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Natural Resources Committee
March 10, 2011

[LB328 LB645 LB683]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, March 10, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB328, LB683, and LB645. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: Annette Dubas.

SENATOR LANGEMEIER: Welcome to the Natural Resources Committee. My name is Chris Langemeier, I'm the Chairman of the committee. I'd like to introduce our committee members that are going to be with us today starting to my far left, or your far right, we have Senator Jim Smith from Papillion, Nebraska. Then Senator Ken Haar from Malcolm. We have Senator Mark Christensen from Imperial. We have Laurie Lage who is the legal counsel for the committee. To my immediate right we have Senator Tom Carlson from Holdrege; we have Senator Beau McCoy from Elkhorn or west Omaha. And then on the end is Barb Koehlmoos who is the committee clerk for the Natural Resources Committee. We have two pages that will be helping us today.

LAURIE LAGE: Just one. [LB328]

SENATOR LANGEMEIER: Oh, Kate isn't here today. Okay, we're only going to have one, I guess. We have Ian Vosburg who is a sophomore at UNL, a political science major and he is from Holdrege, Nebraska, and he will be helping us hand things out. If you care to testify today on a bill, in the corner of the room, you'll see these green sheets; we ask that you fill those out in their entirety. As you come up to testify, if you'll give those to Barb, it helps us keep an accurate record of today's events. If you're here and you want to be part of the record, but you're not planning to testify, you'll see there's kind of a spreadsheet form in the corner. We ask that you fill out one or the other, you don't have to do both. We ask that when you come up to testify, that you say and spell your name the first thing you do; it helps us also keep an accurate record of today's hearings. If you have anything to hand out, we ask that you have 12 copies. If you know right now you're short some copies, raise your hand and Ian will be over to help you make more copies. If it's something that you want us to see, but you don't want us to keep, don't hand it to us. If you give it to us to look at, we're going to keep it for the official record, a photo of your operation, or a family photo or whatever, show it to us from the table. And then allow the senators to look at it afterwards, because if you do give it to us, we are going to keep it for the record. At this time we'd like you to look at your cell phones and make sure they're turned off, which I have to do as well, so we don't disrupt those that are going to testify ahead of you. At this time I see Senator Fischer is here and we will open the hearing on LB328. Welcome.

SENATOR FISCHER: Good afternoon Chairman Langemeier and members of the Natural Resources Committee. For the record my name is Deb Fischer, F-i-s-c-h-e-r,

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and I am the senator representing the 43rd District here in the Nebraska Unicameral. LB328 as currently drafted would amend Section 46-233 which deals with the process for applying to appropriate water. Specifically, the bill would allow an appropriator to apply for an appropriation of water for any hydropower plant located within the channel of a river to provide that in addition to the use of water for hydropower generation purposes, the appropriations could also recognize benefits for fish, wildlife, and recreational purposes. As I've stated several times over the years, I believe water management is one of the most important issues facing our state. Our water is important...it is important for so many reasons for our way of life including agriculture, livestock production, municipal and industrial use, power generation, recreation, fish and wildlife. Given these various interests, I wanted to work to find a way to provide an additional protection and water management tool for all parties. I worked with Nebraska Public Power to develop a potential tool that could maximize the benefits of water while respecting and protecting all interests. I believe the concept behind LB328 is a creative and workable management tool. I understand that several parties, many who would like to testify today, do not support this bill. I understand their concerns and I would ask that the committee hold the bill and allow me time to work with the interested parties on a potential alternative to this proposal. With that, I appreciate your time today and I would try to answer any questions. [LB328]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen. [LB328]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator Fischer. Do they put like a low head power generation into a stream? Do they have to have an appropriation to do that, or can they do that on any flowing stream now? [LB328]

SENATOR FISCHER: I believe that public power will be coming up to testify and they can better answer that for you, Senator. [LB328]

SENATOR CHRISTENSEN: Okay. Thank you. [LB328]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB328]

SENATOR FISCHER: Thank you. I will waive closing and I do ask that you hold the bill. Thank you. [LB328]

SENATOR LANGEMEIER: Thank you, Senator Fischer. You have heard the opening on LB328. We will now move to proponents, those that want to testify in support. Oh, I didn't bring that up did I. In the Natural Resources Committee we do use the light system. You get five minutes to testify. You'll see the lights in front will come on here in a second, and it's a green light. When you see the yellow light come on, you'll have one

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minute, it's kind of your one minute warning. And then when the red light comes on, we ask that you conclude so we can ask you questions. Mr. Barels, welcome back. [LB328]

BRIAN BARELS: (Exhibit 1) Thank you, Chairman Langemeier and members of the Natural Resources Committee, good afternoon. My name is Brian Barels, that's B-r-i-a-n B-a-r-e-l-s. I'm the water resources manager for Nebraska Public Power District. I'm testifying today in support of LB328. As many of you know, NPPD primarily provides wholesale power or electricity directly serving 52 municipalities, 25 public power districts, and we also serve directly to retail customers in 80 municipalities throughout the state. NPPD owns and operates three hydroelectric-generating facilities. One of those, Spencer Hydro, is located on the Niobrara and appears would qualify as an in-river hydro under this bill. LB328 would allow the additional beneficial uses of water for fish, wildlife, and recreation as part of an appropriation for a hydro generating facility located in a stream. An in-river hydro facility that would not divert water from the stream or river through a canal to the generating facility is the type of hydro that I believe is envisioned with this piece of legislation. As such, the water remains in the river and is not diverted from the river. With the water remaining in the river and passing through the hydro, it provides protection for streamflow that is beneficial to fish, wildlife, and recreation both above the plant and downstream of the plant to some point where another appropriator may divert the water or use the water. This flow remains in the river and provides the aquatic system with benefits from the flow that remains in the river. Water in Nebraska provides multiple beneficial uses. It can be used for storage for recreation; it can be used for hydropower generation; later be used for instream uses; and also used for irrigation further downstream. Recognizing the benefits to fish, wildlife, and recreation provided by water appropriated to an in-river hydro plant makes sense. We look forward to additional discussions with Senator Fischer and the committee regarding this bill and think it makes sense to have those discussions to find something that will work. With that I would be glad to answer any questions you may have. [LB328]

SENATOR LANGEMEIER: Very good. We'll start with Senator Christensen. [LB328]

SENATOR CHRISTENSEN: Thank you, Chairman. I'll ask you the same question as Senator Fischer. Can you not just put them in the stream now and generate? [LB328]

BRIAN BARELS: No, I believe you need...to put water to use in the state of Nebraska, it has to be for beneficial purposes which is hydropower. You need an appropriation to do that; and then with the appropriation, you also then need a lease from the state of Nebraska to generate electricity with that facility. [LB328]

SENATOR CHRISTENSEN: Because you got no net usage, so it seems kind of odd that you'd have to. [LB328]

BRIAN BARELS: I think those statutes have been in place for a long time because in

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addition to irrigation, hydropower generation was one of the first uses of water in the state of Nebraska. [LB328]

SENATOR CHRISTENSEN: Okay. Thank you. [LB328]

SENATOR LANGEMEIER: Senator Haar. [LB328]

SENATOR HAAR: Not knowing a whole bunch about this, but we all read about the Niobrara and NPPD and so on in that, how...give me a little bit of that history and how this bill would change what happened there. [LB328]

BRIAN BARELS: I'm really...don't know that there is a direct relationship. I think the history that you're referring to is that NPPD did ask for administration of the water rights for the hydropower plant. The Department of Natural Resources then implemented their standard administration procedures. And from that, a number of things have occurred and one of those is implementation of the preference system. The preference system in Nebraska allows a junior appropriator to use those rights ahead of a senior hydropower facility. And that can be accomplished in two ways, a voluntary subordination agreement or can actually go through a formal condemnation procedure. In this manner I really don't see the two being related. [LB328]

SENATOR HAAR: Okay. [LB328]

BRIAN BARELS: This is really a different potential tool in the toolbox that could be used by state and local interests for fish, wildlife, and benefit...you know, fish, wildlife, and recreation benefits that are already happening within the river basin. [LB328]

SENATOR HAAR: Okay. And how would this benefit NPPD then? [LB328]

BRIAN BARELS: Um, I'm not sure that there is a direct benefit to NPPD, but in discussions we had with Senator Fischer and others, it seemed like it would be a tool in the toolbox and provide some benefit to the local area. [LB328]

SENATOR HAAR: Okay. Thank you. [LB328]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you much. [LB328]

BRIAN BARELS: Thank you. [LB328]

SENATOR LANGEMEIER: Very good. Further testimony as a proponent to LB328. Seeing none. We will move to opponents, those who would like to testify in opposition. Seeing none. Is there anyone that want to testify in a neutral capacity? Welcome.

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[LB328]

GENE ZUERLEIN: (Exhibit 2) Good afternoon. Gene Zuerlein, G-e-n-e Z-u-e-r-l-e-i-n. Senator Langemeier and Natural Resources Committee members, I am the assistant fisheries division administrator for the Nebraska Game and Parks Commission and I'm here on behalf of the commission in a neutral position which...for LB328, which would amend the state statute 46-233. And as you just discussed, it would also recognize benefits for fish, wildlife, and recreation along with hydropower. Some of the key facts of the proposed changes that we see is, on the surface this proposed change sounds good for the Niobrara River, but no details are included as to the supporting facts needed by the Nebraska Department of Natural Resources to determine if the appropriation is, in fact, beneficial to fish, wildlife, and/or recreation to substantiate and allow the Nebraska Department of Natural Resources to determine the nature and amount of a proposed appropriation under such conditions. Without the necessary substantiating facts, Nebraska Department of Natural Resources by law would most likely rule the application defective and return the application to the applicant for correction within 90 days. And if no new information is required and that the benefits are just a rubber stamp, then fish, wildlife, and recreation could be added as a benefit. However, if a defective application is corrected and returned and subsequently accepted and allowed, the application would take priority as the date of the original filing date. So some of the implications from the proposed changes...the way we see it is, first of all, LB328 could potentially allow NPPD's hydropower appropriations on the Niobrara River, i.e. Spencer Dam, and the Central Nebraska Public Power and Irrigation District's in Lake McConaughy, the Kingsley Hydro, appropriations on the North Platte River to be amended to also include fish, wildlife, and recreation. And if the priority date of NPPD's senior water appropriations on the Niobrara were also the date for fish, wildlife, and recreation, it would be precedent setting. If hydropower flow appropriations could be amended to also include fish, wildlife, and recreation on the Niobrara River, this means that NPPD would control the call for water to meet their senior water appropriations. However, because irrigation has a higher priority than hydropower in preference, junior irrigation appropriators and future junior irrigation appropriators could subjugate their applications to NPPD's senior appropriations and essentially divert more surface water from the Niobrara River as long as they paid NPPD the amount of money they would lose from lost revenue due to the generation of hydropower. In essence, this process could go a long ways down the road and in theory, at least, the hydropower plant could no longer function. I doubt if it would reach that, but given the scenario. So given this scenario, and assuming fish, wildlife, and recreation could be included in an existing hydropower appropriation, does the value of fish, wildlife, and recreation enter into the price junior appropriators must pay to use water from this appropriation? Also, since fish, wildlife, and recreation appropriations are for public trust resources and always on call, would payment be continuous as opposed to a one time payment? It seems like it could be appropriate to determine instream flow needs for fish, wildlife, and recreation based on scientific studies which quantify the needs and go through the instream flow

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process to protect public trust natural resources for present and future generations. And actually obtaining an instream flow appropriation in that manner would most likely satisfy the National Park Service and prevent the federal government from seeking a federal reserve water right. Respectfully submitted, Gene Zuerlein. [LB328]

SENATOR LANGEMEIER: Are there any questions? Gene, I have a couple. [LB328]

GENE ZUERLEIN: Sure. [LB328]

SENATOR LANGEMEIER: From Game and Parks' point of view, to pull fish and wildlife up to a senior appropriator's space in time, looks to be a positive for Game and Parks? [LB328]

GENE ZUERLEIN: It would be. [LB328]

SENATOR LANGEMEIER: So, I understand that, but your concern is then that senior appropriator has the right to... [LB328]

GENE ZUERLEIN: Well he... [LB328]

SENATOR LANGEMEIER: ...allow the junior rights to take precedents which then fish would be back at the bottom of the totem pole again. [LB328]

GENE ZUERLEIN: Right. And see the water rights for NPPD's power plant go back to 1896 and 1923... [LB328]

SENATOR LANGEMEIER: Right. [LB328]

GENE ZUERLEIN: ...and 1450, you know, how would you put a date on it or you could...I think the bill allows for a later date, but without any quantification for the actual needs it could be more or less for the resource. [LB328]

SENATOR LANGEMEIER: And then in your last comment, you talked about the...it would satisfy the National Park Service and prevent a federal government from seeking a federal reserve water right. In your mind, is that good or bad? [LB328]

GENE ZUERLEIN: I think the resource needs to be protected one way or another. I think in Nebraska my sentiment is that we would rather do it through a state mechanism, National Park Service is a partner with us right now doing the scientific studies for the river. And they're willing to be a partner and let the state protect the resource. But if we fail to do so, as I testified earlier, they would have a right to file for a reserve federal water right. [LB328]

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SENATOR LANGEMEIER: Uh-hum. [LB328]

GENE ZUERLEIN: And I know that might raise the ere of some people, but we'd like to do it Nebraska's way. [LB328]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much for your testimony. Further testimony in a neutral capacity. Welcome. [LB328]

DON BLANKENAU: Mr. Chairman, members of the committee, my name is Don Blankenau, B-l-a-n-k-e-n-a-u. I'm here today on behalf of the Nebraska Association of Resources Districts, the Middle Niobrara Natural Resource District and the Lower Niobrara Natural Resource District. All three of those entities originally intended to provide testimony in opposition to this bill due to a variety of concerns, both practical and legal with it. They expressed some of those concerns to Senator Fischer who, as you heard, graciously agreed to work with them and other stakeholders in the interim to resolve some of those concerns. So we thought we would offer our testimony today in a neutral capacity and very briefly go over a handful of those concerns. As I mentioned, they're practical and legal concerns. First regarding the practical concerns, the principle motivation behind this bill is to provide some fish and wildlife benefits to preclude the federal government from seeking a federal reserved water right. When the federal government seeks a federal reserved water right, they do so by filing an action in federal court. Now historically those have been very lengthy proceedings lasting upwards to 20 years and they're very expensive not just for the federal government, but all participants. Because of that expense, the federal government hasn't initiated any new federal claims of this nature in probably a decade or more. And we believe as a practical matter, given the status of things in Washington right now, it's unlikely that the federal government would seek a federal reserved water right on the Niobrara particularly since that river is gaining in streamflow rather than losing streamflow. So the fish and wildlife interests seem safe there for the time being. Secondly, we've been working with attorneys for the U.S. Park Service for about four years now. And over that period of time they've expressed an interest in filing those federal claims, but they've said the one thing that would chill them would be if either the Game and Parks Commission or perhaps an NRD holding an appropriate instream flow permit. The one entity that they indicated would probably not be acceptable would a hydropower generator. And that's historically because the environmental interests of the federal government had been at odds with hydropower producers. So even if the federal government were to look at this bill and ask themselves would it satisfy their interests, my sense is it is improbable that it would because the person holding the rights as a surrogate for them would be someone that they traditionally haven't seen as protective of their interests. From the legal perspective, and this was sort of addressed somewhat by the preceding speakers, what this right would do is to give a new suite of benefits to the hydropower producer which would allow them to call for water 100 percent of the

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time. Right now they can call for water whenever they need it, which in the Niobrara amounts to about 50 percent of the time. By adding fish and wildlife to this, they would be able to call for water 100 percent of the time. That's tantamount in our view to granting an entirely new water right with a priority date that jumps ahead of everyone who's already in the system. So as a result, you have existing water right holders who are deprived almost entirely of their property interest without any benefit of hearing. One of the primary concerns of...that my clients have with LB328 is that it makes no provision for a hearing for those persons who would be adversely impacted by such a change. DNR presently will not even transfer a water right that will result in harm to existing appropriators. This bill as it's presently written would jump ahead of that process and circumvent that DNR approach. And we have a whole host of other legal issues, but I think I'll leave it at that. Again, we very much appreciate Senator Fischer's willingness to work with us in the interim. And I think we can put together a pretty meaningful bill next session. With that I'm happy to take any questions. [LB328]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none. [LB328]

DON BLANKENAU: All right. Thank you very much, appreciate it. [LB328]

SENATOR LANGEMEIER: Very good. Thank you for your testimony. Further testimony in a neutral capacity? Seeing none. And Senator Fischer waived...oh, come on up. You got to be quick around here. Just movement slows me down. [LB328]

LARRY HUTCHINSON: I'm Larry Hutchinson, L-a-r-r-y H-u-t-c-h-i-s-o-n. I'm glad to be here, Senator Langemeier and committee members. I'll have to tell you, I was really perplexed about what to say and I'm not representing the American Fishers Society, I'm representing myself. As I read that bill over and over and over, it seemed to be in the wrong section of law to me. It was under a section dealing with appropriations seemed to be by public water suppliers for induced recharge. So I was confused about who was the appropriator that would appropriate the water, whether it was a public water supplier or somebody else, even though hydropower was inserted in there in that same section under part 2. I, you know, it's been a concern because I've worked a lot with Niobrara issues and Spencer Dam, obviously, to me was the one single place in Nebraska that had met the definition under this law (inaudible) under this bill. I would think that if you had fish, wildlife, and recreation it would increase the economic value of the hydropower water significantly. There has been a study of out-of-stream uses for public water supply and irrigation and power use, and the values of water, for example, for recreational floating in the river. That's pretty substantial compared to the values in the report that have been shown for hydropower from Spencer Dam. So as I thought about it, could this translate into a higher price for somebody that wants to subjugate some water for the value of that water to be used by anybody else? It's a question I have and I don't know...don't know the answer to it, so I guess I'm really happy to see that it would be hopefully held over and give the various stakeholders a place at the table to try to

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discuss how this thing would work and what the benefits would be; where the water right for fish and wildlife should accrue to the Spencer Hydro, where it would begin, in the headwaters or someplace downstream? These are questions, I think, need to be brought out in some discussions. And so I hope that the committee does hold the bill; provide an opportunity for stakeholders, both pro and con, not just the NRDs and the power districts, but others included that have a real interest in the Niobrara River issues to work something out that may be beneficial to all. I too think we should try to move forward with a protection under the existing instream flow laws and try to get a scientific-based approach to the instream flows for the different parts of the river for recreation and fish and wildlife. I'm not sure that this kind of bill really satisfies that kind of ideal, so. With that I'll close and try to answer any questions I can. [LB328]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Hutchinson? Seeing none, thank you very much. [LB328]

LARRY HUTCHINSON: Uh-huh. [LB328]

SENATOR LANGEMEIER: When the introducer says she wants it held, that slows down the questions. Yeah. Is there anyone else that would like to testify in a neutral capacity? Seeing none. Now Senator Fischer has waived closing and that will conclude the hearing for LB328. I'd like to thank everybody that testified. There's Senator Mello. We will open LB683. Welcome back. [LB328]

SENATOR MELLO: (Exhibit 3) Thank you, Chairman Langemeier, members of the Natural Resources Committee. My name is Senator Heath Mello, H-e-a-t-h M-e-l-l-o and I represent the 5th Legislative District which includes south Omaha and Bellevue. I introduced LB683 to bring to the Legislature's attention a pending economic crisis that will affect not just my legislative district in the city of Omaha, but also the state of Nebraska. Over the next 15 years the city of Omaha will undertake what will likely be the largest infrastructure project in the history of the state of Nebraska at a cost expected to exceed \$1.7 billion. The project has a potential to create thousands of new jobs and provide a long, overdue jump-start in the local construction economy. Unfortunately, the same project will also have the effect of driving up utility costs forcing some Omaha residents out of their homes and driving Omaha area businesses out of the state. Much of the discussion surrounding the city of Omaha's unfunded, federally mandated, combined sewer overflow, CSO, project has revolved around the effect this massive public works project will have on the Omaha area residents whose sewer bills will see drastic increases over the life of the project. While the severe pain felt by the residential customers from this unfunded mandate will be substantial, the potential effect of the CSO's current plan fee structure on industrial water users is potentially devastating to our state and local economies. Of the more than 160,000 water users in the greater metropolitan area, the 29 users who are classified as industrial will be forced to pay 5 percent of the entire project which averages out to nearly \$3 million for each of

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these businesses which employ a significant number of Omaha area residents. Collectively, the top nine water users, six which reside in my legislative district, employ more than 4,000 Nebraskans paying an average annual salary of nearly \$46,000. As many of you are already aware, the Revenue Committee recently advanced my priority bill, LB682, which would turn back the state sales tax on increased sewer fees to help...to use to fund federally mandated combined sewer overflow projects to help cities pay their infrastructure costs. While this funding will help produce the overall burden of the current projects in both the city of Omaha and Plattsmouth, it does little to address the many concerns about the percentage of the fee structure that falls on industrial water users. As some testifiers behind me will tell you, it is the management of storm water runoff and not water usage that is the main culprit of the city of Omaha's sewer issues. LB683 is designed to create a legislative commission to examine if there are any possible legislative solutions to this looming crisis. The committee should have received a copy of AM738 which restructures the commission to clarify that the goal of the bill was to look specifically at the combined sewer overflow issue and not a broader statewide storm water issues. The amendment also removes the two executive branch members from the green copy and replaces them with an additional legislative representative and a representative from the Papillion-Missouri Natural Resources District. Many of the businesses who will be affected by the current fee structure are long-standing Nebraska-owned and Omaha-based businesses. For example, Skinner Baking Company has been in Omaha for more than 100 years and is currently looking to expand their business. Unfortunately, I believe that if nothing is done to address the fee structure within the next few months, Skinner may have no choice but to relocate out of state, rather than expanding in state and creating additional jobs. Kellogg's, which has been in Omaha since 1943, has already shut down two lines of production resulting in 57 lost jobs. As with Skinner, if nothing is done to address the fee structure, it is increasingly likely that further production will be shifted from Kellogg's Omaha plant to other plants elsewhere in the country resulting in additional job losses. Again, while the fee structure for this project is largely a local government issue, the decisions being made at the local level do have a profound impact on our state's economy and state's budget. The commission called for in LB683, as amended, provides the Legislature with an opportunity to partner with the city of Omaha and to bring all interested parties together to find potential solutions. Rather than the state doing nothing to address the crisis before it unfolds, I hope the committee will look favorably upon LB683 so the Legislature can lead a thoughtful dialogue about how to move forward with the city of Omaha's \$1.7 billion unfunded, federally mandated combined sewer overflow project without crippling the state's economy at the same time. Thank you for your time and I would be happy to answer any questions you may have. [LB683]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson.
[LB683]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Mello, in looking at

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the makeup of this commission, there are 11 members? [LB683]

SENATOR MELLO: Yes. [LB683]

SENATOR CARLSON: And it looks like five of them end up being state government; five of them, probably Omaha, depending on whether the commercial representative was Omaha or not; and the Metropolitan Utilities District, you would assume is Omaha; and then one from Nebraska Chamber of Commerce. I guess I question the makeup of a commission that is really created to help the Omaha area solve a problem, but it's just about a split between Omaha and state government. Why? [LB683]

SENATOR MELLO: Well, Senator Carlson, I think the...as with the amended version of the legislation, the makeup also from the Legislature and government involves various legislative committees with those members coming from the metropolitan area. To say this is not a...purely just a city of Omaha issue would be an understatement. And I think that is the reason why half of the commission is made up of legislative members to help to be able to provide some direction, as well as being able to take expertise from the various committees that may have some ability to influence the combined sewer overflow project that takes a member from...the chairman of this committee, a member of the Appropriations Committee, the Urban Affairs Committee, and the Revenue Committee, and one additional member at large...to help provide a different perspective and to help, hopefully, I would say negotiate and help bring people to the table to help find a solution to what is a very difficult issue. [LB683]

SENATOR CARLSON: Okay, thank you. And I see that a resident of the metropolitan class, so that takes care of three of those; and of course, they've got dual responsibility. And there's...I don't argue with the point of bringing something like this to the Legislature for consideration, but to this point, who's demonstrated leadership in wanting to find a solution? And if you don't want to name names, positions. [LB683]

SENATOR MELLO: I would say that...I would say that numerous individuals...I would say...or numerous organizations have shown leadership to try to address this issue. I think some of the business leaders that will testify behind me have shown great leadership of trying to do a significant amount of research on their own to look and see what other cities and other states have looked at, or are trying to look at. And I would say that the city of Omaha and the Omaha Chamber of Commerce also have been willing partners to look at expanding the conversation. I think the thought is, is for us though to be able to move forward with what I envision seeing more interested parties than just the city of Omaha and the Chamber of Commerce and the businesses that would be affected by the...the 29 users, heavy industrial water users. MUD is a critical component and they've been more than willing, after we started moving forward on this bill, would be of assistance and come to the table. I think part of it though is to be able to have the Legislature serve as the equalizer in trying to negotiate what is fair and what

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is an economically viable solution for the state's economy, because I think that's the underlying issue, Senator Carlson, in this piece of legislation, is it's not solely just about what is perceived to be unfair fee structures on heavy industrial water users with the understanding that storm water runoff management is a critical component of this project. It's more a matter of what is the economic impact of this combined sewer overflow project. This is the largest public infrastructure project in the history of the state of Nebraska and it's bound to have a significant economic impact because of the way it's going to be financed. I think that in itself warrants extensive legislative research, extensive legislative debate and dialogue to help us understand, as a legislature, how this may have a significant impact to our state's economy, understanding right now we're battling a serious budget crisis of our own. The last thing I would be...want to see happen to us as a state is 4,000 jobs leave the city of Omaha that pay as well as they do, that will, no doubt, have a severe economic impact in regards to our income tax collections, our sales tax collections, as well as those impacts to the local government. [LB683]

SENATOR CARLSON: All right. It's entitled the Metropolitan Storm Water Management Commission. And I look at this as more of a task force and more of a study group than a commission like we refer to the Natural Resource Commission or some other commission, but I have a concern that because it's...although they're residents of the metropolitan area, Omaha metropolitan area, the legislators are people with a dual role and normally I'm used to listening to bills that in a sense provide a solution. Here's our solution, what do you think? But this one is saying, we need a solution, help us figure out one. Is that fair enough? [LB683]

SENATOR MELLO: I would say that's a fair assessment of what LB683 tries to do. It lays out specifically in the legislation areas that the commission would study and would investigate for potential financing and economic-related impacts of the projects. But the reason that there wasn't a proposed solution, Senator Carlson, is because I think that is where the assistance from the state is desperately needed. Right now the state does not provide any direct subsidies to help provide funding for this project because it's a federally unfunded mandated project. There's several...over 700 similar projects like this nationwide. And many other state governments in our research has shown that they have provided funding mechanisms, direct aid and assistance to help deal with these similar kind of projects. And I'm not trying to...and never the intention of this bill was to draft the bill to reach a specific outcome. And I think that's very critical with this...with what this commission would do. I'm not suggesting that there is an answer over here and this commission is going to help us weave our way through months of work to get to this one answer. I think there's potential four or five different answers and it's a matter of whether or not the Legislature has a role in enacting, possibly, any of those answers whether through legislation or whether it's done through the executive branch. [LB683]

SENATOR CARLSON: And there's an element of urgency here because it terminates

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December 1, 2011. [LB683]

SENATOR MELLO: Yes. [LB683]

SENATOR CARLSON: Okay. All right. Thank you. [LB683]

SENATOR LANGEMEIER: Senator McCoy. [LB683]

SENATOR McCOY: Thank you, Senator Mello. Can you describe to me where in the amendment, AM738, where is the city of Omaha involved in the commission? [LB683]

SENATOR MELLO: It's actually Section (f) under, or letter (f) under Section 1; a member of the board of directors from the League of Municipalities is employed by the city of the metropolitan class. That's essentially the city of Omaha's representative on the league, the league board, which would be the mayor's office. [LB683]

SENATOR McCOY: So one member on this commission. [LB683]

SENATOR MELLO: Yes. Yes. [LB683]

SENATOR McCOY: Okay. Can you describe to me in item (j), what is the...where you mention a member of the Omaha Association for a More Competitive Business Environment? For the record, would you describe what that is. [LB683]

SENATOR MELLO: They are...it is a coalition of businesses that are essentially the heavy industrial water users and many of them are here today to testify on the legislation. They are a coalition that was formed after learning more about the CSO project and the fee increases that would affect just their class of usage. And so...and I believe one of their representatives will be speaking shortly after me and she can provide more detail about their organization. [LB683]

SENATOR McCOY: Thank you. And, obviously, LB682 which you deemed your priority bill and different piece of legislation, of course, referenced to a different...one of our standing committees, as we all know, but you mentioned it in your opening so I think it's probably a salient point to mention this as well. Can you describe the synergy, if there is such, between LB682 and LB683. This piece of legislation, in light of the fact that Mr. Doug Clark is head of MUD, said that LB682 wouldn't affect utility rates. So you talked about, I don't think any of us would dispute that this is a huge issue. I guess I'm struggling to see why with this commission what could be done that's going to affect, and you mentioned the tie-in between LB682 and LB683. And in light of Mr. Clark's comments, maybe you would care to elaborate on exactly how that legislation, in conjunction with this, would affect what the folks that you mentioned that will testify behind you in support of this legislation, how that would help them. [LB683]

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SENATOR MELLO: I will do my best, Senator McCoy. LB682, essentially, is a financing mechanism based on a municipality's decision to finance federally...as amended now, federally mandated sewer projects, similar to the way the city of Omaha and Plattsmouth has financed their project which is through a sewer-use fee. And under current state statute, our sewer-use fee, is subject to state sales taxes. That sales tax based on the sewer-use fee, which in the city of Omaha's testimony under LB682, they expressed that sewer-use fee both residential, commercial, and industrial will see a steep incline over the course of the next 15 to 20 years. Thus, with that...just with the sewer-use fee increased to pay for the CSO project, you will also see a significant increase in state sales tax, as well, being paid just on that sewer fee. So essentially what LB682 does, is that it holds the state harmless in the sense of the amount of sales tax the state is currently getting from the Omaha CSO project and the Plattsmouth CSO project and would turn back additional sales tax as it's collected over where the current threshold is set. The city Omaha recently raised their rates. They don't anticipate doing their next round of increases for a couple of years, so over the next couple of years, the city of Plattsmouth and Omaha won't see, really, any turnback money at all. It's all based on their rate increases. The connection, I would say, to MUD and Doug Clark, who is the president, he testified in support of LB682, there was the additional component of the original green copy of LB682 which included water and natural gas pipe replacement as well, understanding that cities across Nebraska are seeing the need to replace outdated and crumbling water and natural gas piping. And so that was the other component of the legislation. That no longer is...with the committee amendment, that's no longer part of what is LB682. It's really focusing exclusively on the sales tax turnback that's paid on the specific CSO fee that's part of the Omaha sewer and Plattsmouth sewer bills. The connection, I think, or the synergy between what is LB682 and the amended LB683 is that they still...I guess they both evolve around the same issue which is how is it that the state can be a partner in helping provide relief and other potential solutions to help finance what is going to be the largest public infrastructure project in the state. LB682, by no means, is a silver bullet. And I think myself and other testifiers explained that it's a significant benefit to the project, bringing in over the lifetime of the project anywhere between \$46 million to \$65 million. But \$65 million over the lifetime of a \$1.7 billion project still at the end of the day does not meet what I think many of the residents of Omaha and businesses in the city of Omaha would like to see more assistance and more relief to help pay those costs. What LB683 does is it provides other mechanisms available, or explores potential mechanisms that need to be created to help the city finance this project. To provide a little background, the city of Omaha is unable due to the acceptance of federal funds, I believe, in the early '80s for their sewer project, are unable to raise or use property taxes to pay for this CSO project. Every other city in the state can use property taxes to pay for a public infrastructure project like this, with the exception of the city of Omaha because of an agreement they have with the federal government. That is one of the most significant financing mechanisms that are available for a city to do or undertake such a large

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project like this. So that is one of the hurdles, I know, as I've learned more about the project of why we need to have a discussion, I think, at the state level of how is it that you finance something this large beyond just using your sewer-use fees right now. And that's kind of where I'd say this synergy comes is LB682 provides some relief over the lifetime of the project. While it may range between \$1 million to \$3 million on average every year, it provides some relief. LB683 might actually be a better nexus somewhere down the road of providing the city other opportunities to look at other funding mechanisms whether it's direct aid from the Department of Environmental Quality or the Department of Natural Resources through storm water management grants, or other grant funds in the Department of Environmental Quality, or the Clean Water Revolving Loan Fund that currently exists in the Department of Environmental Quality of helping prioritize projects like CS...federally mandated projects that need that assistance to maybe prioritize those. Those were a three projects, or three funding mechanisms that I explored this session as we were preparing for LB683. Are they the solution? I won't say that today that they're the solution, but I know that they're options; they're things that we have influence as a legislature immediately to impact if we so choose to. I'm convinced there are other options out there that other states and cities are continually looking at that we can maybe look to mimic and/or tweak existing law to assist with the cost of paying for this project. [LB683]

SENATOR McCOY: Thank you. [LB683]

SENATOR LANGEMEIER: Senator Haar. [LB683]

SENATOR HAAR: Senator Mello, thank you. Now just in terms of priority bills and that whole thing that's happening right now, it sounds like there's some urgency to this if it's really going to make a difference in up-front planning, so how does this get into the stream of the possible this year? [LB683]

SENATOR MELLO: Well without, I think without boring the committee extensively on, I think, the rules of the Legislature, I think there are a few mechanisms that are available for us if this is not a committee bill of the Natural Resources Committee that we could attach this to another existing piece of legislation in part, because it is a new commission, it is a new act, which when you create new acts you have the ability to be able to attach those to other pieces of legislation. So in that sense, knowing that we have many other bills that are put in front of us that we have yet to debate, there's that opportunity available. [LB683]

SENATOR HAAR: Okay. [LB683]

SENATOR MELLO: I would say mechanics-wise for us as the Legislature to deal with this without having to make this a priority bill. The other option always, and it was alluded to by Senator Carlson, is that there always is the opportunity for us to look to

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explore this as an interim study over the interim and look to provide some kind of report or research study similar to what has been done by this committee with the LR83, the wind study that was done a few years ago, that had extensive public hearings, extensive public research and dialogue, that's another option as well for us to move forward on this issue without having to run this as an amendment to another piece of legislation. [LB683]

SENATOR HAAR: Okay. Thanks. [LB683]

SENATOR LANGEMEIER: Senator McCoy. [LB683]

SENATOR McCOY: One final question if I may. Thank you, Senator Langemeier, and Senator Haar sparked it. Is it your intention to amend LB83 to LB82? [LB683]

SENATOR MELLO: LB683? [LB683]

SENATOR McCOY: I mean, pardon me, yes, LB683 to LB682. [LB683]

SENATOR MELLO: At this point I think...I think part of it I would like to have further conversations, I think, with colleagues, Senator McCoy, Omaha area colleagues like yourself, as well as members of this committee. They do come from two different committees which is...I wouldn't say it's problematic, but I think there is that option that is available since they both are...LB682 and LB683 are two both new created acts, so they could, in theory, be pushed together if this committee so chose to move out LB683. [LB683]

SENATOR McCOY: Thank you. [LB683]

SENATOR LANGEMEIER: Senator Mello, I have a number of questions. First of all, you have a fee structure set by the mayor and the city council of the city of Omaha that nobody seems to like, or I should say a few individuals that are heavy users don't like. So we have this before us to look at other local ways to pay for it, or is this group supposed to focus on state aid or state solutions in funding or where does the true focus that you're looking at? [LB683]

SENATOR MELLO: The focus is at multiple layers, I would say, of our government within Nebraska, Senator Langemeier, both at the local level and county level, regional level, state level, because this, obviously, doesn't just impact the city of Omaha, as Senator Smith knows, representing Papillion-La Vista. They also are part of paying for this project as is the city of Bellevue and those in the Council Bluffs area, my understanding, as well, who are connected to the city of Omaha's sewer system. It's a regional issue that's being financed. So to that extent, the intention was to look at any and all options frankly, whether it's at the city, county, regional, or state level and to

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determine whether or not any of them are feasible, understanding that there are some that are probably not feasible both feasibly locally nor at the state level, but I think it's worthwhile for the Legislature to help lead that discussion and that exploration to see if there are any. [LB683]

SENATOR LANGEMEIER: Okay. Are there any other questions? Seeing none, thank you very much. [LB683]

SENATOR MELLO: Thank you. [LB683]

SENATOR LANGEMEIER: You have heard the opening on LB683. We will now move to the proponents, those that support LB683. Welcome. [LB683]

JULIA PLUCKER: (Exhibit 4) Thank you. Good afternoon, Chairman Langemeier, committee members. My name is Julia Plucker, J-u-l-i-a, last name, P-l-u-c-k-e-r. I'm a lobbyist registered for the Omaha Association for a More Competitive Business Environment which consists of, right now the top ten largest potable water users. And you can see the list of those companies on the handout I just handed out. This coalition is growing because we keep talking about the number 29. Twenty-nine companies, 29 of the top largest water users are on the hook for a bulk of this \$1.7 billion bill and we will be growing as we add more of those companies in. I've got at least 13 representatives, CEOs, managers of those different industries of...ten of those companies here today. Not all 13 are going to testify, but we wanted to show that this is a very important issue for these industries. This means the difference between them staying in Omaha; of them relocating; of them laying off workers; of them folding up altogether. I will have three members of our coalition testify behind me so I know you're going to find my testimony extremely exciting and want to ask me questions, but I'll just remind you that there will be people after me and I want them to tell their own story. I just wanted to take a few minutes to set up the problem, which Senator Mello did very eloquently, but I'll just point out a couple of things: \$1.7 billion is the project cost that we're looking for. Right now, 29 users are categorized as large industrial users. They are on the hook for what averages out to those 29 companies to be about \$3,000 (sic) over a 15-year period. This is in contrast to the 12,667 businesses in Omaha that are categorized as commercial users which will pay on the average \$43,000 over a 5-year period...over a 15-year period, excuse me. So we have our companies, our 29 largest water users--\$3 million; other some similarly situated businesses paying \$43,000. We don't get any additional services for this and we have read time and time again and have had conversation after conversation about how there is no correlation between the CSO issues that are being fixed by this \$1.7 billion investment and water usage. The city negotiated a payback with the EPA over 15 years. And I'm going to talk more about how that is adding to the problem in a little bit. But I just wanted to take an example of Kellogg's. As you can see from the spreadsheet, they are the largest water user in Omaha. Again, they've been in Omaha for 67 years; over 600 employees; their average

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salary for their workers is about \$60,000 a year. Their sewer fees increase in five years 87.2 percent. And you can follow that out in the green with their monthly costs goes up in 2009, \$113,871 per month and it keeps going up. And by the way, this doesn't stop after 2014, that's just when they look at how much more it's going to have to be increased; how much more these rates are going to have to increase. We don't know what happens after five years. We know the worst case scenario in five years is an 87 percent increase, but when we sit down and try to pencil this out, Kellogg's is probably looking at over 15 years of \$15 million to \$20 million fee increase on their rate utility costs. As for Skinner Baking Company, we talked earlier about why this is an urgent problem. Skinner Baking Company, a company that's been here for a hundred years, they're doing an expansion to twice its size and they're, obviously, going to be using more water and why would they do that in Omaha when their rates are just going to increase? Why are we here? We're here because we need leadership on this issue. We are working with the city of Omaha; there is a dialogue that's been opened, but we haven't seen much progress. We need this rate structure to change. We've been working on this for 18 months. They hired me before the session to see if there were any state solutions that we could come up with. The 15-year period needs to be expanded. There are other cities in the CSO list that have 25 years. I heard a rumor of another one that has 40 years to pay this back. There are other methods of implementing a rate structure. The point is, we need real discussion on this and we need it before these industries leave and not two years from now when we look at 4,000 to 6,000 employees these companies being affected saying what happened to these industries, why did they leave? And there will be a story after me as to one of these cities that is exactly what happened. They instituted this fee and the industries left. I'd be happy to answer any questions because I see my red light is on. [LB683]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator McCoy. [LB683]

SENATOR McCOY: Thank you, Ms. Plucker. You talked briefly about the EPA negotiated agreement, the 15-year pay back, and you mentioned there are other cities and CSO problem across the country that have 25 years and I think you mentioned a rumor of 40 years. Who are the players in that? Who negotiates that with the EPA? [LB683]

JULIA PLUCKER: I believe it was the city public works department. I'm not sure if the mayor's office was involved in that or not. I know the city is here; Marty Grate is who we have worked with and gotten a lot of information from and he would be able probably answer that more specifically. But I do know that right now we have the 15-year pay-back period. And we...I think we negotiated that fairly early and cities after us have gotten longer time periods, so I think it is an option to go back to the EPA and say this simply cannot be paid for in 15 years and we need an expansion of that. [LB683]

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SENATOR McCOY: Thank you. [LB683]

SENATOR LANGEMEIER: Other questions? Senator Haar. [LB683]

SENATOR HAAR: Well I was just curious, nobody is really saying this doesn't need to be done right, but it's how it gets done. [LB683]

JULIA PLUCKER: Exactly. Yeah, I mean, the industries that I represent know that their rates are going to increase, and they have absolutely no problem with that. They understand they're part of the system and they should pay for the update of the system. But it's just the arbitrariness and the unfairness of, you know, ours goes up 87 percent whereas a similarly situated company goes up, you know, 30 percent or 5 percent. So it is, it is just the method of how they are charging for this. [LB683]

SENATOR HAAR: And the goal, of course, is to keep raw sewage from going into the Missouri River during rain storms and so on. [LB683]

JULIA PLUCKER: Exactly. And that is part of the fee calculation and these companies do...have charges to clean their water or they get...I mean, that's not included in this charge. They will still additionally pay for that as well. [LB683]

SENATOR HAAR: Okay. Thank you. [LB683]

SENATOR LANGEMEIER: Senator Carlson. [LB683]

SENATOR CARLSON: Thank you, Senator Langemeier. Julia, in the area that's impacted and affected here, how close is total property valuation of \$50 billion in the ballpark? Do you know? [LB683]

JULIA PLUCKER: I knew you were going to ask me that. I don't know. [LB683]

SENATOR CARLSON: Okay. [LB683]

JULIA PLUCKER: But I would assume if you're saying that it's...I don't know. [LB683]

SENATOR CARLSON: Well I don't know that. [LB683]

JULIA PLUCKER: I don't know. I don't either. [LB683]

SENATOR CARLSON: I think it might be ballpark. Now nobody likes to hear this. If it is, a 3 cent property tax levy pays for it in ten years. [LB683]

JULIA PLUCKER: Right. [LB683]

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SENATOR CARLSON: A \$150 million a year. [LB683]

JULIA PLUCKER: I think as...as...that is certainly...when we look at studies of this and we do research on how...how these...because we're not the only city that is facing this. How are these other cities handling this? Property tax is a big solution on how to pay for this. It's my understanding that, as Senator Mello alluded to, we have...the city has accepted some grant funds from the federal government to work on the infrastructure of this, and so we are now precluded from charging property taxes, ad valorem taxes as a way to pay for this which is causing some of the problems. Now I will point out that the residential customers are also paying for part of this fee. And we're not suggesting that they should have to pay any more. What we're looking at is to get some sort of fairness between the arbitrary designation of industrial users and the rest of the commercial users. But I...yeah, I...property tax would be a great option available to the city, but I don't think they have that option. [LB683]

SENATOR CARLSON: I would imagine, right now, that the heavy users pay more...probably pay more than their actual share in comparison to residential. [LB683]

JULIA PLUCKER: Definitely. [LB683]

SENATOR CARLSON: Yeah. Okay, thank you. [LB683]

SENATOR LANGEMEIER: Senator Schilz. [LB683]

SENATOR SCHILZ: Thank you, Senator Langemeier. Ms. Plucker, I guess...I guess I have to ask the question now, what? You're telling me that property taxes can't be used how come? What exactly happened? [LB683]

JULIA PLUCKER: I believe...and Marty and the city will be able to testify to this again more specifically, but I believe that the city of Omaha accepted federal grant funds to fund a portion of this project or something related to this project and part of accepting those grant funds, part of the conditions from the federal government was you cannot now charge this project and pay for this project using ad valorem taxes, or property taxes. [LB683]

SENATOR SCHILZ: Oops. Thank you. [LB683]

JULIA PLUCKER: Thank you. [LB683]

SENATOR LANGEMEIER: This grant wasn't like \$50,000 was it? [LB683]

JULIA PLUCKER: I don't know what the amount of the grant was. [LB683]

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SENATOR LANGEMEIER: Do you know...you talk about the 15-year payback, is someone already started into that process of trying to reopen those negotiations or... [LB683]

JULIA PLUCKER: We don't know. [LB683]

SENATOR LANGEMEIER: ...is that part of this task force we think we're going to do that too? [LB683]

JULIA PLUCKER: Well, frankly, I mean yeah, it could be part of what the task force is obligated to do, but really what we need, and I want to be a little bit careful, I know the city is...this is a problem for them. It's an unfunded federal mandate and I completely understand that. Dialogue has been going on between our group and the city. But it's been slow in coming and we haven't gotten real concrete answers. Before December or January, there were a number of meetings in the last 18 months with my industry people and the city and nothing, basically, got done. We did have a meeting with them at the beginning of February where we gave some proposals as to what might be an alternative; and remember, it's not our job to come up with the alternative, we don't even know all the facts. I mean we don't know what the grant amount was. We don't know exactly what the rules are. It's not our job to come up with the solution, but we want to be helpful. But we have not heard anything from the city since that meeting. And so I don't know the answers to a lot of the questions as to whether that process has been started with the EPA. I hope it has. [LB683]

SENATOR LANGEMEIER: However you say it's not your job, but yet in LB683 you put this on this commission which I... [LB683]

JULIA PLUCKER: We want to be part of the solution. [LB683]

SENATOR LANGEMEIER: ...which I'd end up chairing. You make it my job. [LB683]

JULIA PLUCKER: Absolutely. We want a leader. [LB683]

SENATOR LANGEMEIER: Twelve grand a year, I don't think this is my problem. [LB683]

JULIA PLUCKER: I totally agree. I totally agree. And we want to...I mean, we want to be part of the solution. Obviously, we're on the hook for paying it now. We've been paying it for a year. And it's already driving...and you'll hear behind me, it's already driving one company to seriously consider relocating. We're not crying wolf. This company will relocate because of this issue if it is not solved before they have to make their decision. [LB683]

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SENATOR LANGEMEIER: Any other questions? Senator Smith. [LB683]

SENATOR SMITH: Thank you, Senator Langemeier. You've said this numerous times, but just to...I want to repeat it back, and this is...what the...the real issue here is that you and the group that you're representing appreciates and recognizes that this is a local issue; the rate structure, the recovery structure process is a local issue. You're not getting the timely movement from the leadership in the Omaha metro community and you're seeing this in your group that you're representing sees this as an economic stability issue and that's why you're elevating this up to the state level to say, if we don't do something about this, if the state doesn't step in and help us out with this, we're going to see significant impacts to our state's economy. [LB683]

JULIA PLUCKER: That's exactly right. I couldn't say it any better than that. [LB683]

SENATOR SMITH: Okay. [LB683]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much, well done. [LB683]

JULIA PLUCKER: Thank you. [LB683]

SENATOR LANGEMEIER: Further testimony in support or proponents. Welcome. [LB683]

PETER MOAIT: Thank you. Chairman Langemeier and Natural Resources Committee members, my name is Peter Moait, M-o-a-i-t. I am the plant director for the Kellogg Omaha facility; a facility that has been in operation, as you heard earlier on, in Omaha since 1943, steeped in traditions of the local community. And again, very proud to be part of that local community. If we look at the Kellogg Company and its facility in Omaha, we employ 600 people directly and we engage up to 200 contracted/temporary personnel on a daily basis. Our facility, we're proud to say, is the largest facility in the Kellogg world. We are the flagship for the Kellogg Company from a manufacturing perspective. We represent 10 percent of the company's revenue is produced through the Omaha facility. As I said, the company itself, we have invested in the facility of a various number of years. We do consider ourselves a valued member of the community, and as such, always look to contribute to the solutions associated with keeping Omaha on a scenario that it does have clean solutions, that we do care about the infrastructure. I do want to say that we do support the bill as proposed by Senator Mello, LB683; and the reason for it is just again the flavor, we want to give you a feel for the impact of those...the cost structure that's had on a company basis like ourself. Now again, as we talk through the impact, while we are a large multinational company, we are very localized and we do have a local impact on our community. Our business is set up

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based on both external and internal competition. And as a manufacturing plant, our internal competition is really within the U.S., other states that are non-CSO affected and also plants and companies that are, in fact, overseas. And as our business model lends itself to the fact that we are source based on lowest cost sourcing. So volume gets associated or allocated to the plant based on the efficiencies, cost effectiveness of the operation, and as you look at any business infrastructure, there's a fixed portion of running and operating a business and a variable portion. Forty percent of our variable costs, and it probably the same for a lot of manufacturing companies, is based on utilities costs. And one of the major attractions into Nebraska and the city of Omaha has been the utility infrastructure. And what we're seeing as a company, I think we happen to be fortunate enough or unfortunate enough to be the highest user in terms of water use, we're seeing a \$3 million direct impact to our P&L over the next five years, but even more concerning than that, is an undetermined amount through to 2015. So what that does directly to us is twofold. One thing it affects our ability to remain competitive against our sister facilities. And again, the result from that is the potential deviation of volume to other facilities or out of state. The other aspect of not being competitive is also the fact that we tend to...part of our 5-10 year plan is around capital investment, investment into the facility, and as we become less effective, as our future is not necessarily clear or mapped out, are we going to be lower source. Is it really the facilities of the state that we want to invest in? Then investment options get made to divert that investment elsewhere. And we have seen it happen in our facility; we had the opportunity to...we have gone from...this year we are due to invest up to \$50 million. That has been reduced with redirecting that investment. So in reality, you know, I think the impact to us is a direct impact. We want to be part of the solution. We are part of the community. We do acknowledge that there needs to be a fix to the problem. We also want to get back to the root cause of the problem. Now having said that, what we're really looking for is for government support, for leadership from our state; things that attracted companies like Kellogg's to Nebraska, things that make us competitive. We're asking for your support in ensuring that we have the right type of infrastructure; want to be part of the solution. We want to be competitive. We want to be the flagship company for Kellogg. We need to stay in Nebraska. Well I think, if I can add from a Nebraska perspective, we produce about 300 million pounds of cereal, of which 42 million pounds of grains come from the state of Nebraska. Thank you. With that I'll open up to any questions. [LB683]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB683]

SENATOR CARLSON: Thank you, Senator Langemeier. How long has Kellogg been in Omaha? [LB683]

PETER MOAIT: We started operations in 1943. [LB683]

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SENATOR CARLSON: Okay. [LB683]

PETER MOAIT: We've been in our current location since 1965. [LB683]

SENATOR CARLSON: And you have many other locations and you talk about the cost of utilities, so there must be...is there a lower cost in some of your other operations? [LB683]

PETER MOAIT: What we have is we have been the lowest cost from a utility base amongst the other facilities. It's stepping into future years. The state of Memphis where one of our competing plants now has a more competitive cost structure, so that will start working against us. [LB683]

SENATOR CARLSON: So of all your operations, Memphis is the only that is lower cost than Omaha? [LB683]

PETER MOAIT: Currently, that's correct. [LB683]

SENATOR CARLSON: And so that could affect where you put the dollars for future expansion? [LB683]

PETER MOAIT: Correct. As I said, there was the opportunity to invest further into Omaha. That has been diverted to plants outside of the U.S., if I can say that. [LB683]

SENATOR CARLSON: Outside of the U.S. With this long history in Omaha, what do you like about Omaha? What do you like about Nebraska? [LB683]

PETER MOAIT: The great skilled workforce, reality, that's...you know, we got a great workforce that we rely on. We got stability in the economy. Again, what attracted us to the economy is the infrastructure that exists and the fact that we can be competitive. We can be competitive in Omaha. Again, it's a large operation and we know we are an efficient operation. [LB683]

SENATOR CARLSON: Okay, and one other question then. When you're asking for support from the state, it's more than just encouragement, you're talking about money. [LB683]

PETER MOAIT: We're looking at really coming up with a fair and equitable model. We're cereal makers; pretty good at making cereal, but not necessarily good at building policies or process or building a structure that...building a strategy that supports the infrastructure for...be it Nebraska or for the state or city. So we're coming to ask for help. [LB683]

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SENATOR CARLSON: Okay. Thank you. [LB683]

PETER MOAIT: Thank you. [LB683]

SENATOR LANGEMEIER: Other questions? Senator Schilz. [LB683]

SENATOR SCHILZ: Thank you. Thank you for coming in today. [LB683]

PETER MOAIT: Thank you. [LB683]

SENATOR SCHILZ: Are you familiar with...is there anybody else around the country that's doing it the way Omaha is looking at doing it? [LB683]

PETER MOAIT: Well what we do understand, we've done a little bit of research. [LB683]

SENATOR SCHILZ: I'll bet. [LB683]

PETER MOAIT: Again as part of doing that research, what we do understand that Canada, Edmonton, they took on the same sort of structure, fee structure. What that did is drove industry out of Edmonton. They then went back in and reversed that fee structure and did not return that industry. So again, from our perspective, there is a danger in that model because if I tell you the options for us, we always wanted to be a part of the Omaha community, and we're going to drive to be so. We're going to be cost-efficient. We're going to be cost-effective. But the danger with the existing model is we can become very, very effective at using water; those costs will go elsewhere. They don't disappear. [LB683]

SENATOR SCHILZ: Thank you. [LB683]

SENATOR LANGEMEIER: Are there any other questions? I'm going to ask one trivial question. [LB683]

PETER MOAIT: Sure. [LB683]

SENATOR LANGEMEIER: In Natural Resources we deal with water, whether it's acreages, gallons per minute, consumptive use. In looking at your high use of water and cereal is a dry product, what do you do with the water? [LB683]

PETER MOAIT: We do a lot in terms of our production processes, cooling, maybe cooling, maybe expansion, creating vacuums, intricacies of cereals, it sounds simple, but taking it from a seed and into our finished product is a lot of work. We certainly offer up the option to have you come through and take a look at the system. But, again the intricate processes of manufacturing cereal. [LB683]

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SENATOR LANGEMEIER: Yeah. Natural Resources Committee does travel quite a bit. [LB683]

PETER MOAIT: Great. [LB683]

SENATOR LANGEMEIER: So we might take you up on that after we go look at zebras out at Monroe yet. (Laughter) Senator Smith. [LB683]

SENATOR SMITH: Senator Langemeier, I've had a chance to tour that plant, and it's an absolutely amazing operation and if you go, you are going to have to wear a hair net. [LB683]

SENATOR LANGEMEIER: We can handle that. Thank you very much. Seeing no other questions. Well done. [LB683]

PETER MOAIT: Thank you. [LB683]

SENATOR LANGEMEIER: Further testimony in support, proponents. Welcome. [LB683]

AUDIE KEATON: Hello. Senator Langemeier, committee, thank you for letting us come before you to speak today. My name is Audie Keaton, A-u-d-i-e, last name Keaton, K-e-a-t-o-n. I am the president of Skinner Baking. We are a privately held company in Omaha. The family is, obviously, steep in tradition within Omaha. We've been here 100 years, we're celebrating 100 years this year. The family has been through several food industry companies through the years, primarily known for pasta. In 1983 we opened the facility we were in. It was a Hinky Dinky in-store bakery. Since 1983 and Hinky Dinky closing their doors, we've grown our business to \$100 million, a little over \$100 million. We're at that position now, as a company, where we're ready to expand. We employ 400 people. We run seven days a week, nearly 20 hours a day. Our average income for our employees is \$44,000 a year. We have a very skilled workforce; they've been with us for 30 years. In some cases we have well over 40 employees that have been here that long that served the company prior to us buying them and have stayed. We love the city of Omaha. We love being where we're at. It's not our choice to leave the city. But we're faced with a real decision as we decide to expand. And that decision is how do we move forward. The top water users in Omaha consume a lot of water, obviously, but they're the food processors within this industry. And the food processors are facing the perfect storm right now; the perfect storm being we've decided as a society that we're going to put 5 percent more corn into our ethanol and that is resulted in the volatility we're seeing right now in the commodity market. Our increases right now, as we move forward, is 67 percent of our base cost is those commodities. When we take a look at the structure that's been posed before us right now and that being what has always been our fuel or our edge within the Omaha area and that being our

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energy use, to see an 82 percent increase across the next four years and not know what's happening from 5 to 15, puts us into a situation, why would we stay here? And so we've looked at alternate models. We've set August 8 as our date when we're going to make a decision as a company in terms of how we're going to move forward. We have received several bids from around the country, Wisconsin, New York, other cities within the state, Iowa, and they're extremely competitive compared to the situation we're in now. Eighty-two percent of our business is sold in the east coast, mainly through the Baltimore/New York City corridor. And, obviously, there's logistics opportunities for us moving out there. We are asking for leadership, myself and the other ten companies, to move forward. We have been talking about this for 18 months. We're in a position now where a decision really needs to happen. We need to move forward one way or another. And Skinner is a privately held company. I make the decisions for the company and I'm a UNO grad, degree in industrial engineering, mechanical engineering. I love the state. My family is from here. But the lack of moving forward has frustrated myself and the other nine in our coalition. We have met and we have talked about it; we've been given deadlines that we're going to get back to us. We have heard nothing up to this point. So we're here today to ask for leadership to help us move forward and resolve this issue. That's not a veiled threat; I'm not crying wolf. We are going to make decisions from Skinner's perspective as how we're going to move forward. We're poised right now with \$78 million in additional contracts of expansion. And so the time is really up to us in terms of how we're going to move forward and we ask your help today. I can't lay it out any clearer than that. I'm open up for questions. [LB683]

SENATOR LANGEMEIER: Questions? Senator Christensen. [LB683]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for sharing with us today. Can you give me a little further insight, what type of leadership, you know, we can have meetings and try and discuss this, but trying to pull a bunch of money out of the state right now is going to be tough. So if you look at, you know, as far as getting this group together and others together to find other ways of applying it, maybe, more fairly can be done. What other type of leadership are you looking for, because other than that, to tell you, I know there's cheaper water and there's cheaper utilities and things in out-state Nebraska where there's buildings open now. And, you know, further west; I'm from the western side. I know we can get a number of you facilities out there. But not trying to take from Omaha, what additional leadership do we need and what do we need? Because trying to get state money out of the state is going to be tough. What additional things do we need to do to keep you here? [LB683]

AUDIE KEATON: You know, first of all, I think, Senator Mello, we met with the Governor, we met with Mayor Suttle in Omaha, and I think Senator Mello stated it pretty well. What...how did we get into this situation? Where did we decide that 29 companies were going to foot this bill...or foot the majority of the bill? And I think to fix the problem, we've got to ask that question. And then we've got to decide as a...collectively, what is

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the...what are the solutions? I'm not...to be honest with you, I'm not the leader in our group here. I represent Skinner Baking and you heard Peter say it, we make Danish and we do it pretty good. But I think we've got to ask the question and ask it ourselves, how did we get into this situation in the first place? Who decided this? And then we've got to decide how we can get out of this situation. But I don't have that answer. I don't. I don't, I wish I did. I know that Henry, who is going to speak next, has laid out an alternative proposal and my understanding is that is under review in the mayor's office right now. [LB683]

SENATOR CHRISTENSEN: The way I looked at it is, unfortunately, that's a...unless the state can find money to do it, which I question, it's a leadership problem of Omaha that's got to step up and meet this, or we run the risk of losing it in the state or having you move out of Omaha. And hopefully it's out of Omaha, if you do leave, to out-state Nebraska where there's facilities. But, you know, we can't force Omaha to do anything. We can give them money if we can find it. But that's why I'm asking what can...do you see that we can do and maybe somebody else behind you will be able to answer that question. Other than doing some brainstorming as a group, we can't make the city of Omaha do anything. They've got to step up, provide the leadership themselves or run the risk of losing you guys, which hurts the whole state as a whole unless we can move you out. I know nobody is trying to move, because that's an additional cost. And that's why I sat here brainstorming what literally can I do other than sit and brainstorm and pray that the city of Omaha will listen because we can't dictate to them. And that's my struggles just trying to think, what is there I can do. So I thank you. I understand, I don't have the answer either, same as you said. I appreciate it. I just wish I knew what to do. [LB683]

SENATOR LANGEMEIER: Senator Carlson. [LB683]

SENATOR CARLSON: Thank you, Senator Langemeier. When you said 29 companies, try to understand that in this session we're dealing with 698 bills, so one comes before us and we've got to get up to speed on really what's in here. The statement, the 29 companies are to foot the bill, where did that come from? So that's a good question. In your understanding, what percentage of the bill are the 29 supposed to be responsible for? [LB683]

AUDIE KEATON: Five percent of the bill. That's my understanding. [LB683]

SENATOR CARLSON: Twenty-nine companies in the entire area responsible for 5 percent of the bill, okay. [LB683]

AUDIE KEATON: That's correct. [LB683]

SENATOR CARLSON: Okay. Thank you. [LB683]

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SENATOR LANGEMEIER: Senator Smith. [LB683]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Keaton, you mentioned August 8 as your, kind of your drop-dead date... [LB683]

AUDIE KEATON: That's correct. [LB683]

SENATOR SMITH: ...for deciding what you're going to do. And if this commission were to go into effect, it doesn't look as if a report would be due out of this committee until November 1, roughly three months after your drop-dead date. Would simply the creation of the commission and an acknowledgement that there's a problem, that there needs to be some work on this, is that sufficient to keep you from moving operations or investing any additional monies after August 8 outside to other locations or what exactly has to happen by August 8? [LB683]

AUDIE KEATON: What we're looking for, myself and the Skinner family, is looking for direction. Are we going to make progress on this or are we going to talk about it? And that's really for 18 months what these ten companies have seen. And the problem is not going to go away. The reality is, if I...if Skinner Baking walks out of the state tomorrow and moves its...moves it...somebody else is going to have to fill in and pay for that. If we all, the ten companies that are sitting here decide tomorrow that we're going to find a way to recycle our own water, the bill implodes, or the fee implodes. It's our belief...well, for us to move forward, we need to move forward and find a solution. And if we can see that honestly, I think that's something that we're definitely going to take a look at. That's as honest as I can answer that. [LB683]

SENATOR SMITH: But do you see that just the commission being formed in and of itself is sufficient to move in the direction that you need to move? [LB683]

AUDIE KEATON: I think that's a great start. I think that's a great start. [LB683]

SENATOR SMITH: Thank you. [LB683]

SENATOR LANGEMEIER: Senator Schilz. [LB683]

SENATOR SCHILZ: Thank you. Thanks for coming in today. And I'm going to put you on the spot a little bit here and if you're not comfortable in answering, I understand. If you had to tell us today, in a percentage, of whether in a year from now you're going to be in Omaha, Nebraska, what would that percentage be? [LB683]

AUDIE KEATON: Well I'm definitely comfortable in answering that. We're 50/50...that's...that's...we've looked at both alternatives and the god's honest truth is we

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are 50/50, right on the fence right now. The Skinner family has a long relationship with the state of Wisconsin. The Skinner industries have been associated with them for a great deal of time. That's, obviously, one eye on our list. Once again, we want to stay in Omaha. We want to be here. It's...this really was the straw that broke the camel's back. We just don't know where we're going. And I don't think there's any business model that's going...that you're going to look at that shows an increase of 82 percent and not know where we're going from there at a point of expansion. It's the uncertainty that concerns us. [LB683]

SENATOR SCHILZ: And then one final question. Was your coalition, or any of the folks involved in your coalition, involved in working on how this rate structure came out or how it came to be? [LB683]

AUDIE KEATON: No, no, we weren't...no we were not. [LB683]

SENATOR SCHILZ: Just handed down, so to speak. [LB683]

AUDIE KEATON: Not that I know of, no. [LB683]

SENATOR SCHILZ: Sent a letter in the mail, maybe, a memo. [LB683]

AUDIE KEATON: We were...some of the companies were informed up front. I don't think this was a new issue. My company, personally, I don't recall that happening, but I know that several of the companies were. And in defense of the city, I don't think that they necessarily...or that we took, necessarily, took it serious up front. Probably should; we didn't know what was coming. We were told that there were increased fees...or several of the companies were told that there were increased fees. And I'm here today because the bills increased. And I became a member of this coalition about six months ago and when we made the decision to look at expansion and how this was affecting our business, that's where the idea, the concept, well if we're going to expand, let's expand where it makes sense for us. [LB683]

SENATOR SCHILZ: Okay. Thank you. [LB683]

SENATOR LANGEMEIER: Senator McCoy. [LB683]

SENATOR McCOY: Thank you, Senator Langemeier. Thank you, Mr. Keaton, for being here this afternoon. Obviously, this hearing is on LB683, a commission, but discussion, obviously, centered around Senator Mello's other piece of legislation, LB682. And I guess one of my questions to you would be in conjunction with this commission as it's proposed in this bill and with LB682, that with the sales tax turnback, is that a value to you? Will that help in any way your organization with that sales tax turnback? [LB683]

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AUDIE KEATON: I can't answer that right now. We're looking at that. [LB683]

SENATOR McCOY: Okay. And I guess my other question to you would be in your, which I'm sure is as you've stated, a heart wrenching thing to go through to contemplate moving your organization, will it play into your decision if the city of Omaha would decide to use a different rate structure and also, maybe, find a way to negotiate a new repayment structure with EPA beyond the 15 years that we currently have, would that play a role in your decision? [LB683]

AUDIE KEATON: Absolutely, absolutely, that's our hope, that's our hope. [LB683]

SENATOR McCOY: Thank you. [LB683]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for testimony, appreciate it. [LB683]

AUDIE KEATON: Thank you. [LB683]

SENATOR LANGEMEIER: Further testimony in support. Good afternoon, welcome. [LB683]

HENRY DAVIS: Thank you. Thank you very much for taking the time to listen to our issues. My name is Henry Davis, D-a-v-i-s. I am the president of Greater Omaha Packing Company where we process 2,400 head of steers and heifers a day. My annual payroll for last year was \$36 million and I employ 840 people. My plant is located in south Omaha. I'm here to talk to you today about the unfairness of this new water and sewer use fees that have been put in place in the city of Omaha. The rate structure is an attempt by the city of Omaha to pay for the federally mandated sewer redesign and sewer infrastructure rebuilding costs by taxing the use of potable water. The current fee structure in place taxes Kellogg's, Nebraska Beef, XL Four Star, Greater Omaha Packing Company, between \$12 million and \$20 million each to be paid in the next 14 years to rebuild the infrastructure of the city of Omaha. This is a penalty levied against the largest water consumers in the city who are some of the largest employers, and many of which have their plants located and draw employments from areas of the city that are most in need and that have the highest unemployment as defined by the federal government's work opportunity programs. These are all high volume, low margin industries. With the current fee structure in place, reinvestment in the plants located in Omaha will be greatly reduced as competing plants in other cities will be much more competitive. In the 1970s, there were 45 to 50 beef processors in Omaha. Now there are only three because businesses dropped out because they were not competitive. The current fee structure in place will create a similar environment that will force plants into a noncompetitive situation. The increase in just five years from 2009 to 2014 for Kellogg's will be \$1.1 million more for water than they paid in 2009. Cumulatively, from

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2009 to 2014 for Kellogg's, they will have paid \$2.9 million more. Nebraska Beef, they will be charged \$1,067,000 more in 2014 than they were charged in 2009. Greater Omaha Packing Company will be charged \$775,000 more in 2014 than they paid in 2009. And XL Four Star will be charged \$763,000 more in 2014 than they paid in 2009. This unfairness demonstrated by comparing the industrial users compared to the commercial users. The industrial accounts amount to the 29 accounts that have been mentioned. These 29 accounts are being asked to pay 5 percent of the \$1.7 billion cost to repair the infrastructure of the city of Omaha. There are a total of 161,536 accounts. On the average for the 29 users, over 15 years, at the rate structure the way it is today, they're going to pay \$2,931,000. Now keep in mind, the high-volume water users like Kellogg's, Nebraska Beef, XL Four Star, and Greater Omaha, we're going to be paying \$12...to possibly...Kellogg's may pay as much as \$20 million in the 15 years. The smaller users may be paying \$1 million, but the average is \$2,900,000 over the 15 years. The 12,667 commercial accounts, over the 15 years are being asked to pay \$42,000. So the industrial accounts are being asked to pay 70 times as much as the commercial accounts. The question has been asked to this group several times, are you asking for money from the state. Yes, we'd like money from the state. But realistically, what we are asking for is a fair formula to divide up this \$1.7 billion. We do not think it's fair that a commercial user pays 1/70 what the industrial users are paying, because the problem is not created by the use of potable water. I see my red light is on. I have a few more things to say if you would allow me to. [LB683]

SENATOR LANGEMEIER: Be brief, summarize, yes. [LB683]

HENRY DAVIS: Okay. The assumption by the city is that because you use a high volume of potable water, you can afford to pay for more of the rebuilding of the infrastructure of the city. There is no science; there is no business; there is no economic model that would show or say or lead one to believe that because you use a greater amount of potable water, you can repair the city sewers, the city streets, the bridges, the parks, or snow removal. There's no correlation. And that's what the formula is that the city has come up with. Nebraska is an agricultural-based economy. Everyone of the top ten users are agricultural-based businesses. Kellogg's used over 250 million pounds of grain a year. Greater Omaha processed 667,000 cattle in 2010. Nebraska Beef processed about 400,000 head of cattle last year, and XL Four Star processed about 300,000 cattle last year. The current potable water fee in place will force the agricultural-based businesses that our state's economy is based on into an uncompetitive environment that will not be sustainable. [LB683]

SENATOR LANGEMEIER: Very good. Are there questions? Senator Carlson. [LB683]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Davis, give me that figure again, the 29 companies, according to your figures, are asked to pay what portion of the \$1.7 billion? [LB683]

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HENRY DAVIS: That is exactly the same question the Governor asked us. It's 5 percent which equals \$85 million. [LB683]

SENATOR CARLSON: Well that doesn't add up because if I add up the 2014 with just these top...how many companies, ten companies, that's over \$10 million just in that year. [LB683]

HENRY DAVIS: I'm sorry, what numbers are you referring to? [LB683]

SENATOR CARLSON: Well the 2014 annual sewer column. [LB683]

HENRY DAVIS: Okay. [LB683]

SENATOR LANGEMEIER: It would just be the green numbers. [LB683]

SENATOR CARLSON: Pardon. [LB683]

SENATOR LANGEMEIER: The green numbers would be the new ones, the black ones are their old numbers they're paying. [LB683]

HENRY DAVIS: The blue numbers are the increases. If you take a look at it, it says increase in cost from 2009 to 2014. For Kellogg's, that increase is \$1,191,000. [LB683]

SENATOR CARLSON: But let's take the annual cost in 2014 for Kellogg's. What's the annual cost? It's \$2.5 million, isn't it? [LB683]

HENRY DAVIS: Correct. [LB683]

SENATOR CARLSON: Okay. That's annual cost. Right? That's in that year. [LB683]

HENRY DAVIS: Right. [LB683]

SENATOR CARLSON: You're underestimating here, I think, and the annual cost for Nebraska Beef, that's you, in 2014 is \$2.4 million almost. [LB683]

HENRY DAVIS: Correct, which is an increase of \$1,067,000. [LB683]

SENATOR CARLSON: I know that. But I'm just adding up the black numbers there. [LB683]

HENRY DAVIS: Oh, well that includes the cost of the water and the affluent charge. We are charged for the BOD and the suspended solids. That is included there. These

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increases are the amount that goes towards funding the \$1.7 billion. The numbers that you are referring to are the total cost for water and the use of the sewer. [LB683]

SENATOR CARLSON: Okay. You've convinced me, it's an unfair portion. But I think what you're asking maybe from the state can't be delivered. There's a mind-set, you know this, of some people in this country that figure that want to get something done, let's soak the rich. And then when it comes right down to it, and that's being applied, all of a sudden we find out that ain't going to work. How does the state change an attitude of a local entity that really, I think, is saying, let's soak the rich--they can afford it? [LB683]

HENRY DAVIS: Well, sir, I think that that assumption of soaking the rich is very inaccurate and that's the problem here. Because I don't believe that Kellogg's or Nebraska Beef or XL Four Star, or Greater Omaha Packing Company is going to sit back and spend another \$10 million or \$20 million and continue to reinvest in their plants in the city. As the mayor told us, for every job we lose, it affects eight people. He said, Mayor Suttle said if you lose a thousand jobs in Omaha, you have to take that number times nine; that affects 9,000 people. That will affect and hurt everybody. There won't be a discussion about poor and rich. There will be a serious discussion about high unemployment in south Omaha. [LB683]

SENATOR CARLSON: I'm not disagreeing with you. I'm agreeing with you. But it seems to me like I'm listening to the testifiers here and part of your frustration is with an attitude, one statement made: How did we get here? How did this decision...how was this decision made? [LB683]

HENRY DAVIS: Well I appreciate, I hope I didn't mean to be insensitive or in any way contrary to what you said, but from my position of dedicating my life to this industry, to have a city come up with a formula that is so unfair and so biased I have to compete with plants in Kansas, in Iowa, in Texas, they're not looking at \$10 million or \$15 million in additional water and sewer use fees, they're taking that money and putting it into food safety like I've done for the last ten years. And that's where I need to reinvest in food safety and types of efficiencies, not in paying more money to correct the sewers unjustly. I understand I'm...I will pay for part of it, but I can't spend 70 times as much as a commercial user. I don't think that's fair. [LB683]

SENATOR CARLSON: No, but are you asking the Legislature to draft a formula that makes it fair? [LB683]

HENRY DAVIS: I believe we're asking the Legislature to take a look at this because we haven't had the leadership in Omaha to come up with a formula that is fair. I believe we're asking this group to form a commission that will look at this and say...asking one group to pay \$85 million when another group has to pay 1/70 as much is unfair. [LB683]

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SENATOR CARLSON: I agree with you. I think it's a sad state of affairs. And hopefully we can help in whatever way we can. [LB683]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB683]

HENRY DAVIS: Thank you. [LB683]

SENATOR LANGEMEIER: Well done. [LB683]

HENRY DAVIS: Thank you very much. [LB683]

SENATOR LANGEMEIER: Further testimony in support? Mr. Oltmans. [LB683]

STEVE OLTMANS: Good to see you all. [LB683]

SENATOR LANGEMEIER: It's been a while. [LB683]

STEVE OLTMANS: (Exhibits 5 and 6) Yeah. Chairman Langemeier and fellow members of the Natural Resources Committee, I'm Steve Oltmans, O-I-t-m-a-n-s. I'm appearing here today on behalf of Mayor Suttle as his chief of staff. This is a subject that I know a little bit about. I don't think you can ever know enough. I grew up on a farm in Nuckolls County so I'm very familiar with the rural issues in the state of Nebraska regarding the water and in recent years have become very familiar with those in the city, like the city of Omaha. I'd first like to...the handouts you received is one of the best summaries I've ever found of the complex managing storm water and water quality issues. I think most of you know that in 1971 the Clean Water Act was signed by then President Nixon that primarily looked at municipal sewage treatment. In the late '70s, the act was amended to require secondary sewage treatment which most cities were voting doing. And we had literally rivers catching on fire in those days and of course we've come a long ways from that. And in 1994, Congress amended the act again to require cities that have combined sewage, the CSO acronym, that they attack that and take care of that responsibility. In other words, a federal mandate in all three cases. The city of Omaha has spent four years on this significantly. We spent over a half a million dollars on a rate study. Marty Grate, who is the head of the environmental division of our public works that includes garbage and sewage, will comment and answer most of your questions regarding the details of that rate study since that seems to be the factor today. I can assure you it's not easy to determine an equitable rate structure. I can tell you that if we adjusted it significantly, 63 percent of the cost of this enormous project is paid for by residential ratepayers. I think...even I can make the argument that you've heard from the industries here today that it is unfair for them. But so can the other ratepayers. We spent two years and a half a million dollars looking across the country at

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what other cities charge to come up with this. Now are we willing to change it? Sure we are. Mayor Suttle, for example, just toured the Skinner plant, I believe, last week. I go way back with the Skinner Company. Lloyd Skinner who was the original CEO of that company used to travel to a national water resources meeting with me for well over a decade, so I've followed that company for a long time. The mayor also has me meeting every Thursday morning at 7:00 A.M. at the chamber of commerce with the economic development structure within the chamber. Historically, in Omaha the mayor's office will get initially contacted by companies that are looking at Omaha, about a third of those, and about two-thirds of them contact the chamber directly. So it's very important the chamber knows the Nebraska Advantage Act very well. We have other incentives for some industries like TIFF, CDBG grants, that sort of thing and we've developed a very good team approach. And very fortunately have a number of companies looking seriously at Omaha now. And the water rate fees are only a part of that economic structure, of course. And Marty will address that a little further. The handouts I gave you, again, are the briefest, and it's not brief, but of the mandate that we're facing. And then the other brochure is one put out by the Omaha Chamber that shows you a lot of good things about Omaha. And we can always improve and we will be working with these folks in trying to get them some consolation, if at all possible. But this wasn't done on a hoof print. This was done through a very normal process; many, many hearings; many, many public meetings, and approved unanimously several times by the Omaha City Council. In a big city like Omaha, we have two checkpoints. We have a strong mayor system and everything that is done through the administration, almost everything is approved by the city council. You don't have that in other entities of government. You usually have one board making all those decisions. So we're very conscientious about this. We're very sincere of working with all our industries, but it is a very challenging thing to comply with a federal mandate, particularly one of this size, one of the largest of any city in the Midwest. With that I'd be happy to answer any questions. Marty Grate, again, is the director of environmental services who will get into the details of the rate structure and how we arrived at what we did. [LB683]

SENATOR LANGEMEIER: Are there any questions? We'll start out...Senator Haar. [LB683]

SENATOR HAAR: Yes, do you see then that LB683...what do you see the advantages of LB683 in terms of solving the problem? [LB683]

STEVE OLTMANS: Well I think it always...we're always willing to participate in any type of a commission or committee, interim study. Usually it's a very...I've done that for years, it's usually a good educational process for the parties involved. In this case a number of state senators would be involved if it was an interim study or a commission most likely. So we're supportive of the bill, that's why we're here. We see it as another tool. I wish it hadn't come to this. But it has and we'll attempt to solve that. I know Senator Langemeier was here and maybe one or two other of you, but, you know, we

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went through in Omaha together, with the city of Omaha and all the cities in Sarpy and Douglas County that are serviced, we have a regional sewage system so we're very fortunate, that's a good marketing tool. We have a regional water system that is well-run by MUD that serves all the communities, but Papillion and the metropolitan area. We serve all the communities in the metropolitan area and Douglas and Sarpy County for sewage that drained into the Papio Basin. And it's, you know, most of those cities if they operated an individual treatment plants, their costs would be at least two times higher than hooking into the main system where we have two treatment plants that handle the whole metropolitan area in the Missouri River there, so. [LB683]

SENATOR HAAR: So when it finally comes down to a vote, is it just the Omaha City Council or is it in conjunction with the other communities? [LB683]

STEVE OLTMANS: Ultimately, it's the Omaha City Council. Now we have a contractual arrangement with all the other cities. But take...just using Papillion has an example, if they operated their own treatment plant, their cost would be approximately two to two and a half times higher than by hooking into the regional system. They'd have to have licensed operators. They'd have a lot more liability. Right now most of that liability is shifted to the regional system and I can guarantee you EPA and DEQ does not want 20 more sewage treatment plants that they've got to look at. They love the regional system. That's one of the best examples in the country from that standpoint. [LB683]

SENATOR LANGEMEIER: Senator Smith. [LB683]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Oltmans, you said that...well, you're here to kind of speak on behalf as a proponent of this bill, and...but I'm also hearing that you're saying you invested quite a bit already in establishing the rate structure so...and that you want to work and you support this bill, but then again, you've already spent a lot developing the rate structure, so are you not or are you willing to change that rate structure? [LB683]

STEVE OLTMANS: Well, we're willing to look at that. We did spend a lot of money determining that, two years of time, but that doesn't mean it's right. I mean, you can always...even with all that effort you can still be wrong. I will tell you that it would be my personal opinion if you change it significantly, then the other groups are going to say they're not...they're paying too much. I mean I...that's just natural. But we're very conscious of the fact, and Mayor Suttle says we're going to try to adjust this to some degree and we're going to do that. And we see this as another way to have an open discussion, another forum to look at the rate structure. So we're willing to do that. [LB683]

SENATOR SMITH: And then this is a difficult question, but we're hearing a lot here about the lack of leadership locally to address some of these issues and then forcing it

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to come to the Legislature. Is that accurate and is there anything more that can be done at the local level... [LB683]

STEVE OLTMANS: Well. [LB683]

SENATOR SMITH: ...to have the type of results that you're looking at this commission to providing? [LB683]

STEVE OLTMANS: Well the lack of leadership and that judgment is based on anybody and everybody. I'm not going to comment on that. I mean obviously we're making some very tough decisions in Omaha and just like the Legislature is in terms of money and where it comes from. It's not easy. And here we don't have a lot of choices from the standpoint that it's a federal mandate; good, bad or otherwise. And if we don't take care of this, we'll have a lot bigger problems than we have right now as a city solving this problem. If you study the rate structure across the country, the trend is up in all of this, it's not...and do we like it? No. But I think...it's pretty obvious that the Suttle administration has made some tough decisions so there's leadership there. Now whether you agree with it or not is anybody's opinion. Obviously we've tested that recently. [LB683]

SENATOR SMITH: Thank you. [LB683]

SENATOR LANGEMEIER: Senator Christensen. [LB683]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Steve. Did I hear you right when you used the term equitable, and then you said, it would put...if you done it the other way, it puts 63 percent of it onto residents? [LB683]

STEVE OLTMANS: No, currently the...63 percent of the cost of this project is being paid for through the water fees on residents. [LB683]

SENATOR CHRISTENSEN: Okay. What if it was done on usage? Absolutely just every gallon got the same equal increase regardless of whether it was...? [LB683]

STEVE OLTMANS: Well the current structure, Senator, is based on usage. [LB683]

SENATOR CHRISTENSEN: Well I guess I thought from some of the testimony they said it wasn't equally. [LB683]

STEVE OLTMANS: Well... [LB683]

SENATOR CHRISTENSEN: So you're telling me the household charges are going up 87 percent if...if everything is on usage, why would one be 87, one be 81, 78 percent

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change? [LB683]

STEVE OLTMANS: Marty, if I can defer that to Marty's testimony, he'll cover that with you much more accurate than I could. [LB683]

SENATOR CHRISTENSEN: Okay. Thank you. [LB683]

STEVE OLTMANS: You're welcome. [LB683]

SENATOR LANGEMEIER: Senator Schilz. [LB683]

SENATOR SCHILZ: Thank you, Senator Langemeier. Steve, thanks for coming in. [LB683]

STEVE OLTMANS: You bet. [LB683]

SENATOR SCHILZ: I guess, I guess, you know, as we sit here and we talk about this, we all know that federal mandates are really...they're tough to deal with at times and it's not very much fun. Knowing that and knowing that this is such a big cost that's there, I guess I would like to know, you know, when we talked about the grant that was applied for and received and then precluded you from using property tax, so to speak, how was that arrived at? Was that a conscious decision to do that? Or did somebody miss it in the paperwork? [LB683]

STEVE OLTMANS: No, that's a federal EPA ruling and that was determined in 1979. [LB683]

SENATOR SCHILZ: Right. But my question is, how big was the grant that you received and was it a conscious decision to go for that grant knowing that then the taxes would be precluded, or was that just something that came up that nobody saw? [LB683]

STEVE OLTMANS: I'm going to defer to Marty to give the answer, because that's his department and... [LB683]

SENATOR SCHILZ: Okay. Sure. [LB683]

STEVE OLTMANS: ...he'll clearly answer that better than I would. [LB683]

SENATOR SCHILZ: Okay. That's fine. Okay. [LB683]

SENATOR LANGEMEIER: Senator McCoy. [LB683]

SENATOR McCOY: Thank you, Senator Langemeier and thank you, Mr. Oltmans for

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being here this afternoon. I guess my question for you, the very first proponent that we had on this bill, Ms. Plucker, indicated that there has been long lapses of time in between discussions between the mayor's office and this group of large industrial water users. I would assume that's a question that's best directed to you rather than Mr. Grate, who I assume will follow you. So perhaps you could elaborate on that because I'm hearing in your response to Senator Smith that you're very cognizant and very understanding of the problem at hand and are willing to look at changes that may be made. That appears to be contradictory to what we're hearing from other testifiers as to just how much, perhaps, the mayor's office is working on this issue. Perhaps you can elaborate on that. [LB683]

STEVE OLTMANS: Sure, be glad to, Senator. We could show you all the logs and the correspondence and I think most people would agree that that response has been pretty good. Now have we given them the answer they want, no, we haven't, because it's not that easy. Any rate structure would have to go through city council and be approved and if we can find some justification for that, we're willing to do that. I think Marty will respond to that as well. Again, like I said, last week Mayor Suttle just walked through the Skinner plant trying to understand the issues more. And it is a major increase, there's no doubt about it. It's a major increase for everybody paying that, the commercial folks and so forth. Senator Langemeier will remember that three years ago we were in front of this body trying to get an authorization for a storm water management fee which these folks are advocating. We didn't have many people advocating for that. That's still a solution if you want to open that door again. I guarantee you, you'll get a lot more letters than you did on this issue. But we'd be glad to open that door again because the city of Omaha and the Papio NRD in a partnership are trying to attack many of these federal mandates as a joint venture. And part of the solution was a storm water management fee. But all the commercial folks adamantly opposed that. It's based on surface acreage runoff. And at that time the city and the NRD felt that that was more equitable. But that legislation did not get out of this committee because of the opposition. [LB683]

SENATOR McCOY: Well you're again here as the chief of staff to Mayor Suttle and representing him here today. In regards to the specifics of LB683 and this proposed commission, are you hoping that...for a financial solution from the state to this problem? Is that part of the mayor's support of this legislation? [LB683]

STEVE OLTMANS: No, we're not asking for that. We're a little scared to ask. No, we're not asking for that. [LB683]

SENATOR McCOY: Then what are you asking for? [LB683]

STEVE OLTMANS: That we pass this so we have another forum to try to draw a conclusion to the problem with this issue. [LB683]

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SENATOR McCOY: But what conclusion could we possibly draw if it's not financial in nature? What would be the purpose... [LB683]

STEVE OLTMANS: Well that... [LB683]

SENATOR McCOY: ...of our involvement at the legislative level in this commission, setting up and then helping to operate this commission if it is not financial in nature? [LB683]

STEVE OLTMANS: Well that you would look at the rate structure, Senator, that these folks are concerned with and feel that they've been treated unfairly. And if we can find something in there that shows that, we'd be more than willing to adjust the rates. [LB683]

SENATOR McCOY: But that rate structure is set and approved by...at the local level by the Omaha City Council, is it not? [LB683]

STEVE OLTMANS: That's correct. [LB683]

SENATOR McCOY: Then what could we do at the legislative level...that would be a decision that's made at the local level. [LB683]

STEVE OLTMANS: Yes, sir. I think all this could ask for is another body to hear the facts and maybe make additional recommendations. I think that's what this asks for. [LB683]

SENATOR McCOY: Thank you. [LB683]

STEVE OLTMANS: Um-hum. And we're supportive of that. [LB683]

SENATOR LANGEMEIER: Senator Carlson. [LB683]

SENATOR CARLSON: Thank you, Senator Langemeier and Mr. Oltmans. This is a very impressive piece of propaganda. And it's based on past performance; that's the problem. And so how quickly things can change as ordinances and so forth change in a community. And I...you have a real problem. I'm trying to understand it and I think I do. You got some big horses in the stable and to not pay attention to those horses risks the entire operation. And it almost looks like a decision, I'm not saying your decision, a decision was made by the city council to take the risk that these horses are going to stay in the barn. And they may not. And that is a real problem. [LB683]

STEVE OLTMANS: We know that. [LB683]

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SENATOR CARLSON: And I think it's just getting close enough that...I'm not saying you'd didn't realize it, because you didn't vote. [LB683]

STEVE OLTMANS: That's correct. [LB683]

SENATOR CARLSON: But that took place and these big horses have to be listened to. Now, the problem I can see on this, I'll call it a task force, is that they only have one representative. But that's one voice at least on that group. I hope something can be worked out and appreciate you coming here. [LB683]

STEVE OLTMANS: We do too, we do too, Senator Carlson. [LB683]

SENATOR CARLSON: Okay. [LB683]

SENATOR LANGEMEIER: Senator Haar. [LB683]

SENATOR HAAR: Well one of the things you mentioned earlier was potential of a storm water fee or whatever, I mean, things like that would go back on the table, I assume, if this commission were formed. [LB683]

STEVE OLTMANS: Potentially. [LB683]

SENATOR HAAR: Yeah, potentially. [LB683]

STEVE OLTMANS: Um-hum, I agree. [LB683]

SENATOR HAAR: I could see...and then the things that Senator Mello talked about in LB682, although I'm not really familiar with that, that does involve action from the Legislature and things like the storm water fee, that would have taken a move by the Legislature. [LB683]

STEVE OLTMANS: Yes. Um-hum. Yeah. There are about 800 cities or water districts in the country that have a storm water fee. That was proposed in front of this body about three years ago, I think, if I remember right, four years ago. [LB683]

SENATOR LANGEMEIER: Before I was Chair, so it was four years ago. [LB683]

STEVE OLTMANS: Okay. [LB683]

SENATOR HAAR: So even though the state is not going to write a check for this, there is involvement from the state bodies that could make a difference, I gather. [LB683]

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STEVE OLTMANS: Yeah. Absolutely and we'd appreciate any...whether it's moral support or, obviously, always appreciate financial support, but we're not advocating that. We're supporting this bill because if it helps us have another forum possibility to understand this and adjust the rates for the people that do employ a lot of people in our city, we're willing to take that look. [LB683]

SENATOR HAAR: But I mean for example, if this commission or task force, whatever would come back with a recommendation of a storm water fee, it would take this body to be engaged in that. So I can...you know, it's going to be your problem to solve, obviously, but I can see where...where we have a role to play as well. [LB683]

STEVE OLTMANS: You do. And that's why both the city of Omaha and all the cities in the metropolitan area, in the Interagency Act Agreement with the NRD, that's why we came here four years ago with that proposal. And there was extreme opposition to that proposal as well. [LB683]

SENATOR HAAR: Sure. [LB683]

SENATOR LANGEMEIER: Senator Christensen. [LB683]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Mr. Oltmans. You talked about you had many meetings and first of all, I'll say I've started a business before, so I know the difficulties in running a business until something starts hurting, you don't pay attention to the meeting. All right, because you're trying to grow a business, you're trying to expand the business, you're trying to see how you can get the competitive edge, you're not worried about all of a sudden getting attacked on the backside. But how many meetings have you had with this since you've become aware of the situation with this group? And then you said you're willing to look at change. Well if this group has been going for six months, if you've had meetings in the last six months this group's been going, you surely got some ideas of how you potentially change this from having some meetings. What have you looked at? [LB683]

STEVE OLTMANS: We do, and again, Mr. Grate will address that directly if I can punt again, if I could, Senator, I'd appreciate that. And maybe it might be a...I'm not trying to cut this off, that's your job, but... [LB683]

SENATOR LANGEMEIER: We got one more question. [LB683]

STEVE OLTMANS: Okay. [LB683]

SENATOR LANGEMEIER: I'll handle that. [LB683]

STEVE OLTMANS: Okay. [LB683]

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SENATOR LANGEMEIER: Senator Smith. [LB683]

SENATOR SMITH: Thank you, Senator Langemeier. Well, Mr. Oltmans, I get to have the last question. [LB683]

STEVE OLTMANS: All right, Mr. Smith...Senator Smith. [LB683]

SENATOR SMITH: But, you know you've endured some really tough and pointed discussion here and really appreciate you being here. I've known you for a very long time, Steve, and I know that no one here probably has a bigger heart, greater heart for public service and our communities than you do. And I know that no one probably wants a more positive outcome to this than you do. [LB683]

STEVE OLTMANS: Correct. [LB683]

SENATOR SMITH: So I appreciate your hard work at this and appreciate you being here today and for enduring. [LB683]

STEVE OLTMANS: Thank you, Senator. Appreciate that. [LB683]

SENATOR LANGEMEIER: You're not done yet. Senator Haar. [LB683]

SENATOR HAAR: I'll get the last word. [LB683]

STEVE OLTMANS: Okay. [LB683]

SENATOR HAAR: No, our purpose here today isn't to beat up on Omaha. It's to see if--if at this point in time, with this kind of mechanism we can be helpful and I think that should be clear. [LB683]

STEVE OLTMANS: And that's...we'll take all the help we can get. Thank you. [LB683]

SENATOR LANGEMEIER: Steve, I always get the last word. [LB683]

STEVE OLTMANS: Okay. All right. Senator, you're the Chairperson. [LB683]

SENATOR LANGEMEIER: It's the unique part of being the Chair. [LB683]

STEVE OLTMANS: Yeah. [LB683]

SENATOR LANGEMEIER: In this amendment it makes me chair of this group. And on behalf of Omaha, that you represent, would we have your commitment that number one,

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you're going to come, you're going to participate. And as we were to ask questions and dive into the background of how you came up with your numbers and that, the mayor's office is going to be open and receptive to that? [LB683]

STEVE OLTMANS: Absolutely, and I think you'll see that with Marty's comments here. You can always do more, there's no question about that. And the mayor has visited with many of these people already and directly, and so, absolutely. Again, you have to understand the process in a city government, the council has to approve these changes as well. The mayor can't just make these changes. We certainly make the recommendations. [LB683]

SENATOR LANGEMEIER: Sure. [LB683]

STEVE OLTMANS: And we'll do that. [LB683]

SENATOR LANGEMEIER: Very good. Thank you very much. [LB683]

STEVE OLTMANS: I should say that a part of that answer too, all the times the city council has voted on the rate structures and so forth through this process, the vote has been seven to nothing. You can check the record. [LB683]

SENATOR LANGEMEIER: Very good. Thank you, Steve. Further testimony in support? [LB683]

MARTY GRATE: Good afternoon. [LB683]

SENATOR LANGEMEIER: Welcome. [LB683]

MARTY GRATE: (Exhibit 7) Senator Langemeier and members of the committee. My name is Marty Grate, M-a-r-t-y G-r-a-t-e and I'm the environmental services manager for the city of Omaha. And if there's a responsible person in this room for the rate structure, it's me. I've been responsible, actually, we have a national consultant that's based in Denver that has been the principle architect of our model and it's a very extensive computer model. It's not an arbitrary model as it's been characterized. But I want to start out by saying that I truly appreciate the concerns and the dismay of the industries over these rate increases. They're very large rate increases. It's not a matter that we just came up with this formula on the back of a napkin. Our rate structure has been substantially unchanged since 2005. So this isn't anything new; isn't anything we came up. The reason the concern has arisen is because the stakes have increased, the total amount of money that we need to spend in order to comply with our consent order with the state of Nebraska is driving these costs up. And so now the formulas are becoming more apparent in their current and future impacts. I also am a little bit concerned about being characterized as, you know, not being willing to look at this. Because we have

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been looking, and maybe we haven't communicated as well as we could have, but we have been working with our rate consultant to look at what the legal constraints we have are on how we're able to set these rates and also look at alternatives. Henry Davis offered the mayor some alternatives. I'm supposed to get a tech memo back from our rate consultant this week on that which then would trigger another meeting with the industrial group to go over those and say, well, here's how we view those alternatives, what we could do. One of the things that I will be up-front and honest with you about is that we have a rate ordinance in place right now. Our rate consultant assures us that that rate ordinance is lawful, that there are other communities that use this same sort of rate structure. It is a legal option. We do have a concern with our industrial customers and we take that very seriously. But we also have a concern to the larger community in terms of a bond rating. We have that rate ordinance in effect until 2014. If we were to go in every week and start tweaking and tuning our rate ordinance, the signal that that would send to our bond rating agencies is, boy, Omaha is not very stable. Are they really a good risk for interest rates? So yes, we may not be moving as quickly as some people would like, but we have to be very deliberate because this is a huge, huge, huge project. It's not a project that was entered into lightly. There was a lot of planning. There was a lot of communication. But it's just complicated. These good people from the industries, I'm sure the gentleman from Kellogg's is an expert at cereal; and I'm sure that the meat packing plants are experts in their industry, but rate setting law is very complicated. It's just not that easy. A lot of the calculations and the numbers that you were given, well yeah, from a layman's perspective they may make sense and they may provide some arguable points, but the rates are much, much more complicated than people understand. You've got to factor in the fact that not only are we setting rates to fund our operation and maintenance, but we've also got now this big capital expense and it's not a pay as you go program. It's too expensive. That \$1.7 billion will be financed with a series of revenue bonds that will spread those costs forward to 2054. So when you're dealing with simple \$1.7 billion divided by 15 years, that's not the financial plan. It's much more complicated than that. With that I'd be happy to answer any of the questions that you had about how we developed the rates and what we have for alternatives. [LB683]

SENATOR LANGEMEIER: Where do we start? Senator Christensen. [LB683]

SENATOR CHRISTENSEN: Thank you. Back to the equitable question. Is this done evenly per gallon on every household, every industry, everything? [LB683]

MARTY GRATE: Okay, let me explain our rate structure. Our rate structure essentially has three components, there are three ways that we can charge, or three parts of a sewer bill. One is a flow charge which is based on a per gallon and whether it's Kellogg's or Marty Grate as a resident, we all pay the same per gallon. So the more gallons you use, the more you contribute. The second component is a customer charge, and that charge kind of covers our fixed costs like billing and administration. And

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because different customer classes receive different kinds of...or there's different things that are done for that class in terms of monitoring and things like that, those vary within a class. But all of the commercial customers pay a set fee, all the residential. But that's unchanging. The third fee was one that was mentioned, that's a high-strength fee that's charged to some industries that have more concentrated pollutants and therefore requires more treatment and more cost. When we got to the CSO cost, because this program, you know, started about five years ago, we talked with our rate consultant and said, how can we recover these costs to pay the debt that we're incurring to fund the CSO? And he said, well, you know, it's not really flow related per se. It's not all due to the flow and that the more waste you discharge the more those costs go up. But it's not exactly a fixed cost either because there's some of both. And so we asked him, well, you know, what should we do and what the rate consultant suggested was, well normally if you went to a judge and you knew it was part of this and part of this but you couldn't tell what the percentage was, they'd say 50/50. That's the fundamental philosophy we have in our CSO rates is that half of those costs will be recovered through the per gallon charge and half of them on the fixed cost. Even though our industrial customers, because they use so much water, are looking at huge, huge increases in the amount of money they are going to have to pay each year, when you look on a percentage basis, our residential and commercial customers are actually seeing higher percentage increases than are our industries. For a typical household customer in 2010 they paid \$15 a month. By 2014 they'll pay \$37 a month. So that's more than doubling. Our industrial customers are seeing 60 to 70 percent increases. So, I mean, again, what's fair? There's no denying that they're experiencing huge and very impactive cost increases. But rate making, it's not the case of the cost of the project is going to suddenly go down, so if one customer class receives, you know, a credit or some assistance, somebody else is going to have to pay more. And that's why we can't just jump into this. [LB683]

SENATOR CHRISTENSEN: But so basically what you're telling me with the industries we have here, it's the high-strength fee, I believe that's what I wrote, you said for the cleaning up the contaminants is what's nailing these industries? [LB683]

MARTY GRATE: No, that's incorrect. They've always paid those high-strength fees and that does distinguish them in some ways from the other customer classes, but the CSO costs by rate-model design are recovered only based on the flow and the customer. So the high-strength charges don't come into play with regard to CSO. [LB683]

SENATOR CHRISTENSEN: So if that don't come into play, and your custom...our customer charge doesn't come into play, then it all has to be in per gallon. [LB683]

MARTY GRATE: No. The customer charge recovers 50 percent of the CSO cost and the flow charge covers 50 percent. [LB683]

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SENATOR CHRISTENSEN: So did the customer charge just go up...is that just like everybody pays \$15 a month for a meter, or how does that work? [LB683]

MARTY GRATE: Okay. Let's say we had a million dollars of CSO costs that we had to recover. What that means is that we've got some...it's in one of your handouts, some 160,000 accounts; if you take a half a million dollars and divide it evenly among those 160 accounts (sic), that's how you would pay for half of it. The other half of it you would pay based upon how many gallons anybody used and split the pie according to that. So effectively, on the customer's half of the CSO cost, Greater Omaha Packing is again paying the same as Marty Grate resident. But they've got a lot more flow so in that other half of the cost, they end up with a large fee. But is it fair? One of the reasons that I came down here, because I wasn't aware there was an amendment to the bill, I was coming down to speak to storm water, is when they came to me with their concerns, or actually I went to them to advise them that their fees were going to be going up and that they needed to be aware of this, they read some of the reports and said, well gee, it's really not my water that's causing the overflow, it's the rain water that's causing the overflow. Why don't we bill it based upon a runoff. And I said, I've been down to the Legislature for 15 years and sat at this table and asked for enabling legislation to get that option available to us and have been just flatly turned down every time. I don't know. The reason I came down here today was to see if the Legislature, as part of this study, would be willing to look at that again. The bill that I passed around was the last attempt to get that legislation. I think there is an argument to be made that some of the CSO costs are probably runoff based and perhaps it would make sense to shift some of those costs that direction. But again, we don't even have that authority right now. The state denies us that authority. [LB683]

SENATOR CHRISTENSEN: I remember that argument my first year down here. And I have toured the sewer facility that you have to have changed. But when you go to that fee for runoff, that's going to go based on parking lot, non-pervious areas, parking lots, rooftops, basically, is going to pretty much nail the same people. [LB683]

MARTY GRATE: I think, and because I don't have all the calculations, but philosophically, I think, what it would do would it would effectively spread those costs more evenly between commercial and industrial. Because you've got a lot of commercial facilities with runoff that would be more impacted by a runoff-base system. Again, that's not a decision that I'm here saying that that's what we want to do because there's, obviously, some stakeholder groups that would oppose that. But I think there is some appeal in the case of the industries that, well, if you're trying to look at a fairness perspective, you know, maybe this runoff model makes some sense and has some logic. [LB683]

SENATOR CHRISTENSEN: When we was talking to Steve, he said you guys had talked about change and he deferred to you. What change have you looked at? Other

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than this sewer fee or the runoff fee, what have you looked at? [LB683]

MARTY GRATE: Like I said, this week I'm supposed to get from our rate consultant some other alternatives. The laws also are pretty murky, you know, we were talking about the laws that preclude us from using property taxes. We have our legal staff looking into that to seeing if there's some way we can get around that and entertain the idea of some kind of subsidy. Right now our understanding of the federal law that directs people who have received state-revolving loan fund money, or grant money over the years precludes people...or precludes those systems from subsidizing one user class with funds from another user class. The question was asked earlier, you know, how did we get into that program and did we, you know, miss the fine print? When waste water treatment plants were constructed back in the '60s and '70s and then upgraded in the '70s and '80s, most of those improvements of these large regional systems like the one we operate were funded 80 percent federal funds. It was tens of millions of dollars. And because it was so much money coming in from the federal government, the federal government had a lot of things attached to it. I believe that the rationale behind precluding people from going back and funding it on property taxes was that they didn't want to get heat from their voters that, you know, they provided a bunch of money and then the property taxes went up. They decided, no, instead it would be more fair if this was treated like a utility and that there were user fees used to fund these systems. And I think that's how we got where we are in terms of being in this...where we now have some constraints on what our choices are. We aren't the masters of our own fate totally. [LB683]

SENATOR CHRISTENSEN: One last question. Can you give the grant back and go to property tax if that was discussed? [LB683]

MARTY GRATE: No. No, and yet we're looking at that very closely legally if there's some way to get around that. But the initial legal opinion we got was, no, you're in. [LB683]

SENATOR CHRISTENSEN: Okay. Thank you. [LB683]

SENATOR LANGEMEIER: Senator Smith. Nope. Senator Haar. [LB683]

SENATOR HAAR: So how do you see this commission as helping the situation right now? [LB683]

MARTY GRATE: Well I think it's kind of like Steve said, you know, we'll always be happy to be at the table. That doesn't mean we're going to wait for this commission or think that this commission is necessarily going to solve all of our problems. We are diligently still working with our rate consultants to see what alternatives we may have that could, within the constraints of the law, still help give our industries relief without

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becoming unacceptably burdensome on some of our other ratepayers. [LB683]

SENATOR HAAR: Now the whole thing of...I'm just curious about that, you have to come to the state to get approval for storm water charging. [LB683]

MARTY GRATE: Yeah. My understanding over the years is that it's one of those cases where unless the state specifically authorizes you do something, you don't have the ability to do it. And what the opinion, the legal opinion has been is that charging fees based upon impervious surface or runoff or area is not something that is enabled for us right now and that it would require your approval. [LB683]

SENATOR HAAR: Okay. [LB683]

SENATOR LANGEMEIER: Senator McCoy. [LB683]

SENATOR McCOY: Thank you, Senator Langemeier, and thank you, Mr. Grate for being here this afternoon. A couple of questions for you. And we haven't talked about this for a while now in the discussion on this bill. Perhaps you can shed some light on us...for us on the issue of the repayment schedule to the EPA. I understand we're under a 15 year repayment schedule, is that correct? [LB683]

MARTY GRATE: No, that's not correct. We have a consent order with the state of Nebraska, the Department of Environmental Quality, to implement a control plan to reduce those combined sewer overflows. That plan was approved in February of 2010 by the NDEQ. What the regulatory framework under which we're operating is the Federal Clean Water Act, but that authority is delegated to the state here in Nebraska. So they're enforcing the federal law. What was required in our consent order with the state, and EPA was in conversations on this. They weren't the approval agency, but were certainly done with their blessing and their input, was they told us that their expectation was we come up with a plan that will allow us to control these overflows and improve water quality over a 15-year period, that's the 15 years. The question was asked earlier, well, you know, if other people got more time or, you know, why...why...why (inaudible). Well, we can always look at that. At the time that we agreed and entered in, this was an administrative agreement, and the administrative order on consent with the NDEQ, the city agreed to attempt to do this in 15 years. It's a binding agreement, but it could always be reopened and we could work with NDEQ to extend it. [LB683]

SENATOR McCOY: Well let me follow that up then. You said we can look at that. Well let me allow you to restate that if it needs to be restated. Are you looking at that? [LB683]

MARTY GRATE: Currently, no. We are not in active negotiations. We have looked just

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very cursorily at what would happen if, for example, extended that payment from 15 years out to 20; that we funded that, you know, slowed down construction and took longer to do it. And it's kind of like when you buy a house or you buy a car, you know, how long of a mortgage do you really want? Because the longer you spread it out, the more you're going to end up paying. And conversely, what is that monthly payment for that car? If you go for a longer period, does that payment really come down. And my initial reaction was, if we went from 15 years to 20 years, there would be a noticeable increase in financing cost, but the monthly cost to either a homeowner, or an industry, or a commercial customer, it still would probably be outrageous. [LB683]

SENATOR McCOY: Well let me...is it your understanding that there are other cities that have 25...I heard mention of 40 years. [LB683]

MARTY GRATE: Kansas City recently got 25. I'm not aware of anybody with 40. [LB683]

SENATOR McCOY: Okay. Well 25 would be significantly different than 15, would it not? [LB683]

MARTY GRATE: Yes it would. [LB683]

SENATOR McCOY: Okay. Well I would find that to be a pretty worthwhile component of this overall issue, the \$1.7 billion issue, that we would be investigating at the city level, the possibilities through NDEQ, and in turn to the EPA on whether or not that can be renegotiated. I guess I'm a little puzzled as to... [LB683]

MARTY GRATE: Well there are significant risk to renegotiating. Right now... [LB683]

SENATOR McCOY: What would those be? [LB683]

MARTY GRATE: The agreement that we negotiated was administrative in nature. It wasn't judicial. We could end up with a judicial decree that would be much more inflexible. The administrative order that we negotiated didn't have any penalties. Typically a CSO consent order has millions of dollars of penalties that you just have to pay and it never comes back. Also, administrative orders on CSOs frequently have stipulated damages in them so that if you miss this milestone, you pay us this amount. Ours doesn't speak to that, so we have a lot of flexibility in our consent order. I don't think our negotiations were a poor deal for Omaha. Again, at the time that we negotiated that consent order, we had experts consult with the federal guidance on how much a community should be able to afford to pay and how quickly they should do these programs. And what our own consultant advised us was, you know, if it went to court, they could probably make you do it in ten years. So 15 years isn't so bad. [LB683]

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SENATOR McCOY: Well I appreciate that, Mr. Grate. Then how did Kansas City, you mentioned Kansas City recently negotiated their consent order of 25 years. How did they arrive at 25 years, do you know? [LB683]

MARTY GRATE: I wasn't in the room and (inaudible) negotiations. [LB683]

SENATOR McCOY: I'm aware you weren't in the room, but... [LB683]

MARTY GRATE: I have my suspicions, but I don't have any factual knowledge of how they negotiated. I know they did negotiated it. [LB683]

SENATOR McCOY: You mentioned we had a lot of flexibility with our consent order. In what way would we have flexibility? You mentioned that you could have established mile markers, you mentioned, where we would pay fees. But it would seem to me that this is fairly inflexible that from a standpoint of the businesses that have testified, homeowners that would pay these fees, it appears to be fairly inflexible. In what way is there flexibility? [LB683]

MARTY GRATE: In the milestones it provides a range of activities, not each project, you know there is over 80 project elements in this 15-year plan. And we've got them grouped into categories so as long as we start one of these projects by this date, and as long as we complete a package by this date, that we have the flexibility to kind of juggle things around and react, because there's going to be unexpected things that happen in a project that big and over that long period of time. My personal preference, Senator, is I don't think that today, as we're just really entering into this plan, is the best time to try to renegotiate. I think along the way there may be something that comes up where we say, you know what, it might be a good thing to sit down and renegotiate. I think we're early enough in this program right now that right now we can continue to look at rate alternatives. We can continue to look at some of these things. Even though we're experiencing huge, huge, increases in our rates, the fact of the matter is that Omaha customers have enjoyed amongst the very lowest rates across the nation for decades and decades and that when I look at projections of industrial rates, what I see is that our rates would have to triple today in order to approach the national average for industrial sewer rates. I cannot argue, you know, what these industrial representatives are telling you in terms of what they're seeing in other locations, but I can provide you with national statistics that show that we are not pricing ourselves out of the market. My opinion is that these industries are just concerned because these are new costs that they didn't have before and they're significant. And I can understand and appreciate that concern, but it's not the case that this program is going to suddenly put Omaha at a national disadvantage to other municipal wastewater communities. [LB683]

SENATOR McCOY: My last question, Mr. Grate, you had mentioned that...and I assume one of the flexible options and parts of the consent order is setting rates and

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figuring out who pays what rates, we heard earlier testimony from Mr. Keaton with Skinner Baking that, he was kind enough to share with us that a date of August 8 when they're going to be making a decision of whether or not to expand here in Nebraska, or I should say specifically, in Omaha or perhaps move elsewhere. You had said you're hearing from your consulting firm on rates. When do you anticipate that you would have a decision as to any different rates for this association for a more competitive business environment of the industrial users? [LB683]

MARTY GRATE: Well, you know, I don't know that I have a decision here. [LB683]

SENATOR McCOY: Will it happen before August 8, specifically? [LB683]

MARTY GRATE: Could something happen? It could. I don't think that that's impossible for it to happen. Again, we would have to weigh, and the city council would have to weigh in on when we would want to implement a change. But I think we could look at a change strategy and develop something like that by then. [LB683]

SENATOR McCOY: Okay. Thank you. [LB683]

SENATOR LANGEMEIER: Senator Carlson. [LB683]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Grate, I'm glad I don't have your job. And I can sense how difficult it might be. What are current municipal bond rates for...if you know, ballpark, for 15 versus, say, 10, 15, or 25 year rates? [LB683]

MARTY GRATE: Yeah, and I have bond counsel that has all that, I just don't carry that around in my head. [LB683]

SENATOR CARLSON: Okay. Well, I think one of the frustrating things for people like you in your position, and yet it's an advantage, is that this is still America, and we've lost some freedoms, but we still have some, and one of those is where we want to live and where we want to do our business. And so that's what is a challenge for you and a challenge for those that have to make a decision. Thank you. [LB683]

SENATOR LANGEMEIER: Senator Schilz. [LB683]

SENATOR SCHILZ: Real quick. Thank you. Thanks for coming in today and I know you referenced the grant that you got from the federal government, the 80/20 grant, I believe is what you said. [LB683]

MARTY GRATE: Yeah. [LB683]

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SENATOR SCHILZ: When did that actually take place? [LB683]

MARTY GRATE: It was a series of grants through the '60s and '70s and into the '80s. Again, when the Clean Water Act was passed, initially it was a strong move by the federal government to come in and approve public health and most of it was paid with federal dollars and there were small matches from the locals. That's...I would imagine at the time everybody assumed that was the way it was always going to be. [LB683]

SENATOR SCHILZ: Great deal, huh. [LB683]

MARTY GRATE: And then over the years, that kind of transitioned from a grant to a mix of grant and loan, and today there is virtually no grant money and there's some low interest loan money, but it has a lot of attachments to it that add costs back in so it's really sometimes not as competitive as our... [LB683]

SENATOR SCHILZ: And so those...so those...sorry, I didn't mean to interrupt you, but...and so by doing that clear back then, that dictates what happens today? [LB683]

MARTY GRATE: That was our...that was the legal ruling that, yeah, no, this is permanent; you can't undo it. Well we could go to Congress and get the law changed, I suppose, and that's one of the things that we considered is lobbying to try to get them to cut us some kind of deal and remove that stipulation so that we could entertain that. [LB683]

SENATOR SCHILZ: Right. [LB683]

MARTY GRATE: Does Omaha as a community want to raise property taxes to fund this? I don't know. But right now we don't believe we could without some change in law. [LB683]

SENATOR SCHILZ: I don't think anybody wants to raise taxes to do things, but. And then on the other thing, I would guess, and maybe, if I'm wrong tell me, but when you have a constituency such as this that provides, you know, a lot of revenue to the city and a lot of jobs to the city, are you...did you say that...are you meeting with them now and trying to get things around? How often are you guys meeting and when do you...what's the time schedule as far as trying to come up with some solutions? [LB683]

MARTY GRATE: Well I've been...I've been working mainly through Henry Davis with Greater Omaha Packing. He and I talk every few weeks. What we've been through in the last few months is a series of...well, okay, let us explain what we think our constraints are. And then the industry comes back, well, can we do this? And then we have to go to our rate consultant and say, well, could we do this or is there something else we can do? So it's a lot of research time is what is going on now. Again, the first

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thing we looked at is, is what we're doing okay? Or are we doing something that really, you know, is truly unfair from a legal perspective. And from a moral perspective I think there's some arguments, but from a legal perspective, we reaffirmed that we're in good standing. [LB683]

SENATOR SCHILZ: Okay. Thank you. [LB683]

SENATOR LANGEMEIER: Do you have another question? Just looking to me, I get the last one. Mr. Grate, I guess I'd recommend on your drive home that you call Senator Nelson and ask him about whether you can get that property tax issue fixed on a federal level. I would make that call as you drive home today. The second thing is, as you talk about NDEQ, and you talk about a risk, if you have an agreement that you seem to think is kind of a sweet honey of a deal over 15 years, and you said there's risk, I don't know that calling NDEQ and saying, hey, can we look at this, and having that discussion to decide whether you add more years and keep the rest of your term free and open as you'd like to see it, I don't see where there's risk in that until you both negotiate and you both agree to something different. But to call and have that discussion, I don't see the risk. I would think that's just a lack of the ability to want to make a phone call. So I'd think you'd want to do that. And the other thing I would ask, and I agree with Senator Carlson, glad it's your job and not mine, but this bill kind of drags me into this so I've got to think about that. The other thing I would ask that...and I'll get...Steve's got all my contact information, is when you get that back from your consultant,... [LB683]

MARTY GRATE: Um-hum. [LB683]

SENATOR LANGEMEIER: ...would you call me and let me know when that meeting is going to happen. [LB683]

MARTY GRATE: Certainly. [LB683]

SENATOR LANGEMEIER: Appreciate it. Thank you very much, good job. Further testimony in support. Welcome. [LB683]

DAN CROUCHLEY: Senator Langemeier and members of the committee, good to see you again so soon. My name is Dan Crouchley, D-a-n C-r-o-u-c-h-l-e-y. I'm the senior vice president and general counsel of Metropolitan Utilities District. MUD is the water and natural gas provider in Omaha and we're involved in this matter in a number of different ways. We provide the water and gas at a cost that we think attracts business and retains business in the Omaha area. MUD is also the collector of the sewer use fees. So we provide the figures of consumption to the city and we also collect the fee on their behalf. We're also named as one of the members of this commission. But the most important aspect is that the 13 people behind me and the 29 users referenced are our largest customers. And when there's a concern that your largest customers might leave,

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you begin to worry about that. And it isn't just water, in fact it may be more significant that it's natural gas. We are concerned about that and we would like to keep these people in Omaha. Because of that, we think this is a potential method of resolving this matter. I like to...I think Senator Smith's approach is...when we get in the same...get into the room, I think we'll see some action. I don't know that we have to wait until November 1 for a report. I hope we can...don't have to. But to get the parties in with some other more neutral parties, let's say, I think will result in some good in reaching a solution. And remember that we're all, even though there was certainly some conflict there, that we're all proponents. So we're all in favor of this commission. And so we favor LB683. Any questions? [LB683]

SENATOR LANGEMEIER: Any questions? Seeing none, thank you. [LB683]

DAN CROUCHLEY: Thanks. [LB683]

SENATOR LANGEMEIER: Further testimony as proponents. Seeing none. Are there anyone testifying in opposition? That's surprising. Seeing none. Are there any testifying in a neutral capacity? Welcome. [LB683]

LOY TODD: (Exhibit 8) Senator Langemeier and members of the committee, my name is Loy Todd, that's L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. However today, apparently I drew the short straw, short straw because I'm testifying on behalf of 55 separate organizations who are part of a coalition who worked on storm water issues in the past and has remained somewhat active in this arena and I do have a list of the members of the coalition for the committee if you'd like to have that. I would like to say to start with, we are appearing neutral and the reason for that is very simple. Pretty hard to object to a study, you know, we think it's a good idea and studying any issue is certainly going to, hopefully, be helpful. One point that I'm supposed to make is that...remember this is a sewer separation issue. This is not a storm water issue. I was somewhat surprised that the city of Omaha came up and offered that tired old storm water bill that was defeated year after year after year by this coalition and those people who took the time to look at the issue. This is not a statewide issue. It's really kind of isolated in the metropolitan area. We agree that the current formula adopted by the city of Omaha is really unfair to this group of people and needs to be looked at and we certainly hope that gets done sooner rather than later. But it will be just as unfair to target some other group or target somebody else totally unrelated to the issues at hand. If I had been part of a study group, Omaha has done this for years. So they had a study group; they brought in a consultant from Florida. I was part of that group. There was a report issued. And clearly the kinds of things proposed by Omaha were not the solution. And Nebraska law already addresses storm water and what the solution is, and our statutes currently provide that the property tax is the proper method of funding storm water. What we have here is a situation where there is...there is a polluting material being put into the storm

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sewers and it happens on certain events, but it still...the source of the problem is the pollution, not the clean water. And so we hope that any solution that is arrived at is at least a scientific approach that goes toward making the people causing the problem, or the entities causing the problem, pay for it rather than some other proposal. It might interest those of you who weren't involved in that historically with us, but the former proposals and the one that apparently is being pro-offered by Omaha; we were looking at a doubling or the amount of property tax, for those people with large parking lots for nothing more than casting pretty clean storm water into the sewer system. So we would urge you to resist the temptation to just find any other solution. I would hope that this is something that can be solved in Omaha and something that any members of this coalition, these 55 organizations, would be more than happy to participate in with the goal of assigning the expense of this situation to those causing it and those needing a solution. Glad to answer any questions. [LB683]

SENATOR LANGEMEIER: I appreciate you testifying on behalf of all 54 at one given time at this time of day today. Senator Haar has a question. [LB683]

SENATOR HAAR: Yeah. You said this is not a storm water, it's what again? Characterize that for me. [LB683]

LOY TODD: This is a sewer separation issue. The problem that Omaha has is because...what they have from CSO, combined sewer operation and certainly that has to be addressed. There's no question the problem is real and there's no question the problem is expensive, but when we go back to the storm water bill, it's totally unrelated to that. The Clean Water Act addressed storm water because the pollutants that they were looking at under the storm water portion of the Clean Water Act, dirt and fecal matter. And it was from real estate. The two prime contributors of that are agriculture and new construction, not parking lots. In fact, the permits that the cities have gotten when it addresses the issue of parking lots, it says they're not a problem unless you're storing hazardous materials on them. So to turn to and say, well we're going to go get the parking lots, and in affect, double these people's property tax, or the amount that they're paying in property tax, to hand some other pile of money to Omaha I think is just completely inappropriate. [LB683]

SENATOR HAAR: Thanks. [LB683]

SENATOR LANGEMEIER: Are there any other questions? I will note this bill that was said was to be the last attempt in 2007 went to Urban Affairs and not to Natural Resources. [LB683]

LOY TODD: It's been here several times, as you know, Senator. [LB683]

SENATOR LANGEMEIER: I know it has, but the last attempt went to Urban Affairs.

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Questions? Seeing no other questions, thank you very much for your testimony. [LB683]

LOY TODD: Thank you. [LB683]

SENATOR LANGEMEIER: Further testimony in a neutral capacity. Welcome. [LB683]

JESSE POORE: Good afternoon. My name is Jesse Poore, J-e-s-s-e, last name Poore, P-o-o-r-e. I'm the 2010-2011 chair of the Nebraska Flood Plain and Storm Water Managers Association. We are a nonprofit association of professionals in Nebraska concerned about educating ourselves, our communities, and our citizens about issues that impact us regarding flood plain, flood management, storm water, storm water regulations, policy, planning, the list goes on and on and on, so I come today representing our 160 members statewide, many of whom are municipal representatives statewide: Scottsbluff, Lexington, Omaha, Lincoln, so on so forth. We also have state agency representatives of NDEQ, Nebraska DNR, so we are very well versed with all the history of the storm water bill that has come before the Legislature, albeit other committees and the contentions against it. I was a bit disturbed to come today and realize that there was an amendment to the bill that I wasn't able to get a hold of; went to the bill room and they didn't have a copy of it either. So I will be excited to see that one as soon as I can, because we've been tracking this bill as advocates for our members and are testifying as a neutral body because we do not take up positions on legislation one way or the other. We are an educational body only. But there is interest about this bill from municipalities across the state because when you are proposing a commission that would study and affect the...as you put it in your bill, financing, actual and potential financing mechanisms, the storm water utility or fee does come into question, the storm water falling on the ground and running off being paid for by those who generate it. Many communities in states across the country have looked at that option and found it to be a viable one and if the previous commenter is accurate and this Legislature has decided that property taxes are the best way to fund such a discharge in Nebraska, I believe the hope would be that this commission would look at, or task force would look at what it would take for the Legislature to enable cities to make that decision on their own. As the city of Omaha has stated already, their city council makes these decisions in the best interest of their citizens and I think they would like, and I do not want to speak for them at all, but some of the sentiment we've had from some of our members is the ability to make that decision on their own, how to pay for these unfunded mandates at the local level. If they can't do it with a storm water utility fee, what other mechanisms would be available? And so I believe that the interests of others in the state in this commission and the outcomes of the commission's report by November 1 of this year is widespread beyond the city of Omaha sewer separation project. If I'm misguided in that understanding and it was never intended to be a storm water funding or consideration bill, I suppose we could disregard my comments. But that is what I was here to testify about and just to understand that there are others besides the city of Omaha, MUD, the industries who are well represented here today, watching

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on to see what this commission report does include and we would look forward to that final report if it is advanced. So that's all I have to say and open for comments or questions. [LB683]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Poore? Seeing none, thank you very much. [LB683]

JESSE POORE: You bet. [LB683]

SENATOR LANGEMEIER: Further testimony in a neutral capacity? [LB683]

KRISTEN KOCH: I promise to be extremely quick. I know Senator Christensen still has another bill to give today. [LB683]

SENATOR LANGEMEIER: Maybe. [LB683]

KRISTEN KOCH: Maybe. Well I promise not to testify on that one. Chairman Langemeier and members of the Natural Resources Committee, my name is Kristen Koch, that's K-r-i-s-t-e-n K-o-c-h and I'm the director of Natural Resources and Environmental Affairs and a registered lobbyist for the Nebraska Cattlemen. And I'm just here today to share with you, there are some greater impacts to the rest of Nebraska that result from this issue, at least from our industry's standpoint. As you are well aware, several of the key players are cattle processing facilities and so increasing the cost to process beef in this state will most likely be passed back onto producers through decreased payments that they can be made for cattle coming in. If you increase the costs...the operating costs for these sort of facilities and they become no longer competitive in their industry and potentially leave the state, you've eliminated accessible and valuable markets for our producers as well. Finally, I would just let you know that these facilities provide a huge competitive advantage for Nebraska beef producers because they serve specialty markets. One of the facilities is actually one of only three in the entire United States that can process cattle and ship beef product to the European union. So having that located in Nebraska is a huge advantage to Nebraska beef producers. You're probably well aware and have heard at several events that the Nebraska Cattlemen's strategic goal is to be the beef epicenter of the United States. And these processing facilities are an integral part of that goal and very important to all of Nebraska's beef producers. And with that, if you have any questions, I'd be happy to answer them. [LB683]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much, well done. Further testimony in a neutral capacity. Seeing none, Senator Mello, you're recognized to close. [LB683]

SENATOR MELLO: Very quickly. Thank you, Chairman Langemeier and members of

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the Natural Resources Committee, for your patience and your inquisitive questions of the multiple testifiers. If anything that I want to leave you with the closing is that with the testimony you've heard today in support of the commission, in support of the Legislature taking an active role in this issue, is that...to leave you with two, I guess, takeaways. One, the economic impact of this project is far greater than just to the city of Omaha. Even hearing from our neutral testimony from the Nebraska Cattlemen, you can see how the meat packing district that I represent, LD5, has such a significant impact on the cattle industry in the state. And when you see the costs associated with this large public infrastructure project being put on that specific industry within a certain city of the state, you can see how big of an economic footprint we're talking about and the potential downfalls of businesses in regards to whether or not they want to continue to expand in Nebraska or leave Nebraska. The second point is, I think, I was very appreciative that the city of Omaha was able to join us today and provide testimony and feedback. I think having the city at the table with members from the Legislature, obviously, the testifiers today from Skinner, Kellogg's, and Greater Omaha Packing, amongst the many other members of the industrial users coalition, as well as some of the other members listed in the commission, can only help us find, hopefully, what are better solutions. I know Senator McCoy asked the city if they were looking for some kind of financial assistance. The city may not be looking for a financial assistance because I know right now this is a very tough legislative session in regards to the cooperation and the relationship between our state government and our local governmental entities. But I will ask on behalf of, not just those who testified in support today, but all users who are affected by this project that we need to look for some sort of state partnership. And I believe...one of my legislative bills, LB682, is a first small step to help do that, but there are other options available. And I think with this commission we can identify other options. No one has said in conversations I've had, that we're looking at one specific option, but research has shown that there are ways that we can look at being creative and innovative as we have had with multiple pieces of legislation when it comes to financing that that is not off the table. And it shouldn't be off the table and ideally the commission created by LB683 would help identify those potentially new mechanisms or tweaking of existing programs to help provide critical assistance to keep some of our, I think, hallmark businesses in the city of Omaha and the state of Nebraska to keep them in the state of Nebraska at the end of the day. With that I'd take any questions. [LB683]

SENATOR LANGEMEIER: Senator Smith. [LB683]

SENATOR SMITH: Thank you, Senator Langemeier. Senator Mello, thank you for bringing this to at least my attention, and to other senators' attention. You know, I do have a sense of urgency. I feel that sense of urgency on this and I certainly hope we can, you know, we can do something to get this dialogue started because there is a concern of economic stability for Nebraska associated with this. Although it's a local issue, it does affect all of the state. And thank you for bringing it forward. [LB683]

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SENATOR MELLO: Thank you, Senator Smith, and it would be my hope, I understand that while we have passed committee priorities and individual senator priority bills, that there are other ways that we can move forward, I think, with LB683 and I think members who are interested in looking to help bring people together to help solve what is a very tenuous economic situation here regarding this project, I'm more than willing to involve as many people as possible. [LB683]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB683]

SENATOR MELLO: Thank you, Senator. [LB683]

SENATOR LANGEMEIER: That concludes the hearing on LB683. And let's take a five minute break. So at 20 till, we'll start on Senator Christensen's bill. [LB645]

BREAK

SENATOR LANGEMEIER: Thank you. We'll reconvene with the opening on LB645. Senator Christensen, welcome. [LB645]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman and members of the Natural Resources Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n, I represent the 44th Legislative District. LB645 would require the natural resources districts within the river basin to include the regulations of surface water in the integrated management plans to comply with a compact agreement or to agree to include established surface water use in addition to groundwater use when making a written agreement between themselves and the Department of Natural Resources regarding the creation of an equitable apportionment of the basin's virgin water supply between districts. Currently the Republican River Basin NRDs and DNR have a somewhat informal agreement splitting the virgin water supply into equitable apportionments based on the average groundwater use in each NRD from 1998 to 2002. Informal in a sense that I don't believe there's an official written document outlining the agreement, but was integrated into the regulations to help determine each NRD's portion of the responsibility within the confines of the compact and settlement with Kansas. The Upper Republican's portion is 44 percent of the virgin water supply; the Middle Republican--30 percent; and the Lower Republican--26 percent; and Tri-Basin's is effectively zero since their 6 percent use was basically a wash with the terms of credit system by the mound. What LB645 seeks to do is create a policy that says if surface water is included by the NRDs and the integrated management plan is part of the solution to staying in compliance with the compact agreement or degree, surface water use should be included when figuring out the equitable apportionment of the virgin water supply because that is in the total use. Why should this change in LB645 be made? I think the Republican River has been the pilot project in terms of many of the water issues in Nebraska. Looking back in hindsight, some people in my district are wondering whether a fair determination would have been

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to add surface water to these figures. As we look forward, other river basins may find themselves in similar situations and in need of standard of what we...what usage should be included in the figuring of equitable apportionment of virgin water amongst NRDs in their basin. What difference would this make in the current splits in the Republican River Basin? That may depend on who you talk to. I believe we may hear different opinions today regarding the actual change that could take place with the percentages split. We spoke to DNR to get information from them and I have handed out what I have been provided. I also received information from Mr. Brad Edgerton, Director of Frenchman-Cambridge Irrigation District. I believe some in the Lower Republican NRD believe this could accurately represent what the total usage was during the baseline years. On that I'll just ask if there are any questions. [LB645]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Christensen? Seeing none. Very good. Now we'll move...you've heard the opening on LB645. We'll move to proponents, those that want to testify in support. Good afternoon. [LB645]

JIM MILLER: Good afternoon. [LB645]

SENATOR LANGEMEIER: You sat here all afternoon and learned about some other issues. [LB645]

JIM MILLER: Yes. Honorable Chairman and members of the Natural Resources Committee, my name is Jim Miller, J-i-m M-i-l-l-e-r. I'm here today on behalf of the Bostwick Irrigation District in Nebraska and wish to go on record in support of LB645. Our district lies in the Republican River Basin and our water supply is based on the condition of the Harlan County Reservoir. This is the same reservoir that is the basis for determining if a year will be a water short year as designated in the final settlement stipulation. The inflows to the reservoir have seen major depletions as a result of well development upstream from the reservoir. And it has been said as much as 10,000 acre feet of depletions have yet to impact our river and reservoir. We have seen how these depletions have impacted the other surface water projects in the basin, and can only hope that this will not be our fate as well. When water supplies get short in the future due to drought, untimely rains, or management, it will be the surface water users that will be called upon to make large sacrifices for the basin. The viability of surface water districts is married to the viability of fish, wildlife, and recreation of several hundred thousand people annually. The taxation on our water supplied by wells without representation for the decision making is not good democracy. Having a voice on decisions impacting our current and future status is prudent and in the best interest of ourselves, the basin, and Nebraska. Thank you for this opportunity to comment. Are there any questions? [LB645]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Miller? Senator

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Carlson. [LB645]

SENATOR CARLSON: Thank you, Senator Langemeier. Jim, thanks for being here. Just as a part of a statement, I'm not necessarily asking you to respond to this, I think it's important...and you and I both understand how important irrigation is to agriculture in Nebraska, how important groundwater is, and how important surface water is. And I think it's reasonable that we have a discussion about a place at the table that surface water can have in this ongoing discussion and I think that's part of your concern. Would that be true? [LB645]

JIM MILLER: Yes, that's correct. The water, whether it's surface or groundwater, is used for the agricultural production and viability of this state. And I think it's very important that we have a place on the table with groundwater and for users, the transparency as a whole. [LB645]

SENATOR CARLSON: Okay. Thanks for being here and for your testimony. [LB645]

SENATOR LANGEMEIER: Very good. Is there any other questions? Seeing none. Well done. [LB645]

JIM MILLER: Thank you. [LB645]

SENATOR LANGEMEIER: Very good. Well done. Further testimony in support. Welcome. [LB645]

JON SWANSON: Thank you. Mr. Chairman, committee members, my name is Jon Swanson, J-o-n S-w-a-n-s-o-n, and I'm an officer with H&RW Irrigation District and also an officer in the co-H&RW Frenchman Valley Irrigation District. And I'm here in support of this bill. It's really one of the first commonsense things I've seen come out of this water thing in a long time. The numbers that they have been using here in the past, they...with their statistics and everything else, without using the surface water in there, you've got skewed numbers. And if you're not looking at the whole picture, you're not getting the whole view of everything in the water. And unless you're going to actually put this in and start using it, you're really not looking at fixing the problem, you're looking at just trying to sit there and get what little bit you can for yourselves. And they've had a real problem of trying to bring in these, this data, which absolutely has to be in in any real serious concept in correcting the problem. And this is the first real step I've seen in correcting the problem that we've had. Any questions? [LB645]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB645]

SENATOR CARLSON: Thank you, Senator Langemeier. And Jon, thanks for being here

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and testify. And this is uncomfortable, but I think for the benefit of the entire committee and the rest of us know in here when you come to testify, you got to say things as straight out as you can, so you've said, "they" in planning, and so forth. Who do you mean by "they"? [LB645]

JON SWANSON: Basically, I mean the NRDs. The NRDs, and I don't blame them. I mean, each NRD is its own individual group and they're trying to work together, but they're elected in their area and they're representing their own terms. And everybody is trying...it's just like having three siblings sitting there trying to go for an estate. You know, everybody deserves more. Well, if you're not putting all the data out there, they're not going to sit there and bring forth any ideas that's going to sit there and take away from them. The data has to be forced upon them that this is the actual numbers, and this is the only way that we can get the actual numbers down there. Otherwise, we're using statistics that are skewed and, basically, make believe numbers. I mean, I can make those numbers work any way I want to. But if we've got all the data there, we've got the data. And I mean, you've got to work with it. And that's what we need to work with is what's actually there. [LB645]

SENATOR CARLSON: Okay. Thank you. [LB645]

JON SWANSON: You bet. [LB645]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB645]

JON SWANSON: Oh, I'm sorry. [LB645]

SENATOR HAAR: So for somebody still learning all this stuff, how would this change your role then when it comes to IMPs and so on? [LB645]

JON SWANSON: Really, I'm not real sure how it's going to change on that, but I know the data has got to be there for us to sit there and find out where we're going to be. If we don't have the data there...I mean this is basically just a bill on data. This isn't a bill sitting there going, we're going to give you water or you water. This is a bill saying this is where the water is and this is what the numbers are. And this is going to tell us when it's all over and done with what everybody should get, instead of what everybody wants. [LB645]

SENATOR HAAR: Okay. Thank you. [LB645]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB645]

JON SWANSON: Thank you. [LB645]

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SENATOR LANGEMEIER: Well done. Further testimony as a proponent. [LB645]

BRAD EDGERTON: I guess all the surface water folks are going first today. Good afternoon, Senator Langemeier and members of the Natural Resources Committee. My name is Brad Edgerton, B-r-a-d E-d-g-e-r-t-o-n. I'm the manager for Frenchman-Cambridge Irrigation District. At the start of the day I had two directors here with me, but we've lost one since then, so. First of all, I'd like to thank Senator Christensen for bringing this bill forward for discussion. I think it's some important discussion that we need to have. By including all irrigated acres within a given NRD to determine the historic consumptive use, regardless of the source supply, a true and equitable baseline can be established. As you know, DNR has required the NRDs to equally reduce their consumptive use from an established groundwater baseline. By including all irrigation, consumptive use in the baseline, you spread the burden for reduction in use across the basin in a more equitable manner. This is important so that one area doesn't shoulder more of the economic hardship required for compliance. LB645 also promotes conjunctive management of groundwater and surface water. Many of the Frenchman-Cambridge water users also irrigate with groundwater. In fact, many of the acres under permit with Frenchman-Cambridge have supplemental wells on those acres. During a wet period with high compact allocations, the NRDs and the irrigation districts can promote the use of surface water irrigation while leaving the groundwater in the ground. Using more streamflow during this time also provides additional recharge that will find its way back to the river in one or two years. LB645 is a big step towards the stable water supply in the Republican River Basin by spreading the responsibility in a more equitable manner across the basin. It has the potential to restore balance in the basin. It appears that we have a stalemate in the basin with regards to the modified IMPs. With the current groundwater split, 44, 30 and 26, as the battlegrounds, LB645 could move everyone off center so that we can move forward with these IMPs. DNR could remove the term "allowable groundwater depletions" and replace it with "allowable irrigation depletions." LB645 has the potential to resolve several of these conflicts in the Republican River Basin. Frenchman-Cambridge would make one recommendation with regards to LB645. We would suggest that the established surface water use...we suggest removing "established surface water use" and replacing it with "historic surface water consumptive use." We think these terms mean the same but it would add clarity to the bill. Frenchman-Cambridge requests that you advance LB645 out of committee, and I thank you for the opportunity to talk to you today. [LB645]

SENATOR LANGEMEIER: Very good. Well done. Senator Carlson. [LB645]

SENATOR CARLSON: Thank you, Senator Langemeier. Brad, you used to work for the Department of Natural Resources, the DNR, isn't that correct? [LB645]

BRAD EDGERTON: That is correct. [LB645]

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SENATOR CARLSON: How many years did you spend working there? [LB645]

BRAD EDGERTON: Twenty-five years in the Cambridge office. [LB645]

SENATOR CARLSON: So it was 25 years with the DNR, you were an employee of the DNR before...? [LB645]

BRAD EDGERTON: Yes. [LB645]

SENATOR CARLSON: ...okay, making this change to Frenchman-Cambridge. And it, in what you've said, it's fair to say that you believe that groundwater and surface water combine to make the total virgin water supply in the basin? [LB645]

BRAD EDGERTON: Yes, I mean that's how we do it now. [LB645]

SENATOR CARLSON: Okay. And it's been referred to, and I'm doing this for the benefit of some of the rest of the committee members here, that currently the percentage is 44 in the Upper, 30 in the Middle, and 26 in the Lower. That's a percentage of water in the basin that they are responsible for. It also dictates the percentage of virgin water supply that they can utilize. Is that fair to say? [LB645]

BRAD EDGERTON: Where that number derives is, in the Republican River Basin, Nebraska has an allocation and there's consumptive use that basically comes off the top of that allocation. The remaining balance is split between the three NRDs which is the allowable groundwater depletions. [LB645]

SENATOR CARLSON: Okay. So those percentages are strictly groundwater. [LB645]

BRAD EDGERTON: That's correct. [LB645]

SENATOR CARLSON: Okay. And if, according to your figures, if you combine the surface water and the groundwater for these three NRDs, how does that change the percentage? What would the Upper be? [LB645]

BRAD EDGERTON: The Upper would be approximately 31 percent of the allowable irrigation depletions. [LB645]

SENATOR CARLSON: Okay. What about the Middle? [LB645]

BRAD EDGERTON: I believe they're like at 36. [LB645]

SENATOR CARLSON: And the Lower? [LB645]

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BRAD EDGERTON: Would be...I'm thinking 31, 33. [LB645]

SENATOR CARLSON: Thirty-three adds up to 100. Okay. So combining the two, it changes the percentage from 44 in the Upper to 31, according to your figures, 30 in the Middle to 36, and 26 in the Lower to 33. What do you think is the advantage of that for the basin? [LB645]

BRAD EDGERTON: The advantage for the basin would be that it would shift the burden for some of the cutbacks farther west which, you know, is what we need to make sure that our surface water supplies are there in the future. [LB645]

SENATOR CARLSON: Do you think that would have a long-term impact in a positive way on groundwater depletion? [LB645]

BRAD EDGERTON: I think it would. I think, you know, right now we're kind of reacting in...going to do drastic things in water short years when we need to, and we need to look at the big picture and try to get things under control in the long-term so that in the short-term, we don't have to be so drastic. [LB645]

SENATOR CARLSON: One more question then. Why do you think legislation is necessary to accomplish this? [LB645]

BRAD EDGERTON: Well, this agreement, the 44-30-26 is basically, my understanding, a handshake agreement. There is no document that says this is what it is. And surface water basically has zero allocation. If it's there, we can use it. The problem is, on the top end of the basin, our water supplies...the trend is continuing to be on a downward trend, and we would least like to see that stabilized or even turned around a little bit. [LB645]

SENATOR CARLSON: Okay. Well, I appreciate you putting this material together and your answer to these questions and your testimony. Thank you. [LB645]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. Well done, Brad. [LB645]

BRAD EDGERTON: Thank you. [LB645]

SENATOR LANGEMEIER: Further testimony as a proponent or in support. Welcome, Mike. [LB645]

MIKE CLEMENTS: (Exhibit 9) Thank you. Chairman Langemeier and members of the committee, my name is Mike Clements. I'm the manager of the Lower Republican NRD in Alma, Nebraska. And first of all... [LB645]

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SENATOR LANGEMEIER: Mike, I need you to spell your name. [LB645]

MIKE CLEMENTS: M-i-k-e C-l-e-m-e-n-t-s. First of all, we would like to thank Senator Christensen for introducing this bill. We appreciate his help with the water issues and it's another effort on his part to really try and bring some resolve to some of the issues in the Republican Basin. The board of directors of the Lower Republican NRD supports LB645, but with some modifications and wording clarification. I'm not going to go through those with the committee. We have spoken to Senator Christensen's staff about some of our concerns that I think that they're things that can easily be worked out. The Lower Republican Natural Resources District has had an integrated management plan in place since 2005. We are presently working on our third modification to the plan, which will essentially be a totally new integrated management plan. Our integrated management plans have been jointly developed and approved by the Lower Republican NRD and the Nebraska Department of Natural Resources. The plans have groundwater and surface water controls, goals, and objectives. In our district, we have focused on conjunctive management and working closely with the irrigation districts to manage the available water supply jointly and proactively. Conjunctive management gives us the flexibility to work with the irrigation districts to retime surface water releases and implement groundwater controls for the most benefit of the district. By adding established surface water use to the established groundwater use to the apportionment of the virgin water supply, the surface water will now have a targeted computed beneficial consumptive use that can be more easily conjunctively managed with groundwater. In closing, again, we would like to thank Senator Christensen for introducing LB645, and we encourage the committee to advance LB645. [LB645]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB645]

SENATOR CARLSON: Thank you, Senator Langemeier. Mike, I don't know, how many years ago was there no restriction on water use in the Lower? [LB645]

MIKE CLEMENTS: Our first IMP had allocations in 2005. [LB645]

SENATOR CARLSON: And what were they? [LB645]

MIKE CLEMENTS: Twelve inches west of Highway 183 and 11 inches east of Highway 183. [LB645]

SENATOR CARLSON: Okay. So there was none, then there was 12 and 11, and what is it this year? [LB645]

MIKE CLEMENTS: It's 9 inches now, and our present IMP for the entire district and the

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new IMP that we are working on with the state presently would propose to drop that down to 7.2 inches for the entire district. [LB645]

SENATOR CARLSON: Okay. So over that period of years since 2005, the allocation has dropped from 12 and 11 down to 7.2? [LB645]

MIKE CLEMENTS: Well, 7.2 is not approved, but presently we're at 9, but we're looking at 7.2. [LB645]

SENATOR CARLSON: All right. That's a consideration in the IMP. [LB645]

MIKE CLEMENTS: Right. Right. [LB645]

SENATOR CARLSON: Okay. And I appreciate what I feel like I've observed that the Lower has done in an effort to minimize water use and water pumping and, hopefully, this can continue, and we still have the production that we need in the Lower in order to make things work and be profitable. Thanks for your testimony. [LB645]

MIKE CLEMENTS: Thank you. [LB645]

SENATOR LANGEMEIER: Senator Haar. [LB645]

SENATOR HAAR: So if LB645 goes in, then how does that change your life? [LB645]

MIKE CLEMENTS: I think it will make it better because we're going to apportion the surface water use to the districts in accordance to where it was actually used. Whereas today, it's just taken off of the top. So if there was X amount of CBCU, computed beneficial consumptive use, in the Lower Republican NRD from surface water, then that's where it's charged. And I think it would make it...it would make it easier for the districts to manage the system as a whole if we know...if we have specific targets for each group, the groundwater and the surface water. [LB645]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. Well done, Mike. [LB645]

MIKE CLEMENTS: Thank you. [LB645]

SENATOR LANGEMEIER: Further testimony as a proponent. Welcome, Dan. [LB645]

DANIEL SMITH: (Exhibit 10) Senator Langemeier and members of the Natural Resources Committee, my name is Daniel L. Smith. That's D-a-n-i-e-l S-m-i-t-h. I'm the manager of the Middle Republican Natural Resources District and offer this testimony in support of LB645. I'm circulating my testimony so I'm not going to read it to you. I'm

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going to try and speed up here a little bit. I do want to touch on what I think are some important issues and some concerns that my district has. We see LB645 as maybe one of the first steps towards conjunctive management in Nebraska. In spite of LB962, we still manage groundwater and we still manage surface water. We don't manage water in Nebraska. So some of the points that are addressed in Senator Christensen's bill with regard to combining those uses and looking at overall allocation could be beneficial for Nebraska. We have riparian uses, we have conservation measures that have affected us. And by looking at all of those things, we may be able to come up with an equitable allocation of waters across the basin that are based on statutory authority. We're working that way now with the Department of Natural Resources. A few months ago we set up a conjunctive use committee that involves the NRDs, the irrigation districts, the department, and the Bureau of Reclamation to try and work towards these ideas. The bill does cause us a little bit of concern. And Senator Christensen touched on a couple of those things in his introduction, in that, what all agreements are we talking about? What is the time of the original agreement and are these agreements our integrated management plans? And I think in the opening, you obviously address that. Our current integrated management plans, while they function and meet the requirements with the state of Nebraska, don't allocate the entire waters. I think it's been touched on that in surface water we look at consumptive use that's calculated over here, it is what it is. Whatever is left in the virgin water supply gets shaken out, 44-30-26 between the NRDs. We've agreed to stay in those standards. We agreed to that in our previous integrated management plan. We have agreed to those compliance standards in our current integrated management plan. I thought it was interesting. I sat through the first hearing on Senator Fischer's bill and in listening to the questions that were asked there, references to permits, caused me just a little bit of concern as I thought about what we're trying to do here in that, you know, would any of this require that the irrigation districts have a different permit. We need to address that. And it's my assumption that if this bill should come out of committee, that DNR would somehow have to go through that rule making process to identify those things that need to be incorporated into the individual allocations of water, but. And another concern of that is, you know, if we're talking about a year when Nebraska is compliance, can you even do a different allocation for the surface water districts. Like I say, I had some concern in that original testimony on Senator Fischer's bill that seemed to overlap into this, so. With that, I will stop. I would try to answer any questions if there are some. [LB645]

SENATOR LANGEMEIER: Very good. Senator Carlson. [LB645]

SENATOR CARLSON: Thank you, Senator Langemeier, and thank you, Dan. Now I appreciate some of these concerns that you brought forth, because I think that they do need to be addressed. I'll ask you the same thing I asked Mike. How long have you had metering on the wells? [LB645]

DANIEL SMITH: We phased it in beginning in about '98, sir, but by '03, we had

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everything metered. [LB645]

SENATOR CARLSON: Okay. And what was your allocation prior to '03? [LB645]

DANIEL SMITH: First allocation, three-year allocation of 39 inches or 13 inches a year. We've since reduced to 12. [LB645]

SENATOR CARLSON: Okay. So you're currently at 12 aren't you? [LB645]

DANIEL SMITH: Yes, sir. [LB645]

SENATOR CARLSON: Do you think over time that can go down? [LB645]

DANIEL SMITH: To a certain extent, I'm going to say, I don't think it needs to. DNR doesn't really care what our allocations are. We've got those compliance standards in place that look at our reductions from our baselines. And if we're within those reductions, we're generally in good shape over the long term. Our allocation has been 13 and 12. Our highest use ever was just a little over 10. Our average usage last year was 7.86, I believe, within a tenth of that, under 8 inches. So regardless of whether we've got a 12 inch allocation or not, we're not using it, so. [LB645]

SENATOR CARLSON: Okay. And I think that's...I think that's an important factor for people to be aware of because you hear an allocation, you think everybody is using it. [LB645]

DANIEL SMITH: Right. [LB645]

SENATOR CARLSON: And I think that is pretty important, so thanks for your testimony. [LB645]

DANIEL SMITH: Thank you, sir. [LB645]

SENATOR LANGEMEIER: Very good. Are there any other questions. Seeing none, thank you very much. Well done. [LB645]

DANIEL SMITH: Thank you. [LB645]

SENATOR LANGEMEIER: Further testimony in support. Welcome. [LB645]

JAMES UERLING: (Exhibit 11) Hello. Senator Langemeier and members of the Natural Resources Committee, my name is James W. Uerling, it's J-a-m-e-s, and Uerling is U-e-r-l-i-n-g. I am a director of the Middle Republican Natural Resources District and I offer this testimony in support of LB645. At our March 8 meeting, the Middle Republican

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Natural Resources District board of directors voted 11 to 0 to support LB645, and to encourage our manager Dan Smith and directors to testify in favor of Senator Christensen's bill. This bill gives groundwater and surface water, and I'm going to quote this from Senator Christensen's bill, "baseline equitable apportionment of the virgin water supply." Now this could potentially reduce conflicts between groundwater and surface water users...I'll say that again, it could reduce...it could potentially reduce conflicts between groundwater and surface water users, and give NRD directors the ability to fairly manage the resource. Now surface water has been made...they've been made responsible, I guess, for...you know, they've been held accountable by the occupation tax and by the surface water curtailment in our IMP. And so since they've been made responsible, I feel like they should be given an allocation, part of the...part of the allocation. Thank you for the opportunity to offer this testimony. Any questions? [LB645]

SENATOR LANGEMEIER: Very good. Senator Carlson. [LB645]

SENATOR CARLSON: Thank you, Senator Langemeier. James, thanks for being here. How could it potentially reduce conflicts? [LB645]

JAMES UERLING: Well, it wouldn't do it immediately, I don't think. And it wouldn't solve...I mean, the river wouldn't run at capacity tomorrow, but it possibly could change streamflow. And the way it could reduce conflicts is, you know, right now, right now, surface water doesn't really have an allocation. They just take whatever water is there. And I'm just...I'm in the middle of this battle because I'm an NRD director and I also am a surface water user. I irrigate out of the H&RW Canal and the Frenchman-Cambridge Irrigation District Canal. And, I guess, I didn't answer your question very well, but... [LB645]

SENATOR CARLSON: Well, I know that you are both groundwater and surface water and you've answered in that it's not going to happen overnight but you think it has a better opportunity over a reasonable period of time of reducing these conflicts. [LB645]

JAMES UERLING: Yeah. [LB645]

SENATOR CARLSON: Okay. Thank you. [LB645]

SENATOR LANGEMEIER: Very good. Seeing no other...well done. [LB645]

JAMES UERLING: Thank you. [LB645]

SENATOR LANGEMEIER: Further testimony in support. Welcome. [LB645]

JAY SCHILLING: Hi. Senator Langemeier and the rest of the committee, my name is

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Jay Schilling. It's J-a-y S-c-h-i-l-l-i-n-g. I've never done this before so please give me some latitude here, but... [LB645]

SENATOR LANGEMEIER: You're doing good so far. (Laughter) [LB645]

SENATOR CARLSON: You can still spell. (Laughter) [LB645]

JAY SCHILLING: I might have got it right. I'm a producer. I'm a director on the Frenchman-Cambridge Irrigation District board. I'm a producer that uses surface and groundwater. LB645, I feel...I would testify in favor of it. I feel it could help the basin as a whole. I'm trying to look at it from your viewpoint. What can it do for the state of Nebraska? It's been gone over how it could reduce conflict. We, right now, we don't have a lot of cooperation between all the entities involved. I feel this bill, by including surface water in the mix formally, will promote cooperation between the irrigation districts, Bureau of Reclamation, the NRDs and the DNR. One of the big affects I can see coming of this is the possibility of long-term sustainability and stability in the basin. By evening out the amount of water we use through the basin, hopefully, that will promote streamflow so we will have more surface water to deal with. On February 25, Brad Edgerton and I met with the DNR in an informal meeting. One of their biggest concerns was conjunctive management. We told them we would be very open to any projects we could do with them but we had to have the tools to do it with, namely, water, which right now, surface water we don't have the availability of the source. We've got to improve that. One of the things they want to look at doing is the possibility of using our systems for groundwater recharge in years when we're not in any compliance issue problems, and then we'll have it there for years when we're water short. We informally agreed to work with them on some of these projects, but this bill will help that situation. It will, you know, it just to me, it will decrease the likelihood of the water short years. I think we can make this basin much more efficient this way. It brings a balance in the basin, I feel. And I guess that's all I have, and I thank you for your time. [LB645]

SENATOR LANGEMEIER: Very good. Senator Carlson. [LB645]

SENATOR CARLSON: You did so well, I don't need to ask a question. (Laughter) [LB645]

SENATOR LANGEMEIER: Just checking. Very good. You did a great job. Well done. [LB645]

JAY SCHILLING: All right. Thank you. [LB645]

SENATOR LANGEMEIER: Further testimony as a proponent. Good evening. [LB645]

NELSON TRAMBLY: (Exhibit 12) Senator Langemeier, members of the Natural

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Resources Committee, my name is Nelson Trambly, N-e-l-s-o-n T-r-a-m-b-l-y. And I am here representing myself to testify in support of LB645. I farm in Franklin and Webster Counties and have been an irrigator all my life. I have seen firsthand the tremendous strides that have been made in irrigation efficiencies in the past 20 years. The days of gravity irrigation with water flowing out the ends of the rows to the grader ditch are a thing of the past. With no-till, improved center-pivot technology, and soil moisture sensors, I am now applying about one-third of the water I did ten years ago. I have also witnessed tremendous improvements in the efficiency of the surface water delivery systems in the Lower Republican Natural Resources District. Miles of laterals have been buried and are continuing to be buried in the Bostwick District to reduce evaporation and seepage. Most recently I have witnessed the efforts of the Lower Republican NRD and irrigation districts to partner to manage our water supply as one. This type of conjunctive management, in my opinion, will help the state of Nebraska to meet its obligations with Kansas. In compact call years surface water can be shut off just as groundwater controls will be implemented to reduce our consumptive use. If surface water is a part of the solution, and it is, then it also needs to be included in the apportionment of the virgin water supply. I encourage the committee to advance LB645. Thank you. [LB645]

SENATOR LANGEMEIER: Well done. Are there any questions? [LB645]

SENATOR CARLSON: Thank you. [LB645]

SENATOR LANGEMEIER: He agrees, you did well. Thank you. Further testimony in support. Seeing no other testifiers in support, now we'll move to opposition, those who would like to testify in opposition. Welcome. [LB645]

JASPER FANNING: (Exhibits 13 and 14) Thank you, Chairman Langemeier and members of the Natural Resources Committee. My name is Jasper Fanning, J-a-s-p-e-r F-a-n-n-i-n-g. I'm the general manager of the Upper Republican Natural Resources District and our board is in opposition of LB645. As I've spoken with Senator Christensen and Senator Carlson about this, I think it's important to recognize, first of all, the history of the agreement that was used, and...in earlier...it was referred that that agreement was informal. And I guess I disagree with that. It's pretty formal. It's incorporated into each of the three NRDs' integrated management plans. The Lower's adopted IMP, the Middle's adopted IMP, and our adopted IMP, all jointly adopted with the Department of Natural Resources, indicates how formal that agreement was. First off, I think that this bill that's before the Natural Resources Committee, as I thought about that earlier today and prepared my written comments that are being passed out, pretty sure that this measure is unconstitutional. You might want to check on that, but I think back to when we developed our original agreement why surface water wasn't included in that agreement. And at the time, Director Bleed said that the appropriations of surface water within the basin can't be regulated, period, with the exception that

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surface water can be regulated only under the authorities granted by having the federally approved interstate compact. Only if Nebraska were going to be out of compliance with that compact would the state have the authority to regulate service water uses because, technically, they'd be using water Nebraska wasn't allowed to appropriate under the interstate compact. In essence, it would have been Kansas's water that they could only be restricted from using. That's pretty much why surface water wasn't originally included, coupled with the fact that the surface...historically even before groundwater development, the amount of surface water available to use varied very widely with precipitation conditions unlike the groundwater supplies. And so for those reasons, surface water...it wasn't that they didn't get a share of the supply within the basin, but it wasn't...you weren't able to put it into the formulas easily as you were, or maybe even legally for that matter, given that constitutional question. And so for those reasons, surface water was left out of it and we only focused on groundwater, which the whole purpose of focusing on groundwater was, we recognized very early on, we had to have some way of splitting up how much of Nebraska's allocation that groundwater could use was available for each district to manage and stay within. And the whole purpose of that was so that we could all have our share, that's our responsibility. We manage our own house, keep our own house in order, and we could work together, but we wouldn't have to worry about what the other natural resources district was doing. It wasn't our job then to worry about how the Middle Republican managed water, how the Lower Republican managed water. So long as they met their obligation, that was fine. In those uses that were established between the time Kansas sued and between the time that the settlement agreement was inked, were the uses that went into calculating what the average for groundwater was. And essentially the reason for that is, all the uses developed were essentially legal uses, okay. Up towards the end, the Department of Natural Resources told the Lower Republican, you know, look, you can go ahead and drill, we'll have those wells to be drilled late. But you're going to have to make up for the water from those. You're not going to get additional allocation from those. Senator Carlson assures me that this isn't an attempt to get additional allocation for those wells, but as I see it in the format that that agreement was made, the only thing that shifting water from one district to another district does is to provide additional allocation for those wells. I don't see how that doesn't do that. Certainly, you know, to put it in perspective, at the time that Kansas was suing we knew that obviously we didn't need any more uses and that was what Kansas was harping about. They only drilled 493 wells from the date that Kansas filed suit. That's about a 14 percent increase for their district. So, obviously, any cutback is going to have to be about 14 percent bigger to make up for those. Now we'd had...and further to put that in perspective, our 493rd newest well was drilled in May of 1981. So we had through our rules and regulations curtailed water usage much before that. The inefficiencies and the high pumping that Mr. Trambly talked about only went into the modeling and would have given them a larger share of the allocation of that, and so it would have been, you know, relatively easy to cut back. And so I think it's important to understand that history. And I see the red light, so I will take any questions at this time. [LB645]

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SENATOR LANGEMEIER: Very good. Senator Carlson. [LB645]

SENATOR CARLSON: Thank you, Senator Langemeier. Jasper, you and I had a conversation earlier today and I appreciated that. We don't always see eye to eye, but most of the time we're very cordial. [LB645]

JASPER FANNING: Sure. [LB645]

SENATOR CARLSON: And on what you've handed out here, the first sheet, we go over to the Lower, and the Middle, and the Upper, and the balance. And I look at the last three figures for the Upper and that means you're on the plus side. You're not in deficit, you're on the plus side. In 2007, 19,000 acre feet, in 2008, 38,500 acre feet, and in 2009, 8,400 acre fee. I think that's what that means. [LB645]

JASPER FANNING: Yes. [LB645]

SENATOR CARLSON: Yes. Now, and I don't even argue with that. The sticking point, and you know what I'm going to say, is that during that time...well, maybe not in the last couple of years, but prior to that we've still got groundwater depletions in your area, and I have a tough time getting over that. Now, I bring it up because in our conversation today, I asked you, how do you think you're going to be able to cope with that in future years? I liked your answer. [LB645]

JASPER FANNING: Well, good. I'll go ahead and repeat it if you liked it. Essentially, the groundwater decline issue is a local issue, other than to the extent that it impacts streamflow depletions. And that's what our original agreement was intended to do was protect the Lower Republican, and the Middle Republican from having to further regulate their users if our groundwater declines caused additional streamflow depletions. Now our IMPs prevent that. But the way we're going to be able to live with that, if you look back at the last two figures, when the department modeled our...essentially, our current pumping regulations that are in our IMP which is the 425,000 acre foot target on average, the third page there shows the predicted inflows into Enders, which would be one of our more highly impacted streamflow areas upstream of there from groundwater declines. And their modeling shows that the inflows into Enders are pretty stable. Now they're not near what they used to be, but they even show shutting off all the wells in the Frenchman Valley, okay, in both my district and the Middle Republican. That's about 300,000 acres. Shut those wells off for about 40 years, and you're not...that entire project still wouldn't receive a full supply. Now as it is, about three-fourths of their acres are irrigated with groundwater wells and there are about 3,000 or 4,000 acres that don't have any irrigation there. That's unfortunate and something that I think we can work on now that we have the occupation tax in a conjunctive management framework. But if you look at the last page, see, what that told

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us, that graph there was, we don't have to take knee-jerk, drastic actions. Okay. What we've already got in place kind of has things fairly stable, at least as far as streamflow is concerned. But when you get to the groundwater decline portion, this is a chart that we put together that...just in one component of what's out there in terms of...every seed company out there, and seed is only one component of all the technology, has a promise of about 1 percent increase in water utilization efficiency per year for the next 20 to 30 years, depending on which one. So over 20 years, you're going to see the ability to produce just as much product with 20 percent less water. And if that technology comes to be true, and I think that it will from what we've seen so far, and coupled with other technologies that are out there, that gets us to a sustainable allocation or what we...would be sustainable for our district on average and there would be other more critical areas that might need additional regulation beyond that. But if you model out 20 years and ratchet that, that pumping down at approximately 1 percent per year, or it's really 2 percent per year because we only provide half of our crop requirement through irrigation roughly now, you get to it where you're only using six inches instead of the 11.4 that we're targeting today over that 20 year period. There's still more than ample groundwater supplies out there in all but our very limited areas of very limited groundwater that already exists today. And so, you know, the future is really not that bleak because technology has the ability and it already is replacing irrigation on the farm today. And so that's how we're going to manage for the future and that's what our adaptive management program is all about. [LB645]

SENATOR CARLSON: And I appreciate that and this helps understand it a little bit better because it's a target. And I may be wrong, but I hadn't heard you talk in specifics like that before. I think, you won't agree with this, I think part of it is that we're having, I believe, a change of attitudes in our discussions on the Water Sustainability Task Force. I think from the east end to the west end, I'm seeing a more cooperative attitude, and so it's helping when we can come out with, in the sense, goals like this. I'd call this a goal. And that's the kind of thing we've got to have in the basin. So thanks for your testimony. [LB645]

JASPER FANNING: Thank you. [LB645]

SENATOR LANGEMEIER: No other questions? Thank you very much. [LB645]

JASPER FANNING: Thank you. [LB645]

SENATOR LANGEMEIER: (Exhibits 15-18) Is there any other testimony in opposition? You have a number of letters. I have one from Tom Terryberry with the Upper Republican NRD; I have one from Dean Large with the Upper Republican; I have one from John Thorburn from Tri-Basin NRD, and I have from Steve Smith with the North Platte NRD and the North Platte Valley Irrigators Protective Association. Those are letters in opposition. We'll now move to testimony in a neutral capacity. Seeing none.

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Senator Christensen waives closing. Well, that concludes the hearing for LB645. We'd like to thank you all for coming and participating and your testimony. We appreciate it and have a safe trip home. (See also Exhibit 19.) [LB645]