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Natural Resources Committee  
February 26, 2014

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[LB1005 LB1098]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 26, 2014, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1098 and LB1005. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Rick Kolowski; and Jim Smith. Senators absent: Ken Schilz.

SENATOR CARLSON: Welcome to the Natural Resources Committee. I am Tom Carlson, state senator from District 38, the Chair of the Natural Resources Committee. And committee members present, to my far left is Senator Kolowski, Rick Kolowski from Omaha, District 31; next to him, Senator Ken Haar from Malcolm, District 21; Senator Jim Smith from Papillion, District 14; the empty chair next to him will be Senator Ken Schilz from Ogallala, District 47, and I think he's introducing a bill in Judiciary Committee; and then our legal counsel is Laurie Lage and she's running errands or something and she'll be right here when she comes; to my far left is Barb Koehlmoos, the committee clerk; next to her is Senator Lydia Brasch from Bancroft, District 16, the Vice Chair of the committee; and then Senator Jerry Johnson from Wahoo, District 23; and Senator Annette Dubas from Fullerton, District 34. Our pages today...

SENATOR JOHNSON: Are busy.

SENATOR CARLSON: Both of them are here?

BARB KOEHLMOOS: Just J.T.

SENATOR CARLSON: J.T. Okay, our page is J.T. Beck who is a senior at UNL, so he'll be available to help if we need it. We do have two bills today, and on either one of the bills...well, let me ask this. LB1098 is going to be the first bill. How many testifiers do we have? Okay. Then LB1005 is second. How many testifiers do we have? Okay. I think we're going to do this: After the first two...for the first two testifiers let's go 5 minutes and after that let's go 3 minutes. Now, so try and plan what you need to say, and the way the light system works is when you sit down and after you've introduced yourself and turn in the green sheet, which, of course, is back at the corners--and make sure you pick up one of those and fill it out and turn it in as you come forward. But after you have said who you are, say your name and spell it. And then the light comes on and it's a green light. For the first two testifiers it's a green light for 4 minutes and then a yellow light for 1 minute, and then at the end of 5 minutes the red light comes on. And sometimes you're so intense you don't even see the red light and then we'll have to remind you that the red light is there and wind up what you have to say. As we get one testifier after another, try not to repeat what somebody in front of you has said. You may say that you agree with them but try not to have a lot of repeating of information, if you would do that please. If you do not wish to testify, you can submit comments in writing and have them

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read into the official record. If you have handouts, hopefully you have 12 of those, and give those to Barb, our clerk. And if we need the page to help you out on that, that's possible too. Nobody on the committee uses electronics during the hearing, so if you have cell phones turn them off or put them on vibrate, and so we don't interrupt the testimony of the hearing. We don't allow any displays of support or opposition to bills as we have testimony, and we've never had a problem and I don't imagine we'll have one today. So make sure you've got the green sheet. The first two testifiers on each bill after the introducer--and I don't get limited and neither does Senator Avery; then beyond the first two it will drop down to 3 minutes and we'll go from there. So any questions on how we're going to proceed today? Okay. Senator Brasch.

SENATOR BRASCH: Thank you, Senator Carlson. [LB1098]

SENATOR CARLSON: Senator Brasch and members of the Natural Resources Committee, I am Tom Carlson, T-o-m C-a-r-l-s-o-n, state senator from District 38, here to introduce LB1098. The first thing I want to do is make sure that all of you know that I very, very much appreciate the people that have been members of the Water Sustainability Task Force from our first meeting in late July until our last meeting in December, 20 full days, and a lot of work and a lot of effort and a lot of time. And some of you were there for various times, as well, but simply not all 20 days. So that was a real commitment on the part of the people that served and very, very much appreciated. I'm going to be rather brief in my opening because I'd rather listen to what our other testifiers have to say concerning LB1098. You've heard me before, but on my brief introduction I'm going to say what I've said before, again. In Nebraska, agriculture is our number one industry. And now that we've just become number one in the nation on cattle on feed. There's a reason for that. And people are leaving other states, like Texas, because they don't have the water to raise the crops so that they can feed the cattle. And people are looking at Nebraska as a state that has water. So it's a great opportunity from the standpoint of economic development and livestock production, and we certainly want to be in a position to keep that going. We all understand that water is life, and it's a wonderful supply that we have in the Ogallala Aquifer in the fact that 66 percent of it lies under the state of Nebraska. Other than our people, it's the greatest natural resource that we have, and I would say the greatest natural resource in the country. And we will be number one in agriculture and we will be number one in livestock production only as long as we have a sustainable water supply so that people are confident that for generations into the future we have the water we need for irrigation, we have the water we need for livestock, we have the water we need for industrial uses, municipalities, domestic wells, and we have water that we need for wildlife preservation. And certainly if we have a body of water, it lends itself to outdoor recreation, which is a wonderful asset, and I will contend that's not really the reason why you construct something, but it's a by-product that becomes very valuable to a lot of people. And as long as we reach a point where we are sustainable, so that, on average, we're not using any more water year by year than what our supply gives us, we are in a

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position that no other state will be in. We know that Texas is mining their water, and they used to have two crops a year and they'd pump 48 inches of water. Oklahoma is doing the same thing. Kansas is doing the same thing. And when you look at maps and the red part shows depletions, it's a bad picture for Texas, Oklahoma, and Kansas. And Nebraska doesn't look bad and those people that are even here to testify today that are coming from areas where there's a signal that says we need to pay attention to this and we need to become sustainable, they know that. They're not arguing that. And so this policy that we need to implement across the state is just so very, very important. This bill also rehabs, realigns the Natural Resources Commission and it extends it from 16 members to 27 members; and of the 27 members, 13 of them are elected by boards of the NRDs throughout the state, according to basin; and then the other 14 are appointed by the Governor. And part of the work of the task force was to bring people in that had interests in water that represented certainly groups in addition to agriculture, and that was accomplished. And that will show itself through the new Natural Resources Commission and I think it will represent the interests of water very, very well in this state. That's all I would like to say for right now. If you have some questions you want to ask me, that would be fine; but we really have some testifiers here that have put in a lot of time and effort and I'd just as soon have you address questions to them, and then as I close, feel free to ask me anything you'd like. But thank you for allowing me this opening. [LB1098]

SENATOR BRASCH: Thank you, Senator Carlson. Are there any questions from the committee? There are none. Thank you. Would proponents please come forward? Welcome. And can you please say and spell your name. [LB1098]

CLINT JOHANNES: (Exhibit 1) Yes. Good afternoon, Senators, committee members. I'm Clint Johannes, C-l-i-n-t J-o-h-a-n-n-e-s. I'd prefer not to read my testimony, but to make sure I say it accurately and totally, I'm going to indulge your patience with me and I am going to read my testimony. There's a copy of it going around for you as well. First, I'll give you a little bit of background about my experience and my interest in water. First, my background. I'm a retired professional engineer with over 50 years' experience and I've worked that entire time in the electric utility business as an employee and consultant. My interest in water began 23 years ago when I became a member of the Lower Platte North NRD. I was a board chair and a member of the Association of Resources Districts. I was on the Governor's Water Policy Task Force several years ago. And the reason I'm here now is I'm a current member of the Natural Resources Commission, I'm past-president there; and as a member of that commission, of course, as you know, then became a Water Funding Task Force member. It was a privilege and honor for me to be elected chair of that Water Funding Task Force. Of course, that was created by Senator Carlson and the rest of you here with last year's LB517. The task force was a very diverse group of individuals that represented water users all across the state. Our main charge was to develop five recommendations for use in developing legislation for this session. There were three bills that resulted from that: two were heard

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in Appropriations, I guess last week; and, of course, then the bill today to create the process and the revised Natural Resources Commission. The Water Funding Task Force operated under a consensus basis, which means that all 27 voting members of the task force had to accept and agree to whatever recommendation or conclusions that we were to reach. We held, as Senator Carlson mentioned, 20 public meetings across the state where the public was invited in. They were to present, and did present, their issues, the things they felt were important for water sustainability and for water in Nebraska. Initially, there was some wide differences of opinion as to how to achieve the process and the structure for the projects, programs, and activities that this was to put forward. But ultimately, consensus was reached. It was recommended in the report, as you probably have read, that the application process be a two-step process, and this is very similar to the process that's used today for the Natural Resources Development Fund; that's the major fund under today's commission. The first step is a rather simple process that doesn't take a lot of time and effort on the part of the proposer, so that they can determine whether they should go further and make the second step. And, of course, many of these projects are large, so the second step will involve considerable work. It will require economic, technical, environmental, financial, and legal issues, that they all be addressed so that that project can be properly evaluated. The commission will evaluate these, what we call PPAs--that came from LB517, the projects, programs, and activities--against a specific set of criteria, part of which was in LB517 and part of which the task force expanded on, primarily in the area to make certain that we were measuring to attain water sustainability. And I'll read you some of the...just some of the criteria, because I think they're critical. Criteria is very important to this. (1) Protecting the ability of future generations to meet their needs through increasing aquifer recharge, reducing aquifer depletion, increasing streamflow, remediating threats to drinking water, and forwarding the goals and objectives of approved integrated management plans, that the districts have, the NRDs have. (2) Contributing to multiple water supply management goals such as flood control, agricultural use, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources. (3) Providing increased water productivity and enhancing water quality, all of these (4) using the most cost-effective solutions available. (5) And, of course, making sure that we comply with compacts, decrees, and state contracts and agreements. The task force tested these PPAs against the criteria just to make sure that they, in fact, were the kinds of projects that we were looking for to make sure water sustainability was the chief goal. The process and criteria as defined in the task force recommendation report will then be written into the rules and regs of the new Water Sustainability Fund. One of our most difficult recommendations was to reach consensus on the makeup of the Resources Commission. It was clear that the new criteria were broader than the existing commission had dealt with, that the group that should be evaluating these...am I out of time? Okay. Can I go quickly here? The consensus...I won't go into the makeup of the commission. Senator Carlson said that. [LB1098]

SENATOR BRASCH: You can just finish up. You're doing okay. [LB1098]

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CLINT JOHANNES: Okay, I'll do that. Let me just say, I think this group is...I'm proud to be a part of them. They're very dedicated. We're going to work hard to make sure this works. And I would just say that you, as Natural Resources Committee members, are the leaders in the Legislature for water issues, such as sustainability. And you can set Nebraska on a path to sustain our great water supplies by passing on LB1098 onto the full Legislature for approval, and also with your strong support for the water sustainability funds that I talked about earlier, both LB1048 and LB940. With that, thank you. [LB1098]

SENATOR BRASCH: Thank you, Mr. Johannes. Are there any questions from the committee? Seeing there are, Senator Johnson. [LB1098]

SENATOR JOHNSON: Thank you. I'll help you out a little bit on maybe a paragraph that you left out. [LB1098]

CLINT JOHANNES: Okay. [LB1098]

SENATOR JOHNSON: It's going to be a broader committee--larger. Do you anticipate that most of the current members of the task force will be moving toward that? How is that nomination process go? And the second part of it maybe is the new set of criteria will be reevaluated again. What's the risk of some of that changing with the new commission? [LB1098]

CLINT JOHANNES: Okay, first of all, the makeup of the commission. The 13 of us that are elected by the NRDs, in my case my term expires the end of this year. So if I'm reelected I would come on next year. If not, someone else would be. Half of those will run out...actually, it's in January 2016, but it really runs out in 2015. The other half runs out two years later. Our terms are staggered. The appointed members, as soon as everything is passed, as I read the legislation, the Governor would make those appointments based on the requirements of the statute. Those terms would be staggered, two and four years; and so they would start then immediately following. He could appoint...if he appoints three now on surface water, groundwater, and a municipality representative, he could appoint those same ones. And the other question, Senator, was as to? [LB1098]

SENATOR JOHNSON: Well, the new... [LB1098]

CLINT JOHANNES: Criteria? [LB1098]

SENATOR JOHNSON: Let's say that 80 percent of the funding task force or the study group are the new commission. Most likely, not too many of the...too much of the criteria that you have presented and worked on, it's not very likely, then, that that's going to

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change much? [LB1098]

CLINT JOHANNES: No. No. I think the task force and those that will stay on felt so strongly about how important this criteria is, and we spent a lot of time making sure that it's the right criteria, because that's what's really critical. We've got to be measuring this against the right things. And I think as you read through that criteria, we feel quite strongly that, yes, those are the measures. Now as we move 10, 15, 20 years from now and other things come up, I would expect there might be some changes. But initially I wouldn't expect any changes. [LB1098]

SENATOR JOHNSON: Yeah. I think that's important so we don't have a stall right now. Thank you. [LB1098]

CLINT JOHANNES: Yeah. You're welcome. [LB1098]

SENATOR BRASCH: Senator Dubas. [LB1098]

SENATOR DUBAS: Thank you, Senator Brasch. I guess for the record, the makeup of the commission now, if you wanted to explain that a little bit, versus what this new commission would look like; and why do you believe that this new commission would be more effective than what we already have in place. [LB1098]

CLINT JOHANNES: Okay. The existing commission, there are 16 members; 13 of us are elected by river basins. The NRD board members in those basins elect each of us. That's 13 of us. We're on staggered terms, four year terms of staggered. The other three are appointed by the Governor: one representing surface water, one groundwater, and one municipalities. In addition to those 16...those 14, excuse me, there will be 11 more that are appointed by the Governor. And the categories are nearly exactly the same as the categories that were in LB517. There's a couple minor changes. There were two municipality representatives, one that was already on the existing commission, and then the other one was added. We better defined that, I guess might be a way...that one would represent large municipalities, the other would represent smaller municipalities. Then the only other change was at the livestock category; we changed it to range livestock because the other production livestock was...that was in other areas (inaudible). [LB1098]

SENATOR DUBAS: So then am I understanding that you believe the existing commission doesn't cover as much of the interested stakeholders, when it comes to water, than what this new one would deal with? [LB1098]

CLINT JOHANNES: I might characterize it this way. I think the existing commission is...and I think back when we were testifying about the commission earlier on, is fairly broad. It may be if some people feel, slanted some toward agriculture. I'm not an

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agricultural producer and there's many others that aren't. We have teachers and all sorts of things. But with the new criteria, it's broader than the existing commission dealt with. It's more focused on sustainability, which would mean more focus toward things like assuring in-stream flows, groundwater recharge, you know, some of the things that lead us towards sustainability. So I think it's appropriate that, that, you know, we have this good base to build on, the existing commission; but that we add all of these other interests in there so that we're sure we're covering virtually...well, all water users in the state will have a representative on that new commission. [LB1098]

SENATOR DUBAS: I know there's been comment made, and I think you may have even alluded to it in your testimony now, about when you get that many people together, you know, trying to reach consensus, and obviously you were able to do that through the task force; do you see that as being an issue with enlarging this commission to that many people, to be able to come to a decision on these important water projects? [LB1098]

CLINT JOHANNES: I think they can or we can, if I still happen to be there. It's kind of a...you have to do one or both. It would be real nice to have just a small group that could be more flexible and move quicker and do things quicker. But on the other hand, then you're likely to eliminate some important water user groups. So, you know, we debated that for quite some time, and the feeling was that it was more important to make sure all the groups were covered; and we had set kind of the precedent that we were able to reach consensus with...well, the same size of group with the task force; so felt that this new commission with that many, should be able to do the same thing. [LB1098]

SENATOR DUBAS: Thank you. [LB1098]

CLINT JOHANNES: Sure. [LB1098]

SENATOR BRASCH: Senator Haar. [LB1098]

SENATOR HAAR: Yes. Do you know about how much money right now you manage as the commission? [LB1098]

CLINT JOHANNES: How many dollars per year? [LB1098]

SENATOR HAAR: Yeah, yeah. Yeah, what would be about the dollar amount? [LB1098]

CLINT JOHANNES: Let's see. There's a little over \$3 million was going into the development fund. Oh, there's probably another...there was \$2 million going into the...it has a big long name...Water Sustainability...well, the program fund, the one for studies. [LB1098]

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SENATOR HAAR: Okay. [LB1098]

CLINT JOHANNES: Then there's another...oh, I would just... [LB1098]

SENATOR HAAR: Just a... [LB1098]

CLINT JOHANNES: This isn't an exact number, but I suppose \$6 million or \$8 million per year. [LB1098]

SENATOR HAAR: Six to eight. Okay, thanks. [LB1098]

SENATOR BRASCH: Are there any other questions from the committee? Senator Johnson. [LB1098]

SENATOR JOHNSON: And you might...might not, or might not know this, but there's a fiscal note to this. Do you know what it costs now for the commission that's existing? You've got more members, so you'll have more mileage and that. [LB1098]

CLINT JOHANNES: Right. [LB1098]

SENATOR JOHNSON: Do you know a ballpark of what...? Because this probably is not net; this is total cost. [LB1098]

CLINT JOHANNES: Yeah. There would be, of course, more members. We are paid \$50 per diem and expenses, so it's not large amounts that are paid. The numbers would be double or a little over double, so that amount would go up some. The DNR having to handle, hopefully, much larger dollars on these projects are going to have to add some staff to handle that properly and, you know, make sure it's all accounted for. [LB1098]

SENATOR JOHNSON: So the commission itself would maybe double, because basically we're doubling the size. [LB1098]

CLINT JOHANNES: Yeah, it will go from...well, no, actually it would be a little less. We're going from 16 to... [LB1098]

SENATOR JOHNSON: A little less, yeah, than double. Right. [LB1098]

CLINT JOHANNES: Sixteen to 27. Yeah. So it's not quite double. [LB1098]

SENATOR JOHNSON: Yeah. Plus the extra for administration of the extra funds. [LB1098]

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CLINT JOHANNES: Right. [LB1098]

SENATOR JOHNSON: Okay. Thank you. [LB1098]

CLINT JOHANNES: Right. That would be the dealt increase. [LB1098]

SENATOR JOHNSON: Thank you. [LB1098]

SENATOR BRASCH: Are there any other questions from the committee? Seeing there are none, thank you, Mr. Johannes. [LB1098]

CLINT JOHANNES: Thank you. [LB1098]

SENATOR BRASCH: Next proponent. Welcome. If you can please say and spell your name. [LB1098]

DAVID KADLECEK: (Exhibit 2) Thank you, Senators. I'm David Kadlecek, D-a-v-i-d K-a-d-l-e-c-e-k. I live at Hay Springs, Nebraska. It's a long ways up there, guys. (Laugh) It's a 900-mile round trip for me. We farm and ranch about ten miles north of Hay Springs, and I'm here to speak today in favor of LB1098. I'm a board member of the Upper Niobrara-White NRD; also a member of the Natural Resources Commission. I was chairman of it in '13 for last year. I'm elected from the Niobrara River Basin as the rep on the commission, and I'm also speaking for the Nebraska Association of Resources Districts. I had the privilege of serving on the task force, which was a long project but we got her done. And in over the years of projects that have been built through the Resources Development Fund, there's over 70 of them, a cost of about \$250 million with an estimated \$1.41 million in benefits. Today, you know, we get the appropriation of around \$3.1 million in the Resources Development Fund, which as you guys know what costs of fuel and everything it does to build projects and what have you is going anywhere but down. The revised Natural Resources Commission as recommended by the task force and proposed in LB1098 would consist, as Clint had kind of mentioned, the 13 elected members plus 14 appointed by the Governor. I strongly supported the 13 elected commission members on the task force, and still do; and I also am very comfortable with the additional 14 as would be appointed by the Governor. The backgrounds of the current elected commission members are varied in many facets of water. There's a copy of the backgrounds and education of the current commission that's attached to the handout I gave you. And also, with the new 14 to be appointed, the backgrounds that they will be appointed from, I think it makes a very varied and diverse and qualified organization to administer the future funding to move the state forward toward the goal of water sustainability. I'm going to be short. I appreciate your time. I know we've got a lot of stuff to go today, but if you've got any questions, why, I'll take them. [LB1098]

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SENATOR BRASCH: Are there any questions? Yes, Senator. [LB1098]

SENATOR JOHNSON: Thank you. Thanks for coming and thanks for your service. The consensus has worked very well in that. Do you see the structure from a standard procedure structure that it's going to be...have to be a two-thirds? Or are you...do you believe that everything will still be handled by consensus, or do you feel it needs to be a vote? [LB1098]

DAVID KADLECEK: You know, when we set the task force up, we voted on whether we were going to go by majority rules or consensus. Consensus is what we come up with to handle the business of the task force, and we did get everything done thataway. Today, you know, of things on the current commission, those are a majority. [LB1098]

SENATOR JOHNSON: Okay. [LB1098]

DAVID KADLECEK: And I guess it would be up to the new body, if you will. I would kind of guess it would probably go majority or two-thirds or something like that, but I think that's probably an open for discussion thing. Because I think that a lot of the regulations and stuff, according to this bill, those will have to be some things done between the commission and DNR to put a...to how that's...how everything will work. And it's going to take some time and some effort to put that process together, but I think it will work out. [LB1098]

SENATOR JOHNSON: Thank you. [LB1098]

SENATOR BRASCH: Any other questions from the committee? [LB1098]

DAVID KADLECEK: Gosh, you guys are easy today. [LB1098]

SENATOR BRASCH: Seeing there are none, thank you very much, Mr. Kadlecek. [LB1098]

DAVID KADLECEK: Thank you. [LB1098]

SENATOR BRASCH: Next proponent, please. Welcome. And will you please say and spell your name. [LB1098]

SCOTT SMATHERS: Good afternoon, Senators. My name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I am the executive director of the Nebraska Sportsmen's Foundation and I'm also one of the appointed members representing outdoor recreational users that took part in the Water Funding Task Force this summer. We are here today testifying in favor of LB1098, the third bill of a three-bill process that arrived or came out of the Water Funding Task Force. When I sat down with the Water Funding Task Force and

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we agreed on the first day of consensus, yes, there was some concern, and now hindsight is always 20/20 in perfect vision. I can't imagine us doing it any other way than consensus. We had a very diverse, unique group of representation at that table, as unique and diverse as the geographical footprint of our state. And I think it was important that the 27 members and then the six senators that took part as our guide, if you will, came to consensus. We're here today to support because three things we tried to strive for in that task force meeting. One was to review the current criteria underneath the 16-member NRC committee; add additional to expand, to incorporate different and changing times. Two: a funding source. As we know, LB962, ten years ago, did everything except for create a funding source. And three is to expand and review the current governance and committee of the Water Funding Task Force. I think that the work that was done was done on the backs of previous committees. I sat on LB314 from Senator Langemeier. In fact, Senator Dubas was the chair of our technical committee. There's a lot of great work that's been done, but it's always been missing two things, to my opinion. One is funding; and we're closer today than we were yesterday and the day before, hopefully. And third, is a stronger, more diverse group of governance committee that represents the entire state. I think we've accomplished those goals. There's been a lot of conversation since the task force concluded and through the Appropriations Committee and this committee and other conversations. I'm going to keep my testimony short. We support. The Nebraska Sportsmen's Foundation members of 4,700 members is roundly behind the project, considering that it took six months of my time away from their functions as their executive director. So with that I'll close and answer any questions. [LB1098]

SENATOR BRASCH: Are there any questions from the committee? Seeing there are none, thank you very much, Mr. Smathers. Next proponent, please. Welcome. If you can please say and spell your name. [LB1098]

BRUCE KENNEDY: Madam Chairman, members of the Natural Resources Committee, my name is Bruce Kennedy, B-r-u-c-e K-e-n-n-e-d-y. We are here this afternoon to support LB1098. I am representing the Nebraska Wildlife Federation, and I would...I am actually kind of the backup testifier, so my remarks will be very short and I'm sure you'll appreciate that. But the Nebraska Wildlife Federation is very much in support of healthy streams and rivers. As Senator Carlson said, they are, in fact, the lifeblood of our state. They are not only the lifeblood of our state for agriculture, but they are the lifeblood of our state for our fish and wildlife resource. Not too long ago the Lincoln Journal Star had a page talking about the 37 things that defined Nebraska. And one of them was the Sandhill crane migration on the Platte. So we can see how terribly important streams and rivers are to wildlife. This bill expands the Natural Resources Commission and includes most of the stakeholders. And that is reason enough to support it. We are very pleased to be involved in the process. I guess the only recommendation I would make is if our Nebraska Game and Parks Commission is not a representative on this board or committee, I guess my suggestion to the committee would be that they would be

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included. That concludes my testimony. [LB1098]

SENATOR BRASCH: Very good. Thank you. Any questions from the committee? Seeing there are none, thank you, Mr. Kennedy. [LB1098]

BRUCE KENNEDY: Thank you. [LB1098]

SENATOR BRASCH: Welcome. And please say and spell your name. [LB1098]

JAY REMPE: (Exhibit 3) Thank you, Senator Brasch. Members of the committee, my name is Jay Rempe, J-a-y R-e-m-p-e. I am vice president of governmental relations for Nebraska Farm Bureau. I'm here today on behalf of Nebraska Farm Bureau. But in the interest of time I'm sitting here representing several other ag organizations as well, including the Nebraska Cattlemen, the Nebraska Corn Growers, Nebraska Pork Producers, Nebraska Sorghum Producers, and Nebraska Soybean Association; and each one of these organizations supports LB1098, and would like to be on record in support of the bill as well. Let me start, we certainly appreciate Senator Carlson for introducing the bill and all the senators that participated in the task force, your efforts, and the Natural Resources Committee on this issue as well, and the task force for all the hard work they put in over the last summer. We think the bill..obviously, we need water funding. I think that's a must; everybody can agree on that. And in order to have that, we need to have a structure and oversight in place to make sure the dollars are invested wisely and that our priority needs are met. And I think that's what you have in front of you with LB1098. You have that structure with the Natural Resources Commission, you have the broad perspective that can bring to bear that the dollars are spent on our priority needs and the dollars are invested wisely. And somebody mentioned, just earlier, about water being the lifeblood of the state. Let me just give you a couple figures that demonstrate that, at least from an ag standpoint of the importance of water. After the drought in 2012, we asked a firm, an economic analysis firm out of Iowa, to do a study of what that meant to the state of Nebraska that we were able to irrigate in 2012 with the drought. And they came back and said that in 2012, irrigation contributed \$11 billion to the state's economy, and that's not only contribution to farmers that were irrigating, but the contribution that spilled out throughout the economy. And if we would not have had irrigation in 2012, the state would have had over 31,000 less jobs available that year for the state. And I say that, that shows the importance of water to agriculture. But that's only a piece of the puzzle. We also have the domestic uses, the wildlife, recreation, all those interests that water is of value to. And so in closing, we support LB1098 and encourage the committee to advance the bill and be happy to work with the committee on seeing it passed. So I'd be happy to answer any questions. [LB1098]

SENATOR BRASCH: Very good. Are there any questions from the committee? Seeing there are none, thank you, Mr. Rempe. Next proponent, please. Welcome. And please

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say and spell you name. [LB1098]

MARIAN LANGAN: (Exhibit 4) Sure. I'm Marian Langan, M-a-r-i-a-n L-a-n-g-a-n. I'm the executive director of Audubon Nebraska. I appreciate your time today and letting us share our thoughts with you. And what a wonderful day it is to have such a wide diversity of partners and groups and individuals here to support this bill. Audubon has been working on water issues in this state for over 40 years now. And, in fact, this year we're celebrating our 40th anniversary at Rowe Sanctuary out on the Platte River by Gibbon. The cranes are piling in as we speak, so I hope that you'll be able to get out there and enjoy that wonderful thing. When people think of Audubon, they typically do think of birds. But if you step back about it, step back on it, at its fundamental, usually what's good for the long-term health of birds is the same thing that's good for the long-term health of people. So that's why I'm here to talk about water. Like many of you growing up in rural Nebraska, when we were able to take a glass of water and drink it right out of the ground or when we, in my case, as kids we played all day in the Cedar River all the time. We couldn't have imagined that any of that would be in jeopardy. But unfortunately, that's where we are today. All of that is in jeopardy, and what a wonderful thing that it seems like we're close to making steps forward to actually address that, and I appreciate that a lot. In many ways our approach to water has been, I'm sure I'm not the first one to say this, but that old parable about the blind man and the elephant. And every person that's up close and looking at their part of it, like they're all right, everybody is right, there's nobody really wrong here; it's just that we haven't taken a big enough look so that we can see the whole elephant instead of just these little parts of the elephant. And I would like to express a huge debt of gratitude to Senator Carlson for providing the leadership to pull the group together so that we can and have been able to do that, and also appreciate the efforts of the Water Task Force toward that. I'm also here today bringing you a letter that's signed by a multitude of conservation groups. Our organizations have been meeting for several years now to discuss ways that this could move forward in Nebraska. And we have come to agreement, three points. (1) The state of Nebraska needs to commit to comprehensive planning, legislation and funding aimed at ensuring a sustainable future water supply for multiple uses, including fish, wildlife, and recreation. (2) Water funding should be prioritized to fund research and projects intended to ensure future water supply and provide multiple uses and benefits. And also request that agency review by Game and Parks Commission be involved as part of this, as well. And then (3), that the representative body making decisions regarding those expenditures for water funding should include statewide wildlife conservation and recreation interests and representatives. So LB1098, expanding the membership of this commission would be a key component of the water funding plan that was created by the Water Funding Task Force. This letter is signed by Ducks Unlimited; Nebraska Division of Izaak Walton League; Nebraska League of Conservation Voters; Nebraska Land Trust; Trout Unlimited; Audubon Nebraska; The Groundwater Foundation; Nebraska Sportsmen's Foundation; and The Nature Conservancy. It's over 25,000 members all across the state in support of LB1098. I'm happy to answer any questions if

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anybody has any. [LB1098]

SENATOR BRASCH: Very good. Any questions from the committee? Seeing there are none, thank you, Ms. Langan. [LB1098]

MARIAN LANGAN: Thank you. [LB1098]

SENATOR BRASCH: Next proponent, please. Welcome. And if you can please say and spell your name. [LB1098]

TOM KNUTSON: Good afternoon, Senator Brasch and members of the committee. My name is Tom Knutson. I served on the Water Funding Task Force, enjoyed it, and I support all the comments that have been made by those previous task force members. I am also currently on the Natural Resources Commission as the surface water appointed representative, and have enjoyed the opportunity to try to serve Nebraska. I feel that LB1098 will support the diverse interests across the state as already discussed by previous testifiers, and would support that bill. So thank you. [LB1098]

SENATOR BRASCH: Very good. Any questions from the committee? Yes, Senator Dubas. [LB1098]

SENATOR DUBAS: Thank you, Senator Brasch. So as a current member, you believe that you need more diversity, which this bill will bring in, into...? [LB1098]

TOM KNUTSON: I think so, yes. Yes. And also I forgot to mention I serve as a board member for the Lower Loup NRD, so I've...with my background as surface water, which I was general manager for 28.5 years up at Farwell, I think, you know, we could use some more diversity. [LB1098]

SENATOR DUBAS: Is there any one particular area that you don't feel is represented very well under the current form, or do you think that this bill is kind of broadening it across? [LB1098]

TOM KNUTSON: I think...yeah, I think this bill broadens it. Yeah. [LB1098]

SENATOR DUBAS: All right. Thank you. [LB1098]

TOM KNUTSON: You bet. [LB1098]

SENATOR BRASCH: Any other questions from the committee? Seeing there are none, thank you, Mr. Knutson. [LB1098]

TOM KNUTSON: You bet. [LB1098]

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SENATOR BRASCH: Welcome. And if you can please say and spell your name. [LB1098]

RON WOLF: Thank you, Senator Brasch, members of the committee. My name is Ron Wolf, R-o-n W-o-l-f. I find I'm up here just...I do represent the Nebraska Water Coalition. I think we're on record with you as being the most diverse statewide group, most diverse water interests that you're going to put together. I'll not iterate that list again today. I'm repeating here. It broadens the knowledge and experience base. It gets the needs of various groups and entities out in front of people, and it...I like that it sets out the water sustainability goal. It will allow the commission to maybe reprioritize or update some priorities. And I like the fact that the Nebraska Game and Parks Commission is included in the planning and funding expertise section. So I recently discussed stopping when the light was red with a state employee, so I don't want you to blink me. I will quit there and try to answer any questions. [LB1098]

SENATOR BRASCH: Thank you, Mr. Wolf. Are there any questions from the committee? Seeing there are none, thank you again. [LB1098]

RON WOLF: Thank you. [LB1098]

SENATOR BRASCH: Next proponent, please. If you plan to testify as a proponent, could you please move forward? [LB1098]

RICK KUBAT: Good afternoon, members of the Natural Resources Committee. My name is Rick Kubat; that's K-u-b-a-t, here on behalf of the Metropolitan Utilities District in support of LB1098. I'll be extremely brief. We're very thankful to Senator Carlson and members of this body for giving us a seat at the table to essentially represent some of the potable water needs of our state's citizens, certainly part of the overall water picture. I'm really here just to testify in support and here if you have any questions. [LB1098]

SENATOR BRASCH: Are there questions from the committee? Yes, Senator Johnson. [LB1098]

SENATOR JOHNSON: Thank you. Thank you for coming in and your short testimony. My question is, last summer, while the task force was meeting, some of the senators that are, I call it, in the loop between Fremont and Lincoln and Omaha, expressed concerns about being on the tail end of the water in the state. And being supportive of this commission, do you feel that the needs of the municipalities were fully discussed to the extent that you have a good standing in the committee? [LB1098]

RICK KUBAT: And it's not just the Metropolitan Utilities District, but I believe also on this committee we had a representative from Grand Island water systems as well as the

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mayor of Kearney that sat on there. And I believe the bill right now includes ourselves, a member from the city of the primary class and, additionally, a member from a city of the first or second class. And definitely, we were able to voice our concerns and our opinions, and we felt that the group is rather diverse and that people were willing to talk to us and listen to some of the challenges that we have going forward. [LB1098]

SENATOR JOHNSON: Okay. Thank you. [LB1098]

SENATOR BRASCH: Are there any other questions from the committee? Seeing there are none, thank you, Mr. Kubat. [LB1098]

RICK KUBAT: Thank you. [LB1098]

SENATOR BRASCH: Next proponent, please. Welcome, and say and spell your name. [LB1098]

TIM McCOY: Thank you, Senator Brasch, members of the committee. My name is Tim McCoy, T-i-m M-c-C-o-y. I'm the deputy director at the Nebraska Game and Parks Commission. We're pleased to be in favor of this bill. This brings some good structure, I think, to trying to help really sustain our water for all the broad uses of the state. We're really pleased to see recreation and fish and wildlife conservation be a part of that. From our agency's mission, that's a big part of what we deal with. And then we're also very pleased to be...to have the opportunity to serve in an advisory capacity, provide technical resources and additional funding resources where we can leverage those. I think it's important for the future of our state and I applaud the work of Senator Carlson and the task force for the hours of work and travel they put into this. This was a big effort. [LB1098]

SENATOR BRASCH: Very good. Thank you. Are there any questions from the committee? Seeing there are none, thank you, Tim. Welcome, Senator Schmit. And for the record, will you please say and spell your name. [LB1098]

LORAN SCHMIT: Thank you, Madam Chairman. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. Appreciate this opportunity to testify here today. I represent the Association of Nebraska Ethanol Producers. We fully support LB1098 and suggest that it be advanced to General File and passed into law. And thank you. [LB1098]

SENATOR BRASCH: Thank you. Are there any questions from the committee? Seeing there are none, thank you. Next proponent, and welcome. And please say and spell your name for the record. [LB1098]

BRIAN BARELS: (Exhibit 5) Thank you, Senator Brasch and members of the committee. My name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I'm the water resources

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manager for Nebraska Public Power District. I had the privilege to represent public power on the Water Policy Task Force...on the Water Funding Task Force, excuse me. And I am here to testify in support of this legislative proposal to change the makeup of the Natural Resources Commission. I believe it provides a good, broad, stakeholder representation both of the stakeholder constituency as well as across the state of Nebraska from all the river basins. And with that I'd end my testimony and offer to answer any questions anyone might have. [LB1098]

SENATOR BRASCH: (Exhibits 6-8) Very good. Are there any questions from the committee? Seeing there are none, thank you, as well. Are there any other proponents who would like to come forward this afternoon? Are there any opponents? And I do have...thank you, I have a letter of support from Gary Krumland from the League of Municipalities, and Dennis Strauch from the North Platte Valley Water Association. Any opponents? And there is one letter of opposition from Stu Luttich of Geneva. Anyone like to come forward in the neutral? Seeing there are none, Senator Carlson, would you like to close? [LB1098]

SENATOR CARLSON: Thank you, Senator Brasch and members of the committee, and thanks to all the testifiers that came from some pretty good distances today to testify. I appreciate what they had to say and if I went down through the various groups that they represented, it's a wide range of interests in the Water Sustainability Task Force and now the new Natural Resources Commission. And so with that, I'd be happy to entertain any questions you might have. [LB1098]

SENATOR BRASCH: Senator Haar. [LB1098]

SENATOR HAAR: I've saved the tough questions for you, Senator. [LB1098]

SENATOR CARLSON: Thank you. [LB1098]

SENATOR HAAR: No, one of the interesting things about your committee, as I understand it, and I wasn't there, is that you actually hired a consultant to work as a moderator and so on. Could you talk just a little bit about that, because? [LB1098]

SENATOR CARLSON: Well, that came out of LB517 from the last session. And Olsson and Associates, they were the facilitators on this task force, and really did nice work. And there were at least three of them there at every session that we had, leading the discussion and helping us through consensus. And that was an interesting process because when we get to a decision on something it was either thumbs up or thumbs down or I don't really like it but I can tolerate it. And so if there was thumbs down, that had to be dealt with. And it's very interesting to see how groups come along, because if, Senator Haar, you had thumbs down, then everybody else looked at you and maybe even say, now, what's it going to take to get you with us? And that's what happens

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when you face challenges and get people together, and let's talk about it and let's move forward; what do we need to get your support? So they did a really good job of bringing in experts to talk to us, as well as facilitating the discussion and moving ahead with the criteria. So I think it was excellent work, and everybody on the task force I think would echo what I said. It was worth the dollars that we got through LB517 to have them lead the effort. [LB1098]

SENATOR HAAR: Good. Well, it's kind of a tangent, but, you know, as we in the Legislature do various studies and in the Education Committee we're talking about, you know, looking at TEEOSA and so on. Often there's a real question, why shall we spend money for somebody like you did? But you're saying that was really a worthwhile expenditure to keep things moving and. [LB1098]

SENATOR CARLSON: Well, obviously, in my opinion, we have got to move forward on this effort to make us water sustainable in the state of Nebraska. And the fact that we had this larger group representing a lot of different interests in water, and they facilitated the discussions and so forth, yes, it was worth the dollars to have that professional help, and I think it really made a big difference in where we got with this task force. [LB1098]

SENATOR HAAR: Um-hum. And one of the things I like about your expanding the size of this is, if people don't agree but they get to know each other, often it's easier to go like this or this, right? [LB1098]

SENATOR CARLSON: Yes. And, you know, it was very interesting. When we had our first couple of meetings, and I'll pretend it's you and me, but we're sitting across the table from one another and I'm looking over at you and, boy, I don't agree with that Senator Haar; I think he's kind of a nut. And then you listen to you talk and I would speak, and as we met more and more times, I might think, you know, that Senator Haar, I don't agree with him, but he's a nice guy. And then as we go further along and we have a conversation back and forth, most people got to the point, Senator Haar, he's okay; he's got good knowledge in his area and I can work with him. And that's really how we got to this. [LB1098]

SENATOR HAAR: Good. And that's how you and I feel about each other. (Laughter) [LB1098]

SENATOR CARLSON: Yeah. I may not...(laugh) I may not agree with you all the time, but I can't stay mad at you. [LB1098]

SENATOR HAAR: Thank you very much for that. [LB1098]

SENATOR BRASCH: I'm glad we don't need a sergeant at arms here. Any other questions from the committee? Yes, Senator Kolowski. [LB1098]

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SENATOR KOLOWSKI: Thank you, Madam Chair. Senator Carlson, just to...and I think it's more important to make a statement of praise for yourself and the chair of the committee and the leadership that we had that brought the whole thing together. You very ably described both the education and maturation that the group went through. And I think that's...if we could bottle or can that, and remember it during when we need the sweet taste of success, I think it would really be important to go back to that many times over in the future, because it's going to continue to come up as this new developed body forms itself and goes about its work. But you really had to see what took place in that commission over time; and 20 meetings for a half a year is a lot of time and a lot of commitment by a lot of people to make it happen. And I feel, as one of the few senators on the group, honored to be there and to represent my part of the state. But we were nonvoting but we got to see what was happening, and it was just an excellent process to witness. And this is a very, very right direction to head, and I couldn't be more supportive of it. I hope we can take care of this and do it. [LB1098]

SENATOR HAAR: So is that a... [LB1098]

SENATOR KOLOWSKI: I think it's of this. Yeah. [LB1098]

SENATOR CARLSON: I appreciate those comments. And I'm looking around because...where's...well, there's Karen Griffin right there, and with Olsson and Associates. Now she could have come up and testified. I don't think she felt a need to because of how the group came along. And, of course, it was good to have Senator Kolowski and Senator Christensen, Senator Schilz, Senator Watermeier, and Senator Davis as a part of the advisory group. And I can tell you this about them: They were faithful in attendance and faithful in effort. And at one point, Patti, who was one of the facilitators, from Missouri, she got tears in her eyes in the last session as we kind of said goodbye, because she said, if this were Missouri and we had this kind of meeting and there were supposed to be senators there, there wouldn't be any of them there; there would be a staff member. We didn't have any substitutes. The senators were there, and it's an indication of the kind of people that we have in Nebraska and why we can work together to get things done. [LB1098]

SENATOR KOLOWSKI: Right. [LB1098]

SENATOR BRASCH: Very good. I believe Senator Johnson has a question. [LB1098]

SENATOR JOHNSON: Yeah. I was able to attend a few of them and I did see some thumbs down. I think they got resolved. I just asked...I mean, everything went fine. I agree with that and what I saw, and a great result. What was the biggest challenge to bring, whether it's a category or a situation that you had to resolve that took them from a thumbs down to, at least I can live with it? [LB1098]

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SENATOR CARLSON: I think as we went along and started to talk about expanding the task force, that was a challenge. And I understand this. The 16 members of the current Natural Resources Commission felt they had done a good job. They had. And really most of them didn't feel like there was a necessity for a change. But as we discussed more and more and began to see that expanding this group made some sense, and some of the, I would say, experienced and staunch members of the Natural Resources Commission, as they began to say we do need to make some adjustments, that was a big change; and evidence of being willing to cooperate and, yes, we do need to take into account some other interests here. And so it just was very good, and I think it was a good experience for me, and you see how people can work together. [LB1098]

SENATOR JOHNSON: Thank you. [LB1098]

SENATOR BRASCH: (Exhibit 9) Are there any other questions from the committee? We have one more letter of support from John Berge from the North Platte NRD. Seeing there's no other questions, thank you, Senator Carlson. And that concludes the hearing on LB1098. Thank you. [LB1098]

SENATOR AVERY: Did I read the agenda correctly, I'm next? [LB1098]

SENATOR CARLSON: Well, thanks to everybody for coming. I know some of you are going to leave. It will look a little bit like church here in maybe a minute or two, and then we'll go to the next bill. [LB1098 LB1005]

SENATOR HAAR: Did you tell Senator Avery about our thumbs up and thumbs down system? [LB1005]

SENATOR CARLSON: Did you understand that, Senator Avery? [LB1005]

SENATOR AVERY: No, I was... [LB1005]

SENATOR CARLSON: Well, after you testify we're going to give a thumbs up or thumbs down on you. (Laughter) [LB1005]

SENATOR AVERY: That doesn't sound good. [LB1005]

SENATOR BRASCH: It's not. [LB1005]

SENATOR CARLSON: No, we've got to have a little fun once in a while, so. [LB1005]

SENATOR AVERY: I noticed that the people sitting back here are mostly at the back. They must be Lutherans. That's Tom Hansen's joke, by the way. [LB1005]

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SENATOR CARLSON: Okay. All right. [LB1005]

SENATOR AVERY: He is a Lutheran. [LB1005]

SENATOR CARLSON: All right. Well, we'll open now with LB1005. And Senator Avery, you're recognized to open. [LB1005]

SENATOR AVERY: (Exhibit 10) Thank you, Mr. Chair. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in south-central Lincoln, including this building. The bill I'm bringing to you today I've been thinking about for at least two years prior to this session. And this is my last session, so I decided to plunge ahead. Without doubt, water policy is one of the most important issues we deal with in this Legislature. And yet arguably, it's the dominant issue of the 21st century. I tell my son that all the time because he is going...he is now doing research in South America on water science, and he plans to make his career in that. And I said, great, I will never have to worry about you getting a job. The fact is, though, that the way we manage water in this state is chaotic. It's disjointed, and it's irrational and it does not serve the long-term interests of the state. We have 23 separate political entities, the NRDs, making water policy for the management of groundwater. We have one political entity, the Department of Natural Resources, making water policy for the management of surface water. This system was set up when a lot of people didn't accept the science that showed groundwater connected to surface water. Well, they are connected, and we all now accept that fact. However, our policymaking process for water management still reflects the--what I think is--archaic thinking of the past. So what do we do? We cobble together integrated management plans to try to bring some degree of sanity to our water policy and our water management throughout the state. I believe this system needs to change. And if I don't succeed in anything else with this bill but to start a serious conversation about how to change it and what it...how it needs to be conducted, then I would be happy. But we do need a rational and unified policymaking process. And that's what this bill seeks to do. I'd ask you to consider LB1005 as a concept first. The bill guts the Interrelated Water Review Board which is in Section 46 of our statutes, which is authorized to convene at the call of the Governor to resolve a water dispute which has been assigned to it by the Governor. This has been rarely if ever used. It's one of those bills that became law, it's in the statutes, and it has been largely ignored. The board was created in 2004 under LB962. My original intent in the green copy was to avoid the dispute process undertaken by the Interrelated Water Review Board by actually applying an agreed upon formula to water management, trying to get some unity and some coordination. LB1005 would authorize a new board, the Nebraska Surface Water and Ground Water Review Board, which would have responsibility for providing a central clearinghouse for surface and groundwater management through development of a singular formula to apply to approval of all integrated management plans, water decrees, and compacts. The intent was to have a unified IMP approval process that

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promotes coordination and sustainability across the state. I proposed in the green copy an array of members of this new board, each with varying degrees of expertise and interest in water policy because I think it is important for all stakeholders to be a part of this effort. Of course, as with most new ideas, you get a lot of opinions along the way. And I met with some very serious opinions, and I've had some serious conversations about the green copy. It is not my intention to disrupt the long-held underpinning of our water law which is first in time, first in right. It is not my intent to replace any prior appropriation law or micromanage NRD rules and regs. It was brought to my attention, however, that I really just...with the green copy of the bill that really what I was doing was a kind of roundabout way of addressing the real problem for the state, and that is that we don't have a statewide water plan. And that a proposal for the creation of a statewide water plan, comprehensive in nature, would really get at what I'm trying to achieve and that is some rationality in our water policy planning because you cannot come up with a statewide water plan without some cooperation and without requiring some unified policymaking. So I have prepared an amendment which the page I believe has already passed out, AM2086. This replaces the membership of the board that's described in the green copy with the concept you were just talking about in the previous bill, that task force which apparently did some very, very good work. We're not asking that the task force that you just completed take over this task, but that the process or the membership composition would be similar. And that we took a lot of the language out of your bill, Senator Carlson, LB517, to propose the composition of this board which would be the Nebraska Surface Water and Ground Water Review Board. The idea would be that we could come up with an appropriate group of identified experts who are qualified to develop a statewide plan. AM2086 further authorizes the board to develop a statewide water plan that balances multiple interests and identifies the state's long-term goals associated with sustainability. We're...you're aware that that task force recommended the spending of \$50 million this year and then...with the idea that we would spend another \$50 million in each succeeding year for the next 20 years. Am I right about that? I think I am. It's a lot of money, but we don't have a statewide plan on how that money would be spent. What I fear is that because our water policy planning process is so disjointed, it's confusing, and we are not going to get the best value for our money with \$50 million or \$15 million or whatever we manage to get from Appropriations if we don't have a commitment to devise a plan that will help us manage our water resources in the most rational way. So if you look at what we have in place now, the NRDs are responsible in 12 areas of jurisdiction such as flood control, fish and wildlife, yet no two NRDs have prioritized these areas similarly. NRDs have taxing authority. They can enter into interlocal agreements. They can exert eminent domain powers. Yet none of them do this consistently even throughout an entire watershed. There's no coordination, or very little coordination. And that seems to me not to be the best way to manage our resources. In fact, a small group of NRD board members can obligate the entire state legally and financially, as we learned from the Republican River Compact. Is that the way we want to manage our water resources? Shouldn't we have a more unified and coordinated plan in place? This...the Republican River Compact I think

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is a very good example of how we can get ourselves deeply in trouble when we don't have coordinated policymaking. We didn't have a plan for the Republican River, and we don't have a plan now, not really, because all three of the NRDs are at loggerheads over who's doing what and whether they're doing it appropriately. The Upper Republican is not cooperating with the Middle Republican and the Middle Republican is not happy with the Upper Republican. So where is the sanity in this process? Where is the real thoughtful management and unified cooperation? Furthermore, the...we are now in a period of cycling from drought, extreme drought as we experienced two years ago, to floods as we experienced...oh, I'm getting my years mixed up, but you know what I'm saying. It's a cycle of drought, flood, drought, flood. And this throws us into constant crisis management. So if we had a water plan for the state that was committed to policies that were coordinated, and I would say by this board that I'm proposing using the language in LB517, then it seems to me that we'd be better prepared to deal with this cycle of drought and flood. It is interesting to note, this may not be a well-known fact around the state, that the city of Lincoln has the authority put a call on the Platte River when river flow drops below their streamflow permit which is 704 cubic feet per second. Now in 2012, the city was well under this 704 cubic feet per second. And instead of placing a call on the river like they could which would supersede all other claims, the city of Lincoln imposed restrictions on its citizens. They don't have to do that but they did. And they were...citizens were required to adhere to some conservation guidelines: washing cars, watering grass, things of that sort. And that was not even a major issue or a major shortage. It could get much worse. So will it take the city of Lincoln to disrupt upstream water rights to get people's attention and to get our attention to perhaps say, maybe we need a statewide water plan? Maybe we need to know where we're going. Maybe we need to do this in a rational, logical manner. And I know that it's going to upset a lot of people when you start talking about this. And they're all here; not all of them but their representatives are here and we'll hear about it. But I ask you to think about what's in the interest of the state, not just what's in the interest of the Upper Republican or the Lower Platte South. What's in the interest of the whole state? Let's look at all of it, not just little pieces here, little pieces there. And if we're going to spend the kind of money we need to and I believe that you've identified it, Senator Carlson, the kind of money we need to spend, if we're going to do that, let's do it in a rational way. Let's have a statewide water plan. Now I think this conversation has to be an important part of what we do over the next several years. This is not new. I did a little research and looked at the past. We've had several legislative bills, resolutions, hearings, committees, task forces, all undertaken to address the issue of water management. Over the past four decades I identified at least 14 such efforts, 14. And we still don't have a sustainable plan for managing our water. We don't. And I think it's time we take a hard look at it. So I'm asking you to do that. And I think the right vehicle is LB1005 with the amendment that I am offering. It has a number and I don't know what it is. But you have a copy of it. So with that, I would be happy to defer any questions to the experts who are in the room. [LB1005]

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SENATOR CARLSON: Okay. Thank you, Senator Avery. Questions of the committee? Senator Brasch. [LB1005]

SENATOR BRASCH: Thank you, Chairman, and thank you, Senator Avery. It's really interesting that your son...and I congratulate him on his studies. Where is he studying water at? [LB1005]

SENATOR AVERY: Bogota, Colombia, right now. [LB1005]

SENATOR BRASCH: Colombia. [LB1005]

SENATOR AVERY: One of the most dangerous parts of Latin America. It makes his mother very nervous. [LB1005]

SENATOR BRASCH: I'm sure that does. What is the rainfall there compared to Nebraska? [LB1005]

SENATOR AVERY: Oh, they have a lot of water. [LB1005]

SENATOR BRASCH: A lot of water. [LB1005]

SENATOR AVERY: They have formations up in the Andes called paramos that...spongelike formations that collect water out of the clouds and they retain it. And they release that water slowly over time and it forms the entire Bogota River that provides the water supply for 11 million people in Bogota. [LB1005]

SENATOR BRASCH: And that's what interests me when you use the words "managing." Managing surface water, managing...I'm learning more and more about sustainability, but managing rainfall because as you look at the water map across the state and you know that Nebraska has so much rainfall in certain regions. That's according to climatology, meteorology, runoff from snow. There's so many factors that go into that. Where you move into Iowa, there's hardly any central...you know, the rainfall changes. And so when you manage surface water, is that making it rain? I think this is...I don't understand... [LB1005]

SENATOR AVERY: No, no, no. If I could make it rain, I would be a very rich man. [LB1005]

SENATOR BRASCH: Absolutely. So how do we manage... [LB1005]

SENATOR AVERY: No, you manage the use. You manage use. [LB1005]

SENATOR BRASCH: The use. [LB1005]

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SENATOR AVERY: And you manage ways to conserve, store. I mean, a lot water in our state leaves the state... [LB1005]

SENATOR BRASCH: And that's in sustainability package I believe. [LB1005]

SENATOR AVERY: Yeah, that's what we don't...that's what we're not coordinating. [LB1005]

SENATOR BRASCH: Okay. No, and that's why I was just curious. When you study water, we know about our geology, about the earth and everything within and hydrology. And then once you get outside the earth, we know the precipitation cycle. But my concern is if we try to make boxes where they fit in perfectly to manage it that might be... [LB1005]

SENATOR AVERY: Actually, I think we've done that already. We have boxes... [LB1005]

SENATOR BRASCH: Okay. [LB1005]

SENATOR AVERY: ...of water policy. We just don't have a unified water policy. [LB1005]

SENATOR BRASCH: A unified one. Thank you for your testimony. [LB1005]

SENATOR CARLSON: Okay. Senator Johnson. [LB1005]

SENATOR JOHNSON: Thank you, Chairman. Thank you, Senator Avery, for bringing this forward. My question simply is if this new Surface and Ground Water Review Board is created, how do you see that working with assuming that LB1098 goes ahead with the expanded commission? How do you see those two working together and making things better? [LB1005]

SENATOR AVERY: I would leave that up to the judgment of this committee. I was not aware of that bill that you're talking about because I've been so mired in my own legislation... [LB1005]

SENATOR JOHNSON: Um-hum. [LB1005]

SENATOR AVERY: ...and other matters, that I have not had a chance to study that bill. But if you have this commission already, you're expanding it, I think, if I recall what I heard earlier. It might be that that would be an appropriate vehicle for this kind of planning. [LB1005]

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SENATOR JOHNSON: So you're not necessarily saying at this time that we should have a vote. I mean, you've created... [LB1005]

SENATOR AVERY: No, I'm not. I created... [LB1005]

SENATOR JOHNSON: ...you've created a vehicle here for another one, but maybe LB198 (sic--1098) expanded will... [LB1005]

SENATOR AVERY: But the ideas contained in LB1005 I think ought to become serious consideration for this committee. You can find a way within perhaps the existing infrastructure of water planning. But I would caution you about parceling it out among all 24 different political jurisdictions, all 23 NRDs and the Department of Natural Resources. I think it needs to be independent of that. [LB1005]

SENATOR JOHNSON: So maybe bringing the philosophy or the points that you bring here, bring that into the other commission as a target or... [LB1005]

SENATOR AVERY: Unless you think that what would be required of putting together a state water plan would overwhelm that commission and it wouldn't be able to do either that job well or the other tasks that you assign to it. [LB1005]

SENATOR JOHNSON: Okay. Thank you. [LB1005]

SENATOR CARLSON: Okay. Other questions? Senator Haar. [LB1005]

SENATOR HAAR: And maybe I'll ask you this at the end, too, but don't you see this as an attack on local control? [LB1005]

SENATOR AVERY: I don't attack anything. I try to defend myself from attacks mostly. No, I don't think so. If I may be blunt... [LB1005]

SENATOR HAAR: Sure. [LB1005]

SENATOR AVERY: Local control hasn't worked very well in water management in this state. And if that's the price that we have to pay for a well-thought-out and well-implemented statewide water plan, local control, I won't lose any sleep over that. But let me qualify by saying this. There's nothing in this bill that takes any power really away from local control entities like NRDs. They'll still be able to levy their taxes. They'll still be able to have their integrated management plans. But they would have to be consistent with the statewide water plan. That's where the coordination comes in because you can't have a statewide water plan without coordination and a unified approach to the state's needs. It's not all about the one river basin. It's not all about the

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Upper or the Middle Republican. We're all in this together. And if the water is consumed upstream in the Platte, what happens to my city in Lincoln? Now we'd been pretty generous in not exercising our rights. But how long will that be able to exist? How long will we be able to have water shortages that put hardship on almost 300,000 people in order to serve the interests of a handful of people upstream? We need this. We need to have a rational policy. And that would serve everybody's interests, not just the city of Lincoln. But it would serve the interests of the irrigators upstream as well. [LB1005]

SENATOR HAAR: Okay. Well, I may quote you on some of the issues I'm working on. [LB1005]

SENATOR AVERY: Be careful how you quote me. [LB1005]

SENATOR HAAR: (Laugh) Thank you very much. [LB1005]

SENATOR CARLSON: Any other questions? Okay. Seeing none, thank you, Senator Avery. You'll be here to close. [LB1005]

SENATOR AVERY: Yes. I cleared my calendar for that purpose. [LB1005]

SENATOR CARLSON: All right. And we'll go to proponents, and the first two get five minutes and from there on we're at three. So who's first? [LB1005]

JAMES UERLING: I'll be first. [LB1005]

SENATOR CARLSON: Okay. Welcome, James. [LB1005]

JAMES UERLING: Hello, Senator Carlson. [LB1005]

SENATOR CARLSON: Welcome. [LB1005]

JAMES UERLING: (Exhibit 11) Mr. Chairman and members of the Natural Resources Committee, my name is James Uerling, J-a-m-e-s U-e-r-l-i-n-g. My testimony is in support of Senator Avery's LB1005. I am a director of the Middle Republican NRD, but today I am testifying on my own behalf. My testimony will focus on the need for an oversight committee to resolve disputes between NRDs. This is what state statute says, 46-703(4) "The Legislature recognizes that ground water use or surface water use in one natural resources district may have adverse affects on water supplies in another district or in an adjoining state." The Legislature intends and expects that each natural resources district within which water use is causing external impacts will accept responsibility for groundwater management in accordance with the Nebraska Ground Water Management and Protection Act in the same manner and to the same extent as if the impacts were contained within that NRD. The Republican River Basin, water was

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divided using 1998 through 2002 pumping levels, and the Upper Republican was given 44 percent, the Middle Republican 30, and the Lower 26. Acres irrigated by surface water were given no allocation. And the only reason to change that if some of these factors have changed, and they have for the Middle Republican NRD. A mathematical error was discovered after reviewing of the pumping numbers, and the Middle Republican should have been allocated 31 percent of the total. That may seem like I'm nitpicking, but 1 percent of the total water in the basin is quite a bit of water and quite a bit money, too, if you have to mitigate it. The manager and executive committee of the Middle Republican have included this in the discussion at many meetings and letters to the DNR and have been stonewalled at every occasion. Another point, the Middle Republican has 45,000 acres irrigated by surface water. Roughly two-thirds of these acres also have an irrigation well. We call those commingled acres. During the 1998 to 2008 time frame, that's when the usage was divided, these acres were provided with water from their prospective irrigation districts. Shortly after '02, the irrigation districts stopped delivering water and the supplemental wells became the primary source of water for approximately 30,000 acres. So instead of surface water flows from the west irrigating these acres and recharging the aquifer and supplying return flows to the river, we have extra wells pumping groundwater. And that's preventing water from flowing to the river. This consumptive use also was included in the Middle Republican's 30 percent. So now we have a bunch of extra wells pumping water. Limited or no surface water has been delivered to these acres because of little or no streamflow. Average yearly inflows into Enders Reservoir fell from 60,000 acre-feet annually to less than 5,000 acre-feet. And average yearly inflows into Swanson fell from 75,000 acre-feet to less than 20,000. During the five-year period from 2008 to 2012, the Lower Republican pumped 19 percent, the Middle Republican 28 percent, and the Upper Republican actually pumped 53 percent of the water used by the three basin NRDs. You know, the division was supposed to be 26, 30, 44. The NRDs' IMPs includes a pumping standard and the Upper Republican is allowed to pump 425,000 acre-feet per year on average. They have surpassed that long-term average by an average of 19,203 acre-feet for a total sum of 96,000 acre-feet used five years as the long-term average. Okay, these IMP violations have been included in a letter from the Middle Republican to the Upper Republican NRD. The Governor, the DNR, and other basin NRDs were also sent a copy. The Middle Republican received no reply from the Upper Republican or the DNR. Our only response came from two Nebraska attorneys, who during a special meeting at McCook told the Middle Republican directors to stop sending letters because it was damaging their case with Kansas. Although the Middle Republican had positive depletion numbers...this is important. Although the Middle Republican had positive depletion numbers in 2013, 2013 was declared a compact call year and all water passed through area reservoirs. Surface water irrigators in the Middle Republican received 0 to 1.5 inches of water. To add insult to injury, 44 percent of the credit derived from bypassing that surface water was given to the Upper Republican even though the Upper Republican has less than 2 percent of the surface water acres in the basin. When asked about this at a joint meeting between the NRDs and a DNR attorney...and the

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DNR, attorney Justin Lavene from the AG's Office basically said, tough. The directors of the Middle Republican will now have to go back to the same irrigators who experienced millions of dollars of lost revenue and ask for more money to offset the depletion number that the department saddled the Middle Republican with. Okay. In the near future, the Middle Republican will most likely request Governor Heineman to convene the Interrelated Water Review Board because the Middle Republican simply is out of money. [LB1005]

SENATOR CARLSON: Go ahead and finish. You're okay. You're okay. Go ahead. [LB1005]

JAMES UERLING: Okay. Thanks, Tom. The Middle Republican is out of money. The Middle Republican collected \$3 million annually with our occupation tax. At least \$2.4 million has been spent building an augmentation project. Six hundred thousand dollars will only pump--see, that's our operating cost--will only pump 6,000 acre-feet of water of which Kansas receives 3,000 acre-feet of that. So we have to pump twice as much water in order to satisfy the compact. So 3,000 acre-feet of credits in the Middle Republican, we need 10,240 acre-feet. So I hope with my testimony I have clearly presented the need for a committee to resolve disputes between NRDs. Thank you. [LB1005]

SENATOR CARLSON: Okay. Thank you, James. Questions of the committee? Yes, Senator Johnson. [LB1005]

SENATOR JOHNSON: Do you feel that any of your concerns were heard or will be heard with the commission at work this summer and possibly could be created with LB1098? [LB1005]

JAMES UERLING: Yes, that's possible. If you could put together an oversight committee that could solve disputes, we would definitely come to you with those questions because we've got some issues here that need to be resolved. [LB1005]

SENATOR JOHNSON: Okay. Thank you. [LB1005]

SENATOR CARLSON: Okay. Any other questions? Senator Haar. [LB1005]

SENATOR HAAR: Just kind of...do you have any ideas? How do you get people to think outside their own area? And that's one of things we...you know, we have local control which is really great. But sometimes local control only looks inward. [LB1005]

JAMES UERLING: I know. And I've been on this NRD board for six years now. And I'm telling you, they just won't self-regulate. I mean, we've got dry streams. We've got farmers that are getting no water. The surface water users are getting no water. But it's

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just, you know, the...you know, we're actually thinking of raising our allocations. In a second year of a compact call year, we're actually thinking of raising our allocations from 13 to a 15 inch hard cap. Did I answer your question? [LB1005]

SENATOR HAAR: We all struggle with it. Yeah, yeah. [LB1005]

JAMES UERLING: Okay. I'm sorry if I didn't. [LB1005]

SENATOR HAAR: No, that's okay. [LB1005]

SENATOR CARLSON: Okay. Any other questions? Well, James, your last sentence here: "I hope with my testimony I have clearly presented the need for a committee to resolve disputes." Your real request is to see that there's some kind of a dispute-resolving process that works. That's what you're asking for. [LB1005]

JAMES UERLING: Yeah, you know, Senator Carlson, the Interrelated Water Review Board has never been convened. We don't even know how it works. But we're going to have to do something. And yeah, if you could put together a committee that could resolve disputes, we've got some. [LB1005]

SENATOR CARLSON: Okay, okay. Thank you. [LB1005]

JAMES UERLING: Thank you. [LB1005]

SENATOR CARLSON: Thank you for your testimony. Next, and this will be the second one with five minutes. Who wants to claim it? Let's jump forward. Welcome. [LB1005]

STEVEN CAPPEL: (Exhibits 12 and 13) My name is Steve Cappel, S-t-e-v-e-n C-a-p-p-e-l. I'm here to testify in support of LB1005. I am a member of the board of directors of the Middle Republican NRD district. I am here to testify on my own behalf and not of the MRNRD. I believe that LB1005 and LB1074 are essential legislation and will benefit Nebraska water sustainability and can only be perceived as Nebraska taking a more aggressive position in achieving sustainability. The concept of a separate water review board in LB1005 is a separate from the...that is separate from the DNR for oversight of disputes between NRDs is a must. The Middle Republican has several disputes about the IMPs and how the distribution of water credits in Republican River Basin. For example, in 2013 the river basin was in a call year which allows the state to bypass all surface water. The credits from these bypasses was credited 44 percent to the Upper Republican even though they have less than 2 percent of the surface water. It is this unequitable division of credits and other actions of the DNR that has...and not of that of the Middle Republican that has put us in a water short position forcing us to use augmentation and the purchase of stored water to make up the shortfall. The irrigators in the Middle Republican and Lower Republican NRDs are those who suffered the

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economic loss of having inadequate water supply and the pumping of high depletion wells to make up for the loss of the surface water only to have the credit given away to the Upper Republican. I know most of the emphasis is being put on the Republican River Basin, but I do not wish the problems that we are having in the Republican River on any other basin. It is important to have good working process where facts and science are the determining factors of sustainability and equality in regulating the basin and not political clout and favoritism toward one district. I believe that the oversight committee can be this solution. I don't expect this to be a perfect, and there will be need for changes and tweaks as it goes along, just like in the integrated management plans that were put in place on the Republican River NRDs. These plans are not perfect and are in need of some changes which cannot be achieved under the current system where water use is moving west and the burden of compliance moves east. If your concern is about new legislation such as LB1005 and LB1074 that makes Nebraska more responsible and accountable for having a stand on the Supreme Court, then you should be even more concerned about the Upper NRD in violation of the pumping standard in their own IMP because this is very concerning to me. [LB1005]

SENATOR CARLSON: Okay. Thank you, Steve. Any questions of the committee? Thank you. Now we'll go to testifiers. And as soon as you give your name and spell it, you've got three minutes. And the green light will be on for two and the yellow for three. Welcome. [LB1005]

JOHN PALIC: (Exhibit 14) Chairman Carlson, committee members, my name is John Palic, J-o-h-n P-a-l-i-c, and I am here in support of Senator Avery's LB1005. I am a current board member of the Middle Republican NRD and am past president of the Frenchman Valley and H&RW Irrigation District, but I am here speaking on my own behalf. A few years ago, I was urged to run for the Middle Republican NRD. And it was about this time is when the current IMPs were being drafted, and I noticed that in those IMPs there was talk of alluvial shutdown for compact call years. Well, according to state statute, I believe everyone has an equal right to water so this was not acceptable to me. As the year unfolds for this year, we're in another compact call year. The inequity issues continue by the state...is now bypassing the water in reservoirs thus surface water appropriators, their water supply is no longer going to be available to them. Since statute now dictates that there is a hydrological connection between surface water and groundwater, it seems only reasonable that there needs to be an oversight mechanism or a committee in place to resolve current and future disputes. The current integrated management plans, IMPs, between the DNR and the NRDs have the following as one of their stated goals: Ensure the groundwater and surface water users within the NRDs assume their share, but only their share of the responsibility, to keep Nebraska in compliance with the compact. I feel, since I've been on this board of the Middle Republican NRD, that self-regulation is a very hard issue to come by. Yet at the top of the 12 responsibilities statutorily installed on the NRDs when they were created...number 1 on the list of this second page that is attached over on the top

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right-hand column, it says, development, management, use, and conservation of groundwater and surface water. DNR has stated numerous times that control...that they control surface water and the NRDs control groundwater. If that is the case, we better have a functional committee panel to make sure that all parties are taken care of in future water law making and integrated management plans. And I thank you for your time. [LB1005]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions of the committee? Seeing none, thank you. [LB1005]

JOHN PALIC: Thank you. [LB1005]

SENATOR CARLSON: Welcome, Claude. [LB1005]

CLAUDE CAPPEL: (Exhibit 15) Senator Carlson and members of the Natural Resources Committee, my name is Claude Cappel, C-l-a-u-d-e C-a-p-p-e-l. In 1975, the Legislature passed LB577 which protected overdevelopment of the aquifer. In 1982, with the passage of LB375, Senator Kremer declared, referring to the NRDs: "They can use a water management system and I think it's going to work. With these two tools, I think Nebraska can take care of its water and I think we are going to, if the whole world hangs together, we are going to come forth as the greatest agriculture state in all the United States of America. I move that we advance LB375 to E&R." Initially, if I remember right, the NRDs were set up to administer conservation of the land and water. That is why each NRD is basically located in a different area in relation to the climate and soil characteristics. For that purpose, the NRDs were the right thing. The way it is set up now, several NRDs...set up now, the state has several NRDs in each basin. In 1982, the NRDs were given the responsibility of managing large groundwater in their district. That is what they did and still do. In Nebraska, surface water flows toward the river from the west to east toward the Missouri River. Nebraska has a limited source of incoming water. Nebraska's inflow of the South and North Platte and rain and snow are predominately the only sources of new water. There needs to be oversight for each individual basin as a whole and for all water users in each basin. It should take into account the incoming water and outgoing water no matter if it's by evaporation from any source, vegetation, irrigation, pumping, percolation into the aquifer, etcetera. It needs to affect the whole basin, not just those individual areas within the basin. Underground water flows in a different direction than the aboveground streamflow, basically downhill, not in relation to the NRD boundaries. This has allowed the first NRD in the basin to have the most rights. The Republican Basin and the Upper Republican, they are granted the right to deplete the aquifer which supplies the Frenchman River and Republican River. And usually, the Upper Republican had groundwater for irrigation and still met the compact requirements. Then the Middle Republican was granted the right to deplete the aquifer for the Red Willow Creek and head waters of the Medicine Creek which flowed to the Republican River and had groundwater for irrigation. The same

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examples are likely for all river basins in the state. This problem has allowed the groundwater irrigation...depletes the aquifer. Everything has its limits. Allowing NRDs first in place, first in rights to be able dry up the river and stream. I feel the above statement is not only true for the Republican Basin but most likely the whole state because the aquifer is being depleted in a lot of areas which caused the wells to decline and go dry. For domestic use, it means water will be piped in at a substantial cost for homeowners and towns. For Lincoln, it will probably require pumping from the Missouri River at an astounding cost to build, operate, treat, maintain, and purchase power to pump it. This is especially true for surface water irrigators if they are in a response area because their water...in water short years they can be shut off. Even if they have a supplemental well where surface water irrigation is basically gone, what remains of groundwater irrigation will be depleted in the future. It means loss of value in their property and the ability to irrigate. The Legislature has allowed these rights to be taken for economic gain. In 1992... [LB1005]

SENATOR CARLSON: Claude, I'm going to stop you there because we're at the three minutes. But I think I can ask you some questions here to let you indicate what...your concerns here in these last paragraphs. [LB1005]

CLAUDE CAPPEL: Okay. [LB1005]

SENATOR CARLSON: Questions of the committee? I'm going to ask one. In your last paragraph: "If nothing is done, it will be like Kansas, Oklahoma, and Texas with most of the wells dried up." [LB1005]

CLAUDE CAPPEL: Basically, there's a 20-year lag on this water. If we shut it off today, it could take 20 years before all that depletion hits the rivers. [LB1005]

SENATOR CARLSON: Well, I want to agree with you here. Texas and Oklahoma and Kansas are in trouble. [LB1005]

CLAUDE CAPPEL: Yes. [LB1005]

SENATOR CARLSON: And I really think I understand your concern about the Republican Basin. We're not standing still, and we're not reacting as fast as you would like it. But the last thing that I want to see happen is that we end up like Kansas, Oklahoma, and Texas. I don't want to see that happen. You don't want see that happen. [LB1005]

CLAUDE CAPPEL: No. [LB1005]

SENATOR CARLSON: I know from your testimonies before. You do not want to see that happen. In fact, you testified in past years that you could raise good corn on 6

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inches. Do you still feel that way? [LB1005]

CLAUDE CAPPEL: If you have drip system, last year was extremely dry there. We did raise extremely good corn on 10.5 inches...10.2 inches. On the pivots and stuff, it takes a lot more water because you get a lot of evaporation from the pivots and then the end guns, etcetera. Yes. [LB1005]

SENATOR CARLSON: Well... [LB1005]

CLAUDE CAPPEL: We can get by with whatever we need...whatever we get, I guess, if it's treated equal. [LB1005]

SENATOR CARLSON: Okay. Other than in your view, we're just not moving along fast enough. And I don't argue with that. That's completely okay to be your view. What do you see in LB1005 that's going to accomplish that we won't accomplish with the Water Sustainability Task Force? What's the whole concept of water sustainability? [LB1005]

CLAUDE CAPPEL: Basically, it should be for each basin, not by individual NRDs. I think that would take care of a lot of problems because if one basin has one allotment, then all NRDs would have to go live by it accordingly, share equal like the statutes say. [LB1005]

SENATOR CARLSON: If we had a provision that there needs to be basinwide planning toward sustainability, would that be a step in the right direction? [LB1005]

CLAUDE CAPPEL: Would it be what? [LB1005]

SENATOR CARLSON: If we said, there has to be basinwide IMPs geared toward sustainability in addition to NRD IMPs or irrigation district IMPs, would that be helpful? [LB1005]

CLAUDE CAPPEL: I think it's going to have to be one individual basin because each individual NRD wants the most they can get. As a farmer, I want more than...you know, I want all I can get. And that's what's happening. [LB1005]

SENATOR CARLSON: Would it be the right step in the Republican Basin if we required a Republican Basin IMP that was a combination of the NRDs in the Republican Basin as well as the irrigation districts? [LB1005]

CLAUDE CAPPEL: I think it probably would be because it basically would be treating everybody equal. [LB1005]

SENATOR CARLSON: Okay, okay. All right. Questions? Any other questions of the

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committee? Yes, Senator Brasch. [LB1005]

SENATOR BRASCH: Thank you. And thank you for your testimony today. I do have a question when everyone keeps talking about Texas. [LB1005]

CLAUDE CAPPEL: About what? [LB1005]

SENATOR BRASCH: When people talk about Texas and the...has Texas ever been known for growing corn? [LB1005]

CLAUDE CAPPEL: There's places that grow corn there. [LB1005]

SENATOR BRASCH: But is that what they're famous for? Are they the corn state? [LB1005]

CLAUDE CAPPEL: No, no. [LB1005]

SENATOR BRASCH: No. Have they ever been famous as the corn state? [LB1005]

CLAUDE CAPPEL: No. Not that I know of. [LB1005]

SENATOR BRASCH: No. And I have friends who live in Texas too. It's typically really hot and really dry back throughout our entire history that I've studied. Is that correct? [LB1005]

CLAUDE CAPPEL: Yes. [LB1005]

SENATOR BRASCH: And they have a lot of cattle, correct? [LB1005]

CLAUDE CAPPEL: They have cattle because they have a lot of ground. It's...basically, they might get rainfall down there. But you go from east to west it's less... [LB1005]

SENATOR BRASCH: In places. [LB1005]

CLAUDE CAPPEL: ...rocks and everything else, and heat. [LB1005]

SENATOR BRASCH: But you can't compare them to Iowa, the rainfall in Iowa to Texas, correct? [LB1005]

CLAUDE CAPPEL: No. There's no comparison. [LB1005]

SENATOR BRASCH: And so I don't think...you know, as we're...I understand the importance of water to agriculture. But if we're going to compare Nebraska to Texas, I

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really have to stretch a little bit. [LB1005]

CLAUDE CAPPEL: I'm just saying they've all depleted their aquifer. That's all I'm saying. [LB1005]

SENATOR BRASCH: And others have brought it forward too. You're not the only one. But as I'm sitting here, I'm thinking I need to go either to the Internet or get my history books out and see what...where Texas and water. [LB1005]

CLAUDE CAPPEL: In the basin, in our basin up by the state line, it is very arid, probably a little bit similar to Texas. You get down here it's totally different. It keeps going down...getting better as it goes down. [LB1005]

SENATOR BRASCH: But I do understand your concern. And as we look at other states, I think we need to make a thorough comparison. [LB1005]

CLAUDE CAPPEL: Back in mid...probably about 1980, somewhere...'70, we used to go down to Liberal, Kansas, down in there. And everybody was pumping water. They was just wasting water to beat heck. There was water running down the street in Hoxie, Kansas, stuff like that. It's all dried up now. It didn't take long. And that's what I'm saying here. It isn't going to take long. It went fast. [LB1005]

SENATOR BRASCH: Absolutely. All right. I thank you so much, and you...I'll read the rest of your testimony later. Appreciate it. [LB1005]

CLAUDE CAPPEL: Okay. Thank you. [LB1005]

SENATOR CARLSON: Okay. Any other questions? I might say that I'm aware that Texas used to have two crops. I don't know if they still do or not. And they were pumping 48 inches in order to have two crops. What if we pumped 48 inches up here? [LB1005]

CLAUDE CAPPEL: It wouldn't last very long at all. [LB1005]

SENATOR CARLSON: It wouldn't last very long, would it? Okay. [LB1005]

CLAUDE CAPPEL: You know, the thing of it is is I can see a lot of people using water...or you know, there's a lot ways to conserve it. If you set a limit, that's what they're going to do. They're going to go to that limit and that's it if you got proper meters and stuff. If you set the whole basin at 7 inches, that's what everybody would use. They'd learn how to do it. They'd probably cut back acres in places, places they might have more water. But that's...to me, that would be the fair way. And I think it's one way to solve it because you're treating everybody equal. [LB1005]

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SENATOR CARLSON: Okay. All right. Thank you, Claude, for your testimony. Next. Welcome, Tom. [LB1005]

TOM VICKERS: (Exhibits 16 and 17) Senator Carlson, members of the Natural Resources Committee, for the record, my name is Tom Vickers; that's T-o-m V-i-c-k-e-r-s, and I am representing, if you will, the ghosts of legislators past. Thirty-five years ago, I sat on your side of the desk. They weren't the same chairs. Those chairs look a lot more comfortable than the ones we had then. And before I get started, you can read this as well as I can, but I would like to answer a little bit of the questions about Texas, Senator Brasch. I remember being taken down to Texas as a member of this committee by one of the center pivot irrigators...manufacturers, where they were experimenting on ways to use less water, which we've turned out now to be the downspouts. But at that time it was a sock drug in the row that they were planting around and around. And it was corn they were planting because there was a big feedlot. It was close to Hereford, Texas. And the center pivot was being run out of a big cement tank that ten little tiny wells were pumping into. That's all the water they could pump out of the aquifer. And I remember asking the farmer what advice he had for us up here. And his advice was, somebody should have made us conserve. Now, you've got to understand that there's a difference in our constitutions. Texas couldn't because if you own the land, you own everything under it. Thank God our constitution wasn't like Texas' because we can. You can. Now, back to what I just handed out to you. This is...and I need to thank you, Senator Carlson, because you have tried to let us off in some ways, saying that we didn't know. Well, the fact is we did. I was told in 1979 that if the irrigation development kept developing that eventually the Republican would go dry in the area between about Elwood on west. And so we're seeing the results of that. But I've given you some copies of the statutes...that went into the statutes. And one of the things I wanted to really point out to you and I've already pointed out to your legal counsel, is there is the word "finite" in the statutes right now, in the directions to the NRDs. And that was our fault back then. Finite is the opposite of sustainability. You need to really look at that it seems to me. So I'm not here to blame anybody. I'm just telling you that people...I want to blame myself and others that were there at the time. We did know better. We didn't do a very good job. I also want to remind you, the last sentence in the written testimony is, the actions that we take or the actions we don't take do have consequences and history proves what those consequences are. So I applaud you for the sustainability. We didn't get that in when we should have. [LB1005]

SENATOR CARLSON: Okay. Thank you, former Senator Vickers. Questions from the committee? Senator Haar. [LB1005]

SENATOR HAAR: Yes. How long did you serve in the Legislature? [LB1005]

TOM VICKERS: Too long. I about went broke during the process. (Laugh) Eight years.

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[LB1005]

SENATOR HAAR: Okay, okay. Well, one of the things that we face now...and you were in for eight years which will be like many of us, but there were some people that were there much longer, right? [LB1005]

TOM VICKERS: Oh, yeah. Absolutely, absolutely. [LB1005]

SENATOR HAAR: And sometimes I think we... [LB1005]

TOM VICKERS: I served...the Chair of the committee at that time was the father of the NRDs, Maurice Kremer. [LB1005]

SENATOR HAAR: And sometimes I feel that we're in here such a short time that then the next crop comes in and the problems don't get understood very well. [LB1005]

TOM VICKERS: There is some truth to that. We...don't get me started on term limits. (Laugh) [LB1005]

SENATOR HAAR: Okay. [LB1005]

SENATOR CARLSON: Okay. Any other questions? Okay, thank you for your testimony. [LB1005]

TOM VICKERS: Thank you. [LB1005]

SENATOR CARLSON: (Exhibit 18) Next proponent. We have a letter of support from Jay Schilling from McCook on LB1005. So now we're ready for opponents. Any opponents? And if there are others, please move forward and get into the on-deck positions. Welcome, John. [LB1005]

JOHN C. TURNBULL: (Exhibit 19) Thank you, Senator Carlson and members of the committee. I am John C. Turnbull; that's J-o-h-n T-u-r-n-b-u-l-l. I am the general manager of the Upper Big Blue NRD testifying today in opposition to LB1005. The Upper Big Blue NRD board of directors opposes LB1005 because the bill is clearly a move to require state groundwater regulation instead of local NRD control. The bill states: "The Legislature has the responsibility to centralize surface water and ground water management." And I'm just going to highlight my written testimony for you today and not read the whole thing. Nebraska has a local approach to groundwater management that works. It's based on the correlative rights doctrine which is share and share alike in times of shortage. Conflicts do exist between surface water and groundwater, but they are being resolved over time. I have spent considerable time thinking about the long-running dispute on water management in this state. I have

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decided it really comes down to definition. Surface water interests demand that groundwater be regulated. NRDs insist that we are regulating groundwater. But the differences in opinion remain. To surface water folks used to dealing with the appropriative doctrine, regulation means shut off. That is, shut off the junior user until the senior water right is satisfied. Under correlative rights, there is more to it than just simply shut off. To groundwater folks, regulation means meters, water use reports, allocation, reducing of acres, well spacing, limits on transfers, and in some cases moratoriums on well drilling, or any combination. It doesn't mean that groundwater folks ignore surface water interests, but rather takes them into account along with other factors. The pure shutting-off approach makes it difficult to achieve the goals of increased productivity, sustainability, and conservation which is a phrase right out of the bill. The bill dictates that the Surface Water and Ground Water Review Board shall represent Nebraska in interstate river compacts. That can't be. The Blue River Compact with Kansas dictates who those members will be. And that compact was ratified by the U.S. Congress. The bill also requires Surface Water and Ground Water Review Board to review and approve groundwater and surface water usage and conservation in 23 water basins. The bill also requires the board shall issue and review all new and existing water well permits. Is that leading to the appropriative doctrine for groundwater rigs, or maybe correlative rights doctrine for surface water administration? I thought that Nebraska has 13 river basins. But I think really what the bills means is to review each NRD's management plans and regulations. Where is the 23 comes from? The review of existing well permits is an interesting thought. We have 5,213 in our district. That's the number that have been issued since 1978. What's the intent of the review, cancelling of some permits? If so, what's the basis? And I hope I'm not the one that has to tell the landowner he's lost his permit. If the intent is to determine water usage, then there's better ways to do it. We do not agree with the requirement that the Surface Water and Ground Water Review Board makes the final decision on integrated management plans. There hasn't been a case yet that we know of where the DNR and an NRD have failed to agree on final language in an IMP. I've listed here the size of our district, the amount of irrigated acres we have, what our water use is, what our average water use is, rainfall, etcetera. And then a bit about our quick regulations. They've been in place since '77. Our goal is to hold district groundwater levels above the '78 district level. That's water sustainability that Senator Carson talks about a lot. Our latest changes became effective February 1, and that's to require water meters on all wells in the district by January 1, 2016. And we've set up the allocation. It'll go into effect when we reach a certain point in groundwater decline, which is 3 feet from last year's water levels. One point that was raised by several proponents is the inability to have disputes resolved at the state level. If you'll look at LB1005 on page 37, line 16, the old language is stricken through. It really sets up that review process with the Interrelated Water Review Board as the statutes exist now. [LB1005]

SENATOR CARLSON: Okay. [LB1005]

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JOHN C. TURNBULL: I'll be glad to answer your questions. [LB1005]

SENATOR CARLSON: All right. Thank you. Questions of John? Senator Haar. [LB1005]

SENATOR HAAR: So would you say things are just fine and this isn't necessary. Would that be a summary of what...your testimony here? [LB1005]

JOHN C. TURNBULL: I wouldn't say things are just fine, but I think we're getting there. We're working at it. We've been working at it for a long time. Districts have the authorities. We have regulations in place. We are enforcing those regulations. We're tightening those regulations as we need to to sustain the aquifer. I don't think that we need a statewide board to dictate to us how those ought to be. We have local conditions that need to be taken into account. We need to take into account all the water users and try to balance as best we can. I've been in this for 38 years doing this work. I think we are there and we'll continue to improve it. [LB1005]

SENATOR CARLSON: Other questions? John, how long have you been manager of the Upper Big Blue? [LB1005]

JOHN C. TURNBULL: I'm starting my 37th year. [LB1005]

SENATOR CARLSON: Oh, that's all Upper Big Blue? You were in Holdrege for a while, weren't you? [LB1005]

JOHN C. TURNBULL: I've had a couple years before that...I was the manager at the Tri-Basin for 2.5 years before I went to York. [LB1005]

SENATOR CARLSON: Okay. And I'd just encourage the committee to look on the second page when it shows the actual water uses that you've indicated here for years 2007 through 2013. Now, in those...in your 37 years, what's happened to groundwater levels? [LB1005]

JOHN C. TURNBULL: Well, if you look on this third page, you'll see a chart at the top. And that's based on 500 well measurements each year across our natural resources district which is about 3,000 square miles. These water levels that are shown here begin in 1962 and run through the spring of 2013. And you can see that those water levels went down until about 1982; '78, '82 was the low point. Then we had significant rises. The high point was in about 2000, at about 7 feet above the predevelopment level. We had a sharp decline because of change in precip to about 2007 which triggered us to go into water use reporting and certifying of acres. We saw a sharp rise again until 2012 which put us a half a foot above where we began in 1962 even though we went from 300,000 acres to 1.2 million irrigated acres. Then in the last year, because of heavy

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pumping in 2012, we dropped 4.4 feet. That was the driest year on record, even including the '30s. This last year, we won't know that water decline until we finish our well measurements about first part of May. We will get started on that in the next week or so. [LB1005]

SENATOR CARLSON: Okay. And last year you used 9.9. [LB1005]

JOHN C. TURNBULL: Nine nine, that's correct. [LB1005]

SENATOR CARLSON: So you probably won't show much improvement this spring. [LB1005]

JOHN C. TURNBULL: No, I expect a decline. I don't know if it's going to be enough to trigger the allocation which requires another 3-foot drop or not. But the regulations are in place and the amount of allocation is set so whenever that happens, the regulation is already there. [LB1005]

SENATOR CARLSON: Okay. That's a helpful graph. I appreciate you having it. Any other questions? Yes, Senator Dubas. [LB1005]

SENATOR DUBAS: Thank you, Senator Carlson. John, thank you for your testimony. You always give us plenty of really good information to digest. I guess a question, and maybe you don't know the answer and maybe there's not an answer, this review board has been in place since LB962, is that correct? [LB1005]

JOHN C. TURNBULL: That's correct. [LB1005]

SENATOR DUBAS: And my understanding is it's never called upon to do anything. [LB1005]

JOHN C. TURNBULL: It's never been convened. And there's a process in existing statute that sets up how that's to be done. And the Governor appoints the members of that for that particular issue, whatever that is. And then those folks listen to both sides and settle the dispute as has been raised here earlier today or to approve a plan if the department and a district cannot come together on what the terms and conditions ought to be. [LB1005]

SENATOR DUBAS: Well, it's obvious over the last several years at least that there has been issues going on between surface and groundwater. I guess I'm questioning why this review board hasn't been used. [LB1005]

JOHN C. TURNBULL: Well, what's been going on...well, a lot of what's happened has been the negotiations over what should be in a basinwide plan in the case of the Upper

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Platte, or in other areas of the state, what should actually be in an integrated management plan. And those issues have all been settled through the processes there. In other words, the integrated management plan, the language has been agreed to, been signed and put into effect. [LB1005]

SENATOR DUBAS: So there have been things that have happened without the need to necessarily... [LB1005]

JOHN C. TURNBULL: Nobody has called for that board yet that I know of. [LB1005]

SENATOR DUBAS: All right. [LB1005]

JOHN C. TURNBULL: It doesn't mean it couldn't happen. [LB1005]

SENATOR DUBAS: All right. Thank you. [LB1005]

SENATOR CARLSON: Okay. Thank you. Any other questions? Thank you, John, for your testimony. [LB1005]

JOHN C. TURNBULL: Thank you for your time. [LB1005]

SENATOR CARLSON: Next testifier. Welcome, Nate. [LB1005]

NATE JENKINS: (Exhibit 20) Thank you, Senator. Chairman Carlson and members of the Natural Resources Committee, thank you for giving me time to testify on LB1005. My name is Nate Jenkins and I am assistant manager of the Upper Republican NRD. I would like to testify in opposition to LB1005 on behalf of the Upper Republican NRD. LB1005 seeks to centralize management of water with a board that would have extensive and onerous duties: issue and review all new and existing water well permits; summarize yearly water usage on more than 8.5 million irrigated acres in the state; assess consumptive use, water supply, and regional and local aquifer trends. Then an annual report summarizing all of that information would have to be presented to the Legislature. In addition to the report, the board would make recommendations on water policy, priorities, and funding. I question whether a board of 10 volunteers, presumably people who also have busy careers, would have the time to adequately address all of these tasks. But those duties don't include the most difficult task of all and one that I don't believe that a water board would be able to accomplish: establish water policy that would better preserve water for future generations. In addition to the massive amount of data the board would have to analyze, the political pressure that would be exerted on this board would be enormous. With water-related interests from all corners of the state pushing and pulling on the board, I don't believe the progressive action envisioned by the bill would occur. A much more likely consequence would be inaction. There is both precedent and studies that supports this theory. In Kansas, water management is

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mostly centralized in state government. The state has the ability to set stricter water use regulations than now exist and in most cases are much less stringent than regulations in Nebraska. But it largely hasn't occurred. Local water management groups have been hesitant to ask the state for stricter regulations and the state has been hesitant to pursue them in large part because of the political pressures I described. The result has been groundwater declines more than twice as much as what Nebraska has experienced. I'd also reference a study from environmentalist Mary Kelly. Kelly is a former senior attorney for the Environmental Trust Fund. In 2011, she presented a study exploring water management in Nebraska compared to other states. An excerpt from Kelly's studies: "Even with distinct surface water and ground water regimes, some states centralize management in a state resource agency, as opposed to locally-based regulation." I'll skip ahead. "In some cases, local interests may be more aggressive than state policy makers in protecting their resources." In many cases, it seems that local interests implemented via Nebraska's NRD system are more aggressive in protecting their resources for a pretty simple reason. Local people have a vested interest in preserving water for their children and grandchildren in the area in which they live. I'll conclude there. I might reference a map that I attach showing the different regulations throughout the state of Nebraska imposed by NRDs over the years. There's...11 of the 23 NRDs have regulations in place. [LB1005]

SENATOR CARLSON: Okay. Nate, thank you for your testimony. Questions of the committee? Senator Haar. [LB1005]

SENATOR HAAR: You said, protecting their resources, and that local NRDs are more effective. That's part of the thing, though, we've been hearing is that their own resources get protected. And it's sort of, to hell with who's above us or below us or beside us. And that's kind of what I've heard in a number of these hearings. [LB1005]

NATE JENKINS: Yeah, I'd say that the one thing I've seen on the Republican River for instance, there's a tremendous amount of pressure that's been exerted on the state and the Republican Basin to maintain compliance with the compact. And one thing I'd really urge senators to look at is really how stringent the regulations and our obligations are under the compact. One consequence of that has been--this is understandable--pointing to guy upstream for the reason for your own issues. That's a natural human reaction when you're under the amount of pressure that some of the NRDs have been under. [LB1005]

SENATOR HAAR: But how do you get away from that natural pressure then? I mean, we can't just walk in and change the compact or... [LB1005]

NATE JENKINS: Yeah. [LB1005]

SENATOR HAAR: Senator Carlson would have done that over his tenure here. So how

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do we get people to think beyond their own boundaries? If you don't like the idea of someone coming in from above... [LB1005]

NATE JENKINS: I think what you've seen now, Senator, is people are looking beyond their own boundaries because we have to. With the Republican River Compact, it's a state compact. The NRDs in the basin have to take action to ensure that the state is in compliance. Last year, we were in compliance. So while you may hear some disagreement among the NRDs about specific plans that are pursued, the fact is at the end of the day I think we've done a pretty darn good job of actually putting in place actions that maintains compliance with the compact. In other words, there's disagreement about how we reach that end consequence of maintaining compliance with the compact. But at the end of the day, it occurs and it'll continue to occur. [LB1005]

SENATOR HAAR: And sure, the compact is being complied with, but we've heard in quite a number of these hearings where all NRDs are not faring equally well. So this whole idea of cooperation is a great one if it happens. [LB1005]

NATE JENKINS: Yeah, I'd go back to a comment our attorney made I think a few weeks ago. He said, Nebraskans beat themselves up over water. And there's a good reason for that. I think Senator Carlson recognizes that as good as anybody. And that's because it's the most valuable resource that we have in the state. So it's easy to get mired in the problems and the issues that we have at the basin level, at the NRD level. But I think if you look from the 10,000-foot view of how Nebraska has managed water, we're in a lot better shape than other states. And conflict that you see is sometimes an outcome of actually taking action to help preserve water. [LB1005]

SENATOR HAAR: But again, you know, the 10,000-foot view is good, but then what I really hear is when it gets down to the farmer, for example, who doesn't get any surface water or something, that's... [LB1005]

NATE JENKINS: Right. [LB1005]

SENATOR HAAR: ...and they look other directions and they see, you know, they see other people being taken care of. So again, I would just say the challenge for you all...and it seems to me otherwise we're going to have to deal with it, is how do you look beyond your own boundaries? Don't just think about the 10,000-foot level, but look at those individuals who are suffering in the middle. And that's where I'm coming from. [LB1005]

NATE JENKINS: I appreciate that. And I can tell you we're cooperating with the Middle Republican NRD on a project. Our board less than a year ago took action that's expected to reduce water usage in our district by 70,000 to 90,000 acre-feet. I don't

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think you'll find an area of the country with the precipitation that we have that has more stringent regulations than we do. So I believe that we are taking action to help downstream water users. I think it's always difficult to completely satisfy all downstream water users. That's just the unfortunate nature of the water business. [LB1005]

SENATOR HAAR: And then...I mean, the suggestion...at least we heard one person say maybe the whole...there needs to be one NRD because then you've got one set of interests. And you'd still have politics within that, but you can't just talk about them who are upstream or them who are downstream. [LB1005]

NATE JENKINS: Right. And I think you may be referring to kind of a basinwide... [LB1005]

SENATOR HAAR: Yes, yeah. [LB1005]

NATE JENKINS: ...planning process. And I think that's, you know, something we'd sure be willing to consider. [LB1005]

SENATOR HAAR: And it does seem to me that it's our job, our leadership role, to look at these issues and see that they do get resolved. [LB1005]

NATE JENKINS: I appreciate that effort, and I think that we're more than willing, along with the other NRDs in the basin, to work with you on that. [LB1005]

SENATOR CARLSON: Senator Smith. [LB1005]

SENATOR SMITH: Thank you, Mr. Chair. So kind of building on the line of questioning with Senator Haar, kind of at a little higher level for me, so do you feel there is sufficient coordination occurring now between NRDs? And through what means do you see that happening today? [LB1005]

NATE JENKINS: Yeah, I think the way you try to measure whether or not it's sufficient enough, at least in our corner of the world, is compliance with the compact, okay. And you hear me and other people in the basin repeating that time and time again. That's simply because there's no bigger responsibility than maintaining compliance with the compact, okay. In doing that, we have had to cooperate with other NRDs. And I reference Dan Smith who used to be the manager of the Middle Republican NRD said, we fight when we have to and we get along when we have to. Well, I'd argue that we're actually getting along pretty well now and better than we have in years. We're actually cooperating on a multimillion dollar project to keep the state in compliance. Does that answer you question, Senator? [LB1005]

SENATOR SMITH: Yeah. So you're...from your exchange with Senator Haar on

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basinwide planning efforts, you're seeing that there is possibly some benefit to that occurring but yet that you...I'm going to put words in your mouth. Tell me if I'm right or wrong on it. But that you feel that a broader consolidation of the effort would not satisfy the local interests and that it would create some problems in the overall coordination effort between the NRDs. [LB1005]

NATE JENKINS: Not necessarily. I don't see a big downside to having a cooperative planning process, you know, formalized through state statute. [LB1005]

SENATOR SMITH: But at a basinwide level. [LB1005]

NATE JENKINS: Correct. [LB1005]

SENATOR SMITH: Not larger than that. [LB1005]

NATE JENKINS: Yeah. And again, I didn't finish my testimony because I wrote too much there, but I...we simply have evidence that the type of action that Senator Avery is suggesting doesn't work. And I think we have evidence that what we have in place now does work. I think it can be modified, you know, and be improved upon. But yeah, I wouldn't foresee any large resistance to it. [LB1005]

SENATOR SMITH: So if you move much beyond a basinwide effort, you move farther and farther away from that local control and that decision-making? [LB1005]

NATE JENKINS: Yeah, and you know, it's not just, local control isn't good just because the locals are involved in making decisions that affects them. I think in the case of water...and it's tough to encapsulate this in something that's really persuasive, but it just works...is the water resources we have in Nebraska vary so dramatically. I mean, there's more variability in precipitation from where I live to Omaha than there is from Omaha to the East Coast. So I think the system we have in place right now recognizes that variability and is able to respond to it with regulations that make sense, given the different conditions you have throughout the state. [LB1005]

SENATOR SMITH: Okay. And central planning would just get too far away from that understanding of the varying precipitation across the state and water issues across the state? [LB1005]

NATE JENKINS: Yeah, I mean... [LB1005]

SENATOR SMITH: Okay. [LB1005]

NATE JENKINS: ...part of it would just be an educational process as well. I just think it'd be difficult. To set broad parameters and kind of broad goals that we'd like to meet as a

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state, I think everybody could agree, that would make sense. But to go to the...  
[LB1005]

SENATOR SMITH: Yeah, I'm just trying to...and I'm sorry for the exchange, Mr. Chair, but I'm just trying to understand from this exchange. You're not opposed to greater coordination between NRDs. You're not opposed to that. You're just opposed to carrying that too far to where there's a centralized planning process. [LB1005]

NATE JENKINS: Correct. I think at the basinwide level, there wouldn't be a big downside to having more planning even though I'm saying that planning does occur now. If you take that to the statewide level, both because of the intricacies of water management and political pressures, I don't think you'd be able to accomplish a whole heck of a lot. [LB1005]

SENATOR SMITH: I understand. Thank you. [LB1005]

NATE JENKINS: Thank you. [LB1005]

SENATOR CARLSON: Okay. Other questions? Senator Haar. [LB1005]

SENATOR HAAR: Just to carry this a little bit further, what do you think the role of the Legislature is when it comes to water? [LB1005]

NATE JENKINS: I think to set broad policy directives for the state that can be implemented by the NRDs. And I think that was largely realized through LB962 in--was that 2004 or 2005--2005 I believe. I mean, yeah, the state has an interest in helping balance water uses, you know. That was expressed in that legislation. And now we have a process where those uses...we attempt to balance those uses by working with the state. [LB1005]

SENATOR HAAR: I wish we could go in and change that compact. [LB1005]

NATE JENKINS: I do too. It's...if you want to go to D.C. and ask Congress, I'll buy your plane ticket. [LB1005]

SENATOR HAAR: Okay, that's an offer. [LB1005]

SENATOR CARLSON: Okay. Other questions? All right. Jasper, I'm going to...I mean, Jasper...hey, you're speaking for Jasper as well as yourself today. I know that. [LB1005]

NATE JENKINS: Well, I'm speaking for our NRD, so Jasper and everybody else over there. [LB1005]

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SENATOR CARLSON: All right. And to clear everything in my mind at least with your little discussion with Senator Smith, when he talks about centralized planning, I think...management, he's talking about statewide. And when you talk about basinwide, that's not necessarily a threat to you. In fact, you could see that that maybe could work. Am I correct, basinwide? [LB1005]

NATE JENKINS: I think there could potentially be some benefits to some level of basinwide planning, yes. [LB1005]

SENATOR CARLSON: If there were basinwide planning, where do the surface water districts come into that? [LB1005]

NATE JENKINS: I think as they are right now, they're a part of the discussion, you know. [LB1005]

SENATOR CARLSON: And I'm not trying to get off on something that's uncomfortable, but I don't even understand this. How, in your IMP or the Middle's IMP or the Lower's IMP, how are they part of the discussion now? I don't really know, so I'm asking. [LB1005]

NATE JENKINS: Yeah, we have pumping standards in our IMP right now. And really, the intent of those pumping standards is to allow for our rapid response shutdown, which we hope to avoid, to actually work in a compact call year. Now we have augmentation projects in place that will hopefully prevent a rapid response shutdown. But in an attempt to meet those pumping standards, we're helping sustain streamflow as well. [LB1005]

SENATOR CARLSON: Okay. And I understand the rapid response shutdown, and I don't like it at all. And I know you don't want it. But that doesn't address to me, how does that help surface water districts? [LB1005]

NATE JENKINS: Well, if we're taking actions to comply with our IMP, you know, to steadily reduce pumping over time, that's going to aid...that will aid surface water users. [LB1005]

SENATOR CARLSON: And I got the concept. I think I understand that. But there doesn't appear to be a real buy-in by the surface water irrigation districts that that's in fact what's going to happen. Why not? [LB1005]

NATE JENKINS: I can't really speak for the irrigation districts as to why that is. But I can tell you that we've made efforts to work with the irrigation districts, for example, to help avoid compact call years in the future, utilizing our augmentation projects to where they would be allowed to store augmentation water in the reservoirs and then release it in a

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compact call year...or to avoid a compact call year and to avoid an administration of surface water. So I...yeah, we're...via our projects and our regulations, I think we can aid surface water users now and in the future. [LB1005]

SENATOR CARLSON: Okay. I have two more questions. [LB1005]

NATE JENKINS: Yeah. [LB1005]

SENATOR CARLSON: When you were here before, you testified that in the Upper Republican you were working your way down on water used. And I asked you, are you through? And you said, no, because you're not to a point yet that the groundwater depletions have stopped. But I caught from what you said, you're not through and that's your goal. [LB1005]

NATE JENKINS: That's right. [LB1005]

SENATOR CARLSON: Is that still true? [LB1005]

NATE JENKINS: Yeah. Actually we put that in our master plan recently, Senator. And so we've formalized in the master plan for our district to eventually stop groundwater declines. [LB1005]

SENATOR CARLSON: Okay. Thank you for that. And the last question, you didn't testify in opposition, so I assume that LB1098 is on your radar screen as being a good bill. [LB1005]

NATE JENKINS: Yes. [LB1005]

SENATOR CARLSON: Okay. [LB1005]

NATE JENKINS: Yes, yeah. We believe that's a good bill and appreciate the effort on that. [LB1005]

SENATOR CARLSON: Okay. All right, thank you. [LB1005]

NATE JENKINS: Thank you. [LB1005]

SENATOR CARLSON: Next testifier. Welcome. [LB1005]

PAT O'BRIEN: (Exhibit 21) Thank you, Senator Carlson and members of the Natural Resources Committee. My name is Pat O'Brien, P-a-t O-'-B-r-i-e-n, and I'm here representing the Nebraska Association of Resources Districts and the Upper Niobrara-White NRD in opposition to LB1005. Much of testimony has been previously

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stated, so I'm not going to read through it, and you can too. But a couple things I would want to touch on is the broad makeup of LB1005 could completely exclude western Nebraska given the makeup. The only potential for somebody could be from the 3rd district congressional, and that runs from Falls City to Harrison. So that's quite a range. So if somebody...you could actually have everybody east of Lincoln be members of that task force. Also, I did want to touch on a couple of the comments that were made as to how the NRDs do set their water management plans and their integrated management plans. As Nate testified before me, we have 15 inches of rainfall in some parts of our district down to 34 inches in Falls City. So you do need to have different ways of managing water throughout the state. We really don't have the flood concerns out in northwestern Nebraska as they do down in southeast Nebraska. Plus, the topography is completely different. In the northwestern part of the state, there are areas of zero groundwater in Sioux County. Then you get down to southern Sheridan County, there's hundreds of acres of saturated thickness. And we have that diversity in three counties in part of the state. So having the unique nature...or the unique ability to establish practices and policies for that type of diversity in a small area is much better on a local basis. Also, to answer one of the questions that was brought up, is it working? The local control is something that is always brought up. And it is really neighbors setting allocations and limitations on neighbors. Currently, the board of the Upper Niobrara-White are proposing allocating the entire district, even in areas where we have not seen groundwater declines that are significant. That certainly is bringing people out of the woodwork, but it is looking at the long-term future of the water use and protecting water in the Niobrara River for downstream users and to make sure that we can maintain those flows for other users downstream. So with that, I would answer any questions. [LB1005]

SENATOR CARLSON: Okay. Thank you. Questions of Pat? I have one because I know it's painful. I know you're working hard at it. What's the solution to the depletions in Box Butte? [LB1005]

PAT O'BRIEN: I think it's a unique situation that is more complicated by the geography of the area. It is a huge bowl, and that bowl served its purpose well in collecting groundwater for thousands of years. And so trying to figure out how you can reduce some of the use and also get some recharge in that area is where you actually have to try to get to it. It's nothing that has happened...can happen in a very short period of time because it took a long period of time to create the problem. So we need to do as effectively and efficiently as we can while not completely devastating the economics of the region. [LB1005]

SENATOR CARLSON: If there was some way that it could be determined that there could be intentional recharge, that would be a big answer...and a source for intentional recharge. [LB1005]

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PAT O'BRIEN: And \$50 million would certainly help that cause. (Laughter) [LB1005]

SENATOR CARLSON: Okay. Senator Haar. [LB1005]

SENATOR HAAR: You end your letter by saying, it's a solution looking for a problem. Would you talk about that little bit more? [LB1005]

PAT O'BRIEN: Yeah, further up in my testimony it talks about the Water Review Panel. It indicates that there was or is some contention out there between the district and the Department of Natural Resources. And there might have been some contention back when LB962 was going around, and maybe there were some angst against performing or developing an integrated management plan. However, the department and the districts have worked together and have never needed to create this Interrelated Water Review Board. And the districts have actually asked for the ability to create a voluntary IMP. And the districts would not want to go forward and voluntarily subject themselves to pain if they thought it was something that was going to cause them that much difficulty in the future. So I think that the problems are not there, so why create and change something that is not needed? [LB1005]

SENATOR HAAR: So if there is pain, we should deal with it out here. [LB1005]

PAT O'BRIEN: Well, you should know about it certainly, so. But it hasn't ever been needed, so. [LB1005]

SENATOR HAAR: Yeah, okay. Thank you. I appreciate that. [LB1005]

SENATOR CARLSON: Okay. Any other questions? Thank you, Pat. [LB1005]

PAT O'BRIEN: You're welcome. [LB1005]

SENATOR CARLSON: Welcome, Glenn. [LB1005]

GLENN JOHNSON: (Exhibit 22) Senator Carlson, members of the Natural Resources Committee, my name is Glenn Johnson, G-l-e-n-n J-o-h-n-s-o-n. I'm the general manager of the Lower Platte South Natural Resources District here in Lincoln. I'm submitting this testimony on behalf of the Lower Platte South NRD and also on behalf of the Nebraska Water Coalition, which is the Nebraska State Irrigation Association and the Nebraska Water Resources Association, in opposition to LB1005. As we've talked about, the bill would eliminate an existing board structure and replace it with a permanent board instead of a temporary board and continues the same purpose of resolving disputes in integrated management planning processes. But it also expands the responsibilities and authorities. The bill, however, does not designate any agency as a host or provide any staffing but yet gives this huge workload and just seems to create

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some problems that way. LB1005 in giving these expanded responsibilities and authorities to the new board doesn't remove these same or similar responsibilities and authorities from existing agencies such as the natural resources districts, Department of Natural Resources, the Legislature, and the Attorney General. This creates a duplicative and conflicting situation for dealing with surface and groundwater permits. Interstate compacts and decrees, contracts with other states--I think that's something that the Legislature generally has some role in--and preparation and submittal of reports. Lower Platte South NRD and the DNR just are completing and in March will adopt the voluntary integrated management plan for the district. Again, a voluntary management plan. The process worked very smoothly, excellent cooperation, collaboration between the two agencies, just another part of the district being proactive in groundwater management in the district. In fact, the district just created a special area, placed allocations under new rules and regulation that begin March 1, on a particular area in the district that had some groundwater challenges in the last couple of years. Meters have been required in all of the wells in the district. We think the situation is working pretty well. We think it works very well when we can target a very small area within our district and identify and customize those type of rules and regulations that best fit that area. Situation isn't perfect, but we're not sure that LB1005 would be any solution to any of the real problems that might exist out there. [LB1005]

SENATOR CARLSON: Okay. [LB1005]

GLENN JOHNSON: I'd answer any questions. [LB1005]

SENATOR CARLSON: All right, thank you. Questions? Senator Haar. [LB1005]

SENATOR HAAR: Senator Avery brought up the point that Lincoln could put a call on the water in the Platte River. Would that affect you, and how would that? I mean, that's something...I should know that probably, but I didn't know that. It's scary. [LB1005]

GLENN JOHNSON: We were involved in the discussions when the city was talking about that. Certainly with the city having their in-stream flow rights and their induced recharge wells, has that authority to make a call on the river because they do have a certain surface right interest. Their well fields are actually located essentially at the very upstream edge of our district. So while it would have an impact on our district because all of the customer base for Lincoln Water System is in the district, but the call would be all outside of our district. It would be all upstream. All of it would be upstream through the whole Lower Platte Basin up into the Loups and in the Elkhorns. [LB1005]

SENATOR HAAR: Well, you know, and it's kind of scary because there is a study--and it's on my desk but I can't remember who did it--showing cities that are, you know, at risk. And Lincoln is like number four on their list. [LB1005]

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GLENN JOHNSON: Right. [LB1005]

SENATOR HAAR: And so I mean, that's... [LB1005]

GLENN JOHNSON: Right. And the city and our integrated management plan includes working very closely with the city to try and identify and secure future water supplies, whether it be coming from further upstream in the state in the basin, whether it comes from the Missouri River and bringing it in, variety of different sources and potentials that will be looked at. The city has been in the process of looking at that for quite some time. [LB1005]

SENATOR HAAR: Okay. Thank you. [LB1005]

SENATOR CARLSON: Any other questions? Yes, Senator Kolowski. [LB1005]

SENATOR KOLOWSKI: Thank you very much, Mr. Chairman. Glenn, just again for the record and for our knowledge here, the protection of the well field is extremely important to us and the levees that need to be completed and down there to the new FEMA standards and all the rest that are coming out. It's imperative that we look at that and help take care of that as well because of the threat to Lincoln as a source of water. To the south, to the west, to the east, are there any other potential wells? You said you're looking at locations or anything that you tapped into including, you know, pipes from the Missouri River, that would also get water here. But is there any suitable...have they done studies and looked at where water might be located? [LB1005]

GLENN JOHNSON: Yeah. We've got a vast database of... [LB1005]

SENATOR KOLOWSKI: Sure. [LB1005]

GLENN JOHNSON: ...unsuccessful water tests, holes that have been drilled all across... [LB1005]

SENATOR KOLOWSKI: Dry well. [LB1005]

GLENN JOHNSON: ...our district. Yeah. And the gist is a very limited supply in this part of the state in groundwater. Once you get past where you drop off the hill coming east out of Seward on the interstate and you drop in and you can see the Capitol, that's where the Ogallala Aquifer stops. That's where you get into the glaciated area of the state. [LB1005]

SENATOR KOLOWSKI: Okay. [LB1005]

GLENN JOHNSON: The aquifers become very limited and even not just in quantity, but

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also in quality. So it becomes very challenging. That's why the city ended up going to where they are along the Platte River for their water supply. That's why MUD has moved west for their major well field and their south well field, both are on the Platte Aquifer because there's not really a lot of other close well fields or potential supplies. [LB1005]

SENATOR KOLOWSKI: Compared to Omaha sitting in a very good place with a river on one side... [LB1005]

GLENN JOHNSON: Correct. [LB1005]

SENATOR KOLOWSKI: ...and a river on the other side. So that helps from the Elkhorn and Platte down there. It's quite a significant challenge. Thank you. [LB1005]

SENATOR CARLSON: Any other questions? I happen to know the new chair of your board pretty well. I assume he's doing a good job. [LB1005]

GLENN JOHNSON: Doing a very good job. [LB1005]

SENATOR CARLSON: All right. He'll like to hear that. Okay. Thank you. [LB1005]

GLENN JOHNSON: Okay. Thank you. [LB1005]

SENATOR CARLSON: Welcome, Brian. [LB1005]

BRIAN BARELS: (Exhibit 23) Thank you, Senator Carlson. Members of the committee, my name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I'm the water resources manager for Nebraska Public Power District. We have a number of generating, distribution, and transmission facilities across the state that utilize both surface water and groundwater. Today I'm testifying in opposition to LB1005 due to concerns that we have already discussed with Senator Avery. I have a couple of those concerns within my testimony, and I might just touch on them briefly. The first was really covered just by Mr. Johnson previously. And that is that this board would have numerous responsibilities to review usage, to review and set policy for the state including those related to integrated management plans. But it doesn't say what happens to those existing statutes that assign those responsibilities either to the Department of Natural Resources or to the natural resource districts. So in essence, if the bill was implemented as drafted it would have conflicts within our statutes as who was to do what to accomplish certain goals and activities. As was mentioned before, it talks about regulating usage. It's not clear within the bill itself what the definition of usage is. Is it usage governed by surface water permits that are granted by the DNR and have the allocations and the amount set in the permits? Is it usage by a well, you know, in an NRD? Is it usage per an integrated management plan or a groundwater management plan where there are limits that have

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been set which don't exist for wells in all parts of the state at the present time? So it's a little confusing as to what the intent is and some additional definition in that manner would be beneficial. Also, just as was previously touched on, we have assigned a lot responsibilities to a board. And whether it's a 10-member board, whether it's a 27-member board, that's going to be a very difficult task in some of these highly scientific decisions that have to be made. And the three members of the original board that were from the legislative districts were required to have seven years of water-related experience. I think we would want that kind of experience for any members of a board that had to deal with setting water policy for the state, how we were going to allocate water and who gets to use it and who doesn't get to use it. It's not...as you've heard from many previous testifiers, it's highly variable across the state. And someone needs to understand that if they're going to be setting policy. And also if we're going to set policy, if we're just going to use a majority vote, is that adequate to set policy in the state? Don't we have to have good, sound, scientific policy that we want to implement? Lastly, I want to just touch briefly on the amendment that we heard about which is a state water plan and some of the comments that you have had regarding a state water plan in questions. A state water plan is something, as was mentioned, this committee has held hearings on and looked at for quite some time. A state water plan is another mechanism that many states use to identify the projects they need to achieve their goals and objectives or sustainability. You typically build a state water plan by doing it on a basin-by-basin basis. And you really want to look at what the planning needs are and the future needs within that basin are. But then they're all put together so they could be looked at from a statewide basin. And I think that would be very beneficial for the Water Funding Task Force process that they have to undertake into the future as well. Not only could they have criteria by which in they would evaluate a project against a project, but you could evaluate the basin needs within the state as well in that process. And I think that would be beneficial. With that, I'll end my testimony and answer any questions you might have. [LB1005]

SENATOR CARLSON: Okay. Thank you, Brian. I didn't stop you because I was going to ask you what you started to talk about anyway. So that took its place right here. Questions? Yes, Senator Haar. [LB1005]

SENATOR HAAR: So from your...the initial part of your testimony was one of, oh, there are things that would need to be corrected if this goes forward. [LB1005]

BRIAN BARELS: Correct. [LB1005]

SENATOR HAAR: So it's not necessarily a criticism of the idea. [LB1005]

BRIAN BARELS: Well, it's...as I stated in my testimony but didn't really in my verbal was, there's a lot of intriguing ideas on how we might bring management of our water resources together. And some of those may have merit, especially a state water plan.

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[LB1005]

SENATOR HAAR: Okay. Thank you. [LB1005]

SENATOR CARLSON: Okay. Other questions? All right. Thank you, Brian. How many more proponents? Excuse me. [LB1005]

SENATOR HAAR: Opponents. [LB1005]

SENATOR CARLSON: How many more opponents do we have? Okay, John, I think you're it. Welcome. [LB1005]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record, my name is John Hansen, J-o-h-n H-a-n-s-e-n. I am the president of the Nebraska Farmers Union. And as I thought about this, the testimony, the proponents' testimony and looked at this issue, I thought it was appropriate that we comment. I have been working in the area of water management either as an NRD director or the president of a farm organization for 40 years. I've done 18 months on Governor Nelson's Republican River study committee. So we represent landowners from across the state in all of the counties. And as we look at these issues, I'm sympathetic to the need for better dispute resolution. I don't believe that this particular law...or bill that would change the law would be necessarily the appropriate way to facilitate that and do that. And I'm not unfamiliar with the whole issue of...that goes back from the very beginning when we created the NRDs, which I had a little something to do with in '74, is the concept of a state water czar having a centralized decision-making process for both ground and surface water. We have very different management and legal systems for both ground and surface water. We're a state blessed with enormous water resources. And as, I think, as a good summary for trying to manage that based on the geology and the hydrology of our state, it's complicated. And when you centralize decision-making and you want to spread that across the state, it becomes increasingly either too little too late; too much, too soon; too hard, too inappropriate. And our NRD system has done, in my opinion, an excellent job of helping serve our state's needs and resources. And I think that we need to appreciate that, and that at times we've needed a little more direction in an appropriate manner from the Legislature. I think they've done a pretty darn good job for the most part. And in my opinion, they continue to improve and do a better job. Thank you. [LB1005]

SENATOR CARLSON: Okay. Thank you, John. Senator Haar. [LB1005]

SENATOR HAAR: You've probably...well, obviously you know a lot more about the history of this than I do. Do you know, why were basins divided up instead of...? I mean, that seems to me...is not just the testimony today, but that we've heard for long hours this session, that having these separate NRDs in a single basin seems to have created

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problems. Why were they divided, any idea? [LB1005]

JOHN HANSEN: Yes. (Laugh) [LB1005]

SENATOR HAAR: Good. Well, I asked the right person. [LB1005]

JOHN HANSEN: Finally, somebody asked me a question I might have something to note something about. I think that the rationale was that as you looked at all the different governmental subdivisions, as you were trying to deal with the management of natural resources, is that the natural resources really didn't care much for political boundaries. And that as management units, there was a need to try to come up with a more comprehensive and holistic way in order to manage natural resources. So when I started on the Lower Elkhorn NRD and all of the former directors that were there before from all the different governmental subdivision, there were I believe 67 or 69 directors. And so you had all or parts of 15 counties. And yet they were trying to deal with in their own incremental way on political boundaries the needs of the natural resource base. So the logic was to set up boundaries based on hydrologic...on a hydrologic basis that you could deal with in a more comprehensive way. And so as you looked at the basins then, some were larger, some were smaller. And the creation of the NRDs was about creating manageable sections of the basis based on the taxing base, the geography, and the hydrology of the area. And so there had to be some judgments made about what was a reasonable amount of area to cover in order to have a reasonable sized district. Coming from the Elkhorn, if you were to have the Upper and the Lower Elkhorn together, the water quality issues and the particulars of the Upper Elkhorn are very distinct and different from the Lower Elkhorn for the most part just based on the sands and the depth of the water and all of those different kinds of issues. And so in the Lower Elkhorn, in the bottom end we have the highest average annual flood damage in the state in that basin. So very different than the upper end. So I think that the creation of what was originally 24 and then trimmed down to 23 NRDs was about as good of a job as you could do of coming up with reasonable sized management districts based on the natural resource base that we were all trying to kind of bring together all of those different responsibilities and do it in a more holistic kind of way. [LB1005]

SENATOR HAAR: So I've asked you the one question where you knew something. And so I'll stop. [LB1005]

JOHN HANSEN: Sooner or later, Senator Haar, you were...given all the questions you've asked me down through the years, you were bound to get lucky at least once. [LB1005]

SENATOR CARLSON: Okay. Thank you. Any other questions? Seeing none. [LB1005]

JOHN HANSEN: Senator Carlson, if I could just make one additional comment which I

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forgot to make in my original comment, and that is that the pressures that are brought to bear on the three NRDs relative to the management necessary to comply with the Republican River Compact is that...based on my time on the compact study, is that we forget that this was not a state compact. It was a multistate federal compact and that we were responding to...in a tremendously damaging and a life-taking flood. And that they used the vehicle that they had that was available to them at the time. But the folks who signed on the line and the folks that negotiated the compact was the state of Nebraska. And it was the full faith and authority of the state of Nebraska that signed on the line. And at that time they did not have provisions in compacts that made it possible to make adjustments or updates in compacts. And because it takes the authority...the approval of all three state legislatures and the United States Congress in order to change the compact, we are tied to and liable for compliance in one of the most unreasonable, inflexible legal agreements that you could possibly imagine. And it's put enormous pressure on those NRDs, and just the hydrology and the geology of that area in that river basin, very different, very unique. And it is, I think, problematic based on the relationship between ground and surface water. And while we point the finger at those three NRDs, it's not their fault it doesn't rain. And it's not necessarily their fault that it doesn't all run off. We do a better job of conserving the water. More of it stays where it should, which is a good thing. We've done great things as far as kind of cleaning out the basin itself. But we still haven't addressed the fact that the design of the primary water-holding facility for compliance in that compact is many, many, many years over design life and is no longer nearly as functional as it should be. [LB1005]

SENATOR CARLSON: Okay. Yeah, thank you. Senator Kolowski. [LB1005]

SENATOR KOLOWSKI: Thank you, sir. John, have you...what kind of work have you done with the invasive species and phragmites and anything else that...have you really cleared those out? Is that helping with the water flow? [LB1005]

JOHN HANSEN: The efforts that Senator Carlson made and that the Legislature made I think have been very helpful. And we were so forward thinking that we supported his efforts and the Legislature's efforts to do that. That was a good idea. That was a commonsense thing that we could do to try to help improve and take advantage of the amount of runoff that we were actually getting. [LB1005]

SENATOR KOLOWSKI: Are they being done...is the same being done up river and down river from the three NRDs? [LB1005]

JOHN HANSEN: There are others who could comment more specifically to that. [LB1005]

SENATOR KOLOWSKI: So... [LB1005]

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JOHN HANSEN: My sense is that we've done a fairly good job in the whole basin. [LB1005]

SENATOR KOLOWSKI: Thank you. [LB1005]

JOHN HANSEN: But others may know more. [LB1005]

SENATOR KOLOWSKI: Thank you. [LB1005]

SENATOR CARLSON: Senator Smith. [LB1005]

SENATOR SMITH: Thank you, Mr. Chair. Mr. Hansen, so kind of just recapping, you feel as if a centralized statewide planning program could get in the way of reflecting and representing some of the local NRD interests, in general. But what about this basinwide, expanding it to the basinwide planning process, would that be going too far as well? Or do you think that still would be...keep it regional? [LB1005]

JOHN HANSEN: I feel badly for each of the three NRDs who have been tasked with trying to meet the state's compliance in this compact. And so I, just me, I see the advantages of the NRDs doing more things together and working together. And like it or not, they're in harm's way. And it benefits all of them I think to work together. [LB1005]

SENATOR SMITH: So keeping the planning process at the NRD level and encouraging cooperation among them? [LB1005]

JOHN HANSEN: Yes, I think that's a good summary. [LB1005]

SENATOR SMITH: Okay. Thank you. [LB1005]

SENATOR CARLSON: Okay. Thank you, John, for your testimony. [LB1005]

JOHN HANSEN: Thank you, Mr. Chairman and members of the committee. [LB1005]

SENATOR CARLSON: (Exhibits 24-28) Any others in opposition? Anyone in the neutral position? We do have letters of opposition from Steven Smith from North Platte Valley Water Association; Jay Rempe, Nebraska Farm Bureau; Jeff Rudolph, Nebraska Cattlemen; Lyndon Vogt, Central Platte NRD; and John Berge, North Platte NRD. Okay, neutral testimony. How many do we have in the neutral testimony? Okay. Steve, you're it. [LB1005]

STEVE HENRY: Senator Carlson, members of the Natural Resources Committee, my name is Steve Henry, S-t-e-v-e H-e-n-r-y. At the beginning of this testimony, Senator Avery commented that many of the people in the group were towards the back. And I

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have to confess that I started out the day with my back against the wall. And yes, I am indeed a Lutheran. But also as a director of the Frenchman-Cambridge Irrigation District, I'm used to having my back against the wall. So with that, I would like to begin my testimony in a neutral position. But I would like to illustrate the need for something like this bill, if not this bill. And I would like you to imagine a state senator, you perhaps, that with a well-intentioned, controversial, and complicated bill with perhaps a million dollar price tag. And I realize that I can't ask this committee any questions. So I will pose this query rhetorically. Imagine you had this bill with a million dollar price tag. Can you imagine the passage of this bill without having a public hearing? Now instead of having a million dollar price tag, let's imagine that you had a bill with \$86 million to \$125 million price tag. Can you imagine passing this without a public hearing? What I'm suggesting is this is not a hypothetical example. What has actually occurred is this situation with the N-CORPE project. The N-CORPE committed \$86 million to \$125 million of occupation tax money without a public hearing. There should be no surprise of the inevitable backlash against one-sided decisions such as this made behind closed doors. I testify in the neutral position on this bill. I'm in favor of the concept but am skeptical of some of the components and the makeup of the board. But if not this bill, I would encourage you to look at something like this that will provide a suitable mechanism to implement...to involve all the stakeholders, to avoid N-CORPE-like decisions so that we may cooperatively channel our water management efforts. Nebraskans deserve open-door decisions that involve all stakeholders. And I would welcome any questions, particularly the lack of cooperation between surface water and NRDs. [LB1005]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions of Steve? Senator Johnson. [LB1005]

SENATOR JOHNSON: Thank you. I'll go back to maybe one of my early questions on this one. Do you think with the new commission, with the concept here, do you think it can be worked into that and accomplished? [LB1005]

STEVE HENRY: This is why I'm testifying in the neutral. I think there's many mechanisms that could be utilized to resolve conflicts. But there has to be something that brings all stakeholders in the decision-making process. If we don't do it on the front side, then remedial action on the backside is never very effective. [LB1005]

SENATOR JOHNSON: Thank you. [LB1005]

SENATOR CARLSON: Okay. Any other questions? Seeing none, thank you, Steve. Any other testifiers in a neutral position? Seeing none, Senator Avery, you're recognized to close on LB1005. [LB1005]

SENATOR AVERY: I thought this hour would never arrive. You have witnessed a redefense of the status quo from almost every testifier with some notable exceptions,

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think things are just fine. I'm going to just quote; I took notes. It works. We're getting there, excellent job. We're in a lot better shape than other states. Coordination? Yeah, yeah, it works fine at the local level but nowhere else. I really wonder why all of the people who came from the NRDs to oppose this bill with the exception of Glenn Johnson come from the upper reaches of their basins. Think about that. They come from the upper reaches of their basins. Now why do you think that happened? Could it be that they are taking all the water they need before it gets down the line to others in the queue? And they're quite happy. We heard support for this bill from people in the middle and lower areas of at least the Republican Basin. It's...we have a system that is set up in such a way that it encourages self-interest at the expense of the public good. And that is not a good way to make policy in this state. In fact, it's a very bad way. There were some comments about the Water Review Board. And it's interesting that we would hear about the Water Review Board because we've never used it and very few people ever talk about it or very few people even know it exists. And there was talk about the Water Review Board being used to resolve disputes among NRDs. That's not why it was set up. It was set up to resolve disputes between DNR and NRDs, not between and among NRDs. And by the way, if this board is so valuable, why don't we use it? In part, the reason we don't use it is it pits neighbor against neighbor. And we don't like to do things like that in this state and that's good. We are fair-minded people. We want to get along with our neighbors. We don't want to be in a dog-eat-dog fight. And that is a good thing. But that's what the review board would have to do. The comment about cooperation, I thought Mr. Jenkins made some good points. But he limits his support for cooperation to perhaps basinwide cooperation. Well, that's improvement over where we are now, but it doesn't go all the way. If it works in a basin, why wouldn't it work statewide? And we cannot, it seems to me, logically make the argument that, well, yeah, it might work in a river basin but it won't work anywhere else. I heard also that LB1005 is a solution looking for a problem. Really? What have we been doing for the last eight years I've been in this Legislature but talk about water as a problem? What have we been doing in this state for more than 40 years but try to work in the management of water use as a problem? But one of the testifiers talked about, this is a solution in search of a problem. Well, we've got a problem, and you don't have to search for it. It's right there. And a good part of the work that you do in this committee is focused on that problem. All I'm trying to do is to provide some help in getting us toward a solution. Mr. Barels...actually before he sat down, he wound up endorsing the bill as it appears in the amendment. And I apologize to those who didn't get a chance to see the amendment. I think if Mr. Barels were to read the amendment, he might actually say, yeah, this is not a bad idea. Let me end by making the most important point. We have a compelling state interest in wise management of our water. And I would hope that this proposal would advance that debate. And I invite you to seriously consider doing something with this other than IPP. (Laugh) Thank you. [LB1005]

SENATOR CARLSON: All right. Thank you, Senator Avery. Senator Kolowski. [LB1005]

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SENATOR KOLOWSKI: Senator Carlson, thank you very much. Senator Avery, I can't help but think of an analogy. As we sat here last night until 7:30, you in this chair, myself over there, and Senator Haar with a very late day in the Education Committee, so many things are analogous to me right now, exactly what you're talking about. We heard testimony yesterday of protectionism and people talking about, we don't have a problem, we do have a problem, back and forth on all those kind of situations as we're hearing today. And it was almost like *deja vu* all over again when I think about it because local control with sustainability for water in our state is a combination of words I think that have to come together. And in education, local control with state accountability is also a growing thing that we'll have more and more of as we analyze where we are and make decisions concerning educational policy in this state. So I find that I'm on the same track and all the time that we spent on yesterday and the time today and the same kind of issues and the same kind of directions with the same kind of language. And I find that kind of amazing but not surprising. [LB1005]

SENATOR AVERY: We've been there before. [LB1005]

SENATOR KOLOWSKI: Yes, we have. But I thought I'd...I just wanted to share that from the perspective of the time we've spent. [LB1005]

SENATOR AVERY: Well, one thing I have not addressed to this committee is the amount of work that I put into this over more than one year. I've met with a number of people who know something about water, know a lot about water. And it's been percolating my mind and in my interests for at least three years. And I finally decided after I found a glimmer of hope by talking to some people out in the McCook that they were interested in something like this. And I thought, well, maybe I won't be the only one that's willing to look at changing the way we do things. And that's why I decided to come forward with this bill. I don't have enough time perhaps left in my tenure in this office to do the job on this bill that it needs, but at least we can start the conversation here. And maybe you can find a way to incorporate this, at least the water plan, into some of the other things you're doing. [LB1005]

SENATOR CARLSON: Okay. Any other questions? Seeing none, thank you, Senator Avery. [LB1005]

SENATOR AVERY: Thank you. [LB1005]

SENATOR CARLSON: With that, we'll close the hearing on LB1005 and thank all of you for coming today. [LB1005]