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Natural Resources Committee
March 18, 2014

[LB1074]

The Committee on Natural Resources met at 11:30 a.m. on Tuesday, March 18, 2014, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on AM2360 to LB1074. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Rick Kolowski; Ken Schilz; and Jim Smith. Senators absent: None.

SENATOR CARLSON: (Recorder malfunction)...Chairperson of the committee. Committee members to my far left is Senator Rick Kolowski from Omaha, District 31; next to him, Senator Ken Haar from Malcolm, District 21; Senator Jim Smith from Papillion, District 14; Senator Ken Schilz from Ogallala, District 47; and Laurie Lage, our legal counsel is over on the telephone over there that will be to my immediate left. To my far right is Barb Koehlmoos, our committee clerk; next to her is Senator Lydia Brasch from Bancroft, District 16, and she's also the Vice Chair of the committee; then Senator Jerry Johnson from Wahoo, District 23; and Senator Annette Dubas from Fullerton, District 34. And today, of course, we're having the hearing on AM2360 to LB1074. I've indicated if you are going to testify, please pick up a green sheet and have that filled out when you come forward, give it to Barb over there in the box next to her. And then there shouldn't be any adjustment necessary on the microphone. Just take your seat at the chair. We are going to limit time today because of the number of people that have come to testify and so it will be three minutes. And after you've indicated your name and spell it, the green light will come on for two minutes, then the yellow light for a minute, then when the red light comes on, if I don't think you see it I'll ask you to stop your testimony. We want to have as many people able to talk today as possible. If you don't choose to testify, you can submit comments in writing and they'll be read into the official record. If you do have handouts, please have 12 of them so that they can be delivered to the members of the committee. We don't use any electronics here in the committee, so if you've got cell phones, either put them on vibrate or silence or turn them off and so that we don't have the hearing interrupted at any time. We don't have any displays of support or opposition to a bill and we've never had a problem with that. I don't think that we would have a problem today. So I've talked about the light system and we are going to use it. Now, so I still get an idea of how we're going to use these next two hours for the amendment to the bill, how many of you are intending to testify as a proponent? Okay. How many as opponents? All right. How many in the neutral position? Okay. So we've got people in each category. And I'm going to introduce Senator Lathrop and allow him to open on AM2360 in just a minute, but of course we've already had a hearing on LB1074 and we've discussed that bill in committee. And it was the committee's feeling that the amendment, AM2360, is enough different from the original bill that it warranted another hearing, and that's why we're having a hearing today. So with that, Senator Lathrop, welcome to the committee and you're recognized to open.

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SENATOR LATHROP: (Exhibit 1) Thank you, Chairman Carlson, members of the Natural Resources Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent District 12 in the Legislature and I'm here today to introduce the amendment, AM2360, to LB1074. And maybe I can begin with making this comment. To prepare for the introduction of LB1074 and this committee amendment...or this amendment, AM2360, I have reviewed task force reports going back ten years. I've reviewed water funding reports. I've reviewed the report of the Special Master and the summary of funding and tax measures over the last ten years where the Legislature has appropriated General Funds and appropriated funds from various cash funds for water sustainability projects. And I'm struck by the good intentions of those who have worked on water issues over the last 20 years, and without exception, almost every report concludes that we need to stop depletions of the aquifer and get to sustainable. Sustainability invariably is the theme and the conclusion of each one of these reports. This year I believe we have a unique opportunity to address sustainability, and the question is whether we have the will to do what must be done or will we simply appropriate dollars for water sustainability and call it good. If we're serious about sustainability, we will pass LB1098 that deals with the funding and LB1074 which addresses sustainability. The two will provide a comprehensive approach to sustainability, in my judgment. And you're all familiar with LB1098 so let me introduce, once again, LB1074 and AM2360. And before I do that, let me make this observation. AM2360 does not require anything more than what the various task forces have called for in the past. The Water Funding Task Force that did its work this summer had in its conclusions the following goal: protect 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 IMPs. The strategic plan includes this tenet: Encourage the development of integrated management plans for all natural resources districts and that relies on IMPs and groundwater management plans to guide Nebraska to water sustainability within a specific time frame. That's a strategy of the plan to get to water sustainability in a specific time frame. And the goals for appropriating money, we've established a hierarchy. The second of the criteria is as follows. The extent to which the PPA, which is program, project, and activity, contributes to the goals of water sustainability for the state of Nebraska by protecting the ability of future generations to meet their needs, including the following: increase aquifer recharge, reducing aquifer depletion, and increasing streamflow. That's from the task force that met this summer and you're...obviously, most of you if not all of you served on that. There was another task force that issued a report just two years ago, not even two years ago, the Republican River Basin Water Sustainability Task Force. And I know some of you were members of that. That task force made certain recommendations as well, and that's worth observing before I introduce my amendment. The task force recommends that consideration be given to amending statutes governing groundwater management plans to require NRDs to identify water sustainability goals that address and ultimately stop aquifer declines. AM2360 does just that. AM2360 would provide that a basinwide plan be developed within three years from the date of the act by the relevant natural

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resources districts and the Department of Natural Resources district (sic) for every river basin in Nebraska. It would require clear goals and objectives, with the purpose of sustaining a balance between water uses and water supplies, ensuring permitted uses of hydrologically connected water will be sustained to the greatest extent possible, and ensuring compact compliance; that the goals and objectives be met within 30 years, and if not met, authorize the Department of Natural Resources to take over management of the basin to schedule, measure progress towards the goals and objectives; a consultation and collaborative process with official participants and other stakeholders in the plan's development; and invocation of the interrelated Water Review Board if the department or the affected NRDs conclude that an agreement on the plan cannot be reached; and technical reviews every five years by the Department of Natural Resources and the NRDs to determine whether the modifications to the plan are needed in order to meet the goals and objectives; and finally, a public hearing process for adoption of the plan and before subsequent modifications. AM2360 does not add or change definitions of any of the appropriated appropriation statuses. It doesn't negate any work of NRDs that already have done...has already done on an integrated management plan or multibasin plan as long as the plan is consistent with the basinwide plan. It does not negate any work NRDs have already done on the basinwide plan, nor does it remove final authority for any plan approval from the department or the NRDs. That's what the amendment does. In very simple terms, it requires that every river basin, through a basinwide plan, get to sustainable within 30 years. I am...I need to make one more comment before I turn it over to the Chair. In the amendment, on page 11, line 18, we've indicated that the basinwide plan shall have clear goals and objectives, and (ii) ensure that permitted uses of the hydrologically connected surface water and groundwater in the basin, subbasin, or reach will be sustained to the greatest extent possible. The use of the term "permitted" has apparently been interpreted by some critics narrowly as requiring that permitted uses, as in I have a permit, have some priority. The use of the term was synonymous with allowed or, in a broader sense, permissive and not intended to give some priority to those who hold a permit. And I think that will address certainly some of the predictions of dire problems resulting from this amendment because I believe that that's the...that's an interpretation that is used to cause concern among the NRDs with respect to how water will be managed in their basin going forward. And with that, I'll be happy to answer any questions. [LB1074]

SENATOR CARLSON: Okay. Thank you, Senator Lathrop. Any questions of the committee? Part of the reason there aren't questions right now is because we want to hear as many testifiers as we can, and then you'll have your closing. [LB1074]

SENATOR LATHROP: And I certainly want to close after they're done testifying. [LB1074]

SENATOR CARLSON: Okay. Okay. All right, thank you, Senator Lathrop. We're ready now to hear proponents. And those of you that raised your hand, let somebody step

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forward and then the rest of you, you can get in the on-deck area there so that we can move right along. So proponents for AM2360. And as Mike comes forward, others of you please come up and take a chair here up front. And, Mike, as I indicated, we'll wait for you to say your name and spell it, and then the green light comes on for two minutes and then the yellow light for one. Welcome. [LB1074]

MIKE DELKA: (Exhibit 2) Honorable Chairman, members of the Natural Resources Committee, my name is Mike Delka, M-i-k-e D-e-l-k-a, and I'm the manager of the Bostwick Irrigation District in Nebraska. The district believes the state has many challenges in water management, and LB1074 and its amendment will assist in addressing some of those challenges. We've heard opposition to the bill that feel that this is a threat to local control. Although the state delegates some responsibilities and authorities for control of the state's water, it is never the intent to be subservient to a subdivision. A scientific evaluation and coordinated management offer a stronger potential to maximize the benefits of local control and give innovative long-term solutions with a holistic approach. This bill is for knowledgeable water management that should minimize the socioeconomic impacts to our communities for the present and the future. This is not groundwater or surface water, but is Nebraska water. At a recent NRD public information meeting, the manager was asked if the NRD has taken any action on behalf of the private surface irrigators who pay taxes to the NRD and are impacted by being shut off from irrigation. His answer was no. Equal taxation deserves equal representation and no water users should be asked to sacrifice more than his neighbor. Thank you for the opportunity to comment and I'll be glad to answer any questions. [LB1074]

SENATOR CARLSON: Okay, Mike, thank you for your testimony. Any questions of the committee? And if not, it's not because we're not interested. [LB1074]

MIKE DELKA: No. [LB1074]

SENATOR CARLSON: We're trying to let as many people testify as possible. Thank you, Mike. [LB1074]

MIKE DELKA: I tried to keep it short. Thank you. [LB1074]

SENATOR CARLSON: All right. Next testifier. Welcome. [LB1074]

JAY SCHILLING: (Exhibit 3) Senator Carlson and the rest of the members, thank you for this opportunity. I know this is a complex issue. As I heard recently, if you get three farmers in a room, you're going to get four different opinions, so. My name is Jay Schilling, S-c-h-i-l-l-i-n-g. I'm from McCook, Nebraska, and my testimony is in support of the amendment, AM2360, to LB1074. With over 9 million irrigated acres, this amendment is going to be crucial for management and sustainability of the water future

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for the state of Nebraska. I would like to emphasize the need for water management and balance with regard to livestock and domestic use. Declining water tables in our area have made many people lower their stock wells. In rangeland, they're as low as they can go. If we don't do some management actions, we endanger taking the water away from this rangeland. And without water, it's basically worthless. As far as the domestic side of it, where I live, our groundwater depends heavily on recharge from our irrigation canal. These canals have been charged since the 1950s, other than six years in the 2000s. And during that six years, a small housing division south of McCook, all their wells went dry. They were fortunate enough that municipal water let them tie in. But I guess, yes, I am worried about my surface water for irrigation, but if we...if our domestic supply is threatened, our operation that we've built up over 25 years will be useless. We calve there, we background calves. We need water for our enterprise. And I think that's one thing that we need to seriously consider in this state when we talk about a balance. We also have millions of dollars in our area spent on augmentation projects, and I know people are worried about the future of those. I think these augmentation projects, if you pump them annually at the same rate that was allowed to be used on the field with a growing crop, they could be a positive benefit through a basinwide plan. I think you could use them every year and basically you could front-load the system that way so that we could be more proactive than reactive in our basin. I see this bill as being a positive for many other parts of the state because they can develop a plan to get ahead of the situation before it happens, and a lot of them have already developed their plans and there will be no change. So we won't...really, they will have to develop a plan, but they won't change their management action from what they're doing now. In closing, I urge this committee to advance this amendment to the...or bill to the Legislature. I truly believe the future of irrigation and all other water uses in our state depends on using science and best methodologies to develop plans to ensure sustainability. We can't continue blindly forward, reacting to these situations after they happen. We need a plan to balance and sustain our supply. And I thank you for your time. [LB1074]

SENATOR CARLSON: Okay, thank you, Jay. Any questions of Jay? Okay, seeing none, thank you for your testimony. Next proponent. Welcome, Claude. [LB1074]

CLAUDE CAPPEL: (Exhibit 4) Welcome. Thank you. My name is Claude Cappel, C-l-a-u-d-e C-a-p-p-e-l. Senator Carlson, members of the Natural Resources Committee, basically, Nebraska only has two sources of new water--from the North Platte and South Platte River, and rain. Where the Republican enters Nebraska in the Upper Republican western boundary, its elevation is approximately 200 feet higher than where the Platte leaves the Upper Republican. When it leaves the Middle Republican just east of Cozad, the Platte River is over 250 feet higher than the Republican. In 1978, I received a handout, plus initial ones done in '76 and '95, they're studies, from an NRD manager just prior to leaving, saying you're going to need these someday. They pretty much correlate. Underground water moves in the direction of the land slope. On page

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73 of the handout, one of the handouts that's in this attached stuff, there were 38,000 acre-feet of underground flow from the Upper Republican to the Middle Republican. It's my theory that when the Platte goes dry in the summer, depending on rainfall/snowpack is neutral or less, because of the underground aquifer which the Platte provides is moving, in the aquifer, in the slope of the elevation from south to southeast. The Republican has no underground water going south of it, and part on page 50 it shows a bedrock bridge on the north side of the Upper Republican part of the river. In 1982 the Legislature gave the NRDs the authority to control groundwater. In 2004, LB962 recognized all water. But in 2007 the Legislature passed LB702, which took protection of surface water away and allowed groundwater for economic prosperity to deplete the aquifer. There's no requirement for just compensation for those who are losing what was once considered a share in shortage or a property right. If this can happen, what is to stop the taking of other rights, like land and homes, by passing another statute to take away these property rights? The Middle Republican purchased only surface water and groundwater from a small private irrigation company in 2011, a document. That, plus a proportional increase in the value of the irrigated property, should be compensated for. There was a taking of a property right of surface water irrigation in irrigation districts that have to pay a tax, operation and maintenance for that taking, and the response area for that taking. I believe that the taking of the property for a state or federal purpose needs to be justly compensated. Pumping the aquifer till it's dry, till it's depleted should not be an option. If this continues, areas like McCook and others will be devastated financially. Pumping groundwater to meet compact requirements should not be an option because it is depleting the water in the aquifer. The Platte is and all rivers will come to the same fate. Please read these handout verifications. Thank you. [LB1074]

SENATOR CARLSON: Okay, thank you, Claude, for your testimony and for bringing this information in. I appreciate what you do there. Any questions of Claude? Okay, thank you for your testimony. [LB1074]

CLAUDE CAPPEL: Thank you. [LB1074]

SENATOR CARLSON: Next proponent. Welcome. [LB1074]

STEVEN CAPPEL: (Exhibit 5) Senator Carlson, Natural Resources District (sic), my name is Steven Cappel, S-t-e-v-e-n C-a-p-p-e-l. I am a director of the Middle Republican NRD, but I am here to testify on my own behalf and not that of the Middle Republican NRD. I'm here to testify in support of LB1074. Having a whole basin joint MIP is a better system than what we have now, which is discriminatory, costly, and unsustainable. LB1074 should give all water users and uses a voice in the discussion process of creating a more equitable distribution of water and the burdens of shortfall. I do not believe this bill creates any undue burden on any river basins in the state of Nebraska, and we already have one basin designated as overappropriated and, to my

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knowledge, it never created any economic devastation. It does not take any local control away from NRDs unless they choose to ignore the problems and do nothing. The over 30 years to get the problem solved is more than enough time. In the case of the Republican River Basin, another 30 years it will be too late. Along with my testimony, I have included a map from a current USGA study of changes in the Ogallala Aquifer. In this study, they are saying Nebraska's share of the Ogallala has only dropped 1 percent, leaving the perception that everything is fine for Nebraska. But when I look at this map, I see a totally different story. I see that Nebraska, there are four counties that make up most of all the declines. Three of these four are in the Republican River Basin. These four counties make up probably less than 15 percent of the aquifer in Nebraska and have overcome all the positive aquifer levels and then brought the whole state down 1 percent. That can only mean the declines are big in these areas. And under the current system they are only getting bigger. This concept of painting a rosy picture to hide the truth and the facts is why the Republican River is in such jeopardy. And it is my hope that LB1074 will create a more open, factual dialogue in getting the river sustainable for future generations to come. Thank you for your time. [LB1074]

SENATOR CARLSON: Okay, thank you, Steve. Any questions of Steve? Okay, thank you. Next testifier. Any more proponents? [LB1074]

DUANE HOVORKA: Good morning. [LB1074]

SENATOR CARLSON: Welcome, Duane. [LB1074]

DUANE HOVORKA: (Exhibit 6) My name is Duane, D-u-a-n-e, Hovorka, H-o-v-o-r-k-a. I'm here on behalf of the Nebraska Wildlife Federation in support of AM2360 to LB1074. We think it would be a vital next step to provide better water resource planning throughout the state, not just in watersheds that are already fully or overappropriated. LB962 a decade ago helped modernize the water law by recognizing that what we've been doing in the past to regulate groundwater and surface water separately wasn't working. So it required NRD-level and watershed-level provisions to manage the conflict in those watersheds where we had reached fully or overappropriated status; included broad goals and objectives maintaining economic viability, social, environmental health, safety, and the welfare of the river basin. Unfortunately, it's easier and more effective to do that kind of planning before we get to the point where we've got all the water appropriated and where we still have some excess in the river so we can...we have more flexibility at that point. What this amendment does by requiring watersheds around the state to all participate in planning, is it gives us a chance to do that planning in those watersheds before we get to the crisis stage, before we get to fully appropriated. So we think that would be a terrific improvement over the current law to require that we plan throughout the state, not just where we've already recognized that we have a problem. There were a couple of shortcomings in LB962, probably more than a couple, but a couple of them carried over into the current law and the current amendments. And so

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with apologies to Senator Lathrop for not warning him, we did have a couple suggestions on the amendment. One would be to recognize that the Game and Parks Commission does have some instream flow water rights in the Central and Lower Platte and also on Long Pine Creek. And so it only makes sense that they also be a named stakeholder, along with the irrigation districts and the other folks who have water rights, as these plans are being developed, that they be at the table. And second is to recognize that there are beneficial uses that don't have permits and rights, things like recharge of groundwater wells, irrigation wells, and municipal wells, instream flows that benefit fish and wildlife, flows that...groundwater and surface water flows that help recharge and protect wetlands. Those don't have permits but they are beneficial uses. We think they should be considered in these plans. We don't advocate that they should automatically be protected, but we think as you're developing a plan to protect and sustain water uses in the future, you ought to look not just at the stuff with rights and permits in place, but also look to see what you can do for those other water beneficial uses. And so we've got suggested some amendments I can hand out. And I'd be...that's my testimony. I'd be glad to take questions. [LB1074]

SENATOR CARLSON: Okay, thank you, Duane. Any questions of the committee? Seeing none, thank you. And we'll go to the next testifier. Welcome, Brad. [LB1074]

BRAD EDGERTON: (Exhibit 7) Good morning, Senator Carlson and members of the committee. My name is Brad Edgerton, B-r-a-d E-d-g-e-r-t-o-n. I'm here on behalf of the Frenchman-Cambridge Irrigation District and we're here in support of the amendment to LB1074. We support this because we believe this bill, as amended, is a move in the right direction towards ensuring that we have water for agriculture long into the future. And that's really the bottom line here today. You know, we had some concerns about the 30-year period, but we do like the fact that there's incremental checks in the bill where we can see if we're on track to achieving the final goal of becoming...basically having our water in balance in the basin in the future. So, you know, we think this is an important bill and it will, at least in the Republican River Basin, I think it will put us on track to where all the parties can get together and work together and resolve these issues that we need to. We know that compliance is out there. We have to be in compliance. And really, what we're deciding to do is how do we divide up Nebraska's 49 percent of the water supply so that everybody in the basin has an opportunity to make a living and survive in that basin. So with that, I thank you for your time here today and taking time to have this special hearing for this legislation. Thank you. [LB1074]

SENATOR CARLSON: Okay, thank you, Brad. Questions? Seeing none, thank you. Next proponent. Welcome. [LB1074]

LEN SCHROPFER: Thank you. Good afternoon, Chairman Carlson and members of the Natural Resources Committee. My name is Len Schropfer, L-e-n S-c-h-r-o-p-f-e-r. Senator Carlson and some of you have heard this before. I'm a dryland farmer in

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Fillmore County. I'm down to five head of cattle now but many of us are seeing our wells go dry. I'm getting the advice I must drill our well deeper if I'm going to water the cattle. And I would like to say, and some of you have heard this before, I do have relatives in the well drilling business, both a nephew and a grandnephew, with Williams Drilling. The grandnephew just got his license to drill a well. He can do it all by himself now. He's very proud of it. But there are limits. And I would like to also say I got in on the Governor's call-in yesterday, his monthly call-in show. I brought this up with him. He didn't know about this hearing and he, as Mr. Foley did on a phone hookup a few days earlier, you know, praised the fact that irrigation has made Nebraska rich, it's our backbone and all that. And I agree with all that, but obviously there are limits. And I'm out there in Fillmore County. I think all of you have seen the proliferation of center pivots and it's like everybody is dreading some kind of moratorium so we better drill another well or two, better put in another. And those are big investments and they're counting on finally, if there's shutoff, somebody has got to buy them out. Those are millions and millions and millions of dollars out there. Somebody is going to ask to be bought out. The time is now. Thirty years is too long. Maybe it's because I'm so old now. I've been at this a long time. But if anything, I would say try to tighten it up. You're on the right track; Senator Lathrop is certainly on the right track. But don't extend this forever. Thank you very much. [LB1074]

SENATOR CARLSON: (Exhibits 8, 9, 10, and 11) All right. Thank you for your testimony. Any questions? Seeing none, thank you. How many more proponents? All right. We have letters in support from Clint Johannes; from Mace Hack of The Nature Conservancy; from Lee Orton, Nebraska State Irrigation Association; and Ken Winston, Nebraska Sierra Club. Now we'll go to opponents, and let's have the first one step up and then others, please be ready. Welcome, Don. [LB1074]

DON BLANKENAU: (Exhibit 12) Good afternoon, Mr. Chairman, members of the committee. My name is Don Blankenau, my name is spelled D-o-n B-l-a-n-k-e-n-a-u. I'm an attorney from Lincoln and I'm appearing today on behalf of the Nebraska Association of Resources Districts, or NARD. I've had an opportunity since my prior testimony to do a little background as to why this bill is being pursued, and I think it's based on a false premise and that false premise is that Nebraska's existing law will result in the depletion of Nebraska's water, similar to what was experienced in Texas and Oklahoma. That simply can't happen because this body passed LB962 a decade ago. And what that law did was to create, effectively, a status quo, a hydrologic status quo whenever conflicts developed where a basin became fully appropriated. Once that designation occurred, both the state and local officials had to manage water to ensure the status quo of water remained in place. Now what this bill does do is to seek to achieve a balance between uses and demand, and in many instances across the state that's simply impossible, specifically in the Niobrara Basin, where a single water right claims more water than the entire flow of the river, and that water right was granted way back in the 1940s. Since then, over 400 surface water appropriations were granted in that basin and thousands

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of irrigation wells and municipal wells and even golf course wells have gone in. You could retire all of those uses and still not meet that balance mandated by this legislation. Similarly, in the Republican Basin, which seems to be driving much of this bill, if you look at what the hydrologic water supply is, it's determined by the compact. That sets how much water can be consumed. Now historically, surface water users got between two and five times the amount of compact water per acre as groundwater users got. Mandating this balance would require their allocations perhaps to be cut in half to achieve that balance again. And then similarly in the Platte River Basin where instream flow rights were granted, as Mr. Hovorka indicated, those instream flow rights were premised on that water being available only 20 percent of the time. You could shut down virtually every surface water user in the Platte Basin and not still achieve that instream flow number all of the time. And I think that just highlights some of the conflicts that will almost certainly ensue if this bill is advanced. Now NARD has amendments to this legislation. They don't have it available today but they will make it available in the next few days. And I'm told by Mr. Edson that he will transmit those to you as soon as practicable. [LB1074]

SENATOR CARLSON: Okay. All right. Thank you for your testimony. Any questions? Seeing none, thank you. [LB1074]

DON BLANKENAU: Thank you very much. [LB1074]

SENATOR CARLSON: Next proponent and let's have proponents...or opponents. Let's have you ready to go so take the on-deck positions if you would. Welcome. [LB1074]

TERRY JULESGARD: (Exhibit 13) Senator Carlson, members of the Natural Resources Committee, my name is Terry, T-e-r-r-y, Julesgard, J-u-l-e-s-g-a-r-d. I'm general manager at the Lower Niobrara NRD in Butte, and the Lower Niobrara NRD opposes LB1074 with the proposed amendments. We support planning, but this amendment would do more to reverse progress made across the state in integrated water management than to move it forward. On April 1 of this year, the Lower Niobrara NRD voluntary integrated management plan, in accordance with Nebraska Revised Statute 46-715(1)(b) with the department, will go into effect. One would ask why would a district develop an integrated management plan when you're not fully appropriated. The answer is simple: We need to. We know that water is a finite resource and we need to maintain the economic viability in our district. Our plan, our joint integrated management plan, has one overall goal--to ensure that the constituents of the district have water so they can pass their successful farms and ranches on to the next generations. Is our plan perfect or complete? Probably not. This is why we bring the stakeholders from across the district back to the table every year to ensure we continue down the path of sustainability. The Niobrara Basin, five districts have joined together to form the Niobrara Basin Alliance. The group's goal is to keep the line of communications open and develop strategies to benefit all water users, including the recreation users of the

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district. I see this as a first step in a voluntary plan. With what the Lower Niobrara is doing and the work being done at the basin level, we see no need to complicate the process by adding rigid boundaries to work within. The present laws provide everything we need to be sustainable. Page 11, 16 through 21 states that we need to sustain a balance of water uses. As Mr. Blankenau pointed out, that in the Niobrara Basin this would be impossible. We need to have the...if we maintain it at the 1,200 cfs, that's fine; but if we have to meet that 2,500...2,035 cfs, that would be impossible. Even if all water users are shut down, we would still be short 130 cfs during the irrigation season, and another 835 cfs during the rest of the year. So we'd have to develop a project...an augmentation project larger than N-CORPE to provide those flows. This is because the basin has been administered with too much water. In our opinion, if the plan is to sustain the balance at historic or average flows, then differential language is going to be needed to adjudicate the water rights granted by the state of Nebraska at realistic numbers in every basin. If the plan is to sustain the water rights as the amendment reads now, then we don't need to wait 30 years, because that goal can never be attained. Thank you for your time. [LB1074]

SENATOR CARLSON: Okay. All right. Thank you, Terry. Thank you for your testimony. Welcome, Mike. [LB1074]

MIKE MURPHY: (Exhibit 14) Welcome, Senator Carlson and members of the Resources Committee. My name is Mike Murphy, M-i-k-e M-u-r-p-h-y, and I represent the Middle Niobrara Natural Resources District. We're going to try to do this in an orderly fashion within the basins. In 1996, the Middle Niobrara Natural Resources District approved its groundwater management plan to protect its water resources, specifically, water quantity and quality. Since that time, the district has continuously sampled dedicated monitoring, domestic, and irrigation wells for both water quality and quantity in spring and fall. The district has conducted additional sampling efforts when and where needed. Four years after the passing of LB962, the lower portion of the Niobrara Basin was determined fully appropriated in 2008. The district began down the path of integrated management planning. Since 2008, Middle Niobrara and Lower Niobrara NRDs worked successfully to overturn the department fully appropriated status on the lower portion of the Niobrara River Basin with sound science and data. In June of 2011, and the reversal of the department's fully appropriated determination, Middle Niobrara has developed and implemented rules to be consistent with LB483. The Middle Niobrara has limited new irrigation development to 2,500 acres per year, placed a primary emphasis on streamflow depletion to limit direct impacts to the Niobrara River. We require water flow meters on all new irrigation systems, have added the new wells to our sampling efforts for both water quality and quantity, and have orchestrated communications with key agencies to develop long-range integrated management of the entire Niobrara River Basin. This has all had to be done simply because of one water right on the Niobrara River, a nonconsumptive right for 2,035 cfs at Spencer Dam for hydropower generation. In the Niobrara Basin there is simply no way to fulfill NPPD's

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water right at Spencer Dam of 2,035 cfs. I've put some numbers in there and I think Terry touched on them. But ultimately, that's water that you put back in the river for three or four months at the time during the irrigation system, and then you'd go back to what's actually in the river on a day-to-day basis. I've included attached on there the streamflow information for the Niobrara River from the gauging stations as you go west to east, just to show that the Niobrara River is...the Little Box Butte Reservoir is a gaining stream. And even with those gaining water flows in the river, we cannot continue to meet that NPPD demand. Across north-central Nebraska, we average a foot to two-foot increases in our groundwater levels. That's the key to the flow, continuous flow of the Niobrara. If mandatory regulation and management is forced upon this basin, it simply will not be successful. The basin and all those involved will end up failing to meet to the goal of making one downstream surface water right whole. Management will be turned over to the department and we will no longer have any water uses available for the Niobrara Basin. If this is what some of us consider management for sustainability, there's no need to wait 30 years. Thank you for your time. [LB1074]

SENATOR CARLSON: Okay. Thank you, Mike. Next. Welcome, Pat. [LB1074]

PAT O'BRIEN: (Exhibit 15) Thank you. 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 the general manager of the Upper Niobrara White Natural Resources District out of Chadron, Nebraska, here in opposition to AM2360. One of the main concerns that exists with the amendment is the assumption that the NRDs are not currently doing basin planning. There are many collaborations among NRDs and other entities for the purpose of basin planning. For example: Eastern Nebraska Water Resources Assessment is a collaboration of many NRDs and UNL's Conservation and Survey Division; the Lower Platte River Basin Corridor Alliance, a partnership with three NRDs and multiple state agencies; Big Blue River Modeling, with the Big Blue River or the Big Blue NRDs; the COHYST with multiple NRDs, NPPD, Central Nebraska Public Power District; Western Nebraska Water Model, which is the North and South Platte NRD; the Upper Platte Integrated Management Plan; and the Lower Platte Basin group that you may hear about. As Terry touched on, the Niobrara Basin recently formed an alliance with five of the NRDs, the five NRDs within the district, for the purpose of determining the water issues. In the future, we are likely going to engage other entities to determine their needs as well. Given the voluntary action of the NRDs, it seems unnecessary to mandate more planning in the case. The language of the amendment requires a basin plan, but it also has some issues with it. The Department of Natural Resources district is a partner to this and will take over management of it; however, it can fail and then take over management given some of the responsibilities that may be assigned to the department. Also, most NRDs only encompass a portion of a river basin and, therefore, all NRDs must meet the goals. No authority exists for one NRD to force another NRD to take action; however, they can be compromised if the NRD doesn't. Nebraska also does have some unique situations that do require local-level control rather than basinwide

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approaches, for example, the White River and Hat Creek in northwest Nebraska. The area has only 1,200 certified acres and about 12 irrigation wells, yet there are 540 storage and water right permits in the area. It seems very difficult to manage water, surface water and groundwater equitably to make those 540 rights whole. Again, the NRDs have taken voluntary action working with DNR and other entities to establish plans and other mechanisms to manage water through the state. It appears AM2360 is unnecessary. Thank you for your time. [LB1074]

SENATOR CARLSON: Okay. Thank you, Pat. Any questions? Seeing none, thank you for your testimony. Welcome, John. [LB1074]

JOHN C. TURNBULL: (Exhibits 16 and 17) Get caught up on my paperwork. Mr. Chairman and members of the committee, I am John C. Turnbull, the general manager of the Upper Big Blue Natural Resources District, testifying in opposition to LB1074 and this amendment. I'm just going to highlight a few things in this handout. On page 3, beginning in line 9 of the amendment, the current law states that nothing in the integrated management for a fully appropriated river basin shall require a natural resources district to regulate groundwater uses in place at the time of the department's preliminary determination that the river basin is fully appropriated, but a natural resources district may voluntarily adopt such regulations. This language was put in the act precisely to carry out the intent of full appropriation. The basinwide approach, as written, renders fully appropriated meaningless because the required plan is really an overappropriated designation without regard to actual conditions. The data, various investigations and studies being conducted by the NRDs and the Department of Natural Resources in the Blue Basin do not show the need for a full appropriation designation. We like the current law just as it is and strongly feel that the section on page 3 should not be added to or changed. Since 1975 Nebraska statute 46-708 has required NRDs to control groundwater irrigation runoff. The reduction in runoff, as required by state statutes, reduced streamflows. Now with this amendment, the NRDs are going to be required to reduce groundwater irrigation in order to make up for curtailment of irrigation runoff? Which section of law prevails? We don't want to go back to wasting water. We believe that DNR has granted appropriative natural flow rights to 48,000 acres in our district, many of them for reuse pits. A lot of those pits are long gone with the conversion to center pivots. But the water rights still exist. We believe it's time to adjudicate all the surface water rights in the river basins before basinwide plans can be developed. Such a process would clean up the old unused water rights and give us all a better picture of what's really going on. This amendment states that the clear goal of a basinwide plan is to sustain a balance between water users and water supplies. What happened to economic viability, social and environmental health, safety, and welfare of the river basin language that's found in existing statute 46-715 that you can find on page 2, line 19? These factors must be taken into account. Efficiency of water delivery systems also has to be considered, not just available supplies to surface water rights. The total lack of representation of groundwater on basinwide planning is astounding.

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This amendment requires that stakeholders be involved in the drafting of a basinwide plan. Stakeholder input is important, and where possible and practical, their concerns should be taken into account. But to only have stakeholders representing surface water interests is not right. NRDs do not represent the groundwater irrigators any more than DNR represents surface water interests. Both NRDs and DNR are the ones charged with implementing and carrying out the regulations. Where are the groundwater users in this mix, the agribusinesses, and the bankers? Just remember what is perceived is many times different than what is actually happening. I also passed out to you a slide card that was developed at the Water Leaders Academy that your legal counsel and my staff attended, and that gives you I think some information on irrigated acres and on river data across the state, and that ought to be good thing for you to have. [LB1074]

SENATOR CARLSON: Okay. Thank you, John,... [LB1074]

JOHN C. TURNBULL: Uh-huh. [LB1074]

SENATOR CARLSON: ...for your testimony. Thank you. Next opponent. Welcome, Mike. [LB1074]

MIKE ONNEN: (Exhibit 18) Senator Carlson and members of the Natural Resources Committee, I am Mike Onnen, spelled M-i-k-e O-n-n-e-n. I am manager of the Little Blue NRD at Davenport. Although AM2360 to LB1074, as written, is more palatable than the original LB1074, the Little Blue NRD must still convey a position opposed to the bill and the amendments as written. There's a great merit in tracking resource conditions, conducting necessary studies to understand hydrology, the conditions and trends, and implementing policies and rules which assure our water resources are sustainable. The NRDs continue to do that to fulfill their groundwater management responsibilities. And the Little Blue NRD, despite the recent multiple years of drought, our water levels are virtually the same as they were in 1981, which is 30 years ago. The Little Blue NRD does not have significant surface water obligations, and our compact with Kansas has not been a significant concern for the state of Nebraska. A one-size approach to water management is not needed in this state. The Little Blue NRD has an active groundwater management plan. A districtwide hydrogeologic study was completed in 2011. The study deliverables included an aquifer "risk map" which depicts the hydrogeologic conditions which influence well capacity and any potential impacts to other water users as a result of that well development. The district has used this tool extensively over the past 30 months. We are now involved in a comprehensive water quality plan as well. Four years ago, the district developed a dedicated monitoring network of 50 wells, which has provided invaluable information about the effects of pumping during irrigation season. The information has given us a whole new picture of how the water table responds to pumping and to recharge. As a result, the district has been working on additional rule changes this winter to address issues we believe are important to sustaining our waters supply. Key proposed rules include: required flow meters on all

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high capacity wells; annual reporting of all water uses; certification of all irrigated acres and uses; required districtwide operator training and certification in irrigation and also fertilizer management; wider well spacing and additional restrictions in our higher risk areas, which were identified in our study; spacing protection for domestic wells; and additional limitations on transfers. Besides the 124,000 acres of permanent stay currently in place, the district is proposing a permanent stay on an additional 385,000 acres. The public hearing on these rules is this Thursday. The district is implementing the rules reported above based on the local board's understanding of the conditions, limitations, economy, and needs of the people and our resource. They have not been coerced by the state or anyone else to do so. Our objections to LB1074 and the amendment are the mandate for cooperation with DNR and the obvious threat of local control. The bill suggests that this is a cooperative venture; however, DNR can tell us what we're going to do. And if we don't agree and do what they recommend, they'll take our authority away, set the rules, and tell us not only what we will do but how we will do it and when. DNR is a good partner, don't get me wrong, but important aspects of local control would be lost. This summary quotation is taken from DNR's "Annual Fully Appropriated Basin Report" in 2013: "Based on the analysis of the sufficiency of the long-term surface water supply in the Blue River basins, the department has reached a preliminary conclusion that the basins are not fully appropriated. The department has also determined that, based on current information, if no additional legal constraints are imposed on future development of hydrologically connected surface water and groundwater, and reasonable projections are made about the extent and location of future development, this preliminary conclusion would not change to a conclusion that the basin is fully appropriated." If this is true, then why now must DNR direct all water management activities in the Blue River Basin? I would urge the committee to consider killing the amendment and the bill. Thank you. [LB1074]

SENATOR CARLSON: Okay. Thank you, Mike. Thank you for your testimony. No questions. Next. Welcome. [LB1074]

DENNIS SCHUETH: (Exhibit 19) Good morning, Senator Carlson and other committee members. Senators, I do not want to take up much of your time and I will summarize what is happening within the Upper Elkhorn NRD as... [LB1074]

SENATOR CARLSON: We need your name... [LB1074]

DENNIS SCHUETH: Oh. [LB1074]

SENATOR CARLSON: ...and spell it, and then we'll start the clock. [LB1074]

DENNIS SCHUETH: Dennis Schueth, general manager of the Upper Elkhorn NRD, D-e-n-n-i-s, last name spelled S-c-h-u-e-t-h, general manager of the Upper Elkhorn NRD. As I stated, I don't want to take up a whole lot of your time as it relates. I'm going

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to do a summary of how things are happening in the Upper Elkhorn NRD as it relates to ground and surface water, and questions that need to be raised on the amendment to LB1074. The Upper Elkhorn NRD consists of 1.9 million acres, and in 2007 a portion of the Upper Elkhorn NRD was labeled fully appropriated by the Nebraska Department of Natural Resources. The Niobrara River Basin designation encompassed 8 percent of the district. In 2008, 92 percent of the district was preliminarily labeled fully appropriated within the Lower Platte River Basin. Ultimately, both of these designations were reversed by the Nebraska Department of Natural Resources. Senators, LB962, which was passed in 2004, created a tool to sustain and utilize that resource for the betterment of the state of Nebraska. Since 2009, the Upper Elkhorn NRD has updated their groundwater management plan rules and regulations to better manage the water resources and its development. Between 2009 and up through 2012 the Upper Elkhorn NRD has only allowed 2,500 acres annually to be developed under the guidelines of LB483. The board of directors did not allow any new ground irrigated acres to be developed in 2013. Depending on the current weather cycle and spring groundwater data that will be collected over the next couple of weeks will determine if the district will allow additional acres to be developed in 2015. Currently, there are approximately 480,000 to 500,000 acres of groundwater irrigated acres within the district, and the water table today is still higher than the lowest static water readings recorded between 1990 and '92. One would have thought that the lowest static water levels may have occurred in 2013 after the 2012 drought. The Upper Elkhorn NRD does not have any surface water irrigation districts, but we do have individual surface water appropriations that may total 6,000 acres. This number is uncertain because over the years some of them have been converted to groundwater, some are still being actively used, or have not been utilized for more than five years but are still listed as active with DNR. The Upper Elkhorn NRD is currently certifying groundwater irrigated acres, and the state needs to account for their surface water acres as well. By both parties accomplishing this task, it will better equip the district and the state in managing the water resources into the future. The Upper Elkhorn NRD has joined the Lower Platte River Basin coalition, which consists of seven NRDs and the Department of Natural Resources, to voluntarily develop a basinwide management plan, develop ground and surface water policies, develop and maintain a water supply and use inventory, develop a water banking system, evaluate potential ground and surface water storage opportunities, as well as organizing stakeholder meetings. We will be selecting a consultant/engineering firm in June of 2014. We have high expectations to have the basinwide management plan be a guideline in the development of an individual or multiple NRD integrated management plan. Senators, I want to draw your attention to the map that is attached to this testimony. This map illustrates the efforts that are or have already taken place across the state of Nebraska as it relates to developing IMPs or basinwide management plans by the local NRDs and DNR. Senators, looking at this map, is LB1074 really needed? [LB1074]

SENATOR CARLSON: Okay. I'm going to stop you there, Dennis. [LB1074]

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DENNIS SCHUETH: Okay. [LB1074]

SENATOR CARLSON: We're red here for about a half a minute. [LB1074]

DENNIS SCHUETH: Thank you very much for the opportunity. [LB1074]

SENATOR CARLSON: Okay. Thank you for your testimony. Next opponent. Welcome, Nate. [LB1074]

NATE JENKINS: (Exhibit 20) Thanks, Senator Carlson. My name is Nate Jenkins, that's N-a-t-e J-e-n-k-i-n-s. I'm assistant manager of the Upper Republican NRD in Imperial and I'm here to testify in opposition to AM2360 on behalf of the Upper Republican NRD. AM2360 states that the basinwide plan must, quote, ensure that permitted uses of hydrologically connected groundwater and surface water will be sustained to the greatest extent possible. I believe this language could have the unintended consequence of increasing the nonbeneficial consumption of water via regulations on groundwater to increase the more inefficient use of surface water. A modification is needed to encourage more progressive management of the surface water system for the benefit of all surface water users and groundwater users. In 2012, for example, approximately 5 acre-feet of water was delivered for every one of the 40,000 acres in the Republican Basin that relies solely on surface water. That is more than three times the amount of water applied per acre in the Upper Republican NRD during the same year. Irrigation districts are in the business of delivering water that is available, not managing or regulating it to prepare for dry times. This must change if we are truly interested in balancing uses and supplies. The current draft of the bill could require significantly more regulations to sustain the unsustainable use of surface water in the basin as it now exists. The amendment, as drafted, also appears to impose timetables that may conflict with the goals and objectives of the basinwide plan that would be required. An implementation schedule would be a core component of any basinwide plan. Dictating the schedule before the plan is developed could significantly limit and/or alter the plan in ways that may not be preferable to the collaborators that develop the plan. For instance, if it was determined that prioritizing the most efficient uses of water required additional management of relatively inefficient surface water uses, a 30-year period in which to achieve an increase in efficiency of the surface water system may be considered too onerous from implementation and financial standpoints. If it was determined, for example, that sustaining a balance between water uses and water supplies in a basin where the surface water supply is dominated by overland runoff, such as the Republican, required surface water users to switch to more efficient groundwater uses, the conversion could require significant financial investment. If funds were insufficient to achieve such a large-scale conversion over a 30-year time period, the basin would be at risk of ceding control to the state for financial reasons that may largely be out of the control of the entities that would pay for such a conversion. For

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these and other reasons, I urge you to not advance AM2360. Thank you. [LB1074]

SENATOR CARLSON: Okay. All right. Thank you, Nate, for your testimony. Next opponent. Welcome, John. [LB1074]

JOHN THORBURN: (Exhibit 21) Good afternoon, Mr. Chairman, members of the Natural Resources Committee. I am John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I am manager of Tri-Basin Natural Resources District, headquartered in Holdrege, and we're responsible for protecting the soil and water resources in Gosper, Phelps, and Kearney Counties. I've submitted a letter from our board chairman and I'll just take a couple highlights from that. Tri-Basin NRD has, in conjunction with the Nebraska Department of Natural Resources, developed joint integrated water resources management plans for the Platte and Republican Basins in our district. We've also participated with the Department of Natural Resources in development and adoption of the basinwide plan for the overappropriated portion of the Platte Basin. We are, therefore, no strangers to the integrated management planning process. We see these plans as useful additions to our groundwater quality and quantity management plans. Furthermore, we are working diligently to implement those plans and to achieve their goals and objectives. We are concerned, however, about LB1074. This bill would, as we understand it, consider a river basin to have achieved a sustainable balance only when all surface water rights are made whole. Such a goal is not achievable, nor should it even be an expectation of surface water right holders, many of whom were issued water rights with the understanding that the surface water system was already overappropriated when their water rights were issued. And I have attached an example to the letter, an actual water right document for the Cambridge Canal in the Republican Basin that you might want to look at. We don't believe that surface water users should be given preference over groundwater users, nor can they be made whole at the expense of groundwater users. To illustrate the impracticality of this principle, DNR has granted 31 water rights to landowners along North Dry Creek in Phelps and Kearney Counties. These water rights are unlikely to be fully satisfied unless it turns wet this summer. Tri-Basin NRD could curtail groundwater use on all 4,900 irrigation wells in this district for the foreseeable future, but that would not add any significant amount of water to that creek. Tri-Basin NRD is opposed to the current amendment, AM2360, to LB1074, and we urge you not to advance it. Thank you. [LB1074]

SENATOR CARLSON: Okay. Thank you, John, for your testimony. No questions. Thank you. Next opponent. [LB1074]

TONNY BECK: Apologize, I brought 10 copies, not 12, but I'll give you mine when I'm done. [LB1074]

SENATOR CARLSON: Welcome. [LB1074]

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TONNY BECK: (Exhibit 22) Good afternoon. My name is Tonny Beck, T-o-n-n-y B-e-c-k. I am a resident of Ainsworth, Nebraska. I'm also a third-generation water well contractor. My family has been in the water well drilling business since 1950 in north-central Nebraska. My wife, Michelle, and I own and operate Beck's Well and Irrigation in Ainsworth, Nebraska. We provide water well drilling services for domestic, livestock, commercial, municipal, and irrigation applications, along with pump installations and repair for all of those types of systems. We also provide center-pivot sales and installation along with underground water line installation. We provide these services to both groundwater and surface water users. Our service area includes the counties of Brown, Rock, Keya Paha, Cherry, Holt, Boyd, Loup, Blaine, and Thomas Counties. We also are licensed to drill in South Dakota and service Tripp, Todd, Mellette, and Gregory Counties. I am also the president of the Nebraska Well Drillers Association. My testimony is in opposition to this legislation. I have many reasons for being opposed to this legislation and I intend to explain those reasons to you. I understand the core goal of this bill is to develop an integrated management plan for each river basin in the state of Nebraska, and I am not opposed to that idea and, in fact, think it may be a good one for the state as a whole in the long term. The way this bill intends to have water policy in the state function, if it is passed, is where I have objection. I live in the Middle Niobrara NRD district and have lived in an NRD district that has gone from no appropriation status to fully appropriated and then returned to not being fully appropriated, all in the last seven years. This all happened after Middle Niobrara and Lower Niobrara filed suit against DNR for declaring the river fully appropriated above Spencer Dam. The Nebraska Supreme Court found in the NRDs' favor that the basin was not fully appropriated and should never have been determined as such. I will not go into all the details of that ruling, but it was very clear, based on the court's ruling, that DNR did not act in the correct ways to come up with the determination of being fully appropriated for that region that I live in. I'm at 30 seconds already and I'm not going to read all of this to you. The point I want to make is in our area, which is a huge portion of the state of Nebraska that I work in, we don't have any declining water table issues. Ninety-eight, ninety-nine percent of our region does not have declining water table issues of any kind in any magnitude. I've included in my testimony here USGS reports on streamflows for both Long Pine Creek and the Niobrara River at multiple gauging stations. And I hope to prove the point, with that information, that the streamflows, especially like on Long Pine Creek and on Niobrara, fluctuate a great deal and those fluctuations were occurring long before irrigation development ever happened in our basin. And I encourage you to read the rest of my testimony, but I hope you consider the fact that we can't put all the water in the river in the Niobrara Basin that the Spencer Dam permit requires. It can't be done. That is a max flow flood event surface water permit. You need to understand that, okay? It's not a baseline flow. It's the most that's ever been in the river at any given point, okay? We can't manage a basin based off of a peak flood flow scenario. Thank you. [LB1074]

SENATOR CARLSON: Okay. Thank you, Tonny, for your testimony. Next opponent.

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Welcome, Jay. [LB1074]

JAY REMPE: (Exhibit 23) Thank you, Senator. Senator Carlson, members of the Natural Resources Committee, my name is Jay Rempe, J-a-y R-e-m-p-e, vice president of governmental relations for Nebraska Farm Bureau Federation. I'm here today on behalf of Nebraska Farm Bureau in opposition to AM2360 to LB1074. Let me first start by saying that the underlying concept of basinwide planning and involving collaboration and cooperation in that process is one that I think is sound. Where we have some concerns is what you're trying to mesh what is trying to occur in AM2360 with existing law and try to make sure everything works and that we're moving forward, and we have some grave concerns in this area. And I shared them in my written testimony. In the interest of time I'll just touch on two or three of those real quick like. First, it's already been mentioned that the language I think on page 10, starting with lines 26 through the middle of line 6 on page 11, would require all NRDs to engage in basinwide planning and to engage in the development of integrated management plans, and that requirement would become required regardless of whether a basin has been declared fully appropriated. And so if you do that, if you're forcing or requiring that integrated management planning process, I would argue then we should go back and look at the process that requires DNR to analyze every basin each year because that's the purpose of that, is for them to analyze basins and raise a flag and saying, hey, we're getting close to having some issues here, we need to develop these integrated management plans. So if you're going to require an integrated management plan, we should go back and pull that out. Now I wouldn't argue that you do that. Instead, I would rather see you tie the basinwide planning process and development of integrated management plans, as we do today, to the DNR analysis each year looking at those basins. Let's rely on their expertise. Let's let them determine whether we have basins that are getting there and let them...and then if they do trip that trigger, so to speak, then look at requiring the basinwide planning. I think that's a good mechanism. Secondly, it would require some integrated management plans maybe in areas that they will never have any issues, and then you start to worry about the expenditure of resources and efforts on some issues that may not even be there to begin with. Secondly, let me touch on the part about the clear goals and objectives. In the amendment, it's trying to make things consistent, the basinwide planning with the integrated management plans, but the amendment sets out different goals and objectives for the basinwide plan than it does under the integrated management section in existing law, and I think there's a conflict there. I would urge the committee to go back and take the language that's out of current law for integrated management plans in terms of clear goals and objectives because I think it looks a little broader. When you're looking at water management, there's a broad spectrum of issues that you're trying to look at, not just water supplies and uses. People have already mentioned it on both sides of the issue about the socioeconomic issues, the environmental health, the social well-being of a basin. The current definition or clear goals and objectives captures all that and let's the NRDs and DNR and others that are involved in the process look at all those, because there may be ways to bring a basin

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into balance but economically it doesn't make sense or environmentally it doesn't make sense. So let's try to do what's best for everything. Lastly, I'll just comment real quick on the DNR stepping in at the end of 30 years. Today, under current law, DNR doesn't really have any authority to do anything if you were to have them step in. All their authorities fall under the surface water side. So they would be very limited in what they could do, and I would encourage the committee to take that part out. So thank you very much. [LB1074]

SENATOR CARLSON: Okay. All right. Thank you, Jay, for your testimony. Next opponent. How many more opponents do we have? Okay. And before Jim starts here, how many do we have in the neutral position? Okay. All right. Thank you. Welcome, Jim. [LB1074]

JIM BENDFELDT: (Exhibits 24 and 25) Good afternoon, Senator Carlson, committee. I am Jim Bendfeldt from Kearney, a member of the Central Platte NRD, Jim, J-i-m B-e-n-d-f-e-l-d-t. I am testifying today in opposition of amendment to LB1074. The Central Platte and Upper Platte Basin, in cooperation with DNR and stakeholders, approved a basinwide IMP in 2009. Since then, Central Platte has implemented numerous programs for returning an overappropriated reach of the Platte River Basin to fully appropriated. I want to give you two examples of these programs. First, we have retired over 4,000 irrigated acres, both groundwater and surface water, resulting in over 2,400 acre-feet of water being returned to the Platte River. Secondly, we have partnered with four surface water canals for the rehabilitation and conjunctive management of those canals. There were no reduction in irrigated acres and the potential gain to the Platte River is 20,000 acre-feet annually. The Central Platte is also leading another study with private consulting firms and hydrologists to address conjunctive management options that would result in a more efficient use of our ground and surface water. These studies have shown that a better water management plan in the Platte Basin is possible, first, starting with a more efficient use of the Central Nebraska Public Power and Irrigation District diversions. The studies show that this system could be converted to a recharge project. Doing so, all irrigated acres could be maintained, beneficial flows can be provided to the Platte River, flows for hydrogeneration would probably increase, and increased flows for recreation and wildlife would ensue and, thus, benefit all downstream users, including Lincoln and Omaha. Under Central Nebraska Public Power's system, 1 million acre-feet of water is diverted annually from the Platte River, but only 71,000 acre-feet of that is consumed by crops. The rest is lost to evaporation, transportation loss, and continued increases in groundwater levels in two counties south of the Platte River. Data also shows that in Central's surface water irrigated project, 75 percent of those acres have underground...or groundwater wells available to irrigate crops. Central Platte NRD has also offered to cost-share with Central Nebraska Public Power to convert those remaining acres. The concept of proposed amendment to LB1074 of shutting off groundwater to make surface water rights whole is a concept that was never intended

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by law, anticipated by the permitholder, or physically possible in any fashion. Bureau of Reclamation projects do not and never have required surface water to be available 100 percent of the time prior to proceeding with a project. It is simply not possible to assume such availability or to develop a plan to retire groundwater irrigated acres to do it. Thus, I respectfully ask this committee to not advance a bill that damages the economic viability of our water and economic resources. Rather, I would urge you to look at ways to help sustain the economic viability and sustain efficient uses of water. I thank you for your time and the opportunity you afforded me to be heard. [LB1074]

SENATOR CARLSON: Okay. Thank you. Thank you, Jim, for your testimony. Welcome, John. [LB1074]

JOHN MIYOSHI: (Exhibit 26) Senator Carlson and members of the Natural Resources Committee, my name is John Miyoshi, J-o-h-n M-i-y-o-s-h-i. I'm the general manager of the Lower Platte North NRD located in Wahoo. Today I'm giving testimony to LB1074 and AM2360 and asking for an interim study. Current water law in Nebraska has evolved over decades with the goal of wise use in a sustainable manner. We have managed to address our ever-changing needs with many small changes to our water laws mixed in with an occasional large step. Our current system is working, becomes stronger each day as more individual and basinwide integrated water management plans are completed. These plans are to be boosted with funding assistance, as outlined by the Water Funding Task Force. And personally, I'm not sure what this proposed legislation is attempting to fix. In the Lower Platte North, our guide to sustainability began with the adoption of our first groundwater management plan in 1985. As with any plan, there have been amendments and changes to our rules and regulations to help us better utilize our water resources. The heart of our plan are the trigger levels that force our board to take action when there are quantity or quality problems. In 1990 we made a major change and declared two areas within our district as Phase II control areas due to increasing nitrate levels. These areas require producers to report their annual crop history, soil tests, water test, calculate nitrate needs and the actual applied amount of nitrogen fertilizer. Our groundwater quantity trigger for action is when three consecutive spring readings are less than an 85 percent full aquifer. We have never reached this action trigger; however, the drought of 2012 and '13 made us aware of other aquifer challenges. Our confined aquifers operate under pressure. Heavy pumping over a short period can create pressure drops severe enough that well interference occurs in some of our subbasins. The transitivity is too slow in these subbasins, but the groundwater levels have always recovered by the next spring. To address this temporary interference, our board has created two "Special Quantity Sub-Areas" within our district. Within these SQS areas there are moratoriums for no expansion of irrigated acres, flow meters are required for all high-capacity wells with an annual reporting requirement, and an acre-inch allocation placed on all irrigated acres. These changes are not popular but our NRD remains committed to keeping our water supply sustainable. We do have hundreds of surface water permits within our

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district, but very few are active as the groundwater supply is far more dependable than relying on surface water. The major active surface water permits in our district are held by MUD, Lincoln Water System, and the Nebraska Game and Parks Commission. The two cities hold surface water rights for induced recharge to their well fields along the Platte River, and the Game and Parks holds an instream flow appropriation. The instream flow water right was granted knowing it could only be met 20 percent of the time on an annual basis. [LB1074]

SENATOR CARLSON: John, I'm going to stop you here. Sorry. [LB1074]

JOHN MIYOSHI: Okay. [LB1074]

SENATOR CARLSON: Okay. Thank you for your testimony. [LB1074]

JOHN MIYOSHI: The rest of that's there. [LB1074]

SENATOR CARLSON: Yes. [LB1074]

SENATOR KOLOWSKI: Mr. Chairman. [LB1074]

SENATOR CARLSON: Senator Kolowski. [LB1074]

SENATOR KOLOWSKI: May I ask one question? [LB1074]

SENATOR CARLSON: Sure. [LB1074]

SENATOR KOLOWSKI: Just to double-check. John has got a long history with the NRDs. I'm not putting you on the spot or anything, John. I just wanted to get a clarification. Back in 2004 when LB962 was passed, what were the reactions or the stand on the NRDs at that time with that issue ten years ago? [LB1074]

JOHN MIYOSHI: Well, we saw it as a challenge, and all those challenges need to be met. But for sustainability and keeping our water users all intact, we saw it as a good thing. I think there was support from the NRDs. It was the right thing to do and it's proved its merits over the years. [LB1074]

SENATOR KOLOWSKI: Okay. And the Farm Bureau was behind it at that time also or were there mixed bags on all that? [LB1074]

JOHN MIYOSHI: Well, of course there's always a mixed bag. You fear the unknown. I think we have slowly made these changes over the years. The end product has always been positive for the state and it's because we've stood back and looked at the big picture. And our goal with that was to keep all of our irrigators so that they could

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continue to irrigate as they have in the past and not take away from their uses. [LB1074]

SENATOR KOLOWSKI: Thank you, John. [LB1074]

SENATOR CARLSON: Okay. Thank you, John. Let me see a hand of how many neutral testifiers we have again? And I want to give Senator Lathrop adequate time on his closing. So talk a little faster, Stan. (Laugh) [LB1074]

STAN STAAB: (Exhibit 27) Faster? Good day, Senator Carlson, members of the Natural Resources Committee. I'm Stan Staab, S-t-a-n S-t-a-a-b. I'm general manager for the Lower Elkhorn out of Norfolk. I'm testifying today on behalf of our district. Thank you again for the opportunity to testify on these amendments. I would say that Nebraska's progress over the past 12 years to manage this water resource has been very impressive. You have passed various integrated management statutes after meticulous study and deliberate debate. Department of Natural Resources have worked closely, now working more closely than ever with a majority of the districts to complete and implement integrated management plans as required and allowed by statute. This is a carefully devised system and it's working well, and it should be given a chance. Departments are working together as effectively and cooperatively as I have experienced in my almost 35-year career with the districts. I can speak from personal experience with this. Our district is working currently with the district to develop...excuse me, DNR to develop a voluntary integrated management plan. We are also collaborating with the departments, mentioned earlier, with six other NRDs to develop a Lower Platte Basin plan which covers, by the way, roughly one third of the state, all the way from Omaha to Sheridan County. LB1074 proposes to make major changes to our integrated management laws. Unlike LB962, which included significant input from the Water Policy Task Force over almost two years or more, other stakeholders and so on, this proposal has not been vetted in the public eye. Many of my board members and certainly not the public in our district is even aware of what's going on today. Senator Carlson spent many hours with his task force in stakeholder meetings across the state, developing a very viable funding opportunity for us, and we support that. In addition to this general concern of this whole thing, I wish to briefly mention just two things in the proposed amendment which are concerns of us. First change would be authority granted to official participants in the basinwide planning process. Instead of the current framework for stakeholder participation adopted under LB962, which has worked quite well, as been mentioned. This gives official participants a trump card, literally. If the districts and the department cannot reach, and I say districts and department, cannot reach 100 percent agreement with all, the planning process is given off to the Water Review Board. My experience the last time any agreed in water was to agree to disagree. At the end of the day, the districts and department are entrusted with responsibility and authority and our expertise, over many, many years, to balance the interests of stakeholders and make a decision. A second concern is to strip NRDs of any authority over water management if the goals are not met by an end date.

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Integrated water management planning is very complex and cyclical. The ability to meet goals is only partially within the control of the districts. The department, interstate compacts and so forth, and especially Mother Nature are all involved in this. And lastly, I'm really uncertain, like John mentioned, what we're trying to fix. Integrated management planning is relatively new. We've not been given a chance in terms of time and years to develop things, and I would suggest that you give us that time. But we haven't even seen how the game is really being played and we'd like to have a chance to do that. I have great faith in our current system and feel that we should give it an opportunity. And I recommend, therefore, that you take a harder look at LB1074. Thank you, Senator. [LB1074]

SENATOR CARLSON: Okay. Thank you, Stan. Welcome, Butch. [LB1074]

LEON KOEHLMOOS: I've already got a red light. [LB1074]

SENATOR CARLSON: Oh, yeah, wait. We don't want to turn him red right away. (Laughter) [LB1074]

LEON KOEHLMOOS: (Exhibit 28) I thought...any questions I guess? (Laughter) Chairman Carlson and members of the Nebraska Natural Resources Committee, my name is Leon Koehlmoos, that's L-e-o-n K-o-e-h-l-m-o-o-s, and I'm the general manager of the Lower Loup Natural Resources District based in Ord. I'm presently giving testimony in opposition to LB1074 and its proposed amendment, AM2360. The Lower Loup NRD has been proactively involved in both groundwater and surface water management for over 40 years and we've been especially proactive since the passage of LB962 in 2004. And my testimony that I've submitted will go into some of the things that we've done over the years to get ourselves in better shape as far as water management, and I won't read that into the record. The point we wanted to make is the Lower Loup NRD is not against planning, but LB1074 and its accompanied amendment assumes the natural resources districts across the state have not been doing their job, and this is just not the case. Before legislation like LB1074 is considered, I would suggest the Natural Resources Committee and every state senator gather all of the facts and visit with each of their natural resources district to determine if this legislation actually improves groundwater management before setting water policy that isn't feasible or necessary. Local control works. Water basins across Nebraska are diverse, and a one-size-fits-all approach will not be as effective as our current management system. I thank you for your time, and I'd be glad to answer any questions. [LB1074]

SENATOR CARLSON: All right. Thank you, Butch. Thank you. Welcome, Jasper. [LB1074]

JASPER FANNING: Chairman Carlson and members of the committee, thank you. My name is Dr. Jasper Fanning. Today I'm here to appear before you and represent myself

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as an individual. I'm a farmer/rancher, irrigator, economic consultant. In my spare time I manage a natural resources district. But more importantly, today, my comments come as the groundwater user representative on the Nebraska Water Resources Association board. If the intent of AM2360 to LB1074 is to simply require collaborative basinwide planning to best manage our water resources, it falls short of the mark. The attempt to exempt the Upper Platte Basin on page 6, line 10, misses. It would require basinwide planning by those areas of the Platte determined to be fully appropriated but not overappropriated. There would be at least two natural resources districts that would be required to form a basinwide plan while the remaining greater area of the Upper Platte Basin would be exempted from basinwide planning under this proposed amendment. The proposal arbitrarily sets deadlines for achieving goals without knowing what the goals will be or how best to achieve them for the viability of the basin on page 11, line 25. The basinwide plan supersedes the IMPs on page 12, lines 12 and 13, that says the basinwide plan shall include management actions. The goals and objectives belong in a basinwide plan. The management actions to be taken to achieve those goals and objectives by any district should be determined by that district and its IMP, not in the basinwide plan. While surface water users are well represented by the stakeholders in the proposed legislation, I question why we continue to leave out the groundwater user as officially being represented in water management planning on page 12, line 22. The proposal requires a technical analysis every five years, page 13, line 22. While a monitoring plan is part of any IMP, that review process is continual and ongoing under Nebraska water management and there is no apparent benefit that I can see of their specific requirements included in this proposal. Former Director Bleed assures us, in the Journal Star this morning, that the bill would not require a shutdown of groundwater irrigation--if other options can be found. Any logical interpretation of that says there is a requirement unless--unless--we can find adequate funding and tools provided in the future to avoid that. And so I think that requirement is real and the concerns that have been raised here today are accurate. While even if pursued, the policy results in the same amount of water being used, leaving the balance of water uses unaffected. And by that, we could shut off ten irrigated acres, or more, of groundwater irrigation to supply enough water of a relatively less inefficient use of surface water; but at the end of the day, the same amount of water gets used. And so that balancing can result in the requirement of shutting down efficient uses of water to provide water to be used by more inefficient uses. So to equitably achieve a balance, we need adequate funding tools far more than we need additional planning. And with that I'll conclude my comments. [LB1074]

SENATOR CARLSON: Okay. All right, thank you, Jasper, for your testimony. [LB1074]

JASPER FANNING: Thank you. [LB1074]

SENATOR CARLSON: Opponent? [LB1074]

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SCOTT MERRITT: Yes. [LB1074]

SENATOR CARLSON: And then how many neutral again? I'm sorry. Okay. Welcome, Scott. [LB1074]

SCOTT MERRITT: (Exhibit 29) Mr. Chairman, members of the Natural Resources Committee, my name is Scott Merritt, S-c-o-t-t M-e-r-r-i-t-t. I'm here representing the Nebraska Corn Growers today. In the interest of time I'll just kind of hit on a few of the bullet points of our written testimony. The Nebraska Corn Growers Association is opposed to LB1074 as it has been amended in AM2360. We believe that the current language creates issues and needs to be further studied and reviewed, and engaged in some of the solutions. You know, the water issues are very important and very complex in the state of Nebraska, and I think that we need to step back and take another look at what we're doing. Nebraska Corn Growers have always been supportive of the natural resources districts and the local control because of the diversity of our geography and our natural resources in this state. And when we talk about the natural resources, several of the districts have talked about the plans that they have implemented. They're ongoing. They're reviewing them and they're adjusting them as needed to address the needs of the state. I've had several members express concerns. I won't go into those. I'll just kind of, in a broad thing. There's concerns about the modeling; how does it factor into the social, the economic, the environmental impacts, the diversity of the land and the water and geography that you've heard here today; how does that fit into a long-term sustainability concern; and some of the districts that they don't believe need plans maybe already have them, and if they don't need them and never will need them then why are we utilizing resources for those? These are just some of the general questions that have been brought up by my folks. But let me say that we're not opposed to the basic concept of developing long-term plans and setting goals and trying to address those goals as we move forward. So we look forward to working with the committee going forward, trying to address some of these concerns, because we obviously have the very best interests in water in the state of Nebraska from the corn growers' side. Thank you. [LB1074]

SENATOR CARLSON: Okay. Thank you, Scott, for your testimony. Anthony, are you...what's your...? [LB1074]

ANTHONY SCHUTZ: Neutral. [LB1074]

SENATOR CARLSON: Neutral. Okay, I'm going to bring you forward. We'll start with the neutral testimony. [LB1074]

ANTHONY SCHUTZ: Thank you, Senator Carlson, members of the committee. My name is Anthony Schutz, A-n-t-h-o-n-y S-c-h-u-t-z. I'm a professor at the university. I study water law and agricultural law. I'm here in my personal capacity as a former

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resident of the western part of the state. When I look at this legislation, I see, you know, some of it that's not really that new. We've been doing basinwide planning under 46-715(5), but that applies only to overappropriated basins. So this extends that. At least my reading of it is that it extends that to other basins. It recognizes work that's already been done, and I think all of that's appropriate. It doesn't carry forward some of the more strict outcomes that occur under the overappropriated status, so I think it brings a little bit more of a tool to the NRDs and to the department in terms of doing more integrated management going forward. I've heard a lot of testimony about page 11, lines 16 through 20 and 21. I don't read that as requiring anything. I don't think it requires the Niobrara to be maintained at 1,300 Q. I think it provides for a mechanism, it provides for a standard by which the NRDs will be judged and the DNR will be judged. But, generally speaking, the meaning of all those terms I think lies in the hands of those who are charged with engaging the planning process, much like the rest of LB962 did. So that's sort of my read on it and I think it's a reasonable one. The big question I have is, why do we need basinwide planning in addition to all of the other planning we do, right? We do a lot of planning in the water world. We often maybe don't do as much action as we do planning, but we do a lot of planning in the water world. Why do we need basinwide planning; that is, planning that extends beyond the boundaries of the NRDs? One answer is because we're unhappy with the local choices that have been made with regard to aquifer declines. I don't think that's a real good reason to start doing basinwide planning. Another reason is that we're unhappy with the external impacts of groundwater management at the local level. That to me is a more legitimate reason for doing basinwide planning. And hopefully, that's I think why we want to engage this particular process. And those things that extend beyond the boundaries of the NRDs are typically stream depletions. That's why we did basinwide planning for overappropriated basins, right? It was a problem that the locals couldn't solve on their own. You had to go further. You had to go beyond the boundaries. So when I see folks talking about sustainability and aquifer declines and whatnot, I worry that the basinwide planning provisions are just simply a way of sort of getting past the local choices on aquifer declines that have already been made or maybe overturning those choices. If there's no external impact to those choices, then I think the NRDs are doing sort of what they're supposed to do. Finally, I'll finish with the notion of sustainability. We spent two years talking about that down in the Republican Basin, Senator Carlson. It's not as simple as stop aquifer declines, right? It's a much more complicated question that we spent, you know, at least 12 months of the 24 months we worked on that particular question. So lots of normative choices that have to be made. The last point, Jasper made a good point about the difference between implementation and rules and regulations versus the planning. The distinction between those two things hasn't been well delineated in the statutes. I don't know that's it's very well delineated in these statutes or these amendments as well. So I'll end with that unless anybody has questions for me. [LB1074]

SENATOR CARLSON: Okay. Thank you, Dr. Schutz, for your testimony. Amy,

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welcome. [LB1074]

AMY PRENDA: Good afternoon, Senator Carlson and members of the Natural Resources Committee. My name is Amy Prenda, A-m-y P-r-e-n-d-a, and I'm the executive director for the Nebraska Water Resources Association. Just to let you know, the NWRA is a nonprofit alliance of state organizations and individuals dedicated to the appropriate management and conservation of water statewide. We're made up of 28 board members with directors representing Nebraska's river basins, surface water and groundwater irrigation, electric power, municipalities, industrial, professional, financial institutions, conservation, and recreation. And it's, therefore, we do provide a diverse voice when it comes to public policy impacting water. We're here testifying in a neutral capacity today in an effort to reaffirm our commitment to funding for water projects, and respectfully ask that the amendment to LB1074 not be a condition for passing water funding this year. Water funding comes at a critical time and we need to move forward on making this investment. We also want the committee to know that we are in support of basinwide and statewide water planning. In fact, the NWRA and the Nebraska Water Coalition has one of its policy positions that support the development and maintenance of a state water plan to address water sustainability. We think that moving in the direction of basinwide or statewide water plan would be the responsible course of action and should be pursued. That being said, there have been concerns raised that while the amendment moves in this direction, being too hasty in adopting an amendment at this time of the session will result in unintended consequences, and recommend that considerations of any...we recommend that considerations be taken as state statute requirements integrated water planning that's happening already around the state, interstate compacts, and current decrees and agreements are needed prior to such public policy being adopted. Thank you. [LB1074]

SENATOR CARLSON: Okay. Thank you, Amy. Next. Welcome. [LB1074]

DALE HELMS: (Exhibit 30) My name is Dale Helms, D-a-l-e H-e-l-m-s. I'm a surface water and a groundwater irrigator who is concerned about the sustainability of the Republican River Basin. Allocations for the aquifer are equivalent to speed limits for roads. The aquifer and roads are both for the public. The constitution is the foundation on which much of what goes on in the Legislature is based. Given that there are five dams on the Republican River and its tributaries, the compact is the foundation on which the division of waters within the state of Nebraska and the Republican River Basin is to be based on. The preamble to the compact states that individually as a state, Nebraska has agreed upon the following articles. Article I: Nebraska agreed to provide for an equitable division of such waters; to remove all causes present and future, which might lead to controversies. Article IV states that the compact lists and describes where the sources of the allocations come from for each state. And it also states: The uses of the waters herein above allocated shall be subject to the laws of the state for use in which the allocations are made. Article IV does not say that this allocation is only for

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groundwater's use, and that surface water's use is to be sent to Kansas to meet compliance. When surface water allocations are sent to Kansas, no beneficial use in Nebraska occurs and does not comply with this article. When surface water allocations are sent to Kansas, no use in which the allocations are made occurs and does not comply with this article. Nebraska also agreed to the final settlement stipulations that list several actions in water-short administration to limit computed beneficial consumptive use. Some of those are adjusting well allocations, dry year leasing of water rights that divert at or above Guide Rock, imported water supply credits, etcetera. Nebraska may or may not use any of these measures, but I do not find any language that states that if Nebraska diverts surface water above Guide Rock that it is not considered a dry year lease. A lease implies compensation. Is the dry year lease language intended to protect surface water in Nebraska? The state of Nebraska is managing the aquifer for compact compliance and to win lawsuits; it is not being managed for sustainability. Compliance can be achieved without the use of surface water. James Schneider from DNR testified to the water master that model runs using actual data from the 2002 through 2006 years showed that compliance could be achieved without the use of surface water. Nebraska's current management action seems to mirror David Aiken's policy report, and that policy report says, "The best answer I can come up with is to have the groundwater users pay the surface water irrigators for their water rights. This approach would also significantly simplify Republican River management. The river could be managed entirely for compact compliance purposes." Nebraska's current management actions accomplished this policy without the groundwater irrigators or the state paying anything. [LB1074]

SENATOR CARLSON: Dale, I'm going to stop you there. [LB1074]

DALE HELMS: I know. I know. [LB1074]

SENATOR CARLSON: And I appreciate the work that you've done on this, and I certainly will be one that studies this more carefully. Thank you for your testimony. [LB1074]

DALE HELMS: I lost over \$130,000 in revenue last year because my surface water was sent to Kansas. I cannot survive two or three years of this. [LB1074]

SENATOR CARLSON: Okay. All right, thank you. Next. Welcome, Jeff. [LB1074]

JEFF BUETTNER: (Exhibit 31) Senator Carlson and members of the committee, when I arrived here this afternoon, or this morning, I had not intended to testify. In fact, the Central had filed some written testimony in a neutral capacity as it pertains directly to LB1074. But after hearing some of the testimony presented by the Central Platte NRD on something that I failed to find relevance to LB1074, I found it necessary to get up and speak. The studies that he referenced are disputed by Central. In fact, we show, or we have information that directly refutes that, and I just didn't want this to go unchallenged

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before the Natural Resources Committee. So I'd like to go on record as adding those comments. Thank you. [LB1074]

SENATOR CARLSON: Okay. Thank you for your testimony. Oh, Jeff, I've got to call you back. I let you go without saying and spelling your name. [LB1074]

JEFF BUETTNER: Oh, I'm sorry. We'll do that, and can we have a rewind? It's Jeff Buettner spelled J-e-f-f B-u-e-t-t-n-e-r, and I'm with the Central Nebraska Public Power and Irrigation District. Thank you. [LB1074]

SENATOR CARLSON: Okay, thank you. Next. Welcome. [LB1074]

JACK RUSSELL: (Exhibit 32) Senator Carlson and members of the Natural Resources Committee, I'm Jack Russell, J-a-c-k R-u-s-s-e-l-l. I'm the general manager of the Middle Republican Natural Resources District testifying in a neutral position on LB1074 for the Middle Republican NRD. The Middle Republican NRD and the other NRDs in the Republican River Basin have been tackling water concerns since the NRDs were created in 1972. Through groundwater rules and regulations, good honest efforts, and years of experience, the Middle Republican NRD would like to provide this testimony. While it's tough to take a neutral stand, the board could not either support or oppose this bill. Areas of LB1074 that are worth noting that are more conceptual than specific. The Middle Republican NRD board believes the concept of basinwide planning is necessary in finding the right direction to address the concerns of the specific water problems, and hydrologically connected groundwater in the river basin is critical in making the right decisions. There are studies that have valuable information as well as current and new methods of analyzing water interrelations that should allow planners to come to a common and correct solution. It is also positive to recognize and take into account the effects of conservation practices and natural causes considering river basin planning. Experience in the Republican River Basin show that in some subbasins, the impact of conservation measures is very little, while in other subbasins there is a larger impact. To reach some type of consensus, every factor affecting water as a whole needs to be considered. Areas of LB1074 that cause some reservations are the lack of specificity or defining what is sustainable. Knowing what is considered sustainable in a river basin has a direct impact on what would be an appropriate implementation time frame. That depends on what a basin planning goal might be, and it all depends on if the group determines sustainability is not depleting anymore, that's one thing; if it's bringing some surface water back to a level, that's a whole other ball game. Until a basin planning goal is set, establishing a time frame is difficult. The other concern is there being a lack of groundwater irrigation groups that could become official participants, because if there isn't groundwater irrigation groups, then that falls back on the NRDs not only to regulate groundwater users but also an expectation for them to represent groundwater users. The last point I want to make is that the Middle Republican NRD, they understand the dilemma that surface water users are facing. And on a daily basis the NRD is working

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with commingled wells, opt-out requests for occupation taxes, dryland leases, increasing irrigation efficiencies, and setting pumping allocations, just to name a few that will lead to sustainable agriculture in all phases of farming. With that, thank you. [LB1074]

SENATOR CARLSON: (Exhibits 33-39 and 40-44) Okay. All right, thank you, Jack, for your testimony. And I neglected to do this. We have letters of opposition from Nancy Carr of Lincoln; John Winkler of Papio-Missouri NRD; Rita Sanders, mayor, and Dan Berlowitz, city administrator of Bellevue; Joe Anderjaska of Imperial; Dean Large of Wauneta; Thomas Gaschler of Imperial; and Russ Pankonin of Imperial. And letters in a neutral capacity from Steven Smith of the North Platte Valley Water Association; and Dennis Strauch of the North Platte Valley Irrigators; John Berge of the North Platte Natural Resources District; Brian Barel of NPPD; and Glenn Johnson of the Lower Platte South NRD. And with that, that takes care of the letters that we had. You're here to read Senator Christensen's, aren't you? [LB1074]

DAN WILES: Yes. [LB1074]

SENATOR CARLSON: Okay, go ahead. [LB1074]

DAN WILES: Thank you, Chairman Carlson and members of the Natural Resources Committee. I'm Dan Wiles, D-a-n W-i-l-e-s, legislative aide for Senator Mark Christensen who represents the 44th Legislative District. Senator Christensen is unable to be here today but he wanted me to read his neutral testimony for the record on AM2360 to LB1074. Senator Christensen writes: District 44 loses no matter how you handle this bill. If you pass this bill, the consequences to the Upper Republican will be drastic to the extent of possibly shutting off two pivots to run one pivot, based on whether it is NRD-wide sustainability or township-based sustainability. If the numbers in meetings the Upper Republican NRD had are correct, we will see economics killed in the Upper Republican NRD. The land prices will drop up to 60 percent, over time, in my opinion. If, on the other hand, we don't pass this bill, the surface water is gone at least three to four years out of ten, and no compensation will ever come their way. Land prices have dropped 43 percent in one year; and likely to continue dropping till we see 70 percent declines, in my opinion. LB522 was held on Select File, and the NRDs were neutral on the bill in committee, and then the executive director of NARD recommended the bill be held until no lawsuit was pending against them. The lawsuit was denied in court, and the NARD organization never asked anyone to bring a committee or senator priority back on LB522 to compensate the surface water irrigators. Their official recommendation was neutral. So why did they ask the bill to be held? Why didn't they step up and ask the committee or a senator to prioritize LB522? It's not like I didn't plea for someone from the NRDs to step up. I stated to them at the NARD convention at the senators' NRD supper to ask for committee priority. No one would listen. Now we are here, where I cannot tell you where I want you to go with this bill. Basinwide planning is

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a good thing. Killing off surface water and rapid response in the Lower Republican or the Middle Republican is unacceptable. Killing the Upper Republican NRD groundwater allocations is not acceptable. So what should be done? I have testified before. In the Republican NRDs I believe we need a comprehensive plan to reach sustainable levels that keep everyone with enough water to grow a crop with drought tolerant corn and no till systems to grow a crop. This can be done by buying out groundwater in areas of dense groundwater well development or the purchase of surface water to allow reduced usage and to have water for compact compliance. I am term-limited out and cannot return to offer a surface and groundwater buyout with the state and NRD matching, using occupation tax. I realize that means additional occupation tax authority. This committee needs an interim study with commitments to surface water irrigators that a bill to replace LB1074 with the results of the study will be brought back for the 2015 session. The study should be focused on defining more clearly what finding a balance means in LB1074, examining how best to retire both groundwater and surface water through buyouts while maintaining the economy is the balance needed in the basin. It is not my intent to kill the economy through limits on either groundwater or surface water. I just hope NRDs can return to the support and commonsense approach Nebraskans use. If I could know how NRDs would treat surface water in the future, then I would easily know how to vote on this bill; but I don't at this point. Again, I urge you to consider a study, as I mentioned above. Thank you. [LB1074]

SENATOR CARLSON: Okay. Thank you, Dan, for reading in for Senator Christensen. And most of us know why he's not here, and our thoughts and prayers are with him and his family. Senator Lathrop. [LB1074]

SENATOR LATHROP: Well, thank you, Mr. Chairman and members of the committee. I want to thank you for giving up your lunch hour to have this special hearing, and I think it was a good hearing. And I want to begin my closing remarks by acknowledging a lot of NRDs who are doing good work. Right? This bill is not an indictment of every NRD. It is clear that there are NRDs that are managing their resources well and that are in balance. There are basinwide plans that are working. And for those people that are engaged in the management of their basins, the NRDs, and are doing a good job and keeping it in balance, my hat is off to you. The problem is that isn't going on everywhere. And we can't enact special legislation to deal with one, just one, river basin. The difficulty is that when we took care of the Platte River, everybody else said, take care of the Platte; we don't have a problem here. And now what we've found is we should have taken care of everybody ten years ago, and not carved out the Platte River and left everyone else alone. So ultimately the question for the committee I think is whether we've got a problem or not. Right? Do we have a problem to address regarding sustainability or don't we? I would submit to you the fact that we have to pay Kansas \$5.5 million because we did not comply with the compact would suggest that the NRD process, at least down in the Republican River Valley, is imperfect. They were charged with managing it. They didn't get enough water down to Kansas; and now the state of

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Nebraska, if that special master's report holds up, is going to have to write a check for \$5.5 million. So the NRD process is not perfect. It's good, but what it suggests is that we need some other controls in place. Now to suggest that we need more study misses the mark. This Legislature gave a million dollars to this committee to go out and study water and water sustainability. You had 28 meetings, and most of you were members of that committee. We already know what the problem is. It's about whether we have the will to pass LB1074. But there are those who came up here and said we don't really have an issue. And I would suggest that the last two task forces that have looked at water sustainability have concluded that we're depleting the aquifer and that we need to do something to stop it; to recharge the aquifer and stop the depletions. You've chaired or been involved in both committees, Mr. Chairman. And if we don't have a problem, as some would suggest today, then why are we appropriating \$31 million this year to deal with sustainability issues? Either we have a problem or we don't. But if we're going to address it, it's not just about spending money. It's about having something in place. It's the next generation of LB962, having basinwide plans. Because what you heard today is that it's working on the Platte. It's working. And it will work. And is change frightening? Sure, it is. But trust me, this bill doesn't trump or let DNR take over during this process. They have 30 years to get to a state of balance. I want to touch on just a couple more things and then I'll let you go, or stop. Many of the people that came here today said that there's no way we can make surface water whole. All right, let me tell you how they got to that interpretation and why you heard it over and over again, and why it is so off the mark. When I sat down and introduced the bill, I told you that on page 11, line 18, we used the term "permitted uses." Okay? That was meant to suggest allowable uses. Somebody with the DNR or the natural resources districts looked at that and said permitted means somebody holding a permit; and now of those in the Niobrara can never use any water because the NPPD gets their water first; they have the permit. That's not what it means. We'll take permitted out and then we solve the problems of every person that testified from the Niobrara, because they're in balance. I talked to the guys today. See, the problem is, if you're already in balance, this should be a lay up. Right? This process shouldn't be difficult and you shouldn't be afraid of it. You go in, you keep doing what you're doing, your IMPs don't change; there's no problem. But if you're not in balance, then you need to get everybody in the basin. If you want to put ground irrigators into this list of interested parties, I don't care. Get everybody around the table and have them work out a basinwide plan. I think that's what needs to be done. I don't think we need more study and I think if we are going to move on sustainability, it involves two legs or two elements, and one is this bill and the other is the funding. But one without the other won't get it done. Thank you, and I'd be happy to answer any questions. [LB1074]

SENATOR CARLSON: Okay. Thank you for your opening and thanks for your closing, Senator Lathrop, on the bill today. And do we have questions from the committee? Well, I will say--and you can comment to this, and you and I have had conversations--that one of the things I heard today was, and maybe it wasn't meant the way it came out, but that

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sustainability and stopping groundwater depletions in some ways isn't all that important. I think it is. That's where you and I agree. [LB1074]

SENATOR LATHROP: And I think it's critical. [LB1074]

SENATOR CARLSON: And we want to see us reach a point where, in fact, groundwater depletions taper off and level off. And I don't care what anybody else says, I will call that sustainable; and I think you agree with that. [LB1074]

SENATOR LATHROP: Wherever we level off at. [LB1074]

SENATOR CARLSON: In order to get there, we have to have the will to get there. I think we agree on that. [LB1074]

SENATOR LATHROP: Exactly. [LB1074]

SENATOR CARLSON: And if we come up anything short of that, there's going to come a point in time in the future when we're going to look back and say, why didn't we do something? Do you agree with that? [LB1074]

SENATOR LATHROP: I couldn't agree more. [LB1074]

SENATOR CARLSON: Okay. And we've had good discussions. And when it comes down to the basis of what we really want to see happen in this state, we're in agreement. But we had this hearing today and listened to various testifiers so that we can kind of make a decision, is LB1074 the avenue to get us there? We both really want the same thing. Those of you that came to testify...and I appreciate all that did. In fact, I think this is a record. We had eight proponents; we had 17 opponents; and we had six in the neutral position, so. And I appreciate that you put up with coping with the three minutes that you were given. But it gave a lot of people an opportunity to provide an opinion and give a report, and I appreciate that. So between the end of this hearing and a decision that will be made by the committee on LB1074...and, Senator Lathrop, I know that I'm open and the committee is open. After this hearing today if there are any other changes or--and you mentioned one of them--that should be made on the amendment, we're open to that. And so thanks again to everybody that came...and I'm kind of taking the ball away from you. I'll give it back to you if you want any concluding... [LB1074]

SENATOR LATHROP: No. All I would do is just explain to the committee in my close, right now, if we have a problem with sustainability--and the last two or three task forces recognized that we're depleting the aquifer; if that's true, then we need to do something. And, you know, Mr. Cappel said, you know, at some point it's going to be too late. You know, we can look at the Republican River Valley and recognize that there are real problems. There are real problems complying with the compact; and the secondary, but

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equally important part, which is getting to sustainable. Because if you never get to sustainable down there, at some point you're not going to be able to comply with the compact. Right? And I know that there are a lot of people that probably shouldn't get caught in the net and they're down here today. But that's what the Republican said when we were dealing with the Platte. And I don't think it's onerous if you're already doing it. If you are in balance it's a lay up for you. [LB1074]

SENATOR CARLSON: Okay. And I'm going to try and correct you on one statement that you just made, because I don't think you meant it that way, but you said that there are significant depletions. We are depleting; I think you used that. Well, in some places. In other places there's a good job of...and maybe it's just fortunate as to where they're located, that there aren't depletions taking place. But I see responsible people trying to react to this, and I think you've heard some of that today. [LB1074]

SENATOR LATHROP: I do too. I do too, and I wouldn't quarrel with you that there...I think the Niobrara frankly is...in talking to those guys, the groundwater adds to the streams up there, they're doing such a good job. That's not what we're talking about, I don't believe. But I can tell you, either we've got a problem or we don't. And if we do, then I think we need to take a two-prong approach to resolving it. [LB1074]

SENATOR CARLSON: Okay. And for everybody that's...if you don't have anything more to say, we'll close. [LB1074]

SENATOR LATHROP: No, no. That's fine. [LB1074]

SENATOR CARLSON: (See also Exhibits 45 and 46) We're going to close in just a minute here. But there's pretty strong opinions that came forth today. I know Senator Lathrop well enough that if you talk to him personally, he'll talk to you. And if you want to register some things with me or any member of the committee, please do that. And so again, thank you all for coming; and with that we will close this hearing. And have a good rest of the day. And we've got some heavy sledding to do upstairs. [LB1074]