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Natural Resources Committee  
February 12, 2015

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[LB310 LB622 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 12, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB622, LB310, and a gubernatorial appointment. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Dan Hughes; Jerry Johnson; Brett Lindstrom; and John McCollister. Senators absent: Rick Kolowski.

SENATOR SCHILZ: My name is Ken Schilz, Chair of the committee. I'm from Ogallala and we will go ahead and get started now. We have committee members here today. We will start...I will start by introducing folks. Senator Kolowski is introducing a bill in another committee. He will...he may be here today, he may not, just depends on how his introduction goes. And I will let Senator McCollister go ahead and start self-introductions.

SENATOR MCCOLLISTER: Yeah, John McCollister, District 20, Omaha.

SENATOR SCHNOOR: Dave Schnoor, District 15, Dodge County.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR FRIESEN: Curt Friesen, District 34, Hamilton, Merrick, Nance, and part of Hall County.

SENATOR JOHNSON: Jerry Johnson, District 23, Saunders, Butler, and Colfax Counties.  
[CONFIRMATION]

SENATOR SCHILZ: And Senator Hughes, District 44, from Venango. And also with us today we have Barb Koehlmoos, who is the committee clerk. Also normally we have Laurie Lage, who is our legal counsel. She is out today, but she is normally here. And also with us, we have our page, Jake Kawamoto. He is a sophomore at UNL studying political science, so we're happy to have him here too. Today we have one confirmation. Don Batie is here today for the Nebraska Natural Resources Commission, and two bills, LB622 introduced by Senator Larson, and LB310 introduced by Senator Davis. If you are planning to testify today, please pick up a green sheet that is on either table at the back of the room. If you do not wish to testify but would like your name entered into the official record as being present, there is a form on the table that you can sign. This will then become part of the official record. Please fill out the sign-in sheet before you testify. Please print, and it's important to complete the form in its entirety. When it's your turn to testify, give the sign-in sheet to the committee clerk and this will help us make a more accurate

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public record. If you do not wish to testify, you may submit comments in writing and you have them read into the official record. If you have handouts, please make sure you have 12 copies for the pages to hand out to the committee. When you come up to testify, please speak clearly into the microphone, tell us your name and spell it, your first and last name, even if it's an easy name. Please turn off your cell phones, pagers, or anything else that makes noise, and please keep your conversations to a minimum or take them out into the hallway. We don't allow any displays of support or opposition to a bill, vocal or otherwise, so please don't do that while somebody else is testifying. We use the light system in the Natural Resources Committee. You will be given a total of five minutes to make your point to the committee. The light will start out green. When you have spoken four minutes, it will turn to yellow. At that point, please conclude your remarks. When the five minutes are up, the light will change to red and you will be asked to stop. And with that, we will start with our appointment and Mr. Batie, you are welcome to come up. Welcome to the Natural Resources Committee. Good afternoon.

DON BATIE: Thank you, Senator Schilz. My name is Don Batie, and I am from Lexington, rural Lexington. I farm north of Lexington. I have about... [CONFIRMATION]

SENATOR SCHILZ: Can you spell your name? [CONFIRMATION]

DON BATIE: (Exhibit 1) Oh, I'm sorry. D-o-n B-a-t-i-e. We farm north of Lexington. We have about 1,500 acres, two-thirds of that is groundwater irrigated, one-third is surface water irrigated. Was appointed by the Governor Heineman to the Natural Resources Commission last June and that's why I'm here for you with the confirmation hearing today. My history of water issues goes clear back to February of 1990. I can actually date it. (Laughter) That was the time when the Federal Energy Regulatory Commission ordered that all of the surface water stored in Lake McConaughy, on behalf of Nebraska Public Power District, be released on the Platte River for endangered species. Well, that included all of my storage water because our canal is operated by Nebraska Public Power District and so I had no storage water for that summer. As a result, a number of us farmers got together and we organized a group called Nebraska Water Users and I was in on some of the formation of that organization and I'm currently president of the Nebraska Water Users. Over the years I've attended hundreds if not thousands of meetings on water issues through the Cooperative Agreement and since, trying to solve some of the water and environmental conflicts. Just as I...the reason I can date that so succinctly is that the formation meeting we had for Nebraska Water Users was in March of 1990. It happened to be on the due date of my oldest child and my wife thought it was more important that I go to that formation meeting rather than sit home with her. So, I can kind of remember that very succinctly. She is now a 25 year...or soon to be 25-year-old vo-ag instructor. And so while she's got her life well under way, we're still dealing with water issues, the same issues we were 25 years ago. And I'll answer any questions. [CONFIRMATION]

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SENATOR SCHILZ: Yeah, any questions for Mr. Batie? Don, I know you've worked a long time on water issues on all sorts of stuff and is this a new appointment to the Natural Resources Committee? [CONFIRMATION]

DON BATIE: Yes, it's a new appointment. I'm one of the...the bill that the Legislature passed like a year ago added 14 new slots and I'm representing the agricultural interest on the commission. And I was appointed to a four-year term on that, initial four-year term. [CONFIRMATION]

SENATOR SCHILZ: Right. And...okay. And with that, what do you think is the most important thing you bring to the table as far as...to the commission and what's your goal while you're going to be on there. [CONFIRMATION]

DON BATIE: Well, the most important thing I think I can bring is that I understand the issues...of the longstanding issues between the environmental organizations and the power districts and the irrigators because I've been involved with it for 25 years. What we hope to accomplish is, first of all, we need to get the rules adopted to distribute the Water Sustainability funds. That is a committee that I'm on along with Mr. Smathers behind me. We are trying to get those rules adopted. We're fairly well along. We've got a meeting next week. We hope that we can finalize...get it ready for a preliminary vote by the commission maybe in a couple weeks and so we can start the hearings on that soon. But that's the first step is to get those rules for the Water Sustainability Fund and then we need to get that fund distributed and so it can start working. That's the key. And that has been the big issue for a number of years in the water projects. We could see projects that were out there potentially that could help the state of Nebraska, but there was not any funding sources and so with the money that the Legislature appropriated to this Water Sustainability Fund, I think that gives us the ability to accomplish a lot of really positive things for the state of Nebraska. [CONFIRMATION]

SENATOR SCHILZ: Okay. Thank you. Any other questions? Senator Johnson.  
[CONFIRMATION]

SENATOR JOHNSON: Thank you, Chairman Schilz. Thank you, Mr. Batie and thanks for coming in and thanks for your service. A lot of experience, I know, with the Nebraska Water Users group. Is there any...will anybody perceive a...too much of an influence or a conflict with you being president of the Water Users serving on this? [CONFIRMATION]

DON BATIE: I don't think so. The Nebraska Water Users at the current time is really taking a back seat. We have not been very active in the last five to six years because some of the issues are being handled other directions. We will not be applying for any funds, I can guarantee you that, because our organization is strictly trying to advocate for private property rights and is not

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in a position to do any projects involved with the fund. And my whole goal is to represent agricultural interests and the Nebraska Water Users is made up almost entirely of ag interests. So, I think that will all...even as president of the Nebraska Water Users, I'll still be following and representing my constituency, if you may. [CONFIRMATION]

SENATOR JOHNSON: Yeah. Thank you. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Johnson. Any further questions? Seeing none, thank you, Mr. Batie. Congratulations and good luck. [CONFIRMATION]

DON BATIE: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Appreciate it. Are there any folks here in support of Mr. Batie? Mr. Rempe, welcome. [CONFIRMATION]

JAY REMPE: Senator Schilz, members of the committee, my name is Jay Rempe, J-a-y R-e-m-p-e, vice president of governmental relations for Nebraska Farm Bureau. Just wanted to come here and offer our support publicly for Don Batie for the Natural Resources Commission. I've known Don for many years. Shortly after he got started in the water issues, I did, and he kind of tutored me along on some of these things over the years and he's been kind of one of our go-to people within Farm Bureau on water issues. And he does bring a good perspective to the issue and when the opening came up last summer, we actually called Don and asked if he would consider putting his name in because of his experience and his expertise and his knowledge in dealing with the water issues from the variety of perspectives. So, we fully support Don and encourage the committee to advance his appointment. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Jay. Any questions for Mr. Rempe? Seeing none, thank you. Any other support for Mr. Batie? Seeing none. And I must say as well that I also served with Mr. Batie on the Nebraska Water Users as well and he is very knowledgeable in what he does with water and he will be a great addition to that board, so, if he is appointed, or confirmed, which I have full confidence that he will be. Any other supporters? Seeing none, any opposition? Seeing none, anybody here in a neutral capacity? Seeing none, With that, we close the hearing on Mr. Batie. Thank you, sir, for coming in today. We appreciate it. Have a good afternoon. And with that, we will close the hearing on Mr. Batie's confirmation and we will move on to LB622. Senator Larson is here and he is welcome to open on his bill. Welcome, Senator Larson. [CONFIRMATION]

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SENATOR LARSON: (Exhibit 1) Thank you, Senator Schilz and members of the Natural Resources Committee. My name is Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I represent Legislative District 40 from O'Neill, Nebraska. As many of you know, a 76-mile stretch of the Niobrara River was designated by the federal government in May of 1991 as the Niobrara National Scenic River. Over the course of the next ten years, work was done to ensure local control over that scenic river, including the passage by the Nebraska Legislature in 2000 of the Nebraska Scenic River Act which created the Niobrara Council, a 16-member body tasked with partnering with the National Park Service to provide local stewardship of the landscape in the Niobrara Scenic River corridor. As passed by the Nebraska Legislature, the Niobrara Scenic River Act includes legislative findings that explicitly state the purpose of the Niobrara Scenic River Act is to ensure the continuation of the cooperative management relationship between the Niobrara Council and the National Park Service so that local participation and control over this valuable resource can be maintained. Under the National Park Service's general management plan for the Niobrara National Scenic River, either the Niobrara National Scenic River and its corridor can be managed by the National Park Service with a local partner, or it can be managed by the federal government alone. LB622 contains necessary updates to the Niobrara Scenic River Act to ensure continued local control of our state's natural resources by updating Nebraska statutes to recognize the federal boundaries of the Niobrara Scenic River corridor as adopted in 2007. A vote for this bill is a vote against full federal control because the National Park Service is not likely to want a partner that won't recognize the official boundary. I have always been a strong proponent of local control, so I am introducing LB622 and asking for your vote to advance this legislation so that the Niobrara Council does not fail. This bill is not a debate on the boundaries set by the federal government and the National Park Service into the 2007 management plan. The boundaries are already set, but failure to match the Niobrara Council statutory authority to the same boundaries means at the very least that those areas where the federal boundaries defer from the state boundaries, local control does no longer exist. Worse, we are at risk of the National Park Service discontinuing its partnership with our local entity, moving instead to a partnership with a less representative body or with no local partnership at all. Passing LB622 puts Nebraska and my constituents in control of our own natural resources. The second portion of this bill recognizes that appointments to the Niobrara Council should rise to the level of a legislative approval. LB622 provides an important legislative oversight to gubernatorial appointments to the Niobrara Council. Also, I passed out a rough letter from a county commissioner in Rock County that surveyed the landowners in Rock County, the part of the council...the part of the scenic river that I do represent along Rock County and my landowners in Rock County are very supportive of LB622. Thank you. [LB622]

SENATOR SCHILZ: Thank you, Senator Larson. Any questions for Senator Larson? Senator Johnson. [LB622]

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SENATOR JOHNSON: Thank you, Senator Schilz. The polling, how...was that through a...what kind of a survey was that? How biased or unbiased might it be? [LB622]

SENATOR LARSON: You know, I think the polling is just a local county commissioner going to his neighbors and talking to all of them on the river and asking them what they thought. So, I don't think it was any...super scientific. It's just an old farmer doing his job. [LB622]

SENATOR JOHNSON: I see in the briefing that we got, you bringing this on behalf of a constituent. Is that someone separate from the Rock County Commissioner? [LB622]

SENATOR LARSON: Yes, this is not the Rock County Commissioner. [LB622]

SENATOR JOHNSON: Thank you. [LB622]

SENATOR SCHILZ: Thank you, Senator Johnson. Any further questions? Senator McCollister. [LB622]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. This bill and the bill that follows, are they mutually exclusive? [LB622]

SENATOR LARSON: Not necessarily. You know, I would be happy to have...work with Senator Davis to roll the two together, but I think the important part is that the boundaries do change, because if the boundaries don't change, the National Park Service could pretty much completely exclude the Niobrara Council in the management of the scenic river. [LB622]

SENATOR McCOLLISTER: So the difference in the two bills is primarily geography, is the boundaries? [LB622]

SENATOR LARSON: The boundary differences...and I haven't read Senator Davis' bill in its entirety, but I know from my understanding they're not mutually exclusive, it doesn't have to be one or the other. You know, they could be combined. [LB622]

SENATOR McCOLLISTER: Thanks, Senator. [LB622]

SENATOR LARSON: Thank you, Senator McCollister. [LB622]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Schnoor. [LB622]

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SENATOR SCHNOOR: Senator Larson, you just said something about excluding the Niobrara Council. If that happens, would that then give the--and I'll say the federal authorities--that gives them complete jurisdiction over all that? [LB622]

SENATOR LARSON: Yes. [LB622]

SENATOR SCHNOOR: With no input from the locals...local landowners? [LB622]

SENATOR LARSON: It's my understanding when the Niobrara Scenic River was put in place in '91, as I said, that it can either be run by the National Park Service or with a local partner. And the National Park Service has been accommodating to let us have that local partner, but it's unlikely moving forward much longer if we don't come into compliance. We've already given over...we've already created the scenic river. That can't be undone, so now it comes to the fact, do we want to have that local voice? And how obstinate do we want to be with continuing not to recognize the federal boundaries because those boundaries are...they're already set. It's done, whether we recognize them or not. So my worry is that the federal government will say, well, the local partner is no longer playing nice, we already have the statutory authority in federal law that just, do it ourselves and we no longer need the Niobrara Council. [LB622]

SENATOR SCHNOOR: Okay. So we're kind of doing this to hopefully prevent a problem, maybe? And I...because I don't know a lot about this at all. [LB622]

SENATOR LARSON: Yeah, yeah, that's what I would say to prevent full control from the federal government, which is a possibility, and we've seen happen in other states with scenic rivers. I think a similar situation happened with this in Montana with the Missouri River. [LB622]

SENATOR SCHNOOR: Okay. Thank you. [LB622]

SENATOR SCHILZ: Thank you, Senator Schnoor. Senator Friesen. [LB622]

SENATOR FRIESEN: Senator Larson, could you describe a little bit what the council has done in the past regarding these boundaries. Have they...they've obviously taken a position, but could you describe some of the thought process that went into that? Are you familiar with that at all, or...? [LB622]

SENATOR LARSON: Regarding what specifically? [LB622]

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SENATOR FRIESEN: Well, when they've been asked to adopt these new boundaries, also and the commission, in my understanding, has refused to do that. Could you describe a little bit the thought process there is behind that? Has that been discussed at all in your level? [LB622]

SENATOR LARSON: Yeah, I've talked to them. I know that the commission is split in terms of deciding to change the boundaries. Right now there's more members in the commission that don't want to recognize the federal boundaries. You know, I share their concerns when it comes to the federal government having control, or the worry of conservation easements and I understand the emotion that is happening here with the council because a lot of it is that emotion. The big thing moving forward is, do we want to take a stance against the federal government by not recognizing these boundaries? But the clear thing is, is we already ceded control to the federal government in '91. And when they have the authority to either run it by themselves or with a local partner, I would rather have that local partner. And it's a possibility, and from what we've seen, it could be a very strong possibility that the National Park Service will just say, we're done, and do it themselves and they would be in their full legal authority to do that. But like I said, I understand their concerns. I, too, have similar concerns on the...on a different part of the Niobrara farther to the east. You know, the federal government, more in Holt County, they were trying to make it more of a scenic byway and I stood up with my constituents there and said, no, because that's our chance to stop what is happening on the scenic river over here. They've already ceded control, though, they're not...it's not coming back. So, we need to keep as much local control as possible. When you go farther east more into the Holt County, they're trying to get into the Eagle Creek as well and we have land on the Eagle Creek, you know. And this has been an issue over the past two years. We've continually said no, we don't want to see this control. We don't want to put these easements on the land, but once it happens, now we're...you know, it happened over on the western part. Now we have to deal with it, so. That's kind of where... [LB622]

SENATOR FRIESEN: Would you say that when that council had the vote to make that decision, they knew full well that the National Park Service may stop funding them and would take control? They still wish to vote to basically say no, they want to keep this local control and not allow the Park Service to, what they call, overstep their bounds? I mean, if they knew that going in. [LB622]

SENATOR LARSON: I don't know if the...what was said by the local counsel in the meetings or if...when they decided to vote against recognizing...or supporting recognizing the new boundaries if that was discussed. I haven't seen the minutes of that meeting. It's quite possible that they did, you know. And I think if they did know that the possibility of losing funding or no longer being the local partner with the National Park Service when it came to controlling the scenic river, if it was a stance that they're taking against the federal government, like I said, I understand the emotion behind it, but that's not always the most rational move, moving forward.

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And maybe, you know, I also know that individuals have talked about, you know, we lose funding from the federal government and other organizations that have offered us grants in the past to whether it's, you know, to clear cedars or anything like that you know, we lose all of that, you know, the council still exists and it will still be funded, but possibly by property taxes which, I think, dives into a lot more questions of what happens if one county doesn't want to pay, do they still have equal voting rights? How do you make the counties pay? Do you go into...and does the federal government still even need to work with you? Can they just say, now we control it because it is the federal scenic river and you guys can have your local council, but it doesn't matter to us whether you exist or not. [LB622]

SENATOR FRIESEN: Okay. Thank you. [LB622]

SENATOR LARSON: Thank you, Senator Friesen. [LB622]

SENATOR SCHILZ: Thank you, Senator Friesen. Senator McCollister. [LB622]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Who funds the council now? [LB622]

SENATOR LARSON: I know they get some federal funding currently, and I know in the past they've received numerous grants. I think they've received a grant from the Nebraska Environmental Trust before. I believe, and someone from the council might be a better person to ask, funding has decreased recently and also the federal government has pushed them to change the boundaries and this...I mean, that's why we're here and we're listening to this issue. And as I said, it can get very emotional at times, especially when you're dealing with... [LB622]

SENATOR McCOLLISTER: Just so I understand, the council hasn't affirmed the boundaries or confirmed? [LB622]

SENATOR LARSON: No, they...so it's my understanding, the Legislature is the one that gets to confirm or essentially change the boundaries. We have it in statute, the old boundaries. The council has voted against...it was a split vote, but the council voted against recognizing the new federal...or asking the Legislature to recognize the new federal boundaries because the council themselves can't recognize the boundaries. Only the Legislature can recognize the boundaries, but the council did vote against the Legislature recognizing federal boundaries. And like I said, I understand their hesitancy, or their...the emotion behind it, but sometimes we have to put those things aside. [LB622]

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SENATOR McCOLLISTER: Yeah, thank you. It's in the documents as well, but thank you very much. [LB622]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Hughes. [LB622]

SENATOR HUGHES: Thank you, Mr. Chairman. Senator Larson, can you give me some insight as to the makeup of the council? Has there been a lot of turnover recently, or are the original members kind of still there, or do you have any idea there? [LB622]

SENATOR LARSON: You know, and that was something that I thought heavily about in terms of reducing the council because I think we've been all on boards that are unwieldy large and have trouble making decisions. And I'm not going to get everybody. I know managers of all NRDs in the area are on the council. You know, I'd prefer that it be one of the elected NRD members instead of a manager. I know that there's landowners from each county. I think it's my...that there's county commissioners from each county that it runs through. There's a...I think there's like an outfitter, meaning one of the people that supply like the tubes or canoes representative. There's a forest representative, a timber representative, which has...he's a new appointment and he has created some controversy in the last...in his appointment on a number of factors with the application that he submitted to Governor Heineman and then how involved he actually is on that part of it. So, there has been some controversy. And right now, the Governor just decides who to appoint to the council and it doesn't come to the Legislature for approval, which I don't think is necessarily a good thing. I think we do need to have legislative oversight on a lot of those appointments just to ensure that the right, you know...an extra layer of protection, we'll call it. [LB622]

SENATOR HUGHES: Okay. Thank you. [LB622]

SENATOR LARSON: Thank you, Senator Hughes. [LB622]

SENATOR SCHILZ: Thank you, Senator Hughes. Senator Schnoor. [LB622]

SENATOR SCHNOOR: Senator Larson, are there any councilmembers going to testify after you? [LB622]

SENATOR LARSON: I think you're going to have at least one testify in support and I'm sure you're going to have at least one testify in opposition. [LB622]

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SENATOR SCHNOOR: Okay. And the reason I asked that, on our summary here it says the Niobrara Council voted against this proposal. [LB622]

SENATOR LARSON: Uh-huh. [LB622]

SENATOR SCHNOOR: Can...and I know that you're not on the council, but can you explain...or do you know why? [LB622]

SENATOR LARSON: It's similar. I think it was Senator McCollister that asked that question. They voted against changing the boundaries and... [LB622]

SENATOR SCHNOOR: I'm sorry. [LB622]

SENATOR LARSON: Yeah, they voted against changing the boundaries and like I said, the concern, and I understand the concern because I've, as I said, I've been fighting that on to the farther to the east, standing up to the federal government and saying, we don't want to, you know, recognize the boundaries that you've set and ceding control. And I make the argument as, we ceded control in 1991. If we don't recognize and work as a local partner and have a voice...you know, become an equal voice, they're going to take complete control. [LB622]

SENATOR SCHNOOR: Okay. Thank you. [LB622]

SENATOR LARSON: Thank you, Senator Schnoor. [LB622]

SENATOR SCHILZ: Thank you, Senator Schnoor. Any other questions? Seeing none, will you stick around to close? [LB622]

SENATOR LARSON: Yep. Thank you, Senator Schilz. [LB622]

SENATOR SCHILZ: Thank you, Senator Larson. We'll start now with proponents to LB622. Welcome, sir. Good afternoon. [LB622]

LANCE KUCK: Thank you, Senator Schilz, members of the Resources Committee. My name is Lance Kuck, L-a-n-c-e K-u-c-k. I'll alter my testimony just a little bit here to...on the funding question that was asked, and right now, the federal government gives the Niobrara Council \$100,000 and the state, I believe we're at \$42,000 appropriation from the state. So, we get to that before I got started so we can touch base of that. I ranch in northern Rock County. I am also the

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Rock County landowner representative to the Niobrara Council. Senator Larson summarized the history and the Niobrara Council well enough considering our time constraints today. There's obviously been a lot of things that have gone on through the years, and it's, you know, hard to summarize a lot of it, you know, but we are where we are right now. As a landowner within the Niobrara National Scenic River corridor, my goal is to try and manage my resources as effectively as possible. Ranch management in a wild and scenic river corridor is as much about political management as it is about range management, you know, hence why we're here today. There are many entities that are vying for some amount of control or influence in the corridor, but ultimately as a landowner you need to realize, you know, what's best for your resources, which is best for, you know, hopefully your family that want to be involved in your ranch as things progress, you hope. LB622 addresses two issues. The major issue is the discrepancy between the 2007 federally designated boundary. And what the Niobrara Council currently recognizes, we do...I think we can technically say we still recognize the 1996 boundary. That's what we were created under, under statute. The other issue is the appointment of council members. I'll get to that in a minute. The boundary issue has been hashed and rehashed many times with plenty of strong opinions on both sides of the argument and there are legitimate arguments for both sides. The National Park Service, however, has stated multiple times in public meetings that the Niobrara Council is not an effective partner if they don't recognize a mutual boundary. They have emphasized that they cannot continue to work with an ineffective partner. And then they also indicate that they will find other partners. What those other partners are, I have no idea and I don't think anybody has a plan B yet. And even if...and they haven't acted, so even if these continue to be, I guess we could call them idle threats, eventually we can get ourselves back into a situation where there could be some outside groups that have the ability to...well, to sue the Park Service. That's how we got where we got from the 1996 boundary to the 2007 boundary was a lawsuit against the Park Service giving the Niobrara Council too much power. So there's some concern there and then it's really out of our hands and then it goes back to the Supreme Court and then we go back through the whole same scenario we've been through. And I don't want it to go there and even people here, I know that are either in support of LB622 or against, nobody wants that to happen. Okay. We're more on the same page than it kind of seems like now, but a huge bone of the contention is the increased acreage from the 1996 boundary to the current boundary, the 2007 boundary. As a landowner this obviously is a concern, but the fact of the matter is the Niobrara Council has no power, as much as we'd like to influence that boundary, anymore than any of you can when we redid the general management plan, how you could go with public hearings. There was a public hearing in Lincoln and I believe in Omaha, if I remember right. I don't remember to where you can...everybody can weigh in on the boundary. It's just a federally designated legally mandated issue. So the issue is, the council has no control over that. Like I said, as much as we would like to, it doesn't. But the problem is with not recognizing that boundary serves no functional purpose, in my mind, other than to agree that we disagree with the Park Service. And I don't see how that solves any problems and I would like to see that move ahead and where we can recognize it and move on with it. I'm going

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to expedite things here. The second component of LB622 is the modification of the appointment process. This simply takes the appointments to the Legislature and makes them more transparent and gives the public more input in regards to who gets appointed to the council. I know there's been some concern on certain members and they got politicized that maybe is not the appropriate way to appoint people. So it's a...I'm not sure if that's a real significant issue in this bill or not. Some people it is. To me personally, it's just a practical stuff. So anyway, that's what I've got today. So, I mean, please, I welcome any question and I'll try to answer them the best as I can. [LB622]

SENATOR SCHILZ: Thank you, Mr. Kuck. Senator Hughes. [LB622]

SENATOR HUGHES: Lance, thanks for coming in today. Thank you, Mr. Chairman. On, just for clarification, is your land within the current scenic Niobrara corridor, or is it east of there that is not yet designated? [LB622]

LANCE KUCK: No, it's in the current corridor. [LB622]

SENATOR HUGHES: It's in the current corridor, okay. [LB622]

LANCE KUCK: Yes. [LB622]

SENATOR HUGHES: Okay. Are you a member of the Niobrara...? [LB622]

LANCE KUCK: Yes, I'm the landowner Rock County representative. [LB622]

SENATOR HUGHES: Okay. You're a land...you're on the council? [LB622]

LANCE KUCK: Yep. [LB622]

SENATOR HUGHES: Okay, so maybe you could answer the question that I asked Senator Larson about the makeup of the council. Has that council been fairly static in its membership since its inception, or does the membership change and has there been a change significant within the last few years? [LB622]

LANCE KUCK: The county commissioners tend to turn over more frequently. I...whether it's good or bad, this will be the 14th year I've been on the council. [LB622]

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SENATOR HUGHES: Okay. [LB622]

LANCE KUCK: I mean, I hope we could put in this bill where there's some kind of pension plan in there, but I don't think that's going to happen. (Laughter) But the county commissioners turn over, on the NRD side of things, if it's somebody appointed that's an elected member, they'll turn over, but we have one out in the Middle Library NRD director is the representative. That doesn't turn over. We've had issues with the timber representative that's...we have a tough time getting a timber representative because there's really, unfortunately considering the resources, there's just not a lot of money to be made in timber in the Niobrara Valley right now. And the other thing to remember too, this board was made up, I'm not saying haphazardly, but at the time there was a lot of things that were rushed to get done when you went from an advisory committee to a full-fledged...I guess we'd call it a quasi-state agency, I guess, is...we're somewhere in that gray area. So, I know there's been some concern and maybe we need to tweak the board here or there and stuff, but we're not going to get to that today and we're not going to get to that, you know, probably anytime soon. There's other issues we need to work on here, so. [LB622]

SENATOR HUGHES: Okay. Thank you. [LB622]

SENATOR SCHILZ: Thank you, Senator Hughes. Senator McCollister. [LB622]

SENATOR MCCOLLISTER: If memory serves...thank you, Mr. Chairman. And Lance, thanks for coming. Wasn't there some lottery funds that came into the council as well? [LB622]

LANCE KUCK: Yeah, we had...I'm not going to call it aggressive, but we had actively pursued conservation easements and there was Environmental Trust funds to help secure those easements. And at one time, we had federal money too. And we...let's see, the first easement we ever acquired was there at Meadville and I think that was all federal funds because it was fully within the corridor. But then, yeah, we had federal funds that sat for a long time because we had...we had a difficult time identifying a project. And then we did identify a project and then we had some issues in Brown County where the project started to move ahead and then some things changed there. [LB622]

SENATOR MCCOLLISTER: Would you characterize the council as a contentious body? Has it been...other than the vote that appeared in the documents? [LB622]

LANCE KUCK: In the end, we're all on the same page. It's just how we're getting there, I think, is where we have an issue with it. You know, I wish...personally, I wish we had more influence with the federal government. And I think when we partner with them, it's...it can be effective and

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it can be influential, but yet at the same time, you know, the dynamics in the federal government change too, so there's a lot of things, you know, who is in that Valentine office and how they receive you as well. I mean, this is just really complex dynamic moving part when you have different agencies, you have landowners, you have, you know, just a lot of things going on and a unique resource. So it's...to say it's...yeah, I'd say it's contentious a lot of times, but sometimes being contentious isn't a negative thing either. You know, sometimes you can...it may take...you have to go around a lot of ways to get things done, but, you know, I hope maybe that's where we're at now. I don't know. [LB622]

SENATOR McCOLLISTER: Thanks, Lance. Thank you, Mr. Chairman. [LB622]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Friesen. [LB622]

SENATOR FRIESEN: Mr. Kuck, you'd made mention of the fact that basically the boundaries are already established. [LB622]

LANCE KUCK: Uh-huh. [LB622]

SENATOR FRIESEN: And the council really can do nothing other than recognize them and it makes no difference in what you've done or how it's going to operate. [LB622]

LANCE KUCK: Uh-huh. [LB622]

SENATOR FRIESEN: Then if I heard correctly that the Game and Parks though has threatened to withdraw your funding and to use condemnation to accomplish what they want, or am I...? [LB622]

LANCE KUCK: No, I've never heard anything about that. The Game and Parks funding...and I'm not going to...I mean, things can go on out there that we don't know about, so I can't attest to anything I know about that. I can tell you, discussion with the Game and Parks, the funding's not a big issue but the other thing, I guess, Senator Friesen, the question I would ask is, what would the Game and Parks want to condemn, or are you referring to the Park Service? [LB622]

SENATOR FRIESEN: Well, it would be on the National Park Service, sorry. And they were going to use condemnation proceedings to get the easements they needed. [LB622]

LANCE KUCK: No, I've never heard anything like that. [LB622]

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SENATOR FRIESEN: Those are articles I've read somewhere and I don't recall where. That's why I wanted to ask someone that had been involved to find out just...so what... [LB622]

LANCE KUCK: That wouldn't go over very good at all. (Laughter) [LB622]

SENATOR FRIESEN: What does the National Park Service then, other than...are they looking for cooperation from you, but if the council makes no difference on whether or not they approve the boundaries, everything goes forward, what's the big argument about? [LB622]

LANCE KUCK: Well, one of the arguments you get is, they have no ability to be here to discuss state issues. So, they would like the Niobrara Council to be a conduit to, you know, as a resident of the state of Nebraska, you know, I have the opportunity to come here and even your federal employees as residents, but then you start getting into gray areas with them. But, you know, the Park Service really doesn't have the ability to come testify on...you know, I think we can all be fair here and if they had the ability to testify in favor of the boundary issue, they would. They want this to succeed too. Sometimes, maybe, the discussions aren't as persuasive or as nice as you would like, but at the same...at the end of the day, they want this whole system to work as well. It makes it easier on them. So, that's one thing. The other thing is the whole component in the enabling legislation is where the Niobrara Council has zoning, people use the word "authority," but in the end, we don't have zoning authority and if you have the ability to have zoning oversight and ultimately there's a process there. If somebody does something within the corridor that is...that we see is not...I'm going to try to say that...the desired future condition of the National Wild and Scenic, that's the verbiage we use on that. We have the ability to question the local zoning authority, but in the end the Governor is the ultimate individual/entity that affirms that. That's a pretty significant thing for the Park Service because they essentially have no...I'm not sure if they have any jurisdiction on dryland right now. Now, ultimately, on the water, they insist that they have significant jurisdiction. So, it's a...that's one of the big things that they would like to have a local partner that's in step with them to some extent. Now, saying that, there was a lot of years where the Niobrara Council with an effective partnership with the Park Service, we have...I'm not going to say thwarted, but kind of shoved off some things that they came up with that you just said, whoa, whoa, whoa, whoa, we're not going to go down that path. The other thing too, the devil in the details and I have no law degree, is the Wild and Scenic River Act has a lot of small print in it that things still just pop up and they say, there's nothing you can do about this. We're going to do this and they try to say it in a less combative way, but it's insinuated. [LB622]

SENATOR FRIESEN: So would it be legally possible now for someone to come in and develop some property that is in the National Park Service boundary but is not in the council's...the old boundary? Is it possible that some development could happen there? Is that what they worried

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about that someone could put a development where they want their zoning jurisdiction to be?  
[LB622]

LANCE KUCK: We had a development in Cherry County that fell within the new boundary with the Park Service, but it was out of the Niobrara Council boundary. And the Park Service...that was an issue with the Park Service. Now that being said, the Niobrara Council had complete reign to say, we'll let that...we'll let the planning commission. The planning commission says, no, we'll give you a zoning, you know, deviate on the zoning of that. The Niobrara Council could say yes, you can do it, or no, you can't. I mean, ultimately, it comes down to a vote. But the Park Service has no authority to say, we don't want that house on that hill. We've all seen...how many years ago when the individual from Lincoln that had the house on the hill there below Smith Falls and that was a symbolic to the zoning issues you run into in the counties, and that was where some of this came from to try to control that. So, yeah, there are lapses in the zoning, but ultimately and if the Niobrara Council doesn't want to pursue any kind of control over it, then, you know... [LB622]

SENATOR FRIESEN: But right now, the Game and Parks or the National Park Service can do nothing about it either. [LB622]

LANCE KUCK: Nothing. Correct. [LB622]

SENATOR FRIESEN: All right. Thank you. [LB622]

LANCE KUCK: Thank you. [LB622]

SENATOR SCHILZ: Thank you, Senator Friesen. Any other questions? Lance, just a question for you. You say that we're under the 1996 General Management Plan right now and that has specific boundaries, correct? [LB622]

LANCE KUCK: Yeah, that was the 1996 boundary and the Park Service has the 2007 General Management Plan. And, you know, to be honest with you, with the council not recognizing the 2007 boundary, I'm not really sure what general management plan were operating under. That would be a good question. [LB622]

SENATOR SCHILZ: Well, let me ask you this. Under that '96 plan, how many acres fall underneath the council? If you can tell me, if you know. [LB622]

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LANCE KUCK: No, I've got it here. And the acre thing, you know, it comes up and obviously it's a significant issue to some extent, but in a way it's also symbolic. The 1996, and this is a letter from Niobrara Council, 1996 preferred boundary alternative. Because when you get the General Management Plans when they come out and the preferred boundaries, I mean, I wish life was that easy. Wouldn't we just say, we'd prefer that becomes what it is, but that's the way it is with the Park Service and our federal government. But '96, was 20,205 acres and the 2006, 23,000 acres. [LB622]

SENATOR SCHILZ: Then the latest one would be 23,000. [LB622]

LANCE KUCK: 23,074 and I'm not completely sure...I know there was some issues with...some grumblings about what really transpired between the General Management Plan and some of the boundary stuff that came. But yes, essentially, that's the number you use but at the same time, I'm not sure how...how do we combat that? How do we shrink the acreage? You know, I'll all for that too, but it just...I don't see any way we make that work. I mean, in all honesty, I mean, some of the things I think we do, and it's a necessary evil, is...and I don't want to sound terribly negative, but it's damage control in some ways, especially as a landowner. You don't know what's going to happen next year, in two years, or three years. You know, we deal with endangered species, we deal with flows in the water. I'm a surface water irrigator too. We're not going to go down that path today though, you know. [LB622]

SENATOR SCHILZ: How long have you served on the council again? I'm sorry. [LB622]

LANCE KUCK: Since 2001. [LB622]

SENATOR SCHILZ: Since 2001. And then this time, this would be the first time that you've seen anything like this that's come along, correct? [LB622]

LANCE KUCK: No, no, no, no, we need to back up. This whole bill started out as one solid bill. In 2008, the council voted unanimously to basically...what we have with Senator Davis' and Senator Larson's bill all came as one bill. Now, there's some tweaks in there and I can't tell you the specifics, but then that was introduced in 2009 that Senator Fischer introduced it with some changes that she called LB666. And that's an easy number to remember when it's, some of us remember it more fondly than others. So, no, this is really rehashing something that we've already rehashed and they're just...there hasn't been the opportunities maybe to get in front of everybody and have these discussions outside of the council to see what the feelings are or how, you know, how this thing may manifest itself. I don't know, but so, no, this is not the first time we've been here with some variation of what we're trying to accomplish. [LB622]

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SENATOR SCHILZ: I see. Okay. Thank you. Any other questions? Senator Friesen. [LB622]

SENATOR FRIESEN: Maybe you could clarify a little bit the difference in the boundary because one that was first established it was set at a certain distance from the river bank straight down the river for... [LB622]

LANCE KUCK: A quarter mile. [LB622]

SENATOR FRIESEN: A quarter mile from the river for ever how many miles long it was. And so now, they're not going to add any more acres to their jurisdiction, so to speak. They're just changing the way they jog in and out. There is some land owned by a conservation group or something and so at that point they're going to go to the river bank, follow the river bank. As soon as they exit that land, they'll jog back out. But what they're looking to do is to reach up into some fingers of some draws or tributaries to try and protect the scenic portion of the river by doing that. So they're not really expanding their acres, but they're expanding their territory. [LB622]

LANCE KUCK: Yeah, you could...that's a good way to describe it. What they got in trouble with in the lawsuit and I'm not going into the legal specifics, or even being able to remember all of it, we have the outstandingly remarkable values that everything is based on one significant one with the lawsuit and where we went into these boundary changes was a remarkable value is people recreating when they drive across the river. So, you know, when you're coming up Highway 7 and you're south of Bassett, which I happen to find it down, I like it down there as much as on the river. But most people, you're in a "deserty" environment and then you hit what it looks like when you go across the Niobrara River, it's scenically it's a nice change and that's the significant that the court found and the Park Service found that was an important way people recreate is to control that view shed when you go across the river. The other thing, you're correct, the Nature Conservancy, they took that land out because they, politically, I wish they wouldn't have. I think it would have made our life a lot easier if everybody was on an even footing because they're still taxpayers and everything, but that's what they chose to do. They did take that out. And then some of the view sheds, you know, up the drainages, that was considered view sheds, or some of your cold water streams were considered...you know, fit into the outstanding remarkable values, but they went through that whole hearing process and had the opportunity to, you know, give it a year or a day and they take that into account and what ultimately comes out of, you know, your opinion or not, you know. That's what we ended up with. So, it's...the significant ones we ran into was the view sheds on the bridges when you have somebody in the boundary went along right here and then all of a sudden, you have a place and the boundary goes way up and around like especially on Highway 7 north of Bassett when you come down you cross the other side, those landowners there, and they actually through the hearing process and through input from the

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Niobrara Council, we got some of that acreage taken out, not as much as they like, but it...the system did work to some extent at that time. [LB622]

SENATOR FRIESEN: So was there ever any compensation given to landowners when they were restricted from the use of their property? Did anybody ever make any compensation? [LB622]

LANCE KUCK: No, and that's a bone of contention. But the flip side, I'm...we have county zoning that still is the law of the land, I guess we would say, so I think theoretically I probably lost...maybe have I lost any ability to conduct business. I mean, me personally on my ranch, it hasn't changed anything I do. So, what would I be compensated for? Lord knows I'd love to be compensated for about anything if I could get compensated for it, but I just don't know. [LB622]

SENATOR FRIESEN: The question was basically if somebody would have wanted to do something, put in a resort or whatever, I don't know, now they can't. And if that was their plan, you know, that you could look at it as lost opportunity, whatever. I'm just curious if there would ever been any compensation or talk of it, but I'm sure there were some that... [LB622]

LANCE KUCK: Well, and right now, like you said, the county zoning is ultimately what controls it. So, you know, in any of your counties at home, if your zoning limits that you owe compensation to somebody because, you know, if you're in an ag or like you go down in Lincoln and we have gobs of different zoning regulations in different areas where you can and can't do things, do you...I mean, you owe compensation because I can't put an apartment here or there. You know, that's where... [LB622]

SENATOR FRIESEN: Typically, though, counties don't zone our areas for building if you choose to do that. It's an unusual situation because of the river. [LB622]

LANCE KUCK: Yeah, we do...all the counties do have a separate zoning for the river corridor. I guess I should have been clearer with that. We have, I think in Rock County, it's Ag 1 and Ag 2. And for the most part, you know, the zoning is...even in the corridor, it's not that difficult right now to adhere to the zoning standards. But, no, and that's a long answer to your question. No, I don't know if anybody's been compensated for anything. [LB622]

SENATOR FRIESEN: Thank you. That's all. [LB622]

SENATOR SCHILZ: Thank you, Senator Friesen. Further questions? Seeing none, thank you, sir, for your testimony. Appreciate it. [LB622]

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LANCE KUCK: It's clear as mud, isn't it? (Laughter) [LB622]

SENATOR SCHILZ: Further support? Other supporters? Mr. McCoy, welcome. [LB622]

TIMOTHY McCOY: Thank you, Senator Schilz and members of the committee, my name is Timothy McCoy. I'm the deputy director of the Nebraska Game and Parks Commission. T-i-m-o-t-h-y M-c-C-o-y. We're here to testify in favor of the...what I'd call, a correction of the boundary, a little bit of a cleanup to match what the Park Service has. We are a member of the Niobrara Council, our staff. We have staff that sit on that. You know, one of the things I believe that has created a challenge because of that boundary is established in law. You know, one of the questions brought up by our staff when this has been raised before, is, you know, it's unclear whether the Niobrara Council on their own can actually change. You know, can they choose to accept that boundary? It's been a question mark out there because the boundary was set in the law. So, I think for some of the members, it was a bit of a quandary of whether they could even accept that with the Niobrara Council. On the other parts of this bill, we're staying neutral on that because that really impacts the makeup and how the other members of the Niobrara Council are set. With that, I would take any questions if you have any for me. [LB622]

SENATOR SCHILZ: Thank you, Mr. McCoy. Any questions? Is it your understanding...I mean, we've heard all this and we've listened, is it your understanding that there's...that if the council doesn't go along with the feds on this thing that they're out in the cold or whatever? What's your understanding on this or what's your...? [LB622]

TIMOTHY McCOY: My understanding is it is an issue the council and the Park Service are aware of. My interpretation of that is it may not be that the council is going to do something...or that the Park Service, forgive me, is going to do something immediately, but I think it's sort of viewed as a potential future risk. You've essentially let something set there that you know is a potential issue that allows the Park Service to say, you know what, we've tried working with the council as the local entity and now we're going to go do it ourselves. And you've heard some of that, I believe, especially from Senator Larson. And that's the part that's probably the most concerning because, you know, the Wild and Scenic River there are a lot of federally driven things that can happen. There are a lot of things that can happen in the federal system depending on whoever the...you know, who the primary person is there that's in charge of that area. And I think having the council there on this is important to all of us to maintain some level of local control on that river and have an ability to influence them because I believe that is really important to the state. [LB622]

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SENATOR SCHILZ: And then, do you...have you had any other areas...have you looked at any other areas around the country or anything to see, are there any other areas that have experienced anything like this, or have you had any of those? [LB622]

TIMOTHY McCOY: I'm not...you know, I'm not aware of a lot of other partnerships like this where the...you know, where you've got this local organized entity that's actually trying to actively work with the Park Service. I know...there may be some in the eastern states. I think in the western states, I don't think they were even, you know, the states weren't willing to make that connection. They just...they were so frustrated with the designation process that they didn't want anything to do with it. [LB622]

SENATOR SCHILZ: So the feds basically just drive everything. [LB622]

TIMOTHY McCOY: Yeah, yeah. [LB622]

SENATOR SCHILZ: Okay. Thank you. Any questions for Mr. McCoy? Seeing none, thank you for your testimony, appreciate it. Further support. Mr. Smathers, good afternoon. [LB622]

SCOTT SMATHERS: Good afternoon, Senator Schilz...Chairman Schilz and members of the Natural Resources Committee. My name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I am the executive director of the Nebraska Sportsmen's Foundation, a nonprofit sportsmen's organization representing a multitude of stakeholders within the state of Nebraska. We are here today to lend support to Senator Larson's LB622 in regards to the Niobrara River and recognizing the boundary. As someone who has been involved in the conservation, the environmental, and the natural resources community on many levels for the last 20 years from a grassroots to a state level to a regional level to a national level and working with a multitude of partners and stakeholders, the Niobrara Council at the present time, although as stated here today, may have some internal issues that they're working through as any large group does. And being a member of the Natural Resources Commission of 27 members, I'm well aware of the fact of working through different opinions, thoughts, and processes of stakeholders. However, it's very clear. As you've heard, if the boundary is not recognized, the potential of risk is the loss of funding not only from a federal standpoint, but also from this legislative body for the Niobrara Council which can remove local control or local advisory capacity with a federal agency. I'm the first one to sit in this room and talk that federal control is not something that we seek typically within a sportsmen's or the conservational world on a regular basis. However, with the unique situation as you've heard Senator...or Mr. McCoy just stated, it's the one of a kind that he knows of in the country. That says to me that the National Park Service and the feds are willing to at least adhere and have conversation in an advisory capacity with a local community on one of Nebraska's natural resources nuggets. I'm confused by the other side of this opinion when what's at risk is

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funding and a seat at the table. You're either at the table or you're out in the hallway trying to figure out what's being done. So I would urge this committee to forward to the floor LB622 for full debate and review. With that, I'll answer any questions. [LB622]

SENATOR SCHILZ: Thank you, Mr. Smathers. Any questions? Okay, if there's none others, I was just wondering a little bit. It's a little bit odd that, Mr. Smathers, that you and Senator Larson would be working together on a bill that has to do with things like easements and stuff like that, what's going on here? You don't have to answer that, that's a little aside for me, but anyway... (Laughter) [LB622]

SCOTT SMATHERS: I would say the stars are moving in the right direction. (Laughter) [LB622]

SENATOR SCHILZ: Or watch out for lightening, right? Thank you. [LB622]

SCOTT SMATHERS: Thank you. [LB622]

SENATOR SCHILZ: Further supporters. Welcome. Good afternoon. [LB622]

BRUCE KENNEDY: (Exhibit 2) Good afternoon. Chairman Schilz, members of the Natural Resources Committee, my name is Bruce Kennedy, B-r-u-c-e K-e-n-n-e-d-y. I am representing this afternoon Friends of the Niobrara, which is a citizens conservation group and we have a letter that has been distributed to the committee, and for points of clarification and to underscore how important this piece of legislation is to us, I will just read from that letter. Friends of the Niobrara, Inc., is a 501(c)(3) nonprofit Nebraska corporation chartered in 1999. Our stated mission is to preserve the natural, historic, and scenic qualities of the Niobrara River Valley, including the national scenic river corridor, through a program of education and promotion of projects to accomplish this goal. To the end, we work in cooperation with the National Park Service, the Niobrara Council, the Nebraska Game and Parks Commission, and The Nature Conservancy. We support LB622 which would amend the Niobrara Scenic River Act to change the scenic river boundary definition so that it is that which is included in the 2007 National Park Service General Management Plan. It would also require legislation oversight on Niobrara Council appointments made by the Governor. We have supported the change in boundary definition since the publication of the 2007 General Management Plan. The law as it currently stands refers to the obsolete 1996 General Management Plan and results in the Niobrara Council. The law is currently...I'll go back and read that over. The law as it currently stands refers to the obsolete 1996 General Management Plan. And this plan definition results in the Niobrara Council being unable to exercise its administrative authority as intended by the Niobrara Scenic River state boundary. The fact is that either the Niobrara National Scenic River can be managed

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by the National Park Service with a local partner or the federal government alone. The latter option is something any of us would like...none of us would like. We recognize that the official boundary defined in the 2007 General Management Plan is currently a step in the right direction. Basically what we're saying is, that we would like to see the council do this and not the federal government. The Niobrara Council was formed by a local partner...formed to be a local partner to manage the Niobrara National Scenic River along with the National Park Service. We have always claimed that local control works. The Nebraska Legislature should prove this and not let the Niobrara Council fail. Regarding the provisions for legislative oversight of council representatives appointed by the Governor, we believe that more transparency is required for these appointments and that such legislative oversight would achieve that goal. [LB622]

SENATOR SCHILZ: Thank you, Mr. Kennedy. Any questions? Seeing none, thank you very...oh, wait, Senator McCollister. [LB622]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Just a quick question. Who composes the Friends of the Council? What are the membership requirements? [LB622]

BRUCE KENNEDY: The membership requirements of the council? [LB622]

SENATOR McCOLLISTER: Of the Friends. [LB622]

BRUCE KENNEDY: Oh, the Friends. We have a board. [LB622]

SENATOR McCOLLISTER: Okay. [LB622]

BRUCE KENNEDY: And I am the president. [LB622]

SENATOR McCOLLISTER: Okay. And is it open to all people? [LB622]

BRUCE KENNEDY: Yes, absolutely. [LB622]

SENATOR McCOLLISTER: Okay. Thank you very much. [LB622]

SENATOR SCHILZ: Senator Schnoor. [LB622]

SENATOR SCHNOOR: Sir, are any of these members of the Friends of the Niobrara, are any of them on the council, on the council that we're talking about here for this legislation? [LB622]

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BRUCE KENNEDY: No, sir. No, they are not. [LB622]

SENATOR SCHNOOR: Okay. [LB622]

SENATOR SCHILZ: Thank you, Senator Schnoor. Any other questions? Seeing none, thank you for your testimony, appreciate it. [LB622]

BRUCE KENNEDY: Thank you, Senator. [LB622]

SENATOR SCHILZ: Further support for LB622. Mr. Winston, welcome. [LB622]

KEN WINSTON: Good afternoon. For the record, my name is Ken Winston, K-e-n W-i-n-s-t-o-n, appearing on behalf of the Nebraska Sierra Club supporting LB622 for the reasons that have been previously stated this afternoon. [LB622]

SENATOR SCHILZ: Thank you, Mr. Winston, for the best testimony today. (Laughter) [LB622]

KEN WINSTON: I told Senator Larson...(inaudible). [LB622]

SENATOR SCHILZ: (Exhibits 3 and 4) No questions? We love it. All right, any further support? Seeing none, is there any opposition? We...oh, we have...okay, we have a letter of support from Stu Lutich from Geneva and Jessi Umberger from Wachiska Audubon Society in support. Once again, do we have any opposition to LB622? Opposition? Welcome and good afternoon. [LB622]

MIKE TUERK: (Exhibit 5) Thank you. Good afternoon, Senator Schilz, panel. My name is Mike Tuerk, T-u-e-r-k, first name, M-i-k-e. I am here today as the Keya Paha County Commissioner and the chairman of the Niobrara Council, and I'm also a landowner in Keya Paha County that is within the corridor of the scenic river. Representing primarily the Niobrara Council today. And I apologize ahead of time for inundating you with paper. There's been a lot of questions that have arisen in these discussions already. I've included a lot of information in there and, again, I apologize for that, but it's all valuable. This is a very convoluted issue. But as you will notice, on December 13th, the Niobrara Council general regular meeting for December, this issue was nominated...or excuse me, was...a motion was made by a member and seconded by a member of which there was, you know, quite a bit of discussion. Quite frankly, the vote did not fare very well and it was unanimously defeated. The specific motion, obviously, was to advance the language that you're hearing today on LB622. Over the years, this has become a very contentious issue within the Niobrara Council for varied and assorted reasons, I assume. I have

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been the chair of the Niobrara Council for the last five years, been a commissioner for the last six years. We have in the past attempted to introduce legislation on this before and quite frankly, we were advised not to address it. I don't know particularly what the issues were. I can only speculate that I have heard the term water rights, inflow stream type issues, landowner rights, and I think all of those things pertain. The...and I will refer to the General Management Plan of 2006. That's when it was published. Within your packet, you'll see some...in reference to the landowner property rights, you'll see some letters that were written in response to the release of the General Management Plan of 2006. The General Management Plan asked and solicited opinions with regards to their position on the boundaries. All of the letters that I have attached happen to be constituents of mine in Keya Paha County. And you'll also see an overlay map in there that, in fact, describes...and I apologize, it's a difficult map to look at and a difficult map to understand. Yet, when you look at that, primarily, and it was mentioned earlier, the 183 overpass over the Niobrara River and the Highway 7 overpass over the Niobrara River, you'll see that there has been large amounts of ground property that was gerrymandered, is the best term I can use. If you look at the depiction in the 2000...or excuse me, in the '96 General Management Plan, you'll just see a straight line. The Park Service has described these as view sheds. It's been very unpopular. As I say, most of the folks involved in this land acquisition were, in fact, not happy with the Park Service and they're not happy today. And in many instances, I agree with them on what has taken place. The reason that it was voted down is in each member's minds will be a differing reason, but at any rate, the Niobrara Council does not support this legislation. And I wanted to introduce a couple other comments that were made earlier...or excuse me, address a couple of comments that were made earlier. You folks had some questions on the appointment process. I'd like to address that. But with regards to authority, you know, the Niobrara Council has a lot of authority that, number one, was granted by the state of Nebraska with the Niobrara Council statute. And within some of that authority, I don't necessarily agree with the premise that the National Park Service can eliminate the Niobrara Council because it is, in fact, was organized and created through the Nebraska Legislature and the state statutes. So that's one issue. The council has huge amounts of authority with regards to zoning and implementation of different plans. And although it's been a contentious issue over the years, the relationship with the National Park Service on many occasions, we get along on some occasions as well. And they have just replaced some of their upper management and things are going much better. But understand that the... [LB622]

SENATOR SCHILZ: Sir, your red light is on, so if you could please wrap up. I'm sure there will be questions. [LB622]

MIKE TUERK: I would be glad to. I'll end with that. Thank you. [LB622]

SENATOR SCHILZ: Okay. Are there any questions? Senator Schnoor. [LB622]

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SENATOR SCHNOOR: Mr. Tuerk, you talked about addressing this previously and you were asked not to. Who asked you not to do it? [LB622]

MIKE TUERK: I would say it was approximately three years ago. We worked on the next piece of legislation, LB310, trying to address some legislative changes and Senator Fischer at that time was, for whatever reason, was unable to carry it to the Legislature. [LB622]

SENATOR SCHNOOR: Okay. And then you...as the chairman of the board, you had a unanimous decision to oppose this, am I correct? [LB622]

MIKE TUERK: Yes. [LB622]

SENATOR SCHNOOR: Well, I don't know if I got my terms right, unanimous, but a majority decision, is that a better term? [LB622]

MIKE TUERK: That's correct. [LB622]

SENATOR SCHNOOR: Okay. Why do you have some members on your council opposed and some in favor? Could you...I mean, you don't have to get into detailed reasons, but can you give us some insight on that? [LB622]

MIKE TUERK: Well, without looking at the actual tally here, I think there were two members that voted in favor, and the rest of the council...there's 16 members on the council. Those that were present voted not, no. The reason was, I think, probably, as I stated earlier, it has been a very contentious issue over the years. We've been down the road before. We felt as though we wanted to get LB310 implemented. But I suspect that's part to do with it and I think there's a lot of mixed emotions on the board with regards to landowner rights, water rights, those kinds of issues that we deal with on a regular basis. And understanding that that board is comprised of a lot of local people and very few government type people, federal management, or federal employees, and so on and so forth, so a lot of mixed opinions. [LB622]

SENATOR SCHNOOR: Okay. And then when I hear issues like this, I always think of how it affects the landowner. So we had a previous testifier said, overall this hasn't affected his operation and he hasn't had to do anything different, if I understood that correct. And now how does this affect you as a landowner? [LB622]

MIKE TUERK: Well, primarily as a landowner, I've got a corridor. My property parallels the Niobrara River for three and a half miles. If, in fact, I wanted to, and I'm not saying that I do, but

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if I wanted to create a resort-type environment, cabins for rent, turkey hunting, deer hunting type, then you would have to go through the process to be allowed to construct any sort of a structure or a commercial concession within the confines of the corridor. [LB622]

SENATOR SCHNOOR: Right. But a change in the border and now the, I guess, the recognition of the new border, has that affected you in any way, one way or the other? [LB622]

MIKE TUERK: No, it didn't change for me particularly. But again, if you refer to the '96 and the 2006, those view sheds had a huge impact on some of the local landowners where...and I don't know if they had designs on that land or not, or just a simple situation where they're being told what they can and can't do with their own property. I think that's pretty devastating to some folks. [LB622]

SENATOR SCHNOOR: But ultimately, you know, we can't change that. Am I understanding that correct? [LB622]

MIKE TUERK: Understand. [LB622]

SENATOR SCHNOOR: Okay. Thank you. [LB622]

SENATOR SCHILZ: Thank you, Senator Schnoor. Any other questions? Senator Friesen. [LB622]

SENATOR FRIESEN: Mr. Tuerk, you know when you guys have discussed this, surely you have looked at the potential of what could happen to your funding, to the council, to everything else, and do you feel that there will be a lot of changes if you don't adopt these new boundaries? Is the Park Service...said that in any uncertain terms or what's the parameters that you've been operating under? [LB622]

MIKE TUERK: We sign a cooperative agreement with the National Park Service, the Niobrara Council does, and within the confines of that cooperative agreement there are expectations with regards to the Park Service on us, the Niobrara Council, and we try to place some expectations on them as well, but sometimes it doesn't go very far. The nature of the business, if you will, has changed over the years. I think the...you know, we talk about cooperative agreements and partnerships and I think some of those things have kind of gone away over the years. It seems to...and it might have been a management style too and that manager is no longer with the Park Service, but it seemed to me that the nature of the beast was changing from a cooperative agreement to more of an ordinate, subordinate type of relationship where you do this, do it then,

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or this is the...these might be the consequences. And, yeah, it's been brought up in budgetary meetings with the National Park Service in the past where...and it didn't go over very well, quite frankly, but, yeah, it was used as a hammer. I will tell you that that one of the issue was that the Niobrara Council has not produced legislation to recognize the 2006 boundary and you know, and we have been involved in it and we have been proactive with it. And yet, you know, the comments come from the Niobrara Council says, well, we're not the lobbying arm of the National Park Service. Certainly you have recourse. I could also make mention that in this 2006 General Management Plan, they actually referred to this legislation that we're talking about and recognize the '96 border is what they're operating under within this Scenic River Management Guide. And, you know, so that's a complete contradiction there. So, you know, I could also make the comment that they didn't exercise due diligence, in fact, when they produced this document because they probably should have addressed that legislation, or the lack of legislation, at that point in time when the 2006 General Management Plan was introduced. [LB622]

SENATOR FRIESEN: So with your budget of \$140,000 or roughly, what are your responsibilities as a council? What do you do with that money, employees, maintenance? [LB622]

MIKE TUERK: We have several facilities that we are responsible for within the river corridor, restroom facilities, and we take care of the maintenance and upkeep on those facilities. We also provide daycare activities. I'd say, daycare and day camps would be a better term where...anyway, I won't touch that one. (Laughter) We're after school events for kids, canoe trips, those kinds of things. You know, we try to be proactive with the promotion of the Niobrara River and all that it has to offer. [LB622]

SENATOR FRIESEN: What does the Park Service do? [LB622]

MIKE TUERK: Well, in the Park Service, you know, they do a lot and I must admit they're highly staffed, number one. I should back up and tell you that the staff of the Niobrara Council is one full-time individual and one part-time individual. The staff of the National Park Service, I think, 14, 15, 16 people. But they do interpretive services. They've got law enforcement and I mean, they're very proactive in the things that they do, but I think sometimes they think that we're like them and able to go out and do all these wonderful things. Well, we don't have a million dollar budget. [LB622]

SENATOR FRIESEN: Thank you. [LB622]

SENATOR SCHILZ: Thank you, Senator Friesen. Senator Johnson. [LB622]

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SENATOR JOHNSON: I'm going to pursue this...the nomination process and that part of it. There's 14 on your board, is that right? [LB622]

MIKE TUERK: Sixteen, I believe. [LB622]

SENATOR JOHNSON: Yeah, okay. And of those attending, seven, which is 50 percent of the board; and then one abstained, not sure, you know, legitimate reasons or whatever; one does like some of the Legislature, not vote; and three were absent and that's probably an excused absence. So, out of that scenario, I mean, you've got 50 percent that say yes and you're not sure...two definitely said no, and others didn't have an opinion here. How would the process work better if there was a different change as they're proposing? Would it have made it better if it was a process where it was approved by the Legislature? [LB622]

MIKE TUERK: Well, it would certainly...it would certainly remove that contentious issue between the Niobrara Council and the National Park Service. I do believe that we are fairly accommodating at the Niobrara Council that, you know, we try to...and we've had some issues that become interboundary issues. They have been fairly remote, but that potential is there where you've got half of a piece of property within the '96 and half of it within the 2006. We had an issue with that on an easement situation, but would it become...I don't think it would change that dramatically, no. [LB622]

SENATOR JOHNSON: Okay. How many...maybe, you probably don't have this number, but how many appointments have been made by the Governor in...since...maybe I'll rephrase it. How many of those that were the seven that voted against it have been longtime members of the council and have a lot of depth to what's going on? And how many of them would be fairly new to the council? [LB622]

MIKE TUERK: Well, one member is a new member, but he was one of the original members. He's back on the board. [LB622]

SENATOR JOHNSON: Back on, okay. [LB622]

MIKE TUERK: And there's one new appointment on there, and another new appointment that was a previous member as well. So, and the...one other gentleman was a new appointment that, in fact, was one of the original founding members of the Niobrara Council. That was an appointment. I don't know if I completely understand your question. [LB622]

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SENATOR JOHNSON: Well, that's fine. I'm just going to get...so the ones that came back, did they come back with a same feeling or come back with an agenda to make change? [LB622]

MIKE TUERK: I don't feel that there's been vendetta agendas or anything of that nature, no. [LB622]

SENATOR JOHNSON: Okay. [LB622]

MIKE TUERK: And we have had some turnover and, you know, wanted to address, if I might, the appointment process that was brought up earlier. [LB622]

SENATOR JOHNSON: Uh-huh. [LB622]

MIKE TUERK: Typically how those appointments work, if you have a vacancy on the board depending upon the particular position, timber industry representative as an example, which, you know, you have a very limited field to select from because of the requirement. You have to live within the Niobrara Valley and operate and do things in the timber industry. But we would normally advertise that position for X amount of days, depending upon if you get some replies or not, and then the four commissioners that are on the board review the qualifications of those applicants, and then those names, if they are qualified, those names are forwarded to the Governor's office and the Governor then makes that decision. We've had many occasions, Governor Heineman liked to have more than one name and sometimes it's very difficult to do that. But that's basically how the process works. With regards to the issue on LB622 where you'd want now full legislative approval of those appointments, it creates a bottleneck for us. It would...I anticipate it would create a bottleneck for us. The statute states that if a person resigns their position on the Niobrara Council, that that position remains in effect until such a time as an appointment has been...a candidate has been replaced or appointed by the Governor. I think that that would be an unnecessary move now to incorporate the Legislature in oversight on the Governor's appointment to this board. That's a personal opinion. [LB622]

SENATOR JOHNSON: So you do have some input into it? As you probably know, when a committee gets a name, it is a name. We don't have the choice of two people apply for a position when it comes from the Governor... [LB622]

MIKE TUERK: Certainly. [LB622]

SENATOR JOHNSON: ...even though we as the Legislature make the outcome. [LB622]

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MIKE TUERK: Certainly, and in many cases, I don't want to use the term "recruit" but, you know, you talk to people, you know, that timber industry representative as an example, there's very few people that are qualified to handle that position because of the constraints of the legislation in the statute. So, you know, you might talk to a person and suggest that they submit their name, and there's an on-line application process that is involved in that and then it goes to the Governor, so. [LB622]

SENATOR JOHNSON: Yeah, you've satisfied my questions on the process. Thank you. [LB622]

MIKE TUERK: Thank you. [LB622]

SENATOR SCHILZ: Thank you, Senator Johnson. Senator McCollister. [LB622]

SENATOR McCOLLISTER: Thank you, Mr. Chairman and Mike, the terms of the members. Are they a certain length of time? [LB622]

MIKE TUERK: Yes, and I don't know if I can give you specific numbers. I believe the term of the elected...or the appointed positions is a three-year term, and then can be reappointed. The commissioners all have a term, but it's a four-year cycle to coincide with the term of the... [LB622]

SENATOR McCOLLISTER: Any limit on the number of terms? [LB622]

MIKE TUERK: No, not to my knowledge. [LB622]

SENATOR McCOLLISTER: Okay. Referring to the proposed boundary regulations from the Park Service and according to the documents we have, you know, (b) is the preferred boundary established by the Park Service. Is that correct, or the ones they do prefer? [LB622]

MIKE TUERK: On the 2006? [LB622]

SENATOR McCOLLISTER: Yeah. [LB622]

MIKE TUERK: Yes, it's plan alternative (b), I guess, that's correct, and it amounted to 23,074 acres. [LB622]

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SENATOR McCOLLISTER: Was the...were those boundaries arbitrary and capricious or what...is it just didn't favor some landowners over others, or what was the... [LB622]

MIKE TUERK: To the selection process? [LB622]

SENATOR McCOLLISTER: Were they... [LB622]

MIKE TUERK: I think if you read this documentation, they'll tell you that they went out with GPSs and plotted locations on these view sheds, as an example. I don't know how adamant they were on those. I know one of them was contested and the Klane Leonard letter that you see in there was the gentleman that hired an attorney to fight this thing. And so, everything within the Park Service, and it was mentioned earlier, they have terms called outstanding, remarkably outstanding values or ORVs and these ORVs are their criteria. There are five which they look at which happen to be scenic, recreation, fish and wildlife, geologic, and paleontology. Those are what they term as their ORVs and so, they try to look at areas instream on a creek that might have the fish and wildlife outstandingly remarkable value, but the justification for these view sheds was scenic. So with that designation they felt as though they could go, well, that's scenic, that's scenic. And so, when I say...when I said the term gerrymandered, that's a term that I think of because I think it was arbitrary. [LB622]

SENATOR McCOLLISTER: Sure. Sure. Are you saying that their decision was faulty or that some landowners were in and some were out? [LB622]

MIKE TUERK: I would say some were in and some were out. I know there was a lawsuit that from an Omaha businessmen that contested the designation and created a legal premise that stated that what they called a view shed was impossible because of the growth along the river banks, and from the river, there is no view shed. So it was dismissed, so they eliminated that property from what was a bump-out. It wasn't a boundary that went right down the river, it was a bump-out incorporating additional ground and so that was eliminated to satisfy the lawsuit. And then a letter that you'll also see from a Mr. Krueger in there, he was the recipient of the next bump-out after the first bump-out was rejected. So arbitrary and capricious, I don't have a good answer for that, you know, but they will justify anything that they do through the scenic value or one of the other ORVs. I don't know if that answered your question, but. [LB622]

SENATOR McCOLLISTER: Don't you fear that the obstreperous attitude of the council is going to result in a lack of funding, or them just claiming the boundary and not caring if you like it or not? [LB622]

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MIKE TUERK: Well, and again, I think somebody mentioned it earlier, I mean, this thing has been enacted, that is the boundary. The reluctance on the state of Nebraska to modify the legislation, I can't answer to other than what I've told you already then. [LB622]

SENATOR McCOLLISTER: Okay. Thanks, Mike. Thanks, Mr. Chairman. [LB622]

SENATOR SCHILZ: Thank you, Senator McCollister. Any other questions? Mr. Tuerk, thank you for coming in today and thank you for all this information. And how long have you served on the council? [LB622]

MIKE TUERK: Six years. [LB622]

SENATOR SCHILZ: Six years, and how long have you been chair of the council? [LB622]

MIKE TUERK: Five years, I believe. [LB622]

SENATOR SCHILZ: Uh-huh. And today, I'm just asking for the record, are you here representing the council today? [LB622]

MIKE TUERK: Yes, I am. [LB622]

SENATOR SCHILZ: Okay. In an official capacity or yourself today? [LB622]

MIKE TUERK: In an official capacity. [LB622]

SENATOR SCHILZ: Okay. Very good. All right. Then, I guess the question that Senator McCollister asked before, I want to go off on that a little bit more. If...and I guess the one thing that I want to know, are you...like he asked, are you concerned about funding again? [LB622]

MIKE TUERK: Funding? [LB622]

SENATOR SCHILZ: Yeah. [LB622]

MIKE TUERK: Our budget has been increasingly downsized as long as I've been on the council. We are very careful with our money. We try to address projects that need funding. With regards

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to the bigger picture, do I think that we're going to be thrown out on the step, I don't have that fear, no. [LB622]

SENATOR SCHILZ: Uh-huh. Do you have reserves built up or...? [LB622]

MIKE TUERK: Yes. [LB622]

SENATOR SCHILZ: Okay. And how much...you say you get, if I remember right, I heard a figure of about \$140,000 a year. Is that how much you receive or is that how much your budget is every year? [LB622]

MIKE TUERK: The cooperative agreement in days gone by was \$195,000. Today it's approximately \$100,000. I believe the contribution from the Nebraska Game and Parks wasn't at \$40,000. I believe it's closer to \$25,000 today, so \$125,000, I think might be a more accurate description. [LB622]

SENATOR SCHILZ: Right. And then I've heard, too, that the Environmental Trust has come up with some money as well. Is that what you talk about when you say...? [LB622]

MIKE TUERK: Well, there was some Hagel funds that were used for...which is very limited today, that were used for conservation easements. There was also a grant from then-Senator Nelson, a \$4 million grant that was based on a request that originated from the Niobrara Council for improvement of roads within the corridor. I could spend a lot of time talking about that one too, but I think the grant was made in 2006 and I believe they're talking about starting the project this year. It was meant to be a 26-mile project originating in Sparks, Nebraska, and terminating in Norden, Nebraska, and it looks as though we might get about four miles of that 26 miles done, so. That's just sidelight. (Laugh) [LB622]

SENATOR SCHILZ: Right. And then so, so just for the maintenance stuff and things you do, how much do you need bottom line every single year to get the things done that you have to get done? [LB622]

MIKE TUERK: Well, and I think we're self-sustaining as we are today with our reserve, but the Park Service within this cooperative agreement has expressed a desire that we become more self-funding to support some of the things that we do and I don't know that we necessarily disagree with that. We recently submitted a grant application, which was denied, for approximately a half a million dollars to do some cedar removal in the corridor, primarily driven by the events of 2012 with the wildfire situation that we experienced out there, and trying to be again, proactive. And

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anything that the Niobrara Council does lends credence to the National Park Service. You know, if you're looking at a situation where you're creating goodwill, so, you know, we encourage the Park Service to get involved with these projects with us because their reputation has suffered in the country over the years because that's an independent group of folks out in that part of the world and they need to be heard. [LB622]

SENATOR SCHILZ: Okay. Thank you. Any last questions? Seeing none, thank you. [LB622]

MIKE TUERK: Thank you. [LB622]

SENATOR SCHILZ: Any further opposition? [LB622]

TANYA STORER: Chairman Schilz and Senators, good afternoon. My name is Tanya Storer, T-a-n-y-a S-t-o-r-e-r. My husband and I ranch out in Cherry County. I currently serve as the District 6 director for the Nebraska Farm Bureau board of directors and I'm in my second term on the board of directors there. And I am here today on behalf of the Nebraska Farm Bureau in official capacity. I might also note to you that I was recently elected to represent Cherry County as one of their three commissioners, so serve as Cherry County commissioner. In that role, I was appointed to serve on the Niobrara Council. So, several hats, but officially here to represent Farm Bureau. Nebraska Farm Bureau has never been supportive of the federal designation of a portion of the Niobrara River as a scenic river. In addition, current policy adopted by our members opposes state legislation which would designate streams, rivers, and tributaries as protected. Our concerns have always been that the designation would result in greater federal control over private lands and state water rights. So, the fact that the bill seeks to redraw the boundaries of the area under the authority of the Niobrara Council to match the federal changes made in 2007, and bring more private property under the scenic river designation as the state would recognize, would run counter to the members' wishes and expose approximately, you know, that figure is yet to be defined, but somewhere between 3,000 and 6,000 additional acres of private property to exposing that to a greater hand of the federal government. Moreover, one of the authorities provided the Niobrara Council and state law is the authority to hold conservation easements on lands within the boundaries of its jurisdiction. Nebraska Farm Bureau is not supportive of the use of conservation easements, especially those in perpetuity, and especially when public dollars are involved, and believe the long-term impacts of the well-being of Nebraska's rural areas are not well understood. By redrawing the boundaries, more private land would be exposed to the use of conservation easements by the council. Again, the result would rerun counter to our members' wishes. It's also important to note that the Park Service is limited to the percent of acres within the corridor that it can hold by fee title, or by conservation easements. However, the Niobrara Council is not limited. Finally, the federal government has hinted it might seek a federal reserve water right for the portion of the Niobrara River designated as a scenic river. We are not sure

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how redrawing the boundaries of the council might impact this issue. We are fearful of realignment of the boundaries as suggested in LB622 could expose more stream and tributaries to such a claim if that happens. There are a...and I don't know if I can answer this in questions or address a couple of these concerns as long as I have my five minutes left. One thing I would like to note in relationship to this concept of control and who has control, it's a bit of a moving target some might think. But one issue that I want to be very clear, from the viewpoint of a Cherry County commissioner is that of zoning. And in state statute, it is very...the Nebraska Legislature has very clearly outlined the duties of the Niobrara Council in relationship to zoning. The council has authority as granted to it by the state of Nebraska to deny or grant permits, conditional use permits, within the corridor of the scenic river as recognized by the state of Nebraska. If the state of Nebraska were to recognize the expanded boundary, then the council would then also be expanding its boundary that it would have authority to grant conditional use permits and, therefore, be removing those acres from the authority of the counties in each respective county along the river. So, there is a very clear issue of change of authority here from a county to a council in relationship to what the state would recognize, that the federal government doesn't have a direct impact over. I think that's important to note and is significant. So, I'll close with that and would be happy to answer questions. [LB622]

SENATOR SCHILZ: Thank you, Ms. Storer. Senator McCollister. [LB622]

SENATOR MCCOLLISTER: I would doubt...thank you, Mr. Chairman. I would doubt you're a lawyer, correct? [LB622]

TANYA STORER: No, I'm not a lawyer. [LB622]

SENATOR MCCOLLISTER: Okay. Do you see legal issues arising from all of this between the federal government and the state? [LB622]

TANYA STORER: That's sort of a loaded question. [LB622]

SENATOR MCCOLLISTER: I know. I suppose. (Laughter) [LB622]

TANYA STORER: The truth is, these boundaries, I think it's important for us to note that the boundaries were redrawn by the federal government in 2007 and we have as counties and as the council been able to work within...there have really been no major legal concerns or legal issues. For seven years this arrangement has worked and I'm not sure that has been really highlighted here today. It is interesting that seven years after the federal government made its changes to the boundaries that it is now a problem, and I am not really clear. I am new to the council itself. As

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I've tried to study my history, I'm not clear what specific issue there has been or concern that precipitated bringing this bill forth seven years later. So, is there a possibility? I suppose there's always a possibility. [LB622]

SENATOR McCOLLISTER: The federal government didn't initiate this, did they? I mean, this is...has there been new developments from the federal government that caused this issue to arise? [LB622]

TANYA STORER: Not to my knowledge. [LB622]

SENATOR McCOLLISTER: Okay. Thank you, Mr. Chairman. [LB622]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Schnoor. [LB622]

SENATOR SCHNOOR: Tanya, you said with the recognition of these new boundaries that 3,000 to 6,000 more acres will go under control of the government, basically the Game and Parks. [LB622]

TANYA STORER: Three thousand to 6,000 additional acres would be included in the scenic river corridor if Nebraska chose to recognize the federal government's redrawn boundaries, yes, that are not...not under the authority, if you will, of the council specifically in regards to zoning. [LB622]

SENATOR SCHNOOR: The council at present does not recognize that? [LB622]

TANYA STORER: No. [LB622]

SENATOR SCHNOOR: So that...so with that you haven't had to change anything as far as the federal government goes. [LB622]

TANYA STORER: I'm not sure I'm...understand your question clearly. [LB622]

SENATOR SCHNOOR: Well, I'm not understanding, so I'm not asking it very clearly. (Laughter) The...I guess I'm getting some confusing information. Some folks are up there telling us that the boundaries are there, we can't change them, they're already recognized. And other folks are saying, the federal government says the boundaries are there, we aren't recognizing them and they've never questioned it. [LB622]

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TANYA STORER: And I appreciate your confusion, yes. I think, you know, there's a lot for many of us to more completely understand regarding the federal government's role and the state's role here. This land within the Niobrara Scenic River is not owned by the federal government. It is all private property. It is not a park. It has not taken the land by condemnation. So that's a key...a key issue here to remember. We're not...we're not...this is not the same as a park, as a national park. It's a designation on the river of which the National Park Service has been mandated under the Niobrara Scenic...under the Scenic River Act, Wild and Scenic River Act, to carry out a broad objective of protecting those five ORVs, as Mr. Tuerk laid out on the 72, I believe it is, 72, 76 miles of the river. How they carry that out falls within really the judgment, if you will, of the authorities in...that are here in Cherry County or in, along the...along the corridor. It's been mentioned that we are on our third, I believe, National Park's representative there. This individual seems much more open, flexible, willing to work with the local community in how we carry out that federal mandate. So, back to, do we...can you change boundaries, can you not change boundaries? The federal government can designate those boundaries. The state of Nebraska still has rights to acknowledge them, if you will. So, when we say we've already ceded control, I think that's sort of a little bit of a fear tactic, quite frankly. There's a coordination mandate within the Bill of Rights, the Tenth Amendment, that under several federal...the NEPA Act, the part...I can't think of the whole list off the top of my head, but the Tenth Amendment that lays out a coordination mandate, that in essence says that the federal government has a...is mandated to coordinate, not...which is different than cooperation agreement and in essence that means that the state or county land use plans and the federal land use plans cannot negatively impact one another. There has to be a coordination of effort there. And that's in large part what the council was set up to do was to help be that liaison between the federal government and the county governments. I've heard a lot of sort of scary, fear tactics that if we don't do this, they will do that. I think we have to refresh ourself back to why the council was created. You know, what the mandate of the federal government is, and recognize that there still has to be a coordination on some level. If they choose to not coordinate with the council, then they have to go to four individual county zoning commissions anytime they make a change in their management plan, which would be far more cumbersome. That was a mouthful. I'm sorry. [LB622]

SENATOR SCHNOOR: No, those are some good answers, but so whether we enact this bill or not, the council is still going to be there. [LB622]

TANYA STORER: Unless you choose...unless the Legislature chooses to make us go away. Yes, we were created by state statute. [LB622]

SENATOR SCHNOOR: Okay. Thanks, Tanya. [LB622]

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TANYA STORER: You're welcome. [LB622]

SENATOR SCHILZ: Thank you, Senator Schnoor. Senator Hughes. [LB622]

SENATOR HUGHES: Thank you, Mr. Chairman. Tanya, thanks for coming in today. You said you're a Cherry County commissioner... [LB622]

TANYA STORER: Correct. [LB622]

SENATOR HUGHES: ...and you're on the Niobrara Council currently. [LB622]

TANYA STORER: Correct. [LB622]

SENATOR HUGHES: How long have you been on the council? [LB622]

TANYA STORER: I'm the baby on the council. [LB622]

SENATOR HUGHES: So you've just started? [LB622]

TANYA STORER: Correct. [LB622]

SENATOR HUGHES: Have you been to any meetings? [LB622]

TANYA STORER: I have. [LB622]

SENATOR HUGHES: Okay. One, two... [LB622]

TANYA STORER: One. [LB622]

SENATOR HUGHES: Okay. And when was that? [LB622]

TANYA STORER: Our legislative committee met...I have to get my calendar out. I believe it was last week. I drove home in a snowstorm, I remember that. [LB622]

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SENATOR HUGHES: Okay. So, not a full council meeting, but just a committee of the council. [LB622]

TANYA STORER: Correct. [LB622]

SENATOR HUGHES: Okay. So when you discussed this legislation, did you take a position on it, on either of the bills? [LB622]

TANYA STORER: The council had already taken a position. The vote was taken in December prior to my appointment to the council. [LB622]

SENATOR HUGHES: Okay, to oppose LB622? [LB622]

TANYA STORER: Correct. [LB622]

SENATOR HUGHES: Okay. Thank you. [LB622]

SENATOR SCHILZ: Thank you, Senator Hughes. Any other questions? Tanya, I guess just sitting here and thinking about this, I'm trying to figure out...so the federal government has the right to set their boundaries? [LB622]

TANYA STORER: Yes, within the mandate they were given under the Wild and Scenic River Act. [LB622]

SENATOR SCHILZ: Right. [LB622]

TANYA STORER: Correct. And there is a limit. [LB622]

SENATOR SCHILZ: But the state, or who is it, the state has the right not to...not to recognize it? [LB622]

TANYA STORER: Yes. [LB622]

SENATOR SCHILZ: Okay. Okay. I have to check into that. [LB622]

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TANYA STORER: And it's not an issue, Senator Schilz. No disrespect, but it's not an issue of supremacy. This is not an issue...you know, years ago this was a discussion. This is an issue of coordination. [LB622]

SENATOR SCHILZ: But we can't...but we can't get out of the wild and scenic river designation now, can we? [LB622]

TANYA STORER: No, we cannot get out of the Wild and Scenic River Act and that's not the intent. [LB622]

SENATOR SCHILZ: No, no, no, I'm not saying that, but we can't...but what I'm saying is, once it's designated, it's designated, there's no going backwards. [LB622]

TANYA STORER: Right. But to keep this in mind, the designation is a very broad designation. If you read the Wild and Scenic Rivers Act, that...the parameters of that are rather broad. How those objectives are carried out really come down to those closer to, you know, the Park Service cooperating or coordinating with the local entities and in agreement of how to carry out that mandate. And that's really why the Niobrara Council was developed. It has worked well and it has worked well for the last seven years. And again, I want to reiterate that. This boundary change made by the federal government has been in place for approximately seven years. To my knowledge, there has not been a specific legal dispute, stumbling block, so there's some question in terms of why now it's not working. [LB622]

SENATOR SCHILZ: But we do have letters from folks that have filed lawsuits against these new boundaries, correct? [LB622]

TANYA STORER: I'm not...I would have to see the letters to know exactly what you're speaking of. [LB622]

SENATOR SCHILZ: Okay. From the package that we got from Mr. Tuerk, there's some letters in there that are disputing those boundaries and their houses or whatever falling within that and basically saying, hey, there's been a taking here. So, there is some dispute so that some people are saying that there is a taking and so I just wondered that. And so as you say, you said that there's some scare tactics going on or whatever, and one of the things that's been talked about is the funding thing and what happens if there is no...if funding gets taken away. And the feds always been really good at, you know, dangling that out there and saying, hey, look, don't do what we want, we'll take the funding away. In your mind is that...is that possible? Could that be a reality in the future if for whatever reason the council in some fashion would part ways, or not be

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getting along necessarily with the feds and with the Fish and Wildlife Service...or National Park Service, excuse me? [LB622]

TANYA STORER: Well, again I think the council in large part has got along with the National Park Service for the overall objectives of the Wild and Scenic River as it's mandated. However... [LB622]

SENATOR SCHILZ: Except for this. [LB622]

TANYA STORER: Agreeing on the boundary. [LB622]

SENATOR SCHILZ: Correct. [LB622]

TANYA STORER: To my knowledge that hasn't affected the protection of the river, however, which is what we all, you know, are working to do. Is it possible they can withdraw their funding? I'm sure it is possible. You know, I would be remiss to say they would not do that. I don't think any of us have that crystal ball. [LB622]

SENATOR SCHILZ: And in your mind, then, and I know I'm kind of putting you on the spot here and I don't necessarily mean that, but this is how it came up and since you serve on the council. In your mind, then, if that would happen, what are the contingencies for taking care of what you have to do going forward? I know Mr. Tuerk talked about you guys becoming self-sufficient. And maybe you don't know right now, but how does that happen? What are the mechanisms in place to...or what could be put in place to make that possible? [LB622]

TANYA STORER: Self-sufficiency? [LB622]

SENATOR SCHILZ: Yeah. [LB622]

TANYA STORER: You know, I believe strongly that if the state of Nebraska feels the Niobrara Council serves a legitimate purpose as is stated in the statute to be a representation of the local and state citizens, that the state may support us on some level. There are conservation dollars available through granting process in the state that are an option. It is to the best interest of the counties themselves to be engaged and remain engaged through the Niobrara Council, so there are possibilities of which I can't, you know, clearly say what may be agreed upon, but I think there are other opportunities to be self-sufficient. Now, does that necessarily...you know, keep in mind we have one full-time employee and one part-time employee. This is not a large budget to keep the doors open. [LB622]

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SENATOR SCHILZ: Right. [LB622]

TANYA STORER: The question becomes how many projects do we do? Mr. Tuerk referred to the most recent grant application for cedar tree control which is a very, very meaningful...would have been a very good thing to be funded. I'm unclear why it was not. Those types of projects would probably rely on grants. [LB622]

SENATOR SCHILZ: Right. Sure. Okay. And then you talked about state funding versus local funding. What would be your priority, how that would work? I mean, would you rather have the local funding first or state funding first? [LB622]

TANYA STORER: I've attended one meeting to this point, so... [LB622]

SENATOR SCHILZ: I understand. And I'm just asking because, you know, if it's local funding then I'd say, well, then you guys could choose how that goes and if you say the state should have it, then all of a sudden this hearing and this decision becomes a lot more important to what we do here, so that's why I asked. [LB622]

TANYA STORER: Yeah, I would be...I would be...I think it would be inappropriate for me to speak on behalf of the entire council on that issue. [LB622]

SENATOR SCHILZ: I understand. And I said I didn't necessarily want to put you on the spot, but I'm putting that out there for everybody to think about. So thank you very much. Appreciate it. Senator Friesen. [LB622]

SENATOR FRIESEN: Thanks, Chairman Schilz. When you mentioned the duties you carry out now for the National Park Service, basically you do all the zoning and you take care of all those issues in that corridor at the present time. If the council was to dissolve and be gone, you mentioned that the National Park Service then would have to go to each of those county boards to get their zoning issues approved, which I would think would be extremely difficult. So, it looks to me, would you say, that it's in their best interest to maintain the council because you have worked well together, you've worked well for seven years, and it looks to me, at least, like the Park Service would look upon that too as an insurmountable task of getting each county to get on board with changing these boundaries. Because...just because the Park Service can change these boundaries, that doesn't mean the counties have to change their zoning, is that correct? [LB622]

TANYA STORER: Correct. That is correct. [LB622]

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SENATOR FRIESEN: And so the council is what carries out that duty and the council was created to work with the National Park Service. [LB622]

TANYA STORER: Correct. And the Park Service does not have zoning authority. [LB622]

SENATOR FRIESEN: Yes. [LB622]

TANYA STORER: So that is important to note. And the...and again, the Niobrara Council was granted the zoning authority within the boundaries of the Niobrara Scenic River corridor by state statute. Everything outside of that is the county authority. So again, the expansion...by the state of Nebraska recognizing the expanded boundary, the 2007 boundary, we would be expanding the authority of the council on zoning, permitting conditional use, the zoning authority. [LB622]

SENATOR FRIESEN: So it would be, would you say it's safe to say that the Park Service would be better served by keeping the council going? [LB622]

TANYA STORER: Yes. [LB622]

SENATOR FRIESEN: Thank you. [LB622]

SENATOR SCHILZ: Senator Schnoor. [LB622]

SENATOR SCHNOOR: You've got to repeat that one more time. Game and Parks does not have zoning authority, so they made up these borders under no authority? [LB622]

TANYA STORER: The National Park Service does not have zoning authority. Well, Game and Parks doesn't have zoning authority either, but. (Laugh) [LB622]

SENATOR SCHNOOR: Well, that's what I wrote down. I might have wrote down the wrong group. [LB622]

TANYA STORER: Okay. No, that's fine, just for... [LB622]

SENATOR SCHNOOR: They do not have zoning authority, but they made up these boundaries and basically have no authority? [LB622]

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TANYA STORER: They have a mandate to protect the river based on those five ORVs. [LB622]

SENATOR SCHNOOR: Right. [LB622]

TANYA STORER: And so how they carry out that mandate, there is some leeway, if you will. That is why in order for them to carry out their mandate, it is imperative that they coordinate with local...ultimately, the counties, those counties that fall within the corridor. It needs to be a coordinated effort. So either they...currently, they're accomplishing that by working through the Niobrara Council because the council has a representative from each county on the council. That was part of the reason for that. If the council...if they chose to not work with the council, then they would have to work with each individual county to coordinate those efforts. [LB622]

SENATOR SCHNOOR: Okay. We tend to hear a lot here in Lincoln about the government overstepping their authority, the federal government. In your opinion, do you think that's what is being done here? [LB622]

TANYA STORER: I...you know, I wouldn't...I would hesitate to say that to this point that they're overstepping their boundary. Again, I think the Park Service and the council have worked well together historically. I think the river, if you were to visit the river today, you would say that the...that we're all doing our job in protecting the river's scenic values and those four additional values. So to say...and I think we also need to remember, this bill was not brought forth by the National Park Service, so it would not be fair for me to say they're overstepping their boundaries. They did not recommend this legislation. [LB622]

SENATOR SCHNOOR: Okay. Thank you. [LB622]

SENATOR SCHILZ: Senator McCollister. [LB622]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. The Niobrara Council is actually a creature of state government, correct? [LB622]

TANYA STORER: Correct. [LB622]

SENATOR McCOLLISTER: Okay. You made the point that it's in the best interest of the federal government to work with the Niobrara Council as opposed to the many counties that abut the Niobrara River, correct? [LB622]

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TANYA STORER: Correct. [LB622]

SENATOR McCOLLISTER: Wouldn't you say that the same thing is true for the state government? Is the state of Nebraska well served through the Niobrara Council? [LB622]

TANYA STORER: Yes, I believe they are. [LB622]

SENATOR McCOLLISTER: In what way? [LB622]

TANYA STORER: There's just a consolidated effort there to not only...it allows for more input. I guess, let me put it that way. The council allows for a broader input than each individual county ultimately would allow for because there are representatives from those other industries, the timber industry, the landowners, the outfitters, and the special interest groups. And so, really it is more inclusive. [LB622]

SENATOR McCOLLISTER: Thank you. [LB622]

TANYA STORER: You're welcome. [LB622]

SENATOR SCHILZ: Okay. One more question and I promise I'll stop after this. I hope, yeah. And you talked about...you talked about the importance of maintaining this and the funding thing if it goes away or if there would be an issue with that. And I don't know if it's there, but I was just thinking about this. You've got four separate counties that are there that each have boards of their own that sit there, and each one of those would have a say as to whether or not, and you said, you would think that it would be important enough that counties should step up to do something. [LB622]

TANYA STORER: I can't speak for counties. [LB622]

SENATOR SCHILZ: And that's my question. What happens if some of them decide, we're not interested? And I know I'm getting a little far afield, but what happens then? And I don't know if there's an answer. [LB622]

TANYA STORER: What happens then is that the National Park Service has to attend those individual county board meetings and planning and zoning commission hearings. [LB622]

SENATOR SCHILZ: And then it's a free-for-all, isn't it? [LB622]

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TANYA STORER: No, it would not be a free-for-all. There would still have to be a coordination of land use between those individual counties and the National Park Service. [LB622]

SENATOR SCHILZ: But as far as the money goes, it would be a vote in each county to see if there would be money allocated towards that. Is that correct? [LB622]

TANYA STORER: And I have some concern that our primary focus is the money and whether or not we're going to lose federal dollars here. I think that it would be more prudent that we be focused on protecting the rights of the citizens of the state of Nebraska and the citizens and the landowners within those four counties. How we accomplish that, I think can be solved if indeed that becomes a problem, but we're talking about potential solutions to a problem we don't have today. [LB622]

SENATOR SCHILZ: Right. Well, true, but I can tell you this, when I go around and talk to folks, one of the big issues that I hear about all the time is property taxes. And if we lose federal funds for something that they're paying for now that would have to be moved over to county funds, i.e. property taxes, that could be an issue. And you know as well as I do owning a ranch... [LB622]

TANYA STORER: I think we're talking about problems we don't have today. We're assuming that may be a problem and at that point, how would we potentially solve that problem. If we come to that point, then that will be addressed. That being said, as a county commissioner, I would feel strongly that if I needed to find a portion, and we're not talking large dollars, Senator Schilz, it's one and a half employees. [LB622]

SENATOR SCHILZ: Right. [LB622]

TANYA STORER: If we needed to direct a portion of our funds to keep the doors open on the Niobrara Council, I would see it as an investment of our dollars for long-term protection of the property taxes of the county...Cherry County, in which I reside, and I would think the other commissioners would end up seeing it that way as well. [LB622]

SENATOR SCHILZ: I understand. Okay. Thank you. [LB622]

TANYA STORER: You're welcome. [LB622]

SENATOR SCHILZ: Anything else? Tanya, thank you very much for your time. You did a great job. Thank you. [LB622]

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TANYA STORER: Thank you. Thank you for your time. [LB622]

SENATOR SCHILZ: Further opposition? Welcome. [LB622]

MIKE MURPHY: (Exhibits 6-8) Good afternoon, Senator Schilz, members of the Natural Resources Committee. I'd like to introduce the extra letters of opposition on behalf of Lower Niobrara and the Niobrara River Basin Alliance. [LB622]

SENATOR SCHILZ: Could we get your name? Spell it, please. [LB622]

MIKE MURPHY: My name is Mike Murphy, M-i-c-h-a-e-l M-u-r-p-h-y. I'm the manager of the Middle Niobrara Natural Resources District and I'm here today presenting testimony on behalf of the Nebraska Association of Resources Districts in opposition to LB622. I'm also a member of the Niobrara Council. The main concern that we've, I guess, been discussing today is this bill is the expansion of the boundaries of the Niobrara Scenic River. And we do not believe the federal government should take more control of that private land. The initial corridor designated a quarter-mile stretch of land alongside the river for several miles and restrictions were placed on the landowners within that region. In 1996, an Advisory Commission worked with the local residents and an additional six-mile stretch was added to connect the two segments for the total of 76-mile stretch of scenic river designation from Borman Bridge to north of Newport. This is the current boundary that the council and the state of Nebraska recognizes. The 2007 Park Service boundary change would entail more private landowner acres that could be controlled by federal oversight. The local concern of landowners and the public is that the Park Service will continue to try and regulate both uses of the river and land within the boundary, create new requirements through the use of a superintendent's compendium, development of a commercial use authorization permit program for less than a dozen river outfitters, and if necessary, and yes, this is in their management plan, the use of easements and fee title acquisition of property up to 100 acres per mile within that scenic boundary. I want to give the committee some additional background on this issue. The designation of the Niobrara Scenic River was the result of a proposed Norden Dam project dating back in the 1980's. A group that opposed the dam sought protection through the federal designation of a scenic river to prevent the project from ever moving forward. After the designation, it was a well-known fact that the river designation system was an underfunded federal program, and that seems to be true today as the Park Service budget for the Niobrara Scenic River Council continues to dwindle. Even the National Park Service submitted testimony to the Committee on the Interior and Insular Affairs during the May 7, 1991, 102nd Congress, that the study area may possess some suitable resource values, but no determination had been made as to the quality and significance of these resources or the suitability and feasibility of establishment of the area as a national park. Senator Kerrey stated during bill introductions that he understood the concerns of local landowners and believed this

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legislation did much to ensure that their property rights will be protected. These concerns still hold true by the majority of the locals. I've included with this testimony a letter from then-Governor Nelson--I'd like you to take the time to read that--that sums up the feelings of Nebraskans. Governor Nelson points out in his letter that the need to manage, protect, and preserve is done locally and not through federal measures. Expanding the boundary will also bring more regulation by the Fish and Wildlife Service and the Park Service for outfitters and the general public that use the river for its recreation and scenic values. Further, the landowners do not need additional federal government oversight on the use of their property. The Niobrara Council in December voted not to recommend the boundary changes and not submit these changes along with what was introduced in LB310 by Senator Davis. While there may be many issues the council members do not agree on, this is one that a majority of the members voted to reject. I would ask the committee to indefinitely postpone LB622. [LB622]

SENATOR SCHILZ: Thank you, Mr. Murphy. Any questions? Senator Schnoor. [LB622]

SENATOR SCHNOOR: Terry, just a little bit of...I guess, it's good to hear the history on this whole thing. There was a dam...a proposed dam project back in the '80s. Is that correct? [LB622]

MIKE MURPHY: Correct. [LB622]

SENATOR SCHNOOR: That I assume didn't happen. [LB622]

MIKE MURPHY: Due to the individuals that contested it, challenged it, and their way to stop that Norden Dam was to... [LB622]

SENATOR SCHNOOR: Who was this group? [LB622]

MIKE MURPHY: A handful of...a very small handful of individual landowners where the dam would actually impacted their property. [LB622]

SENATOR SCHNOOR: Okay. That's the only question I have. [LB622]

SENATOR SCHILZ: Thank you, Senator Schnoor. Anything else? I guess now that I've been thinking about this, has there been any attempt to contact the federal delegation and ask them if there's any way to pull back the new designation? [LB622]

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MIKE MURPHY: We've talked with both Congressman Smith and Senator Fischer and there is, I think, some stuff under way in California right now on a designated stretch out there that may lead to some possibilities, you know, here in Nebraska. And you know, our national delegation is watching that, Senator Schilz. [LB622]

SENATOR SCHILZ: But we don't know where...we don't know where that is now or what the timeline on that is? [LB622]

MIKE MURPHY: Yeah, I can't answer that, no. [LB622]

SENATOR SCHILZ: Okay. Thank you. Any further questions? Seeing none, sometimes it pays to go later in the process, huh? [LB622]

MIKE MURPHY: I understand. [LB622]

SENATOR SCHILZ: Thank you very much. Further opposition? [LB622]

DEAN JOCHEM: (Exhibits 9 and 10) Good afternoon. It's getting late, isn't it? My name is Dean Jochem, spelled D-e-a-n J-o-c-h-e-m. I am really not representing any group, but you might say a number of groups. First of all, I'm the Brown County zoning administrator, so at this point I think I can answer a lot of those questions that were stumbled through earlier. I've been the Brown County zoning administrator for 15 years. Prior to that I was a vocational ag instructor, one year at Valentine, five years at Ansley, Nebraska, and 32 years at my home (inaudible) so I'm very familiar with what has gone on with the scenic river designation. I have attended in recent years most of the Niobrara Council meetings, so I have a pretty good idea of what has been going on in there. And being a teacher, you'll notice I gave you a bunch of homework, so a lot of the questions you've been asking will be answered in there, particularly the first sheet tells you why I feel that you should not expand the boundary. And the next set shows how the boundary has been gerrymandered around to cut down on federal acres and expand that land out on privately held acres. And there's a list in there of landowners that own land in the corridor in the four counties. So that should tell you that this does affect...it's not just a few people. And then the question that has been, you might say gerrymandered around a lot about zoning, the statute describing the Niobrara Council and its zoning duties is included in this packet. And the thing about zoning in the corridor, I think that the counties have been pretty cooperative with that. We have not only protected the zoning within the corridor, like Brown County as an example, and it's this way in every county, we have a section we call the RC1 Zone, recreational, that is much larger than the boundary. And so far we have been, as far as I know, been very cooperative with them. In fact, if something comes up like putting up a building, I have brought that before the Niobrara Council over the years and sought their approval and the major thing that they're after

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is, if you're going to build something in the corridor or near the corridor that it be screened so it can't be seen from the river. And as long as you do that, as long as you don't start putting in some large commercial development, why, we're not having any problems with that. And then finally, there's a letter here, I think, Mike Murphy had one similar that shows what the Governor at the beginning of the scenic river designation, what his feelings were about local control and his concern that this could get out of hand. And I would point out that this river came about, to stop in Norden Dam, and it went from a few people to a Save the Niobrara River Association which involved all the environmental groups and it was a hard kill, but they killed the dam and replaced it with the scenic river. I see my time is about up. Do you have any questions? [LB622]

SENATOR SCHILZ: Thank you, Mr. Jochem. Any questions? Senator Schnoor. [LB622]

SENATOR SCHNOOR: Dean, I missed the first part of your presentation. I apologize, but in your letter it says, let's see, as the Brown County zoning administrator, member of the NARD board, a resident farmer and rancher of Brown County, I am here to emphatically protest this bill and to express disappointment in the manner this bill ever came before this committee. That last portion, could you expand on that, please? [LB622]

DEAN JOCHEM: Yes. The Niobrara Council, per se, did not bring this bill. And I guess to be perfectly clear, one member of the Niobrara Council who has testified here today, did bring this bill. And the majority of the scenic river is not in the district of the person that introduced this bill. So, I don't see that as being very representative of the total group of people that were affected by, if we expand that boundary, and that's what I'm disappointed about, because the Niobrara Council chose not to introduce it. And so as a result of what happened here today, now we're going through this whole process, and hopefully, it's my hope, that it can be stopped here. [LB622]

SENATOR SCHNOOR: Okay. Thank you, sir. [LB622]

SENATOR SCHILZ: Thank you, Senator Schnoor. Any other questions? Seeing none, thank you, sir. [LB622]

DEAN JOCHEM: I've just got one question myself. [LB622]

SENATOR SCHILZ: Sorry, sir, you can't ask questions. [LB622]

DEAN JOCHEM: I can't answer my own question. I just...you asked all these questions about zoning and I asked you that... [LB622]

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SENATOR SCHILZ: Thank you for your testimony, sir. I appreciate it. Have a good night. Any further opposition? Seeing none, is there any neutral testimony? Seeing no neutral testimony, Senator Larson, you're welcome to close if you wish. [LB622]

SENATOR LARSON: Thank you, Senator Schilz and members of the Natural Resources Committee. I have a few notes here to correct some things. I'll start, Section 72-2008 of Nebraska statute, in it it outlines the powers and duties of the...the duties and powers of the council are to assist in the management of the scenic river. If we aren't going to assist in that and we aren't going to use the right boundaries, we ask ourselves, why should the council exist? And, you know, the concept of what's a good partner or whatnot might be that, but it is obvious that it could be easily ignored as well. A few things to correct for the record. Mr. Tuerk came in and testified on behalf of the council as he stated for the record. And in his first comments he said it was unanimous by the council to oppose LB622. First of all, there's a few things. The vote, it wasn't unanimous and we had a second member of the council, Tanya, said the council also voted to oppose LB622 in December. I'm not quite sure how you decide to vote to oppose a bill that hasn't been introduced yet. What actually happened when you read the minutes was there was a motion in the meeting on whether or not to support the changing of the boundaries and that motion did not pass. There wasn't a majority of the council voting against it. There was only seven. The motion failed, but there was never a motion essentially to oppose this bill or anything of that nature. Also, the Niobrara Council did not ask Mr. Tuerk, in my understanding, in official business which they would have had to do either through the legislative committee or in front of the whole council to testify against LB622 unless the Niobrara Council operated outside the Nebraska open meeting laws. So, there's a few issues I think within the council itself in terms of the...a little bit of dysfunction. Again, like I said, I'm not sure how they vote to oppose a bill in December that hasn't been introduced. I think that one thing that we can talk about, and I can't remember if it was Senator Schnoor or Senator McCollister, the Nebraska part...or the National Park Service cannot eliminate the Niobrara Council. Only the Legislature can do that, but the National Park Service still has the ability to work outside the Niobrara Council. They don't have to work with the Niobrara Council even if it's still in statute. Oh, going back to the vote that the Niobrara Council took, not to...you know, the actual motion was to support changing the boundaries. It wasn't a vote to oppose changing the boundaries. The vote was to support changing the boundaries. In that vote, the actual landowners were split, one to one to one, one voting yes, one voting no, one not voting, but they were not...again, they were not supposed to oppose the bill. On the funding part, you know, I found interesting. I sat on Appropriations for two years. I understand the state budget process very well and the priorities that we face in the state of Nebraska. I have a hard time thinking that you would find that money in the Nebraska Legislature Appropriations room and the concepts of maybe going to local grants, or from my understanding the Niobrara Council is already finding it difficult to get those grants because they haven't recognized the federal boundaries. And when it comes to local, I think Senator Schilz hit it on the head, and the number one issue I hear is property taxes and what happens if one county

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decides not to cooperate, do they still have the equal voting rights? How does...there's just so much that goes into that funding mechanism. You know, I agree with Tanya, Ms. Storer, when it comes to, you know, concern about, as I said, the federal government and that emotional response that many people have, but the Legislature set up the Niobrara Council to work with the National Park Service. And we need to make it work. It doesn't...the land is already underneath that federal designation, and I guess I'm going to circle back and now I'm kind of being a little scatterbrained and that's my own fault. We heard about zoning a lot. You know, if there...if development were to happen on what is now federally recognized but not state recognized, yes, the feds would have to go to the counties for the zoning of that development, but the Niobrara Council would have no say in that portion. So unless we recognize the federal boundaries, the Niobrara Council doesn't have the authority to have a say in that zoning in where the lines don't match up. And there's also portions, mind you, of the old boundaries that are not in the new federal boundaries. So right now the state is recognizing portions of the scenic river designation that are actually in the federal scenic river designation. So that brings in extra questions. Does the council have the authority to oversee zoning authority there even though it's not...it's no longer technically in the Niobrara Scenic River designation? There's a lot of issues here and we have to...it was meant to work with the federal government. We can debate until we're blue in the face whether or not we should ever let it become a scenic river designation. And like I said, in the eastern part of my district where the Niobrara continues on through Holt County...or along the edge of Holt County, those landowners have fought that scenic byway. And I've supported them in fighting that scenic byway. This isn't going away. Not this one. And we have to continue to work and be good partners if we're going to make this succeed. Thank you. [LB622]

SENATOR SCHILZ: Thank you, Senator Larson. Any questions? Senator Johnson. [LB622]

SENATOR JOHNSON: Getting back to your first comment about referring to LB622. The way I look at it, and maybe you would agree with this or not, that would you agree that the text that was involved in the motion of December 18th that was defeated, that same text is now referred to as LB622. They weren't voting on LB622 but this becomes the title for the discussion. [LB622]

SENATOR LARSON: Yeah, the reading in the motion, the motion was to approve the new boundaries. That was essentially the motion. And so, that...there was a motion and a second, that vote failed to approve the new boundaries. [LB622]

SENATOR JOHNSON: Uh-huh. [LB622]

SENATOR LARSON: But there was never a motion to oppose the new boundaries. There was never a motion to, you know, in the legislative meeting that just happened in January or whatnot, you know, there was no action taken to actually...and the bill had been introduced at that time.

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There was no action taken by the council to oppose that bill...or this bill. So just harking back to legislative stuff, I might make a motion in the Agriculture Committee that may fail, let's say to repeal the refund to the Dry Bean Board. That motion may fail, but it doesn't mean the Agriculture Committee automatically supports the...you get what I...it doesn't mean the Agriculture Committee automatically supports the nonrepeal of the Dry Bean Board. You have...that's not how parliamentary procedure works. A vote no doesn't mean a vote yes. [LB622]

SENATOR JOHNSON: I agree. Okay. Thank you. [LB622]

SENATOR LARSON: Thank you. [LB622]

SENATOR SCHILZ: (Exhibit 11) Any other questions? Okay. Seeing none, thanks, Senator Larson. And before we end the hearing, I have one more letter in opposition to LB622 from Amy Prenda representing the Nebraska Water Resources Association. And with that, that will close the hearing on LB622, and we will open up the hearing on LB310, and Senator Davis, welcome. Thank you for your patience. [LB622]

SENATOR DAVIS: You want to take a break first?

SENATOR SCHILZ: No, let's just keep going, (laughter) unless you need to take a break.

SENATOR DAVIS: Yeah, I'm doing well.

SENATOR SCHILZ: Okay. Thank you and welcome.

SENATOR DAVIS: (Exhibit 1) Long afternoon. Good afternoon, Senator Schilz and members of the Natural Resources Committee. I'm Senator Al Davis, D-a-v-i-s, and I represent Legislative District 43. I'm appearing before you today to introduce LB310 on behalf of the Niobrara Council. The Niobrara River was declared a wild and scenic river following federal legislation introduced by Senator James Exon in 1991 and following a somewhat contentious battle between agricultural interests and recreational and environmental interests who were opposed to the construction of a dam on the river at Norden, Nebraska. The Niobrara Scenic River runs primarily through private land and the Niobrara Council was enacted in 2000 as a quasi-governmental body primarily made up of local residents who act as intermediaries between the public and the National Park Service. The council works to mediate between the Park Service and the local interests of public and private entities as well as outfitters, landowners, and others with a local interest in the area of land along the river commonly referred to as the Niobrara

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corridor. I'm introducing LB310 at the request of the Niobrara Council which met on December 18, 2014, and to prove the statutory changes in this bill. The changes were adopted by roll call vote with nine voting in the affirmative, one in the negative, one abstention. Three members were not at the meeting. The first change at the top of page two strikes the word "representative" and inserts the word "commissioner." Since the inception of the Niobrara Council, a position of representative on the council has always been the county commissioner. Since Niobrara Council business often involves participation in public counties, it is logical to assign this slot to a commissioner and the bill only codifies what has customarily been practiced in the affected counties. Farther down the page, the language modifies the appointment of representatives for the United States Fish and Wildlife Service and the United States Park Service. Rather than having these individuals appointed by the Governor as the existing statute calls for, the bill simply states that the regional directors for these two entities shall be the representatives for their organizations on the Niobrara Council. Again, this reflects what has customarily been occurring and simplifies the process as the Fish and Wildlife Service and the Park Service have consistently designated the same representatives to these positions. That cause also adds one requirement that the nonvoting members of the Niobrara Council who sit in the seats held by the United States Park Service and the Fish and Wildlife Service may become voting members by notifying the Governor and the council in writing of their intent to vote on a specific issue. These individuals customarily make and second motions, but have not voted on issues, although the current statute calls for the entities themselves to formally authorize their members to vote. We are only inserting language which asks them to notify the council and the Governor if they intend to vote on an issue. A final modification to the bill removes language requiring members to abstain from voting on an issue if they have been part of a formal discussion in their role as a member of a county board, zoning board, or NRD. The council has 16 members, four are county commissioners, two are NRD managers, one represents the Park Service, and one represents the Fish and Wildlife Service, and neither of the last two traditionally vote on an issue. A strict interpretation of the existing statute could result in 50 percent of the members of the council being disqualified to vote, although they are often more knowledgeable about issues than the other members simply...than other members, simply because they're kept informed by Park staff at their public meetings. Others will follow me and can give you a more thorough explanation of what the Niobrara Council is, if you don't already know, and how it functions. That's it. I would be happy to answer any questions you may have and would urge the Natural Resources Committee to advance the bill to the floor to be debated. Thank you. [LB310]

SENATOR SCHILZ: Thank you, Senator Davis. Senator McCollister. [LB310]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. Welcome, Senator Davis. The composition of the council is made up of people that represent various bodies. Has there ever been any evidence of unhappiness by those counties and other groups that would indicate a...that those counties don't fully support the Niobrara Council? [LB310]

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SENATOR DAVIS: Not that I know of, Senator McCollister. [LB310]

SENATOR McCOLLISTER: Thank you, sir. [LB310]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Johnson. [LB310]

SENATOR JOHNSON: Mine is kind of a personal privilege type of question that I'm going to ask. For my own, maybe need to take a break, because most of the opposition testimony before become pro testimony this time? [LB310]

SENATOR DAVIS: I would assume so, but I can't speak for what they're going to say. [LB310]

SENATOR JOHNSON: You're not going to speak. [LB310]

SENATOR SCHILZ: Senator Schnoor. [LB310]

SENATOR SCHNOOR: I was wondering what you meant? [LB310]

SENATOR SCHILZ: He just wants to make sure he's not going to miss anything is what he said... [LB310]

SENATOR JOHNSON: Good call. I'll risk that. [LB310]

SENATOR DAVIS: So in light of some of the discussion that took place earlier, I want to talk, if you'll give me the privilege to do that, about the prior Park Service commissioner who was a guy named Dan Foster. And so you're looking at the discussion on letting these people vote, the commissioners, etcetera, even if they've heard from somebody prior to this. So, you heard discussion that there was some dissatisfaction between the Niobrara Council and the Park Service representative who was a guy named Dan Foster again. So what Mr. Foster often did was, he would get on the agenda at these commissioner meetings and talk a little bit about issues. Then those people couldn't vote when it came time for this to take place for the council to vote. So, you know, we don't think that is appropriate, or I don't think it's an appropriate solution. I think those people know the issues and they should be the first ones who can vote. [LB310]

SENATOR SCHILZ: Any questions? Senator, one question that I have. You've got commissioners on here voting and then you've got managers of NRDs. The commissioners are elected individuals. Was there any thought of having elected NRD folks put on there as well, or

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what's the reason for NRD managers rather than elected NRD members? Can you give me the rationale for that? [LB310]

SENATOR DAVIS: I haven't looked into that. I would say that probably one of the things that was happening was that those managers have been able to vote. The commissioners have not been able to vote a lot of times when there was discussion before their board. But, you know, I think that was all statutory and put in place back in 2000, so I don't know the reason for why it was managers. [LB310]

SENATOR SCHILZ: Okay. And that was just a question because it just seems...and when you said that, that just seems you...it just seems a bit off, but thank you. I appreciate that. Any other questions? Senator Schnoor. [LB310]

SENATOR SCHNOOR: Senator Davis, just a point of clarification for me. This was brought to you by the Scenic River...if I've got the name right, the Scenic River Council? [LB310]

SENATOR DAVIS: The Niobrara Scenic River Council, yes. The Niobrara Council. [LB310]

SENATOR SCHNOOR: Okay. I mean, in their official capacity, they're bringing this to you, whereas the other bill we heard was just one member of that council, as I understood that. But this is by the council itself. [LB310]

SENATOR DAVIS: Yes, and if you look at their minutes of December 18, there were additional discussion about the boundary, there was some discussion about recommended changes to the statute, not included in the boundary. Adamson mentioned that the Niobrara Council...Adamson motioned that the Niobrara Council forward these recommended changes to the legislative representative, Krueger seconded. Roll call votes, nine, yes; one nay; one abstained; and three not present. [LB310]

SENATOR SCHNOOR: Okay. And I would assume they're going to be behind you to talk. [LB310]

SENATOR DAVIS: I'm not sure if they're here to do that. You know, you've heard a lot of discussion earlier and I haven't lined them up to testify. I'm assuming they're here to do that. [LB310]

SENATOR SCHNOOR: Okay. All right. Thank you. [LB310]

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SENATOR SCHILZ: Any other questions? Seeing none, thank you, Senator Davis, appreciate it. Are you going to stick around to close? [LB310]

SENATOR DAVIS: I will. [LB310]

SENATOR SCHILZ: Okay. Thank you. At this point, we will take proponents. First proponent. Don't be afraid. Come on up. We didn't scare you away. Welcome back. [LB310]

MIKE TUERK: (Exhibit 2) Thank you very much. My name is Mike Tuerk, M-i-k-e T-u-e-r-k. I am a Keya Paha County Commissioner and the chair of the Niobrara Council. I am here today in support of LB310. The legislative committee of the Niobrara Council has worked on this language for several years. I think most of the changes that you see there are fairly innocuous in their intent and I certainly don't think they alter the original Niobrara Council enabling legislation. As mentioned earlier, I think one item of particular concern has to do with the issue of the elimination of voting with an issue that was participated in a previous board, and disallows the member to vote on that issue at the Niobrara Council. I don't know if I can give you a gleaming example of that. It has occurred on occasion, but as an example might be if the Park Service visited each of the county locations with a particular issue and the statute doesn't say voted on, it says participated in. Now, how do you define participation? But in this particular example, if the issue that was being participated in was brought as an issue to the Niobrara Council, it would preclude us from voting on that particular item. I don't necessarily know where this language came from, but I think that was probably one of the major items that we felt needed to be struck from the Scenic River Act. That's all I have. Thank you. [LB310]

SENATOR SCHILZ: That's it. Thank you. Any questions? Seeing none, thank you for your testimony, appreciate it. [LB310]

MIKE TUERK: You're welcome. [LB310]

SENATOR SCHILZ: Next proponent. Welcome. [LB310]

MIKE MURPHY: (Exhibits 3-6) Good afternoon, once again. Good afternoon, once again, Senator Schilz and members of the Resources Committee. I am Michael Murphy, M-i-c-h-a-e-l M-u-r-p-h-y, manager of the Middle Niobrara Natural Resources District. I'm here presenting testimony today on behalf of the Nebraska Association of Resources Districts in support of LB310. I am also a member of the Niobrara Council. The changes in this bill address several issues the Niobrara Council has encountered over the years. The Niobrara Council worked with both Senator Davis and Senator Larson and their respective staffs over the last year on these

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changes. So, in December of 2014, the Niobrara Council members voted to approve these suggested changes and updates to the current statutes. And that's when the council didn't want to move forward with the boundary changes of the 2007 Park Service boundary. While there may be other issues that the council members do not agree on, this is one that all members voted to support as a way to improve operation of the council. I also want to point out that the current statutory language allows NRDs to elect a representative to the Niobrara Council. So currently there is one NRD manager, myself, and Lower Niobrara has a board member that represents. And more importantly is, it comes back to having someone that has time to attend these additional meetings. So, it's been a good balance having a director, having a manager, both be able to be there at different times. I also have today written testimony to be included for the record in support of LB310 from the following, that individuals and entities that could not be here: Testimony from Lower Niobrara Natural Resources District; the Niobrara River Basin Alliance; and individual, Dean Jochem, that I'd like submitted. [LB310]

SENATOR SCHILZ: (Exhibits 7 and 8) Okay. Very good. Thank you. Any questions for Mr. Murphy? Seeing none, we appreciate your testimony. Thank you very much. Next proponent. Proponents. Anyone? Any opponents? Any opponents? Seeing none, anyone testifying in the neutral capacity? Okay. We have a couple of letters here. We have letters in support from Scott Smathers with the Nebraska Sportsmen's Foundation and Amy Prenda with the Nebraska Water Resources Association. And Senator Davis, you are welcome to close. [LB310]

SENATOR DAVIS: I just feel like sitting here all afternoon and visiting. Don't you think that would be a lot of fun? (Laughter) [LB310]

SENATOR SCHILZ: Motion to adjourn? (Laughter) [LB310]

SENATOR DAVIS: I only came back up to say that I had forgotten to hand out a list of the seated representatives on the Niobrara Council and that's being passed out by the page now. So, thank you for your time. I appreciate it. [LB310]

SENATOR SCHILZ: Any questions...last questions for Senator Davis? Seeing none, Senator Davis, thank you very much for a great hearing. We appreciate it. Great. And with that, that will end our hearing on LB310 and we wish everyone a good night and a safe trip home. Thank you very much. [LB310]