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Natural Resources Committee
February 25, 2015

[CONFIRMATION LB130 LB475]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 25, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on a confirmation hearing, LB475, and LB130. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Dan Hughes; Jerry Johnson; Rick Kolowski; Brett Lindstrom; John McCollister; and David Schnoor. Senators absent: None.

SENATOR SCHILZ: Good afternoon everyone and welcome to the Natural Resources Committee. My name is Ken Schilz, I'm the Chair of the committee, I represent District 47 from Ogallala. And we have committee members present with us today; I think everyone but one is here so far. So I will allow each one of them to introduce themselves and we'll start here with Senator Kolowski.

SENATOR KOLOWSKI: Senator Rick Kolowski, District 31, southwest Omaha. Thank you.

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

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 most of Colfax.

SENATOR HUGHES: Dan Hughes, District 44, ten counties in Southwest Nebraska, in reverse alphabetical order today: Red Willow, Perkins, Hitchcock, Hayes, Harlan, Gosper, Furnas, Frontier, Dundy, and Chase. (Laughter)

SENATOR SCHILZ: Thank you for that rendition. We have just been joined by Senator Schnoor. Go ahead and introduce yourself.

SENATOR SCHNOOR: Senator Dave Schnoor, District 15, in alphabetical order is Dodge County. (Laughter)

SENATOR SCHILZ: Thank you very much, appreciate that. Well, today we've got a confirmation hearing, and then we've also got two bills, we've got LB475 and LB130. And if you are...oh, got to introduce some more folks. And Barb Koehlmoos here is the committee clerk. And Lauri Lage, who is not with us today, but she is the legal counsel for the committee. And then we have a page, Jake Kawamoto, who's here from the university, he's a sophomore and he's studying political science. We're going to discuss two bills and a confirmation. So if you're planning on testifying, there's green sheets in the corner, please pick them up and fill them out

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completely. Hand them in before you sit down to speak. When you sit down to speak, please spell your first and last names, that will make it easier for everyone to get you properly in the record. And please fill that out before you sit down to testify, print; and it's important that you do get it done in its entirety. And then Barb will take that when you come up. If you don't choose to testify, but you want to put in testimony in writing, that is okay too, and that will become part of the official record. And if you do...if you have handouts, please make sure you have 12 copies for the pages to hand out to the committee. If you don't, we'll help you get those around. When you come up to testify, please speak clearly into the microphone. Obviously, once again spell your name. At this point, please turn off any cell phones, pagers, anything that makes a noise or might buzz or anything like that. You can have it on vibrate, that's fine. But if you need to talk or take...or anything else, please take your conversations into the hallway. We don't allow any displays of support or opposition to a bill either vocal or otherwise. So we'll keep that to a minimum and respect the testifiers that are here that are trying to give their testimony. And we do use the light system. It's five minutes: you have four minutes on green, and then the light turns to yellow, you have one minute; and then the light turns to red and we'd like you to stop your comments then and see if the committee has any questions for you. And with that I think we have Mr. Kosman calling in, I think that will be at 1:35, so we will stand at ease until he gives us a call. Thank you very much.

EASE

SENATOR SCHILZ: Good afternoon, Mr. Kosman.

HOD KOSMAN: Yes.

SENATOR SCHILZ: Yes, good afternoon and welcome to the Natural Resources Committee and your confirmation hearing. Thank you for calling in today. [CONFIRMATION]

HOD KOSMAN: Well, thank you. And thank you for allowing me to call in. It's a long ways and I appreciate being able to stay here and do some work, so thank you very much.
[CONFIRMATION]

SENATOR SCHILZ: And it's no problem. Mr. Kosman, if you wouldn't mind going ahead and just giving us a little bit of, maybe, your history, how you got interested in being the...I think it's wildlife conservation member on the Natural Resources Committee (sic-Commission) and what you think you could bring to that committee. If you could just kind of outline that for us, that would be great. [CONFIRMATION]

HOD KOSMAN: (Exhibit 1) Thank you. Thank you very much. Well, my background: my grandfather, Harv Ostenberg came to Scottsbluff back in 1909 and started the bank here as the reclamation dams were being completed in Wyoming and changing forever the makeup of this valley into a very profitable, prosperous, irrigated valley. And life went on and changed a little bit. We started Platte Valley Companies, our current organization, in 1996 after a...about a five-year stint under the FirstTier Bank organization which we became in 1990. Our company now has 17 full-service banking facilities in 13 communities in Nebraska, Wyoming, and

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Colorado. We have an insurance division, an ag credit company, trust brokerage, an equipment finance company called C.H. Brown Company. So very involved in a number of communities, all in rural, all in very beautiful settings. I graduated from Scottsbluff High School; got a bachelor's degree from the University of Nebraska, and a graduate degree from Colorado...graduate degree in banking in Boulder. I'm currently the president, chairman, and CEO of Platte Valley Companies. For 25 years I served in a leadership and present role of an organization called Platte River Basin Environments, a 501...a Nebraska public benefit 501(c)(3) organization. In 1989, my uncle, Clive Ostenberg, left a large bequest to Ducks Unlimited and T and C. He died in 1989. And our group formed to help bring some of those dollars back to Nebraska from those organizations. And that organization and that process and those people that became involved at that time just continued on. And we have just never quit and it's very gratifying. We, Platte River Basin, now owns and manages over 20,000 acres in the Wildcat Hills and along the North Platte River in western Nebraska. All of these lands are working landscapes. They continue to be farmed and ranched; they pay taxes. They...but they are all open to the public for science, education, recreation. We have very strong partnerships in that regard with the conservation community, including the Nebraska Game and Parks Commission, Ducks Unlimited, Nature Conservancy, the Nebraska Environmental Trust Fund has been extremely integral in our organization, Pheasants Forever, Oregon Trail Foundation. We work with DOW Chemical; we work with U.S. Fish and Wildlife, Doris Duke Foundation funds items for us; Peter Kiewit Foundation, Field and Stream, Toyota, and Teddy Roosevelt Conservation Partnership, it just goes on and on. So I guess as a result of that, I have a very close and positive working relationship with many of the conservation organizations across this state. And I feel very comfortable in representing them on this commission. And my goal, I believe, would be to use these precious dollars that the Legislature has invested in the future of Nebraska to add value to our state for generations to come. I've filled out dozens of grant applications; very familiar with that process. This will be a new process for this commission and I believe I can be of help in that regard as well. [CONFIRMATION]

SENATOR SCHILZ: Great. [CONFIRMATION]

HOD KOSMAN: I'm out of breath. [CONFIRMATION]

SENATOR SCHILZ: Well, thank you, Mr. Kosman, that's pretty impressive. Do we have any questions from the committee? Well, you did a great job outlining everything. And knowing your history, and knowing what's you've done in the past, I'm sure the Natural Resources Commission will be a better commission with your representation. So thank you very much for calling in today and we very much appreciate your time and your willingness to serve. Thank you. [CONFIRMATION]

HOD KOSMAN: Well, thank you very much. And just an FYI, my dad was in the Legislature right after World War II representing District 66 before he moved out here to take over the bank for my grandfather. So, I have a little history back there as well. [CONFIRMATION]

SENATOR SCHILZ: Well, very good. And you can be...we thank your family for your service too, I guess. So thank you very much for the call and have a good day. [CONFIRMATION]

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HOD KOSMAN: Thank you very much. Bye. [CONFIRMATION]

SENATOR SCHILZ: Is there any proponents for Mr. Kosman? Good afternoon.
[CONFIRMATION]

ROGER KUHN: Good afternoon. Chairman Schilz, members of the committee, my name is Roger Kuhn, R-o-g-e-r K-u-h-n, assistant director with the Nebraska Game and Parks Commission, representing the Game and Parks Commission today. Just wanted to get up and testify in support of the appointment of Hod Kosman to this commission. You heard him mention his partnership and work with the Nebraska Game and Parks Commission. He's been instrumental in doing many, many great things in the field of wildlife conservation, as he mentioned in the Wildcat Hills region of Nebraska in the North Platte Valley. It's been a privilege to have worked with Hod over many years and over many projects and we feel he would be a great asset to this commission. So, thank you. [CONFIRMATION]

SENATOR SCHILZ: Great. Thank you, Mr. Kuhn. Any questions? Seeing none, thank you for your testimony. [CONFIRMATION]

ROGER KUHN: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Further proponents? Proponents? Seeing none, any opponents? Opponents? Seeing none, anyone testifying in a neutral position? Seeing none, that will end our hearing on Mr. Henry Kosman for the Natural Resources Commission. And we will move on to LB475. And Senator Davis, I see, is here. Welcome to the Natural Resources Committee.
[CONFIRMATION]

SENATOR DAVIS: Thank you, Senator Schilz. I will just take the privilege right now of saying I also know Mr. Kosman. We served on the Nebraska Arts Council together back many years ago and he's a great guy and will be an absolute wonderful person to get on this entity.
[CONFIRMATION]

SENATOR SCHILZ: Thanks. [CONFIRMATION]

SENATOR DAVIS: (Exhibit 1) So good afternoon, Senator Schilz and members of the Natural Resources Committee. I am Senator Al Davis, D-a-v-i-s, and I represent Legislative District 43. I'm here appearing today to introduce LB475. The intent of LB475 is to expand the jurisdiction of the Power Review Board by requiring board approval for construction or acquisition of an electric generating facility that results in an increase in generating capacity, or has a total cost of \$150 million or more. I am offering a small but significant amendment to the bill, AM38, which strikes the word "only" on page 2, line 28, correcting an error we made in getting the bill drafted. This clarifies that the Power Review Board will have authority to approve projects that increase generating capacity or have a total cost of \$150 million or more in addition to the authority they currently have. The fiscal note reflects the bill as drafted. The Power Review Board currently has jurisdiction over the construction or acquisition of generation and transmission facilities with

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limited exceptions. The board has interpreted construction of generation to mean any activity that increases the capacity of a facility regardless of the specific increase in megawatts. However, not every significant capital expenditure results in an increase in capacity. LB475 would extend state oversight to high-expenditure projects regardless of the increase in generating capacity. Retail electric rates in our state have risen considerably in the past decade. Our public power industry has been a great benefit to our state and it remains so, but rising rates is a problem for consumers and for our economy. We are one of the few, if not the only state without some kind of statewide, state-level body that regulates, among other things, the amount a utility can recover from its ratepayers for major capital expenditures. The Power Review Board does a great job, but their authority over rates is limited. This could be addressed by adding major responsibilities to the Public Service Commission or creating a public utilities commission like many states have. LB475 is a much simpler approach. It simply ensures that before a utility can make a major capital expenditure, exceeding \$150 million, the Power Review Board holds a public hearing and considers the need for the expenditure. The public power districts are municipal corporations created and enabled by the Legislature. Accordingly, we have a responsibility to monitor them at some level. The Power Review Board has the experience and expertise to do this. LB475 ensures they have the authority to do it when the need arises. Thank you and I'd be glad to take any questions. [LB475]

SENATOR SCHILZ: Thank you, Senator Davis. Any questions? Senator Kolowski. [LB475]

SENATOR KOLOWSKI: Thank you, Chairman. Senator Davis, what kind of facilities would you keep in mind...or have in mind that would fit under this dollar amount and how many locations might there be when you look at the state as a whole? Have you done any analysis of that? [LB475]

SENATOR DAVIS: Well, I haven't done any analysis, but, you know, what I'm really trying to get to here is before a major, major expenditure is invested in a coal plant or a nuclear plant or some other entity, that we have a public body that evaluates that and looks at it and to make sure that we've covered all the alternatives and that this is really a wise investment for the state. Because, once these huge mega investments have been made, we're, basically, locking our state consumers into a long, long-term payout. So I think it's appropriate that there be some sort of oversight beyond just a board meeting. [LB475]

SENATOR KOLOWSKI: And that would be almost like a double of what a company would be doing, because they're not going to throw \$150 million on the table without a lot of their homework being done as well. Is that correct? [LB475]

SENATOR DAVIS: Well, I would think so, yes. [LB475]

SENATOR KOLOWSKI: That's kind for double deal. [LB475]

SENATOR DAVIS: I wouldn't say it's a double. So, you know, you've got a private board that makes the decisions and those things happen all the time. And NPPD's board or OPPD's board is that way. But when the Power Review Board comes in and looks at it, they're probably going to

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be looking at it in a little bit different light than the other entities. And that's what I think we need to do, because when we expose our consumers to 40 or 50 years of payout, we need to make sure that we as legislators have done our job in ensuring that decision that's made is a correct one. [LB475]

SENATOR KOLOWSKI: Thank you. [LB475]

SENATOR SCHILZ: Thank you, Senator Kolowski. Senator McCollister. [LB475]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Senator Davis, have there been instances of your knowledge that would point out the need for this legislation? [LB475]

SENATOR DAVIS: None that I have knowledge of, Senator McCollister. But we are looking at some significant changes that are coming down from the federal government which might entail some huge reinvestment in our public power structure. [LB475]

SENATOR McCOLLISTER: To some extent, doesn't it usurp the authority of the local power boards? [LB475]

SENATOR DAVIS: I don't think it usurps the authority. They have the authority to make...enact whatever they want to do. We're just having an oversight board. [LB475]

SENATOR McCOLLISTER: So they've got no regulatory authority, so they can't nix a product...a project, correct? [LB475]

SENATOR DAVIS: You mean the Power Review Board? [LB475]

SENATOR McCOLLISTER: Yes, sir. [LB475]

SENATOR DAVIS: No, they will have the ability, the authority to over...to have a public hearing and evaluate the project. But no, they're not going to be able to prohibit it. [LB475]

SENATOR McCOLLISTER: Okay. Thank you. Thank you, Mr. Chairman. [LB475]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Johnson. [LB475]

SENATOR JOHNSON: Thank you. Take in mind, I don't...know nothing about generating...generation and how these facilities are put together, but in the statement it says--increase generating capacity or...if there's a...something needs to be repaired on a line, or I mean on a generating facility, and for a reason the new equipment or something increases it by 1 percent, makes it more efficient or something, would they have to be conscious of that? I'm

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wondering if changing "or" to "and" would be...which would eliminate the smaller projects to just...because they're replacing something and needing to put in a piece, and it does increase the capacity. [LB475]

SENATOR DAVIS: Yeah, we had...never considered that that might be a possibility, Senator Johnson, we can visit about that and amend it if necessary. [LB475]

SENATOR JOHNSON: I mean, I don't know if a situation, but I know an industry that I'm involved with, there's some...you can do some replacing and it will, you know, up your efficiency and help your capacity a little bit. So okay, thank you. [LB475]

SENATOR SCHILZ: Thank you, Senator Johnson. Any other questions? Senator Davis, I guess...it kind of...just kind of spurred this with me with Senator Johnson's question. You know, we've got facilities out there that are all different kind of sizes. And is it more about the total amount of dollars, or is it about how that...I mean, is it...let me think how I'm trying to explain this...or is it more about--does it make sense financially because...do you understand the question I'm asking? [LB475]

SENATOR DAVIS: Not really. Can you run it by me one more time? [LB475]

SENATOR SCHILZ: Okay. What I'm saying, if you've got a \$100 million facility and you're going to spend \$150 million, everybody goes whoa, whoa, wait a minute, you're going to spend double, right? But if you've got a \$1.5 billion facility and you're going to spend \$150 million, that's kind of a different kind of equation because it...things that have scale also have a different ability to make up for those things. And some of it could be for efficiency and things...and I was wondering if you thought about that at all? [LB475]

SENATOR DAVIS: Hadn't really talked that through. You know, the main objective I have is just have a little bit more oversight over decisions that are made. And, you know, if we need to make some modifications to it, I'm not opposed to that. [LB475]

SENATOR SCHILZ: Okay. And I was just thinking off the top of my head. [LB475]

SENATOR DAVIS: Right. [LB475]

SENATOR SCHILZ: So don't think I'm going anywhere just yet. So, thank you. Anyway...oh, now I've done it. Senator Hughes. [LB475]

SENATOR HUGHES: Thank you, Mr. Chairman. Senator Davis, is this just directed at existing generation facilities or is this...what you say in here it's resulted in an increase in generating capacity, is that directed at new facilities as well? [LB475]

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SENATOR DAVIS: It would be directed at new facilities. [LB475]

SENATOR HUGHES: At new facilities, not rejuvenation of existing facilities. [LB475]

SENATOR DAVIS: Well, okay, so what it says is--this section applies to construction or acquisition of an electric-generating facility if it involves any activity or improvement that results in an increase in generating capacity or if it has a total cost of \$150 million or more. [LB475]

SENATOR HUGHES: Okay. I'll read it again. Thank you. [LB475]

SENATOR SCHILZ: Thank you, Senator Hughes. Senator McCollister. [LB475]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. Are you thinking about a review protocol where you'd have a public hearing or they'd be obligated to supply information by such-and-such a time or public hearing? Would you conduct a public hearing to review the financial feasibility of the proposed project? [LB475]

SENATOR DAVIS: Well, I think that would be up to the Power Review Board as to how they wanted to do that. But that's my goal. [LB475]

SENATOR McCOLLISTER: We talk about increasing generating capacity, but it could well be that we'll need to downsize in the coming years as solar units and some of these coal-fired plants, they may need to change the amount of electricity they generate in order to comply with the EPA regulations, so that's a possibility as well. Okay. [LB475]

SENATOR DAVIS: You know, we're not really addressing that, but really what we're addressing here is the size of the investment more than anything else. I think below \$150 million there's a lot you can do. When you get over that, you're talking about a fairly significant investment in whatever energy source you're going to be using there. [LB475]

SENATOR McCOLLISTER: Thanks, Senator Davis. [LB475]

SENATOR SCHILZ: Thanks, Senator McCollister. Senator Friesen. [LB475]

SENATOR FRIESEN: Thank you, Chairman Schilz. Senator Davis, when you talked about oversight, and so they review a project and they hold some public hearings and then they'll, you know, I guess what is the end result of this? Do they have any...are they going to have any power to do anything or will it just be a recommendation whether the project moves forward or what...what is the purpose of them reviewing it? [LB475]

SENATOR DAVIS: Well, from my perspective...I introduced a bill yesterday in the Urban Affairs Committee to try to put some oversight over the top of TIF financing because I think it's

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something that needs to be monitored more closely by the state. So this is the same kind of thing. It's just another layer of...another rubber stamp, if you want to call it that, to say, yes, we've looked at this and this makes sense. Or supposing the Power Review Board looked at it and said, you know, I think you really ought to rethink this a little bit. So, you know, that recommendation would probably go back through the power entity that we're talking about, they could evaluate and make decisions and then come back. So I think it's going to strengthen rather than be a hindrance for them. [LB475]

SENATOR FRIESEN: Okay. But it wouldn't require anybody to do anything. [LB475]

SENATOR DAVIS: No. [LB475]

SENATOR FRIESEN: It would come back as a recommendation saying... [LB475]

SENATOR DAVIS: Yes. [LB475]

SENATOR FRIESEN: ...it doesn't look economically feasible, whatever...suggest changes, whatever. And they could take it or leave it. Okay, thank you. [LB475]

SENATOR SCHILZ: Thank you, Senator Friesen. Any further questions? Seeing none, thank you for your opening, appreciate that. [LB475]

SENATOR DAVIS: Thank you. [LB475]

SENATOR SCHILZ: We'll take proponents at this time. [LB475]

SENATOR DAVIS: I'll probably waive closing at this time. [LB475]

SENATOR SCHILZ: Okay, thank you, Sir. [LB475]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I appear before you today as the president of Nebraska Farmers Union. My reading of this very short section and my understanding of what it is I thought we were doing, which we are in support of, is that before any of the public power utilities would build and bring on line a new facility, they need now to go through the Power Review Board. And the Power Review Board applies its standards for electrical generation to that project and reviews it to make sure that it's not redundant, to make sure that it makes generating sense and is an appropriate investment in the first place. So to my reading of this is that those facilities that are existing facilities that you would be doing a major overhaul of or renovation of that hits the \$150 million threshold would need to come back through the Power Review Board for the same kind of assessment and scrutiny that they did in the first place for the original generating facility that it had. And that the very same logic and standards that applied to

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a new facility should, to my mind, apply to a facility of in excess of \$150 million, whatever it is. And so it...we have...we do not have a rate-making agency in the state of Nebraska that reviews rates. The one entity that we do have to make sure that we're meeting our reliability requirements and our efficiency requirements without being redundant is the Power Review Board. So this looks like to me to be a very simple but logical extension of the existing authority to cover for the very same reasons that a new facility would be run by the Power Review Board a major overhaul. And so it's my reading of it, which I always assume could be wrong, because if you're Norwegian as I am, you get used to the business of being wrong from time to time, and you have plenty of folks in your life who are able to point that out to you. But this, in my experience, this is a fairly simple amendment, but it has a fairly simple rationale and is a reasonable amount of oversight. I don't think that it's the heavy hand of overregulation. Our public power system operates with about as little overall oversight, a lot less oversight than other states operate with private sector entities because we don't have a rate-making regulatory agency. But this amount of oversight seems reasonable to me. And with that I would end my testimony and be glad to answer any questions if I could. [LB475]

SENATOR SCHILZ: Thank you, Mr. Hansen. Any questions for Mr. Hansen? Senator McCollister. [LB475]

SENATOR McCOLLISTER: Thank you, Mr. Chairman, Welcome, John. Do you see this as being a bill to gauge the financial feasibility of projects? Is that the primary impetus of your support? [LB475]

JOHN HANSEN: Well, financial is a part of it. And then it's also, you know, as you look at aging facilities, is that still where you'd...is that still where the load is? Is that still where the generating capacity needs to be? Is this still based on all things considered, is this still a good project that meets all of the other criteria that the Power Review Board applies? I just think it's good to run it by them and have them ask those questions. So, to me there is...there's certainly is a financial. But it also gets to be kind of a strategic question of sorts. [LB475]

SENATOR McCOLLISTER: Let's talk about the strategic implications. Let's say that the utility decides to modernize or change around their coal-fire plant. Now maybe they're going to put in some new scrubbers. But that kind of thing does not come cheap. Would it be the proper function of this review board to say--no, don't go with changing your scrubbers and updating those, it's probably time to go to solar or wind. Would that be a proper function of that body? [LB475]

JOHN HANSEN: Well, I think that...I think that you have to take it back to the marketplace and what the dollars and cents are relative to that kind of facility and does it make sense...you know, the question when you're working with the...in the case of farming, older equipment is, you know, are you...is your machine still basically sound and are you still doing the things that you need to do and does it still have the proper capacity and all those things before you do a major overhaul? So, to my mind, it's more of the major overhaul question--is this still what we ought to be doing? Is this still in the right place? Is it still appropriately sized? [LB475]

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SENATOR McCOLLISTER: So what you're saying is that they could suggest to the utility--no, I think you ought to move it to this location because it's not properly located. [LB475]

JOHN HANSEN: I can't...well, I think that based on some cases a load distribution might be a part of it, but I can't think of any facilities in Nebraska that would probably fall under that category. [LB475]

SENATOR McCOLLISTER: Okay. Thank you. [LB475]

JOHN HANSEN: I mean you've already got the transmission there. And once you have the transmission to a site...that's such a big part of the build-out that, you know, once you've got it sited. And it...I anticipate public power to sharpen their pencils, come in and I suspect that they're...what they're going to want is going to be...and what they think is prudent, that they've done a good job, and if that is, in fact, the case I don't see...I don't have this idea that this is going to mean there's going to be a wholesale change in how they going forward. I look at this as a review process. [LB475]

SENATOR McCOLLISTER: Thank you, sir. [LB475]

SENATOR SCHILZ: Thank you, Senator McCollister. Any other questions? Seeing none, thank you for your testimony. [LB475]

JOHN HANSEN: Thank you very much. [LB475]

SENATOR SCHILZ: Further proponents. [LB475]

MARK SHULTS: Gentlemen, my name is Mark, M-a-r-k, Shults, S-h-u-l-t-s. I'm the general manager of the Northeast Nebraska Public Power District in Wayne, Nebraska. And good afternoon, Chairman Schilz and members of the committee. I'm here to represent the elected board of the directors of the Northeast Nebraska Public Power District in Wayne, Nebraska. Northeast serves parts of Pierce, Wayne, Stanton, Dixon, Dakota, and Thurston Counties, in alphabetical order...in the far northeast part of the state. Northeast PPD provides service to only 6,500 individuals and families and businesses. So every dollar we spend has an impact on these people's lives. Northeast Nebraska Public Power District is the result of a 2001 merger of two rural power districts and 14 towns and villages once served by NPPD. The Northeast board met on February 10 to review and evaluate the impacts of several bills related to energy being considered in this session. The board voted unanimously to support LB475 and hence I'm here before you today. Additionally, there are three of our board members in the audience. LB475 is the key, we think, to getting the most results from the proposed state energy plan. LB475 creates an opportunity for coordination at the state level that's missing today, but will be needed in the future to allow all of Nebraska's public power entities to coordinate their big-ticket purchases. LB475 will help policymakers decide what investments are needed to serve Nebraska, as opposed to support out-of-state sales...to out-of-state entities rather. LB475 provides a basic check and balance at the statewide level which Nebraska currently has much less of than nearly

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every other state. Nebraska doesn't have a utility commission as do most other states. In many other states a utility commission would, in fact, approve expenditures down to the local level for public entities just like Northeast or a municipal electric system. The hearing that LB475, as I understand it, the hearing that is proposed is far from an actual oversight review. LB475 simply provides an opportunity for a hearing in a way not now available to our captive ratepayers. In conducting the affairs of the Northeast Nebraska Power District when a matter of significant expenses arise or a matter of policy or a long-term direction is in question, I seek guidance from our board of directors. I feel I'm on a better standing with our customers if I've received prior board approval. I see LB475 as no more than that. While Northeast is now subject to statute 70-102 (sic), we are not large enough by ourselves to likely hit the \$150 million threshold with a local decision, but that doesn't mean that a future merger or a future partnership won't make us large enough to make \$150 million decisions. It's the Power Review Board's purpose to advocate the customer's interest, is it not? The Power Review Board has the authority, the mission, and the attention of the utilities in a way that a single customer does not. Nebraska law now requires the Power Review Board hearing for new power plant construction because of the massive investment and debt required to finance those decisions. That's a good policy and it's in place. The reason for the existing law is exactly the reasoning behind LB475. Lots of money and lots of debt are required for big utility projects. And a single utility's decision needs a hearing and establishing in a broader context. Existing law we now see doesn't cover all big utility expenditures, but the need for coordination does remain. At the end of the day, LB475 is only an additional public hearing. It is not an affront to the independence of an elected board. If a project is a good project, then the hearing will validate that. LB475 is a small step, but we think a meaningful one. Thank you. [LB475]

SENATOR SCHILZ: Thank you, sir. Any questions? Senator McCollister. [LB475]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. And thank you for appearing. Is there a particular occasion that brought you here this afternoon in support of LB475? [LB475]

MARK SHULTS: Not a particular occasion, no. I come from another state. I've spent most of my career at the Tennessee Valley Authority and in municipal systems in Kentucky. And I'm very familiar with public service commissions. They can be tedious and expensive and I certainly am not advocating that. You do sweat out all the details and so...with the state energy plan that's being proposed, if that becomes state policy, I see LB475 as essential to making sure that works right...or something like it. Yes. [LB475]

SENATOR MCCOLLISTER: Thank you. [LB475]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Johnson. [LB475]

SENATOR JOHNSON: Back up just a little bit. What does the power board provide you now that you feel is needed and you say it's just another hearing process? Do they have the capability to do any analysis when they come to that hearing, or is that just to provide the hearing? [LB475]

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MARK SHULTS: Well, you might want to ask Tim. Let me tell you our experience here in Nebraska. If we get ready to upgrade a power line, increase the capacity of that power line, or spend money on it and there are other supplies involved, we have to come, right now, to the Power Review Board and seek a coordinated effort. A hearing is held. Invitations for that hearing go out to the other utilities in our...primarily municipals in our service area and those municipals have an opportunity to come and say--this project is really needed, it's going to help us. Or, no, this project is walking all over something we plan to do. All of that goes on right now. And it goes on with power plant construction. Although I will tell you, as an outside observer, we have ended up in Nebraska with an abundance of base-load generation that creates huge surpluses of energy at night and on weekends when peak times, you know, during the day it might be right. But I think I saw a report from NPPD once that totaled up all that capacity in the state and we have enough base load 24/7 capacity to meet 93 percent of the peak load. I'm not going to say what the Power Review Board should or shouldn't, but I would think that if we got more details and more interest out there that possibly better decisions and money would be better spent in the future. And that doesn't mean that a public service commission in another state that you might pick is a grand affair and making great decisions, but I see no harm in debating and revealing what all the projects are. [LB475]

SENATOR JOHNSON: Thank you. [LB475]

SENATOR SCHILZ: Thank you, Senator Johnson. Any further questions? Seeing none, thank you for your testimony. [LB475]

MARK SHULTS: Yep, thank you. [LB475]

SENATOR SCHILZ: Further proponents. Opponents? Proponents? [LB475]

SHELLEY SAHLING-ZART: Opponent? [LB475]

SENATOR SCHILZ: Opponents, yeah. Okay. Is there any proponents first real quick? [LB475]

SHELLEY SAHLING-ZART: I thought you were done. I'm sorry. [LB475]

SENATOR SCHILZ: No, you're fine. Opponents then. [LB475]

SHELLEY SAHLING-ZART: Thank you. [LB475]

SENATOR SCHILZ: Yeah, I was wondering. [LB475]

SHELLEY SAHLING-ZART: Good afternoon, Chairman Schilz, members of the Natural Resources Committee, for the record my name is Shelley Sahling-Zart, S-h-e-l-l-e-y, Sahling-Zart is S-a-h-l-i-n-g, hyphen, Z-a-r-t. I am vice president and general counsel for

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Lincoln Electric System, the municipal electric utility here in Lincoln. And I'm appearing today on behalf of the Nebraska Power Association in opposition to LB475. The Nebraska Power Association is a voluntary association representing all of Nebraska's publicly owned electric utility systems, including municipalities, public power districts, public power and irrigation districts, and rural power districts and cooperatives. This bill is not simple. This bill is fairly far reaching. It does significantly change some decisions and some things that we would do at the Power Review Board. It is true that today's statutes do provide that we have to go to the Power Review Board for approval of new transmission and generation facilities. And it's proper that we should do that. What this bill does is provide that many years, potentially, after we have made that decision and installed that asset that we run the risk of taking a decision to the Power Review Board that could potentially put us in a position of having to shut that asset down and stranding that asset. That is very significant in our industry. Many of these facilities are completely necessary for the reliability of the electric grid and we have a lot of concern about that. I'm also concerned that the rating agencies that rate our bonds, our long-term bonds, for which we pay for these facilities might also view this as a business risk moving forward. This bill doesn't just impact the new decisions. It does impact retrofits. So it's new ones, but it's also...if we would go back and retrofit a plant, if we would do an upgrade, an uprate to a plant, potentially would have to go back. All those things are business decisions that our elected and appointed boards make. It's been discussed that we don't have a utility rate commission. And that's true. That's because this Legislature, decades ago, elected the public power model that we've been operating under for several decades now. One of the hallmarks of the public power model is that those rate and decisions are made at the local level by locally elected and appointed boards. Those meetings, we operate in the sunshine; our meetings are public. We have lots of hearings. We have lots of meetings. These decisions are all included in budgets for which people can come to a public meeting. They can speak to the budget; they can speak to the decisions, and they can talk to their local board members about these decisions. They probably...the constituents and the ratepayers in Nebraska are probably more aware of what's going on at that utility level than they are at what's going on at the Power Review Board. They're much more likely to notice something on our agenda than a Power Review Board agenda. I would guess most citizens don't know the Power Review Board exists. Now that's neither good nor bad. It's because they're more tuned in at that local level. And we do a lot of things. On major projects, we are typically holding lots of public hearings where we go out to our customers and review our decisions, especially those that involve a huge expenditure of funds. So we try to make sure that our ratepayers are informed when we're making those. But an example of this is let's say you've got NPPD and OPPD who each have nuclear plants. And let's say that the Nuclear Regulatory Commission puts in some regulation that requires them to do a significant upgrade to the plant, install something that's in excess, let's say it's \$151 million. And let's say that they take this to the Power Review Board and for whatever reason the Power Review Board, number one, I don't think there's great criteria that the Power Review Board could even apply to these kinds of decisions, but what if they say no? What do the utilities do? Because those, number one, those are carbon-free resources and they are important base-load resources, meaning they are there for a liability. And we can't be in a situation where they can't operate those plants or have to shut those plants down prematurely while the bonds on the plants are still being paid. So we do think it's a fairly significant change. We think it's not a minor adjustment in the statute. I was going to try to address a couple of other things that were brought up. In terms of coordination of investments: we do a lot of coordination in public power. We have a long-range statewide power supply plan that the utilities join in, major generators participate in, to project what our future power needs are moving forward. We do an annual load and capability report. So I think there's a lot of reasons to not advance this bill and we ask you to do just that. Thank you. [LB475]

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SENATOR SCHILZ: Thank you, Ms. Sahling-Zart, for your testimony. Any questions? Senator McCollister. [LB475]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. The last testifier from Wayne, Nebraska, indicated that Nebraska significant over capacity. [LB475]

SHELLEY SAHLING-ZART: Um-hum. [LB475]

SENATOR McCOLLISTER: Would you agree with that? [LB475]

SHELLEY SAHLING-ZART: Somewhat. [LB475]

SENATOR McCOLLISTER: I suppose you claim reliability is the primary issue for that, or the reason for... [LB475]

SHELLEY SAHLING-ZART: Yeah. It depends on what you're looking at. I mean, some of it is by design, because we are all within SPP, and even before SPP, we are all required for reliability purposes to have enough generation in place, either owned or contracted for, to meet our peak demand, which is that demand in the summer, our peak demand plus 12 percent reserve. [LB475]

SENATOR McCOLLISTER: What's the relationship between your peak demand and your average demand in Nebraska? [LB475]

SHELLEY SAHLING-ZART: It's higher, which is why you have a diversity of types of resources. So we have base-load resources, we have intermediate resources, and we have peaking resources. So the base-load resources are those resources that you can turn on and sort of run at will. That's basically called nuclear...natural gas is really more in the intermediate. And then you stack on the intermediate. We have natural gas fired peaking turbines that they're a higher cost unit, so we, basically, run those to level out those peaks in the summer. [LB475]

SENATOR McCOLLISTER: So would you assume it's about a factor of three between average day and peak day? Four? [LB475]

SHELLEY SAHLING-ZART: Senator, I'm not sure off the top of my head. I'd have to look at that. I could certainly let you know. Off the top of my head, I'm not sure. [LB475]

SENATOR McCOLLISTER: Okay. [LB475]

SHELLEY SAHLING-ZART: But I can tell you that our load here in Lincoln today is probably just a little over half of what it would be in the summer. [LB475]

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SENATOR McCOLLISTER: Okay. Thank you very much. [LB475]

SHELLEY SAHLING-ZART: Um-hum. [LB475]

SENATOR SCHILZ: Thank you, Senator McCollister. Any other questions? Seeing none, thank you for your testimony, appreciate it. Further opposition. Good afternoon. [LB475]

CHRIS DIBBERN: Good afternoon, Chairman Schilz. May it please the committee, my name is Chris Dibbern, that's C-h-r-i-s D-i-b-b-e-r-n. I'm the general counsel for a small joint-action agency called NMPP Energy, the Nebraska Municipal Power Pool, and MEAN, the Municipal Energy Agency of Nebraska. And we are opposed to LB475 for a few reasons. MEAN and NMPP Energy serve 68 municipalities at wholesale. We are a political subdivision of the state. We have to have open meetings, open records. The Power Review Board has been a valuable regulator and oversight for energy planning for our state. Our organization has appeared before the Power Review Board in the past 31 years to bring on the first wind farm in Kimball, Nebraska; 11 megawatts that cost us \$14 million at the time. We also built three miles of transmission outside of Kimball to run to that wind farm which we brought before the Power Review Board. We built a coordinated 220-megawatts small coal plant called PPGA and that's a public power generation authority in Hastings. It was coordinated with Grand Island, Hastings, Nebraska City, MEAN, and Heartland, another joint action agency out of South Dakota. That power plant cost over \$700 million when we brought that application to the Power Review Board. We have also seen application...we've also seen replacements for municipalities. And that's the one I'd like to talk to you about today. In the bill, Section 70-1012 has, in current law, has established a very clear process for suppliers to have certain exemptions. And it's transmission lines at close to and in your own service territory, so if you're replacing those. The one that I'm particularly concerned about is replacement generators owned by individual municipalities or a registered group of municipalities. The third one is transmission lines that are 115 Kv or less. And the fourth one is qualified facilities under Section 70-2002. The Power Review Board established that the Governor appoints members to the Power Review Board and this committee confirms them. It has worked well and worked well for consumers of public power. This bill confuses when a power supplier must bring an application and if they can veto an upgrade. Replacement construction takes a long lead time. You plan, you finance, you build, and time is of the essence if you're repairing a plant. The regulatory review is an important, thoughtful, initial expense. The four exceptions that have been placed in this bill have been there for a long time. Changes that confuse those four exceptions will only delay needed upgrades, cleaner generation, and growth. Any questions? [LB475]

SENATOR SCHILZ: Thank you for your testimony. Seeing no questions, thank you. Further opposition. Good afternoon. [LB475]

JOHN McCLURE: Good afternoon, Chairman Schilz, members of the committee, my name is John McClure. I'm vice president of governmental affairs and general counsel for Nebraska Public Power District. I wasn't planning to testify today, but based on some of the things I heard, I couldn't help myself but to come up here. Hopefully, I can contribute some things that will be of interest to the committee. I personally believe this bill is, in large part, targeted toward NPPD. At one point it was announced that we were contemplating a significant expenditure at one of

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our coal-fired units, one of the lowest-cost units in the country, for environmental controls, and I think in significant part that's what led to this bill being proposed. NPPD has 11 board members who are elected by our customers. The Legislature has made the law clear that our board and the boards of all public power districts are to be elected by the customers they serve. So that is the direct voice. And NPPD serves about 600,000 Nebraskans. We're primarily a wholesale power supplier. We serve currently total requirements of 25 public power districts and cooperatives in the state, 51 municipal electric systems. In addition, we serve 80 communities in the state at retail. Our board does set rates. The Power Review Board doesn't set the rates for any electric utility in the state because all of the electric utilities in the state have an elected body that's given that responsibility. An elected body that comes directly from the customers, whether it's the member board of a cooperative or it's city council for a municipal utility or the elected directors of a public power district. That is one of their fundamental responsibilities. One of the reasons we don't need a rate commission and certain other oversight is because our rates are set to recover costs. We are not like the other 49 states where the investor-owned utilities may be providing monopoly service. And they have to have a rate set so that they don't take an exorbitant profit from that monopoly service. Public power utilities, whether they be electric or someone like MUD, set rates to recover costs from the consumers of that system. This bill, as I read it, is very...is not just a hearing, it would require the Power Review Board to tell us whether or not we could make a decision. I think our elected board that hears information at every board meeting, that gets additional information sent to it is in the best position to ultimately make a determination whether to make investments in facilities. As I read the bill, if the NRC said we had to make \$150 million investment in our nuclear plant, we would have to come to the Power Review Board which really doesn't have the criteria to determine if say some type of a modification at our nuclear plant is appropriate. Do we strand the half a billion dollars we invested to get a 20-year life extension for that plant? What about the fiduciary obligation of our board to the bondholders and to the customers to make that asset valuable? They have been elected. They stand for election every six years. We have board meetings, we have public comment at every board meeting. We have meetings on a regular basis with all of our wholesale and retail customers outside of the board meetings to get their input on issues. So I don't see the reason for this. I think the body with the most expertise is the governing board for the customers for whom those assets have been built and operated. The last comment I'm going to make, and I don't like to get in turf wars in the Legislature with public power, but I would like to point out that Northeast Utilities is a wholesale customer of NPPD and they're choosing to leave NPPD and that's their right. But they're going to be supplied by a utility in Kentucky at some point in the future. They've signed a contract to that effect. Should there be some sort of state oversight on that and the impact on public power? I don't know. With that I will close my comments and I'd be happy to try to address any questions. [LB475]

SENATOR SCHILZ: Thank you, Mr. McClure. Any questions? Senator Johnson. [LB475]

SENATOR JOHNSON: Thank you, Senator. The NPPD board does all the analysis on a project. For the power board to come up and have information to make a recommendation, yes or no, where do they...how do they get their information? Do they have to come to you and look at the same things, or do they have their own mechanism? [LB475]

JOHN McCLURE: The Power Review Board is probably the most efficient agency in the state. It has three employees and a board...an appointed board of five experts from various walks of life.

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It has to have a lawyer, an engineer, an accountant, and then two other positions. They do not have independence. They don't have expertise on their staff, they don't have an engineer on their staff. So they have to listen to the evidence that's brought before them by an applicant. They have to listen to the evidence that's brought before them by any opponents or interveners. And from that they make a decision. But today, they...the primary area they decide on is there a need for a particular transmission project? Is there a need for a particular generation project? And part of that criteria goes back to the creation of the Power Review Board in 1963. Multiple power entities in the state would want to build a project and there was a question--are we having duplication of facilities? In the case of this bill, we're talking about the entity who already operates the facility; should they have the authority to decide what's best for that utility without having to go back to the Power Review Board and face a potential veto? As I read this bill, the Power Review Board could tell them--no, you...the applicant...no, you can't do this. And so, again, they rely on the evidence brought to them by the applicant and any evidence from an opponent to make a decision. And it's that board of the five appointed members who ultimately make that decision. [LB475]

SENATOR JOHNSON: Thank you. [LB475]

SENATOR SCHILZ: Thank you, Senator Johnson. Any other questions? Seeing none, thank you, Mr. McClure, for your testimony. [LB475]

JOHN McCLURE: Thank you. [LB475]

SENATOR SCHILZ: Any further opponents? Seeing none, any in the neutral capacity? Good afternoon. [LB475]

TIM TEXEL: Senator Schilz, members of the committee, my name is Tim Texel, T-i-m, last name is T-e-x-e-l and I'm the executive director and general counsel for the Nebraska Power Review Board. I'm here today in a neutral capacity. The board would have had serious concerns about the bill without the AM38 that Senator Davis had mentioned where we're taking out the word "only" that would have been quite a change to our jurisdiction. So I won't deal with that any further other than to say the board is certainly supporting the amendment to it that takes out the word "only." That would strip a great deal of our jurisdiction away under existing law. And as Senator Davis said, that was not intended in the bill. With that, as I mentioned, the board is neutral on the bill. But I did want to point out some language in the bill that might be subject to interpretation. And then, if I have time, I'll answer some of the questions that were asked of previous testifiers by the senators. As I read the bill, the new language is intended to clarify that the statutory section involved applies to generation facilities when any improvement is made to an existing facility when it either increases capacity or when the improvement involves a cost of \$150 million or more. I think the statement of intent supports that reading. I wanted the committee to know what the board's current interpretation is under existing law. The board's interpretation is that a power supplier is not required to obtain Power Review Board approval for a project that consists only of maintenance, even if that maintenance results in a slight increase in capacity or has a large cost to it. One example that we've encountered in the past are hydro facilities where they're replacing, and I'm not an engineer so I'll use my layman's terms, but the turbine, the inside parts in a hydro facility. When they were built in the '30s, they had heavy

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equipment that the water had to spin, made out of steel or something, you replace those with light, stronger titanium that's much lighter, it spins faster and they get more megawatts out of it. But that wasn't the purpose for the construction. The purpose was simply to replace the either broken or worn out machine parts that are inside of there. My board has interpreted that to be that we don't have to approve that. The facility is already approved. We found the need for that and the one or two megawatts usually it would add was not the point of the construction. So it's a by-product that they get from that. Nuclear facilities are an example I use commonly because the price tags usually with anything associated with them is so high. If you replace computer equipment, sensing devices, things like that, that would allow much more accuracy and to operate the system at much closer tolerances, that could result in several more megawatts of capacity. And my board has said, as long as you're just replacing that equipment and you're not changing the nature of the facility, then we don't need to review that because it is maintenance. So that's the distinction my board has brought...or has made. The new language in this bill would effectively reverse my board's interpretation. It's not a criticism, that's the Legislature's prerogative to make that policy call. But I wanted the committee to be aware of the board's interpretation and what the bill would do for your consideration. One difficulty the board might face with the new language is that the board's approval criteria in the current statute is not designed with these types of situations where we have simply a hundred...it's by a price and not new construction of a generation facility. So our criteria is really designed for new construction or significant increases in construction where you're adding a second unit, you're putting in new boilers that are intended to greatly increase capacity, something like that. I do have several other technical things and I probably won't get through them, so I can speak with the committee counsel about some of those, the language in there, and to put it into the record maybe. If this would go to the floor, the board would like to have some clarification so that we're not interpreting how to read this and we know how the Legislature wants us to implement it. And that's one of the big things I often testify, I want to make sure...and my board wants to make sure we're following your instructions and not going off doing the opposite of what the introducer or the Legislature as a whole or committee wanted us to do...so any clarification. It also helps when we're holding our hearings that one party doesn't make a claim that we have to address and increase the costs. We already have an answer from the Legislature in the legislative record and that helps us out a great deal. One thing I would mention is to add a minimum threshold, because right now we don't have that. [LB475]

SENATOR SCHILZ: You're okay, you can keep going for a little bit. You're fine. [LB475]

TIM TEXEL: Just on that, my concern is if we had, say, a wind turbine and then a cell is replaced and it increases a capacity by a very small amount. I don't know how realistic that is, if the capacity would increase much, but if they had a new model that increases it by 250 kilowatts, a small amount, that would trigger this because one of the functions is that we review any increase in capacity. So there's not any minimum threshold. That's one thing we've addressed in our current statutes; since there's not a minimum threshold...in the old days when...in the '60s, before I was around, at the board, but when the board was created, there was no minimum threshold, but everybody expected 600 megawatt coal facilities and nuclear to be built. So now with the advent of much smaller and distributed wind and things like that, that's a big issue. And I could see that happening here too without some kind of minimum threshold to take into account. I would, if I can, have leave to address several of the questions that the members asked. To clarify one point, I think Senator McCollister and Senator Friesen asked a question that was to Senator Davis about whether the board...what the board can do on a facility. And the Power

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Review Board doesn't actually hold public hearings, we hold formal evidentiary hearings. We operate in a quasi-judicial capacity, so we're operating similar to a district court. And that's why our...we're the neutral fact finder and our decisions then could either approve or deny a facility. So in this instance, if we denied it, they either wouldn't be able to build a facility, or if it's a change, I guess arguably, they couldn't replace the parts. Now in the example with the Nuclear Regulatory Commission, if we would say we would deny the modification NRC had ordered, we wouldn't order the plant to be shut down, but the NRC might step in and say--if you don't make that change to NPPD or whoever, you can't operate the plant. So we wouldn't order it to shut down, we would just say they couldn't make the modification. That would be our authority. But we do have approve or deny authority. And then that would go on appeal to the Nebraska Court of Appeals and then it could go up to the Supreme Court. So I wanted to clarify that. It's not a public hearing so that people could come like here or to the city council, this is a formal, courtroom-style of hearing that we hold. I think I've written that...for Senator Hughes's question that the first part of the new language would apply to existing facilities, the Power Review Board already has jurisdiction over all new facilities...was the notes that I had on that and I wanted to clarify that. And there was a question about public hearings. I think I already addressed that. And then there was a question about the siting of a facility, when it comes to transmission, we don't site that. The Supreme Court...my board has found that we don't, and the Supreme Court has said, you're correct, you don't have any authority to route it or site it; you look at the application as it's presented to you by the utility and decide, as a whole, can you approve it or not? Typically, what they do now with transmission is they give us a corridor; as long as everywhere in that corridor meets the criteria that we can approve it. But with a generation facility, we don't have that clear case law, but we don't normally site anything and tell them where they have to put it. We look at it as they present it to us, at that location. Does it meet the public convenience and necessity? Can the applicant most economically and feasibly supply the power resulting from the project and without duplication of existing facilities? That's our criteria that we apply. So we don't look at where you put it unless, to the extent where you put it impacts those criteria. And that certainly could. But we don't tell them you have to put it somewhere else; we don't have that authority to tell them--not here, put it over there. So I wanted to clarify those questions. And certainly I would answer any other questions, but hopefully that's helpful. [LB475]

SENATOR SCHILZ: Thank you, sir. And I appreciate those answers. Senator McCollister. [LB475]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. So if I'm understanding correctly, you simply judge the financial feasibility of the project. [LB475]

TIM TEXEL: Well, and also the public convenience and necessity comes into a...it's similar to a certificate of need. So that's a big part of it and that it doesn't duplicate... [LB475]

SENATOR MCCOLLISTER: So it's primarily demand then? [LB475]

TIM TEXEL: Both. We have both criteria--the public convenience and necessity and then that the applicant can most economically and feasibly. And then not duplication goes back to the costs so you don't duplicate them. So, I'd say both of those are rolled into it, not just one. [LB475]

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SENATOR McCOLLISTER: The general counsel from NPPD indicated that you have just five employees, is that correct? [LB475]

TIM TEXEL: Five board members; only three employees. [LB475]

SENATOR McCOLLISTER: Five board members. [LB475]

TIM TEXEL: I'm one of the three employees. We have myself, a paralegal and a business manager does the accounting side. [LB475]

SENATOR McCOLLISTER: Well, there's a pretty limited financial impact, negative \$2,000. So you get all of your operating money from the utilities that you...that you manage. [LB475]

TIM TEXEL: Correct, through assessment. [LB475]

SENATOR McCOLLISTER: But have you tried to figure out what kind of costs you'd have implementing this law? [LB475]

TIM TEXEL: Well, under the...the fiscal note was under the green copy. I think Senator Davis mentioned that. I put that in based on if we had a lot of our jurisdiction stripped, we wouldn't have as many hearings. I would...depending on how many more hearings I thought would be under this jurisdiction, we're set up to already hold hearings. Unless I thought there would be a flood of new hearings, it wouldn't be a large fiscal note. So the amendment to this, if AM38 is adopted, would be a fiscal note...it would probably be a modest fiscal note. It would be the cost of our hearings. Our hearings are not terribly expensive. It's the court reporter...it may be expensive for the parties to hire their lawyers, but we have the court reporter and some per diems for my board members and travel costs if it's associated, some things like that. But it's not \$10,000 per hearings; it's more in the hundreds per hearing. [LB475]

SENATOR McCOLLISTER: Since it's a quasi judicial proceeding, are all your board members lawyers? [LB475]

TIM TEXEL: No. One member is a lawyer...well by statute, one member has to be a lawyer. We've had two or three in the past. We always have to have one. Right now, we have one lawyer, several engineers. But we have to have an engineer, an accountant, and a lawyer, and then two lay members. The lay members are sometimes engineers or lawyers. They're not restricted from being those, but we have to have those three minimum. [LB475]

SENATOR McCOLLISTER: From the start of a hearing until you reach your decision, how long does that take typically? [LB475]

TIM TEXEL: From the start of a hearing or from an application received? [LB475]

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SENATOR McCOLLISTER: From the application to the end of the process? [LB475]

TIM TEXEL: I'd say on average, two months. It's a fairly quick process. It kind of depends when the application comes in. We hold monthly meetings. And so it depends if there's any continuances, things like that. But normally, we put it on the next agenda and we hold the hearing then. If it's too close to a meeting coming up, I can't do that because the statute requires that I give ten days notice to alternate power suppliers. And then we also, aren't required by statute, but per our policy, we put out a public notice in the newspapers in the area to make the public aware of it if they want to try and intervene. And so I have to have enough time, because a lot of areas of the state only have weekly newspapers. So if it's near Omaha or Lincoln, I have a daily newspaper. If it's out in the west, sometimes I have to do it by a weekly newspaper. So it's a fairly quick process. [LB475]

SENATOR McCOLLISTER: Thank you very much. Thank you, Mr. Chairman. [LB475]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Friesen. [LB475]

SENATOR FRIESEN: Thank you, Chairman Schilz. Just one question, I guess, if you...if a permit comes before you, or a review and you look at it and you deny it, do you give them an opportunity to correct deficiencies or do you work with them before you deny it or what is the process if you would deny it? [LB475]

TIM TEXEL: Well, we...as I said, we operate similar to a court. So we normally aren't trying to tell them what they have to do to fix it. What we would do is they could...if they saw that coming, they might withdraw it or something like that. There's a lot of ways it could happen. But as far as our legal authority is, we either approve or deny, sometimes we put conditions on it that they have to follow through with the promises they've made to Game and Parks and things like that. But normally we would just say--you don't meet the criteria, you're denied. And they could appeal that to the court of appeals, but we don't come up with alternatives because...since we do operate quasi judicially, we render a decision and that's a final decision. [LB475]

SENATOR FRIESEN: Have you ever had a decision overturned by the court? [LB475]

TIM TEXEL: In the past. We haven't since I've been there. Not saying that's necessarily because of me, but we've had them overturned in the past. Not in the past 16 years or so. They've upheld all of our decisions for that. But I know in the past we've had several that were overturned. [LB475]

SENATOR FRIESEN: What percentage do you think get appealed? [LB475]

TIM TEXEL: We don't have a large percentage that get appealed, first of all, so I should clarify that. Most of the time the utilities abide by our decision and don't go to the court. Since I've been there, there's usually interveners who are from the public that appeal it. But we have had utilities

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appeal it too. The percentage that goes on appeal...of our decisions...I'd have to say the overall would be very small, because most of them aren't contested per se, it's one utility comes in front of us, there's not somebody else who is opposing it. And so we just have to meet the criteria. We make sure they've put on enough evidence to do that. So those, obviously, aren't appealed unless we would deny it. It's usually pretty rare, the utilities and developers are pretty careful bringing stuff to us that only they know is going to get approved. The ones that are contested hearings, it's probably 25 percent, maybe 10 percent that get appealed. It's not a big number. Frankly, I'm surprised it's not a little larger. [LB475]

SENATOR FRIESEN: All right, thank you. [LB475]

SENATOR SCHILZ: Thank you, Senator Friesen. Any other questions? [LB475]

SENATOR McCOLLISTER: One more little one. [LB475]

SENATOR SCHILZ: Senator McCollister. [LB475]

SENATOR McCOLLISTER: How many applications get denied on an annual basis? [LB475]

TIM TEXEL: Not very many. We, as I said, the utilities are very careful, and the developers, before bringing stuff to us. Any application they normally, from what I've seen, don't bring one to us unless they know all their ducks are in a row and they have everything ready. We have a large body of precedent and they know how we function. So they're pretty good at knowing what our answer is going to be when they come to us. So it's a small number. [LB475]

SENATOR McCOLLISTER: Thank you. [LB475]

SENATOR SCHILZ: Thank you, Senator McCollister. Any other questions? Seeing none, thank you for your testimony. [LB475]

TIM TEXEL: Thank you. [LB475]

SENATOR SCHILZ: Any further neutral testimony? Seeing none, I see that Senator Davis is still here. Maybe he has reconsidered. Welcome back. [LB475]

SENATOR DAVIS: Thank you. I don't have a lot to say. I'll just say a few things. You heard what Mr. Texel said at the end about how careful these entities are when they come before the Power Review Board that they've done their homework and they made sure that probably this thing is going to be a successful bill. So I think that is just one really good reason why this is important. A couple of other things I'm going to say, and while I respect everyone who serves on any public board, but, let's just talk about those of us who are sitting here in the Legislature. We can't be experts on everything. So the people that are elected to the board of NPPD are probably, in large

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part, not really experts on power when they get there. So there's a lot to learn; you rely a lot on staff and there are lots of instances across the country where decisions were made that were disastrous. Not just in public power or in power industry, but in any industry. I mean, you can go through the airline industry and look at all the bankruptcies that have taken place and those kind of things which are partly due to poor business choices that were made. You heard people talk about stranded assets a little bit ago, so the stranding of an asset is a very important thing to...we'll say LPS (sic)...Lincoln Public Power District. So because that might be a problem for them, they may not be able to really look at the entire picture. So I think...I think it's just important that we have another public entity that looks at programs and things that are going to incumber our ratepayers for years and years and years to come. We're not trying to quash anything. We're not trying to strand any assets. But what we're trying to do is make sure that what we do is the right thing for Nebraska. Thank you. [LB475]

SENATOR SCHILZ: Thank you. Any questions for Senator Davis? Seeing none, thank you very much. [LB475]

SENATOR DAVIS: Thank you. [LB475]

SENATOR SCHILZ: That will close our hearing on LB475. And we will move on to LB130. And I see Senator Watermeier is here, so...(inaudible)...welcome, Senator Watermeier.(See also Exhibit 2) [LB475]

SENATOR WATERMEIER: (Exhibit 1) Thank you, Chairman Schilz. Members of the Natural Resources Committee, I'm Senator Dan Watermeier, it's spelled W-a-t-e-r-m-e-i-e-r. I represent District 1 in the southeast corner of the state and here to introduce LB130. LB130 proposes to make projects that have been allocated funding from the Nebraska Resource Development Fund, as of March 30, 2014, eligible for funding from the Water Sustainability Fund. Since such projects have already went through the application process, project sponsors would submit a statement of need to the Department of Natural Resources rather than an application. The Natural Resources Commission is directed to develop a ranking system to give priority consideration to such projects. I'd like to give you a little background on the Natural Resources Development Fund. This will help explain the situation and the reason for LB130. The Nebraska Resource Development Fund, or RDF, was created in 1974. The fund can be used to provide grants and loans to political subdivisions of the state or an agency of the state, or it can be used by the Department of Natural Resources to acquire an interest in a project in the name of the state. The Natural Resources Commission housed in the Department of Natural Resources is the entity that oversees the projects and the funding. There used to be an advisory board to the commission, but this advisory board was eliminated in 1985 and the director of the department assumed those responsibilities which includes recommending to the NRC which projects to fund. As of August of 2014, there were 65 projects that the Natural Resources Development Fund helped to build. These projects located all across our state continue to protect the state's natural resources, while also producing notable recreation and economic benefits for all of our citizens. All these projects have leveraged significant federal and local funding to develop, preserve, and maintain the state's water and related resources including flood control, recreation, enhancement of water supplies, and the protection of the health, safety, and general welfare of the state's citizens. The \$108 million of state funds invested since 1974 has leveraged \$152 million of

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federal and local funds to provide the citizens of Nebraska an estimated \$1.4 billion in benefits over the projected life span of all the projects. There are six Nebraska Resource Development Fund projects that have been approved, but are waiting for final funding from the state of Nebraska. This would bring the total number of projects funded under the RFD to 71. Of these six, several are completed, and remaining are projected to be completed in the next three to five years. A total obligation of approximately \$8.8 million remains after fiscal year 2014 and 2015 which takes into consideration the funding provided even last year. The sponsors of these projects are here today to explain some of them. The Governor's proposed biennial budget, as well as a preliminary recommendations from the Appropriations Committee, provides \$3.14 million for fiscal year '15-'16, and \$586,510 in fiscal year '16-'17, totaling only \$3.71 million over the two-year period. The budget also calls for the program to end after fiscal '16-'17. And this leaves a shortage for existing RDF projects of approximately \$15.1 million. The legislation passed in 2014 added new applications for the RDF..ended, excuse me, ended new applications. LB1098 created the Water Sustainability Fund and expanded the membership of the Natural Resources Commission who oversees this new fund. An Appropriations bill passed last year, LB906, prohibited applications being made to receive funds by grant or loan from the Nebraska Resources Development Fund after April of 2014. Although the Appropriations bill, last year provided some additional funding to the RDF to help pay off these projects, most of the new funding went into the newly created Water Sustainability Fund; hence the need for LB130. We must keep in mind that these six projects have already gone through an application, a review, and an approval process. And I don't think these projects should have to go through the application process again, this time facing different criteria and different makeup of the commission. That is why the bill proposes that these six projects submit a statement of need instead of an application and that it be given priority consideration. Currently, there is a \$21 million investment in the Water Sustainability Fund. The Governor's proposed budget includes an additional \$11 million for each of the fiscal years of this biennium. Final rules are not yet complete for the project applications from the new fund, but they could be done by the end of this year. The NRC will then have to review and approve the applications, meaning that it might be towards the end of next fiscal year before an application could even receive any funding. The purpose of LB130 is to begin the discussion on how to obtain the funding to complete the last six projects from the Resources Development Fund. I also have a bill before the Appropriations Committee which deals with the same subject. I feel very strongly that we should follow through on these last remaining projects. And I have distributed...I apologize for not handing this out, give this to the page. I will distribute it out here a short summary of the six projects and the amount of funding still needed. If you have any questions, I'll try to answer them. [LB130]

SENATOR SCHILZ: Thank you, Senator Watermeier. Any questions for Senator Watermeier? Senator McCollister. [LB130]

SENATOR MCCOLLISTER: The description of the bill, Senator; thank you, Mr. Chairman, shows \$18 million. Is that about what the six projects total? [LB130]

SENATOR WATERMEIER: \$18.8 (million) is what they'll take after this ending of the fiscal year we're in right now. But part of the funding is in the next biennium, not all that we need. [LB130]

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SENATOR McCOLLISTER: So what period of time would be necessary to finish these projects? [LB130]

SENATOR WATERMEIER: I would say at the very minimum four to five years. And I just had a report today that the last one that I was concerned about may be able to be cleaned up a little quicker than that, but we're still cleaning up projects. And some of these projects were actually...started their application process in the year 2001 or '02. That just gives you a feel for how long some of these projects can kind of take. Part of the reason for the delay was the fact the legislative body never just funded these projects and we had to hold them back and ongoing costs would come up: land rights would come up, fuel expenses, construction expenses. So there's a whole variety of reasons why they've taken long. This last one was kind of unique as well. But most of the projects that...of these six, are actually very close to being completed or are completed, just haven't gotten the money in the accounts to clean them up. [LB130]

SENATOR McCOLLISTER: So what you're saying, if I'm understanding, so you're looking for \$9 million a year to fund these projects? [LB130]

SENATOR WATERMEIER: Well, that would do it in two fiscal years. But what I'm going to propose we do is take an amount...and that's what's under discussion, I mean, I want to have a discussion in this committee, and as well through Appropriations, but the need right there is \$18.8 (million). And we already have \$3.1 (million) of it in the first half of the biennium and \$500,000 in the next. So it's really the balance of that to clean up these projects. [LB130]

SENATOR McCOLLISTER: Okay. [LB130]

SENATOR WATERMEIER: How we get there is open for debate yet, I would say. [LB130]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Kolowski. [LB130]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator Watermeier, thank you very much for bringing this forward. For you and I, Senator Johnson and Senator Schilz, with the activity level we had last year in the sustainability discussions, it's really important to bring this piece forward. For the new members on the committee, it couldn't be any simpler stated, I think, than there was a restructuring in the commission, commitment to the old projects, desire to finish them up, move on then in the future to the newly-identified projects as additional money comes available. But we have commitment with the money and the old process and the old commission to...we had things hanging and we had to clean those up. And without taking care of that, we wouldn't be able to move ahead with the desired speed, progress, and completion rate that we'd like to have for the future. So I...thank you for bringing it forward today. It's very important for us. [LB130]

SENATOR SCHILZ: Thank you, Senator Kolowski. Any other questions? Senator Friesen. [LB130]

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SENATOR FRIESEN: Thank you, Senator Schilz. I guess part of it is comment, but I understand the need to get it funded. These projects have all been approved and they're well underway, some of them are finished, like you said, they need funding. But when the Water Sustainability Fund was created, I mean, it was created for the reason of eminent need that the state spend some money and do some projects to get some water issues resolved in the entire state. So I'm reluctant to say that I'd like to see that paid off in one or two years. I would prefer it got done through the appropriations process would be great. But how long could you stretch this out...or what would they...what would have been their expected payment rate under the old system? Would this...were these funds...would they have stretched out over ten years yet or when would some of this been paid off under the regular system? [LB130]

SENATOR WATERMEIER: We had a mechanism in place that only allowed us to work under a \$18.5 million cap. And I could go into great detail on that and I'd like to do that if you want to on the floor at some point in time. But you know, we actually had \$28 million worth of projects in the works when we shut it off in 2006. We actually...and I was the chairman of that commission at that point in time and we shut it off and put a moratorium on new projects. At the time, it was feared that it might take eight or nine or ten years to get it cleaned up because we were only infusing \$3.1 million a year. That was the whole problem. And as we went on, if it...some projects, actually, some sponsor stepped up and said, you know what, we're going to do this project and we're going to borrow the money to do it. I don't want to speak exactly to Lake Wanahoo, but I think they actually went out and borrowed quite a bit of the funds. Senator Johnson may be able to speak to that. They went out and borrowed it and got it done a little quicker that way and saved a lot of cost overruns, land rights, fuel rights, all those things. But they had to bear the brunt of that loan for a long, long period of time. So it's a little hard to say, but that was the problem, we were under the constraints of \$3.1 million. And I was in this body 15 years ago asking for money. And we just couldn't get our message across. And I take the blame for that in some ways. I feel like I failed because we had an obvious need and just couldn't get the point across. [LB130]

SENATOR FRIESEN: I remember way back...the fund was always short of money; there were other projects looking for money and there was never any available. So for us to...for this to be stretched out over a five- or six-year period to where we pay this off would not be unreasonable. [LB130]

SENATOR WATERMEIER: No, I don't think so. And that's what I'm going to propose through the Appropriations Committee as well, something like that. [LB130]

SENATOR FRIESEN: Okay. [LB130]

SENATOR WATERMEIER: So this bill here is designed to make sure the discussion happens in here. I wanted to have it in front of this group, really where the natural resources needs to be at in conjunction with...obviously, it will be one of the two bills, but I want to have the same discussion in Appropriations and see what we can do for the best mix of funding it. [LB130]

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SENATOR FRIESEN: Okay. And I mean if...I appreciate that and I would...if there's anything I could do to help to get it through the Appropriations end of it, that would be better. [LB130]

SENATOR WATERMEIER: Okay. [LB130]

SENATOR FRIESEN: Thank you. [LB130]

SENATOR SCHILZ: Thank you, Senator Friesen. Senator Johnson. [LB130]

SENATOR JOHNSON: Okay. I'll follow up a little bit on that conversation. I didn't sit in on the Water Sustainability Committee, I was not one of the senators involved, but I did sit in on several of them. And what I've understood from that and the committee last year and the task was...one of the high priorities was getting these cleared up. And I think everyone seemed to be in agreement with that. I think it still needs to be that priority. Again, if it's...if we can put something in place that ensures that it's there, I think then the NRDs...or the projects can be looked at and say, okay, we have a plan to get it paid off; we're going to have to work through some numbers and go on. I think we need to put stability into the plan, not just water sustainability. [LB130]

SENATOR WATERMEIER: Do you mean the plan of paying the new or the old projects off? I mean I think it's both that we need to talk about the plan. [LB130]

SENATOR JOHNSON: Well, yeah, we need a plan. Well, the ones that are already expended. [LB130]

SENATOR WATERMEIER: Right. [LB130]

SENATOR JOHNSON: I was involved with that project and we had real good...real discussions, you know, about getting the rest of that covered. And I know there's still some out there. So, they need to know what we're doing. So we need something in there that's going to have a longer life than just one year. [LB130]

SENATOR WATERMEIER: Um-hum. It's ironic, you think about them, going through memory here now, when you speak about...you served on the North...Lower Platte North. Did you not serve on the Lower Platte North? [LB130]

SENATOR JOHNSON: No, I did not serve on the board. I was mayor. [LB130]

SENATOR WATERMEIER: Oh, was the mayor at the time. Okay. I remember... [LB130]

SENATOR JOHNSON: Yeah, so I was involved with the project. [LB130]

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SENATOR WATERMEIER: ...very distinctly at that time, speaking with what Senator Langemeier, who was not a senator at the time, much heartburn about biting off Wanahoo, because they did a lot of that, I believe, bought the land rights, took the initiative, did that; and, I mean, thank goodness they did. And even halfway through the project, I know they were still questioning--do we need to be doing this. But thank goodness they did. [LB130]

SENATOR JOHNSON: Yeah. [LB130]

SENATOR WATERMEIER: Saved the state, indirectly, an awful lot of money or the chance that the project may not have been completed. [LB130]

SENATOR JOHNSON: Yep. No, I think we just...we need to firm it up. I'm done. [LB130]

SENATOR SCHILZ: Thank you, Senator Johnson. Senator Schnoor. [LB130]

SENATOR SCHNOOR: So these six...what do we have here, six projects you have listed here, those were started with knowing that the funding wasn't totally there to complete everything? [LB130]

SENATOR WATERMEIER: I would say two of the six were probably funded with a question mark. I think back to the point when I was actually the chairman of the commission at that point in time. When a project would come to the commission and make an application, they have already invested, maybe, \$50,000 to \$100,000 in a project to get it to the point of application. Once they turn that application in, the commission is in statute required to either deny it or approve that project within two years. So we have a backlog of projects that we had given preliminary--yeah, go ahead and do the idea of the study or go ahead and do the application and take some period of time to do it. So we had this backlog of projects that haven't even been approved. But we had, you know, that they were going ahead with the application process. So I would say that...and I can't remember the exact date, but on the commission we could just see a big train wreck coming at that point in time. We said, we are not going to be able to make it inside of our cap and we're not going to be able to make it with continued funding at only \$3.1 (million). We had tried several times to bump that up to \$6 million and \$7 million to kind of clean out the backlog, but we weren't going to make it. So at that point in time, and I apologize for not knowing the year, we decided, and I really pushed hard with the commission, I said--the only way we're going to sell this to the body is that we have to put a moratorium on any new applications. At that point in time, we put a moratorium, you cannot make any more applications for the Resource Development Fund, and we approved two projects for a partial amount. So we got them in the hopper to prevent them from having to make another application, which they have to start all over with their engineering study, start all over with the application process. So we were trying to be aware of...cognizant of the fact that they were going to have to reinvest a lot of time and money to make these applications again. So of the project I'd say two of them were...there was uncertainty about the total funding. To be completely honest with you, that's just what the decision we had to make at the commission at that time. [LB130]

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SENATOR SCHNOOR: So, are some of these completed, the funding is just not there to finish paying for it? [LB130]

SENATOR WATERMEIER: Yes. [LB130]

SENATOR SCHNOOR: Are all of them completed? [LB130]

SENATOR WATERMEIER: Not all them; I would say, well, the project sponsors are going to come up behind me and I asked them to kind of summarize it real briefly to specific questions to their projects. So if you had one, I'll remind them and they can bring it up to which one you wanted. [LB130]

SENATOR SCHNOOR: Okay, thank you. [LB130]

SENATOR WATERMEIER: You bet. [LB130]

SENATOR SCHILZ: Thank you, Senator Schnoor. Senator McCollister. [LB130]

SENATOR McCOLLISTER: Yes, Senator Watermeier; thank you, Mr. Chairman. Looking at this page of charts...of columns, the first listing totals up \$43 million and the one below it shows \$13 million. Why the big difference in the amount of money? [LB130]

SENATOR WATERMEIER: Okay, go back to the first column, you're talking about amount spent... [LB130]

SENATOR McCOLLISTER: Yeah, is this the amount allocated in the first...in the top chart? [LB130]

SENATOR WATERMEIER: Oh, the top chart, excuse me. [LB130]

SENATOR McCOLLISTER: Yeah, \$43,245,000. [LB130]

SENATOR WATERMEIER: Let me just back up where I'm thinking this probably is. The allocation...the resource commission has a two-step process. They have an allocation process which is first when an application will come and then we will decide how much room we have in our cap to work with. So we will allocate so many dollars to a project. And then when we actually get the money from the Legislature, we obligate it. So it's a two-step process. That could be the difference there. [LB130]

SENATOR McCOLLISTER: Oh, I see. [LB130]

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SENATOR WATERMEIER: The potential max if \$59,500,000; do you see that? [LB130]

SENATOR McCOLLISTER: Uh-huh. [LB130]

SENATOR WATERMEIER: Compared to the \$43,245,000, that's probably the difference...that's almost the difference in the \$18,500 max of the cap, excuse me. That's probably that difference. [LB130]

SENATOR McCOLLISTER: Okay. And then, generally, the state's share is 40, 45 percent and the NRDs pick up... [LB130]

SENATOR WATERMEIER: No, the state's share...when this project started in the early '70s, they had the...the director had the range of 50 to 75, I think he could determine which...he had the leeway to decide this project is worthy of 50 percent or 75 percent or a range thereof. [LB130]

SENATOR McCOLLISTER: The state share. [LB130]

SENATOR WATERMEIER: The state share of it, yes, yes. But the state share was somewhat narrow. And I will let some of the specific project sponsors, especially like Lake Wanahoo, if he decides to come up and speak, it has a wide ranging of...Corps of Engineers; obviously, some local match; and even other federal money besides even the Corps. They were leveraged very...very highly leveraged. [LB130]

SENATOR McCOLLISTER: Yeah. There was no federal money? [LB130]

SENATOR WATERMEIER: In some of these projects? [LB130]

SENATOR McCOLLISTER: Yeah. [LB130]

SENATOR WATERMEIER: Oh yes, yes there were. [LB130]

SENATOR McCOLLISTER: And that's from the NRD side? [LB130]

SENATOR WATERMEIER: No, the federal funds would be straight from the federal government. It's like a Corps of Engineers project, a direct earmark through the federal budget actually. [LB130]

SENATOR McCOLLISTER: Are any of these six projects included in those federal projects? [LB130]

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SENATOR WATERMEIER: They...most of them had received federal funds, yes. [LB130]

SENATOR McCOLLISTER: Okay, and is it... [LB130]

SENATOR WATERMEIER: I shouldn't say most, I know... [LB130]

SENATOR McCOLLISTER: Is it significant? [LB130]

SENATOR WATERMEIER: Yes. I would say...well, I'll just let the sponsors answer that question, they'll know. They know those numbers right off the top. [LB130]

SENATOR McCOLLISTER: Okay. Thank you, Senator Watermeier. [LB130]

SENATOR WATERMEIER: You bet, Senator. [LB130]

SENATOR SCHILZ: Thank you, Senator McCollister. Any other questions? Seeing none, thank you, Senator Watermeier, appreciate it. [LB130]

SENATOR WATERMEIER: Okay. You bet. I'm going to stick around. [LB130]

SENATOR SCHILZ: Sure. And we'll take proponents now. Good afternoon. [LB130]

JOHN WINKLER: (Exhibit 2) Good afternoon. Chairman Schilz, members of the committee, my name is John Winkler, J-o-h-n W-i-n-k-l-e-r. I am the general manager of the Pappio-Missouri River Natural Resources District and I'm testifying today in support of LB130 and also on behalf of the Nebraska Association of Resource Districts. Senator Watermeier did a great job of going through the history of the RDF and a little bit of the Water Sustainability Task Force and that funding. And, obviously, with your questions, that helped guide him through that, so I won't spend a lot of your time rehashing that. Funding for the six projects already approved through the Resource Development Fund remains to be completed, and two of those are in the Pappio NRD. As part of my testimony, I've included a couple of fact sheets from the two projects that we have ongoing, that require some funds from the Resource Development Fund to complete those. The first project is a multipurpose flood control and recreation project near Hubbard, Nebraska, up in Dakota County. That's a \$18.7 million facility. The dam was completed in the fall of 2013, and we are just finishing up on the recreational aspect of it right now. The...as many of you may or may not know, the area up near Hubbard, this summer, experienced a whole year of precipitation in a 30-day period. And we luckily had that project completed because we held a whole bunch of water back. We protected thousands of acres of farmland, highways, other infrastructure up in that area that if that project wasn't there, we would have had some serious flooding in that area. The second project that we are nearing completion is the Western Sarpy/Clear Creek Project. And that is a levy project along the Platte River in Sarpy and Saunders County, the majority of it. This particular levy project has taken 15 years to complete. It was an originally estimated cost \$11 million, and now we're at \$42 million. This project was designed

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by the Corps of Engineers and its intent was to protect several high-value infrastructure projects. One, Interstate 80; one, the Nebraska National Guard Camp; and the Lincoln and MUD well fields; as well as several residential and agricultural areas. In 1993, we had a significant ice jam along the Platte River; caused around \$14 million to \$20 million in damages. It closed Interstate 80 for two days. It knocked out one of the two mains to the city of Lincoln for their water supply. And at that time, there probably was not enough pressure to put out a fire until they got that repaired. There was also significant damage to the Burlington Northern rail line there which was closed for several weeks to repair that. This year, we had a significant jam, again, form, about a mile and a half long jam in about the same area. So it is eerily similar to what we experienced in '93. Luckily, the project was completed to a point where it actually functioned as designed. It's not completed yet. We still have the Saunders side; it should be completed in September of this year. But it did perform. We avoided flooding the Lincoln well field; we saved the National Guard Camp. We saved the MUD well field and there was no significant downstream flooding. We were that close to employing dynamite, but thank God, Mother Nature stepped in and had a 60-degree day in January and helped us flush it out. But without that project, we would have had a situation similar to '93. And you're talking not ten millions of dollars now, you're talking hundreds of millions of dollars now. And that's also jeopardizing the drinking water to probably over 50 percent of the state's population. So that was a significant project that worked. As far as cost estimate, I know Senator Schnoor, you had a question about...or maybe Senator McCollister, about federal funding. If you look at the fact sheet, the Western Sarpy/Clear Creek Project was primarily funded with federal cost share. And out of the \$42 million, \$27.3 (million) was leveraged from the federal government. And the Resource Development Fund had about \$8.8 million. So without that Resource Development Fund, without that local cost share, we would not have been able to leverage those federal funds, obviously; and then also we would not have been able to build the project at all. So, obviously, that has a huge impact on us. The district is in a position right now where we have about \$10 million of outstanding debt tied to these two projects. And the reason is, going into the Resource Development Fund, you knew you weren't going to get those funds in a very timely manner because of the level of funding. So the district went ahead and bonded those or loaned those funds to complete these projects as quickly as we can to get the protection in place. And then we counted on that revenue to pay that debt down. Now, if, obviously, the district doesn't receive that, that leaves a \$9 million hole in our budget that we have to fill either by canceling or delaying future projects that we need; or, obviously, finding revenue somewhere which could be tax increases or whatever our board decides to do. So, obviously, we encourage the committee to look at this situation, to advance LB130, and to assist the other districts that will testify behind me to complete these projects and get these off the books. So I'd be happy to answer any questions that you might have. [LB130]

SENATOR SCHILZ: Thank you, Mr. Winkler. Any questions? Seeing none, thank you for your testimony, appreciate it. [LB130]

JOHN WINKLER: Thank you. [LB130]

SENATOR SCHILZ: Next proponent. Good afternoon. [LB130]

JOHN MIYOSHI: (Exhibit 3) Good afternoon. Senator Schilz and members of the Natural Resources Committee, my name is John Miyoshi, J-o-h-n M-i-y-o-s-h-i, general manager of the

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Lower Platte North NRD, located in Wahoo. And today, I'm giving testimony on behalf of my NRD in support of the concepts of LB130. Senator Watermeier, as a former member of the Natural Resources Commission, has a very unique insight into the working and promises of the Natural Resources Development Fund. We all appreciate the migration from the old NRC to the new, and from the NRDF to the new Water Sustainability Fund. The devil is always in the details to make these transitions as smooth as possible. One very large and important detail is how to make the NRD app projects whole. I believe there's universal acceptance that the Legislature's intent has been to make the six remaining NRDF projects whole. There are several legislative bills that include language to make this happen, including LB130. In the case of our Sand Creek Project, that project has been complete since 2012, and we have borrowed funds with the anticipation that our final \$1.4 million will be received from the state as promised. And I should say, at the height of that borrowing we had \$12.2 million borrowed on that project. I provided a handout on Lake Wanahoo and the Sand Creek Environmental Restoration Project that I would like to go over a few key points about the project. Lake Wanahoo is located one mile north of Wahoo, just west of Highway 109 and 77. The dam was completed in 2010, impounding 662-acre lake. The Environmental Restoration Project is a multifaceted project that provides environmental restoration, flood damage reduction, recreation, and highway infrastructure benefits for the Sand Creek Watershed in Saunders County. The Lake Wanahoo/Sand Creek Project began in the early 1990s as an effort to control severe flood problems on Sand Creek and Wahoo Creek. Efforts to find solutions for the flood problems date back to at least the mid-1960s and numerous reports and studies since then have confirmed the need for flood control in the area. We'll kind of skip a little bit ahead here. I'm sure you can all read that. I think, as we get down to the third to the last paragraph: that the recreation that Lake Wanahoo provides, the 662-acre lake, and 1,777-acre recreation area is managed by the Nebraska Game and Parks Commission and is the largest body of water to open for public use in eastern Nebraska in at least three decades. It was open to the public in April, 2012, offering fishing, hunting, camping, picnicking, day use, no wake boating, and more. Attendance over the first three years of operation has averaged over 150,000 visitor days per year. Total cost to construct Lake Wanahoo portion of the Sand Creek Project is about \$32.5 million. The major funding sources include \$10.5 million from the Corps of Engineers; \$12.5 million from the Nebraska Resource Development Fund; \$3.5 million from the Saunders County Road Fund through the Nebraska Department of Roads; \$1.4 million from the Nebraska Game and Parks Commission; and \$1.28 million from the Nebraska Environmental Trust; the remainder coming from the local partners which are the city of Wahoo; Saunders County; and the Lower Platte North NRD. The Corps of Engineers and the Lower Platte North spent an additional \$11 million on the seven upstream dams portions of the Sand Creek Project. I ask the Natural Resources Committee support LB130 or some version of the legislation that will achieve the goals of Senator Watermeier and this proposed bill would provide funding for the remaining NRDF projects. And that concludes my testimony. [LB130]

SENATOR SCHILZ: Thank you, Mr. Miyoshi. Yeah, any questions? Senator Johnson. [LB130]

SENATOR JOHNSON: Of course being part of that project, what's the total debt of Wanahoo by now? [LB130]

JOHN MIYOSHI: With the money we're receiving from the state in June, we'll owe about \$1.4 million on that. [LB130]

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SENATOR JOHNSON: So we're pretty well caught up with the federal...the federal has finally come through? [LB130]

JOHN MIYOSHI: Yes. Yes. [LB130]

SENATOR JOHNSON: Okay. Thank you. [LB130]

SENATOR SCHILZ: Thank you, Senator Johnson. Any other questions? Senator McCollister. [LB130]

SENATOR McCOLLISTER: Yes, sir. Thanks, Mr. Chairman. The ground surrounding the lake, is that under complete authority or control of Game and Parks? [LB130]

JOHN MIYOSHI: We have a joint effort between the NRD and the Game and Parks. It is owned by the Lower Platte North NRD. However, Game and Parks manages the recreation area. We assist some with that. We take the lead on the wildlife areas that the Lower Platte North with the assistance from Game and Parks. [LB130]

SENATOR McCOLLISTER: Yeah, but there's no residential lot construction or anything like that. [LB130]

JOHN MIYOSHI: No, it's all privately owned. [LB130]

SENATOR McCOLLISTER: Okay. Great. Thank you very much, John. [LB130]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Schnoor. [LB130]

SENATOR SCHNOOR: John, is that project done? [LB130]

JOHN MIYOSHI: Yes, it is. [LB130]

SENATOR SCHNOOR: It is complete? [LB130]

JOHN MIYOSHI: Yes, it is. [LB130]

SENATOR SCHNOOR: Okay, thanks. [LB130]

SENATOR SCHILZ: Thank you, Senator Schnoor. Any other questions? Senator Kolowski. [LB130]

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SENATOR KOLOWSKI: Thank you, Mr. Chairman. John, thank you for being here today. Your NRD, there's only one NRD that has bonding authority and that's the Papio at the current time. If you had that at the time, how much earlier might you have had this paid off if your board was amiable to the body? [LB130]

JOHN MIYOSHI: That's a very good question. We did not have the bonding authority; there was a lot of concern over that. Fortunately, we had great community support, a local support for our project. The Saunders County Bankers and First National Bank of Omaha entered into an agreement and a large loan was made. Like I said, at one time we had \$12.2 million borrowed on the project. And that was pooling money from the different local banks to make that possible. It would have been much easier if we would have had the bonding authority. [LB130]

SENATOR KOLOWSKI: Thank you. [LB130]

SENATOR SCHILZ: Thank you, Senator Kolowski. Senator McCollister. [LB130]

SENATOR MCCOLLISTER: Yeah, one...just one comment, boy, that number of partners you had involved with that, that's impressive. And so, well done, thank you. [LB130]

JOHN MIYOSHI: Thank you. [LB130]

SENATOR SCHILZ: Thank you, Senator McCollister. Any further questions? Seeing none, thank you for your testimony, appreciate it. Further proponents. Good afternoon. [LB130]

DAVE CLABAUGH: (Exhibit 4) Good afternoon. Members of the committee, appreciate being able to visit with you today. My name is Dave Clabaugh; Dave, D-a-v-e; Clabaugh, C-l-a-b-a-u-g-h, and I'm the general manager of the Lower Big Blue NRD headquartered in Beatrice, Nebraska. I'm speaking on behalf of the NRD today in support of LB130. I would also like to thank Senator Watermeier for introducing LB130 as we feel it is greatly needed. My NRD is one of the six projects approved, but it's still waiting for funding through old Resource Development Fund. Our project, the Lower Turkey Creek Project, began in 2003 with an application and feasibility study were approved by the Natural Resources Commission. Funding was approved for that project in 2005. The project is composed of seven flood-control structures located on tributaries to Turkey Creek in northern Saline County. The last page of my testimony has a map showing the location of those structures with the towns in alphabetical order: Dorchester, Exeter, Friend, and Milligan; showing that to keep with the theme of the hearings today. The primary purpose of our project was flood control, reduction of flood damages in the Lower Turkey Creek Watershed and downstream along the Big Blue River. This area experiences some kind of magnitude of flooding every year. The damages, of course, are to roads, bridges, fences, and of course crops. These seven dams will control over 33 percent of the acres of drainage in the Lower Turkey Creek that are in the Lower Big Blue NRD. The dams will provide over 500 surface acres of permanent pool and 1,600 acres of flood pool. A public-use area is planned in conjunction with our Site 9. In addition to these sites, a drainage project...improvement project was completed in and around the town of DeWitt. The estimated benefits of our project is \$400,000 a year. The Lower Turkey Creek is the last major tributary in

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our NRD that doesn't have any major flood control in it. We currently have 11 completed of flood control projects that contain over 253 watershed dams that we operate and maintain. We joke with Senator Watermeier that we are the watershed capitol of Nebraska, and sometimes Mr. Watermeier will take offense to that and give us his old Nemeha area. In our project, six of the seven dams have been completed. Construction of our last site, Site 11, has been started this fall, and we hope to have completion done in the spring of 2015. We would like to be assured that funding would continue as assigned under the old Resource Development guidelines with funds from the Water Sustainability Fund to finish this projects. We currently have \$1.4 million borrowed on this project. And any loss of funds that we have budgeted will impact our taxpayers. Again, I urge you to support LB130. And maybe...anything that comes out of this maybe through the Appropriations also, and so our projects can be finished. With that I thank you for your time and I will take questions? [LB130]

SENATOR SCHILZ: Thank you, sir. Any questions? Senator Johnson. [LB130]

SENATOR JOHNSON: Thank you, Senator Schilz. Thank you, Mr. Clabaugh. Does the fact that you have money out on this project, maybe other projects, hinder your ability to do any flood control on the Blue? [LB130]

DAVE CLABAUGH: Oh sure, yes. [LB130]

SENATOR JOHNSON: So it's holding up other projects? [LB130]

DAVE CLABAUGH: We don't have any projects planned on the Big Blue; that would be a big undertaking. I know the city of Crete has talked about that. But at this time, of course, it would be detrimental to that. [LB130]

SENATOR JOHNSON: Okay. I know that would be a big project... [LB130]

DAVE CLABAUGH: Oh yes. [LB130]

SENATOR JOHNSON: ...in Crete with Beatrice, all are affected by that. [LB130]

DAVE CLABAUGH: One of the questions earlier was federal funding. In our project, I think the amount of federal funding would have been through the National Highway Fund. I think there's a fund for bridges that the counties use, and that was...some of that was used in our project. [LB130]

SENATOR JOHNSON: Thank you. [LB130]

SENATOR SCHILZ: Great. Thank you, Senator Johnson. Any other questions? Seeing none, thank you for your testimony. Further proponents. Good afternoon. [LB130]

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ROBERT HILSKE: (Exhibits 5 and 6) Good afternoon, Senator Schilz and members of the committee. My name is Robert Hilske, R-o-b-e-r-t H-i-l-s-k-e. I'm the general manager of the Nemaha Natural Resources District, and I'm here today to testify on behalf of the Nemaha NRD, the Nebraska Water...the Nebraska Association of Resources District, and I have handed out a statement from the Nebraska Water Resources Association regarding support for LB130. We're also one of the NRDs that's a sponsor of one of the six projects that has not been fully funded. Our project is located in southeast Nebraska, 15 miles north of Auburn in Nemaha County. It involves two flood-control structures. It's a \$6 million project. There's about \$3 million worth of federal funding going into this project. The balance of that, the rest of the funding will be...was intended to be the state Resources Development Fund and local tax dollars to complete out the cost of the project. Our project was approved for \$1.3 million by the Natural Resources Commission in 2010. And our project will have the distinction of being the last project ever approved by the Natural Resources Commission for Resource Development Funds. So we were the last one that ever got any money from the commission. And at the time, we understood the fact that it was going to take a long time to receive any funding from the fund because they were out of money. I would note that we recognized the fact that the development fund had been around for...at that time, 35 years, and had a long history of passing through numerous budget shortfalls of the state, particularly in 2008. And I would remind everybody, you could go back to that time, it was a very difficult time. There was a lot of revenue shortage. And a question came up about how long it would take to fund out these projects. Well, you know, at that time we had to struggle through that difficult period and that funding for the Development Fund got scaled down. And at that time, there was very little chance that we're going to get additional funds, but, obviously, as the economy improves and we get better times, we're always asking for additional...we were always asking for additional money added to the Development Fund and, hopefully, we could have sped up that process a little bit. But as it stands now, as a result of the transition, our project is only going to get about \$130,000 unless we do something to address this concern. Right now, the Legislature has two options in front of it, LB130, which would, obviously, give us an ability to speed through the process of application for water sustainability funds. I would note that the application process for water sustainability funds is probably going to be fairly lengthy and costly. And all of these projects had been through a similar process before and it certainly wouldn't be fiscally prudent to make us pay the cost and go through that process again. So, hopefully, we can either look at this alternative, but the other alternative that's being discussed for appropriating more money for the Resources Development Fund to get these projects fully funded. And the Nemaha NRD and the Nebraska Association of Resources Districts, we both feel that that's the better option to go with, but we need to have all the alternatives on the table to be able to discuss them all and come up with the best solution for this process. So, in conclusion, when this bill was being shepherded through the Legislature last year, our district, as well as all the other ones, felt that we were going to be funded for the projects that we had on the table. In fact, I happened to tell my board on a couple of occasions the way the process was going, if they got funds for this project, it may be a benefit because we may actually get the funds faster than we were anticipating. So I think it's important that we fulfill the commitment that the state had to the projects and we work some sort of agreement, get something through the Legislature to get the projects funded. And I would encourage you to advance LB130 and push forward with this...the solution for this problem. Any questions?
[LB130]

SENATOR SCHILZ: Thank you, Mr. Clabaugh (sic-Hilske). Any questions? Seeing none, thank you for your testimony, appreciate it. Next proponent. Good afternoon, sir. [LB130]

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LYNDON VOGT: (Exhibit 7) Thank you, Senator Schilz, members of the committee. My name is Lyndon Vogt, L-y-n-d-o-n V-o-g-t. I'm the general manager of the Central Platte Natural Resource District in Grand Island, Nebraska. And I believe I'm your last testifier today as far as the sponsor of a project. We put together a little bit of information for you that I know I can't cover in five minutes, but will cover rather quickly here. The project we have is probably about 70 percent done. This is a unique project that I think the...Senator Watermeier mentioned in his introduction. Our project, after about four years, got stopped by the Army because we were putting some detention cells on the old ammunition plant west of Grand Island and they found some explosives out there and they made us quit digging detention cells. So that put us about a year and a half behind on our project. We actually changed gears then. This project has four upland dams and about 645 acres of detention cells on that old Cornhusker ammunition plant. The main goal of this project is to move northwest Grand Island out of the hundred-year FEMA flood plain. There's currently about 1,500...well, in 2004, these are 2004 numbers, based on 2004 numbers, there was 1,500 homes and about 60 businesses that this project would take out of the hundred-year flood zone. In 2004 numbers, just on flood insurance, would put about a million dollars back in our local economy. That's probably three to four times that much today based on flood insurance ten years later. There's about 10,000 acres of cropland that will come out of the hundred-year flood zone. It's estimated to reduce damages by about \$130 million in the hundred-year flood. This...make no mistake, this is a dirt moving, or soil-moving project. There's 6.5 million cubic yards of soil moved in this project. In the detention cells alone, we're right at 6 million. The five dams are only about 600,000 compared to the detention cells that we're putting in. We have about 2 million cubic yards left to finish our detention cells. And we have about a two-mile levy left. So I'm kind of the straggler here, I guess. We are about a year and a half or two years behind in our project because of the Army making us stop work. As I said, we just shifted to our upland dams at that point. On the second page of my handout, it actually shows a rough...it says--existing floodplain and proposed floodplain. And that "red" on that map is Grand Island, clear to the right-hand side in the middle. And that's what we're taking out; that's an area of Grand Island that is under intense development right now. There's a lot of homes going in that hundred-year flood plain. You can build up your house to get it out of that hundred-year flood plain so you don't have to buy flood insurance, but you're spreading that water onto your neighbor when you do it. You're raising that elevation of that hundred-year flood plain every time another home goes in there. So our goal is to take them out of that. The third phase of that is just a map that shows the location of our four...you might read this and in some areas it says "four upland dams" and some areas it says "five." Number two on here is actually...we call it one dam, but it's two dams; they actually share a spillway. So it's...if you see "four" in some places and "five" in some places, there's five structures, four spillways. We bid it as one structure when we did that. I think...I just want to touch on the cost of this project. In 2004, this was a \$16 million project. The Resource Development Fund was picking up 52.5 percent of that. Central Platte NRD is picking up about 22 percent; the city of Grand Island is picking up about 22 percent; Hall County is picking up about 2 percent...or two and a quarter; and Merrick County was picking up just a little over...about one and a quarter...one and a half percent. So they were the partners in this project. Since the beginning of this project, it went from \$16 million to \$28 million. And believe it or not, our estimate...our rate of return has not went down one bit. The 36 percent rate of return of this project...or the 34.6 percent rate return of this project is the highest rate of return of a project the commission has ever approved. Most of that is due to inflation. When you start a \$16 million project and put \$2 million a year in it and it's going to take you 10 to 12 years to finish it, the price of...I said that this was a soil-moving project, the price of moving soil in 2004 was 75 cents, today it is \$2. Figure that on four or five million cubic yards

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of soil. So with that, my time is up, and if there's any questions, I'd be happy to answer them. [LB130]

SENATOR SCHILZ: Thank you, Lyndon. Any questions? Senator McCollister. [LB130]

SENATOR McCOLLISTER: Yes, thank you, Mr. Chairman. How did you figure out what share each partner contributed? [LB130]

LYNDON VOGT: (Laugh) You know, I honestly don't know how the Resource Development came up with their 52.5 percent. I think when they looked at the gain to the city of Grand Island and the county as a whole, they decided not to pay as much because they felt that there was a higher return to the county. Because the 52.5 percent from the Resource Development Fund is almost one of the lowest ones...the lowest percentage coming from the state. The city and NRD...as that moves forward, Merrick County does not pay any of the O&M. You know, the city and the NRD and Hall County will share that O&M because Merrick County benefits from the flood control, but they really don't have any part of the operation and maintenance because it's all in the county. [LB130]

SENATOR McCOLLISTER: Well, it's my recollection, the city of Wahoo contributed more and the counties around that area contributed more than the counties in your area. Could that be? [LB130]

LYNDON VOGT: It certainly could be. I think that is something that I'm sure the NRD and the cities and the counties all sat down together and decided who had the most benefit. Every one of them are negotiated differently, I believe, yes. [LB130]

SENATOR McCOLLISTER: Well, I think you're the sixth testifier from the NRDs and you had the best looking presentation. (Laughter) [LB130]

SENATOR SCHILZ: Thank you, Senator McCollister. Any other questions? [LB130]

LYNDON VOGT: Thank you. [LB130]

SENATOR SCHILZ: Thank you very much for your testimony, appreciate that. [LB130]

LYNDON VOGT: You bet. [LB130]

SENATOR SCHILZ: (Exhibits 8, 9, and 10) Any other proponents? Proponents? Seeing none, oh yeah, we had one letter of support from David McCracken from the Nebraska Cattlemen. Do we have any opponents? Any opponents? We also have a letter of opposition from John Berge from the North Platte Natural Resources District. And now we will move to neutral testimony. Any neutral testimony? Seeing none, we have a letter in the neutral position from Jeff Buettner

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from Central Nebraska Public Power and Irrigation District. And we'll ask Senator Watermeier if he would like to close. [LB130]

SENATOR WATERMEIER: Very good. Thank you, Chairman Schilz. Just would like to back up and Senator McCollister's question on his sheet here. I should have noticed it a little closer. The top of the sheet, you were pointing out, it says--an estimate in the fall of 2013; and that was actually just an estimate that we asked the sponsors to come with. The more accurate number to use is actually the revised number of 2014, last... [LB130]

SENATOR McCOLLISTER: Lower numbers. [LB130]

SENATOR WATERMEIER: Well, because we had paid off... [LB130]

SENATOR McCOLLISTER: Okay. [LB130]

SENATOR WATERMEIER: ...in the fiscal year before we had added that infusion of money. The \$18.7 (million) shows in that second column, and that's, basically, what we're trying to get to to fund...the funds to. [LB130]

SENATOR McCOLLISTER: Okay, thank you, Senator. [LB130]

SENATOR WATERMEIER: I just wanted to answer that question. I really don't have a closing today here other than the fact that it just dawned on me right as Lyndon was giving his testimony there. The one thing that I've always been proud about with the Resource Development Fund, and I spoke about this when I was commissioner...on the commission and to the public--name me another fund in the state of Nebraska that has a positive rate of return. For every dollar that we put into it. I'm all for education, but you got to stretch to come out of a positive rate of return. Would you even want to ask someone in HHS if it's a positive rate of return? That's an awkward question to ask on policies that deal with people. One of the qualifications to this project was that it had to have a positive rate of return for every dollar that the state invested, it had to return \$1.03 over the lifetime of that project. There's just no other fund in the state of Nebraska that does that. And I've continually asked that of the Fiscal Office and they say--oh yeah, there's that one fund over there, you're involved with that, aren't you? It's something that you just can't explain. It's unbelievable to think that we've gotten that in the policy over the years now and to expect these groups that have done the best they can with the state's resources and invested the time and energy that they have, to not fund them is really a tragedy to even have the discussion. The other thing I wanted to talk about a little bit was a year and a half ago when we passed LB1098. I made a mistake in talking on the floor and behind the scenes with all the proponents of that, and for those of you who weren't here, we merged two bills together. And it was very hotly contested, hotly debated. And at the time, I should have warned people or should have asked persons--I'm going to turn my recorder on, can I get a recording of that to make sure that we have this in writing or on someone's word the next year. I didn't do that. There was a little bit of haste at the end of that process, and Senator Schilz is laughing, there was a little bit of haste that went into that at the end of that process where all of us decided--let's get this out and let's get it done and we'll take care of it. I should have never agreed to that at that time, and I did. And I

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take responsibility for that in a lot of ways because I could have avoided some of this discussion today if I just would have insisted about two things. One, is we not end the date on the allocation of the 3.1 and we just move the sunset back indefinitely. But I would also like to add a little bit of the discussion that came about through the Water Sustainability Fund, and if I make a mistake, Senator Johnson just jump in and Senator Kolowski had to leave and correct me, but it was certainly the intention of that group at that time to clean up all these projects. I mean, oh, Senator Schilz, you served as well. And I just can't reiterate that enough that that was the intent of that project at the time. And also, that I think it would be justified to ask this Resource Development Fund...excuse me, the Water Sustainability Fund now to help fund some of these projects, and mainly for two reasons. It was clear and concise and very well known at the time that flood control projects were going to qualify in the new group, as well as all kinds of new issues with research and all kinds of things that are going to be hard to put a dollar amount. But I will tell you this, show me another project, whether it's research or quantifying quality of water or quantity of water that's going to rate...give us actual positive rate of return. And so I will tell you that it's completely justifiable to ask for funds out of the Water Sustainability Fund to pay for some of these old projects. And I think if we get down to that point, I feel really good about asking for that. We shouldn't have any qualms about it. And even though the rules are being written right now as we speak, through Water Sustainability Fund, it's been clearly understood that flood control projects are still going to be a big part of what we do. So I would end with that. If there is any other question, I'd be glad to answer them. [LB130]

SENATOR SCHILZ: Thank you, Senator Watermeier. Any questions? Senator McCollister. [LB130]

SENATOR McCOLLISTER: I'd like to make a comment. Thank you, Mr. Chairman. You call it the Water Sustainability Fund, right? [LB130]

SENATOR WATERMEIER: Yes, the new fund is. [LB130]

SENATOR McCOLLISTER: But aren't most of these projects dam control where we aren't trying to sustain water, we're trying to...I guess we're trying to hold it in a dam. [LB130]

SENATOR WATERMEIER: Sustainability is part of the process that we went through...it would have been interesting for you to participate in that because Senator Carlson would be here today still pounding his hand and say--sustainability and it's everybody's definition in some regard. But I would argue your point that, yes, flood control and all the things that are involved with flood-control projects are sustainable, add to the sustainability of water. They really do, because they capture water, even though they capture soil, they capture water, they certainly add to the potential for new water uses. [LB130]

SENATOR McCOLLISTER: Um-hum. [LB130]

SENATOR WATERMEIER: Whether it's to the groundwater or not. I lost a little of my train of thought there. But...I'll visit with the members individually on this, but I think you get the point about what I'm trying to make on this project. [LB130]

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SENATOR SCHILZ: Thank you, Senator McCollister. Any other questions? Senator Johnson. [LB130]

SENATOR JOHNSON: I don't know if this needs to be on the record or not, but probably Senator Kolowski and I probably need to put in a conflict of interest on voting on this because our projects are within our jurisdiction, our constituents are affected. But I do remember from last year, because I...I believe I'm correct in the budget for the Lower Platte North NRD had a receivable. And that would not have been in there by the auditor if it was not specified that those...that that project was going to be covered. And it's still short. So that was truly the intent. [LB130]

SENATOR WATERMEIER: Yeah. Right. I would argue that you don't need to disclose that because you're...the way that works, I've asked on several... [LB130]

SENATOR JOHNSON: No, I was a little facetious on that. [LB130]

SENATOR WATERMEIER: Right, right. The other thing I would add, what happened to me on the commission, almost eight or nine years ago, just as I was asking for more money at the time from Governor Heineman about...for these projects, was we went into the recession and all of a sudden we had some funds swept away. And that was another factor in why we are behind on this. I mean, you just take a small amount away from \$3 million when we're trying to fund \$25 million worth of projects, just one little hiccup and that made a big problem. And that's another reason why I'm asking for funds to come out of the Water Sustainability Fund, if you have to think with me and think this through a little bit. We need to show some history in this new fund. If we just have it sitting there laying stagnant, and for the Rules Committee to get it done and figure it out, we have an application, we could very well have \$40 million to \$45 million in that fund. And I think it will help us, behoove us to show some history of using these funds for exactly what they were intended to do. I just really think having a track record and a history of taking out a small amount out of that Water Sustainability Fund will actually give us some creditability on the floor. It really will, because if we sit there with four or five years of appropriated funds in there and not any history to it, we better hang on tight to try to hang on to that, I'll guarantee you that; or to continue the \$11 million a year, that will be a tough sell, it really will. Thank you. [LB130]

SENATOR SCHILZ: Any other questions? So I take it that what we should take away from your closing is this: any bill that (Senator) Watermeier puts in is going to bring back a 35, 34 percent rate of return, is that right? (Laughter) [LB130]

SENATOR WATERMEIER: Boy, that would be a stretch. I'd like to be able to say that. I do serve on Appropriations and I could use that argument maybe now from now on and say--that might be the first question I ask. What's the rate of return on this bill? I may get a real blank look. [LB130]

SENATOR SCHILZ: I'm just giving you a hard time. [LB130]

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SENATOR WATERMEIER: No very good. No, I'd love to have that in the statute. Can I put that in statute? [LB130]

SENATOR SCHILZ: You can try. Thank you for your closing, we appreciate that. (See also Exhibit 11) [LB130]

SENATOR WATERMEIER: Okay. [LB130]

SENATOR SCHILZ: And with that, that will close the hearing today. And thank you all very much for coming. (See also Exhibit 12) [LB130]