

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources Committee February 23, 2023

**BOSTELMAN:** Good afternoon, everyone. Welcome to the Natural Resources Committee. My name is Senator Bruce Bostelman. I'm from Brainard, representing the 23rd Legislative District. I serve as Chair of the committee. The committee will take up the bills in the order posted. This-- this public hearing today is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the back-- on the table at the back of the room. Be sure to print clearly and fill it out completely. When it's your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to include your position on a bill, there are also white sign-in sheets back on the table. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name, and spell your first and last name, to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents and, finally, by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We will be using a five-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have one minute remaining, and the red light indicates you need to wrap up your final thought and stop. Questions for-- from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It's just part of the process, as senators may have bills to introduce in other committees. A few final things-- items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least ten copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally-- I'd like to draw your attention, please. Finally, committee procedures for all committees states that written position letters to be included in the record must be submitted by 12:00 noon the last business day before the scheduled hearing on that particular bill. The only acceptable method of submission is via the Legislature's website at [NebraskaLegislature.gov](http://NebraskaLegislature.gov). You may submit a written letter for the record or testify in person at the hearing, not both. I want to stress that. If you provided testimony online, you're not to testify in person here today. Written position letters will be included in the official hearing record, but only those testifying in person

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before the committee will be included on the committee statement. I will now have the committee members with us today introduce themselves, starting on my far left.

**FREDRICKSON:** Good afternoon. I'm John Fredrickson. I represent District 20, which is in central west Omaha.

**SLAMA:** Julie Slama, District 1, Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

**HUGHES:** Jana Hughes District 24, Seward, York, Polk, and a little bit of Butler County.

**BOSTELMAN:** To my far right?

**BRANDT:** Senator Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**JACOBSON:** I'm Senator Mike Jacobson, District 42, Hooker, Thomas, McPherson, Logan, Lincoln, three-fourths of Perkins County.

**J. CAVANAUGH:** John Cavanaugh, District 9, midtown Omaha.

**MOSER:** Mike Moser, District 22, Platte County and most of Stanton County.

**BOSTELMAN:** Senator Moser is also the Vice Chair of this committee. Also assisting the committee today, to my left, is our legal counsel, Cyndi Lamm, and to my far right is our committee clerk, Laurie Vollertsen. Our pages for this afternoon is Trent Kadavy and Landon Sunde. Thank you very much for helping us this afternoon. With that, we'll begin today's hearings with LB729. Senator McDonnell, welcome.

**McDONNELL:** Thank you, Chairperson Bostelman. Members of the committee, my name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. I'm here to introduce LB729, which authorizes JEDI, Jobs and Economic Development Initiative, funds to be expended on the economic impact studies related to the JEDI project. This bill is a result of a conversation between former-Speaker Hilgers and myself to ensure legislation relating to the Jobs and Economic Development Initiative Act was in place, if necessary, and further clarify the economic impact studies were to be included in the eligible items of the fund. LB729 has zero negative fiscal impact associated with it. It is simply a placeholder bill that further ensures the original intent of JEDI Act by adding

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the economic impact studies to the language. Here to answer any questions.

**BOSTELMAN:** Thank you, Senator McDonnell. Any questions from committee members? Seeing none, gonna stay?

**McDONNELL:** And I have another bill, so I will not be here to close, but thank you.

**BOSTELMAN:** Thank you.

**MOSER:** Nice seeing you.

**BOSTELMAN:** Anyone like to testify as a proponent for LB729? Anyone like to testify as an opponent for LB729? Good afternoon and welcome.

**MELISSA KEIERLEBER:** Good afternoon. Good afternoon, Chairman Bostelman and members of the Natural Resources Committee, I'm Melissa Keierleber, and I'm here representing my family that has been farming near Gretna for almost 100 years, and we will be severely impacted by the state's desire to build a recreational lake. I'm here to question the additional language in LB729 of economic impact studies.

**BOSTELMAN:** Could you-- excuse me. Could--

**MELISSA KEIERLEBER:** Yes.

**BOSTELMAN:** Spell your name, please.

**MELISSA KEIERLEBER:** Oh, my apologies. M-e-l-i-s-s-a  
K-e-i-e-r-l-e-b-e-r.

**BOSTELMAN:** Thank you.

**MELISSA KEIERLEBER:** LB729 would now state: An amount not to exceed \$20 million shall be available for site selection costs, feasibility and public water supply studies, economic impact studies-- that's the new bit-- and flood mitigation costs. My concern is that by adding economic impact studies, they are not concerned with the impact the state will have on the current businesses that reside in the lake's path, the agricultural businesses, the welding shop, the photography studio, and other businesses that are there. What is my family's economic impact as the current owner of the land? My other concern is that it is added in front of flood mitigation, which of course is the entire reason this project was sought after in the first place. It was the pursuit of LB406 to come up with three to five potential

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flood-control infrastructure projects along the river basin of the Platte. Thus, it appears, once again, the primary purpose of the JEDI bill has taken a backseat to economic development and not the economic development of the people that will be displaced by the state's desire to be in the business of building lakes, never mind the fact that John Engel of HDR said that the flood control benefit was less than 1 percent. However, arguably more important than that--all of that is to the people of Lincoln, is what it does to the funds that were meant to verify if this project would have a negative impact on Lincoln's water source since the Platte wellfields is their only water source. That \$20 million will now be spent on finding out how much money the state stands to make in tax revenue or by aiding private businesses, like those represented by the Metro Omaha Building [SIC] Association or Kiewit, both of whom Senator McDonnell has already met with. Finally, I have a concern as it relates to economic development and what Nebraska's current statute regarding eminent domain says. The statute that is a problem is 76-710.04 and it states: A condemner may not take property through the use of eminent domain under Sections 76-704 to 76-724 if the taking is primarily for economic development purposes. Great. That's perfect. The state is protecting us until later, in Section 3, it states: except for public projects or private projects that make all or a major portion of the property available for use by the general public, and LB1023 makes it very clear that the lake can be used by the general public. LB1023 goes on in Section 3 to state that the Department of Natural Resources can enter into agreements with NRDs to accomplish the purposes of the act, and the NRD may use the full powers granted to it by law, meaning eminent domain. This bill is a current reminder that the state was pursuing protection from the 2019 floods and arrived at building a recreational lake for private business benefit, meanwhile diluting the funds that were meant to protect both MUD and Lincoln's water interests. It is such a surreal thing to have the state talking about economic development and new private residences being built on your lands, on your livelihood, and on top of your houses, without ever being contacted by the state. I think the state should be very diligent in how they're using this money. The most important use of the \$20 million to our family is site selection cost, and that site selection cost should not be calculated with eminent domain in mind. I greatly appreciate your time today and I would be happy to answer any questions that you have.

**BOSTELMAN:** Thank you for your testimony. Are there questions from committee members? Senator Jacobsen.

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**JACOBSON:** Thank you, Chairman Bostelman. And thank you for being here today. I do empathize with your situation and, you know, we spent some time yesterday really talking about eminent domain. I do have concerns about eminent domain. I recognize the benefits of eminent domain. When you're dealing-- dealing with large projects, it's hard to get everyone on board to sell. Probably my biggest concern with eminent domain is-- is what-- who determine-- or how much is determined to be fairly compensating someone for land, particularly the land that's been in the family for a lot of years, or farms in particular that may be selling at the market for considerably above whatever the, quote, market price is determined through eminent domain. So my question to you would be more, how do you feel we should look at eminent domain in terms of how we should compensate people? Is that an issue? Would that make a difference to you if eminent domain laws required a significant premium to the market value to take land through eminent domain? Would that impact your position at all?

**MELISSA KEIERLEBER:** Everyone wants to be treated fairly and, I mean, Erdman right now has a bill trying to do that for--

**JACOBSON:** Yes.

**MELISSA KEIERLEBER:** --agricultural lands over-- you know, in the-- in another room right now. I think it's-- it would be helpful, but it still is-- I think there has to be some sort-- least some sort of threshold that-- that has to be met if you're grabbing that much ground, especially considering that the state owns a lot of land very close to here. So it's-- it's kind of like the king is looking out over the land and saying, well, I've got land and I sure like that, but your land looks pretty nice, too, and I'd like to take that, too. And I think, especially in an agriculture state, we have to be, like, protecting agriculture. This is going to take 6,000-plus acres out of-- out of commission, and that's not just affecting the farmers that are there, but like the co-ops and, I mean, it-- it goes to every level of that-- that town is--

**JACOBSON:** I-- I-- no, I agree with that--

**MELISSA KEIERLEBER:** Yeah.

**JACOBSON:** --and I think that's part of my reason for the question, is I'm torn with this as well. Yesterday, we were hearing about, you know, green energy expansion and the big footprint that would be needed in order to meet the mandates that OPS-- and-- and-- and,

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frankly, LES have imposed upon themselves for green energy. And if you look at the thousands of acres that would be necessary to do that, and we're being told it's all going to be done voluntarily, I kind of have a hard time believing that. And so ultimately, it would come down to eminent do-- domain and they would have those rights. So I'm just kind of curious if-- if you had more of a thought in terms of it-- would valuations at least help in this process, if nothing else? So what do you think would be fair here?

**MELISSA KEIERLEBER:** I realize it is-- it's the-- the same question again, but I-- I'm very concerned that the state is just in the business of building lakes. That's-- I-- I don't think that that's the public-use scenario that the state should really be chasing after. And if they are going to get into that business, then they're probably going to have to do-- like I said last time, they're going to have to knock on doors like they did-- you know, like Facebook did and like Google did, and they got huge chunks of land. Our former Governor, his family bought over a thousand acres right next door to this in like 2016, and he wrote a check and he was able to do it. This--

**JACOBSON:** But it-- but it was bigger. It was well above market price, is, I guess, my-- would be my question.

**MELISSA KEIERLEBER:** And I think that would probably-- I mean, whatever number is going to have to be, is going to have-- if the state's going to be in that business of-- of building lakes, then they're probably going to have to-- just like a private enterprise that would be in the business of building lakes--

**JACOBSON:** Right.

**MELISSA KEIERLEBER:** --they're going to have-- they have to come up with the money somehow.

**JACOBSON:** Great. Thank you. Appreciate that.

**BOSTELMAN:** Other questions from committee members? Seeing none, thank you for coming in this afternoon.

**MELISSA KEIERLEBER:** Thank you.

**BOSTELMAN:** Next opponent to LB729. Good afternoon.

**AL DAVIS:** Good afternoon, Senator Bostelman. Members of the Natural Resource Committee, I'm back again. Al Davis, A-l D-a-v-i-s, here to

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testify in opposition to LB729. LB729 provided-- provides a list of items which will be paid for by state funds concerning the feasibility study of a sand pit lake between Lincoln and Omaha. LB729 builds on language laid out during the 2000-- the One Hundred Seventh Legislature, which allocated \$20 million for a feasibility study on the lake's construction. The original bill included site selection cost, feasibility, and public water supply studies and flood mitigation costs of the Department of Natural Resources related to any projects pursuant to the Jobs and Economic Development Initiative Act. Senator McDonnell wants to add an economic impact study to the list of eligible expenditures for this project. Last year we heard the lake would generate billions in economic activity. The Nebraska chapter of the Sierra Club was skeptical of these figures and remains so, but we see no purpose in using state dollars now to essentially validate speculative figures promoted by those who are advocating for the-- for this bill and the lake. The Nebraska chapter of the Sierra Club remains opposed to the construction of this lake for many reasons, including the disruption to wild and native wilderness in the area, disruption of residents' lives living in the region now, the alteration of the normal water course through the construction of levees, and the loss of habitat for endangered birds, insects, plants and fish. Our tax dollars are better used funding research into nitrate contamination, insect and bird disappearances, reducing the need for pesticides, herbicides and irrigation, than on a boondoggle project which is simply promoted to enrich developers. If the project is so significant, then these developers can foot the cost of economic development studies themselves. Thank you.

**BOSTELMAN:** Thank you for your testimony. Are there any questions from committee members? Seeing none, thank you.

**AL DAVIS:** Thank you.

**BOSTELMAN:** Good afternoon. Welcome.

**JOHN HANSEN:** Mr. Chairman, members of the committee, good afternoon. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n, and I'm the president of Nebraska Farmers Union. If you remember back, and some of you weren't here, but if you remember back to this project when it was bundled and-- and brought forward, there were parts of it that we supported, parts of it that we didn't with the series of proposals that came out, and this particular project was one that we did not support and we did not think it was a sound use of taxpayer dollars from a resource standpoint. It's-- it creates a whole series of problems. And I understand the-- the-- the logic and

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the particulars of what happens once you have a big project on the drawing board and all of a sudden the momentum starts to turn because I was on the board of directors of the Lower Elkhorn NRD when the largest multipurpose structure in the state of Nebraska was built. So once the wheels started to turn, it's awful hard for the wheels to stop. But in our opinion, this is a boondoggle, and that's not going to change. From a technical standpoint, you can accessorize the pig however you want, but at the end of the day, still a pig. In this case, it's still going to be a boondoggle. The questions that we've had and that we've already raised with this committee before relative to the use of eminent domain is that, while we heard theoretical problems with eminent domain yesterday, in my view, we have allowed a-- a situation to develop in our state where we have-- we have stretched the boundaries of common sense or reason relative to what constitutes a multipurpose project. Is that 99/1? And specifically, we're talking about the eminent domain authority that NRDs have relative to multipurpose projects. I think that the flood control benefits of this particular project are minimal. I-- I think it's less than 5 percent. I think it's probably less than 2 percent. But-- so if we're going to build this project and the pressure is going to come on, then how is it that we're going to get the landowners who don't want to sell? And there's landowners who clearly do not want to sell, and they do talk to my office as well. So, well, I think it's a-- I think it's a problem when you publicly say that we're not going to use eminent domain to build this project and yet, when I read the statute that the landowner before this afternoon just cited, and I read that, there's enough ambiguity in there that I don't think we're shooting straight with landowners. I mean, we ought to have a straight-up relationship with landowners from the get-go as part of the state of Nebraska, and we ought to-- are we or aren't we going to use eminent domain? And I think that this particular project does not warrant the use of eminent domain. If I were sitting on the board and this project came to me as an NRD project and I looked at the flood control benefits, yet I looked at everything else involved in it, I wouldn't vote for it. I, you know, I'd get a lot of pressure from certain elements to lien-- put the lien on to build it, but they have their own particular interest for doing so. So I think that the eminent domain part of this is particularly problematic, and I think that if the state is going to shoot straight with landowners, they need to just flat say, are you or aren't you going to use eminent domain? And that ought to be up-front. That shouldn't be what we find out later, a long ways down the road after a whole bunch of other money's been spent and a bunch of other dollars have been used. That ought to be an up-front judgment where we're shooting straight with



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landowners, and that's my background in-- in resource management dealing with landowners. And so from an eminent domain standpoint, of all the things that we use eminent domain inappropriately for in this state, letting private companies, for private gain, use eminent domain to build pipelines, for which we have no public access and no public benefit, is atrocious. And that's a real threat and that continues to go on and that remains unaddressed, and the use of eminent domain for multipurpose projects for which there is minimal or-- or zero flood control benefit is the other, remembering, of course, that when Game and Parks had eminent domain authority, it was taken away from them because they did overuse it, they did abuse it, and the public finally pushed back to the point that eminent domain was taken away. So with that, I would end my testimony and be glad to answer any questions, if you have any.

**BOSTELMAN:** Thank you for your testimony. Any questions from committee members? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you for being here, Mr. Hansen. This bill doesn't have anything to do with eminent domain, though, right? The LB729, the statute it's amending is the one you're gonna-- is what you're concerned about.

**JOHN HANSEN:** Well, the-- the-- the wheels of the bus are moving forward here. We're using tax dollars, we're going to do this study, and yet the rules of the road relative to eminent domain haven't been dealt with squarely or, I think, forthrightly, so there's linkage between the two, in my opinion.

**J. CAVANAUGH:** And we-- I don't remember-- forgive me in that-- for not remembering if you testified on-- we had a bill in this committee a few weeks ago presented by the other Senator Cavanaugh that would have specifically taken away the ability for eminent domain for this particular project.

**JOHN HANSEN:** And I joyfully supported it.

**J. CAVANAUGH:** OK, I assumed you did, but I don't remember. I-- I-- you come a lot, so I don't remember everything you testify on.

**JOHN HANSEN:** Trust me, I-- it's a-- it's-- it's kind of hard to remember myself, which is why--

**J. CAVANAUGH:** So--

**JOHN HANSEN:** --I keep my trusty 3 x 5 cards in my pocket.

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**J. CAVANAUGH:** In terms of like, you know, in the spirit of compromise, would be-- would you have a-- opposition to just putting this bill and that bill together and passing the two as one or something along those lines?

**JOHN HANSEN:** I think that would be one way to address the business of whether or not we have a straight-up process with landowners, and I-- I think that that would be an improvement. But I've heard a fair amount of this conversation and I've heard conversations on both sides of the line, rela-- rather-- relative to the use of eminent domain. That bothers me and so, you know, if you're going to say one thing and do another, that's not a good way to do business.

**J. CAVANAUGH:** Well, this has become the eminent domain committee. Used to be Natural Resources, but--

**JOHN HANSEN:** Well-- [LAUGH]

**J. CAVANAUGH:** --spend all of our time on it.

**JOHN HANSEN:** Yes.

**J. CAVANAUGH:** Well, thank you for your testimony today.

**BOSTELMAN:** Other questions? Senator Jacobson.

**JACOBSON:** Thank you, Chairman Bostelman. Well, I have to ask the question then. Do you think we should get rid of eminent domain by public entities and-- and for power use and so on? You seem to be against pipelines using eminent domain. You're opposed to this being used for eminent domain. What's your position on eminent do-- eminent domain?

**JOHN HANSEN:** Well, there-- as someone who's had to make the decision about what is and is not an appropriate use of eminent domain, and I've been dealing with eminent domain issues-- I-- I-- for 49 years, so I have a-- a very, I think, appropriate respect for the need for eminent domain in order to be able to represent the public interest in certain ways. And I think, when we do use eminent domain, because it has-- it is the ultimate hammer relative to the relationship between private property owners and their government, that it needs to be for clearly identified public benefits and it needs to have a process that is very clear relative to its use so that everyone is-- involved is treated fairly. And so in-- in the case of the example I cited yesterday relative to roads, [LAUGH] we-- we needed to build the highway, which I lived a mile and a half from, and my neighbor

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was opposed to eminent domain. And so at night he went out and he moved the flags every night, and-- and so he ended up pretty much just on the edge of going to jail over his view of eminent domain. But when he would come over, I'd say, well, Lambert [PHONETIC], for Pete's sake, you know, we have to-- we have to have highways, that's a public need, that's a public benefit, you-- you live in a-- in a bottom where the water's going to go over the highway if you don't build up the grade, you have to-- you know, that these are important things, and he wasn't buying any of it. And so I think that eminent domain has an appropriate place, but I get nervous when we-- when we aren't clear with the public about how and when we use it. And so I agree with the decision to take it away from Game and Parks based on how they were using it in the '70s and the '80s. And so--

**JACOBSON:** Right, but in this case, we're talking about taking it away from the state.

**JOHN HANSEN:** We're not talking about taking it away from the state.

**JACOBSON:** Or the NRDs.

**JOHN HANSEN:** We're-- we're talking about the proper use of it, though, relative to the NRD. So if we're going to use the power of eminent domain to take land away from these landowners in this project, who would do that?

**JACOBSON:** That's a good question.

**JOHN HANSEN:** Who--

**JACOBSON:** Yeah.

**JOHN HANSEN:** --would do it?

**JACOBSON:** Yeah. Well, that's the point, is I think right now we're talking about the NRDs in this case that would have that ability, so I-- I-- I guess-- and again, I think you give me kind of where you're at. I'm just saying it's easier-- easier said than done in terms of who makes the decision what that public use should be and who-- who's the standard bearer in terms of when you can and can't use eminent domain and what is and isn't a public use. And I think that's where the gray area is at, and it kind of depends on whose ox is being gored here, which is why I continue to have concerns about what's fair compensation, more so than I'm concerned about when it can or can't be used, because we can all cite cases when it needs to be

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used. But-- but thank you for your answer and I-- I appreciate you testifying today.

**JOHN HANSEN:** I would also just say, if I could, in response to the-- the-- I don't ever remember a project of this size or scope where the-- the state was saying that they were going to get in the middle of it and-- and play a lead role in its development. And you-- you know, so it-- we're not in usual ground here. This is a different situation. But as I read the statute, the only place that I can see that-- that the state could direct an entity to use eminent domain would be the NRDs. And maybe you see other places, but I see the NRDs. And given my history with the NRDs, that's why I raised the question about the-- the amount of flood control benefit and that that becomes pertinent because, if you're telling NRDs to use it and it's not really within their framework, then that's a problem.

**BOSTELMAN:** OK. Other questions from committee members? Seeing none, thank you for your testimony.

**JOHN HANSEN:** Thank you very much.

**BOSTELMAN:** Next opponent, please, on LB729.

**SHIRLEY NIEMEYER:** Opponent or proponent?

**BOSTELMAN:** Opponents.

**SHIRLEY NIEMEYER:** Opponent?

**BOSTELMAN:** Have you submitted written testimony online?

**SHIRLEY NIEMEYER:** I was told when I called the state that I could do this. I was told that.

**BOSTELMAN:** By whom?

**SHIRLEY NIEMEYER:** I don't know her name. She's the person that answers the phone when you call in for questions. Please, please let me. I was told that, honestly.

**BOSTELMAN:** The rules are pretty clear. Do you have something new besides what you have submitted online to provide for us? Do you-- I'm asking. Do you have-- do you have--

**SHIRLEY NIEMEYER:** I-- I own-- we own land near this--

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**BOSTELMAN:** I understand. I know, I know, Shirley. I-- I understand. If you have something you want to add, please sit down.

**SHIRLEY NIEMEYER:** [INAUDIBLE].

**BOSTELMAN:** If you have something you would like to add, please sit down. But I want to repeat for everybody, the rules by the Legislature are very clear, and-- and I--

**SHIRLEY NIEMEYER:** So can I--

**BOSTELMAN:** --and we're trying to-- and-- and we're discussing where we go from here.

**SHIRLEY NIEMEYER:** I would ask--

**BOSTELMAN:** But if you have something new, please go ahead and share with us.

**SHIRLEY NIEMEYER:** Yeah, I do have something new.

**BOSTELMAN:** OK, go ahead and share with us.

**SHIRLEY NIEMEYER:** But I would encourage you to talk to your people who are answering the phones, because she specifically told me and she checked with somebody.

**BOSTELMAN:** So you should call our-- our clerk of our committee is the person you call, or the Clerk of the Legislature.

**SHIRLEY NIEMEYER:** It wasn't the clerk of the committee.

**BOSTELMAN:** I understand. Please state your name and spell it, please.

**SHIRLEY NIEMEYER:** OK. Thank you. Shirley Niemeyer, S-h-i-r-l-e-y N-i-e-m-e-y-e-r. And I can't submit what I've written out, which is very important, but I hope you'll read it. It's very important. I believe that I oppose this because we had land involved in the flood, and it probably cost us a half a million to a million dollars to get all the electricity and everything back, the buildings. It was tragic. And I've seen what the Platte River can do. It cut a channel through this property that had never had that kind of flood. And I don't think that we have been contacted from anybody to talk to us. Maybe somebody of the other owners have, but I have not. And I feel that the environmental issues that is associated with this are critical. They're critical and I don't believe that this bill

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provides enough protection for the environment, as well as the people, their emotional needs. That's-- that's-- that's not the money necessarily. It's the emotion for some of the owners. And the environment, if you read through this, we don't want to lose seven feet of water out of a lake yearly if we have a drought. We don't want to lose that because Lincoln will be affected, Omaha will be affected, and it's critical. And if you look at-- and I'm not repeating what's here-- if you look at the research from the University of Minnes-- or from Minnesota, their resource agency, and Iowa, it does say that they're finding all sorts of contaminants in the lakes, many, many contaminants. And when you open up water, you are allowing all the contaminants that are existing in these other lakes, and I know they must exist in Nebraska if Iowa has that many, and-- and Minnesota's testing them and the one that's in here, you can see what kind of contaminants are in our lakes. So we have an environmental issue here that's not addressed enough in this. And then for-- for eminent domain, I get the feeling that there are a few people, and I may be wrong, with a lot of money who are pushing this for fun. This is not for the use, you know, for economic development. This is not-- they say it is, but-- for economic development, but this is looking at people having fun, which is OK, but we got lots of-- in eastern Nebraska, lots of opportunity. So I think we have to take a look at that and really look at what would happen to the water quality in-- in Nebraska. I think it's not a good idea. It's not a good idea, not for [INAUDIBLE]. And I thank you, Senator Bostelman, very much. And I will-- can I withdraw so I can testify in the future? Can I withdraw my comments that I submitted?

**BOSTELMAN:** Sure, that's something we're talking about, so--

**SHIRLEY NIEMEYER:** OK. Thank you.

**BOSTELMAN:** --probably will do, so.

**SHIRLEY NIEMEYER:** Thank you very much.

**BOSTELMAN:** Yeah. Hold on a second. Are there any questions from committee members? Senator Moser.

**MOSER:** Not really a question, kind of a comment, but in the discussion of this lake, it was said numerous times publicly and on public record that the state would not pursue eminent domain in this project, and I expect the state to follow that. So that's just my opinion. I can't speak for the whole state, but I understand your

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dismay and if there are people who object, they're going to have to negotiate with them or move to the lake or, you know--

**SHIRLEY NIEMEYER:** Um-hum, yeah. The property we have is on the National Historic Register.

**MOSER:** Well, thank you.

**SHIRLEY NIEMEYER:** Thank you.

**BOSTELMAN:** Thanks for coming in.

**SHIRLEY NIEMEYER:** Thank you again--

**BOSTELMAN:** You're welcome.

**SHIRLEY NIEMEYER:** --Senator Bostelman.

**BOSTELMAN:** You're welcome.

**SHIRLEY NIEMEYER:** I won't do this again.

**BOSTELMAN:** [LAUGHTER] No, you're fine. You're fine. Thank you. Next opponent, please, on LB729. Any other opponents on LB729, please. Anyone like to testify in the neutral capacity on LB729? With that, we will close the hearing on LB729 since Senator McDonnell is another hearing. Thank you.

**JACOBSON:** Any letters on this?

**BOSTELMAN:** Just a minute, Senator. So the previous hearing, there was one opponent, which is Shirley Niemeyer, on LB729. She's requested that that testimony be withdrawn, for the record. With that, welcome, Senator Blood, open on LB40.

**BLOOD:** Thank you, Chair Bostelman, and good afternoon to the Chair and fellow members of the Natural Resources Committee. My name is Senator Carol Blood; that is spelled C-a-r-o-l B-l-o-o-d, and I represent District 3, which is the western half of Bellevue and eastern Papillion, Nebraska. Thank you for the opportunity to bring forward LB40. So in recent years, we've seen the state and the Legislature really not commit to strong actions when it comes to pollution of our groundwater and other waterways. Often that pushback has been because our body fears particular businesses will be found complicit or that we are attempting to secretly put some organization or the ag communi-- community on our radar, and that is really not

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what LB40 is about. Now we've seen calls for research and committees such as Senator Gragert's LB925, which created the Healthy Soils Task Force, and I believe Senator Slama is the only one in this group that sat on that committee. You can correct me if I'm wrong. And they actually included things like the water infiltration rates, if you read the study that they gave to the Legislature after-- I think it was last year they released that study. I don't-- but I do remember that was one of the things that was included. And that task force, we committed \$250,000 per year to the program over a five-year period, and ultimately a task force report, that we just discussed, was created, which is really a good read on the issue, if you haven't read it already. But this is part of my concern. So historically, when it comes to this topic, we do a lot of research, but we rarely truly pull the trigger on what needs to be done. So let's face it, we know what needs to be done and we aren't reinventing the wheel. That's why I'm bringing forward such a robust ask. I want to give us a negotiable platform so we end up with an actual implemented plan. As you can see, this plan benefits all of Nebraska, and it will support our Governor's promise to protect Nebraska's waterways, as was mentioned in his speech to Nebraskans recently. Our Governor continues to say that water is life and that we must protect it, but lately, at the end of that sentence, it always seems to be more about the canal. We need to protect our existing resources in addition to embracing new opportunities. This type of programming has been very successful in other states. Minnesota has successfully crafted comprehensive legislation to utilize native vegetation as a buffer to help clean waterways that are contaminated with nitrates and other harmful contaminants. Vermont also has a statewide buffer system, and even more states have legitimate programs that are linked through their university system, such as Oklahoma and its very own university, Oklahoma State. So the reason that we are here today is to address that contaminants can harm humans in a multitude of ways. Some of the harmful elements that stem from contamination of our water supplies don't lead to just cancers, but Alzheimer's, dementia, and other immune system-based diseases. We at this current moment don't really know all of the long-term issues we will have that will affect the population of Nebraska. But what I can guarantee every member of this committee is that the harm that will be done in the near future and the far future for our children and our grandchildren-- children will be negative if we don't address these issues of pollution as soon as possible. So if you compare our cancer statistics compared to the national numbers, you'll note that bladder, brain, breast, childhood, colon/rectum, esophagus, kidney, melanoma, non-Hodgkin's lymphoma, prostate, thyroid, and utus--



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uterus cancers are all higher in our state than the U.S. average. Now we know that 5 to 10 percent of cancers are genetic defects, but the other 90 to 95 percent have their roots in the environment and lifestyles, and that's a really powerful fact. Farming and the usage of pesticides has led to groundwater carrying the chemical compounds attached to pesticides heading towards our water systems. And this is not me criticizing the farmers of Nebraska. On the contrary, I want our farmers to have the ability to create wealth and economic opportunities for their communities and in order to ensure the continuation of farming in Nebraska, we also have to be really good stewards of our natural resources now and in the future. We have to look at the continued success of this state through the lens of conservation and craft an effective way for agriculture to continue to succeed in Nebraska. We know, because our farmers are really the true environmentalists when given the chance, that this is an opportunity to help them use their expertise to do better. To quote the 12th president of the American Farm Bureau Federation, President Zippy Duvall: Modern farming techniques have enabled farmers and ranchers to feed millions of people using fewer resources than just a generation ago. We're also using science to ensure fertilizer and pesticides intended-- intended for healthy crops don't make their ways into streams and rivers. We all rely on clean water to provide for our families and sustain a healthy planet, and it will take all of us working together to ensure it remains a healthy resource for the next generation. So I wish to address some of the concerns that I know that you see in the letters of opposition online and I'm sure that you're going to hear today and be very candid, because I want to ease the concerns of my constituents and the senators that are concerned, NRDs and other organizations, for whom we always, always take their notes seriously. This bill is a canvas. When submitting this bill for drafting, we utilized policy from Minnesota as the backbone of our legislation. I wanted to utilize the Minnesota bill because of how thoroughly the bill analyzes state waterways, conservational efforts, and the utilization of resource departments across the state. This being said, when we amended this bill, we significantly worked hard to address many concerns brought to us from various groups. The amendment has been placed on public record, as I've already turned it into our legislative Clerk, but you should also all have hard copies. This bill has been amended to direct that the funding come from the Department of Natural Resources rather than the Department of Agriculture. The Department of Natural Resources has existing infrastructure funding to handle what this legislation intends to accomplish. The grant funding will come from the Natural Resources Water Quality Fund. My amendment eliminates the mandate for

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farmers. If you look at your copy of the amendment, you will also note additional changes that we are requesting at the result-- as the result of multiple discussions with ranchers, farmers and others who are would-be stakeholders. In addition to removing the mandate language, the first change is to exclude grazing lands from the bill. The amendment also makes sure to exempt the bottom third tier of counties with measurable nitrate levels in groundwater. Not all counties in the state have high enough nitrate levels to justify utilizing buffer systems, although many would benefit from being educated on this issue and it would be great to get in front of the problem. We would identify these counties through UNL's Water Extension Office, who maintain geographical maps that showcase areas of nitrate level exposure in our state. In regards to the grant program, it would provide funds to plant buffers for landowners who wish to apply. No one would receive more than one grant a year, and they will be rewarded until-- until there are no longer funds available. Crucially, the amendment removes the mandate for local governments, as well, and any assistance provided by local water management company to enforce the legislation would be in agreement with the Department of Natural Resources. Nebraska's water resources are some of the most precious resources in all of the United States. If we as a Legislature wish to actually address contaminants in our water systems, this is the first step. Excuse me. We have to recognize, as well, that when farmers utilize lagoons and outer bank areas of their land, there's actually an opportunity for tax write-offs by planting crops such as corn, soybeans, wheat, etcetera. We could incentivize farmers to do better for their own tax purposes. We could create tax write offs for farmers to have incentives in place that guarantee a program like this would succeed. As noted in the amendment, Department of Natural Resources would be given the responsibility of communicating with farmers and making sure that the plants utilized are not invasive and are in fact indigenous, so property own-- owners could easily work with Nebraska's Arboretum at UNL for indigenous plant expertise, and we are really lucky to have that resource here in our state. So as you will hear from the upcoming testimonies from some of the most acclaimed professors of agriculture and water in the state of Nebraska, there is science to back up the usage of buffers as a legitimate way to clean our water systems. I hope that the members of this committee will vote in favor of this bill and allow it to go to the floor. I'm happy to work with members of the Natural Resources Committee to hammer out any additional changes you may want to help move this bill forward as long as it is in good faith for the people of Nebraska. And you'll note that our amendments are clearly influenced by those who had

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concerns or suggestions to make our bill better and more accommodating to all. So I'm willing to do this because I know if we can find our middle ground, we have an opportunity to create effective change for all. So I am happy to answer any of your questions. But because I value your time today, and it sounds like the last one went a little long, I ask that you wait until my closing, as we will have some compelling testimony today and I think some of your questions will be answered in that testimony, and if--- testimony, and if not, I will address it in my closing.

**BOSTELMAN:** Thank you for your opening. There are questions from committee members. Senator Jacobson.

**BLOOD:** I guess they don't want to wait.

**JACOBSON:** I may need to leave early, so I'm going to ask the question now. I guess, first of all, I've-- I've got serious concern when we talk about-- we've been talking about eminent domain. This seems like eminent domain with zero payment to the landowner and intrusion onto--

**BLOOD:** No, it's not mandated, so it couldn't be eminent domain. We're not forcing them to do anything. It's an optional program. And I agree eminent domain is for the greater good of Nebraskans, not for economic development.

**JACOBSON:** Well, thank you. If I can finish my question--

**BLOOD:** All right.

**JACOBSON:** --I guess what I'd like to know is-- I've looked at the Waters of the U.S., which is probably the greatest unconstitutional taking of property rights when you look at something that started out to be navigable waters and has ended up being drainage ditches and so on, on existing farmland today. So that concerns me anytime we start looking at a bill that is not a mandate but will very easily become a mandate, just as we saw with the Waters of the U.S. and how that has been encroached upon. I guess my question is, why are we not utilizing the NRDS, which are currently charged with taking care of water quantity and quality within their watersheds? And I would-- might add, I think they're doing a very effective job of doing-- of dealing with that. Why isn't this something we should leave to them?

**BLOOD:** So if indeed the job is clearly as effective as you say it is, I don't think our nitrate levels, which I'm sure Dr. Rogan will be speaking on, would be as high as they are here in Nebraska. So I

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would disagree, but I can't speak on half-- behalf of the NRDs. You'd have to ask them that question. I also would question whether future bodies would force this to be a mandate. I think that if you have a program that is done effectively and you put the correct guardrails in place, that they would be the opposite of a mandate. Instead, you would have an educational program that would be optional, that would allow farmers to benefit and would allow our citizens that drink our waters and use our water-- waters for their family to benefit as well.

**JACOBSON:** Well, my follow-up would be that you are aware, I assume, that the nitrate problems that we have today were created back in the '70s and--

**BLOOD:** So we should have taken care of that in the '70s.

**JACOBSON:** But-- but it wasn't identified as a problem until later, and that's when the NRDs have engaged and are looking at controlling when and how much nitrogen is put on, whether it's got-- whether it's stabilized and so on. So I guess, knowing that, it would seem to me that-- that this is something that can be adequately taken care of with the NRD, and if it's voluntary, then let's just make it voluntary and let the university send out what their recommendations are. Why wouldn't that be an acceptable use as opposed to passing a bill in the Legislature that could be construed as-- as a mandate?

**BLOOD:** I-- again, unless it says the word "mandate," which with the amendment it does not, I-- I would have to respectfully disagree, but I hear what you're saying. Senator Jacobson, the problem with Nebraska is that we tend to always wait until it becomes a crisis before we throw money at things, and I believe that we need a plan when it comes to the nitrates. And I do respectfully disagree with you. I'm going to tell you that my freshman year I asked for an interim study to discuss indigenous plants and nitrates from this committee, and I was refused the first year to have the public hearing. And then the second year they put together a report that should have been put on the website for this committee. When it did not show up on the website so we had data for this bill, we called the previous Chair's office and were told that the-- it could be found nowhere, that nobody knew where that report was. So this is actually an issue I've been working on for seven years. And so part of what you're asking, and I'm hoping that Dr. Rogan comes up behind me because I don't know if you're leaving right away or if you're going to be here for a few more minutes.

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**JACOBSON:** I'm here till 3:00.

**BLOOD:** Those are questions for Dr. Rogan because she is an expert in this field and works for the Med Center.

**JACOBSON:** Thank you. I'll let others ask their questions and--

**BOSTELMAN:** OK. Senator Slama.

**SLAMA:** Thank you, Mr. Chairman. Just got a few questions for you, Senator Blood. So I am comparing your original bill with the amendment. You would characterize the original bill, as I'm reading it, as a mandate on landowners?

**BLOOD:** Oh, absolutely--

**SLAMA:** OK, so--

**BLOOD:** --which is why we amended it.

**SLAMA:** I-- and I appreciate that, and I think that gets to Senator Jacobson's point of literally the original bill was intended as a mandate, so of course it's going to be in discussion as to whether or not the Legislature is going to mandate this since the original bill was a mandate. But my question, first question, deals with the enforcement mechanism. So you said that we're moving some of the control from the NRDs to being within the Department of Natural Resources. What's the enforcement mechanism for this bill under the white copy? Help me understand.

**BLOOD:** So the original bill has to be-- I have to be really honest. Having new staff and having some miscommunication and not coming out with the bill that we actually wanted was the first copy, which is one of the reasons we amended it. It needed to be under Natural Resources, not the Department of Ag, and we'll actually soon have a new fiscal note because they have the mechanism and the funding. So I gotta be really honest with you. It was a miscommunication and, once we had it in hand, we got to work and changed it.

**SLAMA:** Oh, no, my question isn't regarding why the bill was draft-- my question is, what is the enforcement mechanism on this bill?

**BLOOD:** So you'll notice we used the word "may." If indeed they-- they feel it's necessary to have an enforcement mechanism, then we're giving them the option to present that as part of their plan. But we're not saying that they shall have an enforcement mechanism, I

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believe. I don't have the bill in front of me, but that's how I remember the bill being written.

**SLAMA:** So there is an administrative penalty listed as something here. And I did have the chance to serve with Senator Gragert on the Healthy Soils Task Force.

**BLOOD:** Right.

**SLAMA:** He and I were the only senators who served on that, so I-- I appreciate the shout out. But given my experience on the Healthy Soils Task Force, the biggest challenge that we were facing is respecting the fact, and I wholeheartedly believe, that farmers are true envi-- environmentalists. Do you agree with the fact that farmers are true environmentalists?

**BLOOD:** I said that in my opening.

**SLAMA:** Oh, then is there a reason why we're putting this out rather than a voluntary grant program for those landowners, if it is in their best interests as the true environmentalists?

**BLOOD:** Is that not a voluntary grant program within the amendment, Senator Slama?

**SLAMA:** No. No, it's--

**BLOOD:** What would you call that? You're calling that not voluntary.

**SLAMA:** I am saying that it's a mandate around-- and-- and again, this is our co-- committee, so I-- I ask the questions and you get to answer them.

**BLOOD:** No, I'm clarifying your question, Senator Slama. Is--

**SLAMA:** So--

**BLOOD:** --that not what it says--

**SLAMA:** --thank you, Senator Blood.

**BLOOD:** --under the amendment?

**SLAMA:** No, actually. It actually requires the buffer zones for land-abutting public waterways. Private owners have the opportunity to work with their natural resource districts-- in-- in the time that I've had to read the white copy-- to work to get grants; however, as

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I read it, if they do accept grants under the grant program, they will be required to have somebody from the natural resource's local water management system, as you put it in your bill, to come inspect to ensure whether or not they're maintaining an appropriate buffer. Appropriate buffer is defined in your bill. My question is, how many times are they going to be forced to inspect it if they receive this grant money? What are the means by which they are going to be inspecting it? And how many times a year is this going to happen? Is this a weekly inspection? Is this however we feel? Is there a set mechanism for if we're going to be saying the natural resource districts, who are funded by local tax dollars, are going to be going on to landowners' land to measure their buffer zones?

**BLOOD:** Thank you for that long question, So I can answer it in a very short answer. I think it says clearly in the bill or the amendment-- and again, since I don't have them in front of me, I'm not sure which one, but I'm pretty sure it's the actual bill, where it says that they're going to create that program. We're not demanding that they do it once a year, ten times a year. And it's educational by purpose. What I think is really interesting is you keep using the words "mandate" and "force," and what I see it as is an educational, an opportunity for people to learn if it's going well or not going well. So I hear your concern, Senator Slama, but I respectfully disagree with the fact that you feel it's going to be forced upon them with multiple opportunities. And how-- how many times will they take to get it right? I trust Nebraska's Natural Resources office to do what's best for our environment and what is best for our farmers. And so, for me, I don't anticipate the aggressive scenario that you anticipate, but I understand your concerns. I don't share those concerns. And I feel it says in the bill that it is up to them to create the program, and so they would be the ones that you would ask that-- what they feel would be the most appropriate.

**SLAMA:** So I-- and since you don't have the amendment in front of you, which I-- I thought during our exchanges, when we've had the tables turned and you've questioned me about specific bills, that you'd have your bill in front of you--

**BLOOD:** Senator Slama.

**SLAMA:** --but the language I'm asking about is on page 5, right at the top of that page: If it determines that a landowner who has received grant funding under Section 5 of this act is not in compliance with the Riparian-- Riparian-- sorry-- Protection and Water Quality Practices Act, upon such notification, the department shall provide

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landowners with a list of correction act-- corr-- corrective actions needed to come into compliance in a reasonable timeline to meet the standards of the act. Skipping ahead: If such landowner does not comply with the list of actions and timeline provided, the department may, following notice and hearing, enforce the act by an order imposing an administrative penalty. I read that as not being a voluntary grant program. I don't see administrative penalties for our grant programs, so I-- I disagree with your assessment here. I'd also encourage you to throw in dollar amounts. Just from a fiscal conservative standpoint, I-- I'd like to know if we're giving away these grants. On page, I believe, 3 of the white copy and page 7 of the white copy, the amounts that the-- are included in the grant program are simply listed as double X. So just to help us, as we consider this bill, understand potential fiscal impacts and what those could look like, I'd appreciate dollar figures next time. Thank you, Senator Blood, and thank you, Mr. Chairman.

**BLOOD:** Senator, may I finish a-- actually answering the question? Chair?

**SLAMA:** No, I-- I-- that was a statement, not a question. Thank you.

**BLOOD:** So--

**BOSTELMAN:** --I have a-- I have a question for you--

**BLOOD:** Chair Bostelman, yes.

**BOSTELMAN:** --just a technical question as follow-up maybe. It's on page 3 and then on page 7. You did-- you don't have a specific--

**BLOOD:** On the amendment? I have both now.

**BOSTELMAN:** On the amendment. You just don't--

**BLOOD:** He-- yeah.

**BOSTELMAN:** You just don't have a specific dollar amount in there. Do you have a--

**BLOOD:** Right.

**BOSTELMAN:** Do you have a number you're thinking of?

**BLOOD:** The fiscal note, if you see the fiscal note, was based on whether it was going to the Department of Ag or not, but we know that



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there's already funds within the Natural Resources, which is why we switched it to Natural Resources, actually Fiscal that let us know about it. We don't anticipate it's going to be more than a million dollars a year, but I don't want to talk out of school. I want to make sure that we have the appropriate fiscal note and then I'll have a better answer for you.

**BOSTELMAN:** Right. I-- and I guess it was just the intent of-- your thought was-- it says no single grant shall exceed certain amount of dollars and I just didn't--

**BLOOD:** Right.

**BOSTELMAN:** --know if you'd come up with some thoughts along those lines.

**BLOOD:** We're depending on the fund to have that discussion, and that's why we left it the way we did.

**BOSTELMAN:** OK.

**BLOOD:** So--

**BOSTELMAN:** OK.

**BLOOD:** And again, I would like to point out that there's a difference between "may" and "shall," which has, I always thought, kind of been a lawyers' thing.

**BOSTELMAN:** OK.

**BLOOD:** So when we say there may be a-- a fee or there may be a whatever, that doesn't mean that there is definitely, unless we say "shall." That was always my understanding as a freshman senator, but maybe that's changed--

**BOSTELMAN:** OK.

**BLOOD:** --so.

**BOSTELMAN:** Senator Moser has a question.

**MOSER:** So why is your bill necessary? Why couldn't the NRDs work on their own to improve buffers around flowing water? What does your bill do? Why is it necessary, I guess, to address the problem?

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**BLOOD:** Because, re-- regardless of what we've done so far, it's not been enough, and we have to figure out a way to be more aggressive and to be more assertive in how we protect the environment. We continually say that water is precious and important to Nebraska.

**MOSER:** I don't-- I don't disagree with any of those comments, but why would we need another law to do that? Why wouldn't the NRDs do this on their own? Wouldn't it be in their best interests to protect the environment and to control nitrates?

**BLOOD:** Sure. Are-- is there funding for that right now? Have they been provided the accurate funding to do it?

**MOSER:** They've got a lot of funding, I'd say.

**BLOOD:** I would say that, based on the funding that I saw in the most recent budget, that I don't feel-- I don't feel that they have the funding and the staff to adequately do that right now, and I feel that we have funding at the state level that we could better utilize for this type of program. And I-- I always hate saying "the law" because, again, we're not mandating this. And, yes, it was that way in the original copy, and I explained that in my introduction, how it ended up that way. But I believe it's a new policy, just like we put any other policy in place to help our farmers, no different than a tax incentive, no different than an educational program. We're giving people the opportunity to learn more.

**MOSER:** Well, I would say whether it's helping the farmers or not is subject to discussion, but thank you very much. That's all I needed, I guess.

**BOSTELMAN:** Senator Hughes.

**HUGHES:** Sorry. Thank you, Chairman. Thanks for coming, Carol, and I appreciate you not making it--

**BLOOD:** Senator-- Senator Blood.

**HUGHES:** I said Senator Carol--

**BLOOD:** It's all right.

**HUGHES:** --didn't I?

**BLOOD:** It's all right.

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**HUGHES:** Sorry, Senator Blood.

**BLOOD:** At least you know my first name.

**HUGHES:** Now I'm all discombobulated. Sorry.

**BLOOD:** I'm sorry. I apologize.

**HUGHES:** I appreciate that it's not a mandate because initially, and coming from a farm background or whatever, I was like, uh, that gets your hackles up. So my question is, did you guys look at-- because there is a Buffer Strip Incentive Cash Fund already out that, there's fees that are collected from pesticides--

**BLOOD:** Right, for the Department of Ag.

**HUGHES:** Right.

**BLOOD:** Yep. This expands it.

**HUGHES:** So it's kind of based on the back of that, is that what you're-- because I-- it-- yeah, it looks like they're giving out about \$700,000 a year and it's an incentive, clearly, so you just kind of-- did you take-- you kind of took that and--

**BLOOD:** Um-hum.

**HUGHES:** That's just what I wanted to check, so thank you. Thank you, Chairman.

**BOSTELMAN:** OK. Thank you for your opening.

**BLOOD:** My pleasure.

**BOSTELMAN:** Gonna stay for closing?

**BLOOD:** I-- I'm kind of scared to now, but, yeah, sure.

**BOSTELMAN:** OK. Anyone like to testify, a proponent of LB-- LB40, please come forward. Good afternoon, Dr. Rogan. Welcome.

**ELEANOR ROGAN:** Thank you. Good afternoon, Chairman Bostelman and members of the Natural Resources Committee. My name is Eleanor Rogan; that's spelled E-l-e-a-n-o-r R-o-g-a-n, and I'm a professor at the University of Nebraska Medical Center. While my testimony today presents information related to my work and expertise, I am acting in my own personal capacity and I am not representing the University of

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Nebraska System or the University of Nebraska Medical Center. I am a resident of Omaha and I'm here to testify in favor of LB40, also known as the Riparian Protection and Water Quality Practices Act, which I think would help protect the quality of Nebraska waterways. I've spent my entire career conducting research into how cancer and other diseases are started by exposure to chemicals. In recent years, my research has included investigation of the possible role of water-borne agriculture-- or agrochemicals in the high incidence of pediatric cancer seen in Nebraska. I think the riparian buffer zones proposed in LB40 provide a cost-effective approach to reducing the runoff of nitrates and other agrochemicals from land used in a variety of ways into Nebraska rivers, streams, lakes and ponds. Reducing the amounts of such chemicals getting into Nebraska waterways is cheaper and more effective than having to remove the chemicals before people can use the water. In addition to our research showing-- showing some associations between higher levels of nitrates in Nebraska ground and surface waters and a higher incidence of pediatric cancers, in particular brain and other central nervous system tumors, which was published in scientific journals in 2021. Other scientists have observed associations between exposure of people to higher levels of nitrates. For example, in 1996, the Centers for Disease Control and Prevention, "CDC," showed that-- a cluster of miscarriages occurring in rural Indiana in homes using private wells with high nitrate levels. A 2021 study found an increase in spontaneous preterm births in California among women drinking water with elevated levels of nitrates, and restriction of fetal growth has also been associated with high nitrate levels in drinking water. Blue baby syndrome is clearly associated with exposure of women to high nitrate levels in water during pregnancy. In fact, this adverse health effect was used by the U.S. Environmental Protection Agency to set the legal limit for nitrate in drinking water at 10 milligrams per liter. Finally, several studies have shown an association of central nervous system malformations with exposures of mothers to nitrate in drinking water. These are examples of adverse health effects for just one type of chemical frequently found in Nebraska waterways, but I think they make a strong case for using riparian buffer zones to reduce the level of nitrates and other agrochemicals in our waterways. Therefore, I'm in favor of LB40 and would ask your support to move this legislation forward. I thank you for your attention and I'll be glad to answer any questions.

**BOSTELMAN:** Thank you for your testimony. Are there questions from committee members? Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Bostelman. Thank you for being here and sharing your expertise, Dr. Rogan. So I'm-- I'm listening to the, you know, the statistics that you're giving or the-- or the facts you're giving, rather, on the link with cancers, and in particular pediatric cancers, and I think we can all agree that's-- that's-- that's very concerning and something we want to address as a state. I'm wondering if you had-- if you could shed any light on-- so I'm thinking about, you know, what is-- what is the most effective way to obviously reduce nitrates in our water and do we have any data or good data on what a timeline might look like? Let's say we did move forward with this and we did have these. Buffers in place. When might we expect those levels to go down to an amount that might significantly impact public health?

**ELEANOR ROGAN:** Well, you know, the levels are a mixture of what's going into the ground and what's in surface water. So there's groundwater and surface water. What's in the ground now, it certainly would be affected to some extent by surface water. I-- I think, though, the-- the-- to reduce the levels in ground would take a significant-- probably take a significant change in-- in-- in agricultural practices to reduce the amount that's-- of nitrates that's being put on the fields. However, we can reduce the amount in surface water, and we know there's-- there's-- there's nitrate in surface waters because we're measuring it today in-- in samples collected. We don't have '23 samples yet, but we have 2022 samples and we know that Nebraska's surface waters, in lakes and rivers and streams, have nitrates. I can't give you a date, but if we started with buffer zones that would sequester a lot of agrochemicals in them and prevent them from getting into the surface waters, I think that would begin to reduce the levels immediately and that would help with the general problem. Wouldn't solve it, but it would-- it would certainly help.

**FREDRICKSON:** So this is-- this is an intervention that has the potential to have--

**ELEANOR ROGAN:** Yes, I think this is an inter-- intervention. I heard about this intervention-- shoot, I don't know. I couldn't tell you exactly when, probably ten years ago, from somebody in Iowa where-- someone from Iowa State who-- who was-- was working on this, and they were seeing effects immediately with riparian buffers along waterways where-- where Iowa still has a big problem on like the Des Moines River, etcetera, etcetera. But this seems to be one effective, relatively-- relatively inexpensive way to address the-- to-- to partially address the problem.

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**FREDRICKSON:** Sure. Thank you.

**BOSTELMAN:** Senator Moser.

**MOSER:** Thanks for coming to testify today. Is your background more in the damage from consuming nitrate water or is it in how the nitrates get into our water?

**ELEANOR ROGAN:** Mine's more in the damage from the nitrates water. I work with some hydrological engineers from-- from Lincoln, from the College of Engineering, who-- well, they-- they collect the water samples and we-- we work as a team, but my-- my expertise is more in the damage, on the damage side. I'm a biomedical scientist.

**MOSER:** A bio what?

**ELEANOR ROGAN:** Biomedical scientist, let's put it that way.

**MOSER:** That's your Ph.D.--

**ELEANOR ROGAN:** Yeah.

**MOSER:** --is--

**ELEANOR ROGAN:** Well, my Ph.D. is in biochemistry. I work in the College of Public Health.

**MOSER:** Well, chemistry would probably qualify you better than a lot of things. Thank you.

**BOSTELMAN:** Senator Jacobson.

**JACOBSON:** Thank you, Chairman Bostelman. Thank you, Ms. Rogan. First of all, thank you for clarifying in your open the capacity in which you're testifying. I have great respect for the university, and certainly for the Med Center, and-- and I think you bring great credentials-- credentials in that area, but I-- I appreciate you clarifying the capacity in which you're testifying today. My-- my question kind of stems a little bit along Senator Moser's. It's my understanding that you're testifying on really the impact that you see of nitrates in particular.

**ELEANOR ROGAN:** Yes.

**JACOBSON:** But-- but we're really talking-- and I think it's safe to say that nitrates, if you look at the NRD studies, is the water that's-- what's in the groundwater and that, what's in the

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groundwater, is coming from whatever's in-- across those areas where high nitrogen levels were placed back in the '70s and sin-- and-- and before the NRDs became more involved in controlling nitrate applications and so on. But I-- I'm assuming you really have no background in terms of being able to determine whether buffer strips would make any difference at all from an educational background. Is that correct?

**ELEANOR ROGAN:** That's correct. But I do think that it's-- but I-- I do know from the data that I've seen that it isn't-- it-- the-- the nitrates in the groundwater aren't just from-- this is a problem that started, let's say, in the 1970s, but it's not that there aren't still nitrates sinking down into the ground today.

**JACOBSON:** I-- I appreciate that. But what I'm really getting to is we're talking about riparian buffer strips and-- and I don't know that you've linked for me that the water that's getting-- the water that's getting into the waterways is necessarily creating a bigger hazard to groundwater than-- than the-- than the groundwater itself. We're not drinking the surface water. We're drinking the groundwater.

**ELEANOR ROGAN:** Well, some places-- our drinking--

**JACOBSON:** Yeah.

**ELEANOR ROGAN:** Linc-- Lincoln water comes from the Platte River.

**JACOBSON:** Well, I'm just saying my-- my concern is I'm trying to determine the-- the background that you're bringing in terms of your testimony today. I appreciate the effects that are out there. I just wanted to confirm that you don't really have any other reason to say that these buffer strips can-- can do anything more than-- than be a buffer strip. Is-- is that really true?

**ELEANOR ROGAN:** Well, I have read scientific literature that showed that buffer-- that planting the right plants in-- in buffer zones along waterways can reduce the amount of chemicals that make their way into the-- that water, yes. Yeah, I-- I've read that. I don't study it myself, but I've certainly read it as part of our-- our research into the effects-- the possible effects of agrochemicals in the high incidence of pediatric cancers in Nebraska.

**JACOBSON:** OK, and-- and thank you. And I-- I guess I gleaned two things from that, "I read" and "possible," and those are--

**ELEANOR ROGAN:** Yes, via-- yes.

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**JACOBSON:** --those are-- and we're also talking about chemicals as opposed to nitrates, which would seem to be two different, necessarily, key areas, but--

**ELEANOR ROGAN:** Nitrates are chemicals. I used a general term.

**JACOBSON:** I understand that there's much more beyond that, but I-- I appreciate the answer. I guess I'm-- I'm just trying to clarify the capacity in which you're bringing your testimony. And I appreciate your-- your-- your testimony and I appreciate your background in pediatric cancer and I appreciate the work you're doing for the university. Thank you.

**ELEANOR ROGAN:** Thank you.

**BOSTELMAN:** Senator Brandt.

**BRANDT:** Thank you, Chairman Bostelman. Thank you, Professor, for your testimony today. We are going to have a big problem, if we do not already, with nitrates out in rural Nebraska, and I appreciate the work you do on this. The ten milligrams per liter, is that a high level or that's the acceptable level and somewhere north of that is considered a high level for people that consume our groundwater?

**ELEANOR ROGAN:** The Environmental Agen-- Protection Agency sent-- set ten milligrams per-- per milliliter as the acceptable level in drinking water, and that relates to what-- what we would call an acute exposure and-- and you end up with blue baby syndrome. As-- now there are more recent studies-- for example, the ones I kind of alluded to here-- that have shown adverse health effects from chronic exposure, let's say years of drinking water with nitrate at a lower level in it, and there's, I think, a push-- I-- I'm sure it'll take a while-- for the-- to get the EPA to reduce ten milligrams per liter as a-- as a-- as the acceptable level. I-- ten is certainly a pretty high level. I think someday they're going to bring it down because it's going to be clear that people are suffer-- suffering adverse health effects if they-- if they consume that kind-- lower levels of nitrates for a long period in their life.

**BRANDT:** OK.

**ELEANOR ROGAN:** I can't give you any specific data on that, though.

**BRANDT:** And then my-- my second one follows up on what Senator Jacobson brought up. In your testimony, you referred to fertilizer and agrochemicals, and there's a distinct difference between the two



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and how a buffer strip could impact that, because in most of our ag operations, the nitrogen is knifed into the ground, whereas most of our chemicals are flown or used with a sprayer or airborne, and I don't know as a buffer strip would do a lot to impact that. It would keep the field edge maybe a little further away. Do you have any thoughts on that?

**ELEANOR ROGAN:** Well, I think the-- the-- a buffer strip zone would only be useful there for whatever was traveling, let's say, in-- in groundwater through-- through a field and it came to-- on its way to-- to, let's say, a-- a stream or a river. I think it would-- then it could be useful, but it wouldn't have an effect on what was in the air or something like that.

**BRANDT:** Right. And then you referenced Iowa. The problem in Iowa are drain tiles and the drain tiles go underneath the buffer strips.

**ELEANOR ROGAN:** Yeah.

**BRANDT:** They dump directly into the water. The buffer strip really has no impact, like the Raccoon River--

**ELEANOR ROGAN:** Yeah.

**BRANDT:** --that feeds Des Moines. And they do have a tremendous problem there, but the buffer strip has no bearing on that because the drain tiles go underneath that. Would you agree with that?

**ELEANOR ROGAN:** Yes, that would be true.

**BRANDT:** All right. And then we are, as producers, doing some things out here. We are trying cover crops. It's a tremendous expense. We do get some help from the NRCS to do that. But I-- I do believe producers are a lot more judicious in what they apply for nitrogen. You know--

**ELEANOR ROGAN:** That's true.

**BRANDT:** You know, anhydrous was \$1,400 a ton this fall, and that's a tremendous expense--

**ELEANOR ROGAN:** [INAUDIBLE] yes.

**BRANDT:** --compared to the \$500, \$600, \$700 we paid the year before. So if nothing else, the economics of this may-- may help limit what we do. Do you have any studies that would back that up?

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**ELEANOR ROGAN:** No, I--

**BRANDT:** OK.

**ELEANOR ROGAN:** --I don't personally have any studies.

**BRANDT:** All right. Well, thank you for coming today.

**ELEANOR ROGAN:** You're welcome.

**BRANDT:** I do appreciate it.

**BOSTELMAN:** Senator Moser.

**MOSER:** You were saying earlier that you're testing water over time and I was curious. Are you testing well water as well as surface water?

**ELEANOR ROGAN:** Our focus these days, actually, or the-- the last year or so, has been particularly on what we refer to as domestic water coming from wells, and I'm well aware that that's-- that's all groundwater. I know that's all groundwater. We also have tested some monitoring wells and we do-- have had a-- some study in some of the rivers. We're doing a variety of things.

**MOSER:** Well, what I was wondering is if you had data to show whether nitrates are getting worse or better in well water or if nitrates are showing up in runoff water more in increasing quantities or concentrations or lesser concentrations, so that's not data that you have.

**ELEANOR ROGAN:** I don't think that-- that-- I can't-- I can't answer that off the top of my head.

**MOSER:** OK.

**ELEANOR ROGAN:** We-- we-- our study hasn't-- our studies haven't quite gone in that direction and I'd hate to try to--

**MOSER:** OK, thank you.

**ELEANOR ROGAN:** --characterize it.

**BOSTELMAN:** Dr. Rogan, I have a question. I understand you're here in your personal capacity, understand that that-- I do have a question dealing with University of Nebraska-Lincoln, and perhaps some-- in

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your capacity at UNMC, that you may know or not. And answer this question if you-- if you want or not.

**ELEANOR ROGAN:** OK.

**BOSTELMAN:** But my question is, is, my understanding, UNL does through-- provide information to farmers, recommendations on rate of nitrates per acre for yield; however, they don't necessarily look at it on profitability because potentially you could put on less nitrogen. Your yield may be less, but you're going to take home-- your net's greater.

**ELEANOR ROGAN:** Um-hum.

**BOSTELMAN:** Have you been in any of those discussions? Do you know, has there been any of those type of discussions and all to get [INAUDIBLE]--

**ELEANOR ROGAN:** I can't answer that. I-- I-- I assume that the U-- that a lot of this goes through Extension and-- and I-- and I truly have not been part of those discussions.

**BOSTELMAN:** That-- that's fine. I didn't-- I appreciate that.

**ELEANOR ROGAN:** OK. But I-- but I understand the point that you're making.

**BOSTELMAN:** Yeah. OK. Any other questions? Thank you very much for coming in today, appreciate it. Next proponent, please. Good afternoon.

**EDISON McDONALD:** Good afternoon. Hello, my name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d. I'm appearing today on behalf of GC Resolve, we work with communities, nonprofits, foundations, farmers and tribes to help grow family farms. We support LB40 conceptually as a tool to help address our soil loss and excess nutrient issues, although it needs significant edits beyond AM469. I'm handing out LB729, not from today but from 2019. That was a similar bill that we worked on that I think addresses a number of the concerns expressed by senators so far. You know, I think it really focuses instead on making sure that we are incentivizing instead of mandating. As Senator Slama knows from serving on the Healthy Soils Task Force, that was a big emphasis of theirs, saying that we want to make sure that we're encouraging folks, giving them the tools and providing incentives to really help make sure that we're moving this forward. According to the September 2018 USDA Natural Resource Inventory

summary report, Nebraska loses approximately three tons of topsoil per acre per year as a result of water erosion. Furthermore, various analyses from NDEQ, NRDs, USGS, UNMC, UNL, and others show Nebraska's waterways are under threat from rising levels of contaminants, including nitrates, phosphates, selenium, chlorophylls [SIC], atrazine, glyphosate and many others. Luckily, Nebraska's farmers are the solution to the problem, and the solution lies in the soil. Through improved soil health practices like cover cropping and buffer strips, we can help to mitigate a number of these issues. Increased water filtration is also a key preventative measure from cities as we're looking at legislation now to help pay for denitrification. In towns like Hastings and Prosser, we've seen that we've already had to pay for these systems. The average increased cost per individual per year is \$52 per person per year. We'd like to find ways to help make sure we can mitigate those costs as we see more municipalities that are going to have to address these rising issues. A couple of the improvements in particular that we'd really like to see within this bill, number one, looking back at LB729 from 2019, we targeted specific high-nitrate areas, as seen on the NDE map that's also included. Number two, LB729 also put a healthy-- heavier focus on multispecies cover cropping, which adds even greater benefits to the soil, increases pollinator habitat, and helps farmers manage weeds while reducing herbicide application along waterways. Multispecies cover cropping also gives farmers more opportunities to diversify and increase farm income by adding more cover for grazing and also providing new opportunities for additional crops to market. We need to really-- again, I can't stress how much we really need to focus on making sure that we're incentivizing instead of focusing on a mandate. Then number four is we've always talked to experts. They've suggested looking, instead, at a pathway that could be up to a quarter mile from the waterway to provide more benefits. I know in LB729 we had much broader pathways and then in LB40, they've got much narrower pathways. I would suggest looking at a quarter mile. And then five, looking at the fiscal note, we have lots of opportunities to better maximize our dollars when we pull together stakeholders around LB729. We believe the right partnership between NRCS, NDEE, and the USDA and others can help multiply our state investment with federal funds through programs like regional conservation program grants, which, as we look through, we could potentially multiply our dollars by eight times, but we basically need that initial state funding to act as our seed funding. And then lastly, I just want to direct you to our recent study that you can find on GCResolve.com on stream health that indicates data obtained in this study shows that stream health is compromised. Pathogen counts violated the acceptance

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limits established by the U.S. EPA in almost 80 percent of samples handled throughout the course of this study. We know it's unsafe for Nebraskans. We know tools that we can use to help to fix it. So let's take action and work on moving a revised version of this bill forward. Thank you and I'll take any questions.

**BOSTELMAN:** Thank you for your testimony. Questions from committee members? Senator Jacobson.

**JACOBSON:** Thank you, Chairman Bostelman. I need to run in a couple of minutes here, but I guess I want to come back to my original concerns about overreach and what becomes something along the lines of WOTUS and the-- what started out to be navigable waters and ended up being every drainage ditch on every farm across the country, and therein lies my concern. The federal government's already done it once. I could say that-- the old saying of, you know, fool me once, my fault-- or fool me once, your fault; fool me twice, my fault. And that's what I get concerned about with these kinds of-- of opportunities for producers to do things. I go back to what Senator Brandt said and what Senator Slama said that farmers do care about-- they don't want to lose topsoil. Farmers do care about their soil. They want that land to be better than it was when they-- when they got here. They want to take it multi generations. They do care about all these things. They do look at economics. And I can assure you that the NRDs are doing, I think, a very good job. I've got farms in Clay County. I'm near-- I'm in-- near the Upper Big Blue District. We're in an area that's high nitrates. I'm dealing with it. I've got a building site there with the waters-- the nitrate waters. I don't drink that water. I can also tell you we're not going to quit farming that ground because of it, but we're spoon feeding on nitrogen on those acres. Right in through there, it's flat as a pancake. I've got farms on further to the south that have draws that run-- that has a draw that runs through it. That water is ultimately going to end up in the-- the Blue River, the Big Blue River. So I guess what I'm looking at is we talk about these buffer strips along the main rivers, but I think it ultimately spreads into everything else, and I'm back again to my concerns that we're going to mandate ultimately for farmers to do certain things that may not make a big difference. The draw that runs through this other farm is dry 90 percent of the year; unless we have heavy rains, we don't get any water through it at all, and yet you could see an issue to need a buffer strip. And it's really not going to stop the nitrates because the nitrates, as-- as-- as was mentioned before, spread across the land and they go down in the soil. They're not war-- they're not running off. What you're looking at is, is potentially you could have some chemicals that are

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in the plants itself, which is how most of the chemicals are applied today, is they're surface applied, and-- but again, a lot of that's not going to make it all the way to the river. And so I guess my concern still comes back to, what are we really doing here to-- I mean, if you want to bring a program that's going to incent farmers to do something, that's one thing. This smells too much like a mandate, which is creating my concern. Why should I not be concerned about that?

**EDISON McDONALD:** Yeah, no, and-- and I'll just say, at least on-- on my farm, you know, we have lots of state and federal programs that started off as incentives and are still just incentives. You know, you're-- you're right that sometimes it can go and shift to a mandate. But there are so many other programs that are still just incentive based, and I think that it is important that this stay incentive based instead of mandate based. And, you know, I would say, in terms of your concerns that buffer strips don't do a whole bunch, I'm not a scientist, but of the scientists that I've talked to and, you know-- and I know you're going to say, well, it's just read reports. I will send you one report in particular that we worked on that suggested buffer strips are a highly effective tool to help mitigate this. The science is also getting a lot better in terms of being able to really source and pinpoint where things are coming from, and that study that I'll send you, I think, really delves into that a little bit more. I can't talk about it, again, because I'm not a scientist, but I'd be happy to help connect you with the scientists who can help to go through that.

**JACOBSON:** Sure. Fair enough. Thank you.

**BOSTELMAN:** Senator Brandt.

**BRANDT:** Thank you, Chairman Bostelman. Thank you, Mr. McDonald, for your testimony today. Did I hear you right, you want a quarter-mile-wide buffer strip?

**EDISON McDONALD:** So that-- that's what's been suggested to us.

**BRANDT:** OK. That's kind of extreme given the fact that I can tell you the buffer strips that I've got are underneath pivots and they're taxed at full value as if that ground was farmed. I'm pretty sure most of our rural assessors would still look at that ground as-- as productive ground, even though it's not really producing much of anything. You know, I'm-- I do like the buffer strips that we've got on our ground. But, yeah, if you're-- if you're talking about

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quarter-mile-wide buffer strips, you guys just as well buy the whole farm because--

**EDISON McDONALD:** Yeah.

**BRANDT:** --there won't be much left to farm outside of that, would there?

**EDISON McDONALD:** You know, you're-- you're right. That could have a-- a pretty broad impact. I think, you know, looking at those numbers, I-- I'm just going with what I've been told by-- by experts who know better than I. But, yeah, I know in LB729, that you were a co-sponsor of, we had significantly larger expanses where that could be used. I don't think it has to be used everywhere. I think just giving that potential, though, is important.

**BRANDT:** All right. Thank you.

**BOSTELMAN:** Other questions? I do look on here-- just a comment-- on the LB729 mentions Shell Creek. I just want to make a shout out to the high school students-- I believe it was in Battle Creek-- that-- Newman Grove-- that actually worked with all the farmers along Shell Creek and cleaned that up. That was really-- several years ago, maybe five years ago, I think it was, around then that they had national recognition to what they did, working with the landowners and that around that area. So you have that in there, but it's been pretty much all cleaned up, so thank you.

**EDISON McDONALD:** I mean, that's-- yeah, and I-- I don't know. Do you know what year that would have been in?

**BOSTELMAN:** That it got cleaned up?

**EDISON McDONALD:** Yeah.

**BOSTELMAN:** I'd say probably four or five years ago is-- I believe.

**EDISON McDONALD:** OK. Yeah, so this is data from 20-- I think the original data--

**BOSTELMAN:** No--

**EDISON McDONALD:** --was based on 2018.

**BOSTELMAN:** Sure. No, I understand. I--

**EDISON McDONALD:** We don't know about 2019, was the one we had.

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**BOSTELMAN:** Sure. I understand. I was just-- I just wanted to say that--

**EDISON McDONALD:** Yeah.

**BOSTELMAN:** --one of the items we had-- that was identified in Senator Walz's bill actually has been cleaned up by--

**EDISON McDONALD:** OK.

**BOSTELMAN:** --high school kids working with all the landowners down through that area, actually made a difference, so just wanted to point that out and more of a shout out to those students who have done that work. So thank you. Seeing no other questions, thank you for your testimony.

**EDISON McDONALD:** Thank you.

**BOSTELMAN:** Next proponent, please.

**AL DAVIS:** Wr-- wr-- wrong on schedule.

**BOSTELMAN:** Good afternoon. Welcome.

**AL DAVIS:** Good afternoon, Senator Bostelman, members of the Natural Resources Committee. You know who I am. Al Davis, A-l D-a-v-i-s, registered lobbyist for the Nebraska chapter of the Sierra Club and its 3,000 members in the-- in the-- in the state of Nebraska. The Nebraska chapter has supported multiple efforts through the years which are focused on protecting our underground waters and the many streams, rivers, ponds and lakes which exist in Nebraska. We are pleased to stand in support of LB40 as amended. Farming has drastically changed over the past century, as we all know, with massive consolidation, major technological advances, and significant environmental degradation. On many farms and ranches, the environmental work done in the '30s with soil banking, windbreaks, and the likes have been undone as we adapt to center pivots, massive planters, and harvesting equipment. While new technologies may modify and mitigate some of these problems, we must be proactive to prevent further degradation of our natural resources. This bill goes a long way towards accomplishing that goal. Obviously, the best way to induce protection for our creeks, rivers, streams, and lakes is to garner cooperation with the landowner. This bill seeks to accomplish that by-- that goal by offering payment to the land owner via a grant program. Bill limits the scope of the program by excluding grazing lands from eligibility and also excluding the counties with the



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lowest nitrate levels. Therefore, the bill will concentrate funds and projects-- on projects where inter-- intervention is much needed, those counties with high levels of nitrates. Our neighboring state of Iowa has lagged in the protections offered to its aquifers and surface waters. The extensive development of concentrated animal-feeding operations in Iowa, coupled with slow and poor regulatory actions, have resulted in the degradation of Iowa's water supply. As Nebraska begins to see a major expansion via CAFOs flows in our own state, we need to learn from Iowa about what not to do. Further research by UNMC has demonstrated that long-held beliefs about the safety of low levels of nitrate in water may have been misplaced. We are learning more about the potential threats to human health from nitrate exposure, and the need for mitigation has become more urgent. Nitrates and atrazine in the water have been tied to pediatric cancer by researchers at UNMC and should force regulatory and legislative efforts to reduce the levels of both chemicals. LB40 is just one small step on that road to protecting and preserving our most precious resource, the water that we rely on for life. I want to share a little bit of other information with you. You know, there has-- have been some tests of wells at AltEn. That's all publicly available. So I had these pulled up before the phone rang there just a minute ago. But so the-- if the human health danger is at 10, some of those wells at AltEn are at 113 parts per million, so it's much, much higher. You know, we've seen bills in this body recently that we-- we need to put some reverse osmosis facilities in people's homes in rural Nebraska. I'm all for that. I think that's a solu-- that's a-- a partial fix, but it doesn't solve the real problem. I think Senator Brandt made a lot of good points earlier when he was talking about his ideas. Obviously, I think that the idea of a quarter-mile of buffer strip is-- is an awfully large chunk of territory and doesn't really wash very well with anyone. But we need to do something and this is one step to get there. Thank you.

**BOSTELMAN:** OK. Questions from the committee? Seeing none, thank you for your testimony. Next proponent, please.

**KENNETH WINSTON:** Good afternoon, Chairman Bostelman--

**BOSTELMAN:** Good afternoon. Welcome.

**KENNETH WINSTON:** --and members of the Natural Resources Committee. My name is Kenneth Winston, K-e-n-n-e-t-h W-i-n-s-t-o-n, and I'm appearing on behalf of Nebraska Interfaith Power and Light . Nebraska Interfaith Power and Light Supports LB40. We support care for the earth and protecting people from the impacts of environmental

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contamination. As was previously testified to, Nebraska has one of the highest rates of nitrate contamination, and I-- and specifically of groundwater. And I understand that this bill deals with-- with surface water, but-- but there-- there is a hydrological connection between groundwater and surface water. The amount of nitrate contamination has doubled since 1978, according to UNL studies. Nitrate contamination, as Dr. Rogan indicated, has been long shown to have negative health impacts for pregnant women and small children. Now there are studies that have-- that suggest connections between nitrates and pediatric cancer-- cancers, birth defects and Parkinson's disease. LB40 would provide a tool to reduce the amount of contamination in riparian corridors by providing for buffer zones in the surrounding area. Although more-- more methods of protection may be needed, this would provide a much-needed tool to protect bodies of water from contamination. As previously indicated, this would benefit the quality of both surface and groundwater since groundwater and surface water are connected hydro-- hydrologically. And I've not read the amendments, but I understand that there have been amendments offered which-- which change the provisions from mandates to make them-- them so that people can-- it's not-- not mandatory, required. We encourage the committee to adopt the amendments and to advance LB40 for debate by the entire Legislature. Be glad to respond to questions.

**BOSTELMAN:** OK. Thank you for your testimony. Are there any questions? Seeing none, thanks for coming in.

**KENNETH WINSTON:** Thanks.

**BOSTELMAN:** Thank you for your testimony. Next proponent, please, for LB40. Would anyone else like to testify in support of LB40? Seeing none, anyone like to testify as opponent of LB40? Any testifiers as opponent for LB40? Good afternoon. Welcome.

**BRUCE RIEKER:** Thank you. Chairman Bostelman, members of the committee, my name is Bruce Rieker; it's R-- it's B-r-u-c-e R-i-e-k-e-r. I'm the senior director of state legislative affairs at Nebraska Farm Bureau. In addition to being here on behalf of the Farm Bureau, I'm also here on behalf of the Nebraska Corn Growers Association, Nebraska Pork Producers Association, Soybean Association, and the Nebraska Cattlemen, appearing in opposition to this bill. At all-- you know, I'm not going to read my testimony to you, but I will say that there is no-one-size-fits-all. I appreciate Senator Hughes bringing up the program that-- the voluntary program that they already have in the Department of Agriculture. What we

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would suggest is that before we start, and I heard these words earlier in the testimony, throwing money at a problem, maybe we ought to have an accurate assessment of what the problem is, and that doesn't mean that we're trying to kick the can down the street. But late last year, several of us ag organizations met with the directors of the Department of Natural Resources, Department of Ag, Department of Environment and Energy. We didn't have somebody there from HHS. What we found out is that there's lots of data out there, but there's nothing being shared between those four agencies, and so there seems to be a solution throwing money at something that maybe one entity has some data on, whether it's the university or somebody like that. And so we would encourage the committee to take a much more prudent and deliberate approach and help Governor Pilleen. He has it in his budget for a million dollars to get an accurate assessment of what's really going on, and then we can make decisions from there, and that's what we would encourage you to do, because we think that's the highest and best use of your resources, as well as state resources. With that, I'll conclude my comments.

**BOSTELMAN:** OK. Thank you. Any questions from committee members?  
Senator Slama.

**SLAMA:** Thank you, Mr. Chairman. I've just got a couple of questions for you, Mr. Rieker. So what's your take? I saw in your written testimony your concerns about the definition of a waterway being tied into kind of the in-- in indefinite definition we have from WOTUS.

**BRUCE RIEKER:** Right.

**SLAMA:** Do you-- how is waterway defined in this bill?

**BRUCE RIEKER:** Is water right?

**SLAMA:** Waterway, sorry.

**BRUCE RIEKER:** Waterway? It's not defined.

**SLAMA:** It's not defined.

**BRUCE RIEKER:** No. There are a lot of definitions that are missing in order to be very accurate about it. If we-- if we get to the point where we were using WOTUS, every little bit of water could qualify as a Water of the United States. And, you know, depending on how-- whether it's the Department of Ag or the Department of Natural Resources, I don't know which way we're going on this, but however they would define it. And if any of you follow that debate and how

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many times WOTUS has been hit back and forth like a ping-pong ball as to which way we define things, it creates a great amount of confusion depending on what you're doing. And so it depends on-- in this case, I think, with the amendment, it would depend on what the director of Department of Natural Resources thought, and that could change from administration to administration, so there's no consistency.

**SLAMA:** Well, thank you for that. And Senator Hughes brought up, and I'd really like to get your thoughts on how this program's operating now, the Department of Agriculture currently has a buffer strip incentive program. Is-- am I right there?

**BRUCE RIEKER:** You're correct.

**SLAMA:** How's that been working in the state?

**BRUCE RIEKER:** What I understand, and maybe there's-- I-- and I'm not trying to dodge the bullet here. I have not been involved in that program, but what I understand is that there isn't accurate data to go along with it to make informed decisions. And so that's part of me going back to where I started, is that we have to have the accurate data before we just start shooting in the dark.

**SLAMA:** I appreciate that. Thank you, Mr. Rieker.

**BRUCE RIEKER:** You're welcome.

**SLAMA:** Thank you, Mr. Chairman.

**BOSTELMAN:** Other questions? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you, Mr. Rieker, for being here, always a pleasure. So what do we not know?

**BRUCE RIEKER:** What do we not know?

**J. CAVANAUGH:** Yeah.

**SLAMA:** [LAUGHTER] How much time we got?

**BRUCE RIEKER:** Yeah.

**J. CAVANAUGH:** Well, we-- so we know we have--

**BRUCE RIEKER:** So if a private well is contaminated, it's reported to the Department of Health and Human Services, but a lot of the other state agencies don't know it, so there's that kind of data out there.

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**J. CAVANAUGH:** OK.

**BRUCE RIEKER:** And then there is data that the NRDs collect about, you know, where the-- where the nitrates may be and how that's moving. Some of that's reported to the department of-- and Dean-- I'll tell you what, Dean can tell you where they report all their data. OK?

**J. CAVANAUGH:** OK, throw [INAUDIBLE]. Got it.

**BRUCE RIEKER:** But these things are-- this data is reported to different places, but there is no aggregation of it where somebody or a responsible entity, agency, one of-- I'm-- I'm not saying they're irresponsible, but nobody is singularly responsible for saying, here's where we are.

**J. CAVANAUGH:** OK. So, I mean, so we're collecting the data. We're just not collating it?

**BRUCE RIEKER:** Pretty much.

**J. CAVANAUGH:** So that sounds like an easy fix. We-- do we need to pass--

**BRUCE RIEKER:** Well, you'd think it would be easy.

**J. CAVANAUGH:** Well, do we need legislation to tell all these folks to talk to each other or just common--

**BRUCE RIEKER:** Ask Dean.

**J. CAVANAUGH:** --common sense will tell you?

**BRUCE RIEKER:** This is going to teach him for making me go first, but--

**J. CAVANAUGH:** No. I-- I saw you guys all stumbling over each other to be the one-- first one to come up here.

**BRUCE RIEKER:** [LAUGH] I'm sorry. It-- you know, it's-- it's-- it's one of those, when we were talking to Director Riley or Sherry Vinton, who's now the director of Department of Ag, or Jim Macy, learning from them what they can and cannot share. I took a-- we didn't go-- we didn't mine very deeply and-- and I'm probably guilty of not following up with them since then as to where are the barriers, why doesn't it move from place to place. Part of it's a privacy issue; part of it, I understand that it requires to be

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de-identified information, things like that. And so, you know, there's private property rights or protection that needs to be there for certain types of data. I-- I wish I could give you a real good answer, but right now, we're not--

**J. CAVANAUGH:** That-- that's a helpful answer.

**BRUCE RIEKER:** --we're not doing it because one of our simple questions, I mean, we-- Nebraska Farm Bureau is a huge proponent of reverse osmosis machines to help at least take care of the drinking water situation or to start working on that. So when we ask the question about what do we know about private wells, we can't get a complete answer. And I'm not saying that anybody stiff-armed us. We cannot get an idea as to how many private wells there are, how many have been tested, and which ones are contaminated.

**J. CAVANAUGH:** So we don't know the-- the specific scope of the problem, but we do know there's a problem and we know it's significant.

**BRUCE RIEKER:** Yes.

**J. CAVANAUGH:** Right?

**BRUCE RIEKER:** And we're not denying that.

**J. CAVANAUGH:** OK. So the-- it's significant enough that we should take some action. We just don't know how much action. And so this bill goes too far, well beyond what could possibly be the scope of the problem?

**BRUCE RIEKER:** OK, I'm not the scientist, but we've talked about producers being stewards of the land, environmentalists, things like that. If you're applying these chemicals according to the approved labels, I'm not aware of it running off that land and into the surface water. Most of what I think-- part of what we're talking about here is-- is creating a barrier that could be 16 feet wide or 50 feet wide; and depending on how long that waterway is, that's a lot of acres, and we're taking a lot of things out of production with very little, if any, scientific evidence that says it's going to improve the drinking water situation.

**J. CAVANAUGH:** OK. And your testimony is based on before the amendment. Does making it a voluntary program change any of that?

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**BRUCE RIEKER:** We would still-- I-- OK, I have not-- you know, I have not run this by the people that I need to, to give you an absolute official answer, but we would still go to the voluntary program that already exists but make it work.

**J. CAVANAUGH:** Thank you.

**BRUCE RIEKER:** You're welcome.

**BOSTELMAN:** Other questions? So if a person had a quarter-section of ground-- let's see how good your math is. If we have a quarter-section of ground, we have a water-- river going down the-- you got a 50 mile-- 50. It's corn. It's producing. It's irrigated corn or dryland, pick, and you take 50 foot on each side out of that quarter-section of ground, you're producing-- pick a number. Let's do easy, just round number, 200 bushel an acre, whatever price, pick a price. I mean, you're talking about the amount of dollars that that landowner would be potentially losing in a sense.

**BRUCE RIEKER:** Um-hum.

**BOSTELMAN:** Do you have any idea what that might look like and--

**BRUCE RIEKER:** Yeah.

**BOSTELMAN:** --if there's no--

**BRUCE RIEKER:** If you have a-- if you have a-- a half-section, or you'd say a quarter section--

**BOSTELMAN:** Just whatever [INAUDIBLE].

**BRUCE RIEKER:** And-- and let's say it's a half-mile long then. That's 2,680 feet-- what is it? Yeah, 2,680 feet. Is that right?

**MOSER:** Yeah, 5,280 divided by 2.

**BRUCE RIEKER:** OK. Yeah, that-- that number. Fifty feet wide. If I do my math right, is 125,000 square feet. Is that right?

**HUGHES:** 132.

**BRANDT:** It's 12 acres altogether.

**BRUCE RIEKER:** Twelve acres. Twelve acres, 200 bushels an acre, \$6.50 a bushel, \$7 a bushel, you're talking about tens of thousands of dollars.

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**HUGHES:** Every year.

**BOSTELMAN:** Well, that would be the-- that would be the gross loss because of--

**BRUCE RIEKER:** Right, those are expenses.

**BOSTELMAN:** You have expenses and stuff, though [INAUDIBLE].

**BRUCE RIEKER:** Right, but there's also then the requirement that you maintain this. And a similar program was put in place in Minnesota two years ago and they-- the-- the producers refer to it as the coyote buffet because a lot of predatory animals decided to come back in and reside there, coyotes, raccoons, things like that, and so now there's a maintenance issue, but also then how you handle invasive weeds, things like that. I mean, I know that the bill said that you would plant a prescribed grass or something like that to be the-- the buffer, but you still have to maintain the weeds that are there, so there's a cost associated with that. You know, yes, there-- going back to Senator Cavanaugh, there is a problem that we need to fix, but this is a very expensive solution that we're not convinced it will work.

**BOSTELMAN:** So crop rotation probably addresses-- with cover crops probably addresses the nitrate uptake better than potentially--

**BRUCE RIEKER:** It could, yeah. And once again, cover crops isn't a one-size-fits-all because every farming operation is unique. And we could get into organic versus commercial production. It would surprise a lot of people that organic actually uses more chemicals or, you know, that-- and more passes through there. I mean, they're modified accordingly, but to- to handle that.

**BOSTELMAN:** Any other questions? Seeing none, thank you for your testimony.

**BRUCE RIEKER:** Are you still doing the math?

**BRANDT:** No, we're all good.

**MOSER:** Yeah, we were having a sidebar here.

**J. CAVANAUGH:** You're not allowed to ask us questions. [LAUGHTER]

**BOSTELMAN:** Thank you.



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**MOSER:** We can't decide if it's three acres or six.

**HUGHES:** It's-- it's three.

**BRUCE RIEKER:** It's three acres?

**HUGHES:** Yeah.

**BRUCE RIEKER:** On each side?

**BRANDT:** On each side.

**HUGHES:** OK.

**MOSER:** Oh.

**HUGHES:** And that's it.

**BOSTELMAN:** Super. Thank you. Thank you for your testimony.

**BRUCE RIEKER:** Yeah, I'm glad we worked that out.

**HUGHES:** That's right.

**MOSER:** We got unity now.

**HUGHES:** I was right [INAUDIBLE].

**BOSTELMAN:** OK. Next opponent on LB40.

**MOSER:** It's 5,280 divided by 2, times 50, and then divided by 40,000 for--

**BRANDT:** 43,000.

**MOSER:** OK, 43,000 [INAUDIBLE].

**BOSTELMAN:** Good afternoon. Welcome.

**DEAN EDSON:** Yeah. Senator Bostelman, members of the Natural Resources Committee, I'm Dean Edson, spelled D-e-a-n E-d-s-o-n, executive director for the Nebraska Association of Resources Districts, presenting testimony today in opposition to LB40 on behalf of the Association. While we appreciate Senator Blood for her steadfast commitment to protect natural resources in Nebraska, we feel this bill is overreach with the mandates on the landowners included in the proposal. Since the bill has been introduced, I visited with her

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staff about some existing programs that may help address concerns on a voluntary enrollment basis rather than mandating such. I'd like to share those with the committee. First, years ago, the Legislature passed the Nebraska Buffer Strip Program, which is administrated by the Department of Ag. Cropland adjacent to perennial and seasonal streams, ponds and wetlands, can be enrolled in buffer strips, which are designed to filter the ag chemicals such as fertilizers and pesticides. Two kinds of buffer strips are available: filter strips, which reduce narrow strips of grass; and riparian forest buffer, containing trees and grass. The minimum widths are 20 and 55 feet, respectively; the maximum widths are 120 and 180 feet, respectively. The program is designed to be used in conjunction with the U.S. Department of Ag, or USDA, Conservation Reserve Program, Conservation Reserve Enhancement Program, or other programs. However, it can be used by itself as well. In addition to offering rental rates for both irrigated and nonirrigated cropland, incentives for partnering with other government programs, there are incidental haying and grazing allowances for the Nebraska Buffer Strip Program. Adding more funding to this program may be an alternative to the original proposal in LB40. Secondly, USDA has several federal conservation programs that target similar conservation goals as included in LB40. I want to point out that on February 13, 2023, Ag Secretary Tom Vilsack announced that USDA is making funding available for agriculture producers, and forest landowners nationwide to participate in voluntary conservation programs and adopt climate-smart practices. The Inflation Reduction Act, or IRA, provided an additional \$19.5 billion over five years for climate-smart ag through several conservation programs that USDA's NRCS implements. NRCS is making available \$850 million in fiscal year 2023 for its oversubscribed conservation programs-- and what that means is, if you didn't get in because it was oversubscribed, they're adding another \$850 million to it-- the EQIP Program, Environmental Quality Incentives Program, or EQIP, Conservation Stewardship Program, CSP, Agriculture Conservation Easement Program, ACEP, and the Regional Conservation Partnership Program, RCPP. The IRA funding includes an additional \$8.45 billion for EQIP, \$4.95 billion for RCPP, \$3.25 billion for CSP, and \$1.4 billion for ACEP. The increased funding levels began in fiscal year '23 and rapidly build over four years. These additional investments are estimated to help hundreds of thousands of farmers and ranchers apply conservation to millions of acres of land across the country. All of the state and federal programs listed are voluntary, and they serve conservation efforts well. So in closing, I would encourage you to indefinitely postpone the green copy of LB40.

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**BOSTELMAN:** Thank you for your testimony. Are there questions from committee members? Senator Cavanaugh.

**DEAN EDSON:** I was told there would be no math.

**J. CAVANAUGH:** Oh.

**BOSTELMAN:** Sorry, just-- I'll ask the-- I'll ask that question, because I think Senator Cavanaugh asked the question to--

**DEAN EDSON:** That's right.

**BOSTELMAN:** --Mr. Rieker, previous testifier, and he kind of pointed--

**DEAN EDSON:** He--

**BOSTELMAN:** --to you to answer. So if you remember the question, I'll--

**DEAN EDSON:** I-- what was the question exactly?

**J. CAVANAUGH:** So I-- well.. asked Mr. Riecker about, well, what do we not know, so, I mean ult-- I mean, really, I guess it's a glib way of saying--

**DEAN EDSON:** OK.

**J. CAVANAUGH:** --we know there's a problem and we just don't know quite the scope of the problem, so I guess you're the one that's responsible to answer that question.

**DEAN EDSON:** Yeah. Well, there's a mult-- multiple things going on here. All right? When-- when Mr. Rieker was talking about we don't know which domestic wells are contaminated, that's true. We don't identify which domestic well is contaminated and which ones aren't. OK? You take water sampling in an area, you geographically spread that out so you're not sampling-- concentrating your sampling of one portion and then saying this entire area is contaminated. You spread your sampling out and that's where we get the sampling data. We don't identify the individual domestic well, but that data then is put into the UNL clearinghouse system. We have per-- tried to continually improve that clearinghouse data to where we can identify the-- everybody can use it to identify where the contamination is in an-- in a geographic area. We just had a two-and-a-half-hour meeting this morning to talk about how we're going to continue to improve that

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clearinghouse data and how agencies and NRDs can all get access to that, as well as the general public.

**J. CAVANAUGH:** So collecting the data, I mean, it sounds very similar to what Mr. Rieker said there, that there's-- we need to get better at kind of collating the data. But the takeaway is, regardless of whether you know the point source of the pollution, right, that there is a very-- a problem of a large scale, right, and that need-- so it's large enough it needs to be addressed. Does that sound correct?

**DEAN EDSON:** Yeah. When we say-- when you say a large scale, it's not necessarily a large scale that it covers the entire state and it's not necessarily large scale that it covers an entire NRD. It's pockets of the NRD where you have these problems and it's primarily, you know, around intensive farm ground irrigated practices. We've had the disc-- we've-- you've had the discussion with previous testifiers. A lot of this started back in the '70s. I'd go back further than that. It actually started after World War II when commercial fertilizers first came available. You had loads and loads and loads of fertilizer put on. Nobody knew exactly how much was the right amount. It took the university some time to develop, well, here is your optimum amount of fertilizer that you should apply. They have a formula. We've had a lot of discussions with the university on that. It's 35 pounds plus 1.2 times your targeted yield, but then you subtract off what available nitrates that you have in your field already. That's where a lot of producers stop, is they don't subtract off what's available. So we're trying to reach out to those producers to get them to, hey, take credit for what you've got, put money in your pocket, so we do have some problems ongoing that way. We've been meeting with the ag groups that Mr. Rieker represented over the past couple years to try to identify different things we can do as the NRDs to help pe-- producers educate themselves. That's kind of a long-winded answer to your question, but-- but we're getting there. When you talk about nitrates in the groundwater, there is only one way you're going to get that out of there, and that is you've got to pump it out and you've got to run it through a crop or something to have that crop filter it back out. And so--

**J. CAVANAUGH:** What about reverse osmosis?

**DEAN EDSON:** Well, reverse osmosis for immediate drinking.

**J. CAVANAUGH:** Yeah.

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**DEAN EDSON:** But I don't think you're going to get a reverse osmosis on that large of the scale.

**J. CAVANAUGH:** Well, and, I mean, that, to me, seems like that's the concern, right? We're talking about trying to find other ways to--

**DEAN EDSON:** Right.

**J. CAVANAUGH:** --address the problem without having to buy a reverse osmosis system for every house or every community in the state, and it-- the fear is that we're going to get to the point where we're going have to do something like that.

**DEAN EDSON:** Well, that-- that's a concern of mine, too, and that's why we're stressing so hard and working so hard with the agriculture community and with the producers. When you're looking at your fertilizer application, don't forget to subtract off what's available, and that includes what's available in the water. And so there are some areas where you-- if you take where you have a high concentration of contaminant, of nitrate, where it's real shallow to the groundwater, you know, that's where you get your immediate impact. And if the groundwater aquifer is shallow, it might-- they may be able to get most of their nitrogen fertilizer just from irrigation water, and that would clean it up.

**J. CAVANAUGH:** Thank you.

**BOSTELMAN:** Senator Brandt.

**BRANDT:** Thank you, Chairman Bostelman. Thank you, Mr. Edson, for your testimony today. Just a raw number, of all the wells-- irrigation, private, commercial-- that get tested, what percent are high nitrate today, are unacceptable nitrate?

**DEAN EDSON:** Boy, I really don't have an answer to that on a percentagewise.

**BRANDT:** OK.

**DEAN EDSON:** Again, what it's-- what I tried to explain to you earlier, these are geographically distributed--

**BRANDT:** Sure.

**DEAN EDSON:** --on the samples. There's probably a smaller percentage of that area that has the contamination.

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**BRANDT:** And then being familiar somewhat with the EQIP and CREP and-- and these programs, and we're talking about filter strips today, but the-- the NRCS, NRD programs, in total, what percent of those programs would be filter strips as opposed to cover crops and some of the other programs that you could do?

**DEAN EDSON:** I can maybe find that answer for you. I don't have that off the top of my head of the percentage of the--

**BRANDT:** OK. Last question, I promise.

**DEAN EDSON:** OK.

**BRANDT:** Reverse osmosis, you know, we've got-- we've got areas where we have very high nitrates, which for the most part doesn't make any difference if you're washing your clothes, washing your car, watering the-- watering the yard is a great use of it.

**MOSER:** It helps your garden.

**BRANDT:** Yeah, it helps the garden. That's what Senator-- Senator Moser just-- just added to the record. But at what point does nitrate get so high that the reverse osmosis quits working?

**DEAN EDSON:** That's a-- a good question. We've had some discussion about that, and I-- real high nitrate levels where you're maybe over 30 or 40 that maybe you need to hook up two systems. That's a-- that's a possibility. The-- the main thing with the reverse osmosis systems, those are-- we're fully supportive of and we're trying to encourage homeowners to put them on because that fixes-- it fixes the problem immediately and protecting their health. OK? But the other thing is that most people forget there's maintenance that goes with that. Those filters gotta be changed out every so often, and so it's getting people to put them in to remind them, change your filters, just like your furnace filter in your house--

**BRANDT:** Sure.

**DEAN EDSON:** --or any other filter system you've got on your car.

**BRANDT:** Sure.

**DEAN EDSON:** You change them occasionally.

**BRANDT:** All right. Thank you.

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**DEAN EDSON:** And so people need to focus in on that.

**BOSTELMAN:** In the white copy, which you may or may not have, and I'll explain it to you, and it's-- it's not specific to this, more general. In here, the department is-- is identified as Department of Natural Resources. And when we get back to page 5, it talks about the department will-- has ability to do administrative penalties, though it would include a fine, a dollar fine of \$1,000. Does DNR, does NRDs currently fine landowners? Do you still have that ability? Do you-- would you have to create rules and regs or something in order to do that? I just--

**DEAN EDSON:** Oh.

**BOSTELMAN:** I-- I don't know if you have that type of authority now or not.

**DEAN EDSON:** We do not have that type of authority now to impose a monetary fine on a buffer strip program. The-- if you're enrolled in these programs, if you are maintaining that buffer strip or if you go in and tear it out, those producers have to forgo the payments, and there may be a fine from the department, but there isn't one from the NRD.

**BOSTELMAN:** Or there'd be a repayment of-- if they don't maintain the--

**DEAN EDSON:** Yes.

**BOSTELMAN:** --repayment of whatever cost share it was to put in that--

**DEAN EDSON:** Yeah.

**BOSTELMAN:** --project, that type of a deal?

**DEAN EDSON:** Yeah. And I'm not sure what the-- it would be a similar for NRCS, the USDA programs.

**BOSTELMAN:** Sure, sure.

**DEAN EDSON:** And you might get kicked out of other programs, too--

**BOSTELMAN:** Right.

**DEAN EDSON:** --under USDA if you're in violation of-- of-- of that with the federal enrollment.

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**BOSTELMAN:** OK. OK. Senator Hughes.

**HUGHES:** Thank you, Chairman. Thank you for coming in. This is a little bit of a-- like this is how I do it in my head, right, is that we've got kind of two problems. We've got the problem that exists from, whether it be the '50s, whatever, that's already there, that the RO-type systems address because my well has too many nitrates, whatever. I think another problem to that is-- we have a private well-- there's no te-- we tested it when we put it in. That was 16 years ago. It's like there's nothing that tests it regularly unless you're maybe on-- I don't know, somebody comes out and does it, but we don't.

**MOSER:** Test your water.

**HUGHES:** So that's a-- that's a side issue. But the bill at hand is more talking-- so then the second problem is-- or the second thing we're dealing with is just preventing this to-- from getting worse and-- and preventing it from continuing to happen, which this bill kind of is trying to address part of that problem. So we've already got the Buffer Strip Incentive Program, which is-- is kind of similar. And then I think it was Edison McDonald came in and was talking about a bill from a couple of years ago about the soil something-or-other act, soil health-- soil health act. The NRDs right now have a program, correct me if I'm wrong, that pays per acre if you put in cover crops, yes or no, or is it specific to different NRDs?

**DEAN EDSON:** That would vary per NRD.

**HUGHES:** OK.

**DEAN EDSON:** OK, that's-- that is a local board choice of what--

**HUGHES:** Of how they use their funds.

**DEAN EDSON:** Right.

**HUGHES:** They-- OK, so in my case, our-- my Upper Big Blue NRD does have that program, and so-- and you're over all of them. Do you-- are a lot of those-- some of them-- I guess my question is, are a lot of those programs doing it? Because I would think that would be one sol-- not solution, but helpful thing that we're doing to prevent it from continuing on. Are we seeing good turnout in that program? Is it successful?



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**DEAN EDSON:** In the cover crop?

**HUGHES:** Right.

**DEAN EDSON:** OK, and, yeah, but it's-- it's--

**HUGHES:** Because this-- to me, this cover crop and the buffer are similar-type programs, if you will.

**DEAN EDSON:** These programs, all these conservation programs are targeted broad base, but it's not one-size-fits-all.

**HUGHES:** No. Right. It depends on your soil type and---

**DEAN EDSON:** OK, so cover crops, cover crops don't work on my farm.

**HUGHES:** OK.

**DEAN EDSON:** OK. We've tried them and-- and it didn't work, and we may try them again. Buffer strip? Yeah, I have a buffer strip on my program. I have a drainage ditch that runs through the middle of my farming operation, so we put a buffer strip in there. That works for me. Buffer strip might not work for my neighbor because he doesn't have a stream next to him.

**HUGHES:** Right.

**DEAN EDSON:** So it's kind of-- do-- you design these things broad enough to where it's attractive to everybody, but it's gotta fit within their farming operation.

**HUGHES:** Sure. I guess-- so I guess then the question is, because this clearly falls with how it's situated now under our local NRDs by area and whatever, do you think we're doing all that we can incentivizing-- because I do believe, too, the farmers, I mean, unless you're-- you don't want to pass your farm down to the next generation, why wouldn't you want to keep the land as-- as good as it can, the water as good as it can, etcetera? Is there something that we can do to help do better, I guess?

**DEAN EDSON:** Well, yes.

**HUGHES:** And that's maybe where the million dollar [SIC] comes in that-- the study we're going to do with Governor Pillen on this issue and just get more meaty da-- data about it.

**DEAN EDSON:** Yeah.

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**HUGHES:** I said "meaty."

**DEAN EDSON:** I'm not going to get into specific dollar amounts that you should kick toward any of this. I would say the first thing is that we gotta figure out a way to capture technology and utilize technology in farming operations. OK? And then the second thing is how do we, as NRD and the state, help these producers adopt those practices that will help them better utilize their fertilizer, better use-- utilize their inputs, maximize their profitability? That's what we're after, is we want rural Nebraska and-- and the ag community to be profitable. At the same time, we can also look at how they might be able to save money on their inputs and address the environmental issues. And so that's the-- kind of the approach that we're taking with our producers locally, and what I'm trying to do at the state level with our state associations is identify that. We've also reached out to the agribusiness sector. They have some emerging technologies. We're inviting them to come in and present those to the NRDs, to the ag groups, and are these things that can be adopted? Are these things-- should we put some cost share toward that is the question, and we're trying to design things that way on the incentive side with the new technology, and that's where it's going to be at.

**HUGHES:** That's what I was getting at. Yeah. OK. Thank you.

**BOSTELMAN:** Senator Moser.

**MOSER:** So if you have your own well and, you know, maybe a farmer, maybe you just live in the country, you'd recommend they have their water tested?

**DEAN EDSON:** Yes.

**MOSER:** Is it complicated to get it tested or can you-- they have a at-home test kit or anything?

**DEAN EDSON:** You have some at-home tests that you can do that, but it's not really reliable, and it's one of the things that we're trying to work with-- with DEE right now is to allow maybe the districts to do the sampling so you can get some qualification and assurance. Right now they're-- DEE is requiring those tests to be sent to a certified lab, which the NRD testing stations are not certified labs. OK. We can test it and give you an instant result and majority will do it for free.

**MOSER:** Is it like a measured amount of the sample water and so many drops of test liquid or something?

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**DEAN EDSON:** Well, it's-- it-- they'll give you a sample bottle. You bring in the water to us.

**MOSER:** Yeah.

**DEAN EDSON:** OK. And then we'll test it.

**MOSER:** Yeah.

**DEAN EDSON:** And-- and bring in a couple samples.

**MOSER:** But, I mean, is it a-- like a chromoscopic analysis or is it just you-- you add some kind of precipitate to it or something and it turns a certain color or--

**DEAN EDSON:** The former.

**MOSER:** What?

**DEAN EDSON:** You don't-- we don't put dye in it, no. It's the former. It runs through a mach-- a machine.

**MOSER:** Oh, OK. When we used to test for chlorine, you drop so many drops of the test liquid in a measured amount of water and you go by the shade of yellow and that was how much chlorine you had.

**DEAN EDSON:** Yeah. The-- we also, like at farm shows and events, we try to work with DEE.

**MOSER:** Do you test it at the farm show if they bring a sample?

**DEAN EDSON:** Yeah. At Husker Harvest Days, at our booth, we have water [INAUDIBLE]. They bring their samples and get them tested for free.

**MOSER:** That's cool. Thank you.

**BOSTELMAN:** Seeing no other questions, thank you for your testimony.

**DEAN EDSON:** Yep. Thanks.

**BOSTELMAN:** Next opponent, please. Good afternoon. Welcome.

**SCOTT DICKE:** Hi, Chairman Bostelman and members of the Natural Resources Committee. I am Scott Dicke, S-c-o-t-t D-i-c-k-e. I'm the irrigation and water services manager for the Central Nebraska Public Power and Irrigation District, headquartered in Holdrege, Nebraska. Central is the owner and operator of Kingsley Dam and Lake McConaughy

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and operates the state's largest hydropower and irrigation project. I'm here this afternoon testifying on-- testifying on behalf of Central as opposed to LB40, introduced by Senator Blood. As the largest hydropower and irrigation pro-- water provider in Nebraska, we operate and maintain over 570 miles of canals, of which most are open to the public, and a series of lakes which are all public waters. We understand that LB40 would require a buffer along public waters. We understand our district, consisting of canals and lakes which are public, to be encompassed within LB40 requirements. During the growing season, we spend every day continuously mowing along our canal roads and along many of our banks for a variety of reasons. Removal of vegetation allows us to look for leaks, service our irrigation pump sites, and remove hazards that, if not addressed, could have severe consequences. Further, there are approximately 1,000 houses and cabins located around several of Central's reservoirs. Many of these, probably hundreds of these, are located less than 50 feet from the shoreline and have established yards or landscaping that run nearly all the way to or/and along the shoreline. While the proposed legislation provides exceptions for houses and water recreational access, it's not clear that buffer strips would not-- It's not clear that buffer strips would not be required throughout much of the remaining open space or the open lands between houses along the shorelines. Requiring buffers in these areas would greatly impact cabin owners that might now have lawns replaced with buffers and could perhaps negatively impact the amount of revenue that Central is able to obtain from leasing these lands to cab-- for cabin use. Additionally, establishment or maintenance of vegetation buffers can actually be contrary to riparian habitat management practices. In particular, along portions of the Platte River and in several sandpits, efforts are made to clear the lands of vegetation. This is to provide un-- unobstructed views for cranes, to create open sand for the least tern and piping plover nesting. Again, Central has over 570 miles of canals. A buffer strip requirement could cause a substantial amount of neighboring private cropland to be converted to a buffer. This would have a significant financial impact to the adjacent landowners. Requirement for buffer strips adjacent to the canal would substantially burden the private landowners along the properties owned by Central. Finally, buffers would be impractical or even inappropriate around certain Central facilities, including but not limited to earthen dams, levees, embankments, concrete liners, inlet structures, outlet structures, and gates. Thank you.

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**BOSTELMAN:** Thank you for your testimony. Any questions from committee members? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you for being here, Mr. Dicke. But first off, Central has got a really cool logo, so just want to [INAUDIBLE] that for everybody. I--

**SCOTT DICKE:** I have to take my glasses off to look at it.

**J. CAVANAUGH:** Take it [INAUDIBLE] it's got like the electric there. You got a duck in the water.

**HUGHES:** Water.

**J. CAVANAUGH:** You got the crop growing the middle, and it makes a "C." I mean, it's just-- it checks all the boxes, so I appreciate that.

**MOSER:** Looks like a spider.

**SCOTT DICKE:** I'll make sure to pass that along.

**J. CAVANAUGH:** Thanks. I obviously-- I think-- I don't think you had the amendment before you came. Have you heard the conversation about the as-amended?

**SCOTT DICKE:** I heard it for the first time as I came here. I was driving and I stopped for lunch and at lunch I heard there was going to be an amendment, so that's all I know of, other--

**J. CAVANAUGH:** OK.

**SCOTT DICKE:** --other than what I heard Senator Blood mention.

**J. CAVANAUGH:** My understanding is that it would eliminate the mandatory aspect of it that you-- which basically sounds like your biggest concern.

**SCOTT DICKE:** As we read the-- the bill, it identified public waters. It didn't identify Waters of the U.S., waters of the state, or natural waterways. But as public, you know, as we saw that as public waters, you know, we-- we have to recognize that we-- we need the ability to keep vegetation off our canals. If we have trucks driving down our canal roads and they get stuffed full of grass and there's a fire-- and these are things you don't necessarily think of-- or if we don't maintain the edge of the canal and we have rodents burrow in it

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and there is a leak, these are things that we take very seriously, and have to, doing what we do. And so as introduced by Senator Blood--

**J. CAVANAUGH:** As-- as introduced you -- yeah. But if-- so if the program were voluntary, what I'm hearing is Central would probably opt not to participate.

**SCOTT DICKE:** We have-- we have a lot of vegetation along our canals that we try to keep down--

**J. CAVANAUGH:** Right.

**SCOTT DICKE:** --so.

**J. CAVANAUGH:** But-- but so if it were a volunteer program, Central wouldn't have to participate, that would probably eliminate your objections then?

**SCOTT DICKE:** If-- we would have to see, see the full amendments to know exactly where we stand. You know, there-- there could be areas that are off the canal that we would look at, you know, potentially some-- some-- some opportunities. But a lot of the-- a lot of the canals are actually-- there's no water that runs into it; you know, it's sloped away. And so if the intent is to protect and minimize, mitigate, or reduce the amount of nitrates that are entering waters, it actually doesn't necessarily fit with what we have. We-- we have water running away from our canals, so it really just becomes kind of a-- you know, if it's up on our banks, it becomes more of a concern because we have, you know, areas that are dug out, where the water goes, and areas that are filled in to fill the low areas. And so we-- like I said, we don't really have water that flows into our waterways, so-- but it would be on a, you know, certain location basis and where we would have any interest.

**J. CAVANAUGH:** OK. Thank you.

**BOSTELMAN:** Other questions? Seeing none, thank you for your testimony today.

**SCOTT DICKE:** Thank you. Appreciate your time.

**BOSTELMAN:** Next opponent. Someone else like to testify as an opponent to LB40?

**MERLYN BARTELS:** Good afternoon--

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**BOSTELMAN:** Good afternoon.

**MERLYN BARTELS:** --Senators. My name was Merlyn Bartels, M-e-r-l-yn B-a-r-t-e-l-s. I'm here to just oppose this on a personal basis, not representing anyone, but a farmer in south-central Nebraska. I've been listening all afternoon to the testimony and these last three oppositions pretty much answered all the questions that I had or was going to make on any of the statements, I guess, and I agree with them. My biggest concern was when I read this amendment-- or bill, I should say, was, what was you going to consider a waterway? And we've been dealing with that the last few years with what was brought up, the WOTUS program with the federal level. You know, they was even talking about a puddle standing in your field for two or three days could be considered a pond. And you and I both know, if you get a big rain, you may have water standing in the field for a couple of days, so would you have to put grassway around that? My other concern is what one of the other senators brought up on his land, was I have a drainage ditch that runs through my farm and it only carries water when it rains a heavy rain, so is that going to have to have a waterway-- you know, buffer on the side of it, too, to protect that waterway? I don't think it should because there's not water in it all the time. It's only there sporadically. And then they're talking about maintaining those, keeping the weeds out. The waterway I do have in my farm now is a grass waterway just to help control the erosion when the water is running in there, and we have to either mow it or spray it to keep the noxious weeds out of it because we don't want them spreading into our farm ground. So there is going to be a maintenance issue with that. That falls back onto the landowners, cost to him. And then we're talking about incentives. I guess I would like to see some incentives to help pay for these things, which you guys have discussed a little bit on that too. But in my past experience with working with some of these programs, the money that we get is great, but it don't always cover the cost or the maintaining of it afterwards. And then I guess, too, we've talked about, and this was brought up, if it's grass, you aren't going to be planting a crop in it; it's going to cost you some money right there. So is the assessor going to come out and look at that and say X number of acres is not crop production, shouldn't be valued at irrigated ground value, or is it going to go back to a grassland value? Which then our counties is going to be howling about money lost on tax revenue. So I just wanted to voice my opposition here, and thank you for your time. Appreciate it.

**BOSTELMAN:** Thank you for your testimony. Are there questions? You know, one other--

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**MERLYN BARTELS:** Thank you.

**BOSTELMAN:** Before you take off, I think one other thing, to your point, you would lose base acres potentially, too, wouldn't you?

**MERLYN BARTELS:** What was that?

**BOSTELMAN:** Your base acres, you'd probably lose base acres off that potentially if you had to--

**MERLYN BARTELS:** Yeah.

**BOSTELMAN:** --convert row crop ground into--

**MERLYN BARTELS:** Yeah, I would-- it would probably--

**BOSTELMAN:** So you'd lose your base acres?

**MERLYN BARTELS:** I would think you'd lose those. If it's going to be a permanent buffer, you would lose some of those base acres with a USDA government program, or I would assume they would ask you to take them off, anyway.

**BOSTELMAN:** OK. Senator Moser.

**MOSER:** Do you test your water for nitrates, your drinking water?

**MERLYN BARTELS:** I have on a place that we lived on. I have actually moved off of there now and moved to Lincoln because I'm retiring. But several years ago, we did do that because they was asking or recommending it with the NRD, the Lower Republican.

**MOSER:** Did you have a high rate of nitrates?

**MERLYN BARTELS:** Yeah, we did, and I had to put it in reverse osmosis system and it brought it right down. And the-- the thing we noticed right away was how much clearer the water was when we put the reverse osmosis system in. And, you know, you're just used to drinking water out of a well, but when we put the reverse osmosis in, the water was a lot clearer when you held it up in your glass, so-- and we tested it afterwards and it brought it down below the level that they recommended, so it was working.

**MOSER:** We-- we-- we dipped our heads in the irrigation ditch and drank the water right out of the ditch.

**MERLYN BARTELS:** Yeah.



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**MOSER:** I'm probably going to glow in the dark.

**MERLYN BARTELS:** We used to drink it out of the pipes, too, so, and stuff, so anyway.

**MOSER:** It was good.

**MERLYN BARTELS:** Yeah.

**BOSTELMAN:** Seeing no other questions, thank you for coming today.

**MERLYN BARTELS:** All right. Thank you.

**BOSTELMAN:** Next opponent for LB40. Anyone else like to testify as an opponent? How about neutral testifiers for LB40?

**JOHN HANSEN:** Good afternoon again, Mr. Chairman. Again, for the record, my name is John Hansen, J-o-h-n H-a-n-s-e-n, and I'm the president of Nebraska Farmers Union. Thank you for the opportunity to appear before you today. I have spent my life working in conservation and conservation cost-share programs, as did my father and my grandfather, and so the-- the things that I've learned as a public official is that you educate and you incent and you have a small number of producers who really don't care. You can't make people care, I've come to find out. But the majority of folks want to do the right thing and, once they know what the right thing is to protect their soil and water resources for future generations, if you can provide the economic incentives to them and take away the financial barrier for both putting the practice on the land, but also having the practice on the land, so that it can't cost them more money than they can afford to do the right thing. So educate, educate and incent and incent, that's what works. And so that's what we found out in the Lower Elkhorn NRD. We had the first land and water assistance program in the state. It was wildly successful. We stepped in. We cost-shared with landowners with all of the practices that the feds and USDA was cost-sharing. When they ran out of money, we stepped in, same cost share, same practices. It dramatically expanded conservation use because Nebraska continues to still not get as much money as we have demand for conservation cost-share programs. So when you look at Nebraska as a state, we're the only state in the Union that spends more local and state money on conservation cost-share programs of one kind or another than we get in federal dollars. So we have a remarkable system in our state, and it works when we educate and we incent. So we are strongly opposed to LB40 with the green copy. And so I got the white copy this morning of the amendment. It did things

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that we thought needed to be done. It exempted grazing lands. It took out the mandatory part. It made a lot of progress in terms of getting closer to something that we could be agreeable with. We still haven't landed there yet. We still want to know more. But I think that we have a delivery system in our state that works. Our NRD system is-- has done, I think, a very good job of being able to work with landowners, and so anytime that we can make more money available to them to help provide cost-share dollars, I think, at the end, that's the investment that's the wise investment to make. I think that's how you get conservation on the land. That's how you get things done. Relative to water quality, which is the other part of this bill, when I was on the Lower Elkhorn NRD from '74 to '90, the-- here we are, we're a local government entity, and we're supposed to be managing groundwater. Well, how do you manage groundwater if you don't have any data or information? So I led the effort to help establish the-- what at the time was the first groundwater monitoring program in the state. And I said, If you can't measure it, how do you manage it? You can't possibly have the facts and the information you need in order to be able to make tough management decisions when the river runs dry and people are beating on you from all kinds of directions to do something. So the gathering of information then led me to ask the question, who else is gathering information about groundwater quality as well as quantity, and what I found out then, and what I still believe is the case, that there is not a coherent, coordinated, comprehensive program that takes all the different kinds of information that's gathered by all the different kinds of entities with different kinds of standards and needs and uses and puts them into a-- a singular, managed central system that can be evaluated and used in a helpful and constructive way relative to trying to figure out what exactly is going on beneath the surface of the earth relative to where groundwater is and how it operates, which is-- has its own system of gradients and flows. And just because water flows one direction on the surface, doesn't mean that's the direction it flows under the ground. It is complicated. We need a better system. And with that, I'd end my comments and-- and be glad to answer any questions.

**BOSTELMAN:** Thank you. Questions from the committee? Seeing none, thank you for your testimony.

**JOHN HANSEN:** Thank you.

**BOSTELMAN:** Anybody else to testify in the neutral? Welcome to Natural Resources. You can go ahead and start.

**DAVID HUTCHINSON:** Thank you. David Hutchinson, D-a-v-i-d H-u-t-c-h-i-n-s-o-n. I've been organic for 50 years. I've been certified for 35 years and I'm Audubon certified. Solve some of these problems, rotate crops. If you start rotating crops-- I have organic friends that farm. They rotate their crops, they don't need artificial fertilizer, use legumes, use alf-- like alfalfa. There's 22,000 tons of nitrogen in the atmosphere, so all you have to do is balance the soil, have the right "microbials," and that'll help with the nitrogen problem. And wherever you have nitrogen problems, you have chemical problems. "Glycophosphate" [SIC]-- and some of this literature that I'm handing out talks about "glycophosphate," which is Roundup-- it's terrible for your gut, it's terrible for your health, it's terrible for the animals. We are-- we have-- we run an all-grass program. Some of our philosophy is grass-fed, grass-fed, never the feedlot. And the NRDs celebrated 50 years of progress. They started out planting trees. One of the problems is they still plant cedar trees and then there's programs, because they spread near pastures, to cut those cedar trees. They need to do like Canada and plant blue spruce or white pine or jack pine and forget cedar trees. That's a problem when you encourage the planting of them and then they get in your pastures and there's programs that help you finance to cut those out. Drainage tile, they talk about these buffer zones. But everybody had a cost-sharing with farmers for drainage tiles. Well, that's-- all that does is put all the pollutants under your neighbor-- or your streams. You want to keep those streams clean, and that's the way to do it, is plant-- go back to waterways. You know, they used to be, if you had hill pastures at your farm, you'd build terraces around that. Well, then they started putting drain-- they had waterways to help clean that up, and now they use drainage tiles. They need to get away from that because all that does is put those pollutants onto your neighbor. And I like the mission statement that NRD has, but they need to follow that. I'll give an example. When NPPD was going to come through the Sandhills with an R-30-- 345 power line, 220 miles right through the middle of the Sandhills, they were going to go over seven streams. Where was the NRD to help us?. It was gonna-- you know, they're-- they want to protect this land, the health of the streams, and the wildlife, and that was the big problem because they were going to kill a lot of eagles, the whooping crane. So we need your help through-- they need to stand behind what their mission statement is. Let's see. Well, the cover crops that they talked about earlier, they don't work if you spray them. If they plant-- they encourage you to plant those in the fall and then if you spray 'em, you destroyed everything good about it because it'll kill the earthworms, it'll kill the "microbials" in the soil. The way the

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organic people do that, they got livestock and they'll pasture those and then they'll tear it up. And it was-- then it's real easy to tear it up because they pastured it. And then you get the manure and it recycles back in. That works. But if you plant the cover crops in the fall and you spray them in the spring to kill it, forget it. It's a waste. It's a waste of time, waste of money, and it destroys the soil. Is my time up or--

**BOSTELMAN:** You've got a minute to wrap up, or less.

**MOSER:** You can quit anytime if you want.

**DAVID HUTCHINSON:** Well, I just-- I appreciate the time, but we need to read the mission statement and follow up on it. And-- And they're already testing in most of these districts for the nitrates and in the streams. That's already being done. So some of the stuff that they want to do, it's already being done. You don't need to duplicate it because they're already testing for the water and to make sure that the people are not putting up too many fertilizers. In my case, I'm 100 percent grass-fed. And the roots, when you rotate the pastures, the roots go down 13 feet, and so like the last two years, we've been pretty droughty, but because we took care of the grass, we were able to maintain just what we've done in the past. Thank you for your time.

**BOSTELMAN:** Thank you for your testimony. Are there questions from committee members? Senator Moser.

**MOSER:** Do you test your water, drinking water, for nitrates?

**DAVID HUTCHINSON:** Yes.

**MOSER:** And does your water pass?

**DAVID HUTCHINSON:** They said it was the purest water they've ever seen. Here's a picture of it. I [INAUDIBLE]

**MOSER:** Yeah, it looks good. I like that.

**DAVID HUTCHINSON:** We have 17 artesian springs on our ranch. This is one of the better ones, but--

**MOSER:** That water just flows naturally out of there?

**DAVID HUTCHINSON:** Yes.

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**HUGHES:** Wow.

**DAVID HUTCHINSON:** That's why we need to protect that. Another thing they protect is the bogs, the fens, and that's a federal deal. And if you build a power line through these meadows, it would be disastrous for the fens. But our water, I mean, it'd be impossible to-- to take a big vehicle through these meadows. These used to be lakes years ago.

**MOSER:** Where-- where is your farm at?

**DAVID HUTCHINSON:** It's at Rose, Nebraska. I have land in Rock and Brown County. Rose is south of Bassett, between Bassett and Taylor, and I'm-- I'm eight miles west of there.

**MOSER:** OK. Thank you.

**DAVID HUTCHINSON:** It's three miles to my mailbox, by the way.

**MOSER:** I love that picture.

**DAVID HUTCHINSON:** Thank you for your time.

**HUGHES:** Thank you.

**BOSTELMAN:** Thank you for your testimony.

**DAVID HUTCHINSON:** When you get done reading that, you get a master's degree, by the way.

**BOSTELMAN:** Thank you for your testimony. Next neutral testifier, LB40. Good afternoon.

**BETH BAZYN FERRELL:** Good afternoon. Chairman Bostelman, members of the Committee, for the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing neutral on this bill. We did have a chance to look at the amendment and the bill, and so our-- my comments are going to be focused on language that's in both the bill and the amendment. And it's the language that has to do with preventing contamination of the plantings that are on the buffer strips, preventing contamination with noxious weeds, the seeds for those. We were here a couple of weeks ago testifying in support of a bill that would provide funding for riparian vegetation control, and that's been a great program and we-- we appreciate seeing the language in the bill that would kind of keep those noxious seeds out

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of any kinds of waterways. With that, when we looked at the bill initially, when it was under the Department of Agriculture, we kind of read the language as-- it says: Only seed mixes verified by the department would be eligible to be planted. We kind of read that as, OK, that would be the list that the Department of Agriculture creates of noxious weeds in the state of Nebraska. That same language is in the amendment, and where the department here in the amendment is the Department of Natural Resources, we think there might just need to be a clarification there. Senator Blood also mentioned the Arboretum being involved in that, and so we would just suggest that there would be some-- maybe some clarifying language in there. So I would be happy to answer questions.

**BOSTELMAN:** OK. Thank you for your testimony. Are there questions from committee? Seeing none, thank you for coming in today. Next neutral testifier, please. Anyone else like to testify in a neutral capacity? Seeing none, Senator Blood, you're welcome to close. For the-- for the record, before I get-- let me go back to the front before I forget. Give me just a second. We have 21 proponents, 8 opponents, and 2 neutral-- neutral testifiers.

**BLOOD:** So, Senator Bostelman, I originally told you I'd stay for additional questions, but you got the vast majority of questions answered at the beginning, and I need to pop down to Judiciary. I didn't know we were going to be here so long. So I'm going to answer some of the concerns and scoot out, so I apologize in advance. But I will say that last gentleman was rocking that leather jacket, wasn't he, like with-- so I want to address the-- the comment from the Farm Bureau in reference to what types of plants are going to be-- we would utilize in the-- the buffers. As we mentioned, it's indigenous plants. Indigenous plants actually are the best things to utilize for something like that because they do-- they are no-mow and they eliminate the weeds. So I really encourage those of you that have never done so to meet with the Nebraska Arboretum and learn more about indigenous plants, because you'll see they're being used more and more across Nebraska for purposes like this, and for those that are embracing pollinators, because we know that the pristine green grass that we see on many people's yards are one of the issues our pollinators are dying off. So I agree research is needed, which is why I came to this committee six years ago asking for research. I got blown off. So I just want to put that on record. I also want to put on record that wildlife did come back after Minn-- Minnesota implemented their program, so I understand the concern that wildlife-- that wildlife came and created a problem. But it also-- what needs to be mentioned is that that may have created a secondary

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issue, but the primary issue, the nitrate levels going down, that also happened, so sometimes we have to balance out the good and the bad. Again, voluntary program, not a mandate. I said from the very beginning in my introduction that this is a potential starting point and to please consider how we could perhaps use the amendment version as an opportunity or a springboard to do better. We heard opposition-- opposition say we shouldn't throw money at the problem but in the same breath say the Governor's Office is throwing \$1 million at the concern, so I think sometimes it's who's addressing the concerns, not as much as the money. Opposition testimony has been more about-- and I'm sorry I'm going so fast. I gotta get out of here. The opposition testimony has been more about the bill than the amendment. Mr. Edson noted that he spoke with my AA and expressed concerns, which we clearly addressed in the amendment. And then I'm glad they brought up technology. Many of you may have remembered that we did do a report for the Ag Committee in reference to blockchain, and we agree that it's an excellent additional tool that could be utilized to address things like nitrates, not to mention save farmers millions of dollars in how they do business. With that, since we are on record. I want to say that I'm really disappointed that Dr. Rogan was referred to as Ms. Rogan and that her resumé was questioned in a way that I did not think was appropriate, and so I just want to make sure that I put that on record before I scoot out of here. And I apologize for ending with something negative, but I appreciate your time today and I have to get to Judiciary. Thank you.

**BOSTELMAN:** Are there questions from--

**BLOOD:** I-- I have to go.

**BOSTELMAN:** OK.

**BLOOD:** So I apologize.

**SLAMA:** I mean, I'll just note that for the next time questions aren't taken by [INAUDIBLE].

**BOSTELMAN:** That'll close our hearing on LB40.