

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

[LB1]

The Committee on Natural Resources met at 10:00 a.m. on Monday, November 7, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None.

SENATOR LANGEMEIER: It is 10:00. We'd like to welcome everyone to the Natural Resources Committee hearing room. We'd like to welcome everybody that's watching this via the Internet and those that are watching this on NET2, as well as those that will be moved across the hall into the, kind of holding area, or the overflow room. We'd like to welcome them that are watching this on closed caption television over there. My name is Chris Langemeier; I'm the Chairman of the Natural Resources Committee. I'd like to introduce the committee members that you see with us here this morning. Starting to my far left, or to your right, we have Senator Jim Smith from Papillion. We have Senator Ken Haar from Malcolm. Then we have Mark Christensen from Imperial. And then we have the Vice Chairman of the committee, Ken Schilz; Senator Schilz is from Ogallala. Laurie Lage is the legal counsel for the Natural Resources Committee. Then moving to my far right, or your far left, we have Barb Koehlmoos who is the committee clerk for the Natural Resources Committee. Then we have Senator Beau McCoy from the Elkhorn area in Omaha. Then we have Senator Tom Carlson from Holdrege. And then we have Senator Annette Dubas from Fullerton, which many of you know. We have three pages that will be helping us today, and they're somewhere over on that side. Maggie Gorgen who is a senior at Doane College. We have Emily Gilmore who's also a senior at Southeast Community College here in Lincoln. And then we have Amanda Miller (sic), who is a senior at UNO...excuse me, UNL. And they will be helping if you want to hand things out; they'll be aiding in that as we go forward. As you came in today, you saw some signs out there. You're going to be asked...if you're coming up to testify before us, you'll see these green sheets. We need you, if you're going to testify, we need you to fill this out in its entirety and it helps us keep an accurate record of today's hearings. When you come up to testify, we ask that you hand it to our committee clerk, Barb, and she will take that from you before you sit down. If you're here today and you're not going to testify, but you'd like to sign in and be part of the record that you're here, there's kind of this spreadsheet-looking form back there that you can just sign in on. You don't have to do both, but this will also...oh, excuse me, we're going to circulate this one around now that you're all seated. So if you're not going to turn in a green one, sign in on this. You don't need to do both. That way we will have a record of you here today. We ask that anything you want to hand to the committee, we ask that you have 12 copies of it so everybody gets something. Also, if you have anything that you want us to see, let's say it's a photo or something like that, in that regard, anything you give us to look at, we're going to keep. You will not get it back. So if you have a photo or something you want to just show us, but you want to keep it, show it to us from your

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

seat there, and then the committee members afterwards can make arrangements to look at it in more detail if they would like to. But anything you give to the committee will become part of the permanent record. We have a very respectful process within the Legislature. We ask that there's no sign of public support or dislike to someone's testimony. The three minutes you get to testify is your three minutes. We want to hear from you and only you, and we ask that you respect that as we go forward. At this time I'd like everybody to take their cell phones out and look at them and make sure they're off. We always get one or two, but we'll take this opportunity for you--and the senators are included in that. (Laughter) We've heard some unique ring calls throughout the years--ducks this last session, very nice. So now that you've done that. When you come forward to testify, as you see that microphone, it's kind of sticking up high in the air, that microphone does not amplify anything in the room. It is merely to record what you're saying. So we ask that you don't touch it, because if you pull it too close to you, then it's all garbled and then we don't understand for the record. We don't know what you said. So we ask that you just leave it. Again, it does not amplify into the room, so you're not doing it to aid in someone hearing your testimony. Up front here, it's very good acoustics in here; we'll be able to hear what you say no matter how loud you speak. So we ask that you don't touch that. Now we have a number of individuals that are in the hearing room that are...we understand there's more people coming; they'll be in the overflow room. At 11:00 we are going to ask, respectively, of the individuals here that if you've testified, we're going to ask that at 11:00, if you've already testified, if you'd please leave this room and go to the overflow and allow those people to come in so they can get ready to testify. And we'll do that every hour as we go through this process. We are going to break at noon for lunch. We will start back here at 1:30, and then finish the day, however long people care to testify. We're not going to limit that in that regard. And with that, I think I have said everything...oh, the lights. Natural Resources Committee, there's a little light, if Barb will turn it on, you'll see that little green light; that will remain on for two minutes. It will go yellow, when that comes on you have one minute left. And when it goes red we ask that you conclude your statement. Now the committee members will be available to ask you questions after your three minutes. So feel free, if you get cut off, and it's something of interest to a committee member, my experience is they will ask you a question to get you to finish that little bit of your testimony. So don't be fearful of that. The other thing that is, for many of you that have testified before us, normally after a particular group, like proponents, we go first with proponents, then we go to opponents, and then neutral testimony, usually we read off a list of people that have sent us in testimony. My e-mail is still getting testimony, so we will not read that in until the very end to try and get everybody that wants to send us testimony via e-mail or letter. I'll read those all in at the very end. We won't be doing those after each section of testifiers today. And with that, there...in this front row you'll see it's reserved. What we're going to ask now is proponents; we're going to start with proponents. If you plan to testify, come up and sit in these seats. And then...they'll fill up pretty quick, but then once you testify we ask you go back and sit in your other seat, and then other people that want to testify then can move up and take these. It will help

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

us in the aiding of working through this process. We will also then take testifiers, after we hear the introduction, we're going to start on my right, or the left side, or your left side of the room, we're going to start there. And then we'll move to the other side, and vice versa, as we bring people forward. So if you'll respectfully work your way up in that manner, it helps us in the time frame of this event. Senator Smith. [LB1]

SENATOR SMITH: Should you clarify proponent relative to the bill? [LB1]

SENATOR LANGEMEIER: Yes. When we start we're going to take proponents. We ask that you say and spell your name when you start. And then we have one little curiosity thing: we want to know your town of residence. So I would be Chris Langemeier and I'd spell it, and Schuyler. So with that we will start the hearing on LB1. And Senator Dubas is going to come up and open. Welcome. [LB1]

SENATOR DUBAS: Thank you very much, Senator Langemeier. Members of the Natural Resources Committee, my name is Senator Annette Dubas, D-u-b-a-s, and I represent District 34. I'd really like to take this opportunity first to thank you for all of your attention to this issue today and in the following days. We're going to have lots of opportunity to hear from many, many people across the state. So I do appreciate your attention to this issue. This really is the start of putting everything on the table so that we as policymakers for our state can discern the facts and make our decisions in a sound and responsible manner. As I visited with many of you over the course of the past several months regarding this legislation, I took your questions and your concerns to heart. LB1 is the culmination of many, many hours of work and research and analysis. That does not mean that this is the end product. And as we all know, more work can follow on any bill once it is introduced. If there are ways we can make this bill stronger and better policy, I am open to that discussion. But we cannot leave this special session without enacting effective and constitutional legislation regarding the routing of oil pipelines in our state. LB1 creates an effective and constitutional legislation that provides Nebraska the routing authority which the federal government has reserved to individual states. By giving routing authority to the Public Service Commission, an independent state agency with duly elected officials, our citizens will have a voice for any concerns. And our state will have the ability to interject conditions to ensure the location of any pipeline serves Nebraska's public interest. The application and hearing process in LB1 also provides pipeline companies due process and a full and fair opportunity to present their case for the economic development aspects, expected job creation, and energy enhancement goals. I've worked to make this an efficient process for route approval with a fast track reapplication to allow for any route variations while still allowing the construction of major oil pipelines across our state. First, I'd like to run through the bill with you and then I will address the legal concerns. And finally I will speak to other pertinent concerns that have risen to the forefront leading up to this special session. Before any major oil pipeline company is granted the use of eminent domain, the Public Service Commission must approve an application. And that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

application will include a description of the proposed route and evidence of consideration of alternative routes, reasons for the proposed route selection, a list of all the governing bodies of counties and municipalities that will be impacted by the route, a description of the product to be transported, the estimated number of employees in Nebraska during construction and during operation--that number should include those who may not live in Nebraska or in the areas of the pipeline, the owner and/or the manager of the pipeline, a plan to comply with the Oil Pipeline Reclamation Act, a list of places along the route that are close to unusually sensitive groundwater areas. The federal government does have a definition for unusually sensitive groundwater areas, but it did not fit well for the use in our more rural settings, and in particular, specific to our precious groundwater. In working with water experts who will testify today, these areas are defined to include Class I aquifers, areas where there's not adequate alternate water sources for community water systems, private irrigation systems, private domestic wells, and private livestock watering systems. These were all areas important to Nebraska's agricultural economy and cultural diversity and identity, but not provided in the federal law. LB1 protects these areas from the intrusion of the placement of a major oil pipeline. This is not a safety regulation in the event of an oil leak or spill. A plan to mitigate or minimize potential impacts to land and connected natural resources, the applicant will also include a written agreement to pay expenses assessed to the pipeline application. This explains the revenue column of the fiscal note that offsets any state expenditure. In order to inform interested parties, the applicant publishes notice in a newspaper in each county where they will place the proposed pipeline. They will also give notice to all of the governing bodies in each of the counties and municipalities. The Public Service Commission will then schedule public hearings and serve those appropriate notices. The commission will seek input from all impacted state agencies and other pertinent entities, as well as public testimony to aid in the processing of the application. The Public Service Commission can explain more about the prehearing conferences that they normally employ during these types of hearings. Next, as the Public Service Commission moves through the process, they will look to these conditions to pass the public interest test. And that will be based on compliance with state and local laws, evidence of the impact of the intrusion on natural resources, and methods to mitigate those impacts, economic and social impacts, efforts to ensure the welfare of the residents along the route, impact of the route on local development, agency reports, application materials and any other relevant factors as determined by the Public Service Commission. We all know the importance of the intent language in any bill; and this bill is no different. And the purpose of the Major Oil Pipeline Siting Act is very clearly stated. Through the application process I seek to ensure the welfare of Nebraskans by protecting our property rights, as well as our natural resources and economic interests. I clearly understand our authority only goes to siting and can no way infringe on the federal government's control of safety, operation, and maintenance of such pipelines. LB1 also includes a savings clause which reinforces that fact by emphatically stating: nothing in this bill shall be construed to regulate any safety issues with respect to any aspect of an interstate oil pipeline. This act is intended to deal solely

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

with the issue of siting, totally apart from safety considerations, and recognizes the expressed preemptions stated in the Federal Pipeline Safety Act of 1994. This legislation is intended to exercise only the remaining sovereign powers of Nebraska which are not included in the category of safety regulations. As a sovereign state, we have the authority and the responsibility to protect our land and natural resources, including our water, because of their value economically and strategically to help us meet the growing demands for agricultural products for both food and fuel. As my original draft legislation was circulated, additional legal and constitutional questions continued to surface. And I worked very closely with several well-known and respected attorneys in this state to address those questions. I am confident we have a legally sound bill. I will speak to that analysis today, but trust that they will follow with their own testimony and give you the full benefit of their experience and legal understanding in a more detailed fashion. This bill is not special legislation. It applies to all pipelines over six inches in diameter. This would include intrastate pipelines, as well as interstate pipelines. As to impeding interstate commerce, there's no differential treatment between interstate and intrastate pipelines. Nebraska also has a legitimate interest in lessening intrusions on our economy, agriculture, land, natural resources, and property rights. Other legal concerns ignore the state's sovereign immunity. We have heard many references equating this to the Boyd County nuclear waste dump and the ensuing lawsuit. It is my understanding that states cannot be sued for monetary damages. In the Boyd County lawsuit, we entered a compact with five other states that was agreed to by the Legislature. In that compact we specifically waived our sovereign immunity which in turn allowed for damages. Even then the money went to the compact states and not to the private companies. We have not signed any such agreement with an oil pipeline company and have not waived our sovereign immunity. Again, there will be more expert testimony to these facts following, but I did want to lay the groundwork to support this bill. I acknowledge the mistaken belief that we are coming into this game far too late for this particular project. However, we have been trying to pass laws for the past three years. Senator Adams, while not introducing any specific legislation, raised many questions in regards to the first pipeline when it passed through our state, especially in regards to the use of eminent domain. Senator Cap Dierks introduced legislation. Senator Sullivan and I conducted an interim study during 2010, and after that several bills were introduced last year. I contend that if the lobbying efforts had spent less time, energy, and money blocking our work, we may not be in this special session today. This is a discussion and a decision that should have been made already. But as is easy to say, 20/20 is...hindsight is 20/20. But we were lobbied to be uncertain about what our rights were. Now we are faced with citizens who feel we have ignored their concerns and misleading and aggressive threats of billion-dollar lawsuits. This makes the challenge before us more difficult, but I don't believe it is insurmountable. I am not opposed to oil pipelines. I understand as long as we remain dependent on fossil fuels, meeting our energy needs will be a challenge. And working with friendly countries provides us many opportunities. I fully understand the economic benefits that come with jobs and additional tax revenues. However, I do not believe giving the federal

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

government, or any private company, complete control over decisions impacting Nebraska's land use is in our best interest. What I seek is simply what other states have and that is a state agency that can have a seat at the table to represent Nebraska's interests when these types of pipeline projects knock on our door, and an eminent domain law that respects all the landowners' rights, but does not inhibit economic progress. While we do have many miles of pipelines crossing our state, none through the Sandhills, this particular type of pipeline brings a different set of circumstances. Conflicting information, along with landowner anxiety over the use of eminent domain, motivated me to become involved in this issue. That motivation has not changed. And a better understanding of what rights we possess as a state has brought me to this chair today. States do have siting authority and that is supported by laws that are on the books in other states. In a meeting held with TransCanada officials last month, they spoke to those laws as being helpful to the process and encouraged us to pursue them ourselves, just not for this particular project. Their ensuing offer acknowledged the concerns that we brought to them. But I believe it also underscored the fact that without a state agency in place, we have no ability to negotiate or find other ways to raise additional questions or concerns and no way to ensure follow-through with those conditions. My time in the Legislature has demonstrated a strong bent for states' rights. We passed a resolution last session to that very point. Comments during floor discussions spoke to the responsibility of state senators to stand up for states' rights, that there is a delicate balance of powers between the state and federal government and it is our job to push and shove a little bit to make sure that balance remains true. It seems to me we are here today to establish that balance and to claim our rights. Life is not risk free. We are constantly weighing the benefits to determine if the outcome is worth the risk. Oil pipelines are no different and we can find many recent examples to demonstrate those inherent risks and the ensuing costs to citizens and government. We have an opportunity before us today to put everything on the scale and determine our next steps. First and foremost, our citizens are demanding an open, honest debate. We have an opportunity after all the bill hearings are finished to advance legislation that will spark that discussion. This issue has been placed squarely on the shoulders of the Legislature. I say we own it and we work diligently to craft responsible policy that will serve us today and well into the future. I thank you again for your attention. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Dubas?
Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. And thank you, Senator Dubas. I know you've spent a lot of hours on this subject and I commend you for it. Do you have the bill in front of you... [LB1]

SENATOR DUBAS: Yes, I do. [LB1]

SENATOR CARLSON: ...so I can refer to some pages here. If we go to page 2, starting

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

in line 16. [LB1]

SENATOR DUBAS: Yes. [LB1]

SENATOR CARLSON: How is that section any different than Senator Avery's bill on eminent domain? [LB1]

SENATOR DUBAS: To be very honest with you, I have not looked at Senator Avery's bill in a great deal of detail. And I believe he's referring to all types of permits. I'm saying this one has to have a state permit in place. [LB1]

SENATOR CARLSON: Okay. And I don't think there's much difference here between what you put in here and his bill. If we go to page 3, starting in line 6: maximize the lawful protection of Nebraska's natural resources. Now you made a statement that life is not risk free; but maximize, does that mean zero risk? If we maximize the lawful protection, does that mean zero risk? [LB1]

SENATOR DUBAS: Let me see if I understand. Am I saying by this that we take all risk away? No. [LB1]

SENATOR CARLSON: Okay. Then in line 8: by requiring the location of routes of major oil pipelines within Nebraska to minimize pipeline intrusion, because the word "minimize" would tell me there is some risk involved... [LB1]

SENATOR DUBAS: Sure. [LB1]

SENATOR CARLSON: ...and a willingness to accept some risk. [LB1]

SENATOR DUBAS: Correct. [LB1]

SENATOR CARLSON: And further in that line: minimize pipeline intrusions on any land areas. What does "any land areas" mean? Because if we get away from...if we get any distance, it doesn't seem to be any restriction there in how far away we need to get from something. Otherwise, "any land areas" is the whole state. [LB1]

SENATOR DUBAS: I think that allows us to take the diversity of our state geography, the aquifer, because it also says, "and connected natural resources." So there are places in this state where our land and our water are connected in different ways. So I think this allows for that diversity of our state...looking at the diversity of our state. [LB1]

SENATOR CARLSON: Okay. On page 9, this gets into expenses, and I'm looking at line 9 on page 9, gets into expenses and if the applicant feels like these expenses are unfair, excessive, erroneous, unlawful, or invalid, then it says the commission shall

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

determine. Should that be a neutral party? [LB1]

SENATOR DUBAS: You know, I think you raise a valid point. We worked with the Public Service Commission on this, so I don't know if that's common to other things that they have done. But again, I think you have raised a valid comment, because I can see the validity of having a neutral party look at that. [LB1]

SENATOR CARLSON: Okay. One other question: page 12, section (e), starting on line 8, "Evidence regarding the pipeline carrier's efforts to ensure the welfare of the residents to the area." Isn't that safety? [LB1]

SENATOR DUBAS: No. [LB1]

SENATOR CARLSON: Okay. [LB1]

SENATOR DUBAS: No, welfare can come into economic concerns, to the way the land is used, excuse me, my voice is just leaving me at a very inopportune time. No, I mean, could it be taken to safety, probably, but I don't think it is exclusive, [LB1]

SENATOR CARLSON: It's not the intent? [LB1]

SENATOR DUBAS: No, no. [LB1]

SENATOR CARLSON: Okay, okay, thank you. [LB1]

SENATOR LANGEMEIER: Senator Schilz. [LB1]

SENATOR SCHILZ: Thank you, Senator Langemeier. Good morning, Senator Dubas. [LB1]

SENATOR DUBAS: Good morning. [LB1]

SENATOR SCHILZ: And welcome back to Lincoln. As I was listening to your testimony a few things popped up in my mind and, obviously, with the enactment of this bill into law it would bring the Public Service Commission into the fray. And then would it set them up as the final say in Nebraska? [LB1]

SENATOR DUBAS: Yes. [LB1]

SENATOR SCHILZ: Is that correct? [LB1]

SENATOR DUBAS: It would create that process through the Public Service Commission. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR SCHILZ: Okay. And then, as I read through this, it kind of struck me a little bit, would this be similar to the NEPA process that the feds have in place and was used on this process from the beginning? [LB1]

SENATOR DUBAS: I think there are similarities, yes. Whether I can speak to that specifically... [LB1]

SENATOR SCHILZ: I guess then my next question...maybe somebody else can answer this better, is what...what would we look at as Nebraska with this law that was not necessarily looked at by the National Environmental Policy Act? [LB1]

SENATOR DUBAS: I think we're looking more specifically to our specific state, our...the geography or our state, the land use, and all of the uniqueness of our state, we're looking at it from a state perspective, where the federal agencies are looking at it from a broader perspective. [LB1]

SENATOR SCHILZ: Right. Right. And then I guess...I guess as you look at this and as you see everything that's transpired and what has gone on, you believe that if this law is put into place, that you can actually...that there could actually be movement of the TransCanada Keystone XL pipeline from where it is now? [LB1]

SENATOR DUBAS: I've never said that this would actually move this proposed route. What I've said is this puts a process in place that allows for citizen involvement, that allows for Nebraska state agencies involvement, to look at it from a Nebraska perspective. [LB1]

SENATOR SCHILZ: Right. [LB1]

SENATOR DUBAS: We can't delegate another agency's decision. [LB1]

SENATOR SCHILZ: Right. And I fully agree with that. I would just ask, you know, I mean is it...is it your intention to have that done, or it all is just about process? [LB1]

SENATOR DUBAS: It's all been about...from the very beginning it's been about process for me. And especially after I looked at what other states have done, and how it is worked to help them bring their particular issues into the conversation. [LB1]

SENATOR SCHILZ: Right. Of course, thank you. And then, you know, on the eminent domain issue, I know that we've sat here and we've heard many things about the eminent domain and this process would set it up to where nothing could be acted upon in the eminent domain until the Presidential Permit was put in place, correct? [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR DUBAS: Until this state permit was put in place. [LB1]

SENATOR SCHILZ: Right. Do you know at this point, has any eminent domain proceedings been enacted upon? [LB1]

SENATOR DUBAS: I don't believe so. [LB1]

SENATOR SCHILZ: Okay, thank you very much. [LB1]

SENATOR LANGEMEIER: Senator Smith. [LB1]

SENATOR SMITH: Thank you, Senator Langemeier. Senator Dubas, I want to just briefly expand on a previous question regarding the involvement of state agencies. And I know you've spoken throughout this, in some of your correspondence with us, and even in your introduction here, the interest in involving the state agencies, and I think that's absolutely critical for Nebraskans to be involved in any process or any issue that affects the state of Nebraska. And my understanding is that over the last two to three years, the state agencies have been involved. And can you distinguish for me what involvement they've had in the past in this process and what your current process would do differently? Would it make them more involved in this process? Can you just elaborate on that for us please? [LB1]

SENATOR DUBAS: Certainly, and I couldn't speak specifically to their involvement in the past; I know as agencies under the Governor's purview it would be his direction, I suppose, to determine what their involvement would be and what they would say. So as to what they've said and done, I couldn't tell you specifically, although I do know that there has been some interaction. What this would do would be allowing the Public Service Commission to ask for specific information related to the project in making their determination. So I think it would allow them that opportunity to ask questions based on that agency's expertise. [LB1]

SENATOR SMITH: And not knowing the details of what's happened in the last two to three years, the involvement of those agencies, do you think it is possible that they have been involved to the degree that we're asking them to be involved in this process? [LB1]

SENATOR DUBAS: Again, you know, I don't have anything to base an answer on other than, you know, again, that...most of those agencies are under the direction of the Governor. So I would assume the Governor had provided them the directions as to what they should ask or say. But I certainly don't know. [LB1]

SENATOR SCHILZ: Thank you, Senator. [LB1]

SENATOR LANGEMEIER: Senator Christensen. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator. Why did you choose the Public Service Commission? I know we have other departments like the Commission on Independent...or the...our commission versus an independent state agency which regulates exploration involvement, the production of crude oil, natural gas, to me seems like a more logical place than Public Service Commission. So why did you choose...? [LB1]

SENATOR DUBAS: I chose the Public Service Commission for a variety of reasons. One, it's an independent state agency. The commissioners are elected by the citizens so there's a responsiveness to their constituents, just like we have. They deal with...they do deal with pipelines, the majority of them natural gas pipelines, but I think there's a familiarity, at least, of the pipelines and that process. They have a regulatory framework already in place that, I think, would lend itself to creating the rules and regulations in looking at these types of particular projects. So I think for those reasons it just seemed to me like a logical place to put this kind of a process. [LB1]

SENATOR CHRISTENSEN: Public Service Commission, what would they do now that would be very similar to this? Could you elaborate a little more on that? You hit on it, but...? [LB1]

SENATOR DUBAS: Again, I think they deal a lot with natural gas pipelines, although those fall under federal regulations too, and have to comply with a different set of rules. But I guess, probably, more towards just the familiarity of pipelines and where they're at in the state and those types of things, and the regulatory framework that they have in place, probably, are the two strongest reasons. [LB1]

SENATOR CHRISTENSEN: I misunderstood you the first time. I thought you were talking about the gas commission. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Schilz. [LB1]

SENATOR SCHILZ: Thank you. Senator Dubas, I was just wondering, you know, we were talking a lot about the Public Service Commission, do you...is there someone here today from the PSC to answer questions? [LB1]

SENATOR DUBAS: I believe they will be coming in in the neutral capacity to testify today. [LB1]

SENATOR SCHILZ: Okay. Great. Thank you. [LB1]

SENATOR LANGEMEIER: Senator McCoy. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR McCOY: Thank you, Chairman Langemeier, and thank you, Senator Dubas. You've talked about the purpose of LB1 as to protect natural resources and aesthetics. I guess my question to you would be, wouldn't all underground pipelines be of concern in those regards, rather than just oil pipelines over six inches? In your legislation, I think, specifically to a pipeline that I have in my district, water table is very near the surface; it's in the Platte River Basin; an anhydrous ammonium pipeline, there's been a number of leaks and a concern to drinking water in particular. Why would we be only concerned, in your legislation, with oil pipelines over six inches? [LB1]

SENATOR DUBAS: As I stated in my testimony, there are a lot of miles of pipelines through our state carrying a variety of different things, many of them natural gas. Those have to comply with FERC regulations and some other things. I'm not familiar with like anhydrous gas, the types of oversight there may be required with those. But I guess this particular issue has been brought to our attention as really not having a great deal of state, if any, state oversight. And so we just felt because of the circumstances dealing with these types of pipelines, the state had the ability to step in. [LB1]

SENATOR McCOY: Would we not, though, if we're going to institute and bring this into more of a state focus, Public Service Commission, wouldn't it make sense to include water pipelines, irrigation pipelines, all that? Wouldn't we want to have that all be something that we look at and be under the purview of the Public Service Commission? [LB1]

SENATOR DUBAS: Rules deal with a lot of different types of material that's being transported, so, irrigation, basically, transporting water. And there are regulations, I think, that these other types of pipelines do already have to comply with. Again, I'm not knowing, specifically, what those may be. But I do think there are a lot of regulations in place dealing with other types of pipelines. It just became apparent that these types of crude oil pipelines had no regulations in place, especially in regards to siting. [LB1]

SENATOR McCOY: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Dubas, I do have some questions. You talked in your testimony a little bit of siting and routing versus safety. And you talked a little bit about a leak in the pipeline. And in your mind, is a leak in the pipeline, is that a safety issue or is that a siting issue? [LB1]

SENATOR DUBAS: A leak would probably raise safety concerns. But do we have agencies who would step in after that...after that happens that would deal with leaks. I don't see that this legislation has anything to do with leaks. [LB1]

SENATOR LANGEMEIER: So if a leak within the Ogallala aquifer is a safety issue with possible contamination, there is not a lot we can do in your bill to prevent that? [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR DUBAS: No. [LB1]

SENATOR LANGEMEIER: So then we go to aesthetics, or routing. And in aesthetics we passed a bill on reclamation which is 100 percent aesthetics. What do you see within your bill...if we can't deal with the leaks, so you can't do siting based on a potential leak, so that means we have to forget about what's in this pipeline. So if a leak, whatever it is, whether it's water, gas, peanut butter and jelly, oil, that's all a safety issue once it's a potential of a leak. So we set that to the side. And now we're focused on a pipe, a piece of steel, something over six inches in diameter. In siting a pipe with nothing in it over six inches in diameter laid across Nebraska in some fashion, what do you feel we gain with LB1 for aesthetics that we don't have now through reclamation that we just passed? What would be a justification to say a blank pipe with nothing in it cannot be within a thousand feet of a house because we don't want to look at it; or it might disrupt your comfort in putting the pipe in the ground? [LB1]

SENATOR DUBAS: The law that we already have in place dealing with reclamation, that's after the fact. Once the pipeline is in, these are the things that you need to make sure that you're dealing with. What this bill would do is look at the before the fact. It's creating a process for land use and taking the different considerations into consideration before the fact, before a pipeline is put in place, looking at land use, looking at the impact on the local area, and all those other things. So again, I think this is a before the fact, where many of the other things are an after the fact. [LB1]

SENATOR LANGEMEIER: So on that note, what is the Public Service Commission to use as a justification for saying let's go through a pasture versus going through a piece of farm ground versus going through a feed lot versus...what is their rationale, because we're not talking about a leak, so what might come out of the pipeline is safety. So we're back to what would justify putting it through grass versus farm ground, or farm ground versus something else? [LB1]

SENATOR DUBAS: By giving them the authority to work with other agencies to take any of those particular agency's concerns into consideration by the creation of some of the definitions...let me see my page here. Again, the geography of our state, the uniqueness of our state, we've got the Sandhills, we've got the heavy clays, we've got a lot of different things, and the way the land interacts across the state allows them to take those particular concerns into consideration as to how a pipeline could affect that area, and affect the economy, affect the land use. [LB1]

SENATOR LANGEMEIER: Okay. And we've been struggling with this. That's why I bring these up. You and I have had these conversations. [LB1]

SENATOR DUBAS: I certainly understand. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR LANGEMEIER: So one more time, when you talk about a clay soil versus a sand soil in Nebraska, and again, we can't talk about a leak because that's safety; we both agree that that's safety, so now we're not thinking about anything that comes out of it, what is the justification to say we should put that pipe in clay versus put it in sand? [LB1]

SENATOR DUBAS: I think, again, by giving the Public Service Commission that opportunity to interact with DEQ, to interact with DNR, bring other experts, even outside of the state agencies that we have in place to help. We have all struggled with these questions and you need to have those people with that particular expertise and background involved in this decision. So I think that allows them to use this process to make that determination. [LB1]

SENATOR LANGEMEIER: Sure. And I asked the question now and hopefully we will get responses as the day goes on. So that's why you get the majority of the questions, I think. Are there any other questions? Seeing none, very well done. Now we will start with proponents of LB1. We're not talking proponents of the pipeline or opponents of the pipeline. We're talking proponents of LB1. And come on up. If we'd have you turn your green sheet in, if you haven't done that already to Barb. Welcome to the Natural Resources Committee. [LB1]

ALAN PETERSON: (Exhibit 1) Thank you, Chairman Langemeier. I am Alan Peterson, A-l-a-n, middle initial E, P-e-t-e-r-s-o-n, and I'm from Lincoln. I'm a lawyer today representing the Nebraska Chapter of Sierra Club. I come here today, and I know time is quite limited, but to try to make three or four main points. Number one is, it's clear from the federal statute involving the Pipeline Safety Act, and it is clear from the remarks of the Secretary of State Environmental Impact Statement, it is clear from the Congressional Research Service that Nebraska does have routing authority and power. It does not have jurisdiction over safety standards with regard to oil pipelines. And it does not have jurisdiction or authority to create standards that might involve safety. However, it is my strong opinion that there is room for state legislation. Other states have passed it. LB1, I know, draws on legislation from other states, particularly Minnesota, Montana. There is a precedent. And the only time I've seen where that's been challenged on a bill, on a law, that said it was not on safety, but on routing, was in Minnesota. And the Court of Appeals of Minnesota said, no, this bill has a...we've called it a "savings clause," or a disclaimer, it's not about safety. The court recognized that and honored it. Four different arguments have been presented by TransCanada, or its representatives, preemption, a commerce clause argument, a claim that this might be special legislation, and a variety of other less prominently mentioned claims. But each of those, and I've prepared my remarks in writing and extended them, because I knew this clock would turn red pretty quick. But each of those is answered by the current bill. It's not special legislation. It fits in the nonsafety area, so it's not preempted. It does not

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

create excessive burdens on interstate commerce. And it simply does not create a risk of damages, that's perhaps most important. The other side's memos ignore the fact. Mr. Speaker, I always honor that red light, unless I might finish my sentence. [LB1]

SENATOR LANGEMEIER: Finish that thought for me. [LB1]

ALAN PETERSON: All right. The other side has ignored the fact that sovereign immunity protects this state from damages against the state. Their memos are wonderful. But they somehow ignore that with the sole exception that Speaker Flood's balance memo did mention it. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB1]

SENATOR HAAR: Thank you for being here. I'll start with the most important question. At one point it was put out that state senators could be sued for damages. We'll start with my concern. (Laughter) [LB1]

ALAN PETERSON: Well, that seems very selfish, but...(laughter). Senator Haar, there is, in my opinion, no risk of a personal liability risk of damages against any individual. The sovereign immunity protects state officers. The immunity of senators is part of that. But you also have other forms of immunity in a statute. But the law is that under preemption under dormant commerce clause or under special legislation, sovereign immunity protects against the damages award only if they could prove they spent money on easements after they had a federal permit, which they don't yet have. In my opinion, and then they found a Nebraska law to be unconstitutional, only then could they collect damages. And I think that would be limited to getting their money back on the easements that they spent money on at that time. So talk about billions, talk about millions, and talk about individual lawsuits is, frankly, puffery and doesn't do a lot of good in advancing the conversation. You could lose a lawsuit and be enjoined from enforcing it. Under any of those theories you can always possibly lose, but no damages, no damages. [LB1]

SENATOR HAAR: So, should I just continue? One of the rumors that's going around is that we could be sued for \$200 billion. Could you tell me a situation where you think we could be sued \$200 billion? [LB1]

ALAN PETERSON: Anybody can sue anybody and they can write as many zeros in the addendum or printer clause, as they wish. I know no rationale, no legal rationale under which that kind of claim makes any sense. You know, lawyers they either act as advocates at which time they may make some pretty strong and even exaggerated claims. Anything that is at least...it's feasible they can argue. Or lawyers can ask, as advisors and counselors, at which time they're supposed to try to be objective and only raise realistic things, including telling their own client you have problems here, you have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

problems there. That's the highest duty that a lawyer can fulfill. I'm an advocate, but I try to honor that second task of lawyers. And talking about billions of dollars, frankly, is beyond the pale. [LB1]

SENATOR HAAR: Today we saw in the newspaper that someone leaked, at least, that President Obama may wait until after the 2012 election because he's getting heat. Because we've heard that TransCanada could sue Nebraska. Could they sue the federal government? Could they sue the President for this? [LB1]

ALAN PETERSON: Sovereign immunity applies there, as it does in state courts, federal courts, state courts, and even in the court of claims unless there is a consent to be sued. I can't imagine such a case. Suing your own regulator for...to hurry up, or whatever. I suppose it's possible, but it is very unlikely and, frankly, I'd say unheard of. [LB1]

SENATOR HAAR: So under the theory you could sue a ham sandwich if you want. [LB1]

ALAN PETERSON: I used to be accused of being able to find a First Amendment argument in a ham sandwich, so. (Laughter) I understand what you're saying. But not realistically, no. [LB1]

SENATOR HAAR: Well, one of the big things that was coming up as well, is that Nebraska lost a lawsuit to your client for \$150 million on the low-level nuclear waste site. [LB1]

ALAN PETERSON: Yes. [LB1]

SENATOR HAAR: So if we could be sued for \$150 million in that case, why can't we be sued for \$200 billion in this case? [LB1]

ALAN PETERSON: In that case, which ended about seven or eight years ago, Nebraska lost a judgment and then settled for about \$150 million; that was a repayment to the commission, a compact commission that I represented, for the money it had spent in trying to site a low-level radioactive waste disposal site in Boyd County. The reason we were allowed to sue for money was because Nebraska expressly waived its sovereign immunity defense. A state can't do that normally through the Legislature. And when the Legislature passed the compact law, as did Kansas, Arkansas, Oklahoma, and Louisiana, all the same law, essentially, it included what amounted to a demand that the commission enforce the law, in court, as necessary. The federal court, the Honorable Judge Richard Kopf from the Eighth Circuit and then the U.S. Supreme Court, by denying cert., agreed that was a waiver of sovereign immunity. There's no waiver here; there's no hint of a waiver. You're protected. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR HAAR: So is that why we can be sued on the Republican River thing, as well, because we're in a compact? [LB1]

ALAN PETERSON: Exactly. [LB1]

SENATOR HAAR: Okay. Well, let's say if this got to court and we were sued that the fact that TransCanada spent over \$300,000 since 2006 opposing legislation on the pipeline and now they're saying we're not doing it fast enough, would the courts take that into consideration? [LB1]

ALAN PETERSON: If I were representing Nebraska being sued by TransCanada, that would be a large part of the evidence; how much of the delay in passing siting regulation might be due to the efforts of TransCanada itself? Sometimes it's called "do you have clean hands" when you ask for relief of an equitable nature like an injunction. If you don't have clean hands, if you've caused the problem, you may be denied any relief. Injunction, by the way, is mentioned in the memo; I want to be sure that's understood when I use that. An injunction is a court order not to go ahead with doing something. In this case, if TransCanada won an injunction of damages, but they won an injunction, they would be entitled to an order telling Nebraska not to enforce either all or part of some piece of legislation. That's the remedy. They might also get a...what's called a declaratory judgment where the court lays out the reasons why an injunction was entered. But, again, the risk in this case of losing a lawsuit doesn't have a lot of zeros on it. I don't think you'd lose it, but I mean I don't want to get into advocacy here. I'm just trying to lay out the issues fairly and without exaggerating, and also without underestimating. Sure there could be a lawsuit. Possibly you could lose. It might well be worth a fight. [LB1]

SENATOR HAAR: And Senator Dubas mentioned a savings clause. And I'm not a lawyer. Talk a little bit more about that too. [LB1]

ALAN PETERSON: That phrase "savings clause" refers to the language in the purpose portions of the bill where it says this is not safety legislation; any ambiguities, nothing should be construed to be safety regulation. Savings clause means...that is language put into legislation to avoid having any incorrect interpretation of ambiguous language. Sometimes savings clause is just another word for the severability clause that we're a little more familiar with. And there is one of those. But I'm sure that what she's referring to is that very careful language that moved this bill away from where an earlier draft that had been circulated was, because that had safety language in it. The savings clause is intended. You know, tie goes to the runner. If there's any ambiguous language that could be interpreted either way, routing versus safety, that language says the Legislature's intent is that it is routing and not safety. The Minnesota statute that was looked at contains shorter...a shorter savings clause, or disclaimer you might call it that.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

But it's the same, and that...the court honored that when it looked at the Minnesota routing law. Said, yes, this is routing, not safety. Look at the language the court said. [LB1]

SENATOR HAAR: And one of the terminologies, and it makes us all nervous to think that we could be sued, now that I know I can't be sued, but...and the terminology has been used: This whole thing is a legal minefield. Could you respond to that? Is this... [LB1]

ALAN PETERSON: I like rhetorical language too, probably more than most, so I'll respond that it might be that the first draft of this bill...because it might well have been preempted, was kind of a minefield. This bill, LB1, has had a mine sweeper go through it. I do not believe it is a minefield now. Sure they could sue; but because of the language of this bill and the specific purposes, and then the criteria for the PSC that are included, they're not safety. They're economic. They deal with overall impact on natural resources of the state of Nebraska, just as it did the Minnesota law. And they deal with things, aesthetics; they deal with economic considerations other than safety. And the bill even includes little mine sweepers in it, I guess you could say, where it specifically says we care about this, this, and this, other than with respect to oil spills. I don't know how the bill could be any more explicit on that point. The mines have been swept as best they can. [LB1]

SENATOR HAAR: Um-hum. And then you also mentioned the fact that...and now we know North Dakota has siting laws, Minnesota, Montana, South Dakota, what effect does that have in court if we're sued? [LB1]

ALAN PETERSON: Let me be very honest, there is a case in the Eighth Circuit which governs us. And it's been referred to in each of the memoranda where Iowa's law regarding oil pipelines was held to be preempted by federal law. And that case governs us. And that's why the mines needed to be swept. The original draft may well have been preempted under that Iowa case. However, that Iowa law incorporated express language about safety and safety standards in all of its portions. So when the Eighth Circuit threw out Iowa's law, it expressly said, the safety portions are interwoven, it's not severable. And so all of the law had to go. That case is certainly one to be looked at very carefully by lawyers, perhaps by an attorney general, or other...the lawyers for the other side. And it's their best case. However, it's no longer on point because of the...well, I'll use the short phrase, the mine sweeping that's gone on. This no longer is a safety oriented bill. And Senator Dubas in her introduction made a careful point of it. People may testify, if they wish, about safety. I know the rules don't forbid the use of any particular words, but this is not a safety bill. This is a routing bill. It's permissible. The federal government says so and it's drafted to make sure that that happens. [LB1]

SENATOR HAAR: Okay. Thank you. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

ALAN PETERSON: Thank you, Senator. [LB1]

SENATOR LANGEMEIER: Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Chairman. You said you are representing the Sierra Club. Are you representing the state, federal or is there a difference? [LB1]

ALAN PETERSON: State chapter only. [LB1]

SENATOR CHRISTENSEN: Okay. What is Sierra Club's stance on fossil fuels versus renewables? [LB1]

ALAN PETERSON: I don't know. [LB1]

AUDIENCE: Oh, oh, oh. (Laughter) [LB1]

SENATOR CHRISTENSEN: I'm done. [LB1]

SENATOR LANGEMEIER: Were you done? We ask that there are no responses from the crowd. This is their opportunity to testify. Senator Schilz. [LB1]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Peterson, thanks for coming in this morning. [LB1]

ALAN PETERSON: Thank you, Senator. [LB1]

SENATOR SCHILZ: Really appreciate it. In your testimony earlier, obviously you were involved in the Boyd County low-level radioactive suit. And even though the facts between the two are definitely night and day difference, I think as a scope and what we see as far as, obviously, the controversy and the potential impact of a lawsuit in that could be somewhat similar. And so, you know, as you said, you may believe that we could prevail in a lawsuit if that would happen with this bill in place. But that still means we have to pay for a lawsuit to defend ourselves. Can you give us any sort of indication as to what...I mean, let's just talk about the Boyd County issue. And maybe you know this, maybe you don't, do you know what the state of Nebraska spent on defending that? [LB1]

ALAN PETERSON: Yes, I do know. The state of Nebraska had an Attorney General who believed that he might have a conflict of interest, either he or one of the other attorneys in the AG Office, and therefore recused the office and hired two...one, and then eventually two very large and very fine national law firms to defend this state. The trial was nine weeks. They charged the state, I believe, over \$25 million, much to the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

chagrin and, I think, even anger of our current Attorney General who fired them, frankly, before things were all over with. But they'd already incurred those bills. If this law or one of the other bills becomes law and is challenged, you have an Attorney General's office and they are...a number of the attorneys are very skilled, including in this area. They're paid a salary. You might have court costs if you lose the case. And if it were formed as a civil rights case, it's possible that TransCanada could claim, oh, you've violated our civil rights, we prevailed and therefore you have to pay our attorney fees, that's possible; but no money judgment, no money judgment. [LB1]

SENATOR SCHILZ: All right. But there is still a cost. [LB1]

ALAN PETERSON: Yes. Absolutely. [LB1]

SENATOR SCHILZ: And there would be an order of folks that would have to do this, when they could possibly be doing something else; because as I've learned in this job, there's usually more problems than there is people or resources to solve them. So thank you very much. [LB1]

ALAN PETERSON: Thank you, Senator. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Senator Dubas. [LB1]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Peterson. Would you expand on the commerce clause issue and explain how this does not, in your opinion, impact commerce issues? [LB1]

ALAN PETERSON: I will. The commerce clause argument has two sides. The first part is, if there's a discrimination between interstate commerce and intrastate commerce, in the law that you would pass, in such a way that the non-Nebraska entity was treated much more harshly in some way than an instate entity, say an intrastate oil pipeline company. If there were a difference of that kind, that could well be a violation of the interstate commerce clause in the U.S. Constitution. The bill you've introduced, so far as I'm aware of, contains no indication of differential treatment, none. There was an earlier argument based on the size of the suggested pipeline limitation that originally, I think, was 25 inches or something. And I know the other side argued, well, that really means interstate commerce, because there aren't any intrastate 25-inch pipelines. I don't know, factually, whether that's true or not, but assume it's true. The six-inch figure you have used is the same as Minnesota's. And it certainly includes both intrastate and interstate. So there is no, in my opinion, there is no differential. The second kind of interstate commerce clause issued is called the dormant commerce clause. And that's sort of the reverse side of the coin of the U.S. Constitution's language where it says Congress shall control interstate commerce. That is read to mean "and states shall not" in the dormant commerce clause theory. And in regard to the dormant commerce clause idea, if there

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

is no differentiation between out-of-staters and in-staters, then they can still look and see whether there is an unfair quantity of burden placed on the out-of-state company, such as TransCanada, as compared to the benefits that are sought to be achieved by the law for Nebraska, the public benefits for Nebraska. And I think you would then be looking at the criteria and the purpose provisions that you've put into this bill, the values of Nebraska that you've put in. And TransCanada would have a burden, I think, a tough burden of showing that the delay, if any, caused by having to go through a Nebraska process is such a burden to them that it overshadows completely the benefit to Nebraska. If they prove that to the satisfaction of a court, that would be a dormant commerce clause claim. They could try to fashion it as a civil rights claim, as I've said, I don't mean to make this complicated, but that's what they could do in order to get attorney fees. Not damages, not damages, you can't do it because of sovereign immunity unless you want to stick a provision in the bill or somebody does that says: and furthermore we consent to a waiver of our sovereign immunity. And that's not going to happen. So that's the commerce clause issue. And I think you're in very good shape. It would be a balancing lawsuit. There would be blows struck on each side. There would be burdens shown from the delay. I don't think, perhaps, they'd have such a good case that some of the delay is caused by their having fought regulation in this state for so long. But it would be a battle. [LB1]

SENATOR DUBAS: Have you had a chance to read the legal memos that TransCanada had done? [LB1]

ALAN PETERSON: Yes, I certainly have. [LB1]

SENATOR DUBAS: Were there any commonalities between the analysis you did on this legislation? I think Dave Domina did one also, and then what they...were there any commonalities at all? [LB1]

ALAN PETERSON: There is one commonality that I found particularly in the memorandum from the Nebraska firm McGrath North. And I think the first paragraph or the first page, and again on the eleventh page, they admit Nebraska can pass a siting law. That's a commonality. I'm sure they can, because...as I said, as I started my three minutes, Secretary of State, the Congressional Research Service agree. And so...even the environmental impact statement says that states have routing authority. There's a whole essay, practically, by Congressional Research that says that's an area...Department of Transportation and Hazardous...pipeline agency, they don't have routing authority, states do. We don't in Nebraska. That's because we don't have the law yet. The other states do, and they haven't been challenged. [LB1]

SENATOR DUBAS: I've spent a great deal of time on this issue. My staff and I have worked very hard researching it and putting the bill together. We put the first draft out and I believe, you know, we asked you to look at that; came back, continued to work on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

it. I wasn't looking for you to tell me what I wanted to hear. I was looking for you to tell me what I needed to hear, because my name is on this bill. [LB1]

ALAN PETERSON: Yes. [LB1]

SENATOR DUBAS: And I need to be able to let my colleagues know that I have approached this in a very responsible manner and I'm not asking them to do anything that would put us in jeopardy, although we're in jeopardy just about any time we pass a bill. But I guess...I've appreciated the information that you've shared, and your thoughts and suggestions you've made in helping us make this a better bill. And I know you passed out in your testimony your credentials, but I think it might be helpful for the record, at least, if you would go into your credentials just a little bit. [LB1]

ALAN PETERSON: All right. I'm 71; I've got a wife and two kids, live in Lincoln. [LB1]

SENATOR LANGEMEIER: We're going to go to your credentials, we're going to narrow this down. [LB1]

SENATOR DUBAS: Maybe not there...more to your legal credentials, please. [LB1]

ALAN PETERSON: I graduated from law school at the University of Nebraska-Lincoln in 1967. I was lucky to be elected by the student body as the...the Law Review student body as the Editor in Chief during my last year. I also was fortunate, a partner and I won the Allen Moot Court Competition, which is just the in-school competition. I worked for a federal judge, Donald P. Lay, of Omaha for a year as his law clerk after that in the Eighth Circuit. I then went to work for Cline Williams law firm in Lincoln; now of Lincoln, Omaha, Aurora, Fort Collins, now a big firm. But there were about a dozen of us at that time when I joined it in '68 as a trial lawyer. I tried cases of all kinds. Somehow got into representing the press. And for more than 35 years was the lobbyist for Media of Nebraska and sometimes for Nebraska Press Association, and sometimes for the broadcasters in the Legislature, and also in court when they got sued for liable or whatever. So I'm an oddball, I think, in that I've been a full-time trial lawyer with a side practice as a lobbyist. I left the firm to finish my career on my own as a governmental relations lawyer and still as a trial lawyer. I tried the nuclear waste case. I'm currently the lead counsel in the lawsuit involving Fremont's immigration law or ordinance, and several other matters. I've been involved in death penalty litigation because I was appointed by the courts to do so. And that's been my career. [LB1]

SENATOR DUBAS: Very good. Thank you very much. [LB1]

SENATOR LANGEMEIER: Senator Smith. Then we'll work our way around. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Great credentials and thank you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

for your testimony today, Mr. Peterson. [LB1]

ALAN PETERSON: Thank you, Senator. [LB1]

SENATOR SMITH: In your exchange with Senator Haar, you made the comment that...and this was related to the chance of litigation, you said that it may be worth the fight. Can you tell me what you mean by "worth the fight?" What is worth the fight? Is it stopping the pipeline or is it moving the pipeline? Can you expand on that? [LB1]

ALAN PETERSON: Yes, absolutely. What I mean by that is that I think Nebraska needs to exercise its constitutionally legitimate authority to have input into where the pipeline should be sited, located, or routed. I don't think that this Legislature should say "move it," nor even that you probably can do that legally. You can set up a procedure, as have the other states, where both the applicant, TransCanada, presumably, and the people of Nebraska each get a fair shot to be heard. And then a decision made by as close an expert body as we have, I suppose, the PSC, having taken all that into consideration whether to approve or not approve the proposed route. And then if there's a lawsuit over that, filed right after you pass a law, or after the PSC rules, or whatever, as I said, I think the risk is not a huge monetary risk. You might be found wrong; a court might say, well, you were wrong; you passed a law in the preempted safety area. It's too close to being a safety law. Or they might say, uh, the burdens on poor TransCanada are too great compared to the Nebraska citizens who claimed those values that are described in the bill. You could lose there. I don't think it's special legislation, but I suppose, theoretically, you could lose on any of these. I don't think there's much damage at risk, I really don't. Maybe you pay...you buy some easements and the state of Nebraska then has its own easements or something. But I don't think there's a damages risk for consequential damages. They knew the risk when they went into this. And they didn't have permits and still don't. So I think, you know, when I say worth the risk, I mean, if I were an oddsmaker, I think you have a better chance to win a lawsuit than they do over a bill such as LB1 and perhaps some of the others. That's what I meant. [LB1]

SENATOR SMITH: Okay. Thank you. And you seem very knowledgeable of this project and the process that's been followed to date over the last two to three years, and I'm going to ask you the same question I asked Senator Dubas following her testimony and that is, you make mention of involving and engaging Nebraska agencies and the best minds in Nebraska. Can you tell me what this bill brings to the table that has not been used to date in this process? [LB1]

ALAN PETERSON: Um-hum. I will try. And I heard her answer and thought it was pretty good. I want to let you know I've been involved for less than a month in this matter; was not brought on earlier. I was brought on more recently. So I'm not the historian on that. However, it's definitely true that this bill would require a look at the Nebraska values, not those of the United States or several states, as did the environmental impact statement.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

It ended up concluding that under normal operation, most areas won't suffer much impact. Well, the sad word "most," I suppose that bothers some of us and makes people on this side rather skeptical. What about the Nebraska specific areas, like the big aquifer, the Sandhills? What about the natural resources? We're entitled to protect our own groundwater. It belongs to the people of this state. Those are specific Nebraska values and they are specified in the bill. And there was no such bill, no such list in front of the Department of State. And Cardno ENTRIX, the very fine engineering company, I think, that did the EIS, but which also listed TransCanada as a major client at the same time they were doing the work. I know that's being looked into. Whether that's really bad or not, I don't know. But it...let me use a Nebraska word: it doesn't smell right. [LB1]

SENATOR SMITH: Well, I think you and I would hope that the involvement of state agencies during this process early on, hopefully they would have represented Nebraska interest during their involvement in this EIS. [LB1]

ALAN PETERSON: I did see in the EIS reference to some input from Nebraska agencies. What the scope of it was I just simply don't know, Senator. But it's a good question. [LB1]

SENATOR SMITH: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Senator McCoy. [LB1]

SENATOR McCOY: Thank you, Chairman Langemeier. And thank you, Mr. Peterson, for your testimony this morning. In your prepared testimony, or summary testimony that you handed out as you sat down this morning, you talk about how LB1 borrows some of the language and concepts from other states, specifically Minnesota and the Enbridge case that was tested in court, and you state that it was found not to be safety and was not preempted. I'd like you to expand, if you could, a little bit on what you exactly mean by that. Because my understanding, and the unpublished opinion in Minnesota, was that it was dealing with a precise location of a pipeline. And that environmental or aesthetic concerns were not part of that state commission or that state statute and therefore were not even...or didn't...weren't even part of the discussion. So, I guess I'd like you to expand, if you would, on are we not comparing apples to oranges here in what we're...and what we're talking about when we're comparing what happened in Minnesota to what hypothetically could happen were we to pass LB1? [LB1]

ALAN PETERSON: Yes, I read that case with great interest and then looked up the Minnesota statute, and even the Minnesota regulations which had been passed in Minnesota; and that case is not very old, it's within the last three or four years, I believe. In that case an individual was objecting to the finding that the route was okay, yes, as to a specific place. But one of his arguments, really his final argument that the court disposed of was that the entire routing statute was preempted by the federal pipeline

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

safety act. That was the argument. So the legal aspect of it didn't focus on just his property at all, it focused on this big question--was there preemption or not? The court looked at the statute which included, as I said earlier, language, like a savings clause, saying this does not deal with safety. It deals with other concerns. And said it is not a safety...it is not a safety, it is a routing statute and therefore it is not preempted. And the Kinley K-i-n-l-e-y case in the Eighth Circuit was specifically discussed by the court and they said this is not like Kinley and Kinley does not govern. My suggestion is that LB1 is most comparable, not to the Iowa law that got thrown out, but to the Minnesota law that was held up against the preemption challenge. I think that's a fair summary. And I would be very pleased to furnish both the Minnesota regulations, which are fairly short and sweet for their PSC, or whatever they call their PSC, as well as the statute. It contains a savings clause more briefly worded than Senator Dubas'; says the same thing. [LB1]

SENATOR McCOY: I appreciate that. Is there not though a difference between talking about a precise location and then bringing in environmental and aesthetic concerns, because it would seem to me to be difficult to divorce the subject of environmental or aesthetic comparison versus a precise location of a pipeline. [LB1]

ALAN PETERSON: Hmm. [LB1]

SENATOR McCOY: To me we're talking about different things here, it would seem, when we're speaking of precise location, but at...whereas with LB1 where we're bringing in safety...or pardon me, environmental and aesthetic concerns, it would...the court seemed to decide that they...that it wasn't preempted by safety because it was speaking of a precise location. It's my understanding environmental and aesthetic concerns weren't part of the discussion at all. Is that correct or not? [LB1]

ALAN PETERSON: No, I don't think that that's a correct summary of the case. It always kind of depends how the lawyers framed the issue for the court. And the way the issue was framed was an attack on the entire routing statute as being preempted on this very broad ground of no, no, it's safety, not routing. And even though the individual complaining about his property was concerned about a specific area, that was not at all, in my opinion, the deciding point of the case. It was, was the whole Minnesota routing law preempted by the Federal Pipeline Safety Act? And the answer was no. So, I see where you're coming from, but they...he didn't...the court just didn't rely on those specific facts as the basis. It was the broader issue of preemption. [LB1]

SENATOR McCOY: Thank you. [LB1]

ALAN PETERSON: Thank you, Senator. [LB1]

SENATOR LANGEMEIER: Senator Haar, among others with questions. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR HAAR: Yeah. Going back, when you said something that...about, you know, in terms of buying up the easements and so on, could we in any sense be held responsible for the easements that are purchased before the permit in your opinion? [LB1]

ALAN PETERSON: You know, that's one I would give an economist answer, "on the one hand and on the other hand." In my opinion it would be a very strong argument. And I know Mr. Domina, who is another lawyer, his office looked at this, feels, perhaps, even more strongly than I do. I don't think so. I think that if a pipeline company has...like a prospective home builder building on the hope he can sell it because somebody will like it, they take the risk of making expenditures before they have a right to lay one inch of pipeline in the state. However, I would say that after they get a Presidential Permit, if they get one, if they then rely on that, buy some more easements, or condemn some and pay the price for condemning them, and then Nebraska's law is held unconstitutional for whatever reason, if they bring their case as a reverse condemnation or reverse eminent domain they could claim, but by our regulation we have taken their easements and we have to pay for them. I don't see how they could say that with regard to anything before they even have a permit. And I really don't think they have any right to do eminent domain either, because they can't show a public purpose which is required until they have a permit to lay the pipe. Those are lawyer arguments. That's the side I think is stronger. TransCanada has 1,800 lawyers or so, as near as I can tell. They'll present theirs very well I'm sure. [LB1]

SENATOR HAAR: Well one of the threats that was given to us, and I'm not sure who told me this on the floor, another senator, that we could, you know, if the Texas oil companies are expecting crude and they don't get it now exactly when they thought, that we could be sued by Texas. [LB1]

ALAN PETERSON: I haven't seen any threats from Texas or any of these other states. A lawsuit between states is in the United States Supreme Court. They're extraordinarily rare. Sometimes they go as long as 50...I think the record may be more like a hundred years, the Kansas-Nebraska lawsuit is in the U.S. Supreme Court. I don't know that that's a legitimate threat, because I haven't seen any such threats. To me that may be a little bit like all the people that hang the wonderful ghosts and witches in the air on their trees around their front yard, they're not real. If there are real threats, then they should be analyzed. And Nebraska has a fine Attorney General's office, can take a look at them. I don't understand why TransCanada would suggest that states, who usually can speak for themselves, are going to sue Nebraska. [LB1]

SENATOR HAAR: Those things on the trees used to scare me, but no more. (Laughter) [LB1]

SENATOR LANGEMEIER: Senator Schilz. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR SCHILZ: Thank you, Senator Langemeier. Once again, Mr. Peterson, thanks again for putting up with all of our questions. You talked about the engineering firm that was picked by the State Department to do the EIS on this project, right? [LB1]

ALAN PETERSON: They were picked, as I understand it, from a list of three with that one being at the top and, and therefore recommended by TransCanada. But I'm going by the New York Times article. I don't have independent research on that. [LB1]

SENATOR SCHILZ: Right. So you do not understand how the process works at the State Department and how they pick their EIS folks? [LB1]

ALAN PETERSON: Well, I understand what I read, if it's correct, they were given a list of recommended engineers to do the EIS by TransCanada. The one at the top of the list was Cardno ENTRIX, which is a global, very fine, I think, engineering company, American and Australian,... [LB1]

SENATOR SCHILZ: Uh-hum. [LB1]

ALAN PETERSON: ...which had done prior work. Not only, I think, on the first Keystone pipeline, but possibly on some other projects for the company. TransCanada will know the facts of that. That might be better directed to them, because I don't want to make up any facts. [LB1]

SENATOR SCHILZ: Right, sure. Right, I understand. Okay. I understand that. And as I looked at LB1, it looks to me like we asked the PSC to do this and then the agency that they have to keep the share...to keep their costs down where they are and keep them out there and then we ask, whoever it might be, whichever pipeline it could be, whether it's TransCanada or whoever, to pay for that, correct? [LB1]

ALAN PETERSON: Yes. Very common in any kind of regulatory matter. [LB1]

SENATOR SCHILZ: So what we may be looking at here, when you talk about what happened at the State Department, is exactly the same thing as we're talking about here. [LB1]

ALAN PETERSON: Oh, I see what you're saying. You make a very good point. I think that's absolutely right. It's common for the applicant to pay the costs. [LB1]

SENATOR SCHILZ: And so if you're... [LB1]

ALAN PETERSON: But not to pick the judge. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR SCHILZ: Right. I understand that. But as you look at it, and then you say that this engineering firm is one of the best in the world, which is... [LB1]

ALAN PETERSON: They have a wonderful reputation. [LB1]

SENATOR SCHILZ: Okay. And I don't disagree with that. I don't know per se, but I'll take your word for it. Then wouldn't you want to have somebody that is well respected to be one of your biggest clients to get things done right if you're TransCanada? And so what it means is that when TransCanada pays them, does that then notch them up as a larger client of theirs already, even though they're doing the work for the State Department? And I don't know how that works. I'm just asking the question. [LB1]

ALAN PETERSON: See the problem is, as I understand it, the engineering company is hired by the Department of State. The bills do go to TransCanada. But for some reason, Cardno ENTRIX listed TransCanada as one of its major clients. [LB1]

SENATOR SCHILZ: Sure. [LB1]

ALAN PETERSON: It's problematic, but I think it's being looked into, perhaps, by Congress and I don't want to go beyond what I read in the papers. [LB1]

SENATOR SCHILZ: Sure. Sure. And I appreciate that. My next question is somewhat...and it gets a little bit off of what all we've been talking about here, but it's more of a philosophical question about Nebraska and if we look to enact a pipeline routing bill that goes into place and we put down parameters of what we've all heard, that we don't want it going over the aquifer and that we don't want it going through sensitive areas of the state, first of all the question would be...and it's kind of two parts, okay, then where do we move it? And second of all, if you're for the pipeline, but for a different route, and let's just consider that you take all of the risks that have been put out there at face value and it being true and real, if the pipeline is moved, does it not affect the same amount or maybe even more people with the same risk that you would be moving it from now? And how as a Legislature are we supposed to take that into effect and decide who should "pick winners and losers here?" That's where I'm coming into some real conflict. [LB1]

ALAN PETERSON: Yeah, it seems to me that for the Legislature the best thing to do, as is done in many other technical questions, is to find the agency or governmental entity best equipped with the most expertise to make the decision. And I know the bill calls for input from...what are they called, everybody with a dog in the hunt, or whatever you want to call it. Stakeholders, I think that's the clause. That seems to be the best way. Somebody's got to make a decision. It isn't easy. I know when there's another bill suggesting that our head of Nebraska, the Governor make the decision after getting full input. This bill, it seems to me does head in the direction of more expertise to make a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

good decision. And this bill doesn't set the decision at all. It sets a forum. [LB1]

SENATOR SCHILZ: Absolutely. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Peterson, thank you for being here today. I'm impressed with your background and knowledge. I want to comment on a statement that I think I heard you make to Senator Smith and then would ask for your response to it. I believe you said that the people of Nebraska own the groundwater in the state. And it's the state of Nebraska that owns groundwater. [LB1]

ALAN PETERSON: Fair enough, I agree with that. [LB1]

SENATOR CARLSON: The citizen has the right to a beneficial use of that groundwater. [LB1]

ALAN PETERSON: Yes. [LB1]

SENATOR CARLSON: Which would carry with it the idea that if the state determines it's not a beneficial use, then the state has the final say on whether that water can be used or not. It is related to what we're talking about because our water resource is important and we have to go by state law. [LB1]

ALAN PETERSON: I agree with your correction. Rather than saying "the people," which I did as a shorthand, you're correct. State statute, and you undoubtedly know these statutes because of where you live as well as anybody, it is the state that has rights in the groundwater of the state including, of course, the aquifers. That's correct. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

ALAN PETERSON: Thank you for correcting that. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, that was the question I was going to ask you so we got that taken care of. Thank you very much. [LB1]

ALAN PETERSON: Thank you, Senator. [LB1]

SENATOR LANGEMEIER: We will now move on to the next proponent. You're next. We're going to go to that side next. Just tell us your name and where you're from and spell it please. [LB1]

SUSAN SEACREST: (Exhibit 2) Mr. Chairman and members of the Natural Resources

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

Committee, my name is Susan Seacrest. That's spelled S-e-a-c-r-e-s-t. I live in Lincoln and I am here to strongly support Senator Annette Dubas' bill, LB1. I'm going to change the focus of the discussion a little bit towards groundwater, which is an area that I have had experience with. In 1984, while investigating the mystery behind the grave illness of my newborn son, I made some interesting discoveries. I made the discovery that not only is Nebraska the groundwater state, holding more groundwater than any other state, it also is a tremendously important resource for us economically. We're actually the number two or three state in terms of gallons pumped for groundwater in our irrigation industry. I also discovered that groundwater contamination is also a serious issue. So I decided to found the Groundwater Foundation, and I led this organization for 23 years so that the public could have a scientifically sound, politically neutral source of information about the nature of this groundwater. The importance of Nebraska's groundwater was certainly reinforced by the work of experts. One of the world's preeminent hydrologists, John Cherry, compared that when groundwater is contaminated and one tries to clean it up, he compared it to placing a patient on life support when there is no cure possible. Pollution prevention remains the only viable management strategy for groundwater. My three points are in regard to pollution prevention. Number one: Below ground pipelines are difficult to monitor. We know this from recent headlines. Leaks will occur. Subsurface irrigation specialists that I interviewed for the book Rainmakers, told me that leaks occur even more frequently when there are large seasonal changes in soils such as the ones we experience here in Nebraska. When I reflect on this I sometimes think of the pipeline as a very large underground tank carrying a toxic substance directly within the most valuable groundwater resource in the United States. Existing pipelines in our state carrying natural gas are located in other areas. An accident, however small, is a direct attack on a natural resource that provides billions of dollars to Nebraska through our agriculture and related industries. Another thought, less discussed, is that perception, the public perception, the national public perception about the high quality of this national treasure if polluted, or if polluted by even a small spill, could cost Nebraska the opportunity to create long-term jobs using this Ogallala aquifer water. Finally, the pipeline route as proposed, when I reflect on it, seems to be based on short-term financial gain, but also incurs potentially large environmental and economic costs for the rest of us. What I like about Senator Dubas' bill is it provides a legal channel to safely site this pipeline and future projects away from the fragility of the Sandhills and the obvious vulnerability of the Ogallala aquifer. Thank you. [LB1]

SENATOR LANGEMEIER: Well done, Susan. Are there any questions for Ms. Seacrest? Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Susan. Why do you call oil toxic? It's a natural occurring. There's places it meets oil. Why do you call it toxic? [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SUSAN SEACREST: Anything that is a petroleum product contains a variety of substances, and I'm not an expert on oil. So I'm not going to pretend to tell you exactly what's in oil. But one of the substances that we come into contact with quite frequently is benzene in our refined gasoline. I'll give you just a quick example. This example came to me from one of my mentors at the University of Nebraska. If you had a swimming pool the size of Memorial Stadium, which all of us wish we had not been witness to perhaps last Saturday, but let's say that's a swimming pool, three feet deep. A teaspoon of refined gasoline, which contains benzene, would render that swimming pool...any water from that swimming pool, three feet deep, the size of Memorial Stadium, unfit for human consumption. So in my view, that's pretty toxic. I don't think I want benzene in my drinking water and I'm sure you don't want that in yours either, Senator. [LB1]

SENATOR CHRISTENSEN: Well, I agree I don't want it in my drinking water, but it is naturally occurring in oil and to compare it to gasoline, we're not even comparing...there's 132 chemicals in gasoline. Absolutely, that would be toxic and bad. Crude oil is not toxic, in my mind, gasoline is. But... [LB1]

SUSAN SEACREST: Well, we can agree to disagree on that. [LB1]

SENATOR CHRISTENSEN: That's fine. One of our most difficult jobs is, we got to sort through the emotion. [LB1]

SUSAN SEACREST: Right. [LB1]

SENATOR CHRISTENSEN: Look at the facts. [LB1]

SUSAN SEACREST: Absolutely. [LB1]

SENATOR CHRISTENSEN: Let's take the Platte pipeline, it's been in there since 1952. [LB1]

SUSAN SEACREST: Is this the one that goes along the southern route of the state? [LB1]

SENATOR CHRISTENSEN: Yes. And I've got information here that tells me from the Nebraska Oil and Gas Conservation Commission, but do you know how many leaks there's been in that pipeline in the state? [LB1]

SUSAN SEACREST: I think it's been a very safe pipeline as far as my research is concerned and as far as I know, it's not a real active pipeline. I don't think they're flowing a lot through that right at the moment, but it's been a very safe pipeline, yes. [LB1]

SENATOR CHRISTENSEN: I would disagree they're not flowing much through it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

because it's very active right now. [LB1]

SUSAN SEACREST: It could be right now. I know that it's been active in the past. [LB1]

SENATOR CHRISTENSEN: And I don't have...yeah, Platte pipeline carries approximately 162,000 barrels of oil per day and it is actually Alberta crude, which is the same that we're looking at this pipeline. So the reason I bring this up is, when you can get a pipeline that has been that safe, been there for 59 years, it's hard for me to step up and take the emotion... [LB1]

SUSAN SEACREST: I understand. [LB1]

SENATOR CHRISTENSEN: ...that's on this pipeline and say, you know what, we shouldn't build this because it's going to leak, because it's things this direction, because I guess I'm trying to study the facts of what we have in the state, like I said, to sort through the emotion. So I don't disagree with having a process in place for having it evaluated. But, you know, I'm just trying to make a point here that we got examples of things that has been in the pipelines themselves have been very safe. Even TransCanada's first pipeline, in the pipe itself... [LB1]

SUSAN SEACREST: Right, which I worked on, by the way, when I was president of the Groundwater Foundation. And I'm really glad you made this point actually because I knew it was going to come up. I am someone that drives a car. I depend on gasoline every day. I use petroleum products. One of the reasons that the Groundwater Foundation was chartered was precisely your point, which was to sort emotion from scientific fact. And I was proud to say that I think we did a pretty good job of that for many, many years. We balanced different points of view, tried to get the best science available, and then provided in very understandable terms such as my swimming pool analogy to the public. So I think that you're making an excellent point. The Groundwater Foundation under my leadership worked closely with oil companies and industry collaboratively because, honestly, without collaboration between industry and all interested parties, we're not going to get where we need to go unless we're willing to go back to a time when we don't want to go back to, which means we don't have all the modern conveniences and standard of living we enjoy. So I'm glad you brought up your point. My concern, Senator, is really more about the differences between that pipeline built many years ago and some of the differences of this kind of pipeline. We're looking at some differences in scope, in size, and also in location through some very vulnerable, porous, and permeable sands. I know there's even been scientific disagreement on that danger. And I'd like to speak to that for a moment too. A lot of the scientists that you've been reading about are mentors of mine and teachers of mine. And what I'd like to say is, our science is always going to be incomplete. Somebody said earlier, it's really worth the fight. Here's what I'd say to all of you: When the risk is so high, I think that our safeguards also need to be very high. Senator Dubas' bill provides us a process that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

allows us to take a strong look, and a lengthy look, and a deliberative look at all these factors, including the one that Senator Christensen just brought up. I think that when a risk to the Ogallala aquifer is at stake, that is worth a fight. And I'd like to answer that question. That one is worth a long, lengthy public process that is safeguarded on many, many levels. We have been very fortunate with the pipeline that you have alluded to. I hope that we are equally as fortunate in the future. But I will say one thing, if we do have a problem and there is a risk, then we give up a great deal as well. Some of those economic opportunities that I talked about to develop, our groundwater resources here in Nebraska even beyond that of irrigated agriculture. [LB1]

SENATOR CHRISTENSEN: I'd like to make one statement here before I leave, and that is, the Platte pipeline does cross east to west the full length of the Ogallala aquifer. And if you want to study the soils map and go to Lincoln County, it's identical to some of the areas that the Sandhills where we're looking at here. And so...and I've been out on site where it was at and talked to landowners there, so. I've been digging into this a lot and looking at it. [LB1]

SUSAN SEACREST: Good for you. [LB1]

SENATOR CHRISTENSEN: And very torn on this because there's many delicate areas in the state. I've got many areas that we have got lots of blowouts, concerns this way, that has been brought forward. [LB1]

SUSAN SEACREST: I think it's a great...good statement. [LB1]

SENATOR CHRISTENSEN: And so go see how that's been restored. People can go look at the highway, see how that's been restored in the Sandhills. That's one of the reasons why the restoration bill was picked, it was done this last year. But again, I just want to point out both sides...I appreciate your testimony. I'm glad your...foundation. [LB1]

SUSAN SEACREST: Well, and for someone...yeah, I'm here because I devoted so much of my life to understanding and learning about Nebraska's groundwater. And I really like Senator Dubas' bill because it fit very well with the philosophy of the Groundwater Foundation, which is to take a measured deliberative, scientific, and balanced approach to these very difficult issues. So that's why I support it strongly. I'd also say, it's just a privilege to be here and I'm glad that you're digging into that. I wish more people would. That's great. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. You made the statement that risk is so high. It almost sounds like when it comes to the aquifer that you want zero

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

risk. [LB1]

SUSAN SEACREST: I think my statement about risk being high is really in regard to groundwater in general wherever it might occur. And that is because the cleanup of groundwater, remediation of groundwater, may be impossible and it's always very expensive, period. So that's my point about the risk being high. And I doubt if anyone would argue that cleaning up an aquifer is ever easy or inexpensive work. [LB1]

SENATOR CARLSON: In your opinion, the aquifer, as it is today... [LB1]

SUSAN SEACREST: Yes. [LB1]

SENATOR CARLSON: ...do we have a good ample safe water supply today? [LB1]

SUSAN SEACREST: Yes. That's why communities enact wellhead protection ordinances that limit development including gas stations with buried underground storage tanks around their source of domestic water. At least in small communities. That's where I'm mostly familiar. I served for a couple of terms on the National Drinking Water Advisory Council, so I know a little about the importance of wellhead protection as a way to protect drinking water. So, yes, Senator Carlson, we do. Done a good job. [LB1]

SENATOR CARLSON: And I agree with you that we have a bountiful safe water supply. [LB1]

SUSAN SEACREST: Yes. [LB1]

SENATOR CARLSON: I also agree with you that it's very, very important that we protect that water supply. [LB1]

SUSAN SEACREST: Thank you. [LB1]

SENATOR CARLSON: We currently have over 21,000 miles of pipeline in Nebraska. We have thousands of oil wells in Nebraska and their pipelines... [LB1]

SUSAN SEACREST: We also have a lot of irrigation wells. [LB1]

SENATOR CARLSON: ...every one of those, every one of those goes down through the aquifer, and deep, and under great pressure, pumps that crude back to the surface through the aquifer. You don't know, and I don't know, how many leaks there are in those thousands of oil wells but I assume there's probably quite a few. [LB1]

SUSAN SEACREST: Some underground storage tanks too. Add that to your list. [LB1]

Natural Resources Committee
November 07, 2011

SENATOR CARLSON: But we have a safe, ample water supply today and we do need to protect it. You also mentioned something about scientific study and scientific research and I don't remember your statement exactly but it's like, regardless of what's been done and what's been studied, it's always incomplete or there's always room for more? [LB1]

SUSAN SEACREST: No, not at all. And, in fact, I like your point about the pipelines and also the storage tanks and everything because there are very strong federal laws that govern both oil extraction and there's a whole program...it used to be called LUST and that got to be very...too politically incorrect. And so it's now called UST, the Underground Storage Tank program. And also there is a Title 5 under the Safe Drinking Water Act which regulates shallow wells where you can just, you know, can put things, and it might not be so good to get in the drinking water. So there are some safeguards in place, Senator Carlson, both on the federal and state level that I believe have been effective in safeguarding our water supply. And what I like about Senator Dubas' bill...I'll just go back to it, is that it adds one more layer of safety, public input, and scientific review to something that is high risk. I mean, let's get serious. This is a very high-risk operation. It's a very large pipeline. It's going through a very large part of our state through an aquifer that we all agree is critically important to our identity as a state, and to who we are as a state, and to the economic future of our state. So I don't think anybody could argue that the risks aren't there. I'm just saying that Senator Dubas' bill gives us another tool in our tool box. And I'm speaking as a private citizen. I'm a guidance counselor. I have to go teach an ACT prep class in about 10 minutes. So, you know, I'm not...I've changed my gears a little bit. I'm here today because I do love groundwater. I'm not going to get the emotion out of it. I'm going to tell you that I love Nebraska. I love my state. I love the Groundwater Foundation as a volunteer for most of its history because of that love, and of that, I guess, confidence in the Nebraskans to take care of what's ours. [LB1]

SENATOR CARLSON: You are an attractive person, you're an interesting person, you also have a good way of getting off the question that I asked. (Laughter) [LB1]

SUSAN SEACREST: Oh, yeah, I got coached on that from my teenage daughter last night. Thanks. (Laughter) [LB1]

SENATOR CARLSON: Let's go back to scientific research. [LB1]

SUSAN SEACREST: Oh, okay, yeah. [LB1]

SENATOR CARLSON: Tell me what you said about something related to, there's...we have...we want to base our decisions on sound science so we have studies that are being done. But there was something about there's always...they're always incomplete

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

or there's always more to learn. [LB1]

SUSAN SEACREST: Yep. You bet. You just defined science. [LB1]

SENATOR CARLSON: And one of the drawbacks as I see it to maybe having that kind of philosophy is that we want sound science, and we want the university and other institutions to study things that are of interest to us... [LB1]

SUSAN SEACREST: They'll study them forever for you. [LB1]

SENATOR CARLSON: ...and are important to us. And once they get that done, there comes a time we need to act. [LB1]

SUSAN SEACREST: Yep, I agree. [LB1]

SENATOR CARLSON: If we sit back until everything is answered, we'll never do anything. [LB1]

SUSAN SEACREST: Absolutely. [LB1]

SENATOR CARLSON: And that was my point. [LB1]

SUSAN SEACREST: I couldn't agree more. I couldn't agree more. And I'll just give one other quick example. I know time is limited but you know when I first got interested in groundwater, people thought that the earth was a natural filter for land use. And all of my...my parents were both raised on farms in south-central Nebraska, near Red Cloud, Republican Basin. [LB1]

SENATOR CARLSON: My district. [LB1]

SUSAN SEACREST: Wow. Senator Carlson, we probably are related. We're probably cousins, actually. Everybody is related down there. (Laughter) I spent a lot of time in the Republican Basin. When I was with the Groundwater Foundation we did a five-year education project down there on water use over the Republican River Compact. I will tell you that you're absolutely right and at some point we do have to just make a decision. And here's my...here's sort of my historical perspective. When I first got started in this whole area, people first of all told me that it could not not be political, that all water is political. I believe that programs like the Children's Groundwater Festival, Groundwater Guardian, and other programs that we developed were not political. It put into the hands of citizens the protection of their groundwater on a local level. It has to be done locally. But I would also say that the science evolves. So when I first got started, everybody thought, oh, the earth is a natural filter. What we do on the land surface, well, by the time it gets down there to the water table, probably not going to be too much of a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

concern. That science has evolved and changed. And now we know, we're much more cautious about the way we farm and what we do to the benefit of everyone in the state. So science does evolve. At some point you do have to say, this is it. This is where we're going to stop. I'm just saying, I think, for me at least, we might need to take a really careful look right now because this is sort of a new thing, even though we have lots of pipelines. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Schilz. [LB1]

SENATOR SCHILZ: Thank you, Mrs. Seacrest. Thank you for coming in today to... [LB1]

SUSAN SEACREST: Will you...you'll call my principal, won't you for me? Thanks. Never mind. [LB1]

SENATOR SCHILZ: I'll try not to keep you longer than we need to. [LB1]

SUSAN SEACREST: Oh, I'm just kidding. I'm just kidding. [LB1]

SENATOR SCHILZ: I understand you're here today on your own behalf, not as part of the Groundwater. [LB1]

SUSAN SEACREST: Totally on my own benefit. As a citizen. I have absolutely no ties to the Groundwater Foundation whatsoever anymore. I retired four and a half years ago. [LB1]

SENATOR SCHILZ: Sure, okay. Thank you. And then, you know, being knowledgeable on groundwater issues around the state of Nebraska, do you know or can maybe you tell me, as Senator Carlson said, with all of the pipelines that have been in place over there, how many crude oil remediations are we going through in the state of Nebraska at this point? [LB1]

SUSAN SEACREST: Well, Senator Schilz, I'm glad you asked me that because I'll tell you, when I was president of the Groundwater Foundation we were really focusing on groundwater quality on the local level and drinking water and safety issues and health issues. So, you know, to the extent that the oil industry and oil pipelines are a major factor in our state, I'll have to be very honest with you to tell you, I'm outdated. You know, I left Groundwater Foundation four and a half years ago. If I were with the foundation right now, I could get you that information more quickly. I did not research that prior to my testimony today because I take care of a lot of 9th graders and I'm here more as an ethical decision that for me to say nothing, and to not share my enthusiasm,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

and past experience, at a moment in time when we have a state senator who has spent literally weeks and weeks working on getting us some additional protection, I felt I'd be letting Senator Dubas down if I didn't arrive. [LB1]

SENATOR SCHILZ: Right. And then, let me just finish with my last question. [LB1]

SUSAN SEACREST: But I'm not an expert on that. I don't know the answer. [LB1]

SENATOR SCHILZ: Right, I appreciate that. And then to the philosophical question that I asked Mr. Peterson. [LB1]

SUSAN SEACREST: I love those. Love those. [LB1]

SENATOR SCHILZ: You know, when you're sitting here and you're looking at it on a statewide level, and somebody says, well, we could just solve this by moving the pipeline. [LB1]

SUSAN SEACREST: Yes. Right. [LB1]

SENATOR SCHILZ: If you take all the risks that we face, by how...how do you make that decision and how do you justify where all of these... [LB1]

SUSAN SEACREST: Yep, that's very good. That's the key question. That's the key question in my view. [LB1]

SENATOR SCHILZ: Go ahead. [LB1]

SUSAN SEACREST I used to have a short answer, not a really good one. [LB1]

SENATOR SCHILZ: Remember you got an ACT class. [LB1]

SENATOR LANGEMEIER: I need the short one today. (Laughter) I have three more questions in three minutes, so. [LB1]

SUSAN SEACREST: Okay. My backyard is open, and I mean that sincerely. I don't think this is about nimbyism. My backyard is open. I live in eastern Nebraska. I've got tons of environmental stuff to happen around me all the time. I'm not out on the Middle Loup River. I'm not out on the Snake River Falls area. I'm not out there. I'm in Lincoln, Nebraska, in suburbia. Come through my backyard. [LB1]

SENATOR SCHILZ: Thank you very much. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR HAAR: We like to make decisions based on sound science. On this particular issue, we have scientists on both sides. It's not that we keep asking for more and more and more, but we have scientists solidly on both sides. Is that unusual? How do you account for that? [LB1]

SUSAN SEACREST: I don't. I have to say that I've been very confused and disappointed by some of the recent discussion, public discussion on this issue. Because when I was learning about groundwater, I was taught that gravity is important when it comes to protecting groundwater and that groundwater quality is the footprint of human endeavor. Did you know that they can find...traces of radioactivity in Hastings, Nebraska, from a watch factory that was located there in 1930? So if our groundwater is really the final, moral test, of what we do as citizens, if it finally tells a tale of our community, the history of our community, then I would say that anything as large-scale as this pipeline that we all agree we need, we want, and we're not opposed to, needs to be carefully, carefully sited where it will do the very least damage imaginable. [LB1]

SENATOR HAAR: So do you think that science is there that tells us it's safe? [LB1]

SUSAN SEACREST: I don't know. I'm confused myself. I'm very...how can I say this. When I was learning about groundwater, it was a little bit more direct. Groundwater, I was told, that gravity tells all. That contaminants move down. They move down into the water table and that's why we have to be careful. When you have a pipeline, you're going to have a little more ambiguity. Dr. Roy Spalding wrote yesterday about that ambiguity in the Lincoln Journal Star. Many of you may have read that article. What happens when you're cleaning up groundwater, and gravity has taken it down below the surface, you may have numerous wells. You talked about the oil wells. Think about the irrigation wells in this state. Each one of those irrigation wells creates what's called a cone of depression. When the cone of depression is formed and the irrigation well pumps, and you all know this because you're all...many of you are in farming and you understand this, that water is going to flow faster towards the point of pumping. That makes contaminate plumes in Nebraska particularly difficult to predict and Dr. Spalding did make that point in his article yesterday. So, you know, I think that basically the science is not completely unified. I think you've got to take the best of it and then make a decision based on what you think is best. [LB1]

SENATOR HAAR: Thank you. [LB1]

SENATOR LANGEMEIER: Are there any questions? A couple of them backed out so you could make your meeting. Thank you very much. You did a great job. [LB1]

SUSAN SEACREST: Thank you so much. Thank you so much for your time. I'm so appreciative. This was really, really a great opportunity for me. Thank you. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR LANGEMEIER: We appreciate it. Now it is 12:00. We're going to break for lunch and we will be back at 1:30. It is 12:00. We will adjourn until 1:30. [LB1]

BREAK

SENATOR LANGEMEIER: It is 1:30. The Natural Resources Committee will restart again on LB1. I don't think I need to go through all the opening because not a lot of people moved. So at this time, we would ask that you look at your cell phones because you probably used those over the lunch hour, just to make sure those are back off, including my colleagues up here at the table. We will continue. Again we're on proponents, supporters of LB1, and not supporters of the pipeline, but we're focusing on the bill. So with that, we have our first testifier and then we're going to go to this side and then we'll come to you and vice versa, we'll just go down the line. Okay. So, when you're ready. [LB1]

SANDRA ZELLMER: (Exhibit 3) Good afternoon. Thank you, Senator Langemeier, thank you, committee members for giving me the opportunity to speak. I am Sandra Zellmer, Z-e-l-l-m-e-r. I am a professor of environmental and water law at the University of Nebraska Law College. I am not here speaking on behalf of the university by any means. I am speaking under my own steam, as it were. And I guess in the interest of all appropriate disclaimers, I was previously a federal attorney for the federal government so I think that I have some expertise that can be brought to bear on some of the constitutional issues. The questions that have been raised throughout the morning, I was very interested in, and perhaps will be able to do some follow-up on some of those questions. But I also think I have a very unique perspective on federal-state relationships and the strengths of both of those institutions in the framework that we call cooperative federalism, and what role the state can and really should play in that particular relationship. So four topics, state sovereign authority over natural resources, preemption, and also happy to speak about supplemental environmental impact statements and what that might entail. And finally, if time and interest warrant it, I would talk about potential takings liability and some of the parameters of some of the takings cases from our United States Supreme Court. Again, the theme throughout my short talk will be cooperative federalism with Nebraska as a strong partner in the pipeline decision making process. First, state authority over natural resources, water, land use, and land use development, property values. Topsoil. Anyone who has lived through the Dust Bowl. I can't claim to be quite that old myself but anyone who did live through the Dust Bowl and the Great Depression know how important states' involvement in protecting and conserving topsoil and the vegetation that resides on topsoil happens to be. Certainly groundwater and wildlife are all firmly well within the state's traditional police powers. We can come back to that if the senators wish to pursue any questions about that topic, but I wanted to say that LB1 comes well within these traditional state authorities, and it's a fair expression of the state's power. And public trust

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

responsibilities, I would add, over these resources. State authority is not expressly or implicitly preempted by the Pipeline Safety Act. And again under the principles of cooperative federalism, the state has a role to play. And under the plain language of the statute itself, the federal statute, that is, states retain authority to regulate routing of pipelines to achieve economic land use and environmental objectives while the federal government regulates safety. Why does the federal government retain the power, or I could even say, wrest the power for safety regulations over pipelines? Because in this area the federal government has determined, Congress has determined that uniform national standards are critical. That's the end of my three minutes so I've gotten through two points and I'm happy to just entertain questions on anything the senators want to discuss. [LB1]

SENATOR LANGEMEIER: We find the questions will always get them out. So are there questions? Senator Haar. [LB1]

SENATOR HAAR: Yes, I would like to hear your third point, please. [LB1]

SANDRA ZELLMER: The point on the supplemental environmental impact statement? [LB1]

SENATOR HAAR: Yes. [LB1]

SANDRA ZELLMER: Absolutely. You'll have to forgive me. I'm using my husband's iPad. It's a first for me so I'm not all that adept at this new technology. Just because the State Department's environmental impact statement identified the route of this particular pipeline, the Keystone XL pipeline, as its preferred alternative in its EIS, doesn't mean by any means that Nebraska is precluded from engaging in its own analysis, particularly with respect to routing of that pipeline. NEPA, I think Mr. Peterson mentioned this morning, is not a preemptive statute. It doesn't have any kind of preemption provision. And, in fact, many states have NEPA, National Environmental Policy Act--I'm sorry for using the acronym--requirements that complement the federal environmental impact statement analytical requirements and objectives. NEPA, the National Environmental Policy Act, is a look before you leap kind of process that imposes these analytical requirements so we know at the federal level what we're getting ourselves into. And it's not intended to impose substantive nor duplicative nor redundant requirements. That said, and I don't want to overplay this by any means, but if an adequate environmental impact statement had been prepared for the Deepwater Horizon, BP's Deepwater Horizon and off-shore oil drilling deficiencies with that piece of equipment, the blowout preventer device, may have been revealed in advance of the blowout. And there's been a lot of analysis, including some by myself, written about how important NEPA, look before you leap, is. Information is essential. What's that mean to the state of Nebraska? And what's that mean to TransCanada? TransCanada asserts that the EIS process took approximately three years, so if Nebraska requires it to reroute the pipeline,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

TransCanada asserts that it will have to completely redo the EIS. Really, it's the State Department's responsibility, but TransCanada obviously plays a role in the analysis, and that that would lead to further delays and interference with existing contracts in Texas. In fact, under the federal law, and I practiced in this area for four years as a federal litigator, only a supplemental environmental impact statement would be required. If the route were to be moved, and that is at the...within the expertise of the agency if LB1 were to be passed, if the agency would determine that the route should be moved in any way, shape or form, the findings of the initial project's environmental impact statement, and quite possibly the findings from the first Keystone pipeline EIS, could be utilized and updated and made applicable and shed light on the new routing if that were to occur. This, too, simply enhances the effectiveness of state and federal partnerships along the lines of cooperative federalism. So one thing I would add to that is perhaps...anticipating the next question, delay, and it will take some months, I imagine, to prepare a supplemental environmental impact statement, but it's not the same thing as a full-blown, from scratch, whole cloth, brand new environmental impact statement. But delay does not result in a Fifth Amendment taking under our United States Supreme Court precedent. So if anyone wants to address the potential liability issues, particularly Fifth Amendment takings kinds of issues, I'd be happy to go there as well, but I'll stop for the moment. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. Thank you for being here. Is your primary purpose in testifying today about the legality of the state being able to determine siting of a pipeline rather than the merits of the pipeline itself? [LB1]

SANDRA ZELLMER: Yes, absolutely. [LB1]

SENATOR CARLSON: Okay. Okay. [LB1]

SANDRA ZELLMER: I'm here to support in...support of LB1, specifically that bill, and its legality. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Schilz. [LB1]

SENATOR SCHILZ: Thank you. Ms. Zellmer, thanks for coming in today. Happy you did. It says here when you worked for the federal government you actually dealt with the NEPA process... [LB1]

SANDRA ZELLMER: Yes. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR SCHILZ: ...and how that all worked and I was just wondering, as far as I understand in other things that I've been involved where there's a NEPA process, it's a very extensive look at what goes on. And as you said, if I understood your words correctly, your statement was that the BP incident in the Gulf did not have a NEPA examination, whereas, any project like we're talking about today would. And I was just wondering if you could tell us how extensive that is and what kind of things that NEPA process looks at, and then what would be the different things that the state of Nebraska would want to look at that would be...not duplicative, not redundant, in that sense? [LB1]

SANDRA ZELLMER: Excellent. I'd be happy to, Senator Schilz. First, one thing I wanted to make sure, there was an environmental analysis for the Deepwater Horizon well and drilling platform. But it was what's called staged NEPA analysis so the broad-brush comprehensive environmental impact statement was for the five-year leasing program off-shore in the Gulf of Mexico, in this particular region in the Gulf of Mexico. Then there was only an environmental assessment, kind of a...I told my students, it's a 1040 EZ, if you want to compare it to our tax forms. It's basically a truncated, short-form analysis that then tiers to that broader, more comprehensive five-year leasing plan broad analysis that had taken place previously. At the conclusion of that environmental assessment, because it was so narrow under those circumstances for the BP Deepwater Horizon, there was a finding of no significant impact. That specifically, that project would not have significant impacts other than different from the analysis, or the impacts that were considered in the five-year leasing program as a whole in that previous EIS. So there were environmental analyses. I think where that process fell apart was at the EA finding of no significant impact step that actually issued the permit for British Petroleum to go forward with that particular operation. To bring it back around to the relevance, I think, for this situation, is that the final environmental impact statement is indeed a long, comprehensive, arduous, analytical process and here, as I understand it, it's taken a good three years. And that's fairly typical, a full-blown, from whole cloth, environmental impact statement will typically take two to three years. It's not at all uncommon to come back to a previous question, for the federal agency that's issuing the permit or license to authorize the number of environmental consultants and then to work closely in partnership with the developer or the applicant to get that environmental analysis or environmental impact statement prepared. And I understand that that is indeed what happened here. That's not unusual and that's not anything, at least that I would raise an eyebrow over. That's efficient and economical, and after all, who has much of the data that we want to analyze is the company, it's the developer. So that's the way it typically works. Nothing unusual about that. If we were to...if this bill were to pass, and if the agency that's authorized to look at routing issues under this bill, were indeed to determine that some rerouting, either minor or more significant, were to be appropriate, then what would happen is a supplemental environmental impact statement. In effect, it would be a layering upon the basis, the foundation that we already have, the environmental impact statements that we already have. Possibly the first Keystone pipeline EIS, environmental impact statement, would be relevant. Some

Natural Resources Committee
November 07, 2011

of the analysis there might be useful, but certainly the one that has just been prepared for this particular pipeline would be the very foundation of the supplemental EIS. Those, I haven't seen as much data on how long they take or how much they cost so I can't give you specifics. But just anecdotally, six months, nine months. It's more months than it is years. My expertise with supplemental EIS has been primarily for the forest service so it's a very different kind of process. But nonetheless, I think it's probably at least informative on what would happen here. The next question, what more can Nebraska do to add to the analysis? Well, I think, and this actually goes back to Senator McCoy, I think it was your question about anhydrous ammonia pipelines or gas pipelines, and what's the difference between this kind of pipeline and those pipelines, and why is it important for Nebraska to take a more...I don't want to say aggressive, but certainly affirmative probing stance with respect to the analysis for this kind of pipeline, an oil pipeline, is because there are really no comprehensive federal requirements for routing of these kinds of pipelines. So the issues that lie at the very heart of state authority, land use planning and development, I would put as number one, or at least very close to the top of the list. Conservation of our topsoil, conservation of private property land values, conservation and protection of the vegetation, via the vegetation of the sand dunes or the vegetation of whatever other area a pipeline might be routed now or in the future. Our landscapes, the aesthetic appeal of a landscape during and potentially post-construction, fish, and wildlife, and bird habitat, all of those things are things that no one in the federal government is really taking a close look at because the Public Safety Act for hazardous liquids, unlike some of the other statutes related to gas pipelines to some extent, to off-shore oil and gas exploration certainly, there is no strong federal authority like the FERC, Federal Energy Regulatory Commission, that's in place here that would be taking a close look at the kinds of issues that are most near and dear to Nebraska's heart. [LB1]

SENATOR SCHILZ: Okay. Thank you for that answer. With that being said then, and you can correct me if I'm mistaken, but the National Environmental Policy Act would require every agency of the federal government that would have an issue here, say it was Fish and Wildlife Service with endangered species, they would then be required to come in and look at anything that would impact endangered species necessarily. Is that correct? [LB1]

SANDRA ZELLMER: That's correct, but it's under the Endangered Species Act, not under NEPA. So if there were no endangered species involved or impacted in any way, that would not even be a component of this environmental impact statement. But because there are whooping cranes and blowout penstemon and other endangered or threatened federally listed species, that's why the Fish and Wildlife Service is under a duty to weigh in. [LB1]

SENATOR SCHILZ: Right. Right. As far as...okay. Thank you very much. Appreciate it. [LB1]

SENATOR LANGEMEIER: Any other questions? Senator Dubas. [LB1]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Professor Zellmer. In going through what our constitutional authority is, dealing with water, the water belongs to the state of Nebraska. Am I correct in that statement? [LB1]

SANDRA ZELLMER: For the benefit of the people. Absolutely. [LB1]

SENATOR DUBAS: And so if there is what I would perceive to be a public trust, how do you address that public trust through legislation like I've introduced today? [LB1]

SANDRA ZELLMER: Through conservation of the resources to which the public trust applies. And there is no precise definition of the state's public trust responsibilities. The only time at which a state has been found...has been stopped, enjoined from engaging in a project that the state wishes to engage in on the public trust grounds, is when the state gives away the resource. Illinois Central Railroad v. Illinois, the state of Illinois basically gave away Michigan harbor to a railroad company and the Supreme Court, going back some hundred years, said that violates the public trust. You hold these resources in trust for the people, and the precise parameters of your trust responsibility have not yet been clearly defined but we know that an outright giveaway of the resource would violate this public trust responsibility. [LB1]

SENATOR DUBAS: But through addressing concerns through the conservation and those other types of things, we do have that authority and that ability. [LB1]

SANDRA ZELLMER: Absolutely. Absolutely. [LB1]

SENATOR DUBAS: And then you started to talk about something in your opening statement that dealt with the Fifth Amendment and takings. Would you elaborate on that, please? [LB1]

SANDRA ZELLMER: I'd be happy to. TransCanada could claim and, as I understand it, there have been some assertions that they may well claim a regulatory taking of the value of its easements, or some other theory that would reflect the cost that it has so far sunk into this particular project, or that it might be required to expend on the project in the future. Because the entire value of their property, let's say that they did have easements, I understand at this point that they may not yet have easements, but to the extent that they did, only when the entire value of those easements was taken by a state regulation prohibiting the use of those easements in any way, shape, or form, would there be first a per se taking under Lucas v. South Carolina Coastal Council. That's the one that says if you derive, or if you deprive a private property owner of 100 percent of their private property value, you have engaged in a per se taking for which

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

you will be liable under the Fifth Amendment to the Constitution to pay for those easements, if indeed you had taken the entire value of those easements. I don't think that even if there were easements in place, and to be affected by LB1, we would be looking at a Lucas type per se 100 percent diminution in value kind of taking. Rather we would be looking at a balancing test under Supreme Court precedent called Penn Central. And that is the kind of test that looks at whether or not the regulation, the state requirements imposed on the pipeline, have gone too far. In quotes, I say, "too far." This is Justice Oliver Wendell Holmes' statement, a balancing test. A kind of rough and ready balancing test, but basically the factors are, what is the owner's reasonable investment back interest? How is that weighed against the legitimate state concern that's to be advanced by the regulation? And I've seen in some of the court of federal claims cases that a diminution of value of even, say, 90 percent has been upheld against Fifth Amendment takings challenges under this balancing test if the state's interest is weighty enough. [LB1]

SENATOR DUBAS: Thank you very much. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. It seems to me like, habitually, the federal government is slow on about everything they do. In my district I have one of those examples, is immigration. I have families that have been working for ten years to become legal. Over that ten-year period they've spent a lot of money, lost a lot of money, and lost work time going to Omaha for a hearing only to be told they need to come back six months later. And the money that it cost to go down there, plus the anxiety that they have that they don't know if they're ever going to be legal. That's wrong. That's criminal. Now you indicated that the normal time on a pipeline is about three years, so I've got two questions. In your opinion, could that be condensed? And the second question is, we could solve some of our issues here if we could build a refinery up north, and what's the length of time for getting a permit on a refinery? [LB1]

SANDRA ZELLMER: I'll answer those in reverse order, if you will let me proceed that way, Senator Carlson. I don't know how long it would take to get a refinery in place. I'm not a pipeline expert. I'm a federal constitutional expert which is far more broad-brush, I think, than I could really speak to your questions with any precision or specificity. I know the Hyperion facility has been proposed in South Dakota and that's been dragging along for quite, quite some time, probably a good five or six years...the Hyperion oil refinery that has been proposed. They can take a very long time. But I think one of the options is, why not have a refinery closer to the border rather than rely on ones in Texas. That's just a matter of common sense, probably. But that's not the hand that we've been dealt here in Nebraska at this point at least. Going a step further, your second question was, well, how long, how much could the process be streamlined for pipelining...for a pipeline...for authorizing a pipeline? That, too, I was speaking about NEPA. EIS is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

whether it be a timber harvest or an off-shore drilling platform or a major highway project, for example. Environmental impact statements with all of their requirements, analytically, typically take two to three years. I don't know that pipeline environmental impact statements are any different from that. I think they're probably right within the average. But here I think we're talking about a supplemental environmental impact statement. The environmental impact statement is already done, so it wouldn't require a whole additional two or three years to complete the next step if that were to be warranted. And I think I answered both questions, but did I miss one? [LB1]

SENATOR CARLSON: No. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: You sort of addressed this already, but one of the reasons I believe that we need LB1 is because we need Nebraska eyes looking at a route, not...kind of address that for me, the difference between the federal government eyes and Nebraska eyes looking at a project like this. [LB1]

SANDRA ZELLMER: Thank you. I'd be happy to. I think that Mr. Peterson mentioned the Minnesota case, the Enbridge case, and that one is probably a good illustration where the court did, in fact, say that it was perfectly appropriate and, in fact, warranted for the state to be looking at routing, but not at other forms of...or not at, directly at safety kinds of regulations. And I think that goes to the Kinley case as well, which Mr. Peterson mentioned out of the Eighth Circuit. So the federal government does a really nice job of setting uniform national standards on inspection, on the kinds of materials to be used in pipeline construction, in other aspects of safety in both the construction, and yes, also the operation. But it doesn't look at the land use development and land use conservation issues. That's state authority and if the state doesn't take a look at the land use, land development aspects, and that includes the full array of issues, private property values, aesthetics, protection of landscapes, just deciding that one particular location is more appropriate for state interests than another, for whatever reason that might be, if Nebraska doesn't take a look at those issues in routing of the pipeline, or if a Nebraska agency doesn't take a look at those issues in routing of the pipeline, no one will. It's a regulatory vacuum. [LB1]

SENATOR HAAR: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Ms. Zellmer, it sounds like you know a lot about this topic and about this particular project and the process that's followed. And kind of following up on what Senator Haar was asking, what do you know of state agencies involvement today on this project, and how does...and I've been

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

asking this all morning, how does what's proposed in this piece of legislation differ from what's happened over the last two to three years? [LB1]

SANDRA ZELLMER: I apologize, but I really can't speak to that. I am an expert on the federal side of things so I really don't know what state agencies engagement at that point...at this point has been. [LB1]

SENATOR SMITH: Okay. But your response to Senator Haar was that it is a...it is a good idea to have state eyes on a project that affects the citizens of the state and the water of the state. Would it be a surprise to you to find out that this is...there has been involvement by state agencies over the last two to three years looking at this project? [LB1]

SANDRA ZELLMER: No. No, that would not surprise me at all. [LB1]

SENATOR SMITH: Thank you. [LB1]

SANDRA ZELLMER: If I could add just an observation. Before I represented the federal government I represented a private client in a case involving the Minnesota Public Utilities Commission and Northern States Power, and Northern States Power was arguing that the Minnesota Public Utilities Commission had no authority over the handling and siting of nuclear waste in dry cast storages outside of one of NSP's nuclear power plants. And we had a six-week administrative hearing in front of an administrative law judge for the Minnesota Public Utilities Commission. And I think that this bill would set up something similar to or akin to a public utilities commission inquiry into routing specifically, which would not be preempted. And that was just the case with NSP's arguments that the Minnesota Public Utilities Commission ought not be looking at where hazardous waste dry cast storage ought to be located. The Public Utility Commission and then the Minnesota court said, no, that's precisely the kind of thing that's within the state's authority. It's a siting issue. In this instance it's a routing issue, not a safety regulation calling for uniform national requirements. [LB1]

SENATOR SMITH: Thank you. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. Well done. [LB1]

SANDRA ZELLMER: Thank you, Senators. [LB1]

SENATOR LANGEMEIER: We're going to go to this side and then we'll come over to this side. Welcome. [LB1]

LINDA DUCKWORTH: (Exhibit 4) Thank you, Chairman Langemeier and all the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

committee. I'm Linda Duckworth, president of the League of Women Voters of Nebraska. I live in Omaha. [LB1]

SENATOR LANGEMEIER: Linda, I need you to spell your name first. [LB1]

LINDA DUCKWORTH: Yes. Duckworth, D-u-c-k-w-o-r-t-h. The League of Women Voters of Nebraska supports the passage of LB1. The state of Nebraska needs the Public Service Commission to have regulatory control over pipeline siting and oversight capability. As we stand now, there is no place for anyone to go to vet the situation of pipeline siting, regulation, or oversight. The Unicameral could have accomplished this during the regular session with passage of LB340, but did not. We are here today because a huge majority of Nebraskans, who do understand the issues, have insisted our elected leaders find the will to do what we all know can be done. We can regulate pipelines that carry oil. Other states have shown us that and, in fact, this bill is based on such laws already in place in other states. I live in Omaha, and residents of Omaha, Lincoln, and other areas in the eastern part of our state are justifiably concerned about the route that any contaminants take when entering our water supply. We have questions about the planned location, not only for the potential impact on our drinking water, but for all the hundreds of other ways we use water every day. We wonder about the costs of cleanup should a leak or spill occur, and who would pay those costs. We know that a very small amount of benzene can be a dangerous addition to our water, and we know that benzene is just one of the possible carcinogenic substances that may be found in oil pipelines placed in our state. LB1 gives authority to the Public Service Commission to ask questions such as these, and to determine whether the proposed route is protective of our state's resources. This is the bill that gives Nebraska regulatory control and oversight. I urge you to pass it out of committee and allow a full debate on the floor. Then I urge the Unicameral to stand strong with strong legislation. President Obama is carefully watching Nebraska, the epicenter of this entire national and international debate. When Nebraska stands strong with routing and oversight legislation, the President can stand strong for Nebraska. The federal government does not overrule the state with the siting of interstate pipelines. I'd like to remind you of the statement that greets us as we enter this beautiful State Capitol: "The Salvation of the State is Watchfulness of the Citizen." I hope you've noticed our citizens are watching. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Duckworth? Seeing none, thank you very much. [LB1]

LINDA DUCKWORTH: You're welcome. Thank you. [LB1]

SENATOR LANGEMEIER: Very well done. Now we'll go over to this side. Further proponents? Welcome. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

DONNA ROLLER: (Exhibit 5) Thanks for allowing me to testify. My name is Donna Roller, D-o-n-n-a R-o-l-l-e-r. My sister and I own 160 acres of land in York County with two irrigation wells on it. The Ogallala aquifer runs under this land and York County. I grew up on this farm and among other duties, irrigated the corn. Our first well was drilled in 1954 and at 4-years-old I saw it coming out of the pipe and was amazed and knew this is something valuable and important. This irrigation allows us to produce more corn per acre than any other county in Nebraska. I never thought my land and water would be under a foreign threat. Our concern was always using the water wisely and carefully and never to waste it. In my mind, TransCanada is like a military threat of war. The difference is, they can use half-truths, advertisements, lobbyists, unlimited money, trade agreements to get what they want. Honestly, let's use our common sense here. A dirty tar sands oil pipeline in our state water supply is irrational, and shows a disregard for the citizens of Nebraska making a living over the aquifer. The very fact that TransCanada's refusal to move this route of the pipeline shows a disregard for the safety of the people in Nebraska. This committee must understand the danger of this type of oil. Most citizens think it's like other oil. It is not. This oil does not rise to the surface, it sinks. It is highly toxic with dangerous additives. The oil is highly corrosive and will ruin a pipeline if a thin cheap steel is used. TransCanada has had twelve leaks in 12 months. With this reputation, where is the central United States going to get our water once the pipeline has leaked into the aquifer, and regardless of what anybody says about the safety of a pipeline over the aquifer, we don't know for sure what will happen. We cannot afford to take this risk. You are our state senators and your first and only responsibility is to protect the people, the land, and our water of the state. TransCanada can testify and say whatever they want about their money involved in this pipeline. This is not our problem. This company in its mining process has killed a hundred people from rare cancers in the village of Fort Chipewyan, population 1,200, in Canada. If they do not care about the people of Canada, they do not care about our health and well-being. Their actions speak louder than their promises. Food our land produces and water is basic to human life as is the agriculture economy as Nebraska's major business. You, as our state senators, must pass legislation to say where these pipelines are routed. Authority to the Public Service Commission will ensure a nonbiased review process, and the opportunity to establish rules and regulations regarding pipelines. I expect nothing less from this committee than to move this bill on to the Legislature floor for a fair and logical debate. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Roller? Seeing none, thank you very much. Well done. [LB1]

DONNA ROLLER: Thank you. [LB1]

SENATOR LANGEMEIER: Good afternoon. Welcome. [LB1]

SUSAN DUNAVAN: Thank you. My name is Susan Dunavan. Thank you to the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

members of the Natural Resources Committee for giving me this opportunity to speak. [LB1]

SENATOR LANGEMEIER: Susan...Susan, I need you to spell your name. [LB1]

SUSAN DUNAVAN: (Exhibit 6) Oh, excuse me. S-u-s-a-n D-u-n-a-v-a-n. [LB1]

SENATOR LANGEMEIER: Thank you. [LB1]

SUSAN DUNAVAN: Thank you for giving me the opportunity to speak. I'm here today to speak in support of LB1, the Oil Pipeline Siting Act. I am not here representing any special interest group. I am a landowner in York County whose property is in the path of the proposed Keystone XL pipeline. I have come to speak about what I know and my experiences with this project. I have 80 acres of pastureland. Most of this land is native prairie. According to our county assessor, less than 6 percent of York County is pastureland, and only a small fraction of that is native prairie. The pipeline will destroy 5 acres of what has taken us over 30 years to establish. I have been approached by at least four different land agents since the start of this project to persuade us to sign an easement. We have been offered four different easements, all of which are unsatisfactory. I have written certified letters to TransCanada, and never once been acknowledged or answered. I have received two letters threatening eminent domain condemnation, one in July 2010, and one in April 2011. I have written 25 letters to state senators and state officials stating my concerns regarding an oil pipeline through our property as well as the ecologically sensitive area of the Sandhills and through the Ogallala aquifer. I have also written to senators and state officials about the threats of eminent domain condemnation. Out of these 25 letters, I have only received 14 replies. The responses included replies such as, oh, go consult an attorney, write President Clinton, write Senator Nelson, write Senator Johanns, and write Representative Smith. There have also been replies that the senator was concerned, but... There were very few words of encouragement. However, there were a few courageous senators who said they would do all they could to help. After the pipeline bills stalled out in the Natural Resources Committee hearing last spring, I called the offices of each and every Natural Resources Committee member to find out where they stood and how they voted. I was told that it was not public information because the committee met in Executive Session and there was no record of the vote. So I have been asking myself: Why did the senators not stand up for the citizens of the state of Nebraska last March? Why does the state allow a foreign for-profit corporation come into the state and dictate their desires at the expense of its citizens? How far would a United States "for profit" corporation get in Canada if they threatened eminent domain condemnation without a permit? How could Nebraska senators fail to stand up for what are not just state treasures, but national treasures, the Sandhills and the Ogallala aquifer? If our legislators fail to stand up for the citizens of the state of Nebraska, our land and our water, they are not doing their job. Please, I ask you, I beg you to protect our rights, our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

land, and our water not just for today, but for generations to come. Thank you. [LB1]

SENATOR LANGEMEIER: Are there any questions? We'll start with Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Susan, thank you. Thank you, Chairman. Would you be willing to share a copy of the letter of the threat of eminent domain? [LB1]

SUSAN DUNAVAN: Yeah, I don't have it with me, but I could... [LB1]

SENATOR CHRISTENSEN: If you would mail it to our office, e-mail or something. [LB1]

SUSAN DUNAVAN: Yes, I have actually...I have one of the senators in the past has asked for that and I would be...yes, be glad to do that. [LB1]

SENATOR CHRISTENSEN: I'd just like to read that if I could. [LB1]

SUSAN DUNAVAN: Yeah, which one? (Laugh) [LB1]

SENATOR CHRISTENSEN: Send them both if you would. [LB1]

SUSAN DUNAVAN: Okay. [LB1]

SENATOR CHRISTENSEN: Thank you. [LB1]

SENATOR LANGEMEIER: Send them to my office, we'll distribute them so you don't have to. [LB1]

SUSAN DUNAVAN: Okay. Okay. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: I'd like you to respond to something in Senator Dubas' bill, it's on page 12, line 8. It says, and this would be part of the public service, evidence regarding the pipeline carrier's efforts to ensure the welfare of the residents of the area along the proposed route of the major oil pipelines. And then in a letter to Senator Flood, dated October 18 from the president of Energy and Oil Pipelines, he said: "We also treat our 60,000 landowners with respect and fairness." Do you have any comments about...? [LB1]

SUSAN DUNAVAN: Well, I would beg to dispute that and I don't have all my...you know I was told I'd only had three minutes so I mean, I've got eight volumes of stuff at home. I do not think that they've been fair and I think that they've been threatening, they've been

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

bullying, they've been using coercion. They...you know, they won't even answer our letters, so I don't know how that can be fair. I don't know how threatening eminent domain condemnation can be fair. How is that fair to a landowner? Saying if you don't sign this easement, we're going to come after you in 30 days. The first eminent domain condemnation came in July of 2010 and they said we had 30 days to sign our easements or they were going to proceed with condemnation. I waited and I waited and I waited and I never heard anything, August, September, October, November, December, January. February, my husband came and testified at the Natural Resources Committee hearing. There were some TransCanada officials there and they came to York to...that was the first time actually we've had contact with a TransCanada official because their land agents are all subcontracted. And so we sat at our lawyer's office and I said, you sent this letter in July saying we had 30 days and we never heard. Every time a FedEx vehicle came up our driveway I thought, okay, they're serving papers on us. And I said, how can you let us go for month after month and not pursue what you said you were going to pursue in July? I said, don't you have to tell the landowners that you're not going to pursue, and they said, we don't have to. We do not have to. And we can file for eminent domain no matter what. They said they didn't need their permits. We told them to come back and talk to us after they received a Presidential Permit. And so when they...also sent another letter in April of 2011, they said that we had 30 days and then this was then followed by a letter by their CEO saying, oh, well, we didn't really mean it. So they did rescind the letter of threatening condemnation. But I mean, I don't know where it goes from here because after they sent the last letter, and I've written them again, certified letters, and you know, I don't know where they stand. I don't know what their procedure is going to be at this point or anything. [LB1]

SENATOR HAAR: It's stressful? [LB1]

SUSAN DUNAVAN: A little bit, yeah. I feel like our whole life has been on hold since 20- and what '09. I don't know when this whole thing started. I can't even remember. It's just month after month. We've just been battling back and forth with this company. And like I said, they don't answer our letters, nothing. Absolutely nothing. [LB1]

SENATOR HAAR: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. You and I may have different ideas and opinions on this project, but I am alarmed when I hear about how some people were treated. So I want to ask you, what was the first type of communication that you got from TransCanada? [LB1]

SUSAN DUNAVAN: They sent a letter, I believe...golly, it might have been in 2008 or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

something. I don't know. They sent a letter when they were first thinking about building the pipeline. I don't remember the date of the letter. [LB1]

SENATOR CARLSON: Okay. It started with a letter? [LB1]

SUSAN DUNAVAN: A letter. [LB1]

SENATOR CARLSON: And then you got a visit? [LB1]

SUSAN DUNAVAN: Well, then we got a call actually and they said that they wanted to come and look at our property. And actually I thought an oil pipeline in Nebraska. I thought we have friends that play practical jokes on us all the time and I really didn't take it seriously. But then they kept calling and I realized that it really was somebody that wanted to come and look at our property. [LB1]

SENATOR CARLSON: Okay. So you have letters and then more than one phone call. [LB1]

SUSAN DUNAVAN: A lot of phone calls. And I didn't...you know that was a mistake on my part. I haven't documented every single phone call over the last four years. [LB1]

SENATOR CARLSON: That's okay. That's okay. Then you had a visit? [LB1]

SUSAN DUNAVAN: At some point we had a visit and they showed us a map and I asked for a copy of the map and they said, oh, we can't give a copy of the map. And so, luckily, we have a photocopy machine at home so I ran downstairs and photocopied enough copies for all of our neighbors also. [LB1]

SENATOR CARLSON: When you had that visit, how did they represent themselves when they came to the door? [LB1]

SUSAN DUNAVAN: Well, it was a subcontractor also. It was somebody... [LB1]

SENATOR CARLSON: Okay. So it was not an employee of TransCanada? [LB1]

SUSAN DUNAVAN: They always work through subcontractors. The only time that we had actually met with anybody from TransCanada was last February after the Natural Resources Committee hearing. [LB1]

SENATOR CARLSON: All right. So then through that process, did you always meet with the same person? [LB1]

SUSAN DUNAVAN: No, we had up to four different land agents. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR CARLSON: And do you know why that was? [LB1]

SUSAN DUNAVAN: No, I do not know why that was. [LB1]

SENATOR CARLSON: Okay. So you met four different times with four different people or you met more than that? A lot of different times with four different people? [LB1]

SUSAN DUNAVAN: A lot of different times with four...yeah. Over the years, yeah, four different people. [LB1]

SENATOR CARLSON: And during none of those did you give your approval of an easement on your land? [LB1]

SUSAN DUNAVAN: We did not sign any easements. We had questions and we'd ask to keep the easements if they didn't come in the mail, you know, if they happened to drop them off. And then we'd write a letter saying, okay, you know, these are the questions we have about this easement and we never heard back. [LB1]

SENATOR CARLSON: And then let's go back to the...you referred to it as threats of eminent domain. Did you ask about that? [LB1]

SUSAN DUNAVAN: I wrote letters about that to TransCanada. [LB1]

SENATOR CARLSON: Okay. And was... [LB1]

SUSAN DUNAVAN: And I wrote actually to the Attorney General also. [LB1]

SENATOR CARLSON: Were the responses back to you a letter? [LB1]

SUSAN DUNAVAN: No, I never got a letter back. [LB1]

SENATOR CARLSON: Okay. So then it was when another agent came to see you. [LB1]

SUSAN DUNAVAN: Either when another agent called or came to see us or another threatening letter came. And I wrote Jon Bruning actually after July of 2010. It probably wasn't until August when we received our first letter threatening eminent domain condemnation. And I said, can a foreign company come in and do this without permits? And I was told basically to consult a lawyer. [LB1]

SENATOR CARLSON: Okay. But then you eventually got a letter saying that we didn't mean what we said, that we're not...the 30 days doesn't apply. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SUSAN DUNAVAN: That was...yeah, that was after the April 2011. I don't have the exact date of that with me today. Just for brevity, I just didn't want to...and then we have...we haven't heard anything. [LB1]

SENATOR CARLSON: You haven't had other contacts since that time? [LB1]

SUSAN DUNAVAN: A TransCanada lawyer from Omaha has contacted a lawyer in York, our attorney in York, and handed us the same easements that we've...you know, the same easement that we had questions about and we have not had a response from TransCanada. [LB1]

SENATOR CARLSON: Okay. All right. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: Well, one of the words used was "bullying." That's a pretty strong word. Do you want to put that in context? [LB1]

SUSAN DUNAVAN: Well, I think it's...I should have brought the definition with me. I mean, it's just constantly coming at you with, why aren't you signing your easement? You know, your neighbors have all signed. Why are you holding out? And we tell them that we want to see a Presidential Permit before we even talk...you know, before we get really serious about this. And they said they don't need a permit. And we were told they don't need a permit. And so, I mean, it's the constant...when they were constantly calling us. It's been fairly quiet over the last few months, but when they were constantly calling us all the time, sign the easement, sign the easement, sign the easement, I consider that kind of bullying. [LB1]

SENATOR HAAR: Thank you. [LB1]

SUSAN DUNAVAN: And sending threats of eminent domain condemnation, if that's not bullying, I don't know what is. I don't know what the authority is. I wrote the Attorney General and I did not get a satisfactory answer to, you know, if this is legal or not. And that's the thing, nobody knows what's legal in the state. I feel like that's one of the main topics. You know, you write the Attorney General, you write your senators, you write congressmen, you write, you know, the federal senators. Nobody knows. Can a foreign company, for-profit company, come into your state and threaten you with eminent domain condemnation? I haven't found a person yet that can tell me the answer to that. [LB1]

SENATOR HAAR: Well, under LB1 my understanding, according to this phrase I've read, is that that kind of treatment of landowners would be taken into consideration of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

approval of a route, so. [LB1]

SUSAN DUNAVAN: I don't think any landowner should have to go through what the landowners have for the Keystone XL pipeline. [LB1]

SENATOR HAAR: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you. I apologize if you've been bullied in your terms that way. Be glad to read the letters and look at it. Just kind of explain the process as I understand it, is they have to be up-front and say that if you don't sign an easement, at some point in time there could be eminent domain used. And that's why I've asked this question to a number of people. You know, if we change that process and they have to have the permit first, then you set in a situation of, they'll never mention it, and then they'll come in and say this is our final offer, and we're going to eminent domain. That to me is more threatening than if somebody explains it up front, this is what's going to happen. But there's a difference between saying, this is what's going to happen and threatening it. You know, that's why I asked to see your letters because that's how I understand the process is supposed to work. You have to explain the process which is, we go out to try to buy the easements. If it doesn't occur, then at some point in time eminent domain will be used. And so that's why I'm anxious to see your letters to... [LB1]

SUSAN DUNAVAN: If my memory serves me correct, both letters said within 30 days they would initiate eminent domain proceedings. [LB1]

SENATOR CHRISTENSEN: I appreciate that. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. And Ms. Dunavan, thank you for coming and testifying today. I appreciate you being able to offer the copies of the letters of the eminent domain condemnation. That would be really helpful. I know, myself, like probably many of my colleagues, we've heard about some of these letters but have not actually seen them. So I look forward to seeing those letters. And it sounds like you have really great records as far as some of these other letters you've sent to them that they have been nonresponsive to. Any chance you could maybe give us some examples of that and even maybe some of your receipts of the certified letters that were sent so that we can kind of understand the sequence of events? [LB1]

SUSAN DUNAVAN: Okay. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR SMITH: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: Did all of your neighbors sign? [LB1]

SUSAN DUNAVAN: Two of the neighbors...one neighbor signed right away when they got the easement because they said, you cannot fight big business. And another neighbor went with Landowners for Fairness, and that's...everybody has been kind of private about this and I don't really like to pry too much in my neighbors unless they bring it up. Also a lot of people had to sign "gag orders" so they aren't allowed to talk about it, so. [LB1]

SENATOR HAAR: So they can't talk to you... [LB1]

SUSAN DUNAVAN: They can't talk about what the procedure was or, you know... [LB1]

SENATOR HAAR: What their experience was. [LB1]

SUSAN DUNAVAN: Yes. [LB1]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. Well done. [LB1]

SUSAN DUNAVAN: Thank you. [LB1]

SENATOR LANGEMEIER: And if you can get us copies of those to my office, we will distribute those. Love too. [LB1]

SUSAN DUNAVAN: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Welcome back. [LB1]

DOUGLAS COBB: (Exhibit 7) Thank you. Senator Langemeier, Honorable Senators, I am Douglas Cobb, D-o-u-g-l-a-s C-o-b-b from Stuart, Nebraska. I am a third generation landowner in southwestern Holt County. I come to you today not representing myself, but I wish you would think of me as a representative of our grandchildren and great-grandchildren. TransCanada has said that the pipeline they are proposing will be the safest pipeline ever built. Personally, I do not believe anything TransCanada says, but I will explain that later. Let's just assume they are correct. But do we really know that the 36-inch pipeline covering hundreds of miles in our state will not leak, rupture, or corrode in 25, 50, or more years, after sitting in water and having toxic chemicals running through it 24/7? I know what a steel post looks like and how it functions after

just sitting in water for 30 years. It is also possible in the future that TransCanada could declare bankruptcy. I know that sounds ridiculous, but 20 years ago it would have sounded ridiculous that General Motors would go broke. This foreign company at that time could just abandon the pipeline and walk away. Also, TransCanada can sell the pipeline and easements any time in the next 50-plus years, and chances are they will once they have made the big bucks and the pipeline starts to deteriorate. They would probably sell it to a smaller company operating on a smaller margin that may or may not be able to maintain it. When any of these scenarios happen, then where is the protection for the Nebraskans not even born, and our state's future natural resources? They will pay the price for the lack of a decision if our state senators choose not to do something today. TransCanada, their lobbyists, and their agents have told you and me many things. Here is what I have learned from TransCanada after working with them since 2008. I have heard them say they will provide jobs for Nebraskans. How many and for how long? Since 2008 I have dealt with about 14 different people from TransCanada--land agents, management, engineers, surveyors, and biologists. Do you know how many were from Nebraska? I do. Not one single person. They were from Oklahoma, Texas, Tennessee, Illinois, and Missouri. Those are not jobs for Nebraskans. Most drove vehicles that were not even licensed in Nebraska. As a landowner, I have been lied to, deceived, and bullied by this foreign corporation. If time would allow I would give you specific examples. This was going on while they kept saying they wanted to act fair and in good faith. I see them now doing the same thing to our state as they did to me. They claim they cannot change the route because of contracts they have. Have you ever heard of a contract that could not be renegotiated? They just might not make as much money. This foreign company is threatening to sue the state just as it threatened to sue us landowners. They negotiate only on their terms. They will not move the pipeline unless they are forced to. They will give you a token bond in case of a spill and that is just money. It does not solve the problem with the route. TransCanada does not care about the Sandhills, the Ogallala aquifer, or the state of Nebraska. If they did, they would not be so insistent about not changing the route. They want the shortest, cheapest route, as quick as they can, so they can make the most money. The state of Nebraska, our grandchildren and great-grandchildren need you to stand up for them and our future. Please be the leaders they need you to be, and do not let a foreign company come to our state and dictate what they will do. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Cobb? Senator Haar. [LB1]

SENATOR HAAR: Yes sir. Are you a landowner? [LB1]

DOUGLAS COBB: Yes, I am. Third generation. [LB1]

SENATOR HAAR: And the pipeline would go through your... [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

DOUGLAS COBB: It's going through four quarters of my land. [LB1]

SENATOR HAAR: Okay. So again reading what they said in their letter to Senator Flood: "We also treat our 60,000 landowners with respect and fairness." Would you comment on that? [LB1]

DOUGLAS COBB: I do not feel that I was treated with respect and fairness. No, I do not feel that I was at all. [LB1]

SENATOR HAAR: And give us at least once incident. You said you had several. [LB1]

DOUGLAS COBB: Oh, yes. Well, I will tell you when they first came, the first contact I had with TransCanada was with their land agents and they came to my house, knocked on my front door. I answered the door and I invited them in and they were congenial. They talked about the oil pipeline and stuff that...would I sooner have oil from Canada than from the Middle East or, you know, Venezuela and so forth like that. And then they said that they were thinking about putting a pipeline in the general area and that they would like to survey my land. And nothing is going...you know, they didn't say the pipeline was going to go...they just wanted to survey it. And they wanted my permission, and I said, no, I don't want anything on my land. I've been very protective of my land over the years. My father was very protective of it and his father was very protective of it. And we...my land, most of it has never been plowed. It is hay land, natural prairie meadows that I have a great deal of respect for. And I don't want it disrupted. And so I said, no, I just as soon you not come into it. And so they were congenial and they left and they came back a second time, as I recall. This was in 2008 so, you know, a lot has gone under the bridge in those three years or four. They came back a second time and asked again and I said, no, I wasn't interested and after...I don't know if there was another time or they called or whatever, the last time that they contacted me regarding doing the survey, they said, well, all your neighbors have signed to do...have approved doing the survey. And you're the only one that hasn't and we need you to do that. And I said, well, I'm sorry, I'm not going to do that. I then got on the phone and called my neighbors and that wasn't the case. There were other neighbors that had not approved of them going on their land and surveying it at the same time. So that is, you know, an example of them being deceitful, of them lying, if you want to put it that way, or their agents or whatever. And I...if you want to know other examples, I can give you some more examples. [LB1]

SENATOR HAAR: That's good. Thank you. [LB1]

SENATOR LANGEMEIER: That's probably good for now. [LB1]

SENATOR HAAR: Thank you very much. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

DOUGLAS COBB: You're welcome. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, very well done. [LB1]

DOUGLAS COBB: Thank you. [LB1]

SENATOR LANGEMEIER: Appreciate your testimony. Now, we're on this side. Then we'll be over to you. Welcome. [LB1]

LEN SCHROPFER: Good afternoon, Chairman Langemeier, members of the Natural Resources Committee, my name is Len Schropfer, L-e-n S-c-h-r-o-p-f-e-r. I'm a farmer in Fillmore County. Besides the threat to the aquifer and the Sandhills, there are many reasons why the XL pipeline is not in Nebraska's or the United States' interest and should not be permitted. By TransCanada's own admission, the XL would, by by-passing Midwest refineries, corner the international crude market, making crude prices rise. And the net beneficiary would be China, which is invested in TransCanada and in the tar sands fields and in Gulf refineries. These projects will not lower our gas prices, and the jobs created in Nebraska would be temporary. I do not understand why so many senators seem to accept it as a done deal, always mentioning all the already existing pipelines as justification. And this might just be the straw that breaks the camel's back. And if I may, Senator Christensen ignores the toxic solvents that needed to be added to make this stuff flow, solvents which TransCanada keeps as proprietary secrets. Senator Flood has said that this all should have been taken care of long ago. Why wasn't it? Why have so few senators objected to TransCanada's coercion of landowners, who do not have standing to go to court until they have been served condemnation papers? And if I may, it's my understanding that they cannot proceed with condemnation until the permit is issued. I think that's clear; I believe it's clear. It's an absurd political situation here. A Republican governor and Republican state senators stalling all this time, leaving this entire matter up to a Democrat administration which many of us do not trust. A citizen-taxpayer has to ask, what exactly is motivating these leaders, besides the threats? I urge this committee to stop stalling and quibbling. LB1 is a start. It is your duty as a committee to forward a bill which finally gives Nebraska a say. Thank you. [LB1]

SENATOR LANGEMEIER: Well done. [LB1]

LEN SCHROPFER: If there are any questions, I'll try to answer them. [LB1]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB1]

SENATOR HAAR: Thank you, sir. Is the pipeline slated to go across your...? [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

LEN SCHROPFER: No, sir, but I have experience with condemnations from NPPD, Nebraska Public Power District, and I see how this game has been played. [LB1]

SENATOR HAAR: Okay. Appreciate that. Thank you. [LB1]

LEN SCHROPFER: Thank you. [LB1]

SENATOR LANGEMEIER: Oh, Senator Smith. [LB1]

SENATOR SMITH: Can I just ask you to expand on that. That was interesting, that exchange. Thank you, Mr. Chairman. Condemnation proceedings from NPPD, would you consider those to have been bullying? [LB1]

LEN SCHROPFER: Absolutely. We were treated the same way these people are being treated with TransCanada. In that case it was a Nebraska utility doing it. This is even worse, because it is an international corporation. [LB1]

SENATOR SMITH: The process is very similar, you think? The condemnation process? [LB1]

LEN SCHROPFER: Yes, sir, if I may. I think it is bullying, when people are forced to do things, lied to, told that they will be condemned if they don't sign. And that whole idea of signing. I was at the interim hearing on this, where one of you asked a rancher, a lady, how they were being treated by TransCanada. And she had to say: Well, I'm sorry, we've signed a confidentiality agreement, and I can't answer that question. To the Nebraska Legislature she was not able to answer a question. [LB1]

SENATOR SMITH: Thank you, Mr. Schropfer. Appreciate... [LB1]

LEN SCHROPFER: Thank you, Senator. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB1]

LEN SCHROPFER: Thanks very much. [LB1]

SENATOR LANGEMEIER: Thanks for coming back. Further testimony in proponent. Welcome. [LB1]

KATHRYN GABIG: (Exhibit 8) Thank you. Good afternoon. My name is Kathryn Gabig, K-a-t-h-r-y-n, Gabig, G-a-b-i-g. I live in northeast Lincoln, and I'm against the Keystone XL pipeline. I would propose a large sign on Nebraska's northern border: Whoa, dude, there is a limit. We need to realize how important wild places are, like the ones in the

Natural Resources Committee
November 07, 2011

Sandhills. These places are a haven for biodiversity, for blue-winged teal, prairie orchids, and pelicans. We need birds, flowers, soils, and clean water. These are not just nice, tree-hugging things we can dispose of without consequences. When we connect with Gaia, we are healthier; when we disconnect, we are diminished. As stewards of the planet, we must seek the truth and put our fears aside. We must not be cowed by large corporations that wish to keep us addicted to petroleum for profit. When they object to the words "toxic liquid" and say that petroleum is natural, that it comes from the ground, and therefore should not be seen as detrimental but in contact with living creatures, we must say: mercury, lead, arsenic are also natural-occurring and we know, when disturbed from the ground, are deadly. When they tell us they have safety measures for oil spills and they are creating thousands of jobs for Nebraskans, we have to see this as what Robert Redford recently said: pipe dreams. We can stand up to a mostly Canadian industry, with its destructive extraction practices pouring unregulated toxic chemicals into the earth, and say, they are not the same as the Canadian people, and therefore we do not see them as protecting our national security. We need not be silent. We can say this is ludicrous. TransCanada has much power and money on their side. They have lobbyists and State Department connections. They use tactics that are cloaked in deceit. And they really thought that we citizens and lawmakers should suspend our own intelligence and let them run roughshod over landowners. Are we to ignore recent environmental disasters and not question just how Nebraskans will pay for oil spills running through the largest freshwater aquifer in the world, our drinking water source? Can we ignore seismic activity in the area recently, for instance, and believe it will not affect a pipeline running through sand? We have the science. We need to use our resources now for energy independence, not to be distracted by business as usual, waiting for future solutions. Clearly, we need to be brave, truthful, and smart. And, clearly, for our planet and our progeny, we need to say no to big oil. [LB1]

SENATOR LANGEMEIER: Well done. Are there any questions? Seeing none, thank you very much. [LB1]

KATHRYN GABIG: Um-hum. [LB1]

SENATOR LANGEMEIER: Well done. Now we'll go back to this side. Come on up. Don't be shy. If there's other testifiers that want to move up to those seats, come on up, fill them up. Welcome. [LB1]

CHARLES S. HRUBY JR.: (Exhibits 9 and 10) Afternoon. My name is Charles S. Hruby, that's H-r-u-b-y, Junior. I am a retired engineer of about 15 years. I--just briefly, my background is in--been in water and wastewater for the HWS firm here in Lincoln, now Benesch. I practiced extensively through the Sandhills region, mostly transmission lines, water, wastewater, not much oil, except in Wyoming. I was branch manager for the state of Wyoming. I would just like to--I have a handout, so I can get a little briefer. I will furnish at least a couple of copies to you just to review. How did I get started in this?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

Lee Gustafson and I are in a prayer group that meets every Tuesday. Sometime back in January, he...well, I should say, he replaced me when I got transferred to Wyoming. So he also managed the water and wastewater, that is, supervising other engineers. So that makes us--I'm trying to tell you that makes us skeptics; we're critical. Anyway, Guffie and I were--Mr. Gustafson and I were talking about this at one of these meetings, and we said, what in the world is going on? Here they're coming down from the north. They hit the little town of Mills, and it looks like they took a chalkline for Steele City. It didn't make any sense to us. We knew that would be going across what we call the Sandhills. There's a difference between the Sandhill area depicted in the Ogallala, quite a difference. And the difference is that the soil comes down but the clays and thicker materials--not the Ogallala--get deeper as you go east. I in the past owned a farm just south of Wahoo, and I put down a 750-gallon irrigation well and I was pumping, the geologists told me, from the Ogallala. Yeah, but at 240 feet there were two water-bearing strata above that. And I suggest to you, as indicated earlier by others, that that's typical. This conversation with my colleague led me into--his getting a copy of the environmental assessment, documents from the EPA. I wanted to cover this because of the comments I heard here. Now, the instances where ENTRIX, E-N-T-R-I-X, Incorporated, of Seattle, Washington, are the folks that prepared the environmental assessment. There's a good firm, great engineers. Oh, yeah? Read John Stansbury's--a professor here in Nebraska--copy titled "Analysis of Frequency, Magnitude, and Consequence of Worst-Case Spills from the Proposed Keystone XL Pipeline." And I tell you that because some of you haven't read it or don't know about it. It's an honest appraisal. As I said in my testimony at the public hearing put on by the State Department, this is done by John Stansbury; it's really well done. I told you I'm critical of engineers. Well, that's why I dug into it. And later I'll give you a spreadsheet of what I worked up for that environmental--hearing. I just want to get...I'm on a red light. Let me get two points. [LB1]

SENATOR LANGEMEIER: Yep. Summarize. Here you go. [LB1]

CHARLES S. HRUBY JR.: Recommendation 1 in this previous testimony: Reroute the Keystone XL pipeline to the east of the sensitive Sandhills; encase the 36-inch carrier pipe--that is, the one that's got the oil inside of it--at least in a 54-inch encasement pipe for the Platte River crossing and perhaps other river crossings. I say 54-inch because that will give you just about equal area in the annular space between the 30-inch and the outside one, okay, so that the velocities are roughly the same. That's a requirement of any railroad--of U.P., Burlington, blah, blah, blah--where pipelines crossing...it's been there; it's a history for years and years and years. My second recommendation is, if recommendation 1 is denied, deemed not feasible to the Keystone XL pipeline, then encase the 36-inch carrier pipe in at least a 54-inch encasement pipe for the Platte River crossing and in such areas of the Sandhills where the probability of the seven-day/ten-year high water table elevation is within ten vertical feet of the designed flowline of the encasement pipe. So (inaudible). See any questions. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR LANGEMEIER: Well done. Is there any questions for Charles? Do you have another handout you're going to give us? [LB1]

CHARLES S. HRUBY JR.: Yeah. (Inaudible) [LB1]

SENATOR LANGEMEIER: Okay. Okay. Very good. Seeing no questions, thank you very much. [LB1]

CHARLES S. HRUBY JR.: Yes, sir. [LB1]

SENATOR LANGEMEIER: Appreciate it. And we did get your copies made; we did distribute your testimony. [LB1]

CHARLES S. HRUBY JR.: Thank you. [LB1]

JUANITA RICE: Senator... [LB1]

SENATOR LANGEMEIER: Yep. That side. This side is next. [LB1]

JUANITA RICE: He's from the second wave. I'm... [LB1]

SENATOR LANGEMEIER: Oh. Okay. [LB1]

JUANITA RICE: He jumped me. (Laugh) [LB1]

SENATOR LANGEMEIER: We'll get you in a second, when we go with you. You're up. Welcome. [LB1]

TIM TAYLOR: Thank you. Good afternoon, Chairman Langemeier and members of the Natural Resources Committee. My name is Tim Taylor, T-a-y-l-o-r; I'm a veterinarian from Newport. My family has been raising beef cattle in the Sandhills for over 100 years. In 2005 I returned to Nebraska, becoming the fifth generation to manage our ranching business. For Nebraska, the controversy over Keystone XL starts just a few miles north of my home, when the route enters the Nebraska Sandhills. TransCanada has requested easements for almost six miles of our land in Keya Paha, Rock, and Holt Counties. I support LB1 because Nebraska needs to bring common sense and caution to a process that is being driven by cost and convenience. There is no place like the Nebraska Sandhills. When blown dunes were brought to rest thousands of years ago by a mixture of over 700 plant species, the web of roots provided by this diverse and unique vegetation are all that hold these dunes from reverting to their desertlike state. To be a successful land steward as well as a businessman in this environment requires even the smallest decisions be taken with the greatest care and consideration for

Natural Resources Committee
November 07, 2011

potential effects on the land. There is very little margin for error. The strong, consistent winds that fuel our windmills and bring the aquifer's bounty to the surface for our cattle can at the same time rearrange the landscape if the vegetation has been disturbed. Fortunately, for our state, great production incentives exist for responsibly managing this land of sand and water. When it comes to feeding the world with a safe, premium-quality food supply, Nebraska has the perfect combination of resources in place. Beef produced from the Sandhills enjoys a worldwide reputation not only for exceptional quality, but also responsible management of natural resources by the producer. Over three years have now passed since I first learned of TransCanada's interest in acquiring easements for oil pipeline construction and operation on our land. It was immediately clear that, at best, this project would leave us with a scarred landscape that would take generations to reclaim and pose a continual threat to our water supply. At worst, the threat to our water would be realized and a spill would cripple my ability to raise cattle or my young family. I have come up with no way to incorporate the Keystone XL pipeline into my ranching business and at the same time be a good steward of our delicate land and the state's precious water. Ranching in the Sandhills is a chess game where moves take years to plan and results may not be seen for a generation. In this game, the ground and its water are kings and no success can ever come from putting those pieces in peril. It is because of this that we are here. Nebraska must make a choice: continue providing the highest-quality, safest food for the world and water for our citizens; or ignore the concerns of the current land stewards to avoid being viewed as obstructionist or worse, an environmentalist. I urge you to advance LB1 and give Nebraska a voice in protecting our resources and continuing on our noble mission of feeding a hungry planet. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Doctor...? Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Senator Langemeier. You mentioned generations of scars if this goes through. Do you got any highways through your neck of the woods through the Sandhills? [LB1]

TIM TAYLOR: Yes, Senator, we do. And to my knowledge, most of them run on the cardinal directions of east-west and north-south, which gave them a great advantage in their reclamation efforts. Also, cattle aren't ran intentionally in the road ditches, whereas this pipeline route, unfortunately for everyone, traverses the northwest and southeast direction of our prevailing winds. And any rancher in the Sandhills will tell you, if you can at all avoid it, you never build a fence northwest to southeast, you never start a trail northwest to southeast. And that would be a big differentiation between this pipeline project and a roads project that follows section lines. [LB1]

SENATOR CHRISTENSEN: Well, I appreciate that, because I've asked that question of a lot of people, and no one has given me that answer--the prevailing winds and things

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

that way. I understand the cattle run. And I run cattle myself. But...I'm going to quit. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: Have you signed easements with TransCanada? [LB1]

TIM TAYLOR: No, sir. [LB1]

SENATOR HAAR: But it--they plan to run it through your property? [LB1]

TIM TAYLOR: Yes, property owned by myself and then additional property owned by my mother and father for a total of nearly six miles, an additional mile owned by my late grandmother, who passed away this summer, and it's now in her estate, and an additional school section that we lease, but that is not our concern as the tenant. [LB1]

SENATOR HAAR: So have you found that the treatment you've gotten is fair and respectful? [LB1]

TIM TAYLOR: I'm not going to engage in any recitations of personal interactions with, you know, land agents of Universal Field Service, but I think the best information that I could offer this committee would be the most disturbing thing for our family was an immediate recognition that it really didn't matter how we were treated, but there seemed to be a real disconnect between our understanding of what it would take to reclaim the land and the sensitivity of the area they were entering and TransCanada's view of it. So in that essence I don't really think you could be more disrespectful to a Sandhills rancher than to not understand, you know, what we would be faced with reclamation. And the political winds have shifted a lot in the last three years. And because of that, you know, there's been more handouts regarding their care of the Sandhills and whatnot. But originally TransCanada's response...or I should say Universal Field Service, because initially that was the company that we interacted with, which is a subcontractor for them. But it seemed to be that their answers to the Sandhills problem were: Well, we've been through the Alberta Sand Hills--which I've never been to but from my best research don't equate to the Nebraska Sandhills. And just, you know, blanket statements of: Well, our engineers are the best in the world, you know, we're going...you know, just regurgitation of information that they had been given and not a real interest in answering our specific questions about how they were going to deal with the Sandhills. And it's been because of our dissatisfaction with those answers that we still remain without easements. [LB1]

SENATOR HAAR: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR CARLSON: Thank you, Senator Langemeier. I smiled at one of your statements and--which is okay, because I'm going to ask you some questions here, and I'm not leading you down a path. I think I'm going to illustrate maybe what your real concern is here. Are you against all the present oil pipelines in Nebraska? [LB1]

TIM TAYLOR: No, sir. [LB1]

SENATOR CARLSON: Okay. Are you against additional pipelines in Nebraska? [LB1]

TIM TAYLOR: No, sir. [LB1]

SENATOR CARLSON: Are you against the further development of fossil fuels? [LB1]

TIM TAYLOR: No, not at all, sir. [LB1]

SENATOR CARLSON: Are you against drilling for oil in the United States? [LB1]

TIM TAYLOR: No. [LB1]

SENATOR CARLSON: Are you against coal-fired electrical generation? [LB1]

TIM TAYLOR: No, not at all. [LB1]

SENATOR CARLSON: Are you--do you believe in global warming? (Laughter) [LB1]

TIM TAYLOR: I'm--honestly, I'm not sure. [LB1]

SENATOR CARLSON: Okay. [LB1]

TIM TAYLOR: I'm not trying to be cute or...I'm not sure. [LB1]

SENATOR CARLSON: I'm asking you these--I think your reservations and your resistance is for pure reasons. And I appreciate that. Thank you. [LB1]

TIM TAYLOR: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Dubas. [LB1]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you for being here today. When this whole process all started for you several years ago and even up till now, have you felt like you had any place or anyone you could turn to that could help you either get questions answered objectively or point you in the right direction? I mean, no

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

matter what we're working on, we're all going to come at it from our particular bent or self-interest. So I guess I'm just looking for--were you able to find the kind of help that maybe you needed as you were involved in this? [LB1]

TIM TAYLOR: No. Our initial reaction was to educate ourselves and consult an attorney as to, you know, what is this, what is happening. And we learned first from our attorney, our local business attorney, that Nebraska, you know, didn't have, you know, oil pipeline siting regulations or...I'm not going to get into--I'm not an expert on all that. But we were told that, you know, there was really no specific protections offered by the Nebraska statutes for us. We then consulted an attorney that specialized in, you know, oil and gas leases, you know, easement attorney. And he reiterated that Nebraska had, you know, no specific statutes. And we were told to get the best deal you can, because you're not going to stop it. We decided, mostly through the efforts of my mother, to lobby our own state senator. And my mother has been before this committee before to try to find that protection. So that's why I'm here, Senator Dubas. I think that your bill will at least provide future generations what we've definitely lacked the last three years and prior generations have. [LB1]

SENATOR DUBAS: Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Senator Haar. [LB1]

SENATOR HAAR: Yeah. I guess this would be a little bit like Senator Carlson's question in a different line. But do you think that the best use of our land and so on is a concern of the U.S.? Would be more a concern of the U.S. government or the state government? [LB1]

TIM TAYLOR: I'll give you an answer, and then you can tell me... [LB1]

SENATOR HAAR: Sure. [LB1]

TIM TAYLOR: ...if I'm evading your question. I think the best use of our land is for food production, you know, whether it's a garden in the backyard or, you know, the Valentine Wildlife Refuge. I think the best use of our land is to produce...you know, we produce protein. We don't raise any crops; we raise beef. As far as whether it's a state or federal issue, I like controls to be as local as possible, because I feel that local people understand local issues better than anyone. You know, I would rather, you know, go to the state Legislature for an issue than I would ever consult any of our representatives in Washington. And I don't mean to disrespect them. And this isn't your question, but I view federal officials as either professional politicians or lifetime bureaucrats. Whereas...and I don't mean to disrespect any of you by saying that I see you more as, you know, businessmen and -women who are true public servants. So I feel that I can relate more and have more of my issues addressed through legislation or oversight by

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

anyone in this Capitol building or a state agency than I ever could at the federal level.
[LB1]

SENATOR HAAR: Well, I consider that a compliment. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for testifying. Appreciate your answers. Just a clarification on my previous question: If they was running more north and south and then true east and west, would you support the pipeline where it was at? Or is it still sensitivity of the ground, you don't think it should be there anyway?
[LB1]

TIM TAYLOR: Okay. I didn't mean to...I kind of stepped over you when you asked your first question, because I was nervous. But these are the kind of issues that have come up around our dinner table time and again--are that, you know, we just can't manage our ranch, I mean, this--with the route and the winds and the, you know, the wet meadows and then some of the wickedest hills we have. The only way we're going to be able to manage it, you know, assuming that the state, you know, doesn't give us any further protections, this route doesn't, you know, get changed by the Public Service Commission, you know, hypothetically, through an LB1--the only way we would be able to manage it would be to, you know, essentially take the land out of production for a long, long time, and then don't ask me how long that would be. My definition of a long time would be, you know, probably at least 15 to 20 years before I would use it in a regular grazing rotation, just from what our experience in our country has been with attempts at CRP reclamation. But to get more direct to your question, those are the kind of common-sense solutions that--not that that's a solution for...I'm going to try to toe a line here to try to get to the crux of your question. That's the kind of Nebraska common sense that this pipeline process needs. And there has been no one from TransCanada or any of their subcontractors and definitely no one at the federal level that I've tried to contact that would even think to ask that kind of question. So through asking the question, you're, you know, exposing some more needs, I think, for our state to have some type of agency that has accountability within the borders of the state of Nebraska to protect Nebraska issues and solve Nebraska problems with Nebraska common sense. And we do not have that right now. I've looked under every stone. Senator Smith has asked about the involvement of state agencies. I guess it's my feeling they are probably been involved more in this than they would like to. Because they seem to be very disinterested overall in what, to them, they view as a federal process. You know, I don't think our state agencies view their responsibilities for input as part of their duties; it's just that they're chiming in on a federal project. We need to make these, you know, international projects that have Nebraska common sense put into play. I'm sorry, I'm using up too much time. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR CHRISTENSEN: I just want to say thank you. You're very methodical and do a great job answering. That's why I asked the second question, because I just--I think you've done a great job. So thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any other questions? You did a great job, and I think you keynoted a bumper sticker for my neighbor as: My cattle are not running intentionally in the road ditch. (Laughter) I'm going to send that to him. [LB1]

TIM TAYLOR: Thank you, Senators. [LB1]

SENATOR LANGEMEIER: Thank you. Come on up. Welcome. [LB1]

JUANITA RICE: Thank you. Thank you for your time and energy and attention. My name is Juanita Rice; that's J-u-a-n-i-t-a Rice, R-i-c-e. I came from Fairmont this morning with the express purpose of showing my support for LB1 as a very good beginning for state legislation. And I commend Senator Dubas for her time, attention, diligence, and intelligence. I will argue perhaps with emotion, and I don't mean to be defensive, but I thought there's maybe a little overemphasis on the scientifically correct. There's room in a democracy for opinion, because of cares, because of invested life. And that's the person I'm speaking for today; I'm not a scientist. I hope the committee can set aside for a moment their views: pro pipeline or anti pipeline; pro fossil fuels, anti fossil fuels; pro oil, anti oil; faith in corporations, lack of same; belief this pipeline should be rerouted or belief that what TransCanada has proposed is automatically to be accepted as being in the best interests of Nebraska. Set these issues aside. These are the kinds of things that we want the Public Service Commission to investigate at length with expert testimony. And ask yourself only whether Nebraska should have a regulatory system in place for things of this nature. As a citizen I believe we should. Public interest is not always identical to a specific business's goals. I'm almost grateful that TransCanada XL came along, because this proposed first violation of the very heart of the Ogallala aquifer--the Ogallala Formation above the Northern High Plains aquifer--has stirred up some interest, and their behavior toward Nebraska citizens has stirred up some resistance, and that has brought us to this point. I have heard legal opinions that Nebraska not only can but must regulate the siting of oil pipelines. Our neighbor states show the precedent. Big money can posture convincingly, but we must be courageous enough to stick up for what we are ourselves want. I assume everyone knows about the Kalamazoo River spill, which could have contaminated Lake Michigan for an unforeseeable future. Ms. Seacrest's metaphor this morning of Memorial Stadium--three-foot-deep swimming pool that size and a teaspoon of contaminants is relevant in this area. The seriousness of that spill is equivalent to the seriousness of a possible threat to our aquifer, our unstable Sandhills geology, our agricultural lands, and the livelihoods and well-being of those farmers and ranchers and others affected. Cleanup at the Kalamazoo has so far cost \$700 million; it is unthinkable, and the end is not in sight. Unthinkable incidents. We have before our memories--I hope they're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

vivid--the Gulf oil gusher, the Fukushima nuclear disaster in Japan. The unexpected can happen, and it demands regulatory processes as foresight and not merely hindsight. I want to point out that in Michigan they have to dredge the riverbed. We can't dredge the aquifer. I urge "a stitch in time saves nine." I commend LB1. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? [LB1]

SENATOR HAAR: Yeah. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: I do. As we think about this and we talk amongst senators here, this idea--how does Nebraska common sense weigh up against scientific facts? Are, you know, we...well, you know, do you have all the facts? How do facts weigh out Nebraska common sense? [LB1]

JUANITA RICE: Well, I think Mr. Taylor was a perfect example that maybe the scientists at a high enough theoretical level don't notice the directional winds of Nebraska that affect our lands. That...it's not just Nebraska common sense, it's experience, it's living with this land and having great investment and care for it. Even scientists are going to disagree. So in the end it should come down to a democratic opinion. The citizens have a right to that. And what we want is an informed public process that's answerable to Nebraska people. [LB1]

SENATOR HAAR: That... [LB1]

JUANITA RICE: Does that address that at all? [LB1]

SENATOR HAAR: The premier of Canada said something like, when people in Nebraska know the facts, this will just be a done deal. [LB1]

JUANITA RICE: I don't think that's true. I am not a scientist. I am not a farmer or a rancher. My parents, grandparents on both sides of my family have been farmers in the Fairbury area and in Fillmore County. I think those are facts, that we live here, we know that the unthinkable can happen and we want some--a neutral body to be really investigating this with their best ability. Then if they come out with the facts that say--no, this is actually the best thing--at least we had someone to turn to, rather than just buttonholing individual senators and...that's kind of intimidating, you know? I mean, coming up here is very nerve-wracking; I have never testified in front of a government body before. My mouth is so dry I could hardly get through my sentences. (Laughter) And it's not fun to take the time out from my day and drive into Lincoln and wait for five hours. It's hard for Nebraska citizens to really make their views known. But I think we're open to reason. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR HAAR: Well, just to let you know, Senator Langemeier is frightening; the rest of us are pretty nice people. (Laughter) [LB1]

JUANITA RICE: As long as I'm not going to be cross-examined on my items of conscience. [LB1]

SENATOR LANGEMEIER: I think you're doing really well. [LB1]

JUANITA RICE: Thank you, Senators. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. Well done. You're off. Welcome. [LB1]

CONNIE WEICHMAN: (Exhibit 11) Chairman Langemeier, members of the Natural Resources Committee, my name is Connie Weichman, W-e-i-c-h-m-a-n. I'm a rancher from Stuart, Nebraska, which is in southwest Holt County. I am here today representing my family. My husband, Leon, and I are lifelong residents of Holt County. My husband grew up on our place, and when he returned from Vietnam we married and raised our family on the ranch that is in its third generation. Most of you on this committee are also lifelong Nebraskans and landowners like myself. My testimony today is as a landowner. Having worked this land side by side with my husband for 35 years, we study our land and know as much as anyone how it reacts, responds, and changes almost daily. Three years ago my husband and I and many others from our area attended the first public briefings about TransCanada's Keystone XL pipeline. As experts on the land, we told TransCanada representatives and we told our elected representatives that this route would not work. That is why three years later we are still telling TransCanada and you, our elected representatives, that this route will not work. Nebraska needs authority and places to address this and future routes so that our state, our land and resources, are respected. Almost one month ago, my husband and I invited Governor Heineman, Chairman Langemeier, and Speaker Flood to come see the proposed route firsthand. While the Governor did not accept our invitation, Senator Langemeier and Speaker Flood took a Saturday to visit with my husband and me and our neighbor about the land and the route. We showed the senators the route in our area, where it crosses subirrigated meadows. These are meadows that require particular care, as the water table is so high that there's frequently water standing there most of the year. The current route would go through one of our subirrigated meadows, right next to a windmill and stock tank, which is one of the pictures that I gave you. We also explained the flowing wells, which are numerous in the area. Finally we took the senators to the planned site of the pumping station, where most pipeline leaks occur, which is also planned to be built in a subirrigated meadow. This meadow and the water that is standing in it is a perfect example of the disregard paid to the sensitivity of the area. We need a process put in place that would allow state oversight of planned projects. We need Nebraskans

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

who know, appreciate, and understand our natural resources to be a part of these decisions to place permanent intrusions into our land. While TransCanada has been completely blind to these precious and unique areas, our state should not be. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB1]

SENATOR HAAR: Since you're a landowner and the pipeline is slated to go through there, as I stated earlier, part of LB1 is that the Public Service Commission would take into account how landowners are treated. And when TransCanada said, "We also treat our 60,000 landowners with respect and fairness," how would you react to that? [LB1]

CONNIE WEICHMAN: Probably that we weren't treated fairly. But we have signed a nondisclosure statement, and so I don't really feel I can elaborate too much. [LB1]

SENATOR HAAR: So you can't talk to anybody about it, or...? [LB1]

CONNIE WEICHMAN: No. [LB1]

SENATOR HAAR: Neighbors? Or the Legislature? Okay. I respect that. Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? I can say your pictures don't quite give it justice to the water we were standing in on the day we were out... [LB1]

CONNIE WEICHMAN: Right. [LB1]

SENATOR LANGEMEIER: ...looking at those two spots. So... [LB1]

CONNIE WEICHMAN: And the post hole that he dug for the reporter--it's, like, that's where--like, 30 inches down--water came up and, I mean, or hit water right there. And that's right where the pipeline would be going, is right by that fence line. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB1]

CONNIE WEICHMAN: Yeah. [LB1]

SENATOR LANGEMEIER: Appreciate it. Go clear out to the end, and then we'll be to the second wave, as it was referred to earlier. Oh, do you have a green sheet? [LB1]

PAUL BLACKBURN: I already dropped it in the box. [LB1]

SENATOR LANGEMEIER: Oh, okay. [LB1]

PAUL BLACKBURN: Chairman Langemeier, members of the committee, my name is Paul Blackburn; it's spelled P-a-u-l B-l-a-c-k-b-u-r-n. I'm an attorney from Minneapolis, and I'm here representing Bold Nebraska. But I also--I'm one of the probably, I think, the only attorney in the United States who's gone through an entire evidentiary hearing on the Keystone XL pipeline, because I represented a group called Dakota Rural Action in South Dakota at the PUC hearing. And I think that gives me something of a unique perspective and direct experience in what a state proceeding is like and how it would proceed and what some of the benefits and some of the, maybe, the downsides are. I wish I could say that what I've heard here today from some of the landowners is new, but it really is *deja vu* and a lot of the same complaints, a lot of the same concerns. And the advantage that South Dakota had, though, was that the commission there could address some of the landowner concerns, you know, after a full evidentiary hearing, after considering--listening to all sides. And as, I think, South Dakotans would say, you know, they have common sense too. A lot of the members of my client, Dakota Rural Action, were personally very conservative. A number of them had oil wells on their property. Many of them would respond the same way the rancher responded today, that they were not opposed to fossil fuel development; they, you know, were not opposed to pipelines; they were not opposed to, you know, all those sorts of things, you know. And that meant that my client's perspective was fairly pragmatic. And it had to be, because that's what the members were like. I don't have a lot of time today. I know a lot about this project; I've worked on it for three years now. But I think that there are a few things about the landowner process that is important. The first--one of the first, most important things is control. A lot of landowners feel completely out of control of the process. And at the same time, they feel that they know their land best. And it's one of things we repeated over and over again in South Dakota, was the person that knows the land best in each of the segments is the landowner. And I think it's important for the state and TransCanada to trust them. You know, these folks are not out to bust TransCanada's chops. I mean, maybe there's a few that are, you know, would struggle with that. But most of them really want to try to do what's best for their land, their families, and, I think, the country too. There are a couple things that can be done practically. One thing is that the bill could have a requirement there be a description of the process and that it be mailed to each of the people--some states do that--or put it on the Web, so that citizens have a clear place to go to know what the process is. You know, this is a process that only a corporate oil attorney would love. It's confusing; it's scattered; it's chaotic; it takes a lot of time just to explain the rudiments to people. And having a simple description of the process would be extremely helpful. You could also do like North Dakota has and include in the law a penalty provision for improper use of land acquisition, you know, process. There's also...we went through a lot of time in South Dakota talking about very pragmatic things, such as one rancher who had their cattle cut off because of the trenching. They couldn't get them out of a pasture for three or four months; it was a real problem. Difficulties in dealing with different kinds of soils: some soils are acidic or, you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

know, are--have saline in them and other kinds of chemical differences. And finally, the Hell's Creek formation in northwest South Dakota has fossils in it. Well, why is that a big deal? Well, the most valuable fossil pulled out of one of our client's property was worth \$8 million, and they did not want that kind of fossil to be damaged by TransCanada going through. The commission could help and provide real benefits to people in a very pragmatic way. And I think that's maybe something--to set aside some of the politics and some of the big-picture things but be aware that there's a need for compassion for the landowners and for the people of Nebraska. There's a need for understanding. And there's a need for pragmatic things that can be done by the government to protect and help real people's interests, because ultimately that's who my clients were in South Dakota. And I think the same sorts of folks need your assistance now. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB1]

SENATOR HAAR: Yes. One of the arguments I've heard is that, well, yeah, all these other states have these routing laws, but they don't make any difference. I mean, in terms of where the route goes. Has that been true in South Dakota and North Dakota? Or has the siting process actually done some changing to the routes? [LB1]

PAUL BLACKBURN: Um-hum. In South Dakota it doesn't, because the South Dakota Public Utilities Commission does not have routing authority. But in North Dakota it did; they did change the route around the Hecla Sandhills. And I didn't represent anybody in North Dakota, but I understand that that was done as part of their order. And, you know, it wasn't necessarily a huge change in route, but it was an important piece for the state, and the state was able to do something about that particular valuable, you know, environmental asset. So it does make a difference to have a routing statute. It's not...in Minnesota I'm not sure they made any route changes. In Montana they're still in the process. Montana law requires that they consider three routes formally through their environmental review process and then choose from among those three. And at the same time, there can be the really big route changes, but there can also be smaller route changes--around a particular piece of property, around a farm, you know, just a slight change in route to avoid a sensitive area that a landowner knows about. So there are, you know, the big-picture things, but there are also the really micro-level things that can make a big difference to a landowner. Does that answer your question? [LB1]

SENATOR HAAR: Yes, thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. I think that--I'm speaking for myself, but I think there are several of us in the Legislature that probably have this as a concern, and maybe it's not a good concern. Do you think at the federal level we've got too many regulations? [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

PAUL BLACKBURN: In some places, probably. In some places, probably not. It's a very general...I'm sorry, I'm not trying to avoid it, but, I mean, that's a philosophical point of view, you know, my personal point of view, and I'm not sure, is that relevant? [LB1]

SENATOR CARLSON: Do you think there's a possibility, in the permitting process for a refinery, we may have too many regulations--if it's 12 years? [LB1]

PAUL BLACKBURN: Which refinery are you talking about? [LB1]

SENATOR CARLSON: Well, I don't know this for a fact, but I've had people talk to me and say that the time involved now to try and get the permit for an oil refinery is 12 years. This one is 3 years. Why is 3? Why isn't it 2? If it were 2 and we could add some things at the state level, we're not turning 3 into 4, 3 into 5. And for a lot of us--for me, that bothers me. We should be able to get the job done without piling regulation on top of regulation on top of regulation and we paralyze the economy. [LB1]

PAUL BLACKBURN: Well, in South Dakota, the law required they do it in less than a year, and, in fact, they did. Now, various folks accused me and other people of wanting to delay that process. Frankly, that was not possible in South Dakota, even if I'd wanted to, because it was too early in the--throughout the process; it's a very conservative PUC; it's a very conservative court, you know, set of courts. And, you know, it wasn't delayed. It wasn't delayed by one second. The biggest amount of time added to it was when TransCanada asked for a motion of reconsideration. So South Dakota was successful in going through it. And you talked about the Hyperion refinery before. There is no federal EIS process for the Hyperion refinery. And the state of South Dakota has a voluntary option for doing a state EIS, which they did not elect to do. At this point, as far as I can tell, that's on commercial hold; it's nothing to do with the regulations. And, you know, my understanding of the oil industry is that, you know, there's a reason that new refineries haven't been built in a long time; it's because it's a lot cheaper to expand existing ones than it is to build a greenfield project, you know. And that's just flat-out economics. When I was in Washington, D.C., my first work was for an energy law firm, and a lot of what I did in my first years of being an attorney was help to permit a coal-fired power plant, you know. And I understand that (a) the energy industry is a blood sport and people are very competitive, and there are a lot of projects that never come to pass, you know; and (b) even good projects can be--you know, therefore die. The coal-fired power plant I was with finally got moved to someplace else but only because the local gas utility apparently funded a campaign because they didn't want to lose the business, because they were doing reconversion. I'm just saying it's not as simple as just the government, you know, messing with these things all the time. I think Hyperion is...personally, I had never have worked on it. Everybody thought it was going to go to South Dakota. Originally I went there to work on Hyperion. I never did, because I didn't think it was going to work, from an energy, you know, attorney point of view. So,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

yeah, I think that in South Dakota's example of how they moved through effectively and efficiently...other places it's not so much. But it's up to, I mean...but fortunately, the Legislature has control over the legislation, and it can draft legislation that can ensure a prompt and efficient process that still protects the interests of Nebraskans. [LB1]

SENATOR CARLSON: Okay. Appreciate that. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Schilz. [LB1]

SENATOR SCHILZ: Thank you, Senator Langemeier. Good afternoon. Thanks for coming in. Just one other point. As we've sat here and talked about the issues and refineries and--I've had numerous e-mails saying: Well, why don't we just build a refinery closer, then we don't have to pipe it as far? But as I thought about that and I looked at it, it's...a lot of things are exactly what you said. You've got the economics of building that, and then that's only the refinery. Then you have to remove the refined product away from there as well. And how are you probably going to do that? Probably with a pipeline. And so you have to go through all of this spreading out all over the place. So it's a huge, important specification that, you know, the refineries are where they are for a good reason. And that's why the oil goes to them and not the other way around. [LB1]

PAUL BLACKBURN: Um-hum. [LB1]

SENATOR SCHILZ: Is that true? [LB1]

PAUL BLACKBURN: That's correct. I mean, it's a little bit like Walmart, in some ways. Originally there were a lot of small refineries in the United States, because everything was smaller in the past. There were a large number of small refineries. And the shortage--so therefore the shortage isn't in location or sites for refineries. If there's a shortage, it's just in equipment. And it's much cheaper to take an existing refinery location, which has the rail transit, which has, you know, the electric power, which has the natural gas feeds to, you know, hydrolyze the heavy petroleums, and has all that infrastructure in place, plus a knowledgeable and experienced work force and lots of other, you know, advantages for an existing refinery than it is to come into a new place like South Dakota, where none of the important infrastructure exists, none of the export infrastructure exists. You know, the skilled labor pool doesn't exist. And it's very expensive to develop all that infrastructure. And if you're talking about trying to compete with, you know, adding an upgrade to four or five different refineries down on the Gulf Coast, well, they'll beat, you know, a new refinery in South Dakota flat out; I mean, hands down, because it's just cheaper to do that in an existing location. I mean, that's--it's not a matter of needing new sites, if there's a need for more refining capacity. It's a matter of needing more capacity at existing sites. That's what the industry has been doing. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR SCHILZ: Right. And so then taking a step forward from that, then we--could we also surmise, then, that it's safer to transport the crude than it is to transport the refined products away from it? [LB1]

PAUL BLACKBURN: Um. [LB1]

SENATOR SCHILZ: If we're looking at the sort of issues that we're talking about here in Nebraska. [LB1]

PAUL BLACKBURN: It's...there's some interesting...like in, like, various interest groups in Canada have wanted to refine the oil in Canada and ship the refined products down here. It's cheaper to ship crude in a single pipeline than it is to ship multiple forms of product in multiple pipelines out. That's why they ship crude as far as they can. In terms of safer, some products the pipeline ships are--the refined products are more dangerous than crude, if they spill. Obviously, gasoline is more flammable and can be more contaminating. But I think that another question is, you know, related to whether it's needed and in what volume, you know. So I think it probably is safer to ship it via--safer to ship crude than it is to ship a lot of different products. And I'm not really sure that's an issue here. And it really isn't an issue generally, because the economics just mean that people don't ship product very far. [LB1]

SENATOR SCHILZ: Sure. [LB1]

PAUL BLACKBURN: I mean, that's why you have, you know, oil--the refineries typically located near major metropolitan areas and not in the middle of rural states. Because it's just really expensive to build all those pipelines, you know, long distance, all those other pipelines long distances. [LB1]

SENATOR SCHILZ: Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much. Well done. [LB1]

PAUL BLACKBURN: Thank you. [LB1]

SENATOR LANGEMEIER: Further testimony? Good afternoon. [LB1]

JIM KNOPIK: (Exhibit 12) Afternoon. My name is Jim Knopik, K-n-o-p-i-k. I'm a farmer, live near Fullerton, Nebraska. I've handed in my testimony; I'm not going to read it, because I get too emotional doing this kind of stuff. But I, you know, when I learned that it was a siting bill, which I agree with, I thought about some of the things that are considered when siting different things. And some of those things are hydraulic lines on

Natural Resources Committee
November 07, 2011

equipment. Farming for the last 45 to 60 years with my dad, I dealt with a lot of hydraulics on equipment. And this is just a bigger hydraulic line, to me; the pressures are probably similar. But I know that there's a lot of things that happen to hydraulic lines in everyday wear and tear on equipment. And the vibrations, the heat, and everything that it has to go through takes its toll on that. Some of the things about siting that I was thinking about is that in siting electrical lines in houses, there's lots of considerations that go on when electricians do that. They make sure they don't cross water lines--or steel or copper water lines, for safety purposes. And you know, I'm thinking that most of the siting that's on equipment and houses is really just common sense. And it'd really be important to have an entity in Nebraska that looks after our siting of a pipeline that's 36 inches in diameter. I mean, we worry about things that are just millimeters in diameter and where they go, and we have departments and electrical engineers and inspectors that look after that. It just seems logical to me to have somebody oversee a hydraulic line of this size that goes through. The...to me, their only concern was that the shortest distance between two points is a straight line. That makes a lot of sense, but in, you know, our case of where it's going through, I think it's important to probably first think about going around it. Or I've even thought about if it does have to go that way, why not put it above ground so the citizens of the state can, you know, be those watchful eyes of whether it's leaking or not. I'm really concerned about it being underground, and I don't think the technology is good enough to know if it's just a small leak that I've seen in some hydraulic lines on our equipment, where it's just a slow seep. I don't think that there's anything that can detect that, not in an instant. So I got to quit. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. In your statement here, your daughter's family has unsafe drinking water. What caused that? [LB1]

JIM KNOPIK: The main thing is the nitrates. But I think they also have an arsenic problem in the Central City area. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

JIM KNOPIK: Um-hum. [LB1]

SENATOR LANGEMEIER: Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you for testifying. Have you asked any of your other neighbors about having it above the ground? Because I've threw this out before at people. Do you really believe that would be better? Would it have to be high enough for cattle to go up and over, like they did in Alaska? If it was above ground, what would you see having to be done? [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

JIM KNOPIK: Well, of course, it'd take some different kind of structure to do that. But what I see them...I don't remember, I think there was about a 60-mile stretch where they said that they would encase the steel pipe in concrete or some other barriers like that. I've worked with concrete a lot, too, in my lifetime, and I've noticed that concrete breaks down. And, you know, I'm trying to imagine how much concrete around a steel pipe it'd take to hold that in. Concrete is a porous material, and eventually even that...it doesn't make any sense to me why you would use concrete to do something like that. Our farm is organic. We have an organic farm. We actually rent one of the farms that this pipeline is going through, and I'm really concerned about if there was a leak, that it throws us out of certification. It throws us out of a lot of things we promise our customers also--the way we raise and grow crops and animals on there too, so if you've read my other testimony, so... [LB1]

SENATOR CHRISTENSEN: But do you think that's a solution, being on top of the ground, then? [LB1]

JIM KNOPIK: That is a solution, that if we want real inspection out there in the country for miles and miles, I think that's the only solution. And one thing that it really helps, is that it--hopefully, we probably see the leak sooner and then it would be contained on top of the ground. And you know, if it's underground and it's going on and it filters into the soil, the aquifer no matter what, it's something you can't see easily and take care of easily. [LB1]

SENATOR CHRISTENSEN: Thank you. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB1]

JIM KNOPIK: Thank you. [LB1]

SENATOR LANGEMEIER: Well done. Now we'll go over to that side and--yep. Yep. [LB1]

ERIN FRANK: My name is Erin Frank, and I'm from my family's farm and ranch in Rock County. I currently live here in Lincoln. It's E-r-i-n F-r-a-n-k. I actually used to be a page for the Natural Resources Committee about five years ago, and so it's nice to be back here. And thanks for the opportunity. I've come here to support Senator Dubas' bill and to urge you all to do the same. It's obvious that this bill has been written and carefully researched, and it's a strong plan and process to protect our land and our community. I originally had not planned on speaking today, but I changed my mind when I walked into the hearing room this morning. And I did so because I am, in the eyes of many here, just a kid. And this is a multigenerational issue. What happens at the state and federal level this week, next year, and when all these decisions are made will be made for the yet unwritten future. I came here not officially representing any group, but by default I'm

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

representing the youth of the Sandhills and of Nebraska. And I'm not the only 20-something planning on returning to my roots to participate in agriculture. And isn't that what we need now when many rural areas are faltering? I'm young; I'm educated; I'm a Nebraska native; and I have every intention of working with the state's natural resources for my livelihood. I and others like myself will be contributing to our state's economy and community. However, in order for this dream to become reality, the Natural Resources Committee and our state Legislature must make responsible decisions considering land use and geography. If we don't take action now, the very natural resources we depend on and that can serve as a draw to bring young people back will be put in jeopardy. Allowing TransCanada to push this pipeline through as is, I believe, is to allow the brain drain to continue. We can't predict the future, and there's no way to know what will happen with this pipeline, but we do know that multinational corporations are a force to be reckoned with. And that's why we need to do everything in our power--and we do have the power--to put all proper safeguards in place and to protect our natural resources, which include our youth. It would serve us well to take the preventive measures proposed today. Choosing not to move forward is choosing to give up our chance and to give up our choice. I believe that the people have spoken, and now we ask you to join us. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Frank? Senator Haar. [LB1]

SENATOR HAAR: Yeah, I would just say, why not just let the people in Canada and Washington decide where this pipeline is going to go? [LB1]

ERIN FRANK: Well, for one thing, I don't think that all the people in Canada support this. There are First Nation communities there and a large community who, you know, are against this. And so I believe it'd be a coming together of the people here, those people in Canada, the state Legislature, and at the federal level. I mean, I think that the decision can be made together. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much, well done. [LB1]

ERIN FRANK: Thanks. [LB1]

SENATOR LANGEMEIER: Welcome. [LB1]

TERI TAYLOR: (Exhibit 13) Hi. Senator Langemeier and members of the Natural Resources Committee, they have a old saying out in the country that "this isn't my first rodeo." And it isn't. I've testified before you several times before, and I thank you for the opportunity to testify today. My name is... [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR LANGEMEIER: You still have to tell us your name. [LB1]

TERI TAYLOR: ...Teri Taylor, T-e-r-i T-a-y-l-o-r. I'm a rancher in the Sandhills of Nebraska, near Newport. I'm here today to support LB1. I boarded a bus 12 hours ago with a group of people from up in our area who along with myself feel it is urgent for our state to enact legislation now. We were a diverse group of people; we had farmers and ranchers, men and women, young and old, and I'll put myself among the old so I don't offend anyone. But we had one thing in common: our roots are deeply planted in the Sandhills soil. And it is our lives, it is the future of our families, and it is the future of our state hinging on the ability of our Legislature to pass laws to protect all three of those things. Many of the people on the bus this morning spoke of leaving work behind, whether it was weaning calves, picking corn, or numerous other jobs that we find are never ending on the ranch and farms. But they all thought it was so necessary to be here today that they turned their back on it and they drove--got on that bus at 4:00 this morning and they came down here to let their presence show you how important it is for us up in that area to have legislation enacted to protect us. I'm going to veer off my statement here a little bit. You have the copy. But there are a couple issues I think are maybe a little more important. I've heard the comments made that we have to keep emotion out of our testimony. And that's very difficult for farmers and ranchers to keep emotion--and lifetime landowners and multigenerational landowners--to keep emotion out of anything we do. Whether it's going out with--my husband and I going out to sort calves, eventually one of us is going to get emotional. It just happens. And in an issue like this that has been weighing on us for the last three-plus years, we can't keep emotion out of it. Because you're talking about our lives; you're talking about the future of our children and grandchildren. And you can't take it lightly. You have to listen to us. This is imperative. Our land...I'm not a scientist, but no one knows my land any better than I do. I don't have to have a college degree to tell you that on my land we cannot support the Keystone XL pipeline; it can't be done. We have listened to our forefathers tell how hard it has been. They went through the dirty '30s and the Dust Bowl days, and it took...we're still working to reclaim land that was damaged then. It can't be done. We can't risk the water. We can't risk the land. And I would beg you to enact legislation to protect us. It is so simple. The President of the United States is telling you, you can do it. And I don't care if you're Democrat or Republican, this isn't a party issue; it transcends party lines. It's about doing what is right for the state that you were all elected to represent and to protect. And I would just...if I have to beg, I will. If that's too emotional, I'm sorry. But I need you to enact legislation to protect us now, before it's too late. I thank you. I thank you for your time. I know it's been a long day for all of you, and I understand that. But I thank you. [LB1]

SENATOR LANGEMEIER: Well done. Are there any questions for Ms. Taylor? Senator Schilz. [LB1]

SENATOR SCHILZ: I have one. Thank you, ma'am, for coming in today. I was sitting

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

here reading your testimony, your written testimony. [LB1]

TERI TAYLOR: Yes. [LB1]

SENATOR SCHILZ: And you talk a little bit about the eminent domain. And the last line that I read here on the first page, it talks about people in the state of Nebraska need protection from this type of tactic and that I feel LB1 would provide that protection. Can you explain that? Are you...I guess, can you explain that a little bit further? [LB1]

TERI TAYLOR: Explain why I feel that LB1 will give us protection from eminent domain? Or explain... [LB1]

SENATOR SCHILZ: Right. [LB1]

TERI TAYLOR: ...about the tactics? [LB1]

SENATOR SCHILZ: Well, a little bit of both. [LB1]

TERI TAYLOR: Okay. [LB1]

SENATOR SCHILZ: Please. [LB1]

TERI TAYLOR: My son, who testified before me, is much more of a conservative and much more of a gentleman. I'm a little bit hotter-headed. And he was very good with his remark about whether or not we have been intimidated. And he also pointed out: Mama's been kind of in the forefront of this fight. I've been up to a lot of meetings. I've met with a lot of officials that my son and husband did not--were not involved in, so I have maybe a little more information than perhaps he was privy to. We have been told and I guess I'm going to call them lies, because, you know, if you want to say half-truths or if you want to--how you--I don't know. We have been told, you know, lies about people who have signed, people who haven't signed, circumstances that were trivial and meaningless as far as things that we as a family were supposedly to have done during the surveying time that Universal Field Services went through our area, things that were told to our neighbors that, needless to say, in the Sandhills gets back to you and just, you know, that really aren't even worth repeating simply because they were so trivial and so nonsensical they happened. But that's how they treated us. We have also been talked down to. You know, we don't understand our land, we don't understand how they're going to reclaim it, you know. And I'm sorry, I'm, you know, like I said, we understand it all too well. Unfortunately, we understand it all too well. We understand what it's going to take. The fact that they have used this eminent domain threat...as I pointed out in my statement, from the first day that I saw maps that showed where this pipeline was going to cross our property, the word "eminent domain" was thrown out there; it shadowed us. It was--and I think my wording was, I think it was a tactical

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

maneuver on TransCanada's part to get us to sign easements. If these people know they have no choice, if they know that eventually we're going to take it whether they enter into an agreement with us or not, then we've got a better chance of just getting them to roll over and play dead, and we'll, you know, we'll waltz right through. They didn't know that Taylors were quite as bullheaded as we are, because we're very bullheaded. And I certainly hope you senators are just as bullheaded as we are, when you're threatened with lawsuits and things. Because you can stand up to them; we have. [LB1]

SENATOR SCHILZ: Do you believe that--when you talk about eminent domain, do you believe that eminent domain is there to protect both the landowner as well as anybody else that's coming through, like a utility or anything like that? [LB1]

TERI TAYLOR: Well, I understand the use of eminent domain in projects--I'm selfish--that will benefit me or my state. I don't understand the use of eminent domain for a project that is to benefit a Canadian transportation company like TransCanada, when they're coming into Nebraska to take my land, and very well I will never benefit from that--from that oil going through that pipeline; I firmly believe that that's a faux pax. So, yes, I think there's a time frame on a domain...unfortunately, yeah, I'm selfish; it's my land; I've worked it. My, you know, it was handed down through...and, you know, we took the...we're proud of it. And I hope pride doesn't--isn't a sin. [LB1]

SENATOR SCHILZ: So...right. No problem. I fully understand what you're saying. So in your thoughts, should eminent domain stay around, or should it just...? [LB1]

TERI TAYLOR: Oh, I don't think we have any choice. It's going to stay around. But let's put it in the right context. Let's make them get their permit. They don't have their permit yet. And they told us they were going to use that eminent domain three years ago? [LB1]

SENATOR SCHILZ: Has anybody had eminent domain proceedings? [LB1]

TERI TAYLOR: I don't think so. Because the way I understand it, they can't in the state of Nebraska. [LB1]

SENATOR SCHILZ: Okay. [LB1]

TERI TAYLOR: But we're simple landowners. And when you have people...well, no, I...and I don't say that (laughter), no, please, I hope everybody behind me isn't throwing me daggers. But, you know, we don't deal with situations like this every day. So when a company comes in and says matter-of-factly, point-blank, you know: We're going to file eminent domain, and you have no choice. And, unfortunately, there's people who are going to believe that and people who literally felt they had no choice. But if we had had

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

a law that said--until a company has the permission from the state of Nebraska or from the federal government or whomever, eminent domain cannot be threatened or used to obtain easements--then we'd have some protection. [LB1]

SENATOR SCHILZ: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Chairman. A little more on the eminent domain. I mentioned this earlier. My concern with changing the law right now is, if we'd done just what you said, till they have their permit they could come out, negotiate with you but they couldn't use the words, where now they have to explain the process and say, you know, eminent domain can be used at the end if we don't come to an agreement. Well, if somebody would come out and negotiate with me to put in a power line, three times, whatever, five times, six times, and then all of a sudden they show up one more time because they got their permit, saying, you know--this is the final offer, you take this, or we use eminent domain--I'd feel threatened. If somebody explained the process to me up front and I knew, well, I can negotiate for a while and then see the permit happen and know, you know, I'd better get my best deal, it's going, I'd feel less threatened than if somebody would come me...because I've had situations where power companies and stuff went across me, where all of a sudden it's...if they come up one time and said--well, this is the final offer, or we're going to eminent domain, that's more of a threat to me than explaining the process. So how do you think it should be handled? Do you think waiting till that permit is? Because then I know they're going to say: This is our final offer; do this, or we're going to take you to court and solve it. To me, that's more threatening than knowing the process I have to work with. [LB1]

TERI TAYLOR: Senator, I think there's a lot of landowners in this room today that would have given up the last three years of emotional stress and just had one easement handed to them, no matter what it was, and not had to deal with the threats of eminent domain. Because had they not had that right, if the state law would not give them the right, we wouldn't have had this easement, this easement, this easement. We probably would have said...they would have come in when they had their permit; they would have said: Okay, we have a permit; here's our easement; how does this look to you? They would have negotiated regardless of whether it was the first easement, third easement, or whatever. But we would have not had three years of the constant letter writing, 30 days, you know, deadlines. And so I think it's kind of a balancing act there. [LB1]

SENATOR CHRISTENSEN: But I guess maybe I didn't explain it. I would see the process working as--I could come out and negotiate with you for three years, I just couldn't use the word "eminent domain." And all of a sudden, if you didn't know people could come to that eventually and on the final time they come in and say, you're going to take this, or we're going to go to eminent domain proceedings; wow, what a threat

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

that last time. Where, as the process is supposed to work, it's supposed to be saying, you know, we're here negotiating on this, if we never come to a process or an agreement, eminent domain will be the final result. It's supposed to be explained. And so, to me, I'd rather know what's going to happen in the process than deal with three years in negotiation, decide not, and then, all of a sudden, boom: We're going to eminent domain if you don't take this, because now that I got my permit I can say it. You know, I don't know. I like to ask this question, because, to me, I like to know what I'm looking at. [LB1]

TERI TAYLOR: I understand. [LB1]

SENATOR CHRISTENSEN: And you're saying, if I understand you right, you'd rather just have negotiations and not worry about it. Then when it comes to--they have their permit, they can say: Fine, we're going to go to eminent domain if you don't do this. [LB1]

TERI TAYLOR: Yes, I guess I would, Senator. [LB1]

SENATOR CHRISTENSEN: Okay. [LB1]

TERI TAYLOR: I guess I would give up that three years of the threats and the 30-day deadlines and anything to--you know. Because, when it comes right down to it, when you're talking about an easement, you're talking, pretty much, about a dollar figure. And in most cases, that's not what this is about. This isn't about how much money I'm going to get. Because, you know what? Money couldn't buy that 110-foot easement for six miles on my property. It's not for sale. So I guess, yes; I guess, if that's how the process works. I guess if you take away the right for a company to threaten landowners and only give them that right, by giving them a permit, then I guess I'll take the one threat. [LB1]

SENATOR CHRISTENSEN: Well, I appreciate that. [LB1]

TERI TAYLOR: Okay. [LB1]

SENATOR CHRISTENSEN: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Ms. Taylor, thank you for coming in and testifying. [LB1]

TERI TAYLOR: Thank you. [LB1]

SENATOR SMITH: And your son spoke very, very well, and you've obviously... [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

TERI TAYLOR: Yes, he does; I'm very proud of him. [LB1]

SENATOR SMITH: ...you've done a very, very fine job... [LB1]

TERI TAYLOR: Thank you. [LB1]

SENATOR SMITH: ...obviously. But I wish I had asked this question while he was up here, but perhaps you can answer it. And if you can't, that's okay. But he was talking about the reclamation process and how he would not be able to use the land for grazing for a long, long period of time after the reclamation process. And I guess I want to understand that a little bit more, as to why it would take so long. And I'm...I stepped out a little bit ago, and I went and I got my copy of LB629, which was the reclamation legislation that was passed earlier this year. And, you know, it notes in here...and Senator Sullivan did a very fine job on this bill. But: "A pipeline carrier's obligation for reclamation and maintenance of the pipeline right of way shall continue until the pipeline is permanently decommissioned or removed." So, obviously, there's an obligation there to make certain it's put back into such a state that it can continue to be used. Why would it not be able to be used? [LB1]

TERI TAYLOR: Because, Senator, there are so many other outside things that will affect that. We'll talk about TransCanada. TransCanada can come in--and we've got a 110-foot easement--they can come in, and they can reseed, and they can lay their seed blanket, and they can do, you know, all these things. But without the help of Mother Nature, and without the prevailing northwest winds, they can seed it every day for the next 30 years and it will not grass back, you know. The northwest prevailing wind is brutal. It can take a corner--we bury our eight-foot corners nearly four feet in the ground--and it can pull that corner out; it can bare that corner--we block them, you know, with a creosote box on the bottom--in a year's time. We can dig it down one spring. When we go back the next spring to fence, it has blown it out again. We have bedded, you know, we bed our blowouts. And...but without the rain and the wind, it's virtually impossible. And so for them to say, yes, we are going to do this, and, yes, we are going to see to it, I don't think they realize the unsurmountable job they're talking about doing. I mean, it's a...I mean, I know you're aware of blowouts in the Sandhills, and they're just virtually impossible to control. [LB1]

SENATOR SMITH: Are there any cases where we've seen reclamation take place and have adequate restoration to where the land was usable? [LB1]

TERI TAYLOR: Senator Christensen spoke of roads, you know, the Road Departments...once again...totally development. At one of your other hearings, when one of the professors that is in charge of the Barta Brothers ranch south of Bassett, he told about different management practices that they had tried, and he also told about

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

how much sand shifted on a couple of those, you know...and those were areas, you know, where they were trying to...and he also made the remark that this could be a 400-mile, or however many, blowout across Nebraska simply because of these reasons. So I would refer to that. I would refer to the studies that have been done at the Barta Brothers ranch, because that's very typical Sandhills ground. And that would be a good, you know, scenario to... [LB1]

SENATOR SMITH: Thank you. [LB1]

TERI TAYLOR: ...identify with, yes. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: Again going back to--the Canadian prime minister talked in Ottawa, and he said: Approval of the proposed 1,661-mile \$7 billion pipeline from Alberta to Texas is a no-brainer, because demand for oil and jobs will overwhelm opposition from Nebraska lawmakers. What would you say if he was standing here? What would you tell him? [LB1]

TERI TAYLOR: Well, first I'd say, you know: Nice to meet you; it's an honor. (Laughter) Then the next thing I guess I would say would be--that I would not mean to offend him but I don't think he realizes how valuable we Nebraskans think our property and our land and our state and our water is. And so to compare it to \$700 billion and to... [LB1]

SENATOR HAAR: Just \$7 billion. [LB1]

TERI TAYLOR: Oh, excuse me. Well, oh, seven hundred--I don't care, it's all the same to me. To \$7 billion and to whatever those job figures are, you know, it's pretty hard for us, when our emotions run pretty deep here in this state, to put a dollar figure on it. And so I guess that would be my... [LB1]

SENATOR HAAR: So you don't feel that you're just standing in the way of progress. [LB1]

TERI TAYLOR: Oh, no. I'm sorry, I don't. I think we've made a lot of progress in this state, and I think I've been a part of it, you know. So, no, I don't think I'm standing in the way of progress. I might be standing in the way of TransCanada, but I'm not standing in the way of progress. [LB1]

SENATOR HAAR: Thank you. [LB1]

SENATOR LANGEMEIER: Seeing no other questions... [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

TERI TAYLOR: Thank you. [LB1]

SENATOR LANGEMEIER: ...well done. Now we're going to hop to this side. Do you mind if we hop to the little prop here? [LB1]

CAROL REED: So sorry. Thank you. [LB1]

SENATOR LANGEMEIER: We'll let him get out of here--he or she, I should say. [LB1]

CAROL REED: My sincere apologies for any disruptions, but this little man wants to speak, as do I. (Laughter) [LB1]

SENATOR LANGEMEIER: That's okay; I've got a couple of them. [LB1]

CAROL REED: My name is Carol Reed, C-a-r-o-l R-e-e-d. And this is little Noah. And we're here today to thank those of you who have worked very hard, Senator Dubas and others, on thinking about a good solution for us as state of Nebraska citizens. I'm here to remind you that you are here as employees and representatives of the citizens of the state of Nebraska and that your job is to protect us. And, yes, I'm emotional, too, just like the rest of them. But I'm emotional for a really good reason: this little guy. He deserves to be able to go and see the Sandhills not blown out, because, as these wonderful ranchers have put it, you can't fix it when you screw it up that bad. And the reclamation things that they're talking about doing won't work. I have been a landowner; I have had ag land in my property. And what that was was some sandy soil. Even here in the eastern part of Nebraska there are little bits of sand. And where they are they blow. And if you have cattle trails through them, you can't fix them very easily; it's a big pain. And if you have something like a big pipeline going through it, that's not going to fix either. And I've been in the Sandhills; they're beautiful; they're exquisite; they're gorgeous. And as a citizen of the state of Nebraska, I know they're irreplaceable. And you should know it too. If you haven't been there, you should go. And if you would go, you would see what all of these wonderful landowners are saying, that it is precious and irreplaceable. And, yes, when you have ranchers who are conservative and environmentalists who are liberal and mothers who are here to say, all of us, the same thing: Do what is right for the state of Nebraska; move this bill out of your committee; let the whole Legislature debate it and do what is right for the state of Nebraska to protect our water, our land, our Sandhills, our aquifer, and the rights of future generations to have their voices heard and the rights of future generations to have a clean environment to grow up in, to have clean water to drink, and to have beautiful places to explore. And again, I'm sorry for any disruption, but these little ones have a right too. And even if they can't vote, I sure as hell can; and I'm paying attention to what you do. And I will continue to do that. So, please, do what's right; follow your hearts; follow your conscience. I'm sorry, I don't mean to be disrespectful, but when I hear senators say things like: The people of Keystone will be heard as well as the citizens of Nebraska, I get pissed. The

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

people of Nebraska are the ones who elected you. The people of Nebraska are the ones who are paying your salaries. The people of Nebraska are the ones who are here to say: Please, protect our land, protect our water, do what is right. It is not just an emotional issue; it is a real issue. Because for the little ones, like the animals, the little ones, like the Sandhills orchids, the little ones, all of those things--they are irreplaceable. And the way of life of agriculture in Nebraska is irreplaceable. If you screw up these ranchers' lives and their homes, it will take generations, or it will never be fixable. Please, do the right thing. Move this bill out of here so that the entire Legislature can hear it and protect their citizens of the state of Nebraska. And I thank you for your time. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Reed? Seeing none, thank you very much. Well done. Now over to this side. Come on up. [LB1]

LARRY CALDWELL: (Exhibit 14) My name is Robert Caldwell; I go--normally go by "Larry," because it's "Robert L." I'm from here in Lincoln, but I have lived... [LB1]

SENATOR LANGEMEIER: I need you to spell it. [LB1]

LARRY CALDWELL: Oh. C-a-l-d-w-e-l-l. I live in Lincoln, but I have lived in several places in Nebraska. Due to the fact that I'm not able to attend all the hearings that I would like, I am going to talk about several issues. I'm not an expert, by any means, but I have lived and worked and studied in communities located in the Sandhills region. I attended elementary school in Albion, Nebraska, where my parents were both public schoolteachers. I learned at an early age through my Scouting experience that it was an important part of Scouting to conserve and protect our natural resources. I later became an Eagle Scout. During my college years I enrolled in a two-week conservation course that took place at the 4-H camp at Halsey, Nebraska. During that time we had the opportunity to go on a field trip with the soil conservation agent in that area, who explained to us how he worked with landowners to best protect their land from erosion. I later lived and worked as a teacher in the Sandhills community of Arthur. So I am aware of life in the Sandhills. Please refer to the article I ran across in the June 2008 NEBRASKAland magazine, page 10 to 19. It's entitled, "Sandhills Blowouts." It shows pictures of what has transpired over the past 100 years in the Sandhills. Once this land is disturbed, it takes a very long time to restore it to the grassland it is intended to be. Ask the landowner from near Stuart, Nebraska, about this. Another thing I would like to address is the issue of eminent domain. It appears that this project is for personal gain of a private, foreign company and not necessarily for the public good. Let me give you an example of personal experience. If you want to ask questions about specifics I'll go into that later. I have former clients that own farm ground giving up good corn producing acres for road construction projects in this manner and not receiving what they considered a fair price. Note: a similar letter plus a copy of the June 2008 NEBRASKAland was sent to Secretary Hillary Clinton during the public comment period

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

last spring. Thank you for your time. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. What was the publication again that... [LB1]

LARRY CALDWELL: That was the June 2008 NEBRASKAland magazine, page 10 to 19. Very good article with very good pictures. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. Well done. Welcome. [LB1]

JOHN POLLACK: (Exhibit 15) Thank you. Thank you for allowing me to speak today in favor of LB1. My name is John Pollack, P-o-l-l-a-c-k. I am a meteorologist with 31 years of forecasting experience in Nebraska as an employee of the National Weather Service. I am now retired, but I continue an active interest in the weather of this state and also in climate change. Evidence continues to mount through both observations and research that climate change will bring an intensification of the hydrologic cycle to the Great Plains. This means more intense precipitation episodes, but also longer periods of drought between the wet spells. Nebraska has already seen more flooding, but western Nebraska and the southern Plains have also had recent episodes of severe drought. Even natural climate change has brought recurrent severe drought to Nebraska. Drought is especially relevant to LB1 as Section 8, part (4) addresses commitments of land and depletion of natural resources in a proposed pipeline corridor. I agree that such depletion of natural resources should be heavily weighted by the Public Service Commission, as in part (b). Drought will create the potential for serious and widening blowouts along a pipeline corridor, especially in the Sandhills, as people testifying before me have so eloquently put it. This potential will be increased by a greater width of the corridor and repeated operation of heavy machinery within and approaching the corridor. Section (c) requires consideration of methods to minimize or mitigate impacts. Drought effects can arise any time the ground cover surrounding the pipeline is interrupted. Possible blowouts require ongoing monitoring for the length of the pipeline operation, and the ability to reestablish effective cover even during severe drought conditions. It cannot be assumed that adequate cover will be maintained in any area of pipeline operations during a drought. Flooding brings the potential for water erosion problems to a pipeline corridor. In addition, my experience--I won't go into the horror stories--suggests that storms and flooding frequently interrupt the operation of automated monitoring systems, such as there might be around a pipeline. Backup measures should be mandated as well. I thank you for your time. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Pollack? Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. Thank you for your testimony. In your second paragraph there you're referring to climate change twice. [LB1]

JOHN POLLACK: Yes. [LB1]

SENATOR CARLSON: Why isn't it global warming? [LB1]

JOHN POLLACK: The reason is because global warming just talks about the temperature, and climate is a lot more than temperature. It's winds. It's water. It's the time of year that different things happen. It's the totality of weather taken over time. And to me, as a scientist, it's a shortcut that people understand maybe to refer to it as global warming. But even if the temperature were to remain the same in Nebraska but the precipitation regime were to change, it would still be an issue. [LB1]

SENATOR CARLSON: Well, it seems like, and maybe I'm wrong, that when we first started to hear about this it was called global warming and then it switched to climate change. Is there a reason for that? [LB1]

JOHN POLLACK: I can't tell you the reason. I can tell you that in my...among my personal documents, I have a report by the National Academy of Sciences that was released in the late 1970s entitled "Understanding Climatic Change." So even back then among scientists they weren't referring to it so much as global warming. I would call that a popularized term which gets an idea across succinctly, but it's an incomplete term. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. Appreciate your testimony. Further testimony as proponents. Good afternoon. [LB1]

KARL CONNELL: (Exhibit 16) Good afternoon, Senator. Glad to be here, I think. I appreciate you staying around here with me, with us. My name is Karl Connell, C-o-n-n-e-l-l. I live north of Newport, Nebraska, in Keya Paha County. We will have approximately 2,900 feet of proposed TransCanada pipeline on our property and we have not signed any easements nor do we intend to. We have not gotten...they have not...we have not given them permission to be on our property. Senator Avery's bill, and I'm just going to run down through these bills quick and my comments, and then we're probably going to back up a little bit. Senator Avery's bill, LB6, does not have enough dollar amount in a bond and it should be at least a billion or more. I like the bond money being made available to landowners and the counties to restore by payment any

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

damages to land, infrastructure, or natural resources. The Kalamazoo River cleanup is over \$700 million and they have been working at it for about a year and they're not done yet. They haven't really started. Senator Haar's bill, LB5, I hope this will protect all the groundwater in all the Sandhills region in Nebraska, especially north and south of Highway 20, and it's in Section 4, lines 21-24 (sic). Senator Langemeier, your bill LB4, I'm glad that the Governor finally has recognized the importance of protecting the groundwater in the state. I really don't like the state giving a foreign for-profit corporation the power of condemnation just because it looks good to him. Some people are going to say no to a pipeline because it is not in their best interest because they're having it run across their property or they just don't want it. My question to you, Senators: Do the senators have the emergency response plan in hand for the Keystone XL pipeline to know what will happen when we have a spill in the state? Do you know how to handle it on a state level? Contamination? Containment? Partial cleanup by emergency personnel? Do the senators have the MSDS on the oil that will be transported through this export pipeline from the province of Alberta, Canada? Now, a question for Senator Christensen. If you would please read for me, page 5, all the chemicals that is found in this tar sands crude oil, please, so they're pronounced right. [LB1]

SENATOR LANGEMEIER: Sorry, but you don't get to ask questions. [LB1]

KARL CONNELL: Yes, if you would please. Only take you a moment. Do you want me to read them? Do I have to read them for you? No. All right. Very well. I'll continue then. Let's see, where was I at here? Can you tell me what chemicals and the amount of the mixtures together will create the heat in oil to help it flow down the pipeline? When we have a spill, how do you get these chemicals out of the water supply for the people of the state of Nebraska? This pipeline should be moved out of the state or at least to the same right of way as Keystone I pipeline. Two pipelines in one right of way would be easier to monitor and watch, closer to cleanup crews to get out, and cheaper to construct in the long run. Senator Dubas' bill, LB1, Major Oil Pipeline Siting Act. You senators have finally figured out you have siting authority. It has been over...it has only taken about a year and a month. Thank you for realizing that. This pipeline needs to be moved out of the Sandhills and out of the Ogallala aquifer. It will leak. When and where, we don't know. [LB1]

SENATOR LANGEMEIER: Okay. You're out of time. Can you summarize the rest of your testimony? You've got lots of pages here yet. [LB1]

KARL CONNELL: I'll finish to the bottom of the page here. Some of the things that's going to affect me and it's not going to do me any good: my electric rate is going to go up 15 to 20 percent each year; my taxes are going to go up in the county to maintain roads, bridges, right of ways; the liability insurance, I've been told in a roundabout way that I'm going to have to carry my own liability insurance for this TransCanada pipeline. I was also been told from my insurance company that they probably could supply me with

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

insurance, but it would be cost-prohibitive. That's an expense to me. It also affects my ability to borrow money at the bank. The bank does not want to be liable for a Keystone pipeline tar sands crude pipeline. It appears to me that the state of Nebraska has been sold out by the political games in this state by elected officials. We are in the twelfth hour of this pipeline debate. This should have been done the first part of this year, not now. You senators have failed the people of Nebraska by sitting around on your hands and not acting, just reacting to the problems of TransCanada XL pipeline. We, the people of Nebraska, will hold you, Senators, accountable when there is a spill, and we will have a spill. These six bills will help if you've got the sand to enforce them and not turn and run from TransCanada when they cry "lawsuit". Don't turn this into a dog-and-pony show, Senators, please. Any questions? [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Connell?
Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for speaking. Because you can't ask questions, if I would have spoke up you would have been done speaking. I wanted to give you your time. That's the reason. I will gladly read them for you. I will gladly speak with you at any time after this too. You know, I'm not going to avoid anything, but I just wanted you to understand why I was quiet because otherwise you'd have lost your time, so. [LB1]

KARL CONNELL: That's all right. Thank you. [LB1]

SENATOR CHRISTENSEN: Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. Well done. [LB1]

KARL CONNELL: You bet. Thank you. [LB1]

SENATOR LANGEMEIER: Further testimony as a proponent to LB1. Good afternoon.
[LB1]

DAVID HIBLER: (Exhibit 17) Good afternoon, Senators. Thank you. My name is Dr. David J. Hibler, Sr., presently residing in north Omaha for the past 13 years, prior to that, some 30 years in the Bohemian Alps. [LB1]

SENATOR LANGEMEIER: I need you to... [LB1]

DAVID HIBLER: H-i-b-l-e-r. I'm sorry. [LB1]

SENATOR LANGEMEIER: Thank you. [LB1]

DAVID HIBLER: Prior to that, some 30 years in the Bohemian Alps, where I still own three properties which are on the fringe of the Ogallala aquifer. So as Lawyer Peterson said it before, I guess I am a stakeholder, although I do not have the TransCanada projected to go through my property. But, by the same token, if there were contamination, it could have affected my property. I learned something here today from the earlier testimony which is what I had mainly planned to come and talk with you about is the elephant in the living room, which is the potential, that is if we allow this pipeline to go through the Sandhills, the potential for a terrorist strike that would intentionally be tried to contaminate the groundwater and intentionally strike a blow against us it seems to me is indisputable. If you want to take out an airport, if you want to take out a nuclear power plant or something like that, you're going to need a really big bomb or a fuel and an airplane. If you want to take out the TransCanada pipeline, all you're going to need is a pickup truck filled with enough fertilizer and diesel fuel, park it out in the middle of nowhere in the Sandhills, use your GPS to get there, and bye-bye birdie. Okay? Basically a pipeline is an indefensible soft target. Now the only difference between the pipeline going across the Sandhills and the pipeline going through clay soils is what happens when and if--God forbid that it should happen--but when and if that eventuality takes place. My son was a Marine in Iraq. He walked pipelines. He saw IEDs. He saw the size of craters that they make. Okay. If that happens, look at one figure. Because you had said earlier today that you want facts and figures. Look at TransCanada's own figure, 700,000 barrels. A barrel is 42 gallons. Seven hundred thousand per day equals 29,400,000 gallons per day, which comes out to 22,416 gallons per minute--22,416 gallons per minute in the event of a catastrophic blowup of that pipeline. Kalamazoo, which you've heard about a couple of times already, leaked 800,000 gallons, approximately. It took them hours to get it shut off. How many gallons are going to leak if there's a catastrophic failure in the middle of nowhere when it's 20,416 gallons per minute blowing out of there at a high pressure? Why would a terrorist strike there? Why not. It's a soft, easy target. My main question is, where are the contingency studies? I have written to the State Department. I have written to the CEO of TransCanada. I have written to the president of the company as well as the vice president. I'm not getting any answers back from anybody. The simple question is, has anybody done a contingency study on the effects of the environmental damage and the cost of cleanup of a major blowout like that, a terrorist attack in sandy soil versus a terrorist attack in clay soil? It seems to me that's a logical question. And my final point, I see the red light is on, apart from the question of the attack itself and how logical it seems to me or...I mean, Al Jazeera has had four articles on this within recent months. Okay? But apart from that question, which is outside the bounds of this committee because, as you said, you don't really have authority to deal with the question of the environmental impact study, assume it happens. Then what? For the next 50 years, we have this pipeline which is going to have to be defended. In order to defend it, gating, fences, troops, whatever, who knows what. The quality of life in the Sandhills would never again be the same. Terrorism...what's, you know, a reporter from the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

World-Herald said, well, why would they blow up the pipeline in the middle of nowhere? Why wouldn't they blow up a train in the middle of...toxic chemicals in the middle of a city? Well, the purpose of terrorism is to throw terror. If they can strike in the middle of the country, if they can strike right in the heart of America, pollute our water, and make a statement, they've accomplished their goal. And it would change the...in order to defend against it in the future, the things we would have to do out in the Sandhills to protect that asset would change entirely the quality of life. And I think, Senator Dubas, that's what your environmental impact is what you're talking about, the socio-cultural implications of what this would do to the state. Thank you. I'm sorry I went over. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. [LB1]

DAVID HIBLER: Thank you. [LB1]

SENATOR LANGEMEIER: Appreciate it. Further testimony as a proponent. Don't be shy, we'll all get up here. Welcome. [LB1]

MARILYN LUND: (Exhibit 18) Hello. Thank you. Senators, I just want to support Senator Dubas' bill because I think we need pipeline and siting... [LB1]

SENATOR LANGEMEIER: I need your name and have you spell it for me please. [LB1]

MARILYN LUND: Okay. It's Marilyn Lund, M-a-r-i-l-y-n L-u-n-d. We need pipeline and siting regulations to protect our people, land, and water resources. I represent my husband and myself and our friends and those who are interested in this big dilemma. And my husband, we are farmer/ranchers in Bassett, Rock County, Nebraska, and he's concerned about reclamation, about how it can be restored. Once they tear up these Sandhills, and he says the Sandhills are just that--there's sand with the Ogallala aquifer, there's sand above the water. And when you start digging in that, it's almost impossible to reclaim that to its normal state. And we feel that people in the Legislature and other places don't really understand the nature of those soils in that Sandhills. The Sandhills Ogallala aquifer is different than it is over by Norfolk where they have dense soils. We're concerned about that. The tar sand also, all the possible...all the possibilities of leaks. The tar sands oil, heavy, acidic crude is not the upgraded conventional crude that for the most part has been transported to Midwest refineries in established pipelines. The Keystone XL pipeline will transport a highly corrosive acidic blend of thick, raw bitumen and highly volatile natural gas liquid condensate which carries vanadium, arsenic, heavy metals, and benzene--a carcinogen. This diluted bitumen has 20 times higher acid concentration and 10 times as much sulfur as conventional crude. Additional sulfur leads to weakening and embrittlement of pipelines. The high temperature of 158 degrees in the pipeline increases the speed at which acids and chemicals corrode the pipeline and cause gaseous condensate to become unstable, forming gas bubbles and

Natural Resources Committee
November 07, 2011

column separation. The corrosive action is an ongoing threat. The high rate of pipeline failure from internal corrosion in the Alberta pipeline system located in Canada was 218 spills per 10,000 miles between 2002 and 2010. That is over 27 failures per year. But they were transporting mostly this heavy, acidic crude. Lots of the crude that comes into the United States in their network of pipelines is upgraded conventional crude. This is a whole new ball game. Phase I of the original Keystone pipeline spilled at least 10 times in its first year of operation. And the proposed pipeline just must not be built through the Ogallala aquifer in the fragile Sandhills. There are other things I mention, many of which are covered by these other persons and the experts, so I'm not going to take up more of your time. But I'm going to give some papers to your person here, sorry, that you can look over in other time, various things on the cost of this pipeline. And, also, all these ads that we see in the radio and the newspaper, many of those claims are based entirely on a report by the Perryman Group commissioned by TransCanada. An independent analysis by Cornell University Global Labor Institute finds that between 500 and 1,400 temporary construction jobs will be created with a negative long-term impact as gas prices rise in the Midwest and environmental costs are incurred. I speak a little bit more to that in this paper and you will all receive that. But so many of the advantages on the radio and in the ads now are so exaggerated. Getting back to the main purpose, I just wanted to testify to let you know there's a lot of people up there who are concerned about this who are not...do not have the pipeline crossing them. We irrigate out of the Ogallala aquifer. We're concerned about the pureness of the water for drinking, for our cattle, for irrigation, all the rest. So I just urge and I thank you, Senator Dubas. We urge you Nebraska senators to establish siting, eminent domain, and pipeline oversight legislation to protect our Nebraska citizens and resources. Take hold of the authority you have and do something for us before it's too late. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Lund? Seeing none, thank you very much, and if I can have you turn the green sheet in. Further proponents. I guess since there's one on this side. So this side is turned, so. Come on up. Just out of curiosity, how many more proponents do we have to testify? Come on up, there's room up front. Go ahead. [LB1]

ROSE MAPEL: (Exhibit 19) Hello. Thank you for letting me speak. My name is Rose Mapel, M-a-p-e-l. I am a landowner on land that is so far not in the path of a pipeline. I sit before you as a concerned citizen, landowner, taxpayer, parent, and dependent on the Ogallala aquifer. I grew up in the Sandhills and we depended on the Ogallala aquifer for our food and water as do countless families today. We drank well water, watered our crops, and had windmills that brought our cattle life-giving groundwater. I'm against the Keystone XL pipeline for the following reasons: (1) This pipeline is not necessary because a private-sector oil company in a foreign country wants to transport crude oil through our country to be refined and then exported. (2) Nebraskans are being asked to offer a sacrifice of our fragile Sandhills ecosystem and, along with neighboring states, we are all asked to sacrifice our clean Ogallala aquifer that is constantly being used for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

drinking, washing, and irrigating. Other states have spoken out about these environmental issues and their taxpayers' rights have been heard. This pipeline will run through properties that our families homesteaded, and TransCanada demands eminent domain from landowners. (3) Projections from TransCanada's Canadian application to build the Keystone XL in Section 3 under Supply and Demand Markets states that it will, "increase the price of heavy crude." Refined oil will be exported and it will raise the price of oil in America. (4) What about the long-term results of this pipeline? The first Keystone pipeline has a history of multiple leaks. TransCanada does not say what will happen once the pipe's natural life is done. TransCanada has not provided us with a plan of action about what steps will be taken in case of an oil spill or multiple oil spills. (5) The pipeline would be an easy target for terrorists as it is not guarded at all. Once the authorities think that it is time for it to be guarded, will you have patrol units on your land 24/7? Will your neighbor find a terrorist on his land who wants to do harm to America with bombs being strategically placed up and down the pipeline over the Ogallala aquifer? Will the private oil company go bankrupt and leave the cleaning up to us? What will this poison do to the fragile Sandhills ecosystem? Will it kill off the native grasses that stabilize the sand dunes that protect the hills from wind erosion? In the end, will the land go back to becoming the Great American Desert once the land is not fit for human habitation? If it does, we will have nothing left to fight for. Please help protect Nebraska. We are risking our communities and a way of life that we have grown to know and love. Thank you. [LB1]

SENATOR LANGEMEIER: Thank you. Are there any questions for Ms. Mapel? Seeing none, thank you very much. Well done. Further proponents. Good afternoon. Oh, don't touch it! [LB1]

MARY ELLEN MULCAHY: Good morning. Oh, I did! [LB1]

SENATOR LANGEMEIER: There you go, there you go. It won't record right. Just...that's perfect. [LB1]

MARY ELLEN MULCAHY: All right. Is it going to record? [LB1]

SENATOR LANGEMEIER: Yep. [LB1]

MARY ELLEN MULCAHY: I can hear it. It sounds good to me. [LB1]

SENATOR LANGEMEIER: I can see it over there, so I know when it's working, so. [LB1]

MARY ELLEN MULCAHY: You'll tell me. [LB1]

SENATOR LANGEMEIER: Yep. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

MARY ELLEN MULCAHY: All right. Thank you very much. Thank you, Mr. Chairman and fellow members of the Resources Committee. I am Mary Ellen Mulcahy, a landowner in Greeley County. I am from Omaha. [LB1]

SENATOR LANGEMEIER: Mary Ellen, I need you to spell it. [LB1]

MARY ELLEN MULCAHY: I will. [LB1]

SENATOR LANGEMEIER: Okay. [LB1]

MARY ELLEN MULCAHY: M-u-l-c-a-h-y, Mary Ellen, two separate words, e-n. [LB1]

SENATOR LANGEMEIER: Thank you. [LB1]

MARY ELLEN MULCAHY: Okay. I am from Omaha. I own land in Greeley County. It's a Valentine soil pasture section where TransCanada wants to place a 36-inch pipe covered in four foot of soil, so that is a seven-foot deep hole, 50 feet wide easement to send tar sands through the life of the pipe. I have not allowed TransCanada on my pasture despite numerous phone calls from their land agent. I have not signed an easement with TransCanada because they have not received federal approval. I have received two letters from TransCanada using eminent domain as their method of securing my pasture for their pipeline. Upon reading the easement, I realized TransCanada did not give enough safeguards to the landowner. Reparation of Valentine soil. How are they going to repair major blowouts and not cover new ones? Will the seed fit a native prairie specific to my Valentine soil? There was a liability issue, a safety issue. These were the key factors not adequately addressed in the easement. I also have no electricity on this pasture site. My last reply to the eminent domain letter offered an alternate route by my pasture, not through the section. It suggested a stronger diagonal line under Highway 281 and then through a Nebraska school land. TransCanada's reply to a two-mile change was no. When I was informed in 2007 of President Bush's presidential approval given to use my pasture for a tar sand pipeline, I contacted my Greeley County commissioners who said they could not do anything. My 3rd District House of Representative who said, since I live in Omaha and not a voter in the District 3, even though my pasture ground is, nothing could be done. By the way, my calling the other federal Senators and House of Representatives, their response also was, they are not aware of a Keystone XL pipeline and they could not do anything about it. Contacting the Nebraska state senators, their reply very graciously always was, the state of Nebraska could do nothing; it was a federal project. After multiple contacts since 2007, I am now given another opportunity to testify before the Nebraska Resources and Judicial Committees. I am still saying: I do not want a tar sand metal pipeline from a foreign country running under my Valentine soil. I provide jobs to the men and women who monitor their cattle on my pasture. I provide jobs to the fence and well people. I pay taxes to my county, state, and federal governments. My family has

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

owned land in Greeley County for over 110 years. Why am I telling you all these facts which you have already heard but not really listened to? Because the state of Nebraska is now down to the wire to really listen in 2011 and step up to the plate to support landowners who have been a part of the Nebraska agricultural explosion over 140 years. I am asking you to grant passage to Senator Dubas' siting bill, Senator Avery's eminent domain and bond bill, and Senator Haar's bill. And I thank you very, very much. It's late in the day, but thank you for listening. I appreciate that. [LB1]

SENATOR LANGEMEIER: You're welcome. Are there any questions? Seeing none, thank you very much for your testimony. [LB1]

MARY ELLEN MULCAHY: You're welcome. [LB1]

SENATOR LANGEMEIER: Further testimony as proponents. Welcome. [LB1]

LINELL CONNOLLY: (Exhibit 20) Thank you, Senators. It is late in the day. I'll try to condense mine since you have a written copy. My name is Linell Connolly, it's L-i-n-e-l-l C-o-n-n-o-l-l-y. I'm from Lincoln and I support Senator Dubas' bill. In short, when I was in Colorado hiking, where I mentioned, I saw the aftermath of a plane crash in the mountains from clear back in the World War II area. I saw that, as often happens with forest fires, the area that was affected by the fireball in a resulting fire had totally regrown. All the understory had become 60 and 70 feet high and was beautiful. The area where the fuel spill occurred, however, 65 years later was still barren. I was hiking with people who were archeologists, geologists, physicists, learned people, and I said: is nothing growing here because of the fuel spill? And the answer I had was, most likely. I cannot believe that when there is a spill from a pipeline of this sort that TransCanada may wish to build or does wish to build would not cause the same type of devastation. As a practicing dental hygienist in this state for 37 years, at one point I had a patient, also a healthcare professional, who ultimately had been exposed to benzene. And I can explain that a little bit more. We don't know why. Her ailments were many and they were bizarre and they lasted several years. She is only just now, 15 or 18 years later, beginning to have some normalcy in her health. We know this pipeline will carry benzene, along with many other toxins, that won't be able to be cleaned from the earth when it leaks. We need clean, healthy water for our personal use, for livestock and crop growth, and certainly for use in our healthcare settings. Anything else is unacceptable. Another friend recently showed how concerned...or shared how concerned her father was when he found barren areas in his grassland pastures on their farm near Elgin, which is on the edge of the Sandhills. She said he would just worry like crazy because he knew that grass wouldn't regrow quickly enough to prevent erosion and changing of the terrain. This pipeline project will create a wide swath of damage. We've seen it in their TV commercials. As it's constructed, that damage then can never truly be restored to its natural state. A cosmetic-type fix cannot restore that which took thousands of years to create. Short of stopping this pipeline, if a permit is issued by our President,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

then I believe that it is imperative that it be moved to protect the fragile Sandhills and the Ogallala aquifer. If we get it wrong and there is ultimately catastrophic damage, we don't get any do-overs. We need strong statutes such as LB1 regarding siting of all pipelines of this sort, as well as statutes protecting landowners from the threat of eminent domain and the destruction of their land--the heritage from generations before and for generations to come. We need strong statutes that our state can enforce from this point forward for any and all pipelines and projects of this type. We are Nebraskans. I implore you to work together to do the right thing to protect our land and water and ultimately our world. Thank you in advance for your strong actions. [LB1]

SENATOR LANGEMEIER: Thank you. Are there any questions? Seeing none, thank you very much for your testimony. [LB1]

LINELL CONNOLLY: Thank you. [LB1]

SENATOR LANGEMEIER: Duane, welcome. [LB1]

DUANE HOVORKA: Good afternoon. Duane, D-u-a-n-e, Hovorka, H-o-v-o-r-k-a. I live near Elmwood, Nebraska. I'm here on behalf of the Nebraska Wildlife Federation. You've heard of a lot of good reasons this afternoon for passing this bill. I won't repeat any of them. What I want to do is thank Senator Dubas and her staff for doing an excellent job in writing a well-written and well-crafted bill, and to highlight four of the provisions that we think make it so important that you pass it. Section 1 requires that the Public Service Commission grant a determination, grant the permit before that eminent domain authority kicks in in the state of Nebraska. The Fifth Amendment to the Constitution is designed to protect private property from being taken except where there's a clear, public use. And the fact that the Public Service Commission would make a determination based on whether that permit was in the public interest would then grant that authority by saying clearly the Public Service Commission believes there's a public purpose for the permit. And so that would be the basis of granting a private company that eminent domain authority. Second, in Section 8 requires the participation by a number of state agencies in this process. To its credit, the Nebraska Game and Parks Commission did provide some written comments to the State Department in the Keystone XL permit determination, but most of our other state agencies were largely missing or, if they did provide comments, they were at least not public. And so (laugh) we think... [LB1]

SENATOR LANGEMEIER: You were reserved for a moment. [LB1]

DUANE HOVORKA: Thank you. [LB1]

SENATOR LANGEMEIER: She unreserved you. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

DUANE HOVORKA: So we do think it's important that those other state agencies be on record and up-front about (laugh) some of these implications. Third, if you look at Section 8, some of the things that the Public Service Commission is supposed to look at, they include intrusion upon Nebraska natural resources. At a regional level, that would hopefully include things like the Ogallala aquifer and the fragile Sandhills, but on a more local basis we have things like rare, tallgrass prairies in southeast Nebraska, we have wetlands in the Rainwater Basin and along the Platte where we've lost more than 90 percent of our wetlands. And so those are largely local natural resources that mostly got left out and ignored in the federal process. So bringing those in would be important. And, fourth, in Section 9 there's an eight-month deadline for the Public Service Commission to act after receiving an application. That seems to be a pretty reasonable time line for the state agency to act. We don't think that causes undue delay for the company. And so with those four provisions, just highlighting some of the things we think makes this bill such a good idea. I'll close my testimony and be glad to answer any questions. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB1]

SENATOR HAAR: Well, one thing we hear is that, Duane, and I've known you for a long time, so on a first-name basis, but you're just one of that group of environmental extremists described...and this is from the [Huffington Post](#) where a TransCanada spokesman was critiquing a report. And he said, "This is part of the desperation and misinformation that these groups are going to continue to put out," Howard said. "At some point, this ridiculousness needs to stop. We welcome a discussion on whether the pipeline is in the national interest of the United States. We welcome a discussion about safety of our pipelines. But we just wish they would tell the truth." How do you respond to that? [LB1]

DUANE HOVORKA: Well, Senator, if I'm up here lying, that's not what we do. If you look at our board, it's a very moderate board. We have Republicans and Democrats on our board. They're very commonsense folks. They're very in line with mainstream Nebraska, and they would not let me get away with something that would be considered radical. And I wouldn't try to do it. So I think when you get to the point of calling names, that's not a good point for public policy. What we need to do, what you need to do is look at the facts, look at the arguments, sort out the truth from the untruths, and make your best decision. But I don't think it helps any of us to stand up here and call each other names. I think we need to have an informed, reasonable debate on the facts that are before us. [LB1]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. [LB1]

DUANE HOVORKA: Thank you. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR LANGEMEIER: Further proponents. Do we just have the one? Proponent? Come on down, get ready. [LB1]

JOHN K. HANSEN: (Exhibit 21) Mr. Chairman, members of the committee, for the record, my name is John K. Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union and appear before you today as both their president and lobbyist. We are in support of LB1. The concept of laying out the process we think is the appropriate agency. And to cover several issues not covered in my written comments that I handed in earlier in the possibility that I might not be able to be here this afternoon would say that since this process began, we have had the opportunity to work with a fairly significant number of landowners up and down the pipeline. And the lack of any clearly designated agency that deals with disputes and conflict resolution and houses information and helps make things clear to folks, so that when there are problems and there are conflicts, there's the opportunity to be able to resolve them, has enormous value. There's a tremendous benefit in that. The state of Nebraska owes that to our landowners. And so when our landowners call us up and the frustration, the pressure, the lack of clarity about where to go, who's in charge, what are we doing, where are we going, who do we talk to. And so as we have gone through and done the service work for our landowners, it's become increasingly clear to us that there is a very high and very significant value in the state clearly designating an appropriate agency so that when conflicts arise, when disputes arise, and they will, when you're talking about especially a private-sector company taking land from private-sector landowners for a private-sector purpose instead of for a public purpose, you can take the normal amount of conflict between landowners when you take their land for public purposes and you can at least double it. So to me that there's significant value in Senator Dubas' bill in that we think somebody somewhere ought to be able to be a clearinghouse for information, help lay out a much more clear process for how things work, and that the absence of process and that the absence of a designated agency has magnified the frustration and the conflict that's out there. The other thing that I would say in closing is that as we look at the outcome of the hearing last February and we heard the commitment that things were going to change on the part of TransCanada, I would just tell you that in our experience doing the service work, they did significantly change and they did get significantly worse. The pressure increased. The letter coming out threatening eminent domain immediately came out in April. And so the high-pressure tactics, the twisting, the misrepresentations of who had signed, all of those things got worse not better. And they're able to do that because there is no real clear standard. And given the way that this company has treated our landowners, if they were selling insurance in our state based on the things that they have done, as a former insurance agent I would tell you that their license would have been revoked by now. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR HAAR: John, what does your wife do? [LB1]

JOHN K. HANSEN: My wife is a hairstylist and a barber. [LB1]

SENATOR HAAR: So she has more regulation than crude oil pipelines in Nebraska? [LB1]

JOHN K. HANSEN: If you were wanting to ask her that question, she would assure you that she doesn't know how much they have but she knows how much she has and it would be fairly substantial. They've tried to put a fish aquarium in their shop just so that folks have something to look at when they're in there. They're not able to do that. They've wanted to be able to have an opportunity for folks to get pop. Well, they can't do that. There's a long list of things that she would tell you about, things that they can't do if you're running a hair salon. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. John, if you'd answer these questions in terms of the stance of Farmers Union. Is Farmers Union against all present oil pipelines in Nebraska? [LB1]

JOHN K. HANSEN: Oh, absolutely not. [LB1]

SENATOR CARLSON: Is Farmers Union against additional pipelines in Nebraska in the future? [LB1]

JOHN K. HANSEN: No. [LB1]

SENATOR CARLSON: Is Farmers Union against further development of fossil fuels? [LB1]

JOHN K. HANSEN: Nope. [LB1]

SENATOR CARLSON: Is Farmers Union against drilling for more oil in the United States? [LB1]

JOHN K. HANSEN: No. [LB1]

SENATOR CARLSON: Is Farmers Union against coal-fired electrical generation? [LB1]

JOHN K. HANSEN: No. [LB1]

SENATOR CARLSON: Does Farmers Union have a concern about that becoming more expensive? [LB1]

JOHN K. HANSEN: If you could you repeat the last question, I'm not quite sure. [LB1]

SENATOR CARLSON: Does Farmers Union have a concern about coal-fired electrical generation becoming more expensive? [LB1]

JOHN K. HANSEN: It's a mixed concern I would say. [LB1]

SENATOR CARLSON: If this oil pipeline is completely stopped, would that bother Farmers Union? [LB1]

JOHN K. HANSEN: Senator, what our members did was to lay out the criteria that they thought should be in place in order to be able to protect the interests of landowners at our last state convention. So we have a generic policy relative to siting. And, as you know, we're also in the wind business and very strong supporters of wind, and you can't be for transmission lines and against all pipelines if you think about it. You have to look at these things through the eyes of landowners and come up with a reasonable policy that treats people fairly. And so we have a log return policy, which I'll be glad to give you, that kind of sets out the criteria for what we think is fair treatment of landowners. And so the special order of business that we passed relative to what we thought the criteria should be was laid out, and the process and the lack of process and the lack of treatment of landowners did not measure up to that criteria relative to this particular pipeline. [LB1]

SENATOR CARLSON: Now there are groups that if they're wide open about their desires stop the TransCanada pipeline. And I think that some of those groups, that's exactly what they mean--just stop it. Is that Farmers Union's view? [LB1]

JOHN K. HANSEN: Our view really primarily, and we're a member of the Save Our Sandhills Coalition because we really think that there is a need for the state to step up and develop siting and routing authority so that we have a much more appropriate route. And the route in this particular project has caused very substantial push-back, especially from our landowners in the northern end of the state, which we have a lot of members frankly. [LB1]

SENATOR CARLSON: So it would be accurate to say that Farmers Union is wanting the TransCanada pipeline but just in a different path? [LB1]

JOHN K. HANSEN: Well, I think that we would prefer it to be in a better...have a better route. We would prefer it be in a more suitable route and that...I think that that would be a good way to say it. I would tell you that the view of our landowners, as the process

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

has gone on, is that the credibility and the reputation of TransCanada has got increasingly poor and that's by virtue of how they've treated our folks. And that...they've sort of wore out their welcome with our folks and burned their credibility. [LB1]

SENATOR CARLSON: So it could be a case that Farmers Union is not against an oil pipeline in Nebraska but against the path that it's currently on and against TransCanada for building it? [LB1]

JOHN K. HANSEN: We would be against this current route, and we wish we had clear, more clear standards that protected the rights and the interests of landowners so that TransCanada had to meet those standards. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Chairman. You heard a couple of people mention that if it was above ground it would be much better. Where would that put Farmers Union? [LB1]

JOHN K. HANSEN: I don't know. We don't have a policy on aboveground pipelines (laughter). We have a policy on how deep the gravel should be on county roads. We have...our policy that we have was developed last year, but I don't...I'm trying to think what that policy is and I don't think we have anything relative to aboveground placement. [LB1]

SENATOR CHRISTENSEN: Do you feel like personally it would be a safer, better deal or is it just get it out of the Sandhills? [LB1]

JOHN K. HANSEN: Well, as you know, I used to be a director of the Lower Elkhorn Natural Resources District, and so I've spent a lot of years working on natural resource issues. And so I'm fairly familiar. It's also my old seed corn territory. So I know where the wet meadows are. And I...the route that they have is particularly problematic and it's, you know, during substantial portions of the year where the route is, it's not going to be a matter of how many feet to water; it's going to be a matter of how many feet under water. So if there is a leak, there's immediate contamination of the ground and surface water, which in a lot of those, the wet meadows are, if you think about it, that's just groundwater that's high enough that it's above the surface of the soil. And so the wet meadows come up and so it goes down. So, you know, that whole upper end of the Elkhorn is primarily spring fed. And so there's so much interaction between ground and surface water they're really one and the same. So the route through that very porous soil profile and the depth of the water make it a particularly risky route. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR CHRISTENSEN: Okay. Thank you. [LB1]

JOHN K. HANSEN: Thank you. [LB1]

SENATOR LANGEMEIER: Seeing no...oh, Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Let me delve into a little bit with eminent domain. And, you know, in your testimony here, I've read through this, I know that's a large concern of your members. And in eminent domain and the issue with eminent domain is not isolated to Keystone pipeline. We heard earlier I know, I think there was a Mr. Schropfer that testified that he had had encounters with some of our public power districts related to transmission lines, I believe. So there is an issue. Eminent domain is a process that's in place and unfortunately sometimes it's exercised. And, generally speaking, give me your thoughts on the use of eminent domain, not necessarily in this particular case, but is it a necessary evil in certain cases and what's your experiences with eminent domain? [LB1]

JOHN K. HANSEN: Thank you, Senator, for the question. In my former responsibilities on the board of directors of the Lower Elkhorn NRD, our view--and we had eminent domain authority--was that it was just the last option. You did everything you could possibly do to avoid eminent domain, and that you used it very judiciously, and that, you know, when you do use it, it comes at a price. You know, most folks don't like ownership or control of private property being forcibly taken away from individuals. And we have a very strong personal property ethic in our state. And my experience is that as I look at the law relative to public entities and public entities who are either directly or, through their staff or departments, indirectly in control of the use of eminent domain, I see a very clearly delineated, very clearly defined, very narrowly prescribed, limited kind of use of that power, as it should be, for very specific purposes, all of which entail public use or public benefit. And so in the case of this particular oil pipeline issue that we're talking about today, there is no such guidance. It is not prescriptive. It doesn't limit. It doesn't prescribe. It doesn't do the same things that public entities would do. And it takes and uses the eminent domain authority to transfer control from one private-sector entity to another private-sector entity for commercial gain. And so the public use and the public benefit part is really missing. So that's a little...I mean, that's seriously troubling for us, but the lack of guidance on when to use it. So, for example, does TransCanada actually have eminent domain authority before the State Department issues the permit? And so they certainly have been acting as they did up to a certain point when they completely changed the way they're engaging with our landowners, but they were claiming that they had that authority when really they were entering, in our opinion, into a willing-buyer, willing-seller arrangement with folks which dramatically changed and unfairly tilted the table, the negotiating table, in favor of TransCanada. So we need some clarity about when it's enforced and when it's not because that has led to a lot of the hard feelings. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR SMITH: As, you know, as a property owner myself, I mean, it certainly would upset me whenever someone is talking about my property, the property I own. But so and it just...it does generate emotions. But are you aware of any cases that you've had where you exercised eminent domain and people were not upset? [LB1]

JOHN K. HANSEN: Well, I guess that I know of some landowners that are...to be accurate, relative to eminent domain is when that process is invoked based on how the process works and based on, you know, the option for a jury trial, there are some landowners who would, you know, who are absolutely opposed to the mission. They're going to fight it no matter what. Some landowners, you know, they know that their chances are that things might get better, things might get worse, it might be the same, but there's some folks I suspect, and that would be the group I think that you referred to in the beginning, that are willing to roll the dice and say, why, I think I'll come out better in front of a jury. Most of those folks are not members of my organization or part of this process (laugh). [LB1]

SENATOR SMITH: And then the last question I have is, in your experience when you've exercised eminent domain, how early in the process has that term been used, not necessarily in a threatening tone or way but to at least let the folks know that this is the path we're headed down? [LB1]

JOHN K. HANSEN: As a public official, the folks who represented us were very clear how the process worked from get to go and at what point things would get before eminent domain would ever come into play, and that we did willing-buyer, willing-seller negotiations and we only used eminent domain after everything else had been clearly exhausted. And they knew that we had eminent domain authority, but we were very careful not to beat them over the head with it. And we had in the case of one of the projects I was involved, we had a parcel of land that was in the middle of the project, we had to have it and you couldn't. We had all the rest of the land around it. So we finally...we had to use eminent domain. And his land is at the bottom of the lake. [LB1]

SENATOR SMITH: Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions for Mr. Hansen? Seeing none, thank you very much. [LB1]

JOHN K. HANSEN: Thank you. [LB1]

SENATOR LANGEMEIER: Further testimony as a proponent to LB1. You're the last. Welcome. [LB1]

DOUG LIEWER: Thank you. My name is Doug Liewer, D-o-u-g-l-a-s, Liewer,

Natural Resources Committee
November 07, 2011

L-i-e-w-e-r. I am 24 years old. I graduated from college, from Chadron State College in 2009-2010. I was the student trustee for Chadron State College which was for the Nebraska State College System. I'm speaking on behalf of myself not of anybody else, just a concerned citizen that we need to protect our land, including the Sandhills, the Niobrara River. I really don't think that TransCanada just drew a straight line from Mills, Nebraska, or from Canada to Steele City. In Nebraska, they picked a certain spot and that spot is...they're going through Karl Connell's land--he spoke today--they're going through his land. They're crossing the road so that they can get by the Niobrara National Scenic River, which is to the west of the bridge. They're going through the...across the road through the meadow, and they're not going to the Boyd County line, Boyd/Holt County line right at the corner. They're not going into Boyd County because that is...because the Game and Parks Commission, it's an old one but it's recognized as the Boyd/Holt Wildlife Refuge. That's why they picked that spot, I think. That's just my opinion, but that's why I think they picked that spot in the Niobrara River. If the whole Niobrara River was, you know, Niobrara National Scenic River all the way from the Missouri River all the way out west to the Wyoming border, it wouldn't go through the Niobrara River, I don't think. So that's why I think they picked that little...it's about two miles is where they picked. We need to protect our Sandhills so that we can produce the food that the world will need and that it's healthy and not polluted with...because when the cows drink that water and they need to drink clean water and not polluted water because otherwise those cattle will probably die or whatever. In college, I learned that it's good to know the rules so that we know these are the rules that you have to follow. Rules can be broken, but at least you know the rules when you go to court that these are the rules. And those are all my comments. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Douglas? Seeing none, thank you very much. [LB1]

DOUG LIEWER: Thank you. [LB1]

SENATOR LANGEMEIER: I think that concludes our proponents to LB4 (sic) and I think we'll just take a five-minute, quick break here so my committee members can get up, and we'll start at ten after with proponents...or, excuse me, opponents. [LB1]

BREAK

SENATOR LANGEMEIER: Welcome back to the Natural Resources Committee on the hearing on LB1. We will now move to opponent testimony, those that are in opposition to the passage of LB1. With that, we have our first...we filled the front rows just like we...you've had a lot of training today I guess. (Laughter) And now we have our first opponent testimony. Welcome. Please state your name, spelling, and your opening remarks. [LB1]

Natural Resources Committee
November 07, 2011

ROBERT JONES: (Exhibits 22-23) Thank you. Good afternoon, Chairman Langemeier and members of the Natural Resources Committee. My name is Robert Jones, J-o-n-e-s. I am here representing TransCanada Keystone Pipeline LP. I'm responsible for the implementation and development of the Keystone pipeline system. I testify before you somewhat daunted about how to prioritize my responses to the misinformation that needs to be addressed after hearing the testimony presented to this committee and to Nebraskans at large. I am happy to take questions on any aspect of the Keystone pipeline system you would like information. But I will use my three minutes to make a few general points. Opponents of the Keystone XL pipeline have used misinformation, fear, and, in some cases, outright misrepresentation about how pipelines are developed, constructed, or operated. It feels like every day Keystone XL opponents volley yet another baseless allegation. These antidevelopment action groups manipulate social and mainstream media to spread their message. They do not use factual evidence or experts to corroborate their message because if they did, it would be clear that there would be no basis for their message, such as a leak will contaminate Nebraska's drinking and irrigation water. This is not true. One allegation is TransCanada is a foreign oil company. TransCanada Keystone Pipeline LP is a U.S. company with its head office in Houston; its field operations are headquartered in Omaha. Keystone hires American workers and has American employees, Nebraska employees. TransCanada does not explore for or develop or own crude oil. TransCanada is a utility with a long, proud history of safely and reliably delivering energy to millions of North Americans every day, 24 hours a day. Keystone XL pipeline is a vitally important infrastructure project, critical to the U.S. economy and energy security. Keystone will transport oil from Canada, North Dakota, and Montana to U.S. refineries in the Gulf Coast. Because these refineries are losing their access to traditional suppliers, like Venezuela and Mexico, their options are to turn to Canadian and Bakkan oil or rely on increasing supplies from the Middle East. That seems to me like an easy choice. Delaying the Keystone XL schedule will result in delays for American refineries receiving oil from North American sources, increasing American's dependency on OPEC, increasing costs volatility of gasoline and diesel, forcing oil to move in rail cars, trucks, and barges that leak 60 to 100 times more frequently than if this oil was moved by a pipeline. Interstate oil pipelines are safe. They are extensively regulated by the federal Pipeline Hazardous Materials Safety Administration. In addition, the Keystone XL pipeline has agreed to comply with 57 additional conditions, making it the safest pipeline ever built. The supporters of LB1 miss the fact that the State Department and many other federal and state agencies have been reviewing the environmental impacts of the pipeline for over three years. As other witnesses will testify, LB1 is a pipeline safety bill with direct references to safety having been superficially removed to try and save it from legal challenge. Others will testify about the legal flaws in such legislation. I will make the point that it is unnecessary for the state to redo the comprehensive safety review that has already been done. I hope that you will ignore the unsupported claims that the pipeline will not be safe and that it will endanger the aquifer. I ask you, instead, to give consideration to the realities of existing federal safety legislation and regulation, the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

extensive reviews of this project, the well-founded conclusions about safety as it relates to Nebraska's resources, as well as the important constitutional issues related to this bill, which other experts will address. I look forward to answering your questions. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Where do I start? Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Chairman. And thank you for appearing. Would you address the suggestion of eminent domain letters and things this way? I have one of them in front of me. I guess my point is you read down through the letter, it explains it like I said it was to be done. Then it goes through what the consideration and other things are if there's...and then the final paragraph says, well, we hope to acquire this property through negotiations. If we're unable to do so, we'll be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property promptly after expiration of this one-month period. And then it gives where it comes from. If you don't have a permit yet, why would you...you know, I liked how it was explained at the beginning. I guess, if anything bothers me, it's this last paragraph. Why would you be threatening that without a permit? [LB1]

ROBERT JONES: So the Keystone pipeline complies with the guidelines of a utility. There is no doubt that this serves the public good and, therefore, complies with eminent domain legislation here in the state, and it does so in all the other states that it runs through. The reason why we never pursued further eminent domain is that the project got delayed. And so, you know, there was just no need to get to that stage. And we might as well continue negotiating. So that's why we continue negotiations. And of course, you know, I mean, the law says you have to do it. And that means send this letter. And I totally understand landowners being threatened by that because you have to say you have the right, and utilities do have the right. [LB1]

SENATOR CHRISTENSEN: Now I understand you have to explain it, and I do like the way it's done up-front at the first part because it says if Keystone's strong preference to negotiate voluntary transfer of the property. However, if we cannot, in the explanation area. I guess it's basically the same wording just repeated. [LB1]

ROBERT JONES: Yeah. [LB1]

SENATOR CHRISTENSEN: And I suppose that's where they get their offense. But I got...I went out on the Platte pipeline; visited with a gentleman; it went through his property. And I said, are you concerned about this pipeline? Because he has the same style of sands--when you look on the maps that's been handed us, they're in southern Lincoln County--as what you're going to be going through. And that's the reason I went on site and visited with this guy. And his concern was, he says, people shouldn't be worried about the leaks and the pipeline itself, but how it is handled if there is crop

damage and things this way outside of the easement area. And he gave an example. He said that because the pivot, it went through at a later time than originally planned in the easement, the pivot couldn't turn all the way around, so some of the corn only made 58 bushel instead of 200 bushel. How will your company handle situations like that outside of your easement if there is crop damage because you're working and they can't turn their pivot? [LB1]

ROBERT JONES: Right. So part of the compensation for...during construction includes the loss of production, crop production, or inconvenience if you're a rancher with regards to how you have to move your livestock around. Also, we work with each landowner when we have an easement, there's a construction services agreement. And the construction services agreement would talk about: Do you have a certain type of fence you need to have replaced? Does it have a certain type of wire, post spacing? That sort of good stuff. So on top of the easement, there's actually an agreement between Keystone and the landowner. [LB1]

SENATOR CHRISTENSEN: Okay. Have you had to deal with this on your first pipeline? [LB1]

ROBERT JONES: Absolutely. [LB1]

SENATOR CHRISTENSEN: Okay. On the sensitivity everybody talked about of the area you're going through in the Sandhills and the restoration part of it, and I know they do the highways, but that keeps cattle off it because it's fenced off, things that way. How are you going to handle with their talk of the directional winds? Are you going to fence off them areas that that goes through or how are you going to totally manage this area not to have it continually blow out and have to be reseeded and done? [LB1]

ROBERT JONES: There is no doubt restoration is going to be a challenge, I have no doubt about that. Yes, in many areas we're going to need to do some fencing. We're going to need to work with each landowner with regards to their livestock. There's no doubt that we may need to water because if we don't get enough moisture, then how is that grass mat going to take seed? So, yes, there's going to be challenges. And, you know, I don't doubt that we're going to need to, you know, work with not only the landowner, but we've also got advice and we will work with not only the university but roads and parks. [LB1]

SENATOR CHRISTENSEN: One last question for me. There's been a number of articles and concerns about where this oil potentially could get shipped out, not refined, or be refined and shipped out of this nation. Even though there's need here, it could be sent elsewhere. You're probably a pipeline only. Can you answer that question or not? [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

ROBERT JONES: Sure I can. You know, this is just one of the many allegations that has been volleyed against this project. First of all, our project builds the interconnect right into the refinery. We're not going to any shipping channel where it can up and get on to a boat. Of course, you know, and others will testify, the economics just don't make any sense either. That being said, we've now had our shippers come out and expressly state that they're not going to move any of this crude offshore. [LB1]

SENATOR CHRISTENSEN: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. I'm going to ask you a few questions based on earlier testimony. And I made some marks here on what was said, so I want to ask you about it. But the first thing, one thing that bothers me in these opposition testimonies, I'm not about to tell somebody that's owned land for generations in the Sandhills that they don't know what they're talking about when they say that land has been disturbed and would be very, very difficult to restore. Now I know that's your goal. And you did say in answer to Senator Christensen's, if we have to water it, we'll water it. Well, what if there's no water? There's no well. And so that does bother me and I think that that could be a real challenge. I guess I'm not asking you a question on that. I'm just making the statement. [LB1]

ROBERT JONES: By the way, that concerns me as well when I heard that. I, too, agree with them. I mean, it's going to be a challenge. [LB1]

SENATOR CARLSON: Now the people that talk about that, I'm not about to argue with them. I don't see the risk to the aquifer, and we'll have testimony later on that I think would help show why I think like I do on that. But this other was a concern. But now one of the testifiers said that most citizens think it's like all other oil or crude; it is not this crude. I'm using crude. This crude doesn't rise to a surface, it sinks. Untrue? [LB1]

ROBERT JONES: Yeah. Another allegation falsely misrepresents the facts. This oil has a specification that's common to all pipelines that move oil through the United States. It's on FERC's Web site. We have to publish it. It's crude oil and it has to be because it goes into U.S. refineries, so it's got to be able to compete with oil from domestic supplies and from offshore supplies. [LB1]

SENATOR CARLSON: So you would say that, regardless of what's been stated, tar sand crude and I'll call normal crude, they're not that much different? [LB1]

ROBERT JONES: They're not much different. [LB1]

SENATOR CARLSON: They're not any more bad chemicals in tar sand crude than in

regular crude. [LB1]

ROBERT JONES: You see, this is another misrepresentation of the facts, and that is we add chemicals. The industry...by the way, TransCanada, the pipeline operator, we don't add anything. We don't heat it. We measure it. It has to meet a certain specification, has to be a certain quality of crude. Now, there's a range of crude. There's light crude like WTI or Bakkan or synthetic, which is not as viscous as heavy crude, and heavy crude being like Cold Lake or California or Venezuela is more like a heavy molasses where the other one is more like maple syrup. [LB1]

SENATOR CARLSON: So what's going to be...what would be transported through this pipeline is heavy. [LB1]

ROBERT JONES: No. We're going to transport all types of oil. So it's a batch pipeline. You can move whatever the customer requires, whatever their refinery requires. So that's another misinformation and another misrepresentation of the facts. [LB1]

SENATOR CARLSON: Okay. All right. Here's another statement in previous testimony: Projections from TransCanada's Canadian application to build the Keystone XL pipeline in Section 3 under Supply and Markets states that it will increase the price of heavy crude. Refined oil will be exported and it will raise the price of oil in America. [LB1]

ROBERT JONES: So the...it's great when you can just take parcels of evidence and then testify on it. The allegation with regards to increasing the price of heavy oil, what that has to do with is that there's huge discounts in North Dakota and Montana right now because they don't have pipeline capacity, and there's a discount happening at Cushing, Oklahoma, because there's no pipeline capacity. So if you look at a domestic U.S. producer in Oklahoma, he's not getting Brent price for his WTI, that West Texas Intermediate crude oil, which is equivalent, by the way, to a Brent light crude oil. He's getting discounted by about the price of rail, rail cars, from Cushing to the Gulf Coast. So let's say the price of Brent is \$100, just because it's easy math, and that cost of transporting it from Cushing, Oklahoma, to the Gulf Coast is \$20. Then the Oklahoma producer instead of getting \$100 is only getting \$80. Now the North Dakota producer and the Alberta producer is getting even less because of the cost of rail cars from Cushing to that supply source, so another \$20. So...and this is why the governor of Montana is so supportive of the project because oil in North Dakota and Montana is being discounted \$35 to \$40 a barrel right now. And so when that testimony was made that heavy oil will go up, it will but it will always be discounted to the price of international oil because it is a price buyer; it's a land lock. In other words, it doesn't have an ability to go offshore. And so you're competing against Saudi Arabia and Brent and Nigeria and other Middle Eastern nations. And so the oil in the Bakkan and in Alberta will always be traded at a discount to them. But, yes, compared to where they are now, when we get...instead of being discounted by \$40, it'll be discounted by \$15,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

something in that range. [LB1]

SENATOR CARLSON: Okay. And one more question off of previous testimony. And I may not have heard this exactly right, but the statement was made if Memorial Stadium was filled with three feet of water I think, it's either three feet or all the way to the top, whichever, and a teaspoon of benzene was put in there that that would make it very dangerous. What's...I don't even know what...I don't understand benzene, but how does that enter the picture here in this argument? [LB1]

ROBERT JONES: Okay. The claim is that benzene, which is a chemical, is added to the oil. And, by the way, I'm not a toxicologist. I'm a pipeline engineer, so my area of expertise is pipeline engineering, but I'm advised by toxicologists that benzene is stable within crude oil. Now that's not the same when it comes to gasoline, like diesel and jet fuel and unleaded gasoline, where benzene is soluble, much more soluble with water. But benzene in crude oil is not. It's much more stable, certainly in the short period of time. Now if you let it sit there for a long period of time, then...and we're talking years, then potentially benzene will start to leach out of the crude oil. But for the time period that we, by law, have to mandate and clean up an oil spill if there is one, there would be no impact on benzene. [LB1]

SENATOR CARLSON: Okay. All right. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Dubas. [LB1]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Jones, for being here today. And I really appreciated the conversation that we were able to have up in Norfolk and the information that you shared with us. And one of the points that you raised was the process that you went through in other states and really that it worked well, and that you hoped that Nebraska would put something in place for the future, not necessarily for this project. But I guess what I'd like to know is, over the course of the last several years, we've had multiple pieces of legislation introduced dealing with different types of regulations dealing with pipeline projects. Has your company lobbied against those efforts? [LB1]

ROBERT JONES: You know, I am not a lobbyist. I'm not a political individual. When you start developing a project, if legislation is going to come in that will defer or delay that project, then it is our...my responsibility to make sure that that doesn't occur. I believe the way to do that is to explain the facts to people. And so there's no doubt that if you look at the delays that this project has had and the requirements by my customers, the U.S. refiners need for this oil, you know, there's certainly anything that would delay that would be obviously against the public need and the public good. [LB1]

SENATOR DUBAS: Okay. Thank you. And I was somewhat dismayed by a comment

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

that's been attributed to you in today's Omaha World-Herald saying that you predict the Legislature will reject all bills presented, and this was even before our hearing process starting. So I guess I'm going to give you an opportunity to maybe clarify that statement. I'm taking it directly out of the paper that I read because I think that kind of flies in the face of our process. And so I guess I'm looking for...giving you an opportunity to clarify and maybe ask you why you would make that prediction. [LB1]

ROBERT JONES: Senator Dubas, as you now know and probably...I know more...you know all the time, I know more than everything, everything we read in the newspaper is, of course, put into whatever context. My goal is that by going through this process and going through this hearing process that the Legislature will agree with TransCanada that, after three years of extensive regulatory evaluations that, you know, siting legislation that prevents the development of the Keystone XL project won't be passed. [LB1]

SENATOR DUBAS: All right. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: Yes, I was just going to...the second line in the press was: We believe the members of the Legislature will use sound reason and judgment and won't be passing LB1 or LB2 or LB3 or LB4, any of those. But today I think I heard sound reason and judgment may come into conflict with Nebraska common sense. Do we just discount Nebraska common sense of the ranchers? [LB1]

ROBERT JONES: Well, I don't think they're exclusive of one another. So, I mean, I would tell you that a lot of Nebraskan common sense would look forward to supporting this project. [LB1]

SENATOR HAAR: And so the people that, for example, testified today just need to be educated more or...? [LB1]

ROBERT JONES: Oh no, no. I think that those people have genuine concerns and they were allowed to express them and I'm compassionate for them because I believe that they do hear a lot of misinformation, and a result of hearing that misinformation, they are genuinely concerned about this project. [LB1]

SENATOR HAAR: Well, I just throughout the whole process I guess I have sensed a certain amount of arrogance from TransCanada...I just need to say this, a certain amount of arrogance from TransCanada that we just don't know what we're talking about and once we figure that out, it'll not be an issue. That's simply a statement. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. Jones, thank you for testifying. And, you know, Senator Dubas brought up the comments that were made in the newspaper. And I can assure you you're not the only person up in this side of the room, and I'm speaking primarily for myself, maybe my colleagues feel the same way, that there have been times where I feel as if comments I've made have been taken out of context as well. And it's kind of hard to recover from those things. But nonetheless, I appreciate your testimony here today in trying to clarify that. But let me dig into it a little bit with your experience with this pipeline. How long have you been working with this pipeline project? [LB1]

ROBERT JONES: Well, because I was responsible for the implementation and development of the first Keystone pipeline, in fact all of the phases of the Keystone pipeline, I've been working on it since 2003. On this project specifically, when Hugo Chavez started to expropriate American assets in 2007, the Gulf Coast refiners realized that they were in serious trouble and they needed to find a new supply. And so...and then at the same time, the Mexican pipeline, PEMEX...sorry, oil company PEMEX was having trouble continuing their production. And so that was the genesis of the project was these Gulf Coast refiners need to find alternate sources of oil. And so I've been working on the project since then. [LB1]

SENATOR SMITH: Since 2003. So in 2008 whenever this really went underway with the Department of State, you probably are somewhat familiar with the involvement Nebraska has had in this project since the very beginning, specifically some of the agencies. I know that we're involved in the scoping process. Can you speak to that at all? [LB1]

ROBERT JONES: Yes, I can, and there are others who can give even further information than I can. You know, we applied to the State Department because we need a Presidential Permit. For example, if we were just coming from Montana, then you wouldn't be filing for a Presidential Permit; you would just be applying for an EIS, an environmental impact statement, and which, of course, we already have. The process requires though, first, consultation. So when you heard today testimony from landowners about when they...we first came to them, you know, that's part of the NEPA process is that you do have to consult with potential landowners. And, believe me, we actually consulted with probably two or three times more landowners because, you know, you had a corridor; you weren't sure where the pipeline was going to end up. And so we started working with the State Department. And, really, they are like the quarterback; they're not the whole team. They went and solicited information and input from other federal agencies and other state agencies. And so here in Nebraska it was DEQ, Parks, and Roads. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR SMITH: Are all of the communications that take place during this period of time, is it all based on very structured communication meetings or is it an open process to where the conversation can take place any time from these Nebraska agencies to the Department of State and to TransCanada to express their concerns? [LB1]

ROBERT JONES: Yeah, no. It's a very open process. I know there are obviously certain times where the State Department through their consultant may say, okay, we have deadlines; people need to provide their comments by a certain time. Other than that, it's very open. [LB1]

SENATOR SMITH: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Mr. Jones. We heard people testify earlier today that they felt it'd be safer if it was built on top of the ground. I know you can't come in and out every 80 acres or every quarter or something that way. Is it possible through some of the most sensitive areas to, if the pipeline stays where it's currently at, to work with that wish? [LB1]

ROBERT JONES: Senator, there's only one pipeline that is really above ground in the United States and that's the one in Alaska. And really, it was put above ground because of concerns on the permafrost, and in today's technology I really would believe that that pipeline would be buried. And the reason is, is that the number one cause of failure is third-party damage--people hitting it; and for Alaska, people shooting at it. You know, it's...it's a real...and then, of course, you have all the migratory animal issues as well. So, you know, when you see...well, you can't see this pipeline when it's in service, because it is...it's like we like to describe it: out of sight, out of mind. You know, it really will not impact the landowner or the vegetation or the migratory birds once we're in operation. [LB1]

SENATOR CHRISTENSEN: Well, I asked that because, you know, if that gives certain people peace, I guess I don't...three foot off the ground I don't see being a major issue myself, but I prefer it underground myself. I'll share something else: On the ranch I was on that on the Platte there in southern...Platte pipeline in southern Lincoln County, a guy said there was one vibration leak showed up on that, and they showed up without any signs of any leaks on the ground. They come in, they cleaned it up, fixed the pipe, and left. And that was not real long after the pipeline had been in there as I took it, because he said he was a very young gentleman at that time and having been there for 59 years. But he was impressed to how they detected it with technology back then. And with the technology now, I think we're much safer and much better off. But that was...I just wanted to add that. He was impressed how they detected such a small leak and how they come in, cleaned it up, notified him, fixed it, and left. And you know, and that's one

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

of his statements. He says, I'm not worried about the pipeline going in. I'm worried about, as I went through earlier, potential additional damage. So thank you. Basically, I'm hearing you say you prefer not to take anything to the top of the ground? [LB1]

ROBERT JONES: No, and it's mainly because of third-party damage. We really, you know, there's two million miles of pipelines in the United States. The only one above ground is in Alaska. The number one cause of failure is third-party damage. We really are all better off that if it's buried. [LB1]

SENATOR CHRISTENSEN: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Schilz. [LB1]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Jones, thanks so much for coming in again today. Appreciate your willingness to sit here and take these questions. Just a couple that I have today. You know, we've heard about the oil from Venezuela and Mexico that are now coming into the refineries that could possibly or will not be there in the future. Can you tell me that if...how much capacity if this pipeline is put into place, would that replace of that? Or, and on top of how much of the capacity of the refineries that's not being utilized today would this take up? And maybe that's two separate questions. [LB1]

ROBERT JONES: It is, and I'm not even...I may have to get some clarity on the second half of that question. [LB1]

SENATOR SCHILZ: Sure. [LB1]

ROBERT JONES: So let me try and answer it as...I mean, there's no doubt this oil is going to displace offshore oil. But it also...the oil right now that's getting there, that's being on rails or on trucks, it'll also move it safer. And so it's really a two-part question. Yes, there's domestic production that will, instead of being on trucks and barges and rail cars, will move on the pipeline and, obviously, the oil right now that's on supertankers and that comes into the Gulf Coast, it'll displace that oil. The ongoing forecast, because of the economy and our goals to reduce our footprint in, you know, hybrids, we really do see the oil production or oil consumption flat to slightly declining. But because, you know, we consume so much and import so much, you know, the capacity of this pipeline fully at full capacity is only 830,000. Today of the eight million barrels that is refined in the Gulf Coast, maybe 100,000 is Canadian. So, you know, there's, you know, over five million is imported from offshore sources, so, you know, five million is a big number. There's...we need to do two things. We need to increase domestic and we need to reduce consumption. [LB1]

SENATOR SCHILZ: All right, thank you. And then one last question and this is, and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

maybe you know the answer to this. I would hope that you can help me out. We've heard many times on the first Keystone pipeline that was put through and gone through Nebraska, that there have been some leaks on that pipeline--12 or some number like that. Can you tell me of any of those leaks, has there had to be any remediation done on any of those? And if so, what was the extent of that and how does that work? [LB1]

ROBERT JONES: Certainly. So...and not surprising considering the mega size of this project, we had some leaks on our pump stations: seals, gaskets, and bearings. It's really a break-in period. And we did experience a number of pump station leaks. However, the pipeline outside of our own property has never leaked. Now, of...since then, we had two leaks that I was really disappointed with, because the spray with the wind went across to our adjacent landowner. In one case, we were able to just take the crop off and there was zero other impact to it. And because our pump stations have an impermeable liner, we just move it all to our property where we can treat it on our site. For the other landowner, we had to bulldoze some topsoil and take it away and have it treated, but because oil is an organic product, you can virtually either treat it on-site or treat it in what they call a farm, like an oil farm, and you can add, you know, bugs and bacteria to break down the oil that was in that soil. So they've been fully restored. We had to compensate those landowners. Of course, you know, again, I was very disappointed about those. Now what we've done since is we've had an investigation. What was causing these things? Is there something we can do to improve it? We have...we've gone in there, we've replaced a bunch of fittings. We put some flex hose so that there wasn't so much rigidity in the aboveground piping. That solved the problem. We haven't had a leak since; we haven't had a leak in months at the pump stations. [LB1]

SENATOR SCHILZ: Thank you. And you talked about the...you talked about two areas. Can you tell me how large of an area, say, you had to take the crop off in one area? [LB1]

ROBERT JONES: Oh, yeah, it was literally a very small, little distance. I mean, what I can remember from the pictures it was like 100 feet by 20 feet. And it was grass; it was hay. So we just cut it and put it on our property and then disposed of it. [LB1]

SENATOR SCHILZ: Right. Did that hay grow back? [LB1]

ROBERT JONES: Yes. Absolutely, yeah. [LB1]

SENATOR SCHILZ: No problem there. Right. I guess the next question that I would have is, how much pressure will this pipeline run under? I've seen all sorts of numbers. [LB1]

ROBERT JONES: Yes. There has been a bunch of numbers and that's because at one

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

time we were going to operate at 1,440 psi, and that's because we were going to operate with a .8 design factor. Now we're going to operate at .72 which means our operating pressure will be slightly over 1,300 pounds. This is a high-strength steel pipeline, and by the way, in the industry now, very, very standard to operate at 1,400 psi. Going forward, I believe that you'll see pipelines move up to about 2,100 psi. It's just more efficient and more economic, and the steel now is so much higher quality and stronger that we'll be able to do that safely. [LB1]

SENATOR SCHILZ: Thank you very much. [LB1]

ROBERT JONES: You're welcome. [LB1]

SENATOR LANGEMEIER: Senator McCoy. [LB1]

SENATOR McCOY: Thank you, Chairman Langemeier, and thank you, Mr. Jones, for your testimony this afternoon and appreciate the information. I guess I'll ask you a two-part question. I'll ask the first one. I think probably you've given us this answer a number of times maybe in the last several times that you've testified in front of us. But why can't you just change the route? I know I hear that question from some of my constituents and I think we probably see that out in the media. I guess I'll give you the opportunity, if you would please, to elaborate on that. [LB1]

ROBERT JONES: Sure. You know, over the past three years, probably no pipeline has had more review environmentally or safetywise than the Keystone XL pipeline. And part of that review resulted in a final environmental impact statement after we've had a supplemental environmental impact statement and a draft environmental impact statement, which, by the way, is unprecedented. As part of that under the NEPA process, we had to look at alternative routes. And so not only did we look at the route and moving it to the east where the existing pipeline is, we also looked at moving it to parallel the Platte pipeline which also crosses the aquifer and portions of the Sandhills. We also looked at routes that missed Nebraska altogether. And when you look at the overall things, when the Department of State, through their experts, through their consultants, reviewed all the different routes--by the way, 14 in total, eight that impacted Nebraska--the route selected impacts the least amount of farmland, agricultural land, rangeland, wetlands, forested lands. And so it was the route selected because of those minimal environmental impacts. Now, if we were to move the route, that would mean all that effort would be, I guess, would...well, first of all, that effort would dispute it. It would dispute that analysis which means that you then would have to either have a full environmental impact statement on a different route or you're going to have another supplemental environmental impact statement. Of course, if that was the case, it would require more time and would delay the project. And so, you know, first of all, we sincerely believe that this route is the best route and causes the least impact to the environment. But if we were to move it, we would have to either have a supplemental

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

EIS or a full-blown additional environmental impact assessment. [LB1]

SENATOR McCOY: I guess that leads right into my second and last question. But what is the impact of delay? Say you were to have to have a supplemental impact statement for a portion of the route be prepared, or a full one,... [LB1]

ROBERT JONES: Um-hum. [LB1]

SENATOR McCOY: ...what are the impacts of delay to this project? [LB1]

ROBERT JONES: Well, there's impacts to this project, there's impacts to the nation, and the impact...let me start with the impacts to this project. We would have to go back and negotiate extension of our contracts with our shippers to make sure the project is still viable. We would...you know, and so that's completely speculative; we don't know. There's no doubt about the fact that Hugo Chavez has made his intentions very clear, and he's already started moving his oil off American shores and Mexico. The contracts are expiring. So we know that we're going to be more...if this pipeline doesn't deliver North American oil, then we know that those refineries are going to have more reliance on OPEC. We can only remember the gas shortages, the energy crisis in the seventies. Whenever there's an instability in the Middle East, what happens to the price of oil? So how much longer before it would exceed the last peak which was \$140 or more, and you know what that means then to the people of Nebraska. That means that their fuel will increase, the price they would pay for diesel and gasoline. So the impact is twofold. Then there's also the economic benefit that would be lost to the state from a tax perspective, and then, ultimately, for the many unemployed folks that we know that are in the United States and here also in Nebraska, you know, there would be a lot of jobs that would be deferred or delayed as well. So really, it's a carrying cost for the project but more, there's just far more implications for the country. [LB1]

SENATOR McCOY: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: One of the things I like about Senator Dubas' bill, LB1, is it requires a lot more input from Nebraska agencies. For example, and this is on page 11, at the top of the page, the Department of Environmental Quality, the Department of Natural Resources, the Department of Revenue, the Department of Roads, Game and Parks Commission, the Nebraska Oil and Gas Conservation Commission, the Nebraska State Historical Society, the State Fire Marshal, and the Board of Educational Lands and Funds. And I think the concept here is that all of those groups have some kind of input. So in the current process, which of those agencies were consulted? [LB1]

ROBERT JONES: Well, under the NEPA process, the lead agents would come back to

Natural Resources Committee
November 07, 2011

the state, and they all actively participate. Typically, why you don't see a number of those agencies participate is because they understand oil pipelines or they understand pipelines, what they mean to them. So, for example, the Commerce Department: well, they know that there will be taxes. You know, there's ordinances in counties with regards to use of, you know, whether it impacted the use of future commercial development. So, I mean, all Nebraska agencies have an opportunity. I just think that the ones that get most engaged in an environmental review are the ones that did, which is DEQ, Roads, and Parks. [LB1]

SENATOR HAAR: But in the case of, you know, it's required in LB1. And we checked out with all these departments to see what kind of...I mean, it was an e-mail to the departments to see what kind of input they got. And, of course, NDEQ is responsible for overseeing federal regulations, so, of course, you talked with them. Games and Parks did provide comments, has not yet provided final comments on the EIS. Comments include information about threatened and endangered species, and disruption of the unique Sandhills region. Games and Parks has no legal obligations or jurisdiction with regard to an oil or gas pipeline. Here's what the Department of Roads said: "TransCanada has consulted with NDOR about every state highway the proposed pipeline would cross. This is a standard process by which utility permits are issued." That's a far cry, in my opinion, from "providing input on FEIS." But that's what the articles and this...referring to the press release that you guys put out: "District design staff and communications office has no recollection of any written or verbal input." Then you also listed the Nebraska Department of Fish, Wildlife, and Parks, and there is no such agency. [LB1]

ROBERT JONES: No, it's the...you're right. It's the... [LB1]

SENATOR HAAR: And then the Department of Natural Resources didn't file anything. Apparently they weren't queried or whatever. They didn't file. So one of the reasons, you know, that I like LB1 is that it really requires a lot more state input, because one of the things that many of us feel is that Nebraska should be at the table with a full team. And so, I don't know, I just think that's been a failure of the process so far is to really talk to Nebraska agencies that could have some kind of valuable input to the process. [LB1]

ROBERT JONES: You know, what shouldn't be lost is that, you know, the Department of State used the handbook that FERC uses with regards to natural gas pipelines. And so, when you're siting an interstate pipeline, whether it be oil or gas, they used the NEPA process, and it really has been mastered and used extensively by FERC. And so the Department of State followed FERC's handbook, and so the same Nebraska agencies' participation in a gas pipeline would be very similar to what...in expectations, we would see them in an oil pipeline. [LB1]

SENATOR HAAR: And if we got it to Nebraska, though, if we exercise our authority,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

there will be more required consultation with Nebraska agencies. And that's going to be a judgment of the Legislature whether that's useful or not. [LB1]

SENATOR LANGEMEIER: Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. During the proponent testimony, there was a comment made about the concern of an underground leak, and if you would allow me to kind of step through a scenario here and describe to me how this would be resolved with the pipeline. First of all, how would an underground leak occur? Because in your exchange with Senator Schilz this sounded as if the leaks are primarily in the pumping station area. Talk to me about an underground leak and how would that occur. [LB1]

ROBERT JONES: Well, you know, our ultimate goal as the pipeline operator is to make sure it never occurs. And so, you look at the design, the construction, the inspection, and once it goes into operation--and the testing--and then you put it into operation. And then the advancements since really post-1970 where you look at how we can now run these tools inside the pipeline. And this pipeline, through the 57 conditions that we worked with PHMSA on to make it as, in their words, the safest pipeline that will be ever built, is you can run these what they call smart tools inside the pipe that can make sure that you don't have an anomaly. And so that gives us...and should give us all comfort. And that technology, by the way, started with NASA and the military with regards to all their advancements, and we've been able to transfer that technology into pipelines. It's really an amazing amount of information that is collected now on these devices. You can measure wall thickness; you can measure GPS; you can measure corrosion, cracks; the changes in elevation. I mean, these tools are incredibly sophisticated now and so it really provides us a map into the integrity of the pipeline. But that all being said, what if it misses something? What if...or somebody hits it between pigs and even though we make it so that it is what I'd call John Deere proof or Caterpillar proof. And that is where you take the very largest hoe that Caterpillar builds, and you take the hoe bucket and you strike it with the pipeline, the steel composition is actually puncture resistant. But let's say somebody did it repeatedly and they never told us and they backfilled it, and later the scenario you described occurs. So then what we have is 21,000 sensors on this line that measure the pressure and the flow every five seconds and we have redundant satellites. And then we have a sophisticated leak detection system where if it's a very large...you know, a lot of things start to happen automatically. The indicators indicate the massive pressure loss; the operator automatically starts to shut down the pumps, and within minutes the pressure is gone, and, you know, virtually all the oil stays in except for whatever pressure was required to relieve through that anomaly. Then we would obviously have to respond. And under, again, federal pipeline safety regulations, we have to respond within hours. If it is a non-HCA it's 12 hours; if it's within an HCA it's six hours, and our goal is far faster than that. In fact, I spent a lot of time describing that situation with Senator Dubas in Norfolk. And so we would

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

then...what we do is we then have spill response-trained individuals and we have spill response equipment strategically placed up and down the pipeline so that we can quickly address the situation and minimize whatever impact we would have. And remember, this is going to be very localized. It's going to be a leak that will be between 10 and 100 feet is kind of the experience we've had. When I say we, I'm talking about the industry here, because obviously Keystone XL isn't in operation and Keystone has only been in operation for a few years. But the industry, of course, has been measuring these type of incidences for decades. So we will then quickly put the pipeline...we'll start cleaning it up. We will repair the pipeline and put it back in service. [LB1]

SENATOR SMITH: So... [LB1]

ROBERT JONES: And all under the satisfaction of the landowner and the Department of Environmental Quality. [LB1]

SENATOR SMITH: Okay. So an underground line, there could be some defect that's identified in advance and scheduled for the repair. There could be a dig-in, unfortunately, and in either of those cases, one is an emergency, one is probably a scheduled repair, but in the emergency case there is a segment of line that's between the shut-off points... [LB1]

ROBERT JONES: Um-hum. [LB1]

SENATOR SMITH: ...and on average, that segment of line is about how much? [LB1]

ROBERT JONES: So again, part of the 57 conditions that we agreed to and worked with PHMSA on, our average spacing is 13 miles. And those valves, those isolation valves are remotely controlled and they have backup power which, by the way, is far above and exceeds the industry standard and codes. And if we're at a water body like the rivers, the major rivers through Nebraska, we have isolation valves on either side of the riverbank. And then we build a pipeline in a critical area like a river completely different than they used to in the past. So when people look at Kalamazoo and Yellowstone, they say, how do you prevent that? And what we do is we do what they call a horizontal directional drill. And so in the old days they would just have followed the contours of the land and been just a few feet below the riverbed. Now we drill from the top of the bank and we are minimum 25 feet; in most cases, 45 to 50 feet below the riverbed. And in order to do that, the pipe...because you drill a...so for a 36-inch hole you're going to drill probably a 48-inch bore. And so when you have the drilling mud in there and you're pulling this pipe through it, because of the stresses you're going to put on it dragging it, you actually have to have extra thick pipe in that area as well. [LB1]

SENATOR SMITH: Thank you. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR LANGEMEIER: Mr. Jones, I have a number of questions. [LB1]

ROBERT JONES: Um-hum. [LB1]

SENATOR LANGEMEIER: You want to talk about a little bit is you talked about your extension. Oh, we'll get to that. I want to talk about the EIS for a moment. As you laid that out and as it has been approved on the federal level, we heard today a number of landowners have not allowed you on to their property. How have you made evaluation of their ground, not being able to go on to it? [LB1]

ROBERT JONES: Because we were able to get permission for about 90 to 95 percent of the easements, that was a sufficient enough representation for the Department of State's consultants to be able to do a full assessment. [LB1]

SENATOR LANGEMEIER: But one landowner came before us today and said there were six miles of property they own. And of being in the Sandhills myself, you can't just drive along that six miles from a county road and look at it. So how do you know you're not hitting something out in that particular six-mile chunk that's something other than a cemetery or something? [LB1]

ROBERT JONES: Well, you know, obviously, you can fly the line and you can walk on public properties or drive by. But for the areas where you don't, there's no doubt that you're going to have to do another assessment once you actually have the easement. [LB1]

SENATOR LANGEMEIER: So you'll have to do some kind of EIS update for that six miles? [LB1]

ROBERT JONES: Sure. We...we have...there's a protocol so for that, for those. And so for that landowner, we will work with them to make sure that the proposed easement...it may have to move a few feet one way or the other; it may have to move as much as a hundred feet, again to make sure that we don't impact his pivots or we may have other structures or a drinking well or something that we weren't aware of. And so if that was the case, then we would actually have to, like you said, do an update, but it's not a...it's more of an administrative process than a full-blown assessment. [LB1]

SENATOR LANGEMEIER: Okay. And then the number one question I woke up this morning with is where you talked about the extension, because you have a deadline, and that deadline is when? Later this year? [LB1]

ROBERT JONES: That's right. Our contracts basically require us to have our regulatory approvals in place by the end of the year. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR LANGEMEIER: Okay. And with that said, back to what I woke up this morning with, with the first reporter calling me at home, way earlier than I expected. (Laughter) As the President has stated in numerous articles, they may delay it on a federal level for maybe till after a major election. What does that do to you on your extensions? [LB1]

ROBERT JONES: I don't believe the President said that. I believe what...and what we've heard from the Department of State is they're continuing to work diligently and their goal is still to give us a decision by the end of the year. [LB1]

SENATOR LANGEMEIER: Okay. And I should say Department of State, that's fair enough. And the last question I'm going to ask you is, you're proposing a 36-inch pipeline down this route. And if it's all approved...let's say you get your permit tomorrow and put what we're doing aside, you got a permit to put a 36-inch pipeline. Could you put a 22-inch pipeline in there if you wanted to? [LB1]

ROBERT JONES: If I wanted to. (Laugh) [LB1]

SENATOR LANGEMEIER: Let's say you found a hot deal on 22-inch steel pipe (laughter) and you don't want to wait because of all the delays for this 36-inch pipe to show up, but the 22 is just as good, could you, without any further approval, could you put a 22-inch in? [LB1]

ROBERT JONES: It doesn't have the hydraulic properties that we need to meet our contractual obligations, so, you know, we'd need a 36-inch pipe. [LB1]

SENATOR LANGEMEIER: But could you? [LB1]

ROBERT JONES: I'm not a... [LB1]

SENATOR LANGEMEIER: I know you don't...you can't deliver as many barrels to... [LB1]

ROBERT JONES: Yeah, I'm not an expert on that. That's a good question, Senator Langemeier, and I don't have an answer for you. [LB1]

SENATOR LANGEMEIER: Okay. Just curious. Senator Carlson. Dang it, I sparked another one. [LB1]

SENATOR CARLSON: Sorry. Thank you, Senator Langemeier. But this...before you get away, and we've grilled you pretty good, but I want to follow up on a question Senator Christensen asked, because I think I caught what you said, that in the negotiations you took care of the possible crop loss. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

ROBERT JONES: Um-hum. [LB1]

SENATOR CARLSON: Well, how do you know? Because when corn is \$6 a bushel, and if I couldn't get the pivot to part of mine and that, that I couldn't get to was,...I got 50 bushels versus 200 on the rest of it: that's \$900 an acre, and however many acres...you couldn't forecast that and neither could I. Are you going to pay me? [LB1]

ROBERT JONES: We do. And so, we first of all, we come up with, working with each landowner, we'd come up with, you know, what is it they grow? What is it they do? You know, what needs to be the compensation? And it varies. You know, if it's native prairie, we know that it takes longer. It's going to be five years, not three years, and so...depending on which one. And then, ultimately, if we never restore the land or they never have the ability to go back to the production they were before, we do continue to compensate them. [LB1]

SENATOR CARLSON: But the actual payment that I might get on a given year is based on what happens that year. [LB1]

ROBERT JONES: No... [LB1]

SENATOR CARLSON: You know, I got a big loss that year because I couldn't irrigate part of that. You'll handle that? [LB1]

ROBERT JONES: During construction...that's correct. But usually, you know, we can calculate these things, and so... [LB1]

SENATOR CARLSON: Well, you can't tell whether I'm getting rain or not. I might... [LB1]

ROBERT JONES: Oh, I see, sorry... [LB1]

SENATOR CARLSON: ...on that portion that I can't run the pivot to, if I get rain I might have a full crop. [LB1]

ROBERT JONES: Right. [LB1]

SENATOR CARLSON: If I don't, I might be way off. Neither one of us can predict that. So if that happens, are you going to pay me? [LB1]

ROBERT JONES: Sorry, I misunderstood your question. You're right, it's based on historic. So, for example, we want an easement and we negotiate and you say, well, I get so many bushels per acre. We figure out how many acres, and we say...and it's a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

sliding compensation, and then each landowner has their choice. Do you want it all up front, lump sum, or do you want it over the next three years? And so, it's based on their historic records. [LB1]

SENATOR CARLSON: But in the process of the construction, if we have an event that has really put me out, you're going to adjust that contract and pay me. [LB1]

ROBERT JONES: No, I'm not going to adjust it. It's whatever we decide before we start construction. [LB1]

SENATOR CARLSON: Okay. Better be a tough negotiator up front. [LB1]

ROBERT JONES: (Laugh) You know, we've had a lot of success. You know, when it comes to, you know, the price of the crops, you know, these things are really well documented. And so, it's a pretty amicable relations trying to get the rate and the price and such. And so, that typically isn't our biggest issue. The biggest issue really is you either support the project or you don't. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: Well, this morning President Obama did call me just before the reporter called him, and it's my assumption that you can't start construction until the Presidential Permit...or can you start any time? [LB1]

ROBERT JONES: No, you can't start until you have...I believe you can start mobilizing when you have a record of decision, and you can't start construction--well, sparking a weld--until after you have a Presidential Permit. [LB1]

SENATOR HAAR: Okay, and then the states...like we've heard Montana has not approved it yet, so what happens next? [LB1]

ROBERT JONES: Then the MFSA certificate follows the FEIS. We've got some clarifications that we're working with Montana, so it's actually TransCanada that's working with the Montana regulator to try and resolve those remaining issues. [LB1]

SENATOR HAAR: Okay. But that...until they...even if the Presidential Permit goes through... [LB1]

ROBERT JONES: We'd have to have a MFSA certificate, yeah. [LB1]

SENATOR HAAR: You'd still have to have, and so... [LB1]

ROBERT JONES: But we're anticipating that any day now. We're just trying to work

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

through a few understandings, because we didn't know their issues completely until we had the FEIS in hand. And so once we had the FEIS, there were a couple of surprises and so we are working with the Montana Department of Environmental Quality to resolve them. [LB1]

SENATOR HAAR: So if we pass the siting law that requires a permit from Nebraska even if the Presidential Permit were not...were given, if we come first then that permit would take precedence. [LB1]

ROBERT JONES: Well, we need to have all our permits, and so if that was the case then, and before construction could start in Nebraska. [LB1]

SENATOR HAAR: And I was lying. He didn't...Obama didn't call me. [LB1]

SENATOR LANGEMEIER: Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. To follow-up on Senator Carlson's a little bit. I understood when I asked a question...because what happened to the landowner I visited with, they were supposed to go through in March. [LB1]

ROBERT JONES: Right. [LB1]

SENATOR CHRISTENSEN: They didn't go through until June. So he did not have in his contract to pay damages outside your 110-foot easement. If you go through at a later time there and it's not in the contract, are you going to pay for where the pivot couldn't irrigate? [LB1]

ROBERT JONES: Yeah. No, we do. I mean, we just work with the landowner to figure out how much...because we obviously...you know, they changed. We said we were going to come at a certain time; we came at a later time. You know, the contract changed. [LB1]

SENATOR CHRISTENSEN: Okay. I just wanted to clarify. Thank you. [LB1]

ROBERT JONES: Yeah. [LB1]

SENATOR LANGEMEIER: Seeing no other questions? Thank you very much for your testimony. [LB1]

ROBERT JONES: Thank you. [LB1]

SENATOR LANGEMEIER: Further testimony in opposition of LB1. Good evening. [LB1]

Natural Resources Committee
November 07, 2011

DAVID CARPENTER: (Exhibit 24) (Laugh) Thank you, Mr. Chairman. My name is David Carpenter. That's C-a-r-p-e-n-t-e-r. I'm a partner in the law firm of Sidley Austin, and I've had a lot of experience litigating federal preemption and federal constitutional commerce clause challenges to state statutes that affect interstate transportation, communications, and power systems. Some of these cases are listed in my written testimony. At Keystone's request, I've analyzed the constitutionality of LB1, and with the greatest respect to Senator Dubas and to the many heartfelt local concerns that were expressed today, it's my opinion that LB1 is patently unconstitutional under this well-settled law. In my judgment, this is not even a close case. LB1, of course, is one of several bills that have been introduced in the special session that's been called to address concerns about the effects of the Keystone pipeline on the Ogallala aquifer. LB1 would prohibit the construction of this pipeline unless the PSC first assesses factors that include the "potential impact" of this pipeline on "unusually sensitive groundwater areas," and if the PSC then finds that the pipeline is in the public interests. The PSC would be required to issue this decision no later than eight months after the conclusion of the massive federal environmental review that's been pending for over three years and that's expected to end in December. The most obvious problem with LB1 is that it's preempted by the Federal Pipeline Safety Act. This FPSA gives a federal agency exclusive authority to regulate the safety of interstate pipelines. Under the statute, safety regulations means measures that are designed to prevent harm to persons, to property, and to the environment. That's been cleared since 1992. For example, the federal authority determines whether and when pipelines pose undue threats to areas "that are unusually sensitive to environmental damage" like the Ogallala aquifer. And the FPSA expressly preempts state safety standards of interstate pipelines, and under settled law, state regulations are unlawful safety standards if they have the purpose and effect of protecting persons and natural resources from threats posed by the construction or operation of interstate pipelines. Because LB1 would require a Nebraska agency to consider and address these threatened environmental harms, it's flatly preempted. Now, LB1 attempts to avoid this preemption by reciting that the state would regulate the "location" or the "siting" of the pipeline, and the effects of the pipeline's "intrusion upon natural resources" but not its "safety." But this is irrelevant. The Supreme Court has said many times that a federal court is not bound by the name, description, or characterization that a state legislature gives a statute, and that the federal court will make an independent determination of the purpose and practical effect of the legislation. Here the purpose and practical effect of LB1 would be to prevent harms to unusually sensitive groundwater areas and harms from a pipeline's potential "intrusion on natural resources" and that is safety regulation within the meaning of this federal statute. I think this is very simple. In addition, in my opinion, LB1 would violate the dormant commerce clause of the U.S. Constitution even if this federal statute didn't exist and even if LB1 does not apply to safety in some minor incidental respects. First, LB1 unconstitutionally discriminates against interstate commerce. It not only applies to all oil pipelines larger than 6 inches in inside diameter, whether they're interstate or intrastate. But I've been informed by an official at the Nebraska Oil and Gas

Natural Resources Committee
November 07, 2011

Commission that there are no active such intrastate oil pipelines in existence today, and that there can't be any...there's no likelihood that there will be any in the future because there are no refineries in Nebraska, and pipelines carry oil between production fields and refineries. So LB1 would only apply to a single interstate pipeline--Keystone--and not to intrastate pipelines under 6 inches in diameters that carry hazardous liquids that are at least as dangerous, if not more dangerous, as the oil...crude oil that would be carried by this pipeline. The Supreme Court has said that when a statute favors instate interests in these ways, it's virtually per se invalid. Second, even if LB1 were nondiscriminatory, it would be invalid because this burden on interstate commerce is excessive in relation to the putative local benefits that the statute would advance. It imposes burdens on interstate international commerce that are immense. It would delay the construction of an international pipeline for a minimum of eight months and up to three to four years after there's been a comprehensive federal determination that the pipeline will have no significant adverse environmental effects, that there is no better route, that the pipeline will promote national interests, and that the pipeline should be built and operated. Because this is a direct and substantial burden on interstate commerce under very well-settled law, LB1 will be unconstitutional unless it were to produce substantial local benefits that are legitimate, and that Nebraska has no "alternative means that could have promoted this interest as well with a lesser burden on interstate commerce." This is a quote from Pike, U.S. Supreme Court case, 397 U.S. 142. Nebraska can't make that showing. The putative local benefit is preventing harm to Nebraska's local natural resources, but this interest is protected by the FPSA regulations and by the separate three-year environmental review. Nebraska has no substantial interest in performing its own separate truncated environmental review, and it has no legitimate interest in second guessing the federal determinations based on the kinds of local parochial interests that were expressed today. And it's patently the case that Nebraska has had alternative means that could, in the Supreme Court's words, have promoted this local interest as well with a lesser burden on interstate commerce. Like other states, Nebraska could have enacted a pipeline siting statute years ago, and that would have enabled the state review to be complete long before the pipeline receives federal approval. There's absolutely no justification for Nebraska having sat on its hands for three years and now to enact a siting statute on the eve of the expected federal approval. So I think the statute is clearly unconstitutional and I'd be happy to answer any questions. [LB1]

SENATOR LANGEMEIER: I'm sure we'll have some. We'll start with Senator McCoy. [LB1]

SENATOR McCOY: Thank you, Chairman Langemeier, and thank you, Mr. Carpenter, for your testimony. Quite a number of hours ago I had an exchange with Mr. Alan Peterson, who testified on behalf of the Nebraska Chapter of the Sierra Club in regards to the Enbridge v. Drydal case in Minnesota, that this legislation is purported to have skirted legal minefields around that. And I wondered if you could possibly address that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

case. I know you have in your written testimony, and I'd like to give you the opportunity to discuss that, if you would. [LB1]

DAVID CARPENTER: Yes, with all due respect to Mr. Peterson, I'm very surprised that this is an argument that's been made. First of all, this is an unpublished decision of the Minnesota Court of Appeals, and the Minnesota statute provides that "Unpublished opinions of the Court of Appeals are not precedential." That's Minnesota Statute 480A. It's cited in my written testimony. So this opinion is not a precedent. I don't think it could be cited to a federal court. And if it could, a federal court would understand that it's not precedential under Minnesota law, and couldn't be intended in a complete statement of the law. Second, the decision does not involve state regulation designed to minimize adverse environmental consequences of a pipeline. This was an appeal of a private landowner who was objecting to a condemnation decision that granted a pipeline easement across his property, and we know there's no safety regulation. So on its facts, this didn't present any issue...the kind of issue presented by this statute, and any statement in there would be dictum and would be ignored for that reason. And I have to say, it's really ludicrous to suppose that a federal court is considering the constitutionality of LB1 would rely on dictum and on an unpublished state court decision that has no precedential value as a matter of that state's law, rather than the uniform federal court decisions that hold that state regulations are preempted if they are "a safety standard and letter purpose for effect." As I explained in my testimony, that's what LB1 is. [LB1]

SENATOR McCOY: Thank you. [LB1]

SENATOR LANGEMEIER: Are there questions? Senator Haar. [LB1]

SENATOR HAAR: I was just wondering, sir, with all due respect, are you licensed to practice law in Nebraska? [LB1]

DAVID CARPENTER: No. [LB1]

SENATOR HAAR: Okay. [LB1]

DAVID CARPENTER: I'm licensed in Illinois, the U.S. Supreme Court, and I think the Eighth Circuit and, I think, every other federal court of appeals but not in Nebraska. And I'm expressing opinions only on federal constitutional law, the supremacy clause and the commerce clause. [LB1]

SENATOR HAAR: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Smith. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. Carpenter, can you just talk a little bit about your credentials and the experience you have in such cases as this? [LB1]

DAVID CARPENTER: Yes. I'm...you know, I've been...well, I was a...after I graduated from law school, I was a law clerk on the First Circuit...the Chief Judge of the First Circuit Court of Appeals for two years for Judge Coffin. Then I was a law clerk to Justice William Brennan on the Supreme Court for one year. In both those capacities, I dealt with these issues many, many, many times. Some of the cases that I cite are cases that were decided when I was a law clerk. And for the last 33 years I've primarily represented electric power companies, communications companies, and transportation companies. And I've handled many, many, many cases in which we've raised federal preemption and constitutional federal commerce clause challenges to state statutes that affect, you know, those firms and their interstate operations. I thought, off the top of my head, of ten such cases. I listed them in the exhibit to my testimony. Seven of those I personally argued. I think six of them were in the U.S. Supreme Court. Nine were cases in which...they all upheld federal preemption challenges based on statutes issued under the commerce clause. In each of those cases, we made arguments under the dormant commerce clause, but the court didn't reach those because the practice is to decide statutory issues first. I lost my thread...several issues were decided in federal Courts of Appeals. So these are issues that I, you know, live with...I've lived with almost continuously for the past 35, 36 years. [LB1]

SENATOR SMITH: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Carpenter, on page 2 of your testimony, I'd like you to clarify this statement. "LB1 is the first piece of such proposed legislation to have been introduced, and it contains a declaration of an emergency that would cause LB1 to take effect immediately and apply only to the Keystone XL pipeline." So that makes it special legislation? [LB1]

DAVID CARPENTER: I don't have any opinion on that. As I pointed out, I'm not...that's an issue under the Nebraska Constitution, and I'm not licensed to practice law in Nebraska, and I know nothing about that. So I'm blessed in that respect. [LB1]

SENATOR CARLSON: Well, it's part of your testimony. [LB1]

DAVID CARPENTER: You asked for a legal conclusion whether that makes it special legislation, and I'm not in a position to offer that opinion on that legal question. But that's an accurate, I believe, statement of how LB1 would operate for the reasons I explained in my, you know, written testimony towards the end and in my oral statement. The only

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

pipeline to which the statute is going to apply, based on what I've been told by the official from the Oil and Gas Commission in Nebraska, is this Keystone international pipeline. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB1]

DAVID CARPENTER: Thank you. [LB1]

SENATOR LANGEMEIER: Further testimony in opposition. Good evening. [LB1]

LEE HAMANN: (Exhibit 25) Good evening. Chairman Langemeier, members of the Natural Resources Committee, thank you for your endurance today and your patience to hear all the speakers. My name is Lee Hamann, H-a-m-a-n-n. I'm with the McGrath North law firm in Omaha. I represent TransCanada pipeline company and I'm here to testify in opposition to LB1. You've heard some of this before, but it's really important, and this may get to the question that Senator Carlson had. But it's important to understand that this session, as a special session itself, is not occurring in a vacuum. There's been a lot of publicity about safety concerns for the Ogallala aquifer, for the Sandhills, and then there's also been a lot of concern because of that for moving the pipeline. So I think it's fair to say that we wouldn't be here today but for the fact that people hope that this legislation will force the pipeline to be relocated and rerouted out of the Sandhills area. So you heard today that there's been extensive review at the federal level. This has been going on since 2008. There's an environmental impact statement that's very thorough. Governor Heineman, on October 28--there's a copy of the letter in your materials--and proponents of the pipeline have repeatedly voiced concern over safety, both directly and indirectly, and because of that, over the route. But the focus now has shifted because even the proponents have realized that safety is a huge federal issue on this pipeline. So the question I'm going to get to, the first one on the state level would be special legislation is prohibited under Article III, Section 18 of the Nebraska Constitution. LB1 indicates that it's to ensure the welfare of Nebraskans to maximize lawful protection of Nebraska's natural resources, to ensure a coordinated and efficient method for authorization of major oil pipeline construction, protect the economy, preserve water quality, minimize intrusion. It excludes pipelines less than 6 inches in diameter that carry something other than crude oil. That could be natural gas, ammonia, ethanol, gasoline, liquefied natural gas; also oil wells, power lines, other linear structures. All these excluded features could have the same kinds of impacts that this pipeline could have. There's really no rational basis for that distinction plus the emergency clause targets the KXL, and so, there you get into your special legislation again. The second issue that's come up that's a potential problem for this regulation is the regulatory taking, inverse condemnation that's prohibited under Nebraska

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

Constitution, Article I, Section 21. It derives from a regulatory action that deprives a property owner of the economic benefit of their property. It does not require a full taking. It requires only that there be damage. Nebraska's law is different than the federal law, so you have to...if there's a taking, you have to pay for it. This bill essentially forces a process that's almost predetermined to relocate the pipeline, and if that, in fact, ends up shutting down the project or causing damage to the project, then we believe there's potential liability. My time is up and I will be happy to entertain any questions and answer them as best I can. Thank you. [LB1]

SENATOR LANGEMEIER: Thank you. Are there any questions? Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. Hamann, could you continue on and talk about the interstate commerce and what your read is on that and? Do you have any more...? [LB1]

LEE HAMANN: Well, I don't know that I have more to add to that. Mr. Carpenter covered it pretty thoroughly. But the problem you have with interstate commerce is, as a practical matter, the way this is written, there's no good reason to distinguish between 6 inches and larger and all kinds of other pipelines that are going to have the same kinds of impacts. And so really it appears to be targeted at an interstate pipeline. And then to take it on a more pointed level, the focus of this whole discussion that's been going on for months now and has really come to a peak with this special session has been to cause the Keystone XL to be rerouted, and that I think is an incredible burden and I think the courts would agree, to put on an interstate pipeline that's been in the process, been through a very thorough federal review, at literally the last minute. [LB1]

SENATOR SMITH: Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other...Senator McCoy. [LB1]

SENATOR McCOY: Thank you, Chairman Langemeier, and thank you, Mr. Hamann, for being here this evening now to testify before us. I refer to page 6 of your testimony that you just handed out to us as you joined us up here. When you talk about federal preemption and it goes on through a good portion of page 7 as well to the conclusion at the bottom of the page. If you could, I'd like you to expand on what you're referring to in your first paragraph below the subsection there, "Federal Preemption," when you talked about direct and substantial effect on pipeline safety and how that would work in the construct of how a court might interpret legislation that were enacted by our Legislature here. [LB1]

LEE HAMANN: Well, I think the main point of that is, and Mr. Carpenter touched on this, you can couch the statute in all kinds of terms that try to avoid the safety issue. But if, as a practical matter in its application, and the criteria that has been laid out in this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

statute certainly allow you to get there with the environment and economic welfare and that kind of thing. If the practical effect is ultimately to affect safety of the pipeline or to try to influence the safety of the pipeline, that is preempted and the federal courts are going to throw out the statute. [LB1]

SENATOR McCOY: So the mere addition of a savings clause, is that what you're referring to, may not be enough? [LB1]

LEE HAMANN: Well, beyond a savings clause, a savings clause frequently is put in a statute so that if one part of it gets thrown out, the rest of the statute can survive. But if the underlying premise of the entire statute is flawed, in other words, it's camouflaged for a purpose that really gets back to safety--which is entirely in the legislative history now. I mean with the work up to this special session, the Governor's comments, all kinds of comments of all kinds of people, when the ultimate goal is safety then the federal courts...it really doesn't matter what the statute says to try to put window dressing on it, it's going to come down to a preemption issue. [LB1]

SENATOR McCOY: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: Well, I need to ask one question. We've heard from some of our colleagues that Nebraska could be sued for \$200 billion. Do you see a scenario in which Nebraska could be sued for \$200 billion if we enacted LB1? [LB1]

LEE HAMANN: Well, I'm not sure where the \$200 billion number comes from. If there was a regulatory taking, under Nebraska law we're entitled to the...I shouldn't say we. The aggrieved party is entitled to what was taken, the value of what was taken. So if there's, like in a total taking, they have to pay you like the Department of Roads, the fair market value of the land. Nebraska law also provides, though, unlike the U.S. Constitution, that they pay damages. So there could be collateral damages that go beyond just the property interest taken, and that particularly becomes relevant in a partial taking. So we don't have a \$200 billion project, so I'm not sure where that kind of number comes from. [LB1]

SENATOR HAAR: I don't know either. Okay. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, I do have one question. Mr. Peterson, this morning, talked about there's really no risk to a large payment like Senator Haar has referred to. It just can't be done. Maybe some repayment of the legal expenses that TransCanada or someone might have. Do you agree with that because we have our immunity and we have not signed that away? [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

LEE HAMANN: There are a couple of different issues involved there. If you violate the U.S. Constitution, we've cited in our materials some federal statutes that allow recovery of damages and attorneys' fees. Part of that...the damage part does not apply to a situation like this, so there would be a recovery of attorneys' fees that would be possible. So now shifting away from that, that's kind of a federal remedy, we go to the state remedy. Well, the state does have sovereign immunity, but the state also, under its constitution, is liable if it takes property and doesn't pay fair compensation and...or just compensation and damages. So if you get into an inverse condemnation situation like potentially you would have here, then it's not a sovereign immunity question anymore. It's the state has done something wrong under its constitution where it owes its citizens. How the damages shake out, there's the Scofield case, which we cite in our materials, that is pretty clear that you can have something less than a full taking and still have damages. In a situation like this, and the Scofield case uses the terminology of a...just interference with a distinct-investment backed expectation. So it's not just that a piece of property is taken. If the aggrieved party has acted with normal course of business of trying to do something that's permitted under current law, and gets down the road and the state changes the rules on them to the extent that it damages that property interest, then there's potential liability. [LB1]

SENATOR LANGEMEIER: So on that note, we're going to explore that just a little further. [LB1]

LEE HAMANN: Okay. [LB1]

SENATOR LANGEMEIER: And you talk about a taking. If for some reason something is passed by the state and you go through the process and you have to move some portion of the route, there has been no taking of where you currently, or TransCanada, has currently purchased easements. They still have their easements, they're there. We haven't taken those, but now we've asked them to go a certain two-county-over direction. Explain to me the taking portion of that, or is it the fact that it's a due burden to go a different route or? We haven't taken their route; it's still there. And from what I can do some math here is, is we've got almost a whole county where they don't even have an easement yet so there is no taking if we move out of that county. And so... [LB1]

LEE HAMANN: If there's two things under Nebraska law, which is a little different than your taking under the U.S. Constitution, it's both the taking and the damage, so you might not have a taking which was pretty clearly the case in Scofield and some of the cases they cite in there, that these people that basically didn't have the ability to commercially hunt along the Platte River because of the wildlife refuge zone was expanded by Game and Parks. Because they couldn't hunt there anymore, they lost that commercial revenue but the land was clearly still worth something. They could still do something with it, but it was that commercial expectation that our Supreme Court said you're entitled to be compensated for. So let's take that to your scenario where we have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

a route. We've acquired the right-of-way. We've acquired these easements, paid money for them, and then we were told...and it was totally legal to do that at the time we did it. We had an expectation that we'd get our permits, and then this law comes along and we have to reroute, well, that right-of-way there has become worthless to us because we can't do anything with it, you know, under...if there's a Nebraska certification that says we have to take this route, then there's no way we can use that route again and our easements are limited to pipeline. We can't sell it to somebody else or anything like that. [LB1]

SENATOR LANGEMEIER: True. Thank you. Are there any other questions? Seeing none, very good. [LB1]

LEE HAMANN: Thank you very much for your time. [LB1]

SENATOR LANGEMEIER: Further testimony in opposition to LB1? Welcome and good evening. [LB1]

MARK WHITEHEAD: (Exhibit 26) Thank you. Good evening, Senator Langemeier. My name is Mark Whitehead. That's W-h-i-t-e-h-e-a-d. I'm here testifying as the president of the Nebraska Petroleum Marketers and Convenience Store Association. September, we passed a resolution in favor of the TransCanada Keystone pipeline. This was not a decision taken lightly. As marketers who deal with petroleum issues every day, from the handling of it to the sale of it, we understand the importance of a safe, reliable, and economic fuel supply for our customers. As part of my background, I'm president of the 52-year-old company. I've been a longstanding member of our state association board. I've seen firsthand what can happen when corporate and conservationist interests work hand in hand as we did when we worked with the natural resources district to make the 100-acre saline wetlands happen. For our efforts, we were the first corporation ever to be awarded the Master Conservationist Award. I have been an on, off, and on again 20-plus-year member of the Nebraska Department of Environmental Quality Council. I was on the Quality Council when we dealt with issues with the low-level radioactive waste facility in Boyd County. There are comparisons to be drawn between these two projects. I witnessed firsthand the comments from the then-executive director of the department and the council that was leading to railroad the defeat of that project. I got off the council at that point because I was not comfortable with what was happening. A later court case proved my perceptions to be correct. The tragic thing about the low-level facility is that instead of building the most environmentally advanced facility in North America, and driving economic benefit to the state, we currently don't deal with the waste in a responsible way, and we had to pay a settlement of \$150 million, which equates to about a penny sales tax, the way I understand it. TransCanada has proposed the safest pipeline ever to be constructed across Nebraska and across North America on a route that has been studied by geologists, by both TransCanada and the State Department, as both the most efficient and environmentally responsible. The

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

project would put \$1.3 billion in Nebraska, and has a direct economic impact of almost a half-billion dollars. If this project gets delayed by actions of this state, we open ourselves to lawsuits that would amount to over a billion dollars or \$200 billion, depending on whomever's number you want to use, which would have a dramatic effect on our economy. The comparison is striking. The low-level permit denial lead to less environmentally responsible handling of radioactive waste. Denial of the pipeline would lead to less environmentally responsible ways of dealing with crude oil from Canada. Deja vu. Low-level permit denial costs Nebraskans millions of dollars from economic development, to a significant fine. Denial of the pipeline will leave billions of dollars of positive impact on the table and cost us over a billion dollars on the back end. Once again, deja vu. The low-level denial came after scared, misinformed Nebraskans pressured the Governor to do so. Today we have very similar pressure. Deja vu. We ask you to please to consider to do the right thing for the environment and for the state of Nebraska. Please don't pass LB1. I'd be welcome to answer any kind of questions you might have. [LB1]

SENATOR LANGEMEIER: Thank you. Senator Haar. [LB1]

SENATOR HAAR: Well, your father sold gasoline to my father, our Standard service (laugh), way back when. Where did you get the billion dollars from? [LB1]

MARK WHITEHEAD: Just through media and that sort of thing. The obvious thing is it appears as though we are opening ourselves up to public scrutiny whether it's a billion dollars, whether it's \$200 billion. I've heard the figure \$1 billion to \$2 billion, but probably...I don't know what's reliable. Obviously we're again drawing the comparison between the low-level facility. We went in that direction without knowing what our exposure was as well. We crossed that line, and obviously, we've paid a heavy price. And by anybody's estimate, I think our price in this is significantly more than what we realized with the low-level facility. [LB1]

SENATOR HAAR: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. Mark, thanks for being here. Your last statement: We would ask you to please consider doing the right thing for Nebraska, and you said, the right thing for the environment. Now we listened to 30 proponents of the bill that all pled with us to do the right thing for the environment. And now you're saying do the right thing for the environment. So just expand a little bit on that. [LB1]

MARK WHITEHEAD: Well, and I guess as well, and just prior to that we put in the scared and misinformed Nebraskans. And when I say it's scared and misinformed, I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

mean ignorant from a perspective of understanding our industry and understanding the effects of hydrocarbons and dealing with that sort of thing. Granted, we don't deal with crude oil in our area, but we do have well over 100 underground storage tanks. I know what the effects are of dealing with that supply, what can happen if, in fact, it does leak out of a tank. You don't run a company for 52 years and not have a leak of some sort out of an underground storage tank. In fact, the pipeline industry, from what I understand, has got a far safer track record than probably our end of the industry does, but we deal with those sort of issues on a fairly regular basis. We feel that we deal with it responsibly. From an environmental standpoint, we clean it up. In an environment, we are financially responsible and we clean it up in as responsible a fashion as we can in accordance with the laws. And so when I state that I think that an awful lot of people that were testifying today were certainly very passionate, they know their property, they know their real estate. They know the...certainly they know the Sandhills. What they don't know are pipelines, the effect of crude oil moving through those pipelines, how exactly their remediation process works, what exactly happens. When in doubt...you're hearing testimony from both sides of the fence. When in doubt, take a look at history and where we've actually been. We've talked about the Platte pipeline and the effects of 60 years of that. Every single gallon of product delivered into the state of Nebraska comes in via pipeline. Thank God it does, because it is the most environmentally responsible way to transport gasoline, as it is the most environmentally responsible way to transport crude oil as well. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you, Mr. Whitehead. [LB1]

MARK WHITEHEAD: Thank you very much. [LB1]

SENATOR LANGEMEIER: Further testimony in opposition. Good evening. [LB1]

TOM NESBITT: Good evening, Senator Langemeier and members of the committee. For the record, my name is Tom Nesbitt, N-e-s-b-i-t-t, and I'm a retired 28-year law enforcement veteran with the Nebraska State Patrol, and the former colonel and superintendent of the Nebraska State Patrol. I appreciate the opportunity to be here today in opposition to LB1. I'm very concerned about the state of Nebraska stepping in at the eleventh hour to change a regulatory process that would govern this project. The National Environmental Policy Act review has run for three years resulting in an EIS that it concluded that this project is appropriate. The aquifer will be safe, the Sandhills will be protected, and the route is better than alternatives, including the original Keystone route. An attempt to insert a new regulatory process and potentially a new route at this stage risks killing the project. While cutting off the supply of oil may please some, it would be harmful to the United States' interests as well as harmful to Nebraskans. I

Natural Resources Committee
November 07, 2011

believe that many people are forgetting in this debate on the Keystone XL project is the reason why America needs this pipeline. The primary form of energy that fuels our transportation, that drives our trucks, planes, school buses, ambulances, and safety patrol cars, you name it, is gasoline. And gasoline comes from oil. And we will need oil to fuel our transportation requirements for decades to come, a fact even our own United States Department of Energy acknowledges. And unless some miraculous invention that will enable us to cost-effectively replace all of the millions of vehicles we have on the road today that rely on oil, I believe that fact to be true. America needs oil and that oil can come from a friendly, reliable source in Canada via the Keystone XL project. Let me now focus on the need for oil from a friendly, reliable source from the perspective of protecting the safety of American citizens as a dedicated law enforcement public servant for over 30 years. I became a Nebraska state trooper in 1978 and served the state of Nebraska in law enforcement for most of my life, and most recently as the superintendent of Law Enforcement and Public Safety, also known as the Nebraska State Patrol. The Nebraska State Patrol, unlike many other states in the United States, is the only statewide full-service law enforcement agency. So our duties include working with communities across the state to improve public safety, enforcing traffic, enforcing criminal drug laws, investigating crimes, as well as enforcing the laws and federal regulations pertaining to commercial motor carriers. As such, our State Patrol officers drive on an average of over 10 million miles per year. I have seen over my 30 years in law enforcement, with six years as superintendent and the past six years since I have retired, the difficult choices that have to be made when costs such as the cost of gasoline rises. Law enforcement agencies have fixed budgets. And as much as we'd like to seek an increase in funding when our costs rise, that is not always the case, especially in these tight economic times. Rising fuels costs have required law enforcement agencies across the country to reduce the number of patrols on the street or where we patrol are cutting in other areas such as time, reducing miles, training, or our new hires, all of which directly impact public safety. And these impacts are felt not only in law enforcement but in other areas of public safety such as fire department, ambulances, and other emergency medical vehicles. This problem is not limited to Nebraska. The same situation is playing out in police stations, highway patrol departments, hospitals, and fire departments across our great country. So when we rely on our source of oil from countries which do not share our interests, and crisis such as that which recently occurred in the Middle East, drive up the price of crude oil and thus the price of gasoline, our ability to protect the safety and well-being of our citizens is compromised. The decision seems to be straightforward: America should obtain our oil from a steady, reliable, and friendly neighbor in order to protect the safety and well-being of our citizens. Yes, I care about the environment. I've been blessed to live in Nebraska for the majority of my life. I have two beautiful children, I've been blessed with a grandchild, and my son serves in the Marines in Afghanistan. However, I also respect the diligence and breadth of analysis conducted by the Department of State and other federal agencies in producing this environmental impact statement. The Department of State has determined the pipeline to be environmentally safe and so I have requested

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

respectfully that the department expedite the approval of the XL pipeline and grant TransCanada the Presidential Permit necessary to proceed. We have a motto in Nebraska State Patrol, it's pro bono publico, and that's "for the good of the public." Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? I do have one question. I didn't catch, are you representing just yourself or...? [LB1]

TOM NESBITT: Yes. I'm here on myself, here for America, here for Nebraska, here for the military. I could go on and on and on. Probably don't have that much time. (Laugh) [LB1]

SENATOR LANGEMEIER: I don't have that much paper, so. Seeing...oh, Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. Nesbitt, thank you for your testimony. You know, earlier this morning and this afternoon, we were hearing some of the folks speaking, and in their testimonies they were talking about that there are no "do overs," and they were talking in terms of, you know, potential environmental issues or risk. And I don't want to be insensitive to that, but is there...can that also be applied to, in this particular case, no "do overs." What happens in the event this construction does not go forward on this pipeline, in your opinion? [LB1]

TOM NESBITT: Well, in my opinion it just probably won't happen for some time, if it can happen then. I think that the Keystone people have been very diligent, and the State Department has as well, in making sure that this is safe and a good place for the pipeline. It would be very unfortunate for America, in my opinion, if this does not happen. And again I'm not representing Keystone or anyone else. I'm here and I'm here because I really feel the need. I can remember, and Senator Langemeier was here, the rest of you weren't here when I was colonel, I don't believe, and we had to deal with budgets and we had to cut. And I'll never forget when they came to me and said the gas, you don't have enough budgeted: What are you going to do? Well, you know what I had to do? I had to ask the troopers to sit in the median for a period of time and park those cars so they could be seen, and that did slow down traffic and it did do things, but that's not effective law enforcement. That's not effective public safety for what we're here to do. And that is a genuine concern of mine across this great country of ours. [LB1]

SENATOR SMITH: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. And Tom, appreciate what

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

you've done over your career in helping make Nebraska a safer place for us to live.
[LB1]

TOM NESBITT: Thank you, sir. [LB1]

SENATOR CARLSON: And I appreciate you coming in here, because when you first started I thought, well, where he's going? But you've got passion and you believe strongly in what you just told us, and so I appreciate your testimony. [LB1]

TOM NESBITT: Thank you. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. We appreciate it. [LB1]

TOM NESBITT: All right, thanks. Appreciate it. [LB1]

SENATOR LANGEMEIER: Good evening. [LB1]

BILL SYDOW: (Exhibit 27) Good evening. For the record, my name is Bill Sydow. My last name is spelled S-y-d-o-w. I live in Sidney, Nebraska. I work for the Oil and Gas Conservation Commission where I'm the director. Just quickly, I appear today in opposition of LB1. I believe Nebraska and we do certainly has the right to have legislation like this. However, I believe LB1 is very pointedly directed at oil pipelines, and I want to share with you tonight that I think oil pipelines are the most benign type of pipelines that we have in the state or in the entire country. And so with that, I don't believe that there's any compelling reason right now to have legislation very quickly, leaving all the other kinds of pipelines out. I've worked to have some pictures for us to talk about and I think that might be the best way to talk in time. I would like to talk about the geological aspects of aquifers, physical properties of crude oil, and why crude oil is unable to flow downward to the water table. So maybe with that if I could ask you just to go to the first slides. The first one is a geologic bedrock map of North America, and you can see the greens, yellows, and tans in the center part of the United States that were rocks deposited during the Cretaceous of the marine seaway. All of those rocks are capable of being aquifers in North America, and I'll just say that the Ogallala aquifer and the formation is neither a unique nor singular aquifer in North America. Next is our bedrock geology map of Nebraska. And in the bold yellow there is the surface, subsurface, and surface outcrop actually of the Ogallala. It does not show superimposed on this the Sandhills. The Sandhills cover a smaller portion actually than this, and we have oil production out in western Nebraska, in the Panhandle, and in southwestern Nebraska. But there are aquifers all over our state, not only from the Ogallala but even in eastern Nebraska. The rocks showing in blue or purple can be aquifers as well as glacial till. So aquifers are at risk from many types of things. I think I'm going to skip to the properties of crude oil, in time. Crude oil is a naturally occurring

liquid hydrocarbon that is not hazardous if you don't drink it. Crude oil is thicker than water, which means it has a viscosity and it's lighter than water so it floats. And as well, crude oil will not dissolve in water. I have some graphs to show you something about 32 degree API, that's a specific gravity designation by American Petroleum Institute. Our crude oil production in southwest Nebraska is 32, and I believe that this upgraded bitumen is very similar. I gave you a little math there, and I know you don't care about it, but fluid flow can be described mathematically, and Mr. Darcy was a sewer engineer in Paris in the 1850s, and he designed this equation and it's a law, and it says that viscosity is important in the fluid flow. And so as I quit, I'll just tell you why crude oil cannot go to the water table if we're any distance away. To force any fluid through a permeable, porous reservoir, you have to have a force acting upon it. And if we spill some crude oil here on the ground, it has no natural energy. It's just laying there. The atmosphere is equalized above it and below it in the zone of aeration in the aquifer system, so we can't push it down. The only force we have acting on it is gravity, and gravity will try to pull it down. But with the viscosity of crude oil, 12...this gravity is 12 times more viscous than water. The viscosity effects of the oil and the capillary effects of the small pore throats in those reservoir rocks and the soil will hold the oil in place and gravity cannot pull it down. And so I asked my guys that I work with, how deep have you ever seen crude oil go? And the answer was: maybe a couple feet, even in sand. Darcy's Law is why it can't go down. Other materials can, and that's my question on this, is why crude oil? Because if we have a leak in a leaking underground storage tank, if we have a leak in a higher pressure pipeline, delivery, gasoline, diesel--or even propane--but gasoline and diesel, those viscosities are effectively 1 and they're equal to water. And those two products will go right down to the water table and it'll get there, but it will float. So I'll cease and desist, Mr. Chairman. [LB1]

SENATOR LANGEMEIER: Good move. Senator Schilz has a question. [LB1]

SENATOR SCHILZ: Thank you. Bill, thanks for coming in. Quite a ways from Sidney. I know I've seen some of these slides before and looking at that. And one question I have for you is, if this pipeline would be built everybody keeps saying that there's no economic opportunity for Nebraska. But in our district out there in the southern Panhandle and the Panhandle as a whole, there's quite a bit of development of oil. And my question to you is, if the Keystone XL pipeline would be constructed, would it free up capacity to ship more domestic Nebraska oil out and make it more cost-effective to move? [LB1]

BILL SYDOW: Good question, Senator Schilz. I think the possibility is there and I think I spoke a little bit about that maybe back in March. But I'll tell you what's happening in the Rocky Mountains. The Bakkan Formation and that oil play in North Dakota has increased from 80,000 barrels a day to 450,000 barrels a day. We can't get it out of the center part of North America. Now this Keystone XL is proposed to go through the southern portion of the Williston Basin. The Montana governor has asked for an access

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

to get their oil on. If we can get some additional or take-away capacity, even out of Canada, what that may do--and this is on the Keystone XL--what that may do is open up some pipeline capacity on this existing Platte pipeline. The Platte pipeline is full. It makes...it produces, or it pumps 162,000 barrels a day of Canadian crude oil since 1997. Now we have a terminal 15 miles from Sidney with oil production right there. We cannot put one barrel on that Platte pipeline because it's full. If Keystone XL is built, I believe the possibility exists that maybe that pipeline might not be full all the time and maybe we can get some on. Now that could have an impact of maybe \$7, \$8 a barrel, incremental. And we heard about how those differentials can go away from published prices. But when I came, in 1995, our oil price was about \$2 below West Texas Intermediate, and that was a benchmark crude, and about \$2.50 below Brent--and Brent is North Sea oil production. Okay. Today, it may be about to 9, but for two years now we've been 11.65 below West Texas Intermediate because there's too much oil in the Rockies, and even though we're not really in the Rockies that's the excuse that the purchasers use. We don't have any negotiating power, and certainly I don't. The other thing about Brent and this pipeline project, is there's a big bottleneck of crude oil at Cushing, Oklahoma, and so it's having to be rail bound or just not getting there. But I'll tell you the real impact of this is maybe domestically. Well, I'll just tell you, Brent price has been \$38 a barrel higher than our good crude oil in western Nebraska in the last year. It's kind of peaked up there at \$38 to \$40 a barrel less than our producers could get. And so the impact that has is that has an impact on taxes at the county level, because oil and gas producing properties get taxed as real estate, and so that's future value is the way that's done. Also as a part of sales, you know, 2-3 percent of our sales of oil and natural gas in Nebraska goes to the permanent school trust fund, and that interest comes back out to public education and it could help that. As well, it could help royalty owners. I think while we have divided minerals and severed oil and mineral interests in Nebraska, a vast majority of our mineral owners are attached to the land yet, and they are Nebraska residents, so they're losing the revenue too. So, yeah. [LB1]

SENATOR SCHILZ: And then my last question is, with all these oil wells that you see in western...Kimball County, Banner County, Cheyenne County, and all over, in your experience has there been any water issues with that, that you've seen or heard of? [LB1]

BILL SYDOW: No. To be...and here's the absolute honesty: crude oil has never contaminated water in Nebraska--never. And I candidly tell some people, I said, now don't ask me about saltwater, because water is water. It will go right through the zone of aeration and it's to the aquifer. But crude oil can't do it. It can't do it like diesel or gasoline. And I'll tell you another issue that we had that was really was...it was a part of a natural gas plant. It was by Sidney that was operated by Ohio Oil Company for a number of years. And for whatever reason, I believe it was having some wastewater and condensate. Condensate is a condensed liquid out of gas streams. It got into the near surface gravels and it got on top of the water. But that particular stuff--actually it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

looks like diesel. I don't think you could tell the difference; it looked like diesel. And so if it's a thin, less viscous, then the aquifers are at risk. But my opinion, crude oil is the most benign things that we could talk about. [LB1]

SENATOR SCHILZ: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Bill, for coming in today. You mentioned it, but Alberta crude or sands tar, they would be the same oil, correct? [LB1]

BILL SYDOW: I think we could categorize that. At least that's the big potential up there is the oil sands. [LB1]

SENATOR CHRISTENSEN: And that's been flowing for 15 years through the Platte pipeline. [LB1]

BILL SYDOW: Yes. [LB1]

SENATOR CHRISTENSEN: And so we're looking at the same type of oil going through the new pipeline as what goes through the Platte. [LB1]

BILL SYDOW: Yes. [LB1]

SENATOR CHRISTENSEN: Because I know we heard testimony this morning that it was thicker, it would sink, it was all this. But I know they bring the viscosity up to a certain level to make it flow and things this way, so it makes it standard crude flowing. So we have a history in the state of Nebraska to seeing these same crude oils flow for 15 years through this state over the Ogallala aquifer. [LB1]

BILL SYDOW: Yes. And I will add that for prior to 1997 the Platte pipeline moved a lot of sour crudes out of the Big Horn Basin, maybe even Wind River Basin. Sour crudes being have some sulfur in it and maybe even a little bit of hydrogen sulfide, which is a gas, the rotten-egg smell gas that given the wrong metallurgy, the harder the metal the faster H₂S attacks it. It just literally embrittles it and it crumbles. So the Platte "pipelined" those types of oils even for a long time, and I think it's with...if...and I believe all those operators have excellent corrosion programs in place and so they check that, and so it's able to last a long time. There's no material in it as far as sand or gravel or anything that would erode the internal pipe body itself. It's...all that is...it's never really in our oil field, but in northern Alberta and the process that everybody goes through, and people have different processes to upgrade. But the sand is the first thing that's taken out and it's actually done mechanically with big paddle systems and they dump these

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

400-ton trucks into a crusher or a conveyor. It goes to a hot water bath, and the oil just...it comes to the...it floats to the top. That's how they get it off on the basic pass and they take the sand off the bottom and pump it back out to one of the areas that they had just mined all the oil sand out of. [LB1]

SENATOR CHRISTENSEN: Thank you. That was my next question on the sand in there. Can you tell me the safeties that's on the Platte? We've probably heard quite a little bit about what's on the XL. Do you know what the safeties they do for checking? Do they send down the electronic eye and things that way on that too? [LB1]

BILL SYDOW: With that, I believe that...and that line is now operated by Kinder Morgan, maybe Kinder Morgan Canada. They may be, since it originates up there and it's all tied in. But I believe that they have the ability to pig that with the so-called smart pigs with all the sensors to look for wall thicknesses or pitting or corrosion. And I think the other thing that they do, virtually all the time they fly over it with airplanes, because this technology is decades older than this. That technology doesn't exist probably on the Platte. So they, it's a visual inspection and they fly it. [LB1]

SENATOR CHRISTENSEN: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. I've said that we have thousands of oil wells in Nebraska, and I didn't realize it was 5,000 until I look at this. [LB1]

BILL SYDOW: Okay. [LB1]

SENATOR CARLSON: So whatever, I've said we have thousands of oil wells in Nebraska and every one of them is a pipeline. How deep do they normally go? [LB1]

BILL SYDOW: Okay. And I put 5,000 on that because, over our time and our history out there, we've had over 5,000 producing wells. The vast majority are, unfortunately, plugged and abandoned now with concrete. We'll never get back in. So we have about 1,300 wells. None of our wells are capable of flowing. We don't have the bottom hole pressures. And all our bottom hole pressures are going out through the Salt Creek right here, in the Dakota Formation, and that's literally what happened to our bottom hole pressure when the Rockies came up. But our wells are pumped either with submersibles or a rod pump, and...so you're probably familiar with water wells. It's just...we're just pumping water and a little bit of oil. We skim it off. Pretty low pressures when it comes up the tubing: I'd say 50 pounds, 60 pounds. And so I want to thank Senator Dubas, because she was sensitive in there, and I didn't talk to her but this pipeline bill has a size restriction. And that was one of my concerns in the last series of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

bills were the small pipelines. Because we transport, if you want to get technical, from a producing wellhead over to a heater-treater on virtually every well that we have. Now, some day, somebody could go, that's a transportation line and that's a crude oil transportation line, all part, some, and it's a, thankfully...I mean, we control those. And I'll just speak to that a little bit. Those are 35-, 40-pound flow lines. If we have a leak, and once in awhile we do, what happens is that pressure will go to the closest area of low pressure, which is the atmosphere, and they are buried probably right at below the frost line. So that pressure, even at 35 or 40 pounds, it will erode and it will go through the soil to the surface. And so you'll pond it up on the surface, your oil and water. At the pipeline pressures that we're talking about on, at least, on natural gas--we didn't really talk about that--or the 1,300 pounds...and I'm going to tell you I'm ignorant, I don't know what the Platte pipeline operates at. I bet it's 800 or 900 pounds, but I don't know. If we had a leak, that leak would go right to the atmosphere. It won't go down because of just the lithostatic load. Rocks are getting harder to go through, even if this short near surface. It will go right to the surface, and so you will see it very quickly. Now, Platte, you know, they might have pressure sensors, but they fly it. I mean, with this new technology, I'd say we would know in an hour. That's my personal opinion. I don't think we would know instantaneously but I think we'd know in an hour, and we'd know where it is. [LB1]

SENATOR CARLSON: Thank you. [LB1]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB1]

BILL SYDOW: Thank you very much. [LB1]

SENATOR LANGEMEIER: Good job. Further testimony in opposition. [LB1]

JOHN KUEHN: (Exhibit 28) Good evening, Senator Langemeier and members of the Natural Resources Committee. I'm Dr. John Kuehn, J-o-h-n K-u-e-h-n, from rural Hartwell, Nebraska. I am the secretary of the board of directors of Southern Public Power in south-central Nebraska. I'm also a tenured associate professor of biology and a fourth-generation cattle producer in Kearney County. I'm here today representing the 14 publicly elected directors of Southern Power's seven-county region, representing over 25,000 customers within our service, including 8,200 irrigation wells. I'm here today to represent our board's opposition to LB1, and recognition that, as proposed, this serves a significant impediment to the development of the energy infrastructure in Nebraska by creating a regulatory system that is both redundant and less effective than the existing federal process, which has already been undertaken. Energy and water are both critical components of the economic viability of Nebraska and need not be in opposition as has been artificially created in this discussion over recent months in the state of Nebraska. Southern Power has been working with TransCanada for almost

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

three years, spanning the initial phases of the Keystone XL pipeline project up to now, as we will be serving a pumping station in Merrick County, which is in our service area. We found our interactions throughout the negotiation process for construction of the electrical and transmission infrastructure with TransCanada to be exemplary in every manner. I've also attached to this particular document written comments in addition to my oral testimony for your reference with regard to our board's opinion on the very positive economic impact to our ratepayers--comments which I presented to the Department of State hearing in Washington, D.C. It didn't take common sense for members of Southern to engage in this issue in the process from the beginning. Our opposition to LB1 stems from two primary points. First, the proposed legislation attempts to separate the issues of pipeline safety from the routing of the pipeline. Routing considerations, as examined under the Federal Pipeline Safety Act, take into account this interrelationship between the ecology and geology of the route, as well as its implications relative to the construction, maintenance, and operation of the line. I've also attached, in addition, statements directly from the executive summary of the environmental impact statement regarding these particular safety concerns. To assume that safety and routing are somehow separable and not recognize their inextricable interrelationship is simply ignorant, and we recognize that this is little more than an attempt to meet constitutional muster and not truly the intent of the legislation. Second, LB1 establishes a secondary approval process through the Public Service Commission that we recognize is redundant but also cannot begin to match the extensive three-year federal review process which has been unprecedented in its nature and in its scope. The vast resources of the federal review processes, all of its agencies, and the opportunity for citizens, state, and local agencies to comment on that process and provide their helpful insight has been extensive. Some agencies and groups and citizens have availed themselves of the opportunity. If others have not, we do not feel that that is something that can be simply legislated. We also recognize that LB1 is literally more than a thinly veiled attempt at targeting a specific project, the KXL pipeline. We do recognize that this sends, as a public utility, a dangerous message out to all businesses wishing to do business in Nebraska that requires an energy infrastructure; that if you want something done in Nebraska, it's going to be politics, not science, that will affect your ability to do business and maintain the infrastructure required by your operation. I'd welcome any questions that the committee may have. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. It's okay with me if Southern Power stands to benefit if the pipeline goes through. [LB1]

JOHN KUEHN: Our ratepayers stand to benefit. Southern does not. [LB1]

SENATOR CARLSON: So, to them you are an expense, but to you they are revenue. Correct? [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

JOHN KUEHN: Yeah. I mean we have fixed costs that we have to spread out over all of our customers, and the revenue obviously has to cover those fixed costs in the public power model. Certainly. [LB1]

SENATOR CARLSON: That's okay. Thank you. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you for your testimony. And now we've had two veterinarians speak to us today. [LB1]

JOHN KUEHN: You bet. Well-trained. [LB1]

SENATOR LANGEMEIER: It's good to see young individuals in Nebraska. [LB1]

MICHAEL WHATLEY: Good evening. [LB1]

SENATOR LANGEMEIER: Good evening. [LB1]

MICHAEL WHATLEY: (Exhibit 29) I'm Michael Whatley, W-h-a-t-l-e-y. I am the executive vice president of Consumer Energy Alliance. I'm based in Washington, D.C. CEA strongly supports the Keystone XL pipeline because of the economic benefits that it will provide both Nebraska and the entire United States; endorses the State Department's finding that the project poses no significant risk to the environment; and opposes LB1 because we believe it is an unconstitutional attempt to change state law in order to affect an ongoing regulatory process. The project will bring enormous benefits to both Nebraska and the entire United States. It will create more than 120,000 jobs across the U.S., including 7,500 here in Nebraska. Even more, the project will generate hundreds of millions in federal, state, and local taxes, create \$20 billion in economic growth nationwide, and generate more than \$150 million in government receipts for the state of Nebraska. That's a lot of money that will go to improving public schools, roads, and hospitals. It will also strengthen our national security. The 700,000 barrels of oil per day that this pipeline will bring to the Gulf Coast refineries will be coming from places like Oklahoma, Texas, Montana, the Dakotas, and Canada--our neighbor, our closest ally, and our largest trading partner. These facts help explain why CEA, working with Nebraskans for Jobs and Energy Independence, was able to submit more than 32,000 comments in support of the Keystone XL pipeline from Nebraskans to the Department of State during its recent public comment period on TransCanada's application for a Presidential Permit on the project. The United States has imported, as of this morning, 3 billion barrels of oil since January 1, at a total cost of over \$312 billion. This equates to more than 11 million barrels per day. To suggest that the oil from the Keystone XL, which is going to be heavily discounted versus Venezuelan and Middle Eastern oil that it will replace, will cause the U.S. to become an exporter or will raise gasoline and diesel prices, as some have alleged, betrays a fundamental lack of understanding of the U.S.

oil markets. Not only will the pipeline bring great economic and energy security benefits, it will be the safest pipeline ever built. The State Department's extensive environmental review of the pipeline concluded that there is no scenario in which the Northern High Plains aquifer would be adversely affected. Consumer Energy Alliance urges both the Natural Resources Committee and the entire Legislature to cautiously approach any legislation which will address oil pipeline siting, particularly such legislation as LB1, which seeks to change state laws to affect ongoing common carrier oil pipeline construction projects such as the Keystone XL project. The express intent of LB1 is to force a change in the proposed Keystone XL route that TransCanada selected in reliance upon both federal and state laws and regulations that were in place at the time that they filed their permit application and are still in place today. Seeking to change state law to create a new permitting requirement for the project, three years after TransCanada filed its application with the State Department, is an unfair attempt to alter the rules of the game long after it started, and violates the intent if not the letter of the constitution's prohibition on ex post facto laws. This is particularly problematic given that the state of Nebraska has been directly involved in the State Department's environmental review throughout its three-year process without raising any objections to the proposed route. Further, given the fact that the State Department will need to conduct a new environmental impact statement for any new proposed route, which will restart a process that has taken over three years to date, it is safe to say that the actual impact of any legislation seeking to change the route will be to seriously jeopardize this project. Again, we urge the committee and the Nebraska Legislature to defeat any legislation that seeks to retroactively add a new state permitting requirement to the federal and state regulatory processes that have been in place in TransCanada filed the application for a Presidential Permit over three years ago. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. Whatley, can you talk...speak to the potential impact that this pipeline would have on fuel prices in the United States? [LB1]

MICHAEL WHATLEY: Yes. As I mentioned a minute ago, we import about 11 million barrels of oil per day in the United States, out of about the 16 million barrels of oil that we consume. The oil that will be coming through this pipeline is going to be coming really from three main reservoirs: the Permian Basin, the Bakkan, and the Canadian oil sands. And what we have seen is that those oil prices are discounted anywhere from \$25 to \$45 per barrel, depending on what analysis you look at, versus what we're paying for it in terms of Venezuelan and Middle Eastern oil that it would replace. So we think that it would have a significant downward pressure on gasoline and diesel prices nationwide, including here in Nebraska. [LB1]

SENATOR SMITH: Thank you. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. Well done. [LB1]

MICHAEL WHATLEY: Thank you, Mr. Chairman. [LB1]

SENATOR LANGEMEIER: Further testimony in opposition. Good evening. [LB1]

JOHN McCOLLISTER: Good evening. I admire your endurance. (Laughter) Senator Langemeier and members of the Natural Resources Committee, my name is John McCollister, M-c-C-o-l-l-i-s-t-e-r, and I'm the executive director of the Platte Institute for Economic Research, from Nebraska. We support construction of the Keystone XL pipeline along the proposed route and oppose LB1 as drafted. The Governor's call for a special session and the passage of legislation which asserts state jurisdiction over the Keystone XL pipeline could very well derail the multibillion, multistate project, and put this state in a precarious legal position. Such an action could be unconstitutional under the commerce clause which gives the federal government the authority to regulate international and interstate trade. The action also potentially violates the constitution and federal law which could subject the state to an endless amount of litigation. It is clear that the intent of this bill is to put safety regulations and responsibility into the hands of the state. However, because the pipeline crosses the Canadian border, approval of the route rests with the State Department and the President under the auspices of the Federal Pipeline Safety Act. Accordingly, the State Department conducted a comprehensive environmental review, evaluated alternative routes, and concluded that the current route is environmentally safe. These studies constitute preemption by the federal government, meaning that because the route is now under federal jurisdiction, the state cannot legally interfere. The bill would also create a significant burden on the Keystone XL project by requiring a certification process by the Nebraska Public Service Commission. The new requisite could delay the project so significantly that the project would die. But again, this bill is constitutionally infirm due to its incursion into the areas of preemption and violation of the interstate commerce clause. In Nebraska alone, over 7,500 jobs would be created if the pipeline is built. And in our current economic climate, we should be creating as many jobs as possible. Additionally, building the pipeline would inject over \$465 million into the state economy, increasing personal income by \$314 million, enhancing state and local tax revenues by \$11 million. Building the pipeline would increase Nebraska's gross state product by an estimated \$390 million. And these jobs are not transitory construction jobs. Maintenance of the pipeline will ensure that jobs remain long after construction is completed, and property taxes will be paid to support local communities along the pipeline's route. The oil transported by the pipeline and refined in the United States will replace oil imported from hostile countries. There is no economic incentive for the oil to be transported by this pipeline to go anywhere else but to the American consumer. The Ogallala aquifer and the Sandhills will not be harmed by the Keystone XL pipeline and the nation's

Natural Resources Committee
November 07, 2011

economy will receive a boost. Building the Keystone XL pipeline is good for Nebraska and good for America. We oppose this bill. [LB1]

SENATOR LANGEMEIER: Very good. Are there any other questions? Any questions? Seeing none, thank you very much for your testimony. Further testimony in opposition to LB1. Welcome. [LB1]

ANDY BLACK: (Exhibit 30) Good evening. I'm Andy Black, A-n-d-y B-l-a-c-k, president and CEO of the Association of Oil Pipe Lines in Washington--AOPL. I really appreciate the chance to be here, even now. As you have probably heard many times, pipelines are the safest and most preferred, efficient, and reliable way to move crude oil and refined fuels. Safer than barge, safer than truck, safer than rail. This safety record will continue to improve because of new construction, inspection, and maintenance practices, and a dedication to continuous improvement. AOPL and its members take pipeline safety very seriously. AOPL encourages the Legislature to use significant caution on oil pipeline siting. Any revisions should allow needed infrastructure to be developed under an equitable process. AOPL members compete with each other but want any project to get a fair and predictable review. AOPL believes any siting legislation should be prospective only. Bills should not affect any project that has relied upon existing state laws or been subject to substantial federal environmental review. Adopting legislation to thwart a potential project at the figurative eleventh hour would be discriminatory, punitive, and vulnerable to legal challenge. AOPL encourages Nebraska to not violate the letter or spirit of constitutional protections against the enactment of ex post facto laws. No siting bill, like LB1, designed to retroactively target a project developed in reliance upon existing state laws, would be fair, appropriate, and legally sound. Pipelines and other businesses in this state that rely on state laws need to know a commercial enterprise will not be disrupted due to last-minute changes in those laws. Projects needing a Presidential Permit, like Keystone XL, are subject to extensive studies of alternative routes which must comply with stringent environmental requirements. Once the process results in a specific route and a final environmental impact statement, any action by a state to change the law for that project undermines the national interest determination process. AOPL encourages the Legislature to avoid the dramatic expansion in scope of some of the recently introduced bills. While some earlier proposals singled out Keystone XL, some of the newer bills, such as LB1, would drag even minor projects into a new bureaucratic net designed to catch just one project. This not only affects expansions to bring additional fuels to Nebraskans and elsewhere in the region, but also threatens important line replacement projects planned for safety purposes. AOPL discourages changes to siting laws also as a disguised attempt to regulate pipeline safety. Federal laws and regulations protect the citizens of Nebraska and other Americans. Special attention near the thousands of aquifer crossings and other sensitive areas is required. These laws are strong and cannot be preempted. Finally, the safety aspects of the Keystone XL project from the AOPL perspective: New pipelines are constructed with high quality steel and modern technologies and practices

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

under comprehensive regulations. Keystone will comply with the 57 safety conditions you have heard that go beyond existing requirements. It was the federal government, not TransCanada or AOPL, that said Keystone would have a degree of safety greater than typical pipelines constructed under current or previous code. In conclusion, we encourage the Legislature to consider any siting changes deliberately. If you make any change, please apply them not only prospectively, but wisely. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Senator Haar has a question. [LB1]

SENATOR HAAR: Do you think the courts would take into account the fact that TransCanada has been lobbying in Nebraska since 2006 not to do any regulation? I mean, you brought up the point that it's an eleventh hour kind of--11:45 or something. But they've been working since 2006, paying Nebraska lobbyists so that we won't have any pipeline regulation. Do you think the courts would consider that? [LB1]

ANDY BLACK: I can't speak to it. I think they would also look at the fact that this Legislature hasn't acted for the many years that the project has been proposed. But I'm not an expert on that process, Senator. [LB1]

SENATOR HAAR: Okay. Okay, thank you. [LB1]

SENATOR LANGEMEIER: Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. Black, thank you for your testimony. You're familiar, you've read through LB1. Tell me what you see in this legislation that provides a better process than what we experienced over the last two to three years that has resulted in the FEIS. What improvements do you see in this process over what we've seen to date? [LB1]

ANDY BLACK: I don't see any significant improvements. I think it's been a very thorough process before. You've been asking all day about the participation of state agencies--and the ones that have a reason to participate have been especially the DEQ: 39 months now of extensive review by many federal agencies, a lot of study of this route. This has been perhaps the most studied oil pipeline proposal ever. I'm not sure anything else would add to it. [LB1]

SENATOR SMITH: Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB1]

ANDY BLACK: Thank you. [LB1]

SENATOR LANGEMEIER: Further testimony in opposition to LB1. Good evening. [LB1]

TOM BYERS: (Exhibit 31) Good evening. Thank you, Chairman Langemeier, members of the committee, committee staff. My name is Tom Byers, B-y-e-r-s, and I am the senior government affairs representative for Magellan Midstream Partners. Magellan owns and operates the longest refined products pipeline in the United States, more than 80 refined products terminals, which are located primarily in the midwestern and southeastern part of the United States, as well as several crude oil pipelines and crude storage facilities both at Cushing, Oklahoma, and in Houston, Texas. In the state of Nebraska, we own and operate approximately 375 miles of pipeline as well as refined products terminals in Lincoln, Omaha, Doniphan, and Capehart. Magellan supports and echoes the comments that have been made by the Association of Oil Pipe Lines. And rather than present testimony on the specifics of the bills that have been introduced during this special session, I'd like to present some general concerns that we see with the approach that is being taken. Magellan appreciates the efforts of the Unicameral to protect the natural resources of the state. However, the pipeline industry is already heavily regulated by the federal government, specifically through the U.S. EPA and the U.S. Department of Transportation, and we respectfully request that the Nebraska Legislature not usurp those federal regulations which are already in place to manage the siting, the safety, and the operation of pipeline assets. There are interstate commerce concerns with the proposed bills. Magellan's refined products pipeline transports fuels that are produced in Texas, Oklahoma, and Kansas, and transports them to our Nebraska terminal facilities, and then on to several of Nebraska's neighboring states to the north. Because of the overly burdensome requirements that are being proposed, Magellan could be prevented from obtaining the permits that are required for us to make needed changes or additions to our pipelines and terminals in Nebraska. In that case, the Nebraska Legislature would have effectively restricted, or prevented entirely, our ability to economically deliver fuel to our Nebraska customers and to those in the states of Iowa, South Dakota, North Dakota, and Minnesota. Because there are no refineries in the state, Nebraskans depend on pipelines to transport traditional fuels that are produced in other states. As has been said, pipelines are the safest, the most efficient, and the most environmentally sound method of transporting the gasoline and diesel fuel that are used by Nebraskans. The existing pipeline infrastructure that is critical to the Nebraska economy will be severely impacted by the requirements that are included in the bills that have been introduced. The continued efficient operation of these pipelines is critical if there is to be an adequate supply of fuel for Nebraska residents at a reasonable price. Another problem that could arise if one of the bills is passed is if private landowner agreements acquired in anticipation of receiving siting approval for a new pipeline could be rendered worthless if a pipeline company is not able to obtain the required authority from the state. This would create additional uncertainty and delays in bringing the pipeline on line. If the Unicameral or other state legislature enacts a bill which imposes unrealistic regulatory requirements, it's going to be difficult if not impossible to complete the construction of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

interstate pipelines in a timely manner. And because this legislation also covers proposed organic growth projects, it will impede, if not completely eliminate, those investment dollars which would otherwise flow into the state. The development of...in closing, the development of pipeline infrastructure is essential to support our nation's policy objective of becoming less dependent on oil that is produced outside of North America. Reasonable regulations are essential for the construction of new pipelines to transport products from where they are produced to where they are consumed. We feel that the bills under consideration are unnecessary and would act as a barrier to improving our nation's energy security. Again, Chairman, sorry for going over. We appreciate the opportunity to share our concerns with your committee, and we request that you take our comments into consideration as you move forward. Thank you. [LB1]

SENATOR LANGEMEIER: Thank you. Are there any questions? Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Byers, in your last statement, on the front page, "Because there are no refineries in the state" of Nebraska, why is it so expensive to build a refinery? [LB1]

TOM BYERS: We're not in that business, Senator. I don't know that I could really even opine on that. We simply are in the transportation... [LB1]

SENATOR CARLSON: Well, to anyone that may follow, I'm interested in whether it's because of regulation or because of cost of supplies and materials. So I thought you might have an idea there. Okay. Thank you. [LB1]

TOM BYERS: I would rather not hazard a guess. It's something that I'm really not qualified to answer. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB1]

TOM BYERS: Thank you. [LB1]

SENATOR LANGEMEIER: Further testimony. [LB1]

DAN GUNDERSON: Thank you, Mr. Chairman. I'll forward copies to the committee afterwards. I had some changes along the way here. My name is Dan Gunderson, G-u-n-d-e-r-s-o-n. I'm director of mobilization for the American Petroleum Institute, and based out of Minneapolis, Minnesota. API opposes LB1 because it would enforce siting requirements that conflict with the U.S. Constitution's interstate commerce clause. While a state has the right to determine if a project is in the public interest for purposes of

Natural Resources Committee
November 07, 2011

eminent domain, such power does not include dictating the route of the pipeline--and for good reason. If each of 50 states could enact such onerous restrictions, it would bring a halt to interstate commerce as we know it, and preclude vital energy supplies from being shipped by pipeline from point A to point B. TransCanada has played by the rules, but LB1 would send an ominous warning that businesses and workers cannot rely on rules written in Nebraska as a guide to future investments in the state. LB1 is a step backward for a state known for fairness, the rule of law, and a steadfast commitment to free market principles. We have the utmost respect for landowners and other hardworking Nebraskans who have asked serious questions about the pipeline. We also know it's our duty to respond to questions honestly, clearly, and with a no-nonsense respect for the facts. Facts matter. We all benefit from the unmatched expertise and vast experience of the scientists and engineers who have studied the pipeline at premier universities, research centers, and businesses. Facts are also the best defense against fearmongering, one of the most predictable exports for attention-seeking actors and the extremist environmental groups with whom they associate. As President Kennedy warned an earlier generation, "Too often we enjoy the comfort of opinion without the discomfort of thought." Greenpeace organization's Daniel Kessler has admitted publicly his real reason for opposing the Keystone pipeline. In his words, "The real race is about getting us off fossil fuels." So let's be clear about it and address the facts. According to the International Energy Agency, the U.S. Department of Energy, API, and other reputable sources, petroleum and natural gas will be the primary source of American energy well into this century. Nebraska's leading hydrologist said that there's little threat to the Ogallala aquifer, and data from liquid pipelines crossing aquifers throughout the country supports this conclusion. And yet, Robert Redford has let himself become an alarmist for the Natural Resources Defense Council. Actor Daryl Hannah warns that the pipeline will "only shackle us" to fossil fuels. While our valiant troops are stationed abroad and we continue to import oil from unstable or even unfriendly nations, Greenpeace and the Hollywood crowd tell us to maintain the status quo. For every dollar spent on Canadian crude, about 90 cents is returned to the United States through added jobs and equipment purchases. While skilled craftworkers, like pipe fitters, are looking for work, a major project that will create thousands of good-paying jobs has stalled even though not a penny of public funding is required. Keystone XL will be built safely, securely, and by the best work force in the world. During the Great Depression, and later in World War II, President Franklin Roosevelt asked Americans to conquer their fears and work together for a better future. Today, in a time of economic hardship, and a War on Terror, we urge you to reject the agenda of fear in favor of jobs, greater national security, and a brighter energy future for Nebraska and the United States of America. Thank you for your time. [LB1]

SENATOR LANGEMEIER: Questions? Senator Haar. [LB1]

SENATOR HAAR: Well, I find the "guilt by association" interesting. Do you consider me--I'm the one who suggested this session--an environmental extremist? [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

DAN GUNDERSON: I wouldn't know, Senator. [LB1]

SENATOR HAAR: How about our Governor who called the special session? [LB1]

DAN GUNDERSON: I wouldn't speculate on that. [LB1]

SENATOR HAAR: Or Senator Johanns? [LB1]

DAN GUNDERSON I consider groups that do stand outside with Occupy in Washington as being environmental extremists. I don't know you so I couldn't explain. [LB1]

SENATOR HAAR: Senator Nelson? There are strange bedfellows in this whole process. And I think it's really...I think one of the things we're going to have to do in this legislative session as we debate these bills is be careful of labels, because we have interesting combinations of people. And I think the labeling as environmental extremist is not very useful. [LB1]

DAN GUNDERSON: I don't think I labeled you that, and I'm pretty sure I didn't. I think I did reflect what's going on in the world today. I think that when...if you've watched the protests in Washington, and if you've seen folks doing what they're doing, you would say that that's probably not the way people in Nebraska would behave nor in my home state of Minnesota. I would characterize those people are extremists on environment. [LB1]

SENATOR HAAR: But it's very American to get out in groups and talk about your interests. [LB1]

DAN GUNDERSON: And, thank God, it's also very American to make an observation, which I have. [LB1]

SENATOR HAAR: (Laugh) [LB1]

SENATOR LANGEMEIER: Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. Gunderson, thank you for your testimony. And I think...you know, I think it's fair to say on both sides and in some of the testimony we've heard earlier this morning and this afternoon, obviously this is a very emotional issue, and those flames have been stoked a bit, unfortunately, over the course of this year. And so we're trying to, you know, put together some reason here and understanding of the issue and really what this legislation brings about. But I wanted to go back to something you said. You brought about the need for fossil fuel in this country going forward. Would you speculate for a moment. You know, if this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

pipeline is stopped and we do not have this supply of oil going up to our refineries, can you speculate what type of impact that's going to have on our economy and also on future projects? [LB1]

DAN GUNDERSON: Well, I think that...and let me add one thing. I'm restricted by antitrust laws from projecting any prices or anything like that. I can only speak historically based on what we know. I think that, going forward, if I'm addressing both of the questions, we will see a stabilizing effect on the market by having this pipeline. It's amazing to me, I should have probably taken it as an omen. My first job was working for Texaco pumping gas in 1973 when OPEC had their embargo, and I probably should have considered that an omen of my future employment. But it's astounding to me that for the last 38 years we have been fighting essentially within our economy, and literally, over our imports from foreign countries that aren't necessarily very friendly to us. And now we have the opportunity, literally within our lifetime, to have 100 percent of all our energy needs, as far as fossil fuels are concerned, come from North America. And imagine the security that brings to this country. As far as this if the pipeline were derailed: I have worked with many pipelines, I worked on the project. I went through four states to deliver oil sands, currently delivering oil sands through North Dakota, Minnesota, Wisconsin, and Illinois. I can't speak for them, but I do know, having been involved with government for 30-some years, it would be very difficult to want to develop a project in this state if the rules get changed midstream. [LB1]

SENATOR SMITH: Thank you. [LB1]

DAN GUNDERSON: I'd also like to speak, if I might, to Senator Carlson's question regarding refineries, if he would like. [LB1]

SENATOR LANGEMEIER: Senator Carlson has got to ask you a question first. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. Go ahead. And then while you're at it, comment your thoughts about global warming. (Laughter) [LB1]

DAN GUNDERSON: Well, I am a certified government affairs lobbyist and so I'm not an expert on global warming by any means nor am I here to speak to that on behalf of the client. But as far as refineries are concerned, I believe in Phoenix they've been trying to site a new refinery for 13 years. The estimate is that they will spend a billion dollars to get the permits before they ever get the approval. It is largely a permitting process. If you have people that have difficulty with pipelines, they have equal difficulty having refineries sited in their backyard, if you will. In 1975, thereabouts, we had over 300 refineries in the United States. Today, we have 145. Building new refineries really is not very likely, and we haven't had one for a number of years. [LB1]

SENATOR CARLSON: If the one in, you said Phoenix, been after a permit, if they spent

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

a billion dollars on that permit, what would they spend on the facility itself? [LB1]

DAN GUNDERSON: I really would be reluctant...it would be a guess on my part. [LB1]

SENATOR CARLSON: Go ahead. [LB1]

DAN GUNDERSON: It would be in the billions. If you look at the largest private economic development project in the history of Indiana was to expand the BP refinery to handle oil sands crude, was in, I believe, in the \$5 billion range just to expand an existing refinery. [LB1]

SENATOR CARLSON: But even at that, \$1 billion is a pretty substantial percentage of the cost of the structure. [LB1]

DAN GUNDERSON: Without a promise of a permit. Yeah. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB1]

DAN GUNDERSON: Thank you very much. [LB1]

SENATOR LANGEMEIER: Further testimony in opposition. [LB1]

JOHN BOURNE: Long day. I feel sorry for you. Mr. Chairman, members of the Natural Resources Committee, my name is John Bourne, spelled J-o-h-n B-o-u-r-n-e. I live in Omaha, Nebraska, and I'm an international representative of the International Brotherhood of Electrical Workers. The IBEW has 750,000 members across North America, and we represent people across our state from south Morrill to Omaha. I'm here to go on record opposing LB1. We oppose this legislation not because we think it's wrong, just that it's too late. We need to start this Keystone project as soon as possible, and we feel that this legislation would probably delay it and end up probably killing it. This project means an awful lot to our members--jobs we really needed yesterday as well as today. Construction workers are among the hardest hit and longest suffering employees that have been losing their jobs during this recession. The numbers of unemployment across the nation of construction workers is well over 20 percent; in some places, 30 percent and more. I'm sorry to say I don't think it's going to get any better in the future. In fact, the Nebraska Department of Labor says the construction jobs are down 2.3 percent this fall, which is a lot larger than normal decline. In a news release from the federal DOL, it stated that 20,000 more construction workers became unemployed just in October. We need to put our people to work, and a project like this is badly needed. Not only are there hundreds of thousands of hours of electrical construction work for inside electricians, instrument technicians, and linemen in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

providing the electrical work for the pump stations that are going to be needed, but there are a huge amount of hours of employment in bringing the electricity needed to the projects as well. At this time, NPPD has a project to supply three wholesale customers of theirs, which includes 74 miles total, of 115,000-volt transmission lines, including some substation work, to supply the power needed. Just this project is valued at \$49 million. I am told that there's 750 hours of labor per mile in one of these transmission projects. So if you total that up, we would be talking about 55,500 hours of employment for a lineman. This is going to happen all along this pipeline, from Montana to Nebraska. Others have spoken here to the benefits when you extend these types of electrical transmission projects, and our publicly owned power districts have a market that they never had in selling this constant power. I was told that to provide power to the last pipeline built, there were three complete substations built at \$10 million each, with over 25,000 hours of work by electrical workers by the Western Area Power Administration, WAPA, in the Dakotas. I'm not sure of everything that has to be built for this project, but I can guarantee you it's an awful lot of electrical construction workers' hours of employment and a whole lot more for the other trades that are going to be involved. We need the jobs now. I think I can talk for an hour about the benefits that jobs bring: money spent for food, lodging, gasoline for driving, groceries, taxes paid, and all the rest, and of course, be spent across the state and help all of us in this terrible economic time. I am sure all of you know all that and will, of course, take it under your consideration. I appreciate your listening to our concerns as you begin your deliberations, and thank you very much for the jobs you do no matter how you vote. [LB1]

SENATOR LANGEMEIER: Senator...thank you. Senator Christensen has a question. [LB1]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for testifying. I had a visit with a constituent yesterday. They said TransCanada would bring all their workers in from the outside; they'll stay in campers. There will be zero benefit to the state. Do you see that happening? Do you...have you had any conversation, do you know if there will be some Nebraska people going to work? [LB1]

JOHN BOURNE: I can guarantee you there will be Nebraska people going to work. One thing I believe, unless I'm completely wrong, that on inside wireman, which I am, a construction electrician that does buildings like this. It will have to be a licensed job. It will have to have permits pulled, people carrying a license in their hip pocket to work at the...somebody coming from, pick a state: Texas, doesn't have...mostly doesn't have Nebraska licenses. Will there be anybody from the outside involved in this? Absolutely. You know, there's some specialists. There's some huge amount of controls in something like this there you just don't get to do very often. I'm a pretty good electrician. I've got four licenses. I've got certifications all over, but some of the systems they're talking about are very, very complicated--very technical. I'm not concerned at all. Now, if

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

you can tell me when they'll actually start it, I can tell you what the percentages are going to be. We've got 240 electricians unemployed in Omaha. We've got 60 in Lincoln. We've got many in Fremont and spread across the country. If the project is delayed four years, I don't know what to tell you, Senator, you know. Will we bring in travelers if we have to? Of course. But, right now, I can tell you they're going to be Nebraskans. [LB1]

SENATOR CHRISTENSEN: Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB1]

JOHN BOURNE: Thank you very much. I appreciate it. [LB1]

SENATOR LANGEMEIER: Good evening. [LB1]

JOHN KNABE: Good evening. My name is John Knabe, J-o-h-n K-n-a-b-e. I live around Wymore, Odell area. I've been on the school board there. This is finishing my seventh year. I want to talk about a couple things: first, environmental, and then economics. I am here opposed to this bill. First of all, the number of people that have come this morning and talked, have all talked about negative environmental things that are going to happen here. The pipeline, the first one, the Keystone pipeline went within three miles of my house. My neighbors all benefited from that. The thing that I would comment on is this surface restoration that they've done, they reseeded all the disturbed areas. They rebuilt the roads for the townships that they destroyed. The heavy trucks moving around and hauling pipe everywhere really did a number on a lot of our roads. I know I had to go out and fix some, being the township road-grader operator. A lot of the farmers had terraces and stuff, fields that they went through, creeks that they went through. All the terraces were rebuilt. The creek banks and river banks were all restored to normal. After one year of the project, actually two years it's been, if you go driving around, if I would take any of you out in my truck and head around, you wouldn't be able to tell where the pipeline was except for the standpipes that said: here's the pipeline. Only one month ago, a culvert that the pipeline had put in, there was a ditch started washing underneath the road where a culvert had been laid. Contractors were there lining it with limestone rock. I could have fixed that. I could have fixed that ditch with a half an hour with my tractor and loader and it would have been done, so I know that they're there taking care of these problems even after the first or second year. As far as economics go, I am on the school board; I have been there for the last seven years. We've been under a school levy override for the last eight years, at least. It's been at \$1.15 to \$1.17. When the first pipeline went on line...I mean, granted, some of this has to do with ag land valuations, but when the pumping stations came on line and things started rolling, our levy is now down to 76 cents, so we are only taking, I think, \$12,000 in state aid now. We don't get a lot. Very fair compensation to landowners. I know I've had friends of mine, guys that I've sold hay to, that have been able to buy new tractors and disks to help the pipeline

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

with their reseeded efforts. Personally, I benefitted from the last one. I sold straw to the pipeline for their reclamation efforts. And by my calculations...I had a phone call last year requesting 1,800 tons of weed-free straw, and the trucking that would go with that. Just for the straw and the trucking, would have been over \$200,000 dropped into the economy here. Our townships got to purchase new road graders. We got to upgrade new school buses. You know, things that have been putting off and putting off, were things that we needed to do. Our local motels were sold out, you know, for people there. And I know, talking to the local grocery store owner and the restaurants around there, there was a much needed boost to them, so. My red light is on. Whatever you guys want, I need to go trucking at the wee hours of the morning, so I'm sorry I butted in line if there was one. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. [LB1]

JOHN KNABE: Thank you. I sure appreciate it, guys. [LB1]

SENATOR LANGEMEIER: Welcome. [LB1]

MARK McCOLLEY: Senator Langemeier and members of the committee, I appreciate the opportunity to come and testify. My name is Mark McColley, M-a-r-k M-c-C-o-l-l-e-y. I am the business manager of Steamfitters and Plumbers Local Union 464 in Omaha, Nebraska, and also president of the Omaha-Southwest Iowa Building Trades, which represents about 15 different trades and probably 6,000 families that will be working on this pipeline. The majority of those people that will be working on that pipeline will be members of the United Association of Pipe Fitters from my local. Probably 200 pipe fitters could work on that pipeline, all citizens of Nebraska, all taxpayers here in Nebraska. Going to have Local 1140 laborers working on that pipeline, 571 operators are going to be working on that pipeline. There's just going to be a lot of people that are going to be employed. You know, I listened to all the people that testified earlier, you know, and there was a lot of scared, angry, worried about what's going to happen to their land--and I sympathize with those people. But I get those phone calls every day from my members who wonder where their next job is coming from. Some of my members' houses are in foreclosure. They have to tap into their 401(k)s to make their house payments. So these jobs are real important to us. We need these jobs and we need them now, so that's why we oppose this bill. Not that it's not a good bill. I support Senator Dubas. I just can't support this bill. It's going to probably postpone or maybe eliminate this pipeline. If it was just a bill that was going to look at future pipelines, we could support it. But to come in, in the eleventh hour like this, and try to reroute the pipeline at this particular point in time, we feel would just postpone it and eliminate jobs for our membership. You know, we talked a little bit about the economic benefits of this, and these people would be out there in those motels, out there eating in those restaurants. There's going to be a big economic impact to that part of Nebraska with

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

these jobs. That's all I've got. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. [LB1]

MARK McCOLLEY: All right. [LB1]

SENATOR LANGEMEIER: Appreciate it. Further testimony in opposition. [LB1]

JOE HERRING: (Exhibit 32) My name is Joe Herring, H-e-r-r-i-n-g. I'd like to thank the committee for this late day of testimony. It's a very important subject and I appreciate the opportunity to testify. I'm a writer from Bellevue, Nebraska, and I am here representing Americans for Prosperity. We oppose this bill as we do anything that will halt progress and jobs in this state. As a writer, I've had occasion to research this issue for a series of articles that I have written on the subject. I understand that reasonable people can often come to differing conclusions when they view the same evidence, and ultimately, we hope that these proceedings will result in a conclusion based on sound science, rational consideration, and factual debate. Unfortunately, the citizens of Nebraska have been treated to very little of that sort of discussion on this issue. We are here today directly as a result of that manufactured unease. As required by law, an environmental impact statement has been prepared for this project. The science reflected in that statement is sound. It was conducted by top experts in their fields. It covered the effects, likely risks, and reasonable alternatives. It has been ongoing, as we all know, for many years. The proposed route for the Keystone XL pipeline is, in fact, demonstrably the best available route. The bill before the committee today is unfortunate and a deeply flawed attempt to halt this project now and forever, this coming literally years after the Legislature and other relevant permitting authorities in our state have had occasion to review this project and have made no actions against it. After several months of the best environmental protest that money can buy, an unfounded hysteria over the supposed risk of wholesale contamination of our water supply has gained traction through simple repetition. The unprincipled propagandists of the environmentalist left have succeeded in entrenching a fantasy as fact in the minds of thousands of Nebraskans. With all due respect to the good intentions of Senator Dubas, this bill fails on multiple levels. As we all saw with the safe haven law, imprecise language can have extreme consequences in application. LB1 is full of generalities, poorly defined terms. They will serve as grist for a legalistic mill for years. That is the idea behind this opposition. If the pipeline can be delayed sufficiently, it can ultimately be halted, and that is the goal of the opposition to this pipeline. There are people who obviously feel strongly and are wishing to have some kind of input. They have a genuinely felt fear, but that fear is not based on rational science. It is based on fearmongering that has been bought and paid for. The aquifer is not at risk. Science shows that. And the ability of this Legislature to sit in session and discuss this should result, in my opinion, not with the advancement of Senator Dubas' bill or any other, but

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

rather, with a strongly worded resolution in favor of building the pipeline immediately and an equally strongly worded denunciation of the tactics that have been employed against it. Now, there is virtually nothing that any of us encounters throughout our day that has not touched, come from, been made with, petroleum products. Unlike the Sierra Club's idea that, you know, as they have posted on a banner across their state chapter Web site, "Windmills, not oil spills." I'm sorry, there are some things that you just can't replace with wind. The idea behind this, the idea behind the fantasy that is being pushed to create this special session, to create enough of a litigious environment to result in years of litigation, therefore allowing the entire project to collapse of its own weight, is simply based on a fantasy. I welcome any questions. My goal here is to represent the people who would like to see a rational discussion, for a change. [LB1]

SENATOR LANGEMEIER: Thank you. Senator Carlson has a question. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Herring, thanks for your testimony. Now I'm going to take exception with something you've said, because you are irritated with some of the scare tactics and so forth that have been put forth. I am too. But on the other hand, I'm going to disagree with something you've said, because in trying to evaluate people's attitudes towards this project you did make the statement that the opposition is wanting to stop the pipeline. Well, that's too big of a generalization. [LB1]

JOE HERRING: And I would agree. [LB1]

SENATOR CARLSON: There are some people, there are a number of people that honestly feel like a risk to the aquifer, however small that might be, is not worth taking. And I think those are genuine feelings, and I may not agree with it but I can honor their convictions on that. On the other hand, there are other people that use harm to the aquifer as a crutch because there's ulterior motives that they want to stop the pipeline and they want to stop fossil fuels and they want to stop coal-fired generation. But you made a generalization there because you don't like it, on the other hand, and I want to correct you on that. [LB1]

JOE HERRING: Well, and I appreciate that. Now allow me to clarify. Nebraskans are known for being reasonable and well grounded in our decisions. That has been used against us, the Nebraska common sense that Senator Haar spoke of. That has been used against us in this instance. I first came to this issue to write about it, from the other side. I thought: A pipeline over the aquifer, are you kidding me? Until I started looking at the facts, the science. You have to understand what an aquifer is and what it isn't. And this entire opposition, the paid opposition--please, let me differentiate between the heartfelt worries and concerns of landowners, property owners, and those who have been misled by the paid opposition who has a completely different agenda that's being pushed. They are two separate things. Unfortunately, one is driving the other. The

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

aquifer is not some vast underground lake. It's a rock formation. It is a vast rock formation that is capable of holding water, this according to Professor Goeke, the preeminent hydrologist studying that. This man writes the information that goes into the textbooks that teach about aquifers. And he tells us that this death plume that has made such a...they've made so much about, is a geological impossibility. Water does not run uphill. Oil does not run uphill. The Sandhills are unique but they don't defy the laws of gravity. The elevation to the west of the pipeline route is hundreds of feet higher than the elevation to the east. For a wholesale contamination of the aquifer, such as being described and used to foment the opposition, for that to occur, the oil, any spill, and the water with it, would have to run literally thousands of square miles up several hundred feet of elevation to do so. It's just...it's not going to happen. Once I realized that, that led me to begin digging a little deeper to find out why and who, and that's what has brought me here today. [LB1]

SENATOR CARLSON: Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB1]

JOE HERRING: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: I was hoping at some point we would hear from an air conditioner repair man in here. (Laughter) Knowing you, that's why I brought that up. Welcome. [LB1]

RON KAMINSKI: Welcome. Thank you, Chairman, and thank you, Natural Resources Committee, for allowing me to speak today. My name is Ron Kaminski; the last name is spelled K-a-m-i-n-s-k-i. I am the business manager of Laborers' Local 1140 based here in the state of Nebraska. We cover the whole state of Nebraska and 11 counties in southwestern Iowa. And on behalf of our members and on behalf of the over half-million members nationwide, we come here to oppose LB1. The reason why we are opposed to this bill, not is because we are not opposed to legislation moving forward, but we believe that the amount of time this project has been reviewed, has been studied, we have never seen any other project regarding a pipeline that has been through this much review. Our union, our members have constructed pipelines through the aquifer, most recently the Rockies Express pipeline and the first Keystone line through the state of Nebraska. Because of that, we have been able to open up a new training facility where we train people from South Dakota, Iowa, Nebraska, and from other Midwestern states that are looking to come get our expertise and training regarding pipeline construction. That has also led to other avenues of training. We care deeply about the environment. That's why our members also build biodiesel plants in the state, ethanol plants, and we are also constructing at this point 193 wind turbines in southwestern Iowa. So I can't necessarily say that we believe in global warming, but we do believe in energy,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

conserving as much energy as possible not only here in this state but also across the United States. There are also other reasons besides the jobs. As you have heard from some of the other people who have testified, unemployment in the construction field is higher than any other field in this state. We see in the areas of 20-28 percent unemployment. We have folks that are losing homes, losing cars, are struggling to live on unemployment, and that is if they still have...if they are still able to receive unemployment here from the state of Nebraska. It is imperative that this project is approved so we can move forward; that this committee listens to the science, you know. And I was thinking about this today, I was here on Saturday, and all last week actually, but on Saturday, you know, it would have been really nice to give the Cornhuskers another 15 minutes to play some football. But unfortunately, we can't walk in at the third quarter or the fourth quarter and say we need 15 more minutes. That's just not playing by the rules, and I think that's unfair. And that's all I've got. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Kaminski? Seeing none, thank you very much. [LB1]

RON KAMINSKI: Thank you, sir. I appreciate it. Thank you. [LB1]

SENATOR LANGEMEIER: The later you go, the less questions. (Laughter) [LB1]

RON SEDLACEK: And I'm sandwiched between two labor organizations, so. [LB1]

SENATOR LANGEMEIER: This is interesting bedfellows. (Laughter) Good evening. [LB1]

RON SEDLACEK: Good evening, Chairman Langemeier and members of the Natural Resources Committee. My name is Ron Sedlacek; that's spelled S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce. And actually the testimony that you just received is very similar to our testimony and I will not go through our entire formal presentation for your benefit and not be redundant. But the Nebraska Chamber of Commerce would like to express their strong support for the permitting construction of the Keystone XL pipeline project, and we do oppose proposed legislation that would result in unnecessary delays of the project or place the state of Nebraska in conflict with the federal permitting process. You've heard about the economic opportunities, which certainly is...we can go over, but I think that's already been discussed enough. We've talked about the State Department's environmental impact statement. Clearly, one of the State Chamber's top priorities, and it's in our policy handbook, is protection of the state's groundwater resources. We did pay particular attention to the EIS conclusion that alternatives to pipeline would be unworkable or, in some cases, would result in greater environmental damage. We believe that the State Department's review of the proposed project is based on sound science and that Nebraska has been treated fairly throughout the process and have confidence in the thorough review conducted by

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

officials at the Department of State and other agencies. It's our hope that the Nebraska Legislature will refrain from taking actions that could unnecessarily delay the permitting construction of the pipeline project. And thank you, Senator, I appreciate your...Senators, we appreciate your time, and if there are any questions I'd be happy to answer them. [LB1]

SENATOR LANGEMEIER: Are there any questions for Mr. Sedlacek? Seeing none, thank you very much. [LB1]

RON SEDLACEK: (Exhibit 33) And I also have copies of a letter that Barry Kennedy, president of the State Chamber, I would like to submit. Thank you. [LB1]

SENATOR LANGEMEIER: Give those to Barb. Thank you very much. Mr. Mass. Good evening. [LB1]

KEN MASS: Good evening, Senator. How are you? [LB1]

SENATOR LANGEMEIER: I'm doing great. [LB1]

KEN MASS: I can almost tell if this committee goes much longer, you will have to pass out toothpicks. Senator Langemeier and the members of the committee, my name is Ken Mass. That's M-a-s-s. I'm with the Nebraska AFL-CIO, and here today in opposition to my good friend Senator Dubas' LR1 (sic--LB1). Nebraska AFL-CIO's position is on record and we support the pipeline, but we also have the same safety concerns that have always been there. I think you have heard the safety problems or concern have been put to bed today by the testimony that has been given, and the pipeline needs to go forward. Also the jobs that it will create, it will create an economic basis in Nebraska that will not only help those individuals but also help the state and bring in revenue to it. So even said that, let's move forward on the pipeline. Hopefully, by early next year, we'll have groundbreaking, and away we go. I don't know if you hear so much from your peers from other states, but I am on a weekly conference call with 14 state AFL-CIOs. I have never heard an issue that has gotten more notice within the Midwest--not in the Dakotas, including the Dakotas, Montana--but these are Indiana and Illinois: Get the damn pipeline going, Mass. And it's out there. I don't know if you're hearing that, but it's broad-based throughout the Midwest. So with that, I'd entertain any questions. [LB1]

SENATOR LANGEMEIER: Are there any questions? I can't speak for my colleagues, but my e-mail would confirm your statement. [LB1]

KEN MASS: Your what? [LB1]

SENATOR LANGEMEIER: My e-mail level would confirm your statement. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

KEN MASS: Oh. Very true. Yeah, very true. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you. [LB1]

KEN MASS: Very good. [LB1]

SENATOR LANGEMEIER: Good evening. [LB1]

VAL NELSON: (Exhibit 34) Good evening, Senator Langemeier. I'd give you warm greetings, but under the circumstances that probably wouldn't be appropriate. (Laughter) My name is Val Nelson; that's spelled V-a-l N-e-l-s-o-n. I'm from Omaha, Nebraska. I grew up in western Nebraska in Cheyenne County, in the little town of Potter, originally. And I'm a descendent of third- and fourth-generation farmers. I myself might be a fifth generation had I not been the third-born instead of the firstborn. But that's beside the point. I am steeped in agriculture. I understand agricultural issues, perhaps anybody on the opposition has. I am here in opposition to LB1 because of exactly what it's going to do to agriculture. I have given you a map, let me get this out of the way, showing the aquifer as it...the Ogallala aquifer as it stretches all the way from South Dakota down to Texas--and you've probably seen this before, but it's good to be reminded of exactly where this aquifer lies. And more so, it's good to be reminded just exactly how many pipelines there are running through the state of Nebraska. As you can see, through all the very fine red lines, there are literally thousands of miles of pipe that do go through the aquifer, the Platte pipeline being perhaps the prominent. It cuts directly right across it, every phase of the aquifer. So it's not a new thing to have pipelines across the aquifer, so that should not be the issue and that should not be the reason why you have LB1. But it is--and it's a phoney reason. It's really a veiled attempt to stop the Keystone pipeline. There can be no other reason. That's why the Governor called the special session in the first place. So let's just be clear about that. Let's talk about the effects of what will happen if we don't get the Keystone pipeline. First of all, we have a severe dependence upon foreign oil right now, and it's time that we put a stop to that; at least, put a dent in it by getting oil from our friend Canada instead of trying to continue to import it from hostile Islamic nations who make it their purpose to destroy us, as we saw in 9/11, and continue to make plans to do that, funded by money that they got from oil that we bought from them for the last 40 years. It's time that we put a stop to that; at least, put a dent in it. And we need to stop it and we need to begin now by approving the Keystone pipeline as it is. It's already been established that if we delay what Keystone has done where they have to do further impact studies or whatever, it's going to end up probably killing the pipeline. That's a given. That's not an assumption or anything else. But I'll tell you what will really kill this deal is if we do not allow the Keystone pipeline to go forward early next year: We have a competition that we don't want coming into the picture, and that's Red China. They are already making overtures with Canada to get that Alberta oil. They have already offered to build a pipeline and pay for it themselves to the west coast so that they can ship that oil to China. We can't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

let that happen. It is a matter of national security that we keep this oil in North America. It's a matter of our own national security that we become less dependent upon other foreign oil by taking oil from a friend instead of an enemy. Nebraska is dependent upon what goes on with this committee, what happens with Keystone, because Nebraska is a diesel-driven state. We need diesel fuel for every aspect. There's not a farmer that doesn't depend on diesel. There's not a train that goes through the state that doesn't depend on diesel. There's not a bus, not a truck. Every one of these things need diesel. There are commuter cars that depend on diesel fuel, and, of course, petroleum by-products. It is essential--I repeat essential--that the Keystone pipeline be allowed to go through as proposed. Therefore, I strongly encourage you to not approve LB1. Thank you. I'll be happy to entertain any questions you may have. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Nelson? Seeing none, thank you very much for your testimony. [LB1]

VAL NELSON: Thank you for your time. [LB1]

SENATOR LANGEMEIER: Hold on. Further testimony in opposition? You're our last one. Good evening. [LB1]

CHRIS YATES: Good evening, members of the Natural Resources Committee. My name is Chris Yates, C-h-r-i-s Y-a-t-e-s. I'm a part owner of O&O Auto Sales here in Lincoln, and know a thing or two about the high need for affordable fuel. If our federal government actually allowed oil drilling in our own country, we wouldn't need to be having this conversation because we wouldn't need the Keystone XL pipeline. Under the guise of environmentalism, radical left-wing socialists are attempting to control our lives by controlling our energy consumption in hopes of creating their beloved socialist utopia. These environmentalists and their special interest groups have destroyed our country's ability to drill here and drill now by getting government to pass energy regulation laws, and that's exactly what we're discussing here today: energy regulation dictated by the government upon business and free markets. Instead of drilling here and now, we've been forced to rely on foreign oil, oftentimes in countries with dictators who are unfriendly to our republic and to democracy in general. Now we have an opportunity to increase our imports from our friendly neighbors to the north. And who's against it? You guessed it: the radical environmental left. Under the disguise of saving the environment, they have played Nebraskans for fools by generating a hysterical crisis. They're using our passionate and reasonable love for our Sandhills, claiming imminent danger to our beloved groundwater. But there is one problem with that generated crisis: Science, technology, and facts prove they are wrong. The radical hysteria over the Keystone XL pipeline is politically driven by socialists who do not want us to use oil because they believe it is killing our planet. They believe they can control our lives by pushing us into solar and wind energy. But until that technology is developed and affordable, oil is the only alternative for people who live in reality here in Nebraska.

Natural Resources Committee
November 07, 2011

Radical environmentalists have already dictated and forced our federal regulation on oil. We are really going to allow them to do it to us in our own state now? LB1 goes the wrong direction from what our state and country needs, and that's why I'm opposed to it. I'll be working on selling more cars this week, so while I'm here today I also want this committee to know that I also strongly oppose Senator Avery's LB5, you'll be reviewing Wednesday, for the same reasons I oppose this bill. Let's build the Keystone XL pipeline, the most technologically advanced, safest pipeline ever built. Thank you for your time. [LB1]

SENATOR LANGEMEIER: Thank you. Wait a minute. There might be a question. Do you want to take a question? Senator Schilz, did you have a question? Okay, you got off. [LB1]

SENATOR SCHILZ: Thank you. (Laugh) [LB1]

VAL NELSON: All right. Thank you for your time. [LB1]

SENATOR LANGEMEIER: Further testimony in opposition. Are we done with opposition? Now how many do we have for neutral testimony? Okay. Come on up. We'll start neutral testimony. [LB1]

MIKE HYBL: (Exhibit 35) Senator Langemeier, members of the Natural Resources Committee, my name is Mike Hybl. That's spelled M-i-k-e H-y-b-l. I'm the executive director of the Nebraska Public Service Commission and I'm here today to testify in a neutral capacity on LB1. The commission is aware that the question of whether to exercise some level of state jurisdiction over the siting of petroleum pipeline presents challenging legal and public policy issues. Should the Legislature decide that the commission should have a role in the siting of pipelines, we ask only that it provide the necessary tools to ensure a fair and workable process. With respect to LB1, the commission has a few specific comments for the committee's consideration. The commission's process is governed by the Administrative Procedure Act and the commission's rules of procedure. In Section 9(4), the bill states, and that's at page 13, lines 21, through line 2 on page 14, it states that if an order is entered denying an application, the pipeline carrier can amend its application without restriction and the commission is required to make a decision regarding the amended application within 60 days. As drafted, this section would require the commission to enter an order on an essentially new application without an evidentiary record. Any reports or testimony previously received from interested parties would relate only to the original pipeline route. With the limited time frame in which a decision must be made, interested parties would have no opportunity to be heard on the modified plan, and we would strongly suggest that the committee reconsider this provision. As previously stated, the process for the consideration of any application to the commission is generally governed by the Administrative Procedure Act and the commission's rules of procedure. However, the

Natural Resources Committee
November 07, 2011

commission normally establishes specific rules and regulations for the implementation of any given authority. The commission could proceed under its general rules of procedure if an application were filed without first implementing rules and regulations specific to the Major Oil Pipeline Siting Act. We took a similar approach with respect to the first general rate application under the State Natural Gas Regulation Act. However, the potential for a court challenge on the basis that the commission failed to promulgate specific rules and regulations remains. Should the commission need to commence a rule and regulation proceeding prior to considering any application filed, such a proceeding would take a minimum of eight months to complete. Finally, under the State Natural Gas Regulation Act, the commission regulates natural gas service provided by jurisdictional natural gas utilities, competitive natural gas providers, and aggregators. Such regulation includes certification and ratemaking authority. Additionally, the commission responds to consumer complaints regarding natural gas service. Although the regulatory authority of the commission is broad, the Natural Gas Department maintains a small full-time staff and relies on outside consultants for technical expertise as cases require. We do not have the staff with expertise related to siting and environmental issues and would likely have to employ consultants to conduct any review. The bill proposed would require a significant commitment of internal staff time and a dramatic increase in the amount and variety of technical expertise required by the department. I would be happy to take any questions the committee may have. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Hybl? Senator Dubas. [LB1]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mike, for all the help and answers to my questions as we worked through this. I really do appreciate it. You made comment: It's not uncommon for you to call on outside help on different issues. [LB1]

MIKE HYBL: No. That's...particularly, for example, in the case of the Natural Gas Act. Because we essentially have a staff of two for the Natural Gas Department, along with the legal support the department has internally, we do retain consultants that advises both staff and commission. The commission made a decision when the Gas Act was first implemented that the public advocate role that is provided for under statute, rather than hiring full-time staff to serve in that role, when we see a gas case generally about every three years, out of...from the jurisdictional utilities, that the public advocate role is maintained basically on a contract basis using outside attorneys to carry out that role. So it's a process we're familiar with. [LB1]

SENATOR DUBAS: In relation to the rules and regs, do you feel, through this bill, with the regulatory framework that you already have in place dealing with other types of pipeline issues, would this help you in moving forward on implementing this bill without...before setting the rules and regs in place? Do you think you have enough of a

framework in place that would assist you, I guess is what I'm trying to say. [LB1]

MIKE HYBL: I think the answer to that is, yes, we have the framework to operate under. Obviously, if you have the opportunity to go through a rule and reg proceeding, you have the opportunity I think to narrow down some of the issues. I think particularly with the way we generally run a rulemaking process, we'll generally start off with a staff proposal for rule and reg. Put that out for comment. And then we hold workshops where all interested parties can come in and be a part of the rulemaking process before we actually put anything formal and final in front of the commission to move up through the process. It's...I think it's always helpful to be able to go through that process. Obviously, we've had experience in a number of areas with different areas of jurisdiction where we have just not had the opportunity to commence with the rulemaking prior to actually having to deal with an issue under the statutes. [LB1]

SENATOR DUBAS: Thank you very much. [LB1]

SENATOR HAAR: That answered my question. Thank you. [LB1]

SENATOR LANGEMEIER: Senator McCoy. [LB1]

SENATOR McCOY: Thank you, Chairman Langemeier. Thank you, Mr. Hybl. You talk about, in the last paragraph of your testimony, this additional...the additional time, internal staff time, and whatnot. I would presume that that's reflected in the fiscal note on this legislation, or are you talking about in addition to what's been listed in the fiscal note is what the cost would be? [LB1]

MIKE HYBL: No. What we list in the fiscal note basically would take into account a best-guess estimate of what we might need in terms of outside consultants. Obviously, until you actually had an application in front of you and we saw what the actual issues that were being raised in that application, that would really guide what type of expertise we think we need to bring in that we may not have. It also takes into account our best estimate of our internal staff time, since most of the people that work in this area are cash-funded through assessments made against the natural gas industry. The time that...our internal time we would need to use the assessment process in the bill to bring in the dollars that would fund staff. I don't think it would be appropriate to have natural gas ratepayers paying for our staff's consideration of one of these applications. So we try to incorporate both internal staff time, and then what we...best guess at what we think we might need in terms of outside consultants. [LB1]

SENATOR McCOY: Thank you. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

MIKE HYBL: Thank you. [LB1]

SENATOR LANGEMEIER: Further testimony in a neutral capacity. Welcome back. [LB1]

DAVE WEDIN: (Exhibit 36) Thank you. I'm Dave Wedin, David, and the last name is W-e-d-i-n. I'm a professor in the School of Natural Resources here at the University of Nebraska-Lincoln. And as a university employee, I would be happy to stay here as long as you like, if you guys continue to support the university well. (Laughter) So we've got several of your employees from the university coming up here--so ask away. [LB1]

SENATOR LANGEMEIER: Now we're off topic. [LB1]

DAVE WEDIN: Ask away. I'm a grassland ecologist. I've been working in the Sandhills for about a dozen years. I don't think of the Sandhills as fragile. I'm amazed at the resilience of the Sandhills. But the key to that resilience are healthy grasslands. All the ranchers in the Sandhills know that. We've heard a lot about grasslands today. I'll share a few thoughts and if I can shed any light I'd be happy to answer to some questions. We've done a lot of experiments in the Sandhills over the last decade, looking at vegetation and erosion. When that dune surface is unprotected, it is vulnerable. Just some data: When we have an unprotected surface, we observe about an average of 10 inches of wind erosion a year. Some locations lose or gain up to 3 feet per year of sand movement. The winter and early spring winds are particularly erosive. We've lost a...we can lose a foot of sand in less than a month in a planting that we've done for research. Water erosion and the development of rills and gullies also becomes important when grass cover is lost. When the sand is unprotected by grass, slopes greater than 15 percent are vulnerable to water erosion. We, in our research plots, have observed gullies of 6-12 inches, routinely, from large June rainfall events. One gully of 4 feet in depth developed in only a week in the heavy rains we had in June 2010. So there's a couple issues here. One is replanting and restoring healthy, diverse grasslands following pipeline construction. The second issue is maintaining healthy grasslands over the pipeline for the lifetime of the project. Regarding revegetation after pipeline construction, if the goal is simply to have grassland cover that stops erosion, I think TransCanada will be mostly successful, but I have some caveats here. The final EIS dramatically increased the calls for physical erosion approaches such as straw and erosion mats. We had better hope the weather cooperates with some rain; cattle damaging new plantings are an issue; and you better have a long-term, you know, five-year perspective on that revegetation. I want to note, though, that just establishing grasslands is different than restoring the diverse grassland community that might be replaced in that disturbance. For a couple reasons, you know, I don't think restoration is possible in terms of matching that original community, and one of those reasons is the heating that will take place with the pipeline. Not necessarily a bad thing, but it will

preclude the vegetation over the pipeline matching the vegetation in some of those surrounding pastures. I'm out of my time but I'll... [LB1]

SENATOR LANGEMEIER: Go ahead and finish. We've been here this long, finish it. [LB1]

DAVE WEDIN: Okay, okay. A couple other issues. This is privately owned land and I am concerned about land tenure and the neighbors of the pipeline over the lifetime of the project. I'm not that concerned about damage from the right of way affecting well-run ranches adjacent to the pipeline. Even if the pipeline company does a relatively bad job, it's the stewardship ethic of the ranchers you've heard from today to fix the messes they have on their land, even though it will be a long-term battle perhaps in some of those cases. What I'm concerned about are absentee landlords, people that own a chunk of hunting land that they let go overrun with red cedar or other people that really aren't taking care and managing and understanding their grassland, are the regulations in place to prevent erosion damage coming onto the pipeline from adjacent land which is poorly managed? Because most of the Sandhills are well managed, but there will be some bad apples and there will be some bad apples in the future. What's...will the flyovers every two weeks looking for erosion be adequate to protect that cover on the pipeline? I just don't know what the regs are. My second concern is wildfire. The March 1999 fire near Mullen started with a spark from a utility pole. It burned 70,000 acres in 24 hours. Volunteer fire departments, guys of my age and weight died from heart attacks fighting fires out there. And there will be issues with wildfire during the construction period, but I'm also concerned about fires in the long term. It's a darn flammable habitat. Is this whole pipeline, including the pumping stations, the censor networks we've heard so much about, is it fireproof? And I don't know that answer. But it better be, because this will burn, and it's inevitable in that landscape. So those are my concerns I'll give you at this point. [LB1]

SENATOR LANGEMEIER: Very good. Are there questions? We'll start with Senator Christensen. [LB1]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you for testifying. We heard comments this morning about northwest winds and because this is the direction of the pipeline it's going to be much worse. Do you see that as an additional problem? [LB1]

DAVE WEDIN: Yes. In our research, and I had shared some testimony last February and brought some photographs at that time, you do get a prevailing plume of sand moving from northwest to southeast. That's the net direction that sand wants to move in that landscape because of the wind patterns. If the pipeline was perpendicular to the prevailing erosive winds and you had healthy grasslands, that sand is going to peter out. It's not going to move more than 100 meters or 100 yards at most into that adjacent

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

field. But there is a potential to build up a head of steam for that erosion because it wants to erode in that northwest to southeast direction. I think it's something that can be engineered to address, but it just raises the bar higher on doing the revegetation right. [LB1]

SENATOR CHRISTENSEN: So you do believe it can be managed. [LB1]

DAVE WEDIN: Yeah, but they're going to...you've got to anchor...you've got to deal with erosion. Cover crops aren't going to do it. Just throwing some specially adapted rye grass out there as a cover crop is not going to stop the wind. [LB1]

SENATOR CHRISTENSEN: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. Professor Wedin, on the first page at the bottom, I guess it's good to see your statement there. But you're saying if the Sandhill is well managed and if the company does a good job of managing and replanting, it may not take more than half a decade, and we're hearing a whole lot more than that this morning by some people. [LB1]

DAVE WEDIN: Well, I'm setting two standards here and you can choose because I'm not sure what's been promised to people. One standard is you got some grass growing and you've stopped the erosion. And the other standard, to me restoration means a grassland that has the diversity and the productivity and the resilience comparable to that native rangeland that was destroyed. And so I think the...one of the ranchers this morning spoke about, well, he wasn't so concerned about erosion if they can get that vegetation established. But he said, well, I maybe won't graze it for 15 years. In other words, that resilience and the ability to handle that grazing pressure, you know, it just may not be there for a while. So, you know, you can choose which standard, and I'm not sure which one is being held to here: to get something growing to stop the erosion or to replace the native prairie. They're very different standards. [LB1]

SENATOR CARLSON: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: From your experience, is a grassland a grassland a grassland? I mean we've heard that TransCanada has done grasslands up in Canada. [LB1]

DAVE WEDIN: No. I mean the Sandhills grasslands are amazing, both for the diversity but also for the ways that the warm season grasses that grow in the middle of the growing season are complemented by the cool season grasses. You've got low shrubs

in there like leadplant and stuff that are pumping in nitrogen and maintaining a deeper soil profile to absorb water. And, no. You could grow a relatively low diversity mixture of grasses and it would stabilize the soil, as I said to Senator Carlson. But I don't...and it maybe would be acceptable from an engineering point of view, but I'm not...particularly this issue with the warming, and this is just based on engineering studies in the appendix of the EIS. The soil warming, which is a consequence of the friction and the oil and the heating in the pipe, you're going to be about 10 degrees Fahrenheit warm...no, what was it? It was, yeah, 10 degrees Fahrenheit warmer in the winter at 6 inches depth. And if you extrapolate that out, you're going to have spring coming about three weeks earlier just directly above the pipeline, and fall is going to last about three weeks later above the pipeline. The vegetation will be different because of that. That's not necessarily a tragedy, but a good manager, a good grazer, rancher had better manage for that or else his cows are just going to go out in the spring and beat the heck out of the pipeline because it's going to green up a month earlier than everything else. So it will be a different grassland and it's going to probably be a lower diversity grassland. And that's some of this issue and it will be different because you're not just working with restoring, putting back a cornfield or a soybean field. You've taken out native rangeland and put something else back. I'm trying not to...I'm trying to just be objective. I'm not trying to be a total pessimist that that's the end of the world. I don't think it is, but it will be different. [LB1]

SENATOR HAAR: It's different. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much, appreciate it. Further testimony in a neutral capacity. [LB1]

WAYNE WOLDT: (Exhibit 37) Chairman Langemeier, members of the committee, my name is Wayne Woldt, spelled W-o-l-d-t, and thank you for the opportunity to make a brief statement here this evening, brief statement this evening on proposed legislation. I'm an associate professor at the University of Nebraska in biological systems engineering with a specialty in water resources environmental engineering. However, I'm speaking here independent of that association. I'd like to speak just a little bit to the science. There's been a lot of talk about the science of groundwater pollution. I'd like to just come back to that a little bit here this evening as well as a little bit on risk assessment. I'd like to suggest that should a leak or spill occur we would be dealing with a highly complex set of circumstances that involves layers of complexities ranging from the natural setting, which is highly variable according to location and timing, to human-induced modifications to the aquifer that include irrigation and production wells, to the mechanisms of the spill and the fluids that are being conveyed in the pipeline. At this time, the science does not exist to predict the fate and transport of the oil in the subsurface environment and groundwater without having to make very simplifying assumptions that may overestimate or perhaps even underestimate the full extent and damage that a spill or a leak might cause to the aquifer. If any of you are interested in

why I would make this statement, I would be happy to answer that question as to what would give me the qualifications to say that the science does not exist. In other words, these assumptions introduce significant uncertainty into our attempts to predict what may occur. When a risk assessment is completed, the standard process is to rely on science to inform the risk assessment process. Clearly in this case, without the science to inform the risk assessment process that was completed in the EIS for the Keystone XL pipeline, the risk assessment itself is flawed and incomplete. Given the lack of science and our ability to predict, the EIS has relied on experience with a spill that occurred in Bemidji, Minnesota, and the EIS has adopted this site as a surrogate to predict what would happen should a leak occur in the Ogallala aquifer. I would suggest that this is an improper use of risk assessment...risk surrogate concept due to the significant differences between Bemidji and Nebraska. Some of the differences are listed here. They include (1) the geographic setting; (2) the fact that in Bemidji there are virtually no people present at the site, no wells. In fact, that fact was used by the USGS to justify a long-term study of that site. There's no wells there to introduce these uncomfortable kind of complexities. We don't want to deal with those. It's too complex. The depth to the groundwater at the Bemidji site is about, oh, 15 to 30 feet, depends where you're at. Nebraska's depth could be much less, perhaps even zero if the pipeline is run through very shallow depth of groundwaters. The aquifer at the Bemidji site is relatively thin at about 45 feet or so whereas the aquifer in Nebraska could be 100, 200 or more feet thick. And the hydrogeology at Bemidji is described as "a simple hydrogeologic setting." And the Ogallala aquifer might likely present a more complex hydrogeologic setting. These site differences I would suggest result in an apples and oranges comparison which is simply not appropriate for use in attempting to understand the risk that this pipeline poses to the Ogallala aquifer. I went on to explain a little bit about one of the greatest differences being the wells. Our wells are large production wells in Nebraska, actually create kind of a large mixing zone in the aquifer. One of the things that we're finding are nitrates that are very deep in the aquifer. Science would normally say, why is that? They shouldn't be down there that deep. Well, it's because of the irrigation wells that are pumping and the connections between the layers of the aquifer that were largely there based on the drilling of the wells and the failure to seal the annular space. So there's vertical movement and a big kind of mixing zone. That's not really considered here in this risk assessment. And it may, in fact, induce movement of the pollutants in directions, places, locations that we had no idea would occur. So in summary, I feel that the EIS includes a very weak attempt at a risk assessment from a science point of view to address the issue of what would happen to the Ogallala aquifer should a spill or leak occur. This weakness was driven by a lack of science to inform the risk assessment process. Given this, I'll call it a very poor attempt at a risk assessment, and if you look at the whole EIS, the discussion of risk to the groundwater is a very small portion of that contained in a few pages relative to the whole thickness, and that the State Department is using this in part to make its decision, that may be something that we really need to consider. And I think that it's imperative that Nebraska consider steps to manage the risk through mechanisms that are offered in legislation such as

being proposed. I won't say this particular legislation, but maybe there's other legislation that's coming along. I think it's important because it just hasn't been looked at well. [LB1]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB1]

SENATOR HAAR: Yeah, thanks for staying. Are you a sound scientist? You know, we hear about sound science. [LB1]

WAYNE WOLDT: I would like to think so. In this area I started researching in about 1987, and my dissertation was on groundwater pollution, fate and transport of pollution, modeling of fate and transport. So it's been about 24 years of study and research in this area. I don't dispute that there are disagreements. There are differences of opinion about groundwater and what might happen. I ran into that directly, if I can, on a site near Raymond, Nebraska, where carbon tetrachloride was the contaminant of concern from a former grain storage facility. A very large, reputable federal contractor developed a groundwater model on that site--Argonne National Labs, it's all in the records--and concluded based on their studies that there was no threat to the Raymond well system. I thought, well, this is an interesting research opportunity. It's very rare that modeling is done on the same site. It's kind of expensive to do, but it was an opportunity to kind of explore it from a different point of view. And we put together a model and concluded differently: that the Raymond well field was under threat from the contamination plume. All we could do was wait and see what happened and watch the contamination levels, and they went up, and Raymond now has a treatment system on their water supply to deal with the volatile organic compounds of the carbon tet. So that took time to kind of prove out. There was differences of opinions. That will happen, but time will tell. [LB1]

SENATOR HAAR: Well, we frequent the Ding-a-Ling Bar in Raymond (laugh), and so they have water purification then, huh? What about, are you a rational scientist? We've heard that today--sound science, rational science. [LB1]

WAYNE WOLDT: Well, I do...you know, rational, I don't know what that means, but I guess I do believe in the laws of physics. I would take a little bit of exception to some of the statements made earlier about oil not moving and in a subsurface environment, especially the vadose zone. There is a capillarity action that takes place with liquids and solids, and that tends to want to hold the liquids in place and there's gravity that wants to move the liquids down. There's a constant fight between them. As the volume of liquids increase in the porous space, gravity tends to dominate and win the battle. So it comes into a question of moisture content if you're dealing with water or fluid content if you're dealing with other than water. But there are other issues of viscosity of the nature of the porous material and the specific gravity of the fluid that come into play. In vadose zone, we deal with permeability as opposed to...or with oils we deal with permeability as opposed to hydraulic conductivity. I think that these things come into play from a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

physics point of view. And from that point of view, I'd like to think I'm rational in terms of the laws of physics. The problem is that we don't fully understand the complexities. This becomes a complex system. And complex systems are defined as a set of connected systems, each of which we might understand a bit, but when you put them all together, they operate in very nonlinear ways, very difficult ways to predict. [LB1]

SENATOR HAAR: So the stuff...at least some of what's going to come through the pipeline will be dilbit, diluted bitumen. So there's other things in it than oil. Will that affect a leak or the transport of whatever happens if there's a leak or a spill? [LB1]

WAYNE WOLDT: My understanding is that the fluid is a mixture. And the extent to which it would disassociate or move into its separate phases I think is going to be dependent on the environment, the conditions. I don't know without research on... [LB1]

SENATOR HAAR: Yeah. [LB1]

WAYNE WOLDT: ...you know, how it would move in that kind of porous material. But I would suspect that it will disassociate or move into its different components. That seems to be what's happening at Bemidji. And then within that, each of those individual components can kind of move differently in the groundwater. Some materials may be more ready to move, readily movable. Others are going to hold back and do what's called absorption, desorption. And again, that's part of the complexities. [LB1]

SENATOR HAAR: Yeah, because actually oil was found at the bottom and they're trying to clean up the bottom of the Kalamazoo River. And it may have floated at one point, but at least some of that has gone down in the water. [LB1]

WAYNE WOLDT: Yeah. As it separates, there may be some portions of the material that have a specific gravity greater than one, or water, and will sink then. [LB1]

SENATOR HAAR: Now TransCanada really sort of pooh-poohed the idea of benzene, that benzene could enter groundwater. Is benzene a problem in groundwater or? [LB1]

WAYNE WOLDT: Well, I don't know what the constituents are in the fluid that TransCanada is talking about pumping, so I don't know if benzene is in there if that would be a problem or not. [LB1]

SENATOR HAAR: Could be. [LB1]

WAYNE WOLDT: If it is, benzene, BTEX--benzene, toluene, ethylene and xylene--can all be problems in water, in groundwater. Benzene is one in the front edge of the BTEX kind of characterization, and, yeah, it can move with the groundwater. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR HAAR: I'm sorry. I don't understand what you just said about the BTEX or whatever. [LB1]

WAYNE WOLDT: Benzene, toluene... [LB1]

SENATOR HAAR: Okay, okay. [LB1]

WAYNE WOLDT: ...mostly related to gasoline. [LB1]

SENATOR HAAR: Okay, okay. And then the thing of leaks in pipelines and the cost of remediation nationally in general, you have some knowledge of that? [LB1]

WAYNE WOLDT: Well, at one time, I don't remember when it was, I believe it was in February presentation here I did do some looking into the Pipeline and Hazardous Materials Safety Administration database. And there are...they characterize incidents according to whether it was just an incident, a serious incident, or a great concern type of incident. Incidents, there were documented to be 5,437 incidents in the period of 1991-2010, about 20 years or so. The incidents of greater concern, about 2,771, of which...and this is dealing with hazardous materials pipelines, just hazardous materials on shore. There's all kinds of natural gas... [LB1]

SENATOR HAAR: Yeah. [LB1]

WAYNE WOLDT: ...off shore total, of which there were 40 fatalities, 178 injuries; property damage estimated to be \$2.6 billion; barrels spilled, about 2.6 million; barrels lost, in other words, not recovered, about 1.4 million. And then the very serious types of characterizations in that same time period were set at about 93. And that's where they just look at fatalities or injuries that resulted in hospitalization. [LB1]

SENATOR HAAR: Of workers. [LB1]

WAYNE WOLDT: Of workers, yeah, or I suppose someone, if they were on a backhoe and, you know, were a casualty as a result of accidentally piercing the line or something like that. The medium range include over \$50,000 in total costs, highly volatile liquid loss of greater than 5 barrels; other liquids greater than 50 barrels; or a liquid release resulting from accidental fire explosion. So those are...there's kind of three tiers there of characterization that the federal Pipeline and Hazardous Materials Safety Administration keeps track of through their database. [LB1]

SENATOR HAAR: Okay. Could I have a copy of that when you're...or send me one, please? [LB1]

WAYNE WOLDT: Yes. [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

SENATOR HAAR: Okay, thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. I think you made the statement just a couple of minutes ago that you weren't sure of what all would be in tar sand crude that would come through this pipeline. [LB1]

WAYNE WOLDT: Correct. [LB1]

SENATOR CARLSON: Okay. So if you were the President and needed to make a decision on whether to grant the permit or not in the next several days, I assume that your answer would probably be no permit. [LB1]

WAYNE WOLDT: Well, I'd...there's...let me back up and just mention from a risk point of view there's two main elements to a risk assessment. One is the probability of exposure, which is generally derived by modeling or looking at past records, data, some sort of a way to estimate what the probability of some sort of exposure would be. And then the other main component is the consequence of exposure. So what are the consequences? What are the health risks that might result from different levels of exposure? And without that...without knowing the exact kind of constituents in the fluid, in my mind it's a little bit tough to answer the question of the consequences. So I think that that adds to a little bit of questions about the risk assessment process. So on the other hand, I know as an engineer that we do need to move forward in this country. And risk...and it quickly evolves into risk management. So what are the steps you take to manage risk? There's no such thing as zero risk. We can only work toward maybe a de minimis, what's called a de minimis risk. And things that are done to do that are the EIS, trying to understand more about it. I think that steps that are being taken here, maybe on more of a local level to try to manage that risk and have a recourse at the local level. At the national level, I'll...going back now, I've kind of been spanning from national to local, back to national to kind of answer your question. I think I would hold off on answering that because I'm not the President. That's his call to make. But I would just mention that's kind of the elements of risk, risk analysis and risk assessment. And hopefully he considers that through counseling and then makes his best judgment based on that. [LB1]

SENATOR CARLSON: So your answer isn't a yes or a no, but I think I may be hearing that you feel like there ought to be more sound science involved before a decision is made. [LB1]

WAYNE WOLDT: I think what I'm saying here is that risk management...what I'm seeing here is a natural response to uncertainties. This is a risk management exercise here.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

Legislation is about risk management. And the uncertainties stem from scientific unknowns as well as differences of opinion. You'll hear differences of opinion. That adds uncertainty to perceptions about what might happen. And I think that it's always good to find more science, to pursue science and to try to answer questions. I remain very interested in that. At the same time, I'm not sure that we can answer all the questions before we move forward, which is why I'm presenting this as what I would call neutral position on this. However, risk management, I believe in that and feel that strongly about that. [LB1]

SENATOR CARLSON: Okay, thank you. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB1]

WAYNE WOLDT: Thank you. [LB1]

SENATOR LANGEMEIER: I think we have two more in a neutral capacity. Good evening. [LB1]

JOHN STANSBURY: (Exhibit 38) Good evening. Senator Langemeier, members of the committee, thank you for allowing this opportunity and forgive my cryptic notes that are coming around and also forgive my sort of froggy throat. It's been sort of a long day of lectures and etcetera. My name is John Stansbury, S-t-a-n-s-b-u-r-y. I teach environmental and water resources engineering at the University of Nebraska. Before I joined the university, I worked in consulting and primary duties in the consulting field was to evaluate and do fate and transport evaluations of chemicals that had been released into the environment at hazardous waste sites. And as part of that, to conduct ecological and human health risk assessments. My role here today is simply to try to help understand or clarify some of the claims that have been made regarding the science relating to this project. And so there have been quite a few claims about what the science does and does not say related to the project, and I want to talk about some of those claims and discuss their validity and voracity and so on. One of the claims is that the science shows that the aquifer will be safe or not be at risk. That was just mentioned just a few minutes ago. The actual state of the science is that an adequate independent study has not been done that is able to evaluate the potential risk to the aquifer. Not a single...and I'm going to apologize because a lot of the stuff I'm going to say is going to sound a lot like Professor Woldt's testimony. But not a single fate and transport study has been done on these oil constituents in the setting and conditions of the Sandhills Ogallala aquifer system. So how can we possibly say that the science says that the aquifer will be safe? We haven't done the science yet. We haven't done the study. Not a single analysis of the potential plume development in the Sandhills Ogallala aquifer has been done. So once again, no study, no data. How can anyone say that the science...what the science says? The science hasn't been done. Not a single risk assessment estimate for human health risk impacts due to exposure to chemicals

Natural Resources Committee
November 07, 2011

like benzene, which will be in some of these oils, and as Professor Woldt says, are mobile and will get to the groundwater, unlike some of the heavy oil constituents which people said won't travel. It's true, some of the heavy ones won't, but the light constituents will. And if it rains on a big oil spill, those light constituents will dissolve in the rainwater and will travel down into the groundwater. There's little question about it. But not a single risk assessment estimate was done in the EIS. So nobody knows what the risks are to the people in that environment. Like I see, I need to speed up. All of the evaluation, just like Professor Woldt said, all the evaluation of the Sandhills Ogallala aquifer was done based on comparison to an aquifer in Minnesota. There's kind of two problems with that. One is the assumption that the aquifer in Minnesota is just like the aquifer in the Sandhills. It actually may be in some places. But as people have pointed out, the Sandhills are a heterogeneous system. They're different in different places. So if the Minnesota aquifer is like someplace in the Sandhills by definition, it must be different than the other places in the Sandhills. So is it a good surrogate? I think that's highly questionable. Another problem with using the Minnesota site is even very small changes, differences in the chemistry can make very large differences in the fate and transport of chemicals in the aquifer. So as I put in the notes, just for example, total organic carbon content, if that's even slightly different, that will have a very large difference in the transport of the oil constituents. So are they the same in both aquifers? I don't think anybody knows because I don't think that study has been done. In fact, I'm pretty sure of it. Another claim is that any spills to the aquifer will be small and localized. Well, the actual state of the science is that a 1.5 percent spill or a spill that is less than 1.5 percent of the design flow rate won't be detected by the leak detection system. It's also true that the pipeline will only be inspected every two weeks. So in a remote area in the Sandhills, it's possible that 1.5 percent leak could be going on for two weeks, for 14 days. If that occurs, that would...that flow volume would result in 6 million gallons of oil being released from the pipeline. If the oil is 1 percent benzene, which is what the content is in some of the oils up in Canada, that would be 60,000-some gallons of benzene. That's a huge amount of benzene that would be released to the environment. Some of that would be dissolved in leaching infiltrating groundwater and be carried down to the aquifer, no question about it. So will the spill be small? I think there's certainly a risk that some very significant spills could occur to the groundwater or to the aquifer. Another claim is that any spill would be cleaned up very quickly. We have hundreds of oil-related contaminant spills, plumes in the aquifers in Nebraska. It takes years to clean these up. Some of them have been under remediation for decades. There's no reason to think that once these chemicals get to the groundwater in the Sandhills it will be cleaned up any more easily. So I think the science doesn't support the statement that any spills would be cleaned up very quickly. It would be very difficult to clean up. That will take a long time. Another claim is that the federal studies show that the pipeline will be safe. Well, I think as been pointed out a few times, the federal study primarily is the EIS. The EIS was contracted by the State Department, but it was conducted by a consulting firm that gets the majority of its revenues from the oil industry and a significant portion of its revenues from TransCanada. So why the State

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

Department thought that that particular consulting firm could actually provide an independent, unbiased analysis is a little bit beyond me, but I'll leave that to you. Some people have said that this pipeline is being studied more than any other because we had a draft EIS and a supplemental EIS, now a final EIS. The reason there's been so many is because the EPA flatly rejected the first two as being utterly inadequate. And I'm going to talk about that a little bit more. Essentially all of the substantive findings in the EIS are taken straight from TransCanada's documents or documents from TransCanada's consultants. A couple of examples of those: as the worst-case study evaluation...worst-case spill evaluation, in the EIS they use 11.5 minutes as the pipeline shutdown time. That's straight from TransCanada's document. That might be a reasonable value for the best-case scenario, but it's absolutely unreasonable for a worst-case scenario. So these things are going straight from TransCanada's documents right into the EIS. And I'm going to skip over some stuff there. There have been claims that alternative routes have been evaluated. As we pointed out, the proposed route hasn't been adequately evaluated so I'm not quite sure how that route can be compared to other routes. And as just a sidelight, the current Keystone pipeline had to undergo an EIS. Part of that EIS would have been to evaluate the best route. They found that the route along the eastern side of the state was the best route. Now they're finding that the route across the Sandhills is the best route. I don't know quite how both of those can be the best routes so that doesn't make any sense. Just one last thought: When people say that the science says one thing or another, ask them for the data because the data don't exist for most of these statements. Thanks. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB1]

SENATOR HAAR: I've only gotten to know Dr. Stansbury recently. And what drew me to getting to call him was a statement, and here's the way it worked. When the supplemental--correct me if I'm wrong--when the supplemental EIS came out, you responded with a response. Okay. And then TransCanada responded with a response to your response, which was published in the final EIS. Right? [LB1]

JOHN STANSBURY: Pretty close. It was the draft EIS that I commented on. And when the State Department got my comments, in my opinion what they should have done is sent...they were extensive comments. It was a whole study. What they should have done is send those to some qualified agent, independent agent to evaluate them to see if Stansbury is crazy or not, to see if there's anything in there that's worth looking at. Instead, they sent it to TransCanada and asked them for their thoughts. And surprisingly, there were quite a few negative comments on that. I subsequently then responded to those responses. [LB1]

SENATOR HAAR: To their response and their response. [LB1]

JOHN STANSBURY: Well, what Senator Haar said was the State Department then, in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

what I think is an unprofessional move, simply published TransCanada's rebuttal in the final EIS. Maybe it's...I get mixed up between the copies. So, yes. [LB1]

SENATOR HAAR: Yeah, yeah. Well, I'd like to just read that because this was offensive to me and it still is. First of all, they referred to it as the Stansbury Friends of the Earth report. Were you paid by the Friends of the Earth report to do your study? Why did you do this, all this work? [LB1]

JOHN STANSBURY: Well, the why is kind of a long story but I was paid not by the Friends of the Earth. I was paid by nobody. I did all this in the evenings when I should have been doing other things. I did...Friends of the Earth did help me distribute my report because I'm a professor and I don't know anything about distributing things to media outlets, and so they did help with that. They took the report and distributed it. Why I started actually is on the second page, third page. Yeah, on the third page near the top there's a number in there that was in the draft EIS that said in the draft EIS that they don't expect to spill any more often than 7,800 years. Now I know how they came up with that number and it wasn't totally bogus, but it was clearly misleading because it's not 7,800 years that we expect between spills on this pipeline. And so I thought that my decision makers, you folks, might be confused by numbers like that, so that's why I did an alternative study to clarify numbers like that. I told them they shouldn't put that in the EIS because it's completely misleading, and they continued to put it in the supplemental and then in the final. [LB1]

SENATOR HAAR: And that was the, as I understand it, the 7,000 years was taking one mile of pipeline and saying the risk for this one mile of pipeline is only once in every 7,000 years. [LB1]

JOHN STANSBURY: Right. First they looked at the historical expected frequency. They reduced that by a factor of eight because they consider their pipeline will be at least eight times better than the other pipelines, and some of that is reasonable. It probably will be better, maybe not by eight times. Then they divided that number by 1,763, which is the number of miles, and then they divided it by 50 years and so they got the expected frequency essentially right in one particular spot. [LB1]

SENATOR HAAR: But I get suspicious when people bow to name calling, and we heard that this is socialism by radical environmental extremists. But here's scientists from TransCanada responding to your response and that's what got my attention. This is simply the latest case of opportunistic fearmongering dressed up as an academic study, referring to your proposal. How do you react to that? [LB1]

JOHN STANSBURY: Well, I didn't...actually, that didn't upset me all that much because that was TransCanada's response to a report that I made that was critical of their project and you would expect that from an organization that is... [LB1]

SENATOR HAAR: But from engineers? [LB1]

JOHN STANSBURY: Well, yeah, that's the good point. You wouldn't expect that from true...as a true scientific exchange. But actually I wasn't so upset with TransCanada's response. I was really upset, though, with the fact that the State Department published those unedited words in their official U.S. document. [LB1]

SENATOR HAAR: So scientists can disagree but this is simply the latest case of opportunistic fearmongering dressed up as an academic study I think is certainly unscientific and resorting to name calling. When they couldn't debunk your data, they called you names. That's what children do and... [LB1]

JOHN STANSBURY: I think there's some truth to that. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. So the only compensation you received from Friends of the Earth was help in distributing your report. [LB1]

JOHN STANSBURY: Exactly. [LB1]

SENATOR CARLSON: In a sense, it's worth something. [LB1]

JOHN STANSBURY: Well, I guess. [LB1]

SENATOR CARLSON: I don't know anything about Friends of the Earth. Tell me what you know about them. [LB1]

JOHN STANSBURY: I don't know much about them. They helped me distribute this report and that's basically all I know about them. [LB1]

SENATOR CARLSON: So you let a group distribute your report and you don't know anything about them? [LB1]

JOHN STANSBURY: Yes. [LB1]

SENATOR CARLSON: Have you ever conducted a pipeline risk assessment? [LB1]

JOHN STANSBURY: No, but I've conducted upwards of a hundred other risk assessments on chemicals that are the same chemicals that have the same properties and would do the same fate and transport processes. [LB1]

Natural Resources Committee
November 07, 2011

SENATOR CARLSON: Okay. Okay, thank you. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you for your testimony. And I think we have our last testifier. Come on up somebody or we're going to close the hearing. Just have a seat in the front row if you want to testify, we'll get you there. Good evening. [LB1]

JIM GOEKE: (Exhibit 39) Good evening. I'm the one you've been waiting for (laugh). My name is Jim Goeke, J-i-m G-o-e-k-e. I'm a retired hydrogeologist with the University of Nebraska. I'm an emeritus. I worked for 41 years for the University of Nebraska Conservation and Survey Division. Good evening, Senators, and thank you for the opportunity to speak about LB1. I am here to talk about the role of hydrogeology in understanding aquifers and evaluating pipeline alignments. An aquifer can be defined as any subsurface material that stores and transmits water in usable amounts. Aquifers vary dramatically around the globe, but to understand them you always have to begin at the same point--their geology. Hydrogeologists are scientists who research and define aquifers, including their structure and composition, how fluids move through them, the amount of available water they contain, and any natural or human-induced contaminants. During this special session, the Ogallala aquifer is the focus of attention. As I testified before you last December 3, this aquifer is a rock formation made of many different layers, some of which promote the flow of water, some of which impede or slow down that flow of water. The Ogallala is not a massive, uniform body of loose sand nor underground river or lake. Our detailed knowledge of the Ogallala aquifer and the water within it comes primarily from the research conducted over the past 100 years by hydrogeologists at the University of Nebraska's Conservation and Survey Division and the United States Geological Survey. We have worked closely together to define, describe, and understand all of Nebraska's many aquifers. We have conducted experiments on the behavior of fluids within and surrounding these aquifers. Any calculations and descriptions of how a pipeline spill would impact an aquifer must take into consideration the ground truth of its geology. This brings me to my two points for the language and intent of LB1. The first relates to the Section 8(3) that excludes mention of the Conservation and Survey Division or the State Geological Survey and yet includes the State Historical Society, and Section 12 which instructs the Public Service Commission to use professional services and expert assistants. The specific professions listed are engineers, accountants, attorneys, and economists. I certainly agree that a variety of experts is needed when considering the full extent of pipeline impacts. My point is that the list of specific professions which the commission must consult should include hydrogeologists. Their knowledge is crucial for determining pipeline routing and calculating the impact of any potential oil spill. My second point relates to LB1's definition of "unusually sensitive groundwater areas" in Section 62(j), which appears to use federal classifications as a starting point. I welcome further clarification about the intent of this section. For me, all of our state's water, from the prolific Ogallala to the aquifers in eastern Nebraska, from cold water streams to the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

flowing Platte, all are equally valuable and need our protection. It makes me uneasy to imply that some bodies of water are more important than others when it comes to keeping them clean and free of human-made contaminants. If we agree as a nation that for now we need pipelines to transport oil and gas, then for any alignment we must work diligently with the industry to ensure that pipelines are built in a manner that protects these aquifers as well as humanly possible. We can do this best by starting with the hydrogeology of the proposed route. I have included attachments: the Op-Ed piece that I wrote for The New York Times; eight maps that are a reiteration of my testimony from December 3; and two well logs from Merrick County and four logs from Holt County as examples of what the hydrogeology is in those areas. Thank you. [LB1]

SENATOR LANGEMEIER: Very good. Are there questions? Senator Haar. [LB1]

SENATOR HAAR: Yes, Jim, several times I've heard you talk, and one thing that I was really concerned about is that you implied we're not funding the kind of research that you did for many years to an adequate level anymore. [LB1]

JIM GOEKE: Yes. [LB1]

SENATOR HAAR: Is that a true statement? [LB1]

JIM GOEKE: That is exactly true. [LB1]

SENATOR HAAR: And so we need to be... [LB1]

JIM GOEKE: I think if you looked around for how many people you have that could talk in defense of the Ogallala aquifer, if the Ogallala aquifer is important in Nebraska, there ought to be a legion of people who could come in to and talk about the aquifer. And I don't think that we have that sufficient number of people who are properly qualified. [LB1]

SENATOR HAAR: Well, I think as we go down the road, whichever way all of this goes, we need...this is an area where we really need to fund research it seems to me. And we may not be doing that. [LB1]

JIM GOEKE: And I would suggest to you that primary...the primary research that we have done in Nebraska to help us understand our groundwater resources have been done by the Conservation and Survey Division and the USGS working together. And that cooperation does no longer exist and the Conservation and Survey Division is a very weak semblance of what it used to be. [LB1]

SENATOR HAAR: Now, you know, I was trained in science, chemistry, and physics and stuff like that, and I understand this thing that scientists disagree. In fact, that often

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

leads to the next level of understanding is when there's disagreement. So...but the people on the street are pretty confused because they seem to say that, you know, for example, Dr. Woldt is saying one thing and you're saying another thing. And just, for example, his statement: At this time the science does not exist to predict the fate and transport of the oil. Do you just disagree with him on that or do you think he's wrong or? [LB1]

JIM GOEKE: No. I would in part agree with him, what he says, because we have not done definitive research on that. [LB1]

SENATOR HAAR: Um-hum. Okay, okay. Well, thank you. I've found the meetings where you've talked very informative about water. [LB1]

JIM GOEKE: Thank you. [LB1]

SENATOR HAAR: I even have a water map on my office wall now. (Laugh) [LB1]

JIM GOEKE: Good, good. [LB1]

SENATOR LANGEMEIER: Senator Smith. [LB1]

SENATOR SMITH: Thank you, Chairman Langemeier. Thank you for your testimony, Professor Goeke. In your New York Times article, you conclude at the very bottom by noting that in your opinion that a leak from the XL pipeline would pose a minimal risk to the aquifer. Is there anything you heard in the testimony today, particularly the couple gentlemen that were before you, that would change that conclusion? [LB1]

JIM GOEKE: Not really. I still maintain that the character of the aquifer is so variable that any spill or leakage is going to be localized and just localized. [LB1]

SENATOR SMITH: Thank you. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. Dr. Goeke, on your statement, "It makes me uneasy to imply that some bodies of water are more important than others when it comes to keeping them clean and free of human-made contaminants." And that's an interesting statement because would it follow up then that you aren't any more comfortable of moving the proposed pipeline from its proposed path to another one? [LB1]

JIM GOEKE: Exactly. [LB1]

Natural Resources Committee
November 07, 2011

SENATOR CARLSON: Well, then would you talk a little bit more about where that...where the proposed one is located and why you see it as, I don't know if minimal is the right word, but not a great risk to the aquifer. [LB1]

JIM GOEKE: Well, I've had a little difference of assessment from December 3. When Professor Stansbury wrote his piece, I became concerned about the extent of sand, loose sand in Holt County. And so that's why I included the four logs of Holt County. I immediately looked to Holt County and the logs of wells in Holt County to determine how much fine sand there might be up there because that would be the primary concern. And I was pleasantly surprised, but I thought it was going to happen that way, that there is a veneer of sand up there. And those sands are 10 to 20 feet thick, not 200 to 300 feet thick, and they're underlain by 40 to 60 feet of silt and clay. So that any leakage directly into the water table in Holt County would be constrained by those underlying silts and clays, if not only by the thin seams of sands of silt and clay in the sands. So that largely put my fears at rest in Holt County, in southwestern Holt County. And the logs that I included in your handout cover I think three townships along the pipeline route from south to north. [LB1]

SENATOR CARLSON: Would you review for us again how water moves in the aquifer and how the...just how it works in terms of filtering out impurities. [LB1]

JIM GOEKE: Well, it does filter out impurities and it moves basically from west to east, and I think the 3 and 4...the figures 3 and 4 are reversed in the handout I gave you. But 4 is a cross section across the middle of the Sandhills and it shows the height of the Sandhills and the land surface to the west in Box Butte County and it shows the east, the end...the east terminus of the cross section is in Garfield County I think, maybe northeastern Garfield County. And it shows there that the sediments are Cretaceous green sediments in green; the yellow, the Ogallala; and then the overlying sands and gravels, and then the overlying silts and clays and the fine sands. And the fine sands act as a filter and the sands and silts are going to constrain any contamination or movement. [LB1]

SENATOR CARLSON: Are you familiar with or do you know J. Paul McIntosh from Norfolk? [LB1]

JIM GOEKE: No, I don't. [LB1]

SENATOR CARLSON: Okay. He talks about microbial action that takes care of some impurities. [LB1]

JIM GOEKE: Um-hum. [LB1]

SENATOR CARLSON: Do you agree with that... [LB1]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

JIM GOEKE: I do. [LB1]

SENATOR CARLSON: ...and the saturated thickness? [LB1]

JIM GOEKE: I do. I think if you look at the history of oil spills, microbial activity is a great natural solution to spills. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Senator Haar. [LB1]

SENATOR HAAR: Well, has that microbial degradation in soil from oil spills been studied in the Sandhills? [LB1]

JIM GOEKE: Not that I know of, no. [LB1]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB1]

JIM GOEKE: Sure. [LB1]

SENATOR LANGEMEIER: No, we have one more, great. Welcome. [LB1]

JOHN GATES: Thank you, Senator Langemeier. And my timing has worked out terribly. I'm last for a very long day and I have to follow Professor Goeke so my apologies in advance. Thank you for the opportunity to address the committee. My name is John Gates, G-a-t-e-s. I'm an assistant professor in the Department of Earth and Atmospheric Sciences at the University of Nebraska-Lincoln. My research involves groundwater movement and groundwater quality, and I've been involved in several such studies in the High Plains region. In my testimony to the Natural Resources Committee in December of 2010, I outlined some technical issues that pertained to water quality as it would relate to a crude oil pipeline spill in the Sandhills region of Nebraska. Today I'd like to highlight two main points that I feel are relevant as the Legislature considers possible pipeline siting legislation. The first point pertains to the special attention that the Sandhills region has drawn with regard to the pipeline siting. My view is that the extra attention to risks in the Sandhills is justifiable given the hydrologic conditions of the region. Those conditions include shallow water tables and very permeable soils, a combination of which would result in little or no lag time between an oil release and its entry into the zone of groundwater saturation. When considering the relative groundwater contamination risks across the state, it is important to note that the differences in permeability between sand and finer grain sediments is large. For example, fluids pass through sand about 1,000 times faster than they do through silt, all

other factors being equal. The second point relates to uncertainty about how an oil plume would behave once it reached saturated groundwater. As a water quality scientist, I'd love to be able to give you definitive answers to questions like: How fast would a plume spread in the Sandhills? Would natural degradation processes remove contaminants within reasonable time scales? What concentrations of benzene or other BTEX compounds will we find in groundwater surrounding a spill site? Unfortunately, we're not yet in a position to provide those definitive answers because there's very little precedent on which to predict crude oil behavior in a place like the Sandhills. In my estimation, much of this uncertainty is irreducible without detailed scientific studies. I'd be pleased to answer any questions about what we know and what we don't know about how a crude oil release may affect groundwater concentrations in Nebraska. Thanks for your time. [LB1]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Gates? Senator Haar. [LB1]

SENATOR HAAR: Did TransCanada consult with you in the EIS and so on? [LB1]

JOHN GATES: No, they did not. Colleagues from the Department of Earth and Atmospheric Sciences and I had a brief meeting with a TransCanada representative, but my understanding it was well after the environmental impact assessment. [LB1]

SENATOR HAAR: Okay. And then the one statement that Dr. Woldt made, "At this time the science does not exist to predict the fate and transport of the oil." Do you agree, disagree, partly? [LB1]

JOHN GATES: Yeah. I think we're in general agreement in the sense that the rates of oil plume spreading, the rates of natural degradation by biological action, processes like that are very site specific so they're going to differ from place to place. So we can learn in broad brush the types of processes that are going to occur in and around a plume from some examples in different areas with different hydrogeologies. The Bemidji example is probably the best example we have. But, no, those studies haven't been conducted in the Sandhills and so there's always going to be some level of uncertainty there. [LB1]

SENATOR HAAR: So kind of get back to this thing, and the reason it has drawn my attention because some of my training at least was science, and what is sound science when it comes to the movement of contaminants through...what does that mean when it comes to the movement of contaminants through the Sandhills? [LB1]

JOHN GATES: Well, as you've probably gathered, the processes that can affect both groundwater movement and oil movement within a groundwater system are pretty complex, multifaceted. So in my view, due diligence would include a numerical modeling

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

exercise that could take all of those processes into account in a qualitative way, rather than simply professional judgment. [LB1]

SENATOR HAAR: And that's not just fearmongering. [LB1]

JOHN GATES: No, sir. [LB1]

SENATOR HAAR: Thank you for staying so late. [LB1]

JOHN GATES: Thanks. [LB1]

SENATOR LANGEMEIER: Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Senator Langemeier. I'll ask you the same question that I think I asked Dr. Woldt. If you were the President, knowing what you know, and you needed to make a decision about a permit or not a permit, would you issue the permit? [LB1]

JOHN GATES: Well, apart from that being well above my pay grade, I would say that...well, let me reiterate what I mentioned a moment ago. I believe in terms of risk assessment, due diligence has to include numerical modeling, so that would be my starting point at least for that decision. [LB1]

SENATOR CARLSON: Now I have a background in academics quite a while back, and I know a little bit about how research is conducted. When do you ever get to a point that you know enough to make a decision about something and accept the risk involved? Because Dr. Woldt referred to this is a project of risk management, and someplace you have to put the two together. And we know enough now to move ahead or we don't know enough to move ahead, but if we move ahead we've got to be careful about risk. What's your response to that? [LB1]

JOHN GATES: I fully agree with the spirit of the question. At some point you have to pull the trigger one way or the other. But I think the fact that we've done none of these investigations is probably insufficient. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. Well done. [LB1]

JOHN GATES: Thank you. [LB1]

SENATOR LANGEMEIER: (Exhibits 40-55) We do have a number of letters. As I said,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
November 07, 2011

the e-mails are coming in. Those that sent in letters for LB1 was the Lower Niobrara Natural Resources District--and we will get these spelled right if I screw them up here. Frances Heinrichs, Beth Wallace, Stu Luttich from Geneva, Barbara Bailey from Lincoln, Deb Miller from Michigan, Frank LaMere, Jo Stec, Barbara Bernard from Lincoln, and Jean and John Perez from Papillion, and we have one letter in neutral which is from the Nebraska State Historical Society. And, oh, here's one more for LB1: it's Jason Miller from Omaha. With that said, Senator Dubas is recognized to close on LB1. That's a smart decision: she's waives closing. With that, that concludes our hearing for the day and we'll see you all tomorrow. (See also Exhibits 51-54) [LB1]