

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
OF THE STATE OF NEBRASKA

A Public Hearing for the)
Purpose of Taking Oral)
Testimony and Evidence on)
the Preliminary Determination)
that the Lower Platte River)
Basin is Fully Appropriated.)

Northeast Nebraska
Community College
601 East Benjamin Avenue
Norfolk, Nebraska

Convened, pursuant to notice at 1:55 p.m. on
February 17, 2009,

BEFORE:

RON THEIS, Hearing Officer

- - -

ALSO PRESENT:

BRIAN DUNNIGAN, Director of the Department of
Natural Resources; JESSE BRADLEY, Water Management
Analyst.

- - -

State of Nebraska
Department of
Natural Resources
Filed in the Department of
Natural Resources at 2:20
O'clock P M. this 4th
day of MARCH 20 09
L. Gower

Kelly S. Horsley
ACE Reporting, NE
(402) 416-4882

I N D E X

<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled On</u>	<u>Found</u>
1 Notice (2 pages)	4	4	4	Appendix
2 Notice of Public Hearings (5 pages)	4	4	4	Appendix
3 Water Resources Policy of the Nebraska Well Drillers Association (2 pages)	8	--	--	Appendix
4 Typewritten Comments of Rod Zessin (4 pages)	45	--	--	Appendix
5 Letter in Opposition, Regan Kucera (1 page)	72	--	--	Appendix
6 Letter in Opposition Bernard Wrede, Rob Fleer (1 page)	72	--	--	Appendix
7 Letter in Opposition, Steve, Tim and Warren Pellatz (1 page)	72	--	--	Appendix
8 Letter in Opposition, Nina A. Sorensen (1 page)	72	--	--	Appendix

<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled On</u>	<u>Found</u>
9 Letter in Opposition, Marilyn Zahradnicek (1 page)	72	--	--	Appendix
10 Letter in Opposition, Melvin Zahradnicek (1 page)	72	--	--	Appendix
11 Letter from Tom Dover, Sr. (1 page)	72	--	--	Appendix
12 Letter from Papio-Missouri River NRD (2 pages)	72	--	--	Appendix
13 Letter from Upper Big Blue NRD (1 page)	72	--	--	Appendix
14 Letter from City of Norfolk, (1 page)	72	--	--	Appendix

- - -

Comments by Mike Whitesel	6
Comments by Don Adams	9
Comments by Lumir Jedlicka	14
Comments by Henry Aschoff	15
Comments by Terry Anson	18
Comments by Randall E. Vavrina	20
Comments by Mike Krueger	25
Comments by Dave Nability	28
Comments by Bryce Neidig	33
Comments by Richard Hoppe	34
Comments by Ron Cemper	36
Comments by Tim Tighe	39
Comments by Chad Korth	42
Comments by Cody Christensen	44
Comments by Rod Zessin	45
Comments by Stan Staab	49
Comments by Joe Schmit	53
Comments by David Wright	57
Comments by Robert Lingenfelt	59
Comments by Mike Murphy	60
Comments by Wayne P. Nelson	61
Comments by George Pick	65
Comments by Nancy Lingenfelt	69
Comments by Loran Wemhoff	69

- - -

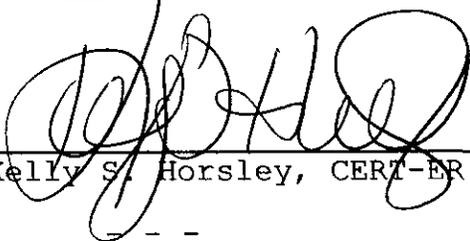
Index	ii, iii
Comments	iv
Reporter's Certificate	v
Attendance Sign-in Sheet	Appendix

- - -

REPORTERS CERTIFICATE:

I, KELLY S. HORSLEY, reporter for ACE REPORTING, certify that I reported the proceedings in this matter; that the transcript is a true, accurate and complete extension of the recording made of those proceedings; further, that the disposition of the exhibits is referenced in the index hereto.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Lincoln, Nebraska, this 28th day of February, 2009.



Kelly S. Horsley, CERT-ER
- - -

1 PROCEEDINGS:

2 THE HEARING OFFICER: We would like to get it
3 going on the reason that we're here today at the hearing.
4 We're supposed to start at 2 o'clock, but it was
5 important to give you some more information to consider
6 and we wanted to give you a little bit of an opportunity
7 to have some of your questions answered.

8 With this I would like to officially start the
9 hearing. Good afternoon. It is 1:55, February 17th,
10 2009, and we're located at the Learning Center of the
11 Northeast Nebraska Community College in Norfolk,
12 Nebraska. My name is Ron Theis. I am a legal counsel
13 for the Department of Natural Resources, and I will be
14 the hearing officer for this hearing.

15 With me today are Brian Dunnigan, Director of
16 the Department of Natural Resources. You've met Jesse
17 Bradley, who is our integrated water management analyst.
18 And this is Kelly Horsley, who is the court reporter, who
19 will be making a verbatim record of this hearing.

20 If you haven't done so already, please turn off
21 your cell phones, or at least the ringers, for the
22 duration of this hearing.

23 The purpose of this hearing is take testimony
24 on the Department's previously released preliminary
25 determination that the Lower Platte River Basin is fully

1 appropriated issued December 26, 2008, pursuant to
2 Nebraska Revised Statute, Section 46-713.

3 The preliminary determination was a result of
4 the Department's annual evaluation of expected
5 availability of hydrologically connected water supplies
6 in accordance with the Nebraska Groundwater Management
7 and Protection Act generally referred to as the Annual
8 Report. It was published December 16, 2008, on the
9 Department's website, which is www.dnr.ne.gov, for the
10 record and the context here. The Department will be
11 holding other similar hearings in Ord, Lincoln and
12 Fremont at later dates on the same matter.

13 After the hearing today, the other hearings on
14 this preliminary determination and an examination of the
15 testimony and all relevant evidence, the Department will
16 make a determination whether the Platte River Basin
17 upstream of the confluence with the Missouri River,
18 including all tributary drainages and the groundwater
19 aquifers considered to be hydrologically connected to
20 that portion of the Platte River Basin, will be
21 designated as fully appropriated.

22 The authorities for these hearings and the
23 decisions are set out in Nebraska Revised Statute 46-748.
24 This is a public hearing. It's not an evidentiary
25 hearing. It's simply to gather information from the

1 public to be used by the Department. Those testifying
2 will not be required to be sworn in.

3 The way we're going to do it is we have a table
4 here with a microphone hooked up both to the court
5 recorder and for the room so that everyone can hear.
6 There's a sign-up sheet on that table. And we want
7 everyone who's going to testify to use that sign-up sheet
8 and whether your testimony be either oral or written. On
9 the other side of the projector there, we've got a half
10 dozen chairs that will be a warm-up area. We've got two
11 chairs over here. Our intent is, with this large number
12 of people, to give everybody as much of an opportunity to
13 speak and go on record as possible. So, in a moment,
14 we'll ask you to start filling in the warm-up chairs.
15 The sign-up sheet is here. And if you haven't done it,
16 you can do it immediately before you testify. And then
17 the table on my left, your right, we have that mic, and
18 persons testifying will use that microphone.

19 Written testimony regarding the preliminary
20 determination that the Lower Platte River Basis is fully
21 appropriated may be submitted to the court reporter at
22 this hearing or it may be mailed to the Department. It
23 will be accepted by the Department for inclusion into the
24 record if received by the close of business Friday, March
25 13th, 2009, and you state that you want it included in

1 the record. Please state that for our purposes to make
2 sure that that's what your intent is when you send us
3 materials.

4 (Exhibit No. 1 was marked for identification.)

5 At this point I would like to submit for the
6 record a copy of the notice of the preliminary
7 determination. We'll mark that as Exhibit 1.

8 (Exhibit No. 2 was marked for identification.)

9 And I'd like to submit the proof of
10 publications pursuant to Nebraska Statute 84-907 stating
11 the publication of the Department of Natural Resources
12 public hearing notice for this hearing occurred on three
13 consecutive weeks in newspapers of statewide circulation
14 and in newspapers of circulation within the basin. They
15 were published in The Ord Quiz, the Norfolk Daily News,
16 the Fremont Tribune and the Lincoln Journal Star. That's
17 Exhibit 2.

18 Exhibits 1 and 2 are received into the record.

19 (Exhibits 1 and 2 were received in evidence.
20 See Index.)

21 I would also like to note for the record the
22 Department's report for 2009, the annual evaluation of
23 the availability of hydrologically connected water
24 supplies as published on the Department's website. This
25 is the material on the subject of this hearing, which the

1 Department will refer to in part in making any final
2 determination.

3 Before we begin testimony, I would like to
4 offer a little more explanation of how I want to proceed.
5 I ask that each person wishing to testify besides whether
6 you are a proponent, an opponent or neutral on the
7 preliminary determination -- You have three choices. You
8 can be for the preliminary determination, against it or
9 neutral. Regardless of where you stand on it, can I have
10 a show of hands of how many people who want to offer oral
11 testimony.

12 (Raising Hands.)

13 Okay, not too many. I think we're going to
14 have plenty of time and we won't need to set any time
15 limit and everybody who raised their hand will have
16 plenty of time to speak.

17 So, if you do go on, I may ask that you begin
18 to limit your testimony. If you find that your testimony
19 is repetitive of someone else, you can use that
20 opportunity to edit it. Certainly if you're speaking for
21 a group, it's reasonable that you'd use more time.

22 So, we'll begin with the proponents. And at
23 this point I would like to invite the persons willing to
24 testify in favor come forward to the seats in front of
25 the room. If you'd already signed up and you're a

1 proponent, take a seat here. Any proponents?

2 (No response.)

3 THE HEARING OFFICER: Okay. We'll go on to the
4 opponents. When you come forward, please state your name
5 prior to offering your testimony and spell it for the
6 court reporter and tell who, if anybody, you're
7 representing if you're representing someone other than
8 yourself. If you wish to present an exhibit for the
9 record to supplement any things you want to say, please
10 identify it and leave a copy with the court reporter.
11 The short microphone is the one that goes to the court
12 reporter, that's the real important one, but pull up the
13 other one so that everybody can hear what you have to
14 say.

15 MR. WHITESEL: Are you ready?

16 THE HEARING OFFICER: Yes, sir.

17 MR. WHITESEL: My name is Mike Whitesel,
18 W-h-i-t-e-s-e-l, from Broken Bow.

19 THE HEARING OFFICER: Mike, you signed in?

20 MR. WHITESEL: Yes, I did.

21 THE HEARING OFFICER: Thank you.

22 MR. WHITESEL: Today I represent the Nebraska
23 Well Drillers Association, and I just have a little thing
24 I'm going to read into the record.

25 The Nebraska Well Drillers Association was

1 established as an organization of trained and educated
2 groundwater professionals. The organization has always
3 sought to establish and implement groundwater development
4 based upon the gathering of geological knowledge and the
5 use of scientific information about our groundwater
6 resources. Sound science is the foundation upon which
7 all groundwater management should be developed and
8 administered.

9 Development of sound hydrologic and geologic
10 data and scientific information regarding the groundwater
11 resources and water-bearing formations in the state
12 continue to be the paramount goal of the association and
13 its scientific and professional members and partner
14 organizations.

15 The association recognizes the extensive
16 diversity of climate, geology, topography and groundwater
17 in storage across the transition environment of the state
18 of Nebraska. Because of the wide range in conditions
19 which impact the availability and use of groundwater for
20 domestic, agricultural and commercial requirements, the
21 association acknowledges and supports the need for
22 locally developed and administered laws and regulations
23 to govern groundwater use best intended to fit local
24 conditions. The system of local management, available
25 through the natural resources districts or other locally

1 based policy leadership, should be relied upon and that
2 reliance must be based upon locally determined and
3 administered groundwater management decisions.

4 The association believes that some ground and
5 surface waters of the state are hydrologically connected
6 in such a manner that the use of one will impact the
7 available use of another. When such conditions are
8 proven by the use of sound scientific assessment, they
9 should be managed locally to avoid or minimize conflicts
10 between users of the two supplies. Continued development
11 of the waters of the state in a manner assuring that the
12 supply will not be diminished or destroyed should be the
13 goal of all water resources management decision makers.

14 The association recognizes that the water well
15 construction and services industry must continually
16 strive for improvement in water well design,
17 construction, development, service and operations.

18 The association will support the continued
19 assessment of reasonable standards for the quality of
20 drinking water supplies and for other groundwater aquifer
21 uses. Thank you.

22 (Exhibit No. 3 was marked for identification.
23 See Index.)

24 THE HEARING OFFICER: Thank you, Mike.

25 Next testifier, please.

1 MR. ADAMS: Good afternoon. My name is Don
2 Adams. I'm Executive Director of Nebraskans First
3 Statewide Coalition of Groundwater Irrigators dedicated
4 to protecting Nebraska's groundwater for agriculture. We
5 strongly oppose this preliminary determination

6 Back in 2003 when the water policy task force
7 was developing what ultimately was to become LB 962,
8 there was great concern among many, including our group,
9 that whatever proposed legislation the task force
10 generated would be leveraged by the Department of Natural
11 Resources to shutdown all new groundwater irrigation
12 development in the entire state. To quell these fears
13 and to prevent a rush to drill new wells, the task force
14 issued a press release in September, 2003, promising
15 irrigators that the statewide moratorium on new well
16 drilling was not going to happen and that local control
17 of groundwater would remain in the hands of the Natural
18 Resources Districts.

19 The World-Herald article supporting this,
20 September 23rd, '03, says, "State says no to ban
21 planned -- no ban planned on new wells." "The State says
22 no ban planned on new wells."

23 We were assured by the task force that LB 962
24 would be used only in those areas of the state such as
25 the Republican and Upper Platte where there is a water

1 shortage problem. LB 962 was to be used as a scalpel,
2 not a chainsaw.

3 When the DNR determination -- With the DNR
4 determination that issued today, it is clear to all that
5 the promise made a little over five years ago by the task
6 force has been broken. I hate to say we told you so, but
7 we predicted this would happen, and this was the reason
8 why we strongly opposed LB 962 at the time.

9 Let's briefly examine reality. Groundwater
10 levels throughout the entire Loup, Elkhorn and Lower
11 Platte Basins are up, way up, from spring '07 to spring
12 '08. Taking a longer view, groundwater levels in the
13 basins from predevelopment, which is 1952 to spring '08
14 are unchanged or up 5 to even 20 feet. Looking at
15 surface water levels, measurements at the Louisville
16 gage, which is the definitive location for assessing what
17 is happening in the Loup, Elkhorn and Lower Platte Basins
18 reveal that flows is measured in cubic feet per second
19 are for the water year 2008 the highest they have been in
20 10 years. The same goes for the North Bend gage. Stream
21 flows everywhere in the basins are up at Pierce, at
22 Waterloo, at Genoa, at West Point, at St. Paul,
23 everywhere. Where, we ask, is the lag effect? The
24 massive wells in the basin were already drilled and
25 pumping 25 years ago. Again, where is the lag effect?

1 Stream flows for '08 are at 10 year highs. The years
2 2002 to 2006 were bad ones, but we all know why, the
3 drought. The same pattern in low flows can be found for
4 the periods 1988 to 1992, 1975 to 1981 and 1954 to 1959,
5 a time with very low stream flows when there was
6 virtually no groundwater pumping whatsoever.

7 Reality and factual data show that there's
8 absolutely no compelling reason whatever to shutdown
9 these basins to new development. There is no comparison
10 to the situation here and what is happening and why
11 restrictions are being imposed on groundwater irrigation
12 in the Republic, the Upper and Central Platte Basins.
13 The DNR's analysis does not, but definitely should,
14 include 2008, since their determination is for the year
15 2009 and beyond.

16 We all agree the economy is suffering. State
17 policy now should be keyed to saving jobs and encouraging
18 new development, wherever possible, in order to sustain
19 our state and local tax basis and economies.

20 This fully appropriated determination, if made
21 final, will essentially turn our groundwater into stone.
22 Farmers who have invested in irrigatable land, with the
23 hope of some day putting in a new well to irrigate their
24 land, will be hung out to dry. This devaluation of their
25 property right is a serious matter and flies into the

1 face of the correlative rights, share and share alike
2 doctrine, that has been the law of Nebraska since the
3 advent of groundwater irrigation.

4 Governor Heineman recently said he was going to
5 fight to protect every job in this state, one job at a
6 time. This DNR fully appropriated determination will
7 surely hurt the economy here and cost jobs, no question
8 about it. And for what compelling reason? Any such
9 anti-job state program must only be tolerated if the
10 science and the facts weren't such a draconian government
11 intrusion into businesses and livelihoods of those to be
12 harmed. The science, the facts and the data must be rock
13 solid and bulletproof before the State takes someone's
14 job or water right away.

15 We maintain that the DNR's case to shutdown new
16 groundwater development in the Loup, Elkhorn and Lower
17 Platte Basins is speculative, contrived and fails the
18 sound science test.

19 Finally, we have been at this for 15 years now.
20 We've attended, appeared and testified at countless state
21 and federal government hearings in defense of the rights
22 and freedoms of our agricultural producers who rely upon
23 irrigation. Never, not once, has any government agency
24 taken any of the input provided by the public seriously.
25 The hearings have been nothing more than statutorily

1 required square filling exercises.

2 Today, and in the weeks ahead, the DNR has a
3 golden opportunity to restore some credibility in state
4 government and in the public hearing process. Show us
5 you can be flexible, fair and responsive by doing
6 something never done before and that is to reevaluate,
7 reconsider and reverse this preliminary determination
8 based on the irrefutable evidence that the Lower Platte
9 River Basin is not now nor headed for a water shortage
10 problem that warrants taking jobs, stifling an already
11 struggling economy and infringing on the property and
12 water rights of those in the basin who are the producers
13 in our economy. If the DNR misses this chance to correct
14 this mistake -- and we all make mistakes -- the
15 government is not infallible, we will call on Governor
16 Heineman to intervene to reverse this fully appropriated
17 preliminary determination in order to acknowledge post-
18 drought reality and save jobs and protect the local
19 economies in the Lower Platte Basin.

20 I would like the audience now, please, if
21 you're opposed -- I know very few of you are going to
22 testify. You did make the effort to come here today. If
23 you are opposed to this DNR determination, would you
24 please raise your hand now.

25 (Raising Hands.)

1 (Applause.)

2 MR. ADAMS: Thank you.

3 THE HEARING OFFICER: Thank you, Mr. Adams.

4 MR. JEDLICKA: We'll go on then. I, Lumir
5 Jedlicka -- I guess, my name Lumir spelled L-u-m-i-r.
6 Jedlicka, J-e-d-l-i-c-k-a. I'm going to testify solely
7 just a few words against.

8 I have a farm in the Lower Elkhorn NRD here and
9 I have been involved on the Governor's Water Task Force
10 for the years it's been in existence and I've also been a
11 board member of the Lower Platte North NRD for 12 years.

12 I feel this fully appropriate call on this area
13 is rushed and not in tune with the water table readings.
14 And I also feel that the Department of Natural Resources
15 needs to follow up on the calls on water in the streams.
16 In other words, need to adjudicate or just follow up on
17 what is being called for. Better reports of this process
18 is desired is what I feel. The NRD's -- you know, we
19 have the well records of a lot of producers and we do
20 know what approximately they're pumping. But if we have
21 to, I'm sure the NRDs can do a better job, too.

22 I do understand consumptive use and I feel that
23 the types of irrigation have very little to do what the
24 crop uses, what consumptive use does is exactly what the
25 crop is using. And so certifying these acres is the most

1 critical part. So we need a system that does certify the
2 acres and control this ordinance of what it means to our
3 economy. And that's what it all boils down to these
4 days, I guess, is how our economy is going. The NRD
5 system is and can do a better job in this area of
6 regulation. The Nebraska Department of Natural
7 Resources, I feel that they need to do a better job or
8 even turn their surface water monitoring over to the NRDs
9 to get it all on the same page. That's it.

10 THE HEARING OFFICER: Thank you, Mr. Jedlicka.

11 MR. ASCHOFT: My name is Henry Aschoft, A-s-c-
12 o-f-f, and I am co-owner and president of Petersen Ag
13 Systems, an irrigation supplier, repair erection and
14 agricultural business.

15 THE REPORTER: Is Petersen "e-n" or "o-n"?

16 MR. ASCHOFT: E-n, please.

17 I attended both the workshop that Jesse and his
18 counterpart brought up, up here, as well as the workshop,
19 that the developer of the model. Mr. Petersen, come up
20 and did appear. And one question that I have that has
21 never been answered is as the people that testified ahead
22 of us have said that -- taken right from the USGS maps,
23 the data showing that the gage -- the readings at the
24 gage at Louisville and North Bend at the other locations
25 is up. And when -- one slide that Jesse did not use in

1 his presentation showed what the lag effect is supposed
2 to do over the next 25 years. And it showed between the
3 years of 2008 and 2015 an exponential growth in what that
4 lag effect would be. And to this day, no one has told me
5 what happens today, what catastrophic event happens today
6 that changes us from increasing water flows to this
7 exponential growth and lag effect, including the modeler
8 himself. He could not answer that question.

9 On a social economic impact in a broader scale,
10 I would like to give a brief synopsis of a report that
11 will be made public in the very near future. This report
12 is done by David Rosenbaum, a professor of economics and
13 associate director of academic affairs, at the University
14 of Nebraska.

15 THE REPORTER: Spell Rosenbaum.

16 MR. ASCHOFF: Okay. R-o-s-e-n-b-a-u-m.

17 His full report will be released in the very
18 future. But just giving a preliminary synopsis of four
19 key points that he will be bringing out in that report
20 that if this declaration is made permanent that the state
21 of Nebraska could forego 7 to 9 million in output gains
22 per years in lost output gains per year from dryland
23 acreages that will not realize increased yields through
24 irrigation.

25 The second comment is that the local

1 communities could lose more than \$13 million in tax
2 revenues per year.

3 A fourth highlight that will be brought up in
4 this report is that these impacts will be multiplied
5 through the economy by the reduction and output in
6 employment reduces -- when it reduces the demand for
7 other products made and sold in Nebraska.

8 And he forecasted over the next 20 years small
9 communities in this basin can expect to lose or forego
10 over 2300 jobs.

11 Now bringing that back to a more realistic --
12 you know, I see many of my counterparts that are also
13 irrigation suppliers in this room. And we typically --
14 Our workforce throughout the summer is typically 20 to 25
15 employees. And just on our own limited basis, if this is
16 allowed to go through, we can forecast or look ahead and
17 see that we're probably going to have to reduce that
18 workforce by half. So, that's 10 to 15 less households
19 with paychecks coming in, in our business alone, and
20 we're one of many, many people this would affect. And I
21 wanted to make note of that. And I think that that's
22 something that you're going to hear reasoning from a lot
23 of our counterparts is that this is not going to affect
24 us but it's going to affect all the people that we have
25 working for us and their families and where they spend

1 their money. That's all I have.

2 THE HEARING OFFICER: Thank you. One just
3 clarification, Mr. Aschoff. It's not clear to me whether
4 the Rosenbaum report is published or not.

5 MR. ASCHOFF: Not yet. It will be. This is a
6 preliminary -- just kind of synopsis of what's coming
7 ahead.

8 THE HEARING OFFICER: Thank you.

9 MR. ASCHOFF: Okay.

10 MR. ANSON: Good afternoon. My name is Terry
11 Anson, A-n-s-o-n. I am the owner of Anson Electric,
12 Incorporated, in Ewing, Nebraska.

13 THE REPORTER: Sorry. With a "y", Terry?

14 MR. ANSON: Terry, with a y.

15 THE REPORTER: Thank you.

16 MR. ANSON: I'm the owner of Anson Electric,
17 Incorporated, in Ewing, Nebraska. We sell Reinke
18 Irrigation Systems and grain bins manufactured by Chief
19 Industries, both of which are manufactured in Nebraska.
20 And we service about anything that the farmer has for us
21 to work on. We employ eight full-time and four part-time
22 employees. This is a business that I built from the
23 ground floor up. And I have plans to hand it over to my
24 son when I retire or should I say I had plans to hand it
25 over to my son. Like everyone of us in this room, your

1 decision to enforce this moratorium will greatly affect
2 my decisions. Not only am I concerned with my future,
3 the future of my employees lie heavy on my mind. If your
4 decision is to go ahead with this, I will be forced to
5 lay off people with no hope of their return in the
6 future.

7 At this time the world economy is in a crisis.
8 Our new president can do nothing but talk about how we
9 need to rebuilt and create jobs to get the strength back
10 in the United States. Is this the way to rebuild? I
11 don't think so.

12 The Nebraska farmer affects everyone in
13 Nebraska from the car dealer in Omaha to the secretary in
14 Scottsbluff. Every single one of us is tied to the
15 Nebraska farmer. The economy will greatly suffer from
16 the loss of expansion of the Nebraska farmer. Each day
17 the population grows, but you say the farmer cannot. So,
18 who will feed this country? Who will pay the taxes and
19 who will create jobs that our new president is talking
20 about if you do not allow the Nebraska farmer to grow.

21 In closing, I would like you to take a strong
22 look at the lives that this will affect, the children and
23 the grandchildren of the farmers, the plant employees,
24 all of the agricultural employees that build Nebraska.
25 We are all affected. Even you will be affected when --

1 whether you believe it or not. Taxes, jobs and past down
2 heritages are all tied in with your decision. This world
3 needs to grow. I believe the Nebraska farmer is a great
4 steward of his ground. And if you allow him, he will
5 take the needed care of it for generations to come.
6 Thank you.

7 THE REPORTER: Could you spell the name of your
8 business again?

9 MR. ANSON: Anson Electric, Incorporated.

10 THE REPORTER: Anson Electric.

11 THE HEARING OFFICER: Thank you, Mr. Anson.

12 We have space in the warm up chair here.

13 Go ahead, sir.

14 MR. VAVRINA: My name is Randall E. Vavrina, V-
15 a-v-r-i-n-a. I'm president of Vavrina, Incorporated, at
16 Clarkson, Nebraska.

17 Thank you for allowing me to provide my
18 personal testimony this afternoon regarding the impact of
19 declaring the Lower Platte River Basin as fully
20 allocated.

21 Let me open by saying that declaring this area
22 as fully allocated is analogous to this scenario. An
23 overweight man whose name is Lower Platte goes to the
24 doctor, NDNR, asking for advice on how he can control his
25 weight problem. Dr. NDNR examines him and confirms that

1 he has a weight problem. He then prescribes the
2 following procedure, amputation of both arms. Dr. NDNR
3 goes on to say that, "With no arms, you no longer will be
4 able to feed yourself, which will allow you to lose
5 weight."

6 You might say that Dr. NDNR probably went to an
7 extreme in solving Lower Platte's weight problem. I also
8 think that the Nebraska Department of Natural Resources
9 has gone to an extreme measure in declaring this area as
10 fully allocated.

11 When you analyze the annual data provided by
12 the Lower Elkhorn Natural Resources District,
13 particularly in the eastern half of the district, you
14 will find that the water level in the irrigation wells
15 that the LENRD has been monitoring over numerous years
16 have not declined when comparing levels from spring to
17 spring. If that is correct, which I must assume that it
18 is since it is documented, then how is it that the
19 Department of Natural Resources can say that we have
20 reached that point of declining water levels for the
21 Lower Platte system?

22 I will be the first to say that water is a
23 valuable and limited resource. It is a resource that we
24 want our grandchildren and their grandchildren to use
25 into the future. We must properly manage what we have

1 and how we use it There are tools available for
2 irrigators to use to limit the use of water and at the
3 same time to maximize its ability to raise a bountiful
4 crop. Tools, such as flowmeters, to measure how much
5 water that is being pumped; ET gages and Watermark soil
6 moisture sensors can be utilized to measure crop water
7 use more accurately to help the irrigator determine when
8 to start and stop pumping water to raise the crop.

9 In addition to this, center pivot sprinkler
10 packages today offer a much better coefficient of
11 uniformity or effective use of water application compared
12 to a generation ago. These more efficient packages are
13 now installed on new machines and have been added as a
14 conversion to older machines so that most pivot systems
15 in our area are now set up this way.

16 In addition, you must also consider how corn
17 and soybean hybrids are being produced that can further
18 extend increased production with less irrigation. This,
19 too, results in extended water savings.

20 Now, going back to my analogy, would it not
21 have been more reasonable and practical for Dr. NDNR to
22 prescribe a diet to Mr. Lower Platte to help him lower
23 his weight? At the same time, would it not also be more
24 practical for the Nebraska Department of Natural
25 Resources to require the current irrigator to monitor the

1 water that he or she is pumping? And when it appears,
2 and I emphasize "when," that we are showing a trend of
3 declining water tables, to utilize a water allocation
4 system based on acre inches so as to not have a dramatic
5 impact on Nebraska agriculture.

6 At the same time, this water plays a huge
7 impact on our local and state economies. I operate a
8 center pivot irrigation dealership in Clarkson, Nebraska,
9 and I service an area that is in the Lower Elkhorn and
10 Lower Platte NRDs. I employ over 12 individuals whose
11 livelihood is directly impacted by a declaration of our
12 water resources being fully allocated. Sixty percent of
13 our new business is derived from new center pivot
14 irrigation sales, ancillary products and service labor.
15 Reducing my ability to generate irrigation business by 60
16 percent will impact my business by over \$500,000 per
17 year. It would be too early to presume what this would
18 do to employment of these 12 employees, but you can be
19 certain it will have an impact.

20 When you consider that I am just one small
21 apple in a huge orchid, consider the economic impact on
22 our region, as well as our entire state economy.

23 I recently saw statistics provided by David
24 Rosenbaum, professor of economics, from the University of
25 Nebraska in Lincoln referred to earlier by Mr. Aschoff.

1 Dr. Rosenbaum is a highly recognized statistician from
2 the university. According to his analysis, the economic
3 impact to the state of Nebraska is huge. Just to well
4 drillers and irrigation dealers alone, \$9.2 million in
5 annual revenue and up to 70 jobs could be lost by this
6 one declaration.

7 In addition, farmers will feel the effects of
8 this declaration as well. By not being able to convert
9 dry cropland to irrigated cropland, the Nebraska economy
10 will go \$7 to \$9 million in output gains and 80 to 110
11 new jobs the first year of the declaration.

12 One must then consider what the impact would be
13 for years going forward. Also, according to Dr.
14 Rosenbaum, communities will forego up to \$13.8 million in
15 property tax revenues per year. Dr. Rosenbaum then goes
16 on to say, "These impacts will be multiplied through the
17 economy as the reduction in output and employment reduces
18 the demand for other products made and sold in Nebraska."

19 All told, the present discounted value of the
20 loss to Nebraska over a 20-year period will be over \$1
21 billion in output. Over 20 years, small communities in
22 the basin can expect to either lose or forego over 2300
23 jobs.

24 In summary, I urge the Nebraska Department of
25 Natural Resources weigh all the details submitted and to

1 reconsider their original declaration and remove the
2 Lower Platte River Basin from being fully allocated.
3 Thank you.

4 THE HEARING OFFICER: Thank you, Mr. Vavrina.

5 MR. KRUEGER: Hi. My name is Mike Krueger, and
6 I have been farming irrigated land south of Pierce.

7 THE HEARING OFFICER: Mike, would you spell
8 your name, please.

9 MR. KRUEGER: I'm sorry. K-r-u-e-g-e-r.

10 I've been farming south of Pierce for the last
11 30 years and just recently was elected to the Lower
12 Elkhorn NRD Board.

13 I would like to preface this testimony by
14 saying that I believe, aside from the air we breathe,
15 water is our most precious resource for not only
16 ourselves but our children and future generations.

17 With that being said, I feel there are several
18 reasons as to why preliminarily declaring the Lower
19 Platte Basin as fully appropriated, especially including
20 the LENRD, to be premature. Although supposedly
21 scientifically based upon the Elkhorn Loup model, common
22 sense does not support your scientific theories.

23 First of all, a U.S. Geological survey
24 commissioned by the Upper and Lower Elkhorn NRDs using
25 data from 1952 to 2005 indicates that the Elkhorn and

1 Lower Plate Rivers are actually trending upward.

2 Test wells strategically located in our area
3 since 1976 monitoring groundwater levels checked by our
4 Lower Elkhorn NRD are showing excellent levels, even
5 after all of the irrigation development implemented in
6 the last 40 years.

7 Two irrigation systems we utilize in our
8 farming operation pumping out of the Willow Creek and
9 Elkhorn Rivers have been trending higher and are actually
10 as high as they've been in the 35 years our family has
11 been operating them.

12 This was the first year that I've had to take
13 preventive planting due to wet conditions on a parcel of
14 land I've been farming since 1980. That also includes
15 the devastating wet year of 1993.

16 Also, we had to tile four separate quarters of
17 land this fall due to springs erupting out of side hills
18 because of super high water tables we've never
19 experienced or seen for the past 20 years that I've been
20 farming them.

21 Some of the sound science included in this
22 Elkhorn Loup mode, such as the 11-and-a-half inches of
23 water used per acre, per year should be questioned. We
24 normally do not use over 8 inches per year. And this is
25 over a wide range of soil types, I might add.

1 Furthermore, using corn and soybean no-till rotation
2 practices, which reduce runoff, are becoming more the
3 norm in which even less water is used per acre.

4 Remember, when we do irrigate, it is only for
5 two, to two-and-a-half months of the year. And the
6 majority of the water used does go back into the ground
7 to replenish the groundwater tables along with
8 condensation. Whereas, the amount of water consumed by
9 cities such as Lincoln and Omaha 365 days a year, once
10 used is sent down the river never to be seen again.
11 Also, keep in mind with urban sprawl gobbling up
12 thousands of agricultural acres every year -- if we can't
13 develop the acres we have, where is the food going to
14 come from to feed the world's ever increasing population?

15 New science, including better watering systems
16 with pivots versus gravity-flow irrigation, drop nozzles,
17 low impact sprinklers, watering at night, et cetera, all
18 continue to utilize water more efficiently.

19 Also, new science adopting drought tolerant
20 corn hybrids should be in use by 2010 to 2011 optimizing
21 up to one-third less water than today's hybrids do.
22 These are all examples of new technology that I'm
23 wondering if they are included as facts in the ELM model.

24 One final thought. With today's economic
25 strife that we are experiencing in our country today, can

1 we afford to lose hundreds, if not thousands, of more
2 jobs, adding to our unemployment epidemic by eliminating
3 well drillers, irrigation dealers, pipe suppliers, lost
4 food supply and countless other jobs associated with
5 these businesses all based on a model that has only
6 generated a Phase 1 report?

7 Gentlemen, let's not be too hasty in a decision
8 of this magnitude affecting so many Americans in our
9 heartland. Thank you.

10 THE HEARING OFFICER: Thank you, Mr. Krueger.

11 MR. NABITY: Good afternoon. My name is Dave
12 Nability. I'm from Omaha. We have a company called Nability
13 Business Advisors, a family-owned business consulting
14 company. And I also work with a group called the
15 Nebraska Alliance for the Private Sector.

16 And our organization gets involved to try to
17 protect the rights of business people, landowners,
18 family-owned businesses to continue to thrive and prosper
19 inside of Nebraska so they don't move to other states and
20 start their businesses there.

21 THE REPORTER: Is your last name N-a-b-i-t-y?

22 MR. NABITY: N-a-b-i-t-y.

23 THE REPORTER: Thanks.

24 MR. NABITY: I got a telephone call from a
25 friend of mine that said, "Nability, you've got to take a

1 look at this. The State is looking at taking basically
2 the whole northeastern part of the state and calling it
3 fully appropriated."

4 And I have quite a few friends in the
5 southwest. And let me tell you, they would love to have
6 the water problems that the northeast has because based
7 on what I see there's not a whole lot of water problems
8 in the northeast.

9 After doing a great deal of research and kind
10 of bringing myself up to speed -- I look at the maps that
11 are put out by UN-L and I look at the maps from the USGS
12 and the trends in water. And if I go spring 2000 to
13 spring 2008 and I look at the water level changes,
14 there's many areas in the northeastern part of the state
15 where the water level change has gone up. If I go from
16 spring to 2007 to 2008, almost every area of the state
17 that you are thinking about calling fully appropriated,
18 the water levels are up in a big way. If I look at the
19 Elkhorn River Basin and I go back to 1933 and I look at
20 the trend line on the stream flows, it's a steady trend
21 line up. If I go back and I look at a map that a good
22 friend of mine put together where they charted all the
23 gages across the state and the data that the gages were
24 putting out on stream flows, and I look at the river
25 basin that you're talking about calling fully

1 appropriated, if you go back to pre-development, before
2 anybody started to use the water or before we had our
3 brilliant minds managing our water system in the state,
4 the stream flows in most of the areas that you're talking
5 about calling fully appropriated are higher than they
6 were before irrigation even started in this state.

7 I would contend that your model doesn't go long
8 enough. It's too short. It's too short sighted. It's
9 too short term. The drought that we've had in the state
10 throws the data way off. If you look at climatology
11 reports and you go back looking at what's happened with
12 the trends, you'll see that about every 40 years we have
13 an eight-year drought where maybe even a lot of these
14 rivers went completely dry. And endangered species
15 somehow or other figured out how to survive. The change
16 in Mother Nature, even though our great water people
17 weren't around to make sure the stream flows were there
18 for endangered species. And so if you take a snapshot of
19 what we've been through and incorporate that in your 20-
20 year model, it's flawed data. And I would suggest that
21 you have to go way far back, 40 years, 50 years, maybe 60
22 years in order to be able to say you've got a sincere
23 problem.

24 The data also shows that in areas where people
25 got creative and figured out ways to store water, when

1 they did, groundwater levels swelled, aquifers increased
2 significantly.

3 And one thing I'm not hearing from the
4 Department of Natural Resources is any concepts or any
5 ideas or strategic plans to roll out a 21st century plan
6 for managing water so we could take the part of the state
7 that has most of the rainfall and great springs that feed
8 streams and figure out ways to store more water, so when
9 we have isolated situations where we've got areas along
10 the river basins that are having a problem, you can let
11 the water loose and solve the problem. When you talk
12 about the data showing 26.5 versus 27.9 as "oops", we've
13 got to call this place fully appropriated. That's pretty
14 close to me. That, to me, is a very small percentage
15 change over a short period of time that I would say
16 doesn't by any means determine the trend. And so my
17 question is this. If you -- If we know that 2-million
18 acre-feet of water come into Nebraska from Wyoming and
19 Colorado, and 8-million acre-feet go out the bottom, out
20 the spigot, down the Missouri River into the Gulf of
21 Mexico, if you sense we've got an isolated area where we
22 have problems, why don't you come up with a 21st century
23 plan to store more water and capture that 6-million acre-
24 feet that somehow or other gets lost, and figure out a
25 way to become the model of the world at managing our

1 water. If you do that, you don't just shut down and
2 stomp on our business economy for short-term data. What
3 you do is you say, we're going to look way out ahead of
4 this and we're going to get way above it and we're going
5 to figure out a way to come up with a strategic plan so
6 that we so manage our water resources so well that we're
7 never going to have to have these kind of hearings and
8 we're never going to have to face these types of issues
9 as shutting down a river basin because we've figured out
10 a way to capture 6-million acre-feet that we aren't
11 capturing today. And I would encourage you to put your
12 energy there.

13 The economic consequences of shutting down this
14 river basin will be astounding. And I was in Omaha, and
15 I'll just tell you if you take my agricultural business
16 friends and limits their ability to grow, if you don't
17 grow you die. And if we see significant job losses all
18 across this river basin, it's going to affect everybody.
19 And if you think that taxes in this state are high now,
20 look out because there's going to be less and less people
21 here to pay them. And I don't see government showing
22 great strides to shrink in size. And so we're going to
23 be in a situation where the economic consequences are
24 going to compound with the fact to the point where
25 Nebraska is going to be in deep, deep trouble, and we

1 don't have to be.

2 Turn your attention toward a new innovative way
3 to store and manage water. Allow the businesses to stay
4 in business. The data is too short term. It's not long
5 term enough. By the time you deal with storing more
6 water and transferring more water, you won't even have to
7 worry about your 20-year lag models. They won't even
8 exist because you will have solved the problem. Thank
9 you.

10 THE HEARING OFFICER: Thank you, Mr. Nability.

11 (Applause.)

12 MR. NEIVIG: My name is Bryce Neivig,
13 N-e-i-v-i-g. I farm south of here. This is more of a
14 history lesson from me to you than anything else. I
15 doubt that there's any people in this room that have been
16 directly involved with irrigation longer than I have.
17 Admittedly, I was pretty young, but my father and
18 grandfather put down the first irrigation well of ours in
19 19-- summer of 1936. And except for one year, it's
20 been operated every year since that time.

21 And in that interim time, I have to two monitor
22 wells, NRD monitors, Lower Elkhorn monitor, and the water
23 level has not appreciably decreased in that period of
24 time. It is a stream. A running stream goes through my
25 farm about 60 yards, 60 rods from that irrigation well.

1 Only once in my lifetime have I seen that stream run dry,
2 and that was in 1936. I think the information that is
3 being used created what they call a classic case of
4 overkill on this determination of being fully
5 appropriated because I'm living proof for an area at
6 least. And from where the irrigation well is today -- it
7 was filed in 1936 -- I can see, visually see, four pivots
8 put in since then or wells put in since then. And in a
9 five- or ten-mile radius, there's 20 and at the same time
10 the water level has not declined.

11 So I urge the people involved in this to take a
12 good, long second look at what they really are using as a
13 basis of information. Thank you.

14 THE HEARING OFFICER: Thank you, Mr. Neivig.
15 Did you sign --

16 MR. NEIVIG: Yes, I did.

17 THE HEARING OFFICER: Thank you.

18 Next, please.

19 MR. HOPPE: Richard Hoppe, H-o-p-p-e, Columbus,
20 Nebraska. I farm and sell irrigation equipment by
21 Columbus, Nebraska. I have for the last 25 years. I
22 also operate two wells within the three-mile limit of the
23 Platte River. The one well was on my father's farm. We
24 recently inherited it. It's operated at a 12-foot draw
25 period since 1972. It continues to operate and pump with

1 a thousand gallons a minute, 12 gallons a minute. We
2 have not seen a decline in that. It continues to pump.
3 We also recently purchased a farm, a Ferdick (phonetic)
4 farm that the water rights on that go back to 1937. It
5 was one of the first registered wells in Colfax County.
6 That also pumps at the same operating level that I can
7 find documentation on because the original pump in the
8 hole was a 30-foot pump. We still use a 30-foot pump in
9 a re-drilled well in a similar location.

10 In addition to that, in our irrigation
11 equipment sales, we sell T & L center pivots. Like
12 everyone else here, we're a mom and pop operation. We're
13 not a big corporation. We employ five people full time.
14 We also employ 10 to 14 seasonal laborers when we need to
15 construct machines. I will not say that we'll be able to
16 maintain a 60 percent sales level of what we have like
17 Mr. Vavrina with values who is a neighboring competitive
18 sales person, because what will happen on the complete
19 water shutdown is when there's no place to take the U-
20 center pivot, they will no longer trade the U-center
21 pivot, our business will crush. The business we have
22 that service the farmer will cease to exist because we
23 will no longer be able to maintain a profitable outlook.

24 And as far as our future, with a determination
25 of no more new irrigated acres, you basically are saying

1 no independent service people. You'll be seeing a de-
2 valuation of the center pivots that are out there today
3 to almost nontradable positions. And the economic impact
4 from this will be felt far and wide in the state of
5 Nebraska like no other one is.

6 I would also like to mention too, just like
7 myself and a lot of people I see back here, we get up
8 early in the morning. We work all day long. We pay our
9 taxes. We put our future, our heart and soul into this
10 business. And I think we see a lot of people that are
11 doing nothing besides getting a government wage, getting
12 paid what the people here that worked hard and long to
13 keep their operations going are just getting destroyed
14 with this legislation. Thank you very much.

15 THE HEARING OFFICER: Thank you, Mr. Hoppe.

16 (Applause.)

17 MR. CEMPER: My name is Ron Cemper from
18 O'Neill, Nebraska. I'm a farmer --

19 THE HEARING OFFICER: Please spell your name,
20 Ron.

21 MR. CEMPER: -- and an irrigation dealer.

22 Ron, R-o-n. Cemper is C-e-m-p-e-r.

23 Once again, I monitor the static water table
24 more often than anybody else in this state or maybe
25 somebody else does too. The static water level in my

1 backyard lake is 12 inches higher than it has been in the
2 past 28 years that I have noticed while watching it every
3 morning at this time of the year.

4 The U.S. Geological 2007 spring to 2008 spring
5 indicates that the water in the Upper and Lower Elkhorn
6 NRDs has risen 5 feet in places, and everywhere (sic)
7 else 1 to 2 feet or no data. The no-data area is located
8 where the water is at the service of the soil and cannot
9 rise short of a flood.

10 The Louisville checkpoint is flowing above the
11 1954 reported measure of an annual average of 4,509
12 feet -- cubic feet per second. In 2007 the annual
13 average was 8,286 cubic feet, and in 2008, 10,550 cubic
14 feet per second, more than double. Only during the last
15 drought of seven years did the average drop three times
16 below the 1954 average, and that was a lousy total of 460
17 cubic feet per second for all three years combined. In
18 1956, one year alone, it was 2,040 cubic feet per second
19 lower. That year the Platte River at Schuyler, Nebraska,
20 was about 4 feet below the average sand. I live there.
21 I saw it with my own eyes. So what does that do for the
22 endangered species like the palid sturgeon?

23 The NRD has taken seven years of drought -- the
24 DNR, excuse me. The DNR has taken seven years of drought
25 to work in their favor, not the true average, making

1 their science a total fraud. We have no water problems.
2 We have a political problem. I said to Governor
3 Heineman, last year I sent --

4 (Applause.)

5 I said to Governor Heineman, last year I sent
6 out 14 W-2 forms. Come spring of 2010, unless things
7 change in a hurry, I will send out three. With luck,
8 they will be with me more than a couple more months. How
9 about that for an economical boost? And I know that my
10 company is but trivial in the area effected. After
11 setting the geological maps, I found that we have several
12 major water buildups, all caused by major impoundments.
13 Below Lake McConaughy, Sherman and Calamus, only 20 years
14 old, already coming on strong. The economical boost
15 would be a good project on the Niobrara River that would
16 build our water table even higher and create construction
17 jobs for a lot of people instead of a new bill in
18 legislation coming up, LB 577, that will stop the
19 building of dams in the future.

20 Merritt Dam is not indicated on the geological
21 map, but true science tells me that the water use in that
22 project all the way to Bassett is one of the reasons the
23 Elkhorn NRDs are on the rise.

24 I say to the head of the DNR, the people at
25 this hearing are representing but a small percentage

1 against this unnecessary moratorium. If all the people
2 against it would or could be here, they would fill
3 Memorial Football Stadium.

4 I work from Hastings north and Tekamah west,
5 and I have not met a person that is in favor of this
6 moratorium. And I am sure they will remember this next
7 election. Thank you.

8 THE HEARING OFFICER: Thank you, Ron.

9 (Applause.)

10 MR. TIGHE: My name Tim Tighe, T-i-g-h-e. I am
11 the chairman of the Lower Elkhorn NRD based out of
12 Norfolk, Nebraska. I am testifying today regarding your
13 decision on December 16, 2008, to declare the Lower
14 Platte Basin preliminary fully appropriated and as such
15 the Lower Elkhorn NRD is impacted by this decision.

16 I will not testify about the far-reaching
17 economic impact that this decision will make on the area
18 as I am certain that this point is not part of your
19 decision to declare the basin fully appropriated. Your
20 decision is based on all available surface water in the
21 in the river has been appropriated at this time.

22 I think it is premature to declare the basin
23 fully appropriated. The justification in doing this is
24 the ELM model, otherwise known as the Elkhorn Loup model.
25 The Lower Elkhorn NRD participated in the cost share of

1 the Phase 1 study of this model to better understand our
2 more complex geology in this part of the state. To use
3 this model and its future projected river flow decline in
4 the Elkhorn Basin is premature since this study is not
5 complete at this time. I believe that to be more
6 accurate that we will need to take additional time to
7 complete the ELM study. I agree that the ELM model is
8 the best science available, but with our complex geology
9 in the area I question that we have enough data to
10 accurately predict future river flows at this time. I
11 think a more logical solution is for the Upper and Lower
12 Elkhorn Basin to put temporary moratoriums on new well
13 drilling in the 10-50 area until we get additional data
14 in this model so we can say with certainty that we have
15 used the best science as the Department has indicated.

16 I would also like to make one more point today.
17 Even if projected river depletion in the future is
18 accurate, as the State's interpretation of the ELM model
19 suggests, the flows at the Louisville gage are still
20 adequate. The Elkhorn River Basin is meeting these flow
21 requirements now and in the projected future. To declare
22 the Elkhorn Basin fully appropriated at this time using
23 the North Bend gage is unfair and far reaching since the
24 major water permit that we are talking about that
25 consumes the available water in the river is in the

1 Nebraska Game and Parks in stream flow permit. This
2 permit does not consume water but leaves water in the
3 river for beneficial use. The projected numbers show
4 that we are meeting the permit requirements at
5 Louisville, which is the only gage that the Elkhorn Basin
6 can have an impact on. The Elkhorn Basin can't put more
7 water in the river at North Bend. The gage at Louisville
8 is only about five miles from the mouth of the Elkhorn
9 River, so shutting the entire Elkhorn Basin down using
10 flows from the North Bend gage does not make any sense.

11 And one point I would like to expand on that
12 the slide that was put up was -- showed kind of a
13 combination of the average days for the North Bend and
14 Louisville gage. If you put up the slide for the
15 Louisville gage, it still shows adequate flows, even with
16 those projected river declines in the future.

17 In closing, I would hope that the Department
18 and Natural Resource Districts can come up with a
19 solution that is beneficial to all parties. I would ask
20 that you not declare the Elkhorn Basin fully appropriate
21 at this time as present and projected river flows do not
22 justify this designation. Thank you.

23 THE HEARING OFFICER: Thank you, Tim.

24 May I ask how many more people want to testify?
25 A show of hands, please.

1 (Raising hands.)

2 THE HEARING OFFICER: Thank you.

3 MR. KORTH: Good afternoon. My name is Chad
4 Korth, K-o-r-t-h. I'm a third generation farmer in --
5 southwest of Battle Creek. And from my observation from
6 what my father has taught me, we've shot ourselves in the
7 foot. By being good stewards of the ground is what I've
8 always been taught, reducing the water that goes down the
9 rivers, keeping it on our ground, and that's
10 traditionally what we've done, whether it builds
11 terraces, plant sod waterways. And in the thirties when
12 the Government -- the United States was in a world of
13 hurt like we are today, they created civilian
14 conservation cores and dug dams to retain our water in
15 the state of Nebraska.

16 I do a lot of different things as well as farm. I
17 work for the railroad, so there's a lot of different
18 economic impact that we have here in the state of
19 Nebraska. And it all comes back to our agriculture,
20 every bit of it. Whether it be our steel industry or the
21 industry -- the fertilizer that our farmers bring to the
22 state of Nebraska, the co-ops that are in business to
23 support us. And we have a governor that promotes the
24 Nebraska advantage, to try to get business and industry
25 back to Nebraska to lower our tax base on the landowners.

1 And what we're doing here by telling us that we can't
2 water our ground is -- we're reducing that tax base some
3 more. Because the county and the city, and the county
4 and the state governments aren't going to be able to
5 receive as much money from our tax acres, those irrigated
6 acres.

7 I called up the Nebraska Extension. And last
8 year the irrigated potential acres were \$3300 an acre,
9 those potentially irrigatable acres, where irrigated
10 acres were about \$4,000 an acres. So we're talking about
11 a \$700 difference in acres or to our local and city taxes
12 and schools are about \$12.84 an acre. Now, it's a
13 considerable amount of acre -- or money that we're going
14 to short ourselves, a considerable amount of money.
15 Where are we going to get this money? We have the
16 President of the United States going around the country
17 trying to spend \$100 billion. Where is he going to get
18 that money? If we don't let our agricultural producers
19 do what they've done in the past and do -- and they do it
20 very, very well. I'm very proud -- One thing that people
21 ask me what I do in working with the railroad and
22 different things, I say we feed America. As a farmer, we
23 feed the world right here. And if you take that away
24 from us, what are we going to have left? Thank you.

25 THE HEARING OFFICER: Thank you, Chad.

1 (Applause.)

2 MR. CHRISTENSEN. I'm Cody Christensen. I'm
3 representing Christensen Well and Irrigation in
4 Hartington, Nebraska.

5 THE HEARING OFFICER: Cody, would you spell
6 your name, please.

7 MR. CHRISTENSEN: C-o-d-y C-h-r-i-s-t-e-n-s-e-
8 n.

9 I went to the Department of Natural Resources
10 website earlier today and I picked out four wells, just
11 randomly, along the northern border of the Lower Elkhorn
12 NRD. And what I did is I took down the water level
13 readings that were on that website, and I personally went
14 to those wells on my way to this meeting today.

15 My first one I went to was by Laurel, Nebraska.
16 It was a well -- irrigation well that was drilled in
17 2004. At the time it was drilled, the water level was 48
18 feet. Today it was 42 feet. Okay. So we've gone up 6
19 feet obviously.

20 The second one I did was by Coleridge, a well
21 drilled in '04. Static water level when it was drilled
22 was 76 and today it was also 76. It is the same.

23 The last two, the one I did was at Randolph.
24 Its water level when it was drilled was at 198. Today it
25 was 196.

1 And the last one I did was by Osmond, a well
2 drilled in '05. Originally drilled 174; today, 156, an
3 increase (sic) of 18 feet.

4 I basically just want to present these facts,
5 hard facts. And I would strongly urge the DNR to
6 reconsider the way they have come up with their decision
7 because I think if facts are actually looked at, I don't
8 think we're going to be in this predicament.

9 And the last fact I have is this. Our small
10 business employs 8 employees, full time. In the
11 summertime, we increase that by another 8. And I can
12 promise you, our business will probably have to cut our
13 staff in half if this goes through. Thank you.

14 THE HEARING OFFICER: Thank you, Cody.

15 MR. ZESSIN: I'll submit my --

16 THE REPORTER: Thank you.

17 (Exhibit No. 4 was marked for identification
18 See Index.)

19 MR. ZESSIN: Good afternoon. My name is Rod
20 Zessin. That's Z-e-s-s-i-n. I'm a director for the
21 Lower Elkhorn NRD and currently the vice chairman of that
22 board. I represent areas in the southwestern part of our
23 NRD, which would include the counties of Madison, Platte
24 and Stanton.

25 I would like to thank the Director for this --

1 and his staff as well for this time to address you
2 regarding the preliminary fully appropriated status.

3 I'm a farmer and an irrigator as well. As well
4 as many of my constituent farmers use the best of
5 conservation methods to operate a farm. Whether this is
6 no-till farming practices, grassed waterways or the
7 latest in technology, we strive to save irrigation water
8 and assure that it is used in a most responsible manner.

9 Our NRD, the Lower Elkhorn NRD, has been and is
10 continuing to be the lead in conserving water resources.
11 Not only do we use and promote water conservation methods
12 through our no-till incentive program, Buffer Strip
13 programs and others, but we are leaders in managing our
14 groundwater resource. We have added a requirement to add
15 flowmeters to all of our water new high capacity well
16 permits, manage our static water levels through our
17 groundwater monitoring program and have promoted good
18 water use through center pivots in our pivot renozzling
19 program.

20 As a farmer, I have utilized the NRD's
21 flowmeter program that cost shares on the installation of
22 flowmeters into an existing well. Because of this
23 installation, I have been better able to watch the
24 efficiency of my pumping unit, watched the flow of the
25 well on a daily basis and obtain water on an annual use

1 coming out of the well. Although the data is young, it
2 is important to note that over the past two years since
3 this meter was installed that this particular irrigated
4 farm needed only 6.5 acre inches of water annually to
5 supply the needed water for the crops grown. This two-
6 year span included both a crop of corn and soybeans. The
7 current crop use in the model being used by the DNR, the
8 Elkhorn Loup model, uses -- and I could be wrong -- 10-
9 and-a-half inches, I've written in my testimony. But if
10 I'm wrong, it may be 11-and-a-half inches. This data
11 would at least temporarily suggest that water is being
12 used at a far lesser rate than the model would suggest.

13 The Lower Elkhorn NRD is also in an area of the
14 state that has a different set of climate conditions
15 versus other areas of Nebraska where groundwater concerns
16 are much more prevalent. We are in an area of Nebraska
17 where the annual precipitation levels are higher and
18 conservation farming practices are at higher levels.
19 This can be seen by the charts that I've given in my
20 testimony developed by the NRCS or the Natural Resource
21 Conservation Service.

22 Because of these two issues, this area of
23 Nebraska uses significantly less irrigation water than
24 other areas of Nebraska. We are conserving water through
25 the greater use of available water, rain, and through the

1 higher level of no-till implementation, as can be seen on
2 the maps that I've provided. This ultimately lowers the
3 demand on irrigation water through higher levels of
4 rainfall and a greater implementation of conservation
5 farming practices. This would ultimately lower the lag
6 effect on the Lower Platte River system.

7 The Lower Elkhorn NRD has also been very
8 vigilant about monitoring the static groundwater levels
9 in both the spring and the fall. Again, I have included
10 a map of the University of Nebraska's conservation and
11 survey division map of groundwater-level changes in
12 Nebraska, which I have used the map and others that have
13 been previously mentioned in the testimony given before
14 me, but I used the map predevelopment to spring of 2008.
15 This map does show that the Lower Elkhorn NRD has been on
16 the better side of groundwater level changes in Nebraska.
17 As previously -- the previous testimony indicated from
18 his data that was instantaneous as of today, this area of
19 the state with its higher rainfall amounts and levels of
20 no-till implementation does not have the lowered
21 groundwater levels other areas of the state experience.
22 This points to strong flows in the Elkhorn River and to
23 continued supplies of water to achieve the necessary
24 needs of all users of water in Nebraska and in the Lower
25 Platte River system. Thank you.

1 THE HEARING OFFICER: Thank you, Rod.

2 MR. STAAB: I have my comments directed in my
3 letter to Director Dunnigan and I may refer to him in
4 that person in the letter.

5 Welcome to Norfolk. My name is Stan Staab, S-
6 t-a-a-b. I'm the general manager for the Lower Elkhorn
7 Natural Resources District. Our offices are here in the
8 Life Long Learning Center. I am testifying today
9 regarding your decision on December 16th, 2008, to
10 declare the Lower Platte Basin preliminary fully
11 appropriated. And as one of the nine local NRDs affected
12 by this major decision, I wish to comment on the
13 potential impact on this far-reaching state decision.

14 Our district realizes and certainly respects
15 your concern and huge responsibility for the State's
16 management of surface water, including the many streams,
17 rivers and lakes that blanket our great home we call
18 Nebraska. Our citizens share this passion for protection
19 of our water, both surface and ground. This NRD shares
20 your concerns, as the Legislature has charged locally
21 elected boards with conservation and management of
22 groundwater. We are making every effort to understand
23 your decision. Although at this point in time, we do not
24 agree with it. Water issues are complex because some
25 degree of science must be understood in order to

1 comprehend even the most basic concepts. The recent DNR
2 decision involves a very high level of scientific
3 interpretation. Our board and staff have appreciated the
4 opportunities provided by your technical staff to learn
5 more about the decision. We are grateful for the
6 cooperation.

7 One of the NRD's most important and necessary
8 responsibilities is groundwater management governed by
9 local control. We take this responsibility very
10 seriously. For example, our NRD has conducted a
11 district-wide groundwater monitoring system utilizing 247
12 selected irrigation wells that are measured each spring
13 and again in the fall. This program began in 1976, not
14 long after the districts were formed in '72, as a major
15 concern by the Board of Directors of this area. The
16 database reveals a pattern that groundwater levels do
17 rise and fall to some extent through wet years and dry
18 years but overall these levels are not declining.
19 Although the NRD has not historically become involved in
20 stream measurements, a recently completed U.S. Geological
21 Survey study utilizing data from 1953 to 2005 and
22 commissioned by the Upper and Lower NRDs clearly
23 indicates that stream flows are stable or trending upward
24 in the Elkhorn and Lower Platte Rivers. The Logan and
25 Salt Creeks are also included in this project, in this

1 report. Current ground and surface water conditions in
2 the Lower Elkhorn and in fact across the Lower Platte
3 Basin are very sound. Our NRD is one of nine NRDs that
4 are cooperating to review the scientific data that was
5 used by your staff to bring the issue to this point in
6 time. This review is being conducted by an independent
7 consulting firm and we will be bringing our results to
8 the March 12th hearing in Fremont.

9 Much has already been stated about DNR's
10 desire, and statutory authority, to incorporate the best
11 scientific data, information and methodologies available
12 to arrive at your tremendously important decision of
13 fully appropriated status. We also agree the ELM, the
14 Elkhorn Loup Model, is the most advanced computer
15 available and its application as a regional groundwater
16 modeling tool is logical and appropriate. However, only
17 a Phase 1 report was generated from this highly complex
18 model, which has taken more than two-and-a-half years of
19 effort. The ELM results were a major factor of your
20 decision, but we feel very strongly that a good deal more
21 modeling time and study is necessary to produce
22 conclusive evidence for a decision of this magnitude. We
23 are very concerned about the implications of the
24 preliminary fully appropriated decision regarding future
25 NRD projects that are intended to help protect lives,

1 property and our quality of life. These are primarily
2 flood control structures in the form of dams and levees.
3 We have completed several of these successful projects
4 over the years which protect communities and have more
5 projects in various planning stages. Significant
6 impoundments will require storage permits, which will be
7 difficult, if not impossible, to acquire. NRDs are
8 charged by statute to address the problem of flooding.
9 We need the proper tools to do our job.

10 The Lower Platte Basin is approximately one-
11 third of the state sprawling literally from Omaha to
12 Sheridan County in the Panhandle. A fully appropriated
13 designation will impose a significant economic impact on
14 the citizens of the basin. We request, and respectfully
15 request that DNR insure this impact is nonintrusive as
16 possible.

17 We will also be submitting our entire
18 historical record of groundwater static water levels from
19 1976 to 1928 at a later hearing. It consists of more
20 than 250 graphs. We do not have those prepared at this
21 time.

22 We also will be submitting a full report from
23 the USGS, as I mentioned earlier, on stream flows in the
24 Elkhorn and Lower Platte Basin Rivers, the rivers. This
25 is newly released in the U.S. Geological Survey website.

1 And these will all be, as I said, introduced at a later
2 hearing.

3 Thank you for the opportunity to testify.

4 THE HEARING OFFICER: Thank you, Stan.

5 MR. SCHMIT: My name is Joe Schmit, S-c-h-m-i-
6 t. I farm north of Norfolk here by Osmond most of my
7 life. I also am employed with Petersen Ag. Systems. And
8 I work there with an irrigation dealership, and I'm
9 concerned about the future of that business as well.

10 There's been a lot of things that have been
11 said here today as far as the stream flow values and all
12 those things, so I'm not going to get into a lot of that.
13 I think there's a few things that I would like to touch
14 on that are separate from that.

15 Although I will add that I think that the
16 irrigation that we have done since the seventies has
17 actually increased our surface water in our region and
18 that's why you see what you see. We had a lot of
19 gentlemen today that have testified about springs and
20 that nature coming out of side hills. Our wet spots are
21 wetter. And a lot of that has to do with the fact that
22 we've put our own water on our own land and we've kept it
23 there. And so we've generated this stream flow. When I
24 was a child, we used to run through the North Fork of the
25 Elkhorn. It was dry in the summer, in July and August.

1 There wasn't any. We used to ride dirt bikes through it.
2 And that stream has not been dry since I was a child.
3 And so we have increased our stream flows. And all the
4 evidence that has been presented here today testifies to
5 that.

6 I do want to give my admiration to our local
7 NRD for joining in to re-study this and revisit it
8 because I think that's important. I think with the
9 number of testimonies that have been given today here on
10 water levels, that's absolutely necessary. I also want
11 to keep our NRDs. There's been some talk through this
12 whole thing, as our state natural resources district has
13 been imposing these appropriations downstream, that at
14 some point we may not need our NRDs. We definitely need
15 our NRDs. We want to keep those here so that we have
16 some local input from our region on our own water levels,
17 on our own water use. And so that's a very important
18 thing that needs to be brought out here today.

19 I guess the thing that I wanted to now finally
20 get to, because of all the other things that have been
21 stated, is about water rights, mineral rights and
22 property rights.

23 Mineral rights and water rights have always
24 been the rights of the landowner. And they have been put
25 into the share and share alike as far back as it will go.

1 And now all of a sudden, our state has imposed from the
2 laws that have been passed down that we no longer have
3 our water rights as landowner. And if that wasn't bad
4 enough, because that we have to deal with the laws of the
5 past, but I'm saying this mostly to the people that are
6 here today. We need to pay attention to what's going on
7 in our legislature and we need to do it closely. Because
8 now not only have we lost water rights, on our own land
9 mind you, we've also lost our property rights on our own
10 land. And when I say that, I say is that I already have
11 a well on my land. I already irrigate on my land. But
12 if I want to use my own well, which I've paid for on my
13 own land using my own water, now I can't irrigate the
14 rest of my land. So now we're not really messing with
15 water rights anymore, we're messing with property rights.
16 And we're saying to a landowner, "You own this land, but
17 you can't use it for what you want to use it for anymore
18 because you've now lost your rights to do that." And
19 this is a scary thing, people, and I want you to all pay
20 attention because we need to be watching what's going on
21 here. All right? This is serious. And it's an
22 infringement.

23 And in my last knowledge that I've recollected
24 the only way this was possible was through eminent
25 domain. And when you have eminent domain, in every case

1 that I've ever looked at there's been compensation, in
2 almost all cases. So if the State is now saying to me,
3 "You can no longer irrigate on this land over here even
4 with your own well on your own land," is there going to
5 be compensation for that, for my loss of income on this
6 land that I choose to irrigate with a well that I already
7 have? Is that going to be compensated to me, to my
8 family, to future generations? When a highway goes
9 through and it cuts across your land, they pay you for
10 the property that they destroy or take. Now we've got
11 property that is being de-valued, shutdown, never to be
12 used again. Unless we change this, there will be no
13 compensation, to my knowledge. This is a problem and
14 it's rights. And you will -- you haven't seen the end of
15 this. This is going to be far reaching because it's not
16 just the people that already have a well and put in there
17 and that, but it's all kinds of property that have been
18 purchased with the intent to put irrigation on and
19 property that's in the 10-year program and reserved that
20 was going to come out that was going to be put into
21 production. And this goes back to testimony earlier
22 today by a gentleman who said, well, who's going to feed
23 future generations? We keep losing acres, losing this,
24 losing that. And now all of a sudden we have a state
25 government that says, "Oh, by the way, you can't use your

1 property for what you intended to use it for."

2 And that's what I wanted to say today. I had pages and
3 pages of testimony. A lot of it's been covered. So I
4 just wanted the people in this room to realize what's
5 going on and to pay more attention to what's going on in
6 Lincoln. Because when this law was passed, it was not
7 intended to end up the way it has ended up here today.
8 But we need to be paying attention to what's going on in
9 Lincoln and we need to be watching what our legislators
10 are doing so that we don't have things like this happen.
11 Because this should still be of the people, by the
12 people, for the people. And when we cease to allow that
13 to happen, then we're going to have train wrecks like we
14 have today. So I just beg people to pay attention. And
15 that's all I have. Thank you.

16 THE HEARING OFFICER: Thank you, Mr. Schmit.

17 (Applause.)

18 MR. WRIGHT: Hello.

19 THE HEARING OFFICER: Hello.

20 MR. WRIGHT: My name is David Wright. I live
21 up at Neligh, Nebraska, and I'm not a farmer.

22 THE REPORTER: Spell your last name.

23 MR. WRIGHT: Wright, W-r-i-g-h-t, like Mr.
24 Wright.

25 THE REPORTER: Okay.

1 MR. WRIGHT: Anyway, I ranch up at Ewing,
2 Nebraska. I'm not a farmer. I don't irrigate. I don't
3 do any of that. But up at the ranch, I have the
4 misfortune of having the Elkhorn River run through it.
5 And I also have the misfortune of having one of the
6 tributaries called the Willow Slough Creek run through
7 the ranch. And you follow that creek back up into the
8 hills, in to the Sand Hills about seven, eight miles, and
9 that's kind of where it starts. It's a spring-fed creek.
10 In the sixties when I was a kid, that creek got pretty
11 small, but it never did dry up. That's the only time.
12 That's a short tributary that runs through the Elkhorn
13 River. Out at the ranch, there's seven windmills.
14 They're sandpoint wells. A sandpoint with a top cylinder
15 can only pull water 25 feet. I'm a fourth generation
16 rancher. I have never seen those wells -- those
17 windmills not pump water. Twenty-five feet is all they
18 can pull water. There's two stock -- There's a stock
19 pond that we dug and there's a natural blowout lake
20 that's probably as big as this room. In 1988, that
21 blowout lake was down to a mud puddle the size of a
22 pickup, in 1988.

23 And I asked my father, "Have you ever seen that
24 that low?"

25 And he said, "No."

1 And it's never been that low since then, never.

2 Now there's been a lot of things said today
3 about our rights, and that's what I would like to point
4 out. According to the Constitution, we are endowed by a
5 creator with certain inalienable rights, the right to
6 life, liberty and the pursuit of happiness, the right to
7 own property, the right to develop property and the right
8 to make our living from property. The government has no
9 rights, none. Besides owning a ranch, I also run the
10 newspaper in Neligh and I print eight newspapers. So I
11 have the fortunate ability to buy ink by the barrel.
12 Thank you.

13 (Applause.)

14 THE HEARING OFFICER: Thank you, Mr. Wright.

15 MR. LINGENFELTER: Robert Lingenfelter, L-i-n-
16 g-e-n-f-e-l-t-e-r. Most everything has been covered
17 about -- Well, first of all, let me start off to say that
18 most every farmer back behind there takes a lot of pride
19 in using the resources given to him by God to do the very
20 best he can for the very least he can and take good care
21 of it.

22 The second thing, most everything has been
23 mentioned that would show that there's very little proof
24 that the water tables have dropped or the water flows or
25 not what they were 50 years ago when I first remember

1 irrigation being started in this area.

2 I guess the first thing I wanted to mention was
3 that one of the classes they had me take in college was
4 statistics. And statistics called any report nothing
5 more than someone's opinion if it had less than about a 3
6 percent margin of error. And for as near as I can tell,
7 you guys got a mandate to start controlling our water
8 about four years ago through LB whatever it's called.
9 And then one year ago, you came up with this Elkhorn Loup
10 model that had been in effect for two-and-a-half years.
11 And I would have to say statistically you've adjusted the
12 report to fit the outcome that you saw fit.

13 I guess when we talk about best science, I do
14 remember -- I don't remember personally, but my history
15 books told me about at one time best science said the
16 earth was flat. That was later just proved. So I guess
17 that's about the only thing I have to say is if you're
18 going to come in here and you're going to try to shutdown
19 the water and you're going to try to tell us how we
20 should manage that water, you should be taking a look at
21 a look at a lot bigger picture than just the last couple
22 of years. Thank you.

23 THE HEARING OFFICER: Thank you, Robert.

24 MR. MURPHY: Good afternoon. My comments will
25 be brief. My name is Mike Murphy, M-u-r-p-h-y. I'm the

1 general manager for the Middle Niobrara Natural Resource
2 District based out of Valentine, Nebraska.

3 And I'm here to testify on behalf of the
4 Natural Resource District and its constituents. At this
5 time, the Middle Niobrara NRD is taking a stance of
6 opposition to the preliminary fully appropriated
7 designation of the Lower Platte River Basin. The Middle
8 Niobrara NRD would like to request that the Nebraska
9 Department of Natural Resources further and more
10 accurately review the lag effect of groundwater and to
11 adjudicate all the surface water rights not in compliance
12 within the Basin. The Middle Niobrara NRD also requests
13 that the Department of Natural Resources work with all
14 the impacted NRDs, the nine that Stan mentioned, to use
15 and further review the best science, facts, methodologies
16 before making a final determination in this basin. We
17 would like to thank everyone here today and across the
18 state for your interest and involvement in this process,
19 especially the Middle Niobrara Natural Resource District.

20 THE HEARING OFFICER: Thank you, Mike.

21 MR. NELSON: Douglas P. Nelson, Wayne,
22 Nebraska. That's s-o-n. I'm a farmer. My education
23 degree is in biology. I can rubberstamp everybody's
24 testimony prior to mine.

25 My testimony is going to be a little

1 unconventional. We're going to talk about weeds and
2 government. We're going to talk about weeds and the
3 palid sturgeon. We're going to talk about irrigation and
4 economy as a whole. My goal, I hope I can make you
5 laugh. I hope I can stimulate your thought and I hope I
6 can motivate your involvement. Now, here we go.

7 Weeds, we can all relate. Sometimes you see a
8 weed so offensive and obnoxious that you must stop
9 production, put on your leather gloves, grab your pliers
10 and pull it out by the roots. Then you take it home,
11 burn it and bury the ashes under a fresh slab of
12 concrete. That's a weed. Weeds are an expensive
13 nuisance, liabilities to production and must be kept in
14 check lest they smother your crop and break your
15 business. Speaking of weeds, like the dot com industry,
16 David Cole, a Virginia tech economist said, "If it grows
17 too fast, it's a weed." Could that apply to our
18 government? Well, let's review, offensive and obnoxious.
19 Expensive nuisance? Liability to production? Must be
20 kept in check. If it grows too fast, it's a weed. We've
21 all stopped production today to come here to put together
22 a tank mix of sorts and solve this problem, a problem
23 that is not. In my area of northeast Nebraska, we've got
24 more water than ever, static levels that are high. Tile
25 lines have been installed to drain the excess. Because

1 of irrigation and no till, our stream flows will be more
2 stable going into a dry period because our soils are
3 holding the water like a sponge, unlike a slab of Omaha
4 concrete. Now, repeat. Because of irrigation and no
5 till, our stream flows will be more stable going into a
6 dry period because our soils are holding the water like a
7 sponge, unlike a slab of Omaha concrete.

8 Now, back to weeds and onto the palid sturgeon.
9 To begin with, our weeds are not on welfare. We have
10 been trying to kill, control, eliminate, eradicate,
11 exterminate or otherwise completely annihilate weeds.
12 But guess what, today we have healthier, heartier, more
13 robust, chemical resistant, prolific and productive weeds
14 than ever. These things are not on welfare. How does
15 this apply to the palid sturgeon? There have been times
16 in climatic history, way before irrigation, when our
17 stream flows have been greatly reduced and with some
18 ceasing flow all together. The palid sturgeon does what
19 all species do in that situation, you adapt. You adapt
20 to the conditions the best you can. Most of the
21 defective accumulation of DNA is eliminated from the
22 herds, so to speak. And after the drought, the survivors
23 rebuild the population for the better. It's nature.
24 Corn borers, for instance, EPA says we plant 20 percent
25 refuge corn. We don't want to be too hard on those

1 little lepedoterans unless they develop a super race. Do
2 you see the irony here? The endangered species people
3 say we have to be nice to the palid sturgeon by letting
4 about 72,000 gallons per second, more or less, go down
5 the drain. This will keep him strong. On the other
6 hand, the EPA guys say we have to be nice to the corn
7 borer. This will keep him weak.

8 (Laughter.)

9 What would be better raising corn for ethanol,
10 national security -- Excuse me. What would be better,
11 raising corn for ethanol and national security or sending
12 your first born to Iraq? Here we have farmers, feeders,
13 dealers and drillers, the last of the elite. A handshake
14 is still an essential part of our business. Five percent
15 of the taxpayers pay 60 percent of the tax. Do not
16 demoralize this group.

17 In summary, I've had enough of restrict and
18 regulate, enough of tax and spend, enough of permits and
19 penalties.

20 I will close with a personal editorial.
21 Farmers, patriotically it may be time to pull the plug on
22 our wells, park our planters in the trees and put this
23 country on its knees. We have allowed our government to
24 lose its senses. And if we don't get a grip on the
25 overall perspective, we will hand our country to its

1 creditors.

2 Mr. Obama says he's going to spend a trillion
3 dollars to save four billion jobs. That's a quarter
4 million per job. I know he's an educated man, but I
5 think that's an elementary idea.

6 There is only way out of this mess we've
7 allowed and that's the old fashion way. You pay it. If
8 you government guys think that limiting the use of an
9 indestructible resource that we can use and use and use
10 and use and use and use but never lose is the patriotic
11 thing to do, you're not flying the U.S. flag. Thank you
12 very much.

13 (Applause.)

14 THE HEARING OFFICER: How many more people do
15 we have to testify?

16 (Raising Hands.)

17 THE HEARING OFFICER: One, two. Thank you.

18 MR. PICK: George, P-i-c-k, Pick, Hartington,
19 Nebraska.

20 I want to give credit to those that have
21 testified today. And since this is not a stimulus
22 package, I hope the recordings will be carefully reviewed
23 and read. And I would like to see them pay special
24 attention to those that are individual landowners.
25 Because I think we've seriously trampled on the rights of

1 individuals.

2 I have difficulty understanding why the State
3 of Nebraska claims to own the water, but when I have a
4 stream going through my property for three-quarters of a
5 mile, when I have driftwood, bottled and garbage to pick
6 up, it's my water, but it seems it's the State's
7 otherwise.

8 Just last fall, I had to hire an excavator -- a
9 back hoe wouldn't do it -- to take logs out of that
10 stream that was as long as 200 feet -- 100 feet long and
11 48 inches on the circumference.

12 But the main reason I wanted to give testimony
13 here is something that hasn't been touched. I live in
14 Cedar County. And we were told by the experts in 1960,
15 there was no water there. And our wells are unique up
16 there. Because I asked the local well driller who I
17 should get to run an irrigation rig, and he give me the
18 people. And they come up and they drilled a test hole.
19 And our test holes up there at 32 feet, you hit shale.
20 And all the test pipe on the rig, they could not get
21 through the shale. And these wells are in shale where
22 the very experts told us there was no water. And the
23 Indian Club knows that at the University of Nebraska.
24 And we decided to drill a well there. Right away I
25 offered to pay them in advance. The fee was only \$10 a

1 foot in those days. And to make the story short, they
2 drilled the well and the well pumped 1250 gallons a
3 minute. Everybody is in shock. And I think it's
4 important to note that these wells are in shale. And the
5 stream that goes through my property is a mud stream, mud
6 bottom. And when we hear the news media using the pump
7 and creek case apparently, I think there's a world of
8 difference here because I'm guessing that's in a sand
9 bottom stream and not in the Sand Hills. And there's a
10 world of difference when you're dealing with shale and
11 you're dealing with sand. And I got deep trouble trying
12 to figure out where the correction comes between these
13 wells that are drilled and you use them for irrigation
14 and the surface water. Because the streams going through
15 me has never been dry and these wells are within a
16 quarter of a mile or an eighth of a mile of the stream,
17 and you can walk that stream. And what we found out, the
18 last well, they even filmed it. And that should be
19 required observation by these people that make these
20 regulations because the gentleman did an excellent job.
21 He filmed it every tenth of a foot. And we found out the
22 water is coming through the crevices in the shale. And
23 if you hit those crevices, you're going to get a well.
24 And if you don't, you've got a dry hole. And it appears
25 that the water is coming from the northwest to the

1 southwest. And, you know, I live in a county that's 36
2 miles of river frontage. And I don't think the people
3 making these decisions -- I really question they may be
4 sincere, but you have to question the accuracy. And
5 also, did they get all the information, because I know
6 like these wells that are in the shale up in that valley.
7 I don't think there's any information been gathered here
8 because we proved the people wrong. No doubt about it
9 they're proved wrong. And I think this stuff, before we
10 rush to judgment and make these type of judgments, we
11 should take a look at the whole package, how it affects
12 the whole area, whether it be employment or whatever.

13 And taxation, I can go -- I can take another
14 hour here on that. Because I happen to have an
15 assessor's certificate, and I know all about that. And I
16 think the irrigators have really been had because he gets
17 the valuations on his land doubled. He pays on the
18 pivots. He pays on the wells. He pays on all of it.
19 And in Nebraska, let's face it, they'll be the last to
20 lower land values. So I just want to iterate the fact
21 that I've got a real problem with accusing the wells of
22 deleting water surface. I've really got trouble with
23 that. Because in my area, that is not true. Thank you,
24 gentlemen.

25 THE HEARING OFFICER: Thank you, George.

1 MS. LINGENFELT: My name is Nancy Lingenfelt.
2 I'm Bob's mother. I know how pleased he'll be to see me
3 here.

4 Ladies and gentlemen, we are preaching to the
5 choir. I have heard all this testimony as to why this
6 shouldn't happen, but I have not heard an answer to one
7 question. Perhaps you can help me, sir. Can you give me
8 a straightforward answer? How do we go about reversing
9 this? Thank you.

10 THE HEARING OFFICER: Thank you, Nancy.

11 (Applause.)

12 MR. WEMHOFF: I'm Loran Wemhoff. I farm by
13 Humphrey. L-o-r-a-n W-e-m-h-o-f-f.

14 And I guess -- I didn't even come to speak.
15 But after listening to what was stated here -- I bought
16 my dad's farm. He bought it in 1950. 1981 or '83, he
17 decided to retire.

18 So, I says, "Okay, I'll try to keep the family
19 farm."

20 I've got a son that wants to farm. In fact,
21 I'm trying to convince him to go to the University of
22 Nebraska-Lincoln next year instead of Southeast Community
23 College. He wants to study agriculture. I'm trying to
24 talk him out of it.

25 But I said, "The field is this wide. Go ahead

1 and see where you want to start."

2 The problem I got is six years ago, I dug the
3 well on dad's farm. Got the first 80 paid for. Now I'm
4 buying the other 80. The well is not paid for, but it's
5 on a 25-year mortgage with the bank. Who's going to pay
6 the banker if you tell me I can't water it? Who's going
7 to tell my son to take over the farm if he can't afford
8 it? I've got a permit in or had one in. I didn't renew
9 it, but I put it on my wife's grandmother's farm that I
10 have also owned or bought. I put the permit in, got it
11 approved by the resource district but couldn't justify
12 the cost last year to put that well in or two years ago,
13 I should say, because it was only going to be on 80
14 acres. The price of iron went up, the price of wells
15 went up. And these guys that do the well drilling, they
16 got their costs. They've got their employees to take
17 care of. I'm trying to take care of my son. So we get
18 this permit. It's been approved. I let it expire
19 because I couldn't justify the cost. And even though if
20 that permit is going to come back, if he decides to start
21 a farm so he could put a well in. If the NRD says, okay,
22 I can put the well in, and you guys are going to tell him
23 to shut it off. He's going to talk to the banker because
24 he's not going to have any money. He's going to have all
25 this borrowed. How does he get it paid for? Because I

1 ain't going to have it paid for. I'm 57. I'm in that
2 average age group that Nebraska now has or the country
3 has that's farming. He's 18-years-old, and I don't think
4 he's going to be able to start. The land values went so
5 high. The crop prices are low. Like I said, Dad started
6 or bought the farm in 1950. In 1955 he bought a new car
7 and he told this story before he passed away. He had
8 pigs. They were 23 cents. Come time to buy the car,
9 they were 10 cents. A few years back, I had lots. I
10 sold them for 14 cents, just about beat his price. And
11 I'm making payments on a hog barn, land, pivot, tractor,
12 because I'm still farming. I'm buying everything that I
13 have from my dad or what my dad gave me. He didn't give
14 me nothing, but I'm buying. And now I've got my loan
15 with the bank. If you guys tell me to shut it off
16 because they borrowed me the money because the technology
17 says you've got to keep up here to keep going. I took
18 that risk. I think the NRD has to take a risk here and
19 look at what's happening and what will happen with the
20 economy.

21 Northeast Nebraska is fighting to put a
22 Keystone pipeline from Canada to Oklahoma. If they can
23 pump water -- or pump oil from Canada down to Oklahoma,
24 why can't they pump water from the Missouri River back up
25 stream? And I don't think the guy from Neligh would like

1 it because we don't know what kind of shape that water is
2 in. But I think it's clean enough to pump back out on
3 the surface water. Let's use it over.

4 And I think more research, more studies, more
5 time needs to be put into it, and let's start from the
6 beginning and start over. Thank you.

7 THE HEARING OFFICER: Thank you, Loran.

8 (Applause.)

9 THE HEARING OFFICER: Technically that testimony
10 was those in opposition to the preliminary determination.

11 Is there anyone who wants to identify
12 themselves as neutral? No?

13 (No response.)

14 THE HEARING OFFICER: Okay. I have -- Is there
15 any other written testimony to be presented at this time
16 prior to closing the hearing? Bring it forward, please.

17 (Exhibit Nos. 5 through 14 were marked for
18 identification. See Index.)

19 I have a couple of entries to be offered.
20 Thank you. I have Mr. Kucera's statement, Mr. Fleer's
21 statement, Mr. Pellatz' statement. I have the city
22 administrator of Norfolk and a realtor from Norfolk.

23 Any other written information?

24 (No response.)

25 We have a statement from Papio-Missouri NRD and

1 Upper Big Blue NRD.

2 The record will be held open through the close
3 of business, Friday, March 13th, 2009, for receipt of any
4 additional written testimony, which should be mailed to
5 the Department and identified as testimony from the
6 hearing.

7 Once the record is closed, at that time the
8 Director of the Department will consider the testimony
9 and the exhibits presented at this hearing prior to
10 making his final determination on whether to go forward
11 with the preliminary determination or reconsider the
12 preliminary determination, issue a different preliminary
13 determination and schedule further hearings.

14 Since you're ready to chat, we'll close the
15 hearing at this point. Thank you very much for coming.

16 (Whereupon, the hearing was concluded at 3:44
17 p.m. on February 17, 2009.)

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NOTICE OF PRELIMINARY DETERMINATION THAT THE LOWER PLATTE RIVER BASIN IS FULLY APPROPRIATED

NOTICE TO THE UPPER NIOBRARA-WHITE NATURAL RESOURCES DISTRICT, THE MIDDLE NIOBRARA NATURAL RESOURCES DISTRICT, THE LOWER NIOBRARA NATURAL RESOURCES DISTRICT, THE UPPER LOUP NATURAL RESOURCES DISTRICT, THE UPPER ELKHORN NATURAL RESOURCES DISTRICT, TWIN PLATTE NATURAL RESOURCES DISTRICT, LOWER LOUP NATURAL RESOURCES DISTRICT, CENTRAL PLATTE NATURAL RESOURCES DISTRICT, UPPER BIG BLUE NATURAL RESOURCES DISTRICT, LOWER ELKHORN NATURAL RESOURCES DISTRICT, LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT, LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT, LEWIS AND CLARK NATURAL RESOURCES DISTRICT, AND PAPIO MISSOURI RIVER NATURAL RESOURCES DISTRICT

The Nebraska Department of Natural Resources has completed its annual evaluation of expected availability of hydrologically connected water supplies in accordance with the Nebraska Ground Water Management and Protection Act ("Act") and has made a preliminary determination that the Lower Platte River Basin is fully appropriated. As required by the Act, the Department hereby gives notice of its determination to each of the natural resources districts that encompasses a portion of the geographic area involved.

NOTICE

1. The Department has made a preliminary determination that the portion of the Lower Platte River Basin depicted on the enclosed map is fully appropriated. The fully appropriated portion of the basin includes the surface watershed of the Platte River and its tributaries from the confluence upstream of the Missouri River and the ground water aquifers considered to be hydrologically connected to that portion of the Lower Platte River and its tributaries.
2. The Department has placed an immediate stay on the issuance of any new surface water appropriations in the fully appropriated portions of the Lower Platte River Basin.
3. Upon receipt of this notice, and in accordance with Neb. Rev. Stat. Section 46-714(1), an immediate stay on the issuance of water well construction permits takes effect in the area in which the surface water and groundwater are hydrologically connected in the Lower Platte River Basin ("the hydrologically connected area"). A map and the legal description of the hydrologically connected area are enclosed.

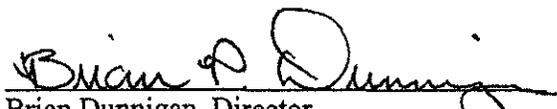


ADDITIONAL INFORMATION

On December 26, 2008, the following additional stays take effect:

1. No new water wells may be constructed in the hydrologically connected area unless a construction permit for the water well was issued by a natural resources district prior to December 16, 2008, and the permit contains conditions that meet the objectives of Neb. Rev. Stat. Section 46-715. Any well constructed pursuant to such a permit must be completed in accordance with Neb. Rev. Stat. Section 46-738.
2. No existing water well in the hydrologically connected area may be used to increase the number of acres historically irrigated.
3. No surface water appropriation in the fully appropriated area may be used to increase of the number of acres historically irrigated.

The stays shall remain in effect at least until the Department has made a final determination about whether this portion of the Lower Platte River Basin is fully appropriated. One or more public hearings on the preliminary determination will be held on or before March 16, 2009. The Department will make a final decision on whether or not this portion of the Lower Platte River Basin is fully appropriated on or before April 15, 2009. A decision whether or not to continue the surface water stays will also be made at that time. The natural resources districts will then have to decide whether or not to continue the stays on the construction of new wells or the use of existing wells to increase the acres irrigated beyond historic use.


Brian Dunnigan, Director
Department of Natural Resources

NOTICE OF PUBLIC HEARINGS
ON THE PRELIMINARY DETERMINATION THAT
THE LOWER PLATTE RIVER BASIN IS FULLY APPROPRIATED

The Nebraska Department of Natural Resources will hold public hearings on the preliminary determination at four locations and dates:

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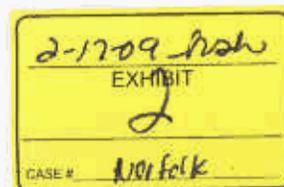
Tuesday, February 17, 2009 at 1:30 P.M. at the Learning Center of Northeast Nebraska Community College, 601 East Benjamin Avenue, Norfolk, Nebraska

Tuesday, February 24, 2009 at 1:30 P.M. in Room A on the Lower Level of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska

Thursday, March 12, 2009 at 1:30 P.M. in the Fremont City Auditorium, 925 North Broad Street, Fremont, Nebraska

Any interested person may appear at these hearings and present written or oral testimony and evidence concerning the appropriation status of the Lower Platte River Basin, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether stays on new uses should be terminated. Information on the preliminary determination, maps of the areas affected, and maps and legal descriptions of the geographic area within which the ground water is hydrologically connected to surface water for purposes of a fully appropriated determination of the Lower Platte Basin are located on the department's web site, www.dnr.ne.gov

Brian P. Dunnigan, Director
Nebraska Department of Natural Resources



Proof of Publication

STATE OF NEBRASKA

County of Dodge

ss.

RECEIVED

FEB 03 2009

DEPARTMENT OF
NATURAL RESOURCES

William Vobejda being duly sworn, deposes and says he is Publisher of the FREMONT TRIBUNE, a newspaper printed and published daily except Sunday in Dodge County, State of Nebraska, and of general circulation in Dodge County; that said newspaper has a bona fide circulation of more than 300 copies daily, has been published within said County for more than 52 successive weeks immediately prior to the first publication of the annexed notice, and is printed wholly in an office maintained at the place of publication.

And that the annexed notice has been published in one issue for 3 consecutive weeks in said newspaper.

CASE TITLE Lower Platte River
NOTICE of February and March Public Hearings

ENVELOPE NO.	LINES	RATE	DATE	CHARGES
67176	76	.30680	01/17/09	
67176	76	.26860	01/24/09	
67176	76	.26860	01/31/09	

Publication Fee \$64.14

and said notice was published each week on the same day of the week as the first publication.

Subscribed in my presence and sworn before me this 31st January, 2009

Cynthia C. Schinstock

Notary Public

My commission expires April 5, 2012.



NOTICE OF PUBLIC HEARINGS ON THE PRELIMINARY DETERMINATION THAT THE LOWER PLATTE RIVER BASIN IS FULLY APPROPRIATED

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Brian P. Dunnigan, Director
Nebraska Department of Natural Resources
(1:17,24,31)09(67176)

Norfolk Daily News

OWNED BY THE HUSE PUBLISHING COMPANY
NORFOLK, NEBRASKA

PROOF OF PUBLICATION

THE STATE OF NEBRASKA
Madison County

Debbie Warneke, being first duly sworn on oath says that she is the Business Manager of **The Huse Publishing Company**, a corporation, publishers of the **Norfolk Daily News**, a legal daily newspaper published at Norfolk, Madison County, Nebraska, and of general circulation in said county; that a notice entitled

**NOTICE OF PUBLIC HEARINGS
ON THE PRELIMINARY DETERMINATION
THAT THE LOWER PLATTE RIVER BASIN
IS FULLY APPROPRIATED**

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Brian P. Dunnigan, Director
Nebraska Department of
Natural Resources
(January 15, 22, 29, 2009)

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29 day of January, 2009

Debbie Warneke

Lori J. Brummels

GENERAL NOTARY - State of Nebraska
LORI J. BRUMMELS
My Comm. Exp. Oct. 4, 2011

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DEPARTMENT OF
NATURAL RESOURCES

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FEB 03 2009

DEPARTMENT OF NATURAL RESOURCES

Proof of Publication

NOTICE OF PUBLIC HEARINGS ON THE PRELIMINARY DETERMINATION THAT THE LOWER PLATTE RIVER BASIN IS FULLY APPROPRIATED

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Brian P. Dunnigan, Director
Nebraska Department
of Natural Resources

52-3tc

STATE OF NEBRASKA,
VALLEY COUNTY.

ss.

Lynn Griffith, being
Publisher

first duly sworn, on oath deposes and says that he is

of THE ORD QUIZ, a legal weekly newspaper under the Statutes of The State of Nebraska, printed and published in whole (or in part) once each week at its office in the City of Ord, Valley County, Nebraska; that he has knowledge of the facts set forth herein; that the notice, a true and correct printed copy of which is hereto attached and made a part hereof, was printed and published in each and in all of the regular and entire weekly issues of every publication of said newspaper

and not in a supplement thereof, 3 consecutive, successive weeks, namely

in the issues of the 14 day of Jan, 2009,

the 21 day of Jan 2009, the 28 day of

Jan, 2009 and the _____ day of _____,

20____ and the _____ day of _____ 20____

Printer's Fees \$ 74.28

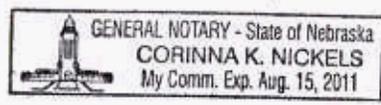
Subscribed in my presence and sworn to before me this 29

day of January, 2009.

Corinna K. Nickels

(SEAL)

Notary Public,



AFFIDAVIT OF PUBLICATION

State of Nebraska }
LANCASTER COUNTY, } ss.

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Brian P. Dunnigan, Director
Nebraska Department of
Natural Resources
#5459959 31 Jan. 15, 22, 29 29-01-00

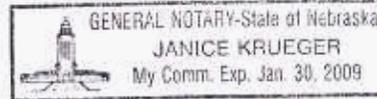
The undersigned, being first duly sworn, deposes and says that she/he is a Clerk of the Lincoln Journal Star, legal newspaper printed, published and having a general circulation in the County of Lancaster and State of Nebraska, and that the attached printed notice was published in said newspaper once successive time(s) the first insertion having been on the 15 day of January A.D., 2009 and thereafter on _____, 20____ and that said newspaper is the legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge and are further verified by my personal inspection of each notice in each of said issues.

Rebecca Coulter

Subscribed in my presence and sworn to before me this 26 day of January, 2009

Janice Krueger Notary Public

Printer's Fee, \$ _____



5459959

AFFIDAVIT OF PUBLICATION

State of Nebraska }
LANCASTER COUNTY, } ss.

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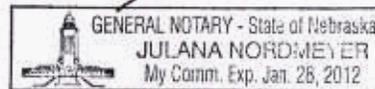
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Rebecca Coulter

Subscribed in my presence and sworn to before me this _____ day of January, 2009

Julana Nordmeyer Notary Public

Printer's Fee, \$ _____



5466180

WATER RESOURCES POLICY OF
THE NEBRASKA WELL DRILLERS ASSOCIATION

BACKGROUND

The Nebraska Well Drillers Association was established as an organization of trained and educated ground water professionals. The organization has always sought to establish and implement ground water development based upon the gathering of geological knowledge and the use of scientific information about our ground water resources. Sound science is the foundation upon which all ground water management should be developed and administered.

Development of sound hydrologic and geologic data and scientific information regarding the ground water resources and water bearing formations in the state continue to be the paramount goal of the Association and its scientific and professional members and partner organizations.

LOCAL CONTROL OF GROUND WATER POLICY

The Association recognizes the extensive diversity of climate, geology, topography and ground water in storage across the transition environment of the State of Nebraska. Because of the wide range in conditions which impact the availability and use of ground water for domestic, agricultural and commercial requirements the Association acknowledges and supports the need for locally developed and administered laws and regulations to govern ground water use best intended to fit local conditions. The system of local management available through the natural resources districts or other locally based policy leadership should be relied upon; and that reliance must be based upon locally determined and administered ground water management decisions.

INTEGRATED WATER MANAGEMENT POLICY

The Association believes that some ground and surface waters of the state are hydrologically connected in such a manner that the use of one will impact the available use of another. When such connections are proven by the use of sound scientific assessment, they should be managed locally to avoid or minimize conflicts between users of the two supplies. Continued development of the waters of the State in a manner assuring that the supply will not be diminished or destroyed should be the goal of all water resources management decision makers.

WATER USE EFFICIENCY

The Association recognizes that the water well construction and services industry must continually strive for improvement in water well design, construction, development, service and operations.



WATER QUALITY

The Association will support the continued assessment of "reasonable" standards for the quality of drinking water supplies and for other ground water aquifer uses.

Mike Whitehead 2/17/09

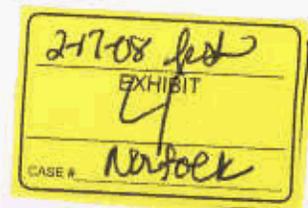
Good Afternoon. I am Rod Zessin, a Director for the Lower Elkhorn NRD and the current Vice Chairman. I represent the areas in the southwest part of our NRD which would include parts of the counties of Madison, Platte, and Stanton.

I would like to thank Director Dunnigan and his staff for this opportunity to address you regarding the determination that the Lower Platte River Basin is "Preliminarily Fully Appropriated".

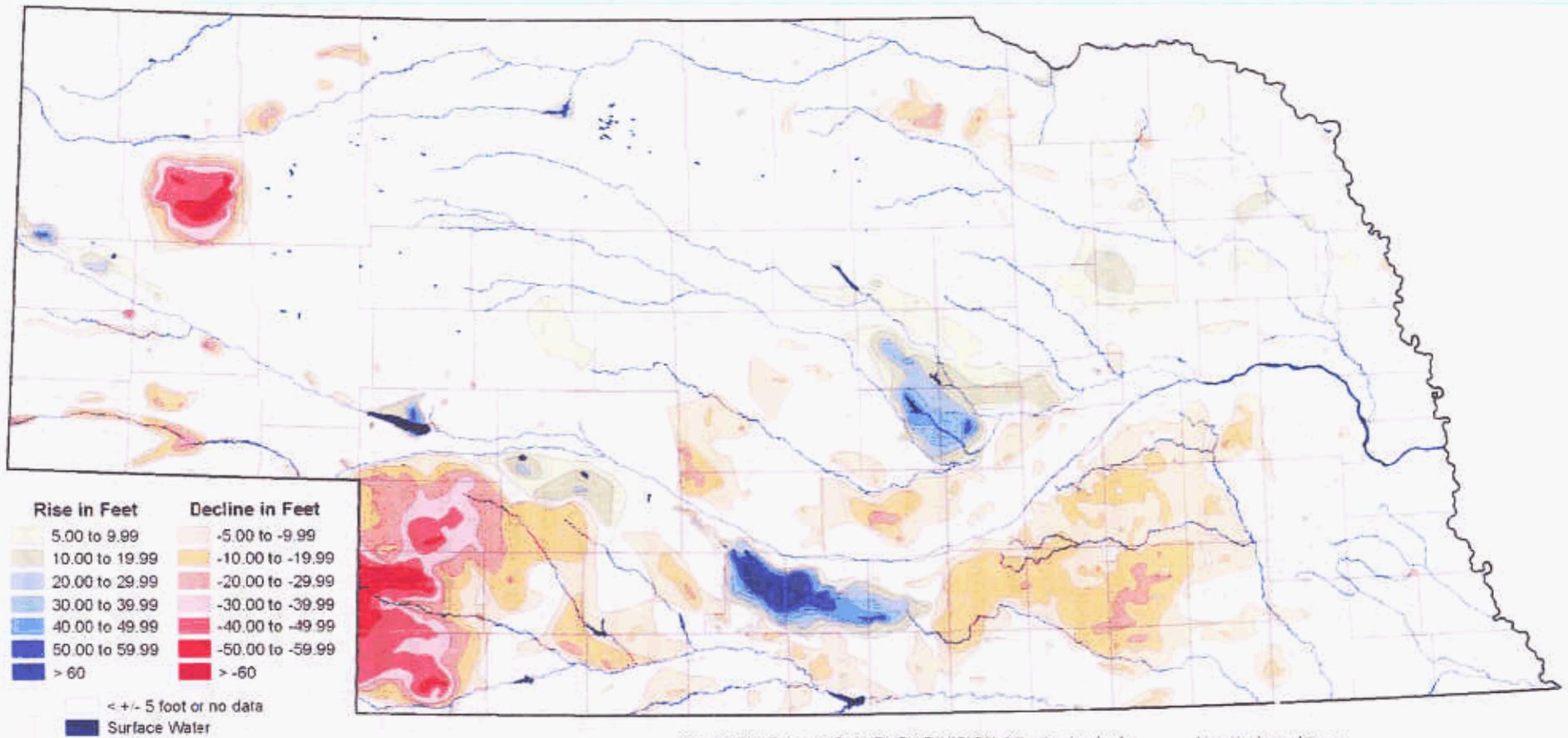
I am a farmer and irrigator. I, as well as many of my constituent farmers, use the best of conservation methods to operate a farm. Whether this is no-till farming practices, grassed waterways, or the latest in technology, we strive to save irrigation water and assure that it is used in a most responsible manner. Our NRD, the Lower Elkhorn NRD, has been and is continuing to be in the lead in conserving our water resources. Not only do we use and promote water conservation methods through our no-till incentive program, Buffer Strip programs and others, but we are leaders in managing our groundwater resource. We have added a requirement to add flowmeters to all of our water new high capacity well permits, managed our static water levels through our ground water monitoring program and have promoted good water use through center pivots in our pivot renozzling program. As a farmer I have utilized the NRD's flowmeter program that cost shares on the installation of flowmeters in to an existing well. Because of this installation, I have been able to better watch the efficiency of my pumping unit, watched the flow of the well on a daily basis and obtain an annual use of water. Although the data is young, it is important to note that over the last two years since this meter was installed that this particular irrigated farm needed only 6.5 acre inches of water annually to supply the needed water for the crops grown. This two year span included a crop of both corn and soybeans. The current crop use in the model being used by DNR (the Elkhorn-Loup Model) uses 10.5 inches of water for its determination of annual water use. This data would at least temporarily suggest that water is being used at a far lesser rate than the model would suggest.

The Lower Elkhorn NRD is also in an area of the state that has a different set of climate conditions verses other areas of Nebraska where groundwater concerns are much more prevalent. We are in an area of Nebraska where annual precipitation levels are higher and conservation farming practices are at higher levels. This can be seen by the charts included in my testimony developed by the NRCS. (Natural Resource Conservation Service) Because of these two issues, this area of Nebraska uses significantly less irrigation water than other areas of Nebraska. We are conserving water through greater use of available water (rain) and through this higher level of no-till implementation as can be seen on the map. This ultimately lowers the demand on irrigation water through higher levels of rainfall and a greater implementation of conservation farming practices. This would ultimately lower the "Lag Effect" on the Lower Platte River System.

The LENRD also has been very vigilant about monitoring static ground water levels in both the spring and the fall. I have included a map of the University of Nebraska's Conservation and Survey Division map of Groundwater-level Changes in Nebraska – Predevelopment to Spring 2008. This map does show that the LENRD has been on the better side of groundwater level changes in Nebraska. As previously discussed this area of the state with its higher rainfall amounts and levels of no-till implementation does not have the lowered groundwater levels other areas of the state experience. This points to strong flows in the Elkhorn River and to continued supplies of water to achieve the necessary needs of all users of water in Nebraska and in the Lower Platte River Basin.



Groundwater-level Changes in Nebraska - Predevelopment to Spring 2008



CONSERVATION AND SURVEY DIVISION (<http://csd.unl.edu>)
 School of Natural Resources (<http://snr.unl.edu>)
 Institute of Agriculture and Natural Resources
 University of Nebraska-Lincoln

Mark Burbach, Water Levels Coordinator, CSD

U.S. Geological Survey
 Nebraska Water Science Center

U.S. Bureau of Reclamation
 Kansas-Nebraska Area Office

Nebraska Natural Resources Districts

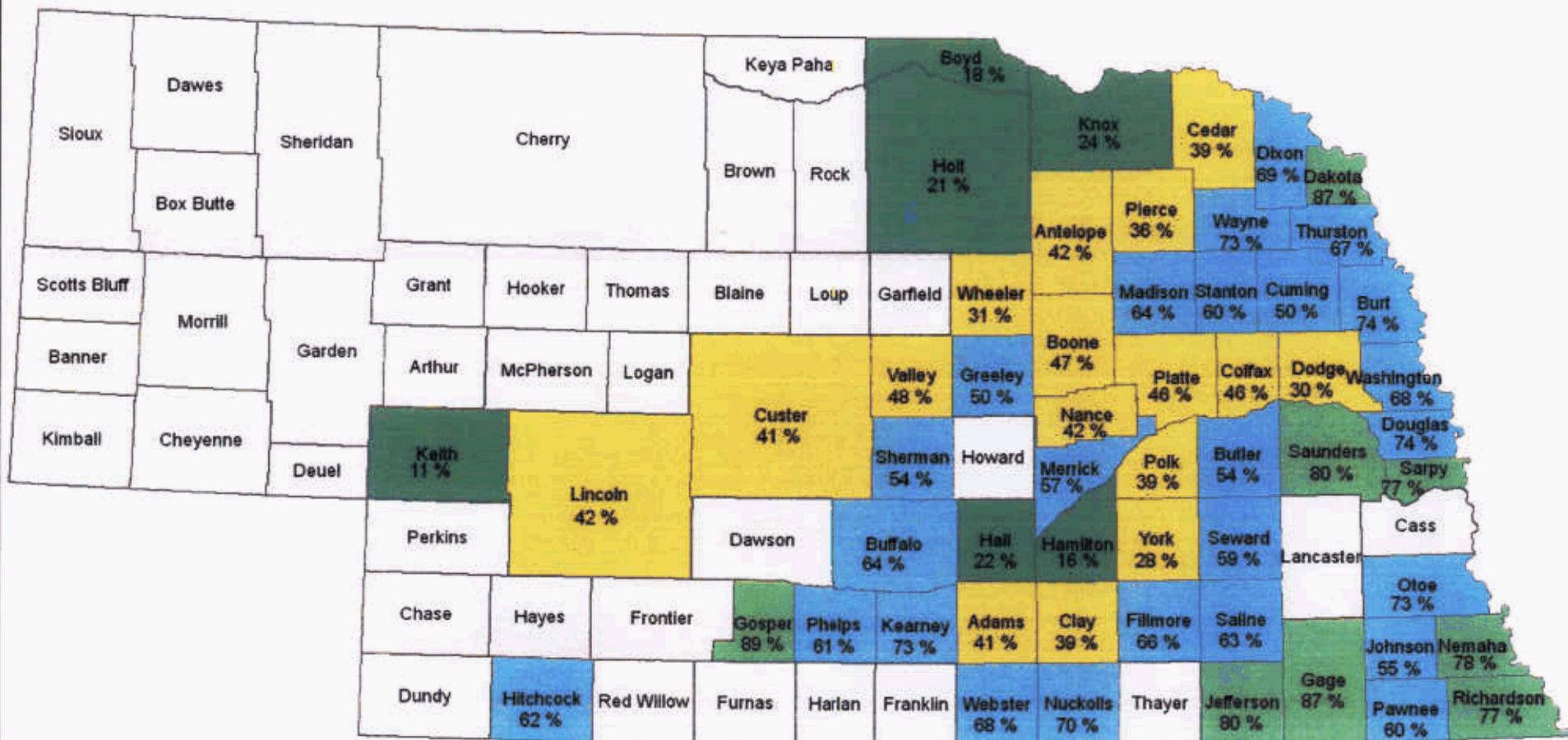
Central Nebraska Public Power and Irrigation District

N School of Natural Resources
I Institute of Agriculture and Natural Resources
ANR University of Nebraska-Lincoln

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September 2008

Nebraska Soybeans Planted No-Till in 2008



Legend

No-Till as a percentage of total planted soybean acres



2/17/2009

This letter is to voice my displeasure with the initial determination of the Lower Elkhorn River Basin to be fully appropriated in conjunction with the Lower Platte river Basin.

I believe that the determination to include the Elkhorn river basin in the fully appropriated area with the Lower Platte river basin has been arrived at erroneously and without just cause.

1. I know of irrigation wells along creeks within the Elkhorn river basin that have static water levels rising to the point of becoming artesian wells.
2. The use of 10/50 designation to include a much larger land area is purely a political move in order to keep from having to shut off those immediately in the hydrologically connected area. An analogy would be to say a butterfly flapping its wings in Hong Kong could affect weather patterns in Northeast Nebraska 10% of the time in 50 years. I protest the use of the 10/50 pattern in determining the hydrologically connected area.
3. The setting of water usage baselines should be scientifically determined and shouldn't be allowed after the fully appropriated designation. Public water supplies, domestic and industry uses attribute for 26.4% of the ground water wells, and now have the opportunity to create there baseline of water usage. Why does agriculture have to be governed by a list of assumptions about there water usage? I suggest a more realistic measurement of actual use, by all parties, should be made prior closing a majority of Northeast Nebraska to irrigation development. I protest allowing municipalities and industries to set baseline water usage after the fully appropriated designation of the area.
4. I protest the altering of the determination models used in order to find the most stringent for limiting expansion of irrigated acres. Politics should not be the deciding factor behind water use and appropriations. Granted I understand the political climate around part of the state being fully appropriated and the balance of the state having little to no regulations. I also understand that a people not willing to look forward past the whims of those not financially or historically connected to the issue are destined to make hasty as well as incorrect decisions.

In conclusion, the above listed reasons are my testimony, and I suggest that the Department of Natural Resources re-evaluate inclusion of the Elkhorn River Basin with that of the Lower Platte River Basin.

Respectfully submitted

Regan Kucera
55175 833 Rd
Madison, NE 68748



To be Included in Record

Moratorium on irrigation

Speak Against

With the water supply ample for our current needs, The projects that owners want to continue with should be allowed. With the Taxes and cost of ownership of the real estate we as farmers should be allowed to use our land as we need to to make a living. If you are to stop irrigation on our land who will reimburse us for our lost income due to the reduced value of our land. Land that is developable is worth more than non irrigatable land. You are taking money out of our net worth by imposing this moratorium. Are you willing to pay us for that loss.

Bernard Wrede
54765 858 rd
Pierce Ne
68767
402-329-4938

Rob Juleen
855210 S61 AVE
Hoskins, NE 68740
402-565-4524



To The Department of Natural Resources:

This is a written testimonial concerning the determination that the Lower Platte River Basin is fully appropriated. We have been lifetime residents of the state of Nebraska. Residing in the rural area of Brunswick, in Antelope County.

We attended the informational meeting in Norfolk, NE at the NECC Campus Lifelong Learning Center. We can see that a big part of this determination is coming from the use of a computer model called ELM to make projections for future stream flows. We were told that this cutting edge technology was the best application of scientific knowledge at this time. We disagree, computer models have no inside track, no crystal ball, and no higher intelligence than the people putting the information into them. Computers can be used to generate any theory you want to prove just by changing the information that is put in. I have used computers to make cash flows and budgets for our farming business. I can make a positive or a negative cash flow just by changing the numbers being fed into the computer. I could put in a price of \$10.00 per bushel for corn but that doesn't guarantee that I'm going to sell my corn for \$10.00.

The people entering this information to make the predictions of stream flows with the ELM Model are doing just that. They are entering scenarios, predictions, and guesses as to what the future will be. The truth is they have no idea. True science involves gathering real valid information. Then using that information to come up with some valid conclusions. This is not fully being done in this determination.

If you are going to make a valid determination then true science needs to be used. Which should include all of the well monitoring that the NRD's have done ever since irrigation development began back in the 1950's not just the past 25 years with the exclusion of the last 2 wet years that have raised the underground water table from 1 to 5 feet. Farmers have already verified that the static water in these wells is currently higher than it has ever been before. Now that is the use of true science.

Farmers along with the help of local NRD'S have improved water conservation dramatically over the past fifty years. Has there been any consideration of all the flood control dams, stock dams, terraces, waterways, shelterbelts, and other water conservation structures that have been built over the past fifty years to hold the water out on the land. Another factor in this is the millions of acres of no-till that have been adopted to conserve water as well. All of these practices have dramatically cut down on the amount of water that is being fed into the river basins. This proves that all the water conservation efforts have been effective. It also proves that these conservation efforts have actually helped recharge ground water supplies by keeping the water out on the land and not letting it flow down the rivers to the Gulf of Mexico. This is evident because after fifty years of irrigating, ground water supplies are higher than they have ever been.

Now the reduced river flows are being used to prove that we are short of water and we must stop any further irrigation development in the state of Nebraska. While completely ignoring the sound and proven science that the water conservation efforts being used over the past fifty years are working extremely well and we have an abundant amount of water in the Ogalala Aquifer. Contrary to what we are being told the rivers and the groundwater are not I repeat are not Hydrologically connected. Ground water does not recharge rivers and rivers do not recharge groundwater. First and foremost rainfall recharges both, but good conservation practices that retain the rainfall and allow it to soak in out on the land dramatically help recharge the groundwater supplies. That is what we are seeing and this is sound science. Let's use common sense and sound science not made up computer models and irrational thinking.

If you want to raise unemployment and kill the economy of the State of Nebraska go ahead with the moratorium. Agriculture is still the backbone of the State of Nebraska. How many million's of dollars have been brought into the States real estate tax system because of irrigation development. Real estate taxes are doubled on a quarter section of ground with the addition of irrigation. Where is all that money going??

Government is supposed to be by the people and for the people not by the government and for the government. Come on people, wake up, let's take back our government and our state. The time has come. Enough is Enough!!!

Sincerely,
Steve Pellatz
Tim Pellatz
Warren Pellatz



LETTER OF PROTEST

February 6, 2009

TO: Department of Natural Resources

We are writing a letter to let you know of our concern about your Notice from the Department of Natural Resources that declared certain portions within the southern boundary of the Lower Niobrara National Resources District were declared fully appropriated. This designation immediately halts construction of new wells for industrial, municipal, and agricultural use. Having agricultural land within the area without irrigation, we feel you are taking away our rights and choices to develop our land in later years if we so choose to put irrigation on it. There are irrigation wells all around us but we are restricted to use "our" water, but they are allowed to use "our" water???? As a tax payer and American citizen, I find this hard to agree with. I believe there should be a solution for all people in the area by regulating the use of irrigated water and not making a selected few pay the penalty for the whole area. I strongly oppose this determination by the Department of Natural Resources. Please reconsider your appropriation of these lands.

Thank You

A Concerned Taxpayer

Nina A. Sorenson
50573 869th Road
Page, Nebraska 68766



LETTER OF PROTEST

February 6, 2009

TO: Department of Natural Resources

We are writing a letter to let you know of our concern about your Notice from the Department of Natural Resources that declared certain portions within the southern boundary of the Lower Niobrara National Resources District were declared fully appropriated. This designation immediately halts construction of new wells for industrial, municipal, and agricultural use. Having agricultural land within the area without irrigation, we feel you are taking away our rights and choices to develop our land in later years if we so choose to put irrigation on it. There are irrigation wells all around us but we are restricted to use "our" water, but they are allowed to use "our" water???? As a tax payer and American citizen, I find this hard to agree with. I believe there should be a solution for all people in the area by regulating the use of irrigated water and not making a selected few pay the penalty for the whole area. I strongly oppose this determination by the Department of Natural Resources. Please reconsider your appropriation of these lands.

Thank You

A Concerned Taxpayer

Marilyn Zahradnick

47436 87th Rd

Atkinson, Ne 68713

In regards to sections 29-11-6 & 29

11-5, in NE Wotton.



LETTER OF PROTEST

February 6, 2009

TO: Department of Natural Resources

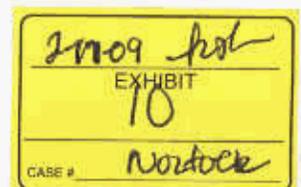
We are writing a letter to let you know of our concern about your Notice from the Department of Natural Resources that declared certain portions within the southern boundary of the Lower Niobrara National Resources District were declared fully appropriated. This designation immediately halts construction of new wells for industrial, municipal, and agricultural use. Having agricultural land within the area without irrigation, we feel you are taking away our rights and choices to develop our land in later years if we so choose to put irrigation on it. There are irrigation wells all around us but we are restricted to use "our" water, but they are allowed to use "our" water???? As a tax payer and American citizen, I find this hard to agree with. I believe there should be a solution for all people in the area by regulating the use of irrigated water and not making a selected few pay the penalty for the whole area. I strongly oppose this determination by the Department of Natural Resources. Please reconsider your appropriation of these lands.

Thank You

A Concerned Taxpayer

Melvin Zahradnick
47436 877th Rd
Atkinson Ne 68713

In regards to sections 29-11-5 and 29-11-6.



**COLDWELL
BANKER**

January 21, 2009
**DOVER
REALTORS**

1000 NORFOLK AVE., BOX 939
NORFOLK, NE 68701

BUS. (402) 371-0200
TOLL FREE (888) 874-0200
FAX (402) 371-7003
dover@doversite.com
www.doversite.com

RECEIVED

JAN 22 2009

DEPARTMENT OF
NATURAL RESOURCES

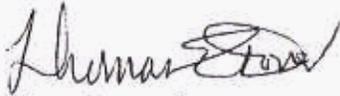
Brian P. Dunnigan
Director
Department of Natural Resources
P. O. Box 94676
Lincoln, NE 68509-4676

Dear Mr. Dunnigan:

It is my understanding that the Dept. of Natural Resources intends to fully appropriate the Lower Elkhorn Natural Resources District. I encourage a more careful review and reconsideration of this issue. The Lower Elkhorn NRD does not have the same issues that many of the other areas of Nebraska are facing. Since 1965 the water table has increased, in spite of the addition of 5,000+ irrigation wells. The Lower Elkhorn takes in approximately 1.9 million acre feet of water from the west and deposits in excess of 9.0 million acre feet of water to the east. These numbers appear to have maintained this level for a number of years.

If the need exists to fully appropriate other areas of the state, it is understandable. Maybe the Lower Elkhorn should be removed from this action as our water issues are not the same as other areas of the state. I respectfully request your reconsideration of this issue. I also would like to see you put into place specific methodologies for an exit strategy from the fully appropriated status prior to implementing a measure of this magnitude.

Sincerely,



Tom Dover, Sr.
Dover Realtors
1000 Norfolk Avenue
Norfolk, NE 68701
402-371-0200

Each Office Is Independently Owned And Operated.



PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT



8901 S. 154th Street
Omaha, NE 68138-3621
402-444-6222
www.papionrd.org

February 10, 2009

Brian P. Dunnigan P.E., Director
Nebraska Department of Natural Resources
301 Centennial Mall South, 4th Floor
P.O. Box 94676
Lincoln, Nebraska 68509-4676

RECEIVED
FEB 12 2009
DEPARTMENT OF
NATURAL RESOURCES

RE: Preliminary Determination of Fully Appropriated: Consultation

Dear Director Dunnigan:

The Nebraska Department of Natural Resources (Department) issued a letter on January 29, 2009 requesting verification and identification of entities affected by the recent preliminary determination of fully appropriated, as compiled by the Department. The Department also requested that the Papio-Missouri River Natural Resource District (District) review the draft joint letter from the Department and District to those affected entities. The following is a listing of the entities that the Department determined to be affected:

Arlington, Nebraska	Waterloo, Nebraska	Omaha, Nebraska
Valley, Nebraska	Springfield, Nebraska	

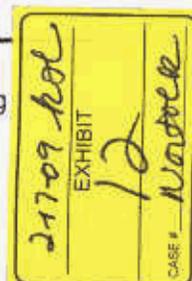
Several other municipalities derive their drinking water supply either directly from sources in the hydrologically connected area or purchase water from entities reliant on hydrologically connected water supplies. The District requests that the Department include all direct and indirect municipal supply systems and requests to amend the list with the following municipalities:

Papillion, Nebraska	Gretna, Nebraska	Bennington, Nebraska
Bellevue, Nebraska	Ralston, Nebraska	Fort Calhoun, Nebraska
La Vista, Nebraska	Boys Town, Nebraska	Blair, Nebraska

Additionally, the Metropolitan Utilities District (MUD) is a political subdivision of the state and is responsible for a large percentage of the municipal water supply within the District and should therefore be included in the consultation process. Lastly, Offutt Air Force Base maintains its own water supply wells, some of which are in the hydrologically connected area, and should be included in the consultation process.

Papio – Missouri River Natural Resource District Board of Directors

Larry Bradley	Fred Conley	John Conley	Tim Fowler	Scott Japp	David Klugg
Rick Kolowski	Dorothy Lanphier	John Schwoppe	Richard Tesar	Jim Thompson	
John Winkler, General Manager					



Brian P. Dunnigan P.E., Director
February 10, 2009
Page 2

The District intends to co-sign, with the Department, the letter to the affected entities with the following clarification and request. Please ensure that the final version of the letter include contact information specific to this district and be addressed to General Manager, John Winkler. The District also asks that the date, time and location of the informational hearings regarding the preliminary designation of fully appropriated be included in the letter.

Thank you for the opportunity to work jointly with the Department for this consultation process. Please contact me if you should have any questions.

Sincerely,



Chairman

Papio-Missouri River Natural Resources District

Papio – Missouri River Natural Resource District Board of Directors

Larry Bradley Fred Conley John Conley Tim Fowler Scott Japp David Klugg
Rick Kolowski Dorothy Lanphier John Schwope Richard Tesar Jim Thompson
John Winkler, General Manager



**UPPER BIG BLUE
Natural Resources District**

105 N. Lincoln Ave.
York, Nebraska 68467

402-362-6601
Fax: 402-362-1849
www.upperbigblue.org

February 10, 2009

Brian Dunnigan
Director
Department of Natural Resources
PO Box 94676
Lincoln, Nebraska 68509

RE: Preliminary Determination of Fully Appropriated: Consultation

Dear Brian,

The Chairman of the Board, Augustus Brown, asked me to correspond with you after his review of your request by letter dated January 29, 2009. The Upper Big Blue Natural Resources District verifies the Department of Natural Resources conclusion that no statutorily listed entities are affected by the Lower Platte Basin preliminary fully appropriated determination. This verification is for the affected legal descriptions within that portion of Polk County that is in the Upper Big Blue NRD.

I think that the Integrated Management Plan process should be rather simple for both the Department and the District.

Sincerely,


John C. Turnbull
General Manager

RECEIVED
FEB 11 2009
DEPARTMENT OF
NATURAL RESOURCES

21708 hcd
EXHIBIT
13
CASE # Nutock

City of Norfolk

127 North 1st Street
Norfolk, Nebraska 68701
(402) 844-2000

RECEIVED

January 20, 2009

JAN 22 2009

DEPARTMENT OF
NATURAL RESOURCES

Brian P. Dunnigan
Director
Dept. of Natural Resources
P. O. Box 94676
Lincoln, NE 68509-4676

Dear Mr. Dunnigan:

Concerning your intent to fully appropriate the Lower Elkhorn Natural Resources District, I would urge a more careful review. The Lower Elkhorn NRD does not have the same issues that many of the other areas of Nebraska are facing. Since 1965 the water table has increased, in spite of the addition of 5,000+ irrigation wells. The Lower Elkhorn takes in approximately 1.9 million acre feet of water from the west and deposits in excess of 9.0 million acre feet of water to the east. These numbers appear to have maintained this level for several decades.

If there is a need to fully appropriate other areas of the state, it is understandable. Maybe the Lower Elkhorn should be split out of this action as our water issues do not mirror other areas of the state. I respectfully request your re-evaluation of this action. In addition, I would request you put into place specific methodologies for an exit strategy from the fully appropriated status prior to implementing a measure this drastic.

Sincerely,

CITY OF NORFOLK



Al Roder
City Administrator



**PRELIMINARY DETERMINATION HEARING
LOWER PLATTE BASIN
February 17, 2009
NORTHEAST NEBRASKA COMMUNITY COLLEGE
Norfolk, Nebraska**

Testimony Sign-In

Name (please print)	Company/Address
LUMIR Jedlicka	694 Rd 14 Schuyler Ne
Mike Whitesel	NEBRASKA Well Drillers Association - Lincoln
Terry ANSON	ANSON Electo. inc. Pawnee Nebr.
Henry Aschoff	Petersen Ag Systems, Inc.
Eduard Laubsch	Farmer
Mike Kraeger	LENRD Board & Farming Operation
Ron Cemper	Farmer Ertg. Dealer
CHAD A KORTH	1612 NORFOLK AVE NORFOLK
DON ADAMS	Nebraskans FIRST
Dave Nabity	Nebr. Alliance for Private Sector
Douglas P. Nelson	86264 573 Av Wayne, NE
RANDALL E. VAURINA	111 W. 5 TH ST., CLARKSON, NE
Bryce P. Heidig	93023 55 1/2 Ave Madison, Ne
Richard Hoppe	293 Rd 3 Columbus Ne 68604
Jim Tigne	55136 823 RD. Humphrey NE
Cody W. Amundson	98005 Hwy 57 Hartington, Ne 68739
Ed Zessin	54339 830 Road Madison NE 68702
Stan Staab	(LENRD GM) 611 E Benjamin Ave, NEFELK 68701

