

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
STATE OF NEBRASKA

In The Matter of the Public Hearing)
Relating to the LB 962 Fully)
Appropriated Area for the Central)
Platte Natural Resources District.)

Holiday Inn Convention Center
110 Second Avenue
Kearney, Nebraska

Convened, pursuant to notice, at 8:00 p.m.,
September 9, 2004,

BEFORE:

ANN D. DIERS, Hearing Officer.

- - -

I N D E X

<u>COMMENTS BY:</u>	<u>Page</u>
Tina Kurtz	4
Carroll Sheldon	7
Don Kraus	8
Loren Taylor	11
Duane Woodward	12
Tom Downey	14

- - -

<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled On</u>	<u>Found</u>
1 Proof of Publication in Omaha World Herald (1 page)	1	2	2	Appendix
2 Proof of Publication in Grand Island Independent (1 page)	1	2	2	Appendix
3 Proof of Publication in Kearney Hub (1 page)	1	2	2	Appendix
4 Proof of Publication in Tri-City Tribune (1 page)	1	2	2	Appendix
5 Proof of Publication in Lexington Clipper- Herald (1 page)	1	2	2	Appendix
6 Proof of Publication in The Central City Republican-Nonpareil (1 page)	1	2	2	Appendix
7 Proof of Publication in Nance County Journal (1 page)	1	2	2	Appendix
8 Notice from Roger K. Patterson Regarding Preliminary Determination of Fully Appropriated: Consultation (2 pages)	1	3	3	Appendix

<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled On</u>	<u>Found</u>
9 Central Platte NRD Bedrock Geology (1 page)	1	4	5	Appendix
10 Central Platte NRD Ground Water Transmissivity (1 page)	1	4	5	Appendix
11 Central Platte NRD Ground Water Elevations (1 page)	1	4	5	Appendix
12 Facsimile to Roger Patterson from Ronald Klein (5 pages)	1	6	6	Appendix
13 E-mail Message from Jay Rempe to Roger Patterson (3 pages)	1	6	6	Appendix
14 Testimony from Central NE Public Power and Irrigation District (1 page)	11	11	11	Appendix
15 Testimony from Loren Taylor (1 page)	12	12	12	Appendix
16 Testimony from Tom Downey with Attachments (126 pages)	19	19	19	Appendix
17 Testimony from Mike Allen (3 pages)	24	24	24	Appendix
18 Written Testimony from Rex Amack (2 pages)	25	25	25	Appendix
19 Written Testimony from Barb Pemberton Riege (2 pages)	25	25	25	Appendix

- - -

REPORTER'S CERTIFICATE:
State of Nebraska)
) ss.

County of Lancaster)

I, CAROLYN S. FREEMAN, reporter for GENERAL REPORTING SERVICE, certify that I reported the proceedings in this matter; that the transcript of testimony is a true, accurate and complete extension of the recording made of those proceedings; and 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 ____ day of September, 2004.

Reporter

- - -

PROCEEDINGS:

(Exhibits 1 through 13 were marked for identification.)

THE HEARING OFFICER: Good evening. It's 8:00 p.m., Central Daylight Time, on September 9th, 2004. This is the hearing to collect evidence and testimony concerning the appropriation status of the river basin, sub-basin, or reach, the Department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, sub-basin, or reach are determined to be hydrologically connected and whether the stays on new uses should be terminated.

My name is Ann Diers. I'm legal counsel for the Department of Natural Resources and I will be the hearing officer for this hearing. With me today are Roger K. Patterson, the Director of the Department of Natural Resources; Ann Bleed, Deputy Director; Tina Kurtz, who will be the Department's representative working with the Natural Resources Districts on the development of the joint Integrated Management Plans; and Tom Hayden, manager of the Department's Bridgeport office. Carolyn Freeman is the court reporter who will be making a verbatim record of this hearing.

Pursuant to Section 46-714(1) of the Nebraska

Revised Statutes, adopted by LB 962 in 2004, notice of this hearing was published once each week for three consecutive weeks in the Omaha World Herald, and in the Grand Island Independent, the Kearney Hub, the Tri-City Tribune, the Lexington Clipper-Herald, the Republican Non-Parcil, and the Nance County Journal. We have marked the Proofs of Publication as Exhibits 1, 2, 3, 4, 5, 6, and 7, and such exhibits are received into the record.

(Exhibits 1 through 7 were received in evidence. See Index.)

This hearing is required as a result of the Department of Natural Resources' preliminary determination on July 16, 2004, that the Central Platte Natural Resources District is fully appropriated in its entirety. The Department's preliminary determination was based on the history of water administration on the North Platte River, South Platte River, and Platte River, and on data from the United States Geological Survey, the University of Nebraska Conservation and Survey Division, and data from COHYST, the Cooperative Hydrology Study.

Since the Department's preliminary determination, the Department and Central Platte Natural Resources District have sent letters requesting consultation with any irrigation district, reclamation district, public power and

irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin and with other water users and stakeholders. We have marked the copy of the consultation letter dated August 11th, 2004, as Exhibit 8, and such exhibit will be accepted into the record.

(Exhibit No. 8 was received in evidence. See Index.)

The Department also held two public informational meetings, one on August 27, 2004, and the other one earlier this evening.

This is a public hearing, not an evidentiary hearing. Those testifying will not be required to be sworn in. If you haven't already signed the sign-in sheet that was on the table outside of the room, recording your presence at this hearing, I would request that you do so. We have a separate sign-in sheet identifying those persons wishing to testify this evening. You may testify even if you have not signed in on the sign-in sheet for testimony. Also, as noted in the notice of this hearing, testimony may be either oral or written. Written testimony will also be received into evidence and should be submitted to the court reporter. Pursuant to the notice, written testimony relevant to the purposes of this hearing has been received

by the Department.

Tina Kurtz will initially present testimony on behalf of the Department. I would ask her to do so at this time.

MS. KURTZ: I'm Tina Kurtz with the Nebraska Department of Natural Resources and, as Ann indicated, I will be giving testimony relevant to the fully appropriated designation of the Central Platte Natural Resources District.

The bedrock of the Central Platte Natural Resources District consists primarily of the Ogallala Group, the Pierre Shale, the Niobrara Formation, and the Carlile Shale, as shown on Exhibit 9. The primary aquifers in the district are the Ogallala Group and the Tertiary and Quaternary sands and gravels which overlie the bedrock. While these units vary in their composition, all have the ability to store and transmit ground water. One measure of the ability of an aquifer to provide water to a pumping well is transmissivity. Transmissivity is determined by multiplying the thickness of the aquifer by the ability of the aquifer material to conduct water. The transmissivity of the units in the Central Platte NRD varies between approximately 500 ft²/day and approximately 53,000 ft²/day, based on information gathered as part of the COHYST model

and from personal communication with Steve Peterson, a COHYST modeler. The transmissivity of the district is shown on Exhibit 10.

Exhibit 11 shows the configuration of the water table within the Central Platte NRD. This map shows that the general direction of ground water flow in the district is from west to east. The Platte River and associated tributaries are the primary surface water drainages in the district and act as ground water discharge areas.

The determination that the ground water and surface water in the entirety of the Central Platte Natural Resources District are hydrologically connected is supported by the fact that there are no geologic barriers to ground water flow within the district, as shown by the transmissivity values. For the most part, the flow direction of the ground water is towards and in to the major surface water drainages of the district providing further evidence that ground water and surface water are hydrologically connected.

In summary, the evidence shows that ground water and surface water are hydrologically connected throughout the Central Platte Natural Resources District, which would support a fully appropriated designation for the entirety of the Central Platte NRD.

THE HEARING OFFICER: Thank you, Tina.

Exhibits 9, 10, and 11 are received into the record.

(Exhibits 9 through 11 were received in evidence. See Index.)

The Department received a fax cover sheet and letter dated September 8th, 2004, from Mr. Ronald D. Klein, P.E., in lieu of his personal appearance at this hearing. This fax cover and letter are marked as Exhibit 12 and will be received into evidence.

(Exhibit No. 12 was received in evidence. See Index.)

The Department also received an e-mail and letter dated September 9, 2004, from Jay E. Rempe, State Director, Governmental Relations, addressed to Roger Patterson, Director of the Department. Mr. Rempe is from the Nebraska Farm Bureau Federation. This e-mail and letter are marked as Exhibit 13 and will be received into the record.

(Exhibit No. 13 was received in evidence. See Index.)

At this time, I'd like to invite anybody in the audience who would like to provide testimony, to take your turn at the microphone. In order to allow every person the opportunity to testify this evening, I would ask that

testimony be limited to five minutes per person. You may submit additional testimony in writing if you wish.

When you come forward, please state your name and spell it for the court reporter, and tell whom, if anybody, you are representing if you are representing someone other than yourself. Please speak into the microphone.

MR. SHELDON: My name is Carroll Sheldon, S-h-e-l-d-o-n, 610 East 46th Street, Kearney, Nebraska. I'm a board member of Nebraskans First and I'm also an elected board member of the Central Platte NRD. My statement will be short. I don't want to waste my time, your time, or the people who's here tonight time because nothing said or done will have any effect whatsoever on what the DNR is going to do, as it has been pre-determined in our opinion.

This hearing tonight is about implementing LB 962. After this hearing, the DNR will formally designate the Central Platte NRD as fully appropriated. For the record and the audience here tonight, I'm proud to say that Nebraskans First was the only farm group opposing LB 962 and the water policy task force that created it. We opposed LB 962 because it gave tremendous new power to regulate ground water irrigation to the State Department of Natural Resources while weakening local control. LB 962 is all about stopping new development and putting the clamps on

existing ground water irrigation. LB 962 is an awful law for Nebraska, where ground water irrigates 85 percent of our total irrigated acres. I want to say that again. Ground water irrigates 85 percent of our total irrigated acres.

Over time, LB 962 will seriously damage the local economies here in the Central Platte Valley as it begins to stifle and strangle production which generates the millions of dollars that built and now sustain our communities. LB 962 is a road map to economic disaster. What is happening tonight is one step down that road. LB 962 is already tearing rural Nebraska apart. It is putting farmers against farmer, NRD against NRD, and NRD's against the State DNR. LB 962 is a job creations act for lawyers. Right now we call upon the legislature's Natural Resources Committee and the governor to repeal LB 962 before it does serious harm to our farmers and state and local economies. End of testimony. Thank you.

THE HEARING OFFICER: Thank you, Mr. Sheldon.

Does anyone else care to testify this evening?

MR. KRAUS: Thank you. My name is Don Kraus, General Manager of the Central Nebraska -- and representing the Central Nebraska Public Power and Irrigation District. And I have a written copy of my remarks that I'll provide.

We support the designation of the Central Platte

Natural Resources District as fully appropriated. We also believe that surface water and ground water are hydrologically connected throughout the NRD, and water uses exceed available water supply.

The LB 962 revisions to Chapter 46 provide that, within 60 days after July 16, 2004, the Department shall designate which river basin, sub-basins, or reaches are overappropriated. The statute has two parts: designation of overappropriated basins, sub-basins, or reaches; and descriptions of areas that are hydrologically connected to streams within those basins, sub-basins, or reaches. The second part is a scientific, factual determination and the section we have concerns about.

While the use of the 28/40 line may be appropriate for application of management options, for example, different rules apply inside and outside the line, we do not believe it is appropriate as a definition of all areas that are in hydrologic connection. We believe the 28/40 line is an arbitrary line chosen in part because it was easily identifiable on the old MBSA maps. Another option for defining hydrologically connected areas would include the standard used by the state of Colorado, which defines non-hydrologically connected wells as those which will not, within 100 years, deplete the flow of a natural stream at an

annual rate greater than one-tenth of one percent of the annual rate of withdrawal.

Maps on the DNR website indicate that lands outside of the 28/40 line are hydrologically connected for a fully appropriated designation. It would be inconsistent to find that lands are hydrologically connected in one case, but not the other. If it eventually proves that management of uses beyond the 28/40 line is necessary, a conflict would likely occur because the State has found that these areas are not hydrologically connected.

THE HEARING OFFICER: Excuse me, Mr. Kraus. I'll give you a couple extra seconds at the end. Could you adjust the microphone up? We believe it's not --

MR. KRAUS: Sure. The current statutes provide no -- Is that doing it?

THE HEARING OFFICER: Is that better?

(Audience members nodding.)

MR. KRAUS: The current statutes provide no mechanism for modifying a designation in the future.

While Central supports the designation of the 28/40 line as a starting point for managing depletions, that support is subject to future review of the consequences of ground water use outside of the 28/40 line. We would expect the lines to be moved outward if necessary. Such movement

of the management line will be more difficult if the limit of hydrologically connected areas has been established at the 28/40 line.

Scientific information regarding aquifers adjacent to streams and tributaries is available to assist in the evaluation of where the hydrologic connection exists. In the case of the COHYST model, the Republican River was used as the southern boundary and the Loup River used as the northern boundary.

In summary, we support a designation of hydrologically connected areas based upon science and establishment of the initial management area using the 28/40 line.

THE HEARING OFFICER: Thank you, Mr. Kraus.

Mr. Kraus' testimony was marked as Exhibit 14 and is received into the record.

(Exhibit No. 14 was marked for identification and received in evidence. See Index.)

MR. TAYLOR: Mr. Director of the Nebraska Department of Natural Resources, my name is Loren Taylor. I'm a licensed water well driller and have been in the industry for over 49 years.

Today I am testifying not as a well driller, but as a taxpayer, landowner, and concerned citizen, in regard

to fully and overappropriated ground water in the Central Platte and the Twin Platte NRD. I know the surface water is fully appropriated, the ground water is not. I'm not a hydrologist or a geologist, however, I will not take a back seat to anybody questioning my knowledge of the ground water and the *hydraulic connection of ground and surface water in the Twin and the Central Platte NRD's.

The problem is that there is no water in the Platte River. If you would stop all drilling of new wells, shut down the wells that are pumping, you still don't have water in the river. When you get water from snow melt, and we know it will happen again, you'll have another problem. The trees and undergrowth in the river will be like beaver dam. Have you calculated the loss of water due to sub-irrigation of trees, shrubs, and so forth between North Platte and the Kearney diversion dam?

Please, look and listen before you say the Twin and Central Platte NRD's ground water is fully or overappropriated. Thank you.

THE HEARING OFFICER: Thank you, Mr. Taylor. Would you care to submit that into evidence?

MR. TAYLOR: Yes, I would.

THE HEARING OFFICER: Mr. Taylor's testimony has been marked as Exhibit 15 and is received into the record.

(Exhibit No. 15 was marked for identification and received in evidence. See Index.)

Does anyone else care to testify this evening? You may testify even if you did not put your name on the sheet regarding testifying.

MR. WOODWARD: My name is Duane Woodward, spelled D-u-a-n-e W-o-o-d-w-a-r-d. I'm employed by the Central Platte NRD as an engineering hydrologist and I'd like to submit some testimony this evening on the fully appropriated designation.

The determination of the fully appropriated area within the Central Platte NRD has been preliminarily determined to be the entire NRD area. While that determination is based on facts of surface water and ground water supplies and their uses by water rights and users throughout the Central Platte NRD basin, and those lines as far as surface water supply, it is important that we consider all the water budget that goes with inflows and outflows out of our river system to really determine what the long-term effects are and how those spread across the Central Platte NRD area to determine this fully appropriated area.

Likewise, on the ground water side of determining if fully appropriated, that is based on the term,

hydrologically connected ground water. To help determine hydrologically connected ground water, the Central Platte NRD as a participant with the Cooperative Hydrology Study, COHYST, has developed and worked on several regional ground water flow models as a group and those models basically run from Columbus, Nebraska, up to the state lines. Utilizing those models, we have looked at streamflow depletions from ground water pumping. And with that analysis, you can determine what the current hydrologic connection is, based on what was used there as the 28 percent/40-year concept. And that concept, I think, provides a good basis for us to use to determine what the fully appropriated areas in the Central Platte NRD. Water does move and the geology does show that there's areas further connected to that. But I think as far as the area that should be considered fully appropriated across the Central Platte NRD, would be the area within the 28 percent/40-year line concept, and that would provide an area of regulation which would further the determination of fully appropriated water supplies. Thank you.

THE HEARING OFFICER: Thank you, Mr. Woodward.

MR. DOWNEY: Good evening. My name is Tom Downey, T-o-m D-o-w-n-e-y. I'm a licensed water well contractor and I've been involved in the ground water industry for over 27

years. I'm a member of the Nebraska Water Well Standards and Contractors Licensing Board and vice-president of the National Ground Water Association. I'm testifying on behalf of myself as a concerned citizen.

While the Department of Natural Resources and others have stated that these hearings -- in these hearings that the provisions set forth by LB 962 have been met to fully appropriate the entire Central Platte and Twin Platte NRD's, I disagree and I am in opposition.

The statement that the entire districts are hydrologically connected to surface water is far too general. If the provision for fully appropriated would have been law during the first time a surface water appropriation could not be met in the late 1890's, due to drought I might add, would we have the economy that irrigated agriculture generates and the way of life that we enjoy in rural Nebraska today? I think not.

I was personally involved in the COHYST study, as our firm was contracted to drill what was probably the deepest of the COHYST test holes and monitoring wells during the project. We drilled the constructed wells in the eastern central and western COHYST areas. In addition, we have done extensive work for USGS, drilling and constructing monitoring wells to the base of the Ogallala formation as

part of the regional high plains ground water study.

Our ground water resource is much more complex than the generalizations stated here today in reference to transmissivity, ground water gradients and movement, and the hydrologic connection to surface water in the Platte basin.

People, we are not dealing with a bathtub full of sand, gravel, and water. It's not that simple. At the end of my testimony, I will submit and enter into the record test hole logs, well logs, geophysical electric logs, and water level data from monitoring well sites that were involved in the COHYST study, USGS sites, and other sites within the Twin Platte, Central Platte, and Lower Loup NRD's.

The information I have included is from near Brady on either side of the river, north of Brady, north of Gothenburg, near Cozad, north of Cozad, north of North Platte, and west of Tryon. This data shows that the degree of hydrologic connection varies immensely in relation to the proximity to the river or reach and at various depths within the saturated zones of the alluvium, the Ogallala formation, and the formations in between such as a broad water sands and gravels. The lithographic or test hole logs, electric logs, and water levels indicate somewhat of a disconnect between alluvial or upper areas and the deeper Ogallala. This is especially noticeable with the static water level

data from nested well sites. For example, at the site west of Tryon, the static water level of the shallow alluvium well, which is drilled at 45 foot deep, is typically 14 foot higher than static water level in the deeper nested wells that range from 370 to 770 foot deep. Near Brady, just north of the river, the static water level in the shallow alluvium well is typically one foot deeper than the static water level in the nested 370-foot well, which was constructed to the base of the Ogallala.

The complex nature of the ground water resource is evident in the new COHYST 28/40 stream depletion factor line that was developed last month, as shown on the map right over there. When using the USGS RSA lines developed as a result of the 1982 Missouri basin states study, the 28 percent depletion and 40-year line was significantly further away from the river. This is the study that DNR hung their hat on to determine boundaries and convince the basin NRD's to impose a temporary suspension in drilling during the past year. The latest science shows that the SDF line is much closer to the north side of the Platte River, especially within the Central Platte NRD.

The general assumptions and conclusions presented here tonight by DNR to justify the hydrologic connection, transmissivity, ground water gradients, and ground water

movement, one can find in this book. It costs eight bucks.

The COHYST study cost over \$7,000,000. The science is available now and will con- -- Let me finish.

THE HEARING OFFICER: Mr. Downey --

MR. DOWNEY: -- and will continually be developed in the future.

THE HEARING OFFICER: Excuse me.

MR. DOWNEY: The producers, landowners, and business people --

THE HEARING OFFICER: Mr. Downey, I'd ask you to stop. We are limiting testimony in all of the hearings to five minutes. If you do have additional, we will accept it in writing. The record will be held open until September 16th for that purpose.

AUDIENCE MEMBER: I think the audience would like to hear his testimony.

MR. DOWNEY: Thirty seconds and I'll be done, okay? Can I finish?

THE HEARING OFFICER: No, you may not. We have a precedent that five minutes of oral testimony are allowed and the balance may be submitted in writing. It is apparent you're reading. We would accept that into the evidence, as well as --

MR. DOWNEY: Well, I think everybody here should

hear this. We've went to informational meetings for the last two or three weeks hearing DNR's case and listening to this. Can I get 30 more seconds?

AUDIENCE MEMBER: Let's loan him 30 seconds, for God's sake. Take it.

MR. DOWNEY: Okay. The producers, landowners, business people, communities and economy of this area deserve more than general blanket conclusions to develop water policy. I challenge this agency and the director to do the right thing; use the science to the advantage of the citizens of this area and state. Do not burden Nebraska's largest industry by ignoring the science and stifling this region's abilities to grow and enhance its livelihood by developing a water policy that caters to outside interests. Thank you. I'll submit the e-logs, test hole logs, and my testimonies in there.

THE HEARING OFFICER: This is one exhibit?

MR. DOWNEY: There's about seven or eight in there, so --

THE HEARING OFFICER: Would you like them separately marked or just marked and --

MR. DOWNEY: That's totally up to you. There's seven or eight -- One's fine.

THE HEARING OFFICER: One's fine?

MR. DOWNEY: Thank you.

THE HEARING OFFICER: Thank you, Mr. Downey.

Mr. Downey's packet of information has been marked as Exhibit 16 and is received into the record.

(Exhibit No. 16 was marked for identification and received in evidence. See Index.)

MR. ALLEN: My name is Mike Allen, M-i-k-e A-l-l-e-n. I live in rural Adams County. I'm from four generations of Nebraska farm families. I own and operate a small irrigated and dry land farm, and I've worked in agribusiness supporting irrigated agriculture for the past 20 years. I also have served on the Water Well Standards and Contractor's Licensing Board since 1999. I'm dedicated to the preservation and sustainable beneficial use of our resources in this state by people of the state. I am testifying on my own behalf as a concerned citizen.

I'm opposed to the preliminary determination of the entire Central Platte NRD as fully appropriated. I have spent many hours researching, studying, and testifying on the policy, science, and politics that have brought us to this point. Throughout my involvement in this process, I have held firm to my conviction that the water policy should be based on sound science through local control. This latest action by DNR continues to erode local control and

disregard the excellent science provided most recently by the \$7,000,000 investment made in the COHYST study.

When Vince Dreeszen, the preeminent authority on water resources in this state for the past 40 years, presented a comprehensive scientific study entitled "Nebraska's Water Budget" in October of 2003, it was summarily dismissed by DNR as being too general to be of much value in the Lincoln Journal Star. Now the COHYST study has shown that the principles in Mr. Dreeszen's water budget are valid and, in fact, remove 75 to 80 percent of the land north of the Platte River that was placed under suspension using DNR's guidelines. However, in direct conflict with this best data available, as DNR referred to COHYST prior to its release, DNR is now dictating a district-wide moratorium through its fully appropriated designation.

The science being offered by DNR to support this district-wide designation is, itself, too general and extremely simplistic. By only using gradient flows and soil transmissivity, and ignoring precipitation recharge, conservation measures, and the use of natural vegetation versus irrigated crop land and other factors, it is possible to reduce Nebraska's hydrogeologic system to a convenient justification tool to meet DNR's political agenda. The

ability to manipulate science in this way was granted to DNR by LB 962 under the so-called proactive plan whereby DNR shall, quote, "shall specify by rule and regulation the types of scientific data for making preliminary determinations."

Reducing the water equation to just gradients and transmissivity will absolutely lead to the conclusion that we are running out of water. Our current drought creates a very opportunistic environment for promoting this hypocrisy.

The reality is that the current drought aside, we are not running out of water. USGS flow data, as well as water table data from the UNL conservation and survey division document this. It is historical scientific data. There are, of course, local exceptions which have been and continue to be managed by our NRD's.

During Central Platte's hearing process last fall to enact the temporary suspensions, the Central Platte was threatened by DNR with the loss of local control if moratoriums were not put in place. The Central Platte was also advised, quote, "You do not need absolute scientific evidence, but only, is there reason to believe, in the reasonably near future, development is likely to contribute to conflicts?" end of quote. Finally, the Central Platte was asked to disregard the public testimony of its

constituents that were 83 percent opposed to the suspensions. Now, in spite of all these concessions, local control is being denied anyway.

The conflict being referred to is between surface water and ground water users. The assumption is that, if surface water irrigators don't get their water, it's caused by ground water users. Instead of emphasizing the beneficial relationship that surface and ground water users enjoy, DNR is emphasizing an adversarial one. Additionally, federal surface water projects are not even designed to meet all requirements all of the time. They are designed to be up to 50 percent short in any given year and up to 100 percent short in 10 years. It would be gross over-engineering to try and meet all demands all the time, yet, this criteria is being used to justify the designation of fully appropriated.

The actions by DNR lead one to believe that this agency does not recognize any authority other than its own.

This was never made more clear than when the deputy director stated to the Lincoln Journal Star that, quote, "Under the current Ground Water Management Act, you can mine an aquifer to extinction," end of quote. This statement completely disregards the role of NRD's and the local control they provide. It is misleading in its intent,

implying that our aquifer is going dry, which is not supported by historical data.

If DNR's agenda could be justified on its own merit, these tactics of division, threat, fear, and misinformation would not be necessary. Nebraska is unique among the 17 western dry states. We are blessed with a large quantity of fresh aquifer, one of the largest in the world. We should demand a unique water policy that provides for beneficial sustainable use, not one that is modeled after states that do not enjoy our abundant resources.

I am not pretentious enough to assume that any of the testimony presented here tonight will have any bearing on NRD's (sic) decision. Based on past experience, I fear this is merely a box filling exercise required by law, a formality to a predestined conclusion. Still, I would urge you to consider supporting the overappropriated designation of the portion of the NRD above Elm Creek and a fully appropriated designation of the portion of the NRD below Elm Creek within the COHYST 28 percent and 40-year depletion boundary.

DNR will be successful in its pursuit to achieve dictatorial control of our water resources in this state, but this should not be seen --

THE HEARING OFFICER: Mr. Allen?

MR. ALLEN: -- as a victory by the people, but instead, and I believe it will --

THE HEARING OFFICER: Mr. Allen?

MR. ALLEN: -- be viewed as a painful reminder of the importance of the words above the door of our state legislature --

THE HEARING OFFICER: Mr. Allen, your time is up.

MR. ALLEN: -- "The salvation of this state is the watchfulness of its citizens." Thank you.

THE HEARING OFFICER: Thank you, Mr. Allen. Do you want to submit that into the record?

MR. ALLEN: Sure.

THE HEARING OFFICER: Okay. Does anyone else care to testify this evening?

THE REPORTER: Did you want to receive that?

THE HEARING OFFICER: Oh, I'm sorry. Exhibit 17 is received into the record.

(Exhibit No. 17 was marked for identification and received in evidence. See Index.)

You may testify even if you did not put your name on the list of persons wishing to testify.

(No response.)

Okay. No one is coming forward. It's now 8:35 Central Daylight Time. This hearing is now closed, however,

the record will be held open through September 16th, 2004, for receipt of any additional written testimony. Thank you for attending.

(Whereupon the hearing was concluded at 8:36 p.m., on September 9, 2004.)

(Exhibits No. 18 and 19 were marked for identification and received into evidence. See Index.)

- - -