

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
STATE OF NEBRASKA

IN THE MATTER RELATING TO THE)
PRELIMINARY DETERMINATION)
THAT THE LOWER NIOBRARA RIVER)
BASIN IS FULLY APPROPRIATED)

Holiday Inn Express
803 East Highway 20
Valentine, Nebraska

Convened, pursuant to notice at 7:00 p.m. on
December 20, 2007

BEFORE:

RON THIES, Hearing Officer.

- - -

OTHERS PRESENT:

ANN BLEED, Director, Department of Natural Resources

JESSE BRADLEY, Integrated Water Management Analyst

PAM ANDERSON, Legal Counsel for the Department

- - -

Kelly S. Horsley
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REPORTER'S CERTIFICATE:

STATE OF NEBRASKA)
) ss:
LANCASTER COUNTY)

I, KELLY S. HORSLEY, certified reporter for ACE Reporting, NE, 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 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 _____ day of January, 2008.

Kelly S. Horsley, CERT-ER

1 PROCEEDINGS:

2 THE HEARING OFFICER: Good evening. It's 7:00
3 p.m. Central Standard Time, December 20, 2007. We are
4 located at the Holiday Inn Express, 803 East US Highway 20
5 in Valentine, Nebraska. My name is Ron Theis, I'm legal
6 counsel for the Department of Natural Resources and I'll
7 be the Hearing Officer for this hearing.

8 With me today are Ann Bleed, Director of the
9 Department of Natural Resources; Jesse Bradley, Integrated
10 Water Management Analysis; Pam Anderson, the Chief Legal
11 Counsel for the Department; Kelly Horsley, to my left, is
12 the court reporter who will be making a verbatim record of
13 this hearing.

14 There is an attendance sheet that has been
15 circulating; it's over on the table to my left. If you
16 haven't signed it, I'd please ask you to sign it. If you
17 haven't already turned off your cell phones, please do so.

18 The purpose of this hearing is to take testimony
19 on the Department's previously released Preliminary
20 Determination that the Lower Niobrara River Basin is Fully
21 Appropriated. After the hearing today, the other hearings
22 on this preliminary determination and an examination of
23 testimony and all relevant evidence, the Department will

1 make a determination whether the portion of the Niobrara
2 River Basin, including the surface water shed of the
3 Niobrara River and its tributaries from the Mirage Flats
4 Diversion Dam to the Spencer Hydropower Dam and the
5 groundwater aquifers considered to be hydrologically
6 connected to that portion of the Niobrara River and their
7 tributary is fully appropriated. The authorities for
8 these hearings and the decisions are enumerated in Neb.
9 Rev. Stat. 46-748.

10 This is a public hearing, not an evidentiary
11 hearing. Those testifying will not be required to be
12 sworn in. We have a separate sign-in sheet from the one
13 that I mentioned about attendance for those persons
14 wishing to testify. It will be located at the end of this
15 table, and this podium where the microphone will be is
16 where I will ask people to come to give oral testimony.
17 You may also give written testimony. Those providing oral
18 testimony will be allowed to speak for a limited amount of
19 time. In order to establish what that time is, I'd like a
20 show of hands at this point for all those who wish to make
21 an oral statement. Five minutes will be allowed to make
22 your oral statements. I will give a warning signal and
23 show it to you when there's one minute left for your

1 testimony.

2 Written testimony regarding the preliminary
3 determination on the Niobrara may be submitted to the
4 court reporter at this hearing or it may be mailed to the
5 Department. It will be accepted by the Department for
6 inclusion into the record if received by the close of
7 business December 27th, 2007.

8 At this point I would like to submit for the
9 record a copy of the notice for this hearing, entitled
10 Preliminary Determination that the Lower Niobrara River
11 Basin is Fully Appropriated. That will be marked as
12 Exhibit 1.

13 (Exhibit 1 was marked and offered into the
14 record. See Index.)

15 I'd also like to submit the Proof of Publication
16 pursuant to Neb. Rev. Stat. 84-907, stating the
17 publication of the Department of Natural Resources' Public
18 Hearing Notice for this hearing occurred on three
19 consecutive weeks in newspapers in statewide circulation
20 and in newspapers of circulation within the basins. The
21 list for your information -- it's kind of after-the-fact,
22 but Spencer Advocate, Ainsworth Star-Journal, Valentine
23 Midland News, Springview Herald, Gordon Journal, Omaha

1 World-Herald, O'Neill Holt County Independent, and the
2 Bassett Rock County Leader were where those publications
3 occurred.

4 And Kelly, I've given a bundle of proofs of
5 publications, and those will be marked as Exhibit 2.

6 (Exhibit 2 was marked and offered into evidence.
7 See Index.)

8 I'd like to take Official Notice, for the
9 record, that the Department's report for 2008 entitled The
10 Annual Evaluation of the Availability of Hydrologically
11 Connected Water Supplies, as published on the Department's
12 web site, is material on the subject of this hearing,
13 which hopefully speaks for itself.

14 Before beginning the rest of the testimony, I'd
15 like to explain how we will proceed. In order to provide
16 some organization and focus to the overall testimony that
17 will be presented, I will ask for each person wishing to
18 speak decide whether they are proponents, that is, in
19 favor of the preliminary determination; opponents, against
20 the preliminary determination; or neutral on the
21 preliminary determination. I'd like to take the order
22 that the Legislature used. Proponents will go first,
23 opponents will go second, and neutral testimony third.

1 My understanding is that there are a number of
2 State agency and Federal agency representatives. It may
3 be most understandable for those wanting to make public
4 comments if they hear from those agencies first. So I
5 would like a show of hands for representatives of State
6 agencies or Federal agencies who want to provide
7 testimony. Three. We'll get you guys up first and then
8 get on to the usual business.

9 So to review, in order to give everyone who
10 wishes to testify an opportunity to do so, I'd like to ask
11 that each person limit their testimony to five minutes.
12 You may ask for additional time if you need to. However,
13 if your additional testimony appears to be repetitive,
14 I'll ask you to wrap it up.

15 If you are here with a group of persons -- Do we
16 have anyone who came in a group, a bus, or anything like
17 that?

18 Are you basically speaking for yourselves as
19 individuals? No one speaking for a group? Okay. Well
20 I'll consider you speaking as individuals, but I'll ask if
21 you are representing someone; an organization, an agency,
22 a company or whatever, if you would state who you are
23 representing at the time that you testify.

1 At this time I'd like to ask the representatives
2 from the State and Federal agencies to come forward to the
3 front of the room. And for your information, we'd like to
4 consider this area kind of an on-deck area. After we get
5 to the bulk of those testifying, if you'll kind of
6 organize yourselves and fill in the on-deck area as you
7 see a space empty. The sign-in sheet for testifying will
8 be over here and we can proceed from there.

9 So when you come forward, please state your name
10 and spell it for the court reporter, and who you're
11 representing. If you want to present an exhibit for the
12 record and something in writing, please identify it and
13 leave it here for the court reporter and we'll give you an
14 exhibit number so that you can find it later in the record
15 when you go looking for it.

16 I'm going to replace the microphone here and ask
17 that everyone use the microphone.

18 MR. WERKMEISTER: Hi, I'm Wayne Werkmeister, the
19 acting superintendent for the Niobrara National Scenic
20 River and Missouri National Recreational River with the
21 National Parks Service. I'd like to thank Director Bleed
22 and her staff for the opportunity to comment on the
23 Preliminary Determination for the Niobrara River Basin --

1 THE HEARING OFFICER: Excuse me, Wayne, would
2 you spell your name, please?

3 MR. WERKMEISTER: Sorry. Wayne, W-a-y-n-e W-e-
4 r-k-m-e-i-s-t-e-r. I'm here on behalf of the citizens of
5 Nebraska and the United States that we serve and represent
6 the interest of the National Park Service. We manage a
7 76-mile segment of the Niobrara River from Borman Bridge
8 to Nebraska Highway 137, and 20-mile segment up from the
9 confluence of the Missouri River. These segments were
10 established in 1991 by Congress under the Wild and Scenic
11 Rivers Act. We are directed to manage, protect and
12 enhance the free-flowing condition, water quality, scenic,
13 recreational, fish and wildlife, and other outstandingly
14 remarkable values for future generations as mandated by
15 our 1916 Organic Act, and the 1968 Wild and Scenic Rivers
16 Act.

17 We hold a 1991 water right for in-stream flows
18 necessary to protect resource values and accomplish the
19 purposes for Wild and Scenic Rivers Act. We are concerned
20 that flows have been decreasing in the 76-mile reach of
21 the Niobrara National Scenic River managed by National
22 Parks Service. Our analysis of the data for the period of
23 1946 to 2006 indicates that flow at the USTS gauge at

1 Sparks has decreased has decreased, particularly for the
2 June to October period, while the Palmer Drought Severity
3 Index indicates that climatic local conditions have
4 generally been wetter in recent decades. We believe this
5 decrease in flow trend in the Niobrara River is related to
6 increased surface and groundwater permitting and
7 development in the Niobrara River Basin. A recent
8 analysis by the NPS indicates that pending surface water
9 applications in the Niobrara Basin have increased
10 dramatically, and in fact, new applications for over 510
11 CFS were filed as of December 2007.

12 We support DNR's decision to declare the
13 Niobrara River Basin and its tributaries from Mirage Flats
14 Diversion Dam to Spencer Hydropower Dam, including
15 groundwater aquifers hydrologically connected, to be fully
16 appropriated. We believe this is the first step toward
17 slowing the water development until studies can be
18 completed to determine the in-stream flow needs required
19 to protect the Niobrara River. We will continue to
20 provide data and work with DNR to make their annual
21 evaluation of the availability of hydrologically connected
22 water supplies. We will also continue to work with NRD to
23 collect data and to assess the impact of development on

1 the Niobrara River and resources dependent upon in-stream
2 flows. We will continue to support the Nebraska Game and
3 Parks Commission's proposal to secure an in-stream flow
4 under Nebraska state law. And we will submit more
5 detailed written testimony by the December 27th deadline.
6 Thank you for the opportunity to comment.

7 THE HEARING OFFICER: Thank you, Wayne.

8 Next agency representative, please?

9 Go ahead.

10 MR. FRERICHS: Hello, my name is Todd Frerichs.
11 I'm Acting Project Leader for the Fort Niobrara Valentine
12 National Wildlife Refuge Complex.

13 THE HEARING OFFICER: Todd, would you spell your
14 name, please?

15 MR. FRERICHS: Frerichs, F-r-e-r-i-c-h-s.

16 THE HEARING OFFICER: Thank you.

17 MR. FRERICHS: We manage both the Fort Niobrara
18 and the Valentine National Wildlife Refuges. Fort
19 Niobrara was established January 11th, 1912, as a preserve
20 for native birds. Later that same year, our purposes
21 expanded for the conservation of bison and elk. On
22 October 19th, 1976, a National Wilderness Area was
23 established adjacent to the Niobrara River within the

1 refuge boundaries along 5.1 miles of the river.

2 Specific management goals and objectives of the
3 refuge are described in the Fort Niobrara Comprehensive
4 Conservation Plan. The goals and objectives seek to
5 preserve, restore, enhance the exceptional diversity
6 significant to the historic resources of the Niobrara
7 Valley and the Sandhills of Nebraska. We believe we hold
8 the 1912 water right for in-stream necessary to accomplish
9 the purposes of the refuge. We also believe that the 1976
10 water right is in place to protect the wilderness area.

11 We are concerned about the decreased flows in
12 the Niobrara River. Our analysis of data for the periods
13 of 1946 to 2006, and the CAPE flows at the USGS gauge at
14 Sparks has decreased, particularly between June and
15 October, while the Palmer Drought Severity Index indicates
16 the local climate conditions have generally been wetter in
17 the recent decades.

18 We believe the decreased flow trend for the
19 Niobrara River related to surface and groundwater
20 permanent development. We support DNR's decision to
21 declare the Niobrara River and its tributaries from the
22 Mirage Flats Diversion Dam to Spencer Hydro Dam including
23 groundwater aquifers hydrologically connected to be fully

1 appropriated. We believe this is the first step in
2 slowing the development until studies can be completed to
3 determine the in-stream flow needs of the refuge. We will
4 continue to provide data with the DNR. We will continue
5 to work with the Natural Resource Districts to collect
6 data. We will continue to support the Game, Fish and
7 Parks Commission's proposal to secure an in-stream flow
8 rate. We will submit additional written testimony by the
9 December 27th deadline. Thank you for the opportunity to
10 express our concerns.

11 THE HEARING OFFICER: Thank you, Todd.

12 Next agency representative? Is everyone able to
13 hear? Would you please speak up if you can't hear? Just
14 let us know if you can't hear back there.

15 MR. HUTCHINSON: My name is Larry Hutchinson, L-
16 a-r-r-y H-u-t-c-h-i-n-s-o-n, and I'm the Water Resource
17 Program Manager for the Commission, Nebraska Game and
18 Parks Commission. I'm here today to provide an oral
19 statement on behalf of Rex Amack, the Director of the Game
20 and Parks Commission.

21 The Game and Parks Commission is pleased to
22 provide summary testimony at this hearing, at Atkinson and
23 the one in Valentine regarding the preliminary

1 determination that the Lower Niobrara Basin upstream of
2 Spencer Dam is fully appropriated. The Commission intends
3 to file written comments prior to the conclusion of the
4 hearing process. The Commission supports the Department's
5 preliminary determination that this part of the basin is
6 fully appropriated. The Commission has advocated since
7 early in 2007 that a moratorium on surface and groundwater
8 use should be initiated until evaluations for in-stream
9 flow needs for fish, wildlife and recreation resources are
10 completed.

11 The Commission owns and manages various park and
12 wildlife lands within the basin, and the Commission's
13 Valentine fish hatchery uses surface water appropriations
14 to provide fish of various species for stocking in
15 Nebraska public and private waters statewide. Public
16 areas and many private campgrounds provide access for
17 outdoor recreation opportunities on the river and
18 tributary streams. In addition, there is a State
19 waterfowl refuge along the Niobrara River along most of
20 the border between Holt and Boyd counties. We also note
21 that there are various state and federal threatened and
22 endangered species that inhabit or use various river and
23 tributary reaches in the basin that depend on stream flows

1 for habitat. The information on their occurrences will be
2 provided with the Commission's written comments.

3 Near Valentine, the Niobrara River passes
4 through Fort Niobrara National Wildlife Refuge owned and
5 managed by the US Fish and Wildlife Service, and in
6 addition, there is a 76-mile reach of the Niobrara that is
7 designated as a scenic river reach under the National Wild
8 and Scenic Rivers Act. This reach contains outstanding
9 and remarkable national resource and recreation values,
10 including the most popular river flowing reaches in
11 Nebraska. The National Park Service administers this
12 reach, along with the assistance of the Niobrara Council.
13 These federal designated areas along the river are of
14 national and state resource significance. It is important
15 that efforts continue to address river and tributary flow
16 needs important to these national and state resources.

17 In conclusion, the Commission supports the
18 Department's preliminary determination for the lower
19 Niobrara, and recommends that the final determination
20 remain the same, that the basin is fully appropriated.
21 Such a finding may provide adequate time for the
22 Commission to develop in-stream flow recommendations under
23 the Department's current in-stream flow and groundwater

1 act regulations. The Commission remains committed to work
2 with Natural Resource Districts and other Niobrara River
3 stakeholders in such efforts. Respectfully, for Rex
4 Amack, the Director.

5 THE HEARING OFFICER: Thank you, Larry.

6 No other agency people? Would the proponents
7 for the preliminary determination step forward please?
8 And you can -- Remember the routine is that you sign here
9 and there's an on-deck --

10 MR. HUTCHINSON: I believe I gave her a copy of
11 my --

12 THE HEARING OFFICER: Thank you, Larry.

13 THE REPORTER: Exhibit No. 5.

14 THE HEARING OFFICER: Exhibit No. 5 from
15 Nebraska Game and Parks Commission is accepted into the
16 record, and No. 4 from the Fort Niobrara is accepted, and
17 No. 3 from Fish and Wildlife Service is also accepted into
18 the record.

19 (Exhibits 3, 4, and 5 were marked and accepted
20 into the record. See Index.)

21 Thank you for joining us. You may begin,
22 please.

23 MR. HOVORKA: Good evening, my name is Duane

1 Havorka, D-u-a-n-e H-a-v-o-r-k-a. I'm here to testify on
2 behalf of the Nebraska Wildlife Federation. The
3 Federation is a statewide organization of people who hunt,
4 fish, hike, bike and canoe and generally enjoy the
5 outdoors. Decisions like this need to be based on science
6 and on the law, and not on politics. We think that in
7 this case, in the evaluation and in the draft decision,
8 that the Department got it right. They got it right on
9 science and the law, and that they got it right because
10 it's the right thing to do.

11 To the extent that there is some gray area, and
12 we don't think there is, but the State should err on the
13 side of protecting their resource. It's a resource that
14 belongs to all of us as Nebraskans, and it's one that we
15 should protect. In the report I noted that -- you heard
16 already about the Fish and Wildlife Service Refuge and the
17 National Scenic River, and the question it reserves water
18 rights. And I would note that those were not considered
19 by the Department in reaching this decision. They were
20 not, in part, because they had never gone to court to be
21 established, and in part because they haven't been
22 quantified. But again, it's another reason to err on the
23 side of protecting the resource because of those at least

1 potential water rights that could be there.

2 We know that there's lots of beneficial uses on
3 the Niobrara. Some of those have rights. Some of them
4 have pieces of paper with irrigation rights, livestock
5 industry, municipal water rights, and all of those have
6 rights, have permits in place. There's also other
7 beneficial uses that do not have those rights in place.
8 Certainly, the canoe outfitters on the Niobrara, the fish
9 and wildlife in the stream, the wet meadows that some
10 ranchers depend on that are fed by those rivers and
11 tributaries. All of those are beneficial uses under State
12 law, and yet none of those people have water rights. None
13 of them have pieces of paper. But I tell you that all of
14 those have economic impacts. That those outfitters, those
15 ranchers, the folks that take people out fishing and
16 hunting, their jobs depend every bit as much on that water
17 being in the stream, as a farmer or a livestock owner
18 depends on having that water available for their crops and
19 their livestock.

20 Assuming that the water shed is declared fully
21 appropriated, which we support, we think therefore that we
22 need a broad-based stakeholders group that is going to
23 represent the many different uses that are in the valley,

1 that will include farmers, that will include irrigators,
2 livestock, municipalities, and the others that have water
3 rights. But also it needs to include the Park Service and
4 the Fish and Wildlife Service and the canoe outfitters,
5 and the hotels in Valentine and all the other folks whose
6 livelihood depends upon the outcome of that integrated
7 water shed plan. And so we think that the ultimate result
8 needs to be a plan that protects not just the rights that
9 are in place on paper, but also to protect those other
10 uses and to protect the economics of the valley that
11 depend on them.

12 We do support the Game and Parks Commission in
13 their efforts to develop an in-stream flow application.
14 We think that's important; one, because it provides
15 information for that integrated management plan in terms
16 of impacts of those uses on fish and wildlife and
17 recreation. Second, because the extent of that water
18 right needs to be determined, and that can only determine
19 if that application is pursued and submitted. And third,
20 because you have people out there, and the example I use
21 is the canoe outfitters, that are dependent on that water
22 being there, but unlike the farmers, they can't go into
23 the Department of Natural Resources and ask for a piece of

1 paper, ask for a water right that gives them a right to
2 continue their business. They've made investments in
3 those campgrounds, investments in those communities, there
4 are jobs tied to their livelihood, but they can't ask for
5 a right to protect that as somebody can if they farm or
6 have livestock. And the only way that can be protected is
7 if the Game and Parks Commission or the Natural Resource
8 Districts file for an in-stream water right that will
9 protect those uses and protect their livelihoods.

10 In summary, the alternative is not a pretty
11 sight. And I don't think it's something that any of us
12 would want to see. At least, I hope not. And that is if
13 the basin is declared not to be fully appropriated, the
14 National Park Service and the Fish and Wildlife Service go
15 to court to prove that they have, in fact, those earlier
16 water rights in place, that's going to result in a whole
17 lot of legal bills, a whole lot of lawyers getting rich.
18 And I suggest to you that if the ultimate decision be
19 taken out of the hands of State and local officials, the
20 integrated management plan, and put in the hands of judges
21 will result in a much less flexible solution, and I think
22 one that probably a lot of us would not like.

23 So thank you for your time and attention.

1 THE HEARING OFFICER: Thank you, Duane.

2 Next proponent, please?

3 MR. THORNTON: My name is Melvin Thornton, T-h-
4 o-r-n-t-o-n. I'm representing the Friends of the
5 Niobrara.

6 I also have read the analysis and was impressed
7 by the details that the Department went through before
8 they wrote this report and temporarily made this
9 designation. And I believe it's the correct decision, and
10 I think that's underlined by the fact when you consider
11 those producers that this year have had to pay money to
12 use their legal water privileges. And now, what I'm about
13 to say, I'm afraid, is going to repeat some of the
14 information that Wayne and Todd have presented. And I'd
15 also like to recognize a kind of interesting fact that
16 Mike Murphy mentioned, that the level of the aquifer has
17 been going up at the same time that the level in the
18 stream, in the Niobrara, has been going down. And I
19 certainly agree with his analysis that this is probably
20 due to the direct pumping out of the river.

21 Now, what has concerned the Friends of the
22 Niobrara is the direct increase in the direct pumping out
23 of the river. Here is a graph from 1980 to 2007 showing

1 the new permits for pumping just for irrigation purposes
2 directly out of the river. There were six permits in the
3 '80's, six in the '90's, nineteen between 2001 and 2006,
4 that's over here, and then this huge thing here is just
5 the first six months of 2007. Those are in cubic feet per
6 second, and that's over 65 cubic feet per second. Those
7 permits have not been approved yet, but those are all
8 pending. All of the rest of them have been approved.

9 Now, how has this been affecting the flow? Both
10 Wayne and Todd had mentioned that the level had been going
11 down. Here is a graph of the data that they were basing
12 their comments on. This is by year from 1946 through 2006
13 by water year. You can see it's going up and it's going
14 down, but recently it's been going down. Now, is it the
15 lowest it's been in the last 61 years? Thankfully, no,
16 but it's fairly close. It is the fifth from the bottom
17 for 2006. It was fifth from the bottom, so it's in the
18 lower 10th percentile. And I think any parents here would
19 be really concerned if they went to a parent/teacher
20 conference and they were told their child was in the lower
21 10th percentile. That would be a real problem. So this is
22 really something that I think we should be concerned with
23 and the only way to do it is to get some control of

1 increased pumping, while leaving the current water rights
2 for those pumpers to make sure that they have that water
3 there.

4 So that's why I believe that this analysis is
5 correct and we should leave the thing as fully
6 appropriated. And I would urge the people that do make
7 these decisions to make the decisions on the data and not
8 just on who can talk the loudest and who can argue the
9 best. I realize it's a public forum so this is a
10 political decision. But still, you know, we ought to
11 consider politics, but we also ought to consider the data
12 as best we can.

13 I was pleased when Ann said we really need to be
14 proactive and I see that's what this is, a proactive
15 approach. Let's not have another Republican River.

16 THE HEARING OFFICER: Thank you, Melvin. Your
17 written material will be entered into the record as
18 Exhibit 6.

19 MR. THORNTON: Thank you.

20 (Exhibit 6 was marked and received into the
21 record. See Index.)

22 THE HEARING OFFICER: Next proponent?

23 MS. KIEBORZ: I'm going to attempt to turn the

1 volume up just a second, so -- Is that better for
2 everybody in the back? Yeah? Okay.

3 My name is Kalli Kieborz. It's K-i-e-b-o-r-z.
4 And I'm speaking on behalf of the Niobrara Council. I'm
5 the Executive Director for the Niobrara Council, and I'm
6 here to present testimony and evidence in support of the
7 continuation of the preliminary determination full
8 appropriation of the surface water shed of the Niobrara
9 River and its tributaries from the Mirage Flats Diversion
10 Dam to Spencer Hydro Dam, and the groundwater aquifers in
11 the water shed which are hydrologically connected.

12 The Niobrara Council did, on the 15th day of
13 March, 2007, adopt Resolution No. 2007-001, a copy I have
14 offered for the record. That resolution specifically
15 acknowledged the need for additional information regarding
16 flows in the Niobrara River based upon current shortages
17 and huge pending surface water appropriation applications
18 upstream from and directly impacting the Niobrara National
19 Scenic River. That resolution urged the Nebraska
20 Department of Natural Resources to immediately determine
21 the Niobrara River was fully appropriated, and to identify
22 areas in the basin where groundwater development should be
23 included. The Niobrara Council, in it's resolution

1 requesting a finding of full appropriation insists that
2 any declaration of full appropriation continue until such
3 time as all relevant information regarding quantity and
4 quality of surface and ground water available in the
5 Niobrara River Basin has been developed, specifically
6 regarding the quantities and levels needed to preserve the
7 outstandingly remarkable values of the Niobrara National
8 Scenic River. A copy of the minutes of the meeting when
9 the resolution was adopted is also included for the
10 record.

11 The Niobrara Council has a specific and unique
12 statutory authority regarding State or State-assisted
13 activities within the Niobrara National Scenic River
14 corridor. Section 72-2011 specifically provides that any
15 State or State-assisted activity or undertaking proposed
16 within the Niobrara National Scenic River shall be
17 consistent with the purposes for the scenic river
18 designation, including the scenic river's free-flowing
19 condition, scenic, geological, biological, agricultural,
20 historic and prehistoric resources.

21 The Council's authority necessarily requires
22 that State agencies present any such proposal to the
23 Council for review, and if the Council determines that the

1 proposed action is not consistent with the purposes for
2 the statute, the agency is not to proceed with the action
3 until after a jurisdiction for action by the governor,
4 which justification shall include specific elements
5 including the anticipated current, future, and cumulative
6 effects from the scenic river and the natural resources of
7 the designated scenic river corridor.

8 Consequently, the Council suggests that any
9 action affecting the scenic river's purposes are solely
10 within the Council's jurisdiction, including action
11 specifically within the corridor and upstream from the
12 scenic river stretch as well. The opinion of the Council
13 has been expressed by the resolution referred to
14 previously. The Department of Natural Resources is
15 required to respect this request, as well as to respect
16 the authority of the Niobrara Council. Any action that
17 the Department takes must necessarily comply with Nebraska
18 law and continue the determination of full appropriation
19 based on the Council's previous decision and resolution.

20 The Niobrara National Scenic River Declaration
21 was a congressional act that occurred in 1991, and at that
22 time the United States took a protected position on the
23 flow of the Niobrara River. Immediately upon passage, the

1 federal right became vested, and the only real issue was
2 quantification of that vested right. The congressional
3 declaration identified the standard use of the water in
4 the river and its flows, and must be held to in the
5 corridor. The standard requires that the outstandingly
6 remarkable values of the Niobrara National Scenic River
7 must be protected. Those values are paired by the
8 Nebraska Legislation creating the Niobrara Council and
9 include, most importantly, the river's free-flowing
10 condition. Free-flowing condition, while not quantified,
11 clearly mandates protection of flow as the river as it
12 existed in 1991. Additionally, there are other reserved
13 and invested federal rights, including the Fort Niobrara
14 National Wildlife Refuge.

15 The statutory duty of the Niobrara Council is to
16 protect the free-flowing condition of the river, the
17 existence of that obligation, and the existence of any
18 vested federal rights in the National Parks Service and
19 the US Fish and Wildlife Service, coupled with the 1942
20 NPPD Appropriation Approval. We find the river to be
21 fully appropriated, and the fact that NPPD's water right
22 at Spencer Hydro Dam is no longer available, or at least
23 in part, would reduce flows, clearly establishes the need

1 for the Department of Natural Resources to continue the
2 determination of full appropriation until such time as all
3 information can be collected and evaluated.

4 Respectfully submitted, Kalli Kieborz.

5 THE HEARING OFFICER: Thank you, Kalli. Your
6 written material will be Exhibit No. 7.

7 (Exhibit 7 was marked and received into
8 evidence. See Index.)

9 Do we have any more proponents? Seeing none, we
10 will begin with the opponents to the preliminary
11 determination.

12 MR. ADAMSON: I'm Jerry Adamson, J-e-r-r-y A-d-
13 a-m-s-o-n. I'd like to preface my remarks by saying that
14 I'm not terribly concerned about being politically correct
15 here or stepping on somebody's toes. If the shoe fits,
16 wear it. I'm Cherry County Commissioner here in Cherry
17 County, and the first thing for everybody in attendance to
18 realize is that most hearings like this one are generally
19 formality, something to make everybody feel like they have
20 some input at the issue at hand. When in reality, the
21 decisions have already been made. It's sad, but true. I
22 hope this hearing is an exception.

23 Cherry County consists of 3,874,917 acres. We

1 are the number one county in the United States. We're
2 sitting on from 400 to 1400 foot of water commonly known
3 as the Ogallala Aquifer. Three percent of this huge land
4 mass, the second largest county in America, is under
5 irrigation, and possibly, in time, we might figure out a
6 way to irrigate another three percent of our county.
7 Bottom line, in time, we could have six percent of this
8 great county under irrigation.

9 Then along comes the Nebraska Department of
10 Natural Resources with limited facts to base any decision
11 on, and starts using the word "fully appropriated". What
12 could be further from the truth? In my opinion, this has
13 to rank as one of the most reckless, irresponsible
14 decisions ever handed down by any State agency.

15 For the last ten years, the hot button topic in
16 Nebraska, especially rural Nebraska, from the governor
17 down, has been rural economic development. How do we keep
18 folks down on the farm and keep our small communities from
19 drying up? Apparently, the answer to this question is cap
20 water usage in western Nebraska.

21 I heard some other water experts trying to
22 compare the Niobrara River Basin to the Republican River
23 Basin. What a joke. One is basically runoff from the

1 mountains, and one is spring-fed. That would be like me
2 trying to compare a thoroughbred to a Shetland pony.

3 I've heard other water experts use the silted-
4 in, outdated, Spencer-Naper Hydroelectric Plant as an
5 excuse for this fully appropriation status we're now
6 under. Do you know that two of today's modern wind
7 turbines can generate approximately the same amount of
8 electricity as a hydroelectric plant they keep using as an
9 excuse for their decision? The time has come to use
10 common sense and reflect some sound data before we make
11 decisions like declaring the Middle Niobrara River Basin
12 fully appropriated. Thank you.

13 THE HEARING OFFICER: Thank you, sir.

14 MR. JOHNSON: I'm Mark Johnson, J-o-h-n-s-o-n,
15 and I'm a local rancher. And first of all, I know most of
16 you've heard the phrase "one size fits all", and as Jerry
17 said, they are comparing our NRD district to the Platte
18 and the Republican. And as Ann even stated earlier that
19 they're using similar data, you know, comparing this.
20 Well, anybody knows that it is a completely different
21 hydrological system, and how they can do that is beyond
22 me.

23 And before I get into the data part of this, I

1 have a problem, I guess, with the National Wildlife
2 Federation -- is that correct? The National Wildlife
3 Federation saying that they represent the ranchers in this
4 area. I just -- I have a big problem with that. Well,
5 and then he talked about the economics of this area, and
6 he said tourism, and he's talking about the hotels, the
7 eating places and therefore. Well, if he's been around
8 this country, that might help the economy for three months
9 out of the year. That's it; help. This is an ag-based
10 economy. And by doing this, taking this water away from
11 the people that are managing their groundwater very well,
12 as the data shows, they're ruining our economy.

13 And then also the grass. They said this is the
14 fifth from the bottom from the flow. They neglected to
15 show the grass that show rainfall and drought. If you'll
16 notice with those, and you compare those, they follow the
17 drought years. And yes, our river flow is down right now,
18 but we are in one of the second worst droughts that
19 anybody that has lived here has experienced.

20 The DNR itself has said that the data is not
21 enough. They do not have enough data; they need more
22 data. Well why are these State agencies saying that the
23 data is sufficient for this? Listen to the data is what

1 they say. I'm saying listen to the data. It's inaccurate
2 and it is not available. The gauging stations themselves
3 that they have in place right now have a five to ten
4 percent corrective value. That's huge.

5 So until there is data that shows that our
6 groundwater table is falling due to irrigation, that the
7 streams flowing into the Niobrara are lacking water, are
8 less than they are, I feel that there is absolutely no
9 need for this. Thank you.

10 THE HEARING OFFICER: Thank you, Mark.

11 Next opponent, please?

12 MR. WILES: I'm Dale Wiles, D-a-l-e W-i-l-e-s.
13 I'm Operations Manager for Grosch Irrigation, O'Neill,
14 Nebraska, and Director of the Nebraska Well Drillers
15 Association. I am testifying for Grosch Irrigation and
16 myself. I am testifying in opposition to DNR's fully-
17 appropriated designation above Spencer Hydropower Dam on
18 the Niobrara River with these concerns.

19 These are DNR's own records from the gauging
20 station at Spencer Dam, 1927 through 2001. The average
21 mean flow for 74 years was 1484 CFS. Low flow 1934 was
22 1094 CFS, and the high flow 1962, 2066 CFS. The mean flow
23 for 2000 was 1497 CFS, and 2001, the mean flow was 1763.

1 DNR decided to remove the gauging station in 2002 because
2 they felt that there was duplicating readings from NPPD's
3 gauging station. NPPD water permits that exceed annual
4 average flows. Spencer Dam permits are held for 2035 CFS
5 for two generating turbines. Each turbine uses 1200 CFS.
6 This flow is a pass-through. There is no actually
7 consumptive use.

8 DNR has also discontinued 29 gauging stations on
9 the Niobrara River and tributaries from the Wyoming line
10 to the Spencer Dam, making decisions for 580 miles of the
11 Niobrara River with two active gauging stations; one at
12 Sparks indicating an increase over 40 years, and the
13 Verdel station below the dam, which has flow increases
14 during the last 20 years.

15 The method used determining the 10/50 line was
16 the Jenkins line. This method was tested in a court case
17 in Arizona and was found to be only, at best, 40 percent
18 accurate. Is this the best available science?

19 Sound science should be used with the most
20 current and proven NRD water data. The Lower Niobrara and
21 the Middle Niobrara groundwater show some climatic
22 fluctuations, even coming out of the 5 to 7 year drought.
23 These levels have remained constant for 35 years of

1 recording. They are recorded and verified both spring and
2 fall. This has and will continue to show sustainability
3 of these river basins.

4 We must use sound science and methodology to
5 make our basin determinations, not computer modeling. I
6 would like to reiterate that I disagree with this
7 determination and the methods used without sound science.

8 Respectfully, Dale Wiles. Thank you.

9 THE HEARING OFFICER: Do you want that entered,
10 Dale?

11 MR. WILES: Yes.

12 THE HEARING OFFICER: Mr. Wiles' testimony will
13 be entered as Exhibit No. 8.

14 (Exhibit 8 was marked and received into
15 evidence. See Index.)

16 MR. HEATH: My name is Francis Heath, F-r-a-n-c-
17 i-s H-e-a-t-h. I'm here representing myself and hopefully
18 some of the other landowners that's kind of getting the
19 shaft here, I think. I've heard some testimony on the
20 Palmer Index that says that there was -- the past years
21 here have not been that dry. Well, I've got to tell you,
22 the last few years have sure been the driest in my
23 lifetime, especially the last couple. Maybe you guys down

1 there in the other end of the state don't know that.
2 Maybe even some of you that live here on the east side of
3 this Valentine, Nebraska, if you get out in western Cherry
4 County, it's dang sure been dry, and I mean dry. We need
5 to use the right terminology there. You wonder why there
6 isn't as much water in the river? Well, a heck of a lot
7 of it evaporated before it ever got down there to the
8 scenic river.

9 As far as I understand, if it wasn't for the
10 NPPD water permit, there wouldn't be a problem with water
11 appropriations. Agriculture should have precedence over
12 that, even though we've got to buy our water from them.

13 To keep us from pulling water out of the river
14 is a terrible waste of our natural resources, to just send
15 it on down the river. A terrible waste. If we let it
16 stay here and pump it back on our land, it goes back in
17 and recharges our groundwater.

18 On the NPPD deal, I truly believe that they
19 really shouldn't have the permits that they moved from
20 Valentine here. I can't prove it, but I'm pretty sure
21 that those generators never run for a lot more than three
22 years. And I lost some of my irrigated acres because I
23 didn't use them for more than three years. So I have a

1 hard time understanding why those two permits was moved
2 from this area, why they was able to keep them. Also,
3 when they moved those two permits from this area down
4 there, at the time they were here, all that water that
5 went through those permits here, the generators here, that
6 same water went through the generator down there at the
7 dam they're using now. They should have never been able
8 to keep their priority date on those.

9 I don't see any consideration for the local
10 areas. When you get down the river a little farther,
11 there are areas where there could be a lot of ground
12 developed for irrigation. I live in the western end of
13 Cherry County, there's a pretty limited amount that can be
14 developed. Our groundwater is going up, but yet we're not
15 going to be able to drill any more wells. Even though our
16 groundwater is going up and our moisture coming down is
17 less, I don't believe there's that direct of correlation
18 of how much is going to end up in the river if I drill
19 another well.

20 Another thing that needs to be considered;
21 because NPPD has called for people that use their water to
22 buy their water, there's a lot of people that have these
23 dams. I'm not one of them, but there's a lot of people

1 that have dams on their creeks that run through their hay
2 meadows. They dam that up and then towards early summer
3 they let the water out. And then even after the water
4 gets going, there's still water coming out of those
5 meadows lower in the ground. That would actually be
6 evening out the stream flow in the Niobrara in the middle
7 of the summer. They're going to make that worse.

8 So I think we need to follow science here, and I
9 don't believe that's being done. And we're not using
10 accurate numbers. I heard the saying that liars figure
11 and figures lie, and I kind of think that's happening
12 here. That's about all I got, I didn't have a polished
13 speech. Thank you for your time.

14 THE HEARING OFFICER: Thank you, Francis.

15 Next opponent, please?

16 MR. MURPHY: I want to thank you all for coming
17 tonight. This is an important issue that we are all going
18 to deal with and continue to deal with. At this time, my
19 name is Mike Murphy, M-i-k-e M-u-r-p-h-y, and I am here to
20 testify on behalf of the Middle Niobrara NRD and its
21 constituents. At this time, the Middle Niobrara Natural
22 Resource District is taking the stance of opposition to
23 the fully appropriated designation because of the

1 following reasons.

2 The Middle Niobrara NRD approved its groundwater
3 management plan in 1996 to further its efforts to gather
4 more water quantity information. The district has since
5 doubled its static water level monitoring sites from 60 to
6 114 across the district. The district still has long-term
7 increases; 35-years worth in average groundwater levels.

8 We've been hearing a lot of stuff about these
9 gauging stations. There's three main gauging stations
10 currently in operation; Sparks, Spencer and Verdel below
11 Spencer Dam. All three gauging stations show annual
12 increases in stream flows when you look at them post-
13 development of Box Butte and Merritt Reservoir. Two of
14 those gauging stations, data and information provided by
15 the National Parks Service at our October -- or August 23rd
16 meeting, show long term increases from 1946 to 2006, the
17 same dates that they're using to show Sparks showing
18 decreases. So when you look at the Sparks gauging
19 station, short-term from post-Merritt Reservoir to
20 present, that same gauging station shows increases. Even
21 during summer withdrawal periods of June, July and August,
22 the linear graphs that we provided in our packet were
23 provided by the University of Nebraska Lincoln

1 Conservation Survey show slight linear upward increases.

2 The Middle Niobrara National Resource District
3 would like to raise specific issues, provide general
4 comments, and factual scientific data regarding the annual
5 evaluation report. We've provided this information to the
6 Nebraska Department of Natural Resources at the request of
7 Ann Bleed. This information was submitted by October 5th,
8 2007, as requested, prior to the fully appropriated
9 designation on October 17th, 2007, and have heard no
10 response back. We view the preliminary designation of the
11 basin as being fully appropriated as a direct result of
12 the Nebraska Department of Natural Resources' decision to
13 honor a first-time call to protect the water right granted
14 over 60 years ago. Only a year ago, the Nebraska
15 Department of Natural Resources concluded that there was a
16 significant amount of unappropriated water available to
17 users in this basin, which encouraged investment. There
18 were indeed a number of persons who spent substantial sums
19 of money, based upon the representations of DNR employees,
20 and never in the history of the Nebraska Department of
21 Natural Resources has a first-time call for regulation
22 shut down an entire basin and result in so much economic
23 displacement.

1 Moreover, the dam that created the call has, and
2 continues, to waste significant amounts of water in
3 contrast to state law. Accordingly, Nebraska Department
4 of Natural Resources' decision to designate the Niobrara
5 River Basin as fully appropriated is not supported by fact
6 or law. Moreover, the Department of Natural Resources has
7 exposed itself to liability to those who spent money in
8 reliance to the Department of Natural Resources
9 representations that no regulations would be in the
10 foreseeable future.

11 At this time, I would like to refer to the
12 packet of material that was provided to the Nebraska
13 Department of Natural Resources by October 5th, 2007. The
14 Middle Niobrara NRD requests that Nebraska Department of
15 Natural Resources review the content of comments and data
16 submitted and include that in their determination of fully
17 appropriated.

18 The Middle Niobrara NRD has questions regarding
19 the areas not considered hydrologically connected to the
20 Middle Niobrara NRD. This is referring to the map that
21 was on the wall earlier. We do not understand how there
22 can be areas in the district that are either already
23 developed, or can potentially be developed, yet they are

1 not fully appropriated. The examples of this; the areas
2 north of Valentine that drains into Fishbury Canyon, then
3 into Government Canyon, and then into the Minnepenuza
4 Creek are not determined hydrologically connected. The
5 other example; the small block of land southeast of
6 Merriman, south of the Niobrara River, that is not
7 hydrologically connected.

8 The fact is, DNR has failed to respond to all of
9 our requests for careful and scientific management of the
10 resource. It clearly shows that they are simply trying to
11 be politically correct. Respectfully, the Middle Niobrara
12 Natural Resource District.

13 THE HEARING OFFICER: Thank you, Mike. Your
14 written information is entered into the record as Exhibit
15 No. 9

16 MR. MURPHY: Thank you.

17 (Exhibit 9 was marked and received into
18 evidence. See Index.)

19 THE HEARING OFFICER: Next opponent, please?

20 MR. STORER: Eric Storer, E-r-i-c S-t-o-r-e-r.

21 I am a board member for the Upper Loup NRD. We would like
22 to thank the -- for the opportunity and time you have
23 given to hold these public hearings. At our regular

1 December meeting held December 13th, the Board met and we
2 extensively reviewed lands in our district which would be
3 affected by the DNR ruling the fully appropriation of the
4 Niobrara. At that meeting, the Board of Directors for the
5 Upper Loup Natural Resource District appointed a committee
6 to compile testimony that may violate the preliminary
7 hydraulics -- hydrological boundaries which the DNR set
8 forth in it's October 27th, 2007 memo.

9 I am the chairman of that committee. The
10 preliminary hydrological boundaries of the Niobrara water
11 shed, which the DNR established, encompasses over 415,000
12 acres of land under our jurisdiction; most of the land
13 which directly affects the Loup River system. The Upper
14 Loup NRD is currently involved with the USDA and
15 neighboring NRD's in an ELM study of the river's basins as
16 a tool to evaluate the effects of the irrigation on in-
17 stream flow.

18 The Board of Directors of the Upper Loup NRD
19 propose that if the Department of Natural Resources
20 determines that the Niobrara River system is fully
21 appropriated, it is vital that the boundary of that area
22 be accurate as possible. The starting point for this
23 boundary cannot be arbitrarily politically sub-divisioned,

1 but must be hydrologically-based. As of now, the boundary
2 between the Upper Loup NRD and the Middle Niobrara NRD is
3 defined by a township line, versus the hydrologic boundary
4 between the two river systems.

5 Constituents and board members of the Upper Loup
6 NRD have reviewed USGS quad maps, GIS maps, and
7 hydrological unit maps, and believe that the vast areas
8 located in the Upper Loup NRD do not belong in the area to
9 be determined fully appropriated. This includes the head
10 waters of the north fork of the North Loup River, the head
11 waters of the Middle Loup River, the head waters of the
12 Goose Creek, and the head waters of the Calamus River.
13 The sources of creeks and rivers and the groundwater and
14 not surface water runoff make it highly unlikely that they
15 have any affect on the Niobrara River.

16 We feel that to maximize the accuracy of the
17 fully appropriated boundary map, field reconnaissance is
18 needed to define the hydrological unit boundary between
19 the Upper Loup River basin and the Niobrara River basin.
20 Much of this area has been extensively disked and many of
21 the natural drainage altered, making the accuracy of the
22 maps suspect.

23 Natural drainage exists in several portions of

1 the district. The one which stands out is near Cottonwood
2 Stevenson Recreation Area in Round Lake. Ditching in
3 Section 5, Township 29 North, Range 35 West, diverted
4 water from going into the Mud Lake and sent the water
5 north and east into Betsy Creek. This area is
6 approximately 40,000 and outlined on the map which we put
7 on the wall that the Upper Loup NRD is providing as part
8 of our testimony.

9 The Board of Directors of the Upper Loup NRD
10 would like to review the boundaries as proposed, and feel
11 that changes are important to accurately reflect boundary
12 lines between the Niobrara River system and the Loup River
13 system. We also feel that the current boundary lines are
14 a direct threat to our constituent's property and
15 irrigation rights in the Upper Loup NRD's local control of
16 the groundwater within our district. Thank you.

17 THE HEARING OFFICER: Thank you, Eric. Your
18 written material was entered into the record as Exhibit
19 No. 10.

20 (Exhibit 10 was marked and received into the
21 record. See Index.)

22 Are there other opponents? Is there anyone who
23 would like to speak in the neutral capacity?

1 MR. RIDENOUR: My name is Larry Ridenour, R-i-d-
2 e-n-o-u-r. I'm going to kind of testify, I guess, against
3 some of the data and the testimony that we did to do the
4 border. I think there's -- Tonight I've seen there's a
5 lot of guess-work on what's been going on. If you'd
6 notice -- and if I have read your map right, your border
7 to the land you've appropriated for the Niobrara basin has
8 got the North Loup River running through it, which doesn't
9 make much for me physically how the north side of the
10 river can drain to the Niobrara, but only the south land
11 can go into the North Loup River. So I would just
12 encourage the Council to study and get more data before
13 they make their decision on these life -- you know, these
14 are big changes for us in the agriculture industry. So
15 thank you.

16 THE HEARING OFFICER: Thank you, Larry.

17 Anyone else who wishes to testify? Oh, I didn't
18 see you.

19 MR. ROGERS: I'm Dave Rogers, R-o-g-e-r-s.
20 There's been a lot of testimony today on both sides of the
21 issue. But one point that I want to make is that -- and
22 our place is eight miles out on the Niobrara River. And
23 in the middle of the summer, our river flow is about 150

1 feet and normally it runs about 300 in the spring and it
2 drops to about 150.

3 If the figure is right where one cubic foot
4 irrigates 70 acres, another 10,500 acres of irrigated land
5 off of the surface water use dries up the Niobrara. What
6 irrigator is irrigating 2500 acres? So he's taking -- You
7 know, he took a fourth of what's left, if you look at it
8 like that. So another 10,500 acres upstream would
9 effectively take all of the water out of the Niobrara
10 River. And the problem is that we don't have enough
11 water. We've got huge amounts of water across the
12 Sandhills, but the problem is with the surface water,
13 there's no mechanism to control that surface water use.
14 Certain people can come in and apply for these huge
15 permits and dry up the river, and that's the problem. And
16 somehow we have to address that, and the legislature
17 hasn't handled this -- you know, so we can handle this.
18 We could have another three percent of irrigated acres, or
19 five or six or whatever across the Sandhills and it would
20 be good for this area and good for the ranchers. But the
21 problem is we don't have the right to destroy that river
22 and dry it up. We need some mechanism to handle that part
23 of it. Thank you.

1 THE HEARING OFFICER: Thank you, Dick.

2 Next testifier, please?

3 MR. HEINERT: My name is Ed Heinert, H-e-i-n-e-
4 r-t. My wife, Louise, and I live out at Sparks. I am
5 currently the art teacher at the high school. My wife and
6 I also have a canoeing business, but we also ranch too.
7 And the neutral stance that I take today is based off of
8 several things that my wife and I have done over the last
9 20 years.

10 In our ranch land, we have a spring that runs
11 through the majority of the property. When irrigation
12 season comes along, that creek dries up for three months.
13 And in the fall it starts to flow again. With our
14 canoeing business, the last three years we've seen a
15 decrease in the water flow where the June flow is like an
16 August flow. And for the amount of people that float down
17 the river, some people say it's 30,000, some people said
18 it's 60,000, the canoe outfitters dump close to 11.3
19 million dollars into the economy in Valentine.

20 You know, President Bush signed in to law here
21 this last week for the increase in ethanol. If I was a
22 farmer or rancher right now that had irrigation and had to
23 operate in Cherry County right now, I would seriously

1 wonder what the heck to do. You know, here we have an
2 economy that could throw in millions and millions more
3 bushels of corn, and you tie the hands of the farmers and
4 ranchers. Timing isn't the best thing right now, is it?

5 So I just wanted to point those things out and
6 hopefully that will help in the decision later on. Thank
7 you.

8 THE HEARING OFFICER: Thank you, Ed.

9 Is there anyone else that wishes to testify? Is
10 there anyone who has some written material you would like
11 to put into the record that you have with you? Additional
12 written material?

13 Please come forward.

14 MR. BARNES: This is just from --

15 THE REPORTER: Give me your name please.

16 THE HEARING OFFICER: He's just delivering.

17 MR. BARNES: Mel Barnes, but I'm just delivering
18 for Paul Johnsgard --

19 THE REPORTER: I know, but you're talking and I
20 have to type what you're saying. That's why I need your
21 name.

22 THE HEARING OFFICER: This is an exhibit from
23 Paul Johnsgard.

1 THE REPORTER: Exhibit 11.

2 THE HEARING OFFICER: Exhibit 11 from Mr.
3 Johnsgard and Exhibit 12 from Mr. Knott, and Exhibit 13
4 from Mr. Mel Thornton are hereby entered into the record.

5 And we have an Exhibit 14 from a group of people, the
6 SCHRAM Association for a Viable Environment.

7 (Exhibits 11 through 14 were marked and received
8 in the record. See Index.)

9 There being no other written or oral testimony,
10 we're ready to close the hearing. It is now 8:12 p.m. and
11 the hearing is closed. The record, however, will remain
12 open through the close of business December 27, 2007, for
13 the receipt of any additional written testimony, which
14 should be mailed to the Department and identified as
15 testimony for this hearing. Once the record is closed,
16 the Director of the Department will consider the testimony
17 and the exhibits presented at this hearing prior to making
18 her final determination on whether to go forward with the
19 preliminary determination. Thank you for attending. I
20 believe Ann had volunteered to stick around for a little
21 bit, but the hearing is closed.

22 (Concluded at 8:12 p.m. on December 20, 2007.)

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