



April 3, 2009

TO: NARD Board, NRD Managers and Conservation Partners

FROM: Dean E. Edson, NARD Executive Director

RE: April 3 NARD Update

DNR Reverses Fully Appropriated Status – The Department of Natural Resources reversed its preliminary decision that the lower Platte River is fully appropriated. After reviewing the analysis of the data by the NRDs in the basin, it was determined that an error was made in the modeling that over-stated the impacts of groundwater pumping. In essence, the average groundwater pumping was tripled which overstated the actual impact to the stream.

These findings in the analysis by the NRDS included the following:

1. The methodology used in the 2009 Annual Evaluation is inconsistent with DNR's regulations because it:
 - (a) Includes impacts for wells outside the hydrologically-connected area; and
 - (b) Assesses the 65/85 rule against a junior appropriator, rather than the most junior appropriator.
2. The 2009 Annual Evaluation substantially over-estimates the current levels of groundwater pumping in the basin.
3. The 2009 Annual Evaluation utilizes an out-dated methodology – known as the Jenkins method – to calculate stream depletions outside the ELM area. This methodology is not the best available science.
4. The 2009 Annual Evaluation includes stream flow depletions from over 100 wells below the Louisville gauge as though the depletions are occurring at the Louisville gauge.
5. The preliminary determination that the Lower Platte River Basin is fully appropriated is not supported by the best science and is not consistent with the regulations.

The NRDs involved in the area were happy to work with the Department of Natural Resources during this process and help produce this final decision that is based on the best scientific information available. The goal of the Natural Resources Districts all along has been to make sure Nebraska is using the most accurate, reliable and sound science possible in making decisions on Nebraska water policies. The NRDs are taking steps now to be ready to implement LB 483 to better manage economic growth and related water use in the area to keep it from being fully appropriated in the near future. With the current actions taken by the NRDs, the basin can not become over-appropriated.

LB 483e passes final vote – Senators gave final approval to **LB 483e on a 46-0 vote** on Friday and sent the bill to the Governor for consideration. The bill changes the planning process for NRDs when a determination is made that the district is not fully appropriated and a stay on well drilling has expired or that a preliminary determination was made that a basin, sub-basin, or reach is fully appropriated but a final determination finds that it is not fully appropriated.

The final version of the bill would:

- Change the date for a request of re-evaluation of a basin from March 1 to July 1.
- Require natural resources districts that are in a situation where a status change has occurred from fully appropriated or preliminarily fully appropriated to not fully appropriated, to create and implement a policy for the prioritization and granting of water well permits for the four-year period following the change.
- Require moratoriums to stay in place until the districts developed rules and regulations to allow limited growth that would not reach a point to cause a fully appropriated determination.
- Require DNR to approve the NRD rules and regulations within 60 days of NRD adoption. If DNR fails to approve the regulations, NRDs would have to adopt rules and regulations to allow up to 2,500 irrigated

acres growth or not more than 20 percent increase in historic irrigated acres within a hydrologically-connected area.

- The bill would prohibit DNR from issuing any new appropriation for the four-year period following a status change that would result in a fully appropriated status based on the most recent evaluation.
- Prohibit DNR from granting more than 834 acres of new surface water appropriations for irrigation within each natural resources district affected by the status change.

Legislative Bill 483e is Senator Langemeier's Priority Bill for the 2009 session. It included the emergency clause so it becomes effective as soon as the Governor approves the bill.

Riparian water right administration passes – The Legislature gave final approval to **LB 184** on a 45-0 vote this week. The bill, sponsored by Senator Loudon, authorizes the Department of Natural Resources to administer any riparian water right that has been validated and recognized in a court order from a court of lawful jurisdiction in the state. The bill does not mandate the department to do such. Further, the only surface water appropriations that may be closed for a riparian water right are appropriations held by persons who were parties to the lawsuit validating the riparian water right or appropriations with a priority date subsequent to the date of the court order.

LB 98 – Riparian Vegetation Management Task Force debated – A bill introduced by Senator Carlson to extend the termination date for the Riparian Vegetation Management Task Force was debated by the full Legislature on Friday. The Ag Committee amendment (**AM 641**) was adopted on a 40-2 vote, with Senators White and Wallman voting no. The legislature adjourned for the weekend prior to taking a vote to advance the bill. The committee amendment (**AM 641**) strikes the original provisions and becomes the bill. This amendment does the following:

- Extends the existence and duties of Riparian Management Task Force for four years, rather than just two years. Includes intent language to appropriate two million dollars annually for the vegetation management.
- Clarifies the priority for grants that are consistent with any plans and priorities for riparian vegetation management established by the Riparian Management Task Force.
- Includes a directive for the Director of Agriculture to apply for grants from the Environmental Trust Fund the Natural Resources Conservation Service of the USDA prior to July 31, 2009.
- Provides for a one-time transfer of \$500,000 from the Buffer Strip Incentive Cash Fund to the Noxious Weed and Invasive Species Assistance Fund.
- Retains the emergency clause.

Senators White and Wallman lead efforts to oppose the bill and introduced two amendments that will be debated when the bill comes up for further debate.

- Senator White introduced FA 25 which would provide that the cost of the program be divided according to the relative ownership of river frontage and the proportionate amount be charged to the owner of that land.
- Senator Wallman introduced AM 963 which instructs the Director of Agriculture to collect a fee from each such landowner on a pro rata basis to match state funds appropriated under the bill.

The legislature adjourned for the weekend before voting on the White and Wallman amendments.

Committee advances tort claim bill – The Legislature's Judiciary Committee advanced LB 304 this week which extends the time for a claimant to file a lawsuit against a political subdivision. Under the Political Subdivisions Tort Claims Act, all claims must first be made, in writing, to the governing body of the political subdivision before a claimant may file a lawsuit. The claimant must make the claim to the governing body within one year of the occurrence or discovery of the alleged tort, or the claim is forever barred.

The bill extends the time in which a claimant may file an initial claim from one year to two years. The bill is sponsored by Senator Brenda Council of Omaha.

In Washington DC this week

Man-Made drought that amounts to 35,000 jobs lost and 300,000 acres of farm land unused -The House Natural Resources Committee held a full committee hearing March 31st on the “*The California Drought: Actions by Federal and State agencies to address impacts on lands, fisheries and water users.*” Witnesses, including several members of California’s Congressional delegation, testified that this is a man-made drought, resulting from Endangered Species Act regulations that have diverted much-needed water from California families on the farm to three-inch Delta Smelt fish in the bay. The man-made actions have been devastating to California’s San Joaquin Valley where it is estimated that this year alone up to 35,000 jobs will be lost and 300,000 acres of farm land won’t be used because water has been diverted.

Ranking Member Doc Hastings (WA-04) explained, “Communities dependent on irrigated agriculture are now approaching 40% unemployment as they watched over 83 billion gallons of water – which was water normally dedicated to the fields -- go out to the ocean in the last month alone. It’s important to protect lands and endangered fish, but our government’s environmental policies shouldn’t make our communities endangered in the process.”

Republicans have offered numerous solutions to provide necessary relief to families, farmers and businesses in California’s San Joaquin Valley who are struggling to survive in the midst of a man-made drought. Solutions include passing legislation (specifically H.R. 996 and H.R. 856) to suspend the Endangered Species Act and the National Environmental Policy Act during times of drought emergency to ensure that the Delta pumps operate at historic capacity, encouraging the Administration to take steps to allow for water transfers and temporary barriers to keep smelt away from the pumps, and offering new water storage as a longer-term proposal to help the State in alternating times of drought and floods.

Additionally, 17 members of the California Congressional delegation today sent the attached letter to Committee Chairman Nick Rahall and Ranking Member Hastings, requesting field hearings on the California drought in order to get “the Committee to step outside the Washington beltway and hear firsthand accounts from citizens throughout California impacted by the drought.”

The complete press release can be found at:

<http://republicans.resourcescommittee.house.gov/PRArticle.aspx?NewsID=1773>.

NACD Chief Executive Officer nominated for USDA post -- Krysta Harden, NACD Chief Executive Officer, has been nominated for Assistant Secretary for Congressional Relations, United States Department of Agriculture.

Krysta Harden joined the National Association of Conservation Districts as Chief Executive Officer in March 2004. Operating from NACD headquarters in Washington, D.C., she was responsible for the association’s policy development and member services programs and coordinated strategic planning, budget formulation and related business operations. Harden previously served as the senior vice president of Gordley Associates, a Washington, D.C. consulting firm. In that capacity, she worked with a variety of commodity organizations, most notably the American Soybean Association. Her major areas of responsibility included conservation, environmental and energy issues.

Prior to working for Gordley, Harden served in various positions on Capitol Hill for 12 years. While on the Hill, Harden served as a professional staff member for the House Agriculture Committee and as chief of staff for former House member Charles Hatcher of Georgia. Harden holds a Bachelor of Arts degree in Journalism from the University of Georgia.