



Nebraska's
Natural Resources
Districts

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TO: NARD Board, NRD Managers and Conservation Partners

FROM: Dean E. Edson, NARD Executive Director

RE: April 10 NARD Update

NRD water management changes approved by Governor Heineman – Governor Dave Heineman signed LB 483e into law this week after Senators gave final approval to the bill on a 46-0 vote last Friday. 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.
- 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 became effective as soon as the Governor signed the bill.

Last week, 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.

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 483e to better manage economic growth and related water use in the area to keep the Lower Platte River from being fully appropriated in the near future. With the current actions taken by the NRDs, the basin can not become over-appropriated.

Riparian water right administration approved by Governor Heineman – Governor Dave Heineman signed LB 184 into law this week after the Legislature gave final approval on a 45-0 vote last 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.

Lien holder bill advances -- Senators advanced **LB 477 to Final Reading** this week which changes requirements when water is transferred to include evidence of lien holder's agreement to allow the transfer of water. The bill

clarifies in law that districts can certify irrigated acres and other beneficial uses of water. The bill then requires that participation in any financial incentive program and/or any transfer of certified acres or uses include similar evidence of the lien holder's agreement to allow the transfer.

Senator Carlson offered, and the Legislature adopted, **AM 991** to the Enrollment and Review Amendment (**ER8044**) on Select File which does the following:

1. Clarifies the definition of certified irrigated acres to mean the number of acres or portion of an acre that a natural resources district has approved for irrigation from ground water in accordance with law and with rules adopted by the district;
2. Clarifies the definition of certified water uses to mean the number of acres or portion of an acre that a natural resources district has approved for irrigation from ground water in accordance with law and with rules adopted by the district;
3. Require the reporting of water uses and irrigated acres by landowners and others with control over the water uses and irrigated acres for the purpose of certification by the district.
4. Outlines that determination of certified water uses or certified irrigated acres by a natural resources district shall not affect the allocations of ground water established by the district.
5. Clarifies the district may recover the cost of the title report and filing an instrument of transfer of the right to use ground water from the person seeking the transfer.
6. Clarifies that it is the responsibility of the person seeking the transfer to get the signatures of the lien holders.

Riparian Vegetation Management Task Force advanced – A bill introduced by Senator Carlson to extend the termination date for the Riparian Vegetation Management Task Force was advanced to Select File by the full Legislature this week. The Ag Committee amendment (**AM 641**) was adopted last week on a 40-2 vote, with Senators White and Wallman voting no. The committee amendment (**AM 641**) strikes the original provisions and becomes the bill. This amendment does the following:

- Extends the existence and duties of the 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 and 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 were withdrawn before a vote was taken on them. These amendments included:

- 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.

Livestock Waste Management Act modifications advances -- The Legislature advanced LB 56 to Select File this week after adopting the Natural Resources Committee amendment (**AM 310**).

The original bill offers several changes to the permit system including: 1) Changes the standard for small operations to be subject to the inspection, construction and operating permit system. Small operations (less than 300 head cattle, 750 hogs, etc.) are exempt from permits but can be subject to a permit if there has been a discharge to water of the state. The proposal would have it apply only if an intentional or willful intent to discharge occurred. 2) Defines discharge violations to be those discovered after investigation to be caused intentionally or by willful negligence. 3) Establishes that if a permit-holder loses his/her permit for violations on one operation, the

revocation does not include any other person who is a relative, partner, member, shareholder, resident, parent company, subsidiary, or other affiliate of the permit holder. 4) Currently, a permit can be revoked for three non-permitted discharges from a facility, whereas the bill proposes to make it three discharge violations. The bill proposes to count those violations on a per facility basis, rather than the current per operator basis. In other words, the bill proposes that a large operator with several facilities could have many violations and still not come under the three strikes provision as long as no one of those facilities had three violations.

The committee amendment (**AM 310**) eliminates that the producer's discharge must be "willfully" committed before a discharge violation can be charged, leaving only that the discharge must be intentionally or negligently committed before a discharge violation, or "strike", can be assessed. The committee amendment also increases the number of discharges, or strikes, from three to five that a producer must commit before being determined unsuited to hold a permit.

Electronic Voting Board bill advances – Senators advanced LB 361 to Final Reading this week, which allows entities created under the Interlocal Cooperation Act, the Joint Public Agency Act and the Municipal Cooperative Financing Act to utilize an electronic voting device to record roll call or votes of the governing body of such entities. Currently, only municipalities are authorized to utilize an electronic voting device. Two amendments were adapted to the bill to make further changes.

First, the Government Committee Amendment (**AM 552**) made the following changes on General File:

- Adds counties to the list of entities who are allowed to utilize electronic voting devices to satisfy the requirements of a roll call or vote.
- Adds the provisions of **LB 465**, which adds educational service units to the list of public entities which are allowed to hold public meetings by videoconferencing and telephone conference.
- Adds the provisions of **LB 639**, which allows a governing body of a risk management pool and the advisory committees of the governing body to hold more than half of their meetings by telephone conference if the governing body's quarterly meetings are held in person. Under current law, no more than one-half of the meetings in a calendar year held by governing body of a risk management pool or its advisory committees may be held by telephone conference call.

On **Select File**, Senator Avery offered **AM 966**, which was adopted to add learning communities to the list that can use electronic voting devices.

Pesticide Permits -- Last week, the Nebraska Environmental Quality Council voted to approve a proposal by the Department of Environmental Quality to establish a Clean Water Act permit for application of aquatic pesticides applied to or near state waters. The permit would call for applicators to follow pesticide label directions for pesticide applications and maintain records of applications for three years (requirements that are already in place under federal pesticide rules). Farm Bureau will develop a guidance document to explain the potential implications of the state permit for Nebraska agriculture producers.

On the same issue at the national level, EPA is considering an appeal of a court decision that has the potential to require farmers who apply pesticides to obtain a federal permit under the court's expanded interpretation of the federal Clean Water Act. The deadline is April 9 for EPA to petition the U.S. Court of Appeals Sixth Circuit for a rehearing of the issue. In January of this year, the court vacated a 2006 EPA rule which exempts certain pesticide applications from permit requirements of the Clean Water Act.

FFA Natural Resources Awards and Proficiency Award – At the 81st Annual Nebraska FFA Convention last week, Courtney Weatherby, Conestoga FFA Chapter, was the first place winner of the Outdoor Recreation Award, sponsored and presented by the Nebraska Association of Resources Districts. Second and third place finalists in this category included Angela Brichacek, Schuyler FFA Chapter and Cary Ryan, West Holt FFA Chapter. Natural Resources Awards were presented, also sponsored by the Nebraska Association of Resources Districts. Gold Emblem Certificates and plaques were awarded to the top ten chapters statewide in natural resources educational activities. Natural Resource Awards were presented to FFA chapters in Broken Bow, Central, Fairbury, Lewiston, Norris, Ord, Ravenna, Schuyler, Superior and Verdigre.