



February 27, 2009

**TO: NARD Board, NRD Managers and Conservation Partners**  
**FROM: Dean E. Edson, NARD Executive Director**  
**RE: February 27 NARD Update**

**LB 184 Riparian Water Management Bill Stalls** -- A bill to authorize the Department of Natural Resources to consider and administer any riparian water right stalled on Select File this week after constitutional questions arose about the measure. Senator Chris Langemeier filed a motion (MO18) to send the bill back to the Natural Resources Committee for reconsideration. When the bill came up for scheduled debate on Friday Senator Louden, the sponsor of the bill, requested the bill be passed over and not be debated.

**The following bills were acted upon by the Natural Resources Committee:**

- **LB 54 – Integrated Water Management Procedures. Senator Fischer.** The Natural Resources Committee **advanced LB 54** this week with **AM 346**. The bill creates a process for the NRDs and DNR to use in fully and over-appropriated basins for procedures to track depletions and gains to stream flows from new, retired or other changes to uses within the river basin.

The amendment allows offsets for new uses as long as there is no more than a de minimus affect on existing users. A second part of the amendment would require consultation and an opportunity for public comment from all water users.

- **LB 483 - Change well moratoriums, Langemeier.** The Natural Resources Committee **advanced LB 483** this week with **AM 502**. Senator Langemeier also declared the bill his **Priority Bill** for the session. 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.

Under the committee amendment, the bill would require districts in this situation to create and implement a policy for the prioritization and granting of water well permits for the four-year period following such situations. It would require moratoriums to stay in place until the districts developed a plan to allow limited growth that would not reach a point to cause a fully appropriated determination. The bill would also prohibit DNR from issuing a surface water right that would result in a fully appropriated status.

The committee amendment would require NRD rules and regulations that allow water well permits to be issued that will result in no more than 2,500 irrigated acres or that will result in an increase of not more than 20 percent of all historically irrigated acres within the hydrologically connected area of each natural resources district within the affected river basin, sub-basin, or reach, whichever is less, for each calendar year of the four-year period following the date of the determination.

For DNR, the amendment would limit issuances of surface water permits to a net increase of more than four hundred irrigated acres in each natural resources district during each calendar year of the four-year period following the date of the determination described in this section. The department shall not in any event issue a new surface water appropriation that will cause a basin, sub-basin, or reach to be fully appropriated.

- **LB 577 – Change provisions relating to improvement project areas of natural resources districts, Senator Rogert.** The Natural Resources Committee **indefinitely postponed LB577** this week. The bill proposed to limit the power or authority of NRDs to cooperate with private landowners to protect and improve property under the Improvement Project Area (IPA) statutes. The bill was brought to the legislature by the Papio Valley Preservation Association, a Washington County-based group that opposes flood control programs to protect lives and property in Omaha.
- **LB 477 -- Change provisions relating to water transfer permits. Senator Carlson.** The Natural Resources Committee **advanced LB 477** this week with **AM 481**. The bill, with the amendments, changes requirements when water is transferred to include evidence of lien holder’s agreement to allow the transfer of water. The bill also clarifies in law that NRDs can certify ground water irrigated acres. The bill then requires that any transfer of certified acres or uses, include similar evidence of the lien holder’s agreement to allow the transfer.
- **LB 209 – Change provisions relating to time for construction of irrigation projects and dams. Senator Langemeier.** The Natural Resources Committee **advanced LB 209** this week as written. The bill changes the time frame from 6 months to 12 months after the Department of Natural Resources approves of water project to commence the excavation or construction. The bill also clarifies that the Department of Natural Resources may extend, for reasonable lengths of time, the time for commencing excavation or construction.

### Hearings this week

**LB 666 – Changes to the Niobrara Scenic River Council, Langemeier.** The hearing on the bill this week turned into an emotional plea from opponents of the bill to “Save the Niobrara River”. However, the bill does nothing to change the flow in the river. The DNR determination last year that the basin is fully appropriated prohibits new water uses unless offset water is provided.

The bill simply removes the requirement that the appointed Niobrara Scenic River Council has to approve of zoning requirements imposed by cities, villages and counties in the area covered by the designation. The change places the appointed council in an advisory role to local elected officials rather than an oversight role. This is the only area in the state that an appointed board has such authority over an elected body. It was revealed at the hearing that the National Park Service tells the Council whether to approve or disapprove of local zoning actions and conservation plans.

Mike Murphy, Middle Niobrara NRD Manager, testified in support of the change on behalf of NARD. The testimony asked the legislature to clarify what the role of the Council should be especially on approving individual conservation programs for landowners that have already been approved by federal, state and other local entities. Several other individuals testified in support of the measure and

several environmental interests testified in opposition. The Natural Resources Committee took no action on the bill.

**LB 651 – Create Water Resources Revolving Loan Fund Act, Christensen. (NARD Bill)** Jasper Fanning, Upper Republican NRD Manager, and Dan Smith, Middle Republican NRD Manager, testified in support of the bill on behalf of NARD which creates a Water Resources Revolving Fund. The testimony focused on the need to have funds available to NRDs in the fully and over-appropriated districts to finance projects for water needs throughout the state.

The bill would provide low interest loans to natural resources districts or any joint entity with a joint project which is to be owned, operated, or financed by the joint entity or joint public agency for the benefit of its member natural resources districts for the purposes of developing and protecting water resources in the state. The Natural Resources Commission would have oversight over the program and an administrative fee would be allowed to pay for operational cost of the program.

The loans under the program would be used for activities related to financing or refinancing the costs of eligible projects including, but not limited to, river augmentation, vegetation management, acquisition of water rights, and to furnish water for domestic purposes.

Several members of the group that filed the lawsuit against LB 701 spoke in opposition to the bill, but did not mention any specific problems with the bill. Rather their focus was on the court decision that ruled the property tax unconstitutional and that groundwater users other than them should be shut down. Frenchman Cambridge Irrigation District spoke against the bill and focused their testimony making sure that any water savings from NRD programs are not protected for compact compliance. Rather they want all Nebraska surface water irrigators have all of their water rights filled to the maximum amount before any water is delivered to Kansas under the compact. Going as far back to the early 1900s, surface water irrigators in the basin were granted diversion rights of 3 feet of water directly out of the river per irrigated acre in the basin. Groundwater irrigators, which began development in the 1950s, are limited to 9-13 inches/acre in the basin.

The committee took no action on the bill.

**LB 504 - Authorize permits and provide penalties relating to discharge of dredged or fill material into the waters of the state, Langemeier.** John Miyoshi, Manager of the Lower Platte North NRD, presented testimony on behalf of NARD in support of LB 504 which allows the State of Nebraska to take over the 404 permit process from the U.S. Army Corps of Engineers. Ken Berney, Assistant Manager of the Lower Elkhorn NRD, also submitted a letter in support.

The testimony outlined the lengthy and expensive delays for obtaining a 404 permit for flood control projects from the Corps. Governor Dave Heineman recently sent a letter to President Obama noting that the 404 permit process needs to be fixed to assist with infrastructure development in Nebraska. The fiscal note from the Department of Environmental Quality listed just over \$1 million per year to operate the program, which may be less than the losses from the delays.

Other supporters included the Nebraska Cattlemen and a private contractor. The League of Conservation Voters testified in a neutral capacity on the bill, but stressed there are lengthy delays in obtaining permits under the current system. No testimony was provided in opposition to the bill and the committee took no action.

## HEARINGS NEXT WEEK

### **Monday, March 2, 2009 – General Affairs Committee, Room 1510, 1:30 PM.**

**LB 286 – Change the distribution of lottery funds, General Affairs Committee, General Affairs Committee.** The bill proposes to change the way lottery proceeds are transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund.

### **Wednesday, March 4, 2009 – Natural Resources Committee, Room 1525, 1:30 PM.**

**LB 582 -- Create the Nebraska Invasive Species Council, Dierks.** The bill establishes the Nebraska Invasive Species Council to recommend action to minimize the effects of harmful invasive vegetation in Nebraska.

### **Wednesday, March 4, 2009 – Government, Military, and Veterans Affairs Committee, Room 1507, 1:30 PM.**

**LB 626 -- Change prohibited activities for public officials and public employee's use of public resources, Karpisek.** The bill makes several changes and clarifications regarding incidental use of governmental property by governmental employees. Primarily, the bill outlines that use of public resources by a public official or public employee which is incidental, de minimis, or unintentional shall not constitute a violation of the Nebraska Political Accountability and Disclosure Act.

### **Thursday, March 5, 2009 – Government, Military, and Veterans Affairs Committee, Room 1507, 1:30 PM.**

**LB 486 -- Require certain governmental entities to identify themselves as such in their official name, Karpisek.** The bill provides that the state, its agencies, the University of Nebraska, and each political subdivision of the state and any other unit of local government, which includes any entity created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act, shall include as part of its official name the words that clearly identify the entity as a unit of government.

### **Thursday, March 5, 2009 – Revenue Committee, Room 1524, 1:30 PM.**

**LB 632 -- Adopt the Nebraska Green Building Advantage Act and authorize a sales tax refund, Mello.** The bill adopts the Nebraska Green Building Advantage Act and provides a sales tax credit to those commercial buildings that use the Leadership in Energy and Environmental Design Green Building Rating System (LEED).