



Nebraska's  
Natural Resources  
Districts

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**March 13, 2009**

**TO: NARD Board, NRD Managers and Conservation Partners**

**FROM: Dean E. Edson, NARD Executive Director**

**RE: March 13 NARD Update**

**Findings for Lower Platte do not support fully appropriated status** -- Following a scientific and legal review, the preliminary determination that the Lower Platte River Basin is fully appropriated is not supported by the science and is in conflict with the State's regulations.

On December, 16, 2008, the State of Nebraska Department of Natural Resources (DNR) issued a preliminary determination that the Lower Platte River Basin, including tributaries, is fully appropriated. Nine Natural Resources Districts (NRDs) – including all eight in the lower Platte – recently concluded their review of this determination. As provided by statute, the 90 days following the preliminary determination are to be used by DNR for hearings and receiving evidence and for the NRDs and DNR to consult water users and stakeholders regarding the preliminary findings. The NRDs worked closely with DNR during this period of time, engaging in an open dialogue, exchanging information, and working together to ensure the final determination is based on the best science and is consistent with the regulations. Although the NRDs previously shared this information with DNR, they presented their findings at the final hearing in Fremont, Nebraska on March 12.

These findings include 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.

Reflecting on these findings, John Miyoshi, General Manager of the Lower Platte North NRD, commented: "It was extremely beneficial, with DNR's cooperation, to do a transparent review of the work that led to the preliminary determination of fully appropriated. It is our hope that we can continue working together to assure we are using the best science and are consistent with the regulations in the future. At this time, it would appear that a final determination of fully appropriated is not supported by the best science with adherence to the state regulations governing this process".

**Republican River Compact arbitration** - Nebraska and Kansas officials pitched their case to the Arbitrator in the Republican River Compact arbitration this week over damages for the disputed overuse of water under the settlement agreement. Nebraska officials submitted an estimate of \$615,000 to \$1.23 million for the disputed overuse of water while Kansas claimed just over \$9 million in damages to crop yield and revenues for Kansas farmers.

Last year, Kansas asked for \$72 million from Nebraska for damages which was based upon their estimate of Nebraska's gain from the extra water. However, the arbitrator in the case outlined that Kansas can only seek actual damages, not what the estimated gain was to Nebraska. The revised \$9 million estimated loss of crop yield and revenues for Kansas farmers totaled \$4.2 million in 2005 and \$4.85 million in 2006, according to documents Kansas submitted to the arbitrator.

The arbitrator will have a decision early this summer. The states would have to agree to the decision or go back to the Supreme Court.

**NARD officers elected** – At the Nebraska Association of Resources Districts Board meeting this week, Dan Steinkruger, Lower Platte South NRD, was re-elected as President of the Nebraska Association of Resources Districts. Mr. Steinkruger served two years as NARD Vice-President, and two years as Secretary-Treasurer. Dan is the acting Nebraska Director of the Farm Service Agency in Lincoln. In other officer elections, Mary Ann Wortmann, Lewis and Clark NRD, was re-elected Vice-President and Joe Anderjaska, Middle Republican NRD, was re-elected Secretary-Treasurer.

Mr. Steinkruger also appointed Jim Meisner, Twin Platte NRD, to serve as Chairman of the Legislative Committee. Jim has served as chairman for the past 7 years. Mr. Steinkruger also filled the following appointments: Jim Johnson, South Platte NRD, was appointed Chairman of the Information and Education Committee and Judy Ridenour, Lower Loup NRD, was appointed as Chair of the Native Vegetation and Forestry Subcommittee.

At the NRD Managers meeting this week Jasper Fanning, Upper Republican NRD Manager, was elected to Chair the Managers Committee and Anna Baum, Upper Loup NRD Manager, was elected Vice-Chair.

**Bonding bill advances** – The bill to allow the Papio-Missouri River NRD to issue bonds for stormwater and flood control, LB 160, was advanced by the Natural Resources Committee to General File this week. The committee amendments to the bill make several modifications, including:

- Allow county board to disapprove of any reservoir exceeding 20 surface acres, if done within 90 days of notification of project by the NRD Board of Directors;
- Allow for bonding authority with a vote of the electorate for bonds exceeding one cent of the levy;
- Provide for a 2/3 vote of the NRD board to submit a bond issuance;
- Provide that bond proceeds not be used for metropolitan class city's combined sewer separation projects; and
- Provide that the bonding authority sunsets on December 31, 2019.

The bill is sponsored by Senator Tim Gay and was declared a Priority Bill by Senator John Nelson of Omaha.

**Prohibiting NRD use of eminent domain advances** – The Natural Resources Committee advanced LB 134 this week which prohibits NRD use of eminent domain for recreational trails. The committee amendment is proposed to replace the bill. This amendment would require a district to obtain consent of the Legislature before using the power of eminent domain for the development or management of recreational trails or corridors unless associated with a flood control structure. The bill's sponsor, Senator Dave Pankonin, also declared LB 134 his Priority Bill for the session.

**Priority Bills** – March 12<sup>th</sup> was the deadline for senators and committees to declare Priority Bills for the session. Each senator can declare one priority bill and each committee can declare two priority bills for the session. The Speaker can also designate 25 bills as Speaker Priorities, which will be announced next week. Priority status increases the chances of the bill to be debated. **For a complete list of Senator Priority Bills, go to: <http://www.nebraskalegislature.gov/session/priority.php>.** The following bills related to natural resources were declared priorities:

- LB 54** -- Integrated water management procedures (Fischer Priority Bill)
- LB 98** -- Extend riparian vegetation management (Carlson Priority Bill)
- LB 134** – Limit NRD eminent domain authorities (Pankonin Priority Bill)
- LB 160** – Bond Authority for Papio-Missouri River NRD (Nelson Priority Bill)
- LB 286** – Change the distribution of lottery funds (General Affairs Committee Priority Bill)
- LB 361** -- Change roll call provisions under the Open Meetings Act (Government Committee Priority Bill)
- LB 477** -- Change provisions relating to water transfer permits (Utter Priority Bill)
- LB 483** – Change water management provisions (Langemeier Priority Bill)
- LB 646** -- Adopt Livestock Growth Act and Revolving Loan Fund (Schilz Priority Bill)
- LB 681** – Provide for refund of unconstitutional taxes, assessments, and penalties (Christensen Priority Bill)

### **Committee Hearings this Week**

**LB 12 - Increase Nebraska Resources Development Fund, Langemeier (NARD Bill).** Ron Bishop, Central Platte NRD Manager, testified on behalf of NARD in support of increasing the annual general fund appropriation for the Nebraska Resources Development Fund. The bill would increase funding for the program from \$3,373,066 to \$7,000,000 annually for FY 2009-10 and 2010-11. The Appropriations Committee took no action on the bill after the hearing.

**LB 210 -- Change provisions relating to aid to natural resources districts, Langemeier (NARD Bill).** Dan Smith, Middle Republican NRD Manager, testified before the Revenue Committee on behalf of NARD in support of changing the state aid formula for natural resources districts. The bill, LB 210, changes the formula so that the amount of property tax levied by the district does not include the property tax levied for principal or interest on bonds. State aid to NRDs is calculated on the ratio of property taxes levied by a district compared to the total property taxes levied by all districts. The Revenue Committee took no action on the bill after the hearing.

**LB681, Tax refunds** – Senator Mike Flood, Speaker of the Legislature, introduced LB 681 on behalf of Governor Heineman to the Revenue Committee this week which would provide refunds for taxes declared unconstitutional. Although the bill is in response to a recent Nebraska Supreme Court ruling that property taxes levied under LB 701 were a state purpose and thus unconstitutional, the bill would apply refund provisions to all cases after January 1, 2009. Existing law allows for refunds if a taxpayer had filed a protest of the taxes within specific timeframes when the tax was imposed. The bill would provide refunds to all taxpayers, whether they filed the protest or not and apply to all future tax cases.

Dan Smith, Middle Republican NRD Manager, and Mike Clements, Lower Republican NRD Manager, testified on the bill offering support for returning LB 701 property taxes. The Nebraska Association of County Officials suggested at the hearing that a tax credit system be considered as an option to tax payers rather than refund checks as some refunds under the LB 701 will be less than a dollar. The committee took no action on the bill.

**All hearings on bills that are being tracked by NARD are concluded for the session.**