



# Nebraska's Natural Resources Districts

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**March 6, 2009**

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

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

**RE: March 6 NARD Update**

**North Platte NRD responds to Central suit** -- The North Platte Natural Resources District in Scottsbluff responded today (Friday, March 6) with a Motion to Dismiss a lawsuit filed January 8, 2009 by Central Nebraska Public Power and Irrigation District of Holdrege. Central filed the lawsuit seeking to overturn the 12-inch annual ground water allocation for water users in Pumpkin Creek Basin, and calling for more severe water restrictions in western Nebraska.

Counsel for the North Platte Natural Resources District in this litigation are Stephanie F. Stacy and Peter W. Katt with the Baylor Evnen Law Firm in Lincoln, together with the District's local counsel Steven C. Smith of Scottsbluff.

"While Central's filing with the Court is entertaining to read and makes great news, it is short on legal substance," Katt said of the 17-page complaint/petition against the NRD. Katt, Stacy, and Smith maintain that Central is asking the Court to invalidate the amended rules and regulations, which the NRD established pursuant to its statutory and legal authority, something the Court has no jurisdiction to review.

At the heart of Central's claim is the Lytle Report submitted by Central at the public hearing held October 16, 2008 in Harrisburg, recommending immediate limitation of the entire groundwater withdrawal from the Pumpkin Creek Basin to 8,000 acre/feet. Spread out over the 38,645.43 acres certified and irrigated with groundwater in the entire basin, the result would be about 2 ½ inches of irrigation water per acre for the crop land in Pumpkin Creek Basin.

"That is not enough to survive in this part of the country," Smith said. "Central seeks to put the water users in the entire Pumpkin Creek Basin out of business immediately."

Smith also points to the fact that water users within the boundaries of the CNPPID irrigate more acres with groundwater than the entire Pumpkin Creek Basin. Those irrigators within Central's boundaries have six to eight additional inches in surface water supply, not available to Pumpkin Creek Basin irrigators, and have received almost twice the average annual precipitation as water users in the Pumpkin Creek Basin.

"The arrogance of Central's action reveals an absolute disregard for the welfare of hundreds of farm families in the North Platte NRD and a continuing effort on Central's part to place legal liability for diminishing supplies in their reservoirs solely on water users in our basin," Smith said.

In responding to the lawsuit, NPNRD's team of legal counsel, along with its Board of Directors, maintains that the NRD has a legal right and obligation to protect the economic viability of residents in western Nebraska. "The NRD will vigorously defend its right and duty to make fair and sensible rules and regulations regarding our groundwater resources asserting the District's right to protect our existing beneficial uses," Smith said.

Balancing competing claims between ground water and surface water uses is to be done through the development of an Integrated Water Management Plan (IMP) by and between the Nebraska Department of Natural Resources (NDNR), the appropriate Natural Resources Districts (NRD's), and various stakeholders which would include Central. The attorneys pointed out that the NRD is adhering to that process and is scheduled to have its local IMP completed by September 2009.

"The causes of Central's problems involve many factors, especially the longstanding drought, over which this NRD has no control," Smith said. "We believe we have a very strong case, and will seek to obtain a ruling from the courts that Central has no legal right to second guess, in the form of this lawsuit, the rules and regulations properly adopted by our NRD Board."

**Appropriations Committee releases preliminary budget report** -- The Appropriations Committee released its preliminary budget report Feb. 26, proposing adjustments that would put spending growth at 2.4 percent per year, slightly higher than the governor's recommendation of 1.8 percent. Both numbers are significantly lower than the pre-session estimate of 4.6 percent. The preliminary budget increases state obligations by \$54.8 million over the biennium in comparison to Gov. Dave Heineman's budget plan and would result in a financial status that is \$36.4 million below the minimum reserve. This likely will be adjusted in the final budget recommendation, as the committee foresees significant alterations to the preliminary financial status before April.

The difference between the governor's proposed budget and the preliminary budget amounts to approximately 0.75 percent of the total general fund budget over the two-year period. Among the significant adjustments from the current biennium recommended by the committee are the following:

Factors that likely will alter the financial status include revenue forecast revisions, availability and use of federal stimulus funds, the status of the state's defined benefit retirement funds and use of cash reserve fund monies. The Appropriations Committee public hearings on the budget will continue in March. The committee has until the 70th legislative day during a long session (April 29<sup>th</sup>) to place budget bills on General File for debate by the full legislature.

**LB 483 -- Water legislation advances** -- Senators advanced LB 483, Senator Langemeier's Priority Bill, to Select File this week. The bill, with the adopted committee amendments (AM 502), 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 no 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 would be prohibited from issuing a new surface water appropriation that will cause a basin, sub-basin, or reach to be fully appropriated.

**LB681 – LB 701 tax refund** -- Senator Mike Flood, Speaker of the Legislature, introduced LB 681 on behalf of Governor Heineman this week which would provide refunds for taxes declared unconstitutional. 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. 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. The hearing on the bill is scheduled for March 11<sup>th</sup> at 1:30 before the Revenue Committee.

### **Committee Hearings this week**

**LB 286 – Change the distribution of lottery funds advances.** After the hearing this week, the General Affairs Committee advanced LB 286 on a unanimous vote. The bill eliminates a sunset date in a provision of the State Lottery Act governing how funds are to be distributed to Lottery beneficiaries. It requires that the dollar amount transferred to beneficiary funds shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03, which

amounts to approximately \$20.2 million, or (b) any amount which constitutes at least 22% and no more than 25% of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and Lottery Director may authorize a transfer exceeding 25% of the dollar amount of the lottery tickets sold on an annualized basis. The bill was supported by the Nebraska Lottery, the Coordinating Commission for Postsecondary Education, the Nebraska Environmental Trust and the Nebraska State Fair Board. There was no opposition to the bill.

**LB 582 -- Create the Nebraska Invasive Species Council, Dierks.** The Natural Resources Committee accepted testimony on LB 582 this week which establishes the Nebraska Invasive Species Council to recommend action to minimize the effects of harmful invasive vegetation in Nebraska. Mike Clements, Manager of the Lower Republican NRD, testified in support of the bill on behalf of NARD. Other supporters included the Weed Management Association, the Nebraska State Forester, Sierra Club, Nebraska Farmers Union and individual landowners. The Nebraska Cattlemen opposed the bill raising some concerns about too much federal representation on the proposed council. The committee took no action on the bill.

**LB 626 -- Change prohibited activities for public officials and public employee's use of public resources, Karpisek.** The Government Committee accepted testimony this week on LB626, a 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. The Nebraska Association of Resources Districts submitted a letter in support of the bill, specifically on the provision that allows local governing boards to set policies on de minimis uses.

Other supporters included the League of Municipalities and other political subdivisions. There were several neutral testifiers that suggested something needs to be done to address de minimus use. The Nebraska Accountability and Disclosure Commission opposed the bill because of other provisions that allow for use of public resources but did mention that the section dealing with local governing boards setting policies on de minimus use was a good idea. The committee took no action on the bill after the hearing.

## HEARINGS NEXT WEEK

### Monday, March 2, 2009 – Appropriations Committee, Room 1524, 1:30 PM.

- **LB 12 - Increase Nebraska Resources Development Fund, Langemeier (NARD Bill).** Increases the annual general fund appropriation for the Nebraska Resources Development Fund from \$3,373,066 to \$7,000,000 for FY 2009-10 and 2010-11.
- **LB 315, DNR agency hearing and budget request.**

### Wednesday, March 11, 2009 – Revenue Committee, Room 1524, 1:30 PM.

- **LB681 – LB 701 tax refund** – Senator Mike Flood, Speaker of the Legislature, introduced LB 681 on behalf of Governor Heineman this week which would provide refunds for taxes declared unconstitutional. 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.

### Thursday, March 12, 2009 – Revenue Committee, Room 1524, 1:30 PM.

- **LB 210 -- Change provisions relating to aid to natural resources districts, Langemeier (NARD Bill).** Changes the state aid formula for natural resources districts so that the amount of property tax levied by the district shall not include the property tax levied to 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.