

May 1, 2009

TO: NARD Board, NRD Managers and Conservation Partners

FROM: Dean E. Edson, NARD Executive Director

RE: May 1 NARD Update

**Flood protection legislation advances** – Senators advanced **LB 160** to Select File this week on a 31- 11 vote. The bill provides financing authority to the Papio-Missouri River NRD for flood protection and water quality programs. The Papio Creek Watershed is one of the most dangerous watersheds in the Midwest for potential loss of life and extensive property damage due to flash flooding. Near-flood events in early 2008 highlighted the need to take immediate action. Urban growth within the Papio Creek Watershed continuously increases the risks for significant, hazardous flooding and presents serious water quality problems.

The objectives of the bill include:

- Providing the necessary financing tool, at no cost to the State of Nebraska, to reduce the risk of catastrophic flooding and improve water quality in the Papio-Missouri River Natural Resource District;
- Protect public infrastructure and investments and private property of individual and business property owners and taxpayers within the district;
- Protect the lives, health and welfare of all residents living within the district;
- Reconstruct flood levees identified as deficient;
- Reduce the amount of property subject to costly federal flood insurance requirements; and
- Bring the district into compliance with the federal Clean Water Act.

The Natural Resources Committee amendment (**AM 735**), and an amendment from Senator Rogert (**AM 1005**) were incorporated to the bill before it was advanced to Select File.

Senator Rogert's amendment, **AM 1005**, would require that proceeds to the bonds shall not be used to fund any project in any city or county which is party to an agreement under the Interlocal Cooperation Act, unless such city or county has adopted a storm water management plan approved by the board of directors of the natural resources district.

The committee amendments to the bill, **AM 735**, make several modifications, including:

- Allows use of its **existing mill levy**, to finance flood protection and water quality enhancement projects through the issuance of bonds, requiring a two-thirds affirmative vote of the board members for the issuance of any bond and a public vote for any proposed bond levy exceeding 1 cent, all within the NRD's 4 ½ cents per 100 of assessed valuation levy limit
- Allow county boards to disapprove of any reservoir exceeding 20 surface acres, if done within 90 days of notification of project by the NRD board of directors;
- 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.

Senator Hadley from Kearney offered several amendments, none of which were incorporated to the legislation. One of his amendments, AM 1084, would require all bonds to be approved by a majority of registered voters of the districts, limited to 2 cents, and subject to, and includable in, the computation of other limitations upon the district's tax levy. This amendment failed on an 18-18 vote.

Under current law for all other political subdivisions with bonding authority, when taken to a vote of the public, the approval only requires a majority of those voting and is not subject to levy limitations. Further, counties and school districts currently have a 5.2 cent levy authority for capitol construction and maintenance bonds that only requires the governing body majority vote -- no public vote is required.

**Supreme Court hears Niobrara River water case** -- The Nebraska Supreme Court heard arguments this week on a water case involving the water rights on the Niobrara River. The case began in 2007, when the Nebraska Public Power District made a call on the river for their full water right – something they have never done since gaining the right in the 1940's. This prompted action the Department of Natural Resources to order hundreds of farmers and ranchers to shut off their irrigation surface water rights to meet the call. This action was also the main reason the Niobrara River Basin was declared fully appropriated.

The irrigators that were shut down asked for a hearing to determine whether the order was properly issued. Prior to the hearing, the Director of the DNR issued an order concluding the DNR lacked subject matter jurisdiction over the proceeding and dismissed the case, primarily citing that the irrigators already had chosen a different route - through Boyd County District Court - to secure their water rights for the next 20 years.

In the legal action through Boyd County District Court, the irrigators had reached an agreement to pay NPPD 70 cents per acre-foot for the water for the next 20 years, totaling \$47,000. However, the question now is whether NPPD actually had maintained the water right over the years – one of the legal requirements to keep the right.

The state Department of Natural Resources has granted at least 440 appropriations since NPPD acquired its rights in 1942, and NPPD never made a call on the river for all the water. The irrigators argue that NPPD hasn't used its rights for more than 50 years, and may have forfeited them by failing to object to any of the applications of other water users. Under state law, the department has a duty to cancel rights not exercised.

If the high court agrees with irrigators, the case will go back to the state Department of Natural Resources.

The case before the state Supreme Court is entirely separate from one filed by other irrigators along the Niobrara, who won an 8th U.S. Circuit Court of Appeals ruling April 13. That court ruled that a U.S. district judge was wrong to dismiss their case, and gives those eight irrigators another chance to keep NPPD from taking the water rights.

There appears to be only one thing for certain in this case – the amount of money generated by NPPD for the water lease from the irrigators (\$47,000) probably will not cover the litigation expenses.

**Appropriations bills advanced** – The Appropriations committee finished their committee work and advanced the appropriations bills to General File. Floor debate is scheduled to begin Tuesday, May 5th when the legislature reconvenes after a 4-day weekend.

Based on the April revenue forecasts, the Committee proposed budget included in **LB 315** results in a \$208.3 million unobligated ending balance at the end of the FY10/FY11 Biennial Budget which is \$18.6 million above the minimum 3% reserve. This variance from the minimum reserve has fluctuated substantially over the past four months from the \$377 million shortfall projected prior to the session based on October revenue forecasts and a projected budget based on agency requests, to a \$36.4 million shortfall based on the Committee Preliminary budget, back to a \$374 million shortfall after the February 2009 revenue forecasts to over \$580 million shortfall when including the ARRA revenue impacts and April forecasts.

For natural resources programs, there is little change from the preliminary budget proposed by Governor Heineman. The changes for DNR in **LB 315** include:

- Increase personnel services limit to reduce reliance on contractual services for integrated management workload. The Appropriations Committee increased the agency personnel services limit by \$250,000 and includes the following intent language: "It is the intent of the Legislature that the Department of Natural Resources 1) examine the use of consultants to carry out integrated water management projects and studies and 2) hire additional staff when cost benefit analysis indicates that it is feasible to decrease the reliance upon consulting services used to carry out long-term integrated water management projects and studies."

- Reduction of estimated federal funding by \$100,000. The agency requested a lower federal fund expenditure authority, based upon projected funding levels.
- Soil & Water Conservation Fund, reduce General Fund allocation to by \$198,619 in each of the next two fiscal years. The Appropriations Committee recommendation reduces funding for this program by 7.4%. Funds allocated to this program are divided between natural resources districts, with the NRDs providing funding to individual property owners undertaking conservation practices.
- Water Management Fund, reduction of program funding by \$100,000 in each of the next two fiscal years. The Appropriations Committee recommendation reduces funding by 9.3%.

The budget can be found at <http://www.nebraskalegislature.gov/>. Click on the report “2009 Appropriations Committee Budget Report”.

**Programs available for rural & urban tree planting** -- There are numerous cost-share programs available to help land owners plant trees and shrubs in rural and urban settings.

In rural areas, the most common programs offering technical and financial assistance are the Environmental Quality Incentives Program, Continuous Conservation Reserve Program, or natural resources district programs. Other examples that also offer tree and shrub cost-share assistance in rural areas include:

- Wetlands Reserve Program is administered by the Natural Resources Conservation Service. In some locations, planting hardwood trees and shrubs in the uplands near the actual wetland can diversify the landscape and offer additional wildlife habitat;
- Wildlife Habitat Incentives Program, also by NRCS, offers landowners payments for developing wildlife habitat, including pivot corners and irregular areas;
- Continuous Conservation Reserve Program offers cost share funds for planting riparian forest buffers. Trees planted along streams offer wildlife or aquatic habitat, and improve water quality by shading and cooling the water;
- Conservation Security Program, when it is announced by USDA, may also be an option for planting trees and shrubs; and
- Pheasants Forever and Quail Forever organizations have a “Corners for Wildlife” program for establishing permanent wildlife habitat in pivot corners.

In urban areas there are opportunities for communities or neighborhoods to plant more trees. The Nebraska Statewide Arboretum that administers funds for several tree planting programs. Check their website at <http://arboretum.unl.edu/>. The Arboretum also manages funds from the Nebraska Department of Roads for the Community Enhancement Program aimed at transportation corridors like streets, trails etc.

Another program funded by the Nebraska Department of Roads and administered by the Nebraska Forest Service, soon to be released, is called Shade our Streets for tree planting along streets. Many private foundations also fund tree planting projects and some are listed on the Nebraska Forest Service website at [www.nfs.unl.edu/program-communityforestry.asp](http://www.nfs.unl.edu/program-communityforestry.asp).