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May 22, 2009

TO: NARD Board, NRD Managers and Conservation Partners

FROM: Dean E. Edson, NARD Executive Director

RE: May 22 NARD Update

Legislative Action – The following bills were given final approval by the Legislature.

LB 160, Flood protection legislation approved – Senators gave final approval to **LB 160** this week on 36-12-1 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 final vote on the bill follows:

- **Voting in the affirmative, 36:** Adams, Ashford, Avery, Campbell, Carlson, Christensen, Cook, Cornett, Council, Dubas, Fischer, Flood, Fulton, Gay, Giese, Gloor, Haar, Hadley, Harms, Lathrop, Loudon, McCoy, McGill, Mello, Nantkes, Nelson, Nordquist, Pahls, Pankonin, Price, Schilz, Stuthman, Sullivan, Wallman, White, and Wightman.
- **Voting in the negative, 12:** Dierks, Friend, Hansen, Heidemann, Howard, Janssen, Karpisek, Langemeier, Lautenbaugh, Pirsch, Rogert, and Utter.
- **Present and not voting, 1:** Coash.

The following are the objectives of the bill.

- Provide 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, 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.
- Bring the district into compliance with the federal Clean Water Act.

The following provisions are included in the final version of the bill.

- Allow use of its existing mill levy authority (4 ½ cents per \$100 of assessed valuation) 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.
- A public vote would be required for any proposed bond levy exceeding 1 cent.
- The proceeds of bonds shall be used to pay costs of design, rights-of-way acquisition, and construction of multipurpose projects and practices for storm water, including flood control and water quality.
- Flood control, water quality projects and practices include, but are not limited to, low-impact development best management measures, flood plain buyout, dams, reservoir basins, and levees.
- The proceeds of bonds shall not be used to fund combined sewer separation projects in a city of the metropolitan class.
- Limits reservoir or water quality basin to no more than 400 surface acres of permanent pool.
- Public access would be required for any project that has a permanent pool greater than 20 surface acres.
- Provides a 90-day time frame from the point that a NRD notifies intent to issue bonds for counties to object to a dam within their exclusive zoning authority.
- Allow county boards to disapprove of any reservoir exceeding 20 surface acres, if the affected county passes a resolution.
- Bonds would only be used for projects in cities and counties that have adopted zoning regulations or ordinances that comply with state and federal floodplain management rules and regulations.
- Any property acquired by the district using eminent domain and financed by bonding can only be transferred to another political subdivision or agency of the state or federal government.
- Provide that bond proceeds not be used for metropolitan class city's combined sewer separation projects.
- Provide that the bonding authority sunsets on December 31, 2019.

Senator Hadley from Kearney offered several amendments, none of which were incorporated into 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 during General File debate.

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.

LB 209 -- Dam construction bill approved. Senators gave final approval to LB 209 this week on a 48-0-1 vote. The bill changes the time frame from 6 months to 12 months after the approval of any application

regarding water for irrigation, power, or other useful purpose by the department, to commence the excavation or construction of the project. The bill also clarifies that the Department of Natural Resources may extend, for reasonable lengths of time, the time for commencing excavation or construction. The bill was sponsored by Senator Langemeier.

LB 626 -- Change prohibited activities for public official's and public employee's use of public resources. A bill introduced by Senator Russ Karpicek of Wilber to change governance of public resources was given final approval this week on a 44-2-3 vote. The bill would allow public officials and employees to use public resources that are considered incidental.

The key components of the bill include:

- Any use of public resources by a public official or public employee which is incidental or de minimis will not constitute a violation of the sections in the Nebraska Political Accountability and Disclosure Act.
- A resource of government, including a vehicle, will not be considered a public resource and personal use will not be prohibited if the use for personal purposes is part of the public official's or public employee's compensation provided by a government body and the personal use of the resource is reported as compensation in accordance with the Internal Revenue Code and taxes are paid.
- If authorized by the contract or policy, the resource may be used whether or not the public official or public employee is engaged in the duties of his or her public office or public employment.
- A public official or public employee is not prohibited from using his or her personal cellular telephone, handheld device, or computer to access a wireless network for which access is provided to the public by a government body.
- Unless otherwise restricted by another agreement or contract, a public official or employee may use a telecommunication system, cellular telephone, handheld device, or computer under the control of a governmental body for emails and calls in certain circumstances, such as calling a teacher, doctor or family member. The communication will be kept to a minimum and not interfere with public business. A public official or public employee shall be responsible for reimbursement of charges that directly result from the communication.
- Allows a public employee under the direct supervision of a public official to respond to specific inquiries as to his or her opinion on a ballot question or to provide information in response to a request for information. Currently, only public official's were allowed to respond to specific inquiries regarding ballot questions.

The bill was introduced in response to an August 2008 decision by the Nebraska Accountability and Disclosure Commission in which a city administrator was fined for sending an email relating to a campaign event from his own computer at home, but it went through a server owned by the city.

LB 263 -- Provide that state law preempts local laws for seeds and fertilizers. Senators gave final approval to LB 263 this week on a 44-4-1 vote. The bill would not allow political subdivision's to prohibit or regulate matter regarding the registration, labeling and sale, storage, transportation, distribution and notification of use of seeds, fertilizer and soil conditioners under the Nebraska Seed Law and the Nebraska Commercial Fertilizer and Soil Conditioner Act.

The bill does not limit the authority of any city or county to adopt and enforce zoning regulations. The committee amendment added on General File also adds that natural resource district enforcement of the Nebraska Groundwater Management and Protection Act is expressly excluded from the preemption of the Nebraska Fertilizer & Soil Conditioners Act and its regulations. The bill was introduced by Senator Rogert and was a Speaker Priority Bill this session.

LB's 315 & 316, Budget bills approved –Governor Heineman signed the budget bills this week without exercising his veto authority. The budget proposed by the Appropriations Committee would provide \$6.9 billion for state government operation and aid during the two-year period, an average annual spending growth rate of 1 percent. For natural resources programs, there is little change from the preliminary budget proposed by Governor Heineman.

Legislature in recess -- The Nebraska Legislature is in recess from Friday May 22nd until Tuesday, May 26th for Memorial Day. The tentative plan is to adjourn the session on May 29, 2009.

Interim Study List – The following provides a list of interim studies related to natural resources introduced this session. The introducers name follows the one-line summary. Hearings on interim studies are usually held late summer through December. However, it is not required that all interim studies have a hearing.

- **LR 101** - Interim study to examine issues relating to the impact of additional well development on water use by domestic wells in areas of the state where ground water supplies are limited. Haar.
- **LR 103** - Interim study to examine the statutory duties of riparian landowners adjacent to natural streams and other watercourses for the control and removal of noxious and invasive vegetation. Agriculture Committee
- **LR 115** - Interim study to review issues under the jurisdiction of the Natural Resources Committee. Langemeier.
- **LR 122** - Interim study to examine the feasibility of making the Game and Parks Commission a code agency. McCoy.
- **LR 124** - Interim study to examine the use of eminent domain by natural resources districts for the taking of private land for development or management of recreational trails or corridors. Pankonin.
- **LR 128** - Interim study to examine issues relating to the laws of Nebraska governing the management and use of Nebraska surface water and ground water. Langemeier.
- **LR 141** - Interim study to examine the subject matter of LB 474, 2009, that would have required the state and its governmental subdivisions to pay property tax on property that was not being used for a public purpose. Stuthman.
- **LR 181** - Interim study to examine the feasibility and benefits of restructuring the natural resources districts. McCoy.
- **LR 214** - Interim study to examine local government levy limits and property tax proposals that have been implemented since 1995. Revenue Committee.
- **LR 222** -- Interim study to examine granting the Department of Environmental Quality the statutory authority to file and collect environmental liens on property. Langemeier.
- **LR 235** -- Interim study to examine water issues. Christensen.
- **LR 240** - Interim study to examine ideas for encouraging responsible livestock development through participation and partnerships between communities, counties, organizations, and state agencies. Christensen.

A full list of interim studies can be found at <http://www.nebraskalegislature.gov/session/interim.php>.