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TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: January 29 NARD Update

NRD State Aid bill advances – Senators advanced **LB 210** to Final Reading this week without debate. The bill changes the state aid formula to NRDs by eliminating the levy for bonding from the calculation. On General File, senators adopted FA 57 which places a July 1, 2010 effective date on the bill. On Select File, senators adopted AM 1573 which adds the emergency clause to the bill so it takes effect when passed and approved according to law. Senator Langemeier is the sponsor of the bill.

NARD Legislative Conference highlights -- Almost 300 NRD board members and employees from all 23 NRDs attended the 2010 NARD Legislative Conference this week. Governor Dave Heineman expressed appreciation to the NRDs for their hard work on the controversial water issues and explained the financial issues and struggles that the State of Nebraska will have to face in the upcoming year. The NARD voting delegates reviewed the legislation before the Nebraska Unicameral this session.

Delegates supported Legislation that would provide a variety of ways to assist NRDs in managing natural resources. These bills include: **LB 764** -- Allows NRDs to develop IMPs in areas that are not Fully or Over-Appropriated (Fischer); **LB 1031** – Eliminate the sunset date on NRD levy (Dierks); **LB 1032** -- Change the fully appropriated levy (Dierks); **LB 893** - Provide refund procedures for unconstitutional taxes and assessments (Christensen); **LB 932** - Change provisions relating to repayment of financial assistance by natural resources districts (Christensen); **LB 862** – Change provisions relating to issuance and repayment of river-flow enhancement bonds (Christensen); **LB 993** – Change use of the Water Resources Cash Fund (Carlson); **LB 795** - Authorize employment of law enforcement officers by natural resources districts (Council); **LB 1010** - Provide procedures and limitations on the use of eminent domain by natural resources districts for recreational trails (Pankonin); **LB 1019** - Creates a trails dispute board to decide disputes concerning recreational trails between county boards and NRD boards (Haar); **LB 785** -- Provide an exception to required approval for certain water transfers (Carlson);

Terry Martin elected NARD Board Treasurer – The NARD Board of Directors elected Terry Martin, Upper Republican NRD, as NARD Secretary-Treasurer. Terry farms and ranches in Dundey County with his brother, which includes corn, wheat, soybeans, millet, alfalfa, sunflowers, various hay crops and a cow/calf operation. Prior to farming full-time, Terry spent 11 years as a Design Engineer and Project Manager at an engineering firm in Salina, Kansas. Terry was elected to fill a vacancy after the untimely passing of director Dean Johnson, Lower Platte North NRD.

Testimony taken on NRD director elections – The Natural Resources Committee accepted testimony on LB 895, which would require directors appointed to fill vacancies to run for re-election if the appointment occurred before September 1 of the second year of the term. Augustus Brown, Upper Big Blue NRD Board Chair, testified on behalf of his district and NARD in opposition to the bill, as it would force such directors to run again in two years rather than giving them the unexpired term.

The Papio Valley Preservation Association (PVPA) requested the bill be introduced, so they would have more input on any vacancy that may occur. In their testimony they cited an example of a vacancy appointment in 2004 by the Papio Missouri River NRD where not all candidates were considered. The bill does not address the situation described by PVPA of how vacancies are filled.

After the hearing it was discovered that there was not a vacancy appointment in 2004 as claimed by the PVPA. However, there was a vacancy appointment in 2006 that involved six candidates. The PMRNRD allows for all the candidates to come in and make a 20 minute presentation. Prior to the presentation, two of the candidates withdrew from nomination. The remaining four candidates were given consideration before the board voted to select one as the current law outlines. It is assumed the two candidates that withdrew, are the ones PVPA claimed were not considered.

Revenue Committee hears tax refund bill – The Revenue Committee accepted testimony on LB 893, introduced by Senator Mark Christensen, which would provide a refund mechanism for taxes declared unconstitutional. Joel Burke, legal counsel for the Upper Republican NRD, presented testimony in support of the bill on behalf of NARD.

When the Nebraska Supreme Court ruled that the LB 701 property taxes were unconstitutional, they did not strike the purpose of the tax which was to pay for a bond that financed the lease of water or to pay the loan provided by the state. Under current law this is the only purpose the funds can be used for.

The current refund provision in law only allows for taxes declared unconstitutional to be paid back to those that filed timely protest with the county. The refunds can be provided once the county determines that the protest was filed on time. It is then the county's responsibility to pay the refund, after submitting a request to the appropriate political subdivision (the NRDs in this case). There are only about a dozen individuals that filed timely protest in the entire basin. So far, the county has not taken final action on all protests.

The districts can not get a bond issued with an unconstitutional tax, so they can not spend it. Further, under current law, the state has not filed its request for repayment of the loan as they are still reviewing the case of using property tax to pay for a state purpose. Thus, the funds (about \$2.3 million) are still sitting in an escrow account.

Senator Christensen's bill would allow for refunds of unconstitutional taxes without filing a protest. The committee has taken no action on the bill.

Water Funding – The Natural Resources Committee accepted testimony on LB 689 this week, which would eliminate the check-off funds going to the Water Resources Cash Fund. Senator Chris Langemeier introduced the bill to eliminate the check-off funds that were to go into the water fund starting in 2012.

Under the current law there is a 3/5th cent/bushel check-off on corn and 3/5ths cent/hundredweight check-off on grain sorghum that goes into the Ethanol Production Incentive Fund. In October of 2012 this ethanol fund will cease and the existing check-off was to go to the Water Resources Cash Fund starting in October 1, 2012. There is no increase in the check-off proposed, only directing where the funds should go.

The bill eliminates the commodity check-off also redirects the funds remaining in the Ethanol Production Incentive Cash Fund when the program ends December 31, 2012. The remaining funds would be split equally with the commodity boards and the general fund. These remaining funds were to go into the Water Resources Cash fund.

The bill was supported by the agriculture organizations and commodity groups. Although they recognized the need for a state water fund, they all argued that the funding source should come from a broader source but did not offer anything specific other than to be willing to look at other sources.

Kent Miller, Twin Platte NRD, presented testimony in opposition to the bill on behalf of his district and NARD. The primary focus of the testimony was not against eliminating the tax, but rather to have a funding source in place before that is done. Kent also provided the committee with funding needs for the Platte River Recovery Program and the Republican River Compact. The testimony stressed the commitment to use local funds, but the state needs to have some matching funding available.

The committee took no action on the bill.

The following are bills of interest up for hearings next week. All hearings begin at 1:30 p.m.

February 3rd

- **LB 764** – Allows NRDs to develop IMPs in areas that are not fully or over-appropriated. Fischer. Natural Resources Committee.
- **LB 862** – Change provisions relating to issuance and repayment of river-flow enhancement bonds. Christensen. Natural Resources Committee.
- **LB 932** – Change provisions relating to repayment of financial assistance by natural resources districts. Christensen. Natural Resources Committee.

February 5th

- **LB 1057** – Creates the Republican River Basin Water Sustainability Task Force. Carlson. Natural Resources Committee
- **LB 1076** – Change provisions relating to evaluation of river basins, sub-basins, and reaches. Schilz. Natural Resources Committee