

March 26, 2010

TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: March 26 NARD Update

General File Action

Occupation tax – The Legislature advanced **LB 862** to Select File on a 41-3 vote this week after adopting the committee amendment (**AM 2004**) on a 41-2 vote. The bill makes several changes to the occupation tax on irrigated acres. The bill makes two important changes: 1) Expands the definition so the Republican Basin portion of Tri-Basin NRD is eligible to participate in water management programs, and 2) allows the proceeds of the tax to be used to pay for the costs of projects without issuing bonds.

Changing the definition to tie it to the required integrated management plans fits the current water law, and also allows the Tri-Basin NRD to participate in water augmentation plans that may be required to maintain compact compliance. The existing law does not allow Tri-Basin NRD to do such.

Two amendments were offered to the committee amendments and were rejected by the legislative body. First, Senator Harms offered **AM 2197** to exempt surface water irrigators from paying the occupation tax and only apply it to groundwater irrigated acres. This amendment failed by a 6-22 vote.

Second, Senator Loudon offered **AM 2200** which would have maintained the current language for eligible districts, plus required those districts to incorporate the intent language in their IMPs. This would have precluded Tri-Basin from developing a program to prevent water-short years. The Loudon amendment failed by a 5-39 vote.

The committee amendment (**AM 2004**) to **LB 862** requires an eligible district to have the language incorporated into the IMP which also has to be approved by the state (DNR). Additionally, the IMP has to spell out the districts' intent to utilize the qualified projects. The criteria in the bill are as follows:

- The eligible district has jurisdiction that is part of a river basin for which the district has adopted an integrated management plan (IMP);
- The IMP is in accordance with 46-715;
- The IMP refers to 2-3226.04; and
- The IMP explicitly states the district's intent to utilize qualified projects described in 2-3226.04.

Funds from **LB 862** can only be used to pay or refinance the costs of qualified projects in Neb. Rev. Stat. **2-3226.04**, such as: (1) Acquisition by purchase or lease of ground water or surface water rights; (2) purchase or lease or the administration and management, pursuant to mutual agreement, of canals and other works, including reservoirs, constructed for irrigation from a river or any of its tributaries; (3) vegetation management, including, but not limited to, the removal of invasive species in or near a river or any of its tributaries; and (4) the augmentation of river flows consistent with the authority granted under Chapter 2, Article 32. All of these programs benefit *both* ground and surface water users.

Currently, DNR is working with the districts in the Republican River Basin to modify the local IMPs to address water-short years. These proposed modifications to the existing IMPs provide an opportunity this year for the districts to incorporate the language from **LB 862** in the revised IMPs.

The way the bill is drafted, only districts that are fully or over-appropriated are eligible. NRDs under this designation include the North Platte NRD, South Platte NRD, Twin Platte NRD, Central Platte NRD, a portion of the Upper Big Blue NRD, Upper Niobrara White NRD, Middle Niobrara NRD, and a portion of the Lower Niobrara NRD. In order to gain the authority to levy the tax, a district must express its desire in an IMP to use the occupation tax. However, districts that are fully or over-appropriated and have IMPs approved and adopted still may not be eligible if they do not explicitly reference their intent to use the tax in the IMP. Requiring this reference ensures that the districts have properly planned for the occupation tax as a tool for conjunctive management of water use in a basin. This means their constituents will know the intentions of the District when an integrated management plan is adopted.

The other key component of the bill allows the occupation tax to be used to pay for the cost of a project without using bonding.

Finally, the amendment addresses that for districts that have more than one river basin within its jurisdiction, the occupation tax is to be confined to the geographic area affected by an IMP.

Last week the Lancaster County District Court ruled that the occupation tax on irrigated land meets constitutional standards. The court case is important to **LB 862** in several areas, primarily that the tax is constitutional and it is a valuable tool to manage water resources to keep Nebraska in compliance with compacts, decrees and agreements.

The bill is sponsored by Senator Mark Christensen and is one of the Natural Resources Committee Priority Bills.

Select File Action

Contracts with law enforcement – On Select File this week Senators adopted **AM2203** to **LB 817** on a 40-0 vote. The amendment will allow natural resources districts to contract with law enforcement agencies to patrol district property. Senator Brad Ashford sponsored the amendment, adopted 40-0, that contained provisions originally introduced by Senator Brenda Council in **LB 795**. Following this amendment and a couple of others, senators advanced the bill to Final Reading.

The provisions of **LB 817** would exempt valid permit holders under the Concealed Handgun Permit Act from also having to obtain a certificate to purchase, lease, rent, or receive transfer of a handgun. The bill is Senator Fulton's Priority Bill for the session.

Republican River Task Force – Senators advanced **LB 1057** to Final Reading which proposes to create the Republican River Basin Water Sustainability Task Force. Several amendments were adopted prior to advancing the bill to the final round of consideration.

On General File, Senators adopted the committee amendment, **AM 1895**, that replaces much of the bill and maintains the emergency clause. The bill with the committee amendments creates a task force as follows:

1. Governor appointments:
 - Eight from NRDs in the Republican River Basin (two from each NRD).
 - Four from irrigation districts in the basin.
 - One from each of the following: UNL, Nebraska Game and Parks, Nebraska Department of Agriculture, Nebraska Department of Natural Resources.
 - Two from agriculture-related businesses in the basin.
 - One representative each from a school district, city, county and public power district in the basin.
2. The Legislature's Executive Board chairperson is also to appoint three ex-officio, non-voting senators, including two who reside in the basin, and the chairperson of the Natural Resources Committee. On Select File, Senators adopted an amendment from Senator Carlson (**AM 2235**) to add an additional member of the Legislature that has a portion of his or her legislative district in the basin. This allows Senator Hansen to be part of the task force.
3. The task force is to be housed within the Department of Natural Resources for administrative and budgetary purposes. Advisory support may be requested from federal and state agencies, and non-state employees are to be reimbursed for expenses.
4. The task force is to meet quarterly, may hire a facilitator, and is to convene within 30 days after appointments are completed. The task force is to provide a report to the Governor and Legislature, and is to terminate on June 30, 2012. Also, the intention is stated that expenses are to be paid from funds appropriated from the Water Resources Cash Fund and not to exceed \$25,000 per fiscal year.

Senators adopted an amendment offered by Senator Heidemann (**AM2262**) on Select File consideration that creates a Republican River Basin Water Sustainability Task Force Cash Fund to hold the funds, clarifies the fund shall be administered by the Department of Natural Resources and expended at the direction of the Republican River Basin Water Sustainability Task Force. The amendment also eliminates the old Water Policy Task Force Cash Fund and transfers \$50,000 from that fund to the new task force fund and the remaining amount (about \$107,000) from the old WPTF to the Water Resources Trust Fund which is used for integrated water management studies.

The bill is Senator Carlson's Priority Bill for the session.

Final Reading Action

Appropriations bill passes – Senators gave final approval to the deficit appropriations bill (**LB 935**) on March 26th. Included in the package is **AM 2117** to **LB 935**, which is the deficit appropriations bill.

Since the bill was introduced in January, revenue forecasts have been lowered prompting the committee to respond with spending cuts and funds transfers that were not included in the original versions. The committee proposal (**AM 2117**) was incorporated into the bill prior to advancement and includes a 2% across the board cut applied to the same operations and aid programs to which the 5% cut was applied in the 2009 Special Session for the FY 10-11 years. No cuts are proposed for NRD-related programs in the current fiscal year.

The problem looming in the future is the projected deficit of \$670 million for FY's 11-12 & 12-13. This deficit projection is based upon a 7.2% growth in revenue for the next two years, which is probably un-attainable. If the revenue growth is not met, the deficit for the next biennium could be \$1 billion.

Certain state appropriations were exempted from across-the-board reductions including TEEOSA school aid, Special Education, Medicaid, Kids Connection, Homestead Exemption, Behavioral Health Aid, Developmental Disability Aid, Health Aid, Aid to Aging Programs, Health and Human Services care and treatment facilities, State Patrol, Corrections, Juvenile Services Aid, HHS protection and safety, State Emergency Fund, and Public Safety Communications.

The across-the-board reductions were also not applied to higher education which includes the University of Nebraska, state colleges and community colleges due to maintenance of effort requirements attached to Nebraska's use of Stabilization funds received under the American Recovery and Reinvestment Act (ARRA). These priority and entitlement programs that were excluded amount to 89.3% of the budget meaning that the across-the-board cut is applied to only 10.7% of the total budget.

For natural resources programs, adjustments include the following:

<u>Natural Resources Program Type</u>	FY2010-11 GF Appropriation (2009 Spec Session)	FY2010-11 Across the Board Cut	FY 2010-11 Revised
NDNR operations	9,494,300	(189,886)	9,304,414
Soil & Water Conservation Fund	2,365,343	(47,307)	2,318,018
Resources Development Fund	3,204,413	(64,088)	3,140,325
Interrelated Water Management Plan Program	2,197,211	(43,944)	2,153,267
NRD State Aid	1,465,377	(29,308)	1,436,069

A complete listing of the programs and the amount of across-the-board cuts is included in a report from the appropriations committee which is available online at:

<http://www.nebraskalegislature.gov/pdf/reports/fiscal/2010committee.pdf>.