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March 5, 2010

TO: NARD Board, NRD Managers and Conservation Partners  
FROM: Dean E. Edson, NARD Executive Director  
RE: March 5 NARD Update

**Anna Baum elected chair of the NRD Managers Committee** – Anna Baum, manager of the Upper Loup NRD, was elected chairperson of the NRD Managers Committee this week. Baum is the first female to chair the committee. Coincidentally, Mary Ann Wortmann is serving as President of the NARD and the first woman to hold that position. Mike Murphy, the Manager of the Middle Niobrara NRD, was elected vice-chair of the NRD Managers Committee.

### Committee Action

**Occupation Tax** – The Natural Resources Committee advanced **LB 862** this week to General File with a committee amendment. The bill has not been officially reported out of committee, but will be early next week. The bill makes several changes to the occupation tax on irrigated acres. The bill is sponsored by Senator Mark Christensen and is one of the Natural Resources Committee Priority Bills.

Current law allows districts that contain a river subject to an interstate compact among at least three states and at least one irrigation district within the compact to be able to issue river-flow enhancement bonds. The committee amendment deletes the original bill and replaces that language with the following criteria:

- It 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.

Nebraska Revised Statute **2-3226.04** outlines that the funds shall only be used to pay or refinance the costs of (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.

The committee amendment also allows the funds to be used to pay all of or any part of the costs and expenses of one or more qualified projects rather than issuing bonds.

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.

**Recreational Trails** -- the Natural Resources Committee advanced **LB 1010** this week on an 8-0 vote, with Committee Amendment **AM 2029** to the floor for debate by the full legislature. The bill establishes a procedure for natural resources districts to use when eminent domain is involved for developing a recreational trail. Several changes to the original bill were made.

Originally the bill called for a 75% board vote in favor of the trail, which is reduced to 67% (2/3rds) by the committee amendment. The amendment also clarifies that private lands included in the bill do not include property under management of the Board of Educational Lands and Funds. The amendment also requires the district to have clear and convincing evidence that the procedures were followed and all of the criteria are met.

The bill is Senator Pankonin's Priority Bill for the session. The bill has not formally been reported out of committee, but will be next week.

**Bank lien exemption** -- The Natural Resources Committee advanced **LB 785** this week, which would provide an exemption from the lien search for transfers of four certified irrigated acres or less. The bill is sponsored by Senator Tom Carlson of Holdrege. The title search requirement was added to state law last year as a way to protect lien-holders from having property devalued as a result of a certified irrigated land transfer. Those involved in drafting the legislation recognized at the time that there was some minimum threshold that should be exempt from the lien search requirements. However, the parties were not able to come to an agreement at the time as to what that threshold would be, so the original legislation was silent on that point.

The committee advanced the bill on a 8-0 vote with an amendment, **AM 2090**, which adds an exception for a landowner on a single tract of land where there is no reduction or increase in certified acres and the transfer is for irrigation efficiency improvements.

**NRD property tax levy authority** – The Revenue Committee advanced two bills dealing with NRD levy authorities this week. The bills, **LBs 1031 and 1032**, are both sponsored by Senator Cap Dierks of Ewing.

The original version of **LB 1031** eliminates the 2012 sunset date for the NRD three-cent levy in fully and over-appropriated areas. The other bill, **LB 1032**, allows NRDs that have been preliminarily determined to be fully appropriated, but later reversed, to have access to the three-cent levy to administer and implement ground water management activities, and integrated management activities under the Nebraska Groundwater Management and Protection Act.

The funds are to be used for water management planning, hydrological studies, retiring water uses, river augmentation programs, and providing off-set water for municipal and industrial uses. These programs need to be funded at a proper level to maintain the economic viability of the local regions.

Even though the determination has been reversed in the Lower Platte Basin, the districts still have to move forward with studies on groundwater/surface water interaction. This is the same as what happens when the basin is declared fully appropriated. The three-cent levy is still needed to do the modeling and studies to help with water management. The Loup, Elkhorn and Lower Platte NRDs are working with DNR and other parties on the Elkhorn Loup Model (ELM). Funding is needed for this study and the districts would like to provide the local funding necessary.

The committee amendments (**AM 2040 to LB 1031 and AM 2039 to LB 1032**) allow for the authorities in both bills to extend until 2016-17.

**NRD director elections** – The Natural Resources Committee advanced **LB 895** this week on a 8-0 vote without amendments. The bill requires directors appointed to fill vacancies to run for re-election if the appointment occurred before September 1 of the second year of the term. The bill is sponsored by Senator Charlie Janssen.

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.

**NRD write-in candidates** -- The Government Committee advanced **LB 852** this week which allows for write-in space on official ballots for certain offices. The bill eliminates the prohibition of write-in candidates in the primary for directors of NRDs and public power districts. The bill also eliminates the prohibition of write-in candidates in the general election for directors of NRDs, public power districts, county weed districts, reclamation districts, and ESUs.

Under current law, if there are two or less candidates for NRD or public power district directors, the ballot does not have to be printed in the primary election as the candidates would automatically advance to the General Election. This does not change under the bill.

The Nebraska Secretary of State's office testified at the hearing and pointed out that races with two or less candidates for NRD or public power district directors would not have to be on the primary ballot and thus the districts would not have to pay for ballots for additional write-in candidates. Their testimony also pointed out that the ballots could get rather lengthy with the write in spaces for all the lower tier offices.

The bill was supported by the Nebraska Association of County Officials and the Papio Valley Preservation Association. The committee advanced Senator Avery's bill to General File without amendments.

### **General File Action**

**Contracts with law enforcement** – On General File this week Senator Brad Ashford, Chairman of the Judiciary Committee, filed an amendment (**AM 1976**) to **LB 817** to allow a natural resources district to contract with law enforcement agencies to patrol district property. The amendment was withdrawn after realizing the amendment included an incorrect reference. The amendment is the language from **LB 795**.

Senators advanced the bill to Select File and a subsequent amendment, **AM2096**, has been filed which corrects the error and would allow the NRDs to enter into interlocal agreements for the services of certified law enforcement personnel or to contract for the services of private security firms. Senators will debate the amendment when the bill comes up on Select File.

The intent 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.

### **Select File Action**

**Eliminate dedicated water fund source** – The legislature advanced **LB 689** to Final Reading this week which eliminates dedicated funding sources for the Water Resources Cash Fund.

The bill eliminates the 3/5ths cent/bushel check-off on corn and 3/5ths cent/hundredweight check-off on grain sorghum that was to go to the Water Resources Cash Fund starting on October 1, 2012. The bill also redirects the funds remaining in the Ethanol Production Incentive Cash Fund when the program ends December 31, 2012, splitting it equally with the commodity boards and the general fund. The funds were to

go into the Water Resources Cash Fund. Several state senators argued that the bill should not advance without some back-up plan for funding.

Three other bills were advanced this week dealing with local funding. The Revenue Committee advanced **LBs 1031 & 1032** to allow for local NRDs to continue to raise funds locally through 2017 and the Natural Resources Committee advanced **LB 862** to make modifications to the occupation tax on irrigated lands.

Senator Heideman, Chairman of the Appropriations Committee urged caution that large general fund budget deficits are projected in the next few years and that General Fund dollars will be extremely hard to come by. Several urban senators echoed that they do not want general funds used for water programs. Some rural senators also urged caution that the alternative could be worse than the check-off funds.

**Voluntary NRD IMPs** -- After brief debate, senators advanced **LB 764** to Final Reading which allows a natural resources district encompassing a river basin, sub-basin, or reach that has not been designated as fully or over-appropriated to, jointly with the department, develop an integrated management plan for such river basin, sub-basin, or reach located within the district.

The original version of the bill would have required a district to notify the department on or before October 1 of its intention to develop an integrated management plan. The committee amendment strikes the October 1 requirement and leaves it open that a district could notify the department at any time of the year.

There was some discussion about making sure surface water groups were included as stakeholders for local NRD IMP workgroups, but no amendments were offered as the discussion became how the Legislature lists every group, individual or organization in statute without inadvertently omitting someone. On General File similar debate occurred concerning environmental groups, but no amendments were offered.

#### **Other Issues**

**Water quality improvements and off-sets** -- Recently, the Nebraska Game and Parks Commission had commented on the NDEQ draft National Pollutant Discharge permits and requested/suggested municipalities and NRDs find off-sets for water quality improvement projects that may result in a depletion of stream flow volume with the emphasis on the Lower Platte River. This portion is not fully appropriated and no requirements for offsets are in state law for these areas. The NGPC is making this request over concerns with stream flows for endangered species including the pallid sturgeon.

Communities targeted on the issue are ones that have to install new sewage treatment facilities rather than discharging. It is the lack of discharge that NGPC is stating causes the negative impact to stream flows.

The Department has been working through these by demonstrating the loss of flow would be negligible and the impact to the river would be de minimus. These comments and evaluations are expected to increase as more small communities work to meet more stringent permit limits.

**NRD Groundwater Technician Training and Water Programs Conference** -- This week the NRD groundwater technician training and NRD Water Programs Conference was held in Kearney, Nebraska. The training was attended by 14 NRD staff and provided initial certification training and continuing education units. The conference was attended by approximately 100 NRD staff and conservation partners. The program included talks on the Platte River, Republican River, Niobrara River, agency updates, Hastings Wellhead Protection Program, Nebraska Rural Water and the well grout study. Application will be made for six CEUs for all classes of water well licenses.

**NARD Washington DC Conference** -- Representatives of Nebraska's NRDs will be participating in the annual NARD Washington DC Conference next week to discuss natural resources management issues with federal agencies and the Nebraska Delegation. The conference also includes a tour of the water quality concerns of the Chesapeake Bay.