



NEBRASKA ASSOCIATION OF RESOURCES DISTRICTS

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April 11, 2008

TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: April 11 NARD Update

Game and Parks Commission bill passes – A bill to change the terms of the Nebraska Game and Parks Commission passed final reading on a 40-2-7 vote this week. The final version of the bill makes the following changes: 1) Adds an at-large member, bringing the total number of commission members to nine; 2) Eliminates the requirement that two of the members reside on a farm or ranch, but leaves the requirement that three of the members shall be actually engaged in agricultural pursuits; 3) Increases the limit from four to five of the members can be of the same political party and clarifies that the party affiliation would be determined as of the statewide general election prior to his or her appointment; and 4) The bill establishes that person can serve no more than two terms as a member of the commission.

LPNNRD changes rules on well locations in the former Mead Ordinance area -- The Lower Platte North NRD changed their rules and regulations on well permits to address water quality concerns around the Former Mead Ordinance Plant. The ordinance manufacturing site was used by the federal government during WWII and the Korean Conflict. In the 1980's, groundwater contamination was discovered and a massive cleanup effort was subsequently undertaken by federal, state and local authorities. Included in the remediation plan is an effort to contain the contamination, pump out and treat the water. The Lower Platte North NRD is one of the partner agencies involved with the cleanup effort.

The rule change was prompted from 2007 permit application where a landowner who had a choice on location of a new irrigation well adjacent to the cleanup plumes. The landowner selected a well location which will pump contaminated water. Further, the drawdown effect of his pumping may adversely affect the currently contained contamination plume. There is a very good alternative location in the same field, however it would not be as convenient for the landowner. The previous Rules and Regulations gave the district no alternative but to issue the well permit as it did not address the remediation concerns.

The rule change will not permit new wells in the area if it is determined that the location or operation of a proposed water well or other work would adversely impact current or proposed clean up operations of hazardous materials being conducted by NDEQ and/or overseen by NDEQ, including the clean up operations of the Former Mead Ordinance Plant. This new requirement was added to the other list of requirements for well permits that includes health and welfare concerns, consideration of impacts to other water users, public interest considerations, and compliance with other existing rules and regulations. The new rule becomes effective May 10, 2008.

Natural Resources Committee Legal Counsel -- Effective May 1, 2008 Mark Ludwig will replace Jody Gittins as legal counsel to the Legislature's Natural Resources Committee. Ludwig currently serves as legal counsel to the Nebraska Lottery, and prior to that served as general counsel to the Nebraska Accountability and Disclosure Commission. Ludwig is a 1989 graduate of the University of Nebraska College of Law and grew up on a farm west of Deshler, Nebraska. Following graduation from law school

Ludwig worked as an associate in the law firm of Germer, Murray & Johnson in Hebron, and also worked as legal counsel to the Nebraska Public Service Commission and as regulatory counsel for the Nebraska Rural Electric Association. His prior experience with the Nebraska Legislature includes working as a legislative aide to former State Senators Howard Lamb of District 43 and Ed Schrock of District 38.

Republican Basin irrigator payment approved – The Nebraska Department of Natural Resources has approved the transfer of funds to the Republican River Basin NRDs to pay surface water irrigators for waiving water rights in 2007. Under the authorizing legislation, **LB1094**, the State of Nebraska will loan \$9 million from its cash reserve for the program. Funds should be distributed to the irrigators next week.

Because of a pending lawsuit, the Republican Basin NRDs could not issue the bonds allowed under LB 701 to pay the irrigators who leased water to the NRDs. The lawsuit alleges a new state law (LB 701) that allows property taxes to be collected for the purchase of water is unconstitutional. The case is still pending in Lancaster County District Court.

If the state loses the lawsuit and the property taxes are ruled unconstitutional, the \$9 million could be paid back to the state through a current tax on irrigated acres or through some other mechanism approved by the Legislature.

The State of Nebraska should be 29-44,000 acre feet in the black for 2007 primarily due to the efforts of the NRDs through groundwater regulation and surface water leases.

Electronic recycling advances -- Senators advanced **LB 986** to Final Reading this week, which proposes the Electronic Recycling Act. Electronic device is defined in the bill to mean a computer, video display device, or television. The bill establishes fees on the manufacturer of these devices based upon the volume sold in Nebraska to generate funds for recycling.

The bill also requires manufactures to develop a plan for recycling and file it with the Department of Environmental Quality. The fund from the fees would be earmarked to award grants for infrastructure development, collection, transportation and recycling of electronic devices. The bill was introduced by Senator Preister, and is his personal priority bill.

When the bill came up for Select File debate, three of the four pending amendments were withdrawn. Senator Louden did take **AM 2522** to a vote, but it was defeated. The amendment would have imposed an additional fee of \$2.00 per electronic device sold by retailers. The amendments withdrawn included **AM 2555, AM 2535 and AM 2536**.

Senator Louden offered **AM 2555** which would have stricken the manufacturers fee refund. Senator Kopplin filed two amendments to the bill including: 1) **AM 2535** which would have terminated the program 3 months after adoption of a federal program; and 2) **AM 2536** which would have redirected funds remaining at the end of the fiscal year to the General Fund rather than allowing them to be carried over for the next fiscal year grant cycle. Concepts of these amendments were included in amendments adopted on Select File offered by Senators Preister and Kopplin.

Senator Preister offered **AM 2730**, which was a made several minor changes, including; 1) to clarify fees only apply to electronic devises used in a home or residential environment and marketed to the general public; 2) Changes the fees under the act to the following -- \$1,000 for 500 to 1,000 electronic devices; \$7,000 for over 1,000 to 5,000 electronic devices; \$20,000 for over 5,000 electronic devices; 3) Beginning in FY 2010-11, authorizes the Department of Environmental Quality to adjust the fees on an annual basis to collect a minimum of \$1 million and a maximum of \$1.5 million; 4) Authorizes the

director of the Department of Environmental Quality the ability to end the program, if a federal recycling program is established.

Senator Kopplin offered **AM 2763**, which changed the refund provision of the fee. In the version adopted and advanced on General File, up to 50 percent of the fee would be refunded if an approved plan is filed with the department. Under Senator Kopplin's amendment, a refund to the manufacturers would be tied to the percentage of products recycled as compared to the number sold. The amendment lays out: 1) If 10 to less than 20 percent were recycled, the refund would be 10 percent; 2) 20 to less than 30 percent were recycled, the refund would be 20 percent; and 3) if more than 30 percent were recycled, the refund would be 50 percent.

The accompanying appropriations bill, **LB 986A**, authorizes \$1,720,000 to be transferred to the fund from the cash fund created under the act in FY 2009-10.

Chemigation Permit reminder – Farmers planning to chemigate in 2008 must obtain permits by June 1, 2008, which is the state deadline. Renewal permits are \$10 and must be submitted to the local NRD. An irrigation system that fails to renew by the deadline can not chemigate until a new permit is obtained. New permits cost \$30 and the system must pass inspection. A certified applicator must be included on all new and renewal permits. Contact your local NRD office for more information on permits, certifications and inspections.

2008 Surface Water Report sent to EPA for approval -- The Nebraska Department of Environmental Quality has submitted the 2008 Surface Water Integrated Report to the U.S. EPA for final approval, and has posted the report on the agency's web page: www.deq.state.ne.us. Go to "Maps and Data", then select "Surface Water/Impaired Waters and TMDLs."

The Integrated Report is a combination of these two federal Clean Water Act-required bi-annual reports: the Section 303(d) List of Impaired Waters and the Section 305(b) Water Quality report. The List of Impaired Waters portion includes those rivers and lakes that do not support their assigned beneficial uses. From this list, states prepare Total Maximum Daily Loads (TMDLs) that include pollution controls and strategies to improve the quality of these waters. The Section 305(b) Water Quality Report portion of the Integrated Report describes the status and trends of existing water quality for all waters of the state.

Once approved by EPA, the Integrated Report will be incorporated as part of the state's water quality management plan. For more information, contact Pat O'Brien at NDEQ at (402) 471-3382 or patrick.o'brien@ndeq.state.ne.us.

Senate approves Platte River legislation – On April 10th, the US Senate passed legislation to implement the federal share of the Platte River recovery implementation plan as part of the Consolidated Natural Resources Act of 2008 (S. 2739). The sponsors of the legislation included Senators Ben Nelson and Chuck Hagel.

The measure will authorize the Secretary of Interior to proceed with the program and includes \$157 million to carry it out. The cost will be shared 50/50 by the states and federal government. Through the program the states will provide benefits for the endangered and threatened species as well as land, water, and scientific monitoring and research to evaluate benefits of the program.

In late 2006 the Governors of Nebraska, Colorado, and Wyoming and the Department of Interior signed the final program agreement to develop a recovery plan that benefits certain species, yet allows continued water use and development along the Platte.