



# NEBRASKA ASSOCIATION OF RESOURCES DISTRICTS

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TO: NARD Board, NRD Managers and Conservation Partners  
FROM: Dean E. Edson, NARD Executive Director  
RE: January 18 NARD Update

**No Regulations for Lower Platte** – On Wednesday, January 16<sup>th</sup>, the Nebraska Department of Natural Resources released their decision that there will be no regulations along the Lower Platte River for protection of endangered species. The decision allows for future development within the area along the Lower Platte River. The Nebraska Game and Parks Commission had submitted a draft biological to DNR outlining concerns about additional water use and its impact to endangered species. DNR's decision will not be reviewed again until next year.

**Governors State of Union Address** – Governor Heineman delivered his State of the State Address on January 15<sup>th</sup>. He focused on tax relief, health care, immigration, education, and the job market. Water resource issues were not mentioned in the address.

**New Bills** -- The following are a few new bills of interest for the NRDs introduced this week. The last day for bill introductions is next Wednesday, January 23<sup>rd</sup>. For more information on introduced legislation, visit the Nebraska Unicameral web-site at [www.nebraskalegislatre.gov](http://www.nebraskalegislatre.gov).

**LB 922 -- Adopt the Cellulosic Biomass Renewable Energy Initiative and impose and change taxes.**

**Senator Dubas.** Creates the Cellulosic Biomass Renewable Energy Board consisting of three members appointed by the Governor. One member shall be appointed from the Nebraska Ethanol Board, one member shall be appointed from the Department of Economic Development, and one member shall be appointed from the Department of Agriculture. Members shall serve at the pleasure of the Governor. The board shall review and approve applications for incentives under the Cellulosic Biomass Renewable Energy Initiative and award incentives within four categories: (1) Cost-share grants; (2) Loans; (3) Production incentives; and (4) General grants.

The program would be funded by an excise tax of one cent per one million BTU units would be imposed on natural gas imported to Nebraska for industrial use. The tax shall be imposed until the fund reaches \$10 million and resumed when the fund falls below \$5 million.

**LB 924 -- Provide for streamflow depletion offsets. Senator Fisher.** The bill modifies several statutes relating to water management.

First, it establishes a clear procedure for natural resources districts to follow to quantify gains to stream flows by integrated management plans or programs, and acquisition of existing groundwater or surface water uses on a permanent or temporary basis. The NRDs would certify the amounts to DNR.

Second, it modifies the state endangered species act to more closely resemble the federal act in two respects: (1) Allows the Nebraska Game and Parks Commission to develop a reasonable and prudent alternative to a project that has been judged to jeopardize the continued existence of a protected species or adversely impacts designated critical habitat. Existing state law does not so provide although the Game and Parks Commission Rules and Regulations allow it. (2) Creates a committee to grant exceptions for projects that may harm a species. However, the project must have great value and there is no reasonable and prudent alternative. Although authorized to the US Fish and Wildlife Service under the federal Endangered Species Act, existing state law does not provide this exemption. It should be noted that under the state law, all federally listed species

are also protected by the state law. The state law, however, allows for the listing of species as threatened or endangered that may not meet the federal criteria.

Third, when applying for an instream flow right, the changes would require the Nebraska Game and Parks Commission and the natural resources to agree on an application prior to filing the application with the Department of Natural Resources. The parties would have to work together, no matter which entity initially is seeking the flow right.

Fourth, changes the annual river basin determination procedure by requiring the Department of Natural Resources to review existing surface water rights nonuse prior to the department making a preliminary conclusion that a river basin, subbasin, or reach presently is fully appropriated. If the right as been forfeited or abandon, the rights would be adjudicated under section 46-229.02.

Finally, the bill eliminates the reference all other applicable state or federal laws for the department to consider for determining whether a basin, sub-basin or reach is fully appropriated. This change eliminates uncertainty and/or interpretation of which other laws to consider.

**LB 945 -- Change authority of natural resources districts. Senator Peterson.** The bill prohibits natural resources districts to cooperate with or enter into agreements with, or to furnish financial or other aid to, any person who is in the business of selling or leasing, offering for sale or lease, or advertising for sale or lease, residential or commercial real property, when the cooperation, agreement, or financial or other aid relates to real property taken by the district through the use of eminent domain.

**LB 946 -- Impose an excise tax on production of ethanol. Senator Burling.** The bill proposes a 2 cent/gallon excise tax on the production of ethanol in the state. The proceeds would be distributed through the Water Resources Cash Fund starting in 2009 and eliminate the additional corn and sorghum checkoff that was scheduled to be implemented in 2013.

**LB 962 -- Change public body meeting provisions of the Open Meetings Act. Senator Preister.** The proposal would prohibit public bodies from requiring that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda.

**LB975 -- Change provisions relating to river-flow enhancement bonds. Senator Wightman.** The bill clarifies limitation of groundwater pumping on acres where surface water has been leased that was passed last year in LB 701. The bill clarifies that the limitation is on the specific acre that was served by the leased or purchased water. It also outlines limitation when groundwater is purchased or leased. The bill outlines four situations and incorporates the changes needed to address the concerns of the existing language as follows:

- a) Single year NRD groundwater or surface water leases.
- b) Multiyear NRD groundwater or surface water leases.
- c) Single year State of Nebraska groundwater or surface water leases.
- d) Multiyear State of Nebraska groundwater or surface water leases.

Finally, a variance procedure is provided to allow for a landowner to rotate irrigated acres while maintaining the reduction in use.

**LB 1017 -- Change provisions relating to tax levies of members of risk management pools. Senator Raikes.** Requires that all costs and expenses associated with membership in a risk management pool, including, but not limited to, standard insurance coverage's, group self-insurance coverage's, assessments levied by the pool, retirement of debt incurred by the pool, and operating expenses of the pool be subject to levy limitations.

**LB 1040 -- Impose an excise tax on production of ethanol. Senator Louden.** The bill proposes a 1 cent/gallon excise tax on the production of ethanol in the state. The proceeds would be distributed through the

Water Resources Cash Fund starting in 2013 and eliminate the additional corn and sorghum checkoff that was scheduled to be implemented in 2013.

**LB 1041 -- Protect certain water purchased or leased for river flow enhancement. Senator Christensen.** Surface water or ground water purchased or leased by the state, or purchased or leased for river-flow enhancement purposes by a natural resources district described in section 2-3226.01, shall be fully protected and accounted for by the Department of Natural Resources from the point of diversion to the intended destination or use of such purchased or leased water, except for normal carriage loss.

**LB 1049 – Change terms for members of the Nebraska Game and Parks Commission. Senator Erdman.** The proposal changes the terms for members appointed after January 1, 2009 to a four year term rather than five. The bill also prohibits any person who as served two full terms after January 1, 2009, to be reappointed as a member of the commission.

**LB 1050 – Changes the Nebraska Game and Parks to a Code Agency. Senator Erdman.** The bill makes the Nebraska Game and Parks Commission a code agency under the governor's office. The commission members would be changed to advisory members and the director of the agency would be appointed by the governor rather than hired by the commission members.

#### **Hearings next week**

**LB 724 – Change fees under the Remedial Action Plan Monitoring Act.** Lowers application fee and deposit for those wanting to monitor remedial action plans. **Hearing 1/23. Natural Resources Committee, 1:30 Room 1525.**

**LB 725 – Provide for grants under the Waste Reduction and Recycling Incentive Act.** Provides Grants to reimburse second class cities, villages, and counties of five thousand or less for deconstruction projects. **Hearing 1/23. Natural Resources Committee, 1:30 Room 1525.**

**LB 790 – Change buffer strip reimbursement provisions.** Increase maximum payment through Nebraska Buffer Strip Program from \$150 to \$250. **Hearing 1/22. Natural Resources Committee, 1:30 Room 1525.**

**LB 880 – Provide for watershed enhancement bonds.** Allows NRD's to issue bonds to pay costs of design, rights-of-way acquisition, and construction of certain projects. **Hearing 1/25 Natural Resources Committee, 1:30 Room 1525.**

**LB 945 – Change authority of natural resource districts.** Prohibits NRD's from working with private commercial and resident real estate companies as it relates to real property taken through the use of eminent domain. **Hearing 1/25. Natural Resources Committee, 1:30 Room 1525.**

#### **Other News --**

**NARD Staff Changes** – Kody Schrader, NARD Information and Education Director, will be leaving NARD effective February 6<sup>th</sup> to take a position with Farm Credit Services as the Ag Representative Specialist in Omaha. We wish Kody the best in his new career. Lane Tryon will be joining the NARD as an intern this semester. Lane is native of Gothenburg and a freshman at UNL majoring in Business.

**LB 701 Court Case** – The trial arguments on the constitutional questions surrounding LB 701 will be heard on January 24, 2008 at the Lancaster County District Court. A decision may be rendered by the end of February.