



March 14, 2008

**TO: NARD Board, NRD Managers and Conservation Partners**  
**FROM: Dean E. Edson, NARD Executive Director**  
**RE: March 14 NARD UPDATE**

**Republican Basin Meeting** – Republican River Compact representatives from Nebraska, Kansas and Colorado met in Kansas City this week to discuss compliance issues. Kansas representatives had been claiming that Nebraska had used more than its share of the water in 2005 and 2006 and asked for a response from Nebraska. With the assistance of the Nebraska Attorney Generals Office, NRDs and independent consultants, the Department of Natural Resources was able to provide answers to many of the questions raised. Also, due to the action of the Nebraska Attorney General's office and outside counsel, Don Blankenau, the states will not be going into the next phase of the dispute (arbitration) right away as Kansas officials have not identified their incurred damages or placed a value on such. The states will continue discussions in the near future.

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.

#### **Nebraska Unicameral Floor Action**

**Payments to Republican River Basin surface water irrigators** – Senator Christensen's priority bill, **LB 1094** (Introduced by Senator Carlson), advanced to Select File 36-0 this week. The first committee amendment to the bill, **AM 2036**, was defeated in favor of the revised amendment (**AM 2234**) offered by **Senator Carlson** which was adopted 35-0. This revised amendment also strikes all the existing language in **LB 1094** and all references to the Nebraska Resources Development Fund and creates the Water Contingency Cash Fund.

Under the revised amendment (**AM 2234**), the \$9 million Water Contingency Cash Fund would be established by a transfer from the Cash Reserve Fund and would be administered by the Department of Natural Resources. The natural resources districts that owe for leased water would be required to submit a written request to the department outlining the amount of financial assistance to meet the obligations. The committee amendment also includes an emergency clause, so it would become effective upon final approval of the legislature. The amendment clarifies that the loan could be paid back from the additional taxing authorities granted last year in LB 701.

The revised amendment also includes compromise language worked out on **LB 975**, which changes the criteria on groundwater use on acres that have leased surface water. The amendment would eliminate the existing language and replace it with a requirement in that the agreement for the lease or purchase identify a) the method of payment, b) the distribution of funds by the party or parties receiving payment, c) the water use or rights subject to the agreement, and d) the water use or rights allowed by the agreement. Additional language was added to require that if any irrigation district is party to the agreement, the irrigation district shall allocate funds received under such agreement among its users or members in a reasonable manner, giving consideration to the benefits received and the value of the rights surrendered. Senator Christensen was successful in adopting **Floor Amendment 198** which clarified that the conditions placed on the landowners for the water leases would only apply to the specific contract period of the lease.

The bill is scheduled for Select File debate on Monday. There are two pending amendments to the bill which includes **AM 2318** from **Senator Loudon**. This amendment directs the Revisor of Statutes to

place sections of the bill within Chapter 2, article 32, the groundwater management statutes. A second amendment, **AM 2325**, offered by Senator Christensen, incorporates provisions of the committee amendment (**AM 1895**) to **LB 1131**. This amendment clarifies that occupation taxes imposed under for the water leases shall be collected and delinquent in the same manner as property taxes. This committee amendment also allows the county treasurer shall publish and post a list of delinquent occupation taxes with the list of real property subject to sale for delinquent property taxes. The list would also be provided to the natural resources districts which levied the taxes. Finally, this amendment clarifies that the county treasurer shall receive the one percent fee provided for collection of general natural resources district money.

**Public meeting change approved** – On a 46-0 vote, senators gave final approval this week to **LB962** which modifies the Open Meetings Act. The bill, sponsored by Sen. Don Preister of Bellevue, would prohibit a public body from requiring that members of the public be placed on a meeting's agenda prior to being allowed to speak on agenda items. The bill has been sent to Governor Heinemann for his consideration.

**Natural Resources Committee packaged bill advance** – The Legislature advanced **LB 798** to Select File this week after adopting the committee amendment (**AM 1894**) which included two other bills (**LB 799 and 800**). The original bill, LB 798, changes the definition of a headwater segment of a natural stream to an ephemeral natural stream which would be exempt from state storage and use permits. Included in the amendment is **LB 799** which allows for a transfer of surface water for irrigation when there is a change in the point of diversion which meets the following requirements: (i) The new point of diversion is on the same named stream, the same tributary, or the same river or creek as the approved point of diversion; (ii) the proposed point of diversion will not move above or below an existing diversion point owned by another appropriator; and (iii) the proposed point of diversion is not above or below a tributary stream or a constructed river return or a constructed drain.

Also in the amendment is **LB 800** which allows for all intentional underground water storage projects to charge a fee for withdrawal of water. Existing law prohibits projects existing on August 26, 1983 from charging a fee. The committee earlier rejected an amendment to involve the NRDs in the approval process for a fee on groundwater, but it was rejected by Chairman Loudon as he wanted no oversight by the NRDs on the fee.

**Watershed enhancement bonding** — Senators may debate **LB 880** next week which authorizes watershed enhancement bonds in the Papio-Missouri River NRD to issue watershed enhancement bonds to pay costs of design, rights-of-way acquisition, construction of multipurpose projects and practices for storm water management. The bonds would be payable from an annual special watershed enhancement bond levy upon the taxable value of all taxable property in the district. The bond levy is includable in the computation of other limitations upon the district's tax levy.

The committee added an amendment (**AM 1787**) that makes three additional changes to address the concerns raised by the Washington County residents as follows: 1) Bond proceeds could not be used for structures holding more than 500 acres of a permanent pool of water which would eliminate the establishment of large dams in Washington County; 2) Specific language prohibiting the use of eminent domain for the purposes of enhancing private developers; and 3) Public access would be required on any structure created under this program that is greater than 20 acre pool.

After adding the language to address the concerns they raised, the Washington County group changed their minds and decided to still oppose Senator Kopplin's Priority Bill. **Senator Dwite Peterson** of Elkhorn has introduced an amendment on their behalf (**AM 2101**) to require public access to a pool suitable for recreation purposes that has more that 5 percent cost-share from the NRD. Current laws sets the limit at 20 percent, which still allows the NRDs to cost-share in rural areas and leave the land in control of the existing landowner. The amendment filed on behalf of the Washington County would require most of these lands to be now open to the public.

## 2008 NARD Washington DC Trip Report

Forty-seven NARD members, representing 13 NRDs, were in Washington DC this week attending the annual NARD Washington DC Trip. After participating in the two-day sessions to learn more about the issues of concern at the national level, the NARD members spent a day on the hill visiting the Nebraska Representatives and Senators. Following is a brief summary of the sessions:

- **Secretary Mike Johanns** – Even though he is no longer the Ag Secretary, Mike Johanns was in Washington D.C. and was able to find time in his schedule to visit with fellow Nebraskans. The former Secretary talked at length about the evolution of the proposed farm bill. After holding forums in 48 of the 50 states the Department of Agriculture delivered a Farm Bill to Congress. However, there is much disagreement on the cost of the program.

The Administration had proposed a \$5 billion increase from the base line spending. The House includes \$10 billion increase and the Senate proposed \$15 billion increase. Johanns reported other sticking points have been payment limits, and the pressure to increase the funding for nutrition programs in the bill.

Conservation will be a huge piece of the new farm bill, with more money for renewable energy and specialty crops. Unless an extension of the existing farm bill is passed, producers will fall back to a 1949 Farm Bill, which does not fit well with the current ag economy and practices. The former Secretary thought Congress would continue to work out the new bill and at least adopt an extension.

- **NRCS Updates** –Tom Christensen from USDA/NRCS reported on technical assistance needs within USDA-NRCS. Since 1985, program funding has increased 500%, but the funding for staff has decreased by 15%. At the same time, the natural resource program requirements have become more technical in nature, compounding the work load requirements. Christensen reported that because of the staffing and technical assistance shortage, another challenge is getting the contracts implemented once the money has been allocated.

**Steve Chick** provided a status report on Nebraska's conservation programs (EQIP, WHIP, WREP, CSP) and state technical committee recommendations.

- **Updates from National Organizations** – **Kris Polly** from the Bureau of Reclamation discussed the need for all the different groups to work together to work out water allocation and shortage problems. He also stressed that States need to make the decision on water management locally, and then bring it to the federal government for assistance in implementing those local plans.

**Tom Donnely**, National Water Resources Association, reported on the aging infrastructure problem for dams and water delivery systems. However, he stressed that federal money is going to be difficult to obtain in light of the political climate in Washington. Donnely provided a report on the Clean Water Restoration Act

(HR2421/S1662). This legislation will remove the navigation nexuses, and basically federalizing all the water in the county. He reported this is the biggest threat to states water laws and industries reliant on water throughout the nation.

**Krysta Hayden**, National Association of Conservation Districts Executive Director mentioned that the farm bill will include an increase in conservation spending. She highlighted the need for CTA-technical assistance. She also stated that water and urban encroachment will be two key issues the nation will have to deal with as water is not just a western problem anymore because of the droughts.

**Mark Limbaugh**, from the Ferguson Group, reported that local, state and federal governments will have to deal with water issues. He pointed out problems of aging facilities, population growth, environmental demands, recreation, and climate change, are all increasing the demands on water. To address these demands, new funding sources and solutions will have to be found.

**Alan Freemyer**, Jim Hensen and Associates, provided an update on the funding for the Platte River Cooperative Agreement. His firm has been retained by two of the states involved in the compact (Colorado and Wyoming) to pursue funding for the program. He reported that funding has passed the House but hit a snag in the Senate.

**Mary-Ann Fowler**, Rails-to-Trails Conservancy, provided an update on the conversion of old railways into trails, including legal challenges.

**Brent Mecham** from the Irrigation Association provided an update of the irrigation technology, promoting efficient irrigation, and conserving water. New groundwater irrigation systems have improved tremendously over the last 15 years and new technologies are always evolving. He reported that 23 states are anticipating water shortages by 2013, which will push demand for greater water efficiency in both rural and urban areas.

**US Army CORP of Engineers** -- Larry Prather, US ARMY CORP of Engineers, went over some budget updates and a summary of Water Resources Development Act. He really stressed the need for the states to take the lead on projects and the CORP to provide the assistance.

**Bob Weaver**, Attorney, Kelly and Weaver PC, reviewed some new legislation that will come up next year. The National Clean Water Trust Fund, proposed Congressman Earl Blumenauer of Oregon, would set up a revolving fund for state water management programs including integrated water management programs, water conservation and water quality assessments. The measure would have dedicated funding sources including container fees on bottled beverages, taxes on flushable products, taxes on agriculture chemicals, higher penalties on industrial discharges.

**Nebraska Delegation** – After attending the traditional Nebraska Breakfast at the Dirksen Building, the conference attendees finished the conference by meeting with all Nebraska House and Senate leaders and/or their staff that work on natural resources issues. All reported on the difficulties in passing the Farm Bill and other important funding needs under the current election climate. All members mentioned that authorization to extend the current Farm Bill would likely be passed.