



Nebraska's Natural Resources Districts

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TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: February 17 NARD Update

Nebraska Unicameral - General File Action

LB 526e - Change provisions relating to water transfers. Carlson. The Legislature advanced the bill to Select File this week after adopting the committee amendment **AM 1784** and **AM 1992**. The bill allows for a second alternative for water transfers which would be the entire amount of a surface water irrigation right for a non-consumptive use. The bill maintains the other transfer purpose if both the current use and the proposed use are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change.

The committee amendment (**AM 1784**) addresses the concern raised at the hearing that allowing a transfer that is a change in preference of use or point of diversion could possibly harm existing surface water appropriators. The amended language would place conditions on such a transfer, including that the transfer or change in purpose will not diminish the supply of water available or otherwise adversely affect any other water appropriator, adversely affect Nebraska's ability to meet its obligations under a multistate agreement, or result in administration of the prior appropriation system by the Department of Natural Resources, which would not have otherwise occurred.

Before advancing the bill to Select File, Senator Carlson was successful in adding the emergency clause to the bill with **AM 1992**.

LB 723 – Change provisions relating to small systems under the Nebraska Safe Drinking Water Act. Bloomfield. Senators advanced **LB 723** to Select File this week. The bill amends the Nebraska Safe Drinking Water Act so that it is in compliance with federal law. There is no longer a reference in federal law to a water system currently defined in Nebraska law as a "small system." Thus, the bill eliminates the definition of "small system" under the Nebraska Safe Drinking Water Act and refers instead to "public water systems serving fewer than 10,000 persons." The bill also maintains a lower fine for administrative violations under the act for public water systems that serve less than 10,000 individuals.

LB 760 - Change provisions relating to meetings of the Environmental Quality Council and grants made to political subdivisions. Schilz. Senators advanced **LB 760** to Select File this week. The bill proposes two changes to the Environmental Quality Council. First, the bill proposes to eliminate the requirement that the council have four quarterly meetings per year and replaces it with a requirement that they meet at least twice a year.

Second, current law allows that grants to political subdivisions under the control of the department be made in accordance with the priorities of the council. The bill adds language "unless otherwise required by statute" to that requirement.

LB 849 – Convey the Pibel Lake State Recreation Area to the Lower Loup NRD. Sullivan. Senators advanced **LB 849** to Select File this week after adopting **AM 1777** and **AM 1873**. The bill authorizes the Game and Parks Commission to convey the Pibel Lake State Recreation Area, situated in Wheeler County, to the Lower Loup Natural Resources District. The committee amendment (**AM 1777**) strikes proposed language that would have allowed the commission to be responsible only for enforcement of the Game Law once the property is transferred. This week, Senator Langemeier filed **AM 1873** to **AM 1777** which would eliminate the provisions of **AM 1777** as there was an incorrect reference included and place the following operation, maintenance, compliance and enforcement requirements on the Lower Loup NRD after the property is conveyed:

1. The property shall be maintained so as to appear attractive and inviting to the public;
2. Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards;
3. The property shall be kept reasonably open, accessible and safe for public use. Fire prevention and similar activities shall be maintained for proper public safety;
4. Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use, including the maintenance of the area's federally funded public boating access facilities existing on the property, which is specially assigned and required through 2024; and
5. The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

The Lower Loup NRD has agreed to the language included in **AM 1873**.

Nebraska Unicameral - Select File Action

LB 498 - Change water resources provisions relating to in situ uranium mining. Louden. State senators advanced **LB 498** to Final Reading this week. On General File, senators adopted **AM 1581** and **AM 1658**. Originally **LB 498** would have exempted in situ uranium mining in which water is subsequently re-injected into the underlying aquifer from which it was withdrawn from the Industrial Ground Water Regulatory Act and from the definition of consumptive use. The Natural Resources Committee amendment (**AM 1581**) replaced the bill. Current law allows a permit to be amended unless it would increase daily peak withdrawal or the annual volume by more than 25 percent from the amounts allowed in the original permit. The committee amendment proposes an exception to this rule for applications requesting an increase in the maximum daily volumetric flow rate or annual volume to levels allowed under a Department of Environmental Quality-issued permit.

Senator Louden was successful in adding **AM 1658** to the bill which clarifies that exemptions for NDEQ permits are those granted under the general authorities of NDEQ or the Environmental Quality Council.

LB 770 - Change the Nebraska Seed Law. Carlson. State senators advanced **LB 770** to Final Reading this week. The bill makes a couple of changes under the Nebraska Seed Law. First, the bill eliminates the specific list of noxious weed seeds in statute and allows the Director of Agriculture to designate noxious weed seeds. Current law allows the director to designate a noxious weed under the Noxious Weed Control Act. Second, the bill changes the date of Rules for Testing Seeds adopted by the Association of Official Seed Analysts from January 1, 1997 to January 1, 2012. All seed in Nebraska is required to be labeled on the basis of tests performed by a seed laboratory using such rules.

LB 836e - Change provisions relating to deposit and investment of public funds in certificates of deposit and time deposits. Pahls. State senators advanced **LB 836** to Final Reading this week. On General File, senators adopted the Banking Committee amendment (**AM 1700**). The bill would authorize investment or deposit of state or political subdivision funds in FDIC insured "interest-bearing accounts" rather than only "certificates of deposit" or "time deposits" issued by out-of-state depository financial institutions as part of deposit placement services, such as cash sweep programs. The committee amendment (**AM 1700**) would further clarify that participation by a bank or savings and loan in a deposit placement service program is not the exclusive method for securing the uninsured portion of an interest-bearing deposit and that such participation is an alternative to the furnishing of securities or the providing of a deposit guaranty bond. The bill also carries the emergency clause.

LB 873 -- Extend sunset of the petroleum release remedial action fund. Schilz. Senators advanced **LB 873** to Final Reading this week. The bill proposes to extend the sunset date for the petroleum remedial action program and fund from June 30, 2012 to June 30, 2016.

Nebraska Unicameral - Committee Action

LB 743 - Provide for a fee relating to consideration of a variance under the Nebraska Ground Water Management and Protection Act. The Natural Resources Committee advanced **LB 743** by a vote of 8-0 this week to General File with committee amendment **AM 1825**. The bill allows a natural resources district to assess a fee against a person requesting a variance to water use regulations to cover the administrative cost of the variance request, including, but not limited to, costs of copying records, legal expenses, and the cost of publishing a notice in a legal newspaper of general circulation in the county or counties of the district, radio announcements, or other means of communication deemed necessary in the area where the property is located.

Since the interests of adjacent water user(s) may be affected by granting a request for a variance, districts provide a wide variety of public notice methods to give adjacent water user(s) notice of a variance so that they may have an opportunity to participate in the variance hearing if they desire. Unless otherwise provided by law the NRDs may grant a variance from their rules and regulations based upon a showing of good cause.

The committee amendment, **AM 1825**, strikes the term “legal expenses” from the bill. The term was eliminated to address concern that districts would charge attorney fees.

LB 653 -- Provide for inter-basin transfers during times of flooding as prescribed. Christensen. The Natural Resources Committee advanced **LB 653** by a 7-1 vote this week to General File with committee amendment **AM 1844**. The bill would allow an inter-basin transfer without a permit from the Department of Natural Resources in times of flooding. The committee amendment becomes the bill, and eliminates the terminology that the transfer shall be second in time and second in right to all internal water resources projects within the basin of origin.

The amendment outlines that the Legislature finds that, for the best management of Nebraska’s water resources and for the protection of public and private property, interbasin transfers of unappropriated surface water from one river basin to another river basin should be allowed without a permit issued by the department but only pursuant to an agreement among the applicable districts and the department.

The procedure established in the amendment allows the board of directors of a natural resources district or an irrigation district in any river basin to establish a written agreement with the department and the board of directors of the natural resources district or an irrigation district in an adjacent river basin to allow interbasin transfers of unappropriated surface water without a permit pursuant in order to mitigate public and private property damage when necessary.

The other requirements in the transfer agreement would be as follows: (1) Be established in writing prior to the occurrence of such transfer; 2) that the river basin of destination shall be inferior in right to all current and future surface water appropriations and internal water resources projects within the basin of origin; 3) shall include, but need not be limited to, any prearranged purchase price of water, where such inter-basin transfers can take place; 4) identify under what conditions such inter-basin transfers can take place; and 5) include requirements to notify the department and any affected rural water districts, public power and irrigation districts, or other special purpose districts in the basin of origin and the river basin of destination.

LB 782 - Require that reports submitted to the Legislature be submitted electronically. McCoy. The Government Committee advanced **LB 782** to General File this week with committee amendment **AM 1901**. The 382-page bill requires that all reports submitted to the Legislature, including reports to Legislative standing committees and the fiscal office, be submitted electronically. The bill also repeals several sections of law requiring the submission of reports that are no longer required.

The committee amendment (**AM 1901**) delays the operative date until January 1, 2015 for those sections of the bill dealing with reports filed by lobbyists and principals. The amendment also allows the Clerk of the Legislature to establish requirements for the electronic submission, distribution, and format of reports required to be provided to the Legislature. The amendment also allows the clerk to accept a report in written form only upon a showing of good cause.

Priority Bills announced - Senators and committees had until noon February 16th to choose priority bills for this session. Each senator can designate one bill, and committees receive two priority designations. The Speaker will announce the 25 bills that he can designate on February 21st. A priority designation is important in that they are generally scheduled for debate before all other bills. For the remainder of the session (30 days), the Legislature's attention will be focused on priority bills and the budget.

Bill of interest selected included:

- **LB 653 -- Provide for inter-basin transfers during times of flooding as prescribed. (Senator Christensen Priority Bill).**
- **LB 845 - Provide reclamation requirements under the Oil Pipeline Reclamation Act. (Sullivan Priority Bill).**
- **LB 950 - Change crediting provisions relating to reimbursement of certain assistance to natural resources districts as prescribed. (Natural Resources Committee Priority Bill).**
- **LB 959 - Provide immunity to employers for job references. (Senator Coash Priority Bill)**
- **LB 1058 - Change the Employment Security Law and the New Hire Reporting Act. (Business & Labor Committee Priority Bill).**
- **LB 1161 - Provide for study and evaluation of routes for proposed oil pipelines. (Senator Smith Priority Bill)**

Please click on the following link for a list of those bills that have a priority designation:

<http://www.nebraskalegislature.gov/session/priority.php>

Committee Hearing Summaries

LB 1134 -- Change agency procedures for eminent domain. Avery. The Judiciary Committee accepted testimony on **LB 1134** this week which proposes several changes to use of eminent domain and applies those changes to all agencies, political subdivisions, and entities that have eminent domain powers. The bill would require that prior to exercising the right of eminent domain, an agency shall have full and final approval for the public purpose project by (1) an affirmative agency majority vote or other agency action of approval or (2) having applied for and been granted any controlling federal or state order, permit, or authority, for a new public purpose project or the extension of an existing public purpose project.

The bill also proposes to make it a Class IV misdemeanor for each occurrence if any agency claims to have the right to use eminent domain in discussions with any person about a project without having the prior approval outlined above.

Primarily, those individuals and groups opposed to the Keystone Pipeline testified in support of the bill. Opponents basically included the rest of the entities that were pulled into the bill. Steve Graz, Husch Blackwell LLP, testified in opposition to the bill on behalf of the Papio-Missouri River NRD and also submitted a letter in opposition to the bill on behalf of the Nebraska Association of Resources Districts. Steve pointed out that procedures are set up wrong in the bill, and would place an undue requirement on boards and unnecessary concern for the public if the board had to approve eminent domain on a project prior to a public meeting to gain input on the concept of such project.

No action has been reported on the bill, but it was very apparent from comments by some senators on the committee that the bill will not advance.

LB 950 - Change crediting provisions relating to reimbursement of certain assistance to natural resources districts as prescribed. Christensen. The Natural Resources Committee accepted testimony this week on **LB 950** which proposes to redirect any payments from the Republican Basin NRDs to the Water Resources Cash Fund rather than the Water Contingency Cash Fund after the bill becomes law. The bill was supported by the Nebraska Association of Resources Districts and the Nebraska Farm Bureau Federation. No committee declared the bill as the Committee Priority Bill for the session. No further action has been reported on the bill.

As a side note, the loan was made in 2008 for water leased by the Republican Basin NRDs while the law authorizing the occupation tax was under challenge. The Nebraska Supreme Court ruled in the summer of 2011 that the tax was constitutional. Under existing law, repayment of the funds started after the court decision and a formal repayment schedule has been finalized with the Department of Natural Resources. The three Republican Basin NRDs are now making installment payments on the \$8.8 million loan, with over \$1 million paid as of January 13, 2012. The loan is scheduled to be paid off by June 30, 2013.

LB 1125 - Change provisions relating to natural resources district occupation tax. Christensen. The Natural Resources Committee accepted testimony on **LB 1125** this week that would provide a way for individuals to ask for a refund of occupation taxes. The original copy of the bill proposes that for any occupation tax levied on or after March 1, the record owner may certify the nonirrigation status of the acres subject to the tax by September 1, and the district shall refund amounts collected based upon such acres by December 31.

Under current law, acres classified by the county assessor as irrigated shall be subject to such district's occupation tax unless, on or before July 1, 2007, and on or before March 1 in each subsequent year, the record owner certifies to the district the nonirrigation status of such acres.

The bill was brought to the Legislature to address a situation for the Lower Republican NRD. The district had not implemented the tax in previous years, but approved an occupation tax in September of 2011. They want to give landowners an opportunity to update records, but the bill needed to be re-written to accomplish that intent. It was also recognized that opening up a refund provision for everybody after the season is over could create more problems than it fixes. Districts could be left to the landowner's word and have no way to prove that they did or did not irrigate.

A compromise amendment is being worked out that would allow the record owner to present evidence of the nonirrigation status of the acres subject to the tax within 12 months of the date the tax was levied and the district may refund amounts collected upon such acres, if an occupation tax was not levied by the district the previous year and the district had not adopted an integrated management plan by March 1 in the current year.

Addition safeguard language was included in the compromise amendment to not allow an exemption or refund if the land remains in irrigated status in that tax year. Irrigated status could be cross-referenced and verified with the property tax status of the land in question by either checking property tax records and/or farm program status with the USDA Farm Service Agency. This language in the amendment prevents a "free for all" after the irrigation season.

The Nebraska Association of Resources Districts opposed the original version, but provided testimony in a neutral capacity on the bill if the compromise language is all maintained in the bill. The committee has not taken action on the bill.

LB 845 - Provide reclamation requirements under the Oil Pipeline Reclamation Act. (Sullivan). The bill proposes that a pipeline carrier shall complete final grading, topsoil replacement, installation of erosion

control structures, seeding, and mulching within 30 days after backfill except when weather conditions, extenuating circumstances, or unforeseen developments do not permit the work to be done within such 30 day period. The bill also requires a pipeline carrier to use seeding that is genetically appropriate for the surrounding vegetation, methods and mulch as conditions exist or requested by the landowner, and complies with the Nebraska Seed Law and Noxious Weed Control Act.

The Nebraska Association of Resources Districts presented testimony in support of the bill as the provisions of this bill are important to protect Nebraska's natural resources, protect previous investments made by both the private and public sectors, and should not place an undue burden on a pipeline carrier. Senator Sullivan has declared the bill as her Priority Bill for the session. The committee has not reported action on the bill.

LB 1161 - Provide for study and evaluation of routes for proposed oil pipelines. Smith. The Natural Resources Committee accepted testimony on **LB 1161** this week. The bill amends the law passed in the Special Session last November, when the permit was still pending before President Obama. Since the denial of the permit by President Obama, the law needs to be modified so that Nebraska Law would allow the Department of Environmental Quality to continue studying and evaluating routes for oil pipelines within, through, or across the state. Senator Smith introduced **AM1984** prior to the hearing that allows the NDEQ to work with an applicant to determine the route through the state, rather than reacting to a company's decision. The committee has not reported action on the bill. Senator Smith declared the bill his Priority Bill for the session.

Hearings Next Week

Committee Hearings Next Week – The following are bills of interest regarding natural resources issues. For a complete list of hearings visit: <http://nebraskalegislature.gov/FloorDocs/Current/PDF/Hearings/hearings.pdf>.

Wednesday, February 22, 2012

- **Government Committee, Room 1507 – 1:30 p.m.**

LB 975 - Adopt the Fair Bidding Act. (Smith)

LB 1076 - Change requirements for copies of public records and speaking at public meetings. (Karpisek)

- **Natural Resources, Room 1525 – 1:30 p.m.**

LB 1044 - Provide for Public Service Commission regulation of hazardous liquid pipeline facilities. (Harr)

- **Revenue, Room 1524 – 1:30 p.m.**

LB 798 - Provide that certain assessments are levied and collected as special assessments. (Urban Affairs Committee)

Thursday, February 23, 2012

- **Government Committee, Room 1507– 1:30 pm.**

LB 1013 - Change the Administrative Procedure Act and provide for attorney's fees and costs as prescribed. (Mello)

LB 1060 - Change procedures for adoption and promulgation of rules and regulations. (Avery)