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May 8, 2009

TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: May 8 NARD Update

Alyssa Smola joins NARD – Alyssa Smola will join the Nebraska Association of Resources Districts as the Public Relations and Communications Director on May 18th. Smola graduates on May 9, 2009 from UNL with a Masters of Science Degree in Leadership Education with a minor in Management. She also holds a Bachelor of Science Degree in Agriculture Leadership with a minor in Natural Resources Economics from UNL. She is currently the Outreach Coordinator for the Agriculture, Leadership, Education and Communications program at the Nebraska Department of Agriculture. Over the past year, she has also served as a Teaching Assistant for two undergraduate classes at UNL. Her past professional experience includes service as the Nebraska Agriculture Youth Coordinator and a summer internship with the Platte County Extension Service. Alyssa grew up on an irrigated farm south of David City.

Ron Milner passes -- Ron Milner passed away Monday, May 4, 2009 at his home in Imperial at the age of 75 years. Ron was the manager of the Upper Republican NRD for 25 years, from 1972 until 1997. He was a URNRD board member from November 2005 until November 2006. Funeral services were Thursday, May 7, 2009 at the First United Methodist Church in Imperial. Ron is survived by his wife, Monna, son Jerry and daughters Becky, Linda and Debby. Memorials have been established to the American Legion Baseball Program and the American Legion Boys and Girls State Programs in Imperial and can be mailed to 1638 Grant St, Imperial, NE 69033.

He assisted the board with introducing the first rules and regulations for groundwater control for the NRD in 1978. Ron was always busy with water issues throughout the State and he was active in getting chemigation laws put into place for the State of Nebraska. Ron received a service award in 1997 from the State of Nebraska for his service to the Upper Republican NRD. According to family members, Ron felt his most honorable moment with the NRDs was when he was selected by the NARD to go to Washington DC to lay the wreath on the Tomb of the Unknown Soldier at Arlington National Cemetery.

Increased ground water levels across the Upper Big Blue NRD – The spring 2009 groundwater level measurements in the Upper Big Blue NRD show another gain of 2.6 feet from last spring. This follows a spring 2008 gain of 1.58 feet.

During April 2009, the NRD measured 508 observation wells throughout the district and then averaged the data of all these wells. Observation wells are measured in the spring of each year, allowing the water table to rebound from the previous irrigation season. The findings show that the spring 2009 average groundwater level is 5.80 feet above the “allocation trigger”.

The Upper Big Blue NRD's Observation Well Program includes a network of over 500 wells within the NRD that are measured each year to calculate average groundwater levels. Through the conservation efforts of groundwater users, and because of an extended period of above average rainfall in the 1980s and 1990s, the average groundwater level in the Upper Big Blue NRD rose significantly to a level in the year 2000 that was approximately seven feet higher than the 1961 level (baseline), and 14 feet higher than the low level of 1976 to 1981.

The district goal is to hold the average groundwater level to above the 1978 level. In 2007, the district average groundwater level reached the "reporting trigger" initiating groundwater users to report annual groundwater use to the district and to certify their irrigated acres. If the district average level falls below the 1978 level ("allocation trigger"), the use of flowmeters will be required and groundwater allocation will begin.

The Upper Big Blue NRD rules and regulations mandate that producers will be responsible for installing flowmeters on existing wells if the groundwater level hits the allocation trigger. When the allocation trigger is reached and producers and other users have not installed flowmeters by the next calendar year, then they will not be able to pump any amount of water until a flowmeter is installed. Since March 1, 2004, all new wells and replacement wells require a flowmeter.

Legislative Action – The following bills were given final approval by the Legislature.

LB 54: Water accounting bill passes – A bill to assist NRDs in tracking depletions and gains resulting from new, expired or modified water uses in fully or over-appropriated areas was given final approval by the Legislature on a 47-0-2 vote this week. The bill, **LB 54**, was introduced and prioritized by Sen. Deb Fischer of Valentine.

The bill allows procedures to be established that include:

- use of generally accepted methodologies based on the best available information;
- provide a methodology to estimate streamflow depletions and gains and provide information on gains as offsets to new uses;
- require the identification of means to be utilized so new uses will not have more than a de minimis effect on existing surface water or groundwater users;
- provide a procedure for sharing information between the Department of Natural Resources and the NRDs;
- identify water that could mitigate new uses; and
- provide a plan, after consulting with and providing an opportunity for public input from interested parties, for making water available for offset for economic development purposes.

The committee amendment (**AM348**) clarified some of the definitions and was adopted 36-0. The bill advanced to select file on a 40-0 vote.

On April 17th, the bill was moved from Final Reading back to Select File on a 42 to 0 vote. Sen. Langemeier then introduced an amendment (AM 1099) proposing that the department not be required to perform an annual evaluation for a river basin, sub-basin, or reach during the four years following a status change. Status change is what occurred for the lower Platte River this spring when DNR preliminarily declared the river fully appropriated and later reversed their decision. The four year time frame following a status change in this bill mirrors the time frame stipulated in LB

483 where a status change has occurred. The amendment passed on a 41 to 0 vote and the bill was advanced again to Final Reading.

The committee amendment (**AM348**) clarified some of the definitions and was adopted on General File on a 36-0 vote. The bill advanced to Select File on a 40-0 vote.

LB 56: Livestock Waste Management Act modifications -- The Legislature gave final approval to LB 56 on a 43-3-3 vote this week. The committee amendment originally increased the number of discharges, or strikes, from three to five that a producer must commit before being determined unsuited to hold a permit. This provision was changed back to “three” by FA 32 offered by Senator Dierks on Select File.

The original bill offers several changes to the permit system including: 1) Changes the standard for small operations to be subject to the inspection, construction and operating permit system. Small operations (less than 300 head cattle, 750 hogs, etc.) are exempt from permits but can be subject to a permit if there has been a discharge to water of the state. The proposal would have it apply only if an intentional or willful intent to discharge occurred. 2) Defines discharge violations to be those discovered after investigation to be caused intentionally or by willful negligence. 3) Establishes that if a permit-holder loses his/her permit for violations on one operation, the revocation does not include any other person who is a relative, partner, member, shareholder, resident, parent company, subsidiary, or other affiliate of the permit holder. 4) Currently, a permit can be revoked for three non-permitted discharges from a facility, whereas the bill proposes to make it three discharge violations. The bill proposes to count those violations on a per facility basis, rather than the current per operator basis. In other words, the bill proposes that a large operator with several facilities could have many violations and still not come under the three strikes provision as long as no one of those facilities had three violations.

The committee amendment (**AM 310**), adopted on General File, eliminates that the producer's discharge must be "willfully" committed before a discharge violation can be charged, leaving only that the discharge must be intentionally or negligently committed before a discharge violation, or "strike", can be assessed. The committee amendment originally increased the number of discharges, or strikes, from three to five that a producer must commit before being determined unsuited to hold a permit. This provision was changed back to “three” by FA 32, offered by Senator Dierks on Select File.

The bill was introduced by Senator Deb Fischer of Valentine and was a Speaker Priority Bill.

LB 98e and LB 98Ae: Riparian Vegetation Management Task Force – A bill introduced by Senator Carlson to extend the termination date for the Riparian Vegetation Management Task Force was given final approval by the full Legislature this week on a 45-0-4 vote. The Ag Committee amendment (**AM 641**) was adopted on General File on a 40-2 vote, with Senators White and Wallman voting no. The committee amendment (**AM 641**) strikes the original provisions and becomes the bill. This amendment does the following:

- Extends the existence and duties of the Riparian Management Task Force for four years rather than just two years. Includes intent language to appropriate two million dollars annually for the vegetation management.
- Clarifies the priority for grants that are consistent with any plans and priorities for riparian vegetation management established by the Riparian Management Task Force.

- Includes a directive for the Director of Agriculture to apply for grants from the Environmental Trust Fund and the Natural Resources Conservation Service of the USDA prior to July 31, 2009.
- Provides for a one-time transfer of \$500,000 from the Buffer Strip Incentive Cash Fund to the Noxious Weed and Invasive Species Assistance Fund.
- The related appropriations bill, **LB 98Ae**, appropriates \$2 million for FY 2009-10 and another \$2 million for FY 2010-11 to the Department of Agriculture to aid in carrying out the provisions of Legislative Bill 98.

Both **LB 98e** and **LB 98Ae** included the emergency clause so it will go into effect as soon as the Governor signs the bills.

LB 286e: Lottery proceeds distribution – A bill introduced by the General Affairs Committee, LB 286e, was given final approval by the Legislature this week on a 46-0-3 vote. The bill eliminates a July 1, 2009 sunset date in a provision of the State Lottery Act governing how funds are to be distributed to Lottery beneficiaries. The formula that remains will require that the dollar amount transferred to beneficiary funds shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03, which amounts to approximately \$20.2 million, or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and Lottery Director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis. The bill included the emergency clause so it will go into effect as soon as the Governor signs the bill.

Legislative Action – the following bills advanced to Final Reading.

LB 209: Dam construction bill advances – Working from consent calendar, Senators advanced LB 209 to Final Reading this week. Working from consent calendar allows non-controversial bills to be advanced if they can be explained and voted on within 15 minutes; beyond 15 minutes and the bill is taken off of the agenda. The bill changes the time frame from 6 months to 12 months after the approval of any application for water for irrigation, power, or other useful purpose by the department, to commence the excavation or construction of the project. The bill also clarifies that the Department of Natural Resources may extend, for reasonable lengths of time, the time for commencing excavation or construction. The bill is sponsored by Senator Langemeier.

Budget Bills Advanced – Senators advanced the budget bills to Final Reading this week. Only one amendment was added to the committee recommendations to the mainline appropriations bill, LB 315. The amendment was offered by Senator LaVon Heidemann, Chair of the Appropriations Committee, and it made only slight adjustments in the funding levels based upon more recent information on funding needs.

The budget proposed by the Appropriations Committee would provide \$6.9 billion for state government operation and aid during the two-year period, an average annual spending growth rate of 1 percent. The revenue forecasts on which the budget is based project revenue growth reductions of 2.7 percent in fiscal year 2008-09 and the cumulative revenue growth over the three years that impact the upcoming biennium at 13 percent below the historical average. The committee's budget would result in a \$208.3 million balance at the end of the biennium - \$18.6 million above the minimum 3 percent reserve. The overall budget picture was improved by over \$500 million in federal stimulus funds.

Also advanced by voice vote to final reading were the remaining components of the budget package:

- LB 312 would appropriate funds for state senators' salaries;
- LB 313 would appropriate funds for constitutional officers' salaries;
- LB 314 would appropriate funds for capital construction;
- LB 318 would suspend certain depreciation charges assessed by the Department of Administrative Services;
- LB 414 would change Supreme Court judge salaries;
- LB 456 would transfer \$254.4 million from the state's cash reserve fund;
- LB 628 would provide for payment of claims against the state; and
- LB 629 would disapprove claims against the state.

Legislative Action – the following bills advanced to Select File.

LB 626: Change prohibited activities for public officials and public employee's use of public resources. A bill introduced by Senator Russ Karpicek of Wilber to change governance of public resources was advanced to Select File this week after a couple of amendments were incorporated into the bill. The bill would allow public officials and employees to use public resources that are considered incidental.

The committee amendment, AM 972, was adopted on a 35-6 vote and becomes the bill. The key components include:

- Any use of public resources by a public official or public employee which is incidental or de minimis will not constitute a violation of the sections in the Nebraska Political Accountability and Disclosure Act.
- A resource of government, including a vehicle, will not be considered a public resource and personal use will not be prohibited if the use for personal purposes is part of the public official's or public employee's compensation provided by a government body and the personal use of the resource is reported as compensation in accordance with the Internal Revenue Code and taxes are paid.
- If authorized by the contract or policy, the resource may be used whether or not the public official or public employee is engaged in the duties of his or her public office or public employment.
- A public official or public employee is not prohibited from using his or her personal cellular telephone, handheld device, or computer to access a wireless network for which access is provided to the public by a government body.

- Unless otherwise restricted by another agreement or contract, a public official or employee may use a telephone or computer under the control of a governmental body for emails and calls in certain circumstances, such as calling a teacher, doctor or family member. The communication will be kept to a minimum and not interfere with public business. A public official or public employee shall be responsible for reimbursement of charges that directly result from the communication.
- Allows a public employee under the direct supervision of a public official to respond to specific inquiries as to his or her opinion on a ballot question or to provide information in response to a request for information. Currently, only public officials are allowed to respond to specific inquiries regarding ballot questions.

Senator Karpisek offered **AM 1256** to the committee amendment which would prohibit public officials from using public resources to express their opinion on ballot issues. The amendment was adopted on a 42-0 vote. The bill was introduced in response to an August 2008 decision by the Nebraska Accountability and Disclosure Commission in which a city administrator was fined for sending an e-mail relating to a campaign event from his own computer at home, but it went through a server owned by the city.

Envirothon - The 2009 Nebraska Envirothon State Championship team hails from Ord High School. The members of the Ord Envirothon team are Aaron Kokes, Kris Hornickel, Amanda Duvall, Samantha Krikac and Debra Wray. Their coach/adviser is Dave Ference. Superior High School students were runners-up and Bellevue East High School finished in third place.

The weather was perfect for 12 high school Envirothon teams, including both regional and wildcard winners, that gathered at Ponca State Park Education Center on the Missouri River in northeast Nebraska to compete in the state competition held on May 2nd.

The Ord team is now invited to represent Nebraska at the Canon Envirothon and also receives a \$1000 scholarship offered by the Nebraska Envirothon. This year the Canon Envirothon will be held at the University of North Carolina at Asheville. The week long contest, August 2nd – 8th, involves testing, touring, learning sessions, and opportunities for students to meet other state champions. Over 50 teams from across the U.S. and Canada are expected to participate at this year's national competition.

The Nebraska Envirothon tests 5-student teams on their knowledge on seven different natural resources areas. Team winners of individual testing stations included the following:

- **Oral Presentation - Bellevue East 1**
- **Forestry - Norris**
- **Policy - Norris**
- **Range - Ord and Superior 1 (tie)**
- **Soils - Ord and Bellevue East 1 (tie)**
- **Aquatics - Bellevue East 1**
- **Wildlife – Superior 1**