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TO: NARD Board, NRD Managers and Conservation Partners  
FROM: Dean E. Edson, NARD Executive Director  
RE: February 12 NARD Update

**Recreational Trails** -- The Natural Resources Committee accepted testimony on three bills this week dealing with the use of eminent domain for recreational trails.

Most of the testimony was geared toward **LB 1010**, introduced by Senator Dave Pankonin. The bill would establish some additional criteria for NRDs if eminent domain had to be used to acquire land for a recreational trail. If negotiations failed to acquire property willingly and the district would pursue acquisition through eminent domain, the NRD would be required to hold public hearings and be required to operate as a court or tribunal, in that the board would receive evidence, hear testimony and create a record.

Senator Pankonin mentioned that several discussions have taken place on the bill between the NRDs, several senators, landowners and other interested parties, which has resulted in several suggested changes that the parties could agree to. These include reducing the supermajority vote to two-thirds of the Board of Directors, would clarify the eight components to be considered by the Board before making their decision to implement a trail project, would address the standard of "good faith" in the process of obtaining negotiated right-of-way agreements, would set objective criteria for which the Board would have to find clear and convincing evidence before voting to proceed in their decision to exercise eminent domain, and would add liability protection language for property owners adjoining a recreation trail.

Senator Pankonin also noted that an amendment was not available prior to the hearing, but would be developed early next week.

Glenn Johnson, Lower Platte South NRD Manager, presented testimony in support of the bill on behalf of his district and the NARD, with changes suggested by Senator Pankonin. Also testifying in support of the bill was John Winkler, Papio-Missouri River NRD; Stan Staab, Lower Elkhorn NRD; Nebraska Farm Bureau Federation, Nebraska Trails Council and several individuals from Cass County. The Nebraska Sierra Club testified in a neutral capacity.

The committee also accepted testimony on **LB 1019**, introduced by Senator Ken Haar. This bill also sets up a procedure for mediation if a dispute occurs on developing a trail when eminent domain may be used. Senator Haar mentioned that he had been working with Senator Pankonin to address the concerns with LB 1010 and mentioned that he would keep working toward an agreement on LB 1010.

The third bill, **LB 1011** introduced by Senator Pankonin would eliminate the ability of NRDs to use eminent domain for recreational trails. Senator Pankonin mentioned that this bill was only a back-up if nothing could be worked out on the procedures offered under either LB 1010 or 1019.

The committee took no action on the bills after the hearing.

**NRD Recreational Facilities** -- The Judiciary Committee accepted testimony on **LB 795** this week which would allow a NRD encompassing or including any portion of a city of the metropolitan class to employ or otherwise secure the services of certified law enforcement personnel or security services to patrol and protect district-owned recreation areas and to assist law enforcement officers in enforcing district recreation areas.

Senator Brenda Council, the sponsor of the bill, offered an amendment at the hearing to expand the authority to all NRDs. John Winkler, Papio-Missouri River NRD Manager, testified in support of the bill and the amendment on behalf of PMRNRD and the NARD. The PMRNRD would like to contract with county sheriff offices and/or local city police to patrol recreational facilities for a set number of hours per month to provide protection for individuals using the facilities and also address vandalism problems.

The bill was also supported by Mike Onnen, Little Blue NRD Manager, and Bob Hilske Nemaha NRD Manager. There were no opponents to the bill. The Judiciary Committee took no action on the bill after the hearing. However, a couple of committee members want to assure the language only allows NRDs to contract with qualified law enforcement personnel. The NARD is willing to work with the committee to provide those assurances.

**Water Resources Cash Fund** – The Natural Resources Committee accepted testimony on **LB 993** which would add “enhancing stream flows or groundwater recharge” to the uses of the Water Resources Cash Fund. The bill was brought to the committee by the bill sponsor, Senator Tom Carlson, when it was discovered that a proposed water lease by Tri-Basin NRD to increase stream flow in the Platte River would not qualify under the program.

John Thorburn, Manager of the Tri-Basin NRD, presented testimony on behalf of his district and the NARD in support of the bill. The committee took no action on the bill.

**State Control of Groundwater** -- The Natural Resources Committee accepted testimony on two bills this week to extend more control to the state on groundwater use. The first bill, **LB 1054** would apply a revised version of the correlative rights doctrine for groundwater use. It would only allow the co-equal right of each landowner over a common aquifer to extract his, her, or its share of water from the aquifer without (a) unreasonably harming other landowners over the common aquifer through lowering of the water table, (b) directly and substantially affecting a watercourse, or (c) reducing artesian pressure. If the Department of Natural Resources determined that the standard should apply to a basin for compact or agreements, the allocations for use would be reduced. The bill was supported by the Lower Republican NRD and Frenchman Cambridge Irrigation District. Senator Carlson, the sponsor of both bills, asked that the committee not advance the bills.

Lyndon Vogt, Manager for the Upper Niobrara-White NRD, presented testimony in opposition to the bill on behalf of his district and the NARD noting that the correlative rights already apply and that local NRDs should maintain the authority to make the management decisions to regulate groundwater. The bill

was also opposed by the Upper Republican NRD, North Platte NRD, Nebraska Farm Bureau Federation, Nebraska Rural Electric Association, Nebraska Cattlemen, and many individuals from across the state.

The second bill, **LB 1056**, proposes required metering and allocations when depletions of groundwater occur. The Department of Natural Resources would be required to measure aquifer and groundwater changes across each river basin each year and report such measurement to the Legislature on December 31, 2010, and on December 31 of each year thereafter. Change would be determined based upon a comparison to saturation thickness of the aquifer in the base year of 1963. The bill would mandate metering and allocations determined by the department. If depletions go to 30 percent, the department would require that groundwater use be shut off in the area.

The bill was supported by the Lower Republican NRD and Frenchman Cambridge Irrigation District.

Lyndon Vogt, Manager for the Upper Niobrara-White NRD, presented testimony in opposition to the bill on behalf of his district and the NARD. Vogt pointed out that each NRD has in place an approved Ground Water Management Plan reviewed and approved by the state which is continually maintained and updated. Groundwater decline trigger-levels are set by the districts to initiate regulation.

Other opponents that presented oral testimony against the bill included Upper Big Blue NRD, Upper Republican NRD, Lower Elkhorn NRD, several individual NRD board members, and individual irrigators from all across the state. Letters in opposition came from several organizations and individuals, including but not limited to, the Nebraska Cattlemen, Nebraska Farm Bureau Federation, and the North Platte NRD.

Several other organizations and individuals had planned on testifying against both bills, but decided not to after Senator Carlson announced at the hearing that he requested the committee not advance the bills.

**Priority Bills** – State senators have until next Friday, February 19<sup>th</sup> to declare a priority bill from the session. Further, each Committee gets to select two priority bills for the session. Finally, the Speaker also gets to select 25 priority bills for the session. If a bill does not receive priority status, it is very unlikely that it will be debated further this year. Related to natural resources, Senator Dubas has selected **LB 689** as her priority bill. The bill eliminates the funding mechanism for the water resources cash fund. For a list of priority bills, go to the Nebraska Unicameral website at: [www.nebraskalegislature.gov/session/priority.php](http://www.nebraskalegislature.gov/session/priority.php).

**Papio NRD Board Approves Bonds to Protect Property** -- Much needed flood control measures for the Papio Creek Watershed and elsewhere, to protect the lives and property of district residents, will be pursued through the NRD's first-ever use of bonding. The option to fund projects through bonding was granted to the NRD by the Nebraska Legislature in 2009. The NRD Board voted on February 11<sup>th</sup> to issue \$13.3 million in Flood Protection and Water Quality Enhancement Bonds to fund several proposed flood control projects and programs within the six-county Papio-Missouri River NRD area.

“This was a historic vote. These funds will allow the district to accelerate its efforts to protect lives and property from potentially devastating flood events”, said NRD Manager John Winkler. “Time may be running out to get these projects built before our metro area encounters heavy rainfall and runoff that has recently caused considerable damage to other nearby urban areas,” he said.

Several projects identified to receive bond funding include levee improvements, flood control reservoirs and structures, floodway purchase program, and water quality protection project. “We plan to pay for

these bonds without raising our tax levy. In fact, our levy decreased this year,” said Winkler. The NRD has been working for years with area cities, villages and counties to develop flood control and water quality measures to protect residents. Engineering studies of the Papillion Creek Watershed have shown that our floodplains are growing due to decades of urbanization.

**Papio-Missouri River NRD Residential Cost-share** -- Twenty-four homes on Thompson Creek may be purchased by the City of LaVista through a Federal Emergency Management Agency grant and local cost-share funding by the PMRNRD. By purchasing homes and property the district will protect the lives and property of residents in the area from flooding and severe creek bank erosion that has threatened homes, road crossings and other public infrastructure along this creek since the early 1970s. The NRD’s cost-share amount of \$340,155 was approved by the board at their meeting February 11<sup>th</sup>. The funds will match the amount by the City of LaVista, which then fulfills the match requirement on Hazard Mitigation Grant Program funding. The total cost of the project is \$2,721,240.

All land purchases by the City will be voluntary. Once the properties are purchased, the City of La Vista will demolish the structures and maintain the lots as open space to allow for ease of maintenance of Thompson Creek.

The Papio-Missouri NRD Board also approved cost-sharing with the City of Valley for assistance on improving the North Spruce Street Drainage-way. The project will help protect the lives and property of Valley residents. The Papio-Missouri NRD will cost share \$186,480 with the City to complete the \$310,800 project.

### Hearings Next Week

#### February 18<sup>th</sup>

- **LB 785** – Provide an exception to required approval for certain water transfers; Carlson; Natural Resources Committee.
- **LB 1016** – Adopts the Nebraska Statewide Water Planning Commission Act; Christensen; Natural Resources Committee.
- **LB 1025** – Allows for an instream flow right in fully appropriated areas; Avery; Natural Resources Committee.
- **LB 1031** – Eliminate the sunset date on NRD levy; Dierks; Revenue Committee
- **LB 1032** – Change the fully appropriated levy; Dierks; Revenue Committee

#### February 19<sup>th</sup>

- **LB 1052** – Adopt the Agricultural Production and Economic Stability and Assistance Act; Christensen; Revenue Committee