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TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: February 19 NARD Update

Priority Bills – State senators had until noon Friday, February 19th 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.

The following bills related to Natural Resources were declared priorities for the session:

- **LB 689 -- Change Water Resources Cash Fund, Ethanol Production Incentive Cash Fund, and ethanol excise tax provisions. Langemeier.** The bill eliminates the 3/5ths cent/bushel check-off on corn and 3/5ths cent/hundredweight check-off on grain sorghum that was to go to the Water Resources Cash Fund starting in October 1, 2012. The bill also redirects the funds remaining in the Ethanol Production Incentive Cash Fund when the program ends December 31, 2012, splitting it equally with the commodity boards and the general fund. The funds were to go into the Water Resources Cash fund. **Senator Dubas Priority Bill.**
- **LB 764 -- Allows NRDs to develop IMPs in areas that are not Fully or Over-Appropriated. Fischer. (NARD Bill)** The bill allows a natural resources district encompassing a river basin, sub-basin, or reach that has not been designated as fully or over-appropriated to, jointly with the department, develop an integrated management plan for such river basin, sub-basin, or reach located within the district. The district would be required to notify the department on or before October 1 of its intention to develop an integrated management plan which shall be developed and adopted according to sections 46-715 to 46-717 and subsections (1) and (2) of section 46-718. **Senator Fischer Priority Bill.**
- **LB 862 – Change provisions relating to issuance and repayment of river-flow enhancement bonds. Christensen.** The bill changes the definition of which NRDs can use the occupation tax on irrigated acres to pay for water programs. The bill also allows the proceeds to pay for the cost of a project with or without issuing bonds. The bill allows a district to confine such occupation tax to irrigation activity in any of the river basins in such district. Finally, the bill allows for a reduction of the tax on irrigated lands if there is no surface or ground water available to irrigate such lands, either on a temporary or permanent basis. **Natural Resources Committee Priority Bill.**
- **LB1010 - Provide procedures and limitations on the use of eminent domain by natural resources districts for recreational trails. Pankonin.** The bill outlines procedures for the use of

eminent domain by a natural resources district to take private real property for a recreational trail or a connecting trail. **Senator Pankonin Priority Bill.**

- **LB 1057 -- Creates the Republican River Basin Water Sustainability Task Force. Carlson.**
The bill creates the Republican River Basin Water Sustainability Task Force to ensure sustainable water use within the basin, maintain compliance with the interstate compacts to which the basin is subject, and avoid water-short years. The task force would be required to present a preliminary report to the Governor and the Legislature on or before May 15, 2011, and a final report before May 15, 2012. **Senator Carlson Priority Bill.**

For a list of priority bills, go to the Nebraska Unicameral website at:

www.nebraskalegislature.gov/session/priority.php.

Cass County, NRD agree to work together on MoPac Trail -- Cass County and Lower Platte South Natural Resources District signed a memorandum of understanding to work together evaluating potential corridors for the segment officially known as the MoPac East/Lied Platte River Bridge connection. Under the agreement, the NRD will take care of the technical aspects of the trail segment project and Cass County will lead public involvement, including holding public meetings for concerned residents. The goal of the agreement is to find an acceptable corridor for making the connection to finish a recreational trail between Lincoln and Omaha.

Hearings this Week

Bank lien exemption -- The Natural Resources Committee accepted testimony on **LB 785**, which would provide an exemption from the lien search for transfers of four certified irrigated acres or less. The bill is sponsored by Senator Tom Carlson of Holdrege. The title search requirement was added to state law last year as a way to protect lien-holders from having property devalued as a result of a certified irrigated land transfer. Those involved in drafting the legislation recognized at the time that there was some minimum threshold that should be exempt from the lien search requirements. However, the parties were not able to come to an agreement at the time as to what that threshold would be, so the original legislation was silent on that point.

John Thorburn, Manager of the Tri-Basin NRD, provided testimony in support of the bill on behalf of the NARD and his district. John relayed to the committee that there are a couple of other issues that will need to be addressed either this year or in future years, which include how to protect lien-holders from having property devalued when surface water rights are transferred, and whether people who buy and sell irrigation rights should report the price of those transactions.

Milt Moravek, Assistant Manager of the Central Platte NRD, also testified in support of the bill and the suggested exemption for irrigated efficiency. Moravek suggested that the exemption be expanded to include transfers involving one landowner on a single tract of land where there is no reduction in certified irrigated acres and the transfer involves an improvement to irrigation efficiency.

The bill was also supported by the Nebraska Bankers Association, who cited in their testimony that there should be some small number of acres that should not have a lien search.

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

Instream flow rights – A bill introduced by Senator Bill Avery of Lincoln was heard by the Natural Resources Committee this week. The bill, **LB 1025**, would allow the Nebraska Department of Natural Resources to approve an instream flow water right in areas that have been declared fully appropriated as long as there is no increased consumptive use.

Don Blankenau, Blankneau and Wilmoth, LLC, testified on behalf of the NARD in opposition to the bill and also submitted letters from two NRDs that could not attend the hearing (Middle Niobrara and Tri-Basin). Blankenau pointed out that although it is appealing to seek an instream flow right on the Niobrara River, the Nebraska Constitution expressly limits appropriations to “un-appropriated” water. That is, water that has not already been claimed by another user. The declaration of Fully Appropriated for the Niobrara River outlines in law that there is no un-appropriated water available. Thus, LB 1025 thereby acts in direct opposition to the Constitution and would probably not be enforceable.

Blankenau also pointed out that in a fully appropriated system, granting an instream flow appropriation when no other uses can be developed provides no protection to species or recreational purposes. The reason is that an instream flow appropriation simply allows the holder to call for shutting down diversions by those who acquire rights later in time. Because no other water rights can be granted in a fully appropriated system, a junior instream flow right would have no ability to seek the shut down of junior users because none would exist. Simply stated, the instream flow right would have no meaning or value.

Blankenau also pointed out that if a fully appropriated designation was lifted by NDNR, NDNR and NRDs would still need to abide by the provisions of LB 483. That bill, passed last year, restricts the amount of water that can be obtained for a water right to avoid a fully appropriated designation.

These points were also echoed by the Nebraska Farm Bureau Federation also in opposition to the bill. The bill was supported by Sierra Club and several other wildlife organizations.

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

Statewide Water Planning – The Natural Resources Committee accepted testimony on **LB 1016** which adopts the Nebraska Statewide Water Planning Commission Act. The bill establishes a commission which consists of seven members appointed by the Governor. The commission shall exercise the powers and perform the duties carried out by the Division of Planning and Assistance of the Department of Natural Resources.

The duties of the commission include, but are not limited to: (1) Developing a statewide plan for the future use of water in the state; (2) maintaining and maximizing the use of water in this state; (3) creating a plan to manage the state’s water resources to encourage economic health and prosperity; and (4) make recommendations to the Governor and the Legislature for achieving the goals set forth in the plan developed pursuant to subdivision (1) of this section.

The concept of the bill was supported by the Nebraska State Irrigation Association and Nebraska Water Resources Association.

The bill was opposed by the Nebraska Department of Natural Resources citing that data and models used by the department are for both planning and regulation and noted that separating the agencies would create duplication.

Senator Langemeier also noted that he held hearings this summer on a state water plan and heard repeatedly that there is a state water plan with LB 962, but it lacks funding.

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

NRD property tax levy authority – The Revenue Committee combined two bills dealing with NRD levy authorities into one hearing this week. The bills, LBs 1031 and 1032, are both sponsored by Senator Cap Dierks of Ewing.

LB 1031 eliminates the 2012 sunset date for the NRD three-cent levy in fully and over-appropriated areas and **LB 1032** allows NRDs that have been preliminarily determined to be fully appropriated, but later reversed, to have access to the three cent levy to administer and implement ground water management activities and integrated management activities under the Nebraska Groundwater Management and Protection Act.

Kent Miller, Manager of the Twin Platte NRD, testified on behalf of the NARD and his district in support of LB 1031. Miller also provided the committee with a summary of the long-term statutory obligations and needs for the Platte River Recovery Program. These include retiring irrigated acres, river augmentation programs, and providing off-set water for municipal and industrial uses. These programs need to be funded at a proper level to maintain the economic viability of the region.

The bill was also supported by Milt Moravek, Assistant Manager of the Central Platte NRD, and Dennis Schueth, Upper Elkhorn NRD Manager. Letters of support and outlining funding needs came from the North Platte NRD and Tri-Basin NRD.

Dennis Schueth also presented testimony on behalf of the Upper Elkhorn NRD and the NARD in support of **LB 1032**, which allows NRDs that have been preliminarily determined to be fully appropriated, but later reversed, to have access to the three cent levy to administer and implement ground water management activities, and integrated management activities under the Nebraska Groundwater Management and Protection Act.

Schueth reported that even though the determination has been reversed in his district, the district still has to move forward with studies on groundwater/surface water interaction. This is the same as what happens when the basin is declared fully appropriated. The three cent levy is still needed to do the modeling and studies to help with water management. The Loup, Elkhorn and Lower Platte NRDs are working with DNR and other parties on the Elkhorn Loup Model (ELM). Funding is needed for this study and the districts would like to provide the local funding necessary.

The bill was also supported by Nebraska Farmers Union. There were no opponents to the bill.

The committee took no action after the hearing.

Convention center style funding for water – The Revenue Committee accepted testimony this week on a bill from Senator Mark Christensen to adopt the Agricultural Production and Economic Stability and Assistance Act. The bill, **LB 1052**, was modeled after the convention center financing in Omaha which allows for a portion of the sales tax generated at the convention center to be retained if certain criteria are met.

The act would assist NRDs with financing the management of water resources and the augmentation of water supplies for the economic stabilization of agricultural production in river basins where state responsibility for interstate compacts, agreements and/or decrees exist. An oversight board would be created to review and approve projects sponsored by a district, joint entity, or joint public agency. If approved by the board, the district, joint entity, or joint public agency would receive state assistance.

The state funding would be used to assist the district, joint entity, or joint agency in financing the project, including repayment of locally issued bonds (LB 701). The state source of funds would come from a refund of a portion of the sales tax collected by retailers doing business within the rapid response area of two and one-half miles on either side of the river, stream or tributary within the eligible district.

There were no testifiers in support, opposition or in a neutral capacity on the bill and Senator Christensen waived closing on the bill. The committee did not take action on the bill after the hearing.

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Hearings next week

- **LB852 - Provide for write-in space on official ballots for certain offices. Avery.** The bill eliminates the prohibition of write-in candidates in the primary for directors of NRDs and public power districts. The bill also eliminates the prohibition of write-in candidates in the general election for directors of NRDs, public power districts, county weed districts, reclamation districts, and ESUs.

Other Legislative Action

Electric line notice - Senators advanced **LB 643** this week to Final Reading after amendments were adopted on General File to change the notice requirement. Originally the bill would have required NRDs to provide 180-day notice to owners of power lines before the district begins altering a road structure or grading or moving earth for a flood control, recreation, or other project if the performance of any work is within ten feet of any electric transmission or electric distribution line, poles, or anchors. If the line, poles, or anchors to be moved are within an area that will require Federal Aviation Administration approval, notice shall be given at least one year prior to the start of any work.

The Natural Resources Committee amendment, **AM1620**, adopted on General File would change the 180 day requirement to 90 days, and removes the language requiring a one-year notice if the equipment to be moved requires Federal Aviation Administration approval.

City noxious weed fund -- A bill to allow funds received by cities and counties for noxious weed programs to be deposited in their respective general fund if they do not have a noxious weed fund has reached Final Reading. The bill, **LB 731**, is sponsored by Senator Utter.

Property tax refund bill indefinitely postponed -- The Revenue Committee killed **LB 893**, a bill that would have provided a refund mechanism for property taxes, occupation taxes, assessments, and penalties for such taxes declared unconstitutional by any court of competent jurisdiction entered on or after January 1, 2009. The refund could be made without the necessity of filing a claim and would be repaid or refunded to the person paying such tax or assessment. For purposes of this law, a judgment or final order shall mean a judgment or final order of the Supreme Court. The bill was sponsored by Senator Christensen.