



Nebraska's
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February 5, 2010

TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: February 5 NARD Update

Tri-Basin NRD wins NACD/NRCS Earth Team Award -- The Tri-Basin NRD won the 2009 NACD/NRCS Earth Team Award. The Earth Team has been around since 1981, when Congress passed legislation allowing NRCS to use volunteers in all programs.

The Tri-Basin NRD shared their summer interns with NRCS and other partners to assist with the heavy irrigation workload during this past summer. The interns assisted with irrigation management projects during the busy irrigation season. Producers throughout the district were recruited to collect irrigation data for the Nebraska Agricultural Water Management Demonstration Network website.

The award was presented at the National Association of Conservation Districts on Tuesday, February 2nd during the morning general session. The award was presented by Dave White, Chief of NRCS, and Mary Ann Wortmann accepted the award on behalf of Tri-Basin.

NACD Annual Conference highlights -- Nebraska NRDs had 14 representatives attend the Annual Meeting National Association of Conservation Districts' 64th annual meeting in Orlando, Florida this week. Conference participants spent two days attending breakout sessions, hearing from key government officials and conservationists and recognizing exceptional conservation efforts of member districts and partners of NACD. Following are some of the conference highlights:

- The conference officially marked Jeff Eisenberg's first day on the job as the new NACD Chief Executive Officer. His first remarks to representatives of America's 3,000 conservation districts and partners outlined a set of priorities for the Association. Eisenberg recently he served as executive director of the Public Lands Council, where he represented ranchers' interests. Eisenberg said he plans to focus his energy on policy, fundraising and services to members. Eisenberg's goal is to increase conservation that makes sense for producers, private lands, public lands and urban areas. He is committed to working with districts, officers and staff to strengthen districts' roles in delivering programs to those customers.
- NACD President Steve Robinson of Marysville, Ohio noted that while much has changed in the 20 years he has been involved with conservation districts, many core duties remain the same. But the future will hold new challenges and opportunities, including addressing natural resource issues on a regional level, working across state lines with both traditional and nontraditional partnerships. Robinson promotes new partnerships dealing with water

quality, forest health and other areas, and he encourages districts to find ways to incorporate new tools like social media in cost-effective efforts to reach traditional and new clients.

- U.S. Rep. Adam Putnam (R-FL) address focused on the importance of districts and producers being part of the dialogue about climate change. While cap-and-trade legislation in Washington, D.C. is stalled, he said people who tend working lands need to remain alert about efforts to address global warming gases like carbon.

Other general session speakers at the conference were Harris Sherman, U.S. Department of Agriculture Under Secretary for Natural Resources and the Environment, Jeff Lape, Chesapeake Bay Program Director, Tom Porta, President of the Association of State and Interstate Water Pollution Control Administrators, Steven Koehn, President of the National Associate of State Foresters and Dave White, Chief of NRCS.

Breakout sessions covered a variety of topics on Monday and Tuesday afternoon. Some of the topics covered were: Cost of Climate Change Policy, Creative Collaboration Opportunities for Districts, Conservation Stewardship Program Implementation, Conservation Technology of the Future, Districts Achieving Cutting-Edge Conservation Accomplishments, Local Input Driving National Decisions, and Targeting Major Natural Resource Concerns.

Kansas lawmakers spent \$17 million set aside for litigation—According to the Topeka Capital Journal, Kansas lawmakers accidentally spent \$17 million set aside to finance litigation aimed at forcing Colorado and Nebraska to abide by water compacts. The miscue committed in 2007 drew attention in the Senate Ways and Means Committee, with some senators insisting upon reform in the method of writing appropriations bills and others demanding better tracking of money earmarked for specific purposes.

Kansas' successful lawsuit against Colorado over violations of the Arkansas River Compact resulted in a U.S. Supreme Court ruling requiring Colorado to reduce its groundwater pumping and to pay Kansas about \$34 million in damages and interest. That payment allowed establishment of a fund in Kansas to continue legal work on water issues with border states. A House-Senate conference committee inadvertently slid the whole \$17 million into an appropriations bill at the end of the session. The money was spent on general state government expenses. The Legislature voted and Gov. Kathleen Sebelius signed the bill cleaning out the water litigation fund. The mistake wasn't discovered until the attorney general's office requested financing for legal work on water issues for 2010 and 2011.

For more information visit: http://cjonline.com/news/legislature/2010-02-01/gaffe_depletes_water_legal_fund.

Hearing summaries this Week

Testimony Given on NRD Integrated Management Plans – The Natural Resources Committee accepted testimony on **LB 764**, introduced by Senator Deb Fischer, which would allow 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.

In introducing the bill at the hearing Senator Fischer also introduced **AM 1751**. The proposed amendment would remove a requirement that a NRD must notify the department on or before October 1 of its intention to develop an IMP. The amendment also changes the purpose of IMP development from efforts to “maintain such river basin, sub-basin, or reach in the status of not fully appropriated” to efforts to “manage such river basin, sub-basin, or reach to achieve and sustain a balance between water uses and water supplies for the long-term.”

All testimony given was either in support of the bill or in a neutral position with no opposition. Glenn Johnson testified in support of the bill representing the Lower Platte South NRD, the NARD, the Nebraska Water Resources Association, and the Nebraska State Irrigation Association. Testimony in support was also provided by the Nebraska Farm Bureau and the Nebraska Cattlemen’s Association.

Brian Dunnigan, Department of Natural Resources, testified in a neutral position, indicating that the department would provide technical assistance to NRDs that desire to develop an IMP. Mr. Dunnigan also stated that he believes that every NRD needs an IMP because all river basins in Nebraska are interconnected. Ken Winston, Wachiska Audubon Society, also testified in a neutral position, noting that although this bill was a good idea, he would like to see additional stake holders groups added representing environmental, agricultural, recreational and conservation interests.

In closing the hearing, Senator Fischer gave credit to Ron Bishop, Central Platte NRD, as the person who initially proposed the concepts of this bill. The committee advanced the bill with AM 1751.

Change provisions relating to issuance and repayment of river-flow enhancement bonds – The Natural Resources Committee accepted testimony on **LB 862**, introduced by Senator Mark Christensen, which would address the question of “closed class legislation” by changing the definition of which NRDs can use the occupation tax on irrigated acres to pay for water programs. In essence, this bill would allow any NRD that requires meters on all irrigation wells in their district to issue bonds for flow enhancement which could be paid back by an occupation tax, or if bonding is not necessary, to use an occupation tax to pay for flow enhancement projects directly without the use of bonds.

The bill deletes references to “a district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact is part of a river basin” to “a majority of the districts have adopted controls in accordance with subdivision (1) (d) of section 46-739 (metering)”.

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.

Testimony in support of the bill included Jasper Fanning representing the Upper Republican NRD and the NARD, Dan Smith for the Middle Niobrara NRD, Mike Clements for the Lower Republican NRD, Kristen Gottschauk for the Nebraska Rural Electric Association, and Steve Nelson for the Nebraska Farm Bureau. Opposition to the bill came from two farmers, Claude Kappel who farms east of McCook and Russell Mielson who farms near Potter and the Nebraska-Wyoming border. The department went on record as being neutral on this bill.

Discussion included several components of the bill including:

- Whether or not metering of every well in an NRD should be required
- Whether or not users of surface water should be required to pay an occupation tax
- Whether or not a fully-metered downstream NRD would be allowed to use occupation tax proceeds for an augmentation project in an upstream NRD within the same basin if the upstream NRD is not fully-metered
- Whether or not an occupation tax should be levied on a per acre or on a per inch basis
- Certifying non-irrigation acres
- Removal of a bonding requirement
- Accuracies of numbers of certified acres claimed in NRDs

In response to questions from Senators about how occupation tax monies would be used in the Republican Basin, potential uses given include the purchase of surface water, payment for voluntary retirement of irrigated acres, payment to halt the pumping of surface water, upstream surface water projects, shifting and retiming of water conveyance, purchase of groundwater from “the mound,” and vegetation removal.

Though some attendees believed that Republican Basin flow enhancement projects should be paid for with state funding, including Senator Carlson, they pointed out that state dollars are simply not available for projects or for purchases to enhance flows; something must be done to allow local tax dollars to be used to enhance flows to meet compact requirements.

Some testifiers suggested that an occupation tax is preferable to being forced to meet department mandates in water short years. Opinions were shared that mandating irrigation shut-downs on tens of thousands of acres in the Republican Basin would be far more costly to all citizens in the basin, particularly impacted farmers, than would an occupation tax in terms of local economies and lost funding for schools. Senator Carlson offered an estimate that in water-short years, if department mandates were put into place on up to 166,000 acres in the Republican basin, the result would be a \$32 million negative economic impact on just the farms directly impacted. The committee took no action on the bill.

Change Provisions Relating to Repayment of Financial Assistance by NRDs - The Natural Resources Committee accepted testimony on **LB 932**, introduced by Senator Mark Christensen, which forgives the loan made to the Republican River Basin NRDs by the state to purchase surface water to meet the Republican River Compact if they are no longer authorized to use the proceeds of or is no longer authorized to levy the extra 10 cent property tax or the occupation tax (NOTE: the Nebraska Supreme Court has ruled the property tax unconstitutional and the occupation tax is currently being challenged in court.)

Senator Christensen noted several points during his introduction of this bill. First, he acknowledged that under LB 701 the Republican Basin NRDs purchased surface water to bail the state of Nebraska out of its obligations to the state of Kansas under the Republican River Compact. Second, Senator Christensen feels that if the NRDs hadn’t taken this action, the recent compact ruling would have been much different. In short he concluded that local decisions were made to remedy a state obligation, and now the NRDs can’t pay back the loan made to them by the state to purchase the water.

Testimony in support of the bill was provided solely by Dan Smith on behalf of the Middle Republican NRD and the NARD. Although the NRDs agreed to pay back the loan, the property tax levied to do so was ruled unconstitutional and for a state purpose. Dan questioned then whether or not repayment of the loan would also be for a state purpose and therefore also unconstitutional. There was no opposition to the bill nor were any questions asked or discussion held by the Senators. The department went on record as neutral. The committee took no action on the bill.

Republican River Basin Task Force hearing -- The Natural Resources Committee took testimony on **LB 1057** on Friday which would create the Republican River Basin Water Sustainability Task Force. Several testified in favor of the task force primarily supporting additional education and ideas being created for solutions to compact compliance, water short years and sustainability. However, even some supporters noted the difficulty in defining sustainability.

The Nebraska Association of Resources Districts was the sole opponent of the proposal, noting that the Nebraska Republican River Basin Management District Association could fill the same roll. This group is made up of the NRDs and irrigation districts in the basin and holds quarterly public meetings. Jasper Fanning, Upper Republican NRD Manager, testified on behalf of NARD. Fanning pointed out that ground water users were not represented on the task force and that NRDs are the regulators of those users.

Former Senator Ed Schrock also testified in a neutral capacity on the bill and mentioned that a task force can be useful and can do good things. However, the immediate needs of the basin may not be able to be met by a task force. Dan Smith, Middle Republican NRD Manager, testified in a neutral capacity on behalf of his district, noting the same concerns and also raised some concerns about the lack of representation from ground water irrigators.

The committee took no action on Senator Carlson's proposal, LB 1057.

Over-appropriated River basins – The Natural Resources Committee accepted testimony on **LB 1076**, a bill sponsored by Senator Ken Schilz to allow other river basins in Nebraska to be declared over-appropriated.

Brad Edgerton, Manager for the Frenchman-Cambridge Irrigation District, testified in support of the bill for the Nebraska Water Resources Association and the Nebraska State Irrigation Association. The groups specifically were asking that other river basins be evaluated for over-appropriated status.

Jasper Fanning and Dan Smith both testified on behalf of the Nebraska Association of Resources Districts in opposition to the bill, outlining the history of LB 962 with respect to the Platte River Cooperative Agreement and the Republican River Compact and why those determinations were made in statute with LB 962 and should not be changed.

The committee took no action on the proposal.

Other Committee Action

Water Funding – The Natural Resources Committee advanced **LB 689** to General File this week, which would eliminate the check-off funds going to the Water Resources Cash Fund. Senator Chris Langemeier introduced the bill to eliminate the check-off funds that were to go into the water fund starting in 2012. Under the current law there is a 3/5th cent/bushel check-off on corn and 3/5th cent/hundredweight check-off on grain sorghum that goes into the Ethanol Production Incentive Fund. In October of 2012 this ethanol fund will cease and the existing check-off was to go to the Water Resources Cash Fund starting in October 1, 2012. There is no increase in the check-off proposed, only directing where the funds should go.

The bill that eliminates the commodity check-off also redirects the funds remaining in the Ethanol Production Incentive Cash Fund when the program ends December 31, 2012. The remaining funds would be split equally with the commodity boards and the general fund. These remaining funds were to go into the Water Resources Cash fund. There is no replacement funds offered in the bill.

Floor action this week

NRD State Aid bill passes – Senators give final approval to **LB 210**, with the emergency clause, this week on a 44-0-5 vote. The bill changes the state aid formula to NRDs by eliminating the levy for bonding from the calculation. On General File, senators adopted FA 57 which places a July 1, 2010 effective date on the bill. On Select File, senators adopted AM 1573 which adds the emergency clause to the bill so it takes effect when passed and approved according to law. Senator Langemeier is the sponsor of the bill introduced on behalf of the Nebraska Association of Resources Districts.

**The following are bills of interest up for hearings next week.
All hearings begin at 1:30 p.m.**

February 10th

- **LB795** – Authorize employment of law enforcement officers by natural resources districts; Council; Judiciary Committee
- **LB 993** – Change use of the Water Resources Cash Fund; Carlson; Natural Resources Committee.
- **LB 1054** – Adopt the correlative rights doctrine relating to the use of groundwater; Carlson; Natural Resources Committee.
- **LB 1056** – Provide for measurement of aquifer depletion and limitations on irrigation; Carlson; Natural Resources Committee.

February 11th

- **LB 1010** – Provide procedures and limitations on the use of eminent domain by natural resources districts for recreational trails; Pankonin; Natural Resources Committee
- **LB 1011** – Limit the eminent domain power of natural resources districts to exclude certain recreational trails; Pankonin; Natural Resources Committee
- **LB 1019** – Creates the trails dispute boards to decide disputes concerning recreational trails between county boards and NRD boards; Haar; Natural Resources Committee