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

### Committee Action

**Occupation Tax** – The Natural Resources Committee formally advanced **LB 862** this week to General File with the committee amendment AM 2004. The bill makes several changes to the occupation tax on irrigated acres. The bill is sponsored by Senator Mark Christensen and is one of the Natural Resources Committee Priority Bills.

Surface water irrigation districts have announced they are opposing the bill until they get an exemption from the bill as they feel their direct diversions from the river have no impact to water quantity issues in Nebraska and should not have to contribute toward water reduction programs.

Current law allows districts that contain a river subject to an interstate compact among at least three states and at least one irrigation district within the compact to be able to issue river-flow enhancement bonds. The committee amendment deletes the original bill and replaces that language with the following criteria:

- It has jurisdiction that is part of a river basin for which the district has adopted an integrated management plan (IMP);
- The IMP is in accordance with 46-715;
- The IMP refers to 2-3226.04; and
- The IMP explicitly states the district's intent to utilize qualified projects described in 2-3226.04.

Nebraska Revised Statute **2-3226.04** outlines that the funds shall only be used to pay or refinance the costs of (1) acquisition by purchase or lease of ground water or surface water rights; (2) purchase or lease or the administration and management, pursuant to mutual agreement, of canals and other works, including reservoirs, constructed for irrigation from a river or any of its tributaries; (3) vegetation management, including, but not limited to, the removal of invasive species in or near a river or any of its tributaries; and (4) the augmentation of river flows consistent with the authority granted under Chapter 2, Article 32.

The committee amendment also allows the funds to be used to pay all of or any part of the costs and expenses of one or more qualified projects rather than issuing bonds.

Finally the amendment addresses that for districts that have more than one river basin within its jurisdiction, the occupation tax is to be confined to the geographic area affected by an IMP.

**Appropriations bills advance** – The Appropriations Committee advanced a package of bills this week to address budget issues. Included in the package is AM 2117 to LB 935, which is the deficit appropriations bill.

Since the bill was introduced in January, revenue forecasts have been lowered prompting the committee to respond with spending cuts and funds transfers that were not included in the original versions. The committee proposal includes a 2% across the board cut applied to the same operations and aid programs to

which the 5% cut was applied in the 2009 Special Session for the FY 10-11 years. No cuts are proposed for NRD related programs in the current fiscal year.

Certain state appropriations were exempted from across the board reductions including TEEOSA school aid, Special Education, Medicaid, Kids Connection, Homestead Exemption, Behavioral Health Aid, Developmental Disability Aid, Health Aid, Aid to Aging Programs, Health and Human Services care and treatment facilities, State Patrol, Corrections, Juvenile Services Aid, HHS protection and safety, and the State Emergency Fund, and Public Safety Communications.

The across the board reductions were also not applied to higher education which includes the University of Nebraska, state colleges and community colleges due to maintenance of effort requirements attached to Nebraska's use of Stabilization funds received under the American Recovery and Reinvestment Act (ARRA). These priority and entitlement programs that were excluded amount to 89.3% of the budget meaning that the across the board cut is applied to only 10.7% of the total budget.

For natural resources programs, adjustments include the following:

<b>Natural Resources Program Type</b>	<b>FY2010-11 GF Appropriation (2009 Spec Session)</b>	<b>FY2010-11 Across the Board Cut</b>	<b>FY 2010-11 Revised</b>
NDNR operations	9,494,300	(189,886)	9,304,414
Soil & Water Conservation Fund	2,365,343	(47,307)	2,318,018
Resources Development Fund	3,204,413	(64,088)	3,140,325
Interrelated Water Management Plan Program	2,197,211	(43,944)	2,153,267
NRD State Aid	1,465,377	(29,308)	1,436,069

A complete listing of the programs and the amount of across the board cuts is included in a report from the appropriations committee which is available online at:

<http://www.nebraskalegislature.gov/pdf/reports/fiscal/2010committee.pdf>.

### **General File Action**

**Republican River Task Force** – Senators advanced **LB 1057** to Select File with two amendments, which proposes to create the Republican River Basin Water Sustainability Task Force. The adopted committee amendment, **AM 1895**, replaces much of the bill and maintains the emergency clause. The bill with the committee amendments creates a task force as follows:

1. Governor appointments:
  - o Eight from NRDs in the Republican River Basin (two from each NRD).
  - o Four from irrigation districts in the basin.
  - o One from each of the following: UNL, Nebraska Game and Parks, Nebraska Department of Agriculture, Nebraska Department of Natural Resources.
  - o Two from agriculture-related businesses in the basin.
  - o One representative each from a school district, city, county and public power district in the basin.
2. The Legislature's Executive Board chairperson is also to appoint three ex-officio, non-voting senators, including two who reside in the basin, and the chairperson of the Natural Resources Committee.
3. The task force is to be housed within the Department of Natural Resources for administrative and budgetary purposes. Advisory support may be requested from federal and state agencies, and non-state employees are to be reimbursed for expenses.

4. The task force is to meet quarterly, may hire a facilitator, and is to convene within 30 days after appointments are completed. The task force is to provide a report to the Governor and Legislature, and is to terminate on June 30, 2012. Also, the intention is stated that expenses are to be paid from funds appropriated from the Water Resources Cash Fund and not exceed \$25,000 per fiscal year.

The second amendment adopted, **AM2092**, clarifies that funds can be used from the Water Resources Cash Fund. The bill is Senator Carlson's Priority Bill for the session.

**Settlement claims bill advances** – Senators advanced LB 742 to Select File this week after adopting the committee amendment (**AM 1967**). The original language of the bill required that a public entity which enters into or is otherwise a party to a settlement regarding a claim or potential claim will execute a settlement agreement concerning the claim and such settlement agreement will be a public record.

The committee amendment strikes the original provisions of the bill and inserts the following new language:

- A public entity or a private insurance company or public agency providing coverage to a public entity, public official or public employee will maintain a public record of all settled claims.
- The record for claims settled in the amount of \$50,000 or more, or one percent of the total annual budget of the public entity, whichever is less, will include a written settlement agreement.
- The settlement agreement will contain a brief description of the claim, the amount of financial compensation, and the party or parties released.
- Any claim or settlement agreement involving a public entity will be a public record but, to the extent permitted by other statutes, specific portions may be withheld from the public.
- A private insurance company or public agency providing coverage to a public entity will provide a copy of the claim or settlement agreement to the public entity to be maintained as a public record.
- Except for settlement agreements involving the state, any settlement agreements with an amount of \$50,000 or more, or one percent of the total annual budget of the public entity, whichever is less, will be included as an agenda item at the next meeting of the public agency or public entity.
- Confidentiality or nondisclosure clauses contained in a settlement agreement will neither cause nor permit a settlement agreement or claim or any other public record to be withheld from the public.

Senator Avery was successful in adopting an amendment (**AM 2105**) that would clarify that this bill does not apply to claims made in connection with insured or self-insured health insurance contracts.

Finally, nothing in the bill requires a public official or employee or any party to the settlement agreement to comment on the agreement.

### **Final Reading Action**

**Eliminate dedicated water fund source** – The legislature gave final approval to **LB 689** this week on a 41-1-7 vote. The bill eliminates dedicated funding sources for the Water Resources Cash Fund.

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 on 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. Several state senators argued that the bill should not advance without some back-up plan for funding.

Three other bills were advanced last week dealing with local funding. The Revenue Committee advanced **LBs 1031 & 1032** to allow for local NRDs to continue to raise funds locally through 2017 and the Natural Resources Committee advanced **LB 862** to make modifications to the occupation tax on irrigated lands.

On Select File debate Senator Heideman, Chairman of the Appropriations Committee had urged caution that large general fund budget deficits are projected in the next few years and that General Fund dollars will be

extremely hard to come by. Several urban senators echoed that they do not want general funds used for water programs. Some rural senators also urged caution that the alternative could be worse than the check-off funds. Senator Heideman was the lone no vote on the final passage of the bill.

**Voluntary NRD IMPs** -- Senators gave final approval to **LB 764** on a 46-0-3 vote this week which 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 original version of the bill would have required a district to notify the department on or before October 1 of its intention to develop an integrated management plan. The committee amendment strikes the October 1 requirement and leaves it open that a district could notify the department at any time of the year.

On Select File there was some discussion about making sure surface water groups were included as stakeholders for local NRD IMP workgroups, but no amendments were offered as the discussion became how the Legislature lists every group, individual or organization in statute without inadvertently omitting someone. On General File similar debate occurred concerning environmental groups, but no amendments were offered.

**2010 NARD Washington DC Trip** – Sixty NARD members, representing 14 NRDs, were in Washington DC this week attending the annual NARD Washington DC Trip. After participating in the two-day session to learn more about issues of concern at the national level, the NARD members spent a day on the hill visiting Nebraska Representatives and Senators. The NRD delegation met personally with Nebraska Senators Ben Nelson and Mike Johanns, followed by meetings with Nebraska Congressmen Lee Terry, Jeff Fortenberry and Adrian Smith.

Participants were also provided a tour of the Chesapeake Bay and the pilot programs by EPA and NRCS for water quality protection. Following is a brief summary of the sessions:

**Kris Polly, President of Water Strategies, LLC** -- Mr. Polly provided an overview of the Bureau of Reclamation budget and related programs that may be available to natural resources districts. Mr. Polly also provided a summary of S. 787 which changes the definition of waters of the United States that includes both interstate and intrastate waters. He also reported that much of the discussion about water are top-down directives, rather than bottom up.

**Brian Becker, Chief of Dam Safety Office** – Mr. Becker provided an overview of existing structures and the need to start rehabilitation as many of the structures are greater than 50 years old. Of 476 Corp structures, 370 are High and Significant Hazard and 106 are Low Hazard.

**John Henz, National Atmospheric Science Practice Leader, HDR Engineering**—Mr. Henz presented some very interesting data about global warming data and how many of the important factors have been left out. The top three greenhouse gases are: 80 %- water vapor; 15% - CO2; less than 1% methane. However, water vapor is left out of most prediction models, which provides inadequate results. Even looking at the data that is used, there appears to be a 30-35 year cycle in weather patterns/temperatures, and it appears that we are headed into a cooling cycle. He reminded the group that in the 1970's some predicted that we would have an ice-age by 2000. Finally he expressed concern about the current “new school” teaching method – “Forget the observations and run the computer models”.

**NRCS** -- Greg Johnson, Tim Beach and Duane Howard from the NRCS DC office provided overall summaries of the Conservation Security Program (CSP), Conservation Stewardship Program (CSP), EQIP – Groundwater/Surface Water Conservation (now converted to AWEP), Wildlife Habitat Incentive Program (WHIP), and the Cooperative Conservation Partnership Initiative. Steve Chick, Nebraska NRCS State Conservationist followed and reviewed the funding levels and program highlights for Nebraska.

**Dave Gagner, National Fish and Wildlife Foundation** – Mr. Gagner provided a summary of funds available to Nebraska’s natural resources districts through grants for habitat programs. The organization assists in directing funds from federal agencies to public and private organizations. The organization has provided \$1.5 billion for on-the-ground programs since 1984 including 10,000 grants and 3,000 conservation partners. Grants have been provided in all 50 states.

**Don Parrish, American Farm Bureau Federation** – Mr. Parrish provided some fascinating background information on agriculture and population trends. By 2050, the world population will increase by 50%, which means that a similar demand for food will follow. However, the current focus is to tax production with cap and trade, energy efficient mandates, and restrict production through regulations. Mr. Parrish also relayed concern about the current efforts to define “waters of the United States” which could end up taking away state primacy on water issues.

**Larry Prather, Assistant Director of Civil Works** – Mr. Prather provided summaries of the US Corp of Engineers programs and funding levels. Recently there were two big surges in funding caused by Hurricane Katrina and stimulus funding. However, funding is now leveling off. Prather also noted that administration changes are bringing policy changes with overriding themes of more federal control.

**Jeff Eisenberg – CEO, National Association of Conservation Districts**– Mr. Eisenberg reported on activities related to funding and programs at the national level. He noted that Nebraska is in line for a listening session on livestock waste and CAFO rules this spring if all details can get worked out. The local districts will be included. He also noted that Nebraska has the chance to take the lead on the Missouri River Recovery Program.

**Bob Weaver, Weaver and Associates** -- Mr. Weaver provided an update on water policy issues, including the Clean Water Act and jurisdiction issues, water quality issues related to nutrient controls and TMDLs. Mr. Weaver also provided a review of the administration’s proposed new National Objectives that cover three issues as follows: 1) Protect and restore natural ecosystems and environment while encouraging sustainable economic development; 2) avoid adverse impacts to natural ecosystems wherever possible and fully mitigate any unavoidable impacts; and 3) avoid the unwise use of flood plains, flood prone areas, and other ecologically valuable areas. However, what is missing is supporting justification for national objectives and the national need for these objectives.

**Monsanto, John Anderson, Jr., Business Development Manager** -- Mr. Anderson provided an overview of the technology changes that have occurred over the past 50 years and the changes that will be needed to address future world population demands. Corn yields have doubled since 1970 and have grown about 2.5 bu/year/acre. When looking at the data nationwide, Nebraska has the highest corn yield increase per acre of any area of the country. He reported that new technology is developing faster than it has in the past and will provide tremendous advantages to producers and the country if growth is allowed.

**EPA- Nancy Stoner, Deputy assistant Administrator, Office of Water** -- Ms. Stoner provided a summary of the Chesapeake Bay programs that were signed by executive order of President Obama on May 12, 2009. She noted that this will be the first area where new TMDL programs will be implemented on a watershed basis with a detailed plan with expectations and time tables to reduce sediment and phosphorus by 2025. Other areas of the country will follow and CAFO will be reviewed for changes. She also noted that the agency will be more involved with issues related to “waters of the United States”.