

MEMORANDUM

TO THE BOARD:

SUBJECT: General Manager Report

DATE: June 5, 2009

FROM: John Winkler, General Manager

- A. **INFORMATION/EDUCATION REPORT:** A copy of the I&E Report detailing Information and Education activities for the month of May 2009, is attached for your review.
- B. **MISCELLANEOUS/PERSONNEL ITEMS:**
1. **Thank You #1:** Attached is a letter from Tiffany Polifka, Office Manager of the Arnold Weitz & Company to Director Tesar. In her letter she states, "I was hoping you could pass on a thank you from us to everyone who works so hard to provide and upkeep the public fishing and camp grounds....We look forward to the upcoming renovation of the Elkhorn Crossing, and a possible new river access in the future."
 2. **Thank You #2** – Attached is a letter from Barbara Foster, Lead Business Development Specialist with the U.S. Small Business Administration, thanking the District for the use of the Board Room on May 5, 2009 for a joint training session with USDA for area lenders.
- C. **REPORT ON PURCHASES – CONSTRUCTION SERVICES, PROFESSIONAL SERVICES, PERSONAL PROPERTY:** Pursuant to Board direction, attached is a report indicating construction services, professional services and personal property purchases for the month of May, 2009. Please review this report and contact me if you have any questions.
- D. **CURRENT AND ON-GOING PROJECTS – P-MRNRD LEGAL COUNSEL:** Attached is a copy of the current and on-going projects for District Legal Counsel, Paul Peters, as of May 18, 2009. I would ask each Director to review this listing. If you have any questions, please feel free to contact me.
- E. **PAPILLION CREEK WATERSHED PARTNERSHIP REPORT:** The May, 2009 Papillion Creek Watershed Partnership Monthly Update is attached for your review. The next Partnership meeting will be held on June 25, 2009, at 10:00 a.m. at the NRC
- F. **LEGISLATIVE UPDATE:** The following information is attached for your information:
1. May 15, 2009 NARD Update
 2. May 22, 2009 NARD Update
 3. May 29, 2009 NARD Update

G. PROGRAM/PROJECT UPDATES

1. Pigeon Jones Project (Requested by Director Japp) – Attached is a letter from Paul Woodward, Olsson Associates, responding to some questions/comments from Director Japp regarding the July 2006 NRDF Projection Application and Feasibility Report for Pigeon/Jones Creek Site 15.

H. NEWS CLIPS:

- ✓ May 5, 2009, Omaha World Herald article – Water use gathering issues dire warnings. Current practices could lead to a global crisis, a conference speaker says at UNL.
- ✓ May 11, 2009, Omaha World Herald article – Omaha area flood-control bill advances
- ✓ May 19, 2009, Omaha World Herald article – Omaha-Lincoln trail's last leg on hold. Resources district, county disagree on route.
- ✓ May 21, 2009, Lincoln Journal Star article – Moratorium placed on MoPac link between Lincoln, Omaha
- ✓ May 22, 2009, Omaha World Herald Midland Voices, written by Scott Yahnke – Approval of NRD bonds is trouble for taxpayers
- ✓ May 22, 2009, Alliance Times article – Senator McCoy: Efficient Natural Resources Management
- ✓ May 22, 2009, Washington County Enterprise article – Compromise NRD bonding bill passed.
- ✓ May 23, 2009, Omaha World Herald – Community Connection Section – Outdoor Education. The wonders of water.
- ✓ May 26, 2009, Douglas County Post-Gazette article – Waterloo voters approve the levee bond issue
- ✓ May 28, 2009, Omaha World Herald Editorial – Flood Control Protection. NRD bonds are set to go.
- ✓ June 2, 2009, New York Times Editorial – A Clearer Clean Water Act
- ✓ June 4, 2009, Papillion Times article – Public invited to give input on water project
- ✓ June 4, 2009, Science Daily article – Changing Climate Likely to Make 'Super Weed' Even More Powerful
- ✓ June 5, 2009, Washington County Enterprise – Another Point of View written by Kevin Propst and Shawn Melotz – NRD bonding authority dangerous

- *I. **CHANGE TIME OF BOARD MEETINGS:** Director Japp has asked that the Board consider changing the Board meeting time from 8:00 p.m. to 7:00 p.m. In order to do so, the Board would need to amend District Policy 4.0 Board Meetings – Regular Monthly Meetings. Following are the suggested amendments:

4.0 Board Meetings - Regular Monthly Meetings. Unless otherwise designated by the Board, the regularly scheduled monthly meeting of the Board shall be held on the second Thursday of each month, at the principal office of the District. Each meeting shall begin at ~~8:00~~ 7:00 p.m. unless otherwise designated. If, prior to the meeting time the General Manager and the Chairperson determine that weather conditions are or will be dangerous for travel to and from the

meeting, the regularly scheduled monthly meeting shall be postponed until ~~8:00~~
7:00 o'clock p.m. on the Thursday following such scheduled meeting date, or, if
such date is a legal holiday, until ~~8:00~~ 7:00 p.m. on the second Thursday
following such scheduled meeting date. The General Manager shall cause every
reasonable effort to be made to notify each director of such postponement.

[December 5, 1986; December 8, 1988; July 9, 2009]

If the Board approves this change, the question of the final adoption of such resolution shall
be postponed until the July 9, 2009 meeting of the Board, pursuant to District Policy 1.5.

May 2009 Information and Education Report

Information

- Continued work on NRDs Rec Areas brochure
- Prepared draft I&E budget
- Continued work on Media Campaigns. Recruited new co-sponsors and edited May and June spots.
- Met with Big Muddy Workshop to design P-MRNRD interpretive signs at rec areas
- Web Site redesign nearly complete
- Continued to work with PCWP
- Published Spring Spectrum and began work on the summer issue.

Education:

- Helped with State Envirothon event at Ponca State Park
- Millard South geocaching program = 8 high school students
- Millard South Nature Hike = 8 high school students
- Participated in Sandoz Elementary Site Planning
- KCRO Radio Interview on MORE Nature
- Assisted Omaha World Herald on Articles
 - Water Works, GO! Play Adventure, Parent/Child Workshops, Kidscaping
- Earth Day Omaha meeting
- Presented at May Board Meeting
- Continued working with State and Fed's on Aviaries at Chalco
- Presented Education Programs to Dundee Kiwanis Group
- Presented MORE Nature/Go! Play Adventure at NACEE Conference
- Assisted with Summer Reading Program Kickoff at Elmwood Park
- Continued working on FY09 Outdoor Classroom Grants
- Held Water Works event and helped with registration
- Fullerton Magnet animal adaptations program = 40 1st grade students
- Boy scouts nature hike = 8 cub scouts
- Geocaching programs at MPS fishing day at Two Rivers SRA =150 students
- Fullerton Magnet butterfly/ladybug program = 40 1st grade students
- Lothrop Family Nature Night = 350 students and their families
- Benson West groundwater program = 80 6th grade students
- MORE Nature meeting
- St. Peter Claver geocaching program = 30 high school sophomores
- Continued planning summer camps
- Organized Ralston Nature Club for every Monday afternoon until school is in session

ARNOLD WEITZ & Co.

A REGISTERED INVESTMENT ADVISOR

414 S 14th Street Omaha, NE 68102-2606
(402) 392-2244 1-800-368-7494 fax: (402) 392-0320

May 6, 2009

Richard Tesar
28700 Platte River Plaza
Waterloo, NE 68069

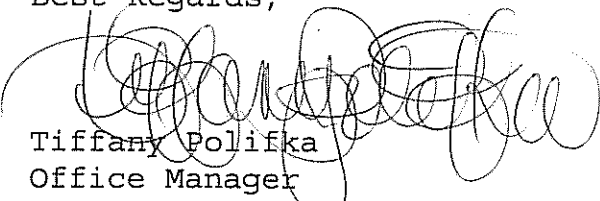
Dear Rich,

First of all I wanted to let you know that it was a pleasure to meet you on the river yesterday. Hopefully you had better luck with the fishing after we left. I also enjoyed pleasant conversation and learning about he NRD.

I was hoping you could pass on a thank you from us to everyone who works so hard to provide and upkeep the public fishing and camp grounds. We really appreciate everything they do on a day to day basis. We look forward to the upcoming renovation of the Elkhorn crossing, and a possible new river access in the future. Thanks for all the hard work and dedication to making Nebraska a beautiful place and for protecting the natural habitat for the wildlife.

Once again it was a pleasure to meet you and I hope to see you out fishing soon!

Best Regards,



Tiffany Polifka
Office Manager
Arnold Weitz & Company

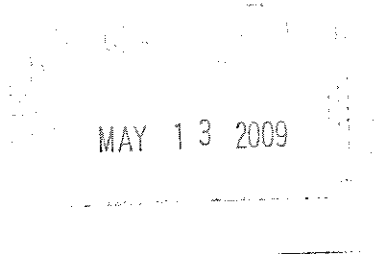
securities offered exclusively through
RAYMOND JAMES FINANCIAL SERVICES, INC
member FINRA/SIPC



U.S. SMALL BUSINESS ADMINISTRATION
Nebraska District Office
10675 Bedford Ave., Suite 100
Omaha, NE 68134
(402)221-7212 Fax (402)221-3680

May 11, 2009

Natural Resources Center
Chalco Hills Recreation Area
8901 S. 154th St.
Omaha, Nebraska 68138



To Whom It May Concern:

The Nebraska District Office of the U.S. Small Business Administration would like to thank you very much for allowing us to use your facility on May 5 to do a joint training session with USDA for the area lenders on our programs. It worked out very well for us.

It is our hope that by putting on these training sessions around the state, that we will be able to keep the lenders informed of changes and updates to our programs (especially under the Recovery Act) so that they can better serve the small businesses in your community.

Again, thank you very much!

Sincerely,

A handwritten signature in black ink, which appears to read "Barbara Foster", is written over a horizontal line.

Barbara Foster
Lead Business Development Specialist

May, 2009

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Updated: May 18, 2009

Current and On-Going Projects P-MRNRD Legal Counsel

★ = Top Priority

F = Future Work – No Assignment

N = New Assignment

O = Others Handling

W = Work in Progress

P = PFP's Portion Completed

- **Little Papio:** (Cleveland)
- **Big Papio:** (Cleveland)
 - ★ Whitted Creek easement form (W)
- **West Branch:** (Cleveland)
 - Land Exchange with Sarpy Co. (96th St.) (W)
- **Western Sarpy Dike:** (Cleveland)
- **Floodway Purchase Program:** (Grint)
 - Review Floodway Purchase title work & prepare PAs for King Lake properties (N)
 - Floodway Property purchase agreements as needed (F)
- **Trail Projects:** (Bowen)
 - Western Douglas County Trail – purchase agreements, deeds, easements, etc. (F)
- **Missouri River Corridor Project:** (Becic)
 - Agreement for Omaha to maintain Missouri River Trail at N.P. Dodge North (P)
- **USDA PL 566 Projects, Silver Creek and Pigeon/Jones Watershed:** (Puls/Cleveland)

- Pigeon/Jones Creek Site Easements – as needed (F)
- Review Papio W-2 Professional Services Contract w/HDR (P)
- ✱ Prepare W-3 Purchase Agreement (W)
- **Papio Watershed Dam Sites:** (Grint/Petermann)
 - ✱ Prepare purchase agreements for WP-5 Properties (W)
 - WP-5 City of Papillion Interlocal Agreement (P)
- **Papio Creek Watershed Partnership (Stormwater):** (Grint)
 - ✱ Review new 5-year Partnership Interlocal Agreement (N)
- **Rural Water Projects:** (Sklenar)
 - ✱ Blair Airport Authority Agreement on WCRW #2 (N)
- **Elkhorn River Public Access Sites:** (Sklenar)
- **Other:**
 - Kennard Wastewater Closing (Grint) (F)
 - ✱ Glacier Creek Heritage appraisals/purchase agreement (Becic) (W)
 - Cinnamon Acres easement documents (Bowen) (P)
 - Radio system service agreement (Cleveland) (W)
 - ✱ Blair Office Architect contract review (Puls) (W)
 - ✱ Finalize Summit Lake/NG&PC Agreement (Becic) (N)
 - ✱ Draft Groundwater Rules and Regulations to address LB 483 (Henkel) (N)
 - Review All Hazard Mitigation Plan contract w/Olsson Associates (Grint) (N)

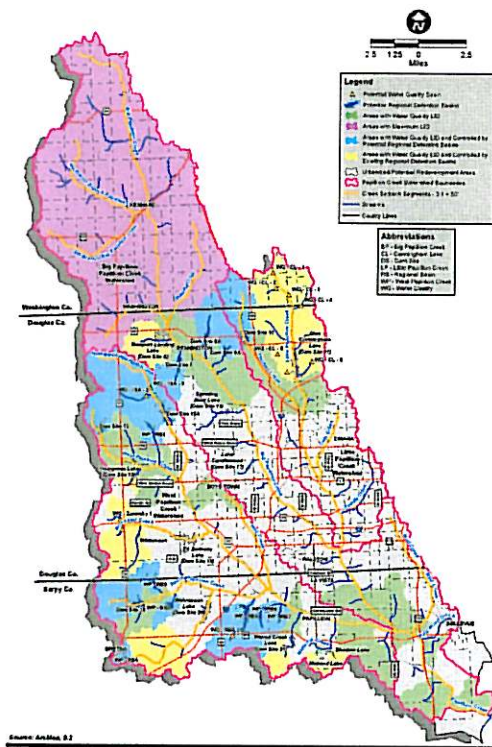
MAY 2009



A Partnership meeting was held on May 15th. Meeting minutes and other materials are updated regularly on the Partnership's website: www.papiopartnership.org.

Watershed Management Plan Update

The Stage IV Study Report has been completed. The report can be found on the Partnership's website. This report represents several years of study in the Papillion Creek Watershed and provides the Partnership's recommendations for implementation of a watershed management plan to address water quality and water quantity.



New Interlocal Agreement

The current Interlocal Agreement expires June 30, 2009. At the meeting on May 15th, the interlocal was discussed. Partners concerns about having a recorded vote was addressed and the partners revised the interlocal to amend the

Executive Committee section. Also a compromise suggested by the partners was to revise the plan for Douglas County to implement maximum LID in lieu of regional detention within their jurisdiction. The Watershed Management Plan attached to the Interlocal Agreement has been updated to reflect this change.

Additionally, several changes were made to the Administering Agent section of the Interlocal Agreement. The Papio NRD is the current and proposed Administering Agent of the Partnership. The partners suggested that meetings and meeting schedules should be planned in advance. It was agreed that meetings would be scheduled for one year every July. Meeting agendas will be posted to the Partnership's website 10 days in advance of the meetings. The meetings will be recorded and those recordings will be made available to the public, consistent with the procedures currently used for the NRD board meetings.

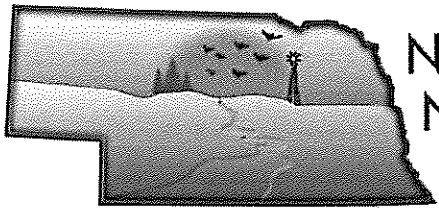
The final draft of the interlocal has been distributed to the partners for approval of the boards/councils.

Upcoming Events

The Post Construction Stormwater Management Plan Workshop has been scheduled for October 8, 2009 at the Scott Conference Center at UNO. A subcommittee meeting has been scheduled for June 11th at 10:00 AM to discuss the Post Construction application process and guidance manual.

Next Meeting: The next full Partnership meeting is scheduled for June 25th at 10:00 AM at the NRD office.





Nebraska's Natural Resources Districts

www.nrdnet.org

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Lincoln, NE 68508

nard@nrdnet.org
(402) 471-7670

Protecting Lives • Protecting Property • Protecting the Future

May 15, 2009

TO: NARD Board, NRD Managers and Conservation Partners

FROM: Dean E. Edson, NARD Executive Director

RE: May 15 NARD Update

LB 681 Tax refund bill indefinitely postponed – A bill that would have provided refunds for taxes declared unconstitutional was killed by the Revenue Committee on an 8-0 vote this week. Senator Mike Flood introduced the bill on behalf of Governor Heineman in March. The bill was in response to a recent Nebraska Supreme Court ruling that property taxes levied under LB 701 were for a state purpose and thus unconstitutional. Existing law allows for refunds if a taxpayer had filed a protest of the taxes within specific timeframes when the tax was imposed. The bill would have provided refunds to all taxpayers, whether they filed the protest or not and applied to all future tax cases.

When the Supreme Court ruled on this case in February 2009, they did not issue a judgment for the taxes to be returned. Rather they only declared the tax was unconstitutional. The other remaining sections of statute limit the use of the funds to repaying bonds. However, no bonds were issued with the funds. There is no other existing statute that would authorize and direct repayment of the tax.

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

Budget Bills Advanced – Senators gave final approval to the budget bills this week. Only one amendment was added to the committee recommendations for 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.

For natural resources programs, there is little change from the preliminary budget proposed by Governor Heineman. The highlighted changes for DNR in **LB 315** include:

- Increase personnel services limit to reduce reliance on contractual services for integrated management workload. The Appropriations Committee increased the agency personnel services limit by \$250,000 and includes the following intent language: "It is the intent of the Legislature that the Department of Natural Resources 1) examine the use of consultants to carry out integrated water management projects and studies and 2) hire additional staff when cost benefit analysis indicates that it is feasible to decrease the reliance upon consulting services used to carry out long-term integrated water management projects and studies."
- Reduction of estimated federal funding by \$100,000. The agency requested a lower federal fund expenditure authority based upon projected funding levels.

- Soil & Water Conservation Fund - Reduce General Fund allocation to by \$198,619 in each of the next two fiscal years. The Appropriations Committee recommendation reduces funding for this program by 7.4%. Funds allocated to this program are divided between natural resources districts, with the NRDs providing funding to individual property owners undertaking conservation practices.
- Water Management Fund - Reduction of program funding by \$100,000 in each of the next two fiscal years. The Appropriations Committee recommendation reduces funding by 9.3%.

Detailed funding levels for natural resources programs follows. This includes what was proposed by Governor Heineman and what the final was from the Legislature:

Funding for Natural Resources Programs

Program	Governor Heineman Proposed		Legislative Final		Dollar Change	
	FY 09-10	FY 10-11	FY 09-10	FY 10-11	FY 09-10	FY 10-11
Interstate Water Litigation – Attn Gen.	1,000,000	0	500,000	0	-500,000	0
State Aid to NRDs	1,545,502	1,545,502	1,545,502	1,545,502	0	0
Small Watersheds	500,000	500,000	500,000	500,000	0	0
Soil and Water Conservation Fund	3,093,454	3,093,454	2,894,835	2,894,835	-198,619	-198,619
Water Well Decommissioning	240,840	240,840	240,840	240,840	0	0
Resources Development Fund	3,423,066	3,423,066	3,423,066	3,423,066	0	0
*Natural Resources Water Quality Fund	1,250,000	1,250,000	1,250,000	1,250,000	0	0
Interrelated Water Mgt Plan Program	2,412,854	2,412,854	2,312,854	2,312,854	-100,000	-100,000
Nebraska Water Resources Cash Fund	2,700,000	2,700,000	2,700,000	2,700,000	0	0
**DNR Agency Operations Fund	13,430,199	13,441,253	13,717,590	13,995,464	+287,391	+554,211
**DNR Salary Limit Total	5,593,370	5,718,503	6,160,414	6,299,301	+567,044	+580,798

** Notwithstanding other provisions of this bill, all appropriations within this program existing on June 30, 2009, in excess of expended or encumbered amounts are hereby lapsed. All other DNR programs with unexpended balances were re-appropriated.*

***DNR Salary limit is included in the DNR Agency Operations Fund*

Other Special Notes

- **Program No. 307 - Nebraska Resources Development Fund.** The bill also provides direction for the use of the funds as follows: 1) Appropriation to this program for state aid shall first be utilized for projects which have been allocated funds but for which only a portion of the allocation has been actually obligated. 2) The total amount of funds allocated for projects less the amounts obligated for such projects shall not exceed \$18,500,000. The definitions of the terms allocated and obligated shall be based on the terminology utilized by the Department of Natural Resources in the Nebraska Resources Development Fund Status Report.
- **Program No. 334 - Soil and Water Conservation, General Operation.** Re-appropriates the unexpended General Fund balance allocated in budget subprograms 19 (integrated management), 20 (Water Resources Cash Fund), and 21 (Interstate Compacts) of Program 334 existing on June 30, 2009.

Also given final approval was **LB 316**, which included the budget cash fund transfers. The bill makes several transfers from the general fund and cash reserve fund for several programs. For natural resources programs

the bill transfers \$2,700,000 from the General Fund to the Water Resources Cash Fund for Fiscal Years 09-10 and 10-11. These are the same amounts recommended by Governor Heineman.

The budget can be found at <http://www.nebraskalegislature.gov/>. Click on the report "2009 Appropriations Committee Budget Report".

Also approved 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 Final Reading.

Flood protection legislation advances – Senators advanced **LB 160** to Final Reading this week on a voice vote after adopting a final compromise amendment. The bill provides financing authority to the Papio-Missouri River NRD for flood protection and water quality programs. The Papio Creek Watershed is one of the most dangerous watersheds in the Midwest for potential loss of life and extensive property damage due to flash flooding. Near-flood events in early 2008 highlighted the need to take immediate action. Urban growth within the Papio Creek Watershed continuously increases the risks for significant, hazardous flooding and presents serious water quality problems.

The objectives of the bill include:

- Provide the necessary financing tool, at no cost to the State of Nebraska, to reduce the risk of catastrophic flooding and improve water quality in the Papio-Missouri River Natural Resource District;
- Protect public infrastructure and investments and private property of individual and business property owners and taxpayers within the district;
- Protect the lives, health and welfare of all residents living within the district;
- Reconstruct flood levees identified as deficient;
- Reduce the amount of property subject to costly federal flood insurance requirements; and
- Bring the district into compliance with the federal Clean Water Act.

On Select File a final compromise amendment (**AM 1375**) was agreed to by all the parties involved in the debate, offered by Senator Lautenbaugh, and adopted to the bill. The amendment addressed two concerns. First, that any property acquired by the district for such a project using eminent domain can only be transferred to another political subdivision or agency of the state or federal government. Second that the bonds would only be used for projects in cities and counties that have adopted zoning regulations or ordinances that comply with state and federal floodplain management rules and regulations.

Also on Select File the legislature adopted **AM 1382**, offered by Senator Gay, which clarified several areas of the bill. These included: 1) Incorporating a 90-day time frame from the point that a NRD notifies intent to issue bonds for counties to object to a dam within their exclusive zoning authority (previous language did not have a time limit); and 2) restrictions placed on bonding do not limit the authority of the district for projects less than 20 acres or prohibit the use of other funds to do studies or reports.

The Natural Resources Committee amendment (**AM 735**), and an amendment from Senator Rogert (**AM 1005**) were incorporated into the bill before it was advanced to Select File.

Senator Rogert's amendment, **AM 1005**, would require that proceeds from the bonds shall not be used to fund any project in any city or county which is party to an agreement under the Interlocal Cooperation Act, unless such city or county has adopted a storm water management plan approved by the board of directors of the natural resources district.

The committee amendments to the bill, **AM 735**, make several modifications, including:

- Allow use of its **existing mill levy** to finance flood protection and water quality enhancement projects through the issuance of bonds, requiring a two-thirds affirmative vote of the board members for the issuance of any bond and a public vote for any proposed bond levy exceeding 1 cent, all within the NRD's 4 ½ cents per \$100 of assessed valuation levy limit;
- Allow county boards to disapprove of any reservoir exceeding 20 surface acres, if done within 90 days of notification of a project by the NRD board of directors;
- Provide that bond proceeds not be used for metropolitan class city's combined sewer separation projects; and
- Provide that the bonding authority sunsets on December 31, 2019.

Senator Hadley from Kearney offered several amendments, none of which were incorporated into the legislation. One of his amendments, **AM 1084**, would require all bonds to be approved by a majority of registered voters of the districts, limited to 2 cents, and subject to, and includable in, the computation of other limitations upon the district's tax levy. This amendment failed on an 18-18 vote during General File debate.

Under current law for all other political subdivisions with bonding authority, when taken to a vote of the public, the approval only requires a majority of those voting and is not subject to levy limitations. Further, counties and school districts currently have a 5.2 cent levy authority for capitol construction and maintenance bonds that only requires the governing body majority vote -- no public vote is required.

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 Final Reading this week after several amendments were discussed and defeated during Select File debate. Most of these amendments discussed focused on campaigns and campaign finance issues.

On General File 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 on General File and became 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.

Other Bills Indefinitely Postponed

LB 466 -- Eliminate an excise tax on corn and grain sorghum, Wallman. The bill proposed to eliminate the corn and grain sorghum check-off that is scheduled to go into the Water Resources Cash Fund for FYs 2012-13 through 2018-2019 and replaced it with a \$10 million annual General Fund appropriation.

LB 632 -- Adopt the Nebraska Green Building Advantage Act and authorize a sales tax refund, Mello. The bill proposed adopting the Nebraska Green Building Advantage Act to provide a sales tax credit to those commercial buildings that use the Leadership in Energy and Environmental Design Green Building Rating System (LEED). Commercial building is defined to mean a building that will be or is being used for commercial activities, including retail, medical, distribution, wholesale, manufacturing, or rental property. The sales tax refund would graduate from 10 to 50 percent as more LEED Standards are incorporated into the building.

Bills passed last week and signed by Governor Heineman this week

LB 54: Water accounting bill – A bill to assist NRDs in tracking depletions and gains resulting from new, expired or modified water uses in fully or over-appropriated areas.

LB 56: Livestock Waste Management Act modifications -- The original bill offers several changes to the livestock waste permit system, including revoking a permit if there are 3 intentional or willful intent to discharge that occurred at that facility.

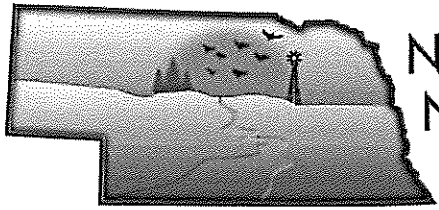
LB 98e and LB 98Ac: Riparian Vegetation Management Task Force – A bill introduced by Senator Carlson to extend the termination date for the Riparian Vegetation Management Task Force and provide funding.

LB 286e: Lottery proceeds distribution –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.

NARD Bill Summary Tracking Sheet							Page 1 of 2	
Bill or CA	Description	Sponsor(s)	Priority	NARD POSITION	Committee	Hearing Date	Status	Amendments
LB 12	Increase NRDF	Langemeier		Support	Appropriations	3/9/2009	Committee	
LB 18	Prohibit irrigation on new school land leases	Christensen	N/A	N/A	Natural Resources	N/A	Withdrawn	Christensen MOA-passed
LB 42	Improvements to Rural Water Systems	Flood		Monitor	Natural Resources	1/21/2009	General File	
LB 43	Eliminate Interstate Water Rights Fund	Flood		Monitor	Natural Resources	1/21/2009	General File	
LB 54	Integrated Water Management Procedures	Fischer	Fischer	Support	Natural Resources	1/28/2009	Approved by Governor, 5/13/09	Passed 47-0-2
LB 56	Modify Livestock Waste Management	Fischer	Speaker	Monitor	Natural Resources	1/28/2009	Approved by Governor, 5/13/09	Passed 43-3-3
LB 98e & LB 98Ae	Extend Riparian Vegetation Management	Carlson	Carlson	Support	Agriculture	2/17/2009	Approved by Governor, 5/13/09	Passed w/emergency clause 45-0-4, LB 98Ae passed w/emergency clause 46-0-3
LB 134	Limit NRD Eminent Domain Authorities	Pankonin	Pankonin	Opposed	Natural Resources	1/23/2009	General File	AM636-Pending
LB 160	Bond Authority for PMNRD	Gay	Nelson	Support	Natural Resources	1/23/2009	Final Reading	Note - 13 Amendments/motions filed, but only 5 adopted to the bill includes AMs 735, 1005, 1375, 1382 and ER 6101
LB 162	Change provisions relating to contractor registration and income tax withholding	Cornett	Speaker	Monitor	Revenue	2/6/2009	Approved by Governor, 5/13/09	Passed 45-2-2
LB 179e	Change project limit adjustments under the Nebraska Resources Development Fund	Natural Resources Committee		Support	Natural Resources	1/21/2009	Approved by Governor, 2/12/09	Passed 46-0 with emergency clause
LB 180	Change provisions relating to the Waste Reduction and Recycling Incentive Fund	Natural Resources Committee		Support	Natural Resources	1/21/2009	Approved by Governor, 2/12/09	Passed 45-2-2
LB 184	Authorize Department of Natural Resources to administer riparian water rights	Louden		Support	Natural Resources	1/28/2009	Approved by Governor, 4/8/09	Passed 45-0
LB 209	Change provisions relating to time for construction of irrigation projects and dams (NARD Bill)	Langemeier		Support	Natural Resources	1/30/2009	Final Reading	
LB 210	Change provisions relating to aid to natural resources districts (NARD Bill)	Langemeier		Support	Revenue	3/12/2009	General File	
LB 218	Change, eliminate, and provide state aid to various political subdivisions	Cornett	Speaker	Monitor	Revenue	1/28/2009	Select File	AM712 Adopted, AM802 Lost, ER8132 Filed, AM1423 Filed
LB 235	Provide the Board of Educational Lands and Funds leases relating to solar, wind energy and carbon sequestration	Adams		Monitor	Education	3/9/2009	General File	AM681-Pending, Attorney General Opinion 09007 to Haar
LB 246	Reestablish the Biopower Steering Committee; to provide for a study	Dubas	Speaker	Monitor	Natural Resources	1/30/2009	Final Reading	AM749-Adopted, AM864-Withdrawn; AM 1195 - Adopted; ER 8061 - Adopted
LB 263	Provide that state law preempts local law for the Nebraska Seed Law and the Nebraska Commercial Fertilizer and Soil Conditioner Act	Rogert	Speaker	Opposed	Agriculture	2/10/2009	Final Reading	AM 354 Adopted, ER8123 Adopted
LB 286e	Change the distribution of lottery funds	General Affairs Committee	General Affairs Committee	Monitor	General Affairs Committee	3/2/2009	Approved by Governor, 5/13/09	Passed w/emergency clause 46-0-3
LB 289	Appropriate funds to the Game and Parks Commission	Christensen		Support	Appropriations	3/11/2009	Committee	
LB 304	Change limitation of action provisions under the Political Subdivisions Tort Claims Act	Council		Monitor	Judiciary	2/4/2009	General File	
LB 315	Mainline appropriations for state government operations	Speaker Flood on behalf of the Governor		Support	Appropriations	DNR 3/9/09	Approved, sent to the Governor	Passed with emergency clause, 46-2-1

LB 316	Budget cash fund transfers		Speaker Flood on behalf of the Governor		Support	Appropriations	2/23/2009	Approved, sent to the Governor	Passed with emergency clause, 48-0-1
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NARD Bill Summary Tracking Sheet										Page 2 of 2	
		Friend	Last Updated: 05/15/09								
			Priority	Monitor	Revenue	3/12/2009	IPP				
LB 336	Exempt municipal water from sales tax										
LB 361	Change roll call provisions under the Open Meetings Act	Avery	Government Committee	Monitor	Government, Military and Veterans Affairs	2/19/2009	Approved by Governor 3/22/09	Passed 48-0			
LB 362	Change requirements for candidate filing forms	Avery		Monitor	Government, Military and Veterans Affairs	2/25/2009	IPP				
LB 379e	Extend the scrap tire grant program	Haar									
LB 389	Change appointment provisions for the Climate Assessment Response Committee	Carlson		Support	Natural Resources	1/29/2009	Approved by Governor 3/19/09	Passed 46-0 with Emergency Clause			
LB 438	Prohibit instream appropriations in fully or over appropriated areas	Fischer		Monitor	Agriculture	2/3/2009	Final Reading	AM 355-Adopted; ER 8077 Adopted			
LB 466	Eliminate excise tax on corn and grain sorghum	Wallman		Support	Natural Resources	2/5/2009	Committee				
LB 477	Change provisions relating to water transfer permits			Monitor	Revenue	3/12/2009	IPP				
LB 477	Change provisions relating to water transfer permits	Carlson	Utter	Support w/ clarification	Natural Resources	2/5/2009	Approved by Governor 3/22/09	Passed 49-0			
LB 480	Change budget limit and tax levy limitation provisions	Dierks		Support	Revenue	2/19/2009	IPP				
LB 482	Change provisions of the NE GW Management and Protection Act	Langemeier		Monitor	Natural Resources	1/29/2009	Committee				
LB 483e	Change well moratoriums	Langemeier	Langemeier	Support	Natural Resources	1/29/2009	Approved by Governor 4/6/09	Passed 46-0 with Emergency Clause			
LB 486	Require certain governmental entities to identify themselves as such in their official name	Karpisek		Monitor	Government, Military and Veterans Affairs	3/5/2009	Committee				
LB 504	Authorize permits and provide penalties relating to discharge of dredged or fill material into the waters of the state	Langemeier		Support	Natural Resources	2/27/2009	Committee				
LB 520	Provide for an income tax credit for perpetual conservation easement donations	Hadley		Support	Revenue	2/6/2009	Committee				
LB 535	Change membership of the NE Nat. Res. Comm. And provisions relating to NRDs.	Stuthman		Oppose	Natural Resources	2/20/2009	Committee				
LB 565	Adopt the Woody Biomass Energy Act	Louden		Support	Natural Resources	2/4/2009	Committee				
LB 577	Change provisions relating to improvement projects areas of NRDs.	Rogert		Oppose	Natural Resources	2/6/2009	IPP				
LB 581	Change disposition of funds from Pesticide Act fees and weed book sales	Carlson		Monitor	Agriculture	2/10/2009	Committee				
LB 582	Create the NE Invasive Species Council	Dierks		Support w/ modifications	Natural Resources	3/4/2009	Committee				
LB 624	Provide for energy efficiency loans for public buildings	Haar		Monitor	Natural Resources	2/4/2009	Committee				
LB 626	Change prohibited activities for public officials and public employee's use of public resources	Karpisek	Speaker	Support	Government, Military and Veterans Affairs	3/4/2009	Select File	Note - 5 Amendments/motions filed, 3 adopted to the bill. Includes AMs 972, 1256 and ER8124			
LB 632	Adopt the NE Green Building Advantage Act and authorize a sales refund	Mello		Monitor	Revenue	3/5/2009	IPP				
LB 639	Change provisions to telephone conferencing for public meetings	Karpisek		Monitor	Government, Military and Veterans Affairs	2/19/2009	Committee	Amended into LB361			
LB 643	Change and provide notice requirements of road construction near electric lines	Schliz		Monitor	Natural Resources	2/20/2009	Committee				
LB 644	Adopt the Electronics Recycling Act	Mello		Monitor	Natural Resources	3/11/2009	Committee				
LB 651	Create Water Resources Revolving Loan Fund Act (NARD Bill)	Christensen		Support	Natural Resources	2/26/2009	Committee				
LB 656	Adopt the Health Care Accessibility and Affordability Act	Harms		Monitor	Health and Human Services	2/11/2009	Committee				
LB 666	Changes to the Niobrara Scenic River Council	Langemeier		Support	Natural Resources	2/25/2009	Committee				
LB 678	Change provisions relating to minutes of public meetings	Haar		Monitor	Government, Military and Veterans Affairs	2/19/2009	Committee				
LB 681	Provide for refund of unconstitutional taxes, assessments, and penalties	Speaker Flood on behalf of the Governor	Christensen	Support	Revenue	3/11/2009	IPP				



Nebraska's Natural Resources Districts

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May 22, 2009

TO: NARD Board, NRD Managers and Conservation Partners

FROM: Dean E. Edson, NARD Executive Director

RE: May 22 NARD Update

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

LB 160, Flood protection legislation approved – Senators gave final approval to **LB 160** this week on 36-12-1 vote. The bill provides financing authority to the Papio-Missouri River NRD for flood protection and water quality programs. The Papio Creek Watershed is one of the most dangerous watersheds in the Midwest for potential loss of life and extensive property damage due to flash flooding.

Near-flood events in early 2008 highlighted the need to take immediate action. Urban growth within the Papio Creek Watershed continuously increases the risks for significant hazardous flooding and presents serious water quality problems. The final vote on the bill follows:

- **Voting in the affirmative, 36:** Adams, Ashford, Avery, Campbell, Carlson, Christensen, Cook, Cornett, Council, Dubas, Fischer, Flood, Fulton, Gay, Giese, Gloor, Haar, Hadley, Harms, Lathrop, Loudon, McCoy, McGill, Mello, Nantkes, Nelson, Nordquist, Pahls, Pankonin, Price, Schilz, Stuthman, Sullivan, Wallman, White, and Wightman.
- **Voting in the negative, 12:** Dierks, Friend, Hansen, Heidemann, Howard, Janssen, Karpisek, Langemeier, Lautenbaugh, Pirsch, Rogert, and Utter.
- **Present and not voting, 1:** Coash.

The following are the objectives of the bill.

- Provide the necessary financing tool, at no cost to the State of Nebraska, to reduce the risk of catastrophic flooding and improve water quality in the Papio-Missouri River Natural Resource District.
- Protect public infrastructure, investments and private property of individual and business property owners and taxpayers within the district.
- Protect the lives, health and welfare of all residents living within the district;
- Reconstruct flood levees identified as deficient.
- Reduce the amount of property subject to costly federal flood insurance requirements.
- Bring the district into compliance with the federal Clean Water Act.

The following provisions are included in the final version of the bill.

- Allow use of its existing mill levy authority (4 ½ cents per \$100 of assessed valuation) to finance flood protection and water quality enhancement projects through the issuance of bonds, requiring a two-thirds affirmative vote of the board members for the issuance of any bond.
- A public vote would be required for any proposed bond levy exceeding 1 cent.
- The proceeds of bonds shall be used to pay costs of design, rights-of-way acquisition, and construction of multipurpose projects and practices for storm water, including flood control and water quality.
- Flood control, water quality projects and practices include, but are not limited to, low-impact development best management measures, flood plain buyout, dams, reservoir basins, and levees.
- The proceeds of bonds shall not be used to fund combined sewer separation projects in a city of the metropolitan class.
- Limits reservoir or water quality basin to no more than 400 surface acres of permanent pool.
- Public access would be required for any project that has a permanent pool greater than 20 surface acres.
- Provides a 90-day time frame from the point that a NRD notifies intent to issue bonds for counties to object to a dam within their exclusive zoning authority.
- Allow county boards to disapprove of any reservoir exceeding 20 surface acres, if the affected county passes a resolution.
- Bonds would only be used for projects in cities and counties that have adopted zoning regulations or ordinances that comply with state and federal floodplain management rules and regulations.
- Any property acquired by the district using eminent domain and financed by bonding can only be transferred to another political subdivision or agency of the state or federal government.
- Provide that bond proceeds not be used for metropolitan class city's combined sewer separation projects.
- Provide that the bonding authority sunsets on December 31, 2019.

Senator Hadley from Kearney offered several amendments, none of which were incorporated into the legislation. One of his amendments, AM 1084, would require all bonds to be approved by a majority of registered voters of the districts, limited to 2 cents, and subject to, and includable in, the computation of other limitations upon the district's tax levy. This amendment failed on an 18-18 vote during General File debate.

Under current law for all other political subdivisions with bonding authority, when taken to a vote of the public, the approval only requires a majority of those voting and is not subject to levy limitations. Further, counties and school districts currently have a 5.2 cent levy authority for capitol construction and maintenance bonds that only requires the governing body majority vote -- no public vote is required.

LB 209 -- Dam construction bill approved. Senators gave final approval to LB 209 this week on a 48-0-1 vote. The bill changes the time frame from 6 months to 12 months after the approval of any application

regarding 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 was sponsored by Senator Langemeier.

LB 626 -- Change prohibited activities for public official's and public employee's use of public resources. A bill introduced by Senator Russ Karpicek of Wilber to change governance of public resources was given final approval this week on a 44-2-3 vote. The bill would allow public officials and employees to use public resources that are considered incidental.

The key components of the bill 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 telecommunication system, cellular telephone, handheld device, 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 official's were allowed to respond to specific inquiries regarding ballot questions.

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 email relating to a campaign event from his own computer at home, but it went through a server owned by the city.

LB 263 -- Provide that state law preempts local laws for seeds and fertilizers. Senators gave final approval to LB 263 this week on a 44-4-1 vote. The bill would not allow political subdivision's to prohibit or regulate matter regarding the registration, labeling and sale, storage, transportation, distribution and notification of use of seeds, fertilizer and soil conditioners under the Nebraska Seed Law and the Nebraska Commercial Fertilizer and Soil Conditioner Act.

The bill does not limit the authority of any city or county to adopt and enforce zoning regulations. The committee amendment added on General File also adds that natural resource district enforcement of the Nebraska Groundwater Management and Protection Act is expressly excluded from the preemption of the Nebraska Fertilizer & Soil Conditioners Act and its regulations. The bill was introduced by Senator Rogert and was a Speaker Priority Bill this session.

LB's 315 & 316, Budget bills approved –Governor Heineman signed the budget bills this week without exercising his veto authority. 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. For natural resources programs, there is little change from the preliminary budget proposed by Governor Heineman.

Legislature in recess -- The Nebraska Legislature is in recess from Friday May 22nd until Tuesday, May 26th for Memorial Day. The tentative plan is to adjourn the session on May 29, 2009.

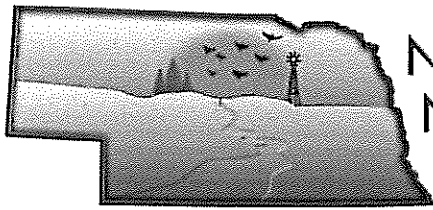
Interim Study List – The following provides a list of interim studies related to natural resources introduced this session. The introducers name follows the one-line summary. Hearings on interim studies are usually held late summer through December. However, it is not required that all interim studies have a hearing.

- **LR 101** - Interim study to examine issues relating to the impact of additional well development on water use by domestic wells in areas of the state where ground water supplies are limited. Haar.
- **LR 103** - Interim study to examine the statutory duties of riparian landowners adjacent to natural streams and other watercourses for the control and removal of noxious and invasive vegetation. Agriculture Committee
- **LR 115** - Interim study to review issues under the jurisdiction of the Natural Resources Committee. Langemeier.
- **LR 122** - Interim study to examine the feasibility of making the Game and Parks Commission a code agency. McCoy.
- **LR 124** - Interim study to examine the use of eminent domain by natural resources districts for the taking of private land for development or management of recreational trails or corridors. Pankonin.
- **LR 128** - Interim study to examine issues relating to the laws of Nebraska governing the management and use of Nebraska surface water and ground water. Langemeier.
- **LR 141** - Interim study to examine the subject matter of LB 474, 2009, that would have required the state and its governmental subdivisions to pay property tax on property that was not being used for a public purpose. Stuthman.
- **LR 181** - Interim study to examine the feasibility and benefits of restructuring the natural resources districts. McCoy.
- **LR 214** - Interim study to examine local government levy limits and property tax proposals that have been implemented since 1995. Revenue Committee.
- **LR 222** -- Interim study to examine granting the Department of Environmental Quality the statutory authority to file and collect environmental liens on property. Langemeier.
- **LR 235** -- Interim study to examine water issues. Christensen.
- **LR 240** - Interim study to examine ideas for encouraging responsible livestock development through participation and partnerships between communities, counties, organizations, and state agencies. Christensen.

A full list of interim studies can be found at <http://www.nebraskalegislature.gov/session/interim.php>.

NARD Bill Summary Tracking Sheet										Page 1 of 2	
Bill or CA	Description	Sponsor(s)	Priority	Last Updated: 05/22/09		NARD POSITION	Committee	Hearing Date	Status	Amendments	
LB 12	Increase NRDF	Langemeier				Support	Appropriations	3/9/2009	Committee		
LB 18	Prohibit irrigation on new school land leases	Christensen	N/A			N/A	Natural Resources	N/A	Withdrawn	Christensen MO4-passed	
LB 42	Improvements to Rural Water Systems	Flood				Monitor	Natural Resources	1/21/2009	General File		
LB 43	Eliminate Interstate Water Rights Fund	Flood				Monitor	Natural Resources	1/21/2009	General File		
LB 54	Integrated Water Management Procedures	Fischer	Fischer			Support	Natural Resources	1/28/2009	Approved by Governor, 5/13/09	Passed 47-0-2	
LB 56	Modify Livestock Waste Management	Fischer	Speaker			Monitor	Natural Resources	1/28/2009	Approved by Governor, 5/13/09	Passed 43-3-3	
LB 98e & LB 98Ae	Extend Riparian Vegetation Management	Carlson	Carlson			Support	Agriculture	2/17/2009	Approved by Governor, 5/13/09	Passed w/emergency clause 45-0-4, LB 98Ae passed w/emergency clause 46-0-3	
LB 134	Limit NRD Eminent Domain Authorities	Pankonin	Pankonin			Opposed	Natural Resources	1/23/2009	General File	AM 636 - Pending; MO 54 - Pending (IPR)	
LB 160	Bond Authority for PMNRD	Gay	Nelson			Support	Natural Resources	1/23/2009	Approved and sent to Governor	Passed 36-12-1	
LB 162	Change provisions relating to contractor registration and income tax withholding	Comett	Speaker			Monitor	Revenue	2/6/2009	Approved by Governor, 5/13/09	Passed 45-2-2	
LB 179e	Change project limit adjustments under the Nebraska Resources Development Fund	Natural Resources Committee				Support	Natural Resources	1/21/2009	Approved by Governor, 2/12/09	Passed 46-0 with emergency clause	
LB 180	Change provisions relating to the Waste Reduction and Recycling Incentive Fund	Natural Resources Committee				Support	Natural Resources	1/21/2009	Approved by Governor, 2/12/09	Passed 45-2-2	
LB 184	Authorize Department of Natural Resources to administer riparian water rights	Louden				Support	Natural Resources	1/28/2009	Approved by Governor, 4/8/09	Passed 45-0	
LB 209	Change provisions relating to time for construction of irrigation projects and dams (NARD Bill)	Langemeier				Support	Natural Resources	1/30/2009	Approved and sent to Governor	Passed 48-0-1	
LB 210	Change provisions relating to aid to natural resources districts (NARD Bill)	Langemeier				Support	Revenue	3/12/2009	General File		
LB 218	Change, eliminate, and provide state aid to various political subdivisions	Comett	Speaker			Monitor	Revenue	1/28/2009	Final Reading	AM712 Adopted, AM802 Lost, ER8132 Filed, AM1423 Filed	
LB 235	Provide the Board of Educational Lands and Funds leases relating to solar, wind energy and carbon sequestration	Adams				Monitor	Education	3/9/2009	General File	AM681-Pending, Attorney General Opinion 09007 to Haar	
LB 246	Reestablish the Biopower Steering Committee; to provide for a study	Dubas	Speaker			Monitor	Natural Resources	1/30/2009	Approved and sent to Governor	Passed 37-5-7	
LB 263	Provide that state law preempts local law for the Nebraska Seed Law and the Nebraska Commercial Fertilizer and Soil Conditioner Act	Rogert	Speaker			Opposed	Agriculture	2/10/2009	Approved and sent to Governor	Passed 44-4-1	
LB 286e	Change the distribution of lottery funds	General Affairs Committee	General Affairs Committee			Monitor	General Affairs Committee	3/2/2009	Approved by Governor, 5/13/09	Passed w/emergency clause 46-0-3	
LB 289	Appropriate funds to the Game and Parks Commission	Christensen				Support	Appropriations	3/11/2009	Committee		
LB 304	Change limitation of action provisions under the Political Subdivisions Tort Claims Act	Council				Monitor	Judiciary	2/4/2009	General File		
LB 315	Mainline appropriations for state government operations	Speaker Flood on behalf of the Governor				Support	Appropriations	DNR 3/9/09	Approved by Governor 5/19/09	Passed with emergency clause, 46-2-1	
LB 316	Budget cash fund transfers	Speaker Flood on behalf of the Governor				Support	Appropriations	2/23/2009	Approved by Governor 5/19/09	Passed with emergency clause, 48-0-1	

NARD Bill Summary Tracking Sheet					Last Updated: 05/22/09		Page 2 of 2	
LB	Bill Number	Bill Description	Friend	Priority	Monitor	Revenue	3/12/2009	IPP
LB 336	Exempt municipal water from sales tax				Monitor	Revenue		
LB 361	Change roll call provisions under the Open Meetings Act		Avery	Government Committee	Monitor	Government, Military and Veterans Affairs	2/19/2009	Approved by Governor 3/22/09 Passed 48-0
LB 362	Change requirements for candidate filing forms		Avery		Monitor	Government, Military and Veterans Affairs	2/25/2009	IPP
LB 379e	Extend the scrap tire grant program		Haar		Support	Natural Resources	1/29/2009	Approved by Governor 3/18/09 Passed 46-0 with Emergency Clause
LB 389	Change appointment provisions for the Climate Assessment Response Committee		Carlson		Monitor	Agriculture	2/3/2009	Approved and sent to Governor Passed 48-0-1
LB 438	Prohibits instream appropriations in fully or over appropriated areas		Fischer		Support	Natural Resources	2/5/2009	Committee
LB 466	Eliminate excise tax on corn and grain sorghum		Wallman		Monitor	Revenue	3/12/2009	IPP
LB 477	Change provisions relating to water transfer permits		Carlson	Utter	Support w/ clarification	Natural Resources	2/5/2009	Approved by Governor 3/22/09 Passed 49-0
LB 480	Change budget limit and tax levy limitation provisions		Dierks		Support	Revenue	2/19/2009	IPP
LB 482	Change provisions of the NE GW Management and Protection Act		Langemeier		Monitor	Natural Resources	1/29/2009	Committee
LB 483e	Change well moratoriums		Langemeier	Langemeier	Support	Natural Resources	1/29/2009	Approved by Governor, 4/6/09 Passed 46-0 with Emergency Clause
LB 486	Require certain governmental entities to identify themselves as such in their official name		Karpisek		Monitor	Government, Military and Veterans Affairs	3/5/2009	Committee
LB 504	Authorize permits and provide penalties relating to discharge of dredged or fill material into the waters of the state		Langemeier		Support	Natural Resources	2/27/2009	Committee
LB 520	Provide for an income tax credit for perpetual conservation easement donations		Hadley		Support	Revenue	2/6/2009	Committee
LB 535	Change membership of the NE Nat. Res. Comm. And provisions relating to NRDs.		Stuthman		Oppose	Natural Resources	2/20/2009	Committee
LB 565	Adopt the Woody Biomass Energy Act		Louden		Support	Natural Resources	2/4/2009	Committee
LB 577	Change provisions relating to improvement projects areas of NRDs.		Rogert		Oppose	Natural Resources	2/6/2009	IPP
LB 581	Change disposition of funds from Pesticide Act fees and weed book sales		Carlson		Monitor	Agriculture	2/10/2009	Committee
LB 582	Create the NE Invasive Species Council		Dierks		Support w/ modifications	Natural Resources	3/4/2009	Committee
LB 624	Provide for energy efficiency loans for public buildings		Haar		Monitor	Natural Resources	2/4/2009	Committee
LB 626	Change prohibited activities for public officials and public employee's use of public resources		Karpisek	Speaker	Support	Government, Military and Veterans Affairs	3/4/2009	Approved and sent to Governor Passed 44-2-3
LB 632	Adopt the NE Green Building Advantage Act and authorize a sales refund		Mello		Monitor	Revenue	3/5/2009	IPP
LB 639	Change provisions to telephone conferencing for public meetings		Karpisek		Monitor	Government, Military and Veterans Affairs	2/19/2009	Committee Amended into LB361
LB 643	Change and provide notice requirements of road construction near electric lines		Schilz		Monitor	Natural Resources	2/20/2009	Committee
LB 644	Adopt the Electronics Recycling Act		Mello		Monitor	Natural Resources	3/1/2009	Committee
LB 651	Create Water Resources Revolving Loan Fund Act (NARD Bill)		Christensen		Support	Natural Resources	2/26/2009	Committee
LB 656	Adopt the Health Care Accessibility and Affordability Act		Harms		Monitor	Health and Human Services	2/11/2009	Committee
LB 666	Changes to the Niobrara Scenic River Council		Langemeier		Support	Natural Resources	2/25/2009	Committee
LB 678	Change provisions relating to minutes of public meetings		Haar		Monitor	Government, Military and Veterans Affairs	2/19/2009	Committee
LB 681	Provide for refund of unconstitutional taxes, assessments, and penalties		Speaker Flood on behalf of the Governor	Christensen	Support	Revenue	3/11/2009	IPP



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May 29, 2009

TO: NARD Board, NRD Managers and Conservation Partners

FROM: Dean E. Edson, NARD Executive Director

RE: May 29 NARD Sine Die Update

Legislature adjourns three days early -- The 101st Legislature adjourned May 29th Sine Die on the 87th day of the 90-day working session. The Legislature will reconvene on January 6, 2010 which is the first Wednesday after the first Monday in January.

The following is a summary of the bills passed relating to natural resources management, those held over for next year, those indefinitely postponed, and also list of interim studies. Also included is a summary of all of these bills and resolutions.

- **Legislative Bills Approved** – 54, 56, 98e, 98Ae, 160, 162, 179e, 180, 184, 209, 218, 246, 263, 286e, 315, 316, 361, 379e, 389e, 477 and 483e. (See pages 1-9)
- **Veto Over-Ride Legislative Bill Approved** – 626. (See page 9)
- **Legislative Bills held in Committees** – 12, 289, 362, 438, 482, 486, 504, 520, 535, 565, 581, 582, 624, 639, 643, 644, 651, 656, 666 and 678. (See pages 10-14)
- **Legislative Bills held on General File** – 42, 43, 210, 235 and 304. (See page 14)
- **Legislative Bills Indefinitely Postponed** – 18, 134, 336, 466, 480, 577, 632 and 681. (See pages 14-16)
- **Legislative Resolutions for Interim Studies** – 101, 103, 115, 122, 124, 128, 141, 181, 214, 222, 235 and 240. (See Page 16)

For more information on legislation and interim studies go to: <http://www.nebraskalegislature.gov/index.php>.

Legislative Action – The following bills were given final approval by the Legislature and signed by Governor Heineman.

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. 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 42-0 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 41-0 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. 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 and 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 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:

- o 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.
- o Clarifies the priority for grants that are consistent with any plans and priorities for riparian vegetation management established by the Riparian Management Task Force.
- o 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.
- o 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.
- o 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 98Ac** included the emergency clause so they went into effect as soon as the Governor signed the bills on May 13th.

LB 160 -- Flood protection legislation approved. Senators gave final approval to **LB 160** on 36-12-1 vote. The bill provides financing authority to the Papio-Missouri River NRD for flood protection and water quality programs. The Papio Creek Watershed is one of the most dangerous watersheds in the Midwest for potential loss of life and extensive property damage due to flash flooding.

Near-flood events in early 2008 highlighted the need to take immediate action. Urban growth within the Papio Creek Watershed continuously increases the risks for significant hazardous flooding and presents serious water quality problems. The final vote on the bill follows:

- **Voting in the affirmative, 36:** Adams, Ashford, Avery, Campbell, Carlson, Christensen, Cook, Cornett, Council, Dubas, Fischer, Flood, Fulton, Gay, Giese, Gloor, Haar, Hadley, Harms, Lathrop, Loudon, McCoy, McGill, Mello, Nantkes, Nelson, Nordquist, Pahls, Pankonin, Price, Schilz, Stuthman, Sullivan, Wallman, White, and Wightman.
- **Voting in the negative, 12:** Dierks, Friend, Hansen, Heidemann, Howard, Janssen, Karpisek, Langemeier, Lautenbaugh, Pirsch, Rogert, and Utter.
- **Present and not voting, 1:** Coash.

The following are the objectives of the bill.

- Provide the necessary financing tool, at no cost to the State of Nebraska, to reduce the risk of catastrophic flooding and improve water quality in the Papio-Missouri River Natural Resource District.
- Protect public infrastructure, investments and private property of individual and business property owners and taxpayers within the district.
- Protect the lives, health and welfare of all residents living within the district;
- Reconstruct flood levees identified as deficient.
- Reduce the amount of property subject to costly federal flood insurance requirements.
- Bring the district into compliance with the federal Clean Water Act.

The following provisions are included in the final version of the bill.

- Allow use of PMRNRD's existing mill levy authority (4 ½ cents per \$100 of assessed valuation) to finance flood protection and water quality enhancement projects through the issuance of bonds, requiring a two-thirds affirmative vote of the board members for the issuance of any bond.
- A public vote would be required for any proposed bond levy exceeding 1 cent.
- The proceeds of bonds shall be used to pay costs of design, rights-of-way acquisition, and construction of multi-purpose projects and practices for storm water, including flood control and water quality.
- Flood control, water quality projects, and practices include, but are not limited to, low-impact development best management measures, flood plain buyout, dams, reservoir basins, and levees.
- The proceeds of bonds shall not be used to fund combined sewer separation projects in a city of the metropolitan class.
- Limits reservoir or water quality basin to no more than 400 surface acres of permanent pool.
- Public access would be required for any project that has a permanent pool greater than 20 surface acres.
- Provides a 90-day time frame from the point that a NRD notifies intent to issue bonds for counties to object to a dam within their exclusive zoning authority.
- Allow county boards to disapprove of any reservoir exceeding 20 surface acres, if the affected county passes a resolution.
- Bonds would only be used for projects in cities and counties that have adopted zoning regulations or ordinances that comply with state and federal floodplain management rules and regulations.

- Any property acquired by the district using eminent domain and financed by bonding can only be transferred to another political subdivision or agency of the state or federal government.
- Provide that bond proceeds not be used for a metropolitan class city's combined sewer separation projects.
- Provide that the bonding authority sunsets on December 31, 2019.

Senator Hadley from Kearney offered several amendments, none of which were incorporated into the legislation. One of his amendments, AM 1084, would require all bonds to be approved by a majority of registered voters of the districts, limited to 2 cents, and subject to, and includable in, the computation of other limitations upon the district's tax levy. This amendment failed on an 18-18 vote during General File debate.

Under current law for all other political subdivisions with bonding authority, when taken to a vote of the public, the approval only requires a majority of those voting and is not subject to levy limitations. Further, counties and school districts currently have a 5.2 cent levy authority for capitol construction and maintenance bonds that only requires the governing body majority vote -- no public vote is required.

LB 162 -- Contractor registration database. The legislature gave final approval to LB 162 on a 45-2-2 vote. The bill creates a uniform definition of contractor, and a single database of registered contractors for purposes of the Revenue Act and the Contractor Registration Act. The registration process and database would be administered by the Department of Labor. Currently, most contractors are required to register with both the Department of Labor and the Department of Revenue.

The bill allows the Department of Revenue and the Department of Labor to share information for purposes of contractor registration. The Revenue Committee amendment was adopted (AM357) which authorizes the Commissioner of Labor to adopt and promulgate rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The bill was sponsored by Senator Abbie Cornett and was a Speaker Priority Bill for the session.

LB 179e -- Change project limit adjustments under the Nebraska Resources Development Fund. Senators gave final approval on a 46-0-3 vote to a bill that corrects an annual adjustment to the Nebraska Resources Development Fund. The Current law established a cap of \$10 million for any individual project from the NRDF. The law also requires the fund to be adjusted each year by an amount equal to the average percentage change in a readily available construction cost index for the prior three years. The proposed change would update the adjustments for each year starting July 1, 1993. The bill included the emergency clause and went into effect in February 2009. The bill was sponsored by the Natural Resources Committee.

LB 180 -- Change provisions relating to the Waste Reduction and Recycling Incentive Fund. Senators gave final approval on a 45-2-2 vote to a bill that will allow grants from the Waste Reduction and Recycling Incentive Fund to be used for reimbursement of costs to cities of the second class, villages, and counties of 5,000 or less population for the deconstruction of abandoned buildings. Eligible deconstruction costs will be related to the recovery and processing of recyclable or reusable material from the abandoned buildings. The bill was sponsored by the Natural Resources Committee.

LB 184 -- Riparian water right administration. The Legislature gave final approval to **LB 184** on a 45-0 vote. The bill, sponsored by Senator Loudon, authorizes the Department of Natural Resources to administer any riparian water right that has been validated and recognized in a court order from a court of lawful jurisdiction in the state. The bill does not mandate the department to do such. Further, the only surface water appropriations that may be closed for a riparian water right are appropriations held by persons who were parties to the lawsuit validating the riparian water right or appropriations with a priority date subsequent to the date of the court order.

LB 209 -- Dam construction bill approved. Senators gave final approval to LB 209 this week on a 48-0-1 vote. The bill changes the time frame from 6 months to 12 months after the approval of any application regarding 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 was sponsored by Senator Langemeier.

LB 218 -- Change state aid to counties. Senators gave final approval to a bill changing state aid to counties on a 37-1-11 vote. The bill eliminates three existing state programs which provide funds to county government. These are the jail cost reimbursement program, state aid to counties, and county property tax relief. A new state aid program is created to substitute for these three programs. The distribution of state funds to counties under the new aid program will be based solely on the share of statewide taxable value found in each county, and aid distribution will be updated annually as this value changes. The amount of funds budgeted for this program will vary from \$10.5 million to over \$17 million, depending on the state budget. The bill was sponsored by Senator Abbie Cornett and was a Speaker Priority Bill for the session.

LB 246 -- Biotechnology assessment and planning. Senators gave final approval on a 37-5-7 vote to authorize the Natural Resources Committee to conduct an assessment of the state's biotechnology potential and develop a strategic plan for the state's efforts to create jobs. The original bill would have re-established the Biopower Steering Committee which was terminated on December 31, 2008. However, the Natural Resources Committee offered an amendment, adopted 30-0, which rewrites the bill. The amendment charges the committee with developing a statewide strategic plan that includes:

- o a baseline review and assessment of the state's biotechnology economic potential;
- o a strategic plan for the state's efforts to create related wealth and jobs;
- o estimates of the wealth and number of jobs that could be generated; and
- o strategies for development, including research, testing, agricultural feedstock and chemicals, drugs and other pharmaceuticals, medical materials, medical laboratories, and advanced biofuels.

The committee, in consultation with the Legislature's Executive Board, would commission a non-profit corporation to provide research, analysis and recommendations for the development of the plan. The selected non-profit must agree to provide \$100,000 to fund the research and present a study to the committee by June 30, 2010. The committee, in turn, would provide a statewide strategic plan in the next legislative session.

Finally, the bill as amended would create the Biotechnology Development Cash Fund, which would receive a \$100,000 appropriation to fund the plan's development in fiscal year 2009-10. The bill was sponsored by Senator Annette Dubas and was a Speaker Priority Bill for the session.

LB 263 -- Provide that state law preempts local laws for seeds and fertilizers. Senators gave final approval to LB 263 on a 44-4-1 vote. The bill would not allow political subdivisions to prohibit or regulate matter regarding the registration, labeling and sale, storage, transportation, distribution and notification of use of seeds, fertilizer and soil conditioners under the Nebraska Seed Law and the Nebraska Commercial Fertilizer and Soil Conditioner Act.

The bill does not limit the authority of any city or county to adopt and enforce zoning regulations. The committee amendment added on General File also adds that natural resource district enforcement of the Nebraska Groundwater Management and Protection Act is expressly excluded from the preemption of the Nebraska Fertilizer & Soil Conditioners Act and its regulations. The bill was introduced by Senator Rogert and was a Speaker Priority Bill this session.

LB 286e -- Lottery proceeds distribution. A bill introduced by the General Affairs Committee, LB 286e, was given final approval by the Legislature 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 22 percent and no more than 25 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 25 percent of the dollar amount of the lottery tickets sold on an annualized basis. The bill included the emergency clause so it went into effect as soon as the Governor signed the bill on May 13th.

LB's 315 & 316 -- Budget bills. The budget was approved by the Legislature on a 48-0-1 vote and will 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.

For natural resources programs, there is little change from the preliminary budget proposed by Governor Heineman. The highlighted changes for DNR in **LB 315** include:

- Increase personnel services limit to reduce reliance on contractual services for integrated management workload. The Appropriations Committee increased the agency personnel services limit by \$250,000 and includes the following intent language: "It is the intent of the Legislature that the Department of Natural Resources 1) examine the use of consultants to carry out integrated water management projects and studies and 2) hire additional staff when cost benefit analysis indicates that it is feasible to decrease the reliance upon consulting services used to carry out long-term integrated water management projects and studies."
- Reduction of estimated federal funding by \$100,000. The agency requested a lower federal fund expenditure authority based upon projected funding levels.
- Soil & Water Conservation Fund - Reduce General Fund allocation to by \$198,619 in each of the next two fiscal years. The Appropriations Committee recommendation reduces funding for this program by 7.4%. Funds allocated to this program are divided between natural resources districts, with the NRDs providing funding to individual property owners undertaking conservation practices.
- Water Management Fund - Reduction of program funding by \$100,000 in each of the next two fiscal years. The Appropriations Committee recommendation reduces funding by 9.3%.

Detailed funding levels for natural resources programs follows. This includes what was proposed by Governor Heineman and what the final was from the Legislature:

Program	Governor Heineman Proposed		Legislative Final		Dollar Change	
	FY 09-10	FY 10-11	FY 09-10	FY 10-11	FY 09-10	FY 10-11
Interstate Water Litigation – Attn Gen.	1,000,000	0	500,000	0	-500,000	0
State Aid to NRDs	1,545,502	1,545,502	1,545,502	1,545,502	0	0
Small Watersheds	500,000	500,000	500,000	500,000	0	0
Soil and Water Conservation Fund	3,093,454	3,093,454	2,894,835	2,894,835	-198,619	-198,619
Water Well Decommissioning	240,840	240,840	240,840	240,840	0	0
Resources Development Fund	3,423,066	3,423,066	3,423,066	3,423,066	0	0
*Natural Resources Water Quality Fund	1,250,000	1,250,000	1,250,000	1,250,000	0	0
Interrelated Water Mgt Plan Program	2,412,854	2,412,854	2,312,854	2,312,854	-100,000	-100,000
Nebraska Water Resources Cash Fund	2,700,000	2,700,000	2,700,000	2,700,000	0	0
**DNR Agency Operations Fund	13,430,199	13,441,253	13,717,590	13,995,464	+287,391	+554,211
**DNR Salary Limit Total	5,593,370	5,718,503	6,160,414	6,299,301	+567,044	+580,798

** Notwithstanding other provisions of this bill, all appropriations within this program existing on June 30, 2009, in excess of expended or encumbered amounts are hereby lapsed. All other DNR programs with unexpended balances were re-appropriated.*

***DNR Salary limit is included in the DNR Agency Operations Fund*

Other Special Notes

- **Program No. 307 - Nebraska Resources Development Fund.** The bill also provides direction for the use of the funds as follows: 1) Appropriation to this program for state aid shall first be utilized for projects which have been allocated funds but for which only a portion of the allocation has been actually obligated. 2) The total amount of funds allocated for projects less the amounts obligated for such projects shall not exceed \$18,500,000. The definitions of the terms allocated and obligated shall be based on the terminology utilized by the Department of Natural Resources in the Nebraska Resources Development Fund Status Report.
- **Program No. 334 - Soil and Water Conservation, General Operation.** Re-appropriates the unexpended General Fund balance allocated in budget subprograms 19 (integrated management), 20 (Water Resources Cash Fund), and 21 (Interstate Compacts) of Program 334 existing on June 30, 2009.

Also given final approval was **LB 316** which included the budget cash fund transfers. The bill makes several transfers from the general fund and cash reserve fund for several programs. For natural resources programs the bill transfers \$2,700,000 from the General Fund to the Water Resources Cash Fund for Fiscal Years 09-10 and 10-11. These are the same amounts recommended by Governor Heineman.

The budget can be found at <http://www.nebraskalegislature.gov/>. Click on the report "2009 Appropriations Committee Budget Report".

Also approved 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.

LB 361 -- Electronic voting board bill passes. Senators gave final approval to LB 361 on a 48-0 vote. The bill allows entities created under the Interlocal Cooperation Act, the Joint Public Agency Act, and the Municipal Cooperative Financing Act to utilize an electronic voting device to record roll call or votes of the governing body of such entities. Currently, only municipalities are authorized to utilize an electronic voting device. Two amendments were adapted to the bill to make further changes.

First, the Government Committee Amendment (**AM 552**) made the following changes on General File:

- Adds counties to the list of entities who are allowed to utilize electronic voting devices to satisfy the requirements of a roll call or vote.
- Adds the provisions of **LB 465**, which adds educational service units to the list of public entities which are allowed to hold public meetings by videoconferencing and telephone conference.
- Adds the provisions of **LB 639**, which allows a governing body of a risk management pool and the advisory committees of the governing body to hold more than half of their meetings by telephone conference if the governing body's quarterly meetings are held in person. Under current law, no more than one-half of the meetings in a calendar year held by the governing body of a risk management pool or its advisory committees may be held by telephone conference call.

On **Select File**, Senator Avery offered **AM 966**, which was adopted to add learning communities to the list that can use electronic voting devices. The bill was introduced by Senator Avery and was a Government Committee Priority Bill.

LB 379e -- Extend the scrap tire grant program. Senators gave final approval to LB 379e on a 46-0-3 vote to extend the grant program for scrap tires from June 30, 2009 to June 30, 2014. The bill included the emergency clause and went into effect in March of 2009.

LB 389e -- Climate Assessment Response Committee (CARC) appointments. Senators gave final approval to a bill to change confirmation requirements for CARC members on a 48-0-1 vote. The bill retains legislative confirmation as a qualification of appointment except for the Directors, or their designees, of the Departments of Agriculture, Health and Human Services and Natural Resources who are made ex-officio members and thus assume duties related to the CARC as a function of their office.

Additionally, the bill would no longer require legislative confirmation of appointment of a representative of the Governor's Policy Research Office. Appointment of a Policy Research Office staff is relocated to a portion of the statute that allows additional appointments at the Governor's prerogative of representatives of administrative agencies. The bill provides clarification of the ex-officio but non voting membership of the chairs of the Agriculture and Natural Resources Committees of the Legislature.

The bill was sponsored by Senator Tom Carlson and contained the emergency clause so it went into effect when Governor Heineman signed the bill on May 26, 2009.

LB 477 -- Lien holder bill passes. Senators gave final approval to LB 477 this session on a 49-0 vote. The bill changes requirements when water is transferred to include evidence of lien holder's agreement to allow the transfer of water. The bill clarifies in law that districts can certify irrigated acres and other beneficial uses of water. The bill then requires that participation in any financial incentive program and/or any transfer of certified acres or uses include similar evidence of the lien holder's agreement to allow the transfer. The bill does the following:

1. Clarifies the definition of certified irrigated acres to mean the number of acres or portion of an acre that a natural resources district has approved for irrigation from ground water in accordance with law and with rules adopted by the district;
2. Clarifies the definition of certified water uses to mean the number of acres or portion of an acre that a natural resources district has approved for irrigation from ground water in accordance with law and with rules adopted by the district;
3. Requires the reporting of water uses and irrigated acres by landowners and others with control over the water uses and irrigated acres for the purpose of certification by the district;
4. Outlines that determination of certified water uses or certified irrigated acres by a natural resources district shall not affect the allocations of ground water established by the district;
5. Clarifies the district may recover the cost of the title report and filing an instrument of transfer of the right to use ground water from the person seeking the transfer; and
6. Clarifies that it is the responsibility of the person seeking the transfer to get the signatures of the lien holders.

The bill was sponsored by Senator Carlson and was Senator Utter's Priority Bill for the session.

LB 483e -- NRD water management plans passes. Senators gave final approval to LB 483e on a 46-0 vote. The bill changes the planning process for NRDs when a determination is made that the district is not fully appropriated and a stay on well drilling has expired or that a preliminary determination was made that a basin, sub-basin, or reach is fully appropriated but a final determination finds that it is not fully appropriated.

The final version of the bill would:

- o Change the date for a request of re-evaluation of a basin from March 1 to July 1.
- o Require natural resources districts that are in a situation where a status change has occurred from fully appropriated or preliminarily fully appropriated to not fully appropriated, to create and implement a policy for the prioritization and granting of water well permits for the four-year period following the change.
- o Require moratoriums to stay in place until the districts developed rules and regulations to allow limited growth that would not reach a point to cause a fully appropriated determination.

- Require DNR to approve the NRD rules and regulations within 60 days of NRD adoption. If DNR fails to approve the regulations, NRDs would have to adopt rules and regulations to allow up to 2,500 irrigated acres growth or not more than 20 percent increase in historic irrigated acres within a hydrologically-connected area.
- The bill would prohibit DNR from issuing any new appropriation for the four-year period following a status change that would result in a fully appropriated status based on the most recent evaluation.
- Prohibit DNR from granting more than 834 acres of new surface water appropriations for irrigation within each natural resources district affected by the status change.

Legislative Bill 483e was Senator Langemeier's Priority Bill for the 2009 session. It included the emergency clause so it becomes effective as soon as the Governor approves the bill.

Veto Over-Ride Bills

LB 626 — Change prohibited activities for public official's and public employee's use of public resources. A bill introduced by Senator Russ Karpicek of Wilber to change governance of public resources was given initial final approval on a 44-2-3 vote. However, the bill was vetoed by Governor Heineman. The Legislature then responded by over-riding Governor Heineman's veto on a 35-10-4 vote.

The bill would allow public officials and employees to use public resources that are considered incidental.

The key components of the bill 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 telecommunication system, cellular telephone, handheld device, 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 were allowed to respond to specific inquiries regarding ballot questions.

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 email relating to a campaign event from his own computer at home, but it went through a server owned by the city.

Carryover Legislation – The following bills will be carried forward for the next Legislative session which is scheduled to begin on Wednesday, January 6, 2010.

Held in Committee

LB 12 -- Increase Nebraska Resources Development Fund. The bill proposes to increase the annual general fund appropriation for the Nebraska Resources Development Fund from \$3,373,066 to \$7,000,000 for FY 2009-10 and 2010-11. Senator Langemeier's bill is held in the Appropriations Committee.

LB 289 -- Appropriate funds to the Game and Parks Commission. The bill appropriates \$55,554.25 from the General Fund for FY 2008-09 to the Game and Parks Commission, to match federal dollars for the repair of flood damage done to the dam at Champion Mill State Historical Park. Senator Christensen's bill is held in the Appropriations Committee. Senator Christensen's bill is held in the Appropriations Committee.

LB 362 -- Change requirements for candidate filing forms. The bill proposes to add the following requirements to all candidate filing forms: 1) The candidate's name; 2) residence address; 3) mailing address if different from the residence address; 4) telephone number; 5) office sought; and 6) party affiliation if the office sought is a partisan office. The bill is sponsored by Senator Avery and is held in the Government Committee.

LB 438 -- Prohibits instream appropriations in fully or over-appropriated areas. The bill prohibits the Director of Natural Resources from approving an instream flow appropriation in a river basin, sub-basin, or reach that has been determined or designated by the department to be fully appropriated or over-appropriated. Current law already prohibits new appropriations of water in such areas. The bill is sponsored by Senator Fischer and is held in the Natural Resources Committee.

LB 482 -- Change provisions of the Nebraska Ground Water Management and Protection Act. The bill eliminates obsolete language in the act that refers to initial start dates of LB 962 such as "Beginning in 2006", etc. The bill also increases the number of public hearings from "one or more" to "two or more" after a final determination by the department that a river basin, sub-basin, or reach is fully or over appropriated. The purpose for these public hearings is to determine whether the stays on the issuance of new water well permits, on the construction of new water wells, or on increases in ground water irrigated acres should be terminated.

A similar change is made to increase the public hearings from "one or more" to "two or more" relating to controls proposed by the Director of Environmental Quality for a management area for quality purposes. Current law requires these hearings prior to the adoption of controls. Senator Langemeier's bill is held in the Natural Resources Committee.

LB 486 -- Require government entities to identify themselves. The bill proposes to require the state, the University of Nebraska, and political subdivisions to include in their official names terminology that would clearly identify them as units of government when dealing with the public. Senator Karpisek's bill is held in the Government Committee.

LB 504 -- Authorize permits and provide penalties relating to discharge of dredged or fill material into the waters of the state. The bill authorizes the Nebraska Department of Environmental Quality to take over the 404 permit process from the U.S. Army Corps of Engineers. Senator Langemeier's bill is held in the Natural Resources Committee.

LB 520 -- Provide for an income tax credit for perpetual conservation easement donations. The bill allows for a refundable income tax credit to a taxpayer who donates all or part of the value of a perpetual conservation easement upon real property the taxpayer owns to the state, to a political subdivision of the state, or to a charitable organization.

The income tax credit would be an amount equal to 15% of the appraised value of the donated portion of the perpetual conservation easement, not to exceed \$50,000 per tax year or a total of \$250,000 over five years. A taxpayer would be limited to claim the income tax credit on only one conservation easement per taxable year.

The Department of Agriculture would have oversight and would approve qualifying conservation easements by November 1 each year. The department shall not approve applications for tax credits which would total more than 5 million dollars for any one year. If qualified applications would result in tax credits totaling more than 5 million dollars

in the year, including qualifying carryover credits from previous years, the department shall prioritize qualifying applications. Senator Hadley's bill is held in the Revenue Committee.

LB 535 -- Change membership of the Nebraska Natural Resources Commission and provisions relating to natural resources districts. The bill increases from 3 to 15 members appointed by the Governor to the Natural Resources Commission. The additional 12 appointments would be representatives of the business community. The bill also requires that all programs and projects of natural resources districts shall first be shown to be wanted by a majority of the residents of the watershed. If the residents approve, then surveys may be used for general programs or projects to determine potential utilization of the program or project.

Any surveys used shall be consistent with state and federal agency statistics and shall not include the same population areas to justify more than one of the same kind of project in a 50-year period of time. All projects shall be bid in total, not by part, and all expenses shall be included when determining a rate of return for a project. Finally, the bill prohibits the NRD use of eminent domain powers until all other requirements for a dam or any other improvement project have been complied with. Senator Stutman's bill is held in the Natural Resources Committee.

LB 565 -- Adopt the Woody Biomass Energy Act. The bill creates the Woody Biomass Energy Revolving Loan Fund to be administered by the State Energy Office. The fund would be created from a \$2.5 million General Fund appropriation in each of the next two fiscal years. The fund would be used for loans to convert heating and cooling systems in public buildings from current energy sources to the use of woody biomass.

The State Energy Office would adopt and promulgate rules and regulations to carry out the act. Any agency of state or local government would be eligible to apply to the State Energy Office for a loan from the fund. The Energy Office would be responsible for adopting and promulgating rules and regulations to implement the act. Senator Louden's bill is held in the Natural Resources Committee.

LB 581 -- Change disposition of funds from Pesticide Act fees and weed book sales. The bill makes changes to the distribution of pesticide fees to increase funding to the noxious weed program. The bill shifts \$10 per product from the Buffer Strip Program to the Noxious Weed Program as shown in the chart below

Pesticide Product Registration Fee

	Specialty (5,700 Products)		Non-Specialty (5,490 Products)	
	Current Fee	Proposed	Current Fee	Proposed
Pesticide Act Administration	\$70	\$70	\$0	\$0
Noxious Weed Regulatory	\$30	\$40	\$30	\$40
Buffer Strip Program	\$60	\$50	\$60	\$50
Water Resources Fund	\$0	\$0	\$110	\$110
Total	\$160	\$160	\$200	\$200

The bill also transfers \$100,000 from the Buffer Strip Program to the Noxious Weed Program in FY 09-10 for a contract between the Department of Ag and UNL for water conservation research. Senator Carlson's bill is held in the Agriculture Committee.

LB 582 -- Create the Nebraska Invasive Species Council. The bill establishes the Nebraska Invasive Species Council to recommend action to minimize the effects of harmful invasive vegetation in Nebraska. The 14-member council would consist of: 1) The regional director of the Midwest Region of the National Park Service or a designated representative; 2) The Executive Director of the Nebraska Association of Resources Districts or a designated representative; 3) The head of the Nature Conservancy, Nebraska Office, or a designated representative; 4) The Director of Agriculture or a designated representative; 5) The Secretary of the Game and Parks Commission or a designated representative; 6) The director of the Nebraska Forest Service or a designated representative; 7) A representative of the Nebraska Weed Control Association; 8) The Chancellor of the University of Nebraska-Lincoln or a designated representative; 9) The

local representative of the Animal and Plant Health Inspection Service of the United States Department of Agriculture or a designated representative; 10) A representative of the Natural Resources Conservation Service of the United States Department of Agriculture or a designated representative; 11) A representative of the United States Geological Survey or a designated representative; 12) The unit leader of the Nebraska Cooperative Fish and Wildlife Research Unit or a designated representative; and 13&14) Two members-at-large appointed by the Governor.

The responsibilities of the council would include: 1) Develop and periodically update a statewide adaptive management plan for invasive vegetation; 2) Serve as a forum for discussion, identification, and understanding of invasive vegetation issues; 3) Facilitate the communication, cooperation, and coordination of local, state, federal, private, and non-governmental entities for the prevention, control, and management of non-native invasive vegetation; 4) Assist with public outreach and awareness of invasive vegetation issues; and 5) Provide information to the Legislature for decision making, planning, and coordination of invasive vegetation management and prevention. The bill is sponsored by Senator Dierks and is held in the Natural Resources Committee.

LB 624 -- Provide for energy efficiency loans for public buildings. The bill creates the Public Building Energy Efficiency Fund for use by any political subdivision for a public building energy efficiency loan. Loans received pursuant to this section shall be used only for energy-efficiency projects approved by the State Energy Office at the time the loan is approved. Energy-efficiency projects may include building and equipment improvements. Building and equipment improvements include, but are not limited to, lighting, heating, ventilation and air conditioning, windows, insulation, and energy control or management systems.

The State Energy Office shall compile records of all loan applications and the amount of energy and financial savings resulting from approved loans. Loans would be distributed geographically throughout the state to the extent possible. Senator Harr's bill is held in the Government Committee.

LB 639 -- Change provisions to telephone conferencing for public meetings. The bill allows a governing body of a risk management pool and the advisory committees of the governing body to hold more than half of their meetings by telephone conference if the governing body's quarterly meetings are held in person. Under current law, no more than one-half of the meetings in a calendar year held by the governing body of a risk management pool or its advisory committees may be held by telephone conference call. Provisions of the bill were incorporated into LB 361, which was approved. Senator Karpisek's original bill is held in the Government Committee.

LB 643 -- Change and provide notice requirements of road construction near electric lines. The bill requires natural resources districts 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. Senator Schilz's bill is held in the Natural Resources Committee.

LB 644 -- Adopt the Electronics Recycling Act. The bill creates a recycling program for electronic devices. Electronic device is defined in the bill to mean a computer, video display device, or television. The bill establishes fees on the manufacturer of these devices based upon the volume sold in Nebraska to generate funds for recycling. The bill also requires manufacturers to develop a plan for recycling and file it with the Department of Environmental Quality. The fund from the fees would be earmarked to award grants for education and information about electronics recycling, infrastructure development, collection, transportation and recycling of electronic devices. Senator Mello's bill is held in the Natural Resources Committee.

LB 651 -- Create Water Resources Revolving Loan Fund Act. The bill creates the Water Resources Revolving Fund to provide low interest loans to natural resources districts or any joint entity with a joint project which is to be owned, operated, or financed by the joint entity or joint public agency for the benefit of its member natural resources districts for the purposes of developing and protecting water resources in the state. The Natural Resources Commission would have oversight over the program and an administrative fee would be allowed to pay for operational cost of the program.

The loans under the program would be for activities related to financing or refinancing the costs of eligible projects including,

- (1) acquisition by purchase or lease of water rights in accordance with Chapter 46, article 6, pertaining to ground water, and Chapter 46, article 2, pertaining to surface water, including storage water rights with respect to a river or any of its tributaries,
- (2) acquisition by 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,
- (4) the augmentation of river flows consistent with the authority granted under Chapter 2, article 32, and
- (5) to develop, store and transport water, and to provide, contract for, and furnish water for domestic purposes, agriculture, manufacturing, and any and all other beneficial uses.

The initial funding source for the program would come from the repayment of the loan provided by the State of Nebraska to the natural resources districts in the Republican River Basin in 2008. Senator Christensen's bill is held in the Natural Resources Committee.

LB 656 -- Adopt the Health Care Accessibility and Affordability Act. The bill establishes a Health Care Plan Advisory Council to develop recommendations for a comprehensive plan to require all Nebraskans not covered by Medicare to have a basic health insurance plan which includes preventive services, behavioral health care, dental care, and long-term care, which is developed and reviewed periodically by health care professionals and members of the public, and which allows for purchase by employers or individuals.

The council would be made up of six persons appointed by the chairperson of the Health and Human Services Committee of the Legislature and six persons appointed by the chairperson of the Banking, Commerce and Insurance Committee of the Legislature. The council shall include, but not be limited to, at least one representative from each of the following classes of persons: Health care providers, health care consumers, and consumer advocates, business representatives, insurers, and elected officials.

The recommendations for the plan would be submitted to the Legislature on or before September 1, 2010. Senator Harms' bill is held in the Health and Human Services Committee.

LB 666 -- Changes to the Niobrara Scenic River Council. The bill removes the requirement that the Niobrara Scenic River Council has to approve of zoning requirements imposed by cities, villages and counties in the area covered by the designation. The change places the appointed council in an advisory role to local elected officials rather than an oversight role.

The bill redefines the mission of the council to provide local representation to the National Park Service and report to the county boards of Brown, Cherry, Keya Paha, and Rock counties. The bill changes the membership requirements of the council for three representatives on the council so that they must reside in a county that includes land in the Niobrara Scenic River corridor. These representatives include: 1) the recreational business representative; 2) the timber industry representative; and 3) the recognized, nonprofit, environmental, conservation, or wildlife organization representative.

The bill further encourages the use and enjoyment of the Niobrara River for recreational, fish and wildlife, geological, historical, cultural, or other assets, and encourage continuance of existing agricultural, horticultural, forestry, and open space land and water uses.

Finally, the bill strikes the authority of the council to hold titles to real estate, accept gifts of real estate, or obtain conservation easements in the name of the council. Senator Langemeier's bill is held in the Natural Resources Committee.

LB 678 -- Change provisions relating to minutes of public meetings. The bill allows minutes of meetings subject to the Open Meetings Act to be written or in an electronic recording, including audio or video recording of the meeting. Senator Haar's bill is held in the Government Committee.

Held on General File

LB 42 -- Improvements to Rural Water Systems. The bill clarifies that plans for any proposed improvements to rural water systems need to comply with the Nebraska Safe Drinking Water Act and rules/regulations adopted and promulgated by the Department of Health and Human Services under the act. Senator Flood is the sponsor of the bill.

LB 43 -- Eliminate the Department of Natural Resources Interstate Water Rights Cash Fund. The bill repeals a fund that was used exclusively for the payment of expenses directly related to interstate water rights litigation. Language in that section of statute specifically called for the fund to terminate on June 30, 2003. Senator Flood is the sponsor of the bill.

LB 210 -- Change provisions relating to aid to natural resources districts. The bill changes the state aid formula for natural resources districts so that the amount of property tax levied by the district shall not include the property tax levied to principal or interest on bonds. The bill is sponsored by Senator Langemeier.

LB 235 -- Provide the Board of Educational Lands and Funds with the power to issue leases relating to solar and wind energy and enter into contracts relating to carbon sequestration rights. The bill authorizes the board to issue leases solar or wind energy for such durations and under such terms and conditions as the board shall deem appropriate. In making such determinations, the board shall consider comparable arrangements involving other lands similarly situated and any other relevant factors bearing upon such leases.

For the sale of carbon sequestration rights, the board could enter into contracts not to exceed 10 years. The board shall consider comparable arrangements involving other lands similarly situated and any other relevant factors bearing upon such contracts. The bill is sponsored by Senator Adams.

LB 304 -- Change limitation of action provisions under the Political Subdivisions Tort Claims Act. The bill extends the time frame in which to file a claim against an employee of a political subdivision or against a political subdivision permitted under the Political Subdivisions Tort Claims Act from one year to two years. The bill is sponsored by Senator Council.

Bills Indefinitely Postponed - The following bills were killed this session

LB 18 -- Prohibit irrigation on new school land leases. The bill proposed that upon the expiration of any lease of school lands existing on the effective date of this act, which are in any river basin, sub-basin, or reach that has been designated as fully or over-appropriated, any subsequent lease negotiated by the Board of Educational Lands and Funds with respect to such school lands shall contain a condition that such school lands shall not be irrigated for the duration of the lease. The bill was withdrawn early in the session by the sponsor, Senator Mark Christensen.

LB 134 -- Prohibiting NRD use of eminent domain. During General File debate on May 27, the Legislature adopted the Natural Resources Committee amendment to LB 134 which would require a district to obtain consent of the Legislature before using the power of eminent domain for the development or management of recreational trails or corridors unless associated with a flood control structure. The adoption of the amendment was more procedural as immediately following the adoption of the committee amendment senators took up motion to indefinitely postpone the bill allowing time for an interim study (LR 124) of the issue to come up with a better solution. The IPP motion was filed by Senator Dave Pankonin, the sponsor of the bill, and prevailed on a 40-0-9 vote. The text of the study follows:

- o **LR 124 - Interim study to examine the use of eminent domain by natural resources districts for the taking of private land for development or management of recreational trails or corridors.** Pankonin.

The Lower Platte South NRD is working with interested parties in Cass County to resolve concerns raised by local landowners. The positive efforts of the LPSNRD to address concerns lead to the bill being indefinitely postponed.

LB 336 -- Exempt municipal water from sales tax. The bill proposed to exempt water supplied by a municipal water supplier from sales tax. The bill was sponsored by Senator Friend. IPP – Revenue Committee.

LB 466 -- Eliminate an excise tax on corn and grain sorghum. The bill proposed to eliminate the corn and grain sorghum check-off that is scheduled to go into the Water Resources Cash Fund for FYs 2012-13 through 2018-2019 and replaced it with a \$10 million annual General Fund appropriation. The bill was sponsored by Senator Wallman. IPP – Revenue Committee

LB 480 – Change budget limit and tax limitation provisions. The bill would have altered budget limitations to allow higher rates of budget growth than currently provided for by local government budget limits. An additional budget lid growth exception would have been allowed under the current capital improvements exceptions. The added language would have allowed budget growth over the current allowable amount for acquisition and replacement of tangible personal property with a useful life of five years or more. A levy exception was also provided for capital improvement expenditures as redefined by the bill. The budget lid and levy exceptions would have applied to all local governments.

Another budget lid growth allowance would have been provided for additional growth for drug prevention and drug enforcement costs in excess of the prior fiscal year. A levy limit exception was also provided for this increased expenditure allowance under the bill. The bill was sponsored by Senator Dierks. IPP – Revenue.

LB 577 – Change provisions relating to improvement project areas of natural resources districts. The bill proposed to limit the power or authority of NRDs to cooperate with or enter into agreements with, or to furnish financial or other aid to, any person who is in the business of selling or leasing, offering for sale or lease, or advertising for sale or lease, residential or commercial real property, when the cooperation, agreement, or financial or other aid relates to real property taken by the district through the use of eminent domain.

The bill also suggested major changes to the improvement project statutes to limit the district's ability to utilize the act for improvement projects. Specifically, it would prohibit the authority for 1) development and management of fish and wildlife habitat and 2) development and management of recreational and park facilities.

The bill proposed to strike all existing law relating to benefits, benefit areas, benefit units, special benefits, geographic areas, etc., under the program and creates new definitions for such. The bill also required for districts that encompass a metropolitan class city, owners of land outside the benefit area would have to approve of a project if they felt they may be impacted.

The bill also included language to prohibit a project and any cooperation, agreement or financial aid with any person, company, firm, corporation, or other entity that owns land within the proposed improvement project area at the time the project is proposed if they have owned the land for less than ten years. The bill was introduced by Senator Rogert. IPP – Natural Resources.

LB 632 -- Adopt the Nebraska Green Building Advantage Act and authorize a sales tax refund. The bill proposed adopting the Nebraska Green Building Advantage Act to provide a sales tax credit to those commercial buildings that use the Leadership in Energy and Environmental Design Green Building Rating System (LEED). Commercial building is defined to mean a building that will be or is being used for commercial activities, including retail, medical, distribution, wholesale, manufacturing, or rental property. The sales tax refund would graduate from 10 to 50 percent as more LEED Standards are incorporated into the building. The bill was sponsored by Senator Mello. IPP – Revenue Committee

LB 681 -- Tax refund bill. A bill that would have provided refunds for taxes declared unconstitutional was killed by the Revenue Committee on an 8-0 vote. Senator Mike Flood introduced the bill on behalf of Governor Heineman in March. The bill was in response to a recent Nebraska Supreme Court ruling that property taxes levied under LB 701 were for a state purpose and thus unconstitutional. Existing law allows for refunds if a taxpayer had filed a protest of the taxes within specific timeframes when the tax was imposed. The bill would have provided refunds to all taxpayers, whether they filed the protest or not and applied to all future tax cases.

When the Supreme Court ruled on this case in February 2009, they did not issue a judgment for the taxes to be returned. Rather they only declared the tax was unconstitutional. The other remaining sections of statute limit the use of the funds to repaying bonds. However, no bonds were issued with the funds. There is no other existing statute that would authorize and direct repayment of the tax. The bill was introduced by Senator Flood on behalf of the Governor. IPP – Revenue Committee

Interim Study List

The following provides a list of interim studies related to natural resources introduced this session. The introducers name follows the one-line summary. Hearings on interim studies are usually held late summer through December. However, it is not required that all interim studies have a hearing.

- **LR 101** - Interim study to examine issues relating to the impact of additional well development on water use by domestic wells in areas of the state where ground water supplies are limited. Haar.
- **LR 103** - Interim study to examine the statutory duties of riparian landowners adjacent to natural streams and other watercourses for the control and removal of noxious and invasive vegetation. Agriculture Committee.
- **LR 115** - Interim study to review issues under the jurisdiction of the Natural Resources Committee. Langemeier.
- **LR 122** - Interim study to examine the feasibility of making the Game and Parks Commission a code agency. McCoy.
- **LR 124** - Interim study to examine the use of eminent domain by natural resources districts for the taking of private land for development or management of recreational trails or corridors. Pankonin.
- **LR 128** - Interim study to examine issues relating to the laws of Nebraska governing the management and use of Nebraska surface water and ground water. Langemeier.
- **LR 141** - Interim study to examine the subject matter of LB 474, 2009, that would have required the state and its governmental subdivisions to pay property tax on property that was not being used for a public purpose. Stuthman.
- **LR 181** - Interim study to examine the feasibility and benefits of restructuring the natural resources districts. McCoy.
- **LR 214** - Interim study to examine local government levy limits and property tax proposals that have been implemented since 1995. Revenue Committee.
- **LR 222** - Interim study to examine granting the Department of Environmental Quality the statutory authority to file and collect environmental liens on property. Langemeier.
- **LR 235** - Interim study to examine water issues. Christensen.
- **LR 240** - Interim study to examine ideas for encouraging responsible livestock development through participation and partnerships between communities, counties, organizations and state agencies. Christensen.

A full list of interim studies can be found at <http://www.nebraskalegislature.gov/session/interim.php>.

LR 249 – Introduced by Senator Kate Sullivan, Senators approved Legislative Resolution 249 on May 28 recognizing Ord High School as the 2009 Nebraska Envirothon State Champion. Ord's Envirothon team was sponsored by the Lower Loup NRD.

NARD Bill Summary Tracking Sheet										Last Updated: 05/29/09 Sine Die		Page 1 of 2	
Bill or CA	Description	Sponsor(s)	Priority	NARD POSITION	Committee	Hearing Date	Status	Amendments					
LB 12	Increase NRDF	Langemeier		Support	Appropriations	3/9/2009	Committee						
LB 18	Prohibit irrigation on new school land leases	Christensen	N/A	N/A	Natural Resources	N/A	Withdrawn	Christensen MO4-passed					
LB 42	Improvements to Rural Water Systems	Flood		Monitor	Natural Resources	1/21/2009	General File						
LB 43	Eliminate Interstate Water Rights Fund	Flood		Monitor	Natural Resources	1/21/2009	General File						
LB 54	Integrated Water Management Procedures	Fischer	Fischer	Support	Natural Resources	1/28/2009	Approved by Governor, 5/13/09	Passed 47-0-2					
LB 56	Modify Livestock Waste Management	Fischer	Speaker	Monitor	Natural Resources	1/28/2009	Approved by Governor, 5/13/09	Passed 43-3-3					
LB 98e & LB 98Ae	Extend Riparian Vegetation Management	Carlson	Carlson	Support	Agriculture	2/17/2009	Approved by Governor, 5/13/09	Passed w/emergency clause 45-0-4, LB 98Ae passed w/emergency clause 46-0-3					
LB 134	Limit NRD Eminent Domain Authorities	Pankonin	Pankonin	Opposed	Natural Resources	1/23/2009	IPP	Pankonin motion to Kill approved 40-0-9					
LB 160	Bond Authority for PMNRD	Gay	Nelson	Support	Natural Resources	1/23/2009	Approved by Governor, 5/22/09	Passed 36-12-1					
LB 162	Change provisions relating to contractor registration and income tax withholding	Cornett	Speaker	Monitor	Revenue	2/6/2009	Approved by Governor, 5/13/09	Passed 45-2-2					
LB 179e	Change project limit adjustments under the Nebraska Resources Development Fund	Natural Resources Committee		Support	Natural Resources	1/21/2009	Approved by Governor, 2/12/09	Passed 46-0 with emergency clause					
LB 180	Change provisions relating to the Waste Reduction and Recycling Incentive Fund	Natural Resources Committee		Support	Natural Resources	1/21/2009	Approved by Governor, 2/12/09	Passed 45-2-2					
LB 184	Authorize Department of Natural Resources to administer riparian water rights	Louden		Support	Natural Resources	1/28/2009	Approved by Governor, 4/8/09	Passed 45-0					
LB 209	Change provisions relating to time for construction of irrigation projects and dams (NARD Bill)	Langemeier		Support	Natural Resources	1/30/2009	Approved by Governor, 5/26/09	Passed 48-0-1					
LB 210	Change provisions relating to aid to natural resources districts (NARD Bill)	Langemeier		Support	Revenue	3/12/2009	General File						
LB 218	Change, eliminate, and provide state aid to various political subdivisions	Cornett	Speaker	Monitor	Revenue	1/28/2009	Approved and sent to Governor	Passed 37-1-11					
LB 235	Provide the Board of Educational Lands and Funds leases relating to solar, wind energy and carbon sequestration	Adams		Monitor	Education	3/9/2009	General File	AM681-Pending, Attorney General Opinion 09007 to Haar					
LB 246	Reestablish the Biopower Steering Committee; to provide for a study	Dubas	Speaker	Monitor	Natural Resources	1/30/2009	Approved by Governor, 5/27/09	Passed 37-5-7					
LB 263	Provide that state law preempts local law for the Nebraska Seed Law and the Nebraska Commercial Fertilizer and Soil Conditioner Act	Rogert	Speaker	Opposed	Agriculture	2/10/2009	Approved by Governor, 5/22/09	Passed 44-4-1					
LB 286e	Change the distribution of lottery funds	General Affairs Committee	General Affairs Committee	Monitor	General Affairs Committee	3/2/2009	Approved by Governor, 5/13/09	Passed w/emergency clause 46-0-3					
LB 289	Appropriate funds to the Game and Parks Commission	Christensen		Support	Appropriations	3/11/2009	Committee						
LB 304	Change limitation of action provisions under the Political Subdivisions Tort Claims Act	Council		Monitor	Judiciary	2/4/2009	General File						
LB 315	Mainline appropriations for state government operations	Speaker Flood on behalf of the Governor		Support	Appropriations	DNR 3/9/09	Approved by Governor 5/19/09	Passed with emergency clause, 46-2-1					
LB 316	Budget cash fund transfers	Speaker Flood on behalf of the Governor		Support	Appropriations	2/23/2009	Approved by Governor 5/19/09	Passed with emergency clause, 48-0-1					

NARD Bill Summary Tracking Sheet					Last Updated: 05/29/09 Since Die		Page 2 of 2	
LB	Bill	Friend	Priority	Monitor	Revenue	3/12/2009	IPP	
LB 336	Exempt municipal water from sales tax			Monitor	Revenue			
LB 361	Change roll call provisions under the Open Meetings Act	Avery	Government Committee	Monitor	Government, Military and Veterans Affairs	2/19/2009	Approved by Governor 3/22/09	Passed 48-0
LB 362	Change requirements for candidate filing forms	Avery		Monitor	Government, Military and Veterans Affairs	2/25/2009	Committee	
LB 379e	Extend the scrap tire grant program	Haar		Support	Natural Resources	1/29/2009	Approved by Governor 3/18/09	Passed 46-0 with Emergency Clause
LB 389e	Change appointment provisions for the Climate Assessment Response Committee	Carlson		Monitor	Agriculture	2/3/2009	Approved by Governor, 5/25/09	Passed 48-0-1
LB 438	Prohibits instream appropriations in fully or over appropriated areas	Fischer		Support	Natural Resources	2/5/2009	Committee	
LB 466	Eliminate excise tax on corn and grain sorghum	Wallman		Monitor	Revenue	3/12/2009	IPP	
LB 477	Change provisions relating to water transfer permits	Carlson	Utter	Support w/ clarification	Natural Resources	2/5/2009	Approved by Governor 3/22/09	Passed 49-0
LB 480	Change budget limit and tax levy limitation provisions	Dierks		Support	Revenue	2/19/2009	IPP	
LB 482	Change provisions of the NE GW Management and Protection Act	Langemeier		Monitor	Natural Resources	1/29/2009	Committee	
LB 483e	Change well moratoriums	Langemeier	Langemeier	Support	Natural Resources	1/29/2009	Approved by Governor, 4/6/09	Passed 46-0 with Emergency Clause
LB 486	Require certain governmental entities to identify themselves as such in their official name	Karpisek		Monitor	Government, Military and Veterans Affairs	3/5/2009	Committee	
LB 504	Authorize permits and provide penalties relating to discharge of dredged or fill material into the waters of the state	Langemeier		Support	Natural Resources	2/27/2009	Committee	
LB 520	Provide for an income tax credit for perpetual conservation easement donations	Hadley		Support	Revenue	2/6/2009	Committee	
LB 535	Change membership of the NE Nat. Res. Comm. And provisions relating to NRDs.	Stuthman		Oppose	Natural Resources	2/20/2009	Committee	
LB 565	Adopt the Woody Biomass Energy Act	Louden		Support	Natural Resources	2/4/2009	Committee	
LB 577	Change provisions relating to improvement projects areas of NRDs.	Rogert		Oppose	Natural Resources	2/6/2009	IPP	
LB 581	Change disposition of funds from Pesticide Act fees and weed book sales	Carlson		Monitor	Agriculture	2/10/2009	Committee	
LB 582	Create the NE Invasive Species Council	Dierks		Support w/ modifications	Natural Resources	3/4/2009	Committee	
LB 624	Provide for energy efficiency loans for public buildings	Haar		Monitor	Natural Resources	2/4/2009	Committee	
LB 626	Change prohibited activities for public officials and public employee's use of public resources	Karpisek	Speaker	Support	Government, Military and Veterans Affairs	3/4/2009	Veto - Legislature Over-ride 35-10-4	Passed Final Reading 44-2-3, Veto Over-ride 35-10-4.
LB 632	Adopt the NE Green Building Advantage Act and authorize a sales refund	Mello		Monitor	Revenue	3/5/2009	IPP	
LB 639	Change provisions to telephone conferencing for public meetings	Karpisek		Monitor	Government, Military and Veterans Affairs	2/19/2009	Committee	Amended into LB361
LB 643	Change and provide notice requirements of road construction near electric lines	Scholz		Monitor	Natural Resources	2/20/2009	Committee	
LB 644	Adopt the Electronics Recycling Act	Mello		Monitor	Natural Resources	3/11/2009	Committee	
LB 651	Create Water Resources Revolving Loan Fund Act (NARD Bill)	Christensen		Support	Natural Resources	2/26/2009	Committee	
LB 656	Adopt the Health Care Accessibility and Affordability Act	Harms		Monitor	Health and Human Services	2/11/2009	Committee	
LB 666	Changes to the Niobrara Scenic River Council	Langemeier		Support	Natural Resources	2/25/2009	Committee	
LB 678	Change provisions relating to minutes of public meetings	Haar		Monitor	Government, Military and Veterans Affairs	2/19/2009	Committee	
LB 681	Provide for refund of unconstitutional taxes, assessments, and penalties	Speaker Flood on behalf of the Governor	Christensen	Support	Revenue	3/11/2009	IPP	



May 8, 2009

Mr. Scott Japp, Director
Papio-Missouri River NRD
8901 S 154th Street
Omaha, NE 68138-3621

RE: Comments concerning July 2006 NRDF Project Application and Feasibility Report for
Pigeon/Jones Creek Site 15

Dear Director Japp:

After careful review of the calculations that you provided me on Thursday, April 30, 2009, and your email on Monday, May 4, 2009; below are my responses (in red) to your comments (in black):

YOUR COMMENT

Under Estimation of Construction Cost

When figuring Cash Flow Stream analysis the report used a capital cost of \$8,739,967. (Attachment A, page V-11) However the cost was revised to \$9,973,334 (Attachment D) to adjust of the error in land cost. (Attachment C). The capital construction costs were underestimated by \$1,233,334. The cost annualizes does not reflect this change, therefore increasing the rate of return.

RESPONSE

The cash flow stream analysis (Section V, Appendix B, and page V-11) did use a capital cost of \$8,739,967; however, the analysis also included an up-front project cost for engineering of \$1,232,501. This provides a total project cost of \$9,972,468 which is used consistently throughout the economic feasibility section. This is only a difference of \$866 from the total cost you referenced and does not impact the financial feasibility of the project.

YOUR COMMENT

Over estimating Recreational Market Area

Using the Nebraska Resource Development Fund Guidelines formula (Attachment B, page 13) the Recreational Market Area (RMA) radius should have been 17.5 miles. (Attachment D, Attachment E) The NRD should have used the population base of 47,000. (Attachment B, page 13) which the formula indicates. However the DNR and NRD used a 30 mile radius which includes the city of Sioux City, Iowa. The NRD stipulated that demand should not be generated outside the State of Nebraska. (Attachment B, page 13) The DNR and NRD over inflated their population number by 330% (Attachment D) (population 47,000 to a population of 158,000)

RESPONSE:

Based on the formula and Director Japp's calculated results (see attached), it appears that the wrong population density was used and it was not squared to properly get X3, see below:

$$\text{Radius of Recreation Market Area (in Miles)} = 69.473 + (.125 \times X1) - (209.616 \times X2) - (.004 \times X3)$$

Where X1= acres of water

X2= acres of water/total (land + water) acres of project

X3= (Population density per sq. mile within 25 miles)²

Using this formula with the new lake and land area numbers of 228 acres and 595 acres actually produces a RMA greater than 30 miles. The population density number used in the original calculation were only for Nebraska counties based on the revised Attachment No. 17 to the NRDF Guidelines in 2007 and resulted in an average population density within the 25 sq. mi. radius of only 29.8 people per sq. mi., not 49 people per sq. mi. Either way, the calculation correctly estimates an RMA greater than 30 miles, see below:

	Previous	Current
Total Water Acres (X1)	200	228
Total Land Acres	500	595
Total(Land+Water)	700	823
X2 (Water/Total)	0.285	0.277
Pop in Radius	37463	37463
Radius	25	25
Square Miles in Radius*	1257	1257
Pop Per Sq. Mile	29.8035	29.8036
X3	888.2486	888.2534
RMA	31.02972	36.3490

*Only represents land area in Nebraska Counties, using population density from Iowa would increase the RMA

YOUR COMMENT

Over estimation of annual benefit cost

The NRD used annual damage benefits of \$61,104 for crop, pasture and sedimentation for a total. (Attachment A, page V-2) The NRD is stating a cost reduction of 43% for crop and pasture and 27% for sedimentation. How can this be if dam site 15 only controls 13% of the water shed. (Attachment A, page 3 & Attachment A, page 7) How come they state \$94,480 of annual cost for sedimentation when their own records indicate \$10,000 annually? (Attachment A, page II-1) A real annual cost benefit should be 13% for crop damages at a cost of \$10,600 and 13% sedimentation at a cost of \$1,300 for a total annual cost of \$11,900 annually. They over estimated annual benefit by 500%.

Total acres in Watershed	36183 acres
Watershed of site 15	4637 acres

Percent of Watershed	12.8%
Annual Crop & Pasture Damage	\$81,541
	13%
Total Yearly Benefit	\$10,600
Sedimentation Benefit (records)	\$10,000
Percent of Watershed	13%
Total Yearly Benefit	\$ 1,300

Annual Damage and Flood Benefits \$11,900

RESPONSE

The numbers on Attachment A, page 3 show a percentage of land uses in the total watershed area of 20,316 acres, not 36,183 acres. Also, Attachment A, page 7 does report the Jones Creek Site 15 watershed as 4,637 acres; however, this is from a prior report before the dam was moved downstream where it now controls 26.3% of the 5,340 acre Jones Creek Watershed, see above. In addition, the damages prevented to crops and pasture are based on a detailed hydrologic study of the downstream levee system and is not based on a certain percentage of the watershed controlled, see page V-3 and V-4 in Section V, Appendix B. In response to the \$10,000 of annual sedimentation damage, this number is only an estimate of the maintenance efforts performed by the local drainage district to remove sediment from the channel and does not account for the total sedimentation generated and deposited in the Pigeon Creek channel and the surrounding floodplain (read page V-4 to understand how total damages were estimated).

YOUR COMMENT

Over estimation of recreational benefits

The recreation benefit number the NRD and DNR used was \$795,348 annually (Attachment D). This number reflects using a population base of 158,000. However the RMA population base of 47,000 should be used. (Exhibit B, page 13)
The true annual recreation benefit number should be \$241,014. (\$795,348/3.3)
This error greatly increased the benefit cost to enhance it to a rate of return.

RESPONSE

The RMA of 30 miles is correct, if not underestimated. Therefore, the annual recreation benefits of \$795,348.15 reported in the NRDF application are accurate.

YOUR COMMENT

Operation and Maintenances Cost

.0075% of \$1,352,842	\$	10,146 (Attachment F, attachment 21 and Attachment C)
35,147 (115,986/3.3) X \$1.45	\$	50,963 (Attachment A, page V-11 minus Attachment A, page V-2)
Total	\$	61,109

Cash Flow Analyses

Capital Cost	\$9,973,334
OM &R	\$ 61,109

Annual Total Value

Recreational value	\$ 241,014 (\$795,348/3.3)
Flood and Sedimentation	\$ 11,900
Total	\$ 252,914

The cost annalist of \$61,104 for the annual Flood Reduction Benefit number was arrived by the total benefit of all 20 dams.

Total acres in Watershed	36183 acres
Total acres in all 20 dams	14758 acres
	40.8%

Annual Crop & Pasture Damage	\$81,541
	40.8%
	\$ 33,268

If the NRD and DNR wants to claim the annual flood benefit cost of \$61,104 as they did in their cost annalist they also need to include the cost of the 19 additional structures at a cost of \$2,745,000. (Attachment A, page 5)

Nebraska Resource Development Fund Guidelines states there must not be no known means of accomplishing the same purpose more economically. (Attachment F, section 3 appendix B)

Using the engineering's own figures the cost per acres to control the flood on dam sites 1-14 & 16-20

Total cost of dam sites 1-14 & 16-20	\$ 2,745,000
Total acres of watershed of dam sites 1-14 & 16-20	10,121 acres
Cost per acre in watershed dam sites 1-14 & 16-20	\$ 271 per acre

Cost of dam site 15	\$9,972,468
Fisheries construction	- \$ 230,828
Recreation amenity	- \$2,457,115
Contingencies	- \$ 537,588
Land	- \$ 600,000
Right	- \$ 150,000
Farmstead	- \$ 297,000

Total cost of dam excluding recreation benefit	\$5,5699,937
Total acres of watershed of dam site 15	4,637
Cost per acre in watershed dam site 15	\$ 1,229

As you can clearly see using other means of controlling the sedimentation and flooding are much more cost effective than building a large structure.

RESPONSE

First, annual flood benefits are specifically estimated for only the Jones Creek Site 15 project and are not in any way related to any additional flood control or sediment reduction benefits that might be provided by the additional structures in the Pigeon/Jones Creek Watershed. Second, Director Japp's calculation of costs per acre accurately shows that smaller structures cost less per acre, however, they don't show that the smaller structures can't provide the flood control or the recreation benefits that have been included as part of the NRDF Application for Jones Creek Site 15.

YOUR COMMENT

Conclusion

The minimum rate of return requirement of the investment for this project is 3% (Attachment B page 19)

By underestimating the cost of the project and overestimating the cost benefits the rate of return was estimated at 4.8% annual (Attachment A, page V-11)

Incremental Benefits	\$20,940,277
Years	50
Per year benefit	\$ 418,805
Project Cost	\$ 8,739,967

However, if a correct cost of the project at \$9,973,334 was used as the project cost and cost benefits using the proper Recreational Market Area of 17.5 miles you would show a negative return on the investment.
(Attachment G)

RESPONSE

In conclusion, the economic rate of return reported in the July 2006 NRDF Application of 5.88% is correct based on the preliminary cost estimates and benefit calculations.

If you have additional questions or comments regarding my response, please contact me at 402.938.2470 or pwoodward@oaconsulting.com.

Sincerely,



Paul W. Woodward, P.E., CFM
Project Engineer

Enclosure

Paper Joplin

recreational market area	lake size	x1	lake size	land size	x2	population density						
17.45356	69.473	0.125	228	28.5	209.616	228	595	0.383193	80.32344	0.004	49	0.196

radius	radius	pie	total SM	pop sm	population		
30	30	3.141	2826.9	25	47,068		
			0.666	1882.72	Nebraska		
			0.333	941.36	117	110,139	IA & SD
				2824.0731	157,207		

radius	radius	pie	total SM	pop sm	population
17.55	17.55	3.141	967.436	49	47,404

Water use gathering issues dire warnings

■ Current practices could lead to a global crisis, a conference speaker says at UNL.

BY LESLIE REED
WORLD-HERALD BUREAU

LINCOLN — Fifty years.

That's how long before current water and land use practices will lead to a worldwide water crisis, a Harvard University professor told those attending a University of Nebraska-Lincoln conference to begin developing a global water institute.

It isn't so much that the world will run out of water, said Peter Rogers, a professor of environmental engineering. Nebraska, for example, probably has enough water to last several hundred years. Yet water could become so difficult to obtain in some areas that it would touch off a global food crisis.

"Only if we act to improve water use in agriculture will we meet the acute freshwater challenge facing humankind over the coming 50 years," said Jackson.

Solutions were discussed, including improving water and irrigation infrastructure, making irrigation agriculture more efficient and conserving water.

Jeff Raikes, chief executive officer of the Bill and Melinda Gates Foundation kicked off the "Future of Water for Food" conference.

More than 200 people, including scientists and policymakers from Nebraska and around the world, attended the \$100,000 conference sponsored by the Robert B. Daugherty Charitable Foundation and the University of Nebraska Foundation.

NU President J.B. Milliken said the UNL Water Center already devotes 160 faculty — engineers, hydrologists, economists, lawyers, chemists and others — to water matters.

"We believe it is in a position to do more," he said. "This is the right time and the right place to establish a global water institute."

Raikes, keynote speaker for the conference, said the goals of such an institute would fit with the work of the Gates Foundation in combating global poverty.

With an asset trust endowment of \$27.5 billion — including more than \$5 billion of an estimated \$31 billion pledge from Warren Buffett — the foundation expends about one-fourth of its efforts on global agricultural.

Raikes said the Gates Foundation has set a goal of helping 150 million small farmers around the world triple their incomes by 2025.

"We can all agree that water is a critical challenge, one that we must take on," Raikes told conference participants. "Collectively, you have the power to help hundreds of millions of people move from poverty."

Other speakers emphasized that a tightening water supply is not just a problem for the developing world.

Robert Glennon, a University of Arizona law professor and author of "Unquenchable: America's Water Crisis and What to Do About It," spoke of threatened water supplies in Nevada, California, Tennessee and Georgia, among other locales. He also told of burgeoning water demands for ethanol production and even to cool computer servers.

James Goeke, a UNL hydrogeologist who has helped map and measure the aquifer system beneath Nebraska and several other states, showed slides demonstrating the proliferation of irrigation wells in Nebraska.

But just as barbed wire fences marked the end of the open range, state law recognizing the relationship between groundwater, rivers and streams is bringing an end to freewheeling irrigation.

"We're closing things down in Nebraska," Goeke said. "Easy access to water is gone."

■ Contact the writer:
402-473-9581, leslie.reed@owh.com

Published Monday May 11, 2009

Omaha area flood-control bill advances

LINCOLN -- The Legislature moved a step closer Monday to passing a bill that would allow bond financing for \$134-million in flood-control work in the Omaha area.

Legislative Bill 160 was given second-round approval on a voice vote. Three rounds of approval, and the governor's signature, are needed for a bill to become law.

LB 160 would allow the Papio-Missouri Natural Resources District to utilize up to one cent of its current property tax levy to help pay bonds to finance a series of flood-control measures.

The NRD also is seeking funding from developers who would levy a fee of about \$750 per new residential lot to help finance the flood-control bonds.

State Sen. Tim Gay of Papillion, the sponsor of the bill, said it is needed to address a dire flood threat in the heavily developed areas of the Papillion Creek watershed in Omaha and Sarpy County.

The bill is the result of several years of studies and negotiations between those seeking the additional flood protection and Washington County landowners, who fear any plan will involve taking their land.

The landowners have agreed to support the bill because it would not allow flood-control dams of 20 acres or larger to be built without the approval of a county board.

Contact the Omaha World-Herald newsroom

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5-19-09

Omaha-Lincoln trail's last leg on hold

By PAUL HAMMEL
WORLD-HERALD BUREAU

LINCOLN — The final leg of the hike-bike trail linking Omaha and Lincoln might be on hold for another year.

The 10-mile segment is the missing link in the 25-year effort to build the trail connecting Nebraska's two largest cities. But the proposed route through Cass County has proved controversial.

That's because the Lower Platte South Natural Resources District has said it might use

eminent domain power to acquire land from farmers and rural acreage owners. Such power is seldom needed for trail projects, which typically follow old railroad rights-of-way.

In response, State Sen. Dave Pankonin of Louisville introduced a bill to remove natural resources districts' power to condemn land for recreational trails.

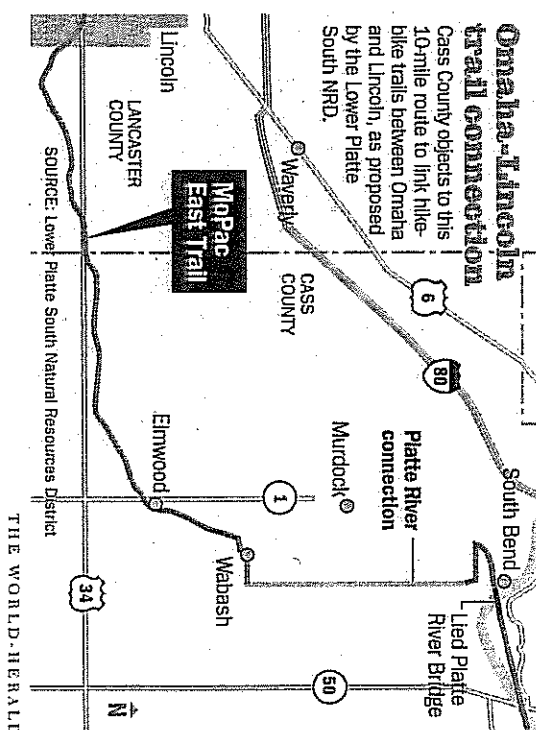
But Pankonin has agreed to drop the bill this year if the Lower Platte South NRD and the Cass County Board resume talks

about alternative routes.

The final segment of the trail would be from South Bend to just east of the hamlet of Wabash. It is the only significant part of the 55-mile trail that crosses private land rather than abandoned railroad rights-of-way.

The county and local landowners want a more westerly route that would connect the trail with Murdock and pass by the Round the Bend Steakhouse west of South Bend.

See Trail: Page 2



Trail: Resources district, county disagree on route

Continued from Page 1

The Lower Platte South NRD board will convene Wednesday in Lincoln to discuss meeting with Cass County officials.

Glenn Johnson, the district's

general manager, said if talks resume, the district could hold off on land acquisition and consider other routes, delaying the project for at least a year.

Johnson said officials have already met once with the Cass

County Board, which has voted to oppose the route the district favors, generally paralleling a remote gravel road, 334th Street.

Pankonin said the Legislature's Natural Resources Committee also might conduct an in-

terim study on the questions surrounding use of eminent domain for recreation trails.

Contact the writer:

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THE WORLD-HERALD

Moratorium placed on MoPac link between Lincoln, Omaha

5/21/09

Faced with growing opposition on three fronts, the Lower Platte South Natural Resources District has voluntarily suspended all work on a key link that would help finish a recreational trail between Lincoln and Omaha.

The self-imposed moratorium would take effect with the understanding that State Sen. Dave Pankonin of Louisville would kill LB134, a bill that would limit the eminent domain powers of the state's 23 natural resources districts.

The stipulation was contained in a motion, which was amended several times, and approved by the Lower Platte South NRD board Wednesday night. The moratorium would last through the 2010 legislative session.

The motion also said that an interim study would be done on the trail issue and that the district would accept the invitation of the Cass County Commissioners to meet and discuss trail alternatives.

In addition, the district would dismiss legal proceedings against two landowners, Bob and Marlene Rikli, who do not want NRD staff on their property.

Local landowners oppose the 10-mile trail segment, especially the use of eminent domain to obtain right of way.

The Cass County Board supports the landowners and has gone on record as opposing the final route chosen in February by the NRD.

Often called the MoPac East/Lied Platte River Bridge connection, the trail segment is a key component of a 50-mile trail between the state's two largest cities. About \$9 million in public and private dollars has already been invested.

The 10-mile segment would start at the unincorporated village of Wabash in Cass County and continue north on the west side of 334th Street before it connects with East Park Highway (Nebraska 66) and finally the Lied Platte River Bridge near South Bend.

LB134, introduced by Pankonin in this session, would restrict a natural resources district's eminent domain powers for recreational trails and require prior approval from the Legislature.

NRD director and former state senator Dave Landis said he liked the idea of killing LB134. He said if the bill stayed on general file, it would be one step from being passed.

"Legislatures have no difficulty in passing bills in which there is no opposition," he said.

He said the bill has a good chance of passing as it stands now and killing the bill would give all parties the opportunity to start over and reach some type of agreement.

NRD General Manager Glenn Johnson said it was his understanding that Pankonin would place a kill motion on the bill.

"What the Legislature does with that is beyond his control," Johnson said.

In other action Wednesday, the NRD board:

- * Approved a proposal to share up to one-third of the \$50,000 cost of an audit of the Antelope Valley Project by State Auditor Mike Foley.

- * Approved an average cost-of-living increase of 2 percent for NRD employees and set Johnson's annual salary at \$110,000.

- * Signed an agreement with the Nebraska Game and Parks Commission to build a pedestrian bridge across Antelope Creek as part of the revitalization process for the Antelope Valley Project. The bridge, near Lincoln High, is necessary because the Rock Island Trail will be moved from the west to the east side of the creek. Total cost of the project is \$195,600.

Reach Algis J. Laukaitis at 402-473-7243 or alaukaitis@journalstar.com.

Source: Lincoln Journal Star

Approval of NRD bonds is trouble for taxpayers

5/22/09

BY SCOTT YAHNKE

The writer, of Omaha, is a Realtor and a member of the Green Omaha Coalition.

In a May 16 editorial, The World-Herald supported the passage of Legislative Bill 160, which would authorize the issuance of bonds by the Papio-Missouri River Natural Resources District for flood-control work. No one in his right mind would argue against this need, especially as our population continues to expand.

However, there is a very clear reason that the Legislature has rejected granting this authorization for several years.

“Perception is reality” for lots of folks, and this includes in particular many of the good people of Washington County.

These Nebraskans paid a lot closer attention than most when the Papio NRD worked out the plans to develop Newport Landing, north and west of 168th Street and Bennington Road, with Horgan Development Co. a few years back. Front-page news articles reported that this plan would include a public fishing lake (now known as Prairie View Recreation Area, across 180th Street upstream of the lake at Newport Landing) and a fishing dock for the public on the north edge of the private lake at Newport Landing.

The level of the lake at Newport Landing is maintained through the use of a pumping station below the dam along the Papio Creek. While the water quality of this private lake is excellent, the water quality of the public lake at Prairie View has been deteriorating steadily since its construction. Another residential development — Woodlands Crossing at 180th Street and Old Military Road, also upstream of Prairie View — has contributed tons of sediment to the Prairie View lake. One needs only to have fished the inlet area over the past three years to understand this impact.

The recent creation of Newport Hill, a mostly upstream subdivision abutting the north edge of Prairie View, has further contributed to this problem. As a matter of fact, I created a PowerPoint presentation that includes photos taken during heavy rains in early May 2008. The photos show mochacolored runoff from Newport Hill streaming into the lake at Prairie View.

In contrast, Newport Landing’s lake was protected from this erosive deterioration because Prairie View’s lake is in actuality a sediment trap for Newport Landing, something the public was not specifically informed of or educated about during the planning, promotion and development of Newport Landing. Herein, I believe, lies the perception problem the Papio NRD has saddled itself with.

As a candidate for the Legislature in District 18 in 2006, I examined the issues surrounding the Papio NRD’s existing floodcontrol work and future plans. I also listened to Washington County residents’ concerns. In addition, having enjoyed hunting and fishing in Nebraska for more than 50 years and therefore valuing the wise use of land, I re-examined my thoughts about how Newport Landing and Prairie View came to be.

Here are the main issues that I believe need to be carefully studied and discussed and debated among the public and our state senators: — Should taxpayers participate in financing the development of private lakes?

— Should taxpayer dollars be used to service bonds issued to develop and maintain “lakes” and recreation areas (acknowledging that Horgan Development apparently agreed to the initial construction of Prairie View as part of the Newport project) that serve a filtering purpose for private lakes downstream?

— Does the Papio NRD need to incorporate a plan for future flood-control work that includes developments which manage rooftop runoff — starting with individual lots instead of dammed areas in which the water quality degrades predictably over time, as all of them have?

— Can the water quality of dammed impoundments be maintained through more comprehensive planning and development of upstream areas?

— Can effective flood control be achieved by taking an absolute minimum of valuable cropland permanently out of production?

In closing, I admit that I enjoy running and cycling the public trail at Newport Landing and fishing from the public dock that my tax dollars have helped to make a reality. I also enjoy Prairie View Recreation Area, but not as much now that the water quality has deteriorated and I have learned more about how we taxpayers are paying for what I believe is certainly a less-than comprehensive approach to water-management issues by the Papio NRD.

I think legislators should hold off on authorizing bonds until the Papio NRD becomes part of a coalition of entities, public and private, that demonstrate a genuine long-term approach to water management and quality, which will be a winning proposition for everyone. But, is this goal possible in Nebraska?

Source: Omaha World Herald

Senator McCoy: Efficient Natural Resources Management

5/22/09

LINCOLN — State Senator Beau McCoy introduced LR 181, a resolution to initiate an interim study to evaluate the restructuring of natural resources districts (NRDs). "The study would answer the fundamental question of whether the structure of the NRDs can be modified to be more cost-effective while properly managing Nebraska's natural resources," said McCoy.

The study would focus on the advantages of having a NRD encompass the entirety of a watershed, river basin or river. Currently there are 23 natural resources districts in the state and only 13 river basins. "Cost-savings potential exists," said McCoy, "by each individual NRD encompassing the full river basin and reducing the bureaucratic cost of maintaining 23 individuals NRDs."

Additionally, with individual NRDs overlapping Nebraska's river basins, the potential exists where current policy governing the state's water resources are ambiguous, if not contradictory, depending on which NRD is governing which portion of the basin. "The Legislature needs to know whether a consistent governing body for each river basin produces better policy and outcomes for agriculture, flood prevention, environmental quality and recreational opportunities for all Nebraskans," stated McCoy.

An example of potential efficiencies and necessity of consistent policy is the Platte River Program, an initiative spurred by the federal government to encourage the three Platte River basin states; Nebraska, Colorado and Wyoming, to cooperate in the management of the water and other natural resources in the basin.

The premise of the Platte River Program is parochial interests in each state resulted in unnecessary spending, and irresponsible use of resources.

Source: Alliance Times

Compromise NRD bonding bill passed

Enterprise
5-22-09

By Stephanie Ludwig
Reporter

It's not the best for some Washington County citizens, but it could be a lot worse.

The Nebraska Legislature passed LB 160 on Monday, a bill giving the Papio-Missouri River Natural Resources District bonding authority to pay for floodplain protection projects in Washington, Douglas and Sarpy counties. The bill, which passed on a 36-12 majority, was presented to the governor Monday afternoon.

Senators Scott Lautenbaugh and Kent Rogert, who each represent portions of Washington County, both added amendments to the bill and ultimately voted against its final passage.

Lautenbaugh's amendment, which deals with eminent domain and authorizes bonding only for cities with floodplain zoning regulations, was filed only a week before the bill passed as a last-ditch effort to protect his constituents and their land.

"I found that we were in a bad spot. The bill was watered down so much that a lot of the opposition to it melted away," Lautenbaugh said. "I couldn't filibuster it so we had to make it the best we could."

Rogert's amendment regulates development in the Douglas and Sarpy county floodplain to prevent further flood danger.

Lautenbaugh, Rogert and the NRD worked with opponents and supporters of the bill to reach a compromise on many parts of the bill, a move NRD general manager John Winkler felt was necessary

To see the final copy of LB 160, visit www.nebraskalegislature.gov.

"We reached a compromise that everybody can work with. There are safeguards for counties that don't want reservoirs, and for taxpayers. I think it's a workable bill," Winkler said.

Winkler said he realized the bill was not going to please everyone, though each side had to concede ground to make it work.

"Most of the things that were part of the bill we agreed with. We're comfortable with it and it's workable. We can work with the provisions," Winkler said.

He said this bill was the best the NRD could hope for.

This bill is the third NRD bonding bill that Winkler has worked on since becoming general manager. The struggle, however, has been going for about seven years, he said.

Lautenbaugh and Rogert agreed that the bill is the best that could have come from the situation, although they ended up voting against the compromised bill.

"It's much better than what we've had in the past, and it's the best deal we could get this year," Lautenbaugh said. "I certainly voted against it and still remain opposed to it. There's some that wanted the bill completely killed, but we didn't have the votes to do that."

"I voted against the bill because I still believe it will

BONDING: Sens. vote against bill

FROM PAGE 1

lead to increased taxes in Washington and Burt counties at some point," Rogert said. "The NRD does great work and has many great projects that provide recreation and protection for its citizens, but they still have yet to convince me that this is a necessary tool. I think they will be coming to the people for money to pay off the bonds at some point."

Other voices in Washington County expressed the same sentiment: LB 160 is not great but it's something they can live with.

"If it had to pass, it's much better than it was when it left the writers and the committee," said County Board chairman Harlo Wilcox. "I'm not in favor of it but it's better than it was when we originally had the opportunity to read it."

Kevin Propst, head of government relations for the Papio Valley Preservation Association, does not agree with that assessment. He feels that most of the amendments added on to LB 160 essentially do nothing.

He cited the "safeguards" that require too many votes to be effective, as well as a focus on water quality, not water quantity, and a compliance with regulations from FEMA, among other problems.

"I think the whole bill is bad," Propst said. "We were in negotiations with senators and had much more stringent protections put on, protection for people everywhere."

Propst said he doesn't understand why the NRD feels it needs bonding authority when it already has a large cash reserve plus extra revenue from its levy fund. Bonding is unnecessary, especially if it's paying for "extras" around projects, such as trails and bridges. Those are wants, not needs, that the taxpayers will end up having to pay for, he said.

"That's what we're faced with, the ability to spend more money. That's not what the taxpayer needs at this time," he said.

Lautenbaugh said he'll be keeping an eye on the NRD to make sure its bonding authority is used properly.

"If this starts to be abused, we'll be right back in there revisiting this," he said.

SEE BONDING PAGE 3A

OUTDOOR EDUCATION

The wonders of water

About 1,350 fifth-graders from elementary schools in Douglas and Sarpy Counties participated over the two days of the "Water Works" outdoor education program at Schramm Park State Recreation Area.

DAY 1:

Ackerman, Millard Blumfield, Ralston Gilder, OPS Grace Abbott, Millard Harrison, OPS Hickory Hill, Papillion-La Vista Holy Cross, Omaha Archdiocese Holy Ghost, Omaha Archdiocese Norris, Millard Oak Valley, OPS St. Margaret Mary, Omaha Archdiocese St. Matthew in Bellevue, Omaha Archdiocese St. Vincent de Paul, Omaha Archdiocese Sunny Slope, OPS Washington, OPS DAY 2:

Assumption-Guadalupe, Omaha Archdiocese Buffett Magnet, OPS Birchcrest, Bellevue Crestridge Magnet, OPS Golden Hills, Papillion-La Vista Kellom, OPS LeMay, Bellevue Mount View, OPS St. Gerald in Ralston, Omaha Archdiocese St. Pius X/St. Leo, Omaha Archdiocese Two Springs, Bellevue Wake Robin, Bellevue TOPICS

These are the topic areas addressed; each group was assigned to one activity from each topic, i.e. for water recreation there was canoeing, fishing and water rockets.

Ak-Sar-Ben Aquarium Pollution Solution Drinking Water Water Recreation The Great Outdoors Water Cycle Game

On Page 3D

More about the "Water Works" event, plus more photos.

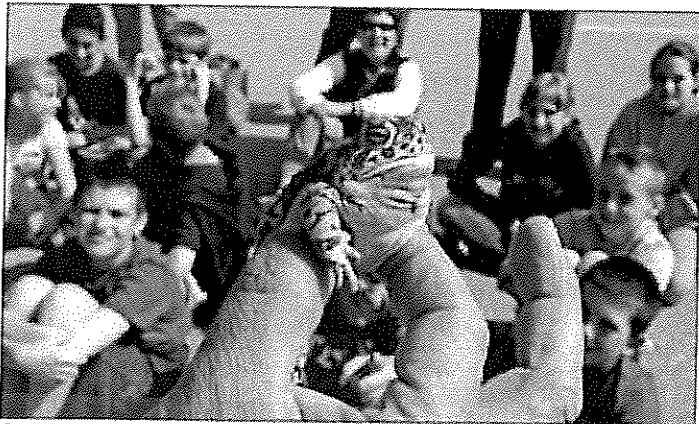
On Web

Find a "Water Works" slide show on Omaha.com.

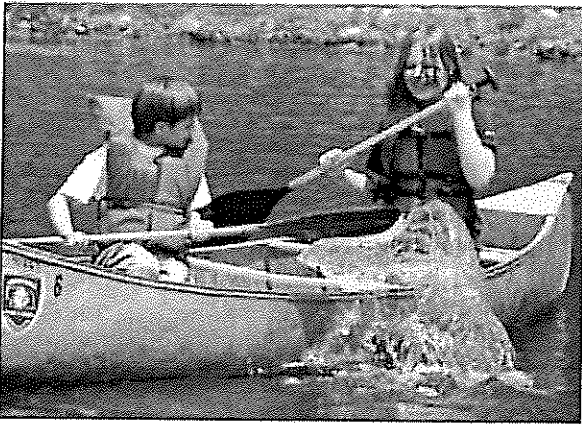


KILEY CRUSE/THE WORLD-HERALD

Fish, here I come! Assumption-Guadalupe student Rachel Tolbert finds the fun in fishing at the "Water Works" program for fifth-graders at Schramm Park State Recreation Area.



Students from Hickory Hill in the Papillion-La Vista school district learned about frogs, snakes and turtles at a "Water Works" station.



There are all sorts of uses for water, including soaking your canoe partner. Above, Holy Cross student Nick Mulcahy tries to splash classmate Emily Manhart. At right, Estefania Gutierrez, left, and Kayley Lothridge of Gilder School in OPS admire their rocket launch.

Fishing helps hook kids on valuing water

■ Water Works, in its 20th year, immerses young people in a full range of H₂O's benefits.

By Emily Kampschneider
WORLD-HERALD NEWS SERVICE
and Kenton Krueger
WORLD-HERALD STAFF WRITER

At a pond at Schramm Park State Recreation Area, a volunteer instructor lines up 20 fishing poles at the water's edge and then waits for the elementary school students to show up.

Seconds later, he hears them.

"Wait right here!" volunteer Greg Harrison yells. "No poles yet, please!"

The students were at Schramm Park and the Eastern Nebraska 4-H Center this month for "Water Works." The 330-acre park is about six miles south of Interstate 80 off exit 432.

Fishing was one of six water-related stations at the two-day field event.

Harrison instructed the students to hold the button on the reel and keep the rod straight. Then bring the pole behind you and swing it toward the water as you let go of the button.

"Make sure you don't hit someone behind you," he cautioned.

Then came a reminder about not to get too close to the water. "We certainly don't want you to get wet."

Fifth-grade students from 27 Douglas and Sarpy County schools were at the park for the outdoor education event. In its 20th year, the event teaches about water pollution, drinking water and how people can safely enjoy water recreation.

The young people get a chance to learn important aspects relating to water, said Christine Jacobsen, education specialist for the Papio-Missouri River Natural Resources District.

The NRD co-sponsors the event with the Metropolitan Utilities District, the Nebraska Game and Parks Commission and the University of Nebraska Cooperative Extension.

Topics included how water can transmit disease and what students can do with their families to help prevent the spread of disease through water.

With an up-close look at snakes, frogs and turtles, the students learned how important it is for all creatures to have clean water. It's necessary, they learned, for the animals to develop correctly.

Recreational fun — like fishing — doubles as a learning tool.

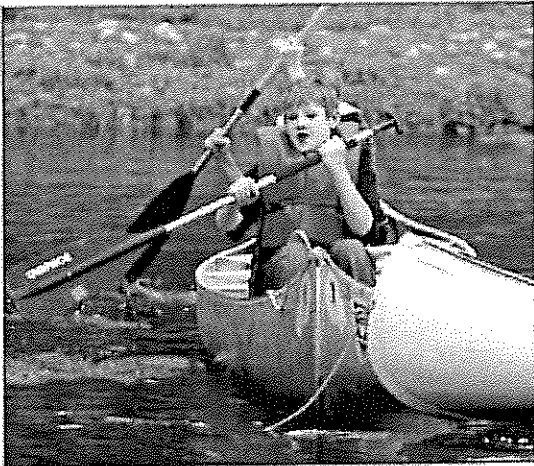
"We throw in recreational activities to show that they can have fun around water and in nature and still treat it with respect," Jacobsen said.

Other activities included a physics lesson using two-liter bottles and water to shoot a rocket into the air.

This year's event went well, said Tony Korth, director of the Game and Parks Commission's Ak-Sar-Ben Aquarium in the Schramm recreation area. The students learned a lot about water, he said, and might pass the information along to family and friends.

Most important, Jacobsen said, is that the kids connect with nature.

"I hope they learn that they can have fun outdoors," she said, "and they can start to develop a love of nature and their natural resources."



KILEY CRUSE/THE WORLD-HERALD

Holy Cross student William Danze, front, and partner Trenton Anzalone have a close call with another canoe.

Waterloo voters approve the levee bond issue

by Sandra Stenglein

The \$2.2 million bond issue needed to fund the Waterloo levee upgrade was passed by a vote of 183 to 28 on May 12. Forty percent of Waterloo's eligible voters sent their mail-in ballots to the Election Commissioners office in time to be counted.

"Citizens realized they were in position to determine the future of Waterloo," said Board of Trustees Chair Stan Benke.

By passing the bond issue the citizens of Waterloo have authorized the expense necessary to improve the levee, thus protecting themselves from the threat of being remapped into a flood plain by the Federal Emergency Management Agency (FEMA). Any federally back mortgage or loan in a flood plain must have flood insurance.

Benke said that when the Board learned that FEMA was placing the current levee on probationary status in 2008, "They (the Board) decided on a path and stuck with it." That path has taken the Board through un-charted waters as they have tried to comply with the standards FEMA has established for the nation's levees since hurricane Katrina destroyed the New Orleans levee.

"Residents of Waterloo share the Board's vision for this community," said Benke. According to Benke, the Board felt that flood insurance requirements would be devastating to the economic development of the community.

Benke cited the outstanding effort made by the Board of Trustees, Village employees, JEO Consulting and many others as being responsible for the excellent voter turn out. Benke said that educating the public was key to helping Waterloo voters make an informed decision. He is thankful that the bond issue was approved.

Special meeting

The Board of Trustees held a special meeting with JEO Consulting and Marlin Petermann, Assistant General Manager of the Papio-Missouri Natural Resource District (NRD) on May 19. It is time to determine what steps to take next, now that the bond issue has passed.

The Board was advised by Peterman to wait to call for construction bids until the Army Corps of Engineers determines the classification the levee will fall under for review purposes. Board Chair Stan Benke asked what could be done to move the process forward and was told that the Omaha District office is waiting for information to come from Corps' headquarters in Washington, D. C.

It was suggested that perhaps enlisting the help of Nebraska's congressional representatives might be helpful in getting a decision. Petermann's office will look into that possibility.

Benke has had many conversations with Pam Graham in the Corps' Omaha District Office. He is hopeful that within the next three weeks she will have some word from Corps headquarters as to whether Waterloo's plan for meeting FEMA's standards will be reviewed by the Omaha District office or will necessitate review by officials at the Corps' Washington D.C. headquarters.

In the meantime, JEO consultants will continue working on documentation to present for review. "The plan is 90 percent ready," said John Callen of JEO.

FLOOD-CONTROL PROTECTION

NRD bonds are set to go

The Nebraska Legislature has acted. The governor has added his signature. Now it's up to the Papillion Creek Watershed Partnership to do the right thing.

The Papio-Missouri River Natural Resources District has been given the power to issue bonds to finance flood-control projects necessary for the Papio Creek watershed. Urban and suburban growth threatens to push more rainwater into that system, which could flood out homes, businesses and industries throughout the metropolitan area.

"The right thing" for the partnership and the NRD, its action arm, to do is not simple, but it is necessary. Luckily, so far the group, led by the NRD, has managed to bridge many of the disagreements among partnership members and property owners in the areas affected by the watershed.

The battle for consensus is not over — proponents of low-impact flood-control projects are adamant their views be heard, and legitimately so — but it is at a point where people of goodwill should come together for the common good.

Legislative Bill 160 was contentious, taking several years to make its way through the unicameral Legislature. The bill required a great deal of compromise on all sides to make it happen: It will take a vote of the people, for instance, if the NRD wants to dedicate more than 1 cent of its levy to bonds. The amount, too, was a compromise; NRD officials had originally asked for the ability to use 2 cents.

In any instance, the final legislation does not allow the NRD levy to increase in order to issue bonds. It must use the levy it already has, which amounts to 0.033753 cents per \$100 of taxable valuation in its eastern Nebraska district.

The agency has already been putting 1 cent of the levy into a reserve fund to pay for flood-control projects but, according to NRD chairman Jim Thompson, it would take about a decade to fund a single watercontrol structure using only that reserve.

Now, the partnership can proceed with its muchaltered plans. For instance, it had thought to put two dams and sizable lakes in Washington County to contain water — an idea that drew plenty of opposition.

Those dams are out. The NRD can build only smaller dams with bond funds. But, according to John Winkler, general manager of the agency, that will be sufficient.

The flood risk in the Papio watershed is high, Thompson said; experts on the subject generally agree. As urban development continues, more water is pushed into the watershed's creeks and tributaries because less can be absorbed by ground now covered by houses, streets and parking lots.

It is the NRD's "deep concern for the potential devastation and loss of life that threatens areas of the (NRD) due to the high flood risk," Thompson wrote to the governor. That is the motivation behind flood-control planning and action.

Growth is good for a community. It brings prosperity, economic security and the kind of can-do vitality necessary to a successful 21st-century community. But it also brings negatives, in this instance a greater risk of flooding and more widespread and valuable areas threatened by floodwater. The NRD and the partnership are trying to get ahead of a disaster that *is* coming — it's a matter of when, not if.

The stage is set for action. The next move is up to the partnership.

Editorial: A Clearer Clean Water Act

New York Times

Tuesday, June 2, 2009

The Obama administration has rightly declared its support for Congressional efforts to restore the broad reach of the Clean Water Act. The law, passed in 1972, was intended to protect all of the waters of the United States, large and small. That mission has since been muddied by two Supreme Court decisions that narrowed the law's scope, weakened its safeguards against pollution and confused federal regulators.

The administration has written to Senate and House committees urging them to act on bills that would restore federal jurisdiction over all wetlands and streams. All of the environmental big guns signed: Nancy Sutley, the chairwoman of the White House Council on Environmental Quality; Lisa Jackson, the administrator of the Environmental Protection Agency; Ken Salazar, the interior secretary; Tom Vilsack, the agriculture secretary; and Terrence Salt, the acting chief of Army Corps of Engineers.

Their intervention is timely. Powerful commercial interests, including developers and big farming groups, have been pressuring Congress to keep things the way they are. For nearly three decades, the Clean Water Act was broadly interpreted by the courts and federal regulators as shielding all the waters of the United States — seasonal streams and remote wetlands as well as lakes and large navigable rivers. The basic idea was that even the smallest waters have some connection to larger watersheds, and that they, too, need to be protected from pollution and development.

Unfortunately, the actual language of the act was less clear than its intent. For instance, the word “navigable” pops up from time to time, suggesting that the law only applied to waters capable of handling boat traffic. Pouncing on these ambiguities, the Supreme Court issued rulings in 2001 and 2006 that said, in effect, that only navigable, permanent water bodies merited federal protection. About 20 million acres of wetlands and more than half the country's small streams were suddenly stripped of protections, and federal investigations into suspected violations were dropped or delayed.

The bills in Congress would, among other fixes, replace the troublesome word “navigable” wherever it appears in the law with the far more inclusive “waters of the United States.” Once Congress provides legal clarity, the administration's letter says, vigorous enforcement will follow. The letter also warns, rightly, that “all of the environmental and economic benefits that these aquatic ecosystems provide are at risk if some elements are protected and others are not.”

In other words, the biggest beneficiary of a tighter, clearer law will be the environment — and the economy — as a whole.

Public invited to give input on water project

By BETHANY FISCHER
TIMES MANAGING EDITOR
6-4-09

About 50 people gathered at the Natural Resources Center Monday night to discuss visions for the flood control reservoir planned at 126th Street and Cornhusker Road.

From 6 to 9 p.m., members from the Papio-Missouri River Natural Resources District and HDR Engineering, Inc. led the community workshop at the center, 8901 S. 154th St. in Omaha. During the meeting, members of the community

were given an overview of the project. The Papillion Creek Watershed Partnership recommended a flood prevention dam and 88-acre lake to help retain potential West Branch Papillion Creek floodwater to protect the City of Papillion and other downstream areas, according to a Papio-Missouri River NRD press release.

(In comparison, Walnut Creek Recre-

ation Center holds a 105-acre lake on a 450-acre park, according to the Papio-Missouri River NRD Web site.)

Recreational facilities are also being considered and potential options were the major topic of the meeting. Doug Bisson, a community planning manager with HDR, led the group through a SWOT (strengths, weaknesses, opportunities, threats) Analysis. About half of the group did an analysis on land use planning and the other did community-based watershed planning.

The group that analyzed the land use planning looked at the potential land uses for the area that Papillion is looking for in the master plan, said Amanda Grint, water resources engineer with Papio-Missouri River NRD. The group that analyzed the community based watershed planning looked to see what things could be done to improve water quality and protect the lake.

Visions for potential land uses for the area differed across the room. Some wanted to see more shopping, office space and even areas for motorcycles. Others preferred wildlife conservation and just about anything to keep the area quiet and as undisturbed as possible, even if some retail or offices were going to be included.

One major factor that will affect development is that Sarpy County will be building a new stadium to house the Omaha Royals at 126th Street and Highway 370, just south of the proposed lakes.

"Given the location and amount of land in the surrounding area, we won't know for five to 10 years whether the overall development was a success. Starting with a blank canvas allows for specific master planning," said Trenton Magid, with Grow Omaha Economic Development Program on 1110 KFAB. "However, as the economy improves in the de-

mand for mixed-use elements (it) will determine the ultimate success of the project."

Overall, increased traffic was one of the overwhelming concerns about developing the area.

Grint said she was happy with the meeting and what was accomplished.

"I thought it went great. There was a lot of participation, which is really nice for us to have that input," she said. "I hope it gives people a chance to have a say in the project."

The next opportunity for the public to get involved is a three-day workshop on June 22, 23 and 24 from 8 a.m. to 8 p.m. each day. During the workshop, the public is invited to drop in at any time to give comments and look at the progress, Grint said. A presentation on that day's progress will be given each day. By the third day, the goal is to have a workable plan from all of the feedback.

Changing Climate Likely To Make 'Super Weed' Even More Powerful

ScienceDaily (June 4, 2009) — Researchers at the University of Delaware have discovered a new reason why the tall, tasseled reed *Phragmites australis* is one of the most invasive plants in the United States.

The UD research team found that *Phragmites* delivers a one-two chemical knock-out punch to snuff out its victims, and the poison becomes even more toxic in the presence of the sun's ultraviolet rays.

The study, which is published in the June issue of the scientific journal *Plant Signaling & Behavior*, is believed to be the first to report the effects of UV-B radiation on plant allelopathy, the production of toxins by a plant to ward off encroachment by neighboring plants.

The authors include Thimmaraju Rudrappa, a former postdoctoral researcher at UD who is now a research scientist at the DuPont Company; Harsh Bais, assistant professor of plant and soil sciences; Yong Seok Choi, postdoctoral researcher in the Department of Chemical Engineering; Delphis Levia and David R. Legates, both associate professors in the Department of Geography; and Kelvin Lee, Gore Professor of Engineering and director of the Delaware Biotechnology Institute.

The research was conducted in Delaware wetlands and in Bais's lab at the Delaware Biotechnology Institute, a major center for life sciences research at the University of Delaware.

"The toxin secreted by *Phragmites* is degraded by sunlight — ultraviolet rays — and causes severe deleterious effects on other native plants," Bais said.

"Our research also addresses the growing questions of increased UV-B incidences because of global warming and its ultimate effect on plants. In this case, an invasive plant is accidentally utilizing the changed global conditions for its survival and invasion," Bais noted.

Two years ago, Bais led a study which discovered that *Phragmites* actively secretes gallic acid to kill off plants and take over new turf. Gallic acid, also known as 3,4,5-trihydroxybenzoic acid, is used for tanning leather, making dyes and inks, and formulating astringents, among other applications.

In this research, the scientists found that the gallic acid released by *Phragmites* is degraded by ultraviolet light to produce another toxin, mesoxalic acid, effectively hitting susceptible plants and seedlings with a double-whammy.

The mesoxalic acid triggers a similar "cellular death cascade" in victim plants as gallic acid does, Bais said, destroying the tubulin and actin, the structural protein in the roots, within minutes of exposure.

The scientific team detected the biological concentrations of mesoxalic acid in Delaware wetlands, in stands of both exotic and native *Phragmites australis*. The study highlights the persistence of the photo-degraded phytotoxin, particularly potent in the exotic species of the plant, and its enhanced effects against the native species of *Phragmites*, which is becoming increasingly endangered in the United States.

Walnut trees, pine trees, ferns and sunflowers are among the plants that release harmful chemicals to prevent other plants from growing too close to them.

However, *Phragmites* uses this strategy not so much to keep other plants away, but to aggressively conquer them and invade new territory, Bais said.

Funding for the project was provided by the University of Delaware Research Foundation.

Journal reference:

1. Thimmaraju Rudrappa, Yong Seok Choi, Delphis F. Levia, David R. Legates, Kelvin H. Lee and Harsh P. Bais. **Phragmites australis root secreted phytotoxin undergoes photo-degradation to execute severe phytotoxicity.** *Plant Signaling & Behavior*, 2009; 4 (6): 506-513 [[link](#)]

'NRD bonding authority dangerous'

Wash. City Enterprise 6-5-09

Oh what a difference a year makes. Last year we had Sen. Dwite Pedersen protecting our property rights. Thank you, Dwite; we miss you. Now we have Sen. Beau McCoy.

During his campaign for District 39, Sen. McCoy was questioned on numerous occasions if he supported

Another Point of View

Kevin Propst and Shawn Melotz

Papio-Missouri River Natural Resources District bonding and dams

proposed in Douglas and Washington counties. He always responded that he was against both. What a turnaround since being elected to office.

Perhaps by visiting the Nebraska Accountability and Disclosure Commission's Web site and reviewing who his main campaign contributors were, you can draw your own conclusions regarding his involvement on LB 160. They included Metro Omaha Builders Association, developers and others who could benefit from this potential transfer of wealth called general obligation bonding.

Sen. Beau McCoy has collaborated with the Papio NRD, not his constituents, in passing LB 160 (the Papio NRD's bonding bill). LB 160 fails to include the language needed to genuinely protect taxpayers and landowners. The five "safeguards," that Sen. McCoy prides himself for adding into the Bill, appear to do little to protect us, as follows:

1 - 1 cent levy limit. This limit applies only as an annual Board approved limit. Additional bonding can be obtained through the vote of

the people. So, in fact, there is a potential for large bond indebtedness by this NRD. A 1 cent levy could generate \$80 million of annual bond issuance, total cost would be over \$150 million with interest. Bonding is a property tax increase PERIOD; to imply it is not is misleading. Sadly, our future property tax statements will establish the results for this safeguard!!

2 - 2/3 supermajority approval of the Papio NRD Board. A quick review of the composition of the Papio NRD 11 member Board demonstrates that this is not a safeguard, at all. There is one representative from Washington, Burt, Dakota, and Thurston counties and 10 from Douglas and Sarpy counties. There are no farmers serving on this Board. There is no mechanism to afford the rural members "clout" when the Omaha metro area (pro-dam) directors will surely dominate any vote.

3 - County Board's veto. LB 160's language includes a disconcerting phrase; it states that county boards can block a dam constructed within the county's exclusive zoning jurisdiction. There has been no definitive answer from the NRD regarding which of the 27 proposed dams are located in Douglas County's "exclusive" zoning jurisdiction (we believe the answer is one dam). It is also uncertain the affect to Washington County; as it's unclear which dams are located in the county's "exclusive zoning jurisdiction." Unfortunately, the courts will enlighten us on the legalities of this "safeguard."

4 - Omaha's Combined Sewer Separation Projects (CSOs). The Papio NRD has never been tasked with Omaha's CSO project nor have any 'studies' reported that the bond proceeds would be used to fund CSOs. The Papio NRD and the Papillion Creek Watershed Partnership have continuously acknowledged that bonding will be used for the construction of dams. This amendment is not a safeguard, it only reiterates reality.

5 - 20-year sunset provision. LB 160 actually has a 10-year sunset (not 20); bonding authority terminates on December 31, 2019. Presumably, a 10-year sunset would be a safeguard. However, according to their dam building plan, by 2019 over \$266 million will be spent on 13 dams. By 2019, it will be too late to stop needless tax burdens and potential land grabbing using eminent domain powers. Consider that the Papio NRD has pledged to lobby next year for additional bonding authority and/or fewer restrictions to LB 160. It is just a matter of time before this "safeguard" will be eliminated.

To garner support for LB 160, the public and senators were told that dams are needed to protect life and property from floods similar to the recent Iowa floods. Regrettably here's what was not disclosed: the Papio *Creek* is not comparable to the Cedar and Iowa *Rivers* - it doesn't take a hydrologist to understand this fallacy.

Nor has the public been informed that other less intrusive and non-taxpayer funded measures such as LID practices exist for water

quality and quantity issues; or that other cities are removing dams - dams are a greater threat to life and property than no dams; or that since 1964 more drowning deaths occurred in Nebraska in lakes, reservoirs, and dams (465) than from floods (7); or that insufficient floodplain zoning restrictions contribute to flooding risk. These simple facts are being conveniently overlooked.

Upon analyzing the so-called safeguards and facts, citizens should be outraged that LB 160 was signed into law. Bonding for the unwarranted dam-building plan will cost taxpayers over \$1 BILLION not \$134 million. This debt will accumulate and compound over time thereby burdening our children and grandchildren with this massive property tax liability.

LB 160 is dangerous and must be removed from the NRD statutes during next year's legislative session. Let's trust that we can find senators that will work hard to protect taxpayers and landowners throughout the Papio NRD and the entire state.

We will close with a special thanks to Sens. Kent Rogert and Scott Lautenbaugh for their repeated attempts to place true safeguarding amendments on LB 160. They truly worked hard to protect not only our property rights but the pocket books of everyone who resides within the boundaries of the Papio NRD.

KEVIN PROPST of Washington, and **SHAWN MELOTZ** of Bennington are members of the Papio Valley Preservation Alliance's Governmental Affairs Committee.