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June 22, 2011

TO: Nebraska Water Coalition

FROM: Cutshall & Nowka

RE: 2011 Final Legislative Report
102nd Legislature, First Session

LB 27 – (Langemeier) Change appropriations for water power and water well registration fees. LB 27 adds the requirement that water appropriations for power must also meet the qualifications that public welfare and public interest are considered. The bill also changes the categories of wells subject to the lower registration fees from “less than 50 gallons per minute” to “50 gallons a minute or less” capacity.

FINAL STATUS: Approved by the Governor 4-14-11.

LB 28 – (Langemeier) Change provisions relating to chemigation. LB 28 eliminates the requirement that a copy of each approved chemigation application be immediately forwarded to the Department of Environmental Quality. The bill proposes that the information be maintained by the natural resource district and provided to the department upon request. The bill also eliminates the requirement that the NRD’s when filing their reports with the department include the location of each permitted chemigation system and the name of each permit holder.

FINAL STATUS: Approved by the Governor 2-22-11.

LB 31 – (Langemeier) Change supplemental agricultural appropriation of water provisions. LB 31 eliminates a procedure for a surface water right holder to gain additional water right flows and allows the Department of Natural Resources to consider other existing factors in determining whether to grant a new permit.

FINAL STATUS: Approved by the Governor 4-14-11.

LB 32 – (Langemeier) Change dam and appropriation application approval provisions. LB 32 eliminates the requirement that approval of all pending matters for an application for water appropriation and water storage under the Safety of Dams Act be issued simultaneously. Allows a project sponsor to determine if a water appropriation is available prior to going through the expense of finalizing the dam design.

FINAL STATUS: Approved by the Governor 4-14-11.

LB 84 – (Fischer) Adopt the Build Nebraska Act and authorize bonds for the highway system. LB 84 would adopt the Build Nebraska Act and authorize bonds for the highway system. The bill would dedicate 0.25 percent of the state’s 5.5 percent sales tax to fund roads projects from FY 2013-14 through FY 2032-33. Directs 85 percent of these funds to a new State Highway Capital Improvement Fund, 75 percent of which would be dedicated to roads projects prioritized by the state Department of Roads. The remaining 15 percent of the new revenue would go to the Highway Allocation Fund. Also changes the allocation for the Nebraska Expressway system and federally designated high-priority corridor from \$15 million to 25 percent of the funds received from revenues generated by 0.25 cents of the state’s sale tax.
FINAL STATUS: Approved by the Governor 5-17-11.
2011 Priority Bill – Senator Fischer

LB 103 – (Schilz) Change instream appropriation provisions. LB 103 clarifies that an instream flow cannot be granted in a fully or over-appropriated basin, but does allow for a transfer of a natural flow appropriation to an instream flow right.
STATUS: Held in the Natural Resources Committee.

LB115 – (Council) Change limitation of action provisions under the Political Subdivisions Tort Claims Act. LB 115 extends the time frame from one year to two years for a claim to be filed against a political subdivision under the Political Subdivisions Tort Claims Act.
STATUS: Held in the Judiciary Committee.

LB 118 – (Avery) Eliminate provisions relating to state aid to natural resources districts. LB 118 eliminates state aid to natural resources districts.
STATUS: Held in the Revenue Committee.

LB 127 – (Avery) Change input into determinations and management plans for regulation of water. LB 127 requires that natural resources districts consult with the Nebraska Game and Parks Commission when developing an integrated management plan.
STATUS: Held in the Natural Resources Committee.

LB 154 – (Janssen) Change procedures for filling vacancies on natural resources district boards. LB 154 makes a couple of changes when a vacancy occurs on natural resources boards. First the bill requires that when a vacancy occurs, the board of directors shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the Secretary of State and (b) to the public by a notice published in a newspaper of general circulation within the district. Second, if the vacancy occurs during the prior to August 1 of the second years of the unexpired term, the appointee would have to run for election for the remaining term.
FINAL STATUS: Approved by the Governor 2-22-11.

LB 173 – (Avery) Prohibit natural resources district board members from running for or holding more than one office. LB 173 prohibits natural resources district board members from holding more than one office.
STATUS: Held in the Government, Military and Veterans Affairs Committee.

LB 229 – (Fischer) Transfer funds from the Nebraska Environmental Trust Fund to the Water Resources Cash Fund. LB 229 allows the Department of Natural Resources (DNR) to apply to the Nebraska Environmental Trust Fund (NETF) for a three-year \$9.9 million grant for fully/over-appropriated river basins and gives that grant 50 bonus points in the ranking. The grant would be paid out in 3 annual installments of \$3.3 million. The bonus points would be contingent on the Legislature appropriating \$3.3 million in General Funds annually to match the NETF funds. The bill provides an annual match of \$3.3 million in General Fund dollars that will be appropriated to the Water Resources Cash Fund (WRCF). The bill authorizes DNR to apply for an additional three-year grant provided that the following benchmarks are met:

- 1) A report from the Natural Resources Committee by December 1, 2012 to provide an outline of statewide funding options which create a dedicated, sustainable funding source to meet the needs set forth in the report.
- 2) The project and activities funded by the DNR through grants from the NETF have resulted in enhanced stream flows, reduced consumptive uses of water, recharged ground water, supported wildlife habitat, or otherwise contributed towards conserving, enhancing, and restoring Nebraska's ground water and surface water resources. On or before July 1, 2014, the DNR shall submit a report to the Natural Resources Committee of the Legislature providing demonstrable evidence of the benefits accrued from such projects and activities.
- 3) On or before July 1, 2014, the DNR provides to the NETF board a report which includes documentation that expenditures from the WRCF made to natural resources districts have met the 40 percent matching fund requirements.
- 4) Limits the NRD in-kind matching to 10 percent or less of 40 percent matching fund requirement. Contributions of land or land rights would not be considered in-kind contribution but would be considered in meeting the matching requirement.

FINAL STATUS: Approved by the Governor with the Emergency Clause 5-17-11.
2011 Priority Bill – Senator Larson

LB 243 – (Carlson) Change membership on the Republican River Basin Water Sustainability Task Force. LB 243 allows for an additional ex officio, nonvoting member from the Legislature representing a portion of the Republican River Basin to be appointed to the Republican River Basin Water Sustainability Task Force, increasing the membership of the Legislature from four to five members.

FINAL STATUS: Approved by the Governor with the Emergency Clause 3-10-11.

LB 328 – (Fischer) Provide for amendment of hydropower appropriations as prescribed. LB 328 authorizes an appropriator to apply to the Director of Natural Resources to amend an appropriation of water for any hydropower plant located within the channel of a river in the State of Nebraska to provide that, in addition to the use of water for hydropower generation purposes, the appropriation may also recognize benefits for fish, wildlife, and recreational purposes.

STATUS: Held in the Natural Resources Committee.

LB 366 – (McCoy) Change subcommittee recommendation provisions relating to the Nebraska Environmental Trust Fund. LB 366 eliminates the requirement that the Trust Fund Board has to have at least eight affirmative votes to deviate from a

subcommittee recommendation to the board. The bill also requires that all subcommittee meetings be subject to the Open Meetings Act.

FINAL STATUS: Approved by the Governor 4-26-11.

LB 374 – (Speaker Flood) Appropriate funds for state government expenses.

LB 374 is the state general fund budget proposal that appropriates \$7 billion during the next biennium.

FINAL STATUS: Approved by the Governor with the Emergency Clause 5-17-11 [Amended to include LB 213 & LB 282].

LB 378 – (Speaker Flood) Provide for fund transfers and change provisions relating to various funds. LB 378 transfers \$2.7 million to the Water Resources Cash Fund for natural resources programs. (The fund was increased to \$3.9 million with the passage of LB 229).

FINAL STATUS: Approved by the Governor with the Emergency Clause 5-17-11 [Amended to include LB 120, LB 414, LB 450 & LB 485].

LB 383 – (Cornett) Eliminate state aid for municipalities, counties, and natural resources districts. LB 383 eliminates general state aid to municipalities, counties and natural resources districts.

FINAL STATUS: Approved by the Governor with the Emergency Clause 3-10-11.
2011 Priority Bill – Revenue Committee

LB 391 – (Schilz) Create the Nebraska Invasive Species Council. LB 391 establishes the Nebraska Invasive Species Council to recommend action to minimize the effects of invasive species in Nebraska. Invasive species is defined as an aquatic or terrestrial organisms not native to the region that cause economic or biological harm and are capable of spreading to new areas. The council would be governed by up to a 12-member group which would be responsible to develop a statewide adaptive management plan to:

- 1) Create statewide coordination and intergovernmental cooperation;
- 2) Prioritize invasive species response and management;
- 3) Provide early detection and prevention of new invasive species through deliberate or unintentional introduction;
- 4) Create an inventory and monitor invasive species;
- 5) Create public outreach and education program;
- 6) Identify funding and resources available for invasive species prevention, control, and management;
- 7) Make recommendations for legislation regarding invasive species issues.

STATUS: General File.

LB 392 – (Schilz) Provide powers and duties relating to aquatic invasive species.

LB 392 establishes the Aquatic Invasive Species Program under the Nebraska Game and Parks Commission. The program would monitor and sample waters of the state for aquatic invasive species, hire personnel, including, but not limited to, an aquatic invasive species coordinator and temporary staff, and purchase equipment, provide additional enforcement, education, and research relating to control of aquatic species. The bill creates a Class III misdemeanor for any person that: (a) fails or refuses to submit to an inspection of a conveyance requested by an authorized inspector or (b) refuses to permit

or prevents proper decontamination or treatment of a conveyance as prescribed by the authorized inspector. The program would be funded by 20 percent of the current boat registration fees and a new \$30 Aquatic Invasive Species Stamp on out-of-state conveyance vehicles entering Nebraska.

STATUS: Held in the Natural Resources Committee.

LB 395 – (Schilz) Change voting provisions for members of the Nebraska Environmental Trust Board. LB 395 proposes to make state agency representatives to the Nebraska Environmental Trust Fund Board non-voting members. The bill also makes the executive director of the NETF a non-voting member.

STATUS: Held in the Natural Resources Committee.

LB 400 – (Janssen) Change tax levy authority for natural resources districts.

LB 400 as introduced would have repealed the Long Term Care Savings Plan Act but the Revenue Committee gutted the bill and inserted provisions of LB 528. As amended the bill extends to FY 2017-18 the sunset date for a 3 cent property tax NRD's can levy in overappropriated or fully appropriated basins.

FINAL STATUS: Approved by the Governor 5-26-11 [Amended to include LB 430 & LB 528].

2011 Priority Bill – Speaker Flood

LB 484 – (Hadley) Exclude certain activities from the definition of excavation under the One-Call Notification System Act. LB 484 adds an exemption to the one-call system for soil sampling for agricultural nutrient and water management purposes, soil sampling performed to meet requirements of local, state, or federal regulations, soil sampling performed for manure management, and installation of soil moisture monitoring equipment.

STATUS: Held in the Transportation and Telecommunications Committee.

LB 498 – (Louden) Change water resources provisions relating to in situ uranium mining. LB 498 exempts in situ uranium mining (water that is subsequently re-injected into the underlying aquifer from which it was withdrawn) from the Industrial Ground Water Regulatory Act and from the definition of consumptive use.

STATUS: General File.

LB 499 – (Price) Change provisions relating to filing for office, registering to vote, and voting under the Election Act. LB 499 would:

- 1) Require a candidate petitioning on the ballot to file a sample copy of the petition with the filing officer prior to circulating;
- 2) Require affidavits that remove a person's name from a petition to be submitted by the time the petition is submitted for verification; and
- 3) Require a voter who is present in his or her county on election day to vote at an assigned polling site.

FINAL STATUS: Approved by the Governor 4-26-11.

2011 Priority Bill – Government, Military and Veterans Affairs Committee

LB 526 – (Carlson) Change provisions relating to water transfers. LB 526 allows for a second alternative for water transfers which would be the entire amount of a surface water irrigation right for a non-consumptive use.
STATUS: Held in the Natural Resources Committee.

LB 527 – (Carlson) Change tax levy authority of natural resources districts. LB 527 allows NRDs that have been preliminarily determined to be fully appropriated, but later reversed, to have access to the three-cent levy to administer and implement ground water management activities and integrated management activities. The bill establishes a sunset of FY 2016-17.
STATUS: Held in the Revenue Committee.

LB 528 – (Carlson) Change tax levy authority of natural resources districts. LB 528 extends the three-cent levy authority for fully and over-appropriated NRDs until FY 2017-18.
FINAL STATUS: Indefinitely Postponed 5-26-11 [Amended into LB 400].

LB 529 – (Carlson) Change provisions relating to conservation and preservation easements and the Nebraska Environmental Trust. The bill proposes to revise the filing and obtaining conservation easements.

- 1) Requires that the proposed holder to provide written notice of the proposed easement to the governing bodies of all entities levying taxes on the property at the same time the notice of the proposed conservation or preservation easement is given to the affected governing body.
 - 2) Requires the notice to be delivered by first-class mail and shall include a statement of the fiscal impact of changing the classification of the property or removing it from the tax rolls.
 - 3) Allows a county to deny the easement if it is found to be inconsistent with the best interest of the county.
 - 4) Provides that if the easement is held by a charitable corporation or trust it would be limited in duration to ten years. Within 90 days of the expiration of such easement, the corporation or trust would be granted a process, including a public hearing, to continue the easement.
 - 5) Prohibits the Nebraska Environmental Trust Fund (NETF) Board from holding property in fee or obtaining easements.
 - 6) Limits NETF in that no more than ten percent of the grant allocations in any year shall be used by the recipients for land purchases and easements.
 - 7) Only political subdivisions would be allowed to use NETF grants for land acquisition.
- STATUS: Held in the Natural Resources Committee.

LB 533 – (Fischer) Change membership of the Niobrara Council. LB 533 proposes several changes to the Niobrara Council, including requiring that a commissioner rather than a representative be the member to the council from each of the county boards of Brown, Cherry, Keya Paha, and Rock counties. The bill also eliminates the Governor's authority to appoint a representative of the U.S. Fish and Wildlife Service and replaces it with the regional director of the National Park Service or his or her designee and the U.S. Fish and Wildlife Service regional director or his or her designee.
STATUS: Held in the Natural Resources Committee.

LB 595 – (Carlson) Adopt the Water Resources revolving Loan Fund Act and change provisions regarding certain revenue. LB 595 would create a financing system for water projects. The bill would create the Water Resources Revolving Loan 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.

STATUS: Held in the Natural Resources Committee.

2011 Priority Bill – Natural Resources Committee

LB 596 – (Carlson) Provide for standing with respect to integrated management plan proceedings. LB 596 allows standing to participate in any legal or administrative proceedings on integrated management plans by any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality if the owner of an appropriation that relies on water from an affected river basins, sub-basin, or reach that is included in an integrated management plan.

STATUS: Held in the Natural Resources Committee.

LB 645 – (Christensen) Require inclusion of established surface water and ground water uses in certain agreements as prescribed. LB 645 requires that when natural resource districts have included the regulation of surface water in an integrated management plan to comply with a compact, agreement, or decree, they shall include established surface water and groundwater use as determined by the DNR for determining the baseline equitable apportionment of virgin water supply among natural resources districts within such basin.

STATUS: Held in the Natural Resources Committee.

LB 653 – (Christensen) Provide for inter-basin transfers during times of flooding as prescribed. LB 653 would amend the definition of “interbasin transfer” to include interbasin transfers during times of flood, pursuant to a new section within the bill to allow an agreement between applicable districts. Provides authority to Natural Resources Districts and Irrigation Districts along with the Department of Natural Resources to enter into an agreement that sets up guidelines to move water from one basin to another during times of flood. The agreements between basins would need to be done prior to any diversion of unappropriated flood water. In addition, the basin of destination would be second in time and second in right to all internal water resources projects within the basin of origin.

STATUS: Held in the Natural Resources Committee

LB 655 – (Christensen) Change provisions relating to an occupation tax imposed by natural resources districts. LB 655 provides that an NRD may allow for the occupation tax on irrigated land to be calculated as a flat amount per irrigated acre or in a different manner as follows:

- 1) The district shall determine the amount of revenue needed to be raised from the tax for the project for the current fiscal year, which could not exceed an average of ten dollars per certified irrigated acre.

- 2) The district shall determine the total acre-feet of surface water and ground water irrigation usage in the district during the immediately preceding calendar year.
- 3) The district shall determine the per acre-foot revenue need by dividing the amount determined in #1 above by the amount determined in #2.
- 4) The district shall calculate the tax for each record owner of irrigated agricultural land based upon each record owner's acre-feet usage of surface water and ground water irrigation during the immediately preceding calendar year by multiplying such usage by the per acre-foot revenue needed.

STATUS: Held in the Natural Resources Committee.

LR 51CA – (Heidemann) Constitutional amendment to change allocation of state lottery proceeds. LR 51CA proposes a constitutional amendment that would redirect the net lottery proceeds currently going to the Nebraska Environmental Trust Fund. Currently the NETF receives 44.5% of the net lottery proceeds. The proposal would provide 22.25% to the Water Resources Cash Fund and 22.25% to the University of Nebraska Innovation Campus. After 2038, the portion going to the Innovation Campus would go to the General Fund.

STATUS: Held in the Natural Resources Committee.