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June 15, 2009

TO: Nebraska Water Coalition

FROM: Cutshall & Nowka

RE: 2009 Final Legislative Report
101st Legislature, First Session

LB 12 – (Langemeier, Giese) Appropriate funds to the Department of Natural Resources.

LB 12 increases the annual general fund appropriation from the Nebraska Resources Development Fund from \$3,373,066 to \$7,000,000 for FY 2009-10 and 2010-11.

STATUS: Held in the Appropriations Committee

LB 18 – (Christensen) Prohibit irrigation of certain educational lands. Would have required the Board of Educational Lands and Funds upon the expiration of any lease of school lands located in any river basin, sub-basin, or reach that has been designated as fully or overappropriated, to contain a condition that such school lands shall not be irrigated for the duration of the lease.

FINAL STATUS: Withdrawn 1-23-09

LB 43 – (Flood) Eliminate the Department of Natural Resources Interstate Water Rights Cash Fund. LB 43 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 20, 2003.

STATUS: General File

LB 53 – (Fischer, Langemeier, Giese) Change provisions relating to formation, territory, and the operating area of public power districts. LB 53 changes the structure of and representation from chartered territories of public power districts. The bill would require that municipalities purchase 50 percent of their wholesale annual energy from a public power district in order to be included in the chartered territory and have representation on the supplying district's board of directors.

FINAL STATUS: Approved by the Governor 3-5-09

LB 54 – (Fischer) Change integrated management plan provisions under the Nebraska Ground Water Management and Protection Act. LB 54 would create a protocol for natural resource districts to offset new water use from streams and rivers as part of an integrated management plan. The bill also creates a process for the NRDs and DNR to use in fully and over-appropriated basins to track depletions and gains to stream flows from new, retired or other changes to uses within the river basin to provide economic development opportunities and

economic sustainability in basins declared fully or over appropriated. The bill allows offsets for new uses as long as there is no more than a de minimus affect on existing users and requires consultation and an opportunity for public comment from all water users in all water offset determinations. The bill would not require revisions or amendments of an integrated management plan approved on or before the effective date of this act.

FINAL STATUS: Approved by the Governor 5-13-09

2009 Priority Bill – Senator Fischer

LB 98 – (Carlson, Christensen, Dubas, et al.) Change noxious weed grant programs and the Riparian Vegetation Management Task Force. LB 98 extends the existence and duties of Riparian Management Task Force for four years and provides intent language to annually appropriate \$2 million for the vegetation management. LB 98 clarifies the priority for grants that are consistent with any plans and priorities for riparian vegetation management established by the Riparian Management Task Force; requires the Director of Agriculture to apply for grants from the Environmental Trust Fund the Natural Resources Conservation Service of the USDA prior to July 31, 2009; and 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.

FINAL STATUS: Approved by the Governor with the Emergency Clause 5-13-09

2009 Priority Bill – Senator Carlson

LB 134 – (Pankonin) Change natural resources districts eminent domain powers. LB 134 would prohibit NRDs from using eminent domain for recreational trails or corridors, unless these projects are related to a flood control structure. The proposed committee amendment 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.

FINAL STATUS: Indefinitely Postponed 5-27-09

2009 Priority Bill – Senator Pankonin

LB 160 – (Gay, Cornett) Authorize issuance of flood protection and water quality enhancement bonds by natural resources districts. LB 160 would permit an NRD encompassing a metropolitan class city, to dedicate up to one cent of its existing 4.5 cent mill levy for the issuance of bonds approved by a two-thirds vote of its board of directors. Voter approval would be required if the bond levy rate were to exceed 1 cent. Cities and counties within a watershed would be required to adopt storm water management plans before the issuance of bonds, and counties could block bonds for projects intended for construction within their boundaries that one larger than 20 surface acres.

FINAL STATUS: Approved by the Governor 5-22-09

2009 Priority Bill – Senator Nelson

LB 179 – (Natural Resources Committee, Langemeier, Carlson, et al.) Change project limit adjustments under the Nebraska Resources Development Fund.

LB 179 allows the Nebraska Resources Development 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 adjustment for each year starting July 1, 1993.

FINAL STATUS: Approved by the Governor with the Emergency Clause 2-12-09

LB 184 – (Louden, Fischer, Schilz) Authorize Department of Natural Resources to administer riparian water rights. LB 184 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 clarifies that 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.

FINAL STATUS: Approved by the Governor 4-8-09

LB 209 – (Langemeier) Change provisions relating to time for construction of irrigation projects and dams. LB 209 changes the time frame from 6 months to 12 months after the Department of Natural Resources approval of any application for water for irrigation, power, or other useful purpose by the department or an individual to commence 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.

FINAL STATUS: Approved by the Governor 5-26-09

LB 315 – (Speaker Flood at the request of the Governor) Appropriate funds for state government expenses. LB 315 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 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 budget uses \$523 million in federal American Recovery and Reinvestment Act funds and \$254.4 million of the state's cash reserve fund.

FINAL STATUS: Approved by the Governor with the Emergency Clause 5-19-09 [Amended to include LB 236]

LB 316 – (Speaker Flood at the request of the Governor) – Change provisions relating to certain funds and provide for transfers of funds. Provide for various transfers between specific funds.

FINAL STATUS: Approved by the Governor with the Emergency Clause 5-19-09

LB 388 – (Langemeier) Change public power district officials compensation provisions.

LB 388 reduces the number of votes required to approve of public power officer compensation from two-thirds to a majority.

STATUS: General File

LB 438 – (Fischer, Carlson, Christensen, Dierks, Flood, et al.) Prohibits instream appropriations in fully or over-appropriated areas. LB 438 would prohibit instream flow appropriations in river basins deemed fully appropriated or over-appropriated.

STATUS: Held in the Natural Resources Committee

LB 477 – (Carlson) Change provisions relating to water transfer permits. LB 477 would require NRDs to obtain a title report that identifies lien holders and documents their consent before approving a transfer of certified irrigated acres or other certified water uses. The provisions also would pertain to participation in an NRD financial incentive program.

FINAL STATUS: Approved by the Governor 4-22-09

2009 Priority Bill – Senator Utter

LB 482 – (Langemeier) Change provisions of the Nebraska Ground Water Management and Protection Act. The bill will eliminate obsolete language in the act that refers to initial start dates of LB 962 and 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.

STATUS: Held in the Natural Resources Committee

LB 483 – (Langemeier) Change provisions relating to water well permits. LB 483 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 is fully appropriated but a final determination finds that it is not fully appropriated.

The bill requires 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. It also requires 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.

The Department of Natural Resources is required 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. DNR is prohibited 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. DNR would also be prohibited from granting more than 834 acres of new surface water appropriations for irrigation within each natural resources district affected by the status change.

FINAL STATUS: Approved by the Governor with the Emergency Clause 4-6-09
2009 Priority Bill – Senator Langemeier

LB 504 – (Langemeier) Authorize permits and provide penalties relating to discharge of dredged or fill material into the waters of the state. LB 504 authorizes the Nebraska Department of Environmental Quality to take over the 404 permit process from the U.S. Army Corps of Engineers.

STATUS: Held in the Natural Resources Committee

LB 520 – (Hadley, Giese, Wallman, Harms) Provide for an income tax credit for perpetual conservation easement donations. LB 520 allows for a refundable income tax credit to a taxpayer who donates all or part of the value of a perpetual conservation easement to a political subdivision of the state or to a charitable organization. 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.

STATUS: Held in the Revenue Committee

LB 535 – (Stuthman) Change membership of the Nebraska Natural Resources Commission and provisions relating to natural resources districts. LB 535 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. 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. The bill also prohibits the NRD use of eminent domain powers until all other requirements for a dam or any other improvement project have been complied with.

STATUS: Held in the Natural Resources Committee

LB 577 – (Rogert) Change provisions relating to improvement project areas of natural resources districts. LB 577 proposes to limit the power or authority of NRDs to cooperate with or enter into agreements with, or to furnish financial aid to, any person who is in the business of selling or leasing, when the cooperation, agreement, or financial aid relates to real property taken by the district through the use of eminent domain. The bill would prohibit the authority for 1) development and management of fish and wildlife habitat; 2) development and management of recreational and park facilities; and 3) limits the total bonding authority for a project to no more than 12 percent of the taxable value of the property.

FINAL STATUS: Indefinitely Postponed 3-4-09

LB 582 – (Dierks) Create the Nebraska Invasive Species Council. LB 582 creates a 14 member Nebraska Invasive Species Council to develop a statewide management plan to minimize the effects of invasive vegetation in Nebraska.

STATUS: Held in the Natural Resources Committee

LB 651 – (Christensen) Adopt the Water Resources Revolving Loan Fund Act. LB 651 creates the Water Resources Revolving Fund to provide low interest loans to natural resources districts or any joint entity for the purpose of developing and protecting water resources in the state. The Natural Resources Commission would have oversight over the program to finance or refinance eligible projects including:

- acquisition by purchase or lease of water rights;
- vegetation management;
- the augmentation of river flows;
- develop, store and transport water.

STATUS: Held in the Natural Resources Committee

LB 666 – (Langemeier, Fischer, Carlson, Christensen, et al.) Change provisions relating to the Niobrara Council. LB 666 proposes to revise the authority of the Niobrara 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. Redefines the mission of the council to provide local representation to the National Park Service and report to the county boards of Brown, Keya Paha, and Rock Counties. The bill requires three representatives of the council must reside in a county that includes land in the Niobrara Scenic River corridor. Repeals the authority of the council to hold titles to real estate, accept gifts of real estate, or obtain conservation easement in the name of the council.

STATUS: Held in the Natural Resources Committee

LB 681 – (Flood, Carlson, Christensen, Cornett, Langemeier at the request of the Governor) To provide for refund of unconstitutional taxes, assessments, and penalties.

LB 681 would provide a mechanism providing for the automatic refund of real or personal property taxes, occupation taxes, or assessments that have been declared unconstitutional.

FINAL STATUS: Indefinitely Postponed 5-13-09

2009 Priority Bill – Senator Christensen