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TO: Nebraska Water Coalition

FROM: Cutshall & Nowka

RE: 2010 Final Legislative Report
101st Legislature, Second 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.

FINAL STATUS: Held in the Appropriations Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

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.

FINAL STATUS: General File. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

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.

FINAL STATUS: General File. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

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.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

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.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

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.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

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.

FINAL STATUS: Held in the Revenue Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

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.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

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.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

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.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

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.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 689 – (Langemeier, Dubas) Change Water Resources Cash Fund, Ethanol Production Incentive Cash Fund, and ethanol excise tax provisions. The bill eliminates the 3/5ths cent/bushel check-off on corn and 3/5ths cent/hundred weight check-off on grain sorghum that was to be transferred from the EPIC Fund to the Water Resources Cash Fund beginning in October 1, 2012. The bill also redirects the funds remaining in the Ethanol Production Incentive Cash Fund when the program ends December 31, 2012, splitting it equally with the commodity boards and the General Fund.

FINAL STATUS: Approved by the Governor 3-17-10
2010 Priority Bill – Senator Dubas

LB 740 – (Agriculture Committee, Dubas) Eliminate transfer provisions from certain agricultural funds. Eliminates references approved during the November 2009 Special Session that allows the legislature the discretion to transfer funds to the General Fund from the following cash funded programs: The Nebraska Buffer Strip Program, the Commercial Feed Act, the Weed Book Cash Fund, the Nebraska Seed Administrative Cash Fund, the Nebraska Pure Food Act, and the Weights and Measurers program.

FINAL STATUS: Held in the Appropriations Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 764 – (Fischer) Change provisions relating to integrated management plans under the Nebraska Ground Water Management and Protection Act. LB 764 allows NRDs to develop IMPs in areas that are not fully or over-appropriated. The bill allows a natural resources district encompassing a river basin or sub-basin that has not been designated as fully or over-appropriated to work jointly with the department to develop an integrated management plan.

FINAL STATUS: Approved by the Governor 3-17-10
2010 Priority Bill – Senator Fischer

LB 785 – (Carlson) Provide an exception to required approval for certain water transfers. LB 785 would provide an exemption from the lien search for water transfers of four certified irrigated acres or less.

FINAL STATUS: General File. [Amended into LB 862] *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 793 – (Dubas) Prohibit cash fund transfers without authorization. LB 793 prohibits a transfer or appropriation of funds from a cash fund for a use or to another fund unless the transfer or appropriation is specifically authorized by law. The bill declares that any transfer or appropriation in violation of this section is a violation of Article III, section 14, of the Nebraska Constitution.

FINAL STATUS: Held in the Appropriations Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 815 – (Haar) Change requirements for political subdivision budget statements and financial information on the state web site. The bill would require the budget forms for political subdivisions to report all private donations, gifts, or grants in the past two fiscal years and estimated to be received in the current and ensuing fiscal years the source, allocation, and expenditure of such money which was received in increments of one thousand dollars or more.

FINAL STATUS: Held in the Government, Military and Veterans Affairs Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 862 – (Christensen) Change provisions relating to issuance and repayment of river-flow enhancement bonds. LB 862 would change state law concerning NRDs' authority to collect and use an occupation tax of up to \$10/acre on irrigated land. The bill allows NRDs access to the occupation tax if they have a completed integrated management plan, which explicitly states the NRD's intent to use an occupation tax to fund qualified projects without issuing bonds (2-3226.04).

FINAL STATUS: Approved by the Governor 4-14-10 [Amended to include LB 785] 2010 Priority Bill – Natural Resources Committee

LB 893 – (Christensen) Provide refund procedures for unconstitutional taxes and assessments. LB 893 provides a refund mechanism for property taxes, occupation taxes, assessments, and penalties for such taxes declared unconstitutional by any court of competent jurisdiction entered on or after January 1, 2009. The refund could be made by filing a claim and would be repaid or refunded to the person paying such tax or assessment. For purposes of this law, a judgment or final order shall mean a judgment or final order of the Supreme Court.

FINAL STATUS: Indefinitely Postponed 2-10-10

LB 932 – (Christensen) Change provisions relating to repayment of financial assistance by natural resources districts. The bill forgives the loan made to the Republican Basin NRDs if they are no longer authorized to use the proceeds or is no longer authorized to levy the extra 10 cent property tax or the occupation tax.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 935 – (Speaker Flood) Provide for deficit appropriations and change certain appropriations. LB 935, the mainline budget bill adjustment the 2009-11 state budget, decreasing general fund appropriations by 1.1 percent over the biennium. Provides an additional 2 percent cut totaling \$7.1 million from the same operations and aid programs that received a 5 percent across-the-board cut during the 2009 special session. The bill also calls for transfers of \$16.7 million from cash funds and \$3 million from the state's cash reserve.

FINAL STATUS: Approved by the Governor with the Emergency Clause 4-1-10

LB 993 – (Carlson) Change permissible uses of the Water Resources Cash Fund.

LB 993 adds enhancing stream flows or groundwater recharge to the uses for the Water Resources Cash Fund.

FINAL STATUS: Approved by the Governor 4-12-10

LB 1008 – (Janssen) Provide for cash basis or modified accrual or encumbrance basis budget statements under the Nebraska Budget Act as prescribed. LB 1008 would permit governing bodies subject to the Nebraska Budget Act to prepare their proposed budget statements either on a cash basis or on a modified accrual or encumbrance basis.

FINAL STATUS: Held in the Revenue Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 1016 – (Christensen) Adopt the Nebraska Statewide Water Planning

Commission Act. LB 1016 would adopt the Nebraska Statewide Water Planning Commission Act. The bill establishes a commission which consists of seven members appointed by the Governor. The commission shall exercise the powers and perform the duties carried out by the Division of Planning and Assistance of the Department of Natural Resources.

The duties of the commission include, but are not limited to: (1) Developing a statewide plan for the future use of water in the state; (2) maintaining and maximizing the use of water in this state; (3) creating a plan to manage the state's water resources to encourage economic health and prosperity; and (4) making recommendations to the Governor and the Legislature for achieving the goals set forth in the plan developed pursuant to subdivision (1) of this section.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 1025 – (Avery) Change provisions relating to stays on new water appropriations.

LB 1025 allows the Department of Natural Resources to accept and act on an application for an instream flow water use, or another surface water use that involves non-consumptive use, if such appropriation will not harm the senior surface water appropriators on such river or stream or the groundwater users whose water wells are dependent on recharge from the river or stream involved.

FINAL STATUS: Indefinitely Postponed 3-2-10

LB 1031 – (Dierks) Change tax levy authority relating to natural resources districts.

LB 1031 eliminates the 2012 sunset date for the NRD 3-cent levy in fully and over-appropriated areas.

FINAL STATUS: General File. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 1032 – (Dierks) Change tax levy authority relating to natural resources districts.

LB 1032 allows NRDs that have been preliminarily determined to be fully appropriated, but later reversed, to have access to the 3-cent levy to administer and implement ground water management activities and integrated management activities under the Nebraska Groundwater Management and Protection Act.

FINAL STATUS: General File. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 1052 – (Christensen) Adopt the Agricultural Production and Economic Stability and Assistance Act.

The bill creates the Agricultural Production and Economic Stability and Assistance Act to assist NRDs with financing the management of water resources and the augmentation of water supplies for the economic stabilization of agricultural production in river basins where state responsibility for interstate compacts, agreements, and decrees exist. A district, joint entity or joint public agency can submit a project for consideration. If approved by a newly created board, the project will be financed. The state source of funds would come from a refund of a portion of the sales tax collected by retailers doing business within the rapid response area of two and one-half miles on either side of the river, stream, or tributary within the eligible district.

FINAL STATUS: Held in the Revenue Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 1054 – (Carlson) Adopt the correlative rights doctrine relating to the use of ground water as prescribed.

The bill proposes to adopt the correlative rights doctrine as it applies to groundwater in the state. The doctrine shall apply with regard to the use of groundwater within a river basin when the Department of Natural Resources or a district determines it is necessary to comply with state or federal agreements or compacts. If the department or district determines that correlative rights should apply, allocations of ground water in the basin or irrigation purposes may be reduced by the district or the department so that each landowner shares equally in the shortfall. If the allocations are reduced to zero, the state would have to provide just and fair compensation to the landowner for such reduction.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 1056 – (Carlson) Provide for measurement of aquifer depletion and limitations on irrigation as prescribed.

LB 1056 would require metering and allocations when depletion of groundwater occur. The Department of Natural Resources would be required to measure aquifer and groundwater changes across each river basin each year and report such measurement to the Legislature on December 31, 2010, and on December 31 of each year thereafter. Change would be determined based upon a comparison to saturation thickness of the aquifer in the base year of 1963.

If the change in aquifer or groundwater results in depletion to an area of the aquifer greater than 10 percent but not greater than 20 percent of the base year, meters shall be placed on all irrigation wells in the depletion area of the river basin to measure water usage, and groundwater allocations for irrigation purposes shall be imposed on all landowners in the depletion area. If the change in aquifer or groundwater results in depletion to the aquifer greater than 20 percent but not greater than 30 percent of the base year, no landowner in the depletion area may use more than 50 percent of the annual allocation of groundwater. However, all or any portion of the unused allocation may be transferred outside the groundwater depletion area. When the change in aquifer or groundwater results in depletion to the aquifer greater than 30 percent of the base year saturation thickness, no landowner in the depletion area may use any portion of the annual allocation of groundwater. However, all or any portion of the unused allocation may be transferred outside the aquifer or groundwater depletion area. If recharge has occurred since the previous annual measurement in a depletion area such that aquifer depletion is no longer greater than 30 percent of the base year saturation thickness, use of groundwater allocations for irrigation purposes in such area may resume as provided as in the proposal.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*

LB 1057 – (Carlson) Create the Republican River Basin Water Sustainability Task Force. LB 1057 creates the Republican River Basin Water Sustainability Task Force. The purpose of the task force is to define water sustainability for the Republican River Basin, and develop and recommend a plan to reach sustainability, and develop and recommend a plan to avoid water-short years in the basin.

The task force consists of:

- 1) eight from NRDs in the Republican River Basin (two from each NRD);
- 2) four from irrigation districts in the basin;
- 3) one from each of the following: UNL, Nebraska Game and Parks, Nebraska Department of Agriculture, Nebraska Department of Natural Resources;
- 4) two from agriculture-related businesses in the basin;
- 5) one representative each from a school district, city, county, and public power district in the basin; and
- 6) four senators, including two who reside in the basin, one who has a portion of his or her district in the basin, and the chairperson of the Natural Resources Committee, who shall be ex officio, nonvoting members.

The task force is to be housed within the Department of Natural Resources for administrative and budgetary purposes, advisory support may be requested from federal and state agencies, and non-state employees are to be reimbursed for expenses. The task force is to meet no less than quarterly, shall hire a facilitator, and is to convene within 30 days after appointments are completed. The task force is to provide a report to the Governor and Legislature, and is to terminate on June 30, 2012.

FINAL STATUS: Approved by the Governor with the Emergency Clause 4-5-10 2010 Priority Bill – Senator Carlson

LB 1076 – (Schilz) Change provisions relating to evaluation of river basins, subbasins, and reaches. LB 1076 allows river basins that have been determined to be over-appropriated to be re-evaluated. The bill also allows any river basin that the department has declared a moratorium on surface water appropriations prior to July 16, 2004 to be evaluated for over-appropriated status.

FINAL STATUS: Held in the Natural Resources Committee. *Indefinitely Postponed (Killed) upon adjournment Sine Die.*