

# NEBRASKA NATURAL RESOURCES COMMISSION

## MEETING MINUTES – February 21, 2018

**Roll Call:**

Commissioners		Absent	Present	Commissioners		Absent	Present
Amen	Karen	X		Rains	Darrell M.	X	
Anderson	Garry		X	Reynolds	Michael (Mick)		X
Barels	Brian		X	Schroer	Lyle		X
Batie	Donald		X	Shields	Jim		X
Clouse	Stan		X	Smathers	Scott		X
Czaplewski	Mark		X	Smith	Lindsey		X
Deines	Dave	X		Steffen	Jeff		X
Dunbar	Brad	X		Strauch	Walter Dennis		X
Fornoff	Kevin		X	Sugden	Steven		X
Hadenfeldt	N. Richard		X	Taylor	Loren		X
Halligan	Bill	X		Thompson	Jim		X
Knutson	Thomas	X		Wilke	Greg	X	
Kraus	Don		X	Wright	Chad	X	
Ag Business	Vacant						

Note: Stan Clouse stepped out briefly during the meeting and missed one roll call vote before returning.

**DNR staff in attendance:**

Jeff Fassett, Kent Zimmerman, LeRoy Sievers, Tim Freed and Jill Richters.

**Others in attendance were:**

Russell Callan, LLNRD; David Potter, LPSNRD; Dustin Wilcox, NARD; and Jodi Delozier, UNL Student.

### CALL TO ORDER, ROLL CALL

Chairman Strauch called the meeting to order at 1:00 p.m. in the Holiday Inn & Convention Center, Kearney, Nebraska, and asked Zimmerman to call the roll.

### NOTICE OF THE MEETING

Notice of the meeting was published on the State Public Meetings Calendar and on the Natural Resources Commission web site at <https://nrc.nebraska.gov>. A copy of Nebraska's public meeting statutes was available in the room.

### MINUTES

**Batie moved and Kraus seconded the motion to approve the minutes of the November 28, 2017, Commission meeting.**

**Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen				X	Rains				X
Anderson	X				Reynolds	X			
Barels	X				Schroer	X			
Batie	X				Shields	X			
Clouse	X				Smathers	X			
Czaplewski	X				Smith	X			
Deines				X	Steffen	X			
Dunbar				X	Strauch	X			
Fornoff	X				Sugden	X			
Hadenfeldt	X				Taylor	X			
Halligan				X	Thompson	X			
Knutson				X	Wilke				X
Kraus	X				Wright				X
					<b>TOTALS</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>8</b>

### **PUBLIC COMMENTS**

Chairman Strauch opened the floor for public comments. Jodi Delozier, UNL graduate student researching stakeholder engagement in an integrated water management process under Dr. Burbach, addressed the Commission describing her research and the importance of the Commissioner's responses to the survey which had been emailed to them twice prior to this meeting.

### **DNR UPDATE & EXPENDITURES REPORT**

Director Fassett reviewed the following items:

- The Governor's budget reductions to the DNR operating budget, Commission funds and the CREP program.
- Filling the DNR Assistant Director position which is currently open.
- Review and develop changes to all agency rules under the guidance of the Governor's Executive Order.

- Legislative bills surrounding the NCORPE project and LB98.
- Republican basin litigation is now over. Republican basin planning should be finalized in 2018.
- The Platte River Recovery Implementation Program is working through the loss of Jerry Kenny and the transition of work to others. Department staff is working on the extension of that program which will require a major set of congressional activities for the next couple years. This is a very important species recovery program that must be extended. Platte River basin planning is also coming to closure in 2018.
- The application for a permit from DNR for the Platte to Republican Diversion Project is expected to be filed in the Department very soon.

### **PROGRAM COMMITTEE**

Because the Program Committee did not meet, staff led the discussion on agenda topics pertaining to program activities. No unusual activity was reported during review of status reports for the following funds.

#### **Resources Development Fund**

- The status report showed reimbursements since the November Commission meeting as well as the available obligated funds for the two projects with balances.

#### **Small Watersheds Flood Control Fund**

- Staff reported that the only activity in this fund since the November meeting was the addition of accrued interest. It appears the money in this fund will be reclaimed by the Legislature and no additional funding is being proposed. Staff will continue to show this fund on future Commission meeting agendas but will not produce reports until such time as funding is restored. Director Fassett clarified that the bill is to sweep any money in the fund on June 30<sup>th</sup>, but the fund itself does not go away.

#### **Soil and Water Conservation Fund Program**

- Staff reported the budget reductions being proposed for this fiscal year will reduce this fund by about \$37,000. Once the budget legislation is signed and final, the necessary adjustments will be made.

#### **Natural Resources Water Quality Fund**

- A \$625,000 semi-annual funding distribution to NRDs was made last week.

#### **Water Well Decommissioning Fund**

- The status report showed business as usual.

### **Water Sustainability Fund (WSF)**

- A status report was distributed showing for each project the approved grant amount, cumulative reimbursement total and remaining unclaimed balance.
- During the November Commission meeting the NRC Executive Committee raised questions about WSF grants on which no reimbursements had been requested. Staff was asked to meet with those project sponsors to discuss project status and planned expenditures. Staff reported the findings and noted that inquiry had been enough to prompt many sponsors into submitting reimbursement requests.
- Staff reviewed the reason that modification of project scope was necessary for application #4151. Director Fassett verified (Title 261, Chapter 3, No. 11) the project would still meet the criteria for funding eligibility if the changes being requested are approved.
- David Potter, Assistant General Manager, Lower Platte South NRD, noted that they were not asking for more money rather the transfer of money between Task items. Potter also thanked the Commission for considering their request, all of the work they do and stated this project is scheduled to be completed later this summer.
- Staff noted that the WSF does not require funding per specific task item, however the application specified no WSF cost share would be necessary for a certain task. Subsequent to Commission approval and funding it was discovered it would be necessary to reimburse for this task and staff suggested bringing this before the Commission to be transparent with administration of this fund.

**Smathers moved and Sugden seconded the motion to approve the Lower Platte South NRD request to modify Water Sustainability Fund project No. 4151 by reducing \$10,000 of administrative cost from each of Tasks 100, 200, 300 & 400; and to create Task 600 for \$40,000 worth of project administration. No additional money is being awarded to this project.**

**Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen				X	Rains				X
Anderson	X				Reynolds	X			
Barels	X				Schroer	X			
Batie	X				Shields	X			
Clouse				X	Smathers	X			
Czaplewski	X				Smith	X			
Deines				X	Steffen	X			
Dunbar				X	Strauch	X			
Fornoff	X				Sugden	X			
Hadenfeldt	X				Taylor	X			
Halligan				X	Thompson	X			
Knutson				X	Wilke				X
Kraus	X				Wright				X
					<b>TOTALS</b>	<b>17</b>	<b>0</b>	<b>0</b>	<b>9</b>

**COMPREHENSIVE PLANNING COMMITTEE**

- Sievers gave an overview of the process going forward including the official “Report” reviewing the public hearing testimony, exhibits containing additional comments that were made along with the Commission’s responses relative to those comments. Next Sievers stated, if the Commission decides to move forward with adoption of these rule amendments it must produce a “Concise Explanatory Statement” explaining what changes have been made to the proposed rule amendments since they were published. Next the Report, Concise Explanatory Statement and the adopted rules are submitted to the Attorney General’s office for review. If approved by the Attorney General, the rules go to the Governor. If approved by the Governor the rules go to the Secretary of State. Five days after receipt by the Secretary of State the rules become effective.
- Committee Chairman Barels opened by stating the Commission could take up to three separate actions regarding the changes being proposed for the Water Sustainability Fund

Rules (Title 261). The first being an action on the draft “Report” which had been submitted by the committee to Commissioners prior to the meeting. The “Report” identifies both written and verbal comments received during the public hearing on the proposed changes, as well as the proposed response drafted by the Committee and DNR staff.

**Barels moved and Kraus seconded the motion to approve the Report of the Natural Resources Commission.**

**Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen				X	Rains				X
Anderson	X				Reynolds	X			
Barels	X				Schroer	X			
Batie	X				Shields	X			
Clouse	X				Smathers	X			
Czaplewski	X				Smith	X			
Deines				X	Steffen	X			
Dunbar				X	Strauch	X			
Fornoff	X				Sugden	X			
Hadenfeldt	X				Taylor	X			
Halligan				X	Thompson	X			
Knutson				X	Wilke				X
Kraus	X				Wright				X
					<b>TOTALS</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>8</b>

- Sievers described “substantive change” and a discussion he had with the Governor’s staff specific to whether not making a proposed change would now be considered a “Substantive Change”. The Governor’s staff told Sievers leaving it alone would not be considered a “Substantive Change”. Governor’s staff also told Sievers they were not comfortable with the changes proposed for Chapters 4 & 5.

- Comprehensive Planning Committee Chairman Barels stated the committee recommended moving forward with the rules revisions in the November 17<sup>th</sup> draft with the exception of the changes proposed to Chapter 2, 009.02 and also keeping the existing Chapter 4 and not having the revised Chapter 4 nor the new Chapter 5.
- Batie thanked Commissioners for submitting comments and noted a lot of the comments were used.
- Barels noted that there is still uncertainty regarding Chapter 2, 009.02 and the Committee will continue work to address clarification regarding permits. Czaplewski requested this be added to the formal agenda so that it not become lost over time. Chair Strauch responded that the committee will reach out to people who responded with comments and suggestion for input as they move forward.

**Barels moved and Shields seconded the motion to approve the Commission Rules Title 261 as amended.**

**Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen				X	Rains				X
Anderson	X				Reynolds	X			
Barels	X				Schroer	X			
Batie	X				Shields	X			
Clouse	X				Smathers	X			
Czaplewski	X				Smith	X			
Deines				X	Steffen	X			
Dunbar				X	Strauch	X			
Fornoff	X				Sugden	X			
Hadenfeldt	X				Taylor	X			
Halligan				X	Thompson	X			
Knutson				X	Wilke				X
Kraus	X				Wright				X
					<b>TOTALS</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>8</b>

- Committee Chairman Barels next stated that based upon the previous discussion and passing of the rules, the “Concise Explanatory Statement” is correct and needs to be approved.

**Barels moved and Smathers seconded the motion to approve the concise explanatory statement.**

**Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen				X	Rains				X
Anderson	X				Reynolds	X			
Barels	X				Schroer	X			
Batie	X				Shields	X			
Clouse	X				Smathers	X			
Czaplewski	X				Smith	X			
Deines				X	Steffen	X			
Dunbar				X	Strauch	X			
Fornoff	X				Sugden	X			
Hadenfeldt	X				Taylor	X			
Halligan				X	Thompson	X			
Knutson				X	Wilke				X
Kraus	X				Wright				X
					<b>TOTALS</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>8</b>

- Committee Chairman Barels thanked the committee members, staff and all Commissioners for staying with this process to see it completed.
- Sievers noted the possible time line for the rules to become effective is May 1, 2018.



### **LEGISLATIVE COMMITTEE**

- NRC Chairman Strauch covered a couple items the Commission has actively taken a position on with the Legislature. The first, LB808, a bill to remove \$100,000 of the Water Sustainability Fund's (WSF) appropriation and create a new fund that municipalities could use to provide money for hook-ups and water for community gardens, to be administered by the Department of Agriculture. Committee Chair Dunbar testified in person and Strauch stated that he had sent a letter on behalf of the Commission in opposition to the bill because it doesn't fit with the purpose of the WSF and because once the door is opened to this fund being raided it won't stop. Strauch noted the Executive Committee had authorized the letter and message and a copy was sent to all Commission members.

The second item covered by Chairman Strauch was LB945 which contained budget cuts to the WSF. Strauch sent a letter, which had been authorized by the Executive Committee and provided to all members of the Commission, expressing the Commission's concerns to Senator Stinner, Chairman of the Appropriations Committee.

Chairman Strauch also noted the process he has used relative to providing quick response to legislative bills and amendments by circulating a draft letter to the Executive Committee for its concurrence, then moving forward and always providing a copy to all Commissioners; asking the Commission if it was comfortable with this process. Commissioners unanimously affirmed noting that's why he was elected chair and the process is very appropriate.

### **GOVERNOR APPOINTEES' EXPIRATION MAY 31, 2018**

- Director Fassett announced that he inquired into expediting any re-appoints hoping those folks could go before this Legislature for confirmation. The Governor's staff responded saying they will have to wait until their scheduled term expires and consequently wait to go before the Legislature until 2019. Appointed but unconfirmed Commissioners will be allowed to vote and be eligible for reimbursement for their service.

### **ANNUAL SCHEDULING OF NRC MEETING DATES**

- Prior to this meeting, staff surveyed several members of the Executive Committee regarding the annual setting of the yearly Commission meeting dates. Many dates were noted to conflict with Commission members work activities and schedules. The remaining proposed dates were emailed to Commissioners requesting they review their calendar and come to this meeting prepared to discuss and select the next four quarterly meeting dates. After discussion,

Czaplewski moved and Barels seconded the motion to schedule the Commission meeting dates as follows: May 17, August 15, and December 12, 2018; and March 6, 2019.

**Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen				X	Rains				X
Anderson	X				Reynolds	X			
Barels	X				Schroer	X			
Batie	X				Shields	X			
Clouse	X				Smathers	X			
Czaplewski	X				Smith	X			
Deines				X	Steffen	X			
Dunbar				X	Strauch	X			
Fornoff	X				Sugden	X			
Hadenfeldt	X				Taylor	X			
Halligan				X	Thompson	X			
Knutson				X	Wilke				X
Kraus	X				Wright				X
					<b>TOTALS</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>8</b>

**COMMITTEE ASSIGNMENTS**

- Chairman Strauch asked anyone desiring to change their committee assignment to let him know as this is the mid-point of the Commission's two year election cycle.

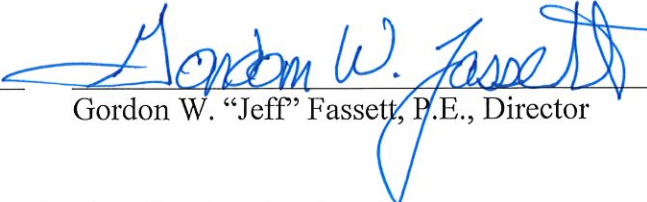
**OTHER BUSINESS/REQUESTS FOR AGENDA ITEMS**

- The next meeting will be held at 1:00 p.m. on May 17, 2018, in Kearney.

ADJOURNMENT

- The meeting was adjourned at 2:43 p.m

  
Dennis Strauch, Chairman

  
Gordon W. "Jeff" Fasett, P.E., Director

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