

NEBRASKA NATURAL RESOURCES COMMISSION

MEETING MINUTES – December 18, 2019

Roll Call:

Commissioners		Absent	Present	Commissioners		Absent	Present
Amen	Karen		X	Kraus	Don		X
Anderson	Garry		X	McDonald	Mike	X	
Barels	Brian		X	Miller	John		X
Batie	Donald		X	Reynolds	Michael (Mick)		X
Bradley	Lawrence		X	Schroer	Lyle		X
Clouse	Stan		X	Shields	Jim		X
Czaplewski	Mark		X	Smathers	Scott		X
Deines	Dave		X	Steffen	Jeff	X	
Dunbar	Brad		X	Strauch	Walter Dennis		X
Fornoff	Kevin		X	Taylor	Loren		X
Hadenfeldt	N. Richard		X	Wilke	Greg		X
Halligan	Bill		X	Wright	Chad	X	
Heaston	John		X	(Livestock)	Vacant		
Knutson	Thomas		X				

DNR staff in attendance:

Jeff Fassett, Tim Freed, Kent Zimmerman, Emily Rose, and Jill Richters.

Others in attendance were:

Karen Griffin, O&A; Mallory Morton, O&A; Marie Krausnick, UBBNRD; Kent Miller, TPNRD; Russell Callan, LLNRD; Tylr Naprstek, LLNRD; Dustin Wilcox, NARD; Jonathan Mohr, JEO; Mike Murren, LPSNRD.

CALL TO ORDER, ROLL CALL

Chairman Smathers called the meeting to order at 8:00 a.m. in the Holiday Inn and 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 (Commission) web site at <https://nrc.nebraska.gov>. A copy of Nebraska's open meeting statutes was available in the room.

MINUTES

It was noted that the August 5th, 2019 Commission meeting had been cancelled due to flooding during the scheduled event.

Knutson moved and Czaplewski seconded the motion to approve the minutes of the May 22nd, 2019 Commission meeting.
Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				McDonald				X
Barels	X				Miller	X			
Batie	X				Reynolds	X			
Bradley	X				Schroer	X			
Clouse	X				Shields	X			
Czaplewski	X				Smathers	X			
Deines	X				Steffen				X
Dunbar	X				Strauch	X			
Fornoff	X				Taylor	X			
Hadenfeldt	X				Wilke	X			
Halligan	X				Wright				X
Heaston	X				(Vacant)				
Knutson	X				TOTALS	23	0	0	3

PUBLIC COMMENTS

Chairman Smathers opened the floor for public comments, no comments were offered.

DNR UPDATE & EXPENDITURES REPORT

Freed noted the Commission Fund Expenditures and Cash Funds Balance reports had been distributed prior to the meeting, and reminded Commissioners to claim Per Diem for the days spent reviewing applications. Per Diems of \$50 are to be claimed for each 8 hours spent reviewing applications

Director Fassett announced:

- The extension of the Platte River Recovery Implementation Program is expected to be executed within the next two days. The cooperative agreement has been signed by the Governors of Nebraska, Wyoming and Colorado and is now in front of the United States Secretary of Interior for signature. That agreement sets out the financial terms for the 13 year extension, until the year 2032.
- The Department is working closely with NRDs and other units of government across the state to address flood related concerns. Looking forward, it's likely there may be a shift in the types of WSF funding requests. Governor Ricketts opened a dialog with the Governors of Iowa, Kansas and Missouri towards a Lower Missouri River Basin Coalition effort to work together on main stem Missouri River issues; and to extend some of the United States Army Corps of Engineers work on the main stem into the tributaries, because the 2019 flood was primarily a tributaries flood in contrast to the 2011 flood event which was upstream on the main stem.
- DNR is aggressively making investments in needed infrastructure such as measurements, controls and other management tools so that we are better prepared for the next dry period.
- The recent significant infrastructure failure in Wyoming and its effects in Nebraska were an eye opener for many people as to the importance, age and condition of some water related structures.
- Batie thanked the Director for the recent web page "Story Map for 2019 Flood Event" summarizing the March 2019 flood events and its impacts which can be found at: <https://storymaps.arcgis.com/stories/9ce70c78f5a44813a326d20035cab95a> .
- Bradley questioned Colorado's activities with Platte River water to which Fassett replied he is "constantly looking upstream." Fassett noted that some of the water Colorado is looking to recapture is water imported from the western slope. Fassett also noted that Colorado is a primary participant in the Platte River Recovery program, contributing both dollars and water to the recovery program efforts in central Nebraska.
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EXECUTIVE COMMITTEE

Chairman Smathers stated the Executive Committee met December 17th, and was not bringing forward any action items. Smathers noted that terms expire in April for seven of the NRC's appointed positions, and that Kraus will be Chairing the Legislative Committee in 2020.

LEGISLATIVE COMMITTEE

Committee Chairman Kraus will focus on sharing the purpose and history of the Commission's Water Sustainability Fund with members of the Legislature as well as the results of what the fund has accomplished through work with the project sponsors.

Heaston questioned what the boundaries and limitations are for commissioners when working with members of the Legislature, and that this information be circulated to all Commissioners.

COMPREHENSIVE PLANNING COMMITTEE

Committee Chairman Barels announced that the committee has not had an action item requiring a meeting.

Rose announced that she is working with the governor's Policy Research Office on minor wording changes and hopes to be in a position by the next NRC meeting for the Commission to take an action to proceed with the formal rules change process.

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 business as usual.

Small Watersheds Flood Control Fund

This is currently an unfunded program.

Soil & Water Conservation Program Fund

The status report showed business as usual with an allocation of about \$1.8 million to the NRD's in July.

Natural Resources Water Quality Fund

A semi-annual funds distribution of \$385,000 was distributed in August, the next distribution is scheduled for February 2020.

Water Well Decommissioning Fund

The status report showed business as usual. When questioned, Richters stated that the formula for distribution of funds is based upon the past three year average of wells decommissioned by the NRDs participating in this program. The amount varies from year to year.

Water Sustainability Fund

- The status report showed business as usual.
- Batie noted the remaining balance on WSF No. 4118 & 4124 and questioned if the projects were completed or still in progress. Reynolds stated that the sponsor is making progress and wants to get them completed. Reynolds also stated that he would follow-up on the projects status at the NRD meeting tomorrow.

- Strauch questioned the status of WSF No. 5181 and whether it was moving through the permitting process. Director Fassett replied that his staff and the attorneys are working through a number of procedural issues and have yet to begin working through the merits of the permit application. Therefore, it will be a while before an answer is reached upon the permit request for this project.
- Taylor requested an update on the status of WSF No. 4152 questioning why it wasn't completed. Staff replied that the project sponsor had not placed the rip-rap prior to this springs flood events and that progress is now being made.
- Regarding project close-outs under Neb. Rev. Stat. § 2-1507 (4), transfer of unused funds into the unreserved balance of the WSF must be formally authorized by a transfer motion. In response to previous NRC direction, staff developed the "Water Sustainability Fund Proposed Close-Out and Grant Reductions" report which was distributed prior to, and copies made available at this meeting (see attachment). Going forward, that report will be the basis for close-out action each year during the fourth quarterly meeting prior to action on the next batch of WSF applications. The following table summarizes project close-outs; and reductions to the amount granted for completed projects with remaining cash balances listed in that report:

Project Number	Year	Grant	Proposed Grant	Returned Grant	Sponsor
4117	2015	\$4,410,000.00	\$4,410,000.00	\$0.00	Hastings Utilities
4125	2015	\$96,300.00	\$96,300.00	\$0.00	ENWRA
4132	2015	\$250,000.00	\$249,999.60	\$0.40	LPSNRD
4133	2015	\$81,270.00	\$81,270.00	\$0.00	UENRD
4135	2015	\$200,000.00	\$91,724.60	\$108,275.40	LPNNRD
4140	2015	\$240,000.00	\$240,000.00	\$0.00	PMNRD
4141	2015	\$250,000.00	\$249,999.60	\$0.40	LENRD
4142	2015	\$250,000.00	\$249,999.60	\$0.40	LPNNRD
4143	2015	\$61,200.00	\$61,200.00	\$0.00	LCNRD
4144	2015	\$250,000.00	\$249,999.60	\$0.40	LLNRD
4159	2016	\$250,000.00	\$250,000.00	\$0.00	MRNRD
4160	2016	\$2,407,200.00	\$2,407,200.00	\$0.00	Village of Mitchell
4170	2016	\$915,554.70	\$915,554.70	\$0.00	FCID
TOTALS		\$9,661,524.70	\$9,553,247.70	\$108,277.00	

Shields moved and Fornoff seconded the motion to adjust the grants described in the (attached) Water Sustainability Fund Proposed Close-out and Grant Reduction table (summarized above) by reducing the amount granted to that in the proposed grant column; transfer the unused balance described in the returned grant column into the unreserved balance of the WSF; and formally close-out each project listed in the table.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				McDonald				X
Barels	X				Miller	X			
Batie	X				Reynolds	X			
Bradley	X				Schroer	X			
Clouse	X				Shields	X			
Czaplewski	X				Smathers	X			
Deines	X				Steffen				X
Dunbar	X				Strauch	X			
Fornoff	X				Taylor	X			
Hadenfeldt	X				Wilke	X			
Halligan	X				Wright				X
Heaston	X				(Vacant)				
Knutson	X				TOTALS	23	0	0	3

Application Review Committee

Committee Chairman Dunbar directed Commissioners to the “2019 NRC Application Review Committee Recommendation” table and the “WSF 2019 Conditions & Considerations” document (both attached). Dunbar also thanked the Application Review Committee members for their time and commitments reviewing and scoring the applications and for participation in the Committee meeting on November 12th and 13th, 2019. (2019 Committee members are Dunbar-Chair, Steffen-Vice Chair, Tom Knutson, Karen Amen, Mark Czaplewski, John Heaston, Loren Taylor, Garry Anderson, Bill Halligan, Kevin Fornoff and Mick Reynolds.)

Dunbar led discussion of the Application Review Committee’s recommendations starting with applications requesting \$250,000 or less by giving the name of the project and a brief description and then opening the floor to discussion.

Dunbar moved and Batie seconded the motion to approve Application Review Committee’s recommended scores (Attached) and fund all small projects with a score of 40 or higher including the conditions for WSF No. 5241 proposed by the Application Review Committee

(described below); and move any remaining funds to the large project category. (Note: Those applications are #5241 – score 47; #5243 – score 45; #5244 – score 42; #5255 – score 41; and #5256 – score 40.)

Coordination, Communication, and Data Sharing with the Department.

- A. Throughout the Project timeline, Sponsor shall coordinate and communicate with the Department on the Project’s compatibility with water management goals, objectives, and action items resulting from the joint planning efforts between Sponsor and the Department.
 - i. Within sixty (60) days following the execution of this Agreement, Sponsor and Department shall meet to further mutually define the scope of this coordination and communication requirement.

- B. Sponsor shall share with the Department all data that is generated as a result of this Project in a form that includes documentation and metadata and that is mutually agreed upon by Sponsor and Department.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				McDonald				X
Barels	X				Miller	X			
Batie	X				Reynolds	X			
Bradley	X				Schroer	X			
Clouse	X				Shields	X			
Czaplewski	X				Smathers	X			
Deines	X				Steffen				X
Dunbar	X				Strauch	X			
Fornoff	X				Taylor	X			
Hadenfeldt	X				Wilke	X			
Halligan	X				Wright				X
Heaston	X				(Vacant)				
Knutson	X				TOTALS	23	0	0	3

Dunbar moved and Heaston seconded the motion to approve the Application Review Committee’s recommended conditions as set forth in “WSF 2019 Conditions & Considerations” (Document Attached).

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				McDonald				X
Barels	X				Miller	X			
Batie	X				Reynolds	X			
Bradley	X				Schroer	X			
Clouse	X				Shields	X			
Czaplewski	X				Smathers	X			
Deines	X				Steffen				X
Dunbar	X				Strauch	X			
Fornoff	X				Taylor	X			
Hadenfeldt	X				Wilke	X			
Halligan	X				Wright				X
Heaston	X				(Vacant)				
Knutson	X				TOTALS	23	0	0	3

Dunbar led discussion of the Application Review Committee’s recommendations starting with applications requesting more than \$250,000 by giving the name of the project and a brief description and then opening the floor to discussion.

Chairman Smathers noted that while some Commissioners may have a personal opinion of certain types of projects, the scoring system in place was designed to follow legislative guidance for the types of projects that need to be funded. That system of review and scoring, was adhered to this time just as it has been in the past. Halligan added that it is important to score each

application fairly based upon the merits of the application and to remember that someone else is willing to pay forty percent of the cost of the project.

Batie reminded Commissioners that the Department reviews applications to be sure they meet thresholds for economic, technical and financial feasibility, but does not review whether the proposed project fits the Water Sustainability Fund categories. That is the Application Review Committee's responsibility. Batie also noted concerns of the Comprehensive Planning Committee when drafting the rules as to how projects for things like computer modeling and data collection for management would score against shovel-ready projects. Some of those projects are now scoring at the top of both categories.

Dunbar moved and Batie seconded the motion to approve Application Review Committee's recommended scores(Attached) and fund all large projects with a score of 38 or higher, including the CSO (in the amount of \$1,086,503.30). (Note: Those applications are # 5242 – score 49; # 5249 – score 44; # 5238 – score 40, # 5247 – score 39; and # 5252 – score 38. Also, including the following condition for WSF No. 5242 included within the “WSF 2019 Conditions & Considerations” recommendation approved above.)

Coordination, Communication, and Data Sharing with the Department.

- A. Throughout the Project timeline, Sponsor shall coordinate and communicate with the Department on the Project's compatibility with water management goals, objectives, and action items resulting from the joint planning efforts between Sponsor and the Department.
 - i. Within sixty (60) days following the execution of this Agreement, Sponsor and Department shall meet to further mutually define the scope of this coordination and communication requirement.

- B. Sponsor shall share with the Department all data that is generated as a result of this Project in a form that includes documentation and metadata and that is mutually agreed upon by Sponsor and Department.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				McDonald				X
Barels	X				Miller	X			
Batie	X				Reynolds	X			
Bradley	X				Schroer	X			
Clouse	X				Shields	X			
Czaplewski	X				Smathers	X			
Deines	X				Steffen				X
Dunbar	X				Strauch	X			
Fornoff	X				Taylor	X			
Hadenfeldt	X				Wilke	X			
Halligan	X				Wright				X
Heaston			X		(Vacant)				
Knutson	X				TOTALS	22	0	1	3

Batie noted that while the allocation “Cap” has not been utilized in the past, this is the year that the “Cap” was designed for. We have high quality projects that are extremely close in scoring and the “Cap” allows funding for worthy projects. Krause added that use of the “Cap” is in accordance with the rules (Title 261) and statutes Neb. Rev. Stat. § 2-1507 (4).

After general discussion regarding the likely remaining dollar amounts available in each category next year, Chair Smathers noted that the small project category was created by the Commission, not statute. Therefore, the Commission could move funding from small to large project categories if it chooses.

Dunbar moved and Czaplewski seconded the motion to approve application 5253 utilizing all remaining funding including any remaining funds in the small category, as well as utilizing the cap in accordance with Title 261 chapter 3 subsection 002.03. (Note: The application is being approved for a total Allocation of \$5,857,792.00; of which \$3,293,650.96 is Obligated now and the remaining \$2,564,141.04 to be obligated in the future as funding becomes available.)

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen			X		Kraus	X			
Anderson	X				McDonald				X
Barels	X				Miller	X			
Batie	X				Reynolds	X			
Bradley	X				Schroer	X			
Clouse	X				Shields	X			
Czaplewski	X				Smathers	X			
Deines	X				Steffen				X
Dunbar	X				Strauch		X		
Fornoff	X				Taylor	X			
Hadenfeldt		X			Wilke	X			
Halligan	X				Wright				X
Heaston	X				(Vacant)				
Knutson	X				TOTALS	20	2	1	3

Chair Smathers thanked Chair Dunbar and the Application Review Committee members for their diligent efforts, department staff for their reviews, and the project sponsors who submitted applications.

OTHER BUSINESS

Heaston suggested contacting the Water Leaders Academy to inquire if they would be interested in being noted as a resource to project sponsors needing help preparing an application. Heaston offered, and Chair Smathers accepted, to formulate a proposal to the Executive Committee for discussion at the next NRC meeting which may include the possibility of an applicant's application review meeting prior to final application submittal. Strauch suggested inviting Lee Orton to give a presentation to the Commission at the February meeting about what the Water Leaders Academy was.

It was noted that seven NRC member's terms expire in April of 2020 and that applications need to be submitted to the Governor by each member who desires to reapply.

The next NRC meeting is February 19th, 2020 here in Kearney.

ADJOURNMENT

The meeting was adjourned at 10:10 a.m.

Attachments

WSF Proposed Close-outs & Grant Reduction table

2019 NRC Application Review Committee Recommendations

WSF 2019 Conditions and Considerations

 acting Chair
Scott Smathers, Chairman


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

WSF 2019 Conditions & Considerations

The Application Review Committee recommends the following overall conditions be part of the approval of each WSF grant:

Grant awards from the Water Sustainability Fund (WSF) are contingent upon the availability of funds, as well as the applicant organization and the Nebraska Department of Natural Resources (Department) entering into a grant award agreement. If the applicant organization indicated that it has all necessary land rights to undergo the project, the Department must determine that proper documentation was submitted verifying this fact before entering into a grant award agreement with the applicant organization.

Reimbursements from the WSF shall be limited to amounts approved by the Department as having met the requirements under Title 261 Neb. Admin. Code and that include adequate documentation. Reimbursements under the WSF shall not be made for litigation-related costs in acquiring property rights or other permits if applicable.

The Application Review Committee recommends the additional following condition for Application # 5241, UBBNRD Allocation Software:

A grant award from the Water Sustainability Fund (WSF) for Application #5241, *Upper Big Blue Natural Resources District (UBBNRD) Allocation Software* is contingent upon the following provision being included in the grant award agreement between UBBNRD and the Department of Natural Resources:

Coordination, Communication, and Data Sharing with the Department.

- A. Throughout the Project timeline, Sponsor shall coordinate and communicate with the Department on the Project's compatibility with water management goals, objectives, and action items resulting from the joint planning efforts between Sponsor and the Department.
 - i. Within sixty (60) days following the execution of this Agreement, Sponsor and Department shall meet to further mutually define the scope of this coordination and communication requirement.
- B. Sponsor shall share with the Department all data that is generated as a result of this Project in a form that includes documentation and metadata and that is mutually agreed upon by Sponsor and Department.

The Application Review Committee recommends the following additional condition for Application # 5242, TPNRD Data Collection and Modeling:

A grant award from the Water Sustainability Fund (WSF) for Application #5242, *Twin Platte Natural Resources District (TPNRD) Data Collection and Modeling* is contingent upon the following provision being included in the grant award agreement between TPNRD and the Department of Natural Resources:

Coordination, Communication, and Data Sharing with the Department.

- A. Throughout the Project timeline, Sponsor shall coordinate and communicate with the Department on the Project's compatibility with water management goals, objectives, and action items resulting from the joint planning efforts between Sponsor and the Department.
 - i. Within sixty (60) days following the execution of this Agreement, Sponsor and Department shall meet to further mutually define the scope of this coordination and communication requirement.
- B. Sponsor shall share with the Department all data that is generated as a result of this Project in a form that includes documentation and metadata and that is mutually agreed upon by Sponsor and Department.

Water Sustainability Fund Proposed Close-Out and Grant Reductions

Project Number	Year	Grant	Proposed New Grant	Returned Grant	Project Name	Sponsor
4117	2015	4,410,000.00	4,410,000.00	\$0.00	Aquifer Storage and Resoration/Nitrate and Uranium Control	Hastings Utilities
4125	2015	\$96,300.00	\$96,300.00	\$0.00	Secondary Bedrock Aquifer Reconnaissance Sampling/Age Dating	ENWRA
4132	2015	\$250,000.00	\$249,999.60	\$0.40	Lower Platte South NRD Aquifer Framework Mapping	LPSNRD
4133	2015	\$81,270.00	\$81,270.00	\$0.00	Aerial Electromagnetic Survey of the Bazile Groundwater Management Area	UENRD
4135	2015	\$200,000.00	\$91,724.60	\$108,275.40	Groundwater Management for Mid-Summer Declines	LPNNRD
4140	2015	\$240,000.00	\$240,000.00	\$0.00	P-MRNRD Sarpy County Aquifer Mapping	PMNRRD
4141	2015	\$250,000.00	\$249,999.60	\$0.40	Lower Elkhorn NRD - Aquifer Framework Mapping	LENRD
4142	2015	\$250,000.00	\$249,999.60	\$0.40	Lower Platte North NRD - Aquifer Framework Mapping	LPNNRD
4143	2015	\$61,200.00	\$61,200.00	\$0.00	Lewis and Clark Aero Electromagnetics Aquifer Mapping	LCNRD

Project Number	Year	Grant	Proposed New Grant	Revised Grant	Project Name	Sponsor
4144	2015	\$250,000.00	\$249,999.60	\$0.40	Lower Loup NRD- Aquifer Mapping	LLNRD
4159	2016	\$250,000.00	\$250,000.00	\$0.00	MRRNRD High Tech Irrigation Implementation	MRRNRD
4160	2016	2,407,200.00	2,407,200.00	\$0.00	Mitchell Wastewater Improvements - 2016	Village of Mitchell
4170	2016	\$915,554.70	\$915,554.70	\$0.00	FCID Storage Enhancement and Retiming Project	FCID
Totals		\$9,661,524.70	\$9,553,247.70	\$108,277.00		