

# NEBRASKA NATURAL RESOURCES COMMISSION

## MEETING MINUTES – November 28, 2023

### CALL TO ORDER – PLEDGE OF ALLEGIANCE & ROLL CALL

Chairman Batie called the meeting to order at 8:00 a.m. in the Holiday Inn Hotel & Conference Center, Kearney, Nebraska. The roll was called following the Pledge of Allegiance.

**Roll Call:**

Commissioners		Absent	Present	Commissioners		Absent	Present
Rollie	Amsberry		X	Tim	Krause		X
Garry	Anderson		X	Rick	Kubat		X
Don	Batie		X	Tom	Mountford		X
Lawrence	Bradley	X		Keith	Rexroth		X
Devin	Brundage		X	Mick	Reynolds		X
Stan	Clouse		X	Lyle	Schroer	X	
Mark	Czaplewski		X	LeRoy	Sievers		X
Dave	Deines	X		Scott	Smathers	X	
Brad	Dunbar		X	Jeff	Steffen		X
Kevin	Fornoff	X		Dan	Steinkruger		X
Randy	Fox	X		Dennis	Strauch	X	
Steve	Kelly		X	Greg	Wilke		X
Tom	Knutson		X	Vacant			
				Vacant			

**DNR staff in attendance:**

Tom Riley, Kent Zimmerman, Jill Richters, and Isabella Peterson.

**Others in attendance were:**

Mike Sousek, LPSNRD; Mark Lindemann, LPSNRD; Mike Sotak, HEI, Lyndon Vogt, CPNRD, Daryl Andersen, LPNNRD; Russell Callan, LLNRD.

### ANNOUNCEMENTS

None were offered.

### NOTICE OF THE MEETING AND PUBLIC MEETING LAWS

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**

**Czaplewski moved and Rexroth seconded the motion to approve the minutes of the July 19<sup>th</sup>, 2023, Commission meeting.**

**Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amsberry	X				Kubat	X			
Anderson			X		Mountford	X			
Batie	X				Rexroth	X			
Bradley				X	Reynolds	X			
Brundage	X				Schroer				X
Clouse	X				Sievers	X			
Czaplewski	X				Smathers				X
Deines				X	Steffen	X			
Dunbar	X				Steinkruger	X			
Fornoff				X	Strauch				X
Fox				X	Wilke	X			
Kelly	X				Vacant				
Knutson			X		Vacant				
Krause	X				<b>TOTALS</b>	<b>16</b>	<b>0</b>	<b>2</b>	<b>7</b>

**DNR UPDATE & PUBLIC COMMENTS**

Director Riley offered updates on the following items:

- The design process of the Perkins County canal is moving forward, and a general public meeting is being planned to provide a progress update to interested stakeholders.
- The ARPA project to provide the City of Lincoln with a second supply of water is moving along about as fast as is possible. Statewide over \$1 Billion dollars is available, but many projects do not appear to be moving forward very fast. This has caused some

concern among the Administration and the Legislative Appropriations Committee because that money must be obligated by the end of 2024 and spent by the end of 2026.

- The Governor has called staff back to the office so DNR staff will return to “in office” status. DNR is fully staffed.
- The Department rolled out a Real-time Flood Forecasting (NeRFF) mapping tool which allows people to get an idea of what an inundation coverage area might be at a given flood stage.

No additional comments were offered from people in the audience.

### **PROGRAM COMMITTEE**

Staff led 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.

Reynolds informed the Commission that Central Platte Natural Resources District (CPNRD) would not proceed with going out for bids on the Education Center until the legislative issue of removing NRD taxing authority is resolved. This could result in a delay of up to a year.

#### **CPNRD Request to Sell Surplus Property**

Lyndon Vogt, CPNRD General Manager reviewed the Upper Prairie project and reported just under 1 million cubic yards of surplus fill material is available at the project site as a result of excavation of the detention cell. Department of Roads is rebuilding Highway 30 and an overpass in Grand Island and requested use of about 750,000 cubic yards of fill material for the Highway 30 project. Vogt’s request is for Commission authorization to sell the surplus fill material by making it available to anyone bidding this project. The Resources Development Fund cost shared this project at a rate of 52.5%, and that same percentage of sale proceeds would be returned to the fund. The CPNRD might also offer surplus fill material to other city, county and state projects. Vogt said CPNRD:

- Is not interested in installing and operating a scale.
- Does not want to deal with purchases less than 10,000 cubic yards.
- Plans to require the purchaser track and report number of loads removed and estimate the number of yards per load.
- Has surveyed the pile via a local company using a drone, and CPNRD would do the same to check how many yards had been removed.
- Would require the contractor to reform the topography, and replant it, to CPNRD’s specifications.

Vogt concluded saying this isn’t a done deal. The surplus fill material would first need be tested to see if it meets the requirements to be eligible for highway use.

Chairman Batie noted that revenue generated by this sale would be returned to the Resources Development Fund at the same percentage as the fund cost shared with the project sponsor's expenses. The money will then be transferred into the Water Sustainability Fund to go out to other projects.

Dunbar questioned the location of the surplus fill material. Vogt stated there is about 750,000 cubic yards along Airport Road, and approximately 200,000 cubic yards along 90<sup>th</sup> Road.

Steinkruger noted that in theory, the sale of this surplus fill would benefit the state by lowering the cost of a public project. Vogt added that they do not intend to make this available to private projects, only those of a government entity.

**Knutson moved and Brundage seconded the motion to proceed with public offering of disposal of surplus fill material from the Upper Prairie/Silver/Moores Flood Reduction project with 52.5% of the sale proceeds being returned to the Resources Development Fund.**

**Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amsberry	X				Kubat	X			
Anderson	X				Mountford	X			
Batie	X				Rexroth	X			
Bradley				X	Reynolds	X			
Brundage	X				Schroer				X
Clouse	X				Sievers	X			
Czaplewski	X				Smathers				X
Deines				X	Steffen	X			
Dunbar	X				Steinkruger	X			
Fornoff				X	Strauch				X
Fox				X	Wilke	X			
Kelly	X				Vacant				
Knutson	X				Vacant				
Krause	X				<b>TOTALS</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>7</b>

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

This is currently an unfunded program.

### **Soil & Water Conservation Program Fund**

The status report showed business as usual.

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

The status report showed business as usual. In August there was a \$380,000 distribution.

### **Water Well Decommissioning Fund**

The status report showed business as usual.

### **Water Sustainability Fund**

The status report showed business as usual. Staff, Commissioners and project sponsors discussed recent project progress and updates for the following projects:

- #4119 North Platte NRD's Groundwater Retirement Program is now fully reimbursed and waiting close-out.
- #4152 Lincoln Water System's Drought Resiliency and Flood Protection Project is working with NEMA and FEMA to obtain reimbursement for work related to the 2019 flood event. Once settlement with NEMA and FEMA occurs, the remaining amount eligible for reimbursement from this fund will be calculated, requested, and the project closed out.
- #5181 Platte River to Republican River Flood Flow Diversion Project remains on hold, pending the outcome of litigation related to obtaining a surface water trans basin diversion permit.
- #5209 Lower Loup NRD's Cover Crop Impact Study is wrapping up and the final reimbursement request is expected soon.
- #5217 Papio-Missouri NRD's WP-1 Detention Structure is starting to move forward after being held up by the NRCS review process.
- #5221 Upper Republican NRD's Remote Water Monitoring and Efficiency Project is moving forward with installation of telemetry units.
- Twin Platte NRD is in the process of wrapping up each of their projects with requests for final reimbursement by the end of 2023.
- #5247 West Point's Levee Improvement Project is moving forward slowly.
- #5252 Blair's Water Supply Resiliency Project is nearly complete. The final reimbursement request should be in by the end of 2023.
- #5269 NPPD's South Platte Canal Restoration Project is on schedule. The remaining funding will be used to purchase a dredge in 2025, as outlined in the application.

- #5306 The City of Peru’s Long-Term Water Supply and Flood Resiliency Project is nearly complete. Peru recently hired a CPA to help with accounting and identification of documentation necessary for reimbursement from FEMA/NEMA. Once established, a reimbursement request for the remaining eligible WSF cost share will be submitted. The project is substantially complete and final completion is expected by the end of this fiscal year.
- #5311 Lower Platte South Natural Resources District’s (LPSNRD) 3-D Hydrologic Framework Project is wrapping up. The final reimbursement request should be submitted within the next two months.
- #5312 Eastern Nebraska Water Resources Association’s Groundwater Recharge Mapping Project is underway.
- #5315 The Mapping and Modeling for Water Balance in the Middle Republican NRD Project is underway.
- #5316 Papio-Missouri NRD’s IMP Groundwater Quantity Monitoring Project is moving.
- #5317 Central Nebraska Public Power & Irrigation District’s (CNPP&ID) Elwood Siphon Project is a few months behind mostly due to obtaining land rights. Engineering is underway, plans are to let bids this spring and start construction later next summer.
- #10013 Lower Big Blue NRD’s Little Indian Creek WFPO project has not officially been approved by NRCS. The application is being reviewed by NRCS staff in Little Rock, Arkansas. Commissioner Kelly stated the NRD has accrued engineering expenses related to the project and wondered if the Commission would require the NRD to return reimbursed funds if NRCS did not approve the WFPO application and the project terminated. Chairman Batie stated that would be up to the Commission at that time. Mountford stated that “NRCS is evaluating several older watershed dams that have been in place for over 50 years and working with NRD sponsors who wish to upgrade or rebuild them. Once the best approach is determined, it will help NRCS, and sponsors move forward with applications for funding assistance”.

Chairman Batie urged Commissioners to continue to visit with and educate their state senators; and reminded Commissioners that project sponsors’ Annual Reports are available on the Commission’s website. (<https://nrc.nebraska.gov/water-sustainability-fund-reports> ) Many projects’ progresses slowed during COVID and projects requiring federal permits are way behind.

#### **WSF #5253 UPDATE BY LPSNRD**

Mark Lindemann, LPSNRD presented a review and update of the Deadmans Run Flood Reduction Project. Lindemann noted that since the time the application was approved there have been drastic cost increases. Changes to project components include; 1) delay in building the 33<sup>rd</sup> Street bridge by a few years due to the unforeseen requirement to create an overpass, 2) construction of a Baldwin Street shoefly to allow traffic to continue to move through 33<sup>rd</sup> Street

during 33<sup>rd</sup> street construction, 3) replacing the BNSF flume with a bridge designed and built by BNSF to benefit higher water flows through the project area, 4) the Baldwin connector to rout traffic off 33<sup>rd</sup> Street during construction and 5) removal of the planned detention basin as it will no longer be necessary due to other recent changes.

LPSNRD originally projected contract design to start in the spring 2019, and for construction to be completed by December 2022. Now, LPSNRD does not expect the United States of America Army Corps of Engineers (CORPS) to reach 95% design until December, and final design by April of 2024. Currently work is underway on appraisals for land rights.

The CORPS originally planned to let the flume contract as a “design build” project but found out that the railroad requires nearly final design before it will sign off on the plans. The CORPS staff at the Omaha headquarters was unable to design flumes so it took time to coordinate nationwide with other CORPS offices to arrange for someone to do the work.

The new project estimates rose from \$26.8 million to over \$56 million leaving the City of Lincoln and LPSNRD to pay \$40 million after applying the CORPS \$10 million and the WSF contribution of over \$5.8 million. The CORPS is capped at \$10 million for this project.

Lindemann also noted relocation of public utilities had not been included in the original estimation of project cost in the feasibility report. Commissioner Knutson asked if they had considered requesting a special legislative appropriation to cover the \$29.8 million cost increase. Lindemann said they had discussed that as well as seeking an increase to the USA ACE 205 project \$10 million cap ceiling.

Mike Sotak, Houston Engineering Inc., on behalf of the project sponsor stated that once you go through a General Investigative Study your cap will not be increased and it would take about 10 years to go through another one, plus an additional five years to get the CORPS share funded. Sotak reviewed the three options he believes the sponsor has regarding anticipated changes to the project and subsequent increases in project cost; 1) cover the cost increase, 2) withdraw the previously approved application and submit a new application, or 3) submit an additional application for supplemental funding to cover the additional work stemming from changes to the initial plan. Sotak also discussed possible ways to separate benefits and costs if a second application were to be filed. Sotak welcomed any feedback regarding his interpretation of the rules and how best they apply.

Chairman Batie noted that a change in scope is not warranted at this point because the sponsor isn't at a point of knowing what to ask for.

Sotak closed by saying the sponsor is requesting feedback and interpretation of the rules to the three potential scenarios discussed to help them make informed decisions as they proceed with the project.

Chairman Batie urged Commissioners to keep this issue in mind as they discuss some of the proposed changes to the rules for Title 256 later in the meeting.

Sievers stated this update has been helpful but as a project sponsor if you are asking for an interpretation of the rules in the abstract, that isn't possible. Since you are looking at a variety of alternatives as to how you may decide to proceed given a variety of factors that aren't fully fleshed yet, the Commission has never decided how it would respond to a request for change in scope without having the change in scope presented. To the extent you are asking for an advisory opinion as to how the Commission would respond to a new application that would go through a scoring process and that would mean you would compete against other applications at the point in time it is submitted, there is no way to provide an opinion in advance.

Director Riley stated that it seems they have a project in progress that would expend all of the WSF dollars in the next couple years. Is that correct? Lindemann confirmed. Riley asked what are you asking the Commission to do? Sotak responded, is the Commission comfortable with utilizing all funding for bridge work since there is no detention basin but the project still achieves the same goals? Channel widening added costs due to bridge lengthening, flume design, real estate and utilities. Zimmerman said that regarding administration of the fund, they are still moving forward with the bridge on 48<sup>th</sup> street and then planning to move onto the bridge on 38<sup>th</sup> street. Therefore, there is nothing to trigger holding up the project, they will simply run out of WSF cost share funding prior to completing the project.

Sievers asked if widening the channel was to provide the same benefits, so the detention basin isn't needed? Sotak confirmed and stated every component of the project is required to achieve all of the benefits. Sievers asked if widening the channel was part of the CORPS portion of the project, not the local portion. Sotak replied, that was how it had been compartmentalized in the initial application. Sievers stated that essentially the cost of the detention basin was removed from this project but was replaced by the channel widening which is part of the CORPS project. Sotak replied the channel widening and the resulting increase in costs by other components of the project as well.

Director Riley pointed out that the grant is for a total dollar amount and not limited to an amount per component. The sponsor may choose to invoice more in one component and less in another.

#### **WSF #10014 UPDATE BY LPNNRD**

Daryl Anderson, Water Resource Manager, Lower Platte North Natural Resource District (LPNNRD) gave an update on its "Developing a Truly Sustainable Solution to Nitrate Contamination in the Drinking Water Supply throughout the Lower Platte North NRD" project which was designed to promote increased adoption for the use of best management practices to help stop nitrate contamination; and to provide a district wide Hydrological Assessment.



The Hydrologic Assessment mapping, to depict contamination risk potential from leaching, has been completed by LRE \$5,500 under budget. Anderson stated he plans to shift this and some funding from other components to provide about \$50,000 for the component offering cost share to convert gravity flow irrigation systems to pivots and drip irrigation systems as this management practice incentive is more popular with producers. The ultimate goal, reducing nitrate leaching, remains the same. The focus area for cost share is between Columbus and Schuyler.

The LPNNRD's focus is on:

- 1) The use of water flow meters. It is getting a lot of applications for this component.
- 2) A component for producers willing to convert from gravity flow irrigation systems to pivots or subsurface drip irrigation systems. The LPNNRD offers a cost share of \$10,000 along with NRCS's \$30,000, so far \$40,000 has been committed.
- 3) Encouraging the use of cover crops after corn harvest. The LPNNRD offers an incentive payment of \$10 per acre in addition to some from NRCS. The LPNNRD is not having much luck with this component, farmers think it should be closer to \$50 per acre.
- 4) Reducing iron chlorosis through application of a product in areas with high soil ph.
- 5) Soil sampling.
- 6) Soil moisture sensors.
- 7) Encouraging split application of nitrogen fertilizer.
- 8) The use of equipment and software that can apply variable rate nitrogen.

### **EXECUTIVE COMMITTEE**

Chairman Batie stated the Executive Committee met prior to this meeting and asked staff to contact project sponsors and remind them to submit reimbursement requests to help reduce the cash balance in this fund.

The following Representative Appointment terms made by the Governor expire in May of 2024. Those serving, that want to be reappointed, should go to the governor's website and fill out an application.

- Outdoor Recreation Users
- Muni Water Users from city of 2<sup>nd</sup> Class
- Public Power
- Muni Water Users Primary Class
- MUD

- Surface Water Irrigators
- Manufacturing Interests
- 

Also, the representative for Groundwater Irrigators is vacant.

### COMPREHENSIVE PLANNING COMMITTEE

Committee Chairman Reynolds thanked the committee members and DNR staff attorney Isabella Peterson for all of their hard work and dedication to review and update the WSF rules (Title 261) in an effort to have the changes in place for the next round of applications. Reynolds stated that it was the desire of the committee to move forward with the formal rules change process and reviewed the following proposed changes.

- Change the way WSF applications are scored by allowing 0 through 6 points for questions 1-9; and 0 through 3 points for questions 10-15. Increasing the point value for question #9 reflects growing concern over water quality and increases the potential scores of applications for those projects.
- The scoring committee will round to the tenths and out to the hundredths in cases where there is a tie. This should alleviate ties.
- Limit sponsor's responses to questions regarding project benefits to those benefits tied to the project for which funding is being requested.
- Allows the Chairman or the Executive Committee to appoint members to the Application Review Committee as Committee members sometimes have something arise at the last minute which prevents them from participating in the Application Review Committee meeting. This will help expedite finding an alternate at the last minute.
- Through formal action of the Commission, allow transfer of funding from the large project request category into the small project request category. Currently, rules only allow for transfer from small to large.
- Combines the March 31<sup>st</sup> and April 1<sup>st</sup> reporting requirements into one report due on or before April 1<sup>st</sup> of each year.
- Added a provision for a contract end date 5 years from date of approval for small project requests and 10 years for large project requests unless initially approved for a longer period of time. There is also the ability for a sponsor to obtain an extension of time upon requesting to be added to the Commission's regularly scheduled meeting agenda, no later than 12 months prior to the contract end date, and then providing a showing for good cause. If the sponsor is not granted an extension of time, the contract will be terminated with no further reimbursements made for work done after the termination date.

Chairman Batie noted that, if approved, this will only apply to contracts for applications made in 2024 and beyond. It will not apply to existing contracts. Staff noted that if

approved, sponsors will be required to check a box prior to uploading an application, acknowledging they understand the new rules apply.

- Defines what information is to be included in the annual Status Report due April 1<sup>st</sup>.

Peterson identified the process going forward as; 1) submitting the draft revisions to the governor's Policy Review Office (PRO) for review and authorization to proceed, 2) schedule and give notice of the required public hearing, 3) conduct the public hearing, 4) consider comments from the public hearing if any are presented, 5) submit to the Attorney General for review and authorization to proceed, and then 5) submit to governor for review and signature.

Kelly suggested the commission consider raising the funding limit for small project funding requests next time the committee reviews the rules.

Director Riley recommended writing the contract for the number of years the applicant stated in the application it would take to complete the project.

Reynold said the committee also discussed asking project sponsors to come in and give a presentation if their project appears to be dragging.

**Reynolds moved and Knutson seconded the motion to authorize staff to proceed with formal rules change process.**

**Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amsberry	X				Kubat	X			
Anderson	X				Mountford	X			
Batie	X				Rexroth	X			
Bradley				X	Reynolds	X			
Brundage	X				Schroer				X
Clouse	X				Sievers	X			
Czaplewski	X				Smathers				X
Deines				X	Steffen	X			
Dunbar	X				Steinkruger	X			
Fornoff				X	Strauch				X
Fox				X	Wilke			X	
Kelly	X				Vacant				
Knutson	X				Vacant				
Krause	X				<b>TOTALS</b>	<b>17</b>	<b>0</b>	<b>1</b>	<b>7</b>

Knutson thanked committee members for all of the work they put into updating these rules.

**PROGRAM COMMITTEE**

No updates were given.

**LEGISLATIVE COMMITTEE**

No updates were given.

Chairman Batie reminded commissioners to be very cognizant with senators about the Water Sustainability Fund and letting them know where things are at moving forward. Staff suggested visiting the NRC’s website to review Minutes and WSF Status Reports. Director Riley noted the Commission does a fantastic job of being transparent, the minutes and reports are very clear.

That helps to prove up the value of the projects to members of the Legislature and Governor's office.

**OTHER BUSINESS**

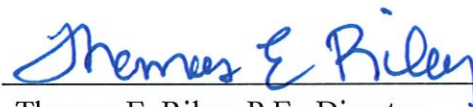
- Chairman Batie requested a report showing all completed projects for the February Commission meeting.
- Chairman Batie asked if anyone had items they would like added to the agenda for the February 21, 2024, commission meeting.
- Chairman Batie stated he would like to have a couple project sponsors give updates each Commission meeting to help them better understand what is going on with these projects.

**ADJOURNMENT**

The meeting was adjourned at 10:29 a.m.



Don Batie, Chair



Thomas E. Riley, P.E., Director