

# **MINUTES OF THE NEBRASKA NATURAL RESOURCES COMMISSION MEETING**

**November 15, 2007**

**Lincoln, Nebraska**

Those in attendance were:

Wayne Madsen, Chair	Lorrie Benson, UN-L	Ann Bleed, NDNR
Clinton Johannes, Vice Chair	Mark Burbach, UN-L	Rex Gittins, NDNR
Jim Van Marter, Member	Leroy Stokes, NRCS	Ron Theis, NDNR
John Burkholder, Member	John Winkler, P-MRNRD	Jill Richters, DNR
Richard Hadenfeldt, Member	Mike Murren, LPNNRD	Kent Zimmerman, NDNR
Larry Moore, Member	Jasper Fanning, URNRD	
Roger Korell, Member	Jay Bitner, UBBNRD	
Ladd Reeves, Member	Dave Clabaugh, LBBNRD	
Garry Anderson, Member	Dean Edson, NARD	
Joseph Hergott, Member	Myron Franzen	
Keith Rexroth, Member	Bev Franzen	
Dan Watermeier, Member		
Vincent Krampfer, Member		
Myron Lembke, Member		
Beverly Donaldson, Member		

## **CALL TO ORDER**

The meeting was called to order by Commission Chairman Wayne Madsen in the Conference Room, Lower Platte South NRD, Lincoln, Nebraska, at 8:30 a.m.

## **NOTICE OF THE MEETING**

Notice of the meeting was published in the LINCOLN JOURNAL STAR on November 4, 2007.

## **INFORMATIONAL MATERIAL**

The following items of informational materials were distributed during the course of the meeting and a copy of each is attached to the file copy of the minutes:

1. Commission Meeting Agenda
2. DNR Fund Expenditures for September - October 2007
3. NRCS November 2007 Report to the NRC/NARD
4. Draft IWRB Flow Chart & Dan Smith 10-11-07 IWRB Suggestion
5. NARD Budget Proposal Requests
  - NRDF Funding
  - NRDF Timelines Example
  - NRDF Project Benefits
  - NRDF Project Summaries
  - NRDF Assistance Summary Sheet
  - NRD/NARD Meeting Notes -NRDF Project Benefits: Gittins' e-mail 10-22-2007

6. Nebraska Resources Development Fund (NRDF):
  - Status Report(s)
  - Quarterly Report
  - Semi-Annual Report
  - LBBNRD's Request for Allocation & Obligation Increase
  - UBBNRD's Request for Extension of Time
  - Mike Sotak (Olsson Associates) letter of 10-18-2007 RE: Leigh Dam
7. Small Watersheds Flood Control Fund Status Report
8. Soil & Water Conservation Fund Status Report
9. Interrelated Water Management Plan Program Fund Status Report
10. Proposed IWMPPF Guidelines (2)

### MINUTES

Motion was made by Kramper and seconded by Van Marter to approve the minutes of the September 25, 2007, Commission meeting. Motion carried.

Aye: Hadenfeldt, Donaldson, Korell, Lembke, Hergott, Moore, Kramper, Watermeier, Burkholder, Anderson, Johannes, Rexroth, Madsen, Van Marter, Reeves

Nay: None

Abstain: None

Not Present: Kadlecek

Rexroth requested and led discussion regarding staff preparing minutes of each committee meeting to create a public record of discussion and activity, and to make those minutes available between two and three weeks after the Commission meeting. Rexroth also requested a summary of the main topics discussed and any motions passed to be available prior to the full Commission meeting. Gittins stated that staff would work with the committee chairs immediately following committee meetings to prepare a list of key points and motions for presentation at the full Commission meeting the next day. Committee meeting minutes will be distributed along with draft minutes of the full Commission meeting.

### EXPENDITURES REPORT

The expenditures report for the various funds for the months of September and October 2007 had been distributed to Commission members. Extra copies were available. Gittins described an adjustment in the expenditures report. The last column on the spreadsheet, which showed the remaining budget balance, was eliminated because it did not reflect funds available to spend. Detail sheets that follow the summary more clearly show the funds actually available to spend.

### ADVISOR'S COMMENTS

#### UN-L Water Center

Lorrie Benson, Deputy Program Manager, Water Resources Research Initiative, advised that plans are being made for the fifth Water Law, Policy and Science Conference to be held April 22 - 23, 2008, at the Embassy Suites in Lincoln. The theme of the conference is Water Quality Challenges in the Great Plains. Benson then introduced Mark Burbach, Ph.D., Assistant Geoscientist, School of Natural Resources, who reviewed the development status and potential benefits of a real time groundwater monitoring network across Nebraska. This is being conducted in cooperation with the USDA Risk Management Agency to

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measure and assess the effects of drought and climate change on groundwater in Nebraska. Burbach, using a power point presentation, summarized the objectives as follows:

1. Identify about 50 monitoring wells in Nebraska that;
  - are shallow,
  - are unconfined,
  - have available historical data,
  - respond well to changes in climatic conditions, and
  - are not impacted by groundwater pumping.
2. Establish a satellite system for reporting data.
3. Develop a web-based database to assess this information.
4. Develop early-warning monitoring applications that will tie in this data to drought prediction and drought modeling applications.
5. Have this up and running by October 2009.

Groundwater data is the area that has the least amount of data with regard to drought monitoring. Real time or recent information on stream flow, soil moisture, precipitation and weather stations data currently exceed that available for real time groundwater levels. The U.S. Drought Monitor uses a number of different indicators to put together a composite of drought. What is missing in these predictive models is real time groundwater data. The U.S.G.S. has a national climate response groundwater network with two real time sites available in Nebraska. There is an effort underway to integrate the UN-L data into the national climate response groundwater network. The effects of short- and long-term climate variability on groundwater fluctuations and trends would allow decision makers access to helpful information for use as triggers when going into different levels of management.

### NRCS

Leroy Stokes, NRCS, distributed a summary entitled “*Natural Resources Conservation Service Report to the Nebraska Natural Resources Commission and Nebraska Association of Resources Districts*” and briefed the Commission on some of the NRCS initiatives during this past year. Comments are summarized below:

- General EQIP awarded 1,462 new contracts and obligated \$21,296,969 for conservation work. The EQIP Ground and Surface Water Conservation Program awarded \$4,790,295 to improve irrigation efficiency with 245 contracts primarily to convert from flood systems to pivots.
- Organic farming adds more organic matter to the soil which in turn ties up more carbon in the soil according to a 9-year study from an experiment station in Beltsville, Maryland. When compared to conventional no-till farming, minimum-till organic farming continued to out produce (18% more yield) the no-till plots three years after the 9-year study.
- Four NRCS offices were closed in the last few months due to budget constraints. These closures did not result in any staff lay offs as one person retired for medical reasons, two people were reassigned, and one person was promoted. If further cost reductions are necessitated by the next farm bill, NRCS has a draft Phase II plan prepared in which several more offices across the state would be closed.

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- Environmental Benefits of Conservation on Cropland require NRCS to prove that what is done in the field is economically feasible and environmentally beneficial. Stokes' handout includes an excerpt from the book, ENVIRONMENTAL BENEFITS OF CONSERVATION ON CROPLAND – THE STATUS OF OUR KNOWLEDGE in the Water Management Practices Irrigated Cropland section which outlines many of the issues raised in Nebraska regarding irrigation water management improvement systems.
- Pigeon-Jones Watershed Project – NRCS Policy calls for 50% land treatment above a reservoir, however in Nebraska they strive for 75% land treatment which extends the life of the lake. There are 20 smaller dams which, along with no-till, will protect water quality coming into the lake.
- The book, THE WORST HARD TIMES describes a Nebraska farm family in the Republican River Basin during the late 1920's through the mid 1930's. There are similarities between their water problems to those faced in the same basin today.
- NRCS has 132 individuals enrolled/registered to do conservation work as Technical Service Providers.
- The FY 2008 farm bill only covers the mandatory programs under the authority of EQIP, GSWC, CRP, WHIP, WRP, GRP and FRPP; the remaining funding comes from annually-appropriated funds. NRCS is still operating under a continuing resolution for this fiscal year's annual appropriation.
- RC&Ds have been very successful in Nebraska creating partnerships that improve natural resources, create economic development, promote community improvement, promote renewable energy, help with information and educational training, and introduce new technology for marketing and merchandizing.
- The Twin Valley Weed Management Area (TVWMA) has been started to chemically treat invasive species in the Republican Basin using both aerial and ground-based control.
- A Rapid Watershed Assessment is in progress on the Blackbird Creek Watershed, primarily located on the Omaha Indian Reservation, which will lead to planning, development and construction.

Kramper mentioned that his wife attended the Dakota County NRCS Farm Program meeting for women and really thought it was great. Kramper also mentioned that there is an Organic soybean plant going in by South Sioux City.

### **DIRECTOR'S REPORT & UPDATE ON PLATTE/REPUBLICAN ACTIVITIES**

Director Bleed discussed the following:

- Game and Parks draft biological opinion that the Lower Platte cannot have any increased depletions to stream flow without endangering the least tern, piping plover and the pallid sturgeon. The Department is working with the affected NRDs and Game and Parks to further assess the situation.
- On October 16, 2007, the Department released a draft of the 2007 report of fully- and over-appropriated basins. The department is recommending that the Niobrara Basin above the Spencer Hydro plant be included on the state's fully-appropriated basin list. This action resulted from Nebraska Public Power District's (NPPD's) request for water administration last summer to maintain a flow required for continued operation of the plant. Because of the

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call on the river, junior appropriators would have received water for only 2.7 days on average during July and August, based upon the past twenty years' of stream flow records. Since this would not meet the consumptive use requirement for crops, the basin above Spencer hydro was declared fully-appropriated. Several hearings on the draft report will be held as required.

- Niobrara River water rights adjudication is in process.
- Negotiations with Kansas under the compact continue.
- The Department is working with the three Republican River NRDs on their management plans. Bleed believes that the plans for the URNRD and MRNRD will be adequate to get us where we need to be to meet the compact. The LRNRD is not going with a compliance plan; Bleed hopes to have a plan in place for this basin prior to any action being taken by Kansas.

The Department submitted four Environmental Trust Fund grant applications for funding to assist with water issues as directed in LB701. All four grants are with the University. Three of the applications were put together in conjunction with the Water Resources Advisory Panel to fund the following studies:

- climate variability education model to help people understand the effects of climate variability.
- quantification of evapo-transpiration from a crop water balance under tillable and no-till conditions.
- measurement of impacts of removing vegetation along the river to look at some of the broader concerns regarding removing vegetation on a large-scale along the river.

The fourth grant proposal is being put together with the University and the state's four largest pivot manufacturers, who want to be part of the solution. The goal is to put educational material into the hands of producers, to look at ways for producers to make more money per acre-foot of water consumption.

The Governor emphasized at the last Director's Meeting that there were to be no requests for increased funding. Bleed urged Commissioners to be very clear in setting priorities and be willing to stick to those priorities.

Rexroth asked Bleed to describe how the state is involved in setting allocations. Bleed responded that in over-appropriated areas (like the Platte River basin west of the Kearney Canal's diversion structure, and in this case an area subject to an interstate agreement) both DNR and the NRD must agree to the integrated management plan including the process of implementing the controls, rules and regulations of the management plan. To gain DNR agreement, the plan must meet compliance requirements. In this way, DNR has a role in setting allocations. Bleed stated that in basins that are declared fully-appropriated, no-one, including DNR, has the right to require the NRD to put in allocations. However, the NRD can require them on their own.

Johannes asked how many subordination agreements are in place for the Niobrara Basin above Spencer Hydro, and how many acres this covers. Bleed responded that there were about 400 agreements, but was unsure on the number of acres. Moore asked if the Spencer Hydro Dam is being inspected, because it looks very dilapidated. Bleed responded that the Department's Dam Safety Division inspects the structure.

### **ENVIRONMENTAL TRUST**

Bleed reported that the Environmental Trust met in Norfolk on November 13, 2007. Current activities include:

- The grant committee is reviewing grant applications.
- The Trust's income from the lottery is up this year from the usual \$10 million to \$14 million.

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- \$26 million worth of grant requests have been submitted, so there will be some hard decisions to make.

Kramper added that:

- The Trust is trying to reorganize the mini-grant review process. The current process involves as much review time on a \$2,500 grant request as for a \$2 million request.
- The Trust received \$50,000 from Telex Corporation as the result of penalties imposed by the State of Nebraska suing them over disposal of hazardous materials.

### **INTERRELATED WATER REVIEW BOARD**

Theis introduced the draft NRC Flow Chart for IWRB included in the review materials sent out prior to the meeting. Burkholder then handed out an October 11, 2007, letter from Dan Smith in which Smith related his recommendations regarding this process.

Jasper Fanning, Upper Republican NRD Manager, suggested that the role of the IWRB must be clearly understood by the Commission. Bleed recommended that the Commission establish a process to respond to a request from the Governor. Madsen and Fanning agreed the process needs to be in place ahead of time, adding that the 45-day response period will be required to gather nominations, contact the nominees, and get agreement to participate.

Madsen requested Commissioners review the draft process and submit any suggestions or comments to Theis as soon as possible. Theis will also draft a proposed nomination ballot for consideration. Commissioners should be prepared to discuss this at the February meeting.

### **LEGISLATIVE & BUDGET COMMITTEE**

Chair Rexroth called upon Theis to give an update on the legislative activities. Theis stated that the Legislature will begin meeting in January. He also reported that the rule changes adopted by the Commission on the RDF timing are now law. As for new legislation requests, Theis noted the Department has a few proposals pending before the Governors' Policy Review Office and the Water Resources Task Force has presented some proposals to the Natural Resources Committee staff for consideration by the Committee.

Rexroth made a motion, Johannes seconded, that the Commission declare an emergency for the purposes of taking action beyond the scope of the published agenda due to the need to convey the Commission's wishes to the Governor and Legislative Appropriation Committee in the form of a resolution prior to the beginning of the next Legislative session regarding funding needs for the NRDF and other NRC funds.

Theis described the reason and need for this motion; stating that this was a more complete disclosure of what the public body intended to take action on.

#### Motion Carried.

Aye: Van Marter, Watermeier, Moore, Lembke, Reeves, Burkholder, Kramper, Anderson, Madsen, Korell, Johannes, Donaldson, Hadenfeldt, Rexroth, Hergott  
Nay: None  
Absent: Kadlecek  
Abstain: None

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After approving the motion to take an Emergency action and place the NRDF Funding Action on the agenda;

Rexroth made a Motion, Korell seconded, to adopt the following resolution supporting the NRD budget request: Be it resolved, the Nebraska Natural Resources Commission supports both a deficit appropriation from the Nebraska Legislature in the coming mid-biennium session and a substantial increase in future annual budget appropriations for the Nebraska Resources Development Fund in order to secure adequate State resources to carry out the Resources Development Projects already allocated and other proposed projects and to enable the Commission to obligate funding on a timely basis. Be it also resolved that this message of support be conveyed to the Governor and members of the Legislative Budget Committee in person for consideration as early as possible for the January, 2008, Legislative session.

Bleed stated that Commissioners must be prepared to convince the Governor that they will make the hard decisions of funding only the best projects and turning down other requests. She recommended that if the Commission is going forward with this resolution, they should appoint and send a small group of Commissioners to spearhead the effort to talk with legislators due to the huge amount of competition for funds, and to meet with the Governor to present the Commission's case as to why this is important and why extra funding is needed.

Motion carried.

Aye: Donaldson, Watermeier, Lembke, Reeves, Burkholder, Van Marter, Kramper, Anderson, Madsen, Moore, Korell, Johannes, Hadenfeldt, Rexroth, Hergott  
Nay: None  
Absent: Kadlecek  
Abstain: None

Madsen and Rexroth appointed a sub-committee consisting of Rexroth, Moore, Lembke, Madsen, Johannes and Watermeier to meet in person with the Governor and members of the Legislature.

### **PROGRAM COMMITTEE**

#### **Nebraska Resources Development Fund (NRDF):**

Chair Johannes reported that the Program Committee met on November 14, and he was bringing forward four motions for recommended action.

#### **Lower Turkey Creek Watershed Project:**

Motion by Johannes, seconded by Watermeier, to approve the Lower Big Blue NRD's request for an increased allocation and obligation to the project for 70% of \$78,695.87 in the amount of \$55,087.11 for Component #3 (Land Rights – Site 4) of the Lower Turkey Creek Watershed Project, increasing the total project allocation from \$4,069,080 to \$4,124,167.11.

There was no discussion. Motion carried.

Aye: Rexroth, Van Marter, Reeves, Burkholder, Kramper, Hadenfeldt, Donaldson, Hergott, Watermeier, Anderson, Johannes, Madsen, Korell  
Nay: None  
Abstain: None  
Not Present: Kadlecek (Moore, Lembke stepped out)

**Kezan Creek Project:**

Motion by Johannes, seconded by Korell, to approve the Upper Big Blue NRD's request for an extension of time until December 1, 2008 to file the Application and Feasibility Study for the Kezan Creek Project. There was no discussion. Motion passed.

Aye: Johannes, Rexroth, Reeves, Van Marter, Hadenfeldt, Kramper, Watermeier, Madsen, Korell, Donaldson, Anderson, Burkholder, Hergott

Nay: None

Abstain: None

Not Present: Kadlecik (Moore, Lembke stepped out)

**Recreation Benefit Calculation Method Comparisons and Other Project Benefits:**

Johannes then described discussion that had taken place on the Guidelines concerning recreation benefits and suggesting that this be placed on the agenda as an action item. Gittins stated that according to the rules, the agency Director is responsible for determining the generally accepted methods and approaches. Therefore, it would only need to be an action item if someone wanted to change the rules.

Gittins also commented that the presentation in the Program Committee meeting was limited to reviewing calculation methods for recreation day benefits. He also noted that the Department will be doing further research on several other areas of potential project benefits at the request of the NARD Committee addressing NRDF funding. Johannes suggested keeping this on the agenda to keep the Commission abreast of what is happening and to provide input for staff.

Gittins stated that on the basis of the research conducted on recreational day benefits methods and values, the Department does not anticipate making any adjustments in this area. Bleed noted that staff's research showed the current method yields results comparable to those used on recent projects in Iowa and Missouri, but offered that staff would certainly be open to evaluating recommendations by sponsors regarding justifiable changes to specific areas of our methodology.

Gittins stated that staff would now turn research efforts toward the other potential project benefit areas. In response to a question about where the Department's \$7.13 value came from, Gittins replied that it represented a value initially gleaned from "*Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*" which was developed to guide the formulation and evaluation studies of the major Federal water resources development agencies. A unit day value for general recreation activities was determined to be the most applicable, and this value had been adjusted annually based on the Consumer Price Index. Bleed stated that the Commission and Department should be asking if the project evaluation process is addressing the right set of priorities and values. For example, rather than requiring a 3% rate-of-return, maybe the project should just have to demonstrate that it has a positive return. Bleed stressed that she would not care to see a recreation component added to a project simply to increase the rate-of-return if recreation is not important to that project.

The comment was made that many public works projects don't even have a one-to-one return. Myron Franzen pointed out that tax payers could get more than a three percent return on their money at a financial institution, and added that town and county sales tax revenue has shown to remain flat after NRDF projects are completed.



**Leigh Dam Project:**

Johannes noted that staff was informed that cost increases on Leigh Dam have resulted in a situation of possible non-compliance with the rate-of-return requirement. He reported that the sponsor, Lower Elkhorn NRD, is looking at making adjustments to the project to get back in compliance.

Franzen stated that as a landowner adjacent to this project, he is concerned about the NRD being able to remove \$500,000 of recreation costs to get back to the 3% rate-of-return when 83% of the benefits come from recreation. Johannes stated that he understood the sponsor's proposed removal of project features would not affect the computed benefits based on the calculation formula. Franzen then stated his belief that bids for road work omitted \$300,000 to \$400,000 of the estimated cost per design estimates. Gittins pointed out that staff does not yet have the sponsor's cost reduction proposal with a component break down sufficiently detailed to address this. Concerns noted in Franzen's letter will be addressed in staff's further assessment of the matter with the project sponsor. Staff will report back through the Commission to help assure everyone is kept informed.

**Soil & Water Conservation Program Fund (S&WCPF):**

NRCS is in the process of revising conservation programs used to determine allowable cost-share on practices approved by the Commission under the State NSWCP. These revisions include changing to an incentive-based program for practice scenarios from cost-share based on average cost by NRD for practice components. Because these revisions are still in process, and since the NRCS has agreed to supply updated average costs by NRD for practice components based on last years' actual results, it was recommended that the existing NSWCP processes be used for the remainder of this fiscal year. Necessary changes and implications can then be evaluated by staff with the expectation that recommended program changes will be proposed in March 2008 for fiscal year 2008-09.

Johannes made a Motion, Van Marter seconded, to continue using the average cost by practice as adjusted for each NRD rather than by county for the NSWCP Fund until June 30, 2008.  
No discussion. Motion carried.

Aye: Anderson, Madsen, Hadenfeldt, Johannes, Moore, Kramper, Lembke, Watermeier, Reeves, Rexroth, Van Marter, Burkholder, Hergott, Korell  
Nay: None  
Not Present: Kadlecek (Donaldson stepped out)  
Abstain: None

**Interrelated Water Management Plan Program Fund (IWMPPF):**

In accordance with program guidelines and limitations, staff recommended changes to the guidelines for use in the application process for fiscal year 2008-09 project funding.

Johannes made a Motion, Kramper seconded, to adopt the updated Guidelines and Limitations for the Interrelated Water Management Plan Program Fund as proposed by staff.  
There was no discussion. Motion carried.

Aye: Donaldson, Kramper, Anderson, Watermeier, Reeves, Hergott, Korell, Lembke, Madsen, Hadenfeldt, Rexroth, Van Marter, Burkholder, Johannes, Moore  
Nay: None  
Abstain: None  
Not Present: Kadlecek,

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**ANNOUNCEMENTS, FUTURE MEETINGS, AGENDA ITEMS**

Madsen asked (on Kadlecik's behalf) to have an item placed on the February agenda to discuss sending a brief synopsis of Commission meetings to the NRD managers. At the request of Department clerical staff, Gittins requested that Commissioners be explicit in reservations requests to staff when NRDs are covering part of the travel and lodging related to a meeting held in conjunction with NARD conferences. This will reduce confusion and the likelihood of having to pay for duplicate reservations.

The next scheduled Commission meeting is February 6, 2008, at the Embassy Suites in Lincoln. This meeting is being held in conjunction with the NARD Legislative Conference on February 4-6.

**Note the date change due to the Legislative session starting later than usual.**

**ADJOURNMENT**

The meeting was adjourned at approximately 10:55 a.m.

  
Natural Resources Commission Chair

  
Director of Natural Resources