

MINUTES OF THE NEBRASKA NATURAL RESOURCES COMMISSION MEETING

May 24, 2007

Lower Platte South NRD – Lincoln, Nebraska

Those in attendance were:

Wayne Madsen, Chair	Leroy Stokes, NRCS
Clinton Johannes, Vice Chair	DeLynn Hay, UN-L
Jim Van Marter, Member	John Miyoshi, LPNNRD
John Burkholder, Member	Ken Berney, LENRD
Richard Hadenfeldt, Member	Glenn Johnson, LPSNRD
Larry Moore, Member	Mike Murren, LPNNRD
Roger Korell, Member	Mike Onnen, LBNRD
Ladd Reeves, Member	Dave Clabaugh, LBBNRD
Garry Anderson, Member	Ann Salomon Bleed, Staff
Joseph Hergott, Member	Jesse Bradley, Staff
Keith Rexroth, Member	Jill Richters, Staff
Dan Watermeier, Member	Karen Best, Staff
Vincent Kramper, Member	Brian Dunnigan, Staff
Myron Lembke, Member	Rex Gittins, Staff
Beverly Donaldson, Member	Ron Theis, Staff
David Kadlecek, Member	Kent Zimmerman, Staff
	Bob Bettger, Staff

CALL TO ORDER

The meeting was called to order by Commission Chair Wayne Madsen in the Lower Platte South Natural Resources District's conference room in Lincoln, Nebraska, at 8:30 a.m.

NOTICE OF THE MEETING

Notice of the meeting was published in the LINCOLN JOURNAL & STAR on May 14, 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 March - April 2007
3. Natural Resources Conservation Service Report
4. Nebraska Resources Development Fund Quarterly Report
5. Nebraska Resources Development Fund Status Report

6. Small Watersheds Flood Control Fund Status Report
7. Soil & Water Conservation Fund Status Report
8. Natural Resources Water Quality Fund Status
9. Water Well Decommissioning Fund Status
10. Interrelated Water Management Plan Program Fund (IWMPPF) Status Report
11. IWMPPF FY 2008 Applications & Recommendations Summary
12. IWMPPF Overviews of Requested Projects
13. Assessment of NRDF Cap & Options for Action on Pending Project Applications
14. Project Rankings for Currently Approved Projects
15. Little Blue NRD letter dated April 27, 2007
16. Great Plains Appraisal, Inc., letter dated June 20, 2006, and Estimation of Damages

MINUTES

Motion was made by Kramper and seconded by Van Marter to approve the minutes of the March 22, 2007, Commission meeting as distributed. Motion carried.

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

Nay: None

Abstain: Kadlecck

EXPENDITURES REPORT

The expenditures report for the various funds for the months of March and April 2007 had been distributed to Commission members. Extra copies were available. Gittins mentioned that Commission members should focus attention on the actual fund balances and not the budget numbers. Budget amounts tend to distort the financial picture because requests are somewhat inflated to help assure funds accrued from unexpected sources can be spent, and because unused budget amounts are automatically reappropriated from the first year of the biennium even if no actual funds are available.

ADVISOR'S COMMENTS

Leroy Stokes, NRCS Natural Resources Planning Specialist, distributed a report and briefed the Commission on programs and achievements. Comments are summarized below and more detail was available in the report which is attached to the file copy of the minutes:

- **PL 566 Program** – This program is not as active as it once was. Currently, progress is being made to place a structure above Wilber. A draft Watershed Plan and Environmental Assessment are under review.
- **Nebraska Climbs to Number 2 in Watershed Rehabilitation** – Nebraska's NRCS is now second in the Nation for active watershed rehabilitation projects. Appreciation was expressed for the sponsoring NRD offices that are active with the Watershed Rehabilitation Program. NRCS is budgeting \$215,000 to look at 10 sites.
- **NRCS Requests Funding through CCPI Program for Republican River Basin** – NRCS has submitted a proposal for funding through a Cooperative Conservation Partnership Initiative (CCPI) grant, looking at a Rapid Watershed study in the Republican River Basin. The study will look at invasive species using high quality photography to determine different species. NRCS is also using this fund to look at structures above the town of Macy on the Blackbird Creek Watershed to prevent head cutting and upland degradation and to provide flood protection for the town of Macy.

- **NRCS Receives Allocation for the Lower Missouri River WREP Program** – Nebraska received \$4,272,000 of financial assistance for the Lower Missouri River Wetland Reserve Enhancement Program. This is the fourth year of a four-year program to restore 18,800 acres of wetlands and associated habitat in a corridor along the Missouri River within Nebraska.
- **Carbon Trading Goes State Wide** – Nebraska’s Farmers Union is working with farmers who want to offer acres for carbon credit trading through the Chicago Climate Exchange.
- **Office Business Analysis Update** – The NRCS plans to close the lowest producing office within each NRD. Phase II of the plan, if implemented, will close 11 other NRCS offices across the State. The hope is to delay that decision until the next Farm Bill. NRCS recognizes the financial impact office closures will have in each community. Commissioner Rexroth commented that he had attended one of the public meetings NRCS held and said that NRCS handled the presentations in the affected communities in a very professional manner.

DIRECTOR’S REPORT

Director Ann Bleed discussed issues on the Niobrara River Basin including 1.) The Game and Parks Commission’s proposed application for an Instream Flow Permit for Fish, Wildlife and/or Recreation. Bleed said the application will likely take between two and three years to gather the information before it is ready to be filed, but a number of people have already expressed concerns. 2.) The number of applications for new surface water permits, the quantity of diversion requested, and the number of new well registrations are up from previous years. Increased requests for diversion have resulted in concerns being raised about flow rates in the river by the Fish and Wildlife Service which operates a refuge along the river downstream of Valentine, and by the National Park Service which manages the Scenic River areas between Valentine and the Missouri River. The Federal agencies are now holding discussions with the State’s Attorney General over the federal reserved rights. 4.) Nebraska Public Power District (NPPD) has non-consumptive “*pass-through*” permits to operate a hydro-electric plant at Spencer. Prior to this year the district had not placed a call on the river when flows dropped below the amount their permits entitled them to use. This year NPPD requested water administration for the Spencer Power facility during times when the flows of the Niobrara River are insufficient to satisfy its permits. Because one of the two turbines was not operational at the time of the call, the Department did not administer until May when NPPD brought the second turbine on line. This resulted in the Department sending out about 400 closing notices to individual permit holders who had never been administered before.

Blead reviewed both the prior appropriations system and the preference system which Nebraska water law follows. Bleed also stated that the Ainsworth Irrigation District and the Mirage Flats Irrigation District have invoked the preference system in the past and that other irrigators may choose to do so now. Bleed noted that two lawsuits had been filed against Bleed as the Director of DNR.

ENVIRONMENTAL TRUST

Kramper reported that he had just been reappointed to another six-year term. Kramper stated that on April 5, 2007 the Trust gave away \$10 million dollars in grants and that they would not be offering mini-grants (less than \$2,500) anymore because of limited demand. LR 11C8, a Crime Commission bill which would have been funded in part from the Trust, is expected to be indefinitely postponed. The next meeting will of the Trust will be in Scottsbluff on July 19th and 20th, 2007.

PLATTE AND REPUBLICAN RIVER ACTIVITIES

Bleed discussed the buyout of water from the Nebraska Bostwick Irrigation District, which is below Harlan County Reservoir, and from the three Districts above Harlan County Reservoir, Frenchman Valley, Riverside and Frenchman-Cambridge. Bleed hoped the contracts would soon be signed and noted that the purchase was a one-year buyout to provide water to Kansas to help meet compact compliance. The estimated supply to be purchased from Frenchman-Cambridge is 26,000 acre-feet, 8,000 acre-feet from Frenchman Valley and 2,000 acre-feet from Riverside. Bostwick is selling 12,500 acre-feet plus their share of any natural flow that comes in below Harlan County Reservoir. Bleed mentioned the Nebraska Bostwick contract was 5.7 million dollars.

Bleed stated that the next Republican River Compact meeting will be held in August. Bleed stated that because we are in a water-short year (less than 119,000 acre-feet of available supply), the compact stipulates using a two-year running average, and reviewing the numbers one year after the fact. This year they will be looking at whether Nebraska was in compliance during the calendar years 2005 and 2006. Normal water supply years (with 130,000 acre-feet or more available for use) are analyzed on the basis of five-year running averages under the compact. Colorado is releasing from Bonny Reservoir, a large recreation reservoir in Colorado, to help meet Colorado's responsibilities under the compact. If Nebraska is found to be out of compliance and Kansas chooses to demand compensation, Kansas must first use dispute resolution. If the matter is not resolved in that process, Kansas can go to the Supreme Court and claim that Nebraska has violated the compact. Bleed said that DNR is working with the Republican River Basin NRDs to help assure future compliance. Also, due to recent rainfall there is 70,000 acre-feet in Harlan County Reservoir available for use to help meet compact stipulations for the current calendar year.

Regarding the Platte River Bleed stated that if Congressional funding is on schedule, Nebraska will need to have plans in place by 2008 to offset the new depletions that have occurred since 1997. DNR is working with the NRDs, Irrigation Districts and the Power Districts in the basin, as well as with a basin-wide over appropriated stakeholders group to implement plans for accomplishing this goal.

WATER POLICY TASK FORCE

Johannes reported that the Water Policy Task Force had not met since the Commission's last meeting. The group is scheduled to meet on July 30th in North Platte. Since LB 701 passed it now supersedes what the Task Force was working on. Johannes noted that the Task Force had an open issue regarding "*Water Banking*" and that there may be discussion on that at the July meeting.

LEGISLATIVE & BUDGET COMMITTEE

Keith Rexroth called on Ron Theis to give an update on Legislative issues. Theis stated that LB 701 passed with the emergency clause so it is now law. He described the bill as essentially a funding bill. The bill also had the Department's water legislation rolled into it including the water management legislation, some clean-up legislation, and the reclassification of sand pits as wells if used for irrigation. The new Water Resources Cash Fund established by the legislation includes fairly large dollar amounts - \$2.7 million in General Fund appropriation and a \$300,000 grant from the Nebraska Environmental Trust. This cash fund will be used by the Department to make final payments for purchased water in the Republican River Basin to help meet compact requirements. The initial payment of \$3 million was enabled by an appropriation for Fiscal Year 2006-07 from the State General Fund for the Bostwick buyout.

Rexroth called upon Rex Gittins to give an update on the budget. Gittins stated that the Legislature had reduced the Resources Development Fund by \$215,000 dollars and eliminated all but six months' worth of funding for the soil survey which is a pass through to the University of Nebraska – Lincoln to complete the soil survey work they were doing. The remaining budget is unchanged from last year's budget with the exception of new funding to carry out the provisions of LB 701.

PROGRAM COMMITTEE

Clint Johannes reported that the Program Committee met in two sessions on May 23, 2007. The first session was a Project Assessment meeting at 1:30 p.m., during which project sponsors seeking FY 2008 obligations of funds presented status reports. The second was the regular Program Committee meeting. The Program Committee adopted recommendations for Commission action as follows:

Nebraska Resources Development Fund (NRDF)

Motion was made by Johannes and seconded by Kramper to reconsider and ratify the motion made at the March 22, 2007, Commission meeting to allow geologic investigation costs incurred after March 22, 2007, for the Pigeon/Jones Creek project to be eligible for cost-share reimbursement if the project is later approved by the Commission. There was no discussion. Motion carried.

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

Nay: None

Not Present: None

Motion was made by Johannes and seconded by Van Marter to reconsider and ratify the motion made at the March 22, 2007, Commission meeting to allow costs incurred after March 22, 2007, for geotechnical drilling and boring in the borrows area for the Lake Wanahoo project to be eligible for cost-share reimbursement if the project is later approved by the Commission. There was no discussion. Motion carried.

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

Nay: None

Not Present: None

Motion was made by Johannes and seconded by Korell to approve the Lower Big Blue NRD's request for an increased allocation of \$128,380 for Component #3 (Land Rights – Site 4) of the Lower Turkey Creek Watershed Project, increasing the total project allocation from \$3,940,700 to \$4,069,080. There was no discussion. Motion carried.

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

Nay: None

Not Present: None

Motion was made by Johannes and seconded by Hergott to approve the Little Blue NRD's request for an increased allocation of \$99,018 (Component #2 – Engineering: Sites 30 & 61 = \$9,935; Site 40 = \$280; Site 12 & 73 = \$20,657) and (Component #4 - Construction & Inspection: Sites 12 & 73 = \$68,146) of the Little Sandy Creek Watershed Project, increasing the total project allocation from \$2,331,576.35 to \$2,430,594.35. There was no discussion.

Motion carried.

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

Nay: None

Not Present: None

The next item deals with the tentative obligation of the FY 2008 NRDF funds. Staff prepared two recommendations, labeled Exhibit B-1 and Exhibit B-2, which were previously provided to Commission members. Recommendation for Exhibit B-1 is the primary recommendation, and Exhibit B-2 is the recommendation if the Leigh Dam project does not receive a U.S Army Corps of Engineers 404 permit by the July 2007 meeting.

Motion was made by Johannes and seconded by Kramper to establish components and tentatively obligate the FY 2008 funds as proposed by staff (1) per Exhibit B-1 if Leigh Dam obtains a 404 permit by July 11, 2007, or (2) per Exhibit B-2 if Leigh Dam fails to obtain a 404 permit by that date . There was no discussion. Motion carried.

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

Nay: Moore

Not Present: None

Motion was made by Johannes and seconded by Watermeier to seek additional information from the project sponsor regarding the Lake Wanahoo project and defer action on the related application and feasibility study until the next Commission meeting or until the information is available. There was no discussion. Motion carried.

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

Nay: None

Not Present: None

Motion was made by Johannes and seconded by Rexroth to seek additional information from the project sponsor regarding the Pigeon/Jones Creek Project and defer action on the related application and feasibility study until the next Commission meeting or until the information is available.

Madsen asked if a period of time should be designated for Commission members to submit questions for the Pigeon/Jones and Lake Wanahoo project sponsors. Gittins described two questions that had been discussed at the Program Committee meeting. One was to ask sponsors of both projects to provide the Commission with the lowest cost share that they could accept from the Resources Development Fund and still successfully complete their project. The second was to ask the sponsors of the Lake Wanahoo project, "What is the degree of certainty and amount of Federal funding for FY 2008?" Madsen added another question for

both sponsors, "What would be the estimated impact of a delay if the application was not approved for a year or two?" Rexroth added another question for both sponsors, "What other entities are involved in the project such as the Department of Roads, etc.?" One additional item dealing with public acceptance was brought up. Anderson stated that the Commission had not heard any opposition on either project. Johannes and Madsen agreed that these questions apply to both the Pigeon/Jones Creek and the Lake Wanahoo projects.

Gittins stated that staff would send official letters out to the project sponsors asking that the additional information be provided in time to send it out with the information packet before the next Commission meeting. Any further questions identified by Commission members should be submitted to Kent Zimmerman by June 1.

Motion carried.

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

Nay: Lembke

Not Present: None

Small Watersheds Flood Control Fund (SWFCF)

Motion was made by Johannes and Korell seconded to approve the Little Blue NRD'S appraisal at Site 40 of the Little Sandy Creek Watershed Project for the Peppie tract (134.24 acres) and commit 50% of \$ 134,400 or \$67,200 for easement. There was no discussion. Motion carried.

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

Nay: None

Not Present: None

Interrelated Water Management Plan Program Fund (IWMPPF)

Johannes pointed out that the Program Committee had deferred discussion of the IWMPPF tentative obligations and that it would be discussed now before the full Commission.

Gittins gave a brief background of the IWMPP Fund stating that the fund was created in 2006 with the passage of LB 1226 and it was intended to facilitate the duties of NRD's that arose under the Nebraska Groundwater Management and Protection Act to help offset the costs associated with implementing those responsibilities. The funds appropriated from the program by the Commission go to NRDs based upon Guidelines adopted by the Commission. Any amounts requested have to be supported by a local match comprised of 20% of the total cost of the project. On July 13, 2006 the Commission adopted the initial Guidelines for allocating funds and evaluating applications; those Guidelines were then revised in November 2006 for use in the current year's assessments.

During 2006, the Commission granted all requests for funding. The total funding was \$2,424,436 to fund 14 projects encompassing participation from all of the NRDs. The current round of applications was due on March 1. The technical review and ranking were completed and are included in the reports as Attachment 4 handed out earlier along with staff recommendations

listed in order of the ranking results. Only the six new applications and the three requesting additional funds were reviewed. All eighteen were put together and ranked side by side. The outcome of this ranking includes recommendations to not fund a couple and not fund a couple others at the level they requested for this fiscal year.

Gittins added that Jesse Bradley, one of the technical review team members from DNR and who was instrumental in assembling the review report, was present and would help answer any questions. In response to a question from Commissioner Kadlecek, Bradley clarified the interest of the Middle Niobrara NRD in the Elkhorn-Loup Modeling Study Project.

Johannes noted that Rexroth was planning a Legislative and Budget Committee meeting and that they should make sure to keep the IWMPPF funding going to help assure continued funding for important studies across the state that will help NRDs do their work.

Motion was made by Johannes and Lembke seconded to tentatively obligate the FY 2008 funds as proposed by staff. Motion carried.

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

Nay: None

Not Present: None

ANNOUNCEMENTS, FUTURE MEETINGS, AGENDA ITEMS

Madsen read Resolutions for two former Natural Resources Commission members: Arlond Garratt and Wayne Davis.

Motion was made by Van Marter and Hergott seconded to adopt the proposed Resolutions of Recognition for Services by Arlond Garratt and Wayne Davis in appreciation for their commitment to the Commission with the addition all current Commission members' names, and present them to Arlond's and Wayne's families. Motion carried.

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

Nay: None

Not Present: None

Lembke announced that the next Commission meeting will be in Scottsbluff. Tentative plans are to meet on Tuesday, July 10, at 9:30 a.m. at the North Platte NRD office for a presentation and tour of the District's IWMPP project, Characterization of Near-Surface Lithology under Selected Irrigation Canals. Lunch will be on your own. A second presentation and tour of Nine Mile Creek will begin at the NRD office at 1:00 p.m. to look at invasive species removal. The Program Committee will meet at 3:00 p.m. back at the NRD office. Following the Program Committee meeting, everyone is invited to attend an Oregon Trail Wagon Train cookout that evening. Activities on Wednesday, July 11, will take place at the North Platte NRD's office starting with a meeting of the Legislative and Budget Committee at 8:30 a.m., followed by the Commission meeting at 9:00 a.m.

Gittins added that Jennifer Schellpeper, one of DNR's program specialists, is planning a presentation and update on the North Platte Decree and the Platte River Implementation and Recovery Program at the next Commission meeting. Also, a proposed contract for 2008 IWMPPF project funding and a request for minor guidelines revisions will be on the next agenda

Moore requested that "Recreation Day Values" be added to the next agenda as this has been an open issue for about a year now. Gittins mentioned that we are participating in a state study and the results are expected to be available in June.

Madsen announced that he wanted each Commission member to tell their spouse/next-of-kin to inform the local NRD, DNR and other Commission members in the event of major illness, accident or death. He stressed that he felt bad he did not find out about Wayne Davis's funeral in time to attend.

Kramper announced that he and his wife were celebrating their 50th wedding anniversary and invited everyone to a reception in Sioux City on June 3.

Scheduled Commission meetings are as follows:

July 10-11 at North Platte NRD

- Presentations/tours on July 10 will start at the NRD at 9:30 a.m. & 1:00 p.m.
- Program Committee meeting on July 10 at the NRD at 3:00 p.m.
- Legislative & Budget Committee meeting at 8:30 on July 11
- Commission Meeting at 9:00 a.m. on July 11

September 25 in Kearney (NARD Annual Conf. 9/23-25)

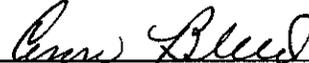
November 14-15

January 23, 2008 (NARD Legislative Conf. 1/21-23)

ADJOURNMENT

At approximately 10:55 a.m. the meeting was adjourned.


Natural Resources Commission Chair


Director of Natural Resources