

NEBRASKA NATURAL RESOURCES COMMISSION

DRAFT MEETING MINUTES – April 19th, 2016

HOLIDAY INN HOTEL & CONVENTION CENTER – Kearney, Nebraska

Roll Call:

Commissioners		Absent	Present	Commissioners		Absent	Present
Amen	Karen		X	Kraus	Don		X
Anderson	Garry		X	Palm	Owen	X	
Barels	Brian	X		Palmertree	Tom		X
Batie	Donald		X	Rains	Darrell M.		X
Christensen	Joel		X	Rexroth	Keith		X
Clouse	Stan		X	Reynolds	Michael (Mick)		X
Deines	Dave		X	Smathers	Scott		X
Fornoff	Kevin		X	Smith	Lindsey		X
Hadenfeldt	N. Richard		X	Steffen	Jeff		X
Hergott	Joseph		X	Strauch	Walter Dennis		X
Huggenberger	Steve		X	Sugden	Steven		X
Kadlecek	David		X	Taylor	Loren		X
Knutson	Thomas		X	Thompson	Jim		X
Kosman	Henry (Hod)	X					

DNR staff in attendance:

Rex Gittins, Kent Zimmerman and LeRoy Sievers

Others in attendance were:

Britt Weiser, NRCS; Mike Onnen, LBNRD; Russel Coloy, Baker & Assoc.; Jeffry Sprock, City of Mitchell; Dustin Wilcox, NARD; Jay Rempe, Nebraska Farm Bureau; Laura Lage, Legislature; Tom Carlson, Former State Senator; Lori Potter, Kearney Hub; Ken Berney, LENRD; John Winkler, P-MRNRD; Marlin Petermann, P-MRNRD; Tim Gay, Husch Blackwell; Nate Jenkins, URNRD; Mike Sotak, FYRA; Mark Brohman, Nebraska Environmental Trust; Lalit Jha, JEO; Rick Wilson, JEO; Mike Murren, LPNNRD; Jesse Bradley, Flatwater; Brian Dunnigan, Olsson & Assoc.; Kellan Strauch, USGS; Amy Williams, HDR; Jim Goeke, UNL/CSD Retired; Steve Cogley, Utilities Department - City of Hastings.

CALL TO ORDER, ROLL CALL

Chairperson Fornoff called the meeting to order at 10:00 a.m. at the Holiday Inn Hotel and Convention Center, Kearney, Nebraska.

NOTICE OF THE MEETING

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

INFORMATIONAL MATERIALS

The following informational materials were distributed at the meeting. Copies are attached to the file copy of these minutes.

1. Commission Meeting Agenda
2. Funds Expenditures and Cash Fund Balances Reports
3. Resources Development Fund (RDF) Status Report as of 4/15/2016
4. Small Watershed Flood Control Fund (SWFCF) Status Report as of 3/31/2016
5. Nebraska Soil & Water Conservation Fund (NSWCPF) Status Report as of 3/31/2016
6. Nebraska Water Quality Fund (WQF) Status Report as of 3/31/2016
7. Water Well Decommissioning Fund (WWDF) Status Report as of 3/31/2016
8. Water Sustainability Fund (WSF) – Appropriations and Funds Transfers
9. NRCS Report
10. Papio Missouri NRD - letter re: WSF & packet dated 4/18/2016
11. NRD Erosion and Sediment Control Program Rules & Regulations Template
12. Redline Changes to Policy Statements I, VI, VIII, X

MINUTES

Rexroth moved and Sugden seconded the motion to approve the minutes of the January 27, 2016, Commission meeting.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie			X		Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds	X			
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson			X		Thompson	X			
Kosman				X	TOTALS	22	0	2	3

PUBLIC COMMENTS

Jeff Sprock, Mitchell City Administrator, highlighted some key points he wanted Commissioners to understand prior to scoring the city's wastewater treatment system improvements application for a Water Sustainability Fund grant.

Former Senator Tom Carlson discussed the importance of water and in making good decisions managing the Water Sustainability Fund.

John Winkler, P-MRNRD, pointed out that water sustainability is different to communities in eastern and western Nebraska. Winkler also stated that a letter is being circulated by Senators' Kolowski, Stinner, and Krist to other senators to examine the procedures of the Commission and NeDNR because management of the Water Sustainability Fund is a very important issue. Amen asked if the letter was available, and Winkler responded that it would be sent out later in the week. Commissioner Rexroth noted concern about statements coming out of Winkler's office which were inconsistent with Commission actions. Winkler emphasized the importance in working together and not having a rural/urban split.

Britt Weiser, NRCS, distributed and reviewed an NRCS report and noted the following:

- The CSP program is the largest program in Nebraska. The sign-up period ended March 31st and staff are now working towards making those decisions and entering into contracts.
- There was increased interest in the CRP program and with sign-up, funding decisions have not yet been made.
- EQIP program is a continuous sign-up and the next cut-off date will be October 21st.
- May 10th will be the next cut-off for the Conservation Innovation Grant program which funds research and innovative conservation methods.
- RCPP program pre-proposals are due May 10th.
- Client Gateway is an innovative way producers can have 24/7 access to programs and records.

NeDNR UPDATE

Rex Gittins reported that Director Fassett was unable to attend today as he was involved in the Republican River Basin Wide Planning meeting. Director Fassett did however pass along a message that he is pleased with the process and appreciates the efforts of his staff and those of the Scoring Committee in reviewing the Water Sustainability Fund applications.

EXPENDITURES REPORT

Fund reports showing financial activity and ending balances through March 31, 2016, were distributed prior to the meeting. No unusual expenditures were reported.

CONFLICT OF INTEREST/ABSTAIN DISCUSSION

LeRoy Sievers reported that during the last Commission meeting a question arose regarding the definition of "any" as used in §2-1510 (4). An Attorney General's opinion on the issue was sought. Sievers, by email on April 8th, had forwarded and offered his interpretation of the following:

- The AG's opinion issued March 23rd, 2016.
- A letter dated February 3rd from Frank Daley, Executive Director of the Nebraska Accountability and Disclosure Commission, addressed to Commissioner Kraus.
- Commission's Rules, Title 261, Chapter 3 001.06, which prohibits a Commissioner from participating in an action of the Commission concerning an application for grant or loan under three circumstances:

- 1) The Commissioner is a member of the governing body of the applicant.
- 2) The Commissioner represents the applicant.
- 3) The Commissioner has a conflict of interest.

Huggenberger asked if it is up to the individual Commissioner to make the call on whether or not to abstain, or if there is a role for the board. Sievers reminded the Commission of Mr. Daley's instructions that if a Commissioner has a concern, it should be presented to his office for a response. Also, it is incumbent upon Commissioners to state for the record that they have a conflict and that they will not participate in the discussion or the vote. Rexroth noted that a "Point of Order" can also be called.

Thompson stated that his opinion differed from Sievers in that all Commissioners are allowed to participate in discussion and may vote unless they stand to receive personal financial gain. Thompson stated his belief that the person with the ultimate say in this matter is Frank Daley and that the NRC has no authority to determine if a Commissioner has a conflict. It is up to the individual Commissioner. If a complaint is made about a Commissioner's action, it should be addressed to the Accountability and Control Disclosure Commission.

Chairman Fornoff stated that Sievers is the NeDNR's attorney so Commissioners should follow his interpretation. Rexroth added that Commissioners who are NRD board members are prohibited by statute from voting on applications submitted by their NRD, and noted that over the years it has been understood that meant no discussion, no vote. Rexroth also pointed out that there are multiple statutes and rules which must be followed.

Sievers noted that in addition to the Accountability and Disclosure Act, there is a specific statute 2-1510 (4) that states "*No member of the Commission shall be eligible to participate in the action of the Commission concerning an application for funding to any entity in which such Commission member has any interest.*" The question of what that means was resolved when the Commission adopted its' rules which state: "*A Commission member shall be ineligible to participate in the action of the Commission concerning an application for a grant or a loan if such member is a member of the governing body, otherwise represents the applicant for financial assistance or otherwise has a conflict of interest.*" Thompson noted the last sentence of the first paragraph of the AG's Opinion says any interest as set forth in statute can be reasonably interpreted that any potential personal or financial fiduciary interest that a member of the Commission may have in an application before the Commission.

Batie noted that there are multiple levels of abstention that must be looked at. One is the financial aspect on the Accountability and Disclosures Act, the other in the rules the Commission has adopted. He added that Title 261 clearly prohibits a commissioner who is an NRD board member from discussing or voting on an application from that NRD.

EROSION AND SEDIMENT CONTROL PROGRAM

State Plan Update

Zimmerman shared a comment from Craig Derickson, NRCS State Conservationist, that NRCS will be updating its own responsibilities related to soil erosion control for Highly Erodible Land (HEL) and Conservation Compliance requirements including the level of allowable erosion in the Alternative Conservation Systems (ACS) and the way ephemeral erosion is being addressed.

➤ **Review of Public Comments from 2nd & 3rd Public Meeting**

The results and comment of the second and third public meeting were discussed. No significant changes were offered. Tracy Zayac, North Platte NRD, submitted written comments which are being reviewed.

➤ **Final Request for Public Comment**

No comments were offered.

➤ **Red Line Changes – Review & Possible Action**

A final version of the red line changes will be distributed prior to the next Commission meeting for possible action at the June meeting.

Reynolds questioned whether he could discuss Erosion & Sediment Control issues because he is on the Central Platte NRD Board. It was clarified that the only time he would not be allowed to discuss Erosion and Sediment Control be when CPNRD submits a program for approval.

NRD Template Discussion

Mike Onnen, General Manager, Little Blue NRD, reviewed a template drafted by a working committee of NRD managers. The managers are requesting feedback prior to distribution and use by each NRD in updating its own program. Each NRD's revised program will be submitted to the Commission and Director for approval. Use of a pre-reviewed template should make the final process, after formal rules are adopted by each NRD, go smoother for everyone. Commissioners were asked to respond within a week if they have any comments regarding changes to the draft template. No comments were submitted.

Upper Loup NRD E&SCP Update – Discussion & Possible Action

Anna Baum, General Manager of the Upper Loup NRD, decided to incorporate their program into formal rules and requested this item be held, pending implementation of those formal rules. No action was taken.

PROPOSED POLICY CHANGES DISCUSSION & POSSIBLE ACTION

Sievers stated that a copy of the red-line NRC policy statements had been updated to reflect recommended changes since the last Commission meeting in January. Sievers also mentioned that Policy Statement XV was not included and should be considered at a later meeting to ensure consistency with any WSF rules changes. The Comprehensive Planning Committee has been directed by Chairman Fornoff to review the rules for possible revisions based on the initial application review process.

Batie requested Sievers draft wording to provide for staggering the term for half of the Applications Review Committee members to provide continuity from year to year. Sievers offered to have that at the next meeting.

Smathers moved and Kraus seconded the motion to approve Policy Statements I, VI, VIII and X.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds	X			
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson	X			
Kosman				X	TOTALS	24	0	0	3

PROGRAM COMMITTEE

A separate Program Committee meeting was not held, so staff led the discussion on agenda topics pertaining to program activities. No unusual activity was reported during discussion of the following funds.

Resources Development Fund

- The status report showed no unusual activity. **Commissioners were reminded that they need to be prepared to obligate funding at the June meeting.**
- Staff reported the following transfers had been made under the authority of the Commission's Rules, Title 256, Chapter 4 – No. 12, to facilitate sponsor reimbursements:

UPPER PRAIRIE/SILVERS/MOORES

Component	No.	Amount Reduced	Amount Increased
LAND RIGHTS	2	\$20,383.13	
ENGINEERING	3		\$20,383.13

LAKE WANAHOO

Component	No.	Amount Reduced	Amount Increased
LAND RIGHTS - Pre Approval	5	\$254,490.29	
LAND RIGHTS	3		\$93,081.90
CCEI Legal Fees	18		\$4,853.93
PAVING PARK ENTERANCE	19		\$38,563.26
RECREATION	20		\$117,991.20

- Lower Platte North NRD (LPNNRD) submitted a request to increase the component limit for component #18 CCEI Legal Fees by \$8,089.88.

Amen moved and Steffen seconded the motion to approve the request of Lower Platte North NRD and increase the limit for Component #18 CCEI Legal Fees by \$8,089.88

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds	X			
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson	X			
Kosman				X	TOTALS	24	0	0	3

Small Watersheds Flood Control Fund

The only activity in this fund since the last report was the addition of accrued interest.

Soil and Water Conservation Fund Program

Normal activity since the last report.

Natural Resources Water Quality Fund

A distribution of \$675,000 was made in February; the next distribution will be in August.

Water Well Decommissioning Fund

Normal activity since the last report.

Water Sustainability Fund

The status report showed no activity. Gittins distributed a sheet identifying how many dollars are available to distribute at this time including source of funding by year with expenses removed.

Staff reported several potential rules clarifications had been identified as the result of processing the first round of applications and from feed-back from applicants and reviewers. Chair Fornoff assigned the Comprehensive Planning Committee to review these items and draft any proposed modifications for discussion at the June Commission meeting.

Commissioners Batie and Smathers reported the following:

- The Scoring Committee was established by Chairman Fornoff and was composed of the Executive Committee plus five volunteers and two alternates.
- The Committee's membership was balanced between appointed and elected Commission members who were spread geographically across the state.
- The Committee first met in January to discuss how to proceed, then met on March 21 in Kearney with NeDNR IT staff for an overview of the login and scoring systems and a demonstration of how the electronic process worked.
- At the March 21 meeting, each member was given a unique login ID number and password with which to log into the NRC web site to do their review and scoring. Each member worked independently and their information was not accessible by other members. Each member was also given a jump drive with all applications and supporting documents pre-loaded to facilitate their reviews. That was the first time any of the members had access to the applications. Staff briefly reviewed each application. At the end of the day, all ten members and the two alternates left the meeting with the charge that they must each score all of the applications or none of their scores would be used. The only exception noted was that members could abstain on specific applications when appropriate. The alternates had to continue to meet and score just like the committee members. The Committee set the next meeting date for March 29 allowing only eight days, including Easter, to score all of the projects.
- The Committee next met in Gothenburg on the night of March 28th, all day on the 29th, and part of the day on the 30th. In discussion about how much time had been spent reviewing the projects prior to the meeting, committee members stated they had spent from 32 to 40 hours with an average of 35 hours over the eight days.
- The Committee started the meeting on March 29 by reviewing each application and each member's scores for every question. For each application, any member who believed they had a conflict abstained from discussion, and the appropriate (elected for elected and appointed for appointed) alternate's scores were used. Members identified their rationale for awarding specific scores. Through this discussion, members sometimes got a different insight or discovered additional information, and each member had the opportunity to adjust any of their scores in the database on the website. Only when everyone was satisfied with their individual scores, NeDNR staff was directed to lock the scores at which point no further individual changes were allowed. Also, at that point, the computer generated an average score for each question for each application. The Scoring Committee went through each question on each application to decide whether to round up or down for a final score. Per the rules, points for each question must be assigned as 0, 2, 4 or 6 or 0, 1, 2 or 3; you can't use a rounded number.
- The Scoring Committee, alternates and staff had a strong, intelligent conversation when discussing projects and scores. Contrary to statements made earlier in the meeting, there was no urban/rural split. Some committee members scores were harsher across the board and some much easier. Interestingly, it was noted that the person whose scores were highest across the board and the one with the lowest scores across the board both ended up with nearly the same rankings of the applications.
- Next, the applications were divided into two groups, those asking for more than \$250,000 and those at or below \$250,000. Scoring Committee members then discussed what level to fund to satisfy one of the tasks of this committee which was to come up with a funding recommendation.
- Although two full days were scheduled for the meeting, the group finished in a day and a half largely due to two things: 1) the group worked well together; and 2) when the group got

together, most had very similar rankings. It was noted that individual members could not see other member's scores and did not discuss scores with each other prior to the meeting.

- The group decided that if an applicant entered N/A in answer to a question, zero points were awarded even if members thought the applicant could have answered the question and received a point or two.
- After the Gothenburg meeting, the committee waited a week until April 4th when they met again by telephone. The scores derived at the previous meeting were discussed; everyone agreed that no changes were needed. The Scoring Committee's scores were locked down and their recommendations forwarded to the full Commission for discussion at this meeting.

Commissioner Kraus addressed public input with the following:

- First he thanked the people who offered public input, stating that it is important to hear that information, but the committee worked with the information presented in the application.
- Speaking to Mr. Sprock regarding the Mitchell application, he stated that he understands there are benefits for increased streamflow and water quality for the project and assured him that those concepts were not ignored.
- He stated that he appreciated Senator Carlson's advice to do the right thing and to do a good job. Krause assured Carlson that the Scoring Committee's intent was consistent with his advice, and he believes the full Commission agrees it is charged with doing a good job with the dollars from the State of Nebraska.
- To Mr. Winkler from the Papio Missouri River NRD, he stated appreciation for the information and summarized his comments as follows:
 - ✓ He agreed with Senator Carlson that the Legislature made the right decision in separately funding the levee project and to avoid the application scoring process for that important and significant project.
 - ✓ As to the question in PMNRD's letter as to whether it is possible to go forward and not fund everything, legal counsel had confirmed that statutory language authorizes the Commission to determine if projects are qualified.
 - ✓ There was no discussion of a rural/urban split by the Scoring Committee, and it was never a factor. The Scoring Committee looked at the merits of each project. In the end there was a large project from eastern, central and western ends of the state although that was not even a factor nor discussed during the meeting.

Commissioner Fornoff discussed the need for some Water Sustainability Fund rules and guideline changes as a result of going through the process once with the following:

- Although not requiring a rules change, some of the bullets under questions in Section "C" of the application could be changed a little bit to more clearly identify what information the applicant needs to provide.
- The Comprehensive Planning Committee will begin meeting to identify and recommend changes for Title 261 to improve the application and review process.

Sugden moved and Reynolds seconded the motion to approve the Scoring Committee's recommended scores and recommendation for funding.

Thompson stated that Senator Kolowski sent an email to each member of the Natural Resources Commission stating that he is watching the Commission's actions very closely. He also added that if the Commission leaves \$17 million on the table it would be discussed during the last day of the legislative session.

Smathers stated that he had spoken with Senator Schilz and Senator Stinner. He reported that the senators were unaware there was another round of applications coming in July. Realizing that uncommitted funds can be allocated prior to the next legislative session, he is open to further conversation with Chair Fornoff. Smathers also stated that his understanding of the procedure for the meeting was that recommended scores for each application would be displayed for discussion by the entire Commission. If everyone accepted the scores, they would stand approved or scores could be revised if 14 Commissioners voted in favor of the change. The process would continue until the group arrived at a final score for each application. He noted that process would be consistent with the Scoring Committee's approach and would ensure everyone had the opportunity to speak on every application. Smathers added that once the scores were complete, another discussion regarding funding would be necessary.

Sugden asked if everyone had scored all of the applications because that was one of the rules the Scoring Committee followed. Commissioner Palmertree was the only non-Scoring Committee member who answered yes.

Anderson questioned the need of having to go through the scores for each project when the problem is really where to stop funding.

Amen stated that voting on a packet puts Commissioners in a catch-22 because they should not vote on their own applications.

Huggenberger asked for a member of the Scoring Committee to explain why some of the applications were not deemed worthy to fund.

Sugden stated that two of the main criteria in the scoring system, questions 1 and 3, address quantity and quality of sustainability by Commission definitions. Application not recommended for funding scored zero points on these questions.

Hergott asked to go through each application one-by-one and receive a brief explanation for each because he has not received or reviewed them. Several Commissioners responded that emails were sent with the website links and general guidance on accessing the materials. Sugden responded that the reason he questioned whether everyone had put in the time to review the applications was that he has a problem going through them all over again in detail given the amount of time and work the Scoring Committee has already put in.

Taylor said he had a concern about some of the small applications so he doesn't want to vote on them all as a package.

Chairman Fornoff asked if there were any amendments to the motion.

Thompson moved and Batic seconded the motion to amend the motion and remove applications 4123, 4129, 4134, 4137 & 4138 from the original motion.

Commissioner Taylor stated his opinion that application 4119 did not fit the intent of the Legislature.

Taylor moved to amend the amendment and only fund those projects in the \$250,000 and less category. The motion failed for lack of a second.

Clouse suggested everyone withdraw their motions and start over with a clean motion. Reynolds stated that because the original motion had been stated by the Chair it could no longer be withdrawn, and had to be acted upon by the Commission. The motion to amend could be withdrawn, however.

Thompson withdrew his amendment.

Clouse moved and Anderson seconded the motion to “call the question”.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson		X			Palm				X
Barels				X	Palmertree		X		
Batie	X				Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds	X			
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson	X			
Kosman				X	TOTALS	22	2	0	3

Vote on the original motion to approve the Scoring Committee’s recommended scores and recommendation for funding.

Motion Failed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen		X			Kraus	X			
Anderson		X			Palm				X
Barels				X	Palmertree		X		
Batie	X				Rains		X		
Christensen		X			Rexroth	X			
Clouse		X			Reynolds	X			
Deines	X				Smathers		X		
Fornoff		X			Smith	X			
Hadenfeldt		X			Steffen		X		
Hergott		X			Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek		X			Taylor		X		
Knutson	X				Thompson		X		
Kosman				X	TOTALS	10	14	0	3

Anderson moved and Palmertree seconded the motion to accept Scoring Committee's recommended scores and fund all small project requests.

Thompson asked for clarification as to why application No. 4133 had moved to the small project category and if there had been any other funding changes.

Staff replied that:

- The applicant had informed them that a Nebraska Environmental Trust grant had been received and they did no longer need as much.
- Several applications had discrepancies in funding amounts and that because this fund is strictly 60/40 on net local share, the applicant was contacted and dollar amounts clarified.
- Once the Commission takes action NeDNR must enter into a contract and specify the dollar amount.
- The correct amount should be known at the time of Commission action so as to not over extend the fund.
- The Scoring Committee recommendation was sent out correctly listing the funding amounts.

Sugden moved and Anderson seconded the motion to "call the question".

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen		X			Rexroth	X			
Clouse	X				Reynolds	X			
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott		X			Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson	X			
Kosman				X	TOTALS	22	2	0	3

Point of Order was made by Reynolds as to voting on a packet if you're a board member of an applicant. It was decided to add a footnote as follows: A commissioner's vote, if a board member of an entity filing an application, is a vote to abstain regarding that project.

Vote on the original motion to accept Scoring Committee's recommended scores and fund all small project requests.

** - Note that a commissioner's vote, if a board member of an entity filing an application, is a vote to abstain regarding that project.*

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X		4132		Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen	X				Rexroth	X		4121	
Clouse	X				Reynolds	X		18 & 24	
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X		4144		Steffen	X		4143	
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson *	X		*	
Kosman				X	TOTALS	24	0	0	3

* Thompson noted continued objection to the Commission rule requiring him to abstain from voting on a project application from a sponsoring entity which he is a board member.

Anderson moved and Palmertree seconded the motion to accept the Scoring Committee's recommended score for application No. 4117 and fund the project.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds	X			
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson	X			
Kosman				X	TOTALS	24	0	0	3

Clouse moved and Smathers seconded the motion to accept the Scoring Committee's recommended scores for application No.'s 4119 and 4122 and fund both projects.

Taylor stated that he did not approve of the use of the state's money to retire acres because farmers often retire undesirable acres and the state will only get 50% of the benefit.

Strauch pointed out the situation this NRD (applicant) is in: 1) the basin is over-appropriated; 2) 8,000 acre-feet of water must be put back into the river on an annual basis by the end of 2019; 3) the only option is to retire consumptive use; and 4) they will use land right along the river with a high depletion factor.

Kraus stated he supports the project because it is in an over-appropriated area and it starts turning some of that back.

Thompson questioned why the application states \$600,000 and the recommendation is \$900,000. Staff replied that the applicant inadvertently reported its share rather than the WSF cost share. The number was corrected based on the rules which state that the Fund pays 60%.

Palmertree questioned how this benefits residents of Nebraska and noted he had scored this much lower than the Scoring Committee recommendation. Sugden replied that he also had this scored lower. Steffen stated that we are compensating the land owner, and any water coming from the west has benefits all the way across the state.

Amen noted that she liked upstream changes but questioned how they will decide which acres to retire.

Reynolds moved and Sugden seconded a motion to “call the question”.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds	X			
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson	X			
Kosman				X	TOTALS	24	0	0	3

Vote on the original motion to accept the Scoring Committee’s recommended scores for application No.’s 4119 and 4122 and fund both projects.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen		X			Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree		X		
Batie	X				Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds	X			
Deines	X		4119		Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor		X		
Knutson	X				Thompson	X			
Kosman				X	TOTALS	21	3	0	3

Anderson moved and Reynolds seconded the motion to accept the Scoring Committee’s recommended score for application No. 4123 and fund.

Thompson asked for clarification regarding the letter and the lack of a study and questioned the value of sending the water down the canal quicker rather than letting it soak into the ground. Batie replied that by lining the canal they can stop canal loss and keep the water in the reservoir.

Motion Withdrawn.

Palmertree moved and Strauch seconded the motion to accept the Scoring Committee's recommended scores for application No. 4123 and not fund.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus			X	
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds				X
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson	X			
Kosman				X	TOTALS	22	0	1	4

Palmertree moved and Strauch seconded the motion to accept the Scoring Committee's recommended score and not fund application No. 4129.

Palmertree asked for clarification on why the Scoring Committee chose not to recommend funding this project. Smathers replied that the Committee questioned some of the cost and benefit studies from Australia and was unsure if the numbers were actual or theoretical values. The applicant can reapply and restate those numbers more clearly. Batie also noted questions one through eight which are weighted higher and this project did not score high on those criteria. Christensen also noted a lot of the money was being used to replacing infrastructure, not saving water for the benefit of the state. He pointed out; however, that leaving water in Sherman Reservoir at the right time could be very beneficial.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen		X			Rexroth	X			
Clouse	X				Reynolds				X
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt			X		Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson			X		Thompson		X		
Kosman				X	TOTALS	19	2	2	4

Palmertree moved and Knutson seconded the motion to accept the Scoring Committee's recommended score and not fund application 4134.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds				X
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson	X			
Kosman				X	TOTALS	23	0	0	4

Smathers requested the scores for application 4134 be displayed on the projector. Batie noted that the zeros were the result of the applicant leaving the questions unanswered.

Anderson moved and Christensen seconded the motion to increase the Scoring Committee's recommended score for question number eight from four points to six points and fund application No. 4137.

Amen explained that there should be no points for question No. 1 because they are over a thick layer of clay and they are not in the rapid recharge area so there would be no recharge. Batie noted that had the applicant answered questions numbers one and three some points would likely have been awarded.

Palmertree asked for clarification on why the Scoring Committee recommended not funding this project. Sugden replied the Committee scored it based upon how the applicant answered the questions, so not answering hurt them. Also he noted that the majority of the benefits came from the first dam that has already been constructed and the two remaining dams to be constructed are part of this overall project. Therefore, the Committee questioned whether they were getting a true picture of what was being sustained without using the big dam that had already been built. Batie added that the applicant was asking for costs associated with the two new smaller dams, but the benefits section included the larger one that had already been built. Therefore they did not receive many points in the first eight questions.

Fornoff added that they may reapply and answer the questions. Batie stated that those changes would have likely have allowed it to get funded.

Clouse questioned the amount of other local share contributions and felt the support level was inadequate compared to the amount the City of Kearney had to supply for the second interchange on I-80.

Sugden added that the Committee struggled with question No. 10 and the Federal Mandate bonus and wants those items reviewed in the rules change discussions.

Motion Failed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus		X		
Anderson	X				Palm				X
Barels				X	Palmertree		X		
Batie		X			Rains	X			
Christensen		X			Rexroth		X		
Clouse		X			Reynolds				X
Deines		X			Smathers		X		
Fornoff		X			Smith		X		
Hadenfeldt		X			Steffen	X			
Hergott	X				Strauch		X		
Huggenberger		X			Sugden		X		
Kadlecek	X				Taylor		X		
Knutson		X			Thompson			*	
Kosman				X	TOTALS	6	16	1	4

* Present, not voting

Batie moved and Kraus seconded the motion to accept the Scoring Committee's recommended score and not fund application No. 4137.

Amen stated her desire to fund this project because of the benefit the Legislature provided in funding Papio’s levee project outside of this fund.

Palmertree pointed out answering questions would have helped this application score higher.

Smathers also noted that no one should consider the levee project when scoring this or any other project.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen		X			Kraus	X			
Anderson		X			Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains		X		
Christensen	X				Rexroth	X			
Clouse	X				Reynolds				X
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen		X		
Hergott		X			Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek		X			Taylor	X			
Knutson	X				Thompson			*	
Kosman				X	TOTALS	16	6	1	4

* **Present, not voting**

Anderson moved and Steffen seconded the motion to accept the Scoring Committee’s recommended score and not fund application No. 4138.

Palmertree asked for insight as to why the Scoring Committee recommended not funding this project. Strauch commented that each of the applications not funded did not score well in the first eight questions which are the questions that pertain to water sustainability and carry the potential for 48 of the 69 total points available. As a result, these projects could not even achieve half the available points and therefore are not top notch projects and shouldn’t be funded.

Thompson noted that in scoring he sometimes assigned points even though the applicant may have not answered the question or responded with a N/A because he read the question and analyzed the project and over-rode the applicant’s N/A. Thompson also stated for the record that he believes the Commission should spend the money regardless of the score.

Batie responded that initially some members of the Scoring Committee had also assigned points in some cases to questions which had N/A’s because they could see some merit. But in fairness, it was later decided that they did not know as much about the project as the applicant and so they deferred to the applicant’s judgement. As to leaving money on the table for the second round, it was discussed and this year is the only year there will be two funding rounds in the same year. The Committee hopes that those who do not get funded this round review their applications and the

scores they received, make adjustments, and reapply. The Committee felt they were being better stewards of the state’s money by only funding projects that were qualified and generate water sustainability rather than spend money on projects that weren’t worthy. This does not mean the project isn’t a quality project, but the applications were written that way and they have been judged based upon the application.

Thompson replied that delays cause inflation to escalate costs. Sugden pointed out that could always be the case because the highest scoring project may utilize all available funding. Kraus stated that the Scoring Committee’s job is to judge the application, not fill it out. Knutson stated that he would rather err on the side of good judgement than to have to face a senator who is asking why you funded that project. Knutson also pointed out that he had abstained from scoring a Middle Loup Project and the alternate’s scores were used and had his score been used it might have made a difference.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen		X			Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds	X			
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott		X			Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson		X		
Kosman				X	TOTALS	20	3	0	4

Batie moved and Kraus seconded the motion to approve the City of Omaha Public Works Department’s application, No. 4116, for its Combined Sewer Overflow project.

Thompson asked for application No. 4116 to be projected on the screen, he then pointed out an upload date of February 2, 2016, which was after the closing date December 30, 2015, for filing these applications. He asked for clarification as to why this application was allowed to come in late. Sievers noted that the application was uploaded during the initial filing period and later uploaded again to reflect the correct request amount. By statute, distributions to combined sewer overflow projects must equal ten percent of appropriations to the WSF.

Thompson noted the applicant initially asked for \$1,100,000 and asked what year one funding was. Staff and several commissioners responded \$21,000,000.

Thompson questioned the change and Batie responded this is another case where they can’t do the math, but the statute still gives them ten percent.

Thompson stated that the city still has to apply and if the city only applied for \$1,000,000 [sic] we should only give them \$1,000,000 [sic].

Sugden pointed out that the city wants ten percent every time. He further stated he has a problem with this project not being scored but by statute the Commission doesn't have a choice.

Smathers pointed out the applicant sent a letter a few months after the legislation passed asking for their money.

Editor's Note: The amount used in general discussion as the total appropriations to the WSF to date has been \$29 million. The exact amount appropriated was \$29,004,518 as shown on the fund analysis worksheet previously distributed by Gittins.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree	X			
Batie	X				Rains	X			
Christensen	X				Rexroth	X			
Clouse	X				Reynolds				X
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt	X				Steffen	X			
Hergott	X				Strauch	X			
Huggenberger	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				Thompson		X		
Kosman				X	TOTALS	22	1	0	4

Sugden stated he wanted to encourage everyone who wasn't funded to re-apply in July.

Hadenfeldt added that the applicants should answer all questions that may be applicable now that they know the Commission will only award points if questions are answered.

The attached table summarizes 2015 Water Sustainability Fund applications approved as described above including final scores and funding amounts

OTHER BUSINESS

Kadlecek asked what was on the agenda for the June meeting at this time. Staff reported that agenda items will include: 1) Erosion & Sediment Control Program updates; 2) Resources Development Fund allocations and obligations; 3) establishing the revolving fund base for the Small Watershed Flood Control Program; and 4) rules and policy changes.

Sievers noted that staff has requested feedback from WSF applicants and would appreciate input from the Scoring Committee and other Commissioners as to how the application submission and review processes might be improved.

Gittins noted that six Caucuses will be held in January 2017 within 10 days following the first Thursday which follows the first Tuesday.

MEETING DATES

Staff noted a conflict with the September 27-28, 2016, Commission meeting date. It was noted that an earlier date might facilitate more timely completion of Title 261 rules change. The Comprehensive Planning Committee will initiate meetings and may describe or propose draft changes to the Commission’s rules at the June meeting.

Staff recommended holding public information meetings across the state to discuss any proposed changes and allow for public input for commissioners’ consideration prior to the meeting in which the Commission may act to move forward with the formal rules adoption process

Staff noted the previous meeting had been scheduled for Kearney but noted that meeting space availability could become an issue. Commissioners were agreeable to a location change if needed to accommodate a new meeting date.

Krause moved and Knutson seconded the motion to reschedule the September 27-28, 2016, meeting to September 7-8, 2016.

Motion Passed.

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Amen	X				Kraus	X			
Anderson	X				Palm				X
Barels				X	Palmertree			X	
Batie	X				Rains	X			
Christensen	X				Rexroth			X	
Clouse	X				Reynolds				X
Deines	X				Smathers	X			
Fornoff	X				Smith	X			
Hadenfeldt			X		Steffen	X			
Hergott	X				Strauch	X			
Huggenberger		X			Sugden			X	
Kadlecek				X	Taylor	X			
Knutson	X				Thompson	X			
Kosman				X	TOTALS	17	1	4	5

GOVERNOR APPOINTEES’ TERM EXPIRATION MAY 31, 2016

Chairman Fornoff and the Commission thanked Commissioners Huggenberger and Palmertree for their service.

ADJOURNMENT

* * * * *

The meeting was adjourned at 4:25 p.m.

Kevin Fornoff, Chairman, NRC

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

DRAFT

2015 Water Sustainability Fund Application's Final Score and Funded Amounts

Application number	Application <= \$250,000	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Q13	Q14	Q15	Bonus	Final Score	Amount Allocated & Obligated
4121	Western Water Use Management Model Update	4	4	4	4	2	4	4	2	0	2	2	2	2	2	2	0	40	235,500
4118	Estimating Recharge toward Sustainable Groundwater and Agriculture, Central Platte NRD	2	4	4	2	2	4	4	2	2	2	2	2	2	2	2	0	38	151,680
4126	Platte and Elkhorn River Valley Integrated Water Monitoring	2	4	2	4	4	4	2	2	1	2	2	1	2	2	2	0	36	64,200
4124	Groundwater Management program review for Water Sustainability	2	4	2	4	2	4	2	2	1	2	3	1	2	2	2	0	35	249,900
4133	Aerial Electromagnetic Survey of the Bazile Groundwater Management Area	4	4	2	4	2	4	0	2	2	2	2	2	1	2	2	0	35	81,270
4132	Lower Platte South NRD Aquifer Framework Mapping	4	4	2	2	4	4	0	2	2	2	2	1	1	2	2	0	34	250,000
4125	Secondary Bedrock Aquifer Reconnaissance Sampling in Eastern Nebraska	2	4	2	4	4	4	0	2	1	2	2	1	2	1	2	0	33	96,300
4142	Lower Platte North NRD - Aquifer Framework Mapping	4	4	2	4	4	4	0	2	0	2	2	1	1	1	2	0	33	250,000
4143	Mapping Aquifer Characteristics of the Lewis and Clark NRD using Aero Electromagnetics	4	4	2	4	2	4	0	2	2	2	2	1	1	1	2	0	33	61,200
4144	Lower Loup NRD - Aquifer Mapping	4	4	2	2	4	4	0	2	2	2	2	0	0	2	2	0	32	250,000
4140	P-MRNRD Sarpy County Aquifer Mapping	4	4	2	4	2	4	0	2	1	2	2	0	0	2	2	0	31	240,000
4135	Groundwater Management for Mid-Summer Declines	4	4	4	4	2	4	0	0	1	2	2	0	0	0	2	0	29	200,000
4141	Lower Elkhorn NRD - Aquifer Framework Mapping	4	4	2	4	2	4	0	2	2	2	0	0	0	0	2	0	28	250,000
TOTAL																			2,380,050

Application number	Applications > \$250,000	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Q13	Q14	Q15	Bonus	Final Score	Amount Allocated & Obligated
4117	Aquifer Storage and Restoration Nitrate and Uranium Control Project, Hastings Nebraska	6	4	2	4	4	4	2	4	3	2	2	2	2	2	2	2	47	4,410,000
4122	Lower Elkhorn Water and Soil Conservation Program	4	4	4	4	4	4	0	2	1	2	2	2	2	2	2	0	39	900,000
4119	NPNRD Groundwater Retirement Program	0	6	6	4	4	4	4	0	0	2	3	2	0	0	0	0	35	900,000
4123	E65 Canal Lining Project	0	4	4	4	4	4	0	0	0	2	2	2	1	2	2	0	31	0
4129	Middle Loup Stream Flow Enhancement	4	2	4	4	4	2	0	0	1	2	2	2	2	1	0	0	30	0
4137	P-MRNRD - West Branch Papillion Creek Regional Detention Structures 5, 6 and 7 (WP-5, 6 & 7)	0	0	0	6	4	4	2	4	2	2	0	2	0	2	2	0	30	0
4134	Advanced Hydrogeologic Frameworks for Aquifer Management in Critical Sections of the Platte River Basin	0	4	2	4	2	4	2	0	0	2	2	1	1	2	2	0	28	0
4138	Mitchell Wastewater Treatment System Improvements	4	4	2	2	2	2	0	0	2	2	2	0	0	2	0	0	24	0
TOTAL																			6,210,000

4116 Combined Sewer Overflow Project

CSO 2,900,452
GRAND TOTAL 11,490,502