

**NEBRASKA NATURAL RESOURCES COMMISSION**  
**MEETING MINUTES – January 27, 2016**  
**EMBASSY SUITES HOTEL – Lincoln, 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:**

Jeff Fassett, Rex Gittins, Kent Zimmerman, LeRoy Sievers and Jill Richters.

**Others in attendance were:**

Craig Derickson, NRCS; Mike Onnen, LBNRD; Mike Sousek, LENRD; Ken Berney, LENRD; Marlin Petermann, P-MNRD; Bob Hilske, NNRD; Mike Sotak, FYRA; Jim Cannia, Aqua Geo Frameworks; Luke Zakezpwski, CPNRD; Jess Mintkin, CPNRD; Claire Oglesby, State Budget, Mark Brohman, Nebraska Environmental Trust; Lalit Jha, JEO; Frank Daley, Nebraska Accountability and Disclosure Commission; Dave Claybaugh, LBBNRD; John Miyoshi, LPNNRD; Erika Hill, NARD; Travis Hazard, JEO.

**CALL TO ORDER, ROLL CALL**

Commission Chairperson Fornoff called the meeting to order at 2:00 p.m. at the Embassy Suites Hotel, Lincoln, 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 1/20/2016
4. Small Watershed Flood Control Fund Status Report as of 12/31/2015
5. Nebraska Soil & Water Conservation Fund (NSWCPF) Status Report as of 12/31/2015
6. Nebraska Water Quality Fund Status Report as of 12/31/2015
7. Water Well Decommissioning Fund Status Report as of 12/31/2015
8. Water Sustainability Fund - Applications Filed in 2015
9. NRCS Report
10. Synopsis of Conflicts of Interest Laws Applying to State Executive Branch Officials and Employees
11. RDF Project Sponsor Reports
  - Lower Turkey Creek Watershed Project
  - Buck & Duck Creek Watersheds Project
  - Western Sarpy/Clear Creek Levee Project
  - Pigeon/Jones Creek Watershed Project
  - Sand Creek Environmental Restoration Project
  - Upper Prairie/Silver/Moores Creek Project
12. Erosion and Sediment Control Program (ESCP)
  - ESC Act
  - Draft NRD ESC Rules Template
  - NRD ESC Flow Chart
  - Redline Changes - State ESC
13. Redline Changes to Policy Statements I, II, VI, VIII, X, XV

#### MINUTES

*Reynolds moved and Smathers seconded the motion to approve the minutes of the September 29, 2015 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				<b>TOTALS</b>	<b>23</b>	<b>0</b>	<b>1</b>	<b>3</b>

### **PUBLIC COMMENTS**

Craig Derickson, NRCS State Conservationist, distributed and reviewed an NRCS report. He described NRC's new online tool, Conservation Client Gateway, which gives producers the ability to work with NRCS online.

### **DNR UPDATE**

Director Fassett reported that the Water Sustainability Fund (WSF) application submission process went smoothly. DNR staff is proceeding with reviews to help him determine whether or not applications meet specified requirements to be deemed satisfactory. Fassett also commented on staff's recent work to update the State Erosion & Sediment Control Program.

### **EXPENDITURES REPORT**

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

## NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

Frank Daley, Executive Director of the Nebraska Accountability and Disclosure Commission (NADC), distributed and reviewed a "SYNOPSIS OF CONFLICTS OF INTEREST LAWS APPLYING TO STATE EXECUTIVE BRANCH OFFICIALS AND EMPLOYEES". The following bullets were of particular interest to Commissioners:

- If a Commissioner has a potential conflict of interest with an upcoming action the Commission will be taking, the Commissioner should file a "Potential Conflict of Interest Statement (NADC Form C-2)" form with the NADC. NADC will review it and determine whether or not a conflict of interest exists. NADC will notify the Commissioner in writing of its finding, and that should be retained as a record of the Commission.
- When a Commissioner has a conflict of interest, that Commissioner may not participate in the discussion or in the vote on the matter (abstain).
- If, during discussion of an issue, a Commissioner realizes that an issue involves something that is a conflict of interest for him or her, the Commissioner should abstain from participation and voting. The Commissioner may file the "Conflict of Interest" form, even after the fact.
- In addition to the NADC statutes, the Commission must comply with § 2-1510 (4) which further limits and prohibits a Commissioner from participating in any discussion and the scoring and ranking of any Water Sustainability Fund application. The statute expands the conflict of interest definition to include "any application from an entity in which a Commissioner has any interest". The NADC doesn't address statutory issues beyond the NADC statutes. Mr. Daley suggested the Commission might request an Attorney General's opinion or some legislative clarification as to how this particular statute language should be implemented.

Reynold asked Sievers to define "any" prior to the time of scoring. Kraus asked that Sievers also look at what constitutes a conflict with regard to business interests.

## EROSION AND SEDIMENT CONTROL PROGRAM

As the result of changes in legislation this past year, NRDs will be revising their Erosion and Sediment Control Programs (ESCP). Action to amend an NRD ESCP requires the approval of the Director of DNR upon recommendation of the NRC.

Because NRD ESCPs must be in compliance with the State ESCP, a working group of NRD managers has requested DNR to amend the State ESCP to bring it into compliance with the revised statute. Four or more public meetings or hearings must be held across the state to gather public comment before the Commission and DNR Director may approve amendments to the State ESCP. This Commission meeting is the first of these public meetings to discuss proposed changes and gather public input. A copy of the State ESCP with proposed red-line changes was provided to the Commissioners prior to the meeting and additional copies were made available during the meeting. Copies will also be available at DNR's office in Lincoln upon request. The main changes include:

- Replacing the term "Soil Loss Limits" with the term "Soil Loss Tolerance Level".

- Adding a paragraph describing sheet and rill erosion and ephemeral gully erosion.
- Addition of a statutory exclusion to the Act for public power districts and public power and irrigation district facilities.
- Removal of the 90% cost share requirement.
- Replacing the statutes in APPENDIX A with current statutes.

**Public Comment Summary**

Mike Onnen, Manager of the Little Blue NRD, described a template the NARD working group has developed for use by an NRD in amending its rules and regulations. The template includes a draft procedure NRDs can use to guide the process from the initial complaint to an action that would appease those that are being negatively impacted. The goals of the template are to assist NRDs with a consistent approach to amend their programs and to get assurance that the Commission and Department are in agreement with them prior to taking action to update their rules. When a final draft template is complete, it will be forwarded to the Commission for review and comment. Onnen also noted that other NRDs, especially the South Platte NRD, are beginning to update many of the old ESCP forms.

Keith Rexroth commented that the ESCP doesn't have a lot of teeth in the program.

Karen Amen appreciated the work Glenn Johnson had put into the complaint flow chart, but added that there are some benefits also derived from sediment and erosion transport.

**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.
- 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:

**Western Sarpy/Clear Creek**

<b>Component</b>	<b>No.</b>	<b>Amount Reduced</b>	<b>Amount Increased</b>
LAND RIGHTS	3		\$0.30
CONSTRUCTION	4	\$0.30	

### Lower Turkey Creek

Component	No.	Amount Reduced	Amount Increased
LAND RIGHTS	2	\$1,751.79	
ENGINEERING	3		\$1,751.79

- Project Sponsor Update Reports
  - Dave Clabaugh reported on the Lower Turkey Creek Watershed Project.
  - Bob Hilske reported on the Buck & Duck Creek Watersheds Project.
  - Marlin Petermann reported on the Western Sarpy/Clear Creek Levee Project.
  - Petermann also reported on the Pigeon/Jones Creek Watershed Project.
  - John Miyoshi reported on the Sand Creek Environmental Restoration Project.
  - Jess Mintkin reported on the Upper Prairie/Silver/Moores Creek Project.

#### 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 over \$600,000 will be made in February.

#### Water Well Decommissioning Fund

Normal activity since the last report.

#### Water Sustainability Fund

- 27 applications were filed in December, including 1 for a CSO project and 14 requesting less than \$250,000.
- Nebraska Game & Parks and DNR are beginning the application review process.
- The DNR Director expects to complete his reviews by mid-March.
- Applications deemed “satisfactory” by the Director will be made available as a group to all Commissioners, and the Scoring Committee will begin meeting to develop its recommendations. The recommendations will be provided to the Commission prior to the next Commission meeting where final scoring and ranking will be determined.
- Gittins reviewed WSF appropriations, current funds balance, administrative expenditures to date, and the amount of funding available to commit to projects.
- Mike Sotak, FYRA Engineering, complemented DNR staff for being very helpful to applicants and with the electronic submission process.

## **PROPOSED POLICY CHANGES**

Sievers stated that NRC policy statements are to be reviewed annually. The Executive Committee had reviewed the draft red-line changes presented at the meeting. Commissioners were asked to review the proposed changes and respond with any additional changes prior to the next Commission meeting where the changes will then be discussed and considered for adoption. Sievers also mentioned that Commissioners should note any other rules or statutory changes that they believe should be considered as they go through the review and scoring process of the WSF applications.

## **MEETING DATES**

The following meeting locations, dates, and times were discussed:

- Kearney      April 19, 2016, starting at 10:00 a.m. and the morning of the 20<sup>th</sup>
- Kearney      June 27, 2016, starting after lunch and continuing into the morning of the 28<sup>th</sup>
- Kearney      Sept. 27, 2016, starting after lunch and continuing into the morning of the 28<sup>th</sup>
- Kearney      February 21, 2017, starting at 10:00 a.m. and the morning of the 22<sup>nd</sup>

**Anderson moved and Hergott seconded the motion to approve the following meeting dates and locations; April 19-20, 2016; June 27-28; September 27-28; and February 21-22, 2017 all in Kearney, Nebraska.**

**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				<b>TOTALS</b>	<b>22</b>	<b>1</b>	<b>0</b>	<b>4</b>

**LEGISLATIVE COMMITTEE**

Chair Sugden reported that:

- He had forwarded the letter to Senator Watermeier after the last Commission meeting requesting the Legislature establish a “cap” equal to the estimated annual funding on WSF commitments beyond current appropriations.
- Recently there has been concern that the amount requested is insufficient.
- Sugden reported that he had spoken with Senator Watermeier regarding this issue and the Senator stated that a greater request would likely not pass.

**ANNOUNCEMENTS / OTHER BUSINESS**

Chair Fornoff reminded the Commission that the elections last year were for a two year appointment so there would not be elections for Commission Chair and Vice-Chair this year; and that he would retain the same committee chairs.



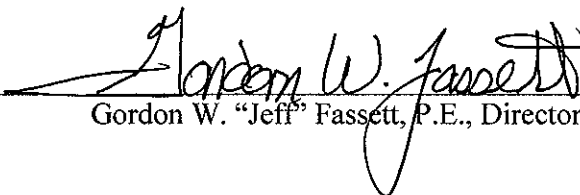
Gittins reminded the Commission that the appointees' terms were set up for four year staggered terms. Seven of those positions are up for appointment in May. Those that wish to continue their appointment will need to fill out an application on the Governor's web site. An email will be sent out to those seven Commissioners with a link to the web page and instructions for locating the application. There will also be six caucuses for NRD representatives next January.

\* \* \* \* \*

The meeting was adjourned at 3:58 p.m.



Kevin Fornoff, Chairman



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