

NEBRASKA NATURAL RESOURCES COMMISSION
MEETING MINUTES – SEPTEMBER 1, 2015
Fairfield Inn – 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:

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

Others in attendance were:

Lynn Webster, UNWNRD; Lyndon Vogt, CPNRD; Karen Griffin, OA; Dean Edson and Dustin Wilcox, NARD; James Goeke, UNL-C&SD; Steve Cogley, Hastings Utility; Marlin Petermann, P-MRNRD; and Jack Russell and Sylvia Johnson, MRNRD.

CALL TO ORDER, ROLL CALL

Commission Chairperson Fornoff called the meeting to order at 10:30 a.m. at the Fairfield Inn, Kearney, Nebraska.

NOTICE OF THE MEETING

Notice of the meeting was published on the State Public Meetings Calendar and on Department of Natural Resources' web site at www.dnr.ne.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. Policy Statement XIV
3. NRC (redline) Draft Rules Title 261
4. Report of the Comprehensive Planning Committee

5. Report of the Natural Resources Commission re Title 261 (Draft)
6. Concise Explanatory Statement re Title 261 NAC (Draft)
7. Water Sustainability Fund Financial Status and Projected Balance
8. Papiro/Missouri River NRD Letter dated 8/31/2015 (handed out)
9. Expense Reimbursement Guideline & Example Form

MINUTES

Knutson moved and Smathers seconded the motion to approve the minutes of the June 16, 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	TOTALS	20	0	1	6

INTRODUCTIONS AND PUBLIC COMMENT

Chairman Fornoff recognized Jeff Fassett, the new Director of the Department of Natural Resources. Fassett introduced himself to the Commission.

Chairman Fornoff offered an opportunity for anyone from the public to make any comments they wish but no one chose to speak.

WATER SUSTAINABILITY FUND

Comprehensive Planning Committee (Committee) Chair, Scott Smathers led the discussion regarding public testimony on the proposed rules for the Water Sustainability Fund (WSF). Smathers presented the Committee’s recommendations and the alternative options regarding scoring of projects that were the result of federal mandates.

Thompson moved and Christensen seconded the motion to change the language on page 17 of the draft rules, Title 261, CH3, 001.01, from “one additional point” to “2, 4 or 6 additional points”.

Commission members discussed various alternatives for dealing with the statutory intent that priority funding status be given to projects resulting from Federal Mandates.

Sugden moved and Smathers seconded a motion to cease debate and 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	15	6	0	6

Vote on motion to change the language on page 17 of the draft rules, Title 261, CH3, 001.01, from “one additional point” to “2, 4 or 6 additional points”.

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	2	19	0	6

Sugden moved and Reynolds seconded the motion to use the Comprehensive Planning Committee’s draft language, related to federal mandates, for the draft rules, Title 261, CH3, 001.01.

Commission members discussed what constitutes a “federal mandate” and how to handle applications claiming to be the result of a federal mandate. The Committee has met twice and is working with DNR staff to establish a set of draft guidelines for the Commission’s review. The concerns regarding whether an application is the result of a federal mandate will be determined by what an applicant submits with the application. The guidelines require the applicant to substantiate what their federal mandate is and why their project is required.

Thompson moved to amend the motion by modifying draft rule language from “one additional point” to “1, 2 or 3 additional points” page 17 of the draft rules, Title 261, CH3, 001.01.

There was no second to the motion to amend.

Motion Failed.

Clouse moved and Knutson seconded the motion by modifying draft rule language from “one additional point” to “two additional points” page 17 of the draft rules, Title 261, CH3, 001.01.

Commission members discussed the purpose and goals of the Water Sustainability Fund, the desire to fund projects of this type and the need to move forward.

Knutson moved and Amen seconded a motion to cease discussion and 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	20	1	0	6

Vote on the motion to amend by modifying draft rule language from “one additional point” to “two additional points” page 17 of the draft rules, Title 261, CH3, 001.01.

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	12	9	0	6

Vote on the motion to change the Comprehensive Planning Committee’s draft language on page 17 of the draft rules, Title 261, CH3, 001.01, from “one additional point” to “two points”.

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	4	0	6

The Commission reviewed the comments from the hearing and the Committee's draft recommended rules changes.

Palmertree moved and Anderson seconded the motion to accept changes as outlined.

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	21	0	0	6

Smathers reviewed additional changes to the draft rules.

Palmertree moved and Clouse seconded the motion to accept the remainder of the changes as proposed in the red line version of the draft rules.

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	21	0	0	6

Sievers reviewed the Committee’s draft of the Report of the Natural Resources Commission Draft Rules Title 261 Nebraska Administrative Code which summarizes all comments received at the hearing and provides a response as required by statute when creating formal rules.

Knutson moved and Kraus seconded the motion to adopt the Report of the Natural Resources Commission summarizing the comments received at the July 31, 2015, public hearing and the responses of the Commission, as presented by the Committee.

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	21	0	0	6

Sievers described the Committee’s draft of the Concise Explanatory Statement which is required by statute to identify any changes made to the draft rules from that noticed and give reasons for those changes. Since the Commission made one change from the Committee’s proposed draft, that one change to give applications two points if resulting from a federal mandate, will need to be incorporated into the Concise Explanatory Statement as well.

Kraus moved and Hadenfeldt seconded the motion to adopt the Concise Explanatory Statement concerning title 261 Nebraska Administrative code as presented by the Committee incorporating the change made in the draft rules.

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	21	0	0	6

Staff reviewed the Water Sustainability Fund balance. Staff also noted that LBs 1098 & 1098A were not consistent as to the amount designated for sewer separation projects for FY2015 (10 percent vs. \$1.1 million). Through discussions with the Attorney General’s Office it was determined that LB 1098 had precedence, so 10 percent (\$2.1M) should be designated for this purpose. It was further noted that the FY2016 and 2017 appropriations to this fund were \$8 million as a result of transfers to the Resources Development Fund, thus \$800,000 (10 percent) must be earmarked for sewer separation projects in those fiscal years.

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The meeting was adjourned at 11:50 a.m.

Kevin Fornoff, Chairman, NRC

Gordon W. “Jeff” Fassett, P.E., Director, DNR