

# MINUTES OF THE NEBRASKA NATURAL RESOURCES COMMISSION MEETING

March 22, 2007  
Lower Platte South NRD – Lincoln, Nebraska

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Those in attendance were:

Wayne Madsen, Chair	Marvin Brown, NRCS
Clinton Johannes, Vice Chair	
Jim Van Marter, Member	Ralph Puls, PMNRD
John Burkholder, Member	Michael J. Murren, LPNNRD
Richard Hadenfeldt, Member	John Miyoshi, LPNNRD
Larry Moore, Member	
Wayne Davis, Member	Jason Farnsworth, OA
Ladd Reeves, Member	Mike Sotak, OA
Garry Anderson, Member	
Joseph Hergott, Member	Brian Dunnigan, Staff
Keith Rexroth, Member	Rex Gittins, Staff
Dan Watermeier, Member	Ron Theis, Staff
Vincent Kramper, Member	Jill Richters, Staff
Myron Lembke, Member	Kent Zimmerman, Staff
Beverly Donaldson, Member	

## **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 March 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 January - February 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. Integrated Water Management Planning Program Fund Status Report
11. Proposed Amendment to Title 262, Chapter 3, Rule 004
12. Proposed Amendments to Title 256 Chapter 2, Rule 007; and Chapter 4, Rule 001
13. NRDF Ranking Worksheet – Project Proposal

14. NRDF Ranking Worksheet – Project Application
15. NRDF Modified Application Process
16. Olsson & Associates Proposed cash flow analysis
17. Master Plan Map of Pigeon/Jones Creek
18. Pigeon/Jones Creek Feasibility Study Fact Sheet
19. Proposed Policy Statement XIV

### MINUTES

Motion was made by Kramper and seconded by Hadenfeldt to approve the minutes of the January 24, 2007, Commission meeting with corrections to the voting record for the Chairperson and Vice-chairperson. Motion carried.

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

Nay: None

Not Present: Korell

### EXPENDITURES REPORT

The expenditures report for the various funds for the months of January and February 2007 had been distributed to Commission members. Extra copies were available. Motion was made by Hergott and seconded by Lembke to accept the expenditures report for January and February as presented. Motion carried.

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

Nay: None

Not Present: Davis (stepped out), Korell

### ADVISOR'S COMMENTS

Marvin Brown, NRCS Assistant State Conservationist, 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:

- **Invasive Plant Management Plan** – On March 8, 2007 the State Technical Committee Subcommittee on Invasive Species met and discussed the pros and cons of a more coordinated state-level approach to addressing invasive species. The main focus of the meeting was the eastern red cedar and salt cedar.
- **No-Till** – Senators Louden and Harms requested a paper explaining the relationship of no-till farming to water conservation and a description of the current no-till educational programs for use at water issues meetings.
- **Business Office Analysis** – NRCS in Nebraska has completed an analysis of the workload of each field office. A multi-phase plan will be presented to assure consistent services are available at each office and to reduce total operating costs. The plan will recommend several office closures to meet the NRCS's service goals and to stay within the projected FY2008 budget. A public announcement will be made around the 1<sup>st</sup> of April with 30 days being given for public comment before action is taken on the initial set of office closures. Rexroth commented that the offices closings are being driven more by budget restrictions than workload. Hadenfeldt noted that local / district government entities share some of the NRCS office space, and asked if anything might be done to address situations where non-federal employees must be sent home when the offices are closed for federal holidays. Mr. Brown had no new information on this issue.

### **DIRECTOR'S REPORT**

As Director Ann Bleed was unable to attend the meeting, no report was given.

### **ENVIRONMENTAL TRUST**

Kramper reported that two bills before the Legislature, LB 301 and LB 638, would result in funding being taken away from the Environmental Trust in 2009 instead of 2013 as scheduled.

### **PLATTE AND REPUBLICAN RIVER ACTIVITIES**

As Director Ann Bleed was unable to attend the meeting, no report was given.

### **WATER POLICY TASK FORCE**

Johannes reported that the Water Policy Task Force met on March 19. The main topic of the meeting was discussion about specific funding needs for meeting the requirements of LB962. The plan must be specific about tasks and needed funding to implement IMPs and to meet DNR's requirement for additional staff with expertise in particular areas. Governor Heineman has proposed legislation to create a Water Cash Fund with initial funding of \$2.7 million from the General Fund and \$300,000 in Environmental Trust grants. Future funding is recommended to come from the corn check-off program, possibly a new soybean check-off, and a ¼ cent ethanol tax. The current corn check-off fund is scheduled to expire in 2013. There was also discussion at the meeting about whether the Task Force should only meet once per year and about water banking. The next Task Force meeting is scheduled for June.

### **LEGISLATIVE & BUDGET COMMITTEE**

Keith Rexroth noted that there is interest in activating the Legislative & Budget Committee. This was raised during the new member orientation meeting held on March 21. As a result of that discussion, he will schedule a Committee meeting in conjunction with the July Commission meeting.

Keith then asked Theis to report on legislation affecting the Commission. Ron gave a brief review as follows:

- Senator Christensen's bill, LB 701, to reorganize the Republican River basin is unlikely to get out of Committee without major revision.
- Senator Coplins moratorium bill is indefinitely postponed.
- LB 458 dealing with riparian vegetation is on general File. This would provide \$2 million annually and would be administered through the Department of Agriculture's Noxious Weed and Invasive Species Fund in the Republican River basin. It is Senator Carlson's priority bill.
- The Governor's LB 322 to create the Water Resources Cash Fund is being considered.
- LB 391 is a Government Military Affairs Committee bill dealing with the public meeting law. This legislation would allow the public to add topics to public meeting agendas and to demand an agency analysis and report on the request within a specific time period. These requirements would affect many public entities, including NRD.
- LB 295 and 314 were joined and are now identified as LB 295. This is the Natural Resources Committee's priority bill which contains DNR's requested cleanup legislation and also redefines sand pits being pumped for irrigation as water wells.

Keith then asked Gittins to comment on the budget. Rex reported that:

- The agency's budget request was for the same funding as Fiscal Year 2006-07 less the \$2.7M special appropriation for irrigation water buyouts. This was approved by the Governor, but the Legislature's Appropriations Committee has recommended reductions in funding for the Nebraska Resources Development Fund (NRDF) and the Soil Survey Program.
- The Appropriation Committee's recommended budget for the NRDF represents a decrease of \$215,000 for both FY2007-08 and FY2008-09 which would affect the timing for funding existing projects. Ann Bleed offered the only testimony on NRDF funding at the Appropriations Committee hearing for the agency. She pointed out that the Commission is currently faced with requests that exceed the cap, and that reduced funding will lengthen the timeframe required to fully fund approved projects.
- The Appropriation Committee recommended that the Soil Survey Program no longer be funded. At the hearing, Ann Bleed stated that work currently in progress (making soil profiles across county lines contiguous) is part of the program's original scope and that results would be beneficial to the State. Based on UN-L's input that the work could be completed in December 2007, she asked that funding be continued for FY2007-08 in the amount of one-half of the agency's budget request for that year.

#### **PROGRAM COMMITTEE**

Clint Johannes reported that during the Program Committee which met on March 21 at 1:30 p.m., status reports for all programs had been reviewed and discussed.

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

Johannes noted that the Commission realizes the present situation of having more project request submissions than allowed under the cap will likely continue. A subcommittee was appointed at the December special Commission meeting to identify structured processes that could help in comparing competing projects. Clint stated that the subcommittee's efforts had resulted in worksheets that could be used to rank projects at both the project proposal stage and at the application and feasibility study report stage. The proposed ranking and point assignments were based primarily upon Commission members' responses to a priority ranking survey, with consideration of differing priorities identified in responses from NRD, irrigation district, and NRDF advisor responses. Clint stressed that ranking information would be input to the Commission's decision making process but would not require that any decision be made based on the ranking. He stated that the Program Committee believed the ranking process and worksheets would help provide consistent and documented project comparisons.

Motion was made by Johannes and seconded by Watermeier to direct staff to utilize the ranking worksheets in the evaluation of project proposals and project applications/feasibility study reports, and to provide recommended rankings to the Commission as part of the Director's recommendations.

During discussion on the motion, Lembke noted exception to the point assignment for items listed on both worksheets under "*Other aspects of the project that warrant NRDF funding.*"

Motion was then made by Lembke and seconded by Burkholder to amend the prior motion to allow only one point per line item and eliminate the ten-point limitation in the "*Other aspects of the project that warrant NRDF funding*" section of each worksheet.

Legal Counsel advised that making another conflicting motion was out of order during discussion of an existing motion, but that discussion of the conflicting motion could proceed if

**PROGRAM COMMITTEE (continued)**

the original motion was tabled by the one making it, but the original motion could only be renewed if by motion of whoever made the conflicting motion.

At this point motion was made by Johannes and seconded by Rexroth to table the original motion, and Lembke withdrew his motion to amend the previous motion to direct staff to utilize the ranking worksheets in consideration of Johannes' motion to table. Motion to table carried.

Aye: Davis, Lembke, Rexroth, Van Marter, Reeves, Burkholder, Kramper, Hadenfeldt, Donaldson

Nay: Hergott, Moore, Watermeier, Anderson, Johannes, Madsen

Not Present: Korell

Discussion continued about how the ranking worksheets would be used. A suggestion was made that the ranking process might be "tested" by ranking projects already approved and allocated. Mike Sotak of Olsson and Associates volunteered his firm's resources to use the worksheets to rank fully or partially funded projects listed on the NRDF Status Report and provide the results to the Commission.

The Commission meeting recessed at 9:30 a.m. for the public hearing.

**PUBLIC HEARING**

At approximately 9:40 a.m., the Commission meeting was halted for a public hearing on proposed changes to the Soil and Water Conservation Fund rules. Ron Theis, Department of Natural Resources Legal Counsel, served as the hearing officer. He explained that modifications to the Soil and Water Conservation Fund rules were in response to a request to change the 50 percent limitation in the NSWCF eligibility rules on landowners' share of federally-supported practices based on the reduction of federal cost share. The following documents were entered into the record:

1. Notice of public hearing published in the LINCOLN JOURNAL STAR on February 20, 2007
2. Letter to the Secretary of State
3. Notice to the Chair of the Legislative Council
4. August 10, 2006, document to Governor Heinemann
5. Working draft of the revised rules and regulations
6. Letter to NRD offices with copy of the proposed rules and regulation changes
7. Written testimony from Steve Chick (NRCS State Conservationist) and Ken Berney, Lower Elkhorn Natural Resources District

Ron briefly described that the proposed change would allow Natural Resources Districts, if they so chose, to supplement federal cost-share assistance with funds from the Nebraska Soil and Water Conservation Fund as long as the combined cost-share assistance from the federal program and the Soil and Water Conservation Fund did not exceed 75% of the actual or average cost, whichever is less, of the practice involved. He then invited Commission members to comment or ask questions. There being no question or comments, Ron then invited public testimony. Being none, he stated that the Commission could take action on whether to adopt the modified rules and regulations later during the meeting. The hearing was closed at approximately 9:55 a.m.

**PROGRAM COMMITTEE (continued)**

After consultation with Legal Counsel, Johannes explained that the ranking worksheet and related point values could be modified at any time by Commission action without rules changes, but having some methodology in place which justified an anticipated rule change for the timing of the Commission's considerations was necessary. He confirmed that ranking criteria and related point assignments would be reviewed by the Commission in subsequent meetings and adjusted as agreed. He added that action on the ranking process and worksheets at this meeting would facilitate arrangements to hold a hearing on proposed rules changes regarding the timing of Commission action on staff recommendations for project proposals and application/feasibility studies submitted in the future. For these reasons, Clint Johannes recommended that the motion to table should be reconsidered.

Motion was made by Lembke and seconded by Burkholder to rescind the motion to table.

Motion carried.

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

Nay: Moore

Not Present: Korell

Motion was then made by Johannes and seconded by Watermeier to direct staff to utilize the attached ranking worksheets to provide recommended ranking for project proposals and applications/feasibility study reports to the Commission for its consideration for all projects which have not yet had formal Commission action on the project application/feasibility study as of this date, provided that such ranking will be used as a guide and not the sole purpose of determining which projects get approved. Motion carried.

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

Nay: None

Not Present: Korell

Johannes stated that the Programs Committee recommended that a policy (proposed Policy Statement XIV) should be adopted to describe the ranking process and require use of the ranking worksheets in the review and evaluation of project proposal and project application/feasibility study reports.

Motion was made by Johannes and seconded by Van Marter to adopt the Policy Statement XIV (attached to the file copy of these minutes) pertaining to the ranking process for project proposals and project application/feasibility study reports.

Motion carried.

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

Nay: None

Not Present: Korell

Johannes described the proposed Nebraska Resources Development Fund rule change that would enable the Commission to evaluate and compare competing project proposals once per year at a set Commission meeting, and to do the same for project application/feasibility study reports at a different Commission meeting.

Motion was made by Johannes and seconded by Kramper to accept, for purposes arranging a public hearing, the proposed revisions to Title 256, Chapter 2, Rule 007 and Chapter 4, Rule 001 relating to when the Commission acts on project application requests, and to direct staff to

**PROGRAM COMMITTEE (continued)**

schedule a public hearing on such proposed rule such that the Commission can act on these items at the July meeting. Motion carried.

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

Nay: None

Not Present: Korell

**Pigeon / Jones Creek Site 15 Project Application/Feasibility Study Briefing**

A two-page handout was described by Jason Farnsworth, Olsson and Associates. The first page was a map of the Site 15 Master Plan and the second a review of the Technical, Economic and Environmental Feasibility of the project. Both sheets are attached to the file copy of these Minutes. Mike Sotak also raised the need to start geologic investigation and borings so that design work could continue, and requested that the Commission approve reimbursement of geologic investigation costs if the project is approved and cost share allocated.

Motion was made by Hergott and seconded by Anderson to allow geologic investigation costs for the Pigeon/Jones Creek project to be reimbursable if the project is later approved by the Commission. Motion carried.

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

Nay: None

Not Present: Korell

**Lake Wanahoo Project Application / Feasibility Study Briefing**

Mike Sotak, Olsson and Associates, and John Miyoshi, Manager, Lower Platte North Natural Resources District presented a slide show and overview. They stated that the DNR is reviewing the plans for the dam, and showed profiles of the spillway, orthographic and principal spillway. John stated that the project also needed to proceed with geologic investigation and borings so that design work could continue, and requested that the Commission approve reimbursement of geologic investigation costs if the project is approved and cost share allocated.

Motion was made by Johannes and seconded by Van Marter to allow costs incurred in geotechnical drilling and boring in the borrows area to be reimbursable if the project is later approved by the Commission. Motion carried.

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

Nay: None

Not Present: Korell

Sotak distributed a theoretical cash flow for approved NRDF projects as of March 21, 2007, with inclusion of proposed funding requirements of Lake Wanahoo and Pigeon/Jones Creek projects. He stated his belief that expected State appropriations should be adequate to meet the future funding needs of both projects as well as those already approved. Staff responded that regardless of cash flow considerations, the cap of \$18.5 million in unfunded projects set by the FY2006-07 appropriations bill (LB 1060) would currently allow approval of additional cost share totaling only about \$6.26 million based on the current balance of allocated but unfunded project costs. The total available to allocate will increase on July 1 by about \$3.3 million assuming the Appropriation Committee recommendation does not change.

**PROGRAM COMMITTEE (continued)**

Sotak noted some possible scenarios that might allow the Commission to approve both projects at the recommended cost-share levels. Miyoshi referenced the Skull Creek and the Antelope Valley projects as variations on the scenarios Sotak described. Commission members agreed that both are beneficial projects that should be funded by the NRDF if possible within the cap limitations. Staff was directed to identify any possible options that could enable such action to be taken legally.

**Soil and Water Conservation Fund (S&WCF)**

This noted that completion of the earlier public hearing allowed the Commission to act on proposed rules changes for the Soil and Water Conservation Program.

Motion was made by Johannes and seconded by Anderson, to adopt the amendment to the Soil and Water Conservation Fund rules (as presented at the public hearing) to allow Natural Resources Districts, if they so choose, to supplement federal cost-share assistance with funds from the Nebraska Soil and Water Conservation Fund as long as the combined cost-share assistance from the federal program and the Soil and Water Conservation Fund does not exceed 75% of the actual or average cost, whichever is less, of the practice involved. Motion carried.

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

Nay: None

Not Present: Korell

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

Gittins reviewed the two handouts and noted that of the 14 projects funded last year, 12 were multi-year projects. Three of these have projected increases in costs for the second year as compared to original plans. Applications were also received for six new projects. Rex noted that expected IWMPPF funding is well short of meeting all requests.

Staff technical review results and recommended project rankings of all IWMPPF applications will be presented to the Commission at the May meeting for discussion and decisions regarding obligation of FY 2007-08 funds.

**CREP & EQIP**

Gittins stated that the number of acres enrolled in CREP is still just over 44,000 acres. More than \$1.1M of the \$5 million appropriated by the State for cost-share on land treatment has been paid out to date.

**ANNOUNCEMENTS, FUTURE MEETINGS, AGENDA ITEMS**

The May Commission meetings will be held on May 23 and 24, 2007, at the Lower Platte South NRD offices. The Program Committee meeting will begin at 1:30 p.m. on May 23, followed by the annual assessment meeting for NRDF projects at 3:30 p.m. The regular Commission meeting will be on May 24, commencing 8:30 a.m.

The remaining Commission meetings are as follows:

- May 23-24
- July 10-11 (at North Platte NRD)
- September 25 in Kearney (NARD Annual Conf. 9/23-25)
- November 14-15
- January 23, 2008 (NARD Legislative Conf. 1/21-23)

It was noted that Roger Korell was not able to attend the meeting due to his wife's illness.

The dedication ceremony for the Little Blue NRD's Lone Star Recreation Area will be held on Monday April 16, 2007.

An orientation meeting for new Natural Resources Commission members was held at 9:30 a.m. March 21, 2007 in the DNR's conference room. The two new members and several other members attended. Staff distributed binders containing reference information about the Commission and programs to attendees, and also provided copies to those Commission members who did not attend the meeting. The following topics were covered:

- Expenses, Reimbursement & Per Diem
- Annual Timeline (3-ring binder)
- Soil & Water Conservation Fund
- Water Well Decommissioning Fund
- Natural Resources Water Quality Fund
- Interrelated Water Management Plan Program Fund
- Small Watersheds Flood Control Fund
- Natural Resources Development Fund
- NRDF project proposal and application/feasibility study review process
- NRDF Cap and explanation of Allocated & Obligated
- Rules change process
- March Commission meeting agenda

Major discussion comments noted during the orientation session included:

- **Committee Assignments** – This topic led to a request to activate the Legislative and Budget Committee. Committee Chair Rexroth said he would like to see the Committee meet in July to prepare for the upcoming legislative session and again in January to assess issues and plan appropriate action.
- **Assignment of Committee Responsibilities** – The question arose as to whether there is a responsibility for each committee to meet, and if so how often. Staff will research this issue and report back.
- **Commission's Advisor Groups** – It was suggested that the UNL Water Center be added to the list of advisors, and regularly give reports at Commission meetings to present updates on UN-L / IANR and the Water Center.

#### ADJOURNMENT

The meeting was adjourned at approximately 12:30 p.m.

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Natural Resources Commission Chair

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Director of Natural Resources