

Nebraska Natural Resources Commission

Program Committee Meeting Minutes – May 14, 2008

Dan Watermeier, Committee Chair, called the meeting to order at 2:50 p.m. on May 14, 2008. Kent Zimmerman, DNR staff, reported that public notice of the meeting was published in the *Lincoln Journal Star* on May 5, 2008, and noted that public meeting statutes were available for review at the back of the room. All members of the Program Committee were present.

9.A. Natural Resources Development Fund (NRDF)

1. Zimmerman reported reimbursements have been made to the Little Sandy, and Upper Prairie/Silver/Moores Creek projects since the last meeting.
2. The quarterly report was distributed to the Commissioners prior to the meeting. There was limited discussion on the Winslow project. Detailed review of the report was omitted as the Commissioners had just completed the project update in the previous Special Project Assessment meeting.
3. A completed ranking sheet for the project proposal and a memo to Commission Members from Brian Dunnigan, Acting DNR Director, were distributed. Dunnigan's memo recommended that Commissioners find the project eligible for RDF funding and authorize the Nemaha NRD to proceed with an application and feasibility study on the Buck and Duck Creeks Watershed Project. The proposal received 40 out of a possible 50 points.

Hilske stated the design work is complete, they have made contact with the Corps of Engineers and they are in the appraisal process for the Buck Creek site and they have the federal funds. Most of the money requested will be for the Duck Creek site. Hilske acknowledged that they could proceed without funding becoming available now, because most of the requested RDF money is for recreation which could be stalled until after the dam is built.

A motion was made by Johannes, and seconded by Kramper:

To recommend the Commission advise the Nemaha NRD that it may proceed with an application and feasibility report for the Buck & Duck Creeks Watershed Project and that it is to address the comments and questions contained in the letter from the Acting Director of the Department of Natural Resources.

There was no further discussion. Motion Carried.

Aye: Anderson, Burkholder, Kadlecek, Kramper, Lembke, Hergott, Van Marter, and Johannes

Nay: None

Abstain: Watermeier

Absent: None

Kramper requested that the project proposal and the application ranking forms be amended to show total points that could be awarded.

4. Ken Berney reviewed the Commission's action at the last meeting to transfer money within components for project close out and stated that the allocation increase being requested at this time is the amount they were short in component No. 3 after the transfer of funds as projected at the March meeting.

A motion was made by Kramper, seconded by Hergott:

To recommend the Commission approve the Lower Elkhorn NRD's request to increase the allocation for Component No. 3 by \$18,759.12 effective July 1, 2008, increasing the total allocation for the Winslow Project from \$491,094.62 to \$509,853.74.

There was no further discussion. Motion Carried.

Aye: Kramper, Lembke, Burkholder, Kadlec, Watermeier, Hergott, Van Marter and Johannes

Nay: None

Abstain: Anderson

Absent: None

5. Watermeier described the Central Platte NRD's request for an allocation increase for the Upper Prairie/ Silver/ Moores Creek Project.

A motion was made by Anderson, seconded by Kramper:

To recommend the Commission approve the Central Platte NRD's request to increase the allocation for Component No. 4 (Construction) by \$271,263.63 effective July 1, 2008, increasing the total allocation for the Upper Prairie/Silver/Moores Creek Project from \$8,627,742.19 to \$8,899,005.82.

Anderson questioned the timing of the allocation increase relative to the project completion date, and the affect allocation increases have in postponing allocations to new projects. There was limited discussion about general NRDF allocations, obligations and the cap, and the timing of allocation increases. Gittins noted that rules require changes in cost and/or scope are to be promptly reported to the Commission (Title 256, 4-016). Commission approval is also required, possibly to help assure total project allocations reflect current estimates of project costs.

Motion Carried.

Aye: Kramper, Lembke, Burkholder, Kadlec, Watermeier, Hergott, Van Marter and Johannes

Nay: None

Abstain: Anderson

Absent: None

6. John Miyoshi, LPNNRD, briefed the Commission on recent discussions between the U.S. Army Corps of Engineers (Corps) and several NRD managers about the 404 permitting process. Highlights included:

- The law has not changed, but new Corps personnel have more strictly interpreted procedures and requirements and environmental concern has increased.
- 404 permits will be much more difficult to obtain from this point forward.

- The Corps expects to be involved by project sponsors in pre-planning to address a series of requirements that will add significantly to the cost and time for each project.
 - An employee from Environmental Protection Agency (EPA) office in Kansas City who attended the meeting stated that the EPA will recommend that the Corps deny any 404 permit for a dam in this part of the United States.
 - The Corps was given authority to administer the Clean Water Act passed in 1974, but EPA was given the right to veto 404 permits issued by the Corps. The EPA used its veto only seven times in the past.
 - In 1974, the Clean Water Act required a 404 permit only for affects to navigable streams. Jurisdiction has since expanded to include any perennial stream and any wetland joining or influenced by any perennial stream.
7. This briefly described Commission rules for obligation, un-obligation, and re-obligation of funds, pointing out one criterion for establishing obligations is to make the most efficient use of funds. Johannes stressed that he was in favor of redistributing funds in cases where projects will be unable to request reimbursements during the current fiscal year to help assure the balance of unexpended funds remains as low as possible.

Discussion on this issue included the following major comments by Commissioners.

- It is unfair for a project to “sit on” funds while others must borrow money to proceed with development, especially considering that unspent funds do not accrue interest.
- Redistribution of obligated funds is provided by the rules as a tool to enhance the Commission’s ability to manage these funds. “Un-obligating” funds does not reduce the project’s allocation or suggest reduced support.
- Staff should further evaluate the statutes and rules related to funds obligation and provide additional information to Commissioners.
- Historically, funds obligated to projects have not been “un-obligated.” This has provided stability and assurance to sponsors that costs incurred once development begins will be reimbursed. Taking back obligations and redistributing to one or more other projects is not a very business-like way to operate.
- Taking away obligated funds could penalize sponsors if commitments have been made. Those sponsors may be unable to pay for work as some NRDs may not be able to borrow large sums of money.
- There is no assurance that “un-obligated” funds will be available when needed.
- The Governor and Senators understand that construction projects may continue for several years, and that sponsors’ commitments extend beyond the current fiscal year. If there is one or two that can’t, that’s what you run into in life.

Comments offered by project sponsors included:

- John Miyoshi, Lower Platte North NRD, described interim funding options he will use to begin work on Lake Wanahoo. These could be leveraged by other sponsors.
- Marlin Petermann, Papio-Missouri NRD, noted that obligated funds are like money in the bank. If obligations are withdrawn and the Legislature reduced or chose not to appropriate funds to RDF next year, sponsors would not be able to get the money back.

There being no further discussion or motion, Watermeier moved to the next agenda item.

8. Commission members questioned the need for and affect of the motion to modify project components prior to obligating funds. Commission members asked that staff review this issue and report back.

A motion was made by Kramper, seconded by Kadlecek:

To recommend the Commission modify components as necessary for obligation of FY 2009 funds.

There was no further discussion. Motion Carried.

Aye: Anderson, Burkholder, Kadlecek, Kramper, Watermeier, Hergott, Van Marter and Johannes

Nay: None

Abstain: None

Absent: Lembke

9. A summary of sponsor requests for FY2009 obligations and staff's recommendations was distributed to Commission members at the meeting. Gittins noted that requested funding totaled nearly three times the budget appropriation, and staff had difficulty in arriving at a recommendation. Staff based its recommendations on prior practices and the rule that preference must be given projects to which funds had previously been obligated. Zimmerman added that staff had made several contacts with each sponsor to discuss their requests and discuss construction schedules during this process.

Some Commission members noted concern that no obligation was recommended for one of the active projects, and felt that staff did not adequately involve project sponsors in the process. Staff was urged to conduct a group meeting with Sponsors in the future to help reach agreement on obligations. The limited time between receiving requests and making recommendations was also discussed. In response to suggestions that requests be required earlier in order for staff to improve coordination with sponsors, Glenn Johnson (Lower Platte South NRD Manager) noted that NRD management is already looking 15-18 months into the future to prepare project plans and budgets. Increasing that timeframe would make estimates less reliable. Donaldson added her belief that Commission members should avoid getting into the details of the obligation recommendation process.

A motion was made by Lembke, seconded by Hergott:

To recommend the Commission establish the following components and obligate FY 2009 funds effective July 1, 2008, as per staff recommendation with changes discussed.

Anderson moved to amend, and Van Marter seconded:

To give the Sand Creek Restoration project \$400,000 by removing that amount proportionally from the proposed obligations to Upper Prairie/Silver/Moores Creek, Lower Turkey Creek and Little Sandy Creek projects.

Motion Carried.

- Aye: Kramper, Kadlecek, Watermeier, Hergott, Van Marter and Anderson
Nay: Lembke and Burkholder
Abstain: Johannes
Absent: None

The following table shows the Commission's proposed obligations by project component.

Project	#	Project Component	Request for FY 2009	
<i>Upper Prairie/Silver/Moores Creek</i>	4	Construction	1,373,197	
			Subtotal:	\$1,373,197
<i>Lower Turkey Creek Watershed</i>	2	Engineering	73,500	
	3	Land Rights	550,200	
	4	Construction	216,844	
			Subtotal:	\$ 840,544
<i>Little Sandy Creek Watershed</i>	3	Land	216,061	
	4	Construction	108,536	
			Subtotal:	\$ 324,597
<i>Sand Creek Env. Restoration (Lake Wanahoo)</i>	1	Application & Feasibility Study	120,000.00	
	2	Engineering	264,469	
	3	Land	0	
	4	Construction	15,531	
			Subtotal:	\$ 400,000
<i>Antelope Creek</i>	7	Construction	146,057	
	8	Recreation	270,000	
			Subtotal:	\$ 416,057
<i>Winslow Levee</i>	3	Land Acquisition	18,759.12	
			Subtotal:	\$ 18,759.12
			TOTAL:	\$3,373,154.12

There was no further discussion. The original Motion with the approved amendment was voted on. Motion Carried.

- Aye: Anderson, Kramper, Lembke, Kadlecek, Watermeier, Hergott, Van Marter and Johannes
Nay: Burkholder
Abstain: None
Absent: None

10. Lower Platte North NRD requested Commission approval to move forward with project construction beyond that for which funds were obligated. Responding to a question about the need for such approval, Gittins stated that Chapter 4, Section 002 of the Rules state that costs paid, accrued or authorized by a sponsor prior to funds being set aside for such projects and costs paid, accrued or authorized for portions of project development in excess of those portions for which funds have been set aside, including the application and engineering costs shall be incurred at the risk of the sponsor and such sponsor shall not be entitled to reimbursement without specific Commission approval.

A motion was made by Anderson, seconded by Hergott:

To recommend the Commission approve the request from Lower Platte North NRD to authorize the Sand Creek Environmental Restoration project sponsor to proceed with building the project and be eligible for cost-share for covered components when money becomes available and is obligated by the Commission.

There was no further discussion. Motion Carried.

Aye: Anderson, Burkholder, Kadlecek, Kramper, Lembke, Watermeier,
Hergott, Van Marter and Johannes
Nay: None
Abstain: None
Absent: None

9.B. Small Watersheds Flood Control Fund Status Report

Zimmerman reported that:

- The only change since the February Report was an interest payment of \$3,316.83 on the cash fund balance.
- Letters have gone out requesting sponsors submit their anticipated funding needs for the following two years.
- The fund base will be established at the July Commission meeting.

9.C. Nebraska Soil & Water Conservation Program Fund

1. Richters reported March and April have been slow, however, this is normal for this time of year. Richters looks for receipts to increase later in the year.
2. Richters stated that NRCS has changed their methodology, for average cost, for practices throughout the state. Copies of the NSWCP practices were distributed for both cost-share rates at 100%; and for unit cost. Richters then introduced Julie Breuer and Katherine Mills, with NRCS. Breuer stated that the new NRCS docket is based on consolidated practices and state-wide average costs rather than cost-share on NRD average costs. NRCS provided cross-references to existing NSWCP component average costs to simplify our transition. This will allow NRDs across the state to use the formulas which were calculated under each practice for each scenario starting July 1, 2008. Information was previously distributed to the District Conservationists and NRD managers for comment. An updated docket will be available in the fall. Miyoshi explained that this change

is due to the World Trade Organization and NAFTA considering cost share payments to farmers to be subsidies. To get around this, NRCS is making incentive payments which do not count against us in the international market.

3. Gittins introduced a letter submitted by John Thorburn, Tri-basin NRD, requesting that two components be added to the Irrigation Water Management practice (NC-17) on the NSWCP approved practices list. Mike Clements, LRNRD, sent a letter supporting approval for the soil moisture and data reader components. John Thorburn described his request in detail, passed around soil moisture sensors, and explained how they help producers to more efficiently manage irrigation water by monitoring soil moisture levels. The other requested component was replacement gates and gaskets on gated irrigation pipe.

Following a brief discussion of costs, installation and operation, a motion was made by Van Marter, seconded by Kramper:

To recommend the Commission approve the addition of soil moisture sensors and data readers to practice NC-17: Irrigation Water Management.

There was no further discussion. Motion Carried.

Aye: Anderson, Burkholder, Watermeier, Kadlecek, Kramper, Lembke, Hergott, Van Marter and Johannes

Nay: None

Abstain: None

Absent: None

A second motion was then made by Van Marter, seconded by Kramper:

To recommend the Commission approve additional components in practice NC-17: Irrigation Water Management for NSWCP cost-share on replacement gates and gaskets for gated irrigation pipe.

Discussion points included:

- Benefits of this practice include encouraging landowners to make improvements in efficiency through stopping leaks.
- This being routine maintenance item, producers should cover.
- The Commission would need to create technical specifications for this as nothing is available from NRCS.
- Whether this would be a one time cost-share.

Motion Carried.

Aye: Anderson, Burkholder, Kadlecek, Kramper, Hergott, Van Marter & Johannes

Nay: Watermeier and Lembke

Abstain: None

Absent: None

9.D. Natural Resources Water Quality Fund Status Report

Revenues to the fund have exceeded projections. These funds have been allocated and distributed.

9.E. Water Well Decommissioning Fund Status Report

Activity for this fund has been normal. Gittins mentioned that due to a declining number of wells being installed compared to past years, revenues to the well registration cash fund have also declined.

9.F. Interrelated Water Management Plan Program Fund Status Report

Zimmerman reported:

- Only one payment has been made since the last report.
- Staff is in the process of trying to close out year one contracts.
- Staff is trying to work with sponsors to roll unclaimed year one money into year three, without expanding total costs.
- Some projects will have unused funds which will become available to reallocate to other projects this fall.

Jesse Bradley gave a power point presentation of the following:

- Review of the ten new project applications.
- Ranking scores for existing and the ten new applications.
- Budget review of existing projects requesting continued funding.
- Staff recommendation to fund all existing projects and one new project which will consume the available budget.

A motion was made by Lembke, seconded by Kramper:

To recommend the Commission approve the FY 2009 IWMPP grants and make obligations as recommended by staff.

There was no further discussion. Motion Carried.

Aye: Watermeier, Anderson, Burkholder, Kadlecck, Kramper, Lembke, Hergott, Van Marter, and Johannes

Nay: None

Abstain: None

Absent: None

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The meeting was adjourned at 5:30 p.m.

Dan Watermeier, Chair

Date