Nebraska Natural Resources Commission

Program Committee Meeting - - Minutes for November 17, 2010

Committee Chair Clint Johannes called the meeting to order at 3:00 p.m. Notice of the meeting was posted on the Department of Natural Resources (DNR) website and the State of Nebraska Public Meetings Calendar. Open meetings statutes were posted in the room. All members of the Program Committee were present except Deines, Kadlecek and Moore.

8. Program Committee Report & Possible Action

A. Nebraska Resources Development Fund (NRDF)

1. Financial Status Report

- Project sponsors have been informed that DAS Budget Office has elected to strictly adhere to the quarterly allotment schedule for the remainder of the FY2011 appropriations. Based on the FY 2011 budget appropriation (LB 935), funds will become available as follows:
  - December 3rd $418,219;
  - April 1st $784,110; and
  - the remaining $130,685 will be allotted sometime between January and June depending upon how the FY2011 deficit bill is constructed.

2. Quarterly Report

- Project sponsors reported good construction progress with no unusual activity.

3. Discussion & Action on the Buck & Duck Project Application

- Kramper reported on the Project Review Committee's project site review on November 16. Bob Hilske, Nemaha NRD manager, served as guide and Dan Watermeier joined the Committee for the tour. The Committee recommended approval of the application, but noted that the project must be granted $0 in cost share assistance at this time. This allocation is necessary because allocations committed to other projects fully utilize the statutory limit of $18.5 million beyond current appropriated funding.

Van Marter moved, Anderson seconded, to recommend the Commission make the following findings of fact in view of the Project Review Committee's recommendation and the recommendation of the Director of the Department of Natural Resources:

1. The Buck & Duck Creek Project will be of general public benefit;
2. The project plan does not conflict with any existing state land plan;
3. The project has been determined to be technically, economically, and financially feasible and environmentally acceptable according to the Resources Development Fund criteria;
4. The plan for development is satisfactory;
5. The plan minimizes any adverse impacts on the natural environment;
6. The Nemaha Natural Resources District is qualified, responsible, and legally capable of carrying out the project;

7. Other plans and programs of the state were taken into consideration in preparing the plan of development in accordance with section 84-135, and resources development plans of the political subdivisions of the state were considered;
8. The project will not jeopardize the continued existence of any threatened or endangered species or modify or destroy the habitat of any such species;

And therefore resolves that:

1. The Buck & Duck Creek Project is eligible for funding from the Nebraska Resources Development Fund; actual funding being subject to the condition that the money required from the Fund is available.
2. Due to the unavailability of funds that can be allocated by the Commission, this project is approved but with $0 allocation. In accordance with the revised rules, the sponsor may request that this project be reconsidered at any point during the next four years for an increased allocation.

Motion Passed.

Aye: Van Marter, Mercer, Hergott, Anderson, Johannes, Nelson, Rexroth
Nay: None
Abstain: Watermeier
Absent: Deines, Kadlecek, Moore and Reeves(arrived late)

4. Discussion Regarding Increasing the Unfunded Allocations Cap

- Kramper stated his recollection of five options raised in previous Commission discussions on how to deal with funding limitations and the cap on commitments against future appropriations:
  (1) Set a maximum of $5 million on funding for new projects;
  (2) Limit allocations to 50% cost share;
  (3) Limit or eliminate cost share percentages on project cost over-runs;
  (4) Convince the Legislature to raise the cap; and
  (5) Implement a moratorium on new application approvals with a sunset clause.
- Pros and cons of a moratorium were discussed in some detail:
  - Zimmerman noted the need to delay new projects until room becomes available under the cap. Gittins added that the Commission traditionally had waited to approve projects until there was sufficient room under the cap. Large, fast-tracked projects and the infusion of federal stimulus funding in recent years have changed some dynamics of the NRDF.
  - Anderson noted that a moratorium may allow the use of the ranking system as intended to force all projects to come in at the same time.
  - A concern was raised that this Commission should not make commitments that will “tie the hands” of future commission members.
  - The term “moratorium might be misconstrued as an indication that increased appropriations were unneeded. Setting a date when the Commission would next accept applications was proposed as a way to avoid saying “moratorium.”
  - Anderson noted concern that a moratorium might be detrimental to two projects the LENRD is reviewing. Neither is at a point that a project proposal could be submitted.
  - Gittins pointed out that with the present budget climate, the Commission may not want to draw attention to any budget increase requests.

- Johannes suggested that review of new proposals/applications might be deferred until there is a reasonable cushion using room under the cap as the trigger for accepting new applications.
- No action was proposed

5. Discussion & Possible Action Regarding Allocation of Funds

The following resolution was proposed by the Papio-Missouri River NRD.

Whereas *the Natural Resources Commission (the Commission) approved the Pigeon / Jones Creek Project with an allocation of zero dollars on July 11, 2007, due to the lack of funds available to allocate from the Resources Development Fund; and*

Whereas *the Commission has subsequently allocated less than the full amount necessary to complete the project or a reasonably severable component of the project; and*

Whereas *the Commission may not contract with the sponsor for project funding at less than the full amount necessary to complete the project or a reasonably severable component of the project; and*

Whereas *funds may be insufficient to enable the Commission to fully allocate funding for the project within the four-year timeframe stated in the approval resolution due to cost increases in other projects and the Legislature's $18.5 million cap on the difference between allocations and realized appropriations; and*

Whereas *the Pigeon / Jones Project was approved prior to any action by the Commission to further limit total funding or cost share percentages for projects; and*

Whereas *the Commission desires to establish a preference to increase allocation to projects approved with an initial allocation of zero dollars on a seniority basis, and also recognize the unique situation of the Pigeon / Jones Creek Project as the first project approved at zero allocation.*

Therefore, *the Commission wishes to memorialize in this resolution its intent to: indefinitely extend the four-year timeframe to achieve full allocation for the Pigeon / Jones Project; (2) exempt the project from any revised limitations in total funding or cost share percentages; (3) freeze any allocations other than for zero dollars for any subsequently approved projects from the date a USCOE 404 Permit is obtained for the Pigeon / Jones Creek Project until that project is fully allocated.*

Nothing in this resolution is intended to conflict with the Director's recommendation letter dated January 22, 2007, or the limits (cap) on unfunded Resources Development Fund allocations set by the Legislature.

Mercer moved, Van Marter seconded, to adopt the foregoing resolution regarding future allocations from the Natural Resources Development Fund.

Anderson moved that the motion be amended to except future cost over-runs. The motion to amend failed for lack of a second.

Motion Passed.

Aye:	Van Marter, Mercer, Hergott, Watermeier, Johannes, Nelson, Rexroth
Nay:	Anderson
Abstain:	None
Absent:	Deines, Kadlecek, Moore and Reeves (arrived late)

- Kramper pointed out that this resolution is designed to put into writing the Commission's intent to see the Pigeon/Jones Creek project fully allocated as room becomes available under the cap.
- Rexroth noted his concern that this would create a precedent for requesting allocation priorities for future projects.

6. Review & Possible Action to Adjust Project Obligations

- Because the DAS Budget Office has elected to strictly adhere to the quarterly allotment schedule for the remainder of the FY2011 appropriations, Committee members concurred that action to adjust project obligations would be pointless.

B. Small Watersheds Flood Control Fund

1. Status Report

- No unusual activities were reported. Pending cash transfers to the general fund (per LB 1), commitments to the Nemaha NRD, and interest accrued since the last report were noted.
- The Little Sandy Site 40 land auction is scheduled to be held at 1:30 p.m., January 18th at the Little Blue NRD's office in Davenport. Staff and the auctioneer have met and are in the process of preparing the auction flyer and giving notice. Look for a request to accept the high bid in January.

2. Discussion & Possible Action to Review & Approve Appraisals

- Five appraisals related to five of the seven USCOE structures above Lake Wanahoo had been submitted by the Lower Platte North NRD (LPNNRD) for approval. The fund can participate in one out of every four necessary land right purchases.
- One of these appraisals is a fee title purchase of an 80 acre track of land which the LPNNRD later divided. One parcel containing an active irrigation well was sold, leaving a portion of the original 80 acres for which this appraisal was completed. Staff is working to determine the value of the remaining portion.
- LPNNRD is required by the USCOE to fence in the buffer and wetland enhancement areas for which there will be very limited use (no haying and no grazing) by the land owner. LPNNRD was obliged to pay full value for this land rather than the usual 50%, and so requested 50% cost share on 100% of the land value.

Rexroth moved, Anderson seconded, to approve the appraisals for the following five tracts of land associated with the LPNNRD's seven upstream dams subject to final review and approval by staff; and to approve cost share at 50% of 100% of the appraised value for the additional lands required by the USCOE for water quality and wetland enhancement; and to authorize staff to

establish a reduced value and method of property delineation for that portion of the tract remaining after the exchanged by the LPNNRD for an easement on a separate tract after the appraisal was conducted and partial sub-division was made by LPNNRD staff.

- Tract #501 (Site 3) W1/2 NE1/4 29-16N-6E
- Tract #402 (Site 16) N1/2 SE1/4 14-16N-5E
- Tract #602 (Site 2) N1/2 NE1/4 31-16N-6E
- Tract #103 (Site24) SW1/4SE1/4 5-16N-5E
- Tract #102 (Site 24) N1/2 SE1/4 5-16N-5E

Motion Passed.

Aye: Anderson, Reeves, Van Marter, Mercer, Hergott, Watermeier, Johannes,
Nelson and Rexroth
Nay: None
Abstain: None
Absent: Deines, Kadlecek, and Moore

3. **Discussion & Possible Action to Transfer Fund Balances**
   - Staff recommended transferring money from "Unassigned Funds" to the "Revolving Fund" and enough from the "Easement Fund" to cover the LPNNRD's fee title purchase request; and to then use the remainder for easements, noting there would be additional revenue returned to the fund as the result of the LBNRD Site #40 land sale in January.

Anderson moved, Nelson seconded, to transfer the "Unassigned Funds" balance and up to $180,000 from the "Easement Fund" balance in the Small Watersheds Flood Control Fund to the "Revolving Fund" as necessary to meet fee title purchase needs of the LPNNRD.

Motion Passed.

Aye: Mercer, Hergott, Watermeier, Johannes, Anderson, Reeves, Van Marter, Nelson and Rexroth
Nay: None
Abstain: None
Absent: Deines, Kadlecek, and Moore

C. Soil & Water Conservation Program Fund Status Report

- There was no unusual business reported.
- Richters commented that the new state law requiring citizenship or lawful presence of legal alien attestation forms to be completed has resulted in some NRDs inquiring about help in verifying legal alien statuses. DNR is willing to perform checks with help from the Nebraska Department of Agriculture which is enrolled to use the federal verification system.

D. Natural Resources Water Quality Fund Status Report

- Payments went out in August, and another should go out in February.

E. Water Well Decommissioning Fund Status Report

- No unusual business was reported.

F. Interrelated Water Management Plan Program Fund

1. Status Report

- Business as usual was reported. Project sponsors were informed at the NRD managers meeting in Ord of the possibility of a reduction in funding over the next couple years.

2. Guidelines Review & Possible Action

- No updates were proposed this year.

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Meeting adjourned at 4:30 p.m.