

NEBRASKA NATURAL RESOURCES COMMISSION

MEETING MINUTES – June 20, 2012 CENTRAL PLATTE NATURAL RESOURCES DISTRICT Grand Island, Nebraska

Those in attendance were:

Garry Anderson, Member	Dick Mercer, Chair	James Huntwork, NRCS
Kenneth Brockman, Member	Clint Johannes, Member	Dean Edson, NARD
Tom Knutson, Member	Dan Watermeier, Member	Mike Murren, LPNDR
Jeff Steffen, Member	Ladd Reeves, Member	Brian Dunnigan, NDNR
Dick Hadenfeldt, Member	Dave Kadlecek, Vice-Chair	LeRoy Sievers, NDNR
Joseph Hergott, Member	Stan Clouse, Member	Rex Gittins, NDNR
Beverly Donaldson, Member		Kent Zimmerman, NDNR

CALL TO ORDER & ROLL CALL

The meeting was called to order by Commission Chairman Mercer at 8:44 a.m. in the Central Platte Natural Resources District office in Grand Island, Nebraska. Mercer opened with a special thank you on behalf of all of the Commissioners to Ron and Darla Bishop for the generosity of their time, wonderful evening and outstanding meal.

The following members were absent: Dave Deines, Dan Nelsen and Keith Rexroth.

NOTICE OF THE MEETING

Notice of the meeting was published on the State Public Meetings Calendar and on Department's 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 Commission meeting. A copy of each is attached to the file copy of these minutes.

1. Commission Meeting Agenda
2. Selected Agenda Topics Explanation Paper
3. NRCS Report to the NRC
4. Expenditures Report
5. Resources Development Fund:
 - Status Reports as of 6/12/12
 - Quarterly Report as of 4/30/12
 - Allocation Request Letter from the Nemaha NRD for the Buck & Duck Project
6. Small Watershed Flood Control Fund Status Report as of 6/1/12
7. Nebraska Soil & Water Conservation Fund Status Report as of 6/1/12
8. Nebraska Water Quality Fund Status Report as of 5/31/12
9. Water Well Decommissioning Fund Status Report as of 5/31/12
10. Interrelated Water Management Planning Program:

- Funding Needs & Available Balance Report Tables as of 6/12/12
- FY13 Funding Distribution Meeting - Project Sponsors' Recommendation

MINUTES

Hergott moved and Clouse seconded the motion to approve the minutes of the January 25th and April 3rd, 2012 Commission meetings.

Motion Passed.

Aye: Anderson, Brockman, Reeves, Kadlecek, Hergott, Hadenfeldt, Donaldson, Mercer, Johannes, Steffen, Watermeier, Knutson and Clouse

Nay: None

Abstain: None

Not Present: Deines, Nelsen and Rexroth

EXPENDITURES REPORT

Fund expenditures reports showing financial activity and ending balances for January through May were distributed prior to the meeting. No unusual expenditures were reported.

ADVISOR REPORTS

NRCS

James Huntwork, NRCS District Conservationist, distributed a report and noted the following:

- The U.S. House of Representatives Subcommittee on Agriculture, Rural Development, and Food and Drug Administration passed the 2013 Agriculture Appropriations Bill which allocates \$812 million for NRCS Conservation Operations and \$14.7 million for the Watershed Rehabilitation Program. It appears there will be significant reductions in NRCS's budget for 2013 and beyond.
- In anticipation of future budget cuts, NRCS has been charged with moving forward on the concept of "Field Offices of the Future." This includes evaluating office locations, their makeup, and their relationship to other conservation partners' activities across the state.
- In Nebraska, \$23 million in EQIP funds have been obligated in 2012. The Ogallala Initiative, a spin-off of EQIP to convert to more efficient irrigation systems, has obligated \$3.6 million for targeted water quality and water conservation in the state.
- Nebraska has just started an effort to seed a cover crop in areas of the Missouri River where flooding has left heavy sand deposits.
- Nebraska has four watersheds designated as impaired for sediments and nutrients by DEQ and the National Water Quality Initiative targets an amount of funds to individuals for practices to reduce sediment runoff.
- Conservation Stewardship Program will return \$8.3 million through 465 contracts covering nearly one million acres.
- Three new WREP proposals were filed: one in the Missouri River Floodplain, one in the Rainwater Basin, and one to assist with easement management in the Rainwater Basin.

- Two projects were funded under the Emergency Watershed Protection program.
 - Design is complete and construction will soon begin on the Cambridge Oaks Stream bank Stabilization Project in Omaha.
 - Design is underway for the Elk Creek Stream Bank Stabilization in Dakota county, construction should begin this fall.
- Ecological Sciences (formerly known as technical staff) primarily maintains the field office technical guide and practice standards. They have been conducting training and outreach for both NRCS employees and partners relating to plant identification and the use of cover crops in places with a high potential for water erosion.
- Planning tool software update conversions in the field offices is underway.
- Nutrient Management standards are being updated to meet the new national criteria and standards.

ENVIRONMENTAL TRUST

No report given.

UNL WATER CENTER

Lorrie Benson was unable to attend this meeting. Benson passed along the following notes:

- Registration for our annual water tour is open. The July 17-19 tour will look at flood impacts and recovery on the Missouri River. Details and registration instructions are available on our website at watercenter.unl.edu
- Please save Tuesday, November 13, for the annual water science and policy symposium, and Wednesday, November 14, for the Water Law Conference. The symposium will feature the usual mix of water-related research and programming, both from a big picture perspective and closer examination of specific research and programming. The program will include an overview of the US Department of Interior's Water SMART program aimed at conserving water resources and helping water managers with decision-making, which will be presented by the national coordinator for USGS's water census program. Two other program highlights will be a panel discussing ideas for water funding in Nebraska, and a review of NDNR's new approach to integrated management. The Water Law Conference will feature a primer on how economists place values on water and related resources, as well as a wide variety of water law presentations. Registration for both events will open later in the summer.
- The UNL Water Center is now the Nebraska Water Center, part of the Daugherty Water for Food Institute. Since the first of the year the Interim Director has been Suat Irmak, who is known for his research and Extension programming in irrigation, water management, evapotranspiration, and related issues. The search for a permanent director is currently under way.

DNR UPDATE

Brian Dunnigan, Director of DNR offered the following remarks.

- What a difference a year makes! Last year he spent most mornings in the State Emergency Operations Center dealing with flood issues starting early in the year with the North Platte River basin and then later with the Missouri River basin. In the last two weeks he has attended two drought meetings. Last year snow pack in the North Platte basin was one of the highest on record, and this year's water equivalent is the lowest on record in thirty years. The current forecast in the Missouri River basin above Sioux City is 87% of normal; last year was 246% of normal which was the highest in 114 years of record.
- The Republican River Litigation is on a very aggressive schedule. Kansas filed this case with the U.S. Supreme Court in 2010, and on April 4, 2011, the Supreme Court agreed to hear the case. A special master was appointed and a hearing is scheduled to begin on August 13, 2012, and plan to conclude by Labor Day. Three expert reports have been submitted by Nebraska, and several rounds of depositions have been completed.

Kansas is asking for a contempt finding, damages and preset sanctions, reductions in Nebraska's ground water use, and appointment of a federal river master to control the Republican River. There is a lot at stake in this litigation. In the non-binding arbitration in 2009 over basically the same issues Kansas was asking for \$72.3 million. In the present lawsuit they are asking for about \$64.9 million in damages due to unjust enrichment, and direct damages. In 2009 Kansas stated that Nebraska needed to shut off 515,000 acres of irrigated crop land in the Republican to comply with the Compact. This number has been reduced to a little over 300,000 acres.

Nebraska also has raised an issue in the case regarding an error in the approved water accounting procedure. The accounting that was agreed to in 2003 is incorrect, and correction would gain 8,000 to 10,000 acre-feet per year of water allocated to Nebraska.

During the first compliance test in 2005-2006 Nebraska was out of compliance. Since then, Nebraska has been in compliance every year (all five tests). Kansas contends that when it gets dry, Nebraska will again fail to maintain compliance. Nebraska is confident that the Integrated Management Plans (IMPs) in the Republican River basin will enable the State to assure compact compliance. If Kansas wins this portion of its argument, the Supreme Court will likely appoint a federal river master to compel compliance, in which case Nebraska's flexibility in choosing how to maintain compliance could be severely limited.

- DNR is working with the NRDs which have developed or are developing IMPs in almost every area of the state to adopt conjunctive management strategies. DNR has funding to help develop and implement tools our NRD partners can use to evaluate project options for achieving conjunctive management goals.

DNR is working on the INSIGHT project which will serve to integrate and consolidate data and related water research results from a number of sources.

This information plus tools to facilitate viewing and using data will be available on a web portal for use by anyone with internet access. This is a big undertaking, and we estimate development to span two years

PROGRAM COMMITTEE

Program Committee Chair, Hadenfeldt, reported the Committee met on June 19, 2012, to discuss programs and review project status. Hadenfeldt noted that reports on all programs listed on item No. 7 of the agenda indicated "business as usual." He then proceeded to bring the following action items forward:

Resources Development Fund

Staff requested authority to work with sponsors to determine the appropriate obligation breakdown by component.

Hadenfeldt moved, Anderson seconded, to authorize staff to modify project components as necessary for obligation of FY 2013 funds.

Motion Passed.

Aye: Anderson, Brockman, Reeves, Kadlecek, Hadenfeldt, Donaldson, Mercer, Johannes, Steffen, Watermeier, Knutson and Clouse
Nay: None
Abstain: None
Not Present: Deines, Hergott (stepped-out), Nelsen and Rexroth

Hadenfeldt moved, Clouse seconded to obligate FY 2013 funds to the following projects effective July 1, 2012:

<i>Little Sandy Creek Watershed Project</i>	<i>\$472,845.20</i>
<i>Lower Turkey Creek Watershed Project</i>	<i>\$666,869.95</i>
<i>Sand Creek Environmental Restoration (Wanahoo)</i>	<i>\$666,869.95</i>
<i>Upper Prairie/Silver/Moores Creek</i>	<i>\$666,869.95</i>
<i>Western Sarpy/Clear Creek Project</i>	<i>\$666,869.95</i>

Motion Passed.

Aye: Anderson, Hergott, Brockman, Reeves, Kadlecek, Hadenfeldt, Donaldson, Mercer, Johannes, Steffen, Watermeier, Knutson and Clouse
Nay: None
Abstain: None
Not Present: Deines, Nelsen and Rexroth

Staff noted that the budget appropriation will be allotted in quarterly increments, and obligated funds will be available for reimbursement to project sponsors accordingly. Subsequent to this meeting staff worked with sponsors to determine final obligation distributions to project components as follows:

- **Little Sandy Creek Watershed**
 - 2 \$266.00
 - 3 \$560.60
 - 4 \$472,018.60

- **Lower Turkey Creek Watershed**
 - 2 \$20,771.11
 - 3 \$281,773.69
 - 4 \$364,325.15

- **Upper Prairie/Silver/Moore**
 - 2 \$222,289.98
 - 3 \$122,289.98
 - 4 \$322,289.99

- **Sand Creek Environmental Restoration**
 - 4 \$666,869.95

- **Western Sarpy/Clear Creek**
 - 4 \$666,869.95

Copies of a letter dated June 11, 2012, from Bob Hilske, General Manager of the Nemaha NRD, requesting an initial allocation for the Buck and Duck Creek project was distributed. The letter stated that the Nemaha NRD does not intend to request any obligation until the project is fully allocated, but asked the Commission to reaffirm that all eligible project costs, including those incurred prior to obligation, be eligible for cost share assistance if and when the project is funded.

Hadenfeldt moved, Knutson seconded, to adopt the following resolution:

Whereas the Natural Resources Commission (the Commission) approved the Buck & Duck Creek Project with an allocation of zero dollars on November 18, 2010, due to the lack of funds available to allocate from the Resources Development fund; and

Whereas the project sponsor has proceeded with construction and desires to complete the project or a reasonably severable component of the project; and

Whereas the Department 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 states in the approval resolution due to cost increases in other projects and the statutory \$18.5 million cap on the difference between allocations and actual appropriations; and

Whereas the Buck & Duck 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 Buck & Duck Project; (2) exempt the project from any revised limitations in total funding or cost share percentages; and (3) allow reimbursement of costs related to the project as it was approved, if and when funding becomes available, to allow the project sponsor to proceed with construction.

Nothing in this resolution is intended to conflict with the Director's recommendation letter dated May 14, 2008, or the statutory limits (cap) on unfunded Resources Development Fund allocations.

Motion Passed.

Aye: Anderson, Brockman, Reeves, Kadlecek, Hadenfeldt, Donaldson, Mercer, Johannes, Steffen, Watermeier, Hergott, Knutson and Clouse
Nay: None
Abstain: None
Not Present: Deines, Nelsen and Rexroth

Hadenfeldt moved, Kadlecek seconded, to approve the following requests for allocation increases:

Lower Turkey Creek Watershed Project	\$303,808.69
Buck & Duck Creek Project	\$130,000.00
Pigeon/Jones Creek Project	\$2,706,516.31

Motion Passed.

Aye: Anderson, Brockman, Reeves, Kadlecek, Hadenfeldt, Donaldson, Mercer, Johannes, Steffen, Watermeier, Hergott, Knutson and Clouse
Nay: None
Abstain: None
Not Present: Deines, Nelsen and Rexroth

Small Watershed Flood Control Fund

Hadenfeldt moved, Hergott seconded to establish the Revolving Fund Base for the Small Watersheds Flood Control Fund at \$208,252.25 (with \$100,000 being made available for easement purchases) for Fiscal Year 2013.

Watermeier commented that he had further considered the financial status of the Small Watershed Flood Control Fund since the discussion at the Program Committee meeting. Given the balance of the fund, projected opportunities for fee title purchases of about \$1.6 million as reported by NRD managers, and the low probability of a General Fund appropriation to the fund, he could not justify designating any portion of the balance toward easement purchases which are permanent reductions to the fund.

Anderson added that the Commission is effectively deciding the future of the fund. If a reasonable base for fee title purchases is not retained, the Commission is allowing easement

purchases to whittle away the balance each year until nothing is left. The Commission needs to decide whether it cares about the longer term viability of the fund.

Johannes stated that the alternative is to ask the Legislature for more funding. If the fund is depleted, perhaps the Legislature would realize the need to appropriate more funding.

In response to a request for input from staff, Zimmerman pointed out that the fund was established as a revolving fund. If the Commission allows expenditures for easements to use up the balance, there is nothing to revolve anymore.

Mike Murren, Lower Platte North NRD, stated that the money buys more acres for easement purchases as compared to fee title purchases. Murren stated that he would prefer to see some money designated for easement purchases.

Zimmerman pointed out that NRDs determine whether to purchase easements or fee title and choose the tracts on which to leverage the Small Watershed Flood Control Fund. Property purchased in fee title is later resold, and the proceeds are again available for use by all NRDs. The Commission has a duty to manage this fund.

Watermeier moved to amend, Anderson seconded to establish the Revolving Fund Base for the Small Watersheds Flood Control Fund at \$308,252.25 for Fiscal Year 2013.

Amendment Passed.

Aye: Anderson, Brockman, Kadlecek, Hadenfeldt, Donaldson, Mercer, Steffen, Watermeier, Knutson and Clouse
Nay: Hergott, Johannes and Reeves
Abstain: None
Not Present: Deines, Nelsen and Rexroth

Amended Motion Passed.

Aye: Anderson, Brockman, Reeves, Kadlecek, Hadenfeldt, Donaldson, Mercer, Johannes, Steffen, Watermeier, Hergott, Knutson and Clouse
Nay: None
Abstain: None
Not Present: Deines, Nelsen and Rexroth

Two tracts of land associated with dams upstream of Lake Wanahoo which are held in fee title by the Lower Platte North NRD can be sold in 2013. In discussions between NRD and DNR staff regarding possible dates for public auction, the timeframe proposed was mid-January, prior to the Commission's January meeting.

Hadenfeldt moved, Knutson seconded to set the SWFCF sales schedule for the two tracts of land in inventory with the Lower Platte North NRD for January 2013 or as close as can be accommodated.

Motion Passed.

Aye: Anderson, Brockman, Reeves, Kadlecek, Hadenfeldt, Donaldson, Mercer, Johannes, Steffen, Watermeier, Hergott, Knutson and Clouse
Nay: None
Abstain: None
Not Present: Deines, Nelsen and Rexroth

Soil and Water Conservation Fund Program

No action.

Natural Resources Water Quality Fund

No action.

Water Well Decommissioning Fund

No action.

Interrelated Water Management Plan Program Fund

Staff presented the proposed distribution of the FY 2013 appropriation based on the formula devised by project sponsors in group meetings. The formula gave preference to projects in basins not designated as fully or over appropriated, with NRDs in those basins being granted half of the amount remaining to fully fund their projects. Remaining funds were split among other NRDs on a pro-rata basis relative to the unfunded balances of their projects. Each NRD was given the flexibility to identify how they wanted to apply funds among their projects.

Staff appreciates the cooperation and willingness to work together exhibited by all sponsors during these meetings.

Hadenfeldt moved. Anderson seconded to approve the FY 2013 IWMPP funding grants effective July 1, 2012 as follows:

<u>Project #</u>	<u>Obligation</u>	<u>Project #</u>	<u>Obligation</u>
31	\$34,675	42	\$4,740
32	\$24,426	44	\$54,635
36	\$214,197	46	\$40,000
37	\$16,115	48	\$57,732
41	\$48,500	49	\$4,980

Motion Passed.

Aye: Anderson, Brockman, Reeves, Kadlecek, Hadenfeldt, Donaldson, Mercer, Johannes, Steffen, Watermeier, Hergott, Knutson and Clouse
Nay: None
Abstain: None
Not Present: Deines, Nelsen and Rexroth

RULES AND REGULATIONS

LeRoy Sievers reported that the draft administrative rules were submitted to the Governor's Policy Research Office for its assessment of impact and decision on whether or not the agency could proceed with the rules change process. Sievers was notified of the approval to proceed just a few days before the Commission meeting. The next step will be to circulate the draft rules on an informal basis to anyone that might have an interest in coming before the Commission to comment on the proposed rules. Informal comments received, if any, will be reviewed and distributed to Commission members to assess whether or not further revisions to the proposed rules need to be made. Assuming no further changes are needed, the next step will be to formally publish a notice of review of the rules changes which includes holding a hearing on the record. It may be possible to hold the hearing in conjunction with the next Commission meeting in Kearney in September. The Commission could then act on the revised rules during that meeting. After the Commission passes a motion to adopt, the new rules must be submitted to the offices of the Secretary of State and the Attorney General for review and approval. With those approvals, the rules are then sent to the Governor's office for final review. When signed by the Governor, the new rules are submitted to the Secretary of State to be published.

ANNOUNCEMENTS / OTHER BUSINESS

Anderson requested a topic for discussion and possible action be placed on the September agenda relating to lifting the recess on new filings of applications and project proposals for RDF funding. Watermeier commented that Commissioners need to keep in mind that the Legislature has already indicated concern over prior actions to approve projects at a zero allocation which effectively circumvents the statutory \$18.5 million cap.

Mercer thanked everyone for traveling to Grand Island and stated that Central Platte NRD has enjoyed hosting this meeting.

Donaldson reported that she represented the Commission at the dedication of the Pigeon-Jones Creek project. There was a good turnout, the project will be good addition for the State, and all present were pleased to see the development proceeding.

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The meeting was adjourned at 9:55 a.m.



Dick Mercer, Chair



Brian P. Dunnigan, Director