

**NEBRASKA NATURAL RESOURCES COMMISSION**  
**MEETING MINUTES – November 25, 2014**  
**Younes Conference Center – Kearney, Nebraska**

**Roll Call:**

Commissioners		Absent	Present	Commissioners		Absent	Present
Anderson	Garry		X	Kosman	Henry (Hod)		X
Barels	Brian		X	Kraus	Don		X
Batie	Donald		X	Palm	Owen	X	
Christensen	Joel		X	Palmertree	Tom		X
Clouse	Stan		X	Rains	Darrell M.		X
Deines	Dave	X		Rexroth	Keith		X
Donaldson	Beverly		X	Reynolds	Michael (Mick)		X
Fornoff	Kevin		X	Smathers	Scott		X
Hadenfeldt	N. Richard		X	Smith	Lindsey		X
Hergott	Joseph	X		Steffen	Jeff		X
Huggenberger	Steve		X	Strauch	Walter Dennis		X
Johannes	Clint		X	Sugden	Steven		X
Kadlecek	David		X	Taylor	Loren		X
Knutson	Thomas		X				

**DNR staff in attendance:**

Kent Zimmerman and LeRoy Sievers

**Others in attendance were:**

Mark Brohman, NET	Jim Bendfeldt, CPNRD	Butch Koehlmoos, LLNRD
Lynn Webster, UNWNRD	Lyndon Vogt, CPNRD	Rachael Herpel, UNL
Bob Hilske, NNRD	Karen Griffin, OA	Dave Kracman, Flatwater
Jack Russell, MRNRD	Dustin Wilcox, NARD	Jay Rempe, Farm Bureau
Sen. Tom Carlson, District 38	Pat O'Brien, UNWNRD	Ann Bleed, LPSNRD
Mike Onnen, LBNRD	Larry Cieslik, HDR	Mike Delka, Bostwick ID
Dave Mazour		

**CALL TO ORDER & ROLL CALL**

Commission Chairperson Donaldson called the meeting to order at 1:30 p.m. at the Younes Convention Center, 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](http://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. Expenditures Report
3. Resources Development Fund (RDF) Status Report as of 11/17/14
4. Small Watershed Flood Control Fund Status Report as of 10/31/14
5. Nebraska Soil & Water Conservation Fund (NSWCPF) Status Report as of 10/31/2014
6. Nebraska Water Quality Fund Status Report as of 10/31/2014
7. Water Well Decommissioning Fund Status Report as of 10/31/2014
8. Interrelated Water Management Planning Program Report as of 11/14/14
9. Comprehensive Planning Committee Notes & White Syllabus 10/22/14
10. Nebraska Rules and Regulations, Title 256 CH 4; & Title 257 CH 2
11. Draft Water Sustainability Fund Application Review & Score Sheets
12. Water Management Brochure

## MINUTES

***Knutson moved and Anderson seconded the motion to approve the minutes of the September 23<sup>rd</sup>, 2014 Commission meeting.***

### **Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Anderson	X				Kosman	X			
Barels	X				Kraus	X			
Batie	X				Palm				X
Christensen	X				Palmertree	X			
Clouse	X				Rains	X			
Deines				X	Rexroth	X			
Donaldson	X				Reynolds	X			
Fornoff	X				Smathers	X			
Hadenfeldt	X				Smith	X			
Hergott				X	Steffen	X			
Huggenberger	X				Strauch	X			
Johannes	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				<b>TOTALS</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>3</b>

## 2015 NRC CAUCUS

Staff reviewed the statutory requirement and dates for the upcoming January 2015 NRC Caucus, including plans to update the *Purpose of the Caucus* and *Explanation of the Commission* documents and to send them to each NRD board member once voting eligibility is established.

**Smathers moved and Steffen seconded the motion to approve the caucus procedure, and to authorize staff to coordinate with NRD managers as needed to schedule and conduct caucuses to elect basin representatives for four year terms and to fill vacancies for unexpired terms.**

### **Motion Passed.**

Commissioner	Aye	Nay	Abstain	Absent	Commissioner	Aye	Nay	Abstain	Absent
Anderson	X				Kosman	X			
Barels	X				Kraus	X			
Batie	X				Palm				X
Christensen	X				Palmertree	X			
Clouse	X				Rains	X			
Deines				X	Rexroth	X			
Donaldson	X				Reynolds	X			
Fornoff	X				Smathers	X			
Hadenfeldt	X				Smith	X			
Hergott				X	Steffen	X			
Huggenberger	X				Strauch	X			
Johannes	X				Sugden	X			
Kadlecek	X				Taylor	X			
Knutson	X				<b>TOTALS</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>3</b>

## COMPREHENSIVE PLANNING COMMITTEE

Chair Smathers reported that the Committee met October 22, 2014, to establish a proposed list, referred to as the *White Syllabus*, to further the rules drafting process by bringing suggestions from the committee to the full commission. Items on the *White Syllabus* were discussed and refined and the outcome is attached under the heading *White Syllabus*.

Lyndon Vogt, Manager of the Central Platte NRD, offered the following comments on behalf of a small group of NRD managers for the purpose of helping to clarify issues being discussed by the Commission:

- Project sponsors have 85-90% of the engineering work completed prior to submitting the application for the permit.
- On an \$8-10 million project, which is small by today's standards, the applicant can easily have \$1 million spent before they obtain the USACOE 404 permit.

- The Upper Prairie/Silver/Moores project started out as a seven year project and now is estimated at 14 years due largely to external factors beyond the sponsor's control.
- If a sponsor proposes a \$25 or \$30 million project that is a home-run in that it takes excess water and keeps it from running out of this state and puts it back into the system for a beneficial use or purpose, and you tell them the funds are only guaranteed for three years, it won't ever happen. The Commission has to assure the sponsor that the Commission will see the project through to completion as long as the Legislature continues to supply funding.
- A project sponsor can't take tax dollars and put them into a project if there is not a guarantee or commitment to complete.

Butch Koehlmoos, Manager of the Lower Loup NRD, responded to a request for input regarding the issue of the "cap" stating that he doesn't understand why the Commission is not putting a priority on those larger projects that sponsors don't have the money to build. Koehlmoos believes the Commission is trying to make the funding duration so tight that they will not get applications for larger projects which is what the goal should be. Also, cost overruns are going to have to be dealt with.

Senator Tom Carlson, District 38, offered the following comments:

- The reason LB 1098 passed with a vote of 48-0 was because of compromise. The concept came across to the Legislature that we are aiming for water sustainability in the state of Nebraska. Not a bunch of other things.
- During negotiations of LB 1098, Senator Lathrop supported the bill to receive wording that a basin with three or more NRDs designated fully appropriated have a mandatory basin-wide plan.
- The Commission has the final authority on projects. Projects may be offered to help with compliance for Kansas, Platte River recovery or a great economic value to the state, but you can't go wrong with projects that contribute to water sustainability. Those in the Legislature, who understand why LB 1098 passed, will keep the fund going if it is handled correctly. The current Appropriations Committee is kind of warm to what we are doing, so let's give them even more reason to cooperate and extend the commitment.
- If this goes the other way, he (Sen. Carlson) will be the one to tell the Legislature to quit funding the program because it is not working out the way it was intended.

Responding to a question regarding the possibility of asking the Legislature to create a trust that funding could go into once a project is approved and funding committed, to avoid the funding being legislatively recalled prior to the project sponsor claiming reimbursement, Carlson responded this would not be likely in 2015, and reminded Commissioners who were on the

Water Funding Task Force to continue to work with a small group of legislators because their buy-in is critical.

Commissioners discussed whether they could limit project funding to, for example, those that score a four or higher on water sustainability. The Legislature identified 15 factors to consider, but did not require all to be considered equally. Only one of those included the term “water sustainability.” Therefore, the Commission has some discretion.

**ANNOUNCEMENTS / OTHER BUSINESS**

- Chair Donaldson appointed the nominating committee and asked that they proceed with developing recommendations for Commission Chair & Vice-Chair during the caucus in the January Commission meeting. Committee members appointed were Mick Reynolds, Chairman, Don Batie and Jeff Steffen.
- The next meeting is scheduled for January 28, 2015, in Lincoln.
- Donaldson and Johannes announced they would not run again in the January caucus. The commissioners offered a round of applause to thank them for their service as Commissioners.
- Sievers announced that the Attorney General’s Office has signed off on the NSWCP rules change and that we are now waiting for the Governor’s Policy Research Office to do the same.

\* \* \* \* \*

The meeting was adjourned at 4:19 p.m.

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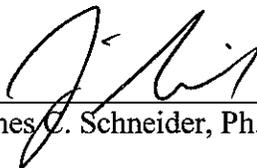
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Kevin Fornoff, Vice-Chair



James C. Schneider, Ph.D., Acting Director

## WHITE SYLLABUS

### **Annual Grants vs Funding Large Projects (or How to Accommodate Large Projects when WSF only Receives Annual Appropriations)**

- Commit to fund projects through completion by providing annual grants based upon projects scoring.
- Review the “sponsor at risk” language in Title 256, CH 4 (002).
- Base the type of funding upon the type of application filed. Annual Grant to sewer separation or short term project like a study; reserve up to 10% for the sewer project and 10% for small projects requesting \$250,000 or less; long term funding for large projects.
- Use of loans will be an option, use RDF rules language in the WSF rules regarding loans.
- In terms of the application funding cycle, DNR reviews and forwards qualified applications to NRC – NRC scores, ranks and approves some, the unfunded applications are returned to applicant. Unfunded applications can be refiled next year with a narrative page describing any changes to the application from the previous year, or a certification that there are no changes to the application subsequent to its prior submission, reviewing and scoring.
- Whether or not to use separate application forms for large or small projects will be reviewed at a later date.

### **Funding**

- Commission may commit funding to a project for a maximum of three years as specified by the applicant in the application.
- Funding may be for the purpose of obtaining permits (404 permits / surface water rights / G&P T&E consultation / & other permits). Once that permit is obtained, come back with a construction application. Two applications, the second may not get funded.
- 2<sup>nd</sup> & 3<sup>rd</sup> yr. funding shall be contingent upon proof of progress and appropriation by the Legislature.
- A definition of what constitutes “progress” needs to be established. The goal is to not string money out for a long period of time with no success.
- Only projects that can be constructed in three years will be funded.
- Projects can be broken into segments. Sponsors can apply one segment at a time.
- Cost over-runs will be the sole responsibility of the project sponsor and will not be funded by the WSF.
- Funding amount for subsequent years (2<sup>nd</sup> & 3<sup>rd</sup>) will be determined based upon progress, the applicant’s initial request and Legislative appropriation.
- LeRoy Sievers will review if a project funding limit could be established and report back.
- All of the available funding will go to the applications in order of scoring, if the 1<sup>st</sup> place application exceeds available funding, nothing else gets funded.

- Should the NRC request the legislature create a fund, like the one in Wyoming; using project funding that has already been committed and set aside to help ensure the WSF is able to retain the money until all necessary permits are acquired and project built? (Tabled for now)

### **Cap**

- No cap, funding will only be awarded as it is received from the Legislature.

### **Permit Requirements**

- Could applications be scored, but not funded, until they receive the 404 and other permits? No but they may apply for the 404 permit in one phase and get more funding in later phases.

### **Feasibility Studies & Proposals**

- Definition of economic feasibility found on p. 9 of draft rules may be updated as the federal requirements change. The WSF definition should be the same as the federal requirement so that an applicant can use the same process for both applications.
- Definition of financial feasibility found on p. 10 of draft rules. Add to the list that the sponsor must list sources of funds that will be available to meet sponsors share of funding in addition to tax revenue. Require the applicant tell Commission sources of funding as part of the application and then rely on that.
- Financial feasibility could be defined as having enough money lined up to fund the project.
- WSF can't be used for feasibility studies.
- Economic feasibility, an internal rate of return of 3% or greater, is required at the time application is made.
- LeRoy Sievers will look into how economic & financial feasibility fit with water sustainability.
- Use the benefit period, life of the project as defined in the draft rules, for calculating economic feasibility.

### **Application Cycle**

- Applications received the 1<sup>st</sup> time 90 days after WSF rules are effective (5 days after signed by the governor), and subsequently on August 1<sup>st</sup> based upon funding availability. Each application period will remain open for 90 days.

### **Sewer Separation**

- Sewer separation projects will have a designated box to mark on the application.
- Sewer separation project applications must show need and describe the population living in the affected area, these applications will not be scored.

## **Scoring & Ranking**

- Initial scoring will be handled by a sub-committee of 9 who are appointed by the Executive Committee. Commissioners will rotate on and off the committee such that everyone participates.
- Sub-committee scoring recommendation will be brought back to the full Commission. The Commission would have the opportunity to ask questions of the committee, may make a motion to change the score or something else recommended by the committee and then come to a final decision by a majority vote.
- LeRoy Sievers was asked to look into voting options: majority, super majority, consensus, roll call etc.
- Ranking is automatic based upon scoring.
- If scoring an application for a 404 permit or other permits in one “phase”, does this scoring stay with the project in subsequent applications for funding subsequent phases of a project?
- Scoring and allocation of funding are two separate votes.

## **Federal Mandates**

- Use the definition of a federal mandate from the “White Paper” in the WSF rules.
- Priority will be given to applications responding to federal mandates by additional scoring points (2, 4 or 6).

## **Cost Share**

- Local cost share is required for all types of applications.
- Up to 60% WSF/40% Local Share, which is calculated after all other sources of funding are taken off 1<sup>st</sup>.
- Fixed cost share of up to 60%. When and how will the rate be determined?
- Can the sponsor use in-kind for their local match? Only after receiving “Pre-approval” from the Commission and upon showing of how this will save the WSF money (i.e. Contractor’s bid for same work is more).
- Interest will not be included as a cost of a project.

## **Reimbursable Items**

- Costs incurred prior to approval will not be reimbursable.
- O&M expenses will not be allowed.
- Use of a rate of inflation for project costs will not be allowed.

## **Land Rights**

- Review (Title 257, Chapter 2) the SWFCF’s rules at November meeting.
- Create rules for purchase of assets such as land rights.
- WSF’s share in rents/revenue, sale of assets.

- Create rules for disposing of property cost shared by the fund if project is discontinued prior to end of its useful life.
- Kent Zimmerman was asked to draft language based upon his experience working with RDF & SWFCF.

### **Reporting**

- Annual project sponsor reports will be required by April 1<sup>st</sup> of each year for use in reporting to the legislature.
- Project investigation and inspections may be conducted by and covered within DNR's rules.

### **Eligibility**

- Other than for NRDs involved in an IMP, no other eligibility requirements exist.
- Anyone is eligible to file an application for use of the WSF.

### **Questions**

- What are the differences among Statutes, Rules, Policies and Guidelines?

Constitution: adopted by a majority of the votes of voters of the state, very hard to amend; statutes adopted by the Legislature and signed by the Governor, must be followed, difficult to change (requires lengthy process including legislative committee hearings, at least three votes of the legislature and approval by the governor unless vetoed and overridden by legislature); rules must be consistent with statutes, implement them as necessary, statutorily required formal steps to be followed which take significant amount of time to implement; policies must be consistent with statutes and rules and implement them as necessary, based upon existing policy require at least two meetings of the Commission in order to be adopted or changed; guidelines must be consistent with statutes, rules and policies and can be changed or adopted by a vote of the Commission.

- Equitable distribution of funding across the state will be reviewed every other year by region which will be defined as river basins.

Separate rules for DNR & NRC are required by statute.