

# **NEBRASKA NATURAL RESOURCES COMMISSION**

## **MEETING MINUTES – November 18, 2010**

Those in attendance were:

Keith Rexroth, Chair	Tom Knutson, Appointed	Glenn Johnson, LPSNRD
Jim Van Marter, Member	Dan Nelsen, Member	Doug Samuelson, LPSNRD
Clint Johannes, Member	Garry Anderson, Member	Dave Clabaugh, LBBNRD
Ladd Reeves, Member	Joseph Hergott, Member	Marlin Petermann, PNRD
Dick Mercer, Member	Doug Christensen, NRCS	Bob Hilske, NNRD
Dan Watermeier, Member	Lorrie Benson, UNL	Brian Dunnigan, NDNR
Beverly Donaldson, Member	Dean Edson, NARD	Rex Gittins, NDNR
Dick Hadenfeldt, Member	John Miyoshi, LPNNRD	Kent Zimmerman, NDNR
Vince Kramper	Mike Murren, LPNNRD	

### **CALL TO ORDER & ROLL CALL**

The meeting was called to order by Commission Chairman Rexroth at 8:30 a.m. at the Lower Platte South NRD office in Lincoln, Nebraska. The following members were absent: Ladd Reeves (arrived later), Dave Deines, David Kadlecik and Larry Moore. Tom Knutson, Governor Heineman's appointee to represent Surface Water user's interests, attended the meeting but was ineligible to offer motions or vote on any issues pending appointment confirmation by the Legislature.

### **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](http://www.dnr.ne.gov). A copy of Nebraska's public meeting statutes was available in the room.

### **INFORMATIONAL MATERIAL**

The following informational materials were distributed either prior to or 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. Selected Agenda Topics Explanation Paper
3. UNL Invasive Species Flyers
4. NRCS Water Resources Update & November 2010 Report
5. NARD Report - 2011 Legislative Review
6. Expenditures Report
7. Nebraska Resources Development Fund:
  - Financial Overview as of October 29, 2010
  - Pigeon/Jones Creek Project Review Packet
  - Financial Status Report as of November 10, 2010
  - Quarterly Report for August 1 to October 31, 2010
8. Small Watershed Flood Control Fund Status Report as of November 1, 2010

9. Nebraska Soil & Water Conservation Fund Status Report as of October 31, 2010
10. Nebraska Water Quality Fund Status Report as of October 31, 2010
11. Water Well Decommissioning Fund Status Report as of October 31, 2010

### MINUTES

Minutes of the September 27-28, 2010, Commission and Committee meetings were approved. *Kramper moved and Van Marter seconded a motion to approve minutes of the September 2010 meetings of the Program Committee and Natural Resources Commission.*

#### Motion Passed.

Aye: Hadenfeldt, Donaldson, Hergott, Watermeier, Anderson, Rexroth, Mercer, Van Marter, Johannes, Kramper, Nelson  
Nay: None  
Abstain: None  
Not Present: Reeves (arrived later), Deines, Kadlecek and Moore

### EXPENDITURES REPORT

Fund expenditures reports showing fund activity and balances for September and October 2010, were distributed. Gittins stated that there were no unusual expenditures to report but noted that the first of two transfers from cash funds legislated by LB 1 / LB 935 would occur on December 15th. Transfer dates and amounts for FY 2011 were listed on the Funds Balances Report.

### ADVISOR REPORTS

#### Natural Resources Conservation Service (NRCS)

Doug Christensen, Assistant State Conservationist for Water Resources, distributed a report to the NRC dated November 2010, and reviewed the PL-534/PL-566 Watershed Program highlighting the following aspects regarding the Watershed Rehabilitation Act:

- Nebraska has built over 900 dams under the PL-566 program
- Nebraska has five ongoing flood prevention Watershed Operation Projects funded with stimulus money
- Nebraska has nine Watershed Rehabilitation Projects ongoing
- Funding priorities are set by the office of OMB
- Nationwide, 1,040 dams have exceeded their design life, and 4,852 will exceed design life in the next ten years

#### Nebraska Environmental Trust

Vince Kramper reported that about 110 new applications were received this year and that about \$55 million will be available for grants. Kramper cautioned applicants to carefully observe filing deadlines as some applications were received minutes late and had to be rejected. The next NET board meeting will be held in February 2011.

#### UNL Water Center

Lorrie Benson discussed the UNL Invasive Species program being conducted with the state of Nebraska and other partners to protect Nebraska's resources from invasive species introduction

from another state. Several pamphlets explaining how to identify and stop the spread of invasive species are available from the UNL extension service.

Benson also mentioned the 2011 summer water tour which will focus on the High Plains Aquifer and the Spring Water Lecture Series.

### **DNR UPDATE**

Director Dunnigan briefed the Commission on integrated management plan developments, flood plain mapping, dam safety, the Republican River Compact lawsuit, and the Department's budget request:

- Of the 14 required Integrated Management Plans, 10 are completed. DNR staff has focused its efforts on updates to the Middle and Upper Republican River Basin NRD's IMPs to ensure future compact compliance. Staff continues to work with the Lower Republican NRD on its IMP. The Upper Big Blue NRD's IMP for the Platte River Basin has been approved and Tri-Basin NRD's IMP for the Platte River Basin has been updated.
- 49 county-wide Flood Plain Maps have been produced in cooperation with FEMA. Four counties remain to be completed as part of the approximately \$700,000 in FEMA grants received by the Department.
- The Dam Safety Section focusing on getting needed Emergency Action Plans in place.
- The U.S. Supreme Court is expected to decide late this year or early next whether or not to hear Kansas's allegations regarding the Republican River Compact compliance.
- The DNR budget (totaling about \$10 million in Operations; \$12.4 million in Aid) was submitted for amounts slightly below the FY 2011 level. As instructed by the Administration, projections were provided to show how additional reductions of 10% could be achieved in both Operations and Aid.

### **LEGISLATIVE & BUDGET COMMITTEE LEGISLATION UPDATE**

Dean Edson, Executive Director of the Nebraska Association of Resources Districts, was invited to provide an update on Legislative and Budget matters of interest to the NRDs. He distributed a Memorandum to the Natural Resources Commission and added the following comments.

- Edson noted that with anticipated reductions to the University, state aid to schools, and Medicaid programs, the Commission should focus on retaining program funding at a functional level, and expect to share in the necessary reductions. He recommended the Commission work with the Legislature to survive budget cuts program and maintain the integrity of aid programs rather than lobbying for no reductions or funding increases.
- The property tax levee for ground water management authorities expires at the end of 2012. Two bills (LB 1031 & LB 1032) that would extend the sunset date until 2017 advanced from Committee last year, but neither was passed.
- Two resolutions were passed at the Fall NARD Conference in Kearney. The first deals with obtaining credit for the entire amount of water involved in a transfer of leased water rights. NARD and the NRDs are working with state senators now to draft legislation regarding this complicated issue. The second deals with rules changes to simplify the reimbursement process within the Nebraska Soil and Water Conservation Program.

However, the NRD managers work group has been assigned to review and resolve concerns raised by several NRD managers regarding this issue prior to advancing this resolution.

- In anticipation of cuts in the State budget, NARD is working with the Department of Agriculture and Senators Langemeier and Carlson to identify alternative funding sources for natural resources programs. One consideration is a revolving loan fund, but no draft legislation is prepared at this time.
- Senator Avery is not planning to introduce legislation to move ground water management to DNR.
- On November 3<sup>rd</sup>, the Nebraska State Supreme Court heard the appeal on the constitutionality of the occupation tax levied on irrigated land. An opinion from the court is expected by March 2011. The statute on which this case was filed was modified in the last session. In another action, the Court denied the Central Public Power and Irrigation District's appeal on a previous allocation/regulation case.
- The Natural Resources Committee only had one interim study related to natural resources this year - prescribed burning. Dave Carr, CPNRD, presented testimony regarding developing a burn plan, working with fire districts, ensuring adequate training and coordinating with all local, state and federal agencies. There is a need for landowner/fire department education regarding how to conduct a safe prescribed burn.
- The NARD/NRDs are going to refrain from pursuing any controversial bills this year as the Legislature is expected to be focused on budget issues.

Rexroth questioned whether the Commission should pursue legislation to increase the NRDF "cap" at this time. Edson replied that since there is no available money, he could not see what this would accomplish. Gittins noted concerns raised by staff about drawing attention to project approvals with zero dollars allocations. Edson agreed, adding that if State funds become unavailable, project obligations will likely have to be met at the local level for expenditures made prior to Commission allocations.

Johannes commented that current NRDF rules almost require approval of eligible projects. The Director must recommend approval if the project meets eligibility criteria, and a unanimous vote by all Commission members eligible to vote is required to reject an application. He stated this was the basis for Program Committee discussion on not accepting applications until approved projects are fully allocated.

Edson suggested that sponsors of new projects should wait to see what the Legislature comes up with for a FY 2011 deficit reduction budget. He also pointed out that some projects will need to recognize significant cost increases due to changes in FEMA requirements, and stated concern about how local governments will be able to meet new requirements if no state or federal money is available.

### **PROGRAM COMMITTEE**

Program Committee Chair Johannes reported the following highlights from the Committee meeting which met on November 17, 2010.

## **Nebraska Resources Development Fund**

### **Financial Status Report**

Staff has been informed by DAS Budget Office that the remaining FY 2011 allotments would be distributed as follows:

- December 3<sup>rd</sup> - - \$418,219 (totals three of four equal quarterly allotments, less 1% per quarter)
- April 1<sup>st</sup> \$784,110 - - (last quarterly allotment, less 1%)
- The remaining \$130,685 (4%) sometime between January and June depending upon the Legislature's action to reduce FY 2011 deficits.

Project sponsors have been notified. Commissioners recommended staff reimburse project sponsors as funds become available by giving to those with remaining balances in the order in which the reimbursement requests were received in the Department.

### **Quarterly Report**

Most projects reported good progress in Quarterly Reports for August 1 through October 31.

### **Buck and Duck Project**

The project review committee toured the project site on November 16<sup>th</sup> and recommended approval, noting there was no room under the legislatively imposed \$18.5 million "cap" on unfunded appropriations.

*Johannes moved, Van Marter 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 and Duck Creeks 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: Rexroth, Kramper, Hadenfeldt, Van Marter, Mercer, Hergott, Anderson, Johannes, Reeves, Nelson and Donaldson

Nay: None

Abstain: Watermeier

Absent: Deines, Kadlecek and Moore

Discussion on Requesting an Increase in the Unfunded Allocation Cap

The following items were discussed:

- The Lower Turkey Creek Watershed project was limited by the “cap” on the initial cost share and was reimbursed at that percentage for all component obligations made (and costs incurred) prior to such time as there was room under the “cap” to increase cost share and allocation. The new percentage applied only to the remaining unobligated and unexpended costs.
- Staff cannot execute contracts for projects approved with \$0.00 cost share because no commitment can be made until a cost share is set. Sponsors are not willing to request a cost share that might limit reimbursement.
- A joint meeting among NRD managers, Dean Edson, and the Commission’s Executive Committee was suggested to address alternative funding sources and the Commission’s interest in increasing the “cap”.
- Concerns were raised about the possibility that more project sponsors might file applications for cost share assistance and further increasing the backlog of approved but unallocated projects.
- The wisdom of waiting until after the Legislature passes the next budget bill versus lobbying during the coming session.
- Invoking a recess on new project proposals/applications until one year after all currently approved projects are fully allocated. This would prevent sponsors from filing project proposals or applications if small balances are available under the cap due to project close-outs, interest on the cash fund balance, etc., prior to money being allocated to already approved projects.
- Lobbying senators for a bill to raise the “cap” even though it does not increase funds available to obligate.
- Holding off on accepting new project proposals or applications could indicate to the Legislature that it is the Commission’s intent to deal with the state’s budget shortage and to help the Commission’s request for an increase to the “cap” to be received in a positive light.
- Requesting and authorizing the Legislative and Budget Committee to pursue increasing the “cap” and initiate discussions with appropriate senators.

*Watermeier moved, Johannes seconded, to take a recess on receiving new project proposals and applications until one year from the time all previously approved projects allocations have been met.*

Motion Passed.

Aye: Rexroth, Kramper, Watermeier, Hadenfeldt, Van Marter, Mercer, Hergott, Johannes, Reeves, Nelson and Donaldson

Nay: Anderson

Abstain: None

Absent: Deines, Kadlecek and Moore

## Prioritizing Allocation of Funds

Johannes moved, Kramper seconded, to adopt the foregoing resolution regarding future allocations from the Natural Resources Fund:

***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.***

### Motion Passed.

Aye: Anderson, Rexroth, Kramper, Watermeier, Hadenfeldt, Van Marter, Mercer, Hergott, Johannes, Reeves, Nelson and Donaldson

Nay: None

Abstain: None

Absent: Deines, Kadlecek and Moore

### Adjustments to Obligations

No adjustments were made to any project obligations.

## **Small Watersheds Flood Control Fund Status Report**

### **Status Report**

No unusual activity was reported. The sale date for the lands associated with the Little Blue NRD's Little Sandy Creek Site #40 is set for January 18<sup>th</sup>, 2011, at the office of the Little Blue NRD in Davenport.

### **Review and Approval of Appraisals**

*Anderson moved, and Kramper seconded, approval of appraisals for the following five tracts of land associated with the Lower Platte North NRD's seven upstream dams upon 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 Lower Platte North NRD for an easement on a separate tract after the appraisal was conducted and partial sub-division was made by LPNNRD staff.*

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

### **Motion Passed.**

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

### **Transfer Fund Balances**

*Van Marter moved, Mercer seconded, to transfer the Small Watersheds Flood Control Fund's "Unassigned Funds" balance and up to \$180,000 from the "Easement Fund" balance into the "Revolving Fund" as necessary to meet the Fee Title Purchase needs of the Lower Platte North NRD.*

### **Motion Passed.**

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

### **Soil and Water Conservation Fund**

No unusual activities were reported.

### **Water Quality Fund**

No unusual activities were reported.

**Water Well Decommissioning Fund**

No unusual activities were reported.

**Interrelated Water Management Plan Program Fund**

No unusual activities were reported. No requests for guideline revisions were made, therefore, no action was taken.

**COMMISSION PROCEDURES FOR 2011 CAUCUSES**

*Johannes moved and Mercer seconded to approve the procedure for the January 2011 Commission Member Caucuses and to authorize staff to work with NRD managers and Commission members involved to schedule the caucuses.*

**Motion Passed.**

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

**ANNOUNCEMENTS**

A meeting of the Legislative & Budget Committee will be held during the NARD/Commission meeting in January.

Plans to review the NRC Reference Guide in conjunction with a later meeting in 2011 will be finalized at the January meeting.

Marlin Petermann thanked Kramper for his dedication and exceptional service to the State in conserving and developing natural resources.

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The meeting was adjourned at 10:20 a.m.