

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
STATE OF NEBRASKA

IN THE MATTER OF)	<u>TRANSCRIPT</u>
THE RULEMAKING HEARING)	
REGARDING TITLE 261, NEBRASKA)	VOLUME I of I
ADMINISTRATIVE CODE, RULES)	(Pages 1 through 20)
GOVERNING THE ADMINISTRATION OF)	
THE WATER SUSTAINABILITY FUND.)	EXHIBITS 1-10

Nebraska State Office Building
301 Centennial Mall South
Lower Level "F"
Lincoln, NE

Convened, pursuant to notice, at 10:00 a.m., on
April 28, 2015,

BEFORE:

LEROY SIEVERS, Hearing Officer.

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DEPARTMENT OF
NATURAL RESOURCES

I N D E XWITNESSES: PAGE

Mike Delka	8
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EXHIBITS: Marked Offered Ruled On Found

1	Copy of Proposed Rule, Title 261, NAC, Rules Governing the Administration of the Water Sustainability Fund (44 pages)	5	6	7	Appendix
2	Notice of Hearing and Proof of Publication in <i>The Omaha World- Herald</i> (2 pages)	5	6	7	Appendix
3	Proposed Regulation Policy Pre-Review Checklist (4 pages)	5	6	7	Appendix
4	Letter to Secretary of State John Gale, dated 3-19-15 (47 pages)	5	6	7	Appendix
5	Letter to Senator John Wightman, dated 3-19-15 (52 pages)	5	7	7	Appendix
6	Comments from North Platte Natural Resources District, dated 4-23-15 (4 pages)	5	7	7	Appendix
7	Comments from Tony Krause, Flood Risk and Floodplain Management, USACE Omaha District, dated 4-27-15 (2 pages)	5	7	7	Appendix

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled On</u>	<u>Found</u>
8 Comments from Nebraska Farm Bureau Federation, dated 4-27-15 (3 pages)	5	7	7	Appendix
9 Comments from Hastings Utilities, dated 4-28-15 (2 pages)	16	16	16	Appendix
10 Comments from Lower Platte North Natural Resources District, dated 4-28-15 (1 page)	17	17	17	Appendix
	- - -			
Reporter's Certificate			4	
	- - -			

1 PROCEEDINGS:

2 (Exhibits 1 through 8 were marked for
3 identification.)

4 THE HEARING OFFICER: Good morning. It's ten
5 o'clock, and today's April 28th, 2015. My name is LeRoy
6 Sievers and I'm legal counsel for the Department of Natural
7 Resources, which provides staff support for the Nebraska
8 Natural Resources Commission. I'm the hearing officer for
9 the hearing today. This hearing is concerning the adoption
10 of the Natural Resources Commission's Rule, Title 261, which
11 is entitled, "Administration of the Water Sustainability
12 Fund." This hearing is held under provisions of the State
13 of Nebraska Administrative Procedures Act, Nebraska Revised
14 Statute §84-901 to 920.

15 Linda Rohman from General Reporting Services will
16 be making a verbatim record of this hearing. This is a
17 public hearing, not an evidentiary hearing. As a
18 consequence, those who wish to provide oral statements will
19 not be required to be sworn. However, you will be asked to
20 sign and neatly print your name on the appearance sheet
21 that's located with the microphone. Information may be
22 presented orally or in writing or both. Written information
23 will be marked as an exhibit and made a part of the hearing
24 record.

25 Initially, I am submitting a copy of the proposed

1 rule, Title 261, which is entitled, "Rules Governing the
2 Administration of the Water Sustainability Fund." This is
3 marked as Exhibit 1.

4 I'm also submitting into the record the notice of
5 the hearing signed by the Acting Director of the Department
6 of Natural Resources, attached to which is a proof of
7 publication, pursuant to Nebraska Revised Statute §84-907,
8 stating that the publication of the public hearing notice
9 for this rule occurred on March 21st, 2015, in the *Omaha*
10 *World-Herald*. This is marked as Exhibit 2.

11 Further, I offer the Department's submission of
12 the rules and regulations policy Pre-Review Checklist for
13 Title 261 to the Governor's Policy Research Office, which
14 was approved on March 19th, 2015. This is marked as Exhibit
15 3.

16 I also offer into the record a copy of the
17 Department's letter of March 19th, 2015, addressed to the
18 Honorable John Gale, Nebraska Secretary of State, which was
19 forwarded along with the working copy of the proposed rules,
20 a copy of the fiscal impact statement, and the hearing
21 notice. This letter was sent to the Secretary of State's
22 Office on March 19th, 2015. This letter is marked as
23 Exhibit 4.

24 I also offer a copy of the Department's letter of
25 March 19th, 2015, addressed to Senator John Wightman, Chair

1 of the Executive Board of the Legislative Council of the
2 Nebraska State Legislature, which was forwarded as required
3 by §84-907.06 with two copies each of the working draft of
4 the proposed rules, the hearing notice to be published in
5 the *Omaha World-Herald*, and the material provided to
6 Governor Ricketts in accordance with §84-907.09. This
7 letter and material were sent to Senator Wightman's office
8 on March 19th, 2015. This is marked as Exhibit 5.

9 In addition, the Department received in advance of
10 today's hearing some written testimony. The first one is
11 from the North Platte Natural Resources District. This is
12 marked as Exhibit 6.

13 Also received from the United States Army Corps of
14 Engineers was a written submission. This is marked as
15 Exhibit 7.

16 And received from the Nebraska Farm Bureau
17 Federation was written testimony. This is marked as Exhibit
18 8.

19 These three items will, thus, also become a part
20 of the record.

21 (Exhibits 1 through 8 were received in evidence.
22 See Index.)

23 At this time, I would invite anyone in attendance
24 who wishes to provide oral or written statement to come
25 forward so that this information can become a part of the

1 record. Again, I would ask whoever comes forward to sign
2 your name, record your address and if you're representing a
3 group or not, I would appreciate it if you would state that
4 on the record for the court reporter.

5 MIKE DELKA

6 My name is Mike Delka, D-e-l-k-a and M-i-k-e. I'm
7 representing the Bostwick Irrigation District out of Red
8 Cloud, Nebraska. And I just have a few comments, more for
9 clarifications than for anything else.

10 In Chapter 1, the stated goals of increasing
11 stream flow. Increasing stream flow is a difficult one to
12 evaluate when most projects are meant to, basically,
13 decrease the depletions. The amount of water in the basin,
14 I believe, is pretty much locked in. It's just how we
15 handle it. From the beginnings, we've seen depletions
16 through riparian growth. We -- let's say, we go out and cut
17 a tree. That water, then, is returned to the stream. It
18 doesn't add anything that wasn't originally there. So, it
19 actually is more appropriate to say it decreases depletions,
20 rather than increases the stream flow.

21 Likewise, most of the projects like we would deal
22 with where we might convert an open ditch to buried pipe for
23 conservation, that conservation, again, does not so much
24 decrease stream flow -- increase stream flow as it does add
25 to sustainability of a water supply is the reason that we're

1 doing it. So -- and that water, hopefully, would be
2 retained in a reservoir for enhancing the supply to a user.
3 So, I guess, that would be a concern.

4 In Chapter 1.004, the engineering and technical
5 feasibility, required geologic investigations, required
6 hydrologic data, a lot of our projects have -- are more of a
7 work that we have traditionally done over the years. And
8 with -- if we have too much of a burden of an investigation
9 and overhead, then we lose the ability to be efficient with
10 the monies that are out here. An example might be that, if
11 we would come after, let's say, a chainsaw to do work on
12 federal property or even other properties, we would get a
13 benefit of water from cutting down the trees or clearing the
14 ground. But to do the geologic and hydrologic studies, the
15 technical feasibility, have an engineering of the --
16 whatever is going to go on, we'd probably have a very
17 expensive chainsaw and it wouldn't make any sense to do it.
18 So, I think there needs to be a threshold and some type of
19 an exemption built into this system somewhere.

20 Likewise, economic benefits in Chapter 2, the
21 benefits versus the cost. Where their cost might be, as
22 it's written, would be pretty formidable as far as an
23 overhead. The -- wouldn't have the -- the efficiency is
24 lost. And sometimes we make fun of government when they
25 have a thousand-dollar screwdriver, but -- and, I guess,

1 that's what we want to avoid.

2 The cost information, where it can come from. I
3 don't know if the Director was going to provide that.

4 The primary benefits versus secondary benefits. I
5 mean, we can reach out to all sorts of people and to the
6 benefits to riparian, you know, changes that would enhance
7 one species, but they would also be a detriment to others.
8 Tree-clearing is an example. The nesting of birds.

9 Another thing in Chapter 2.009.02, they want to
10 have a lot of the clearances done prior to funding. But
11 currently, it's -- most of our work, as far as our cultural
12 and environmental clearances, is done by the federal
13 government. And they've now got a position where they want
14 to see you get the funding before they'll do the clearances.
15 So, we're kind of in a conflict with that.

16 The Chapter 3.001.01, the scoring, the drinking
17 water, the IMPs, increasing stream flow where, again, if
18 we're talking about a decrease in depletions versus an
19 increase in stream flow, a lot of the -- even the
20 augmentation projects are more adequately named re-timing
21 projects. NCORPE, for example, is taking water that might
22 have come from the Platte and taking it to the Republican.
23 If that's -- that is new water to the Republican, but I
24 don't think that is new water to the Platte, and it's
25 probably a detriment to the Platte. So, I guess, if it's an

1 holistic approach versus a -- what actually new water would
2 be.

3 The sustainability goals, I think there's a lot of
4 good projects that can lead to those types of things. But
5 they may not qualify for increasing stream flows as a
6 sideline.

7 And then, the water supply goals, depends on,
8 basically, a perspective of whether that would be a --
9 managing a groundwater level, which we have different --
10 NRDs have different perspectives on that.

11 And being cost-effective. We've seen a lot of
12 projects come out doing channel-clearing and other projects,
13 but they're temporary in nature. There should -- is there
14 longevity? Is there a maintenance issue? Or do we go back
15 every couple of years and the benefits that we see will --
16 how sustainable will they be? One of the issues to be had
17 was that, even if you -- nature does not stand still. Once
18 you clear trees, something grows in their place and there is
19 a consumption associated with that. So, there's -- I think
20 we've all been to meetings where they've discussed those
21 types of things. There's not to say that there hasn't been
22 a benefit, but it's a way that it would probably have to
23 score and be approached.

24 In Chapter 3.001.04, a lot of this may be based on
25 population. A lot of -- I feel that a lot of the greatest

1 conservation and enhancements for both -- about all water
2 projects are probably in the rural areas for the benefit of
3 those populated areas. You may be able to build a dam
4 someplace that will help the water supply of Lincoln, but it
5 won't be in the middle of Lincoln. So, I think there has
6 to -- and if anything that you do in western Nebraska would
7 affect eastern Nebraska. So, do you count everybody in
8 between?

9 So, but those are just a few of the comments that
10 I seen that, I think, really need to be kind of pulled
11 together, especially the threshold. I know, in our case,
12 what we would like to see would probably be to convert more
13 open ditch to buried pipe. The benefits, less evaporation,
14 less seepage, more efficiently delivered. But underneath
15 these current guidelines, I don't even know if I'd want to
16 waste my time to put in an application. That's all I got.

17 THE HEARING OFFICER: Thank you, Mr. Delka.

18 CHUCK SHOEMAKER

19 Chairman Fornoff and Commission members, my --
20 thank you for this opportunity to address the content of
21 Title 261, the rules and guidelines by which monies from the
22 water sustainability funding program will be disbursed. My
23 name is Chuck Shoemaker. I am the Chair of the Board of
24 Public Works of the City of Hastings, Nebraska. The Board
25 of Public Works has been appointed by the mayor and the city

1 council to provide oversight and direction to Hastings
2 Utilities, the community of Hastings' utility service
3 provider, including the City's potable water supply.

4 In Hastings, the quality of our community's
5 drinking water is at jeopardy due to rapidly increasing
6 levels of nitrates in the aquifer that supplies our
7 community. Hastings is not the only group of citizens
8 impacted by this problem, as our community's water system
9 also supplies the Village of Trumbull, a nearby community
10 college campus, and residents and businesses in an
11 industrial park southeast of Hastings.

12 Our concerns include that, as Title 261 is
13 currently proposed, it will be extremely challenging for the
14 City of Hastings to be graded high enough by the Natural
15 Resources Commission when they determine what projects they
16 will fund with the money that the legislature has been
17 setting aside for water sustainability projects.

18 In the grading process, projects explicitly
19 involving federal mandates can receive up to six additional
20 bonus points. The City of Omaha could conceivably be able
21 to receive those points because of a direct mandate from the
22 EPA to separate its wastewater and storm water mains. Also,
23 projects that could impact federal water compacts, such as
24 water supplies guaranteed to another state, can also
25 conceivably receive the bonus points.

1 As a municipal water supplier, the City of
2 Hastings must also comply with federal mandates, such as
3 providing safe drinking water with concentrations of
4 nitrates not to exceed -- to meet or exceed 10 parts per
5 million. Under the guidelines of Title 261, our project
6 would not receive any bonus points because the EPA
7 indirectly mandates the water quality levels and hasn't
8 specifically forced the community to choose the path that we
9 are taking to protect our community's drinking waters. We
10 believe this is wrong.

11 Ten parts per million is a federal mandate that
12 the City of Hastings must comply with and there is nothing
13 indirect about it. It is federal law and our community must
14 comply. And, as such, Hastings and all other municipalities
15 facing such issues should be eligible to receive bonus-point
16 consideration or there should be no bonus-point
17 consideration given to any project.

18 One of the strongest directions given by the
19 legislature to develop the guidelines and grading system
20 used by the Commission to determine which projects would be
21 eligible for water sustainability funding are projects that,
22 I quote, "remediate or mitigate threats to drinking water."

23 The inequity of allowing bonus points to projects
24 that are explicitly for the purpose of complying with a
25 federal mandate yet excluding consideration of the 10 parts

1 per million rule provides an uneven playing field when
2 projects are being graded. We strongly urge the Commission
3 to reconsider this component of the grading system.

4 Another area that could potentially impede worthy
5 projects from moving forward in a particular calendar year,
6 or being funded at all, is the lack of cap amount that
7 sponsors might seek for larger projects, those requests
8 above \$250,000. Under the currently suggested guidelines,
9 after projects are graded and a funding order established,
10 if a selected project is requesting more dollars than are
11 still available from the annual funding pool, that project
12 must wait until the succeeding year when more water
13 sustainability funding is received from the Nebraska
14 Legislature. Not only that, but projects grading slightly
15 lower and requesting an amount that would have still been
16 available would not be able to receive funding that year and
17 would have to reapply the following year. If a large-
18 project cap amount was established, potentially more
19 projects statewide could be funded and move forward, because
20 no one project would dominate or block the funds available
21 for other projects.

22 We sincerely appreciate the hard work of both the
23 Natural Resources Commission and the Department of Natural
24 Resources as they have been establishing the protocols,
25 guidelines, and rules dealing with water sustainability

1 within the state of Nebraska.

2 On a personal note, I would follow up and say, in
3 Hastings, we know what the EPA is all about. We probably
4 have more Superfund sites in Hastings than, I think, anybody
5 in Nebraska and, maybe, anybody in the whole country, and
6 we've been dealing with the EPA mandates for over 20 years
7 and have spent millions, tens of millions of dollars in
8 doing that. And to have the guidelines for this program to
9 provide that what we are faced with with nitrates and the 10
10 parts per million requirement with the projection of
11 potentially having to spend up to \$45 million to protect our
12 public water supplies, to not find us eligible for bonus
13 points in a situation when there are others in the state in
14 different settings but similar requirements to be able to
15 have bonus points doesn't -- it doesn't seem right to me.
16 It doesn't seem to make sense. And it seems to be
17 penalizing to the issues that we are facing in Hastings with
18 our public water supplies. And I hope that the Commission
19 will look at this again and think through whether that
20 really makes sense in this situation.

21 Thank you for hearing our concerns.

22 THE HEARING OFFICER: Thank you, Mr. Shoemaker.
23 Your written submission was marked as Exhibit 9 and is a
24 part of the record.

25 (Exhibit 9 was received in evidence. See Index.)

1 MR. SHOEMAKER: Thank you.

2 THE HEARING OFFICER: Okay.

3 JOHN MIYOSHI

4 Thank you for the opportunity to comment on the
5 proposed rules for operation of the new Water Sustainability
6 Fund. I'm John Miyoshi, General Manager of the Lower Platte
7 North NRD in Wahoo. We appreciate the time and dedication
8 that went into drafting the proposed rules for the Natural
9 Re- -- by the Natural Resources Commissioners and LeRoy
10 Sievers. Overall the rules seem very comprehensive and are
11 logical in their layout. They will set the future for wise
12 use of the fund.

13 We realize these are just the rules. There is
14 guidelines that will say how the fund is operated on a
15 day-to-day basis. We encourage the Natural Resources
16 Commission to adopt the Title 261 draft rules as presented.
17 Thank you.

18 THE HEARING OFFICER: Thank you, Mr. Miyoshi.
19 Your written comments are marked as Exhibit 10 and will also
20 be a part of the record.

21 (Exhibit 10 was received in evidence. See Index.)

22 Anyone else wish to make oral or written comments?

23 MIKE ONNEN

24 My name is Mike Onnen. I'm manager of the Little
25 Blue NRD at Davenport and just have a few comments. First,

1 I'd like to thank the Commission for the hard work that
2 they've put in in developing the rules. I think they've
3 done a pretty good job of consolidating things. I
4 appreciate the fact that they've utilized a lot of the
5 information of the resource development fund of the past,
6 which has been a proven program in building projects and
7 it's really accomplished much through the state of Nebraska.

8 Just a couple of, maybe, questions as much as
9 anything. Page 13, Chapter 2, Article 9.02, seems a little
10 bit difficult to understand regarding the permitting
11 requirements, the timing of the permitting requirements, and
12 so forth. Perhaps, it would be easier to understand if it
13 was worded in a positive rather than a negative. It also
14 does not address permits from DNR, Department of Health and
15 Human Services, DEQ, and those type of State permits. I'm
16 assuming they're all included in that, but, in the past,
17 construction permits have been kind of the final permit
18 that's been secured before a project is started. So, it may
19 just be helpful to be a little bit clearer on how those
20 permits and the timing of those permits is required and
21 about the funding of those permits, as it appears that they
22 can be funded, but they have to already be accomplished
23 before you make your application.

24 Also, I presented a question earlier when we had a
25 public meeting about the rules, is dealing with appraisal

1 costs in Chapter 4.002 and .003. Previous projects for the
2 resource development fund allowed appraisal costs to be
3 included as an eligible component. Here, it indicates that
4 they would probably be ineligible. And simply a question,
5 there are legal aspects, contracts, deeds, deed preparation,
6 and the like that are also components of that type of --
7 those type of projects, and it may be good to spell out
8 whether those items are, in fact, cost-shared on as an
9 eligible component or whether they are considered as
10 potential match for the sponsors. I think that would
11 provide some clarity as well. Thank you.

12 THE HEARING OFFICER: Thank you, Mr. Onnen.

13 Anyone else have any oral or written comments
14 they'd like to submit?

15 (No response.)

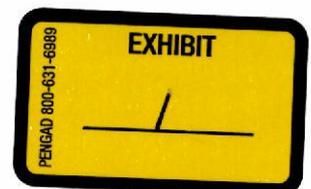
16 Well, not seeing anyone jumping to their feet to
17 come up here, at this time, having allowed everyone present
18 who indicated an interest in presenting an oral or written
19 statement, this concludes the public hearing on the proposed
20 adoption of Title 261. Pursuant to statute, the written and
21 oral statements will be summarized and provided to the
22 Natural Resources Commission for their review and
23 consideration.

24 Thank you very much for your participation in this
25 hearing.

NEBRASKA NATURAL RESOURCES COMMISSION

TITLE 261 – RULES GOVERNING THE
ADMINISTRATION OF THE
WATER SUSTAINABILITY FUND

DRAFT



NEBRASKA ADMINISTRATIVE CODE
NEBRASKA NATURAL RESOURCES COMMISSION
TITLE 261
RULES GOVERNING THE
ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Adopted _____, 201_

NEBRASKA NATURAL RESOURCES COMMISSION
 TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE
 WATER SUSTAINABILITY FUND

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NEBRASKA NATURAL RESOURCES COMMISSION
 TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER
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TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER
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TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER
SUSTAINABILITY FUND

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NEBRASKA ADMINISTRATIVE CODE

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TITLE 261 – NEBRASKA NATURAL RESOURCES COMMISSION

RULES GOVERNING ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 1 – GENERAL PROVISIONS

001 Purpose and Effect of Rules. These rules are adopted for the purpose of meeting the goals of the Nebraska Water Sustainability Fund. The Water Sustainability Fund shall be administered by the Natural Resources Commission (Commission) to provide financial assistance to eligible projects, programs or activities that lead to sustainability of Nebraska's water resources that promotes healthy watersheds, improves water quality and protects the ability of future generations to meet their water needs. In a manner consistent with these rules and regulations and the governing Statutes, the Commission shall administer the Water Sustainability Fund to assist projects, programs or activities that meet the goals and are of the types of projects provided for herein.

001.01 The goals of the Water Sustainability Fund are to:

- (1) Provide financial assistance to programs, projects, or activities that increase aquifer recharge, reduce aquifer depletion, and increase streamflow;
- (2) Remediate or mitigate threats to drinking water;
- (3) Promote the goals and objectives of approved integrated management plans or ground water management plans;
- (4) Contribute to multiple water supply management goals including flood control, reducing threats to property damage, agricultural uses, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources;
- (5) Assist municipalities with the cost of constructing, upgrading, developing, and Replacing sewer infrastructure facilities as part of a combined sewer overflow project;
- (6) Provide increased water productivity and enhance water quality;
- (7) Use the most cost-effective solutions available;

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(8) Comply with interstate compacts, decrees, other state contracts and agreements and federal law.

001.02 The above goals for the Water Sustainability Fund can best be met with programs, projects or activities in the following categories:

- (1) Research, data and modeling;
- (2) Rehabilitation or restoration of water supply infrastructure, new water supply infrastructure or water supply infrastructure maintenance or flood prevention for the protection of critical infrastructure;
- (3) Conjunctive management, storage and integrated management of ground water and surface water;
- (4) Compliance with interstate compacts or agreements or other formal state contracts or agreements or federal law.

001.03 Under no circumstances shall these rules and regulations be construed as a limitation or restriction upon the exercise of any proper discretion that is vested in either the Director or the Commission, nor shall they in any event be construed to deprive the Director or the Commission of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data or information which may be required for the proper administration of the Fund.

002 Definitions. As used in these rules, the terms listed below shall have the meanings noted:

002.01 Accrued Revenues. “Accrued revenues” shall mean income from sales, rents and other sources of revenue returned to the Fund;

002.02 Allocation. “Allocation” shall mean the overall financial limit authorized by the Commission for a project;

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002.03 Applicant. "Applicant" shall mean any state agency or person or entity eligible to apply for financial assistance from the Fund;

002.04 Appropriation. "Appropriation" shall mean the amount of funding approved by the Legislature and authorized by the Governor for the Fund;

002.05 Cap. "Cap" shall be set legislatively for the Fund and shall mean the amount of allocation that can be awarded by the Commission in excess of obligation;

002.06 Combined Sewer Overflow Project. "Combined sewer overflow project" shall mean a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environmental Quality;

002.07 Commission. "Commission" shall mean the Nebraska Natural Resources Commission created pursuant to Section 2-1504;

002.08 Cost Effectiveness. "Cost effectiveness" shall mean a systematic quantitative method for comparing the costs of alternative means of achieving the same stream of benefits or a given objective;

002.09 Current Year Appropriations. "Current Year Appropriations" shall mean appropriations from the legislature for the current fiscal year which may include accrued revenues;

002.10 Department. "Department" shall mean the Nebraska Department of Natural Resources created pursuant to Sections 61-205 and 81-101;

002.11 Director. "Director" shall mean the Director of the Department Natural Resources as provided in Section 81-102;

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002.12 Eligible Costs. "Eligible Costs" shall mean the direct project cost which would otherwise be borne by the applicant if the Water Sustainability Fund was not available. Direct project cost is deemed to include any local match required by federal or other non-state funding sources, but exclude project costs paid or reimbursed by federal and other non-state entities, project funding received directly or indirectly from other state sources plus any associated local match requirement, costs for operation and maintenance, debt interest, applicant project administration and management, and all discretionary costs such as lobbying, entertainment, etc.;

002.13 Fund. "Fund" shall mean the Nebraska Water Sustainability Fund created by Section 61-222;

002.14 Governing Body. "Governing Body" shall mean the individual or group of individuals which are empowered by law to govern the business of an applicant;

002.15 Intangible Benefits. "Intangible Benefits" shall mean benefits, either primary or secondary, that cannot be expressed in monetary terms;

002.16 Large Project. A project with a funding request of greater than \$250,000;

002.17 Obligation. "Obligation" shall mean actual dollars made available by the Commission to a project for reimbursement;

002.18 Political Subdivision. "Political Subdivision" shall mean any political subdivision of the State of Nebraska to which has been granted the authority to develop water and related land resources, including, but not limited to, a metropolitan utilities district, natural resources district, irrigation district, public power and irrigation district, reclamation district, county, and any municipal corporation, village, or city, whether operating under home rule charter or under the general laws of the State of Nebraska;

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002.19 Primary Benefits. "Primary Benefits" shall mean net values attributable to a project of increases in products and services and of reductions in costs, damages, or losses of primary beneficiaries;

002.20 Program, Project and/or Activities. "Program, Project and/or Activities" shall mean any structural or non-structural undertaking for which assistance from the Fund is requested. Unless the context otherwise requires, no distinction is intended between such terms and they may be used interchangeably for purposes of administration of these rules;

002.21 Program, Project and/or Activity Proposal. "Program, Project and/or Activity proposal" or "proposal" or "application" shall mean a proposal which is submitted seeking financial assistance from the Fund;

002.22 Project Engineer or Project Director. "Project Engineer or Project Director" shall mean any engineer, engineering firm, or other person, persons or firm retained or employed by the applicant to provide professional engineering or other professional or technical services during the planning, design, and construction of the proposal;

002.23 Secondary Benefits. "Secondary Benefits" shall mean net values to persons other than primary beneficiaries as a result of economic activity induced by or stemming from a program, project and/or activity;

002.24 Separable Components. "Separable components" shall mean portions of a program, project and/or activity that can be undertaken and justified independently;

002.25 Sewer Separation Project. "Sewer separation project" shall mean funding to combined sewer overflow projects.

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002.26 Small Project. "Small project" shall mean a project with a total funding request of \$250,000 or less. The fund for small projects shall equal 10% of current year appropriations plus any carry forward approved by the Commission.

002.27 State Agency. "State Agency" shall mean any agency, board, commission or other office of state government to which has been granted the authority to develop the state's water and related land resources;

002.28 Tangible Benefits. "Tangible Benefits" shall mean benefits, either primary or secondary, that can be expressed in monetary terms;

002.29 Total Net Allocations. "Total net allocations" shall mean unspent appropriations from prior years and Current Year Appropriations minus Sewer Separation Project Allocations;

002.30 Water Productivity. "Water productivity" shall mean water use to increase water sustainability;

002.31 Water Sustainability. "Water Sustainability" shall mean water use is sustainable when current use promotes healthy watersheds, improves water quality, and protects the ability of future generations to meet their needs;

002.32 Water Sustainability Fund Cap. "Water Sustainability Fund Cap" shall mean a financial cap that may be established by the legislature on limiting the approval of any project which would cause the funding from the Fund to exceed the cap.

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003 Types of Assistance. Eligible applicants for financial assistance from the Fund may receive such assistance in the form of grants, loans, or any combination thereof, or through the direct acquisition by the state of interests in eligible programs, projects and/or activities. The form of assistance which may be allocated to a program, project and/or activity shall be determined utilizing the following criteria:

003.01 Grants. Funding may be made as grants to applicants when it is determined that such an allocation will not be subsequently recovered from revenue or receipts and when the program, project and/or activity, or separable portion thereof, appears to be of general statewide public benefit thereby making reimbursement of such money from the applicant's funds inappropriate or impossible, or when the funds are intended for a state or to meet the requirements for matching a federal grant. If only a portion of the program, project and/or activity meets the above criteria, only that portion will be eligible for a grant. In determining the appropriateness of a grant the considerations of the Director shall include the extent of the area over which the anticipated benefits will accrue and whether equitable distribution of the costs of the program, project and/or activity can be accomplished without a grant.

003.02 Loans. Funding in the form of loans to applicants for any program, project and/or activity or any part thereof consistent with the purposes of the Fund which will directly generate revenue or receipts or which can be anticipated to culminate in a program, project and/or activity which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment appropriate.

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003.03 Acquisition of State Interests. Interests in water and related land resources projects may be acquired by the Department, upon approval by the Commission, in the name of the state with moneys from the Fund when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. The Department, upon approval by the Commission, may also acquire interests in water resources projects in the name of the state to meet future demands for usable water.

004 Interest Rate. The rate of interest payable on loans from the Fund shall be determined annually prior to October 1 of each fiscal year. Such rate of interest shall be computed by averaging the yields, as determined by a readily available state and local bond index, such as the state and local bond rates available from the Federal Reserve System, Board of Governors issued nationally for the three previous fiscal years and by rounding off such average to the nearest one-eighth percent. The rate of interest payable on a loan for a specific program, project and/or activity shall be the rate in effect for the fiscal year in which the Commission approves the program, project and/or activity for a loan allocation. Such rate shall remain in effect throughout the repayment period determined to be appropriate for such program, project and/or activity.

005 Periodic Consultation. Periodically the Commission will request that the following entities submit suggestions to the Commission on funding and planning for water programs, projects or activities: the Department of Natural Resources, the University of Nebraska, the Department of Environmental Quality, the Nebraska Environmental Trust Board and the Game and Parks Commission.

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RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 2 – APPLICATION PROCEDURES AND REQUIREMENTS

001 Filing Fees. No filing fee is required to accompany any program, project and/or activity proposal or any application for assistance from the Fund.

002 Filing Location. All proposals, applications or other documents or instruments supplied by an applicant in connection with a request for financial assistance from the Fund shall be filed with the Director.

003 Application Procedure. If the applicant decides to submit an application, the number and format of the application shall be specified by the Director.

004 Engineering and Technical Feasibility.

004.01 A structural proposal shall be considered feasible when it can and will be designed, constructed, and operated to accomplish the purpose(s) for which it was planned utilizing accepted engineering, geohydrologic and other technical principles and concepts. Engineering and technical data and information to be provided in the feasibility report should include, but is not limited to, the following:

004.01A A detailed discussion of the plan of development selected for the proposal;

004.01B A description of all field investigations made to substantiate the feasibility report;

004.01C Maps, drawings, charts, tables, etc., used as a basis for the feasibility report;

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004.01D A description of the water and land rights associated with the proposal and pertinent water supply and water quality information, if appropriate;

004.01E A detailed discussion of each component of the final plan preparation including, when applicable:

004.01E1 Required geologic investigation;

004.01E2 Required hydrologic data;

004.01E3 Design criteria for final design including, but not limited to, soil mechanics, hydraulic, hydrologic, structural, embankments and foundation criteria.

004.02 A non-structural proposal shall be considered to be technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned. Data necessary to establish the technical feasibility should include, but is not limited to the following:

004.02A A detailed discussion of the plan of development designed for the proposal, including techniques to be utilized in all aspects of the proposal;

004.02B A description of field or research investigations utilized to substantiate the project conception;

004.02C A description of the water and/or land rights necessary for proposal continuation, if applicable;

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004.02D A discussion of the anticipated effects, if any, of the proposal upon the development and/or operation of existing or envisioned structural measures including a brief description of any such measure.

005 Economic Feasibility. Except as otherwise specified by subsection 005.04 or subsection 005.05 of this section, a proposal is economically feasible if primary tangible benefits exceed project costs. In addition, for proposals for which \$100,000 or more is requested from the Fund, each proposal's purpose in a multi-purpose proposal must provide benefits equal to or greater than its separable or specific cost as specified by the Director and there must be no known means of accomplishing the same purpose or purposes more economically. The Director and the Commission may also require that separable proposal features or increments have benefits which equal or exceed their costs. All costs and benefit data reported by the applicant will be based upon current data and sources for all data must be documented. Certain commodity prices, recreation benefit prices, and wildlife prices will be prescribed by the Director. The Director may also prescribe other cost and benefit information necessary for completion of the feasibility report. The period of analysis for economic feasibility studies shall be fifty (50) years or with the discretion of the Director, up to one hundred (100) years or the life of the proposal, whichever is less.

005.01 Cost Information. The application shall include all relevant cost information including, but not limited to, all actual or anticipated costs for the feasibility study, the engineering and inspection costs, capital construction costs, annual operation and maintenance costs, and annual replacement costs. Cost information shall also include the estimated construction period as well as the estimated proposal life.

005.02 Benefit Information. Only primary tangible benefits may be counted in providing the monetary benefit information. In a multi-purpose proposal, the benefits will be estimated for each purpose and displayed by year for the proposal life. Intangible and secondary benefits of the proposal should be described for consideration and evaluation by the Director and the Commission. Benefit measurement techniques and criteria shall be provided to the applicant by the Director.

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005.03 Cash Flow Stream. All benefit and cost data will also be presented in a table form to indicate the annual cash flow for the life of the proposal, not to exceed 100 years. A form for so indicating the annual cash flow shall be supplied by the Director.

005.04 Rate-of-Return on Investment. The cost and benefit data expressed in the cash flow stream will be utilized by the Director to calculate the rate-of-return on the investment. The rate-of-return on the investment is the discount rate applied to future benefits and costs at which costs and benefits become equal and the net present worth of the proposal cash flow is zero. A minimum rate-of-return for a proposal to be considered economically feasible is 3%.

005.05 Other Methods. In the case of proposals for which there is no generally accepted method for calculation of primary tangible benefits and if the proposal will increase water sustainability, the economic feasibility of such proposal shall be demonstrated by such method as the Director and the Commission deem appropriate.

006 Financial Feasibility. A proposal is financially feasible if sufficient funds can be made available to complete the proposal, and if sufficient annual revenues can be obtained to repay the reimbursable costs and to operate, maintain, and replace the proposal. When a loan is involved, financial feasibility requires assurance that the proposals can be adequately operated, maintained, and replaced and that the loan can be repaid during the repayment life of the proposal.

If a loan is requested, applicant shall also supply a complete year-by-year repayment schedule in such detail as directed by the Director.

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007 Combined Sewer Overflow Project Application. If an application is from a municipality for assistance with the cost of constructing, upgrading, developing and replacing sewer infrastructure facilities as a part of a combined sewer overflow project, as defined in this Title, it must contain in its application a demonstration of need for financial assistance from the Fund and the population of the municipality.

008 Ineligible Natural Resources Districts. Natural Resources Districts which have not adopted or are not currently participating in the development of an integrated management plan pursuant to Neb. Rev. Stat. §46-715(1)(a) or (b) are not eligible to apply for assistance from the Fund.

009 Ineligible Applications or Components of Applications.

009.01 An application for financial assistance in any form to assist in paying the cost of a feasibility study is not eligible for assistance from the Fund.

009.02 Unless an application is submitted which explicitly includes a request for financial assistance to obtain a necessary government issued permit, right or authorization (permit) such as a 404 permit, surface water right, consultation with the Nebraska Game and Parks Commission regarding nongame threatened or endangered species, an application shall be ineligible for consideration if the applicant does not possess at the time the application is submitted all of such permits which are required for the project to be completed.

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009.03 Interest owed on borrowed money is not a cost which may be included in an application nor will such costs be reimbursed.

009.04. Costs incurred by an applicant prior to approval of an application by the Commission may not be included in project costs and will not be paid or reimbursed. If a project is ultimately approved, application costs shall be considered as part of the local cost share.

009.05. Operation and/or maintenance expenses will not be costs of a project which can be reimbursed and may not be included in an application.

009.06. A rate of inflation may not be used as a component of project costs which are subject to reimbursement and may not be included in an application.

009.07. After deducting all other sources of funding contributed to offset costs of the project (such as federal, state, Nebraska Environmental Trust and/or others regardless of the method(s) of recording and receiving such funds), financial assistance from the Fund will be 60% of the remaining costs which otherwise would have to be paid from local sources.

009.08. An applicant may use in-kind services for a portion of its local cost share but only if such use is preapproved by the Commission in writing and only upon the applicant showing how the use of in-kind services will result in lower project costs (For example a contractor's bid for the identical services is higher than the proposed value of the in-kind services).

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010 Application Filing Dates. Applications must be submitted to the Director only between the dates of July 15 and August 1, except for the initial period following the date these rules become effective, the beginning date shall be the 90th day after the rules become effective and the ending date for acceptance of applications shall be to and including 14 days thereafter, for a total of 15 days.

011 Information Required in an Application. In addition to other information that may be required to be included in an application, applications must specify:

the amount requested as a loan, if any, and the amount requested as a grant, if any,

if the amount requested is for \$250,000 or less,

if the amount requested is more than \$250,000,

if the project will not be completed in one year or less, the amount of funding requested in each year for which the project is requesting funding.

012 Returned Applications. Applications found by the Director to be satisfactory and reviewed by the Commission but not approved for funding will be denied and the applicant informed. Such applications may be resubmitted to the Director in the next application cycle and if the applicant chooses to do so, then the applicant may either certify that there are no changes in the application or the applicant must include a narrative page describing any changes in the application compared to the prior application.

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RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 3 - COMMISSION ACTION AND REQUIREMENTS

001 Action on the Report of the Director. Following receipt of a report and determination prepared by the Director that an application has been determined to be satisfactory, the Commission may request additional information from the Applicant.

001.01 At the first regular meeting following receipt of the Director's report and recommendations, the Commission will forward all such applications to the Application Review Committee(s) which will examine each application and rank and score each application based upon the following criteria: The following criteria shall be given a score of 0, 2, 4 or 6 points:

- (1) Remediates or mitigates threats to drinking water;
- (2) Meets the goals and objectives of an approved integrated management plan or ground water management plan;
- (3) Contributes to water sustainability goals by increasing aquifer recharge, reducing aquifer depletion, or increasing streamflow;
- (4) Contributes to multiple water supply goals, including, but not limited to, flood control, agricultural use, municipal and industrial uses, recreational benefits, wildlife habitat, conservation of water resources, and preservation of water resources;
- (5) Maximizes the beneficial use of Nebraska's water resources for the benefit of the state's residents;
- (6) Is cost-effective;
- (7) Helps the state meet its obligations under interstate compacts, decrees, or other state contracts of agreements or federal law;

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- (8) Reduces threats to property damage or protects critical infrastructure that consists of the physical assets, systems, and networks vital to the state or the United States such that their incapacitation would have a debilitating effect on public security or public health and safety;

and the following criteria shall be awarded 0, 1, 2, or 3 points:

- (1) Improves water quality;
- (2) Has utilized all available funding resources of the local jurisdiction to support the program, project, or activity;
- (3) Has a local jurisdiction with plans in place that support sustainable water use;
- (4) Addresses a statewide problem or issue;
- (5) Contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources;
- (6) Contributes to watershed health and function;
- (7) Uses objective described in the annual report and plan of work for the state water planning and review process issued by the department.

Applications which are requesting funds which are explicitly for the purpose of complying with a federal mandate will be awarded an additional 2, 4, or 6 points.

001.02 The A Review Committee or Committees will be comprised of members of the Commission and will be appointed to such committee(s) by the Executive Committee.

001.03 The Application Review Committee(s) shall make a preliminary scoring for each application based upon the scoring criteria specified in this chapter. The scoring recommendation shall be reviewed by the Commission and it may either adopt the recommendation of the committee or only upon an affirmative vote of at least 14 members of the Commission revise the recommendation.

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001.03.01 For applications for small projects, a total of 10% of the appropriation to the Fund for the year is set aside and funding to such applications will be provided for the applications in such range considered separately from other applications.

001.03.01.01 If any funds set aside for small projects remains from that funding cycle, such remaining unobligated balance may be carried over or may be made available for other applications.

001.04 An application as defined in Chapter 2 007, which is recommended for further consideration by the Director, shall be reviewed by the Commission for a determination of an adequate demonstration of need by the applicant, a determination of the form of the allocation made by the Director and the percentage of the population served by the applicant compared to the total population served by all of the approved for funding applications, as defined in Chapter 2 007. All of the applications reviewed and approved by the Commission pursuant to this subsection shall be awarded their respective proportion of the amount of funds appropriated to the Fund pursuant to Neb. Rev. Stat. §2-1507 (2).

001.04.01 Subsequent to the initial year in which approval for funding of applications as defined in Chapter 2 007 is made, renewed applications in subsequent years must state that the applicant is still qualified to apply because its plan is still approved by the Department of Environmental Quality, it must state if it still has need for financial assistance and it must state its current estimated population. Funding to all then approved applications as defined in Chapter 2 007 will be based upon then current funds and populations served.

001.04.02 Applications filed pursuant to Chapter 2 007 will not be scored.

001.04.03 Applications filed pursuant to chapter 2 007 are not considered to be part of any cap.

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001.05 Commission action on recommendations made by the Director, as to the form of grant, loan or combination thereof, shall be in accordance with such recommendations.

001.06 A Commission member shall be ineligible to participate in the action of the Commission concerning an application for a grant or a loan if such member is a member of the governing body, otherwise represents the applicant for financial assistance or otherwise has a conflict of interest. All Commission members shall be eligible to vote on proposals involving state acquisition of interests in proposals.

002 Funding. After scoring and ranking applications that the Director finds to be satisfactory, the Commission will make the following determinations to establish the amount of allocation available to utilize in approving new projects and to obligate funds for previously approved projects.

002.01 Fund Allocations. The Commission shall allocate up to 10% of the current year appropriation for Small Projects with the remainder available for Large Projects. The Commission is not authorized to approve an allocation for a project that would cause the Cap to be exceeded.

002.02 Small Project Funding Allocation. The Commission shall allocate funds for current year Small Projects starting with the highest scored project and proceeding until all such projects have been allocated funds or until the available allocation has been utilized or until the Commission sets a limit on current year funding for Small Projects. Any remaining amount may be eligible to be carried over or be available to allocate to Large Projects subject to Commission approval.

002.03 Large Project Funding Allocation/Obligation. The Commission shall obligate funds for Large Projects which have been previously approved and which have complied with the funding requirements in sections 005 and 006. The Commission shall next consider funding for current year projects starting with the highest scored project and proceeding until available allocations for Large Projects have been utilized.

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002.04 Project Obligation. Prior to the Commission's action obligating funds for a given fiscal year, the Department may invite the sponsors of all projects for which additional funding obligation has been requested for that fiscal year to appear before the Commission to address the manner in which their projects relate to the factors to be considered by the Commission. The Commission shall then consider and approve obligations for Small Projects and Large Projects in accordance with the allocation approved in section 002.02 and 002.03.

003 Project Totals Exceeding Balance in Fund. Notwithstanding any approval for funding, an applicant shall not under any conditions be entitled to reimbursement for any project costs until funds have been obligated for reimbursement of costs incurred by the applicant on such project. Costs paid, accrued or authorized by an applicant prior to funds being obligated for such projects and costs paid, accrued or authorized by an applicant for portions of project development in excess of those portions for which funds have been obligated shall be incurred at the risk of the applicant and such applicant shall not be entitled to reimbursement of such costs at any time without specific Commission approval for such reimbursement.

004 Annual Availability of Funds. The extent, if any, to which financial assistance will be provided to such project in any one fiscal year shall be in accordance with and contingent upon the availability of funds and Commission action obligating funds for such project in such fiscal year in accordance with sections 3-005 or 3-006.

005 Determination of Fiscal Year Financial Needs.

005.01 No later than March 31 of each year each applicant willing to utilize and capable of utilizing either an initial or an additional obligation of funds for a project which is not fully obligated shall present a report to the Commission indicating:

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005.01A The estimated time schedule for beginning, ongoing work and completing the project.

005.01B The estimated time schedule and expenditure amount for commencing, continuing and completing reimbursement requests.

005.01C Any such request shall be accompanied by an estimate of the costs for completing work identified in the request.

005.01D Any extenuating circumstances that may delay completion of the project or any other factors which may affect the sponsor's ability to complete the project.

006 Apportioning and Setting Aside Funds. Prior to July 1 of each year the Commission shall obligate available funds for projects eligible for additional funding assistance. In making such apportionments, the Commission shall consider the following:

006.01 Whether it is reasonable to expect that each project for which funding is requested is capable of being commenced within the next fiscal year;

006.02 Whether any of the projects proposed for additional funding, in the opinion of the Commission, be delayed without significant adverse effects on the total project;

006.03 Whether there are reasonable grounds for concern that the project, or portions of it, may not be completed;

006.04 The water and related resources needs addressed by each project;

006.05 The urgency of need for each project;

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006.06 The extent of benefit provided by each project; and

006.07 How to make the most efficient utilization of the available funds.

Prior to the Commission's action obligating funds for a given fiscal year, the Department shall invite the sponsors of all projects for which additional funding obligation has been requested for that fiscal year to appear before the Commission to address the manner in which their projects relate to the factors to be considered by the Commission.

007 Reductions in Allocations. An applicant may no later than March 31 of each year submit reports containing an update of the estimated time schedule for beginning and completing the approved project and any anticipated delays to implementing the project or obtaining sufficient funds to meet the applicant's financial obligations for the project. The Commission shall review all such reports, if any, which have been submitted and any other relevant information available to it and shall, if appropriate and consistent with the funding preferences established in state statute, make reductions in the amount allocated and obligated for any approved application. No amount previously allocated and obligated in accordance with section 002 of this chapter shall be decreased unless:

007.01 The applicant has indicated a decrease in needs;

007.02 The Commission, based on information contained in the applicant's report submitted in accordance with these rules or other information available to it, finds that there are reasonable grounds for concern that the project may not be completed;

007.03 The project is abandoned or significantly delayed;

007.04 The Department fails to receive a re-appropriation of unexpended funds;

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007.05 The appropriation for the Water Sustainability Fund is reduced by subsequent legislative act, or;

007.06 The Commission determines the project no longer meets the criteria for funding eligibility contained in the Water Sustainability Fund or the Commission's rules.

In case of any such findings, the Commission may modify, suspend or revoke any previous action to allocate and obligate funds for the project. Provided, however, any action to modify, suspend, or revoke any previous allocation shall not affect the applicant's right to reimbursement for costs which it has incurred or for which the Fund has become legally obligated prior to such Commission action. In addition, such action shall not affect the applicant's right to reimbursement for the cost of land or interests in land acquired through condemnation actions commenced prior to the Commission action to modify, suspend, or revoke an allocation.

008 Contractual Arrangements. State funds will not be advanced to any applicant pursuant to an approved loan or grant until a contract between the applicant and the Department setting forth terms and conditions of such loan or grant has been executed.

009 Disbursements. From the annual appropriations by the Legislature to the Fund and subsequent quarterly limitations that may be imposed by the Department of Administrative Service's Budget Office, the Director shall disburse no more often than once each month, such funds as are necessary to reimburse or pay, in the proper proportion, all eligible costs incurred by the applicant, if any. All such costs shall be documented by the applicant in the manner as is directed by the Director. In the event that a proposal has been approved for combination grant and loan, each disbursement shall, unless otherwise specified by the Commission, constitute a disbursement of loan and grant funds in the same proportion as the approved allocations.

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010 Inspection During and After Construction. The Director or his or her designated representative(s) shall have the privilege of inspecting the construction of any project at any time in order to ensure that plans and specifications are being followed, and that the works are being constructed in accordance with sound engineering and technical principles and practices, but such inspection shall never subject the State of Nebraska to any action for damages. The Director may bring to the attention of the applicant and the project engineer any variances from the approved plans and specifications. The applicant and the project engineer or project director shall initiate necessary corrective action whenever notified by the Director of any such variances and if they are not completed as directed, then the project will no longer be eligible for funding. Subsequent to the completion of construction, project investigation and inspection may be conducted by the Department during the life of the project and may be prescribed pursuant to the contract between the applicant and the Department.

011 Changes in Scope of Approved Proposals. The applicant shall promptly report all increases in the cost of a project and any proposed additions, deletions, or modifications or any change in the purpose or purposes of the project by submitting to the Commission and to the Director an amendment to the formal application and feasibility report, if any. Commission approval of any change in the scope, purpose, or plan for development of the project, and any increase in the allocation for the project shall be required. Any proposed change in the scope, purpose, or plan of development for the project, any request for an increase in the allocation for the project, or any cost increase, regardless of whether an increase in the allocation for the project is requested shall be referred to the Director for his or her review and recommendation regarding whether the project still meets the criteria for funding eligibility contained in the Fund or the Commission's rules.

012 Project Reporting. Projects which are granted financial assistance from the Fund must submit on or before April 1st, an annual report containing information detailing project progress and anticipated progress for the year.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

Title 261 – NATURAL RESOURCES COMMISSION

RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 4 – FUND ADMINISTRATION

001 Eligibility for Funds. To be eligible for land rights assistance from the Water Sustainability Fund, the local organization, defined as public districts, cities, counties, political subdivisions and agencies of the State or of the Federal government, must first enter into an agreement with the Department. Such agreement, which shall be on a form supplied by the Department, shall provide that the local organization will abide by the law and rules and regulations governing administration of the Water Sustainability Fund. In addition, the following conditions must have been met:

001.01 The Department has either participated in the planning or reviewed the plans and has approved the program of work;

001.02 The local organization has identified to the Department the location and purpose of purchasing lands, easements, and rights-of-way;

001.03 The local organization and the Department have entered into an agreement on the administration and expenditure of these state funds, rental and income generation requirements and limitations, as well as specific limitations against disposal of said property;

001.04 The purchase price of the land, easement, or right-of-way has been established either by a court or by at least one registered, licensed, certified residential, or certified general real estate appraiser approved by the Department; and

001.05 The local organization has given assurance to the Department that it has obtained any water rights or other permits required under state or federal law and complied with all other applicable state laws.

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002 Acceptance of Appraisals. An appraisal must accompany each reimbursement request for funds. Such appraisal shall be supplied at no cost to the state. In the event the Commission or the Department is of the opinion that any appraisal is subject to question, the Department may hire an appraiser at state expense, to aid the Commission in making its decision whether or not to approve such appraisal.

003 Damage to Crops. When applicable, the local organization shall also cause an appraisal to be made of all crops which are growing on the land to be purchased. Such crop appraisal shall also be subject to Commission approval and any rule, hereinabove set forth, applicable to appraisals in general. The local organization shall give the landowner the option of (1) retaining his or her interest in the crops, in which event he or she shall be given a reasonable period of time in which to harvest the same; or (2) selling such interest along with the land.

004 Purchase Price and Total Cost of Acquisition. For all purposes of the administration of the Water Sustainability Fund, the terms "purchase price" and "total cost of acquisition" shall, in the absence of a condemnation proceeding, mean the amount actually paid by the local organization or the amount established by an appraisal whichever is the lesser amount. In the event of a condemnation proceeding, such terms shall mean the amount of damages awarded by a court of competent jurisdiction. Payments by a local organization in excess of any purchase price so established shall be the sole responsibility of the local organization and shall have no effect upon the distribution of any proceeds subsequently realized from the sale of the land or right-of-way.

005 Title Insurance and Other Relevant Documents. Before any funds are paid out to the local organization, such organization must furnish to the Department a copy of a title insurance policy on the property or interest to be acquired, whether through purchase or condemnation. The title insurance policy must be from an insurance company authorized to provide such insurance in Nebraska. The local organization shall also furnish the Department with a copy of any completed purchase agreement (signed by both parties), a deed or easement with seal or filing stamp, the closing statement signed by both parties, all cancelled checks and any other written document

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Chapter 4

demonstrating the terms and conditions of the proposed purchase. All reimbursement requests shall be itemized and packaged in the order of the itemized listing.

006 Eminent Domain Awards. If a local organization is unable to acquire an interest in real property for which an appraisal has been approved except through the power of eminent domain, approval by the Commission of any court award exceeding in amount such appraised value shall be required prior to the disbursement of any funds in excess of such appraised value. The Commission reserves the right to require that the local sponsor appeal such award if such award is deemed excessive or to allocate a percentage of the court award as provided in Section 2-007.

007 Amount Paid.

007.01 The Commission reserves the right to approve or reject payment for any purchases of any lands, easements, or rights-of-way if based on reports from the local organization or other information available to it, the Commission has reasonable grounds for concern that a project, or any portion of it, may not be completed, it may withhold or limit assistance to the organization for the acquisition of any lands, easements or rights-of-way needed for that project. Provided, however, any Commission action to refuse to assist an organization in paying the costs of acquisition of any interest in land shall not affect the organization's right to reimbursement for costs for which it has become legally obligated prior to such Commission action. In addition, such action shall not affect the organization's right to reimbursement for the cost of land, or interests in land, acquired through condemnation actions commenced prior to the Commission action. Reasonable grounds for concern shall include, but not be limited to, opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local, other state, federal or other sources of funding.

007.02 The amount which will be approved by the Commission for reimbursement from the Water Sustainability Fund shall not exceed the purchase price as defined in Section 2-004.

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007.03 If for any reason the local organization desires to sell any of its interest in real property, the local organization shall first make such request to and obtain approval of the Commission. If for any reason the local organization desires to rent any of its real property, the local organization shall first make such request to and obtain approval of the Director of the Department. The local organization must remit to the Department a pro rata share of the proceeds of any rental income or of any subsequent sale of such property. The pro rata share shall be equal to the percentage of the total cost of acquisition of such property made from any state allocation from the Water Sustainability Fund.

008 Documentation of Purchase. The local organization shall forward to the Department a copy of the deed, easement, court decree (in the case of a condemnation proceeding) or any other document or material deemed by the Department to be necessary for each transaction. Such deed, easement, court decree, etc. shall be verified by the clerk of the court or the register of deeds.

009 State Lien. In instances where the WSF is used to acquire fee title interest in real property, the Department shall file a lien against the property, in the local courthouse, for the purpose of preventing the sale of the property without the prior approval of the Commission, as well as the funds interest in any rental or other income generated by the property.

010 Annual Inspection. At least once each year during construction and once every five years after project close-out, a Department staff member and a representative of the appropriate local organization shall inspect each parcel of land for which fee title has been acquired. A report of the staff member's findings along with any suggestions or recommendations will be submitted to the local organization for follow-up action.

011 Annual Financial Statement. Each local organization holding fee title to lands purchased with Water Sustainability Funds shall submit a complete financial statement to the Department by August 1 of each year. Such required statement shall set forth the income received from such lands and also the expenses incurred in the maintenance, improvement, management, etc. of such lands.

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This financial statement is required in addition to any other statement or accounting required to be submitted by the local organization by law or otherwise.

012 Annual Lease. When appropriate, a Department staff member shall work with a local organization in preparing the annual lease for such property as was acquired, in whole or in part, with Water Sustainability Funds. Unless otherwise approved by the Director, leases shall commence on the first day of March and terminate on the last day of February of the year next ensuing. No lease shall be deemed effective unless and until it has been approved in writing by the Director.

013 Use of Lease Revenues. Rental and lease revenues may be used for reasonable and necessary expenses incurred by the local organization in the management of such lands with prior Department approval. As the Department is responsible for overseeing the management of such lands, the local organization shall consult with the Department prior to such management action and shall keep the Department informed of all matters relevant to property management.

014 Notifying Public Bodies of Proposed Sales. The Department shall notify the Governor of the State and the appropriate public districts, cities, counties, political subdivisions and agencies of the State or of the Federal government of the land(s) scheduled to be sold. Such notification shall indicate the proposed date(s) of sale and shall summarize the process by which public entities may acquire such lands for public purposes.

015 Notice of Intent to Acquire or Retain. Any public district, city, county, political subdivision, or agency of the State or of the Federal government which is interested in acquiring or retaining for public purposes land(s) purchased in whole or in part with Water Sustainability Funds shall notify the Department of such interest.

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016 Appraisal and Notification to Public Bodies of Appraised Fair Market Value. Whenever a public entity indicates in accordance with Section 2-017 that it is interested in acquiring or retaining lands purchased in whole or in part with Water Sustainability Funds, the Department shall have an appraisal prepared for such lands in accordance with section 2-1502 R.S. Supp., 2000, as amended, and notify such public entity of the appraised fair market value. Such notification shall indicate the proposed date of sale, the appraised fair market value, and the requirements for purchase or retention by public bodies in accordance with Section 2-020.

017 Acquisition by Public Bodies. Any public district, city, county, political subdivision or agency of the State or of the Federal government which desires to acquire or retain for public purposes land(s) purchased in whole or in part with Water Sustainability Funds shall notify the Department of such desire by the date specified in the notification. A report explaining the public purpose to be made of such property shall be simultaneously submitted to the Department. Such report shall include a description of the public uses to be made of such property, a description of and timetable for improvements, if any, and a discussion of management techniques to be utilized to serve the proposed public purpose. The report shall also document the public entity's legal and financial abilities to acquire or retain such property and to implement the proposed public purpose. If acquisition of such lands for public use by a public body is approved, the Department shall be reimbursed in the amount of the prorated share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid from the Fund and the local organization transferring the title to the acquiring public body shall be reimbursed in the amount of any remaining portion of the appraised fair market value, both reimbursements to occur within 90 days of such approval or approvals. All such proceeds to the Department shall be remitted to the State Treasurer for credit to the Fund. Proceeds from rents and other income shall be split in the same manner.

018 Criteria for Acquisition by Public Bodies.

018.01 Whenever a public entity indicates in accordance with Section 2-019 that it desires to acquire or retain lands purchased in whole or in part with Water Sustainability Funds, the Commission shall determine whether the property should be so acquired or retained or whether it should be offered for sale at public auction in accordance with Sections 024 through 029. In making such determination, the Commission shall consider the following factors:

018.01A The nature of the public purpose for which acquisition or retention is requested and the demand for such purpose in the area to be served thereby.

018.01B The nature of probable alternative uses for such property and their relative importance in the community and the state.

018.01C The adequacy of the property to satisfy the proposed public purpose in comparison to its adequacy to satisfy probable alternative uses.

018.01D The relative economic impacts which could be anticipated in the community because of the proposed public purpose and probable alternative uses.

018.01E The legal and financial abilities of the public body to acquire or retain the property and to implement the proposed public purpose.

018.01F The compatibility of the proposed public purpose with operation and maintenance of the property for the purpose for which it was originally acquired and its consistency with accepted conservation principles.

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018.02 Prior to determining whether the property should be acquired or retained by the public body or offered for sale at public auction, the Commission shall consult with the local organization holding title thereto and other interested organizations and individuals. If the amount invested in such property from the Water Sustainability Fund constituted the full purchase price, the decision of the Commission regarding the purchase or retention of such property by the public body shall be binding on the local organization. If, however, a portion of the original purchase price was contributed by the local organization, such local organization shall have independent authority to disapprove the purchase of such property by another public body, and any such disapproval shall result in the property being offered for sale at public auction as scheduled.

019 Desire to Acquire by Two or More Public Entities. In the event that two or more public entities indicate a desire to purchase or retain the same land or right-of-way, the Commission shall evaluate each separately in accordance with Section 2-020. If following such evaluation, more than one of the proposed purchases by public bodies is deemed preferable to offering the property for sale at public auction, the Commission shall evaluate such proposals on their relative merits to determine which proposal would best serve the public interest.

020 Acquisition or Retention of Less Than Full Parcel.

020.01 The acquisition or retention by public bodies of a parcel of land smaller in size than the parcel scheduled to be offered for sale will be approved only if such purchase or retention would satisfy the criteria of Section 2-020 and if

020.01A It would have no anticipated adverse effect on the marketability of the remainder of the full parcel, and

020.01B No additional public purpose would be served by acquisition or retention by such public body of the remainder of the full parcel.

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020.02 The local organization shall be responsible for any surveys which are deemed necessary because of such acquisition or retention or for providing proper identification of such parcel prior to the sale at auction of the remaining portion of the full parcel. The public body acquiring such parcel shall reimburse the local organization for all actual and necessary costs incurred as a result of such survey and identification.

021 Agreement to Retain in Public Use. As a condition to acquiring or retaining for public purposes any lands acquired in whole or in part with funds from the Water Sustainability Fund, the acquiring or retaining public body shall enter into an agreement with the Department. Such agreement, which shall remain in effect and be controlling as to the public body's utilization and disposition of the property for a period not to exceed the life of the project, shall specify the following terms and conditions:

021.01 The property shall, unless otherwise approved by the Commission, be retained by the public body for the public purposes specified in the report submitted pursuant to Section 2-019.

021.02 No use shall be made of the property which is incompatible with the purposes for which it was originally acquired in whole or in part with funds from the Water Sustainability Fund without prior Commission approval.

021.03 Such public body shall not utilize the property or any part thereof for income production unless such income results from activities that benefit the maintenance of the property or to serving the public purposes for which the property was acquired or retained.

021.04 Any other terms or conditions which the Commission deems appropriate. A copy of such agreement shall be filed by the Department in the register of deeds office of the county in which such land or right-of-way is located.

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Chapter 4

022 Method of Sale. When any lands involving these funds are to be sold, whether those lands are to be sold with or without improvements, such sale, unless governed by Sections 2-019 through 2-023 shall be by public auction, sealed bid or other acceptable method. Prior to such sale the Department shall through the local organization:

022.01 Cause an appraisal to be made of such land,

022.02 Retain the services of a public auctioneer,

022.03 Cause legal notice thereof to be published.

023 Public Auctioneers. In retaining the services of a public auctioneer for the sale at auction of any lands purchased in whole or in part with these funds, the Department shall select a public auctioneer, for the services of such public auctioneer, and over-see the contracting of said auctioneer with the local organization. Selection of the auctioneer shall be the responsibility of the Director of the Department. Fees associated with the appraisal, auctioneer, advertising and notice, and any other fees associated with the sale, provided they are approved by the Department in advance, are eligible for reimbursement from the sale proceeds prior to the disbursement split between the Department and the local organization.

024 Sale of Improvements. When any improvements on lands involving these funds are to be sold separately from the land, such sale may be conducted by sealed bids or by public auction. Prior to such sale of improvements, the Department shall cause legal notice thereof to be published pursuant to Section 2-027.

025 Notice of Sales. Notice of all sales governed by these rules shall be published in the county in which such land(s) and/or improvement(s) is (are) located and also in a legal newspaper with statewide circulation. Advertisement/notice shall also be distributed by flyer and/or posters posted in public view, on web sites and any other appropriate method for generating interest in the sale. Such notices shall list and describe the land(s) and/or improvement(s) to be sold and the easements

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and/or rights-of-way, if any, which will be retained by the local organization, and shall state the date, time and place for the opening of sealed bids. If appropriate, such notice shall state the address where sealed bids are to be mailed or delivered, and the deadline for receipt of the same. The terms of payment and any other information that in the particular case would be required to impart adequate notice to all interested parties shall also be provided.

026 Sealed Bids. In order to be eligible for consideration, sealed bids for improvements shall state which improvement(s) the bid is for and shall be accompanied by a certified check or bank draft made out in the full amount of the bid. If any sealed bid is not accepted, the deposit shall be returned to the bidder within thirty days after the day on which the bids are opened. All sealed bids shall be mailed or delivered to the Department. Such bids must be received at least three days prior to the date set for their opening. All sealed bids shall remain sealed until the time set for their opening, at which time the two highest bids shall be read.

027 Conduct of Auction. The public auction for each tract of land to be sold shall remain open for receipt of bids for a minimum of one hour, but may be closed at the end of such time period if there are no reasonable grounds to believe that a higher bid would be received were the auction held open for a longer period of time.

028 Earnest Money Deposit. The highest bid for a tract of land received at public auction shall, in order to be eligible for consideration by the Commission, be accompanied by a check, bank draft, or cash in an amount of not less than twenty percent of the bid.

029 Purchase Agreement. The highest bidder for the purchase of any of the lands governed by these rules shall, after being designated the highest bidder, enter into a purchase agreement with the local organization stating that the balance due shall be paid within thirty days of notification by the local organization of the acceptance of the bid by the Commission. The purchase agreement shall describe all applicable terms for the sale, including all terms specified by the Commission. Failure to comply with this rule or with the conditions of the purchase agreement shall result in the forfeiture of said bidder's deposit.

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030 Approval or Rejection of Bids. The Commission reserves the right to refuse any and/or all bids. At the next regularly scheduled Commission meeting following the closing of all bidding, the Commission shall review the highest bid, considering, if applicable, such factors as the original purchase price, any increases or decreases in land valuation, the present appraised fair market value, and any other criteria which may reflect the adequacy of the bid. If a portion of the original purchase price was contributed by the local organization, such local organization shall be consulted regarding the adequacy of the bid prior to approving or rejecting the same. In the event the Commission approves a bid, it shall direct the local organization to proceed with the sale. Upon receiving full payment, the local organization shall convey title to the purchaser, reserving as applicable, and such interests in the land as are necessary for the local organization to carry out its ongoing responsibilities relative to management of the land or to any improvements constructed thereon or necessary to effect any terms for the sale specified by the Commission. In the event that the Commission determines that a bid is inadequate, the bidder's deposit shall be returned within ten days after such determination, the land shall be leased for an additional year, and the land shall be rescheduled for sale according to the rules hereinabove set forth.

031 Sale Expenses. Any expenses, that have been approved by the Director in advance, which are incurred by the Department or the local organization in conducting this sale shall be subtracted from the sale price prior to a pro rata distribution of such sale proceeds between the local sponsor and the Department in accordance with Section 2-007.03.



STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF RULEMAKING HEARING

NOTICE IS HEREBY GIVEN THAT THE State of Nebraska, Natural Resources Commission (Commission) will hold a public rule-making hearing pursuant to *Neb. Rev. Stat. § 84-907*. The hearing will be held at 10:00 a.m. on April 28, 2015, in conference room Lower Level F of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

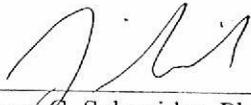
The purpose of the hearing is to take public comments concerning adoption of Commission's rules *Neb. Admin. Code Title 261*, entitled "Rules Governing the Water Sustainability Fund." The proposed rules:

Authorize filing of applications to the Water Sustainability Fund, describes criteria for ranking and scoring by the Commission of applications, and awarding grants and/or loans from the Fund.

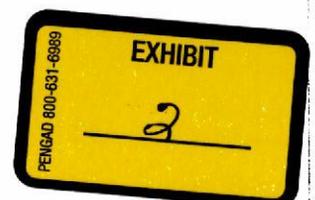
The proposed rules are available at the offices of the Secretary of State, Regulations/Licensing Division, Room 1305, State Capitol, Lincoln, Nebraska 68509, and on the Department's website at <http://dnr.nebraska.gov/rules>. The description of the fiscal and other impacts may be inspected and obtained at the Department of Natural Resources, 4th Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. The fiscal impact is expected to be none.

All interested persons are invited to attend and make oral or written comments at the hearing. Interested persons may also submit written comments prior to hearing which will be made part of the hearing record at the time of hearing if received by the Department of Natural Resources on or before April 28, 2015. If auxiliary aids or reasonable accommodations are needed to participate in the hearing or if hearing impaired, please call LeRoy Sievers at (402) 471-1113 by April 21, 2015.

Date: March 19, 2015



James C. Schneider, Ph.D., Acting Director
Department of Natural Resources



Place Ad Here

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES

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Date: March 19, 2015

Proof of publication

AFFIDAVIT

State of Nebraska, County of Douglas, ss:

Anita Cousin-Hardrick, being duly sworn, deposes and says that she is an employee of The Omaha World-Herald, a legal daily newspaper printed and published in the county of Douglas and State of Nebraska, and of general circulation in the Counties of Douglas, and Sarpy and State of Nebraska, and that the attached printed notice was published in the said newspaper on the 21 day of March, 2015, and that said newspaper is a legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge. The Omaha World-Herald has an average circulation of 127,213 Daily and 157,400 Sunday, in 2015.

(Signed) Anita Cousin-Hardrick Title: Account Executive

Subscribed in my presence and sworn to before me this 21st day of March, 2015.

State of Nebraska - General Notary
MICHELLE SEITER
My Commission Expires
March 28, 2019

Michelle Seiter
Notary Public

Printer's Fee \$ _____
Affidavit _____
Paid By _____

RECEIVED
APR 14 2015
DEPARTMENT OF
NATURAL RESOURCES

**SUBMIT TO GOVERNOR BEFORE SUBMITTING TO EXECUTIVE BOARD AND
BEFORE PUBLIC HEARING DATE IS SET**

**PROPOSED REGULATION
GPRO COVERPAGE
(ATTACH TO PRE-REVIEW CHECKLIST)**

Agency: Natural Resources Commission
Title, Chapter of Rules submitted: Title 261, Chapters 1 - 4
Subject: Rules for the newly created Water Sustainability Fund
Prepared by: LeRoy W. Sievers
Telephone: (402) 471-1113
Date submitted to Governor: March 19, 2015

Projected dates for public hearings: April 28, 2015

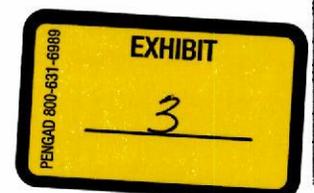
Projected deadline for final approval: June 16, 2015

A copy of the section of laws or federal regulations that triggered these changes is attached. LB1098

FOR GOVERNOR OFFICE RECORDS

Advisor Assigned: Cheryl Wolff
Date approved to proceed: 3-19-2015
Options for proceeding: _____

- a) No further contact with GPRO is necessary until final rules have been approved by the Attorney General.
- b) Contact Governor through GPRO concerning issues raised in Negotiated Rulemaking procedures.
- c) Submit Rules and Regulations Policy Review Checklist to Governor if rules are changed hereafter and a new public hearing is scheduled.
- d) Keep the Governor informed through GPRO as issues arise in negotiations, drafting sessions, advisory board meetings, and public hearings.
- e) Specific policy comments per Governor's instructions is attached.



PROPOSED REGULATION POLICY PRE-REVIEW CHECKLIST

Agency: Natural Resources Commission (NRC)

Title, Chapter of Regulation: Title 261, Chapter 1- 4

Subject: Rules for the newly created Water Sustainability Fund (WSF)

Prepared by: LeRoy W. Sievers

Telephone: (402) 471-1113

A. Policy Changes and Impacts

1. What does the regulation do and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

The rules have been developed to establish the means for potential applicants to know what steps are necessary to apply for funding from the newly created WSF and what criteria will be utilized to rank and score satisfactory applications by the NRC. The newly adopted legislation allows any entity or person to apply for funding so potentially any person or entity could be impacted if its application is satisfactory and it scores high enough to be funded. Other anticipated impacts include additional funding that may be required for the NRC for per diems and other related expenses for any meetings in excess of what have been held in the past.

2. Describe changes being proposed to current policy and briefly provide rationale.

The rules being proposed are new because the WSF is new, having been created by the Legislature in 2014 when the Natural Resources Commission was expanded by the addition of 11 new members. Thus the change is the creation of the rules in response to the creation of the WSF and the need for rules describing how the NRC intends to implement its responsibilities.

Chapter 1 contains definitions, a description of the types of financial assistance that may be provided, a description of the legislatively created goals of the WSF and the rate of interest that may be charged on loans from the WSF. Chapter 2 provides a description of the application procedures and requirements including a legislatively required description of how feasibility is to be determined. Chapter 3 includes a description of how the NRC will rank and score applications which are referred to it by the Director of DNR. This chapter also describes how the NRC will fund projects from the money appropriated to the WSF and other aspects of project administration such as contracting and funding disbursements. Chapter 4 describes the process of fund administration

particularly as it relates to sale of property purchased by project sponsors with money from the Fund.

B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).

1. Update of regulation (repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.). NA
2. Annual changes – cost of living, hunting season schedules, etc. NA
3. Law was changed – federal ___ or state ___ [Cite authorizing statute(s) or legislative bill(s)]. State laws adopted in 2014 through LB1098, LB1098A and LB906.
4. Extension of established policy or program, new initiatives or changes in policy (within statutory authority). NA
5. Constituent initiated. NA
6. Financial needs – increases/decreases in fees. NA
7. Litigation requires changes in rules. NA
8. Addresses legal or constitutional concerns of Attorney General's office. NA
9. Implements federal or court mandate. NA
10. Other (explain). NA

C. What happens if these rules are not adopted? The bills creating the WSF are not self-executing so in order for applications seeking money from the fund to be processed it is necessary for rules to be adopted. Without the rules money from the WSF will not be able to be distributed as intended by the Legislature.

D. Policy Checklist

1. Is this an update or editorial change reflecting essentially no change in policy?
No.
2. Does the policy in the proposed regulation reflect legislative intent?
Yes.

3. Is the policy proposed in the regulation a state mandate on local government? Is it funded?

It is not a mandate.

4. Is the policy proposed in the regulation a federal mandate on local government? Is it funded?

It is not a mandate.

E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:

1. Will the proposed regulation reduce, increase, or have no change in resources – funds, personnel or FTE?

The regulations per se will not have any effect on the NRC expenses. Implementing the legislation adopted which created the WSF and requires rules in order for the fund to be distributed may result in longer or more meetings of the NRC in order to evaluate applications and distribute money from the WSF.

2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation?

Yes, through the development of the draft rules NRC meetings have been open to the public and the topic of rules development has been on the agenda. Some public input has been provided in these meetings.

3. Does the proposed regulation impact another agency? Explain the impact.

The DNR and NRC coordinate with each other regarding the information required to be provided by an applicant to the WSF and definitions used. Moreover the two coordinate the timing of applications and the exchange of information from one to the other.

4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses?

No change.

5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information.

The rules have no direct impact on spending other than by creating the means by which an applicant submits an application for funding from the WSF.

6. Include a description of the impact that the proposed regulation will have on the number of state employees and how the agency intends to address proposed increases or decreases in FTE.

No employees will be added for assistance to the NRC directly. The anticipated additional expenses for NRC include the potential for longer or perhaps additional meetings for the purpose of evaluating applications for assistance from the WSF. The additional expense could include additional per diem for commissioners, room rental and miscellaneous expenses.

- F. Unique problems or issues and recommendations.

None.

- G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts have been made with organizations or citizens who may be affected by the regulation prior to the public hearing.

Because there is no limitation on who may apply for funding from the WSF, any entity or person who believes that they can qualify for funding may apply. Consequently interest in the WSF and the rules implementing it is high. Informal public presentations have demonstrated that interest is high among many organizations. Additional public information sessions are scheduled in an effort to explain how the rules are intended to operate and address misunderstandings that are expressed.

- H. Are these proposed rules a likely candidate for negotiated rulemaking? Explain. Has the process been completed? If so, explain how the issues were addressed.

No.

Director's Verification of Review

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Director's Signature _____



Date _____

3-19-15



Pete Ricketts
Governor

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
James C. Schneider, Ph.D.
Acting Director

March 19, 2015

IN REPLY TO:

John Gale, Secretary of State
Attn: Rules and Regulations Officer
1st Floor, Room 1305
State Capitol Building
Lincoln, NE 68509

Subject: *Nebr. Admin. Code Title 261*

Dear Mr. Gale:

In relation to *Nebr. Admin. Code Title 261*, enclosed are the following:

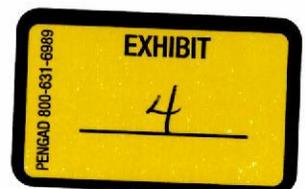
1. A draft copy of the rule.
2. A fiscal impact statement showing that there is no anticipated fiscal impact due to the proposed rule.
3. A copy of the Notice of Rulemaking Hearing which is being published in the Omaha World Herald as indicated in the notice.
4. Additionally a copy of the draft rule is being sent to your office electronically for your use.

If you have any questions regarding this please contact me. Thank you for your assistance and cooperation in this matter.

Sincerely,

LeRoy W. Sievers
Legal Counsel

Enclosures



legal/legal documents/rules/Title 261/2015

NEBRASKA NATURAL RESOURCES COMMISSION

TITLE 261 – RULES GOVERNING THE
ADMINISTRATION OF THE
WATER SUSTAINABILITY FUND

DRAFT

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA NATURAL RESOURCES COMMISSION
TITLE 261
RULES GOVERNING THE
ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Adopted _____, 201_

NEBRASKA NATURAL RESOURCES COMMISSION
 TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE
 WATER SUSTAINABILITY FUND

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 TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER
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TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER
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TITLE 261 – NEBRASKA NATURAL RESOURCES COMMISSION
RULES GOVERNING ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 1 – GENERAL PROVISIONS

001 Purpose and Effect of Rules. These rules are adopted for the purpose of meeting the goals of the Nebraska Water Sustainability Fund. The Water Sustainability Fund shall be administered by the Natural Resources Commission (Commission) to provide financial assistance to eligible projects, programs or activities that lead to sustainability of Nebraska's water resources that promotes healthy watersheds, improves water quality and protects the ability of future generations to meet their water needs. In a manner consistent with these rules and regulations and the governing Statutes, the Commission shall administer the Water Sustainability Fund to assist projects, programs or activities that meet the goals and are of the types of projects provided for herein.

001.01 The goals of the Water Sustainability Fund are to:

- (1) Provide financial assistance to programs, projects, or activities that increase aquifer recharge, reduce aquifer depletion, and increase streamflow;
- (2) Remediate or mitigate threats to drinking water;
- (3) Promote the goals and objectives of approved integrated management plans or ground water management plans;
- (4) Contribute to multiple water supply management goals including flood control, reducing threats to property damage, agricultural uses, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources;
- (5) Assist municipalities with the cost of constructing, upgrading, developing, and Replacing sewer infrastructure facilities as part of a combined sewer overflow project;
- (6) Provide increased water productivity and enhance water quality;
- (7) Use the most cost-effective solutions available;

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Chapter 1

(8) Comply with interstate compacts, decrees, other state contracts and agreements and federal law.

001.02 The above goals for the Water Sustainability Fund can best be met with programs, projects or activities in the following categories:

- (1) Research, data and modeling;
- (2) Rehabilitation or restoration of water supply infrastructure, new water supply infrastructure or water supply infrastructure maintenance or flood prevention for the protection of critical infrastructure;
- (3) Conjunctive management, storage and integrated management of ground water and surface water;
- (4) Compliance with interstate compacts or agreements or other formal state contracts or agreements or federal law.

001.03 Under no circumstances shall these rules and regulations be construed as a limitation or restriction upon the exercise of any proper discretion that is vested in either the Director or the Commission, nor shall they in any event be construed to deprive the Director or the Commission of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data or information which may be required for the proper administration of the Fund.

002 Definitions. As used in these rules, the terms listed below shall have the meanings noted:

002.01 Accrued Revenues. "Accrued revenues" shall mean income from sales, rents and other sources of revenue returned to the Fund;

002.02 Allocation. "Allocation" shall mean the overall financial limit authorized by the Commission for a project;

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Chapter 1

002.03 Applicant. "Applicant" shall mean any state agency or person or entity eligible to apply for financial assistance from the Fund;

002.04 Appropriation. "Appropriation" shall mean the amount of funding approved by the Legislature and authorized by the Governor for the Fund;

002.05 Cap. "Cap" shall be set legislatively for the Fund and shall mean the amount of allocation that can be awarded by the Commission in excess of obligation;

002.06 Combined Sewer Overflow Project. "Combined sewer overflow project" shall mean a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environmental Quality;

002.07 Commission. "Commission" shall mean the Nebraska Natural Resources Commission created pursuant to Section 2-1504;

002.08 Cost Effectiveness. "Cost effectiveness" shall mean a systematic quantitative method for comparing the costs of alternative means of achieving the same stream of benefits or a given objective;

002.09 Current Year Appropriations. "Current Year Appropriations" shall mean appropriations from the legislature for the current fiscal year which may include accrued revenues;

002.10 Department. "Department" shall mean the Nebraska Department of Natural Resources created pursuant to Sections 61-205 and 81-101;

002.11 Director. "Director" shall mean the Director of the Department Natural Resources as provided in Section 81-102;

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Chapter 1

002.12 Eligible Costs. "Eligible Costs" shall mean the direct project cost which would otherwise be borne by the applicant if the Water Sustainability Fund was not available. Direct project cost is deemed to include any local match required by federal or other non-state funding sources, but exclude project costs paid or reimbursed by federal and other non-state entities, project funding received directly or indirectly from other state sources plus any associated local match requirement, costs for operation and maintenance, debt interest, applicant project administration and management, and all discretionary costs such as lobbying, entertainment, etc.;

002.13 Fund. "Fund" shall mean the Nebraska Water Sustainability Fund created by Section 61-222;

002.14 Governing Body. "Governing Body" shall mean the individual or group of individuals which are empowered by law to govern the business of an applicant;

002.15 Intangible Benefits. "Intangible Benefits" shall mean benefits, either primary or secondary, that cannot be expressed in monetary terms;

002.16 Large Project. A project with a funding request of greater than \$250,000;

002.17 Obligation. "Obligation" shall mean actual dollars made available by the Commission to a project for reimbursement;

002.18 Political Subdivision. "Political Subdivision" shall mean any political subdivision of the State of Nebraska to which has been granted the authority to develop water and related land resources, including, but not limited to, a metropolitan utilities district, natural resources district, irrigation district, public power and irrigation district, reclamation district, county, and any municipal corporation, village, or city, whether operating under home rule charter or under the general laws of the State of Nebraska;

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Chapter 1

002.19 Primary Benefits. "Primary Benefits" shall mean net values attributable to a project of increases in products and services and of reductions in costs, damages, or losses of primary beneficiaries;

002.20 Program, Project and/or Activities. "Program, Project and/or Activities" shall mean any structural or non-structural undertaking for which assistance from the Fund is requested. Unless the context otherwise requires, no distinction is intended between such terms and they may be used interchangeably for purposes of administration of these rules;

002.21 Program, Project and/or Activity Proposal. "Program, Project and/or Activity proposal" or "proposal" or "application" shall mean a proposal which is submitted seeking financial assistance from the Fund;

002.22 Project Engineer or Project Director. "Project Engineer or Project Director" shall mean any engineer, engineering firm, or other person, persons or firm retained or employed by the applicant to provide professional engineering or other professional or technical services during the planning, design, and construction of the proposal;

002.23 Secondary Benefits. "Secondary Benefits" shall mean net values to persons other than primary beneficiaries as a result of economic activity induced by or stemming from a program, project and/or activity;

002.24 Separable Components. "Separable components" shall mean portions of a program, project and/or activity that can be undertaken and justified independently;

002.25 Sewer Separation Project. "Sewer separation project" shall mean funding to combined sewer overflow projects.

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Chapter 1

002.26 Small Project. "Small project" shall mean a project with a total funding request of \$250,000 or less. The fund for small projects shall equal 10% of current year appropriations plus any carry forward approved by the Commission.

002.27 State Agency. "State Agency" shall mean any agency, board, commission or other office of state government to which has been granted the authority to develop the state's water and related land resources;

002.28 Tangible Benefits. "Tangible Benefits" shall mean benefits, either primary or secondary, that can be expressed in monetary terms;

002.29 Total Net Allocations. "Total net allocations" shall mean unspent appropriations from prior years and Current Year Appropriations minus Sewer Separation Project Allocations;

002.30 Water Productivity. "Water productivity" shall mean water use to increase water sustainability;

002.31 Water Sustainability. "Water Sustainability" shall mean water use is sustainable when current use promotes healthy watersheds, improves water quality, and protects the ability of future generations to meet their needs;

002.32 Water Sustainability Fund Cap. "Water Sustainability Fund Cap" shall mean a financial cap that may be established by the legislature on limiting the approval of any project which would cause the funding from the Fund to exceed the cap.

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Chapter 1

003 Types of Assistance. Eligible applicants for financial assistance from the Fund may receive such assistance in the form of grants, loans, or any combination thereof, or through the direct acquisition by the state of interests in eligible programs, projects and/or activities. The form of assistance which may be allocated to a program, project and/or activity shall be determined utilizing the following criteria:

003.01 Grants. Funding may be made as grants to applicants when it is determined that such an allocation will not be subsequently recovered from revenue or receipts and when the program, project and/or activity, or separable portion thereof, appears to be of general statewide public benefit thereby making reimbursement of such money from the applicant's funds inappropriate or impossible, or when the funds are intended for a state or to meet the requirements for matching a federal grant. If only a portion of the program, project and/or activity meets the above criteria, only that portion will be eligible for a grant. In determining the appropriateness of a grant the considerations of the Director shall include the extent of the area over which the anticipated benefits will accrue and whether equitable distribution of the costs of the program, project and/or activity can be accomplished without a grant.

003.02 Loans. Funding in the form of loans to applicants for any program, project and/or activity or any part thereof consistent with the purposes of the Fund which will directly generate revenue or receipts or which can be anticipated to culminate in a program, project and/or activity which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment appropriate.

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003.03 Acquisition of State Interests. Interests in water and related land resources projects may be acquired by the Department, upon approval by the Commission, in the name of the state with moneys from the Fund when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. The Department, upon approval by the Commission, may also acquire interests in water resources projects in the name of the state to meet future demands for usable water.

004 Interest Rate. The rate of interest payable on loans from the Fund shall be determined annually prior to October 1 of each fiscal year. Such rate of interest shall be computed by averaging the yields, as determined by a readily available state and local bond index, such as the state and local bond rates available from the Federal Reserve System, Board of Governors issued nationally for the three previous fiscal years and by rounding off such average to the nearest one-eighth percent. The rate of interest payable on a loan for a specific program, project and/or activity shall be the rate in effect for the fiscal year in which the Commission approves the program, project and/or activity for a loan allocation. Such rate shall remain in effect throughout the repayment period determined to be appropriate for such program, project and/or activity.

005 Periodic Consultation. Periodically the Commission will request that the following entities submit suggestions to the Commission on funding and planning for water programs, projects or activities: the Department of Natural Resources, the University of Nebraska, the Department of Environmental Quality, the Nebraska Environmental Trust Board and the Game and Parks Commission.

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RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 2 – APPLICATION PROCEDURES AND REQUIREMENTS

001 Filing Fees. No filing fee is required to accompany any program, project and/or activity proposal or any application for assistance from the Fund.

002 Filing Location. All proposals, applications or other documents or instruments supplied by an applicant in connection with a request for financial assistance from the Fund shall be filed with the Director.

003 Application Procedure. If the applicant decides to submit an application, the number and format of the application shall be specified by the Director.

004 Engineering and Technical Feasibility.

004.01 A structural proposal shall be considered feasible when it can and will be designed, constructed, and operated to accomplish the purpose(s) for which it was planned utilizing accepted engineering, geohydrologic and other technical principles and concepts. Engineering and technical data and information to be provided in the feasibility report should include, but is not limited to, the following:

004.01A A detailed discussion of the plan of development selected for the proposal;

004.01B A description of all field investigations made to substantiate the feasibility report;

004.01C Maps, drawings, charts, tables, etc., used as a basis for the feasibility report;

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Chapter 2

004.01D A description of the water and land rights associated with the proposal and pertinent water supply and water quality information, if appropriate;

004.01E A detailed discussion of each component of the final plan preparation including, when applicable:

004.01E1 Required geologic investigation;

004.01E2 Required hydrologic data;

004.01E3 Design criteria for final design including, but not limited to, soil mechanics, hydraulic, hydrologic, structural, embankments and foundation criteria.

004.02 A non-structural proposal shall be considered to be technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned. Data necessary to establish the technical feasibility should include, but is not limited to the following:

004.02A A detailed discussion of the plan of development designed for the proposal, including techniques to be utilized in all aspects of the proposal;

004.02B A description of field or research investigations utilized to substantiate the project conception;

004.02C A description of the water and/or land rights necessary for proposal continuation, if applicable;

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Chapter 2

004.02D A discussion of the anticipated effects, if any, of the proposal upon the development and/or operation of existing or envisioned structural measures including a brief description of any such measure.

005 Economic Feasibility. Except as otherwise specified by subsection 005.04 or subsection 005.05 of this section, a proposal is economically feasible if primary tangible benefits exceed project costs. In addition, for proposals for which \$100,000 or more is requested from the Fund, each proposal's purpose in a multi-purpose proposal must provide benefits equal to or greater than its separable or specific cost as specified by the Director and there must be no known means of accomplishing the same purpose or purposes more economically. The Director and the Commission may also require that separable proposal features or increments have benefits which equal or exceed their costs. All costs and benefit data reported by the applicant will be based upon current data and sources for all data must be documented. Certain commodity prices, recreation benefit prices, and wildlife prices will be prescribed by the Director. The Director may also prescribe other cost and benefit information necessary for completion of the feasibility report. The period of analysis for economic feasibility studies shall be fifty (50) years or with the discretion of the Director, up to one hundred (100) years or the life of the proposal, whichever is less.

005.01 Cost Information. The application shall include all relevant cost information including, but not limited to, all actual or anticipated costs for the feasibility study, the engineering and inspection costs, capital construction costs, annual operation and maintenance costs, and annual replacement costs. Cost information shall also include the estimated construction period as well as the estimated proposal life.

005.02 Benefit Information. Only primary tangible benefits may be counted in providing the monetary benefit information. In a multi-purpose proposal, the benefits will be estimated for each purpose and displayed by year for the proposal life. Intangible and secondary benefits of the proposal should be described for consideration and evaluation by the Director and the Commission. Benefit measurement techniques and criteria shall be provided to the applicant by the Director.

005.03 Cash Flow Stream. All benefit and cost data will also be presented in a table form to indicate the annual cash flow for the life of the proposal, not to exceed 100 years. A form for so indicating the annual cash flow shall be supplied by the Director.

005.04 Rate-of-Return on Investment. The cost and benefit data expressed in the cash flow stream will be utilized by the Director to calculate the rate-of-return on the investment. The rate-of-return on the investment is the discount rate applied to future benefits and costs at which costs and benefits become equal and the net present worth of the proposal cash flow is zero. A minimum rate-of-return for a proposal to be considered economically feasible is 3%.

005.05 Other Methods. In the case of proposals for which there is no generally accepted method for calculation of primary tangible benefits and if the proposal will increase water sustainability, the economic feasibility of such proposal shall be demonstrated by such method as the Director and the Commission deem appropriate.

006 Financial Feasibility. A proposal is financially feasible if sufficient funds can be made available to complete the proposal, and if sufficient annual revenues can be obtained to repay the reimbursable costs and to operate, maintain, and replace the proposal. When a loan is involved, financial feasibility requires assurance that the proposals can be adequately operated, maintained, and replaced and that the loan can be repaid during the repayment life of the proposal.

If a loan is requested, applicant shall also supply a complete year-by-year repayment schedule in such detail as directed by the Director.

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Chapter 2

007 Combined Sewer Overflow Project Application. If an application is from a municipality for assistance with the cost of constructing, upgrading, developing and replacing sewer infrastructure facilities as a part of a combined sewer overflow project, as defined in this Title, it must contain in its application a demonstration of need for financial assistance from the Fund and the population of the municipality.

008 Ineligible Natural Resources Districts. Natural Resources Districts which have not adopted or are not currently participating in the development of an integrated management plan pursuant to Neb. Rev. Stat. §46-715(1)(a) or (b) are not eligible to apply for assistance from the Fund.

009 Ineligible Applications or Components of Applications.

009.01 An application for financial assistance in any form to assist in paying the cost of a feasibility study is not eligible for assistance from the Fund.

009.02 Unless an application is submitted which explicitly includes a request for financial assistance to obtain a necessary government issued permit, right or authorization (permit) such as a 404 permit, surface water right, consultation with the Nebraska Game and Parks Commission regarding nongame threatened or endangered species, an application shall be ineligible for consideration if the applicant does not possess at the time the application is submitted all of such permits which are required for the project to be completed.

Title 261
Chapter 2

009.03 Interest owed on borrowed money is not a cost which may be included in an application nor will such costs be reimbursed.

009.04. Costs incurred by an applicant prior to approval of an application by the Commission may not be included in project costs and will not be paid or reimbursed. If a project is ultimately approved, application costs shall be considered as part of the local cost share.

009.05. Operation and/or maintenance expenses will not be costs of a project which can be reimbursed and may not be included in an application.

009.06. A rate of inflation may not be used as a component of project costs which are subject to reimbursement and may not be included in an application.

009.07. After deducting all other sources of funding contributed to offset costs of the project (such as federal, state, Nebraska Environmental Trust and/or others regardless of the method(s) of recording and receiving such funds), financial assistance from the Fund will be 60% of the remaining costs which otherwise would have to be paid from local sources.

009.08. An applicant may use in-kind services for a portion of its local cost share but only if such use is preapproved by the Commission in writing and only upon the applicant showing how the use of in-kind services will result in lower project costs (For example a contractor's bid for the identical services is higher than the proposed value of the in-kind services).

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Chapter 2

010 Application Filing Dates. Applications must be submitted to the Director only between the dates of July 15 and August 1, except for the initial period following the date these rules become effective, the beginning date shall be the 90th day after the rules become effective and the ending date for acceptance of applications shall be to and including 14 days thereafter, for a total of 15 days.

011 Information Required in an Application. In addition to other information that may be required to be included in an application, applications must specify:

- the amount requested as a loan, if any, and the amount requested as a grant, if any,
- if the amount requested is for \$250,000 or less,
- if the amount requested is more than \$250,000,

if the project will not be completed in one year or less, the amount of funding requested in each year for which the project is requesting funding.

012 Returned Applications. Applications found by the Director to be satisfactory and reviewed by the Commission but not approved for funding will be denied and the applicant informed. Such applications may be resubmitted to the Director in the next application cycle and if the applicant chooses to do so, then the applicant may either certify that there are no changes in the application or the applicant must include a narrative page describing any changes in the application compared to the prior application.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

Title 261 – NATURAL RESOURCES COMMISSION

RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 3 - COMMISSION ACTION AND REQUIREMENTS

001 Action on the Report of the Director. Following receipt of a report and determination prepared by the Director that an application has been determined to be satisfactory, the Commission may request additional information from the Applicant.

001.01 At the first regular meeting following receipt of the Director's report and recommendations, the Commission will forward all such applications to the Application Review Committee(s) which will examine each application and rank and score each application based upon the following criteria: The following criteria shall be given a score of 0, 2, 4 or 6 points:

- (1) Remediates or mitigates threats to drinking water;
- (2) Meets the goals and objectives of an approved integrated management plan or ground water management plan;
- (3) Contributes to water sustainability goals by increasing aquifer recharge, reducing aquifer depletion, or increasing streamflow;
- (4) Contributes to multiple water supply goals, including, but not limited to, flood control, agricultural use, municipal and industrial uses, recreational benefits, wildlife habitat, conservation of water resources, and preservation of water resources;
- (5) Maximizes the beneficial use of Nebraska's water resources for the benefit of the state's residents;
- (6) Is cost-effective;
- (7) Helps the state meet its obligations under interstate compacts, decrees, or other state contracts of agreements or federal law;

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- (8) Reduces threats to property damage or protects critical infrastructure that consists of the physical assets, systems, and networks vital to the state or the United States such that their incapacitation would have a debilitating effect on public security or public health and safety;

and the following criteria shall be awarded 0, 1, 2, or 3 points:

- (1) Improves water quality;
- (2) Has utilized all available funding resources of the local jurisdiction to support the program, project, or activity;
- (3) Has a local jurisdiction with plans in place that support sustainable water use;
- (4) Addresses a statewide problem or issue;
- (5) Contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources;
- (6) Contributes to watershed health and function;
- (7) Uses objective described in the annual report and plan of work for the state water planning and review process issued by the department.

Applications which are requesting funds which are explicitly for the purpose of complying with a federal mandate will be awarded an additional 2, 4, or 6 points.

001.02 The A Review Committee or Committees will be comprised of members of the Commission and will be appointed to such committee(s) by the Executive Committee.

001.03 The Application Review Committee(s) shall make a preliminary scoring for each application based upon the scoring criteria specified in this chapter. The scoring recommendation shall be reviewed by the Commission and it may either adopt the recommendation of the committee or only upon an affirmative vote of at least 14 members of the Commission revise the recommendation.

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001.03.01 For applications for small projects, a total of 10% of the appropriation to the Fund for the year is set aside and funding to such applications will be provided for the applications in such range considered separately from other applications.

001.03.01.01 If any funds set aside for small projects remains from that funding cycle, such remaining unobligated balance may be carried over or may be made available for other applications.

001.04 An application as defined in Chapter 2 007, which is recommended for further consideration by the Director, shall be reviewed by the Commission for a determination of an adequate demonstration of need by the applicant, a determination of the form of the allocation made by the Director and the percentage of the population served by the applicant compared to the total population served by all of the approved for funding applications, as defined in Chapter 2 007. All of the applications reviewed and approved by the Commission pursuant to this subsection shall be awarded their respective proportion of the amount of funds appropriated to the Fund pursuant to Neb. Rev. Stat. §2-1507 (2).

001.04.01 Subsequent to the initial year in which approval for funding of applications as defined in Chapter 2 007 is made, renewed applications in subsequent years must state that the applicant is still qualified to apply because its plan is still approved by the Department of Environmental Quality, it must state if it still has need for financial assistance and it must state its current estimated population. Funding to all then approved applications as defined in Chapter 2 007 will be based upon then current funds and populations served.

001.04.02 Applications filed pursuant to Chapter 2 007 will not be scored.

001.04.03 Applications filed pursuant to chapter 2 007 are not considered to be part of any cap.

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001.05 Commission action on recommendations made by the Director, as to the form of grant, loan or combination thereof, shall be in accordance with such recommendations.

001.06 A Commission member shall be ineligible to participate in the action of the Commission concerning an application for a grant or a loan if such member is a member of the governing body, otherwise represents the applicant for financial assistance or otherwise has a conflict of interest. All Commission members shall be eligible to vote on proposals involving state acquisition of interests in proposals.

002 Funding. After scoring and ranking applications that the Director finds to be satisfactory, the Commission will make the following determinations to establish the amount of allocation available to utilize in approving new projects and to obligate funds for previously approved projects.

002.01 Fund Allocations. The Commission shall allocate up to 10% of the current year appropriation for Small Projects with the remainder available for Large Projects. The Commission is not authorized to approve an allocation for a project that would cause the Cap to be exceeded.

002.02 Small Project Funding Allocation. The Commission shall allocate funds for current year Small Projects starting with the highest scored project and proceeding until all such projects have been allocated funds or until the available allocation has been utilized or until the Commission sets a limit on current year funding for Small Projects. Any remaining amount may be eligible to be carried over or be available to allocate to Large Projects subject to Commission approval.

002.03 Large Project Funding Allocation/Obligation. The Commission shall obligate funds for Large Projects which have been previously approved and which have complied with the funding requirements in sections 005 and 006. The Commission shall next consider funding for current year projects starting with the highest scored project and proceeding until available allocations for Large Projects have been utilized.

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002.04 Project Obligation. Prior to the Commission's action obligating funds for a given fiscal year, the Department may invite the sponsors of all projects for which additional funding obligation has been requested for that fiscal year to appear before the Commission to address the manner in which their projects relate to the factors to be considered by the Commission. The Commission shall then consider and approve obligations for Small Projects and Large Projects in accordance with the allocation approved in section 002.02 and 002.03.

003 Project Totals Exceeding Balance in Fund. Notwithstanding any approval for funding, an applicant shall not under any conditions be entitled to reimbursement for any project costs until funds have been obligated for reimbursement of costs incurred by the applicant on such project. Costs paid, accrued or authorized by an applicant prior to funds being obligated for such projects and costs paid, accrued or authorized by an applicant for portions of project development in excess of those portions for which funds have been obligated shall be incurred at the risk of the applicant and such applicant shall not be entitled to reimbursement of such costs at any time without specific Commission approval for such reimbursement.

004 Annual Availability of Funds. The extent, if any, to which financial assistance will be provided to such project in any one fiscal year shall be in accordance with and contingent upon the availability of funds and Commission action obligating funds for such project in such fiscal year in accordance with sections 3-005 or 3-006.

005 Determination of Fiscal Year Financial Needs.

005.01 No later than March 31 of each year each applicant willing to utilize and capable of utilizing either an initial or an additional obligation of funds for a project which is not fully obligated shall present a report to the Commission indicating:

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005.01A The estimated time schedule for beginning, ongoing work and completing the project.

005.01B The estimated time schedule and expenditure amount for commencing, continuing and completing reimbursement requests.

005.01C Any such request shall be accompanied by an estimate of the costs for completing work identified in the request.

005.01D Any extenuating circumstances that may delay completion of the project or any other factors which may affect the sponsor's ability to complete the project.

006 Apportioning and Setting Aside Funds. Prior to July 1 of each year the Commission shall obligate available funds for projects eligible for additional funding assistance. In making such apportionments, the Commission shall consider the following:

006.01 Whether it is reasonable to expect that each project for which funding is requested is capable of being commenced within the next fiscal year;

006.02 Whether any of the projects proposed for additional funding, in the opinion of the Commission, be delayed without significant adverse effects on the total project;

006.03 Whether there are reasonable grounds for concern that the project, or portions of it, may not be completed;

006.04 The water and related resources needs addressed by each project;

006.05 The urgency of need for each project;

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006.06 The extent of benefit provided by each project; and

006.07 How to make the most efficient utilization of the available funds.

Prior to the Commission's action obligating funds for a given fiscal year, the Department shall invite the sponsors of all projects for which additional funding obligation has been requested for that fiscal year to appear before the Commission to address the manner in which their projects relate to the factors to be considered by the Commission.

007 Reductions in Allocations. An applicant may no later than March 31 of each year submit reports containing an update of the estimated time schedule for beginning and completing the approved project and any anticipated delays to implementing the project or obtaining sufficient funds to meet the applicant's financial obligations for the project. The Commission shall review all such reports, if any, which have been submitted and any other relevant information available to it and shall, if appropriate and consistent with the funding preferences established in state statute, make reductions in the amount allocated and obligated for any approved application. No amount previously allocated and obligated in accordance with section 002 of this chapter shall be decreased unless:

007.01 The applicant has indicated a decrease in needs;

007.02 The Commission, based on information contained in the applicant's report submitted in accordance with these rules or other information available to it, finds that there are reasonable grounds for concern that the project may not be completed;

007.03 The project is abandoned or significantly delayed;

007.04 The Department fails to receive a re-appropriation of unexpended funds;

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007.05 The appropriation for the Water Sustainability Fund is reduced by subsequent legislative act, or;

007.06 The Commission determines the project no longer meets the criteria for funding eligibility contained in the Water Sustainability Fund or the Commission's rules.

In case of any such findings, the Commission may modify, suspend or revoke any previous action to allocate and obligate funds for the project. Provided, however, any action to modify, suspend, or revoke any previous allocation shall not affect the applicant's right to reimbursement for costs which it has incurred or for which the Fund has become legally obligated prior to such Commission action. In addition, such action shall not affect the applicant's right to reimbursement for the cost of land or interests in land acquired through condemnation actions commenced prior to the Commission action to modify, suspend, or revoke an allocation.

008 Contractual Arrangements. State funds will not be advanced to any applicant pursuant to an approved loan or grant until a contract between the applicant and the Department setting forth terms and conditions of such loan or grant has been executed.

009 Disbursements. From the annual appropriations by the Legislature to the Fund and subsequent quarterly limitations that may be imposed by the Department of Administrative Service's Budget Office, the Director shall disburse no more often than once each month, such funds as are necessary to reimburse or pay, in the proper proportion, all eligible costs incurred by the applicant, if any. All such costs shall be documented by the applicant in the manner as is directed by the Director. In the event that a proposal has been approved for combination grant and loan, each disbursement shall, unless otherwise specified by the Commission, constitute a disbursement of loan and grant funds in the same proportion as the approved allocations.

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010 Inspection During and After Construction. The Director or his or her designated representative(s) shall have the privilege of inspecting the construction of any project at any time in order to ensure that plans and specifications are being followed, and that the works are being constructed in accordance with sound engineering and technical principles and practices, but such inspection shall never subject the State of Nebraska to any action for damages. The Director may bring to the attention of the applicant and the project engineer any variances from the approved plans and specifications. The applicant and the project engineer or project director shall initiate necessary corrective action whenever notified by the Director of any such variances and if they are not completed as directed, then the project will no longer be eligible for funding. Subsequent to the completion of construction, project investigation and inspection may be conducted by the Department during the life of the project and may be prescribed pursuant to the contract between the applicant and the Department.

011 Changes in Scope of Approved Proposals. The applicant shall promptly report all increases in the cost of a project and any proposed additions, deletions, or modifications or any change in the purpose or purposes of the project by submitting to the Commission and to the Director an amendment to the formal application and feasibility report, if any. Commission approval of any change in the scope, purpose, or plan for development of the project, and any increase in the allocation for the project shall be required. Any proposed change in the scope, purpose, or plan of development for the project, any request for an increase in the allocation for the project, or any cost increase, regardless of whether an increase in the allocation for the project is requested shall be referred to the Director for his or her review and recommendation regarding whether the project still meets the criteria for funding eligibility contained in the Fund or the Commission's rules.

012 Project Reporting. Projects which are granted financial assistance from the Fund must submit on or before April 1st, an annual report containing information detailing project progress and anticipated progress for the year.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

Title 261 – NATURAL RESOURCES COMMISSION

RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 4 – FUND ADMINISTRATION

001 Eligibility for Funds. To be eligible for land rights assistance from the Water Sustainability Fund, the local organization, defined as public districts, cities, counties, political subdivisions and agencies of the State or of the Federal government, must first enter into an agreement with the Department. Such agreement, which shall be on a form supplied by the Department, shall provide that the local organization will abide by the law and rules and regulations governing administration of the Water Sustainability Fund. In addition, the following conditions must have been met:

001.01 The Department has either participated in the planning or reviewed the plans and has approved the program of work;

001.02 The local organization has identified to the Department the location and purpose of purchasing lands, easements, and rights-of-way;

001.03 The local organization and the Department have entered into an agreement on the administration and expenditure of these state funds, rental and income generation requirements and limitations, as well as specific limitations against disposal of said property;

001.04 The purchase price of the land, easement, or right-of-way has been established either by a court or by at least one registered, licensed, certified residential, or certified general real estate appraiser approved by the Department; and

001.05 The local organization has given assurance to the Department that it has obtained any water rights or other permits required under state or federal law and complied with all other applicable state laws.

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002 Acceptance of Appraisals. An appraisal must accompany each reimbursement request for funds. Such appraisal shall be supplied at no cost to the state. In the event the Commission or the Department is of the opinion that any appraisal is subject to question, the Department may hire an appraiser at state expense, to aid the Commission in making its decision whether or not to approve such appraisal.

003 Damage to Crops. When applicable, the local organization shall also cause an appraisal to be made of all crops which are growing on the land to be purchased. Such crop appraisal shall also be subject to Commission approval and any rule, hereinabove set forth, applicable to appraisals in general. The local organization shall give the landowner the option of (1) retaining his or her interest in the crops, in which event he or she shall be given a reasonable period of time in which to harvest the same; or (2) selling such interest along with the land.

004 Purchase Price and Total Cost of Acquisition. For all purposes of the administration of the Water Sustainability Fund, the terms "purchase price" and "total cost of acquisition" shall, in the absence of a condemnation proceeding, mean the amount actually paid by the local organization or the amount established by an appraisal whichever is the lesser amount. In the event of a condemnation proceeding, such terms shall mean the amount of damages awarded by a court of competent jurisdiction. Payments by a local organization in excess of any purchase price so established shall be the sole responsibility of the local organization and shall have no effect upon the distribution of any proceeds subsequently realized from the sale of the land or right-of-way.

005 Title Insurance and Other Relevant Documents. Before any funds are paid out to the local organization, such organization must furnish to the Department a copy of a title insurance policy on the property or interest to be acquired, whether through purchase or condemnation. The title insurance policy must be from an insurance company authorized to provide such insurance in Nebraska. The local organization shall also furnish the Department with a copy of any completed purchase agreement (signed by both parties), a deed or easement with seal or filing stamp, the closing statement signed by both parties, all cancelled checks and any other written document

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demonstrating the terms and conditions of the proposed purchase. All reimbursement requests shall be itemized and packaged in the order of the itemized listing.

006 Eminent Domain Awards. If a local organization is unable to acquire an interest in real property for which an appraisal has been approved except through the power of eminent domain, approval by the Commission of any court award exceeding in amount such appraised value shall be required prior to the disbursement of any funds in excess of such appraised value. The Commission reserves the right to require that the local sponsor appeal such award if such award is deemed excessive or to allocate a percentage of the court award as provided in Section 2-007.

007 Amount Paid.

007.01 The Commission reserves the right to approve or reject payment for any purchases of any lands, easements, or rights-of-way if based on reports from the local organization or other information available to it, the Commission has reasonable grounds for concern that a project, or any portion of it, may not be completed, it may withhold or limit assistance to the organization for the acquisition of any lands, easements or rights-of-way needed for that project. Provided, however, any Commission action to refuse to assist an organization in paying the costs of acquisition of any interest in land shall not affect the organization's right to reimbursement for costs for which it has become legally obligated prior to such Commission action. In addition, such action shall not affect the organization's right to reimbursement for the cost of land, or interests in land, acquired through condemnation actions commenced prior to the Commission action. Reasonable grounds for concern shall include, but not be limited to, opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local, other state, federal or other sources of funding.

007.02 The amount which will be approved by the Commission for reimbursement from the Water Sustainability Fund shall not exceed the purchase price as defined in Section 2-004.

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007.03 If for any reason the local organization desires to sell any of its interest in real property, the local organization shall first make such request to and obtain approval of the Commission. If for any reason the local organization desires to rent any of its real property, the local organization shall first make such request to and obtain approval of the Director of the Department. The local organization must remit to the Department a pro rata share of the proceeds of any rental income or of any subsequent sale of such property. The pro rata share shall be equal to the percentage of the total cost of acquisition of such property made from any state allocation from the Water Sustainability Fund.

008 Documentation of Purchase. The local organization shall forward to the Department a copy of the deed, easement, court decree (in the case of a condemnation proceeding) or any other document or material deemed by the Department to be necessary for each transaction. Such deed, easement, court decree, etc. shall be verified by the clerk of the court or the register of deeds.

009 State Lien. In instances where the WSF is used to acquire fee title interest in real property, the Department shall file a lien against the property, in the local courthouse, for the purpose of preventing the sale of the property without the prior approval of the Commission, as well as the funds interest in any rental or other income generated by the property.

010 Annual Inspection. At least once each year during construction and once every five years after project close-out, a Department staff member and a representative of the appropriate local organization shall inspect each parcel of land for which fee title has been acquired. A report of the staff member's findings along with any suggestions or recommendations will be submitted to the local organization for follow-up action.

011 Annual Financial Statement. Each local organization holding fee title to lands purchased with Water Sustainability Funds shall submit a complete financial statement to the Department by August 1 of each year. Such required statement shall set forth the income received from such lands and also the expenses incurred in the maintenance, improvement, management, etc. of such lands.

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This financial statement is required in addition to any other statement or accounting required to be submitted by the local organization by law or otherwise.

012 Annual Lease. When appropriate, a Department staff member shall work with a local organization in preparing the annual lease for such property as was acquired, in whole or in part, with Water Sustainability Funds. Unless otherwise approved by the Director, leases shall commence on the first day of March and terminate on the last day of February of the year next ensuing. No lease shall be deemed effective unless and until it has been approved in writing by the Director.

013 Use of Lease Revenues. Rental and lease revenues may be used for reasonable and necessary expenses incurred by the local organization in the management of such lands with prior Department approval. As the Department is responsible for overseeing the management of such lands, the local organization shall consult with the Department prior to such management action and shall keep the Department informed of all matters relevant to property management.

014 Notifying Public Bodies of Proposed Sales. The Department shall notify the Governor of the State and the appropriate public districts, cities, counties, political subdivisions and agencies of the State or of the Federal government of the land(s) scheduled to be sold. Such notification shall indicate the proposed date(s) of sale and shall summarize the process by which public entities may acquire such lands for public purposes.

015 Notice of Intent to Acquire or Retain. Any public district, city, county, political subdivision, or agency of the State or of the Federal government which is interested in acquiring or retaining for public purposes land(s) purchased in whole or in part with Water Sustainability Funds shall notify the Department of such interest.

016 Appraisal and Notification to Public Bodies of Appraised Fair Market Value. Whenever a public entity indicates in accordance with Section 2-017 that it is interested in acquiring or retaining lands purchased in whole or in part with Water Sustainability Funds, the Department shall have an appraisal prepared for such lands in accordance with section 2-1502 R.S. Supp., 2000, as amended, and notify such public entity of the appraised fair market value. Such notification shall indicate the proposed date of sale, the appraised fair market value, and the requirements for purchase or retention by public bodies in accordance with Section 2-020.

017 Acquisition by Public Bodies. Any public district, city, county, political subdivision or agency of the State or of the Federal government which desires to acquire or retain for public purposes land(s) purchased in whole or in part with Water Sustainability Funds shall notify the Department of such desire by the date specified in the notification. A report explaining the public purpose to be made of such property shall be simultaneously submitted to the Department. Such report shall include a description of the public uses to be made of such property, a description of and timetable for improvements, if any, and a discussion of management techniques to be utilized to serve the proposed public purpose. The report shall also document the public entity's legal and financial abilities to acquire or retain such property and to implement the proposed public purpose. If acquisition of such lands for public use by a public body is approved, the Department shall be reimbursed in the amount of the prorated share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid from the Fund and the local organization transferring the title to the acquiring public body shall be reimbursed in the amount of any remaining portion of the appraised fair market value, both reimbursements to occur within 90 days of such approval or approvals. All such proceeds to the Department shall be remitted to the State Treasurer for credit to the Fund. Proceeds from rents and other income shall be split in the same manor.

018 Criteria for Acquisition by Public Bodies.

018.01 Whenever a public entity indicates in accordance with Section 2-019 that it desires to acquire or retain lands purchased in whole or in part with Water Sustainability Funds, the Commission shall determine whether the property should be so acquired or retained or whether it should be offered for sale at public auction in accordance with Sections 024 through 029. In making such determination, the Commission shall consider the following factors:

018.01A The nature of the public purpose for which acquisition or retention is requested and the demand for such purpose in the area to be served thereby.

018.01B The nature of probable alternative uses for such property and their relative importance in the community and the state.

018.01C The adequacy of the property to satisfy the proposed public purpose in comparison to its adequacy to satisfy probable alternative uses.

018.01D The relative economic impacts which could be anticipated in the community because of the proposed public purpose and probable alternative uses.

018.01E The legal and financial abilities of the public body to acquire or retain the property and to implement the proposed public purpose.

018.01F The compatibility of the proposed public purpose with operation and maintenance of the property for the purpose for which it was originally acquired and its consistency with accepted conservation principles.

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018.02 Prior to determining whether the property should be acquired or retained by the public body or offered for sale at public auction, the Commission shall consult with the local organization holding title thereto and other interested organizations and individuals. If the amount invested in such property from the Water Sustainability Fund constituted the full purchase price, the decision of the Commission regarding the purchase or retention of such property by the public body shall be binding on the local organization. If, however, a portion of the original purchase price was contributed by the local organization, such local organization shall have independent authority to disapprove the purchase of such property by another public body, and any such disapproval shall result in the property being offered for sale at public auction as scheduled.

019 Desire to Acquire by Two or More Public Entities. In the event that two or more public entities indicate a desire to purchase or retain the same land or right-of-way, the Commission shall evaluate each separately in accordance with Section 2-020. If following such evaluation, more than one of the proposed purchases by public bodies is deemed preferable to offering the property for sale at public auction, the Commission shall evaluate such proposals on their relative merits to determine which proposal would best serve the public interest.

020 Acquisition or Retention of Less Than Full Parcel.

020.01 The acquisition or retention by public bodies of a parcel of land smaller in size than the parcel scheduled to be offered for sale will be approved only if such purchase or retention would satisfy the criteria of Section 2-020 and if

020.01A It would have no anticipated adverse effect on the marketability of the remainder of the full parcel, and

020.01B No additional public purpose would be served by acquisition or retention by such public body of the remainder of the full parcel.

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020.02 The local organization shall be responsible for any surveys which are deemed necessary because of such acquisition or retention or for providing proper identification of such parcel prior to the sale at auction of the remaining portion of the full parcel. The public body acquiring such parcel shall reimburse the local organization for all actual and necessary costs incurred as a result of such survey and identification.

021 Agreement to Retain in Public Use. As a condition to acquiring or retaining for public purposes any lands acquired in whole or in part with funds from the Water Sustainability Fund, the acquiring or retaining public body shall enter into an agreement with the Department. Such agreement, which shall remain in effect and be controlling as to the public body's utilization and disposition of the property for a period not to exceed the life of the project, shall specify the following terms and conditions:

021.01 The property shall, unless otherwise approved by the Commission, be retained by the public body for the public purposes specified in the report submitted pursuant to Section 2-019.

021.02 No use shall be made of the property which is incompatible with the purposes for which it was originally acquired in whole or in part with funds from the Water Sustainability Fund without prior Commission approval.

021.03 Such public body shall not utilize the property or any part thereof for income production unless such income results from activities that benefit the maintenance of the property or to serving the public purposes for which the property was acquired or retained.

021.04 Any other terms or conditions which the Commission deems appropriate. A copy of such agreement shall be filed by the Department in the register of deeds office of the county in which such land or right-of-way is located.

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022 Method of Sale. When any lands involving these funds are to be sold, whether those lands are to be sold with or without improvements, such sale, unless governed by Sections 2-019 through 2-023 shall be by public auction, sealed bid or other acceptable method. Prior to such sale the Department shall through the local organization:

022.01 Cause an appraisal to be made of such land,

022.02 Retain the services of a public auctioneer,

022.03 Cause legal notice thereof to be published.

023 Public Auctioneers. In retaining the services of a public auctioneer for the sale at auction of any lands purchased in whole or in part with these funds, the Department shall select a public auctioneer, for the services of such public auctioneer, and over-see the contracting of said auctioneer with the local organization. Selection of the auctioneer shall be the responsibility of the Director of the Department. Fees associated with the appraisal, auctioneer, advertising and notice, and any other fees associated with the sale, provided they are approved by the Department in advance, are eligible for reimbursement from the sale proceeds prior to the disbursement split between the Department and the local organization.

024 Sale of Improvements. When any improvements on lands involving these funds are to be sold separately from the land, such sale may be conducted by sealed bids or by public auction. Prior to such sale of improvements, the Department shall cause legal notice thereof to be published pursuant to Section 2-027.

025 Notice of Sales. Notice of all sales governed by these rules shall be published in the county in which such land(s) and/or improvement(s) is (are) located and also in a legal newspaper with statewide circulation. Advertisement/notice shall also be distributed by flyer and/or posters posted in public view, on web sites and any other appropriate method for generating interest in the sale. Such notices shall list and describe the land(s) and/or improvement(s) to be sold and the easements

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and/or rights-of-way, if any, which will be retained by the local organization, and shall state the date, time and place for the opening of sealed bids. If appropriate, such notice shall state the address where sealed bids are to be mailed or delivered, and the deadline for receipt of the same. The terms of payment and any other information that in the particular case would be required to impart adequate notice to all interested parties shall also be provided.

026 Sealed Bids. In order to be eligible for consideration, sealed bids for improvements shall state which improvement(s) the bid is for and shall be accompanied by a certified check or bank draft made out in the full amount of the bid. If any sealed bid is not accepted, the deposit shall be returned to the bidder within thirty days after the day on which the bids are opened. All sealed bids shall be mailed or delivered to the Department. Such bids must be received at least three days prior to the date set for their opening. All sealed bids shall remain sealed until the time set for their opening, at which time the two highest bids shall be read.

027 Conduct of Auction. The public auction for each tract of land to be sold shall remain open for receipt of bids for a minimum of one hour, but may be closed at the end of such time period if there are no reasonable grounds to believe that a higher bid would be received were the auction held open for a longer period of time.

028 Earnest Money Deposit. The highest bid for a tract of land received at public auction shall, in order to be eligible for consideration by the Commission, be accompanied by a check, bank draft, or cash in an amount of not less than twenty percent of the bid.

029 Purchase Agreement. The highest bidder for the purchase of any of the lands governed by these rules shall, after being designated the highest bidder, enter into a purchase agreement with the local organization stating that the balance due shall be paid within thirty days of notification by the local organization of the acceptance of the bid by the Commission. The purchase agreement shall describe all applicable terms for the sale, including all terms specified by the Commission. Failure to comply with this rule or with the conditions of the purchase agreement shall result in the forfeiture of said bidder's deposit.

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030 Approval or Rejection of Bids. The Commission reserves the right to refuse any and/or all bids. At the next regularly scheduled Commission meeting following the closing of all bidding, the Commission shall review the highest bid, considering, if applicable, such factors as the original purchase price, any increases or decreases in land valuation, the present appraised fair market value, and any other criteria which may reflect the adequacy of the bid. If a portion of the original purchase price was contributed by the local organization, such local organization shall be consulted regarding the adequacy of the bid prior to approving or rejecting the same. In the event the Commission approves a bid, it shall direct the local organization to proceed with the sale. Upon receiving full payment, the local organization shall convey title to the purchaser, reserving as applicable, and such interests in the land as are necessary for the local organization to carry out its ongoing responsibilities relative to management of the land or to any improvements constructed thereon or necessary to effect any terms for the sale specified by the Commission. In the event that the Commission determines that a bid is inadequate, the bidder's deposit shall be returned within ten days after such determination, the land shall be leased for an additional year, and the land shall be rescheduled for sale according to the rules hereinabove set forth.

031 Sale Expenses. Any expenses, that have been approved by the Director in advance, which are incurred by the Department or the local organization in conducting this sale shall be subtracted from the sale price prior to a pro rata distribution of such sale proceeds between the local sponsor and the Department in accordance with Section 2-007.03.

DRAFT/FINAL FISCAL IMPACT STATEMENT

Agency: Natural Resources Commission	
Title: 261, new rules	Prepared by: LeRoy W. Sievers
Chapter: 1 - 4	Date prepared: March 19, 2015
Subject: Water Sustainability Fund	Telephone: 402 471-1113

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	()	()	()
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & Description of Impact:

State Agency: Applications for money from the Fund will be submitted to the Department of Natural Resources and then those applications determined to be satisfactory will be reviewed by the Commission. The process of evaluating satisfactory applications by the Commission may require additional or longer meetings of the Commission which would increase its costs. However Laws 2014 LB1098A included money for the Commission so any such costs have already been addressed by the Legislature.

Political
Subdivision: None

Regulated
Public: None

If indeterminable, explain why:

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF RULEMAKING HEARING

NOTICE IS HEREBY GIVEN THAT THE State of Nebraska, Natural Resources Commission (Commission) will hold a public rule-making hearing pursuant to *Neb. Rev. Stat. § 84-907*. The hearing will be held at 10:00 a.m. on April 28, 2015, in conference room Lower Level F of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

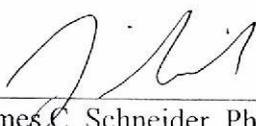
The purpose of the hearing is to take public comments concerning adoption of Commission's rules *Neb. Admin. Code Title 261*, entitled "Rules Governing the Water Sustainability Fund." The proposed rules:

Authorize filing of applications to the Water Sustainability Fund, describes criteria for ranking and scoring by the Commission of applications, and awarding grants and/or loans from the Fund.

The proposed rules are available at the offices of the Secretary of State, Regulations/Licensing Division, Room 1305, State Capitol, Lincoln, Nebraska 68509, and on the Department's website at <http://dnr.nebraska.gov/rules>. The description of the fiscal and other impacts may be inspected and obtained at the Department of Natural Resources, 4th Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. The fiscal impact is expected to be none.

All interested persons are invited to attend and make oral or written comments at the hearing. Interested persons may also submit written comments prior to hearing which will be made part of the hearing record at the time of hearing if received by the Department of Natural Resources on or before April 28, 2015. If auxiliary aids or reasonable accommodations are needed to participate in the hearing or if hearing impaired, please call LeRoy Sievers at (402) 471-1113 by April 21, 2015.

Date: March 19, 2015



James C. Schneider, Ph.D., Acting Director
Department of Natural Resources



Pete Ricketts
Governor

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
James C. Schneider, Ph.D.
Acting Director

March 19, 2015

IN REPLY TO:

Senator John Wightman, Chair
Executive Board of the Legislative Council
State Capitol Building, Room 2010
Lincoln, NE 68509

Subject: *Nebr. Admin. Code Title 261*

Dear Senator Wightman:

Enclosed is a copy of the draft *Nebr. Admin. Code Title 261*.

Also enclosed is a copy of the information provided to the Governor through the Policy Research Office, regarding the proposed rule.

Also enclosed is a copy of the Notice of Rulemaking Hearing that is being published in the Omaha World-Herald.

If you have any questions regarding this matter, please contact me at my direct dial number (402) 471-1113. Thank you for your assistance and cooperation in this matter.

Sincerely,

LeRoy W. Sievers
Legal Counsel

Enclosures

legal/legal documents/rules/Title 261/2015



NEBRASKA NATURAL RESOURCES COMMISSION

TITLE 261 – RULES GOVERNING THE
ADMINISTRATION OF THE
WATER SUSTAINABILITY FUND

DRAFT

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA NATURAL RESOURCES COMMISSION
TITLE 261
RULES GOVERNING THE
ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Adopted _____, 201_

NEBRASKA NATURAL RESOURCES COMMISSION
 TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE
 WATER SUSTAINABILITY FUND

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TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER
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NEBRASKA NATURAL RESOURCES COMMISSION
 TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER
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TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER
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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

TITLE 261 – NEBRASKA NATURAL RESOURCES COMMISSION
RULES GOVERNING ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 1 – GENERAL PROVISIONS

001 Purpose and Effect of Rules. These rules are adopted for the purpose of meeting the goals of the Nebraska Water Sustainability Fund. The Water Sustainability Fund shall be administered by the Natural Resources Commission (Commission) to provide financial assistance to eligible projects, programs or activities that lead to sustainability of Nebraska's water resources that promotes healthy watersheds, improves water quality and protects the ability of future generations to meet their water needs. In a manner consistent with these rules and regulations and the governing Statutes, the Commission shall administer the Water Sustainability Fund to assist projects, programs or activities that meet the goals and are of the types of projects provided for herein.

001.01 The goals of the Water Sustainability Fund are to:

- (1) Provide financial assistance to programs, projects, or activities that increase aquifer recharge, reduce aquifer depletion, and increase streamflow;
- (2) Remediate or mitigate threats to drinking water;
- (3) Promote the goals and objectives of approved integrated management plans or ground water management plans;
- (4) Contribute to multiple water supply management goals including flood control, reducing threats to property damage, agricultural uses, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources;
- (5) Assist municipalities with the cost of constructing, upgrading, developing, and Replacing sewer infrastructure facilities as part of a combined sewer overflow project;
- (6) Provide increased water productivity and enhance water quality;
- (7) Use the most cost-effective solutions available;

(8) Comply with interstate compacts, decrees, other state contracts and agreements and federal law.

001.02 The above goals for the Water Sustainability Fund can best be met with programs, projects or activities in the following categories:

- (1) Research, data and modeling;
- (2) Rehabilitation or restoration of water supply infrastructure, new water supply infrastructure or water supply infrastructure maintenance or flood prevention for the protection of critical infrastructure;
- (3) Conjunctive management, storage and integrated management of ground water and surface water;
- (4) Compliance with interstate compacts or agreements or other formal state contracts or agreements or federal law.

001.03 Under no circumstances shall these rules and regulations be construed as a limitation or restriction upon the exercise of any proper discretion that is vested in either the Director or the Commission, nor shall they in any event be construed to deprive the Director or the Commission of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data or information which may be required for the proper administration of the Fund.

002 Definitions. As used in these rules, the terms listed below shall have the meanings noted:

002.01 Accrued Revenues. “Accrued revenues” shall mean income from sales, rents and other sources of revenue returned to the Fund;

002.02 Allocation. “Allocation” shall mean the overall financial limit authorized by the Commission for a project;

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Chapter 1

002.03 Applicant. "Applicant" shall mean any state agency or person or entity eligible to apply for financial assistance from the Fund;

002.04 Appropriation. "Appropriation" shall mean the amount of funding approved by the Legislature and authorized by the Governor for the Fund;

002.05 Cap. "Cap" shall be set legislatively for the Fund and shall mean the amount of allocation that can be awarded by the Commission in excess of obligation;

002.06 Combined Sewer Overflow Project. "Combined sewer overflow project" shall mean a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environmental Quality;

002.07 Commission. "Commission" shall mean the Nebraska Natural Resources Commission created pursuant to Section 2-1504;

002.08 Cost Effectiveness. "Cost effectiveness" shall mean a systematic quantitative method for comparing the costs of alternative means of achieving the same stream of benefits or a given objective;

002.09 Current Year Appropriations. "Current Year Appropriations" shall mean appropriations from the legislature for the current fiscal year which may include accrued revenues;

002.10 Department. "Department" shall mean the Nebraska Department of Natural Resources created pursuant to Sections 61-205 and 81-101;

002.11 Director. "Director" shall mean the Director of the Department Natural Resources as provided in Section 81-102;

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Chapter 1

002.12 Eligible Costs. "Eligible Costs" shall mean the direct project cost which would otherwise be borne by the applicant if the Water Sustainability Fund was not available. Direct project cost is deemed to include any local match required by federal or other non-state funding sources, but exclude project costs paid or reimbursed by federal and other non-state entities, project funding received directly or indirectly from other state sources plus any associated local match requirement, costs for operation and maintenance, debt interest, applicant project administration and management, and all discretionary costs such as lobbying, entertainment, etc.;

002.13 Fund. "Fund" shall mean the Nebraska Water Sustainability Fund created by Section 61-222;

002.14 Governing Body. "Governing Body" shall mean the individual or group of individuals which are empowered by law to govern the business of an applicant;

002.15 Intangible Benefits. "Intangible Benefits" shall mean benefits, either primary or secondary, that cannot be expressed in monetary terms;

002.16 Large Project. A project with a funding request of greater than \$250,000;

002.17 Obligation. "Obligation" shall mean actual dollars made available by the Commission to a project for reimbursement;

002.18 Political Subdivision. "Political Subdivision" shall mean any political subdivision of the State of Nebraska to which has been granted the authority to develop water and related land resources, including, but not limited to, a metropolitan utilities district, natural resources district, irrigation district, public power and irrigation district, reclamation district, county, and any municipal corporation, village, or city, whether operating under home rule charter or under the general laws of the State of Nebraska;

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Chapter 1

002.19 Primary Benefits. "Primary Benefits" shall mean net values attributable to a project of increases in products and services and of reductions in costs, damages, or losses of primary beneficiaries;

002.20 Program, Project and/or Activities. "Program, Project and/or Activities" shall mean any structural or non-structural undertaking for which assistance from the Fund is requested. Unless the context otherwise requires, no distinction is intended between such terms and they may be used interchangeably for purposes of administration of these rules;

002.21 Program, Project and/or Activity Proposal. "Program, Project and/or Activity proposal" or "proposal" or "application" shall mean a proposal which is submitted seeking financial assistance from the Fund;

002.22 Project Engineer or Project Director. "Project Engineer or Project Director" shall mean any engineer, engineering firm, or other person, persons or firm retained or employed by the applicant to provide professional engineering or other professional or technical services during the planning, design, and construction of the proposal;

002.23 Secondary Benefits. "Secondary Benefits" shall mean net values to persons other than primary beneficiaries as a result of economic activity induced by or stemming from a program, project and/or activity;

002.24 Separable Components. "Separable components" shall mean portions of a program, project and/or activity that can be undertaken and justified independently;

002.25 Sewer Separation Project. "Sewer separation project" shall mean funding to combined sewer overflow projects.

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Chapter 1

002.26 Small Project. "Small project" shall mean a project with a total funding request of \$250,000 or less. The fund for small projects shall equal 10% of current year appropriations plus any carry forward approved by the Commission.

002.27 State Agency. "State Agency" shall mean any agency, board, commission or other office of state government to which has been granted the authority to develop the state's water and related land resources;

002.28 Tangible Benefits. "Tangible Benefits" shall mean benefits, either primary or secondary, that can be expressed in monetary terms;

002.29 Total Net Allocations. "Total net allocations" shall mean unspent appropriations from prior years and Current Year Appropriations minus Sewer Separation Project Allocations;

002.30 Water Productivity. "Water productivity" shall mean water use to increase water sustainability;

002.31 Water Sustainability. "Water Sustainability" shall mean water use is sustainable when current use promotes healthy watersheds, improves water quality, and protects the ability of future generations to meet their needs;

002.32 Water Sustainability Fund Cap. "Water Sustainability Fund Cap" shall mean a financial cap that may be established by the legislature on limiting the approval of any project which would cause the funding from the Fund to exceed the cap.

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Chapter 1

003 Types of Assistance. Eligible applicants for financial assistance from the Fund may receive such assistance in the form of grants, loans, or any combination thereof, or through the direct acquisition by the state of interests in eligible programs, projects and/or activities. The form of assistance which may be allocated to a program, project and/or activity shall be determined utilizing the following criteria:

003.01 Grants. Funding may be made as grants to applicants when it is determined that such an allocation will not be subsequently recovered from revenue or receipts and when the program, project and/or activity, or separable portion thereof, appears to be of general statewide public benefit thereby making reimbursement of such money from the applicant's funds inappropriate or impossible, or when the funds are intended for a state or to meet the requirements for matching a federal grant. If only a portion of the program, project and/or activity meets the above criteria, only that portion will be eligible for a grant. In determining the appropriateness of a grant the considerations of the Director shall include the extent of the area over which the anticipated benefits will accrue and whether equitable distribution of the costs of the program, project and/or activity can be accomplished without a grant.

003.02 Loans. Funding in the form of loans to applicants for any program, project and/or activity or any part thereof consistent with the purposes of the Fund which will directly generate revenue or receipts or which can be anticipated to culminate in a program, project and/or activity which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment appropriate.

Title 261
Chapter 1

003.03 Acquisition of State Interests. Interests in water and related land resources projects may be acquired by the Department, upon approval by the Commission, in the name of the state with moneys from the Fund when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. The Department, upon approval by the Commission, may also acquire interests in water resources projects in the name of the state to meet future demands for usable water.

004 Interest Rate. The rate of interest payable on loans from the Fund shall be determined annually prior to October 1 of each fiscal year. Such rate of interest shall be computed by averaging the yields, as determined by a readily available state and local bond index, such as the state and local bond rates available from the Federal Reserve System, Board of Governors issued nationally for the three previous fiscal years and by rounding off such average to the nearest one-eighth percent. The rate of interest payable on a loan for a specific program, project and/or activity shall be the rate in effect for the fiscal year in which the Commission approves the program, project and/or activity for a loan allocation. Such rate shall remain in effect throughout the repayment period determined to be appropriate for such program, project and/or activity.

005 Periodic Consultation. Periodically the Commission will request that the following entities submit suggestions to the Commission on funding and planning for water programs, projects or activities: the Department of Natural Resources, the University of Nebraska, the Department of Environmental Quality, the Nebraska Environmental Trust Board and the Game and Parks Commission.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

Title 261 – NATURAL RESOURCES COMMISSION

RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 2 – APPLICATION PROCEDURES AND REQUIREMENTS

001 Filing Fees. No filing fee is required to accompany any program, project and/or activity proposal or any application for assistance from the Fund.

002 Filing Location. All proposals, applications or other documents or instruments supplied by an applicant in connection with a request for financial assistance from the Fund shall be filed with the Director.

003 Application Procedure. If the applicant decides to submit an application, the number and format of the application shall be specified by the Director.

004 Engineering and Technical Feasibility.

004.01 A structural proposal shall be considered feasible when it can and will be designed, constructed, and operated to accomplish the purpose(s) for which it was planned utilizing accepted engineering, geohydrologic and other technical principles and concepts. Engineering and technical data and information to be provided in the feasibility report should include, but is not limited to, the following:

004.01A A detailed discussion of the plan of development selected for the proposal;

004.01B A description of all field investigations made to substantiate the feasibility report;

004.01C Maps, drawings, charts, tables, etc., used as a basis for the feasibility report;

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004.01D A description of the water and land rights associated with the proposal and pertinent water supply and water quality information, if appropriate;

004.01E A detailed discussion of each component of the final plan preparation including, when applicable:

004.01E1 Required geologic investigation;

004.01E2 Required hydrologic data;

004.01E3 Design criteria for final design including, but not limited to, soil mechanics, hydraulic, hydrologic, structural, embankments and foundation criteria.

004.02 A non-structural proposal shall be considered to be technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned. Data necessary to establish the technical feasibility should include, but is not limited to the following:

004.02A A detailed discussion of the plan of development designed for the proposal, including techniques to be utilized in all aspects of the proposal;

004.02B A description of field or research investigations utilized to substantiate the project conception;

004.02C A description of the water and/or land rights necessary for proposal continuation, if applicable;

Title 261
Chapter 2

004.02D A discussion of the anticipated effects, if any, of the proposal upon the development and/or operation of existing or envisioned structural measures including a brief description of any such measure.

005 Economic Feasibility. Except as otherwise specified by subsection 005.04 or subsection 005.05 of this section, a proposal is economically feasible if primary tangible benefits exceed project costs. In addition, for proposals for which \$100,000 or more is requested from the Fund, each proposal's purpose in a multi-purpose proposal must provide benefits equal to or greater than its separable or specific cost as specified by the Director and there must be no known means of accomplishing the same purpose or purposes more economically. The Director and the Commission may also require that separable proposal features or increments have benefits which equal or exceed their costs. All costs and benefit data reported by the applicant will be based upon current data and sources for all data must be documented. Certain commodity prices, recreation benefit prices, and wildlife prices will be prescribed by the Director. The Director may also prescribe other cost and benefit information necessary for completion of the feasibility report. The period of analysis for economic feasibility studies shall be fifty (50) years or with the discretion of the Director, up to one hundred (100) years or the life of the proposal, whichever is less.

005.01 Cost Information. The application shall include all relevant cost information including, but not limited to, all actual or anticipated costs for the feasibility study, the engineering and inspection costs, capital construction costs, annual operation and maintenance costs, and annual replacement costs. Cost information shall also include the estimated construction period as well as the estimated proposal life.

005.02 Benefit Information. Only primary tangible benefits may be counted in providing the monetary benefit information. In a multi-purpose proposal, the benefits will be estimated for each purpose and displayed by year for the proposal life. Intangible and secondary benefits of the proposal should be described for consideration and evaluation by the Director and the Commission. Benefit measurement techniques and criteria shall be provided to the applicant by the Director.

005.03 Cash Flow Stream. All benefit and cost data will also be presented in a table form to indicate the annual cash flow for the life of the proposal, not to exceed 100 years. A form for so indicating the annual cash flow shall be supplied by the Director.

005.04 Rate-of-Return on Investment. The cost and benefit data expressed in the cash flow stream will be utilized by the Director to calculate the rate-of-return on the investment. The rate-of-return on the investment is the discount rate applied to future benefits and costs at which costs and benefits become equal and the net present worth of the proposal cash flow is zero. A minimum rate-of-return for a proposal to be considered economically feasible is 3%.

005.05 Other Methods. In the case of proposals for which there is no generally accepted method for calculation of primary tangible benefits and if the proposal will increase water sustainability, the economic feasibility of such proposal shall be demonstrated by such method as the Director and the Commission deem appropriate.

006 Financial Feasibility. A proposal is financially feasible if sufficient funds can be made available to complete the proposal, and if sufficient annual revenues can be obtained to repay the reimbursable costs and to operate, maintain, and replace the proposal. When a loan is involved, financial feasibility requires assurance that the proposals can be adequately operated, maintained, and replaced and that the loan can be repaid during the repayment life of the proposal.

If a loan is requested, applicant shall also supply a complete year-by-year repayment schedule in such detail as directed by the Director.

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Chapter 2

007 Combined Sewer Overflow Project Application. If an application is from a municipality for assistance with the cost of constructing, upgrading, developing and replacing sewer infrastructure facilities as a part of a combined sewer overflow project, as defined in this Title, it must contain in its application a demonstration of need for financial assistance from the Fund and the population of the municipality.

008 Ineligible Natural Resources Districts. Natural Resources Districts which have not adopted or are not currently participating in the development of an integrated management plan pursuant to Neb. Rev. Stat. §46-715(1)(a) or (b) are not eligible to apply for assistance from the Fund.

009 Ineligible Applications or Components of Applications.

009.01 An application for financial assistance in any form to assist in paying the cost of a feasibility study is not eligible for assistance from the Fund.

009.02 Unless an application is submitted which explicitly includes a request for financial assistance to obtain a necessary government issued permit, right or authorization (permit) such as a 404 permit, surface water right, consultation with the Nebraska Game and Parks Commission regarding nongame threatened or endangered species, an application shall be ineligible for consideration if the applicant does not possess at the time the application is submitted all of such permits which are required for the project to be completed.

Title 261
Chapter 2

009.03 Interest owed on borrowed money is not a cost which may be included in an application nor will such costs be reimbursed.

009.04. Costs incurred by an applicant prior to approval of an application by the Commission may not be included in project costs and will not be paid or reimbursed. If a project is ultimately approved, application costs shall be considered as part of the local cost share.

009.05. Operation and/or maintenance expenses will not be costs of a project which can be reimbursed and may not be included in an application.

009.06. A rate of inflation may not be used as a component of project costs which are subject to reimbursement and may not be included in an application.

009.07. After deducting all other sources of funding contributed to offset costs of the project (such as federal, state, Nebraska Environmental Trust and/or others regardless of the method(s) of recording and receiving such funds), financial assistance from the Fund will be 60% of the remaining costs which otherwise would have to be paid from local sources.

009.08. An applicant may use in-kind services for a portion of its local cost share but only if such use is preapproved by the Commission in writing and only upon the applicant showing how the use of in-kind services will result in lower project costs (For example a contractor's bid for the identical services is higher than the proposed value of the in-kind services).

Title 261
Chapter 2

010 Application Filing Dates. Applications must be submitted to the Director only between the dates of July 15 and August 1, except for the initial period following the date these rules become effective, the beginning date shall be the 90th day after the rules become effective and the ending date for acceptance of applications shall be to and including 14 days thereafter, for a total of 15 days.

011 Information Required in an Application. In addition to other information that may be required to be included in an application, applications must specify:

the amount requested as a loan, if any, and the amount requested as a grant, if any,

if the amount requested is for \$250,000 or less,

if the amount requested is more than \$250,000,

if the project will not be completed in one year or less, the amount of funding requested in each year for which the project is requesting funding.

012 Returned Applications. Applications found by the Director to be satisfactory and reviewed by the Commission but not approved for funding will be denied and the applicant informed. Such applications may be resubmitted to the Director in the next application cycle and if the applicant chooses to do so, then the applicant may either certify that there are no changes in the application or the applicant must include a narrative page describing any changes in the application compared to the prior application.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

Title 261 – NATURAL RESOURCES COMMISSION

RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 3 - COMMISSION ACTION AND REQUIREMENTS

001 Action on the Report of the Director. Following receipt of a report and determination prepared by the Director that an application has been determined to be satisfactory, the Commission may request additional information from the Applicant.

001.01 At the first regular meeting following receipt of the Director's report and recommendations, the Commission will forward all such applications to the Application Review Committee(s) which will examine each application and rank and score each application based upon the following criteria: The following criteria shall be given a score of 0, 2, 4 or 6 points:

- (1) Remediates or mitigates threats to drinking water;
- (2) Meets the goals and objectives of an approved integrated management plan or ground water management plan;
- (3) Contributes to water sustainability goals by increasing aquifer recharge, reducing aquifer depletion, or increasing streamflow;
- (4) Contributes to multiple water supply goals, including, but not limited to, flood control, agricultural use, municipal and industrial uses, recreational benefits, wildlife habitat, conservation of water resources, and preservation of water resources;
- (5) Maximizes the beneficial use of Nebraska's water resources for the benefit of the state's residents;
- (6) Is cost-effective;
- (7) Helps the state meet its obligations under interstate compacts, decrees, or other state contracts of agreements or federal law;

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- (8) Reduces threats to property damage or protects critical infrastructure that consists of the physical assets, systems, and networks vital to the state or the United States such that their incapacitation would have a debilitating effect on public security or public health and safety;

and the following criteria shall be awarded 0, 1, 2, or 3 points:

- (1) Improves water quality;
- (2) Has utilized all available funding resources of the local jurisdiction to support the program, project, or activity;
- (3) Has a local jurisdiction with plans in place that support sustainable water use;
- (4) Addresses a statewide problem or issue;
- (5) Contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources;
- (6) Contributes to watershed health and function;
- (7) Uses objective described in the annual report and plan of work for the state water planning and review process issued by the department.

Applications which are requesting funds which are explicitly for the purpose of complying with a federal mandate will be awarded an additional 2, 4, or 6 points.

001.02 The A Review Committee or Committees will be comprised of members of the Commission and will be appointed to such committee(s) by the Executive Committee.

001.03 The Application Review Committee(s) shall make a preliminary scoring for each application based upon the scoring criteria specified in this chapter. The scoring recommendation shall be reviewed by the Commission and it may either adopt the recommendation of the committee or only upon an affirmative vote of at least 14 members of the Commission revise the recommendation.

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001.03.01 For applications for small projects, a total of 10% of the appropriation to the Fund for the year is set aside and funding to such applications will be provided for the applications in such range considered separately from other applications.

001.03.01.01 If any funds set aside for small projects remains from that funding cycle, such remaining unobligated balance may be carried over or may be made available for other applications.

001.04 An application as defined in Chapter 2 007, which is recommended for further consideration by the Director, shall be reviewed by the Commission for a determination of an adequate demonstration of need by the applicant, a determination of the form of the allocation made by the Director and the percentage of the population served by the applicant compared to the total population served by all of the approved for funding applications, as defined in Chapter 2 007. All of the applications reviewed and approved by the Commission pursuant to this subsection shall be awarded their respective proportion of the amount of funds appropriated to the Fund pursuant to Neb. Rev. Stat. §2-1507 (2).

001.04.01 Subsequent to the initial year in which approval for funding of applications as defined in Chapter 2 007 is made, renewed applications in subsequent years must state that the applicant is still qualified to apply because its plan is still approved by the Department of Environmental Quality, it must state if it still has need for financial assistance and it must state its current estimated population. Funding to all then approved applications as defined in Chapter 2 007 will be based upon then current funds and populations served.

001.04.02 Applications filed pursuant to Chapter 2 007 will not be scored.

001.04.03 Applications filed pursuant to chapter 2 007 are not considered to be part of any cap.

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001.05 Commission action on recommendations made by the Director, as to the form of grant, loan or combination thereof, shall be in accordance with such recommendations.

001.06 A Commission member shall be ineligible to participate in the action of the Commission concerning an application for a grant or a loan if such member is a member of the governing body, otherwise represents the applicant for financial assistance or otherwise has a conflict of interest. All Commission members shall be eligible to vote on proposals involving state acquisition of interests in proposals.

002 Funding. After scoring and ranking applications that the Director finds to be satisfactory, the Commission will make the following determinations to establish the amount of allocation available to utilize in approving new projects and to obligate funds for previously approved projects.

002.01 Fund Allocations. The Commission shall allocate up to 10% of the current year appropriation for Small Projects with the remainder available for Large Projects. The Commission is not authorized to approve an allocation for a project that would cause the Cap to be exceeded.

002.02 Small Project Funding Allocation. The Commission shall allocate funds for current year Small Projects starting with the highest scored project and proceeding until all such projects have been allocated funds or until the available allocation has been utilized or until the Commission sets a limit on current year funding for Small Projects. Any remaining amount may be eligible to be carried over or be available to allocate to Large Projects subject to Commission approval.

002.03 Large Project Funding Allocation/Obligation. The Commission shall obligate funds for Large Projects which have been previously approved and which have complied with the funding requirements in sections 005 and 006. The Commission shall next consider funding for current year projects starting with the highest scored project and proceeding until available allocations for Large Projects have been utilized.

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002.04 Project Obligation. Prior to the Commission's action obligating funds for a given fiscal year, the Department may invite the sponsors of all projects for which additional funding obligation has been requested for that fiscal year to appear before the Commission to address the manner in which their projects relate to the factors to be considered by the Commission. The Commission shall then consider and approve obligations for Small Projects and Large Projects in accordance with the allocation approved in section 002.02 and 002.03.

003 Project Totals Exceeding Balance in Fund. Notwithstanding any approval for funding, an applicant shall not under any conditions be entitled to reimbursement for any project costs until funds have been obligated for reimbursement of costs incurred by the applicant on such project. Costs paid, accrued or authorized by an applicant prior to funds being obligated for such projects and costs paid, accrued or authorized by an applicant for portions of project development in excess of those portions for which funds have been obligated shall be incurred at the risk of the applicant and such applicant shall not be entitled to reimbursement of such costs at any time without specific Commission approval for such reimbursement.

004 Annual Availability of Funds. The extent, if any, to which financial assistance will be provided to such project in any one fiscal year shall be in accordance with and contingent upon the availability of funds and Commission action obligating funds for such project in such fiscal year in accordance with sections 3-005 or 3-006.

005 Determination of Fiscal Year Financial Needs.

005.01 No later than March 31 of each year each applicant willing to utilize and capable of utilizing either an initial or an additional obligation of funds for a project which is not fully obligated shall present a report to the Commission indicating:

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005.01A The estimated time schedule for beginning, ongoing work and completing the project.

005.01B The estimated time schedule and expenditure amount for commencing, continuing and completing reimbursement requests.

005.01C Any such request shall be accompanied by an estimate of the costs for completing work identified in the request.

005.01D Any extenuating circumstances that may delay completion of the project or any other factors which may affect the sponsor's ability to complete the project.

006 Apportioning and Setting Aside Funds. Prior to July 1 of each year the Commission shall obligate available funds for projects eligible for additional funding assistance. In making such apportionments, the Commission shall consider the following:

006.01 Whether it is reasonable to expect that each project for which funding is requested is capable of being commenced within the next fiscal year;

006.02 Whether any of the projects proposed for additional funding, in the opinion of the Commission, be delayed without significant adverse effects on the total project;

006.03 Whether there are reasonable grounds for concern that the project, or portions of it, may not be completed;

006.04 The water and related resources needs addressed by each project;

006.05 The urgency of need for each project;

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006.06 The extent of benefit provided by each project; and

006.07 How to make the most efficient utilization of the available funds.

Prior to the Commission's action obligating funds for a given fiscal year, the Department shall invite the sponsors of all projects for which additional funding obligation has been requested for that fiscal year to appear before the Commission to address the manner in which their projects relate to the factors to be considered by the Commission.

007 Reductions in Allocations. An applicant may no later than March 31 of each year submit reports containing an update of the estimated time schedule for beginning and completing the approved project and any anticipated delays to implementing the project or obtaining sufficient funds to meet the applicant's financial obligations for the project. The Commission shall review all such reports, if any, which have been submitted and any other relevant information available to it and shall, if appropriate and consistent with the funding preferences established in state statute, make reductions in the amount allocated and obligated for any approved application. No amount previously allocated and obligated in accordance with section 002 of this chapter shall be decreased unless:

007.01 The applicant has indicated a decrease in needs;

007.02 The Commission, based on information contained in the applicant's report submitted in accordance with these rules or other information available to it, finds that there are reasonable grounds for concern that the project may not be completed;

007.03 The project is abandoned or significantly delayed;

007.04 The Department fails to receive a re-appropriation of unexpended funds;

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007.05 The appropriation for the Water Sustainability Fund is reduced by subsequent legislative act, or;

007.06 The Commission determines the project no longer meets the criteria for funding eligibility contained in the Water Sustainability Fund or the Commission's rules.

In case of any such findings, the Commission may modify, suspend or revoke any previous action to allocate and obligate funds for the project. Provided, however, any action to modify, suspend, or revoke any previous allocation shall not affect the applicant's right to reimbursement for costs which it has incurred or for which the Fund has become legally obligated prior to such Commission action. In addition, such action shall not affect the applicant's right to reimbursement for the cost of land or interests in land acquired through condemnation actions commenced prior to the Commission action to modify, suspend, or revoke an allocation.

008 Contractual Arrangements. State funds will not be advanced to any applicant pursuant to an approved loan or grant until a contract between the applicant and the Department setting forth terms and conditions of such loan or grant has been executed.

009 Disbursements. From the annual appropriations by the Legislature to the Fund and subsequent quarterly limitations that may be imposed by the Department of Administrative Service's Budget Office, the Director shall disburse no more often than once each month, such funds as are necessary to reimburse or pay, in the proper proportion, all eligible costs incurred by the applicant, if any. All such costs shall be documented by the applicant in the manner as is directed by the Director. In the event that a proposal has been approved for combination grant and loan, each disbursement shall, unless otherwise specified by the Commission, constitute a disbursement of loan and grant funds in the same proportion as the approved allocations.

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010 Inspection During and After Construction. The Director or his or her designated representative(s) shall have the privilege of inspecting the construction of any project at any time in order to ensure that plans and specifications are being followed, and that the works are being constructed in accordance with sound engineering and technical principles and practices, but such inspection shall never subject the State of Nebraska to any action for damages. The Director may bring to the attention of the applicant and the project engineer any variances from the approved plans and specifications. The applicant and the project engineer or project director shall initiate necessary corrective action whenever notified by the Director of any such variances and if they are not completed as directed, then the project will no longer be eligible for funding. Subsequent to the completion of construction, project investigation and inspection may be conducted by the Department during the life of the project and may be prescribed pursuant to the contract between the applicant and the Department.

011 Changes in Scope of Approved Proposals. The applicant shall promptly report all increases in the cost of a project and any proposed additions, deletions, or modifications or any change in the purpose or purposes of the project by submitting to the Commission and to the Director an amendment to the formal application and feasibility report, if any. Commission approval of any change in the scope, purpose, or plan for development of the project, and any increase in the allocation for the project shall be required. Any proposed change in the scope, purpose, or plan of development for the project, any request for an increase in the allocation for the project, or any cost increase, regardless of whether an increase in the allocation for the project is requested shall be referred to the Director for his or her review and recommendation regarding whether the project still meets the criteria for funding eligibility contained in the Fund or the Commission's rules.

012 Project Reporting. Projects which are granted financial assistance from the Fund must submit on or before April 1st, an annual report containing information detailing project progress and anticipated progress for the year.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

Title 261 – NATURAL RESOURCES COMMISSION

RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 4 – FUND ADMINISTRATION

001 Eligibility for Funds. To be eligible for land rights assistance from the Water Sustainability Fund, the local organization, defined as public districts, cities, counties, political subdivisions and agencies of the State or of the Federal government, must first enter into an agreement with the Department. Such agreement, which shall be on a form supplied by the Department, shall provide that the local organization will abide by the law and rules and regulations governing administration of the Water Sustainability Fund. In addition, the following conditions must have been met:

001.01 The Department has either participated in the planning or reviewed the plans and has approved the program of work;

001.02 The local organization has identified to the Department the location and purpose of purchasing lands, easements, and rights-of-way;

001.03 The local organization and the Department have entered into an agreement on the administration and expenditure of these state funds, rental and income generation requirements and limitations, as well as specific limitations against disposal of said property;

001.04 The purchase price of the land, easement, or right-of-way has been established either by a court or by at least one registered, licensed, certified residential, or certified general real estate appraiser approved by the Department; and

001.05 The local organization has given assurance to the Department that it has obtained any water rights or other permits required under state or federal law and complied with all other applicable state laws.

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002 Acceptance of Appraisals. An appraisal must accompany each reimbursement request for funds. Such appraisal shall be supplied at no cost to the state. In the event the Commission or the Department is of the opinion that any appraisal is subject to question, the Department may hire an appraiser at state expense, to aid the Commission in making its decision whether or not to approve such appraisal.

003 Damage to Crops. When applicable, the local organization shall also cause an appraisal to be made of all crops which are growing on the land to be purchased. Such crop appraisal shall also be subject to Commission approval and any rule, hereinabove set forth, applicable to appraisals in general. The local organization shall give the landowner the option of (1) retaining his or her interest in the crops, in which event he or she shall be given a reasonable period of time in which to harvest the same; or (2) selling such interest along with the land.

004 Purchase Price and Total Cost of Acquisition. For all purposes of the administration of the Water Sustainability Fund, the terms "purchase price" and "total cost of acquisition" shall, in the absence of a condemnation proceeding, mean the amount actually paid by the local organization or the amount established by an appraisal whichever is the lesser amount. In the event of a condemnation proceeding, such terms shall mean the amount of damages awarded by a court of competent jurisdiction. Payments by a local organization in excess of any purchase price so established shall be the sole responsibility of the local organization and shall have no effect upon the distribution of any proceeds subsequently realized from the sale of the land or right-of-way.

005 Title Insurance and Other Relevant Documents. Before any funds are paid out to the local organization, such organization must furnish to the Department a copy of a title insurance policy on the property or interest to be acquired, whether through purchase or condemnation. The title insurance policy must be from an insurance company authorized to provide such insurance in Nebraska. The local organization shall also furnish the Department with a copy of any completed purchase agreement (signed by both parties), a deed or easement with seal or filing stamp, the closing statement signed by both parties, all cancelled checks and any other written document

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demonstrating the terms and conditions of the proposed purchase. All reimbursement requests shall be itemized and packaged in the order of the itemized listing.

006 Eminent Domain Awards. If a local organization is unable to acquire an interest in real property for which an appraisal has been approved except through the power of eminent domain, approval by the Commission of any court award exceeding in amount such appraised value shall be required prior to the disbursement of any funds in excess of such appraised value. The Commission reserves the right to require that the local sponsor appeal such award if such award is deemed excessive or to allocate a percentage of the court award as provided in Section 2-007.

007 Amount Paid.

007.01 The Commission reserves the right to approve or reject payment for any purchases of any lands, easements, or rights-of-way if based on reports from the local organization or other information available to it, the Commission has reasonable grounds for concern that a project, or any portion of it, may not be completed, it may withhold or limit assistance to the organization for the acquisition of any lands, easements or rights-of-way needed for that project. Provided, however, any Commission action to refuse to assist an organization in paying the costs of acquisition of any interest in land shall not affect the organization's right to reimbursement for costs for which it has become legally obligated prior to such Commission action. In addition, such action shall not affect the organization's right to reimbursement for the cost of land, or interests in land, acquired through condemnation actions commenced prior to the Commission action. Reasonable grounds for concern shall include, but not be limited to, opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local, other state, federal or other sources of funding.

007.02 The amount which will be approved by the Commission for reimbursement from the Water Sustainability Fund shall not exceed the purchase price as defined in Section 2-004.

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007.03 If for any reason the local organization desires to sell any of its interest in real property, the local organization shall first make such request to and obtain approval of the Commission. If for any reason the local organization desires to rent any of its real property, the local organization shall first make such request to and obtain approval of the Director of the Department. The local organization must remit to the Department a pro rata share of the proceeds of any rental income or of any subsequent sale of such property. The pro rata share shall be equal to the percentage of the total cost of acquisition of such property made from any state allocation from the Water Sustainability Fund.

008 Documentation of Purchase. The local organization shall forward to the Department a copy of the deed, easement, court decree (in the case of a condemnation proceeding) or any other document or material deemed by the Department to be necessary for each transaction. Such deed, easement, court decree, etc. shall be verified by the clerk of the court or the register of deeds.

009 State Lien. In instances where the WSF is used to acquire fee title interest in real property, the Department shall file a lien against the property, in the local courthouse, for the purpose of preventing the sale of the property without the prior approval of the Commission, as well as the funds interest in any rental or other income generated by the property.

010 Annual Inspection. At least once each year during construction and once every five years after project close-out, a Department staff member and a representative of the appropriate local organization shall inspect each parcel of land for which fee title has been acquired. A report of the staff member's findings along with any suggestions or recommendations will be submitted to the local organization for follow-up action.

011 Annual Financial Statement. Each local organization holding fee title to lands purchased with Water Sustainability Funds shall submit a complete financial statement to the Department by August 1 of each year. Such required statement shall set forth the income received from such lands and also the expenses incurred in the maintenance, improvement, management, etc. of such lands.

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This financial statement is required in addition to any other statement or accounting required to be submitted by the local organization by law or otherwise.

012 Annual Lease. When appropriate, a Department staff member shall work with a local organization in preparing the annual lease for such property as was acquired, in whole or in part, with Water Sustainability Funds. Unless otherwise approved by the Director, leases shall commence on the first day of March and terminate on the last day of February of the year next ensuing. No lease shall be deemed effective unless and until it has been approved in writing by the Director.

013 Use of Lease Revenues. Rental and lease revenues may be used for reasonable and necessary expenses incurred by the local organization in the management of such lands with prior Department approval. As the Department is responsible for overseeing the management of such lands, the local organization shall consult with the Department prior to such management action and shall keep the Department informed of all matters relevant to property management.

014 Notifying Public Bodies of Proposed Sales. The Department shall notify the Governor of the State and the appropriate public districts, cities, counties, political subdivisions and agencies of the State or of the Federal government of the land(s) scheduled to be sold. Such notification shall indicate the proposed date(s) of sale and shall summarize the process by which public entities may acquire such lands for public purposes.

015 Notice of Intent to Acquire or Retain. Any public district, city, county, political subdivision, or agency of the State or of the Federal government which is interested in acquiring or retaining for public purposes land(s) purchased in whole or in part with Water Sustainability Funds shall notify the Department of such interest.

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016 Appraisal and Notification to Public Bodies of Appraised Fair Market Value. Whenever a public entity indicates in accordance with Section 2-017 that it is interested in acquiring or retaining lands purchased in whole or in part with Water Sustainability Funds, the Department shall have an appraisal prepared for such lands in accordance with section 2-1502 R.S. Supp., 2000, as amended, and notify such public entity of the appraised fair market value. Such notification shall indicate the proposed date of sale, the appraised fair market value, and the requirements for purchase or retention by public bodies in accordance with Section 2-020.

017 Acquisition by Public Bodies. Any public district, city, county, political subdivision or agency of the State or of the Federal government which desires to acquire or retain for public purposes land(s) purchased in whole or in part with Water Sustainability Funds shall notify the Department of such desire by the date specified in the notification. A report explaining the public purpose to be made of such property shall be simultaneously submitted to the Department. Such report shall include a description of the public uses to be made of such property, a description of and timetable for improvements, if any, and a discussion of management techniques to be utilized to serve the proposed public purpose. The report shall also document the public entity's legal and financial abilities to acquire or retain such property and to implement the proposed public purpose. If acquisition of such lands for public use by a public body is approved, the Department shall be reimbursed in the amount of the prorated share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid from the Fund and the local organization transferring the title to the acquiring public body shall be reimbursed in the amount of any remaining portion of the appraised fair market value, both reimbursements to occur within 90 days of such approval or approvals. All such proceeds to the Department shall be remitted to the State Treasurer for credit to the Fund. Proceeds from rents and other income shall be split in the same manor.

018 Criteria for Acquisition by Public Bodies.

018.01 Whenever a public entity indicates in accordance with Section 2-019 that it desires to acquire or retain lands purchased in whole or in part with Water Sustainability Funds, the Commission shall determine whether the property should be so acquired or retained or whether it should be offered for sale at public auction in accordance with Sections 024 through 029. In making such determination, the Commission shall consider the following factors:

018.01A The nature of the public purpose for which acquisition or retention is requested and the demand for such purpose in the area to be served thereby.

018.01B The nature of probable alternative uses for such property and their relative importance in the community and the state.

018.01C The adequacy of the property to satisfy the proposed public purpose in comparison to its adequacy to satisfy probable alternative uses.

018.01D The relative economic impacts which could be anticipated in the community because of the proposed public purpose and probable alternative uses.

018.01E The legal and financial abilities of the public body to acquire or retain the property and to implement the proposed public purpose.

018.01F The compatibility of the proposed public purpose with operation and maintenance of the property for the purpose for which it was originally acquired and its consistency with accepted conservation principles.

018.02 Prior to determining whether the property should be acquired or retained by the public body or offered for sale at public auction, the Commission shall consult with the local organization holding title thereto and other interested organizations and individuals. If the amount invested in such property from the Water Sustainability Fund constituted the full purchase price, the decision of the Commission regarding the purchase or retention of such property by the public body shall be binding on the local organization. If, however, a portion of the original purchase price was contributed by the local organization, such local organization shall have independent authority to disapprove the purchase of such property by another public body, and any such disapproval shall result in the property being offered for sale at public auction as scheduled.

019 Desire to Acquire by Two or More Public Entities. In the event that two or more public entities indicate a desire to purchase or retain the same land or right-of-way, the Commission shall evaluate each separately in accordance with Section 2-020. If following such evaluation, more than one of the proposed purchases by public bodies is deemed preferable to offering the property for sale at public auction, the Commission shall evaluate such proposals on their relative merits to determine which proposal would best serve the public interest.

020 Acquisition or Retention of Less Than Full Parcel.

020.01 The acquisition or retention by public bodies of a parcel of land smaller in size than the parcel scheduled to be offered for sale will be approved only if such purchase or retention would satisfy the criteria of Section 2-020 and if

020.01A It would have no anticipated adverse effect on the marketability of the remainder of the full parcel, and

020.01B No additional public purpose would be served by acquisition or retention by such public body of the remainder of the full parcel.

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020.02 The local organization shall be responsible for any surveys which are deemed necessary because of such acquisition or retention or for providing proper identification of such parcel prior to the sale at auction of the remaining portion of the full parcel. The public body acquiring such parcel shall reimburse the local organization for all actual and necessary costs incurred as a result of such survey and identification.

021 Agreement to Retain in Public Use. As a condition to acquiring or retaining for public purposes any lands acquired in whole or in part with funds from the Water Sustainability Fund, the acquiring or retaining public body shall enter into an agreement with the Department. Such agreement, which shall remain in effect and be controlling as to the public body's utilization and disposition of the property for a period not to exceed the life of the project, shall specify the following terms and conditions:

021.01 The property shall, unless otherwise approved by the Commission, be retained by the public body for the public purposes specified in the report submitted pursuant to Section 2-019.

021.02 No use shall be made of the property which is incompatible with the purposes for which it was originally acquired in whole or in part with funds from the Water Sustainability Fund without prior Commission approval.

021.03 Such public body shall not utilize the property or any part thereof for income production unless such income results from activities that benefit the maintenance of the property or to serving the public purposes for which the property was acquired or retained.

021.04 Any other terms or conditions which the Commission deems appropriate. A copy of such agreement shall be filed by the Department in the register of deeds office of the county in which such land or right-of-way is located.

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022 Method of Sale. When any lands involving these funds are to be sold, whether those lands are to be sold with or without improvements, such sale, unless governed by Sections 2-019 through 2-023 shall be by public auction, sealed bid or other acceptable method. Prior to such sale the Department shall through the local organization:

022.01 Cause an appraisal to be made of such land,

022.02 Retain the services of a public auctioneer,

022.03 Cause legal notice thereof to be published.

023 Public Auctioneers. In retaining the services of a public auctioneer for the sale at auction of any lands purchased in whole or in part with these funds, the Department shall select a public auctioneer, for the services of such public auctioneer, and over-see the contracting of said auctioneer with the local organization. Selection of the auctioneer shall be the responsibility of the Director of the Department. Fees associated with the appraisal, auctioneer, advertising and notice, and any other fees associated with the sale, provided they are approved by the Department in advance, are eligible for reimbursement from the sale proceeds prior to the disbursement split between the Department and the local organization.

024 Sale of Improvements. When any improvements on lands involving these funds are to be sold separately from the land, such sale may be conducted by sealed bids or by public auction. Prior to such sale of improvements, the Department shall cause legal notice thereof to be published pursuant to Section 2-027.

025 Notice of Sales. Notice of all sales governed by these rules shall be published in the county in which such land(s) and/or improvement(s) is (are) located and also in a legal newspaper with statewide circulation. Advertisement/notice shall also be distributed by flyer and/or posters posted in public view, on web sites and any other appropriate method for generating interest in the sale. Such notices shall list and describe the land(s) and/or improvement(s) to be sold and the easements

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and/or rights-of-way, if any, which will be retained by the local organization, and shall state the date, time and place for the opening of sealed bids. If appropriate, such notice shall state the address where sealed bids are to be mailed or delivered, and the deadline for receipt of the same. The terms of payment and any other information that in the particular case would be required to impart adequate notice to all interested parties shall also be provided.

026 Sealed Bids. In order to be eligible for consideration, sealed bids for improvements shall state which improvement(s) the bid is for and shall be accompanied by a certified check or bank draft made out in the full amount of the bid. If any sealed bid is not accepted, the deposit shall be returned to the bidder within thirty days after the day on which the bids are opened. All sealed bids shall be mailed or delivered to the Department. Such bids must be received at least three days prior to the date set for their opening. All sealed bids shall remain sealed until the time set for their opening, at which time the two highest bids shall be read.

027 Conduct of Auction. The public auction for each tract of land to be sold shall remain open for receipt of bids for a minimum of one hour, but may be closed at the end of such time period if there are no reasonable grounds to believe that a higher bid would be received were the auction held open for a longer period of time.

028 Earnest Money Deposit. The highest bid for a tract of land received at public auction shall, in order to be eligible for consideration by the Commission, be accompanied by a check, bank draft, or cash in an amount of not less than twenty percent of the bid.

029 Purchase Agreement. The highest bidder for the purchase of any of the lands governed by these rules shall, after being designated the highest bidder, enter into a purchase agreement with the local organization stating that the balance due shall be paid within thirty days of notification by the local organization of the acceptance of the bid by the Commission. The purchase agreement shall describe all applicable terms for the sale, including all terms specified by the Commission. Failure to comply with this rule or with the conditions of the purchase agreement shall result in the forfeiture of said bidder's deposit.

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030 Approval or Rejection of Bids. The Commission reserves the right to refuse any and/or all bids. At the next regularly scheduled Commission meeting following the closing of all bidding, the Commission shall review the highest bid, considering, if applicable, such factors as the original purchase price, any increases or decreases in land valuation, the present appraised fair market value, and any other criteria which may reflect the adequacy of the bid. If a portion of the original purchase price was contributed by the local organization, such local organization shall be consulted regarding the adequacy of the bid prior to approving or rejecting the same. In the event the Commission approves a bid, it shall direct the local organization to proceed with the sale. Upon receiving full payment, the local organization shall convey title to the purchaser, reserving as applicable, and such interests in the land as are necessary for the local organization to carry out its ongoing responsibilities relative to management of the land or to any improvements constructed thereon or necessary to effect any terms for the sale specified by the Commission. In the event that the Commission determines that a bid is inadequate, the bidder's deposit shall be returned within ten days after such determination, the land shall be leased for an additional year, and the land shall be rescheduled for sale according to the rules hereinabove set forth.

031 Sale Expenses. Any expenses, that have been approved by the Director in advance, which are incurred by the Department or the local organization in conducting this sale shall be subtracted from the sale price prior to a pro rata distribution of such sale proceeds between the local sponsor and the Department in accordance with Section 2-007.03.

**SUBMIT TO GOVERNOR BEFORE SUBMITTING TO EXECUTIVE BOARD AND
BEFORE PUBLIC HEARING DATE IS SET**

**PROPOSED REGULATION
GPRO COVERPAGE
(ATTACH TO PRE-REVIEW CHECKLIST)**

Agency: Natural Resources Commission

Title, Chapter of Rules submitted: Title 261, Chapters 1 - 4

Subject: Rules for the newly created Water Sustainability Fund

Prepared by: LeRoy W. Sievers

Telephone: (402) 471-1113

Date submitted to Governor: March 19, 2015

Projected dates for public hearings: April 28, 2015

Projected deadline for final approval: June 16, 2015

A copy of the section of laws or federal regulations that triggered these changes is attached. LB1098

FOR GOVERNOR OFFICE RECORDS

Advisor Assigned: Cheryl Wolff
Date approved to proceed: 3-19-2015
Options for proceeding: _____

- a) No further contact with GPRO is necessary until final rules have been approved by the Attorney General.
- b) Contact Governor through GPRO concerning issues raised in Negotiated Rulemaking procedures.
- c) Submit Rules and Regulations Policy Review Checklist to Governor if rules are changed hereafter and a new public hearing is scheduled.
- d) Keep the Governor informed through GPRO as issues arise in negotiations, drafting sessions, advisory board meetings, and public hearings.
- e) Specific policy comments per Governor's instructions is attached.

PROPOSED REGULATION POLICY PRE-REVIEW CHECKLIST

Agency: Natural Resources Commission (NRC)
Title, Chapter of Regulation: Title 261, Chapter 1- 4
Subject: Rules for the newly created Water Sustainability Fund (WSF)
Prepared by: LeRoy W. Sievers
Telephone: (402) 471-1113

A. Policy Changes and Impacts

1. What does the regulation do and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

The rules have been developed to establish the means for potential applicants to know what steps are necessary to apply for funding from the newly created WSF and what criteria will be utilized to rank and score satisfactory applications by the NRC. The newly adopted legislation allows any entity or person to apply for funding so potentially any person or entity could be impacted if its application is satisfactory and it scores high enough to be funded. Other anticipated impacts include additional funding that may be required for the NRC for per diems and other related expenses for any meetings in excess of what have been held in the past.

2. Describe changes being proposed to current policy and briefly provide rationale.

The rules being proposed are new because the WSF is new, having been created by the Legislature in 2014 when the Natural Resources Commission was expanded by the addition of 11 new members. Thus the change is the creation of the rules in response to the creation of the WSF and the need for rules describing how the NRC intends to implement its responsibilities.

Chapter 1 contains definitions, a description of the types of financial assistance that may be provided, a description of the legislatively created goals of the WSF and the rate of interest that may be charged on loans from the WSF. Chapter 2 provides a description of the application procedures and requirements including a legislatively required description of how feasibility is to be determined. Chapter 3 includes a description of how the NRC will rank and score applications which are referred to it by the Director of DNR. This chapter also describes how the NRC will fund projects from the money appropriated to the WSF and other aspects of project administration such as contracting and funding disbursements. Chapter 4 describes the process of fund administration

particularly as it relates to sale of property purchased by project sponsors with money from the Fund.

B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).

1. Update of regulation (repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.). NA
2. Annual changes – cost of living, hunting season schedules, etc. NA
3. Law was changed – federal ____ or state ____ [Cite authorizing statute(s) or legislative bill(s)]. State laws adopted in 2014 through LB1098, LB1098A and LB906.
4. Extension of established policy or program, new initiatives or changes in policy (within statutory authority). NA
5. Constituent initiated. NA
6. Financial needs – increases/decreases in fees. NA
7. Litigation requires changes in rules. NA
8. Addresses legal or constitutional concerns of Attorney General's office. NA
9. Implements federal or court mandate. NA
10. Other (explain). NA

C. What happens if these rules are not adopted? The bills creating the WSF are not self-executing so in order for applications seeking money from the fund to be processed it is necessary for rules to be adopted. Without the rules money from the WSF will not be able to be distributed as intended by the Legislature.

D. Policy Checklist

1. Is this an update or editorial change reflecting essentially no change in policy?
No.
2. Does the policy in the proposed regulation reflect legislative intent?
Yes.

3. Is the policy proposed in the regulation a state mandate on local government? Is it funded?

It is not a mandate.

4. Is the policy proposed in the regulation a federal mandate on local government? Is it funded?

It is not a mandate.

E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:

1. Will the proposed regulation reduce, increase, or have no change in resources – funds, personnel or FTE?

The regulations per se will not have any effect on the NRC expenses. Implementing the legislation adopted which created the WSF and requires rules in order for the fund to be distributed may result in longer or more meetings of the NRC in order to evaluate applications and distribute money from the WSF.

2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation?

Yes, through the development of the draft rules NRC meetings have been open to the public and the topic of rules development has been on the agenda. Some public input has been provided in these meetings.

3. Does the proposed regulation impact another agency? Explain the impact.

The DNR and NRC coordinate with each other regarding the information required to be provided by an applicant to the WSF and definitions used. Moreover the two coordinate the timing of applications and the exchange of information from one to the other.

4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses?

No change.

5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information.

The rules have no direct impact on spending other than by creating the means by which an applicant submits an application for funding from the WSF.

6. Include a description of the impact that the proposed regulation will have on the number of state employees and how the agency intends to address proposed increases or decreases in FTE.

No employees will be added for assistance to the NRC directly. The anticipated additional expenses for NRC include the potential for longer or perhaps additional meetings for the purpose of evaluating applications for assistance from the WSF. The additional expense could include additional per diem for commissioners, room rental and miscellaneous expenses.

- F. Unique problems or issues and recommendations.

None.

- G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts have been made with organizations or citizens who may be affected by the regulation prior to the public hearing.

Because there is no limitation on who may apply for funding from the WSF, any entity or person who believes that they can qualify for funding may apply. Consequently interest in the WSF and the rules implementing it is high. Informal public presentations have demonstrated that interest is high among many organizations. Additional public information sessions are scheduled in an effort to explain how the rules are intended to operate and address misunderstandings that are expressed.

- H. Are these proposed rules a likely candidate for negotiated rulemaking? Explain. Has the process been completed? If so, explain how the issues were addressed.

No.

Director's Verification of Review

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Director's Signature



Date

3-19-15

DRAFT/FINAL FISCAL IMPACT STATEMENT

Agency: Natural Resources Commission	
Title: 261, new rules	Prepared by: LeRoy W. Sievers
Chapter: 1 - 4	Date prepared: March 19, 2015
Subject: Water Sustainability Fund	Telephone: 402 471-1113

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	()	()	()
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & Description of Impact:

State Agency: Applications for money from the Fund will be submitted to the Department of Natural Resources and then those applications determined to be satisfactory will be reviewed by the Commission. The process of evaluating satisfactory applications by the Commission may require additional or longer meetings of the Commission which would increase its costs. However Laws 2014 LB1098A included money for the Commission so any such costs have already been addressed by the Legislature.

Political
Subdivision: None

Regulated
Public: None

If indeterminable, explain why:

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF RULEMAKING HEARING

NOTICE IS HEREBY GIVEN THAT THE State of Nebraska, Natural Resources Commission (Commission) will hold a public rule-making hearing pursuant to *Neb. Rev. Stat. § 84-907*. The hearing will be held at 10:00 a.m. on April 28, 2015, in conference room Lower Level F of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

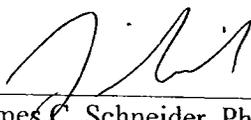
The purpose of the hearing is to take public comments concerning adoption of Commission's rules *Neb. Admin. Code Title 261*, entitled "Rules Governing the Water Sustainability Fund." The proposed rules:

Authorize filing of applications to the Water Sustainability Fund, describes criteria for ranking and scoring by the Commission of applications, and awarding grants and/or loans from the Fund.

The proposed rules are available at the offices of the Secretary of State, Regulations/Licensing Division, Room 1305, State Capitol, Lincoln, Nebraska 68509, and on the Department's website at <http://dnr.nebraska.gov/rules>. The description of the fiscal and other impacts may be inspected and obtained at the Department of Natural Resources, 4th Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. The fiscal impact is expected to be none.

All interested persons are invited to attend and make oral or written comments at the hearing. Interested persons may also submit written comments prior to hearing which will be made part of the hearing record at the time of hearing if received by the Department of Natural Resources on or before April 28, 2015. If auxiliary aids or reasonable accommodations are needed to participate in the hearing or if hearing impaired, please call LeRoy Sievers at (402) 471-1113 by April 21, 2015.

Date: March 19, 2015



James C. Schneider, Ph.D., Acting Director
Department of Natural Resources

NORTH PLATTE

Natural Resources District

Chimney Rock
on the Oregon Trail

P.O. Box 280 • 100547 Airport Rd. • Scottsbluff, NE 69363-0280 • Phone: 308 632-2749 • Fax: 308 632-4346

April 23, 2015

James C Schneider, Ph.D., Acting Director
Department of Natural Resources
301 Centennial Mall South, 4th Floor
P O Box 94676
Lincoln, Nebraska 68209-4676

VIA ELECTRONIC MAIL

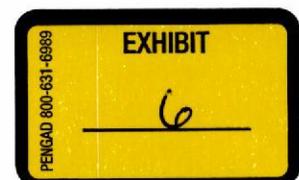
Dear Director Schneider:

The North Platte Natural Resources District (District) appreciates this opportunity to offer written testimony regarding the Nebraska Natural Resources Commission's (Commission) draft Rules Governing the Administration of the Water Sustainability Fund (Fund), Title 261.

The District notes that a significant amount of the language contained in the draft rules has been taken from existing language in Title 256, the Department of Natural Resources' Rules Governing the Administration of the Resources Development Fund. The District questions the strict applicability of the borrowed language to the Water Sustainability Fund.

In addition to the above general comment, the District provides the following additional remarks:

1. Chapter 1, Subsection 001.01, Goal (1), appears to imply that aquifer recharge, reduction in aquifer depletion, and increase in streamflow are always simultaneous benefits from a single project. Although these benefits may co-occur in some aquifers, a project that reduces aquifer depletion may, however, involve an aquifer with little or no direct connection to surficial streamflow but will nevertheless provide important water-sustainability benefits to those relying on such an aquifer. If the intent of this goal is to extend funding qualification to projects that may provide benefits in one or more of the abovementioned categories, then the goal should employ "and/or", rather than "and", to make this intent clear.
2. The distinction and utility of the separate terms "allocation" and "obligation", defined in Chapter 1, Subsections 002.02 and 002.17, respectively, are unclear throughout the draft rules. Moreover, if a precise use of the term "allocation" means that the Commission desires to be able to promise or commit more actual funding dollars than are available in the Fund at the time of project approval, then the District is concerned that approved projects may ultimately face the same funding jeopardy in which unpaid-for Resources



Development Fund projects have been placed. The District believes that the Commission should avoid this pitfall with the Water Sustainability Fund.

3. Chapter 2, Subsection 002.19 refers to “primary beneficiaries”. This term, which is apparently integral to the meaning of the term “primary benefits” defined in this subsection, is not itself defined in the rules.
4. Chapter 2, Subsection 002.02, appears to define the term “allocation” in a project-specific sense. Subsection 002.29, however, defines “total net allocation” to refer to monies that may generally be available in the Fund at any given time, but not relative to any specific project. This use of the same word to describe two different things within the rules may cause unnecessary confusion. The District suggests that alternate and non-identical terminology be formulated for one or both of these terms.
5. Chapter 2, Section 004, discusses the feasibility information that an applicant must provide to the Commission for a proposed project. The language of this section, however, does not make clear whether a feasibility report is a standard requirement for all applications. The Department’s draft rules Title 264, Chapter 2, Section 001, mention that a feasibility report may be submitted but do not indicate that such a report is required. The District would appreciate clarifying language being added in the abovementioned section of Title 261 to state whether a feasibility report is a separate and required component of an application package.
6. The wording of the second sentence of Chapter 2, Section 012, makes unclear exactly what the applicant is required to submit, in the event of refileing a previously-returned application. The addition of commas, or the breakup of this single sentence into two sentences, would make the intended requirements clearer to applicants.
7. Chapter 3, Subsection 001.03, provides for the scoring recommendation made on an application by the Commission’s Application Review Committee and the Commission’s allowable actions thereon. The rule does not indicate whether these scoring recommendations, or the scoring information itself, would be available to an applicant or to the public for review. The District considers that such information should be required to be provided to the applicant and, if requested, to members of the public. Such information would provide valuable insight in better planning projects to meet the State’s water sustainability goals. In addition, this information lends transparency to the application and approval process, which is crucial to maintaining public trust and endorsement of the Fund, its administrators, and its processes.
8. Chapter 3, Subsections 001.03.01 and 001.03.01.01 do not appear to follow logically from the subject of Subsection 001.03. These subsections may perhaps be more usefully placed elsewhere in the rules document.
9. The intent of Chapter 3, Subsection 002.04, is somewhat unclear. If additional funds have been requested for projects that have already received funds in a previous fiscal year, then presumably the Commission has already made a favorable determination as to

“the manner in which [the] projects relate to the factors to be considered by the Commission”. If the purpose of this subsection is to provide the opportunity for existing projects to obtain additional funding without submitting a new application, then the question to be answered by the Commission in such a situation is, rather, whether the request for additional funding is justified, given the project’s purpose and scope and the reasons offered to explain the additional funding request, as well as whether that request weighs more heavily, in a given fiscal year, than the obligation of funds to new projects. This comment also applies to Chapter 3, Section 006, to the extent that identical language occurs there.

10. Chapter 3, Section 006, pertains to the obligation of additional funds to projects that have already received funding. The section does not make clear whether the Commission’s intent is to use any given year’s available funds to make additional awards to existing projects, or whether a year’s available funds may be split in some proportion between projects receiving additional funds and projects receiving first-time awards. The District considers that the Commission should fund new projects, as well as ongoing projects as needed, from any given year’s available monies. Such an apportioning of the funds would ensure a greater diversity of successful projects and applicants, rather than tying all monies to only a couple of projects that repeatedly receive additional funds, to the exclusion of any new efforts.
11. Chapter 3, Subsection 006.02, appears to be missing a verb after “Commission,” and before “be”.
12. Chapter 4 appears to pertain specifically to fund administration with respect to lands and land rights. The title of this chapter should reflect this specific subject matter.
13. The following sections contain ambiguous references to rules, but the format of the citation in each enumerated example below does not match that found in other sections of the rules text (e.g., as found in Chapter 3, Subsections 001.04.02 and 001.04.03) and does not make clear the respective chapters to which these referenced sections belong. Please clarify and standardize the chapter and section references throughout the rules text, for clarity and ease of reference.
 - a. Chapter 3, Subsection 002.03, referring to “sections 005 and 006”;
 - b. Chapter 3, Subsection 002.04, referring to “section 002.02 and 002.03”;
 - c. Chapter 3, Section 004, referring to “sections 3-005 and 3-006”;
 - d. Chapter 4, Section 006, referring to “section 2-007”;
 - e. Chapter 4, Subsection 007.02, referring to “section 2-004”;
 - f. Chapter 4, Section 016, referring to “Section 2-017” and “Section 2-020”;
 - g. Chapter 4, Subsection 018.01, referring to “Section 2-019” and “Sections 024 through 029”;
 - h. Chapter 4, Sections 019 and 020, referring to “Section 2-020”;
 - i. Chapter 4, Subsection 021.01, referring to “section 2-019”;
 - j. Chapter 4, Section 022, referring to “Sections 2-019 through 2-023”;
 - k. Chapter 4, Section 024, referring to “Section 2-027”; and

1. Chapter 4, Section 031, referring to "Section 2-007.03".

Thank you for your consideration of my testimony, offered on behalf of the District's Board of Directors, regarding the Commission's draft rules Title 261.

Sincerely,



John Berge
General Manager

Sent: Monday, April 27, 2015 10:20 AM
To: Sievers, LeRoy
Cc: Callen, John
Subject: RE: Nebraska Water Sustainability Fund (UNCLASSIFIED)

Mr. Sievers,

Thanks for the opportunity to provide input on the Nebraska Water Sustainability Fund. Below are some comments.

Chapter 1 001.01(8) - Rule currently states "Comply with interstate compacts..." As this is currently written the funds goals could be perceived to extend outside water resources. A revision along the lines of "Comply with water related interstate compacts..." would alleviate this.

Chapter 1 001.02(2) - Current version provides for water supply infrastructure maintenance and/or rehabilitation but not flood prevention infrastructure maintenance or rehabilitation. As the service life of the states dams and levees age it is important that communities have resources to assist in the maintenance, repair, and rehabilitation. This section could easily be modified to identify these goals.

Chapter 1 001.02(2) - Section identifies critical infrastructure as a criteria, but "Critical Infrastructure" is not defined

Chapter 1 003.01 - There are a number of federal programs which are not considered grants. The section currently states "meet the requirements for matching a federal grant". Extending this to "meet the requirements for matching a federal grant or federal cost share agreement" would be consistent with federal programs. Chapter 3 Section 0001.01 criteria (5) provides a more rounded description. (note: there are two Chapter 3 001.01(5) lines)

Chapter 2 004.01 and 004.02 - sections uses the term "structural" and "non-structural" neither term is defined

Chapter 2 008 - Section identifies ineligible NRDs as those w/o a integrated management plan, given the flood prevention aspect in Ch1 001.02(2) it may be appropriate to include Hazard Mitigation Plans as a requirement.

Chapter 2 009.02 - This section identifies that all necessary permits and compliance must be in place prior to application. Some permitting agencies require plans and specs in order to process permit requests, these plans and specs may only be available in the implementation phase of a project. This could create a chicken and the egg scenario. An option to allow for consideration without permits in possession could alleviate this. This could come with a condition that projects which receive assistance and are not implemented due to permitting conditions are required to return all received funds in whole to the fund.

Chapter 3 001.01 - this section includes two sets of items (1), (2), (3), etc Chapter 3 001.01 - This section provides scoring criteria for applicants, many of the criteria are written without consideration for flood risk. The following areas could even the playing field when comparing flood risk projects.

Chapter 3 001.01(2) - Inclusion of Hazard Mitigation Plan in the identified community goals Chapter 3 001.01(3) - Inclusion of prevention of flood losses as a water sustainability goal Chapter 3 001.01(5) -



Inclusion of "or reduce the adverse impacts of flooding" in the Chapter 3 001.01(7) - Current version is broad beyond water related efforts Chapter 3 001.01(6)(second number 6) - Contributes to watershed health and function may be a difficult criteria to evaluate. It is broad, undefined, and possibly unquantifiable.

Thanks again for the opportunity to provide feedback,

Tony D. Krause, P.E., CFM
Flood Risk and Floodplain Management, USACE Omaha District

Office: (402) 995-2326
Fax: (402) 995-2307
e-mail: tony.d.krause@usace.army.mil



nebraska Farm Bureau Federation®

5225 S. 16th St., P.O. Box 80299, Lincoln, NE 68501 Phone: (402) 421-4400 FAX: (402) 421-4427

April 27, 2015

Natural Resources Commission
Dept. of Natural Resources
301 Centennial Mall South
Lincoln, NE 68509

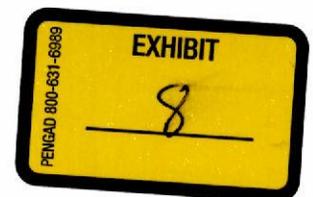
Members of the Natural Resources Commission,

Nebraska Farm Bureau Federation (NFBF) would like to take this opportunity to offer the following comments to the Natural Resources Commission (NRC) on the proposed *Title 261, Rules Governing the Administration of the Water Sustainability Fund*. NFBF certainly appreciates the opportunity to provide comments and input on these regulations.

NFBF understands the proposed Title 261 rules are part in parcel with the Department of Natural Resources proposed rules under Title 264 and the two proposed rules must be read together. We certainly appreciate the efforts of both the DNR and the NRC to develop the rules necessary to implement the Water Sustainability Fund created by the Legislature. The fund and the projects, programs and activities it financially assists can help Nebraskans move forward in our effort to wisely manage our water resources.

We first would like to offer some general comments concerning the proposed Title 261 rules. Language in LB 1098 states that the goals of the Water Sustainability Fund can be met by equally considering programs, projects or activities in four categories: (1) research, data, and modeling; (2) rehabilitation, or restoration of water supply infrastructure, new watery supply infrastructure, or water supply infrastructure maintenance or flood prevention for protection of critical infrastructure; (3) conjunctive management, storage, and integrated management of ground water; and (4) compliance with interstate compact or agreements or other formal state contracts or agreements of federal law.

In our reading of the Title 261 rules as proposed, the procedures relative to applications for funding for structural projects are delineated and outlined. However, the procedures relative to non-structural applications is less clear. For example, the Chapter 1 definitions of grants (.003.01) and loans (003.02) would appear to limit their use to structural projects, as the definitions include language referencing the recovery of revenue or receipts from the project or activity. Also, Chapter 1, 004.02 describes when a non-structural proposal shall be considered to be technically feasible. Again, the data listed as necessary would seem to be tilted towards the type of information necessary for structural projects. As such, we are concerned whether non-structural programs, projects and activities (i.e. research; modeling; cost-share programs for BMPs; etc.) will receive adequate consideration as intended by the Legislature. We encourage



the NRC in its proposed rules, to clarify the proposed rules in regards to how applications for non-structural programs, projects and activities will be evaluated.

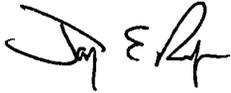
Below are specific comments on the rule:

1. The Chapter 1 definitions section includes definitions for the terms “Allocation” and “Obligation.” It is difficult to distinguish the difference between the terms either in the definitions and the remainder of the proposed rule. The terms appear to be used interchangeably and it is difficult to ascertain how they are different.
2. Chapter 1, 002.25 defines “Sewer Separation Project” and includes the term “funding.” It seems odd to include “funding” as part of the definition.
3. Chapter 1, 002.26 defines “Small Project” and includes the stipulation that funding for small projects shall equal 10% of the current year appropriations. We would encourage the NRC to strike this language from the definition as it is superfluous to language found elsewhere in the rules.
4. In Chapter 2, we recommend 003 Application Procedures, 010, Application Filing Dates, 011, Information Require in an Application, and 012, Returned Applications, be combined to be more clear and better understood by applicants to the fund. Second, as we understand the application process, the Director is to review applications submitted for funding from the Water Sustainability Fund, determine whether the applications are satisfactory, then forward his or her recommendations to the NRC. State law does not provide a time frame under which the DNR is to evaluate and make recommendations to the NRC. The proposed rules for Title 261 do not include a timeline either. We would suggest the rules include a time frame for the recommendations to be forwarded to the NRC by the DNR. It would provide applicants assurances the applications will be acted upon in a timely manner.
5. Chapter 3, 001.03 includes language on how project scoring will occur. It also includes subsections 001.03.01 and 001.03.01.01 stipulating the funding caps for small projects. We would suggest the NRC separate small project language from 001.03, create a separate item (.001.04 perhaps and renumber accordingly), and treat small projects similar to treatment given to sewer overflow projects.
6. Chapter 3, 002 funding, uses the terms “allocation” and “obligation” and given the confusion over the definitions of the terms described above, we are uncertain as to the meaning implied in this section.
7. Chapter 3, 004, uses the reference “to such project”. As such, it would seem to reference a particular project, but we are not sure that is what is intended.
8. Chapter 3, 005.01, is confusing—it is difficult to ascertain what it is saying. Again, it relates somewhat back to the use of the term “obligation” and how it is defined.
9. Chapter 3, 009, provides the Director the authority to disburse funds to reimburse all eligible costs incurred by the applicant. We interpret the language “in proper proportion” to mean the amount approved for reimbursement by the NRC. We encourage the NRC to

review this language and clarify that disbursements for eligible costs are not to exceed the amount approved by the NRC.

Again, Nebraska Farm Bureau appreciates the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay E. Rempe". The signature is written in a cursive style with a large initial "J" and "R".

Jay E. Rempe,
Vice President Governmental Relations



**Testimony before the Natural Resources Commission
Tuesday, April 28, 2015
Commenting on proposed Title 261 guidelines
Water Sustainability Funding Program**

Chairman Fornoff & Commission Members:

Thank you for this opportunity to address the content of Title 261, the rules and guidelines by which monies from the Water Sustainability Funding program will be disbursed.

My name is Chuck Shoemaker and I am the Chairperson of the Board of Public Works of the City of Hastings, Nebraska. The Board has been appointed by the Mayor and City Council to provide oversight of and direction to Hastings Utilities, the community of Hastings' utility service provider, including the city's potable water supply.

In Hastings, the quality of our community's drinking water is at jeopardy due to rapidly increasing levels of nitrates in the aquifer that supplies our community. Hastings is not the only group of citizens impacted by this problem, as our community's water system also supplies the Village of Trumbull, a nearby community college campus and residents and businesses in an industrial park southeast of Hastings.

Our concerns include that as Title 261 is currently proposed, it will be extremely challenging for the City of Hastings to be graded high enough by the Natural Resources Commission when they determine what projects that they will fund with the money that the Legislature has been setting aside for water sustainability projects.

In the grading process, projects "explicitly" involving federal mandates can receive up to six additional bonus points. The City of Omaha could conceivably be able to receive those points because of a direct mandate from the EPA to separate its wastewater and storm water mains. Also, projects that could impact Federal water compacts such as water supplies guaranteed to another state can also conceivably receive the bonus points.

As a municipal water supplier, the City of Hastings must also comply with federal mandates such as providing safe drinking water with concentrations of nitrates not to meet or exceed 10 parts per million. Under the guidelines of Title 261, our project could not receive any bonus points because the EPA "indirectly" mandates the water quality levels and hasn't specifically forced the community to choose the path we are taking to protect our community's drinking water.

"Locally owned and operated since 1886"



We believe this is just simply wrong.

Ten parts per million is a federal mandate that the City of Hastings must comply with and there is nothing “indirect” about it. It is federal law and our community must comply, and as such, Hastings and all other municipalities facing such issues, should be eligible to receive bonus point consideration. Or, there should be no bonus point consideration given to any project.

One of the strongest directions given by the Legislature to develop the guidelines and grading system used by the Commission to determine which projects would be eligible for water sustainability funding are projects that “*remediates or mitigates threats to drinking water.*”

The inequity of allowing bonus points to projects that are “explicitly for the purpose of complying with a federal mandate” yet excluding consideration of the ten parts per million rule provides an uneven playing field when projects are being graded.

We strongly urge the Commission to reconsider this component of the grading system.

Another area that could potentially impede worthy projects from moving forward in a particular calendar year, or being funded at all, is the lack of a “cap amount” that sponsors might seek for larger projects (those requests above \$250,000).

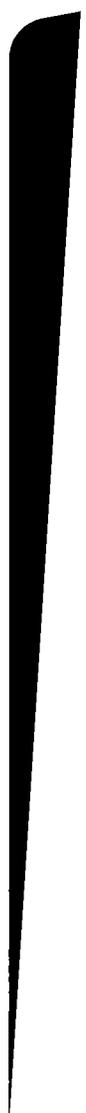
Under the currently suggested guidelines, after projects are graded and a funding order established, if a selected project is requesting more dollars than are still available from the “annual funding pool,” that project must wait until the succeeding year when more Water Sustainability Funding is received from the Nebraska Legislature.

Not only that, but projects graded slightly lower, and requesting an amount that would have still been available, would not be able to receive funding that year and would have to reapply the following year.

If a “large project cap amount” was established, potentially more projects statewide could be funded and move forward, because no one project would dominate, or block, the funds available for other projects.

We sincerely appreciate the hard work of both the Natural Resources Commission and the Department of Natural Resources as they have been establishing the protocols, guidelines and rules dealing with water sustainability within the State of Nebraska.

Thank you for hearing our concerns.





Lower Platte North Natural Resources District

PO Box 126 511 Commercial Park Road Wahoo, NE 68066
402.443.4675 Fax 402.443.5339 Toll-free 888.764.0543
lpnrd@lpnrd.org www.lpnrd.org

To: Jim Schneider – Director
Nebraska Department of Natural Resources

From: John Miyoshi – General Manager
Lower Platte North NRD

Date: April 28, 2015

RE: Comments on Title 261 Rules Governing
Administration of the Water Sustainability Fund

Thank you for the opportunity to comment on the proposed Rules for operation of the new Water Sustainability Fund. We appreciate the time and dedication that went into drafting the proposed rules by the Natural Resources Commissioners and LeRoy Sievers. Overall the rules seem very comprehensive and are logical in their layout. They will set the future for wise use of the fund.

One item in the proposed rules that does not seem efficient is "Rule 010 application filing date" that has all applications due within a 14-day window. This short time span will place pressure on the director and staff to make a determination of eligibility. An open application submittal with an annual due date would make better use of limited staff time. Please keep this in mind during the initial two signup periods to see if a change is needed at some later point.

We encourage the Natural Resources Commission to adopt the Title 261 Draft Rules as presented.



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