

MINUTES

Nebraska Environmental Trust
Special Meeting
Thursday, July 22, 2021
1:00 PM

The Nebraska Environmental Trust Board met at the Ferguson House, 700 South 16th Street, Lincoln, Nebraska, for the transaction of business. Advance public notice was given through release to news media and official public notice was published in the Lincoln Journal Star on Monday, July 12, 2021.

Chairman Kanger called the meeting to order at 1:00 PM.

Roll call was conducted and a quorum was established.

Members present: Chairman Jeff Kanger, Lincoln; Mr. Jim Hellbusch, Columbus; Mr. Paul Dunn, Omaha; Mr. Mark Quandahl, Omaha; Mr. Felix Davidson, Valley; Mr. Josh Andersen, Edgar; Mr. Rod Christen, Steinauer; Mr. Quentin Bowen, Humboldt; Mr. Jim Douglas, Nebraska Game & Parks Commission; Dr. Gary Anthone, Department of Health and Human Services; Mr. Steve Wellman, Nebraska Department of Agriculture; Vice Chairman Jim Macy, Nebraska Department of Environment and Energy.

Members absent: Mr. John Orr, Blair; Mr. Tom Riley, P.E., Nebraska Department of Natural Resources.

Staff present: Mr. Mark Brohman, Executive Director; Ms. Holly Adams, Grants Administrator; Ms. Sheila Johnson, Marketing and Communications Specialist; Ms. Pam Deines, Grants Assistant; and Ms. Sandra Weaver, Office Specialist.

Chairman Kanger asked for all devices to be silenced during the meeting.

Agenda Item #3: Minutes of April 8, 2021 Board Meeting. Minutes of April 8, 2021 Board meeting was presented to the Board.

Motion by Mr. Wellman; seconded by Mr. Macy to approve the minutes.

Voting Aye: Mr. Dunn, Mr. Bowen, Mr. Wellman, Mr. Macy, Mr. Kanger.

Abstain: Mr. Quandahl, Mr. Davidson, Mr. Andersen, Mr. Christen, Mr. Douglas, Dr. Anthone, Mr. Hellbusch.

Absent: Mr. Orr, Mr. Riley.

5 Voting Aye. 7 Abstained. Motion failed.

Agenda Item #4: Discussion of, Potential Action on, Department of Administrative Services (DAS) Performance Review Audit

Chairman Kanger thanked members and those present for attending the meeting and for staff support provided during the audits. Representatives from DAS and the State Auditor's Office were invited to share the scope, nature of work, and any key findings in the audits.

Mr. Jason Jackson, Director of the Department of Administrative Services (DAS), addressed the Board concerning the Performance Review Audit. In November 2020, the Environmental Trust discussed partnering with an outside agency to do an operation assessment of Board and Trust operations. Subsequently, in February 2021, the Board voted to authorize DAS to perform a performance assessment. Don Arp, a colleague on the Governor's Cabinet, was used in a consultant role and Amara Block, DAS General Counsel, who was not able to attend the meeting, did much of the work product in the final draft. The draft is subject to the Board's approval and acceptance. Mr. Jackson noted DAS has statutory authority to do performance assessments for peer agencies and also houses the Center of Operational Excellence (COE). The COE serves as the training center for continuous process improvement across all state agencies.

Mr. Jackson expressed gratitude to the Board, Executive Director Brohman, and staff for their exemplary support and collaboration during the review. The performance review began with a generalized assessment of the Trust's legal obligations by looking at statutes, regulations, policies, bylaws, or anything that might create external or internal obligations. A document review assessed the degree that the Trust could substantiate it was performing against those obligations. Efforts were augmented with interviews of the Board and staff to obtain context for findings. Financial issues were not assessed since the Trust was engaging with the Nebraska Auditor of Public Accounts in a financial assessment audit. Mr. Jackson clarified there was no intention in the report to give any legal assessment risk or legal advice. If findings have legal implications, it is the agency's responsibility to work with its own counsel. Much of the review was spent around the grant process from application through allocation and ultimately management and oversight.

Mr. Jackson summarized a high-level review of findings outlined in the Operations Assessment as follows:

- Lack of clarity with respect to who a qualified applicant is; there was no documentation to substantiate if a grantee could receive more than one grant or whether a grantee need disclose relationships with other grantees.
- No documentation to substantiate if individuals are eligible award recipients.
- Disparity in how staff supports the application process compared to what is generally seen in the grant administration process of other state agencies; staff provided some consultation such as coaching applicants on how to make an application more competitive. This level of support could be construed as accruing to the benefit or detriment of individual applicants. There may be an opportunity for the Board to provide more guidance, clarity, and documentation around how far staff support

should extend through the application process and that documentation substantiating criteria guidance is being adhered to.

- Absences of documentation to substantiate the eligibility determination processes are being adhered to; it could not be determined how preliminary eligibility determination is made by the Grants Committee or officially determined by the Board. The law requires the Board to establish eligibility criteria and lays out specific criteria required by law. The Board adds a criterion of its choosing within its regulatory framework. The regulations direct the process by which the eligibility determinations are made based on the criteria. The recommendation is for the Board to review eligibility criteria, clearly define the eligibility determination process, communicate the process to staff and the public, and ultimately have a process that can document and substantiate that the process is being followed.
- No documentation was located that outlined guidance or methods for deciding how much financial assistance each project will receive or whether expenses incurred before a grant was awarded were eligible for reimbursement. The Board could define the criteria for determining the amount of allotment and provide clarity as to whether expenses incurred in advance of the grant are eligible for reimbursement.
- The law requires annual reviews of existing projects for compliance. The Nebraska Environmental Trust requires grantees to provide quarterly and final reports. The reports are typically narrative and often include images. The question is whether this rises to the level of rigor looked for in the grant oversight process. Absent were records of standardized reporting, specific enumeration of performance against specific contractual performance, records of site visits, and other means of oversight of recipients and their prospective projects. A recommendation was made that the Board assess whether this is in conformance to its expectations and lay out guidance for its expectations.
- General observation of some inconsistencies between law, regulations, guidelines, policies, and bylaws. This would entail a project to identify inconsistencies and reconcile them. Mr. Jackson indicated some of the work has been done in the context of the review assessment.
- From a general operations management perspective, the Board appears to be adhering and complying with relevant Game and Parks Commission practices and policies. One potential issue of opportunity identified is although staff has annual performance reviews, SMART goals are not being utilized. SMART goals are **S**pecific, **M**easurable, **A**ctionable, **R**ealistic, and **T**ime-bound and lend themselves to strong performance management and career coaching. There is opportunity to partner with an HR practitioner for a management and career coaching perspective.

Mr. Jackson commended the staff for being a pleasure to work and enormously supportive. He offered to take questions from the Board, but specified that detail questions might need to be referred to Ms. Block.

Mr. Quandahl asked if the Trust currently possessed the staff and resources to address the findings of the report. Mr. Jackson responded it would depend upon the timeline in which corrective action was expected to occur. Immediate action would be difficult to achieve with existing staff, but if sequentially addressed over a longer period, it might be achievable. Mr.

Mr. Jackson stated DAS is available for support or most appropriately, the COE as the Board gets into mapping out the grant process and identifying any inefficiencies, which need to be corrected. The Center would walk shoulder to shoulder with the NET team and support any corrective efforts.

Mr. Hellbusch reported the Trust has been very successful and wondered if standard operating procedure documents are necessary for every action. If so, more resources and staff would be needed. Mr. Jackson responded he was ill equipped to answer concerning additional resources needed, but there is an element of best practice management. In the absence of documentation and measurement, it is difficult to substantiate the processes are working. The general recommendation is for the Board and staff to assess those areas most critical to know if the processes are working and how they are performing and to make sure they are consistently executed.

Mr. Douglas stated eligibility recommendations called for a process to make sure eligibilities are looked at and communicated and it did not necessarily mean the Board ever had an application pursued through the system that was not eligible. If this is questioned, this might be an example of whether the processes are documented and how they are gone through to ensure better practice. Mr. Jackson generally agreed and stated his team was not attempting to make a judgement that things were not happening, but believed good work was happening. The absence of documentation and guidance, would call for a focus on operational rigor. Mr. Douglas questioned whether the Attorney General's Office would be a candidate for assisting the Board with inconsistencies in statutes, rules, protocol, and bylaws. Mr. Jackson agreed that it was his expectation that the Board work with its counsel.

Mr. Dunn stated the Operations Assessment has some excellent points but questioned whether the Board needs to come up with standard operating procedures for every detail of the process. Comparing the State Constitution, Mr. Dunn stated there are areas that are silent which means it is permissible. Small details may be taken care of in the depth of the grant process. Mr. Jackson responded his team was not attempting to make any judgements but regard the role as a consultant to spot where the issues are, so purposeful decisions could be made to deliberate around the degree of rigor for each element of the process.

As a new member of the Board, Mr. Andersen asked if a similar audit had been performed in the past, if there was reconciliation between a previous audit and the Operations Assessment, if issues were reoccurring, and if a certain response was required. Mr. Jackson stated all he could say was that no prior similar assessments were performed to his knowledge, although he could not answer for other entities.

Mr. Christen questioned if there were some reports talked about when he first was appointed to the Board that had similar findings. Director Brohman responded there were two financial audits during his tenure in 2009 and 2017.

Mr. Dunn commented the closest assessment to the Operations Assessment was the legislature used to have a Program Evaluation Unit that reported to the legislature. In the

early 2000's, it received tasks or requests to look into different issues and did a complete evaluation. The Unit expected a formal written response based on the observations. In general, not comparing the assessments side to side, Mr. Dunn did not believe there were similar issues.

Mr. Christen brought up a grant example that was voted to not fund, and wondered if this meeting was the place to discuss the criteria. He believed it did not qualify but it did. Chairman Kanger leveraged the question for Mr. Christen and asked Mr. Jackson in his review, if eligibility was a separate question from compliance, funding, and scoring components in his review. Mr. Jackson asked for the Board's grace and will have Ms. Block follow up with more specificity.

Director Brohman expressed appreciation to Mr. Jackson and his staff, especially Ms. Block for her hard work. A lot of material is available to reconcile with statute and policies. Mr. Jackson offered support from his entire team in the future at the Board's discretion.

Mr. Davidson asked Director Brohman if he had comments or if he agreed with the report. Director Brohman stated he believed there was some validity and he did not find anything erroneous. There are issues that will be addressed.

Ms. Adams noted in her previous position with another state agency, she had the opportunity to write a guidance document on policies and how they work. The guidance document was key to how staff and grantees operate within a grant. This could be implemented in the future to help everyone understand the process.

Chairman Kanger thanked Mr. Jackson for the resources of his team to help establish baselines and clarity for public benefits, for his summary, and allowing the Board to ask questions.

Agenda Item #5: Discussion of, Potential Action on, Nebraska Auditor of Public Accounts Financial Audit

Chairman Kanger welcomed Ms. Kris Kucera, Audit Manager, and Mr. Lance Lambdin, Legal Counsel, from the Auditor of Public Accounts to the meeting.

Ms. Kucera thanked the Board for the opportunity to attend the meeting to present the audit results and reiterated the staff did a great job with responding to their questions.

The attestation report covers the period from July 1, 2019, to December 31, 2020. Ms. Kucera clarified information is pulled from EnterpriseOne, the State's financial system. Tests are performed on documents and transactions to make sure everything is recorded correctly and the financial schedule shows the correct revenue, expenditures, and fund balances. There are no opinions issued on internal controls or compliance although they are looked at. If something is found, it is brought to the attention of management.

Comments and recommendations are intended to improve the internal control over financial reporting or result in operational efficiencies in the areas of 1) Grant Monitoring, and 2) Unallowed Endowment Transfer.

Eleven grant payments were tested totaling approximately \$6 million out of a total of \$24 million issued during the audit period. During the review, inadequacies and a deficiency in internal controls were found in grants monitoring as follows:

- Out of the eleven grant projects, there were no periodic financial audits as required in the Board's Rules and Regulations (Title 137).
- Nine of the eleven grant projects had no site visits. The rules and regulations call for site visits to be completed after a project is complete. Six grant projects were completed with no site visits. This same finding was found in an audit period ending December 31, 2016.
- The Board Chairman's signature was obtained one time and electronically applied to documents without his review. Electronic signatures are used in the Grant Portal System, increasing the risk that documents are not actually being reviewed. This was also a finding found in a previous attestation.
- There was no supporting documentation for a payment of over \$95,000 to the University of Nebraska-Lincoln. Provided documentation was a printout of the University accounting system and did not include invoices or indicate the reason the payment was made.
- A payment to the Nebraska Community Energy Alliance for almost \$46,000 for expenditures invoiced July 19, 2018; however, the grant period did not start until April 8, 2019.
- Final grant reports for two projects were due on January 31, 2021, and were still not received when auditors asked on June 8, 2021.
- The Board did not formally establish and approve the environmental categories determined for the five-year period July 1, 2020, through June 30, 2025. Although, the categories had not changed, they should have been established and documented.
- A grantee was receiving advance payments without any support or documentation. Prepayments are prohibited by the grant agreement.
- Grant funds were transferred to the same project but to a different grant rather than being forfeited. This was not in accordance with the grant agreement.
- The Board did not have required insurance documentation on file for six of nine equipment purchases tested.
- A grant did not have prior Board approval for a land sale or transfer. Although, the land could have been transferred as a land swap, it did not occur and documentation of Board approval for the transfer of land purchased with \$81,000 in grant funds was not found.

Recommendations of the auditors to help the Board improve the processes included:

- Implement procedures for periodic financial audits and site visits of grantees.

- Ensure expenditures are adequately documented and compliant with grant agreements and in the correct time frame and that advance payments and grant transfers are not allowed.
- Required reports are timely received.
- Grant documents are reviewed, especially when electronic signatures are applied.
- Environmental categories established by the Board are adequately documented.
- Required insurance documentation is on file for equipment purchases.

The Nebraska Environmental Trust has a long-term endowment fund, the Nebraska Environmental Endowment Fund (Endowment Fund), which allows investment income to be used for general expenditures of the Board.

Ms. Kucera noted \$700,000 had been transferred from the Endowment Fund. Per the Auditor's Office calculations, \$630,000 was not allowed to be transferred since only interest income is eligible for transfer. Per the Attorney General, capital gains may not be transferred out of an endowment. The Auditor's Office recommended the Board work with the Investment Council and the Department of Administrative Services to track the amount that should be transferred out of the Endowment Fund.

Chairman Kanger stated before he opened for questions, he wanted the Board to know the context around disclosing the electronic signature issue addressed in the exit commentary. When the Auditor's Office indicated electronic signature issues were discovered in previous audits, he shared that it was asked of him. In the interest of transparency, it was disclosed when it was highlighted by the Auditor's Office.

Mr. Davidson asked Ms. Kucera to educate the Board on the structure of the rating system. Ms. Kucera responded that findings called "Other" are brought to the attention of governance. This would include Item 2 (Unallowed Endowment Transfer). The next level of a finding would be a "Significant Deficiency" which is an internal control deficiency or a combination of internal control deficiencies that definitely need to come to the attention of governance. It is unlikely to have material impact on financial statements. This would include Item 1 (Grants Monitoring). There is also "Material Weakness." This is more severe than a "Significant Deficiency." It could occur when financial statements are materially misstated. There were no findings at this level in the audit. There are some smaller items in the exit conference brought to the attention of management that could possibly be improved upon and are not available to the public.

Mr. Davidson asked Director Brohman about the mechanics of the Endowment Fund and the issues. Director Brohman reported the Fund was originally set up as an endowment in case funding was taken away by the Legislature or if something happened to the Lottery, then interest could be drawn. In 2005, an opinion was received from the Attorney General as to what money could be spent from the Endowment Fund. In 2006, the Board determined the endowment would not continue to be built up and it would be kept at around a million dollars. If something happened to the Trust, there would be enough to finish out grants, although there would not be enough money to fund new grants. The original goal was to build the Endowment Fund to \$70 to \$100 million allowing the Trust to operate on the

interest much like other foundations that award grants. The Board noticed money was not donated to the cause when money was coming in from the Trust Fund and the Board decided not to build up the Endowment Fund. There was a risk that if the Endowment Fund became too large, Lottery proceeds might be taken away. Last year, because the Fund had grown to \$1.9 million, the Board took action to move \$700,000 from the Endowment Fund into the Trust Fund to spend on grants. At the time, records indicated \$600,000 was restricted as the principal and could not be touched. The remainder was interest, dividends and capital gains. The 2005 Attorney General's opinion stated that NET could spend the interest, capital gains, and the endowment. In 2007, the Attorney General's Office came out with a new and conflicting opinion that was sent to the Nebraska Investment Council and the Board was not aware of it. Only interest income is allowed to be allocated by the Trust Board under the provisions of § 85-15,174.01. The interest amounted to around \$70,000 and the rest was capital gains.

Mr. Dunn noted when the Endowment Fund was first started, the investment was made through the Nebraska Foundation. An opinion to not use them was issued and the money was then managed by the State of Nebraska.

Director Brohman indicated after talking to the Attorney General's Office, the Investment Council, and the Auditor's Office, he was suggesting to transfer \$700,000 from the Trust Fund back to the Endowment Fund since it would be difficult to determine the exact interest amount. The transfer will be on the agenda of the August 3, 2021 Board meeting.

Mr. Quandahl thanked Ms. Kucera for her time and efforts in putting together the report. It provided clarity on how the Board is doing on financial and accounting matters. Ms. Kucera was asked in her opinion if NET possessed sufficient resources and staff to address the grant monitoring recommendations. Ms. Kucera responded that she did not know if she was equipped to answer, although she did believe the number of projects was too numerous for a four member staff to do the required financial audits on all the projects. Many state agencies conduct sub-recipient monitoring, but the difference is they are not really audits. The Board may want to clarify what is meant by "audit" and narrow down the procedures in the rules and regulations.

Mr. Douglas questioned what kind of audits the Board needs to conduct. Ms. Kucera stated she did not know the intent of the rule when it was established. The Board would need to determine what the definition is. The rule and regulation is a general statement and the Board would need to define procedures to narrow it down.

Mr. Hellbusch reiterated the need to increase staff and budget to do all the site visits across the state. He questioned whether another agency might be willing to assist with the site visits, how many grants NET had over a three-year period, and the number of site visits. Director Brohman stated there were currently approximately 280 open grants and around 70 new grants opened each year.

Mr. Davidson stated he was on the Performance Committee started last year and two issues were identified for prioritization. They were providing better criteria to refer to the Grants

Committee that could be used in the grant process and align with performance and more “boots on the ground” work to look at projects when completed. He noted that Mr. Douglas’s agency had a geographically distributed group of biologists across the state with some expertise in this type of work, but it was clarified the Performance Committee had not looked at this concept yet.

Mr. Wellman confirmed with Ms. Kucera that contracted audits were acceptable. He questioned if the Endowment Fund continued to grow and funds cannot be transferred to use with grants, what is the end purpose, and what do we do with excess funds? Ms. Kucera responded that this was a legal question and it would need to be referred to counsel. Director Brohman stated the Investment Council was planning to go to the Legislature last year to try to change the language to say dividends and capital gains could be expended from the nine endowment funds across the state. Because of COVID-19, a bill was not presented to the Legislature. The Investment Council Director said that it was their intent to try again next year. Either NET or the Investment Council could submit a legislative bill for statutes to be changed. Mr. Wellman asked about the audit point concerning the transfer of funds left over from grants being carried over to another grant with the same recipient. While he understood the money should be forfeited, in the end, it was the same result minus the transfer back to our account and then the transfer of money to the recipient of the second project. The net amount of money committed to the projects was the same. Ms. Kucera responded she did not know if all the money was regranted if a new grant was established. Ms. Kucera gave an example that if the first project was \$117,000, only \$100,000 may have been given for the new grant. She indicated she was not completely sure how it worked.

Mr. Bowen stated the Board is handing out approximately \$20 million a year of the public’s money for public projects and there is no documentation for good answers to good questions. On grants monitoring, the grant agreement stated the land would be transferred but formal Board approval was not obtained. He expressed frustration that when he came to his first Board meeting, the transfer was already done before it was discussed. Ms. Kucera was asked why it was transferred before prior approval. Ms. Kucera responded that the Auditor’s Office had read the grant agreement and it allowed a land swap. A transfer would need prior approval. Documentation for prior approval was not provided. Mr. Bowen stated that if the Board could not afford the staff to do it right, then maybe \$20 million a year should not be handed out. The Board is accountable to each other and to the public.

Mr. Hellbusch commented that the result was the same, but the process was wrong. This is why the Board is addressing these issues now.

Mr. Andersen stated he was the Chairman of the four-member Finance Committee and some of the issues have been dived into and discovery of some of the same issues had been found. The Goal is to treat everyone fairly and consistently. There is work on some of the “fixes.” If prior audits have similar findings, than these issues need to be addressed.

Mr. Christen questioned whether site visits in the audit were referring to all funded projects. Ms. Kucera responded the assumption was correct, since audits are required in the Board’s

procedures and policies. Mr. Christen stated the issues are long term and monitoring and following up on these projects has probably been deficient for a long time. Board and staff support was lacking to move forward and do something about it. Mr. Christen added that in an effort to be fair to the public and to be transparent, the audit had certainly been helpful.

Mr. Andersen asked Ms. Kucera to explain more about the Revolving Fund on pages 1 and 2 of the exit document. Ms. Kucera stated that through testing there were grants established using a revolving land fund approach. There were no payments coming out during the period of testing, but when looking at grants, it was noticed and added to the report for public knowledge. A grant would be issued for land, that land could be sold, and the proceeds kept at that entity to purchase more land without further Board approval. In 2012, a legislative bill was proposed that did not advance but solidified that this issue was probably not appropriate. While it appears this issue is no longer happening, there is no regulation saying it could not happen again. The issue was brought to the Board and public attention so it could be monitored to make sure if it is done again, it is allowable and legal.

Chairman Kanger asked Director Brohman if there were any further comments to the submitted responses. Director Brohman stated the Assistant Grant Administrator left in November 2020 and the office had gotten behind in collecting insurance documents on equipment grants. Last year, COVID-19 prevented site visits. NET probably needs to look at potentially having an auditor on staff or contract out for site visits. A formal policy could be made by the Board to not do Revolving Funds. Director Brohman thanked Ms. Kucera and her staff for the work in the audit.

Mr. Christen asked if it was the office's responsibility to obtain the insurance documents or if it was the grantee's responsibility. Ms. Adams responded it now is the grantee's responsibility. Director Brohman noted this was easier with the new portal system where the grantee can directly enter the information. It was the grantee's responsibility previously, but if insurance documents were not received, the grantee was contacted. Mr. Christen asked Director Brohman what kinds of grants were meant during discussion of Revolving Funds when a comment was made about other funds like creative funds. Director Brohman responded that before his employment with NET, The Nature Conservancy used funds from the sale of a finished a project to create the Sandhill's Task Force.

Chairman Kanger thanked Ms. Kucera, Mr. Lambdin, and their staff. The Board asked for the audit to be moved up. It put a lot of pressure on the staff and the effort cannot be overstated, but the rationale behind it was that if materials were going to be pulled for an audit, it would be best not to protract them out over a long period. Most importantly, it created a baseline for process improvement.

Agenda Item #6: Public Comment and Good of the Order

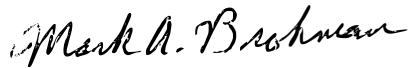
Mr. Rob Schupback reported being a supporter of the Trust for the last 15 years. He stated around 2000, there were changes made to the management of the Trust. There have been growing pains since the beginning of the Trust. The real problem is prosperity. Although the Trust funds have almost doubled, the number of staff is still the same. Paperwork has

always been an issue. Mr. Schupback stated Executive Director Mark Brohman is working night and day and it is not a problem of honesty but of understaffing.”

Agenda Item #7: Date and Location of Next Meeting: Tuesday, August 3, 2021, 10 AM
Ferguson House, Lincoln, Nebraska.

Agenda Item #8: Adjourn. Chairman Kanger adjourned the meeting at 2:34 PM.

Respectfully submitted,



Mark A. Brohman
Executive Director