

MINUTES

Nebraska Environmental Trust Board
First Quarter Meeting
Thursday, February 2, 2023
1:30 p.m.

1. Call to Order

Chairman Quandahl called the first quarter meeting of the Nebraska Environmental Trust Board to order at 1:32 p.m. in LL Room 031 at 245 Fallbrook Blvd, Lincoln, Nebraska.

Advanced notice of the meeting and public hearing was published in the Lincoln Journal Star on January 23, 2023. The agenda and documents to be considered at the meeting were provided. The Open Meetings Act was posted near the entrance of the meeting room and on the Nebraska Environmental Trust (NET) website.

Roll call was conducted, and a quorum was present.

Members present (11):

District I: Mr. James Hellbusch, Columbus; Mr. Jeff Kanger, Lincoln; Mr. John Orr, Blair.

District II: Mr. Paul Dunn, Omaha; Chairman Mark Quandahl, Omaha.

District III: Mr. Josh Andersen, Edgar; Mr. Quentin Bowen, Humboldt; Mr. Rod Christen, Steinauer.

State Agency Representatives: Mr. Tim McCoy, Director, Nebraska Game & Parks Commission; Ms. Charity Menefee, Director, Nebraska Department of Health and Human Services; Ms. Sherry Vinton, Director, Nebraska Department of Agriculture.

Members absent (3):

State Agency Representative: Mr. Felix Davidson, Valley; Vice Chairman Jim Macy, Director, Nebraska Department of Environment and Energy; Mr. Tom Riley, P.E., Director, Nebraska Department of Natural Resources.

Staff present:

Mr. Karl Elmshaeuser, Executive Director; Ms. Holly Adams, Grants Administrator; and Ms. Sandra Weaver, Administrative Specialist.

2. Consent Agenda

Background on consent agenda items

The consent agenda included the January 10, 2023, Board meeting minutes, financial reports and approval to set financials aside for audit, the Grant Disbursement Report, Nebraska Lottery Proceeds Allocation Report, and the Grant Administration Report.

Motion by Mr. Orr, seconded by Mr. Christen, "I move to approve the consent agenda."

Voting Aye: Hellbusch, Orr, Dunn, Andersen, Christen, Bowen, McCoy, Menefee, Vinton, Kanger, Quandahl

Absent: Davidson, Macy, Riley

11 Voted Aye. Motion carried.

3. Public Comment

Mr. Jerry Bucy, Lower Big Blue NRD, explained the reasons for the extension request for grant project 20-162-3.

Mr. John Bender, Friends of the Nebraska Environmental Trust, provided his opinion as to whether specific projects were regulatory and therefore ineligible for funding in response to discussion held at the previous NET Board meeting.

4. Board Development

a. Recognition of Board Representation in Congressional Districts

Chairman Quandahl recognized the public service of Board members John Orr, Congressional District 1; Quentin Bowen, Congressional District 3; and Paul Dunn, Congressional District 2, whose terms expire in March 2023. John Orr and Quentin Bowen have each served one six-year term, and Paul Dunn has served four six-year terms.

b. Accountability and Disclosure – Conflicts of Interest Statement & Reporting

Executive Director Elmshaeuser noted members of the Nebraska Environmental Trust Board are bound by the Nebraska Accountability and Disclosure Act. Members are required to file a Statement of Financial Interests form by March 1 and file a Potential Conflict of Interest Statement whenever any potential conflict of interest arises. Board members were encouraged to sign a NET Conflict of Interest form to acknowledge avoiding or disclosing potential conflicts of interest or any perceptions of them.

5. Legislative Committee Report

Executive Director Elmshaeuser reported 812 bills were introduced in the Nebraska Legislature. No bills or constitutional amendment proposals were identified that directly impact the NET. Legislative bills that may affect board activities include:

- LB302 – concerns accountability and disclosure laws and how conflicts of interest are reported
- LB513 – changes proof of publication requirements for legal notices and requirements for published notices and virtual conferencing under the Open Meetings Act
- LB637 – would require members of the public to be allowed to speak at each meeting subject to the Open Meetings Act

6. Rescind Nebraska Environmental Trust Policy Section VI: G. Defense Funds on Easements

Background on Agenda item 6

In July 2015, the NET Board implemented a policy to require a defense of easements fund by grantees if a conservation easement was part of a grant request. Defense Funds are not held by the NET and are set aside by the grantee after NET funds are provided for the awarded grant. The NET does not monitor these funds. Survivability clauses require the grantee in their grant contract to report the funds annually. In most cases, the NET staff request and track the information. NET Board discussions during 2022 involved the NET's State APA Audit issued on July 21, 2021, and the similarities of a revolving fund situation. The Defense Funds on Easements policy sets a position in which the NET Board is at risk of delegating its authority to fund activities without ensuring outside oversight by either the Board or any other independent entity. Under the current policy, interest gained from the funds may be expended by the grantee for monitoring. The funds are to be tracked

for each funded property. In most cases, the grantee has blended the funds into one investment fund. If there is a conflict concerning the easement, the grantee could use the funds provided by the NET to counter NET challenges.

Motion by Mr. Andersen, seconded by Mr. Orr, "I move that the Nebraska Environmental Trust Board rescinds the Nebraska Environmental Trust Policy Section VI: G. Defense Funds on Easements effective February 3, 2023, and that all surviving contractual obligations by previous grantees continue to report the status of defense fund on easements, interest, and allowed expenditures."

Discussion: None.

Voting Aye: Orr, Andersen, Christen, Bowen, McCoy, Menefee, Vinton, Kanger, Hellbusch, Quandahl

Voting Nay: Dunn

Absent: Davidson, Macy, Riley

10 Voted Aye. 1 Voted Nay. Motion carried.

7. Amend Nebraska Environmental Trust Policy Section VII: A. Post-Completion Procedure and Report to align with Grant Modification Request Policy

Background on Agenda Item 7

NET policy Section VII: A. Post-Completion Procedure and Report was adopted on February 13, 1996, and last revised on April 5, 2007. NET policy Section VI: Grantee Conditions, I. Grant modification Requests was adopted on November 13, 2006, and later amended on April 8, 2021. Conflicting language must be deleted in Section VII to match the updated Section VI.

Motion by Mr. Andersen, seconded by Mr. Orr, "I move that the NET Policy Section VII: Post-Completion Procedure and Report, A. be amended by removing the language that is struck through and read as follows:

A grant contract is considered to have expired when the termination date specified in that contract is reached. ~~The Board authorizes the Executive Director to extend the termination date of any grant, provided that the grantee supplies reasonable cause for the extension and the extension will allow the project to be completed as authorized by the Board in the grant award."~~

Discussion: Mr. Orr stated he supported the policy change since it clarifies authority, holds the Board accountable, and is more transparent.

Voting Aye: Dunn, Andersen, Christen, Bowen, McCoy, Menefee, Vinton, Kanger, Hellbusch, Orr, Quandahl

Absent: Davidson, Macy, Riley

11 Voted Aye. Motion carried.

8. Discussion on limiting survivability terms for insurance, property tax, and easements on grant-funded projects

Background on Agenda Item 8

The continued payment of real property tax is included in Title 137. The NET policy on payment of taxes on real property originated in 1999 and was updated in 2005. Initially drafted in 1996, the equipment insurance policy was revised in 2002 and 2022. These policies create survivability provisions in the grant contracts. Depreciation timelines and monitoring of personal and real property create accountability issues.

Executive Director Karl Elmshaeuser stated input from the NET Board is being sought to create recommendations to the Title 137 Committee and NET Board to update rules, regulations, and policies. Decisions could enable the incorporation of language into grant contracts and separate contractual agreements beyond the grant contract for specific items. As a result, clearer tracking and accountability of expended public funds can be provided. Examples of cases with accountability issues were outlined for the Board. Personal property is easier to track than real property. Questions for the NET Board's consideration include the following:

- What is the term for an environmental benefit to the general public from the public funds invested?
- How do we handle real property, and what is the length of the term for real property?
- How long after the Trust provides funds are the obligations fulfilled, and how long should strings be attached to a grant?
- Does the Trust care if the property doubles in value over time?
- What is the general public's benefit, and how is it quantified?

Part of the Title 137 Committee's challenge will be defining whether a program is regulatory. Currently, there are no provisions in Title 137 to track funds once they go back to the grantee.

9. Grant Modification Requests

a. Extension Requests: 20-162-3, 20-183-3, 21-162-2, 22-141, 21-118

Motion by Mr. McCoy, seconded by Mr. Hellbusch, "I move to approve Lower Big Blue NRD's request to extend project 20-162-3 for one year."

Discussion: Mr. Andersen expressed concern about what the extension would produce for the grant and whether it would finish spending the funds or finish the project. Mr. Kanger questioned whether it is best to surrender the funds, return to the Trust, and reapply when timing and other funding source challenges exist on a project.

Voting Aye: Christen, McCoy, Menefee, Orr, Dunn

Voting Nay: Andersen, Bowen, Vinton, Kanger, Hellbusch, Quandahl

Absent: Davidson, Macy, Riley

5 Voted Aye. 6 Voted Nay. Motion failed.

Motion by Mr. Andersen, seconded by Mr. Dunn, "I move to approve UN-L's request to extend project 20-183-3 for one year."

Discussion: Mr. Andersen requested a review of the modification request before considering the extension request. Grants Administrator Adams noted the modification request was due to burglary and vandalism at one of the sites. Excess money in the Benefits budget category due to the revised eligibility policy could be moved to the Materials and Supplies and Equipment categories. Equipment insurance is required for items worth \$1,000 or more. Since the individual pieces were considered materials, service life was not added to the equipment. Issues with receiving equipment and materials caused the project's timeline delay.

Voting Aye: Andersen, Christen, Bowen, McCoy, Menefee, Vinton, Kanger, Hellbusch, Orr, Dunn, Quandahl

Absent: Davidson, Macy, Riley

11 Voted Aye. Motion carried.

Motion by Mr. Andersen, seconded by Mr. Christen, “I move to approve UN-L’s request to extend project 21-162-2 for one year only.”

Discussion: None.

Voting Aye: Christen, Bowen, McCoy, Menefee, Vinton, Kanger, Hellbusch, Orr, Dunn, Andersen, Quandahl

Absent: Davidson, Macy, Riley

11 Voted Aye. Motion carried.

Motion by Mr. Andersen, “I move to deny Central Platte NRD’s request to extend project 22-141 for one year.”

The motion failed due to lack of a second.

Motion by Mr. Dunn, seconded by Mr. McCoy, “I move to approve Central Platte NRD’s request to extend project 22-141 for one year.”

Discussion: Bidding and construction on the project cannot proceed until NEPA regulatory and FHWA approvals are received. Pending progress with NGPC and FWHS, the current estimate for completion is November 2023.

Voting Aye: Bowen, McCoy, Menefee, Vinton, Kanger, Hellbusch, Orr, Dunn, Andersen, Christen, Quandahl

Absent: Davidson, Macy, Riley

11 Voted Aye. Motion carried.

Motion by Mr. Dunn, seconded by Mr. Orr, “I move to approve Snake Falls Preservation Group’s request to extend project 21-118 for six months.”

Discussion: It was clarified that there was an agreement in the project to allow public access for a term of five years after the completion of the project. Due to severe drought, a permit could not be obtained for mechanical cedar clearing unless fire equipment and personnel were on-site. As the requirement was cost prohibitive, the project was delayed until a snowfall occurred. A subsequent snowstorm resulted in drifts four to six feet deep, making work impossible. NET policy does not prohibit a second extension on a project.

Voting Aye: McCoy, Menefee, Vinton, Kanger, Hellbusch, Orr, Dunn, Andersen, Christen, Bowen, Quandahl

Absent: Davidson, Macy, Riley

11 Voted Aye. Motion carried.

b. Modification Requests: 20-183-3, 22-130

Motion by Mr. Dunn, seconded by Mr. Christen, “I move to approve UN-L’s request to move funds from the Benefits category into the Equipment and Materials categories for project 20-183-3.”

Discussion: As per NET Board policy, requests for budget changes within a grant must be approved by the Board if the total amount is \$10,000 or more. An excess amount remains in the Benefits category due to the new contract limitations and is ineligible for recapturing unless an eligible request is made.

Voting Aye: Menefee, Vinton, Kanger, Hellbusch, Orr, Dunn, Christen, McCoy

Voting Nay: Andersen, Bowen, Quandahl

Absent: Davidson, Macy, Riley

8 Voted Aye. 3 Voted Nay. Motion carried.

Motion by Mr. Dunn, seconded by Mr. Orr, “I move to approve Nebraska Recycling Council’s request to increase the Recycling Equipment mini-grant maximum award amount from \$20,000 to \$25,000 per individual project for NET grant 22-130.”

Discussion: Executive Director Elmshaeuser clarified the mini-grant maximum award amount is internal and that no additional grant funds will be given to the grantee. Mr. Dunn noted the request provided good examples of how Pro-Bin Trailer prices are increasing.

Voting Aye: Vinton, Kanger, Hellbusch, Orr, Dunn, Andersen, Christen, Bowen, McCoy, Menefee, Quandahl

Absent: Davidson, Macy, Riley

11 Voted Aye. Motion carried.

10. Title 137 Committee Report

Chairman Josh Andersen of the Title 137 Committee reported public listening sessions for proposed changes to Title 137 were held in Lincoln, Omaha, Kearney, and a virtual Zoom session was made available. The Committee is reviewing the report of compiled comments. After the review, the Committee will bring ideas to the NET Board for consideration. Title 137 Committee members include Committee Chairman Josh Andersen, Jeff Kanger, Mark Quandahl, Jim Macy, and Sherry Vinton.

Executive Director Elmshaeuser reported the Committee met on February 1, 2023, and will continue to meet every two weeks. Board members were encouraged to submit ideas to the Title 137 Committee for consideration.

11. Directors Report

Executive Director Elmshaeuser reported that ten grant project audits had been conducted in the last eight months, including four in-person and four ongoing audits. Eighteen 15-day notices were sent to grantees for a breach of their grant contract. Fifteen of the eighteen notices have been cleared, and three are ongoing. One grantee in the audit process is under federal indictment. On another issue, a grantee has been criminally charged and is still pending investigation. Two other grant projects are still being researched. Internally, tracking processes for grants have been improved. The office is in the process of updating contracts for the next grant round. Language will be added to the grant contract stating that invoices not submitted by a specified date will not be paid.

Other items in the report included:

- The Appropriations Hearing with the Game and Parks Commission, which includes the Governor’s proposed biennial budget recommendations for the NET in LB814, will be held at the State Capitol, Room 1524, on Tuesday, February 28.
- At the next quarterly meeting, UN-L’s School of Computing students will present their Grants Portal improvements to the NET Board.

Executive Director Elmshaeuser formally recognized Holly Adams and Sandra Weaver for their service to the State of Nebraska and for carrying the load while the office remains understaffed. Both employees were awarded a \$1,000 bonus for their service.

Board Member Comment

Mr. Christen asked to clarify his comments on regulatory programs at the NET Board meeting on January 10, 2023. He noted the comments were based on his impression that Trust-funded grants in the past were not allowed to be used on CRP acres when related to burn equipment and evasive species control. Participants already received payments for management practices on their CRP acres through FSA.

12. Next Meeting

Thursday, May 4, 2023, LL Room 031, 245 Fallbrook Blvd, Lincoln, Nebraska, 1:30 p.m.

13. Adjourn

Chairman Quandahl adjourned the meeting at 3:11 p.m.



Karl L. Elmshaeuser
Executive Director