

## MINUTES

Nebraska Environmental Trust Board  
Fourth Quarter Meeting  
Thursday, November 3, 2022  
1:30 p.m.

### 1. Call to Order

Chairman Quandahl called the virtual, on-site meeting of the Nebraska Environmental Trust Board to order at 1:30 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 October 22, 2022. 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 (13):**

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

**District II:** Mr. Felix Davidson, Valley; Mr. Paul Dunn, Omaha; Chairman Mark Quandahl, Omaha.

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

**State Agency Representatives:** Dr. Gary Anthonie, Director, Nebraska Department of Health and Human Services; Vice Chairman Jim Macy, Director, Nebraska Department of Environment and Energy; Mr. Tim McCoy, Director, Nebraska Game & Parks Commission; Mr. Steve Wellman, Director, Nebraska Department of Agriculture.

#### **Members absent (1):**

**State Agency Representative:** Mr. Tom Riley, P.E., Director, Nebraska Department of Natural Resources.

Mr. Kanger left the meeting at 3:00 p.m.

#### **Staff present:**

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

### 2. Consent Agenda

#### Background on consent agenda items

The consent agenda included the August 22, 2022, Board meeting minutes, financial reports and approval to set financials aside for audit, the Grant Disbursement Report, Nebraska Lottery Proceeds Allocation Report, and Grant Administration Report.

**Motion by** Mr. Davidson, seconded by Mr. Macy, "I move to approve the consent agenda."

**Voting Aye:** Hellbusch, Orr, Dunn, Davidson, Andersen, Christen, Bowen, McCoy, Anthonie, Wellman, Macy, Kanger, Quandahl

**Absent:** Riley

**13 Voted Aye. Motion carried.**

### 3. Public Comment

None.

### 4. Board Development – Informational reviews

#### Background on informational reviews

Board development provides an opportunity for board members and staff to review statutes, rules and regulations, and policies and procedures and become more familiar with documents governing NET's operations.

Executive Director Elmshaeuser clarified procedures for meeting motions, amendments, withdrawals, and abstentions in accordance with Roberts Rules and the Nebraska Open Meetings Act.

Since the Public Hearing was not scheduled until 2:00 p.m., and there were no objections from the Board, Chairman Quandahl moved on to agenda items 10 and 11.

### 10. Title 137 Committee Report

Mr. Andersen, Chairman of the Title 137 Committee, reported the NET Board authorized the Title 137 Committee at its meeting on May 19, 2022. The Committee has met and is holding public listening sessions in each Congressional District for attendees to submit comments and suggestions for revising Title 137 Rules and Regulations. Public comments received by the Title 137 Committee and staff will be evaluated and incorporated, when possible, into the proposed revisions to present to the NET Board for consideration. Regulations are created, amended, or repealed through the hearing and adoption process.

Title 137 Listening Sessions were scheduled as follows:

- Tuesday, October 25, 2022, 1:00-2:00 p.m., Ferguson House, 700 S 16<sup>th</sup> St, Lincoln, NE
- Wednesday, November 9, 2022, from 12:00-1:00 p.m., Omaha State Office Building, Third Floor Room E, 1313 Farnam St, Omaha, NE
- Tuesday, November 15, 2022, 12:00-1:00 p.m., Kearney Public Library, North Platte Room, 2020 1<sup>st</sup> Ave, Kearney, NE
- Monday, December 5, 2022, from 1:00-2:00 p.m., online via Zoom, meeting link <https://outdoornebraska.zoom.us/j/99507450632>

Executive Director Elmshaeuser reported that the goal is to revise the rules and regulations to provide more clarity before the next grant cycle, which begins July 1, 2023. The public will have an opportunity to participate.

### 11. Policy discussions

#### a. Defense of easements funding

NET adopted the Defense Funds on Easements policy in 2015. The Trust requires a Defense Fund of at least 10% of the appraised value at the time of acquisition for enforcement and defense of the conservation easement. The survival provisions remain after the grant period ends, and reporting information is still required. Even though the survivability clause is enforceable, not all grantees are compliant. Executive Director Elmshaeuser reported the amount paid from NET funds since 2005 is \$1,189,660.12. The grantee may use investment or interest income for annual monitoring expenses.

**b. Property taxes on grant funded properties**

The payment of tax on real property is found in Title 137 and NET policy. The policy originated in 1999 and was updated in 2005.

**c. Insurance coverage on grant funded properties**

The NET's equipment insurance policy originated in 1996, with revisions in 2002 and 2022.

Executive Director Elmshaeuser asked for input from members so recommendations for policy updates could be brought to the NET Board. Given the perplexity of the issues, Mr. McCoy recommended continuing discussions with the Attorney General's Office before the Board moves forward on any recommendations.

**2:00 PM Public Hearing on Proposed Eligibility Recommendations for the 2023 Grant Cycle**

As presiding officer, Chairman Quandahl opened the public hearing at 2:00 p.m. to accept testimony on the proposed eligibility recommendations for the 2023 Grant Cycle under consideration by the Nebraska Environmental Trust Board, pursuant to Neb. Rev. Stat., Sections 81-15,167 through 81-15,176.

**Written testimony:**

Ms. Denise McGovern-Gallagher, Grand Island Area Clean Community System, concerning the recommended ineligibility status of grant application 23-101.

Mr. Andy Bishop, Rainwater Basin Joint Venture, concerning the recommended ineligibility status of grant applications 23-104, 23-116, and 23-144.

Ms. Christine Vail, Keep Keith County Beautiful, concerning the recommended ineligibility status of grant application 23-161.

Mr. Mike Murphy and Mr. Chandler Schmidt, Middle Niobrara Natural Resources District, concerning the recommended eligibility status and reviewer concerns for grant application 23-117.

Mr. Jay Jones, Village of Allen, concerning the recommended ineligibility status of grant application 23-119.

Mr. Mike Murphy, Middle Niobrara Natural Resources District, concerning the recommended ineligibility status of grant applications 23-120 and 23-130.

Mr. Mohammad Ghashami, concerning the recommended ineligibility status of grant application 23-139.

**Testimony at Hearing:**

Mr. John Thorburn, Rainwater Basin Joint Venture, testified that the organization had submitted written testimony concerning the recommended ineligibility status of its grant applications 23-104, 23-116, and 23-144. Grant application 23-125 was deemed eligible for scoring. The purpose and beneficiaries of the grants were clarified, and reconsideration was requested for the grant applications not recommended for eligibility.

Ms. Mona Bavarian, University of Nebraska-Lincoln, provided testimony on the benefits of grant application 23-157, Management of Run-off Water in the State of Nebraska, which was recommended as ineligible. Reconsideration of the application was requested.

Mr. Jeff Selden, Loup Central Landfill Association, provided testimony on the benefits of grant application 23-111, Metal Recycling Facility, which was recommended as eligible for scoring.

Mr. Scott Snell, Orton Management Associates Inc., representing the Nebraska State Irrigation Association, expressed concerns regarding the Grants Committee's recommended ineligibility status of grant application 23-145, Nebraska Water Leaders Academy. Reconsideration was requested.

Ms. Becky Ravenkamp, Lewis & Clark NRD, Bow Creek Watershed Project, testified on the project purpose and benefits of grant application 23-112, which was recommended as ineligible for scoring. Reconsideration was requested.

Ms. Denise Gallagher, Grand Island Area Clean Community System, testified on the recommended ineligibility status of grant application 23-101 and its importance to Central Nebraska. Reconsideration was requested.

Mr. Bob Wickersham, Friends of the Nebraska Environmental Trust, provided a written statement for distribution to Board members. Testimony detailed concerns about the eligibility process.

Mr. Joe Stecher, Counsel for Whitney Irrigation District, testified on criteria issue concerns and asked for reconsideration of the recommended ineligibility status of grant application 23-105.

Mr. Mohammad Ghashami, UN-L College of Engineering, explained the project benefits of grant application 23-139 and asked for reconsideration of the proposed ineligibility status.

Ms. Kathy Worley, Keep Alliance Beautiful, testified on the project benefits, criteria issue concerns, and the recommended ineligibility status for grant application 23-109. Reconsideration was requested.

Ms. Chris Vail, Keep Keith County Beautiful, explained the project benefits of grant application 23-161 and asked for reconsideration of the recommended ineligibility status.

Mr. Ron Pelton, President of Whitney Irrigation District, provided further information about the purpose of grant application 23-105, which was recommended as ineligible to proceed to scoring.

Mr. Kyle Kinyoun commended the Grants Committee on a difficult job and expressed concern that some organizations applying for grants could levy a tax or are dependent on Trust funding to function.

The hearing concluded at 2:41 p.m.

## **5. Grants Committee Report and Recommendations for Grant Application Eligibility**

### Background on Grant Application Eligibility

Six grant applications were confirmed as fake and were removed from consideration. Grants Committee members reviewed 81 applications for eligibility using the grants portal checklist and information provided in Title 137. At its meeting on October 13, 2022, the Committee determined that 47 out of 81 applications were eligible to proceed to scoring. After approval, the NET Board will refer

grant applications deemed eligible back to the Grants Committee to use the project ranking and scoring system approved on May 19, 2022.

Mr. Davidson, Chairman of the Grants Committee, thanked those who provided testimony on the proposed eligibility list. The eligibility process for grant applications during the last two years was summarized.

**Motion by** Mr. Davidson, seconded by Mr. Andersen, "As Chairman representing the Grants Committee, I move that the Nebraska Environmental Trust Board accepts and approves the grant eligibility, as recommended by the Grants Committee: 23-115, 23-131, 23-136, 23-113, 23-114, 23-122, 23-123, 23-127, 23-140, 23-149, 23-152, 23-162, 23-164, 23-166, 23-169, 23-183, 23-186, 23-107, 23-108, 23-111, 23-121, 23-125, 23-132, 23-134, 23-135, 23-141, 23-142, 23-146, 23-148, 23-150, 23-151, 23-154, 23-155, 23-156, 23-158, 23-159, 23-167, 23-170, 23-171, and 23-180."

**Discussion:** Kanger reported that as Grants Committee members determined eligibility for grant applications, Title 137 rules and regulations were next to each component. He noted the language in Title 137 is incredibly subjective, which seems consistent with feedback concerns about objectivity.

**Voting Aye:** Orr, Davidson, Andersen, Christen, Bowen, McCoy, Anthone, Wellman, Macy, Kanger, Hellbusch, Quandahl

**Voting Nay:** Dunn

**Absent:** Riley

**12 Voted Aye. 1 Voted Nay. Motion carried.**

**Motion by** Mr. Davidson, seconded by Mr. Macy, "As Chairman representing the Grants Committee, I move that the Nebraska Environmental Trust Board accepts and approves the grant eligibility, as recommended by the Grants Committee: 23-138, 23-170, and 23-172."

**Discussion:** None.

**Voting Aye:** Davidson, Andersen, Christen, Bowen, Anthone, Wellman, Macy, Kanger, Hellbusch, Orr, Quandahl

**Voting Nay:** Dunn

**Abstained:** McCoy

**Absent:** Riley

**11 Voted Aye. 1 Voted Nay. 1 Abstained. Motion carried.**

**Motion by** Mr. Davidson, seconded by Mr. McCoy, "As Chairman representing the Grants Committee, I move that the Nebraska Environmental Trust Board accepts and approves the grant eligibility, as recommended by the Grants Committee: 23-102, 23-117, 23-124, 23-153, and 23-179."

**Discussion:** None.

**Voting Aye:** Davidson, Andersen, Christen, Bowen, McCoy, Anthone, Wellman, Kanger, Hellbusch, Orr, Quandahl

**Voting Nay:** Dunn

**Abstained:** Macy

**Absent:** Riley

**11 Voted Aye. 1 Voted Nay. 1 Abstained. Motion carried.**

Mr. Davidson, Grants Committee Chairman, noted the next phase of the grant process would be scoring eligible grant applications.

## 6. Transfer of property request, City of Lincoln, Grant Contracts 13-116 & 16-122

### Background on transfer of property request

Personnel from the City of Lincoln contacted the Grants Administrator seeking guidance to transfer property under grant contracts 13-116 and 16-122. After consulting with the Executive Director, the Grants Administrator contacted the Attorney General's office. Based on the documents reviewed, the Attorney General's office determined that the City of Lincoln would need approval from the Board to transfer the properties because they were purchased in part with grant funds. The Grant Contracts require notice and prior written permission from the Nebraska Environmental Trust Board.

Ms. Jocelyn Golden, Senior Attorney for the City of Lincoln, together with the Parks and Recreation Department, came before the Board to explain the City of Lincoln's request to transfer two parcels to their cooperative partner, the Lower Platte South Natural Resources District (LPSNRD). The parcels were referred to as Bobcat I-Grant 13-116, purchased in December 2013, and Bobcat II-Grant 16-122, awarded in 2016 and purchased in 2018 with NET funds. Both properties are open to the public, with no permit or fee required. Ms. Golden clarified that the City of Lincoln is the responsible sponsor for the property taxes continuing to be paid. Executive Director Elmshaeuser stated that in accordance with applicable state law, the property may not be sold, leased, transferred, exchanged, mortgaged, or encumbered in any manner or used for purposes inconsistent with the grant without the prior written approval of the Nebraska Environmental Trust. This language is in the current deed and will continue in the following deed. The LPSNRD would not be able to transfer the property without approval from the Trust. Language will also be added concerning property taxes.

**Motion by** Mr. Dunn, seconded by Mr. Davidson, "I move to approve the transfer requested by the City of Lincoln for Bobcat I & II and include grant language concerning property taxes and the current deed restriction concerning the Nebraska Environmental Trust in any new deed."

**Discussion:** Questions from the Board were addressed. Mr. Bowen expressed concern that NET funding had been used to purchase property for perpetual easements, and the terms were later changed.

**Voting Aye:** Bowen, McCoy, Anthone, Macy, Hellbusch, Orr, Dunn, Davidson, Quandahl

**Voting Nay:** Andersen, Christen, Wellman

**Absent:** Kanger, Riley

**9 Voted Aye. 3 Voted Nay. Motion carried.**

## 7. Grant modification requests

### a. Extension request for grant 19-186-3

**Motion by** Mr. Andersen seconded by Mr. Davidson, "I move to deny UN-L's request to extend project 19-186-3 for one year."

**Discussion:** It was clarified that the current grant period closes in December 2022. Dr. Anthone expressed concern that the work done so far might be for naught if the project is not extended and work is not completed. Grants Administrator Adams reported on the total funding received and the amount still available for the project. Mr. Orr clarified that the request letter indicated additional funding would not be required if the project was extended. Mr. Davidson noted that the University is a large organization with enormous resources that could be leveraged to finish the

project. Mr. Wellman stated he would vote against extending the contract period since UN-L previously received a six-month extension and has other resources.

**Voting Aye:** Christen, Bowen, Wellman, Macy, Hellbusch, Orr, Davidson, Andersen, Quandahl

**Voting Nay:** McCoy, Anthone, Dunn

**Absent:** Kanger, Riley

**9 Voted Aye. 3 Voted Nay. Motion carried.**

**b. Budget request for grants 19-205-2, 19-132-3, and 21-139**

**Motion by** Mr. Davidson, seconded by Mr. Wellman, "I move to approve UNL's request to move funding from operating into the supplies, salaries, and benefits categories for project 19-205-2."

**Discussion:** Bowen, Hellbusch, Christen, and Quandahl expressed concern about moving project funding from operating expenses into salaries and benefits.

**Voting Aye:** McCoy, Anthone, Wellman, Dunn, Davidson

**Voting Nay:** Bowen, Hellbusch, Orr, Andersen, Christen, Quandahl

**Abstained:** Macy

**Absent:** Kanger, Riley

**5 Voted Aye. 6 Voted Nay. 1 Abstained. Motion failed.**

**Motion by** Mr. Andersen, seconded by Mr. Hellbusch, "I move to deny the Xerces Society's request to move funding from supplies, travel, and contract services into salaries and benefits for project 19-132-3."

**Discussion:** None.

**Voting Aye:** McCoy, Anthone, Wellman, Macy, Hellbusch, Orr, Dunn, Davidson, Andersen, Christen, Bowen, Quandahl

**Absent:** Kanger, Riley

**12 Voted Aye. Motion carried.**

**Motion by** Mr. Macy, seconded by Mr. Davidson, "I move to approve Southwest Weed Management's request to move \$18,435.79 from other categories into the mechanical vegetation clearing category for project 21-139."

**Discussion:** Mr. Andersen and Mr. Christen expressed support for the modification request since it directly contributes to the grant project.

**Voting Aye:** Anthone, Wellman, Macy, Hellbusch, Orr, Dunn, Davidson, Andersen, Christen, Bowen, McCoy, Quandahl

**Absent:** Kanger, Riley

**12 Voted Aye. Motion carried.**

**8. Closeout report of grants**

Background on closeout of expired grants

Upon completion of a project contract, the grantee must submit a final report. NET staff reviews reports, disbursement requests, and project balances after the contract has ended. Prior to closing out projects in the Grants Portal, the staff creates a summary report for Board review regarding each grant's final status. Before the final status report is created for the NET Board, a written 15-day notice will be sent to grant projects in breach of contract by NET's executive director. If the grantee does not

comply, the grant may be revoked, disbursements may be withheld, or the grantee may be required to reimburse the grantor. Summary information is provided to the NET Board in the final status report.

Grants Administrator Adams reported approximately 80 grant projects are ready to be closed. Currently, an additional 113 grant projects are open and still being managed. Additional projects ready to be closed will be brought to the Board in February 2023.

The grant closeout list was reviewed and discussed.

**Motion by** Mr. Andersen, seconded by Mr. Davidson, “I move to approve the grant closeout report provided and presented by NET Staff on November 3, 2022, for the closeout of the projects presented in the report.”

**Discussion:** Mr. Wellman asked if there was any issue with using the word *approve* rather than *accepted* in the motion since the numbers are unaudited. Executive Director Elmshaeuser stated the language does not change the closeout report, and he believed approval entails acceptance of the report provided by staff.

**Voting Aye:** McCoy, Anthone, Wellman, Macy, Hellbusch, Orr, Dunn, Davidson, Andersen, Christen, Bowen, Quandahl

**Absent:** Kanger, Riley

**12 Voted Aye. Motion carried.**

#### 9. Amended contracts for Five Rivers RC&D, grants 22-148, 22-200, and 22-209

##### Background on potential contract amendments

Five Rivers RC&D received signed contracts for grants 22-200, 22-209, and 22-148 on April 27, 2022. On June 8, 2022, a disbursement request was submitted through the grant portal. The NET Grant Administrator reviewed the request and forwarded it to the Executive Director with concerns. An on-site audit with the Five Rivers RC&D Executive Director, Chairman, and Treasurer was conducted on June 30, 2022. Multiple documents were not available and were promised to be provided. As a result of the non-performance and serious nature of the situation, a 15-Day Notice was issued that the grants were revoked and canceled. Additional correspondence occurred. The grant applications were misrepresented as to the status of the organization’s ability to conduct business. In order to resolve the issues, amended grant contracts were presented to the Board for consideration.

**Motion by** Mr. Andersen, seconded by Mr. Hellbusch, “I move to approve the amended grant contracts as presented in the Board material for grants 22-200, 22-209, and 22-148 on November 3, 2022.”

**Discussion:** It was clarified that the amended contracts would not allow general administration expenses for the executive director and personnel. The grant application stated the organization was authorized to conduct business in Nebraska. An audit later confirmed the corporation did not have a current certificate of authority at the time of application, and a notice of dissolution had been received from the Secretary of State.

**Voting Aye:** Macy, Hellbusch, Dunn, Davidson, Andersen, Bowen, McCoy, Anthone, Quandahl.

**Voting Nay:** Wellman, Orr

**Abstained:** Christen

**Absent:** Kanger, Riley

**9 Voted Aye. 2 Voted Nay. 1 Abstained. Motion carried.**



Agenda items 10 & 11 were addressed before the Public Hearing.

## 12. Directors Report

Executive Director Elmshaeuser reported the exterior wheelchair lift at the Ferguson House is out of service. The Building Division indicated a portable ramp on the north side of the house is not feasible. Meetings will need to be held elsewhere until the issue is resolved and building access is ADA-compliant.

Other items in the report included:

- The burglar alarm system at the Ferguson House has been updated.
- A donation of \$89,825.07 was received from the Alice H. Styskal Estate and placed in the NET Endowment Fund.
- Since May of 2022, nine audits of grant projects have been conducted by Executive Director Elmshaeuser. Audits include four in-person and five desk audits. Another audit is pending scheduling with the grantee.
- Fourteen notices have been issued to grantees for projects in non-compliance.
- Staff performance goals will be entered into the state's Employee Development Center by December 2022.

## 13. Next Meeting

Thursday, January 5, 2023, Fallbrook State Office Building, LL Room 031, 245 Fallbrook Blvd, Lincoln, Nebraska, 1:30 p.m. A public hearing will be held to approve or modify grant recommendations for funding.

## 14. Adjourn

Chairman Quandahl adjourned the meeting at 4:36 p.m.



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Karl L. Elmshaeuser  
Executive Director