

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 is 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 will administer the Water Sustainability Fund to assist projects, programs or activities that meet the goals and are of the types of projects provided for Neb. Rev. Stat. § 2-1506(1) and 2-1506(2).

001.01. Under no circumstances are these rules and regulations to 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 are they in any event to 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 will have the meanings noted:

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

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

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

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

002.05. Cap. "Cap" is set legislatively for the Fund and means 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" means a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environment and Energy;

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

002.08. Cost Effectiveness. “Cost effectiveness” means 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” means appropriations from the legislature for the current fiscal year which may include accrued revenues;

002.10. Department. “Department” means the Nebraska Department of Natural Resources created pursuant to Sections 61-205 and 81-101;

002.11. Director. “Director” means the Director of the Department Natural Resources as provided in Section 81-102;

002.12. Costs & Cost Share.

002.12(A). Eligible Costs.

“Eligible Costs” means project expenses the sponsor would have to pay which are directly required to complete the project and which are incurred after approval of the project by the Commission. Such costs may not be paid by other funding sources nor be used as local match required by State appropriated funding requirements. Matching contribution requirements provided by the applicant or applicant partners to Federal grants, excluding those sources identified in 002.12(b) (2), are acceptable as Eligible Costs (e.g., – Natural Resources Conservation Service (NRCS) or US Army Corps of Engineers (USACOE)).

002.12(B). Ineligible Costs.

“Ineligible Costs” include, but are not limited to:

1. Project related activities and expenditures incurred prior to approval of the project by the Commission.
2. Expenditures accounted for as a contribution towards a match requirement of grants from federal pass-through sources such as Pitman-Roberson, Dingel-Johnson or any other state appropriated funds.
3. Expenditures paid with funds supplied by the USACOE, Farm Service Agency (FSA), NRCS or any other federal funding sources.
4. Any expenditures for which State of Nebraska appropriated dollars (e.g., Nebraska Environmental Trust, Department of Environment and Energy grants) are being used, including any required match, may not be included in Eligible Costs.
5. Expenditures paid by any other party or entity other than those partners listed on the application.
6. Expenditures used for project operation and maintenance, debt interest, applicant project administration and management, lobbying, entertainment or any other similar purpose;

002.13. Fund. "Fund" means the Nebraska Water Sustainability Fund created by Section § 61-222;

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

002.15. Intangible Benefits. "Intangible Benefits" means 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" means actual dollars made available by the Commission to a project for reimbursement;

002.18. Political Subdivision. "Political Subdivision" means 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;

002.19. Primary Benefits. "Primary Benefits" means 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" or "project" means 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" means a proposal which is submitted seeking financial assistance from the Fund;

002.22. Project Engineer or Project Director. "Project Engineer or Project Director" means 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" means 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. Sewer Separation Project. "Sewer separation project" means funding to combined sewer overflow projects.

002.25. Small Project. "Small Project" means a project with a total funding request of \$250,000 or less.

002.26. State Agency. "State Agency" means 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;

002.27. Tangible Benefits. "Tangible Benefits" means benefits, either primary or secondary, that can be expressed in monetary terms;

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

002.29. Water Productivity. "Water productivity" means water use to increase water sustainability;

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

002.31. Water Sustainability Fund Cap. "Water Sustainability Fund Cap" means 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.

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 will 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 leads to a program, project and/or activity, or separable portion thereof, that provides for the goals of the Water Sustainability Fund.

003.02. Loans. Funding in the form of loans may be made 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.

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 will be determined annually prior to October 1 of each fiscal year. Such rate of interest is 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 is 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 will 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 Environment and Energy, the Nebraska Environmental Trust Board and the Game and Parks Commission.

