

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

TITLE 256 – REGULATIONS GOVERNING THE
ADMINISTRATION OF THE
RESOURCES DEVELOPMENT FUND

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA DEPARTMENT OF NATURAL RESOURCES
TITLE 256
RULES AND REGULATIONS GOVERNING THE
ADMINISTRATION OF THE RESOURCES DEVELOPMENT FUND

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NEBRASKA DEPARTMENT OF NATURAL RESOURCES
 TITLE 256 - REGULATIONS GOVERNING THE ADMINISTRATION OF THE
 RESOURCES DEVELOPMENT FUND

ALPHABETICAL TABLE OF CONTENTS

<u>Subject</u>	<u>Statute</u>	<u>Code §</u>
Resources Development Fund, Administration of	2-1586, R.R.S., 1997; 2-1587, 2-1589, 2-1590, 2-1592, 2-1593, and 2-1595, R.S. Supp., 2000; and 2-1588 and 2-1594, as amended by LB 129, 97 th Nebraska Legislature, 1 st Session (2001)	Title 256
Action by the Director		Chapter 3
Committee Findings and Public Hearings		002
Consideration in Passing on Applications		003
Required Findings of Fact		004
Review and Report by the Director		001
Application Procedures and Requirements		Chapter 2
Application Procedure		003
Contents of Feasibility Report		012
Contents of Formal Application		011
Details of Project Proposals		005
Economic Feasibility		014
Environmental Acceptance		016
Federally Assisted Projects		017
Filing Fees		001
Filing Location		002
Financial Feasibility		015
Form of Formal Application and Feasibility Report		010
Information Required in Project Proposal		004
Omissions in Application		019

Omissions in Project Proposal	006
Public Hearing and Notification	008
Required Legal Data	018
Review by Commission and Director	007
Technical Feasibility	013
Time to Complete Formal Applications	009
Use of Department Data	020
Commission Action and Requirements	Chapter 4
Action on the Report of the Director	001
Adjustments in Apportionments	009
Annual Availability of Funds	003
Apportioning and Setting Aside Funds	008
Changes in Scope or Costs of Approved Projects	016
Continued Funding	004
Contractual Arrangements	013
Determination of Fiscal Year Financial Needs	006
Disbursements	014
Funding Preferences	005
Inspection During Construction	015
Limitation on Allocation	012
Limitation on Reimbursements	010
Project Totals Exceeding Balance in Fund	002
Separable Components	007
Review and Approval of Final Plans	011
General Provisions	Chapter 1
Deferred Interest	006
Definitions	002
Eligible Projects	004
Interest Rate	005
Purpose and Effect of Rules	001
Types of Assistance	003

NEBRASKA DEPARTMENT OF NATURAL RESOURCES
 TITLE 256 - REGULATIONS GOVERNING THE ADMINISTRATION OF THE
 RESOURCES DEVELOPMENT FUND

NUMERICAL TABLE OF CONTENTS

<u>Subject</u>	<u>Statute</u>	<u>Code §</u>
Resources Development Fund, Administration of	2-1586, R.R.S., 1997; 2-1587, 2-1589, 2-1590, 2-1592, 2-1593, and 2-1595, R.S. Supp., 2000; and 2-1588 and 2-1594, as amended by LB 129, 97 th Nebraska Legislature, 1 st Session (2001)	Title 256
General Provisions		Chapter 1
Purpose and Effect of Rules		001
Definitions		002
Types of Assistance		003
Eligible Projects		004
Interest Rate		005
Deferred Interest		006
Application Procedures and Requirements		Chapter 2
Filing Fees		001
Filing Location		002
Application Procedure		003
Information Required in Project Proposal		004
Details of Project Proposals		005
Omissions in Project Proposal		006
Review by Commission and Director		007
Public Hearing and Notification		008
Time to Complete Formal Applications		009
Form of Formal Application and Feasibility Report		010

Contents of Formal Application	011
Contents of Feasibility Report	012
Technical Feasibility	013
Economic Feasibility	014
Financial Feasibility	015
Environmental Acceptance	016
Federally Assisted Projects	017
Required Legal Data	018
Omissions in Application	019
Use of Department Data	020
Action by the Director	Chapter 3
Review and Report by the Director	001
Committee Findings and Public Hearings	002
Consideration in Passing on Applications	003
Required Findings of Fact	004
Commission Action and Requirements	Chapter 4
Action on the Report of the Director	001
Project Totals Exceeding Balance in Fund	002
Annual Availability of Funds	003
Continued Funding	004
Funding Preferences	005
Determination of Fiscal Year Financial Needs	006
Separable Components	007
Apportioning and Setting Aside Funds	008
Adjustments in Apportionments	009
Limitation on Reimbursements	010
Review and Approval of Final Plans	011
Limitation on Allocation	012
Contractual Arrangements	013
Disbursements	014
Inspection During Construction	015
Changes in Scope or Costs of Approved Projects	016

NEBRASKA ADMINISTRATIVE CODE

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TITLE 256 DNR – ADMINISTRATION OF THE RESOURCES DEVELOPMENT FUND
Chapter 1 – GENERAL PROVISIONS

001 Purpose and Effect of Rules. These rules and regulations are adopted for the purpose of carrying out the provisions of the Nebraska Resources Development Fund Act. 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 Natural Resources 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 Act.

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

002.01 Act. “Nebraska Resources Development Fund Act” or "Act" shall mean Sections 2-1586, R.R.S., 1997; 2-1587, 2-1589, 2-1590, 2-1592, 2-1593, and 2-1595, R.S. Supp., 2000; and 2-1588 and 2-1594, as amended by LB 129, 97th Nebraska Legislature, 1st Session (2001) , and any and all amendments, additions, or deletions which may be made thereto;

002.02 Applicant. "Applicant" shall mean any state agency or political subdivision applying for financial assistance under the Act;

002.03 Commission. "Commission" shall mean the Nebraska Natural Resources Commission created pursuant to Section 2-1504, R.S. Supp., 2000;

002.04 Department. “Department” shall mean the Nebraska Department of Natural Resources created pursuant to Sections 61-205 and 81-101 R.S. Supp., 2000;

002.05 Director. "Director" shall mean the Director of the Department of Natural Resources as provided in Section 81-102, R.S. Supp., 2000;

002.06 Fund. "Fund" shall mean the Nebraska Resources Development Fund created by Section 2-1587, R.S. Supp., 2000;

Title 256
Chapter 1

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

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

002.09 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 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;

002.10 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;

002.11 Program and/or Project. "Program and/or Project" 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 and regulations;

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

002.13 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 project;

Title 256
Chapter 1

002.14 Sponsor. "Sponsor" shall mean the state agency or political subdivision primarily responsible for the development, administration, operation and maintenance of a program or project for which assistance from the Fund is requested;

002.15 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.

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

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

003.01 Grants. Allocations from the Fund may be made as grants to applicants when it is determined that such an allocation will not be reimbursed from revenue or receipts and when the program or project, or separable portion thereof, appears to be of general public benefit thereby making reimbursement of such money from local tax funds inappropriate or impossible, or when the funds are intended for a state or local contribution to a program or project requiring such contribution to meet the requirements for a matching federal grant. If only a portion of the project 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 and the Commission shall include the extent of the area over which the anticipated benefits will accrue and whether equitable distribution of the costs of the program or project can be accomplished without a grant.

003.02 Loans. Allocations may be made from the Fund as loans to applicants for any program or project or any part thereof consistent with the purposes of the Act which will directly generate revenue or receipts or which can be anticipated to culminate in a program or project which will generate revenue or receipts, or which would not generate

Title 256
Chapter 1

revenue or receipts but would be of general public benefit to the applicant making repayment from local tax funds 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.

003.04 Allocations to State Agencies. No grant or loan shall actually be made to state agencies for programs or projects determined to be eligible for funding unless:

003.04A The allocation is for the purpose of reserving land for a future resource development project, or;

003.04B The allocation has been approved by the Legislature by earmarking appropriations to the Fund for that purpose.

004 Eligible Projects. Moneys from the Fund may be used to (a) participate in locally sponsored projects; (b) participate in projects sponsored or financially assisted by the federal government; and, (c) finance state-sponsored projects. The types of projects and programs eligible for funding and the respective forms of such funding are as follows:

004.01 Structural Measures. Structural measures which may be eligible for allocations from the Fund in the form of grants and/or loans include measures designed for flood control; pollution abatement; fish and wildlife enhancement and preservation; outdoor recreation; irrigation development; irrigation rehabilitation; groundwater recharge; water supply for any beneficial use including domestic, agricultural, and manufacturing uses; streamflow augmentation; stream bank stabilization; and erosion and sediment control.

Title 256
Chapter 1

004.02 Non-structural Measures. Non-structural measures which may be eligible for financial assistance from the Fund in the form of grants and/or loans include: Flood damage reduction; fish and wildlife enhancement and preservation; outdoor recreation; reservation of lands for future resources development projects; and other water and related land resources programs. Projects whose primary purposes are research or data gathering shall not be eligible for assistance.

005 Interest Rate. The rate of interest payable on loans from the Fund shall be determined annually prior to October 1 of each fiscal year. Except as otherwise provided herein, such rate of interest shall be computed by averaging the yields, as determined by the "Moody's" rating and classification system, of AAA State-Local Bonds issued nationally for the three previous fiscal years and by rounding off such average to the nearest one-eighth percent. For loans for the rehabilitation or betterment of surface water irrigation projects, the Commission may reduce the rate of interest to not less than three percent if (1) the amount of the loan is \$500,000 or less; (2) the repayment period is ten years or less; (3) the project sponsor has not previously received a reduced interest loan from the Fund; and (4) the Director and the Commission determine that the proposed project will make water available for public use or will provide other public benefits. The rate of interest payable on a loan for a specific program or project shall be the rate in effect for the fiscal year in which the Director recommends approval of the program or project for a loan allocation. Such rate shall remain in effect throughout the repayment period determined to be appropriate for such program or project.

006 Deferred Interest. When, in the Commission's judgment, a construction or preconstruction period (not exceeding five years next following the initial allocation) is justified, no payment on the interest or principal on such loans is required during that period, but interest shall begin accruing on all loan allocations immediately with disbursement. Repayment shall commence no later than one full year following completion of project construction. Any deferred interest may be apportioned over the repayment period. The repayment period will not exceed the project life or fifty years, whichever is less.

NEBRASKA ADMINISTRATIVE CODE

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Title 256 – DEPARTMENT OF NATURAL RESOURCES

Chapter 2 – APPLICATION PROCEDURES AND REQUIREMENTS

001 Filing Fees. No filing fee is required to accompany any project proposal or any application for assistance under the Act.

002 Filing Location. All project 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. It is recommended that each formal application for financial assistance from the Fund be preceded by a Project Proposal. An applicant may include the cost to the applicant of the feasibility report, the contents of which are specified by section 2-012 as a portion of the project costs of any project for which funding in an amount of less than \$100,000 is requested. Such cost may also be included as a portion of the project costs of any project for which funding in excess of \$100,000 is requested if, and only if, a project proposal has been previously submitted.

004 Information Required in Project Proposal. If the applicant decides to submit a Project Proposal, thirty-five copies shall be filed unless otherwise directed by the Director. The Project Proposal shall include the following information:

004.01 Name and address of applicant;

004.02 Applicant's authorized representative and his name and address;

004.03 A description of the proposed project and the desired accomplishments;

004.04 The primary purpose of the proposed project;

Title 256
Chapter 2

- 004.05 Other purposes of the proposed project;
- 004.06 A statement of urgency and need for the proposed project;
- 004.07 The applicant's most recent financial statement or budget document;
- 004.08 The estimated costs of the project;
- 004.09 The expected benefits from the proposed project;
- 004.10 The anticipated funding or other assistance from other sources;
- 004.11 The type and approximate amount of state assistance to be requested;
- 004.12 A discussion of probable environmental effects which shall include the applicant's plans to determine the potential impact of the proposed project on any threatened or endangered species or the critical habitat of any such species. Copies of any applicable correspondence with the Game and Parks Commission shall be included, if available.
- 004.13 The estimated schedule of construction of the project, and;
- 004.14 A discussion of alternatives for accomplishing the purpose of the project.
- 004.15 An indication whether liability insurance or contractor bonding will be required.

005 Details of Project Proposals. The information required in Project Proposals shall be in such detail as directed by the Commission and Director. Appropriate guidelines for assistance in Project and Program Proposal preparation shall be prepared and distributed to all state agencies or political subdivisions expressing a need for such assistance.

Title 256
Chapter 2

006 Omissions in Project Proposal. If the Commission or the Director desire additional information on a Project Proposal, it will so notify the applicant. If the Director determines that a Project Proposal is not complete, or if additional information is required, the Director will notify the applicant of such omissions. The applicant shall be expected to correct any such omission or provide any additional information requested within 60 days following notification.

007 Review by Commission and Director. Upon receipt of a properly completed Project Proposal, the Director shall review it forthwith, make a preliminary evaluation, and advise the Commission within 90 days: (1) that the Director recommends the Sponsor be authorized to proceed with preparation of a formal application and feasibility report; or (2) that, based upon the submitted proposal, the Director does not recommend the Sponsor prepare an application and feasibility report. The reasons for any negative recommendation shall be stated. If the Director recommends proceeding, he or she shall also indicate the type of funding for which the project may be eligible and a cost-share range within which a funding recommendation is probable if the project is later determined to be eligible for funding. The Director may make any additional recommendations regarding the contents of the formal application and feasibility report he or she deems appropriate. Any such recommendations shall be forwarded to the Sponsor by the Department along with an invitation to the Sponsor to appear before and comment on the Director's recommendations to the Commission. Upon receipt and consideration of the Director's recommendations and the Sponsor's comments, if any, the Commission shall determine whether the Director is to advise the applicant: (1) that it is authorized to proceed with preparation of a formal application and feasibility report; or (2) that it is recommended that an application and feasibility report not be prepared; the reasons for a negative recommendation shall be stated.

008 Public Hearing and Notification. Except for projects requesting less than \$100,000 from the Fund, the applicant shall conduct at least one public hearing on all aspects of the proposed project or program prior to submission of the formal application and feasibility report. Notice of the hearing shall be provided to the general public by publication, at least ten days prior thereto, in a newspaper or newspapers of general circulation within the project or program area. A copy of such notice will be provided to the Director. Information gained from the hearing, including a summary of testimony presented, is to be forwarded with the application.

Title 256
Chapter 2

009 Time to Complete Formal Applications. Upon notice by the Director of the Commission's findings on the Project Proposal, the Applicant shall be given a period of one year to complete a formal application and feasibility report. If an application is not completed within one year, or within such additional time as the Commission may grant for good cause shown, the Commission may request the filing of a new Project Proposal.

010 Form of Formal Application and Feasibility Report. Applicants for financial assistance from the Fund shall file twenty-five copies of an application and feasibility report. Such application shall contain a specific request for each type of assistance applied for in a specified amount. The contents of such application and feasibility report shall include all items required by sections 2-011 to 2-018 unless otherwise authorized by the Director. Feasibility reports shall be prepared at the initial expense of the applicant and with the assistance of licensed engineers, financial consultants, economists, recreation planners, wildlife specialists, or other consultants if deemed necessary by the applicant or by the Director following his or her evaluation of the Project Proposal. Costs of preparation of the feasibility report incurred by the applicant may be included if consistent with section 2-003.

011 Contents of Formal Application. Except to the extent that such information has previously been indicated through submission of a Project Proposal, the formal application shall include the following information:

011.01 A cover letter from the applicant submitting the feasibility report, the contents of which are specified by section 2-012;

011.02 The name and address of the applicant's authorized representative;

011.03 An outline of the initial development and background of the project;

011.04 An explanation of the need and urgency of the project;

011.05 A description of project goals and purposes;

Title 256
Chapter 2

011.06 A general discussion of alternative plans considered including a comparison of the technical, economic, and environmental aspects of each alternative with the plan chosen; and

011.07 A statement whether money from other sources is available or has been sought.

012 Contents of Feasibility Report. Contents of the feasibility report are to be of sufficient detail to demonstrate the technical, economic and financial feasibility, as well as the legal soundness, of the proposed project. Additionally, the expected positive and adverse environmental and ecological consequences of the project shall be therein demonstrated. The extent of detail necessary in the feasibility report will depend upon the type, purpose, and complexity of the project. Upon completion of any project proposal review, the Director will, to the extent deemed necessary, advise the applicant as to:

012.01 The criteria utilized to evaluate the technical, economic, financial, legal, and environmental aspects of the project;

012.02 The informational detail to be contained in the feasibility report.

013 Technical Feasibility.

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

013.01A A detailed discussion of the plan of development selected for the project;

013.01B A description of all field investigations made to substantiate the feasibility report;

Title 256
Chapter 2

013.01C Maps, drawings, charts, tables, etc., used as a basis for the feasibility report;

013.01D A description of the water and land rights associated with the project and pertinent water supply and water quality information, if appropriate;

013.01E A detailed discussion of each component of the final plan preparation including, when applicable:

013.01E1 Required geologic investigation;

013.01E2 Required hydrologic data;

013.01E3 Design criteria for final design including, but not limited to, soil mechanics, hydraulic, hydrologic, structural, embankments and foundation criteria.

013.02 A non-structural project 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:

013.02A A detailed discussion of the plan of development designed for the project, including techniques to be utilized in all aspects of the project;

013.02B A description of field or research investigations utilized to substantiate the project conception;

013.02C A description of the water and/or land rights necessary for project continuation, if applicable;

Title 256
Chapter 2

013.02D A discussion of the anticipated effects, if any, of the proposed project upon the development and/or operation of existing or envisioned structural measures including a brief description of any such measure.

014 Economic Feasibility. Except as otherwise specified by subsection 014.04 or subsection 014.05 of this section, a project is economically feasible if primary, tangible benefits exceed project costs. In addition, for projects for which \$100,000 or more is requested from the Fund, each project's purpose in a multi-purpose project 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 project 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 the life of the project, whichever is less.

014.01 Cost Information. The report 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 project life.

014.02 Benefit Information. Only primary tangible benefits may be counted in providing the monetary benefit information. In a multi-purpose project, the benefits will be estimated for each purpose and displayed by year for the project life. Intangible and secondary benefits of the proposed project or program 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.

Title 256
Chapter 2

014.03 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 project, not to exceed 50 years. A form for so indicating the annual cash flow shall be supplied by the Director.

014.04 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 project cash flow is zero. The Commission may prescribe a minimum rate-of-return for a project to be considered economically feasible.

014.05 Other Methods. In the case of proposed programs or projects for which there is no generally accepted method for calculation of primary, tangible benefits, the economic feasibility of such program or project shall be demonstrated by such method as the Director and the Commission deem appropriate.

015 Financial Feasibility. A project is financially feasible if sufficient funds can be made available to complete the project, and if sufficient annual revenues can be obtained to repay the reimbursable costs and to operate, maintain, and replace the project. When a loan is involved, financial feasibility requires assurance that the projects can be adequately operated, maintained, and replaced and that the loan can be repaid during the repayment life of the project. Financial data supplied by the applicant shall include the applicant's most recent financial statement, budget document or other documentation necessary to illustrate the following:

015.01 The legal limit of the rate of taxation by the applicant and the rate currently being levied;

015.02 The limit of property that can be locally taxed by the applicant;

015.03 The level and trend of actual valuation;

015.04 The rate of local delinquency;

Title 256
Chapter 2

015.05 The legal limit of revenue and general obligation bond indebtedness;

015.06 Any debts, including bonded indebtedness and those resulting from contractual or other obligations.

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

016 Environmental Acceptance. A project is considered to be environmentally acceptable when:

016.01 The Director has found that the project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of the critical habitat of any such species; and

016.02 The plan of development minimizes, in a manner satisfactory to the Director, any adverse impacts on the natural environment and adequately addresses existing cultural resources.

In addition to any proposed mitigation measures, if applicable, all aspects of the proposed project which can be anticipated to result in environmental enhancement shall be considered in determining whether the plan of development does minimize adverse impacts. To assist the Director in determining environmental acceptance, the applicant will demonstrate the probable environmental and ecological consequences of the project by addressing all areas of study identified on the environmental acceptance form (NRC/NRDF Form 02Ev1).

017 Federally Assisted Projects. When assistance from the Fund is requested for participation in a project planned by an agency of the federal government, the federally prepared plan of work can be submitted by the applicant for the purpose of complying with Sections 2-013, 2-014, and 2-016 and shall be submitted at the request of the Director. The Director does, however, reserve the right to reject all or a portion of any such plan of work on the grounds that the information provided therein is insufficient or inadequate for full evaluation of the proposed project's eligibility for assistance from the Fund.

Title 256
Chapter 2

018 Required Legal Data. The applicant shall assure the Director and the Commission that all legal requirements have or can be met prior to the allocation of any funds for the proposed program or project. Legal data submitted by the applicant in the feasibility report shall include the following:

018.01 Citation(s) to the legal authorities relied upon by the applicant to undertake or participate in the proposed program or project.

018.02 An explanation, with appropriate documentation of legal authorities, of the applicant's intention to finance that part of the project or program for which assistance from the Fund is not requested.

018.03 A showing that the applicant has or can acquire all necessary land rights and water rights.

018.04 Copies of any available proposed or executed contracts for construction or consultant services necessary for construction of the proposed program or project and included as part of the total cost of the project.

018.05 A listing of any permits, licenses, or other approvals required for the proposed project, their current status, and estimated schedule for compliance.

018.06 An explanation of the sponsor's plan to require consultants, contractors, and sub-contractors to obtain liability insurance or bonding to ensure the proper design and construction of the project.

018.07 An analysis of the sponsor's potential liability for damages from the project, including dam failure, overflow, or seepage of water and an explanation of the sponsor's plan to protect itself from any such liability.

Title 256
Chapter 2

018.08 A certified copy of a resolution of the applicant requesting financial assistance from the Department and containing a finding that the applicant cannot finance the project from other available state or federal sources.

018.09 Such other information, plans, and specifications as are requested by the Director or the Commission and which are reasonably necessary for an adequate understanding of the project.

018.10 A notarized statement executed by the applicant's official representative that the facts contained in the application are true and correct to his or her best knowledge and belief.

019 Omissions in Application. If an application submitted to the Director is not complete or if additional information is required, the Director will so notify the applicant. If the application is not completed within 90 days after the notice, unless the Director extends this time for good cause shown, the Director will return the application to the applicant without making any findings on the application and without prejudice to the submission of a new application at any future time.

020 Use of Department Data. Any pertinent data of the Department made available to applicants for use in preparing applications and feasibility reports will be furnished at cost.

NEBRASKA ADMINISTRATIVE CODE

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Title 256 – DEPARTMENT OF NATURAL RESOURCES

Chapter 3 - ACTION BY THE DIRECTOR

001 Review and Report by the Director. On receipt of a completed application and feasibility report required by Chapter 2 of these rules and regulations, the Director shall review the application and feasibility report and shall, within six months of receipt, prepare a report containing his or her findings and recommendations with respect to the application and file such report with the Commission. Copies of the Director's report will be furnished to the applicant. The Director's report shall include the following items:

001.01 A recommendation of approval or rejection of the program or project for funding eligibility.

001.02 If approval is recommended, a recommendation that the allocation be made in the form of a grant, loan, acquisition of state interest, or combination thereof.

001.03 If a program or project is recommended for loan assistance, a recommendation of the appropriate repayment period.

001.04 A recommended degree of assistance for each type of allocation recommended by the Director which shall be developed with assistance from a subcommittee of the Commission's Program Committee.

001.05 Any conditions which the Director recommends be placed on project design, construction, operation, or maintenance to ensure the consistency of the project with the Act and with other state policies, plans and programs.

002 Committee Findings and Public Hearings. To assist the Director in making his or her review and report, the Director may refer the application and feasibility report, or any parts

thereof, to such review committees as he or she may establish. In addition, the Director may, at his or her discretion, conduct one or more public hearings at such location (s) as he or she shall choose for the purpose of receiving public testimony on all aspects of the proposed program or project. The record of any such public hearing shall constitute a part of the Director's report to the Commission.

003 Considerations in Passing on Applications. In passing on applications, the Director shall consider:

003.01 The needs of the area to be served by the program or project and the benefit to be received from the program or project by the area served.

003.02 The availability of revenue to the applicant from all sources.

003.03 Whether the program or project is of such general public benefit that state financial assistance is justified.

003.04 The relationship of the program or project to the overall statewide water and related land needs.

003.05 Other factors relating to the nature of the project and the appropriate level of financial assistance.

004 Required Findings of Fact. Prior to making any report to the Commission recommending approval of a program or project for funding eligibility, the Director shall make the following findings of fact:

004.01 The plan does not conflict with any existing Nebraska State land plan.

004.02 The proposed program or project is technically, economically, and financially feasible based upon standards contained within these rules and regulations or otherwise adopted and supplied to the applicant by the Commission or the Department.

004.03 The plan for development of the proposed program or project is satisfactory.

004.04 The plan of development minimizes any adverse impact on the natural environment.

004.05 The applicant is qualified, responsible, and legally capable of carrying out the program or project.

004.06 In the case of a loan, the borrower has demonstrated the ability to repay the loan, and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the project.

004.07 The plan considers other plans and programs of the state in accordance with the provisions of Sections 84-135, Reissue Revised Statutes of Nebraska, 1994, and resources development plans of the political subdivisions of the state.

004.08 The project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of the critical habitat of any such species.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: April 21, 1999

Title 256 – DEPARTMENT OF NATURAL RESOURCES

Chapter 4 - COMMISSION ACTION AND REQUIREMENTS

001 Action on the Report of the Director. Unless the Commission requests additional information from the applicant, it shall no later than its second regular meeting following submission of the report by the Director, act to approve or reject the findings of fact made by the Director pursuant to section 3-004 and the recommendations of the Director; provided, however, that no action shall be taken until a delegation composed of Commission members has visited the project site and reported the results of its tour to the Commission or the appropriate committee of the Commission. Action on recommendations made by the Director pursuant to subsections .01 and .02 of section 3-001 shall be in accordance with such recommendations unless action to the contrary is approved by each Commission member eligible to vote on the specific recommendation under consideration. A Commission member shall be ineligible to participate in the action of the Commission concerning an application for a grant or a loan only if such member is a member of the governing body or otherwise represents the applicant for financial assistance. All Commission members shall be eligible to vote on programs and projects involving state acquisition of interests in projects pursuant to Section 2-1590, R.S. Supp., 2000. If the Commission determines, following review of the application, feasibility report, and the Director's report, that the proposed program or project is eligible for financial assistance from the Fund, the Commission shall determine a tentative dollar figure for such assistance. Tentative allocations shall also be established for each separable component of the project, as determined in accordance with section 4-007. In establishing its tentative allocations, the Commission may take into consideration the recommendations of the Director pursuant to subsection .04 of section 3-001, the nature of the project and the factors associated with it, the total amount of money available in the Fund, and the number of and total tentative dollar allocations for other programs and projects previously determined eligible. No tentative grant allocation shall exceed an amount equal to seventy-five percent (75%) of the portion of the estimated project costs which the local sponsor would be required to provide if financial assistance from the Fund was not available. The Commission may vary the maximum allowable cost-share rate for different

categories of projects. No tentative loan allocation or combination loan and grant allocations shall exceed an amount equal to ninety percent (90%) of such portion of the estimated project costs.

002 Project Totals Exceeding Balance in Fund. Although the total of previously approved allocations exceeds the amount of funds then available in the Fund, the Commission may approve the eligibility of additional projects and establish tentative dollar allocations for such projects if such projects are otherwise eligible for financial assistance and if such approval and tentative allocations are otherwise consistent with state law. Notwithstanding any such approval, a sponsor shall not under any conditions be entitled to reimbursement for any project costs until funds have been apportioned and set aside in accordance with sections 4-008 or 4-009 for reimbursement of costs incurred by the sponsor on such project. Costs paid, accrued or authorized by a sponsor prior to funds being set aside for such projects and costs paid, accrued or authorized by a sponsor for portions of project development in excess of those portions for which funds have been set aside, including application and engineering costs, shall be incurred at the risk of the sponsor and such sponsor shall not be entitled to reimbursement of such costs at any time without specific Commission approval for such reimbursement. Such costs may, however, be used by the sponsor to satisfy in whole or in part the sponsor's share of the total costs of the project if funds for remaining project costs are later apportioned and set aside for such project in accordance with sections 4-008 or 4-009.

003 Annual Availability of Funds. Regardless of the status of the Fund at the time of Commission approval of the eligibility of a project, 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 apportioning and setting aside funds for such project in such fiscal year in accordance with sections 4-008 or 4-009.

004 Continued Funding. In order to assure continued funding of projects with no separable components and of separable project components which are not further separable, the Commission, when it first apportioned and sets aside in accordance with sections 4-008 or 4-009 funds for such project or project component, shall set aside an amount equal to the appropriate percentage of the total cost of the project or the component even if it is not anticipated that all of such funds could be expended during the next ensuing fiscal year. Funds thus apportioned and set aside shall, as soon as costs have been incurred by the sponsor subsequent to such

apportionment, remain set aside and be committed for such project or project component until the sponsor has received all reimbursement to which it is entitled unless:

004.01 The project is abandoned or significantly delayed;

004.02 The Commission has reasonable grounds for concern that the project or any portion of it may not be completed due to public opposition, litigation, or the loss of other state, local or federal funds needed to complete the project;

004.03 The Department fails to receive a reappropriation of unexpended funds;

004.04 The appropriation for the Resources Development Fund is reduced by subsequent legislative act; or

004.05 The Commission determines the project no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's rules and regulations.

If the Commission determines at any time that any of these conditions have occurred, any funds apportioned and set aside for the project which have not been disbursed may be deemed by the Commission and the Department to be no longer apportioned and set aside.

005 Funding Preferences. In order that the maximum practicable assurance of continued funding may be provided to sponsors of uncompleted projects which have previously been apportioned funds for one or more separable components, preference shall be given such projects and project components whenever funds are apportioned and set aside in accordance with section 4-008 or section 4-009.

006 Determination of Fiscal Year Financial Needs.

006.01 No later than March 31 of each year each sponsor willing to utilize and capable of utilizing either an initial or an additional apportionment of funds for a project which has been determined eligible for funding shall submit a report to the Director indicating as follows:

006.01A If the project has no previously identified separable components and no request is made for identification of any such components, the report shall indicate the estimated time schedule for beginning and completing the project.

006.01B If the project has separable components, the report shall indicate the component or components for which the sponsor is requesting an apportionment and the estimated time schedule for commencing and completing such component or components.

006.01C If desired by the sponsor, the report may also include a request for the identification of separable components for a project with no previously identified separable components or for the separation of one or more previously identified separable components into additional separable components. Any such request shall be accompanied by an estimate of the costs for completing all separable components for which identification is requested. For those components for which apportionment of funds is desired, the information required by part B of this subsection shall also be provided.

006.01D The extent of any opposition to completion of the project, or any separable component, including whether any lawsuits to prevent its completion have been instituted or are anticipated, whether any problems are being experienced or are anticipated in obtaining sufficient funds to meet the sponsor's financial obligations for the project, and whether any other factors exist-which may affect the sponsor's ability to complete the project.

007 Separable Components. If a project plan provides that development of the project will take place on two or more land areas not contiguous to each other, the project portion planned for each such land area shall constitute a separable component of the project. Projects for which total project development will take place all on one contiguous land area and separable components of projects of the type described above may also have separable components. A project component shall be deemed to be any distinguishable phase of project development including such phases as land rights acquisition, project construction, and related facilities development. The extent to which such components constitute separable components for any project shall be determined by the Commission after consultation with the Director and the sponsor. In the event that any project is determined to have separable components, the

Commission shall take action to identify such separable components and to determine the estimated costs of completing each such component.

008 Apportioning and Setting Aside Funds. Prior to July 1 of each year the Commission shall apportion and set aside available funds for projects and project components eligible for funding assistance. In making such apportionments, the Commission shall consider the following:

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

008.02 Whether any of the projects or project components proposed for funding by the sponsors could, in the opinion of the Commission, be delayed without significant adverse effects on the total project;

008.03 Whether there are reasonable grounds for concern that the project, or portions of it, may not be completed. 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, federal, or other state funds needed to complete the project;

008.04 The funding preferences established in section 4-005;

008.05 Each project's rate-of-return on the investment;

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

008.07 The economic impact of each project on the local and/or regional economy;

008.08 The environmental impact of each project;

008.09 The support for or opposition to each project;

008.10 The urgency of need for each project;

008.11 The extent of benefit provided by each project; and

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

Prior to the Commission's action apportioning and setting aside funds for a given fiscal year, the Department shall invite the sponsors of all projects for which funding 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.

009 Adjustments in Apportionments. A sponsor may at any time during the fiscal year submit reports containing an update of the information contained in the report submitted in accordance with section 4-006. A sponsor of a project for which no report was submitted in accordance with section 4-006 may also at any time submit a report containing the information required by such section. At the first Commission meeting following August 1, November 1, and February 1 of each year, the Commission shall review all such reports, if any, which have been submitted since the last such review, and any other relevant information available to it and shall, if appropriate and consistent with the funding preference established in section 4-005, make adjustments in the amount apportioned and set aside for any project for that fiscal year. No amount previously apportioned and set aside in accordance with sections 4-008 shall be decreased unless:

009.01 The sponsor has indicated a decrease in needs;

009.02 The Commission, based on information contained in the sponsor's report submitted in accordance with section 4-006 or other information available to it, finds that there are reasonable grounds for concern that the project or any separable component may not be completed;

009.03 The project is abandoned or significantly delayed;

009.04 The Department fails to receive a reappropriation of unexpended funds;

009.05 The appropriation for the Resources Development Fund is reduced by subsequent legislative act, or;

009.06 The Commission determines the project no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's rules and regulations.

In case of any such findings, the Commission may modify, suspend or revoke any previous action to apportion and set aside funds for the project or any separable component. Provided, however, any action to modify, suspend, or revoke any previous apportionment shall not affect the sponsor's right to reimbursement for costs which it has incurred or for which it has become legally obligated prior to such Commission action. In addition, such action shall not affect the sponsor'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 apportionment.

010 Limitation on Reimbursements. A sponsor shall not be reimbursed during any fiscal year in any amount in excess of the amount apportioned and set aside for the sponsor's project in accordance with sections 4-008 and 4-009.

011 Review and Approval of Final Plans. Prior to the actual disbursement of any funds for construction for the project or for any portion thereof, the Director shall review the final plans for the proposed program or project or the portion for which funds are requested. If it appears during such review or during any prior or subsequent review or inspection of the project plans or construction, or during any review of project cost information that:

011.01 The plans and specifications for the project are not being followed;

011.02 The plan for development or any work performed on the project are not based on sound technical principles or practices;

011.03 The project or any portion thereof no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's Rules and Regulations; or

011.04 There is or has been non-compliance with any of the terms of the contract between the Sponsor and the Department;

the Director shall immediately bring such variances to the Sponsor's attention and may refuse to disburse any funds for the project until such time as the variances are corrected and the project is brought into conformance with all appropriate standards.

012 Limitation on Allocation. The amount actually disbursed for a program or project, or a separable component of a project, shall not exceed the dollar amount of the tentative allocation for the program, project or separable component approved by the Commission pursuant to section 4-001 or a dollar amount equal to the same percentage of the actual project costs as the tentative allocation represented to the estimated project costs, whichever is less, without specific Commission approval; except that funds apportioned and set aside for one separable component but not disbursed may be used to reimburse the Sponsor for the costs of another separable component even though such reimbursement may exceed the amount apportioned and set aside for that component if necessary in accordance with section 4-002 to achieve or maintain the appropriate ratio between eligible project costs paid by the Sponsor and those paid by the Department.

013 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.

014 Disbursements. The Director shall disburse, no more often than once each month, such funds from those apportioned and set aside to a program or project as are necessary to reimburse, in the proper proportion, all eligible costs incurred by the applicant in carrying out the program or project since the next preceding disbursement, if any. All such costs shall be documented by the applicant in such manner as is directed by the Director prior to the disbursement of any funds. In the event that a program or project has been approved for combination grant and loan allocations, each disbursement shall, unless otherwise specified by the Commission constitute a disbursement of loan and grant funds in the same proportion as the totals of the allocation approved.

015 Inspection During Construction. The Commission and Director 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 shall bring to the attention of the

sponsor and the project engineer any variances from the approved plans and specifications. The Sponsor and the project engineer or project director shall initiate necessary corrective action.

016 Changes in Scope of Approved Projects. The Sponsor shall promptly report all increases in the cost of a project, or any separable component of the project, and any proposed additions, deletions, or modifications of any separable component, or any change in the purpose or purposes of the project by submitting to the Director an amendment to the formal application and feasibility report. Commission approval of any change in the scope, purpose, or plan for development of the project, and any increase in the tentative allocation for the project, or any separable component, 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 tentative allocation for the project is requested, may at the discretion of the Commission, 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 Act or the Commission's rules and regulations.

ANNOTATION

Title 256 NAC

Section 2-1586, R.R.S.,
1997; 2-1587, 2-1589,
2-1590, 2-1592, 2-1593,
and 2-1595, R.S. Supp.,
2000; and 2-1588 and
2-1594, as amended by
LB 129, 97th Nebraska
Legislature, 1st Session (2001)

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

TITLE 257 – REGULATIONS GOVERNING THE
ADMINISTRATION OF THE
SMALL WATERSHEDS FLOOD CONTROL FUND

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA DEPARTMENT OF NATURAL RESOURCES
TITLE 257
RULES AND REGULATIONS CONCERNING
SMALL WATERSHEDS FLOOD CONTROL FUND

Adopted 7-19-01

NEBRASKA DEPARTMENT OF NATURAL RESOURCES
 TITLE 257 - RULES AND REGULATIONS CONCERNING SMALL WATERSHEDS FLOOD
 CONTROL FUND

ALPHABETICAL TABLE OF CONTENTS

<u>Subject</u>	<u>Statute</u>	<u>Code §</u>
Small Watersheds Flood Control Fund, Administration of	2-1501 to 2-1503.03, R.S. Supp., 2000	Title 257
Fund Administration		Chapter 2
Acceptance of Appraisals		002
Agreement to Retain in Public Use		023
Amount Paid		007
Annual Financial Statement		011
Annual Inspection		010
Annual Lease		012
Appraisal and Notification to Public Bodies of Appraised Fair Market Value		018
Approval or Rejection of Bids		032
Conduct of Auction		029
Conservation Plan		009
Criteria for Acquisition by Public Bodies		020
Damage to Crops		003
Desire to Acquire by Two or More Public Entities		021
Documentation of Purchase		008
Earnest Money Deposit		030
Eligibility for Funds		001
Eminent Domain Awards		006
Notice of Intent to Acquire or Retain		017
Notice of Sales		027
Notifying Public Bodies of Proposed Sales		016
Public Auction		024
Public Auctioneers		025

Acquisition by Public Bodies	019
Acquisition or Retention of Less Than Full Parcel	022
Purchase Agreement	031
Purchase Price and Total Cost of Acquisition	004
Sale Expenses	033
Sale of Improvements	026
Sale Schedule	015
Disposition of Property	014
Sealed Bids	028
Title Opinion or Title Insurance and Other Relevant Documents	005
Use of Lease Revenues	013
General Provisions	Chapter 1
Definitions	003
General Availability of Funds	002
Purpose of Rules	001
Responsibilities	004

NEBRASKA DEPARTMENT OF NATURAL RESOURCES
 TITLE 257 - RULES AND REGULATIONS CONCERNING SMALL WATERSHEDS FLOOD
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NUMERICAL TABLE OF CONTENTS

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General Provisions		Chapter 1
Purpose of Rules		001
General Availability of Funds		002
Definitions		003
Responsibilities		004
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Eligibility for Funds		001
Acceptance of Appraisals		002
Damage to Crops		003
Purchase Price and Total Cost of Acquisition		004
Title Opinion or Title Insurance and Other Relevant Documents		005
Eminent Domain Awards		006
Amount Paid		007
Documentation of Purchase		008
Conservation Plan		009
Annual Inspection		010
Annual Financial Statement		011
Annual Lease		012
Use of Lease Revenues		013
Disposition of Property		014
Sale Schedule		015
Notifying Public Bodies of Proposed Sales		016
Notice of Intent to Acquire or Retain		017

Appraisal and Notification to Public Bodies of Appraised Fair Market Value	018
Acquisition by Public Bodies	019
Criteria for Acquisition by Public Bodies	020
Desire to Acquire by Two or More Public Entities	021
Acquisition or Retention of Less Than Full Parcel	022
Agreement to Retain in Public Use	023
Public Auction	024
Public Auctioneers	025
Sale of Improvements	026
Notice of Sales	027
Sealed Bids	028
Conduct of Auction	029
Earnest Money Deposit	030
Purchase Agreement	031
Approval or Rejection of Bids	032
Sale Expenses	033

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

Title 257 DNR – ADMINISTRATION OF SMALL WATERSHEDS CONTROL FUND

Chapter 1 – GENERAL PROVISIONS

001 Purpose of Rules. These rules and regulations are adopted for the purpose of administering the Small Watersheds Flood Control Fund created by section 2-1503.01 R.S. Supp., 2000.

002 General Availability of Funds. Financial assistance from the Fund shall be available only to local organizations which have programs qualifying for such assistance under these rules and regulations. The Commission, in its sole discretion, may allocate to any qualifying organization, from the Small Watersheds Flood Control Fund, such sum or sums as in the judgment of the Commission may be necessary for such local organization to acquire real property or easements needed to permit the local organization to effectuate the purposes of the Small Watersheds Flood Control Fund.

003 Definitions. All terms defined in section 2-1501 R.S. Supp., 2000 shall have the same definition when used in these rules and regulations. In addition:

003.01 “Fund” means the Small Watersheds Flood Control Fund created by section 2-1503.01 R.S. Supp., 2000.

004 Responsibilities.

004.01 It is the responsibility of the Commission to make allocations from the Fund and to specify the date and all other terms for the sale of any lands or rights-of-way acquired with funds from the Fund and to require the execution of all documents necessary to complete such sales.

004.02 It is the responsibility of the Director, through the Department, to administer the fund and to administer these rules and regulations.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

Title 257 DNR – ADMINISTRATION OF SMALL WATERSHEDS FLOOD CONTROL FUND

Chapter 2 – FUND ADMINISTRATION

001 Eligibility for Funds. To be eligible for assistance from the Small Watersheds Flood Control Fund, the local organization must first enter into an agreement with the Department specifying a hydrologic unit and the total number of land rights to be acquired by the local organization in such unit. Such agreement, which shall be on a form supplied by the Department, shall also provide that the local organization will abide by the law and rules and regulations governing administration of the Small Watersheds Flood Control Fund. In addition, the following conditions must have been met:

001.01 The local organization has agreed on a program of work;

001.02 Such program of work has been found by the Department to be feasible, practicable, and will promote the health, safety, and general welfare of the people of the state;

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

001.04 The local organization has obtained a minimum of seventy-five percent of the needed number of lands, easements and rights-of-way in the project or a subwatershed prior to the use of state funds for this purpose;

001.05 The local organization has made a formal request or application to the Department for state funds for the purpose of purchasing lands, easements, and rights-of-way;

001.06 The local organization and the Department have entered into an agreement on the administration and expenditure of these state funds;

001.07 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

001.08 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.

002 Acceptance of Appraisals. An appraisal prepared in accordance with Section 2-1502 R.S. Supp., 2000 must accompany each formal request or application 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 Small Watersheds Flood Control 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 conducted in accordance with Section 2-1502, 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 pursuant to Section 2-1502.

005 Title Opinion or 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 opinion or title insurance policy on the property or interest to be acquired, whether through purchase or condemnation. If a title opinion is provided, such opinion shall have been drafted following a title search by an attorney who is hired by the local organization and who is admitted to practice law before the courts of Nebraska. If a title insurance policy is provided, it 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 purchase agreement or other written document demonstrating the terms and conditions of the proposed purchase.

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 within the hydrologic unit described in the agreement and executed in accordance with section 2-001. In addition, 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, or federal funds.

007.02 The amount which will be approved by the Commission for payment out of the Small Watersheds Flood Control Fund shall not exceed the purchase price as defined in Section 2-004. The Commission may, however, determine that an amount less than the purchase price should be paid from the Small Watersheds Flood Control Fund for any one of the following reasons:

007.02A The dollar amount of all unapproved requests for funding assistance exceeds the availability of uncommitted funds. Prior to approving any additional requests for assistance under such circumstances, the Commission will, following consultation with all affected local organizations, determine whether the available funds could be most effectively utilized.

007.02A1 By deferring assistance until funds do become available to one or more local organizations which would not encounter serious problems because of such deferral;

007.02A2 By allocating them to all applicants on the basis of a percentage of purchase price; or

007.02A3 By utilizing a combination of percentage allocation and deferral.

007.02B A court of competent jurisdiction has made an award in condemnation in excess of the value established by the appraisal approved by the Commission. Provided that, the dollar amount paid by the Commission in such cases shall not be less than the amount specified in the approved appraisal or the amount determined in accordance with section 007.02A, whatever amount is less.

007.03 If for any of the reasons previously provided, the Commission determines that an amount less than the purchase price should be allocated from the Small Watersheds Flood Control Fund for the acquisition of any interest in real property, the local organization shall remit to the Department a pro rata share of the proceeds 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 Small Watersheds Flood Control Fund.

008 Documentation of Purchase. Within thirty days after the local organization receives payment from the state, 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 in the particular case. Such deed, easement, court decree, etc. shall be verified by the clerk of the court or the register of deeds, whichever the case may be.

009 Conservation Plan. Within one hundred twenty days after the title or titles, as applicable, have been acquired, the local organization shall prepare a detailed Conservation Plan, a copy of which shall be sent to the Department to be made a part of the files.

010 Annual Inspection. At least once each year, 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 and shall compare it to the respective Conservation Plan. A report of the staff member's findings along with any suggestions or recommendations to the local organization shall be filed with the Department and the local organization.

011 Annual Financial Statement. Each local organization holding fee title to lands purchased with Small Watersheds Flood Control 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. 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 Small Watersheds Flood Control 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. In addition to the uses for rental and lease revenues as set forth in Section 2-1502 R.S. Supp., 2000, such revenues may be used for reasonable and necessary personnel costs and expenses incurred by the local organization in the management of such lands. As the Department is responsible for overseeing the management of such lands, the local organization shall consult with and keep the Department informed of all matters relevant to such management.

014 Disposition of Property. It shall be the duty of the local organization, within ten years from the purchase date of lands and rights-of-way, to

014.01 grant or retain, for public purposes, as provided for in Section 2-1502 R.S. Supp., 2000, and as provided by these regulations, or

014.02 sell at public auction

all lands and rights-of-way purchased wholly or partially from the Fund.

015 Sale Schedule. The Department shall maintain a schedule of the proposed dates of sale for lands purchased in whole or in part with funds from the Small Watersheds Flood Control Fund. On or about July 1 of each calendar year, the Commission shall review this schedule, consult with local sponsors holding title to such lands, make any additions or revisions that are deemed necessary, and adopt a sale schedule for the next ensuing fiscal year.

016 Notifying Public Bodies of Proposed Sales. For the purpose of Section 2-1502, R.S. Supp., 2000, the Department shall on or about September 1 of each year 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 in at least the next ensuing fiscal year. 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.

017 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 Small Watersheds Flood Control Funds shall notify the Department of such interest by January 1 of the year prior to the fiscal year in which the property is scheduled to be sold.

018 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 Small Watersheds Flood Control Funds, the Department shall, by June 1 of the fiscal year prior to the year in which the property is scheduled to be sold, 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.

019 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 Small Watersheds Flood Control Funds shall notify the Department of such desire by September 10 of the fiscal year in which the property is scheduled to be sold. 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 retention by the local organization of such land for public use is approved pursuant to the procedures hereinafter provided, the Department, within 90 days of approval, shall be reimbursed in the amount of the pro rata share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid by the Fund. If acquisition of such lands for public use by a public body other than the local organization holding title to the property 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.

020 Criteria for Acquisition by Public Bodies.

020.01 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 Small Watersheds Flood Control Funds, the Commission shall, no later than November 1 of the fiscal year in which the property is scheduled to be sold, 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:

020.01A 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.

020.01B The nature of probable alternative uses for such property and their relative importance in the community and the state.

020.01C The adequacy of the property to satisfy the proposed public purpose in comparison to its adequacy to satisfy probable alternative uses.

020.01D The relative economic impacts which could be anticipated in the community because of the proposed public purpose and probable alternative uses.

020.01E The legal and financial abilities of the public body to acquire or retain the property and to implement the proposed public purpose.

020.01F 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.

020.02 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 Small Watersheds Flood Control 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.

021 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 are 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.

022 Acquisition or Retention of Less Than Full Parcel

022.01 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

022.01A It would have no anticipated adverse effect on the marketability of the remainder of the full parcel, and

022.01B No additional public purpose would be served by acquisition or retention by such public body of the remainder of the full parcel.

022.02 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.

023 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 Small Watersheds Flood Control 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 25 years, shall specify the following terms and conditions:

023.01 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.

023.02 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 Small Watersheds Flood Control Fund.

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

023.04 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.

024 Public Auction. 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. Prior to such sale the Department shall:

024.01 Cause an appraisal to be made of such land,

024.02 Retain the services of a public auctioneer,

024.03 Cause legal notice thereof to be published pursuant to Section 2-027.

025 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, not less than 60 days prior to the date established for the sale of any such lands, advertise for bids for the services of such public auctioneer. Selection of the auctioneer from those submitting bids shall be the responsibility of the Commission.

026 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.

027 Notice of Sales. Notice of all sales governed by these rules shall be published in a legal newspaper of general circulation in the county in which such land(s) and/or improvement(s) is (are) located and also in a legal newspaper with statewide circulation. Such notices shall be published once each week for three consecutive weeks, the last publication of which shall not be published less than seven days prior to the date set for the auction or for the opening of sealed bids. Such notices shall list and describe the land(s)

and/or improvement(s) to be sold and the easements 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 the 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.

028 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.

029 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.

030 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.

031 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 pursuant to Section 2-1503.03 R.S. Supp., 2000. Failure to comply with this rule or with the conditions of the purchase agreement shall result in the forfeiture of said bidder's deposit.

032 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, 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 pursuant to Section 2-1503.03 R.S. Supp., 2000. 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.

033 Sale Expenses. Any expenses 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.

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

TITLE 259 – REGULATIONS GOVERNING THE
ADMINISTRATION OF THE
WATER WELL DECOMMISSIONING FUND

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA DEPARTMENT OF NATURAL RESOURCES
TITLE 259
RULES AND REGULATIONS GOVERNING THE
ADMINISTRATION OF THE WATER WELL DECOMMISSIONING FUND

Adopted 7-19-2001

NEBRASKA ADMINISTRATIVE CODE

TITLE 259 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES
GOVERNING THE ADMINISTRATION OF THE WATER WELL DECOMMISSIONING
FUND

ALPHABETICAL TABLE OF CONTENTS

SUBJECT	STATUTORY <u>AUTHORITY</u>	CODE SECTION
Allocation of Funds	Sec. 46-1404, R.S. Supp., 2000	Chapter 3
General Provisions	Sections 46-1401 through 46-1405, R.R.S. 1998 and R.S. Supp., 2000	Chapter 1
Qualified Cost-Sharing Programs	Sec. 46-1405, R.R.S., 1998	Chapter 2
Reimbursement to Districts	Sec. 46-1404, R.S. Supp., 2000	Chapter 4

NEBRASKA ADMINISTRATIVE CODE

TITLE 259 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES
GOVERNING THE ADMINISTRATION OF THE WATER WELL DECOMMISSIONING
FUND

NUMERICAL TABLE OF CONTENTS

SUBJECT	STATUTORY <u>AUTHORITY</u>	CODE SECTION
General Provisions	Sections 46-1401 through 46-1405, R.R.S., 1998 and R.S. Supp., 2000	Chapter 1
Qualified Cost-Sharing Programs	Sec. 46-1405, R.R.S., 1998	Chapter 2
Allocation of Funds	Sec. 46-1404, R.S. Supp., 2000	Chapter 3
Reimbursement to Districts	Sec. 46-1404, R.S. Supp., 2000	Chapter 4

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: JULY 24, 1996

Title 259 DNR -- ADMINISTRATION OF WATER WELL DECOMMISSIONING FUND

Chapter 1 - GENERAL PROVISIONS

001 Purpose of Rules. These rules and regulations are adopted for the purpose of administering the Water Well Decommissioning Fund created by section 46-1403, as it will appear in R.S. Supp., 2000.

002 General availability of funds. Financial assistance from the Fund shall be available only to natural resources districts which have cost-sharing programs for decommissioning water wells consistent with sections 46-1401 through 46-1405, R.R.S., 1998 and R.S. Supp., 2000, and these rules and regulations and which have entered into a contractual arrangement with the Department setting forth the terms for providing such financial assistance.

003 Definitions. As used in these rules and regulations, unless the context otherwise requires:

003.01 "Decommissioning" shall mean the act of filling, sealing, and plugging a water well in accordance with the rules and regulations of the Department of Health and Human Services, Regulations and Licensure;

003.02 "Department" shall mean the Department of Natural Resources created by Section 81-101, R.S. Supp., 2000;

003.03 "Director" shall mean the individual holding the position of Director of Natural Resources created by section 81-102, R.S. Supp., 2000;

003.04 "District" or "Natural Resources District" shall mean a district created and operating in accordance with Chapter 2, Article 32, Reissue Revised Statutes of Nebraska;

Title 259
Chapter 1

003.05 "Fund" shall mean the Water Well Decommissioning Fund created by section 46-1403, R.S. Supp., 2000;

003.06 "Licensed pump installation contractor" shall mean an individual as defined in section 46-1209 and holding a current license issued in accordance with Chapter 46, Article 12, Nebraska Revised Statutes;

003.07 "Licensed water well contractor" shall mean an individual as defined in section 46-1213, R.R.S. 1998 and holding a current license issued pursuant to Chapter 46, Article 12, Nebraska Revised Statutes; and

003.08. "Water well" shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting water into the underground water reservoir. Water well shall not include any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.

004 Access to Files and Compliance with Agreement and Rules and Regulations. The files of each participating natural resources district shall be available for inspection by personnel of the Department and by representatives of the State Auditor's Office during normal business hours of the district. In the event that the Director becomes aware of a violation of the contract between the district and the Department or of these rules and regulations, the Director may terminate the contract and/or demand reimbursement of any state funds related to such violation.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: JULY 24, 1996

Title 259 DNR -- ADMINISTRATION OF WATER WELL DECOMMISSIONING FUND

Chapter 2 - QUALIFIED COST-SHARING PROGRAMS.

001 Program Eligibility. For a district to be eligible for reimbursement from the Fund, it must establish a water well decommissioning cost-share program which is consistent with the following requirements:

001.01. The district program must apply only to water wells which are decommissioned in accordance with all applicable state laws, standards, rules, and regulations and by a licensed water well contractor or licensed pump installation contractor.

001.02. The program must not exclude any category of water wells from cost-share eligibility.

001.03. The program must be available for at least thirty water wells per year. To establish and maintain eligibility, a district does not have to provide cost-share assistance to at least thirty water wells each year. For a given fiscal year a program that is otherwise consistent with these rules will be consistent with this requirement if the district has budgeted at least \$10,000 for that program that fiscal year. If a natural resources district produces sufficient evidence to document that it can cost-share the decommissioning of at least thirty water wells for less than \$10,000, the Director may determine that such district's program is eligible if the amount budgeted for decommissioning is equal to or greater than that lesser amount.

001.04. The district program must provide at least 60% of the cost of decommissioning water wells, except that a district may establish a maximum cost-share amount of no less than \$300 for all water wells other than hand-dug water wells and no less than \$700 for hand-dug water wells. For purposes of these rules, the cost of decommissioning a water well does not include the cost of removing any exposed or buried pipes, tanks or pumps or any tower, wellhouse or other apparatus or obstruction around or in the water well that might interfere with the process of decommissioning.

Title 259
Chapter 2

002 Program Certification by District. Each natural resources district desiring reimbursement from the Fund shall complete a program certification form provided by the Director. The form shall be completed and returned by July 15 of each year the district wishes to receive reimbursement from the Fund.

003 Approval of Programs. The Director shall be responsible for determining whether a natural resources district cost-sharing program for decommissioning water wells complies with the requirements of this chapter. Before making any such determination, the Director may request additional information from any district.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: AUGUST 17, 2000

Title 259 DNR – ADMINISTRATION OF WATER WELL DECOMMISSIONING FUND

Chapter 3 – ALLOCATION OF FUNDS

001 Allocation of Funds. The Director shall allocate funds only to districts which have entered into a contractual arrangement with the Department and have a water well decommissioning cost-sharing program consistent with the requirements of Chapter 2 of these rules and regulations. Each participating district's percentage of the funds available for a fiscal year will be determined by the Director on or before August 1 of that year and shall be based upon that participating district's proportion of the wells decommissioned the previous fiscal year statewide with natural resource district cost-share assistance. Only decommissionings cost-shared the previous fiscal year with district programs consistent with the requirements of Chapter 2 of these rules and regulations may be counted in determining (1) the total number of wells decommissioned statewide with cost-share assistance and (2) each district's proportion of that total. Funds shall be allocated to participating districts from those available in the Water Well Decommissioning Fund on at least a quarterly basis. Except as provided in Rule 003 of this Chapter each district's share of each allocation shall be based upon the percentages determined in accordance with this rule.

002 Certifying Wells Decommissioned. On or before July 15 of each year, each district which desires to be reimbursed from the Fund shall certify the number of wells decommissioned with cost-sharing assistance the previous fiscal year in accordance with this chapter.

003 Revising Allocations. The percentages determined pursuant to rule 001 of this chapter may be adjusted by the Director after March 1 if the Director determines that one or more districts cannot reasonably be expected to use their full percentage of the funds available for that fiscal year. To assist the Director in making such determinations, each participating district shall provide the Director with a report by March 1. The report shall indicate the number of wells which that district has approved for cost-share assistance and which are expected to be decommissioned and cost-shared by the district before July 1 and any other information the district desires to indicate the demand for funds in that district. If such report provides adequate evidence that the district is likely to provide sufficient decommissioning cost-share assistance to

Title 259
Chapter 3

utilize all of the district's percentage of the available funds by July 1, that district's percentage will be maintained. If any district does not provide the report, or if any district's report indicates that it cannot be expected to utilize all of its percentage by July 1, the Director may reduce that district's percentage and distribute any funds thus made available to districts which have documented the need for additional funds in that fiscal year. Such distribution shall be based on the Director's determination of the proportionate number of well decommissionings that could still be cost-shared within those districts in the remainder of the fiscal year.

004 Expiration of Allocation. Except to the extent that the Department encumbers funds at the end of the fiscal year to reimburse districts for cost-share assistance paid by them in that fiscal year, allocations shall not be carried over from one fiscal year to the next. Any unexpended but reappropriated funds will be included in the amount allocated for the next fiscal year. Funds encumbered by the Department at the end of the fiscal year shall also be released if a request for reimbursement for such funds has not been received by the Director by July 15.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: JULY 24, 1996

TITLE 259 DNR -- ADMINISTRATION OF WATER WELL DECOMMISSIONING FUND

Chapter 4 - REIMBURSEMENT TO DISTRICTS

001 Limit on Reimbursements. Actual reimbursements to the district for each water well decommissioned with district cost-share assistance in accordance with these rules and regulations shall not exceed the lesser of: (1) 75% of the cost of such decommissioning; (2) \$300 for all water wells other than hand-dug wells; (3) \$700 for hand-dug water wells; or (4) the actual amount of the cost-share assistance paid by the district.

002 Requesting Reimbursement. A participating district may request reimbursement no more often than monthly, except as necessary to avoid a loss of encumbered funds in accordance with Rule 004 of Chapter 3 of these rules and regulations. To be eligible for such reimbursement, the district must certify the following information for each water well for which cost-share reimbursement is being sought: (1) the total cost of decommissioning the well; (2) the cost-share amount paid by the district; and (3) that district cost-sharing for the well was in compliance with sections 46-1401 through 46-1405, R.R.S., 1998 and R.S. Supp., 2000, as amended and with these rules and regulations.

Title 259
Chapter 3

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

TITLE 262 – REGULATIONS GOVERNING THE
ADMINISTRATION OF THE
SOIL AND WATER CONSERVATION FUND

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA DEPARTMENT OF NATURAL RESOURCES
TITLE 262
RULES AND REGULATIONS GOVERNING THE
ADMINISTRATION OF THE SOIL AND WATER CONSERVATION FUND

Adopted 7/19/01

Title 259
Chapter 3

NEBRASKA ADMINISTRATIVE CODE

TITLE 262 – NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES
GOVERNING THE ADMINISTRATION OF THE SOIL AND WATER CONSERVATION
PROGRAM

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Application and Eligibility for Funds	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 3
Apportionment of Funds	Section 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 2
Cost-Share Rates and Reimbursement Procedures	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 5
Department Administration of the Fund	Sections 2-1575 to 2-1579 and 2-1583	Chapter 7

Title 259
Chapter 3

to 2-1585, R.R.S., 1997
and R.S. Supp., 2000

Title 259
Chapter 3

TITLE 262 – NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES
GOVERNING THE ADMINISTRATION OF THE SOIL AND WATER CONSERVATION
PROGRAM

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Design, Layout, and Construction of Proposed Projects and Practices and Operation and Maintenance	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 4
District Administration of the Fund	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 6
General Provisions	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 1

Title 259
Chapter 3

NEBRASKA ADMINISTRATIVE CODE

TITLE 262 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES GOVERNING THE
ADMINISTRATION OF THE SOIL AND WATER CONSERVATION PROGRAM

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
General Provisions	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 1
Apportionment of Funds	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 2
Application and Eligibility for Funds	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 3
Design, Layout, and Construction of Proposed Projects and Practices and Operation and Maintenance	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 4

Title 259
Chapter 3

Title 259
Chapter 3

TITLE 262 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES GOVERNING THE
ADMINISTRATION OF THE SOIL AND WATER CONSERVATION PROGRAM

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Cost-Share Rates and Reimbursement Procedures	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 5
District Administration of the Fund	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 6
Department Administration of the Fund	Sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2000	Chapter 7

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: September 8, 1998

Title 262 DNR – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION PROGRAM

Chapter 1 – GENERAL PROVISIONS

001 Purpose of Rules. These rules and regulations are adopted for the purpose of carrying out the purposes and requirements of the Nebraska Soil and Water Conservation Act.

002 General Availability of Funds. Financial assistance from the Nebraska Soil and Water Conservation Fund shall be available only to landowners of land located in natural resources districts which have agreed to assist the Department in the administration of the Fund and have executed a Memorandum of Understanding with the Department setting forth the terms of such assistance.

003 Definitions. As used in these rules and regulations, unless the context otherwise requires:

003.01 “Act” shall mean the Nebraska Soil and Water Conservation Act as established and governed by sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S. 1997, and R.S. Supp., 2000 and any and all amendments, additions, or deletions which have been or may be made thereto;

003.02 “Apportion” shall mean to set aside funds for use in accordance with the act and these rules and regulations, but shall not mean any physical distribution or other transfer of such funds;

003.03 “Average unit cost” shall mean the unit of measure cost determined to be the average cost charged in that county for the work performed and materials required in installing such unit;

Title 262
Chapter 1

003.04 “Board” or “Board of Directors” shall mean the board of directors of the district in which is located the land upon which the projects or practices are proposed or installed;

003.05 “Commission” shall mean the Nebraska Natural Resources Commission created pursuant to Section 2-1504, .R.S. Supp., 2000, and amendments thereto;

003.06 “Department” shall mean the Department of Natural Resources created pursuant to Section 81-101, R.S. Supp., 2000;

003.07 “District” shall mean a natural resources district created and governed by sections 2-3201 to 2-32,101, R.R.S., 1997, and amendments and additions thereto;

003.08 “Eligible project or practice” shall mean a project or practice designated as eligible for state cost-share funds by the Commission in accordance with Section 3-001;

003.09 “Fiscal year” shall mean July 1 of any calendar year through June 30 of the next calendar year;

003.10 “Fund” shall mean the Nebraska Soil and Water Conservation Fund created by Section 2-1577, R.R.S., 1997 and R.S. Supp., 2000 and amendments thereto;

003.11 “Landowner” or “owner” shall mean the record owner or owners of real property or upon adequate documentation of the sale of real property by land contract, the purchaser or purchasers of said real property;

003.12 “NRCS” shall mean the United States Department of Agriculture, Natural Resources Conservation Service;

003.13 “Participating district” shall mean a natural resources district which is a party to a then current agreement entered into in accordance with Section 1-002;

Title 262
Chapter 1

003.14 “Project or Practice” shall mean the soil or water conservation or water quality protection work of improvement or activity for which cost-sharing assistance is requested or approved;

003.15 “State cost-share funds” shall mean funds available from the Nebraska Soil and Water Conservation Fund.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: November 5, 1999

Title 262 DNR – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION PROGRAM

Chapter 2 – APPORTIONMENT OF FUNDS

001 Apportionment of Funds.

001.01 Each fiscal year each participating district shall receive a new apportionment of funds for each of the following time periods:

001.01A July 1 to February 28; and

001.01B March 1 to June 30.

001.02 The amount which shall be apportioned to each participating district for each such period shall be the combined total of:

001.02A A portion of the funds obligated but unexpended in such district as of the last day of the preceding apportionment period, such portion to be determined as follows:

001.02A1 For each apportionment period beginning on March 1, each district shall be apportioned the full amount of funds obligated but unexpended in such district as of the last day of the preceding apportionment period;

001.02A2 For each apportionment period beginning on July 1, each district shall be apportioned the full amount of funds obligated but unexpended by such district as of the last day of the preceding apportionment period if the total amount of all funds obligated but unexpended by all participating districts for that preceding apportionment

Title 262
Chapter 2

period is \$1,000,000 or less. If such total is more than \$1,000,000, the amount to be apportioned to all districts shall be reduced to \$1,000,000 and each district shall be apportioned a percentage of its obligated but unexpended funds, such percentage to be determined by dividing \$1,000,000 by such total;

and

001.02B A portion of the sum of all unobligated funds as of the last day of the preceding apportionment period, any previously obligated but unexpended funds made available as a result of the reduction pursuant to Rule 001.02A2, and any funds newly appropriated to the Soil and Water Conservation Fund. In determining the amount of this part of each district's apportionment, the Commission may divide no more than one million four hundred thousand dollars equally among all participating districts and shall, subject to Subsections 001.03 or 001.04, distribute the remainder, if any, among participating districts on the basis of one or more of the following criteria:

001.02B1 The conservation or water quality protection needs in that district as expressed in monetary terms;

001.02B2 The extent of the district's previous use of the Fund; and

001.02B3 The district's own commitment to conservation or water quality protection as expressed by the expenditure of its general revenues for basic soil and water conservation or water quality protection practices in the preceding fiscal year.

001.02B4 The need, as determined by the Commission, to provide assistance for one or more specific projects or practices or for one or more specific geographic areas.

The Commission may also in any apportionment period establish a minimum or maximum amount to be apportioned to

Title 262
Chapter 2

any one district if it determines that such a minimum or maximum is necessary to maintain the viability of the Soil and Water Conservation Fund program in all participating districts.

001.03 The Department shall reserve at least two per cent of the funds credited to the Fund for grants to landowners ordered by a natural resources district pursuant to the Erosion and Sediment Control Act to install permanent soil and water conservation practices. Such funds shall be made available at a rate sufficient to provide the landowner with total cost-sharing assistance of at least ninety percent of the actual cost of the required permanent practices and shall be granted on a first-come, first-served basis until exhausted. Such funds shall not be obligated by the district, but shall be obligated, if available, by the Director of Natural Resources to a landowner when a copy of the district's administrative order and a copy of an application for cost-share assistance are received by the Director. The application for cost-share assistance must be approved by the district before submission to the Director. Such funds shall remain obligated until used or until the district advises the Director of Natural Resources that all or part of the funds are no longer needed. If more than two per cent of the funds credited to the Fund are at any time reserved by the for such purposes, the may at any later time release all or part of such excess for inclusion in any future apportionment to the districts if it concludes that such funds are no longer needed for the purposes of this subsection.

001.04 The Commission may withhold from any apportionment pursuant to Rule 001.02B not more than 20% of the total

Title 262
Chapter 2

unobligated funds available. Such funds may be later apportioned to districts which have obligated all previously apportioned funds and can demonstrate a need for additional funds or may be apportioned to districts for use in critical erosion or water quality areas. No one district shall receive more than 15% of any such withheld funds unless there are adequate funds available for all districts requesting and demonstrating a need for such additional funds on or before May 1.

001.05 No district shall obligate any funds after the last day of any appointment period until notified by the Department of a new apportionment. The report submitted pursuant to Section 6-008 shall be the basis for determining the amount of funds obligated and unobligated by each participating district as of February 28 and June 30 of each fiscal year. Any district failing to submit a report due on or before the fifth working day of any July or March may be denied any apportionment of funds for the next apportionment period.

002 Supplemental Apportionments. The Commission may, by utilizing funds repaid to the Fund or otherwise made available for expenditure pursuant to the Act, establish supplemental apportionments of funds to participating districts. To the extent consistent with legislative direction, any such supplemental apportionment may be combined with any apportionment made pursuant to Section 2-001, Subsection 001.02 or 001.04.

003 Termination of the Memorandum of Understanding. In the event that the Memorandum of Understanding required by Section 1-002 is terminated by a district or by the Department, the district shall release all funds unobligated as of the effective

Title 262
Chapter 2

date of such termination and shall further release as they become available obligated funds for which no claim for payment is made in a timely manner. Any funds so released shall be used by the Commission to supplement in accordance with Section 2-002 the funds apportioned to participating districts.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: November 5, 1999

Title 262 NNRC – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION PROGRAM

Chapter 3 – APPLICATION AND ELIGIBILITY FOR FUNDS

001 Establishing Project Eligibility. Landowners shall be eligible for cost-share funds only for the types of projects and practices designated as eligible for such purposes by the Commission. The Commission shall at least annually review the list of projects and practices for which such funds should be utilized and shall affirm or modify such list as it deems appropriate. Funds apportioned to districts for that fiscal year may be obligated only for projects and practices thus designated. Each participating district may further limit the types of projects and practices eligible for funding assistance in that district; the Department shall be promptly notified of any such action.

002 Application for Assistance. To be eligible for cost-share assistance from the fund, a landowner must make application therefor on forms provided by the Department. Copies of such forms shall be available at such locations as the district shall specify.

003 Certification of Practices. Before the district board of directors approves the application for assistance, a technician qualified to assess the practicability and need for the projects or practices for which assistance is requested shall certify that such projects or practices are feasible and that the estimated quantities are practical and reasonable. If such technician is other than an individual employed for such purposes by the district or by the NRCS, the qualifications of such technician shall be established to the satisfaction of the board prior to approval of the application.

004 Availability of Federal Funds. Except for funds to be obligated by the Commission in accordance with Section 2-001, Subsection 001.03, applications for cost-sharing assistance from the Fund cannot be approved by the district board of directors unless it determines that federal funds were not available for the proposed project or practice at the time the application was submitted by the landowner. Federal funds shall be deemed to be unavailable in the county where the land is located if all such funds then available for obligation in such county through

Title 262
Chapter 3

federal cost-sharing programs have been obligated or if the particular project or practice proposed is not eligible for federal cost-sharing funds in that county but is eligible for state cost-sharing assistance. Federal cost-sharing funds shall also be deemed to be unavailable to the extent that the maximum allowable dollar amount available from a federal cost-sharing program to individual landowners in a given year has limited or will limit the landowner's federal cost-share payment to an amount less than that to which such landowner would have been entitled in the absence of such a dollar limitation. In the event of the utilization of both state and federal cost-share funds on the same project or practice, the state cost-share funds provided to the landowner shall not exceed the amount which ineligible contributors are authorized to provide by federal regulations and operating procedures.

005 Federal Multi-year Agreements. Notwithstanding any provision of Section 3-004, federal cost-sharing funds shall be deemed to be unavailable for a project or practice which is included in a federal multi-year cost-sharing agreement or contract when and only when federal maximum dollar amounts for that type of project or practice or that contract have been or are to be paid from federal cost-sharing funds.

006 Compliance with Applicable Laws. In the installation or application of any eligible project or practice the landowner shall be solely responsible for assuring compliance with any applicable federal, state, or local laws, ordinances, and rules and regulations. The landowner is also solely responsible for obtaining all permits, licenses, or other instruments of permission required prior to the installation of the proposed project or practice.

007 Group Project or Practices. In the event that the most appropriate solution to the needs addressed by the act requires the eligible projects or practices to be located on or across the property lines of different landowners, and when such landowners desire to jointly install, operate, and maintain such needed projects or practices, state cost-share funds may be used to share the cost when the following additional provisions have been satisfied.

007.01 A group planning agreement prepared by or on behalf of landowners must be signed and submitted by the landowners involved and approved by the board;

Title 262
Chapter 3

007.02 If the proposed projects or practices are approved by the board, the landowners shall arrange for carrying out the projects or practices by securing and recording any easements which are necessary and by agreeing to a division of the costs and cost-share payments;

007.03 One member of the group shall be designated as the group representative to file the application for cost-share assistance, such application to be accompanied by a written statement describing the arrangements agreed to under subsection 007.02 above;

007.04 The group representative shall make arrangements to have the project or practice installed, make payments and obtain receipts from vendors;

007.05 The group representative shall submit the claim for payment, supported as otherwise required by these rules and regulations;

007.06 Payment will be made to the group representative;

007.07 The division of cost-share assistance provided will be made by the group representative in the manner indicated in the agreement previously reached among the members of the group;

007.08 A cost-share assistance agreement must be signed by each member of the group on whose land a portion of the project or practice has been installed;

007.09 When two or more landowners intend to participate financially in the installation of a project or practice located wholly on the property of one landowner, the procedures outlined in this section may be used but are not required.

008 Termination Date. All applications shall specify a termination date which shall be no more than nine months from the date the landowner's application is approved by the board. Claims for payment received after such termination date shall not be honored unless an extension of not to exceed an additional three months time period is approved by the board by amendment to the original application.

Title 262
Chapter 3

009 Application Amendments.

009.01 An amendment to an application for cost-sharing assistance shall be appropriate for any of the following reasons:

009.01A To increase or decrease consistent with the responsible technician's certification pursuant to Section 3-003 the quantities of eligible projects or practices needed and/or the amount of cost-share funds estimated on the original application.

009.01B To extend the termination date indicated on the original application consistent with Section 3-008;

009.01C To cancel the agreement by mutual consent.

009.02 A copy of any amendment will be furnished to each party receiving a copy of the original agreement and the board shall approve each such amendment before it shall become effective.

010 Need for Additional Reviews The Commission may identify projects or practices for which reviews by an entity in addition to the district are required before the board of directors may approve applications for cost-share assistance, or any amendments thereto, pursuant to Section 6-002 or may approve claims for payment pursuant to Section 6-005. In the event the Commission takes such action, the Department, within five working days thereafter, shall notify the affected districts and as soon thereafter as possible, shall direct the affected districts concerning the process for future acceptance and approval of applications, amendments, and claims for payment which include such projects or practices.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: September 8, 1998

Title 262 DNR – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION PROGRAM

Chapter 4 – DESIGN, LAYOUT, AND CONSTRUCTION OF PROPOSED PROJECTS AND PRACTICES AND OPERATION AND MAINTENANCE

001 Technical Specifications. Unless the Commission provides otherwise for specific projects and practices, specifications for projects and practices set forth in the NRCS Field Office Technical Guide are to be used as the basis for determining need and practicability of the proposed project or practice, for preparing plans and specifications, for designing and laying out such projects and practices, and for certifying the proper installation or application of such projects and practices. Specifications for additional projects and practices not set forth in the NRCS Field Office Technical Guide and modifications to those included in such Technical Guide may be considered and authorized by the Commission at the request of the District. Project and practice description and specification information will be on file in the district office and at all such places as application forms are made available.

002 Inspections and Certifications. A responsible technician shall prior to installation or application of the proposed project or practice determine that the plans therefore are adequate and shall inspect any construction work in progress to determine that specifications are met. Following such installation or application, it will be the responsibility of such technician to certify to the district that the project or practice was or was not properly installed or applied. If the district does not receive a technician's certification that the project or practice was properly installed or applied, it shall not approve any claim to the Department for payment regarding such project or practice. In the event that any technician responsible for complying with any portion of this section is different from the technician who originally certified the feasibility of the project or practice in accordance with Section 3-003, and if such technician is other than an individual employed for such purposes by the District or by NRCS, the qualifications of such technician shall be established to the satisfaction of the board prior to proceeding any further with processing of any claim for payment.

Title 262
Chapter 4

003 Operation and Maintenance by Landowner. Except as provided in Section 3-004, the landowner shall be responsible for the operation and maintenance of all projects and practices constructed with assistance from the Fund and the landowner will be expected to maintain the same in good operating condition to assure their continued effectiveness for the purpose or purposes for which they were installed.

004 Operation and Maintenance by District. If on any particular proposed project or practice, the district determines that landowner assumption of all operation and maintenance responsibilities would constitute an undue burden upon such landowner or would not assure operation or maintenance adequate to protect such project or practice from failure, the district may agree to be or require that it be responsible for all or a part of such operation and maintenance and may prior to and as a condition for approval of an application for cost-share funds, require the landowner to provide the district with the right of access necessary to perform such operation or maintenance.

005 Cost-Share Assistance Agreement. As a condition for receiving any cost-share funds for eligible projects or practices, the landowner shall, prior to submission of a claim for reimbursement, enter into an agreement on forms supplied by the Department providing that if a conservation practice is terminated or a project or practice is removed, altered, or modified so as to lessen its effectiveness, without prior approval of the district, for a period of ten years after the date of receiving payment, the landowner shall refund to the Fund the full amount of the state cost-share payment previously received for the project or practices or portion thereof which has been thus terminated, removed, altered or modified.

006 Requests for Termination, Removal, Alterations, Modifications. A landowner may request the district's approval of the termination, removal, alteration, or modification of the project or practice at any time during the 10-year period following receipt of payment. In determining whether to approve or disapprove such action, the district shall consider:

006.01 The value of the project or practice in conserving soil and water resources or protecting water quality;

Title 262
Chapter 4

006.02 The extent to which such project or practice hinders the highest and best use of the land upon which such project or practice is located;

006.03 Whether alternative forms of soil and water conservation or water quality protection measures have been or are to be constructed or implemented; and

006.04 The time remaining in the designed life of the project or practice.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: September 8, 1998

Title 262 DNR – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION PROGRAM

Chapter 5 – COST-SHARE RATES AND REIMBURSEMENT PROCEDURES

001 Cost-Share Rates. The district may establish any cost-share rates for eligible projects and practices up to 75% of average unit cost. However, except as provided in Section 2-001, Subsection 001.03, no payment shall exceed 75% of the actual cost of the project or practice installed or applied. Participating districts shall notify the Department by February 1 of each year of the cost-share rates to be utilized for reimbursement purposes during the next ensuing year. In the event that average unit costs are not established in accordance with Section 5-002, or that average unit costs which are available are determined by the Commission to be unreliable because of the site-specific nature of the costs of a certain type of project or practice, the cost-share rate in effect will be applied to actual cost and average cost will not be utilized and need not be calculated on individual applications.

002 Average Costs. Unless a district establishes and informs the Department of lower average unit costs, the average unit costs for a county shall be identical to any established and utilized by NRCS for the same type of projects and practices in that county. If average unit costs are not established by NRCS for an eligible practice in a county, the Commission itself may establish average unit costs for such project or practice in such county. Except for applications filed with the Commission in accordance with Section 2-001, Subsection 001.03, all applications for cost-sharing assistance shall be based upon the then current average unit costs. Once an application has been completed by a landowner, the same average unit costs in effect at the time the application was completed shall be utilized for determining the cost-share payment to which each landowner is entitled unless the district and the landowner agree to use updated average unit costs.

003 Eligible Costs. Except for costs incurred in employing the services of a technician as required by these rules and regulations or as otherwise may be limited by the Department, all necessary costs incurred by the landowner in installing or applying an approved project or

Title 262
Chapter 5

practice shall be eligible for cost-sharing. Such costs include machine hire or the costs of the use of his own equipment, needed materials delivered to an used at the site, and labor required to construct the project.

004 Documenting Costs. All authorized items of costs for which the landowner desires cost-sharing assistance shall be itemized on a statement submitted to the district by the landowner in such form as is required by the Department. Costs incurred by the landowner in furnishing his own labor, material, or equipment for use on a project or practice should be listed in a certified statement itemizing such items and showing unit cost for each item and the total amount for which payment is claimed.

005 Claim for Payment. The landowner shall after the project or practice has been completed and certified by the responsible technician complete a claim for payment on forms provided by the Department and available at the location where the application form was obtained. A copy of the document(s) required by Section 5-004, shall be attached to such claim for payment prior to submission to the district. A claim for payment will not be accepted unless the landowner has signed the portion of the claim form required by Section 4-005.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: September 30, 1994

Title 262 DNR – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION PROGRAM

Chapter 6 – DISTRICT ADMINISTRATION OF THE FUND

001 Application. Sections 6-001 through 6-009 shall apply only to districts which have entered into a Memorandum of Understanding with the Department agreeing to assist the Department in the Administration of the Fund.

002 Board Action on Application. The board of directors shall review each cost-share assistance application and any and all amendments thereto and shall approve or disapprove each such application or amendment. Such action shall be recorded in the official minutes of the meeting and the landowners shall be notified of such action within ten days thereafter. For any project or practice subject to additional review in accordance with Section 3-010, the board shall not approve an application for cost-share assistance or an amendment thereto except in compliance with direction given by the Department.

003 Approving Applications. Except for applications pursuant to Section 2-001, Subsection 001.03, applications for cost-share assistance may be approved by the board only when there is a sufficient unobligated fund balance to provide the estimated cost-share amount based upon the average cost information indicated on the application. The board may if it desires give preference to the construction of projects or practices which will in its judgment provide the greatest public benefit in that district. Examples of projects and practices which would provide the most public benefit include those which would reduce runoff and sediment damage to lakes, streams, reservoirs, roads, highways, or other public improvements and those which would reduce demands on or contamination of the groundwater reservoir and/or provide enhanced recharge to an aquifer with a declining water table.

004 Record Keeping. The district shall maintain a record of funds obligated as applications for cost-share assistance are approved based upon estimated costs. A cost-share ledger will be kept

Title 262
Chapter 6

current showing the balance of unobligated funds and such other information as the Department determines is necessary to provide for proper documentation of all expenditures from the Fund.

005 District Review of Claim for Payment. Upon completion of an approved project or practice, the district shall review the claim for payment prepared by the landowner in accordance with Section 5-005, and shall if it finds that the project or practice was properly installed, that all other conditions have been satisfied, and that the claim has been properly completed and is accompanied by all required supporting documentation, approve the claim and certify the same to the Department with all supporting documentation attached. For any project or practice subject to additional review in accordance with Section 3-010, the board shall not approve a claim for payment except in compliance with direction given by the Department. If the district determines that the claim is improperly prepared or that other deficiencies exist, it shall so notify the landowner and shall provide the landowner with a reasonable opportunity to correct such deficiencies and to resubmit the claim for payment.

006 District Assistance to Landowner. The district shall provide such assistance as it deems appropriate to the landowner in the completion of necessary forms and in all matters relating to completion of eligible projects and practices.

007 Filing System. To provide for efficient processing of requests for cost-sharing assistance and for maintenance of necessary documentation of matters relating to the administration of the Fund, the district shall develop and maintain with the assistance of the Department a filing system which includes copies of all forms completed by the landowner and all other information deemed relevant to the installation and application of the eligible projects and practices and to the cost-sharing assistance provided. Such files shall be available for inspection by personnel of the Department and by representatives of the State Auditor's Office during normal business hours of the district.

008 Reports. The district shall no later than the 5th working day of March, July and November of each year submit a report to the Department indicating the status of cost-share funds as shown on each cost-share ledger required by Section 6-004 at the close of the last day of the preceding month.

Title 262
Chapter 6

009 Delegation of Responsibilities by Board. The board of directors may delegate to the district manager or to a member or sub-committee of the board all or any of the authorities and responsibilities assigned to it by these rules and regulations except the establishment of preferred projects and practices in accordance with Section 6-003 and the limitation of the types of projects and practices eligible for assistance in accordance with Section 3-001. The Department shall be notified in writing of any such delegation.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: September 30, 1994

Title 262 DNR – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION PROGRAM

Chapter 7 – DEPARTMENT ADMINISTRATION OF THE FUND

001 Forms. The Department shall prepare and make available to participating districts sufficient copies of all forms necessary for district administration and shall further prepare and keep updated a handbook for use by districts in assisting in the administration of the fund.

002 Department Review of Claims for Payment. Upon receipt from a district of a district approved claim for payment, a Department representative shall review the claim and the supporting documentation which is attached. If the claim is determined to be complete and properly documented, the Department shall prepare a voucher for transmittal to the Department of Administrative Services for preparation of a warrant payable to the landowner or to a group representative designated in accordance with Section 3-007.

003 Payment to Landowner. Upon receipt of the warrant from the Department of Administrative Services, the Department shall transmit it by mail to the landowner or group representative.

004 Incomplete or Inaccurate Claims for Payment. If in reviewing the claim for payment, the Department determines that the information contained thereon is incomplete or inaccurate, that an error exists in the final computation or that proper documentation has not been supplied, it shall so notify the district of such deficiency. The district shall then request the landowner to complete a new claim for payment. No payment will be authorized until the Department has determined that the claim for payment and the necessary supporting documentation are complete and accurate in all respects.

005 Violations of Cost-Sharing Assistance Agreement. In the event that the Department is notified of an alleged violation of the cost-sharing assistance agreement, a representative of the Department and/or a representative of the district shall investigate the alleged violation and shall

Title 262
Chapter 6

report the results of such investigation to the Department. If following the investigation it appears as though a violation has in fact occurred, the Department shall so notify the landowner and shall make demand for repayment of the appropriate amount to the Fund within 30 days thereafter. The landowner may within the time specified for such repayment contest the occurrence of a violation and may request that the Department conduct a formal hearing to reconsider such demand for payment. Such hearing shall be conducted in accordance with Title 261 of the Department Rules and Regulations. If following the hearing, the Department determines that the violation did in fact occur, it shall so notify the landowner in accordance with the provisions of Title 261 and shall renew the demand for repayment. If repayment is not provided or all deficiencies corrected at the owner's expense within the time specified, appropriate legal action shall be taken by the Department to recover such amount.

006 Report to Districts. The Department shall prepare on a quarterly basis a report to each participating district indicating the payments which have been made from the fund during the preceding quarter and any other information determined by the Department to be of value to the districts regarding the administration of the fund.

Title 262
Chapter 6

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

TITLE 263 – REGULATIONS GOVERNING THE
ADMINISTRATION OF THE
NATURAL RESOURCES WATER QUALITY FUND

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA DEPARTMENT OF NATURAL RESOURCES
TITLE 263
RULES AND REGULATIONS GOVERNING THE
ADMINISTRATION OF THE NATURAL RESOURCES
WATER QUALITY FUND

Title 262
Chapter 6

Adopted 7-19-2001

NEBRASKA ADMINISTRATIVE CODE

TITLE 263 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES
GOVERNING THE ADMINISTRATION OF THE NATURAL RESOURCES WATER
QUALITY FUND

ALPHABETICAL TABLE OF CONTENTS

SUBJECT	STATUTORY <u>AUTHORITY</u>	CODE SECTION
Distribution of Funds	Sec. 2-15,123, as amended by Section 2, LB 329, 97 th Nebraska Legislature, 1 st Session (2001)	Chapter 2
General Provisions	Sec. 2-15,122, as amended by Section 1, LB 329, 97 th Nebraska Legislature, 1 st Session (2001)	Chapter 1
Qualified Expenditures	Sec. 2-15,123, as amended by Section 2, LB 329, 97 th Nebraska Legislature, 1 st Session (2001)	Chapter 3

NEBRASKA ADMINISTRATIVE CODE

TITLE 263 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES
GOVERNING THE ADMINISTRATION OF THE NATURAL RESOURCES WATER
QUALITY FUND

NUMERICAL TABLE OF CONTENTS

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: MARCH 13, 1996

Title 263 DNR -- ADMINISTRATION OF NATURAL RESOURCES WATER QUALITY FUND

Chapter 1 - GENERAL PROVISIONS

001 Purpose of Rules. These rules are adopted for the purpose of administering the Natural Resources Water Quality Fund governed by Sections 2-15,122 and 2-15,123, as amended by Sections 1 and 2, LB 329, 97th Nebraska Legislature, 1st Session (2001).

002 General Availability of Funds. Financial assistance from the Fund shall be available only to natural resources districts which have programs qualifying for such assistance under these rules and which have entered into a contractual arrangement with the Department setting forth the terms for providing such financial assistance.

003 Definitions. As used in these rules and regulations, unless the context otherwise requires:

003.01 "Commission" shall mean the Natural Resources Commission created pursuant to Section 2-1504, R.S. Supp., 2000, and amendments thereto;

003.02 "Department" shall mean the Nebraska Department of Natural Resources created by Section 81-101, R.S. Supp., 2000, and amendments thereto;

003.03 "Director" shall mean the individual holding the position of Director of Natural Resources created by Section 81-102, R.S. Supp., 2000;

003.04 "District" or "Natural Resources District" shall mean a district created and operating in accordance with Chapter 2, Article 32, Reissue Revised Statutes of Nebraska; and

Title 263
Chapter 1

003.05 "Fund" shall mean the Natural Resources Water Quality Fund created by Section 2-15,122, as amended by Section 1, LB 329, 97th Nebraska Legislature, 1st Session (2001).

004 Access to Files and Compliance with Agreement and Rules and Regulations. Each participating natural resources district shall maintain records adequate to document that the district had expenditures qualified pursuant to Chapter 3 of these rules in amounts equal to or exceeding the amount provided from the Fund plus the required cost-share. Such files shall be available for inspection by personnel of the Department and by representatives of the State Auditor's office during normal business hours of the district. In the event that the Director becomes aware of a violation of the contract between the district and the Department or of these rules and regulations, the Director may terminate the contract and/or demand reimbursement of any state funds related to such violation.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: MARCH 13, 1996

Title 263 DNR -- ADMINISTRATION OF NATURAL RESOURCES WATER QUALITY FUND

Chapter 2 –DISTRIBUTION OF FUNDS

001 Schedule for Distributing Funds. Funds shall be distributed, pursuant to Section 002 of this chapter to participating districts on or before the 15th day of August, each year and at such other times during the year as the Director determines that sufficient additional funds are available to make a distribution and the participating districts indicate their ability to use additional funds.

002 Determining Distributions. The money available for each distribution from the Fund shall be divided among participating districts as follows:

002.01 Except as provided by Section 004 of this Chapter, sixty percent of the funds available shall be distributed to districts on the basis of proportionate fertilizer sales within the districts during the preceding three calendar years for which sales records by county are available from Nebraska Agricultural Statistics or a comparable source. For a county which is contained within more than one district, each district's proportion of sales shall be based upon its proportionate land area within the county. If sales records are not made available for any county, the Director shall establish that county's portion of the statewide sales total. That decision shall be based upon the best available information which may include, but not be limited to, county land area and sales in adjacent counties. In the event the Commission chooses to reserve up to ten percent of funds available for special distribution pursuant to 004 of this Chapter, the amount of funds available for distribution pursuant to this subsection shall be decreased by the amount reserved .

002.02 Twenty percent of the funds available shall be divided equally among all participating districts.

002.03 Twenty percent of the funds shall be distributed among districts which have (1) a designated ground water management area for water quality purposes or (2) a clean lakes

Title 263
Chapter 2

watershed area designated pursuant to Section 314 of the Clean Water Act, or comparable federally funded program. Each district's distribution pursuant to this subsection shall be based upon the proportionate land area in that district which is in such a designated area compared to the total land area within the state in such designated areas. If specific lands are in more than one such designated area, they shall be counted only once for purposes of this subsection.

003 At least thirty days prior to a distribution pursuant to Section 002 of this chapter, the Department shall notify each district of the estimated amount of funds to be distributed to that district. If any district does not believe it could fully utilize any such distribution in the amount estimated, it shall provide the Department with timely notification of the amount of funds which it could utilize for qualified programs. The difference between that amount and the amount that would otherwise be distributed to that district pursuant to Section 002 of this Chapter will be divided among the other participating districts according to subsections 002.01 through 002.03.

004 The Commission may reserve up to ten percent of the funds that otherwise would be distributed pursuant to Section 002 of this Chapter as part of the first distribution in any fiscal year. Any such reserved funds will be distributed by the Director to participating districts for specific programs and/or projects by September 15 of the fiscal year in which they are to be expended. Application for such funds shall be made on a form provided by the Department. If the available funds are not sufficient to fund all those for which application has been made, priority will be given to programs and projects offering innovative ways to address water quality problems. No district shall receive more than twenty-five percent of the funds distributed pursuant to this section in any one fiscal year unless funds are available for all other qualified applications submitted.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: MARCH 13, 1996

Title 263 DNR – ADMINISTRATION OF NATURAL RESOURCES WATER QUALITY FUND

Chapter 3 – QUALIFYING EXPENDITURES

001 Qualifying Programs and Projects. Subject to the requirement of Section 002 of this Chapter, a participating district may expend funds distributed pursuant to Chapter 2 of these rules for costs incurred by that district for any of the following programs and projects: (1) the purchase, installation, maintenance, and use of ground water sampling and testing equipment; (2) the purchase, installation, maintenance, and use of surface water sampling and testing equipment; (3) education and information programs related to water quality issues; (4) administration of ground water quality management areas ; (5) purchase, installation, and maintenance of special monitoring wells and related equipment; (6) flow meters and other equipment required in ground water management areas ; (7) source water protection programs and activities; (8) preparation and updating of ground water management plans; (9) implementation of water quality “best management” practices in both rural and urban areas, including programs which cost-share expenses of landowners and operators in installing or using such practices; (10) soil sampling and testing programs for soils in and below the crop root zone; (11) water quality research; (12) well decommissionings; (13) Chemigation permitting and inspection programs; (14) investigations, because of water quality concerns, of potential replacement sources of water for public water suppliers; (15) animal waste management activities including research, treatment lagoon cost-sharing, feedlot waste effluent management, and inactive feedlot management; and (16) other water quality related programs and projects approved in advance by the Director. The Director shall have sole discretion to determine whether a district’s program qualifies for funding pursuant to this subsection.

002 Cost-Share Requirement. For each two dollars expended by the district from the funds distributed pursuant to Chapter 2 of these rules, the district shall spend at least three dollars in funds derived from other non-state sources for the programs and projects identified in Section 001 of this chapter.

003 Certification of Expenditures and Reimbursement of Funds. Funds distributed pursuant to Chapter 2 of these rules and regulations must be expended by the district in the fiscal year distributed. On or before August 31, the district shall account for expenditure of the funds made available from the Fund in the previous fiscal year. The Department shall provide a form for such purposes. In the event that all funds distributed in the previous fiscal year were not expended by June 30 of that fiscal year, or that any funds were expended for programs or projects that the Director determines were not qualified for funding, or that the district did not match the funds distributed in the proportion required by Section 002 of this chapter, the district shall reimburse the Department for the amount thus unexpended, improperly expended, or unmatched. All such reimbursed funds shall be redeposited in the Fund for redistribution in accordance with Chapter 2 of these rules and regulations. No new distributions shall be made to a district which has not made a reimbursement required by this section.