~~DEPARTMENT OF NATURAL RESOURCES~~

~~TITLE 264 – RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND~~

~~NEBRASKA ADMINISTRATIVE CODE~~

~~DEPARTMENT OF NATURAL RESOURCES~~

~~TITLE 264~~

~~RULES GOVERNING THE~~
~~ADMINISTRATION OF THE WATER SUSTAINABILITY FUND~~

~~Adopted September 16, 2015~~

~~DEPARTMENT OF NATURAL RESOURCES~~
~~TITLE 264 - RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND~~

~~ALPHABETICAL TABLE OF CONTENTS~~

~~Subject~~	~~Statute~~	~~Code §~~
~~Water Sustainability Fund, Administration of~~	~~61-204, 61-222, 84-909~~	~~Title~~
~~General Provisions~~		~~Chapter 1~~
~~Definitions~~	~~2-1501, 84-909~~	~~002~~
~~Eligible Programs, Projects and/or Activities~~	~~2-1507~~	~~004~~
~~Purpose and Effect of Rules~~	~~61-222, 61-204~~	~~001~~
~~Types of Assistance~~	~~2-1510, 2-1511~~	~~003~~
~~Action by the Director~~		~~Chapter 2~~
~~Changes in Scope of Approved Proposals~~	~~2-1511~~	~~009~~
~~Committee Findings and Public Hearings~~	~~2-1509~~	~~002~~
~~Considerations in Making Recommendations on Applications~~	~~2-1509~~	~~003~~
~~Contractual Arrangements~~	~~2-1511~~	~~006~~
~~Disbursements~~	~~2-1511~~	~~007~~
~~Inspection During and After Construction~~	~~2-1511~~	~~008~~
~~Required Findings of Fact~~	~~2-1510~~	~~004~~
~~Review and Approval of Plans~~	~~2-1511~~	~~005~~
~~Review and Report by the Director~~	~~2-1511~~	~~001~~

DEPARTMENT OF NATURAL RESOURCES
TITLE 264 - RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

NUMERICAL TABLE OF CONTENTS

Subject	Statute	Code §
Water Sustainability Fund, Administration of	61-204, 61-222 84-909	Title
General Provisions		Chapter 1
Purpose and Effect of Rules	61-222, 61-204	001
Definitions	2-1501, 84-909	002
Types of Assistance	2-1510, 2-1511	003
Eligible Programs, Projects and/or Activities	2-1507	004
Action by the Director		Chapter 2
Review and Report by the Director	2-1511	001
Committee Findings and Public Hearings	2-1509	002
Considerations in Making Recommendations on Applications	2-1509	003
Required Findings of Fact	2-1510	004
Review and Approval of Plans	2-1511	005
Contractual Arrangements	2-1511	006
Disbursements	2-1511	007
Inspection During and After Construction	2-1511	008
Changes in Scope of Approved Proposals	2-1511	009

~~NEBRASKA ADMINISTRATIVE CODE~~

~~LAST ISSUE DATE:~~
~~Title 264 – DEPARTMENT OF NATURAL RESOURCES~~

~~Chapter 1 – GENERAL PROVISIONS~~

~~001. Purpose and Effect of Rules. These rules are adopted for the purpose of meeting the goals of the Nebraska Water Sustainability Fund. Under no circumstances shall these rules 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 Fund.~~

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

> ~~002.01. Allocation. "Allocation" shall mean the limit authorized by the Commission for a project and is not associated with actual dollars;~~
>
> ~~002.02. Applicant. "Applicant" shall mean any state agency or person or entity eligible to apply for financial assistance from the Fund;~~
>
> ~~002.03. Appropriation. "Appropriation" shall mean the amount of funding approved by the Legislature and authorized by the Governor for the Fund;~~
>
> ~~002.04 Cap. "Cap" shall be set legislatively for the Fund and shall mean the amount of allocation that can be awarded by the Commission in excess of obligation;~~
>
> ~~002.05 Combined Sewer Overflow Project. "Combined sewer overflow project" shall mean a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environmental Quality;~~

~~002.06 Commission. "Commission" shall mean the Nebraska Natural Resources Commission created pursuant to Section 2-1504;~~

~~002.07 Cost Effectiveness. "Cost effectiveness" shall mean a systematic quantitative method for comparing the costs of alternative means of achieving the same stream of benefits or a given objective;~~

~~002.08 Department. "Department" shall mean the Nebraska Department of Natural Resources created pursuant to Sections 61-205 and 81-101;~~

~~002.09 Director. "Director" shall mean the Director of the Department Natural Resources as provided in Section 81-102;~~

~~002.10 Eligible Costs. "Eligible costs" shall mean the direct project cost which would otherwise be borne by the applicant if the Water Sustainability Fund was not available. Direct project cost is deemed to include any local match required by federal of other non-state funding sources, but exclude project costs paid or reimbursed by federal and other non-state entities, project funding received directly or indirectly from other state sources plus any associated local match requirement, costs for operation and maintenance, debt interest, applicant project administration and management, and all discretionary costs such as lobby, entertainment, etc.;~~

~~002.11 Fund. "Fund" shall mean the Nebraska Water Sustainability Fund created by Section 61-222;~~

~~002.12 Governing Body. "Governing Body" shall mean the individual or group of individuals which are empowered by law to govern the business of an applicant;~~

~~002.13 Intangible Benefits. "Intangible Benefits" shall mean benefits, either primary or secondary, that cannot be expressed in monetary terms;~~

~~002.14 Obligation. "Obligation" shall mean actual dollars made available by the Commission to a project for reimbursement;~~

~~002.15 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 metropolitan utilities district, natural resources district, irrigation district, public power and irrigation district, reclamation district, county, and any municipal corporation, village, or city, whether operating under home rule charter or under the general laws of the State of Nebraska;~~

~~002.16 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;~~

~~002.17 Program, Project and/or Activities. "Program, Project and/or Activities" 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;~~

~~002.18 Program, Project and/or Activity Proposal. "Program, Project and/or Activity proposal" or "proposal" or "application" shall mean a proposal which is submitted seeking financial assistance from the Fund.~~

~~002.19 Project Engineer or Project Director. "Project Engineer or Project Director" shall mean any engineer, engineering firm, or other person, persons or firm retained or employed by the applicant to provide professional engineering or other professional or technical services during the planning, design, and construction of the proposal;~~

~~002.20 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 program, project and/or activity;~~

~~002.21 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;~~

~~002.22 Tangible Benefits. "Tangible Benefits" shall mean benefits, either primary or secondary, that can be expressed in monetary terms;~~

~~002.23 Water Productivity. "Water productivity" shall mean water use to increase water sustainability;~~

~~002.24 Water Sustainability. "Water Sustainability" shall mean water use is sustainable when current use promotes healthy watersheds, improves water quality, and protects the ability of future generations to meet their needs.~~

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

~~003.01 Grants. Funding may be made as grants to applicants when it is determined that such an allocation will not be subsequently recovered from revenue or receipts and when the program, project and/or activity, or separable portion thereof, appears to be of general statewide public benefit thereby making reimbursement of such money from the applicant's funds inappropriate or impossible, or when the funds are intended for a state or local contribution to a program, project and/or activity requiring such contribution to meet the requirements for matching a federal grant or federal cost-share agreement. If only a portion of the program, project and/or activity 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 shall include the extent of the area over which the anticipated benefits will accrue and whether equitable distribution of the costs of the program, project and/or activity can be accomplished without a grant.~~

~~003.02 Loans. Funding in the form of loans to applicants for any program, project and/or activity or any part thereof consistent with the purposes of the Fund which will directly generate revenue or receipts or which can be anticipated to culminate in a program, project and/or activity which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment from local 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.~~

~~Title 264~~
~~Chapter 1~~

~~004. Eligible Programs, Projects and/or Activities. Moneys from the Fund may be used for programs, projects and/or activities which support the Fund in reaching its goals which are to:~~

~~(1) provide financial assistance to programs, projects, or activities that increase aquifer recharge, reduce aquifer depletion, and increase streamflow;~~
~~(2) remediate or mitigate threats to drinking water;~~
~~(3) promote the goals and objectives of approved integrated management plans or ground water management plans;~~
~~(4) contribute to multiple water supply management goals including flood control, reducing threats to property damage, agricultural uses, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources;~~
~~(5) assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project;~~
~~(6) provide increased water productivity and enhance water quality;~~
~~(7) use the most cost-effective solutions available;~~
~~(8) comply with interstate compacts, decrees, other state contracts and agreements and federal law.~~

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:
Title 264 - DEPARTMENT OF NATURAL RESOURCES

Chapter 2 - ACTION BY THE DIRECTOR

001 Review and Report by the Director. Upon receipt of a completed application, and if submitted, a feasibility report, the Director will review the application and, if one is submitted, the feasibility report and will, for all such applications submitted within the time provided for submission of applications, prepare a report containing his or her findings and recommendations with respect to the application and will file such report with the Commission.

If the Director determines that the application is not complete and/or if the Director requires the submission of a feasibility report or revised feasibility report, the application and/or feasibility report may be returned to the applicant by the Director and to be eligible for approval by the Director, the completed application and/or feasibility report shall be submitted to the Director within the time specified by the Director.

Copies of the Director's report will be furnished to the applicant. The Director's report will include the following items:

001.01 A recommendation of satisfactory or unsatisfactory of the proposal for funding eligibility. If the Director determines that the plan for development of the program, project or activity and/or the application is unsatisfactory, the Director shall return the application to the applicant and may make recommendations to the applicant as are considered necessary to make the application satisfactory.

001.02 If recommendation of satisfactory is made, then 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 recommendation for loan assistance is made, then a recommendation of the appropriate repayment period and rate of interest as specified in the Commission rules.~~

~~001.04 The amount of assistance for each type of allocation recommended by the Director.~~

~~001.05 Any conditions which the Director recommends be placed on proposal design, construction, operation, or maintenance to ensure the consistency of the proposal with the Fund 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 proposal. The record of any such public hearing shall constitute a part of the Director's report to the Commission.~~

~~003 Considerations in Making Recommendations on Applications. In making recommendations on applications, the Director shall consider:~~

~~003.01 The needs of the area to be served by the proposal and the benefit to be received from the proposal by the area served.~~

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

~~003.03 Whether the proposal is of such general public benefit that state financial assistance is justified.~~

~~003.04 The relationship of the proposal to the overall statewide water and related land needs.~~

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

~~004 Required Findings of Fact. Prior to making any report to the Commission recommending approval of a proposal 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 proposal is technically, economically, and financially feasible based upon standards adopted by the Commission.~~

~~004.03 The plan for development of the proposal 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 proposal.~~

~~004.05.01 A natural resources district is qualified or eligible for funding from the Fund if it has adopted or is participating in the development of an integrated management plan pursuant to subdivision (1)(a) or (b) of section 46-715.~~

~~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 proposal.~~

~~004.07 The plan considers other plans and programs of the state in accordance with the provisions of Neb. Rev. Stat. Section 84-135 and resources development plans of the political subdivisions of the state.~~

~~004.08 The proposal 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.~~

~~004.09 The money required from the Water Sustainability Fund is available.~~

~~005 Review and Approval of Plans. Prior to the actual disbursement of any funds for construction for the project or for any portion thereof, the Director shall review the plans for the 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's plans for construction, or during any review of project's cost information that:~~

~~005.01 The plans and specifications for the project are not being followed;~~

~~005.02 The plan for development or any work performed on the project is not based on sound technical principles or practices;~~

~~005.03 The project or any portion thereof no longer meets the criteria for funding eligibility contained in the Fund or the Commission's Rules and Regulations; or~~

~~005.04 There is or has been non-compliance with any of the terms of the contract between the Applicant and the Department.~~

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

~~006 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.~~

~~007 Disbursements. From the annual appropriations by the Legislature to the Fund and subsequent quarterly limitations that may be imposed by the Department of Administrative Service's Budget Office, the Director shall disburse, no more often than once each month, such funds as are necessary to reimburse and/or pay, in the proper proportion, all eligible costs incurred by the applicant, 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 proposal has been approved for combination grant and loan, each disbursement shall, unless otherwise specified by the Commission, constitute a disbursement of loan and grant funds in the same proportion as the approved allocations.~~

~~008 Inspection During and After Construction. The Director or his or her designated representative(s) 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 may bring to the attention of the applicant and the project engineer any variances from the approved plans and specifications. The applicant and the project engineer or project director shall initiate necessary corrective action whenever notified by the Director of any such variances and if not completed as directed, then the project will no longer be eligible for funding. Subsequent to the completion of construction, project investigation and inspection may be conducted by the Department during the life of the project and may be prescribed pursuant to the contract between the applicant and the Department.~~

~~Title 264~~
~~Chapter 2~~

~~009. Changes in Scope of Approved Proposals. The applicant shall promptly report all increases in the cost of a project, and any proposed additions, deletions, or modifications, or any change in the purpose or purposes of the project by submitting to the Commission and to the Director an amendment to the formal application and feasibility report, if any. Commission approval of any change in the scope, purpose, or plan for development of the project, and any increase in the allocation for the project, 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 allocation for the project is requested shall 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 Fund or the Commission's rules.~~