

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF RULEMAKING HEARINGS

NOV - 1 2019

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NOTICE IS HEREBY GIVEN THAT THE State of Nebraska, Department of Natural Resources, will hold public rule-making hearings pursuant to *Neb. Rev. Stat. § 84-907*. The hearings will be held hourly beginning at 9:00 a.m. on Wednesday, December 11, 2019, in Room C on the lower level of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

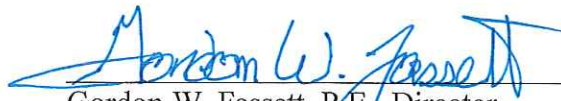
The purpose of the hearings is to take public comments concerning adoption of the Department's amendments to these rules: *Neb. Admin. Code Title 454* entitled "Rules of Practice and Procedure," *Title 456* entitled "Ground Water Rules," *Title 457* entitled "Surface Water Rules," *Title 460* entitled "Rules Governing the Water Resources Trust Fund," and *Title 461* entitled "Rules Governing the Water Resources Cash Fund." The proposed amendments to the rules and their hearing times are:

- 9:00 a.m. - Title 454, repeal Chapters 8, 12, and 14
- 10:00 a.m. - Title 456, repeal Chapters 3, 7, 8, 9, and 10
- 11:00 a.m. - Title 457, repeal Chapter 20
- 1:00 p.m. - Title 460, repeal in entirety
- 2:00 p.m. - Title 461, Chapters 1, 2 and 3 amended

The proposed rules as amended are available at the offices of the Secretary of State, Regulations/Licensing Division, Room 1305, State Capitol, Lincoln, Nebraska 68509, and on the Department's website at <http://dnr.nebraska.gov/rules>. The description of the fiscal and other impacts may be inspected and obtained at the Department of Natural Resources, 4<sup>th</sup> Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. There will be no fiscal impact from the changes.

All interested persons are invited to attend and make oral or written comments at the hearings. Interested persons may also submit written comments prior to the hearings which will be made part of the hearing record at the time of hearing if received by the Department of Natural Resources on or before Tuesday, December 10, 2019. If auxiliary aids or reasonable accommodations are needed to participate in the hearing or if hearing impaired, please call Ron Theis at (402) 471-1113 by Tuesday, December 6, 2019.

Date: October 31, 2019

  
Gordon W. Fassett, P.E., Director  
Department of Natural Resources

DRAFT/FINAL FISCAL IMPACT STATEMENT

Agency: NATURAL RESOURCES	
Title: 461	Prepared by: Ron Theis
Chapter: 1,2,3	Date prepared: Aug. 23, 2019
Subject: Administration of Water Resources Cash Fund	Telephone: 402 471 0577

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( x )	( x )	( x )
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & a Description of Impact:

State Agency: zero

Political  
Subdivision: zero

Regulated  
Public: zero

If indeterminable, explain why:

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES

~~RULES FOR WATER RESOURCES CASH FUND~~

February 27, 2008

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NEBRASKA ADMINISTRATIVE CODE  
TITLE 461 NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
RULES GOVERNING THE ADMINISTRATION OF THE WATER RESOURCES CASH FUND

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NEBRASKA ADMINISTRATIVE CODE

~~TITLE 461~~ ~~DEPARTMENT OF NATURAL RESOURCES~~  
~~RULES GOVERNING THE ADMINISTRATION OF THE WATER RESOURCES~~  
~~CASH FUND~~

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT OR TITLE</u> <u>SECTION</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE</u>
<del>Allocation and Distribution</del>	<del>§ 61-218, R.S.S., 2007</del>	<del>Ch. 2</del>
<del>General Provisions</del>	<del>§ 46-702, 61-218, 61-219, R.S.S., 2007</del>	<del>Ch. 1</del>
<del>Report to the Legislature</del>	<del>§ 61-218, R.S.S., 2007.</del>	<del>Ch. 3</del>

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NEBRASKA ADMINISTRATIVE CODE

TITLE 461 --- DEPARTMENT OF NATURAL RESOURCES  
RULES GOVERNING THE ADMINISTRATION OF THE WATER RESOURCES CASH  
FUND

~~Chapter~~CHAPTER 1 - GENERAL PROVISIONS

~~001 Purpose of Rules.~~ These rules are adopted for the purpose of administering the Water Resources Cash Fund.

~~0021. General Availability of Funds~~GENERAL AVAILABILITY OF FUNDS. In accordance with Neb. Rev. Stat. sections ~~§ 46-702, and 61-218, and 61-219, R. S. Supp., 2007,~~ ~~†~~The Department of Natural Resources is authorized to make expenditures from the Fund for costs incurred by the Department, by natural resources districts, or by other political subdivisions as provided in Neb. Rev. Stat. §61-218(3)(a), to aid management actions taken to reduce consumptive uses of water in river basins, subbasins, or reaches that are deemed by the Department as overappropriated pursuant to Neb. Rev. Stat. section§ 46-713 or fully appropriated pursuant to Neb. Rev. Stat. §section 46-714 or are bound by an interstate compact or decree or a formal state contract or agreement and (b) to the extent funds are not expended pursuant to subdivision (a), the Department may conduct a statewide assessment of short-term and long-term water management activities and funding needs to meet statutory requirements in Neb. Rev. Stat. §§sections 46-713 to 46-718 and §46-739 and any requirements of an interstate compact or decree or formal state contract or agreement. The fund shall not be used to pay for administrative expenses or any salaries for the Department or any political subdivision. Notwithstanding such general authority, †. Moneys from the Fund are to be allocated and expended only in accordance with these rules and regulations.

~~0032. Definitions~~DEFINITIONS. As used in these rules and regulations, unless the context otherwise requires:

~~—0032.01. "Agreement" shall means~~ the Nebraska Department of Natural Resources Application/Agreement to expend money from the Fund;

~~—0032.02. "Department" shall mean the Nebraska Department of Natural Resources created by Neb. Rev. Stat. § 81-101 (Reissue 2003), as amended;~~

~~—0032.03. "Director" shall mean the individual holding the position of Director of Natural Resources created by Neb. Rev. Stat. § 81-102 (Reissue 2003), as amended;~~

~~—0032.024. "District" or "Natural Resources District" shall means~~ a district created and operating in accordance with Chapter 2, Article 32, Reissue Revised Statutes of Nebraska;

~~0032.035. "Fund" shall means~~ the Water Resources Cash Fund;

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—0032.046. "Person" ~~i shall be~~ as defined pursuant to Title 454, Chapter 1, of the Nebraska Administrative Code; ~~and~~

—0032.057. "Match of Local Funding" ~~shall~~ means funding used by a local jurisdiction for an eligible activity that is not from state tax revenue derived sources.

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RULES GOVERNING THE ADMINISTRATION OF THE WATER RESOURCES  
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~~Chapter HAPTER 2 — ALLOCATION AND DISTRIBUTION OF FUNDS~~

~~0031. Primary Allocation and Distribution of Funds PRIMARY ALLOCATION AND DISTRIBUTION OF FUNDS. Subject to the Director's discretion, up to one hundred percent (100%) of the money appropriated to the Fund for a state fiscal year may be utilized by the Department to fund activities identified in § 61-218 (3)(a) and (b). ~~for the purpose of reducing consumptive uses of water in river basins, subbasins, or reaches which are deemed by the Department overappropriated pursuant to section § 46-713 or fully appropriated pursuant to section § 46-714 or are bound by an interstate compact or decree or a formal state contract or agreement.~~~~

~~0042. Alternative Allocations and Distribution of Funds ALTERNATIVE ALLOCATIONS AND DISTRIBUTION OF FUNDS. In the event all of the funds appropriated for a state fiscal year are not allocated and distributed in accordance with Section 0031 of this Chapter, the Director may, in-at his or her discretion, make funds available to eligible natural resources districts for activities to either achieve a sustainable balance of consumptive water uses or assure compliance with an interstate compact or decree or a formal state contract or agreement.~~

~~—0042.01. The Director wishall, no later than May 1 of each year ~~beginning in 2008~~, determine the amount of funding available to eligible natural resources districts for the respective year and notify natural resources districts of this determination.~~

~~—002.02. General eligibility is determined by priorities established in Section 0021 of Chapter 1.~~

~~—0042.023. Specific eligibility for funding requires implementation of integrated management plans in accordance with section § 46-715 ~~as required by the Department.~~~~

~~—0042.034. Any applications for funding ~~shall be presented to~~ are filed with the Department in writing by June 15 of the funding year and ~~shall~~ include:~~

~~— 0042.034.01(A). An explanation of how the planned activity will reduce consumptive uses of water in river basins, subbasins, or reaches that are deemed by the department overappropriated pursuant to section § 46-713 or fully appropriated pursuant to section § 46-714 or assure compliance with an interstate compact or decree or a formal state contract or agreement as required by section § 46-715;~~

~~— 0042.034.02(B). The controls, rules, and regulations of the district designed to carry out the activity;~~

~~0042.034.03(C)~~. A schedule of implementation of the activity or its components; and

~~0042.034.04(D)~~. A budget demonstrating a match of local funding in an amount equal to or greater than forty percent of the total cost of carrying out the eligible activity.

~~0042.045~~. The Director ~~wi~~shall determine whether or not an application is approved for funding under this section.

~~0042.045.01(A)~~. If approved for funds, the District ~~wi~~shall enter into a contract with Department specifying the terms and conditions for receipt of such financial assistance.

~~0042.045.02(B)~~. The Director ~~shall~~ hasve the sole discretion to determine whether an expense qualifies for funding.

~~0042.045.03(C)~~. ~~Each contract shall requires a semi-annual report by the District addressing the specifications of the contract.~~

~~0042.056. Access to Files and Compliance with Agreement and Rules and Regulations. Each nNatural rResourees dDistrict receeiving funds wi~~shall maintain records adequate to document that the District had expenditures qualified pursuant to these rules in amounts equal to or exceeding the amount provided from the Fund plus any matching funds as required by the contract between the District and the Department. 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 Department. 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, Tthe Director may terminate the contract and/or demand reimbursement of any state funds related to such a violation of the contract between the District and the Department or of these rules and regulations.

0053. In the event all of the funds appropriated for a state fiscal year are not allocated and distributed in accordance with Section 0031 or Section 0042 of this Chapter, the Director may ~~apply-expend funds in conformance with te~~ conduct a statewide assessment of short-term and long-term water management activities and funding needs to meet statutory requirements in Neb. Rev. Stat. sections §§ 46-713 to 46-718 and Neb. Rev. Stat. § 6146-218 (3)(c)739 and any requirements of an interstate compact or decree or formal state contract or agreement. Use of funds in this manner is the sole discretion of the Director.

Enabling legislation: Neb. Rev. Stat. §61-218

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~~TITLE 461 --- RULES GOVERNING THE ADMINISTRATION OF THE WATER RESOURCES  
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~~Chapter 3 --- REPORT TO THE LEGISLATURE~~

~~001 The Department of Natural Resources shall submit an annual report to the Legislature no later than October 1 of each year, beginning in the year 2007, that shall detail the use of the Water Resources Cash Fund in the previous year.~~

~~002 The report shall provide:~~

~~--- 002.01 Details regarding the use and cost of activities carried out by the Department;~~

~~--- 002.02 Details regarding the use and cost of activities carried out by each natural resources district that received funds from the Water Resources Cash Fund.~~

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