NEBRASKA ADMINISTRATIVE CODE

TITLE 460, NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

Rules Governing the Administration of the Water Resources Trust Fund

FILED
MAY - 4 2005
SECRETARY OF STATE
By

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NEBRASKA ADMINISTRATIVE CODE

TITLE 460 ---RULES GOVERNING THE ADMINISTRATION OF THE WATER RESOURCES TRUST FUND

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SUBJECT OR TITLE	STATUTORY AUTHORITY	CODE SECTION
Allocation and Distribution of Funds	Section 46-753, R.R.S.2004	Chapter 2
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TITLE 460 --- RULES GOVERNING THE ADMINISTRATION OF THE WATER RESOURCES TRUST FUND

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SUBJECT OR TITLE	STATUTORY AUTHORITY	CODE SECTION
General Provisions	Sec. 46-753, R.R.S.2004	Chapter 1
Allocation and Distribution of Funds	Sec. 46-753, R.R.S.2004	Chapter 2

APPROVED
JON BRUNING
ATTORNEY GENERAL
BY.....
Assistant Attorney General
DATE...5-3-05.....

TITLE 460 --- RULES GOVERNING THE ADMINISTRATION OF THE WATER RESOURCES TRUST FUND

Chapter 1 - GENERAL PROVISIONS

001 Purpose of Rules. These rules are adopted for the purpose of administering the Water Resources Trust Fund governed by Neb. Rev. Stat. 46-753 (Reissue 2004), as amended.

002 General Availability of Funds. In accordance with Neb. Rev. Stat. 46-753 (Reissue 2004),as amended, 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 in (a) determining whether river basins, subbasins, or reaches are fully appropriated in accordance with Neb. Rev. Stat. 46-713 (Reissue 2004), as amended, (b) developing or implementing integrated management plans for such fully appropriated river basins, subbasins, or reaches or for river basins, subbasins, or reaches designated as overappropriated in accordance with Neb. Rev. Stat. 46-713 (Reissue 2004), as amended, (c) developing or implementing integrated management plans in river basins, subbasins, or reaches which have not yet become either fully appropriated or overappropriated, or (d) attaining state compliance with an interstate water compact or decree or other formal state contract or agreement. Notwithstanding such general authority, moneys from the Fund are to be allocated and expended only in accordance with these rules and regulations.

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

003.01 "Agreement" shall mean the Nebraska Department of Natural Resources Application/Agreement to Participate in Supplemental Program to United States Department of Agriculture Natural Resources Conservation Services (NRCS) Environmental Quality Incentives Program (EQIP) completed and executed by the Landowner;

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

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

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;

003.05 "Fund" shall mean the Water Resources Trust Fund created by Neb. Rev. Stat. 46-753 (Reissue 2004), as amended;

003.06 "Landowner" shall mean the owner of land who has been approved by the Natural Resources Conservation Service as a participant in the NRCS EQIP;

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003.07 "NDNR EQIP Payment" shall mean an incentive payment of one hundred dollars ($100) per acre for each acre placed in the NRCS EQIP, to be paid by the Department within one hundred twenty (120) days of the Department's acceptance and execution of the Landowner's Agreement;

003.08 "NRCS" shall mean the United States Department of Agriculture, Natural Resources Conservation Service;

003.09 "NRCS EQIP" shall mean that portion of the Natural Resources Conservation Service's Environmental Quality Incentive Program for which the objective is the elimination, for four years, of irrigation on up to 10,000 acres of previously irrigated land in the Republican River Basin; and

003.10 "Person" shall be as defined pursuant to Title 454, Chapter 1 of the Nebraska Administrative Code.

TITLE 460 --- RULES GOVERNING THE ADMINISTRATION OF THE WATER RESOURCES TRUST FUND

Chapter 2 - ALLOCATION AND DISTRIBUTION OF FUNDS

001 Initial Allocation and Distribution of Funds Appropriated for FY 2004-2005. Up to one hundred percent (100%) of the money appropriated to the Fund for state fiscal year 2004-2005 shall be utilized by the Department to fund incentive payments to Landowners and tenants who are participants in NRCS EQIP. Such use of the fund shall be for the purpose of implementing integrated management plans in the portions of the Republican River Basin previously determined to be fully appropriated in accordance with Neb. Rev. Stat. 46-713 and 46-720 (Reissue 2004), as amended, or for the purpose of attaining state compliance with the Republican River Compact.

001.01 Eligibility for Funds. A Landowner shall be entitled to receive the NDNR EQIP Payment from the Fund if such Landowner has entered into the Agreement with the Department, and complies with the terms and conditions specified in Rule 001.02 and Rule 001.03. Such payment shall be made by the Department within one hundred twenty (120) days of the Department's acceptance and execution of the Landowner's Agreement. Unless the Landowner directs that all or a portion of the payment is to be made to one or more tenants on the land described in the Agreement, such payment shall be made solely to the Landowner. If the Agreement indicates that a portion of such payment shall be made to one or more tenants, such portion shall be paid to such tenant or tenants in accordance with the percentages prescribed in the Agreement.

001.02 Terms and Conditions for Eligibility. A Landowner and, if applicable, tenant(s) designated by the Landowner will be eligible for the NDNR EQIP Payment only if: the Landowner has entered into an agreement with NRCS placing the lands for which the NDNR EQIP Payment is sought in the NRCS EQIP; at least 50% of the Landowner's lands to be placed in the NRCS EQIP are within

the "quick response area" as identified in the Republican River Model and as depicted on the maps available in Republican Basin NRCS offices; all lands to be placed in the NRCS EQIP have been previously certified as irrigated acreage in full compliance with rules and regulations of the Natural Resources District within which the land lies, or shall have a valid surface water appropriation; and the Landowner has completed and signed the Department-provided Agreement required by Rule 001.03. If specified by the Landowner in the Agreement, the tenant(s) may be designated as an additional Person to be subject to the terms and conditions of the Agreement, and to receive a specified percentage of the NDNR EQIP Payment.

001.03 Agreement. The Agreement will include, but not necessarily be limited to, the following terms and conditions which the Landowner will be bound by for the time period for which the Agreement, if approved by the Department, is in effect:

001.03A No water from any source will be applied to the lands described in the Agreement;

001.03B The surface water right or ground water well previously used to irrigate the lands described in the Agreement will not be used to apply water for irrigation or other purposes to any other lands except to the extent that such surface water right or ground water well was used for such other purposes on such other lands in at least two out of the five years prior to the date of the Agreement, provided such surface water right or ground water well use has not been transferred from the lands described in the Agreement;

001.03C If all or part of the water used to irrigate the land subject to the Agreement has been provided by an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company, the Landowner, in order to prevent such district or company from assigning the rights to use such water to another water user, shall take such actions as are necessary to maintain the Landowner's right to use such water during the period covered by the Agreement.

001.03D If there is a violation of the terms of the Agreement with the Department or of the NRCS EQIP agreement or if the Agreement or the NRCS EQIP agreement is terminated, the Landowner agrees to repay to the Department the entire amount of the NDNR EQIP Payment paid by the Department pursuant to the Agreement;

001.03E If either the land described in the Agreement or control over the source of water used to irrigate the land described in the Agreement is sold, leased or otherwise transferred during the period covered by the Agreement, the Landowner shall continue to be responsible for ensuring compliance with the Agreement and for the consequences of any violation unless the responsibility therefore is assumed by the buyer, lessee, or other applicable party

through the completion and filing with the Department of a Department-approved form documenting such party's acceptance of the assignment of those responsibilities;

001.03F In the event Landowner's NRCS EQIP agreement is terminated, the Agreement with the Department shall be terminated for cause and none of the obligations of the Department shall survive such termination;

001.03G The Department is not responsible for any monetary obligations of the NRCS to the Landowner;

001.03H The Landowner will not take any action with regard to the lands described in the Agreement which tends to defeat the purposes of the Agreement, as determined by the Department; and

001.03I The Landowner will authorize the NRCS to provide the Department and the applicable Natural Resources District with a copy of the NRCS map of the lands described in the Agreement and will further authorize the NRCS to provide the Department with a copy of the fully executed federal agreement between NRCS and the Landowner, once available.

002 Alternative Allocation and Distribution of Funds Appropriated for FY 04-05. In the event there are insufficient Agreements to utilize all of the funds appropriated for FY 04-05 in accordance with Rule 001 of this Chapter, the Director may, in his or her discretion, make any funds not required for payments pursuant to those Agreements available to Natural Resources Districts in the Republican River Basin for purposes of assisting such Districts in paying for costs expended in developing or implementing integrated management plans or attaining state compliance with an interstate water compact or decree or other formal state contract or agreement.

002.01 If the Director determines that funds are available for the purposes specified in Rule 002, a District with land area in the Republican River Basin may make an application to the Department describing the costs for which assistance is being requested. If the Director finds that such costs, if expended by the District, would be for activities consistent with Rule 002, the Director may approve funding for that District. In order to be eligible for such funds, the District shall enter into a contract with Department specifying the terms and conditions for receipt of such financial assistance. The Director shall have sole discretion to determine whether an expense qualifies for funding pursuant to Rule 002.

002.02 Access to Files and Compliance with Agreement and Rules and Regulations. Each Natural Resources District receiving funds in accordance with Rule 002 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, the Director may terminate the contract and/or demand reimbursement of any state funds related to such violation.

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