MINUTES

OF THE

NATURAL RESOURCE COMMISSION

MEETING

JULY 11, 2013

HELD AT:

IOWA DEPARTMENT OF NATURAL RESOURCES
HENRY WALLACE STATE OFFICE BUILDING
502 EAST 9TH STREET
DES MOINES, IA 50319

For Office Use Only

Date Minutes Approved By NRC: 8/8/13

Director's Signature: Chuck Gipp
Chuck Gipp
Director

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NRC MINUTES

Sender's initials: KR

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MEETING MINUTES

CALL TO ORDER

The meeting of the Natural Resource Commission was called to order by the NRC Chair, Margo Underwood, on 07/11/13 at 9:34am.

COMMISSIONER ATTENDANCE

Present
Marcus Branstad
Richard (Kim) Francisco, Secretary
Dr. Sally Prickett, Vice-Chair (by phone)
Phyllis Reimer
Dennis Schemmel
Margo Underwood, Chair

Absent
Conrad Clement

PUBLIC PARTICIPATION

None

1. APPROVAL OF AGENDA

Motion - Commissioner Francisco moved with the amendment to move Item 13 will be taken up at approximately 10:30am.
Seconded – Commissioner Reimer
Decision – Approved by Unanimous Vote

CARRIED AS AMENDED

2. APPROVE MINUTES OF 06/13/13 NRC PUBLIC MEETING

Motion – Commissioner Francisco
Seconded – Commissioner Schemmel
Decision – Approved by Unanimous Vote

CARRIED AS PRESENTED

3. DIRECTOR'S REMARKS

Deputy Director Trautman provided information on the public meeting held regarding Missouri River shallow water habitat projects. After evaluating the information and comments, a decision will be made related to the permitting process the Department is responsible for. He also reported the Department has opened up identified state lands to be available for haying and grazing due to the flooding.

4. HONEY CREEK RESORT STATE PARK UPDATE

Geoff Baekey, CHM Central Group Companies Vice President, and Andy Woodrick, Honey Creek Resort General Manager, presented information on the general budget, marketing, public relations, food costs, and the strategic plan.

INFORMATIONAL

5. CONTRACT AMENDMENT-2 WITH FOCUS GROUP, INC.

Commission approval is requested for a service contract amendment-2 with Focus Group, Inc., of Seahurst, Washington.

Amendment-2 Terms:

Amendment Amount: $25,000
Amendment Dates: 07/19/13-12/31/14
Funding Source(s): Hunter Education Federal Grant

Amendment Purpose: The purpose of the Amendment is to extend the contract for 17 months with additional monies to allow the contractor to continue to provide the IHEA-USA Journal with our newsletter insert to all of our Hunter Education, Bowhunter Education, and Fur Harvester Education Instructors and Apprentices on a quarterly basis.

Original Contract Purpose: The Department has had prior contracts with Focus Group, Inc. for printing and publishing the Iowa Hunter Education Volunteer Newsletter as an insert into the IHEA-USA Journal. The vendor then direct mails the journal and newsletter to all active Iowa Hunter Education, Bowhunter Education, and Fur Harvester Education Instructors and Apprentices on the Department's behalf. Prior to the Department working with Focus Group, Inc., we used to handle the printing and mailing internally.

Original Selection Process: The contractor is the sole publisher and mailer of the official publication of the International Hunter Education Association United States of America (IHEA-USA). The sole source process was completed and approved by Department of Administrative Services on May 23, 2012.

Contract History:

Original Contract Terms: Amount $14,800; Timeframe: 04/01/12 – 06/30/13
Amendment-1 Terms: Amount: no change; Timeframe: extend contract for 1 month to finalize project

Motion - Commissioner Francisco
Seconded – Commissioner Branstad
Decision – Approved by Unanimous Vote

CARRIED AS PRESENTED

6. CONTRACT AMENDMENT-1 WITH CONSERVATION BY DESIGN

Commission approval is requested for a service contract amendment-1 with Conservation By Design, of Silver City, NM.

Amendment-1 Terms:

Amendment Amount: $8,825.00
Amendment Dates: 07/11/13 to 09/30/13 *(no change from original contract)*
Funding Source(s): State Park Infrastructure

Amendment Purpose: This contract amendment is for the addition of tactile rubbing plates which will be attached to the 24 panels identifying each tree species in the Woodland Walk planting at the Mines of Spain State Recreation Area. A corresponding "passport" booklet will also be developed by the contractor so visitors on the Woodland Walk can read information about each species, learn about tree planting and care, and take a rubbing of the tree leaf or other significant features of the tree species. The additional features of the rubbing plates and passport booklet will help enhance the interpretive message of the Woodland Walk by further engaging the visitor by using more of their senses and providing a take home information guide.

Original Contract Purpose: The Commission approved the original contract with Conservation By Design on May 9, 2013, for the design and fabrication of 24 panels, 4 of which will be placed in the new park design guide kiosk and the remaining 20 on standard bases placed through the Woodland Walk. All panels are designed within state park design guide specifications. As part of a service project for the National Association of State Park Directors Conference in September 2013, conference attendees and volunteers will be preparing the area for the panel installation, as well as planting the corresponding trees.

Original Selection Process: The contractor was originally selected through the RFP (Request for Proposal) process.

Contract History:

Original Contract Terms: Amount: $47,550; Timeframe: 05/17/13 – 09/30/13

Motion - Commissioner Schemmel
Seconded – Commissioner Prickett
Discussion – Michelle Wilson provided information regarding audio interpretive options the Department

considers and uses for indoor and outdoor education opportunities.
Decision – Approved by Unanimous Vote

CARRIED AS PRESENTED

7. LAND ACQUISITION PROJECTS

7.1 STONE STATE PARK - PLYMOUTH COUNTY – IOWA NATURAL HERITAGE FOUNDATION

The Natural Resource Commission's approval is requested to purchase a tract of land located in Plymouth County two miles north of Stone State Park and adjacent northeast of proposed Spirit Knoll State Preserve.
Seller: Iowa Natural Heritage Foundation (INHF)
Acreage: 55-acre tract
DNR Purchase Price: $149,300
Appraised Value: $186,625
Appraised By: Brian Linnemeyer, Licensed Appraiser of Indianola, Iowa
Property Description: This property is located 2 1/2 miles north of Sioux City in extreme southwestern Plymouth County. The gently sloping to steep tract is a mix of grassland and forest and a creek severs the north portion of the tract. A wire crib on the property has no measurable contributory value; staff will evaluate its use or recyclability. Paved county road K18 provides access along the east boundary of the property.
Connection to DNR Priorities: This tract will be managed for outdoor recreation, including public hunting.
DNR Property Manager: State Parks Bureau
Funding Source(s): Federal Highway Administration, Transportation Enhancement (TE) grant
Incidental Costs: No surveying or fencing costs are anticipated. Incidental closing costs will be the responsibility of the Department.

Motion – Commissioner Branstad
Seconded – Commissioner Schemmel
Decision – Approved by Unanimous Vote

CARRIED AS PRESENTED

7.2 LOESS HILLS WILDLIFE MANAGEMENT AREA - MONONA COUNTY – IOWA NATURAL HERITAGE FOUNDATION

The Natural Resource Commission's approval is requested to purchase a tract of land located in Monona County adjacent north of Loess Hills Wildlife Management Area (WMA).
Seller: Iowa Natural Heritage Foundation (INHF)
Acreage: 21-acre tract
DNR Purchase Price: $54,480
Appraised Value: $68,100
Appraised by: Brian Linnemeyer, Licensed Appraiser of Indianola, Iowa
Property Description: This outer rim property is located 4 miles northwest of Castana in central Monona County. The moderately sloping to steep tract is a mix of grassland and cedar timber. There are no building improvements. Two county, gravel-base roads border the property, one of which is identified as scenic, "Iowa Byways Wilderness Loop".
Connection to DNR Priorities: This tract will be managed for outdoor recreation.
DNR Property Manager: Wildlife Bureau
Funding Source(s): Federal Highway Administration, Transportation Enhancement (TE) grant
Incidental Costs: No surveying or fencing costs are anticipated. Incidental closing costs will be the responsibility of the Department.

Motion – Commissioner Prickett
Seconded – Commissioner Reimer
Decision – Approved by Unanimous Vote

CARRIED AS PRESENTED

***7.3 ROCK CREEK STATE PARK – JASPER CO. – CASS TRUST**

The Natural Resource Commission's approval is requested to accept the donation of a permanent easement for storage of water and retention of silt adjacent northwest side of Rock Creek Lake in northeastern Jasper County.
Donor: Myrtle Cass Trust
Acreage: 3.9 acres
Property Description: The easement shall serve as temporary and permanent storage of water and retention of silt on an area totaling 3.9 acres lying below top of an earthen structure. The earthen dam will be located on State land. To improve water quality, the structure will be designed to trap sediment and to impound water to reduce runoff of soil and nutrients into Rock Creek Lake. The project will cause water impoundment and sediment retention within the basin and located on a portion of the subject property. During extreme precipitation runoff, floodwater could result in occasional flooding to the top of the structure's elevation.
Connection to DNR Priorities: This easement will become part of Rock Creek State Park.
DNR Property Manager: State Parks Bureau

CARRIED UNDER CONSENT AGENDA

***7.4 BOONE RIVER PWA – HAMILTON CO. – OLSON & TOLLE**

The Natural Resource Commission's approval is requested to accept the donation of two permanent conservation easements for the purposes of stream bank stabilization along the Boone River in northwestern Hamilton County.
Donor: Terry Olson and Arthur & Mae Tolle
Acreage: The easements are total six acres in size
Property Description: The easements are located along the banks of the Boone River immediately north of Webster City. This segment of the Boone River possesses many outstanding natural and cultural resources. It is one of Iowa's most scenic rivers and is designated as part of the state's Protected Water Areas (PWA).
Connection to DNR Priorities: The easements will allow the Department to design, construct and maintain bank stabilization features while restricting agricultural and development activities in the encumbered area.
DNR Property Manager: The stabilization projects, maintenance and easement monitoring will be conducted by the Land and Waters Bureau.

CARRIED UNDER CONSENT AGENDA

***8. LAND MANAGEMENT PROJECT – MISSISSIPPI RIVER – LEE COUNTY – HENDRICKS**

The Natural Resource Commission is requested to approve the renewal of Chapter 17 lease 50-R with Hendricks River Logistics of Keokuk, Iowa.
Location: The area is a barge fleeting facility at Mississippi River Mile 370.8, near the town of Montrose, located in Sections 19 & 30, Township 66 North, Range 5 West of the 5th P.M., Lee County, Iowa. The site consists of four segments: one segment is 350 feet of depth by 400 feet of frontage and three segments are 150 feet of depth by 1000 feet of frontage containing anchors, deadman, and moored barges.
Site Purpose: The site is used as an area for barge fleeting and repair.
Lease History: This area has been under a barge fleeting lease since 1983.
Lease Fee and Term: The annual fee is $21,410.00 and will be increased annually based on the percentage increase of the consumer price index. The term of the lease will be five years.

CARRIED UNDER CONSENT AGENDA

9. SMALL CONSTRUCTION PROJECTS

The following Engineering managed projects have been let utilizing the Competitive Quotation process for projects $100,000 or less:

Bid Date	Project No.	Location	County	Summary	Cost Estimate	Bids

5/23/2013	13-01-74-05 Wildlife	Blue Wing Marsh	Palo Alto	Replace an existing culvert type water control structure with a new 50' wide sheet pile weir. Work under this project includes a small amount of excavation and embankment work, 803 SF of sheet pile installation, and riprap protection around the structure.	$43,900	**$24,966.00** $30,057.25
6/6/2013	13-06-70-03 Fisheries	Fairport Fish Hatchery	Muscatine	Remove and replace water supply pump #2.	$20,000	**$17,059.00** $17,478.00
6/20/2013	13-03-31-01 Parks	Mines of Spain SRA	Dubuque	This interpretive kiosk will assist park visitors with way-finding, interpretive analysis and explanation of park features.	$20,000	**$19,000.00** $19,300.00

INFORMATIONAL

10. CHAPTER 91, WATERFOWL AND COOT HUNTING SEASONS - EARLY DUCK AND CANADA GOOSE SEASON DATES – COMPONENT 1 OF 2 FOR FINAL RULE

As presented under the Chapter 91 Notice of Intended Action (NOIA), the Commission is requested to approve the following season dates for submission to the United State Fish and Wildlife Service (USFWS). These dates remain unchanged from the NOIA approved by the NRC at the 04/11/13 meeting:

1. The dates for the early Canada goose season in urban zones run from September 7–15
2. The dates for the early duck season run from September 21-25

The NOIA for Chapter 91 was published in the Iowa Administrative Bulletin on May 1, 2013, as ARC 0721C. A public hearing was held on May 23, 2013. Sixteen comments were received. All except one supported the dates in general; three of the sixteen asked that the early duck season be reduced to two days while four asked that it stay at five days.

After the Department receives the federal guidelines, anticipated in late July, for the late duck season, Chapter 91 will be presented to the NRC for approval in August 2013. After the August NRC meeting, upon approval, Chapter 91 will be completed and filed.

Attached Reference Document: Chapter 91, Waterfowl and Coot Hunting Seasons – NOIA

NATURAL RESOURCE COMMISSION [571]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455A.5(6), sections 481A.38, 481A.39, and 481A.48, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

This chapter contains the regulations for hunting waterfowl and coot, and includes season dates, bag limits, possession limits, shooting hours, and areas open to hunting. The proposed rule adjusts the season dates to comply with United States Fish and Wildlife Service regulations and to ensure the seasons open on weekends. The proposed rule also removes the bag limit on light geese during the conservation order season as studies indicate the population can withstand it, and doing so increases hunter opportunity. Light geese include white and blue phase lesser snow geese and Ross' geese.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 23, 2013. Written comments may be directed to Wildlife Bureau Chief, Wallace State Office

Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; by E-mail at wildlife@dnr.iowa.gov; or by fax at (515)281-6794. Persons who wish to convey their comments orally may contact the Wildlife Bureau by telephone at (515)281-5034 or by visiting the fourth floor of the Wallace State Office Building during regular business hours.

There will be a public hearing on May 23, 2013, at 1 p.m. in the conference room on the fourth floor of the Wallace State Office Building. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and request specific accommodations.

After analysis and review of this rule making, no impact on jobs has been found since most changes are due to shifts in the calendar dates. The change in the bag limit for light geese during the conservation order will not affect license sales or hunter effort.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48.

The following amendments are proposed.

ITEM 1. Amend subrules 91.1(2) to 91.1(4) as follows:

91.1(2) Season dates - north zone. For all ducks: September ~~22~~ 21 through September ~~26~~ 25 and October ~~13~~ 12 through December ~~6~~ 5.

91.1(3) Season dates - south zone. For all ducks: September ~~22~~ 21 through September ~~26~~ 25 and October ~~20~~ 19 through December ~~13~~ 12.

91.1(4) Season dates – Missouri River zone. For all ducks: September ~~22~~ 21 through September ~~26~~ 25 and October ~~27~~ 26 through December ~~20~~ 19.

ITEM 2. Amend subrules 91.3(2) to 91.3(4) as follows:

91.3(2) Season dates - north zone. Canada geese and brant: September ~~29~~ 28 through January ~~4, 2013~~ 3, 2014. White-fronted geese: September ~~29~~ 28 through December ~~11~~ 10. Light geese (white and blue-phase snow geese and Ross' geese): September ~~29~~ 28 through January ~~13, 2013~~ 12, 2014.

91.3(3) Season dates - south zone. Canada geese and brant: October ~~6~~ 5 through January ~~11, 2013~~ 10, 2014. White-fronted geese: October ~~6~~ 5 through December ~~18~~ 17. Light geese (white and blue-phase snow geese and Ross' geese): October ~~6~~ 5 through January ~~18, 2013~~ 17, 2014.

91.3(4) Season dates – Missouri River zone. Canada geese and brant: October ~~13~~ 12 through January ~~18, 2013~~ 17, 2014. White-fronted geese: October ~~13~~ 12 through December ~~25~~ 24. Light geese (white and blue-phase snow geese and Ross' geese): October ~~13~~ 12 through January ~~18, 2013~~ 17, 2014.

ITEM 3. Amend subrules 91.3(8) and 91.3(10) to 91.3(12) as follows:

91.3(8) Light goose conservation order season. Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service from January ~~19, 2013~~ 18, 2014, through April 15, ~~2013~~ 2014.

a. Zone boundaries. Statewide.

b. Shooting hours. One-half hour before sunrise to one-half hour after sunset.

c. Bag limit. ~~Bag limit is 20 light geese~~. No bag limit.

d. Possession limit. No possession limit.

e. Other regulations. Methods of take approved by the U.S. Fish and Wildlife Service for hunting light geese during the conservation order season shall be permitted.

91.3(10) Cedar Rapids/Iowa City goose hunting zone.

a. Season dates. September ~~1~~ 7 through September ~~9~~ 15.

b. to d. No change.

91.3(11) Des Moines goose hunting zone.

a. Season dates. September ~~1~~ 7 through September ~~9~~ 15.

b. to d. No change.

91.3(12) Cedar Falls/Waterloo goose hunting zone.

a. Season dates. September ~~1~~ 7 through September ~~9~~ 15.

b. to d. No change.

ITEM 4. Amend rule 571--91.6(481A) as follows:

571—91.6(481A) Youth waterfowl hunt. A special youth waterfowl hunt will be held on October ~~6 and 7, 2012~~ 5 and 6, in the north duck hunting zone and October ~~13 and 14, 2012~~ 12 and 13, in the south duck hunting zone and October ~~20 and 21, 2012~~ 19 and 20, in the Missouri River duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any other game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

_____
Date

_____
Chuck Gipp, Director

(P:91n.doc/mg)

Motion – Commissioner Francisco Seconded – Commissioner Branstad Decision – Approved by Unanimous Vote

CARRIED AS PRESENTED

11. CONSTRUCTION - GREAT LAKES WILDLIFE UNIT, OKOBOJI VIEW WETLANDS RESTORATION

The Department requests Commission approval of the following construction project:

Project Summary: This project is designed to restore 19 wetland basins on the West Lake Okoboji watershed. Basin restoration will occur through use of wetland dike construction, multiple water control structures ranging from drawdown pipes to toe walls, and tile manipulation within the project area.

The 1,712 acre watershed that this project will improve is labeled as the worst for water quality and discharge entering into the Iowa Great Lakes by the EPA and the DNR. In a 2" rain event the watershed contributes approximately 468 TN of sediment to West Lake Okoboji. This project will establish 74 surface acres of wetland pools on 350+ acres of property to improve water quality and sediment discharge into West Lake Okoboji under normal conditions. The project will also improve storage capabilities in flood events by adding another 20+ acres of storage during high water. Future plans for this area include 3 more wetland basins that could be constructed on the adjacent properties of those not interested in participation at this time.

Construction Needed: Construction of various structures within 19 drainage areas on the west edge of West Lake Okoboji including sediment ponds, water control structures, farm tile manipulation, piping, rock revetment, erosion matting, seeding, and other appurtenances as shown in the project documents and as directed by the DNR Inspector.

Green Features: The entire project is green in that the goal of the project outcome is to reduce sediment content and enhance the quality of the surface drainage water entering West Lake Okoboji.

Engineering Project #: 12-01-30-13
Project County: Dickinson County
DNR Project Manager: Butch Doorenbos, PE; Engineering Bureau
Designer: McClure Engineering
DNR Inspector: Jeff Felts, PE; Engineering Bureau
Operating Bureau: Wildlife Bureau
Funding Source: Federal NAWCA 10%; Lake Restoration 30%; EPA 319 25%; State Duck Stamp 10%; Dickinson County Water Quality Commission 15%; Dickinson Soil and Water Conservation District 5%; INHF 5%
Engineering Cost Estimate: $597,000.00
Plans Issue Date: 6/3/13
Bid Letting Date: 6/20/13
Plan Holders: 14

Number of Bids Received: 3

Bidders

Healy Excavating	Lake View, IA	$492,322.20
Valley Contracting Inc.	Estherville, IA	$536,962.50
Beck Excavating Inc.	Spirit Lake, IA	$1,001,381.75

Upon Engineering's review of bids, IDNR recommends awarding the bid to Healy Excavating.

Motion – Commissioner Francisco
Seconded – Commissioner Reimer
Decision – Approved by Unanimous Vote

CARRIED AS PRESENTED

12. CONSTRUCTION - OTTER CREEK WILDLIFE MANAGEMENT AREA, HEADQUARTERS IMPROVEMENT

The Department requests Commission approval of the following construction project:

Project Summary: Renovating Otter Creek headquarters to provide adequate working space for employees and meet ADA requirements.

Otter Creek headquarters is currently situated along the Otter Creek Wildlife Management Area in Tama County, IA. This is the operation headquarters responsible for the management of over 15,000 acres of public wildlife land. There are four permanent wildlife employees assigned here and the location staffs seasonal employees. The office/shop area was built in the 1960s and is in need of renovation and reconfiguration to meet staff work space, maintenance facilities, and storage needs. Currently, staff are using the kitchenette's table for work space and the garage doors are not big enough to accommodate access of large tractors or field equipment. One of the garage bays will be turned into a meeting room and an office; the office/kitchenette will be renovated in to a new open office layout; the restroom will be made ADA compliant; and a new mechanical and electrical service will be included.

Construction Needed: Demolition and removal of finishes, new mechanical and electrical service, along with architectural additions.

Green Features: Andersen 100 Series Windows with 100% recycled frame & sash, ReWall Essential Board instead of gypsum board walls, Overhead Radiant heating (gas fired), Reusing existing concrete floor, Reusing existing rigid frame building shell, Low-flow plumbing fixtures throughout, Low-energy consumption office lighting, New energy efficient furnace (gas fired)

Engineering Project #: 12-05-86-05
Project County: Tama County
DNR Project Manager: Ryan Richey, NCARB; Engineering Bureau
Designer: Ryan Richey, NCARB; Engineering Bureau
DNR Inspector: Jason Kruse, PE; Engineering Bureau
Operating Bureau: Wildlife
Funding Source: 100% REAP Land Management
Cost Estimate: $125,000.00
Plans Issue Date: 6/3/13
Bid Letting Date: 6/20/13
Plan Holders: 11
Number of Bids Received: 4

Bidders

Garling Construction, Inc.	Marshalltown, IA	$136,000.00
Hay Construction Services, Inc.	Marshalltown, IA	$165,500.00
Paul G. Christensen Construction Co. Inc.	Cedar Falls, IA	$188,000.00
Vieco Dev. & Construction Co. Inc.	Saint Joseph, MO	$220,000.00

Upon Engineering's review of bids, IDNR recommends awarding the bid to Garling Construction, Inc.

Motion – Commissioner Francisco
Seconded – Commissioner Schemmel
Decision – Approved by Unanimous Vote

CARRIED AS PRESENTED

13. CONSTRUCTION – GREEN VALLEY STATE PARK TRAIL

The Department requests Commission approval of the following construction project:

Project Summary: To provide 3.48 miles of paved multi-use recreational trail from the south parking lot of Green Valley State Park to the Park's campground. Construction will include 3.13 miles of an 8 foot wide concrete surface, multi-use recreation trail, and shared roadway signage for the 0.35 miles of shared roadway trail sections. This trail will be accessed by park users and the general public. The project will connect the State Park to the City of Creston's multi-use trail.

Construction Needed: This project consists of installing an 8-foot wide concrete recreational trail with granular sub-base and will require clearing, grading, culvert pipes, seeding, fertilizing, mulching disturbed areas, and highway signage.

Green Features: Green features to be incorporated in the project include the use of recycled asphalt millings which were obtained from the Union County highway department for use as a sub-base for the trail and the use of materials from the demolition of the abandoned beach building for fill which will cut down on the amount of rip rap needed for the project.

Engineering Project #: 12-04-88-03
Project County: Union County
DNR Project Manager: Brett Johnson, PE; Engineering Bureau
Designer: Brett Johnson, PE; Engineering Bureau
DNR Inspector: Mark Johnson, Engineering Bureau
Operating Bureau: Parks and Preserves
Funding Source: 100% Iowa Values Fund
Cost Estimate: $809,341.00
Plans Issue Date: 6/14/13
Bid Letting Date: 7/09/13
Plan Holders: 7
Number of Bids Received: 6

Bidders

TEK Builders, Inc.	Mt Ayr, IA	$719,919.48
Ag & Turf Construction, LLC	Davenport, IA	$742,224.88
Hill Contracting	Leon, IA	$775,763.25
Carley Construction LLC	Treynor, IA	$785,303.40
Absolute Concrete Construction Inc	Slater, IA	$842,482.00
Godbersen-Smith Construction Co.	Ida Grove, IA	$883,443.60

Upon Engineering's review of bids, IDNR recommends awarding the bid to TEK Builders, Inc.

Motion – Commissioner Reimer
Seconded – Commissioner Prickett
Discussion – Staff provided information regarding the maintenance, management, funding, and possible future interpretive signs.
Decision – Approved (1 nay–Commissioner Schemmel)

CARRIED AS PRESENTED

14. FY 2014 BUDGET REVIEW

On September 13, 2012, the Natural Resource Commission reviewed and approved the Department's Fiscal Year 2014's budget appropriation request, which was status quo from FY13 as directed by the State Budget Director.

The table below provides a summary of the Department's proposed budget, Governor's budget, and the final signed budget for the Department.

APPROPRIATION NAME	FY2014 DNR Proposed Budget (status quo from FY13)	FY2014 Governor's Recommended Budget	FY2014 Signed Budget Appropriations
GENERAL FUND			
Department Operations	$12,516,700	$12,516,700	$12,766,700
Floodplain Management	$2,000,000	$2,000,000	$2,000,000
Forestry Health Management	$100,000	$100,000	$200,000
Total General Fund	**$14,616,700**	**$14,616,700**	**$14,966,700**
REBUILD IOWA INFRASTRUCTURE FUND			
Lake Water Quality Improvements	$6,000,000	$1,000,000	$8,600,000
Park Infrastructure Improvements	$5,000,000	$5,000,000	$5,000,000
Water Trails/Low Head Public Dam	$1,000,000	$0	$1,000,000
Lake Delhi	$2,500,000	$2,500,000	$2,500,000
Osceola Reservoir	$0	$1,000,000	$0
Total Rebuild Iowa Infrastructure Fund	**$14,500,000**	**$9,500,000**	**$17,100,000**
ENVIRONMENT FIRST FUND			
Resource Enhancement and Protection	$12,000,000	$12,000,000	$16,000,000
Ambient Air Quality Monitoring	$425,000	$425,000	$425,000
Water Quality Monitoring	$2,955,000	$2,955,000	$2,955,000
GIS Data for Watershed Managers	$195,000	$195,000	$195,000
Keepers of the Land Volunteer Program	$100,000	$100,000	$100,000
Park Operations and Maintenance	$3,710,000	$6,610,000	$6,360,000
Keep Iowa Beautiful	$0	$200,000	$200,000
Water Quantity	$495,000	$495,000	$495,000
Animal Feeding Operations	$620,000	$1,120,000	$1,320,000
Water Supply Appropriation	$500,000	$500,000	$500,000
Geological and Water Survey	$200,000	$200,000	$200,000
Winterset Water Utility	$0	$1,000,000	$0
Total Environment First Fund	**$21,200,000**	**$25,800,000**	**$28,750,000**
NON-GENERAL FUND APPROPRIATIONS			
Fish and Wildlife Operations	$41,078,234	$41,078,234	$41,078,234
Groundwater Fund	$3,455,832	$3,455,832	$3,455,832
Technical Tank Review	$200,000	$200,000	$200,000
UST Administration Match	$200,000	$200,000	$200,000
Snowmobile Transfer to Fish and Wildlife	$100,000	$100,000	$100,000
Electronic Manure Application Training	$0	$0	250,000
Total Non-General Fund	**$45,034,066**	**$45,034,066**	**$45,284,066**
DEPARTMENT TOTAL	**$95,350,766**	**$94,950,766**	**$106,100,766**

With the finalized overall budget, the following table provides a summary for the Department's capitals plan budget.

Funding Source	FY2014 Appropriation Request	FY2014 Appropriations	Net Change
Fish & Wildlife Trust Fund *	$9,764,309	$8,870,800	**-$893,509**
Park & Institutional Roads Fund *	$3,935,000	$5,786,716	**$1,851,716**
Infrastructure and Capitals			
Lake Water Quality Improvement	$6,000,000	$8,600,000	**$2,600,000**
Marine Fuel Tax *	$2,300,000	$2,300,000	**$0**
REAP Open Spaces **	$3,354,952	$4,464,245	**$1,109,293**
Land Acquisition and Development	*$2,851,709*	*$3,794,608*	*$942,899*
Protected Water Area	*$167,748*	*$223,212*	*$55,464*
Public/Private Cost Share	*$335,495*	*$446,425*	*$110,930*
REAP Land Management **	$1,078,377	$1,434,936	**$356,559**
REAP Non-Game Programs **	$540,000	$533,957	**-$6,043**
Water Trails and Lowhead Dams	$1,000,000	$1,000,000	**$0**
State Parks Infrastructure	$5,000,000	$5,000,000	**$0**
TOTAL	**$32,972,638**	**$37,990,654**	**$5,018,016**

Capitals Plan Budget Notes:

** FWTF, P&I and MFT are funds that do not require legislative appropriation on an annual basis. These are funds that receive license dollars, funds from motor fuel tax, or funds from IDOT for use on capital projects.*

***REAP Open Spaces and REAP Land Management are the funds out of the total REAP allocation that are for the Department's use on capital projects. The legislative ask was for $12.5 million and $16 million was appropriated for FY14. REAP Non-Game are funds are received through the REAP Non-Game license plate sales.*

INFORMATIONAL

15. JUDICIAL REVIEW RULING ON BRUSH & WEED CONTROL

IN THE IOWA DISTRICT COURT FOR MONONA COUNTY

BRUSH & WEED CONTROL SPECIALISTS, INC. and NEW FARMERS DRAINAGE DISTRICT, Petitioners, vs. IOWA DEPARTMENT OF NATURAL RESOURCES, ENVIRONMENTAL PROTECTION COMMISSION, and NATURAL RESOURCE COMMISSION, Respondents.	NO. CVCV027337 RULING ON JUDICIAL REVIEW

This matter is again before the court for judicial review of the Administrative Law Judge's findings. The court discussed the facts in a court Ruling on Petition for Judicial Review April 14, 2011, and remanded the case for consideration of a report of Bob Hartzler, a weed specialist consulted by the Department of Natural Resources prior to the issuance of the citation. That report is now included as part of the file.

The court will not again elaborate on the facts or the law except as follows: The court can say with a degree of certainty each of the following:

1. The person who applied the glyphosate in the instance case was Troy Fox, a Brush employee who

is a certified herbicide applicator, and had applied herbicide including glyphosate hundreds of times in aquatic applications.

2. Fox had never before been involved in a fish kill or charged with killing fish by his use of glyphosate.

3. The Iowa Department of Natural Resources has utilized the services of Brush & Weed Control, and specifically Mr. Fox, themselves on their own waterways, spraying the identical chemical that was involved in this case in identical or nearly identical concentrations.

4. The Iowa DNR has utilized Brush & Weed Control Services to spray glyphosate on waterways since the incident in this case occurred in 2007.

5. Glyphosate does not kill fish. It is a herbicide, not an insecticide and is approved by the FDA for application to waterways. In fact, the DNR's own witness admitted that there was not a single documented case in the state of Iowa where glyphosate was known to have caused a fish kill.

6. Only three samples were taken along the drainage ditch where the alleged fish kill took place and the glyphosate level in each of the three samples was insufficient to have caused the fish kill.

7. Glyphosate is not a particularly good algaecide, and although in certain applications it will kill algae, it is likely that such process would take at least a week or more. The court's earlier ruling found that 10:00 a.m. on August 31, Matt Rhodes, DNR Environmental Specialist, stopped Fox from spraying on a location near 130th Street. Rhodes claimed that by 2:00 p.m. fish were dead at the location where Fox had been spraying.

8. There is no possibility that the glyphosate could have killed the algae in the stream in a matter of four hours; thus causing the algae to quit producing oxygen and the fish to die.

9. There is also no possibility that the glyphosate concentrations that were present near 130th Street were sufficient to have killed the fish in the ditch.

10. The fish in the drainage ditch where Fox was spraying were dead and dying from some cause or combination of causes. The expert witness who testified on behalf of the DNR attempted to raise the glyphosate concentrations in the stream by assuming that all of the spray that was in Fox's tanks that day was sprayed directly in the water and not on the land or on the grass adjoining the stream. That simply is not what happened and that testimony is not credible as a cause of the fish kill. The burden of proof is on the Department of Natural Resources to prove that acts of the plaintiffs caused the fish kill.

In this case the court's first question was what do the lab results show. That question went unanswered because there are no lab results. While it would have been easy to collect some of the alleged 60,000 dead fish and send them to the laboratory, apparently an environmental specialist, a conservation officer, and a fishery biologist didn't think to do so.

11. The investigation conducted here was woefully inadequate to determine what caused the fish to die or what circumstances or combination of circumstances caused these fish to die, all being exposed to the same chemical that has been safely used almost universally in the state of Iowa for the same purpose it was being used on this date.

12. The Administrative Law Judge appears to have come to the same conclusion that the DNR employees came to, that being the stream is being sprayed; the fish are dying; the sprayer is at fault.

13. While that is an easy solution, it ignores all of the facts listed above, and particularly the fact that Mr. Fox had done exactly what he was doing hundreds of times in the same area without killing a single fish.

14. While the DNR claims that Mr. Fox was going upstream with his spray rather than downstream, they also acknowledged that the water in the stream was stagnant and there was no flow leaving the direction of travel meaningless.

It is possible that the spray tank that Mr. Fox was using was somehow contaminated with another chemical. The tank was never tested and there is no evidence of that. It is possible that a neighbor or an aerial sprayer contaminated the stream, but there is no evidence of that. While something killed the fish, we really have no way of determining what because no fish were tested.

The court believes the most plausible explanation is that someone accidentally put a wrong chemical in the tank. Since there is no evidence in the record of that, the court cannot find that the state has met its burden.

15. This file is huge. A great deal of state resources have been utilized in an effort to compensate the state for dead bullheads and carp while ignoring the enormous cost of this litigation.

16. There is insufficient evidence in the file to support the Administrative Law Judge's conclusion.

While the court notes that there are several issues argued by counsel, including whether a drainage district can be sued at all and whether the penalties were correctly assessed and whether the decision appealed from was a final decision and whether the Daubert standard shall apply to expert testimony in Iowa, those must wait for another day. The court finds that under Argument B of petitioner's reply brief, the administrative penalties assessed are not supported by substantial evidence, and thus the ruling of the Administrative Law Judge is overruled. His decision is reversed and the case is dismissed.
SO ORDERED.

State of Iowa Courts

Type:	OTHER ORDER
Case Number	Case Title
CVCV027337	BRUSH&WEED CONTROL ETAL V IA DEPT OF NATURAL RESOURCES ETAL

So Ordered – Edward A Jacobson, District Court Judge
Electronically signed on 2013-06-25 10:36:44

Dave Dorff, from Iowa's Attorney General's Office, provided a summary of the judge's ruling.

Motion – Commissioner Francisco moved to go into closed session to discuss and review with counsel a matter that is currently in litigation pursuant to Iowa Code Section 21.5.
Seconded – Commissioner Reimer
Decision – Approved by Unanimous Vote to go into closed session

Motion – Commissioner Francisco moved that the Commission return to open session.
Seconded – Commissioner Prickett
Decision – Approved by Unanimous Vote to return to open session

Decision – No Action Taken

NO ACTION TAKEN

16. DIVISION ADMINISTRATOR REMARKS

Kevin Baskins, Communications Bureau Chief, invited the Commissioners to tour the DNR building at the State Fair before or after their 08/08/13 meeting. The Commission expressed interest and Kevin will coordinate invitations and transportation.

Chuck Corell reported on the Midwest Association of Fish and Wildlife Agencies (MAFWA) conference and major topics discussed at the conference were feral hogs, Asian carp, and Chronic Wasting Disease (CWD). He also provided information that the Commissioner's letter to the Department of the Interior has been finalized and the Department will be preparing a similar letter.

17. GENERAL DISCUSSION

- NRC Goal Setting – Commissioner Underwood initiated a brainstorming session to solicit goals for the NRC to achieve. She will coordinate the responses and submit to the Commissioners for their review.

- Commissioner Reimer expressed appreciation to staff's responses to her questions.

- Commissioner Underwood noted that the REAP assembly dates have been posted and encouraged the Commissioners to attend a meeting close to them.

- Commissioner Branstad shared his interest in educating the public on tree stand safety and offered to donate harnesses.

Lunchtime Presentation: DNR Trout Program (Mike Steuck, Fisheries Supervisor)

Motion to adjourn the meeting – Commissioner Schemmel
Seconded – Commissioner Branstad
Decision - Approved by Unanimous Vote
With no further business to come before the Natural Resource Commission, Chair Underwood adjourned the meeting on 07/11/13 at 2:20 pm.

CARRIED – MEETING ADJOURNED

UPCOMING NRC MEETING DATES

- August 08, 2013 - Henry Wallace State Office Building, Des Moines, 9:30am
- September 5, 2013 - Mines of Spain/EB Lyons Interpretive Ctr, Dubuque, IA, 8:30am
- October 10, 2013 - Henry Wallace State Office Building, Des Moines, 9:30am