



NREC Council Special Meeting

May 18, 2015

9:00 a.m.

Illinois Department of Agriculture, Auditorium, Springfield IL

Council members in attendance:

Representing farm organizations: Gary Hudson, Dale Hadden, Matt Hughes

Representing fertilizer industry: Howard Brown, Ed Corrigan, Matt Duncan

Representing Crop Advisers: Andy Knepp

Representing specialty fertilizer industry: Chris Matlock

Representing IDA: Chuck Cawley

Representing IEPA: Marcia Willhite

Representing Environmental Groups: Cindy Skrukrud and Jessica Dexter

Absent was German Bollero who represents the state or federal ag research station.

NREC Legal Counsel: David Reid

NREC Administration: Bob Hoeft and Jean Payne

Members of the Public in Attendance: Brian Waddell, Jason Wesslund, Kevin Johnson, Tadgh Davis, Regan Wear, Terri Treacy, Liz Brown, Rich Clemmons, Kenneth Hartman Jr, Mark Gebhards, Lauren Lurkins.

Chairman Hudson called the meeting to order at 9:04 a.m. He noted that Director Nelson has approved two new Council members: Andy Knepp representing the Certified Crop Adviser organization and Chuck Cawley as the IDA Director's designee. Gary then asked the members of the Council to introduce themselves as well as the members of the public in attendance.

Review & Approval of April 2, 2015 NREC Meeting Minutes

Secretary Dale Hadden had reviewed the draft minutes provided earlier and went through the changes per his notes, which he reviewed with the Council (see updated minutes attached that include these changes.) Dale made a motion to approve the minutes with those changes, seconded by Chuck Cawley, motion carried. Dale asked Jean to send out the minutes no later than seven days after each NREC meeting for review in the future.

Discussion and Disclosure of the April 20, 2015 Meeting of the Farm Organizations

Gary Hudson stated that he felt the NREC Administrator (Jean) had belittled him with communications regarding her belief that NREC needed to call a Special Meeting. Gary explained that the purpose of the special meeting would be to bring to light the discussion and disclosure of a meeting of the farm organizations on April 20, 2015 in which three members of the NREC Executive Committee (Gary, Dale Hadden and Matt Hughes) were in attendance. That meeting was held to discuss legislation that changes the make-up of NREC to add additional farmer representation, and the question Jean raised was if that meeting potentially violated the Open Meetings Act (OMA) thus requiring NREC to hold a public

meeting to disclose the subject that was discussed pertaining to NREC. Gary had talked with Sarah Pratt, the Attorney General (AG) Public Access Counselor, as well as with NREC's attorney David Reid and neither was sure if the meeting in question resulted in an OMA violation. Gary explained that Jean had communicated with him and said she in an email that she was "shocked and disappointed" that he seemed unwilling to call a special meeting to address the matter. Jean had sent a ballot to the voting members notifying them of a provision in the NREC bylaws to request a special meeting; Gary stated he didn't think there would be enough votes in favor (2/3rd of the voting members) to hold a special meeting, but as Chairman he felt it was important to go ahead and have the discussion with the NREC Council regardless. Gary stated that the President of Illinois Farm Bureau called a meeting on April 20, 2015 and although Dale, Matt Hughes and Gary participated, he didn't feel discussing the position of each farm organization on the NREC legislation was the business of NREC, and therefore, this April 20, 2015 meeting was not subject to the provisions of the OMA. He said it is a gray area and no had ruled that there had been a violation of the OMA. He further said that based on the three individuals OMA training, and their prior practice to never have discussions with more than one of the other Exec Cmte members at the same time with regard to NREC business, he did not feel that there was a willful violation of the OMA on the part of either himself or the other farm organization representatives on NREC. He also did not feel that this development was connected in any way to the search for a new NREC Executive Director.

Matt Hughes stated that the April 20, 2015 meeting was about legislation being offered to change the voting make-up of NREC; the legislation (Amendment #1 to HB 3164) was introduced on behalf of the farm organizations and not on behalf of NREC. Matt said there was lack of communication among the farm groups regarding the purpose of the legislation, and the meeting on April 20 was to resolve those issues.

Jessica Dexter stated that she feels this is an extremely serious issue and that the legislation and discussion of it among NREC Council members is a violation of the OMA because it seeks to change the voting member makeup of NREC significantly, which impacts the business of NREC. She felt that the NREC representatives who were present at that meeting should have discussed this issue with NREC first. She said the lack of trust this has uncovered between the members of the Council is very troublesome considering the positive working relationship of the Council in the past 2.5 years and also felt these three members should consider resigning from NREC for their failure to communicate with their fellow Council members on something so pertinent to the function of the Council. She said she feels these actions have tainted NREC because of the lack of openness and transparency and must be resolved immediately. She also stated NREC is important and needs to continue its work. Jessica stated her position that she feels the farm groups need to stop all action to pursue the legislation in order to remedy the trust issue, and that the search for a new Executive Director also be suspended until the Council rebuilds trust.

Jean stated that the job of the NREC Administrator requires her to ensure NREC is in compliance with all state and federal laws and to facilitate good communications among the Council members. It also requires her to seek the advice of legal counsel on matters pertaining to NREC. Jean stated that she sought and followed the advice of NREC legal counsel David Reid on all communications she sent to Gary and to the Council members on the issue with regard to the possible violation of the OMA. She also consulted with Sarah Pratt in the AG office per David's suggestion; David also advised that it would not be prudent to continue with the Executive Director search until this matter was resolved and the Council made aware of the developments via a Special Meeting and determine how best to proceed. Jean said she had fielded several inquiries from Council members about the legislation, namely who was offering it and why, what were the problems that led to this, and why it hadn't been brought up at the April 2, 2015 Council meeting, and she did not have the answers to those questions.

David stated as legal counsel for NREC, he works for the Council and communicates regularly with Jean. Jean had raised concerns about a possible OMA violation and he had reviewed the OMA statute and guidance documents. David felt the Special Meeting was necessary and that legitimate issues exist to hold a special meeting. He also stated there may be issues of fiduciary responsibilities of the Council members brought to question who are on the Council and also involved on discussing changes to NREC without communicating about these developments with their fellow Council members. David stated the purpose of this meeting is to address the issue and to move forward. David stated that NREC itself, or any member of the public can request the AG to conduct a special review regarding the OMA and issue an opinion on whether the April 20, 2015 meeting was a violation of the OMA. David also stated that in his opinion, there was no intentional attempt to disregard the OMA but that everyone had done what they were supposed to do: Jean raised the issue and Gary called a special meeting to discuss the matter with the full Council.

Cindy Skrukrud asked David what the AG's office advised on how this should be handled; David said requesting an official review is one option. Marcia said that it's an option to do an investigation but it is not an obligation of the Council.

Andy Knepp asked for more details as to the nature of the April 20 meeting. Jessica stated that in her review of the OMA that a meeting to discuss a filed amendment regarding increasing substantially the number of voting members on NREC impacts the business affairs of NREC and she pressed again for openness and transparency in any such discussions. Jessica recommended that NREC consider asking the AG to review the situation in order to remove any shadow of wrong-doing hanging over NREC. Ed Corrigan asked those Council members who participated in the April 20 meeting what the goal of the meeting was and urged that discussion with the Council.

Gary stated to somebody wanted to change the voting make-up of NREC in order to add more farmer representation and sought legislation to do so. The meeting on April 20 was to build a coalition among the farm organizations to come to agreement to support the legislation. Matt Hughes stated he came to the meeting totally uninformed, not knowing who had introduced the legislation, and stated discussing the legislation and solidifying support for it among the farm groups, and IL Soybean Association in particular, was the purpose of the meeting.

Gary Hudson asked Ken Hartman and Liz Brown of the IL Corn Growers Association to make a presentation about the legislation. They provided a handout. Ken said the wheat growers need to be represented on the Council and that the farm groups feels that farmers should have a majority of the votes on the Council for the reason that the assessment level could be raised without a single farmer vote in support. He compared NREC to the type of check-off programs that exist in Corn and Soybean associations and how the money generated in these programs is spent is decided by farmers who pay the check-off when they sell grain to the elevator. The legislation does not change the existing seats of the Council members, but proposes to add 4 additional farmers as voting members to the Council, bringing the total to 7 farmer voting members on a voting body of 13. He said they also felt this was important because of the release of the Nutrient Loss Reduction Strategy. Liz stated that the legislators want to help the farmers and this bill helps the farmers.

Matt Duncan said he had talked with all the CPS regional managers in the state and that no farmers were complaining to the retailers about the NREC assessment or the program. Liz stated that fertilizer retailers do not speak for farmers. Matt responded that fertilizer retailers are in the business of supporting farmers, otherwise retailers would not exist. Jessica asked why the legislative proposal was not provided to the NREC Council at their April 2, 2015 meeting. Howard Brown then asked Ken and Liz if they ever intended to share the legislation and their desire to change the makeup of the Council with the Council for

discussion and Ken replied “No.” Liz stated that there are only 14 days left in the legislative session and the bill had not advanced.

Matt Duncan said NREC was very different from a check-off program in that it deals with issues beyond just use or market for a commodity but rather it was created to address nutrient and environmental issues which involve many stakeholders. Matt also asked what the farm groups feel has not been working with NREC that they felt the need to seek legislation to fundamentally change the makeup of NREC. Jean stated that NREC has held 12 Council meetings, with 76 votes of the body taken and only 7 votes were not unanimous. The NREC Research Committee held 8 meetings with 49 votes of the Research Committee and only 3 were not unanimous.

Jessica said that she felt the offering of the legislation by entities also represented on NREC is a profound miscalculation of the value of the relationships and trust that have been built within NREC. She stated again it should have been brought up and discussed at the April 2, 2015 NREC meeting. She asked again why the Council was not consulted. Liz Brown stated that many bills are introduced each year proposing to change the make-up of boards, and stated that the legislation pertaining to NREC was unlikely to move forward in the next 14 days.

Cindy said she wanted the Council to discuss the legislative proposal. Matt Duncan noted that the legislation seeks to add additional representing each type of row crop, but that all farmers each grow those crops, they are not all just corn, just soy, or just wheat farmers. Jean gave a history on how this legislation to change NREC differed in the steps taken when NREC was created. She said that back in 2010, IFCA and IDA presented the original Fertilizer Research & Education Council (FREC) members with the concept of legislation to change it to NREC to protect it from fund sweeps, which had been occurring regularly with FREC. The FREC Council discussed and approved of that concept and gave it their blessing. Also, before any legislation was offered to create NREC it was shared with all the farm groups for their input and sign-off and it had the support of all the groups during the two years it took to pass. It is not a check-off program in the traditional sense and in meeting where IFCA and the Sierra Club visited with House and Senate leadership, the difference between NREC and traditional check-off programs was made clear to the leadership in order to secure support for its passage.

Ed Corrigan took issue with the statement that without more farmers voting on the Council, that NREC somehow lacks credibility with farmers. Ed stated in working with farmers he feels the buy-in is there from farmers and is largely due to the collaborative nature of NREC including other stakeholders in the decision making process. Howard added that this collaboration and involvement of the environmental groups is what makes NREC unique and has all the country talking about Illinois’ innovative approach to addressing nutrient and water quality issues and has kept us from legislation and litigation like Ohio and Iowa are experiencing.

Matt Hughes asked if the Council can take a position on legislation; he stated that the Illinois Soybean Association was not informed of HB 3164 and prior to its introduction and the Illinois Soybean Association Board of Directors had taken a position to oppose the legislation. He stated again that the purpose of the April 20 meeting was for the other farm groups to discuss the proposed legislation with the Illinois Soybean Association and explain why the other farm groups chose to support the legislation. Jean stated she felt it was odd that the Pork Producers Association took a position on NREC legislation since they were adamant in 2011 and 2012 that NREC not assess or impact manure or manure application in any way, and that she worked diligently with IDA to ensure that they would not be affected, and as a matter of fact, they are not assessed in any way for manure application.

Cindy felt that that the legislation should have been discussed within NREC first. She also stated that if the farm organizations wanted to go this direction, they should have consulted first with the NREC

representatives, since it appears that their own representatives on NREC were also not consulted about the legislation. Gary stated he did not know about the legislation until Jean did, when the amendment was filed on March 23, 2015.

Jessica stated again that she felt the legislation should be withdrawn; she said it's not appropriate to alter the coalition that NREC has built and suggested all NREC members work to rebuild the relationship. She asked the NREC board members on NREC to ask their representatives to not support the legislation or to request the AG to review the possible violation of the Open Meetings Act by the meeting that was held to build support for the legislation.

David Reid said NREC could vote to pursue asking the AG to review the case; he also said NREC could vote to see if they support or oppose the concept of the legislation. Chuck Cawley stated he was not sure that NREC could take a position on the legislation per its IRS status or its status as a public body.

Howard Brown stated that he felt the value of NREC is the collaboration it builds between stakeholders and taking it apart that collaboration will be detrimental. He suggested there may be other means to give farmers more say on the assessment level and Andy Knepp added that could be probably be addressed in the by-laws as to how many farmer votes must be secured to change the assessment level. Dale Hadden suggested that Council could take a straw poll on how they feel about the legislation but felt that he, Gary and Matt being part of that vote wouldn't be appropriate. Howard said if you take apart the NREC structure as it exists today, then we have to evaluate whether NREC is still worthwhile. Jessica said NREC shouldn't take a position on the legislation due to all the actions relative to the OMA. She again requested that the farm groups withdraw their support for the legislation and work to repair the damage that has been done.

Cindy suggested that at future meetings the Council should ask each member for input on how they feel things are going, to ensure good communication if some representatives feel things could be improved. Jessica stated she wants these discussions to be made during the light of day as a Council on any issues of concern to the business of the Council. **Howard Brown made a motion that at the August 18, 2015 NREC meeting, the Council reassess the bylaws to see if farmers could have more say in the assessment vote, but retain the current make-up of the Council. Chris Matlock seconded the motion.** Discussion: Andy said if legislation passes the General Assembly before then, the Council should meet immediately to address how that would change the working relationships within the Council. Chuck suggested that the August meeting be about NREC governance which includes assessment and other issues. Marcia stated she felt governance issues cover many aspects of the Council and this issue being discussed today it mostly about the makeup of the Council voting members. Andy reiterated that actions at the state Capitol are not the business of NREC as a whole, but NREC needs to proceed with doing its business to the best of its ability. **Gary called for a vote on Howard's motion, motion carried unanimously.**

Howard made a motion that if the Council wants to discuss at the August meeting the pros and cons of changing the makeup of the Council that this issue also be explored at the August meeting. Chuck Cawley seconded the motion, motion carried unanimously.

Jessica stated again that discussions related to the business of NREC should be discussed in the light of day. David Reid stated that if Council members want to hold a meeting outside of the normal meeting schedule they should send out a notice to the Council regarding what they want to discuss and it can be determined if this is a meeting. Marcia said she is still uncertain about whether this issue violated the OMA, but she felt it may be useful to have an opinion from the AG in order to be certain of the guidance in the future on how such discussions should be handled. Gary also felt it would be important to seek guidance for the Council members because there could be other meetings convened on nutrient issues where Council members are present that could move into discussions of NREC. **Chuck made a motion**

that NREC seek the guidance of the AG on what types of discussions are relative to the business of NREC and are subject to the OMA. Lauren Lurkins, who is with Illinois Farm Bureau, said a public body has a couple of options for guidance including: calling the FOIA hotline, seeking an advisory opinion based on facts or hypotheticals, or asking NREC legal counsel to research existing opinions. Gary called for a second on Chuck's motion, no second. Howard made motion to have David Reid present a hypothetical situation to the AG on how NREC Council members can have discussions and at what point discussions about NREC become subject to the OMA. Chuck seconded the motion. Discussion: Matt Hughes asked how that would work and David said he would meet with AG Public Access Counselor in person or by phone and then pursue guidance in writing. Jessica asked if David would share the hypothetical situation he might offer with the Council, he said he would. Gary called for a vote on the motion, motion carried unanimously.

Gary then moved to the next item on the agenda which is the NREC Executive Director Job Description and Job Search. Gary said Jean had let him know that she had suggestions on the job description, feeling it was confusing on how it was written relative to the roles of the Research Coordinator and Financial Manager. Howard said he feels given the developments that have just occurred that NREC take extra steps to be transparent and that an outside firm be hired to conduct the search for the Executive Director rather than have an NREC member organization conduct the job search as was approved at the April 2, 2015 meeting. Andy said a new search committee should be formed to vet the job description and lead the search working with an independent search firm. Gary added he also felt the search committee should be changed and that he and Matt Hughes step off that committee and have it instead be Dale Hadden, Ed Corrigan, Chuck Cawley and Andy Knepp. Chris Matlock made a motion to change the search committee to these four gentlemen; Howard seconded the motion. Motion carried unanimously.

Howard suggested waiting until the August meeting to start the job search; Andy felt the legislative issues needed to die down before any decision is made on hiring a new Executive Director. Jessica and Howard both stated that hiring a third party firm to assist in the process would be prudent. Howard made a motion to find a third party employment firm to handle the search working with the search committee. Matt Duncan seconded. Discussion: Dale stated that one of the services IL Farm Bureau Human Resources would have provided is to narrow down the candidates; Jessica said all potential bias in the process needs to be eliminated and a third party that is not affiliated with any of the organizations represented on the Council be contracted to perform the job search. Andy stated that expenses of a recruiting firm are usually 1/3rd of the salary of the person hired. Matt Hughes said he felt NREC should not waste resources, but has the resources to spend in this effort and he felt it would be a good use of those resources to use an outside firm. Andy said recruiter is only paid if person surfaced by them is selected for hire. If they are surfaced in any other matter, by a resume sent to the NREC website for example or through word of mouth, the fee does not apply. Andy amended the motion on the table to hire a third party firm and then proceed with posting the job after the job description is refined. Matt Hughes seconded the motion and added that the search committee continue to move forward with this process if they agree as committee to do so. Gary called for a vote on the amended motion, motion carried unanimously. David will review any contract with a recruiter firm. Matt Hughes emphasized that in looking at the job description, he said there are three distinct duties of service the Council needs: an Executive Director, a Research Coordinator and a Financial Manager and that it's improbable to find one person that can take on all three of these roles, and that handling the NREC monies should be separate from the Executive Director's role to ensure segregation of duties. He also stated that based on the salary offered, some benefits may have to be provided and David added employment taxes must be paid. Gary asked if the Council agreed that there are these three distinct roles that the Council needs, and if there was consensus; the Council agreed in consensus.

Matt stated that the 2014 FY audit report is available and that each Council member should take one home and be prepared to discuss at the August meeting. Jean also stated the 2014 Draft NREC project

report is ready for review and included in the meeting packet. Gary asked the Council to get comments on the draft report back to Jean or Dr. Hoeft by June 15.

Gary asked if there was any other business before adjournment. Howard expressed his thanks for everyone for coming to the meeting and for bringing this out into the open so that the Council can move forward and work together. Gary asked for a motion to adjourn, motion made by Howard, seconded by Dale, motion carried unanimously and the Council adjourned at 11:35 a.m.

Minutes recorded by Jean Payne, reviewed by Secretary Dale Hadden and NREC legal counsel David Reid.