

**ATTESTATION REPORT
OF THE
NIOBRARA COUNCIL**

JANUARY 1, 2023, THROUGH DECEMBER 31, 2023

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Issued on June 26, 2024

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NIOBRARA COUNCIL

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NIOBRARA COUNCIL

BACKGROUND

The 1998 Legislature created the Niobrara Scenic River Local Management Council to provide planning and management coordination among local landowners, citizens, and government agencies, for those portions of the Niobrara River with a Federal scenic river designation. In April 2000, the Niobrara Scenic River Local Management Council became the Niobrara Council (Council) with the passage of Legislative Bill (LB) 1234 (2000) and was given authority and responsibility to manage the Niobrara scenic river corridor in conjunction with the National Park Service per Neb. Rev. Stat. § 72-2008 (Reissue 2018).

The Council is a separate legal entity operating as a nonprofit organization, which is comprised of 16 members, as designated by Neb. Rev. Stat. § 72-2007 (Cum. Supp. 2022). The Council members hold office for three-year terms and until a successor is appointed and qualified. The Council membership consists of: 1) a commissioner from each of the Nebraska County Boards of Brown, Cherry, Keya Paha and Rock counties; 2) a Middle Niobrara Natural Resources District representative; 3) a Lower Niobrara Natural Resources District representative; 4) the secretary of the Nebraska Game and Parks Commission or his or her designee; 5) an individual from each of Brown, Cherry, Keya Paha and Rock counties who resides in the Niobrara River drainage area and owns land in the Niobrara scenic river corridor; 6) a recreational business representative operating within the Niobrara scenic river corridor; 7) a timber industry representative operating within the Niobrara scenic river corridor; and 8) a representative of a recognized, nonprofit environmental, conservation, or wildlife organization. The membership of the Council also includes two nonvoting members, the regional director for the National Park Service and the regional director for the U.S. Fish and Wildlife Service, or their designee.

For administrative purposes only, the Nebraska Game and Parks Commission provides the Council with administrative, operational, and programmatic support, as requested, and serves as its budgetary conduit for State appropriations.

NIOBRARA COUNCIL

KEY OFFICIALS AND AGENCY CONTACT INFORMATION

Niobrara Council Members
As of December 31, 2023

<u>Name</u>	<u>Title</u>	<u>Representative</u>
Wade Hollenbeck	Chairperson	Rock County Board
Jason Appelt	Vice Chairperson	Brown County Landowner
Lana Arrowsmith	Secretary	Rock County Landowner
Dallas Dodson	Treasurer	Nonprofit Environmental Conservation/Wildlife
Karl Connell	Council Member	Lower Niobrara Natural Resources District
Martin DeNaeyer	Council Member	Cherry County Board
Les Hall	Council Member	Keya Paha County Landowner
Mary Mercure	Council Member	Cherry County Landowner
Rich Mercure	Council Member	Recreation Industry
Mike Murphy	Council Member	Middle Niobrara Natural Resources District
Buddy Small	Council Member	Brown County Board
Andrew Steinhauser	Council Member	Timber Industry
Mike Tuerk	Council Member	Keya Paha County Board
Scott Wessel	Council Member	Nebraska Game and Parks Commission
Matt Sprenger	Council Member - Nonvoting	U.S. Fish and Wildlife Service
Steve Thede	Council Member - Nonvoting	National Park Service

Niobrara Council Management

<u>Name</u>	<u>Title</u>
Kalli Kieborz	Executive Director

Niobrara Council
202 North Main Street, Suite 1
P.O. Box 206
Valentine, NE 69201
www.niobraracouncil.org

NIOBRARA COUNCIL
SUMMARY OF COMMENTS

During our examination of the Niobrara Council (Council), we noted certain deficiencies and other operational matters that are presented here. The following comments are required to be reported in accordance with *Government Auditing Standards*: Comment #2 (“Lack of Segregation of Duties”), which is considered to be a significant deficiency, and Comment #1 (“Bonus Payments”), which is considered to be material noncompliance and a material weakness.

These comments and recommendations are intended to improve the internal control over financial reporting or result in operational efficiencies in the following areas:

1. ***Bonus Payments:*** The Council paid two of its employees a total of \$7,570 in gross pay for staff bonuses during calendar year 2023, doing so in apparent violation of applicable Federal regulations, the terms of the Cooperative Agreement between the Nebraska Game and Parks Commission and the Council, and State law, including Article III, § 19, of the Nebraska Constitution.
2. ***Lack of Segregation of Duties:*** We noted a lack of segregation of duties over the Council’s revenue, expenditures, and payroll records, as one person could handle all aspects of processing a transaction from beginning to end.
3. ***Annual Report Filings:*** None of the Council’s annual reports, from fiscal year 2016 through fiscal year 2023, describing the Council’s expenditures, were filed timely with the Clerk of the Legislature and the chairperson of the Natural Resources Committee of the Nebraska Legislature, as required by Neb. Rev. Stat. § 72-2008 (Reissue 2018).
4. ***Health Insurance Reimbursement Overpayment:*** The Executive Director received reimbursements for health insurance, totaling \$7,692, during calendar year 2023, which was \$655 more than the supporting documentation on hand, and included \$1,167 for family vision and dental insurance coverage, which the employee was not entitled to receive based on the “Employment Agreement” on file.
5. ***City Council Employment:*** The Executive Director has served as a council member on the Valentine City Council since June 2011; however, no documentation of the Niobrara Council’s approval of such additional employment was maintained.

More detailed information on the above items is provided hereinafter. It should be noted that this report is critical in nature, containing only our comments and recommendations on the areas noted for improvement and does not include our observations on any accounting strengths of the Niobrara Council.

Draft copies of this report were furnished to the Niobrara Council to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. All formal responses received have been incorporated into this report. Responses that indicate corrective action has been taken were not verified at this time, but they will be verified in the next examination.

NIOBRARA COUNCIL
COMMENTS AND RECOMMENDATIONS

1. Bonus Payments

The Nebraska Game and Parks Commission (Commission) provides the Council with administrative support, including accounting services, and functions as its budgetary conduit for State appropriations and Federal grants. In accordance with the terms of a Cooperative Agreement (Agreement) adopted in 2018, the Commission reimburses the Council, upon written request, for its monthly expenditures. These reimbursement payments are made from both the State General Fund and the Niobrara Council Federal Fund, based on an allocation determined by the Council each month.

We noted that the Council paid two of its employees, the Executive Director and the Education Manager, a total of \$7,570 in gross pay for staff bonuses during calendar year 2023. The Commission reimbursed those bonus payments, which ranged from \$2,485 to \$5,085 per employee, from the State General Fund and the Niobrara Council Federal Fund, as shown in the table below:

Employee Title	Date	Fund	Gross Pay
Executive Director	6/15/2023	State General Fund	\$ 2,211
Executive Director	10/19/2023	Niobrara Council Federal Fund	2,874
Education Manager	10/19/2023	Niobrara Council Federal Fund	2,485
Total			\$ 7,570

These bonuses were not included in any employment contract between the Council and Council staff.

According to Council staff, moreover, the bonuses were not given for any actual services rendered by the recipient employees; instead, they were paid at the end of the State and Federal fiscal years solely to dispose of remaining budgeted State appropriations and Federal funds. In other words, the bonus payments were entirely gratuitous in nature, being made for no other reason than to maintain the appearance of continuing to need the current level of State and Federal funding.

Bonus Pay Reimbursements from Federal Funds

The bonus payments from the Niobrara Council Federal Fund were reimbursed by the U.S. Department of the Interior, National Park Service (NPS), in accordance with a separate Cooperative Agreement between that governmental agency and the Council effective January 1, 2020, through September 30, 2025. Per that pact, the Council received Federal funds as part of the NPS Conservation Protection, Outreach, and Education Program, Assistance Listing #15.954, in order to “protect and enhance visitor experiences, scenic river values and significant resources such as water quality, and educate visitors with respect to resources and private lands within the [Niobrara National] Scenic River.”

Federal grant monies, such as those used to reimburse the bonus payments made to the two Council employees, must be spent in strict accordance with guiding regulations set out in the U.S. Code of Federal Regulations (CFR).

To start, 2 CFR § 200.430(i)(1) (January 1, 2023) states the following, in relevant part:

Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated[.]

(Emphasis added.) Additionally, 2 CFR § 200.403 (January 1, 2023) provides, as is relevant, the following:

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

NIOBRARA COUNCIL
COMMENTS AND RECOMMENDATIONS
(Continued)

1. **Bonus Payments** (Continued)

(a) *Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.*

(Emphasis added.) Furthermore, 2 CFR § 200.405(a) (January 1, 2023) adds the following:

A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received.

(Emphasis added.) Finally, 2 CFR § 200.403(f) (January 1, 2023) states the following:

Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(Emphasis added.) In light of the above regulations, even the most cursory consideration of the Council's bonus payments gives rise to serious concerns about the propriety of reimbursing those gratuitous disbursements with Federal grant monies. Aside from being granted independent of a requisite agreement or plan, such bonuses, when made for no other purpose than to eliminate a surplus of Federal grant monies remaining at the end of the fiscal year, can hardly be classified as "necessary and reasonable for the performance of the Federal award." Likewise, that type of admittedly needless spending shows no correlation whatsoever to any "relative benefits received."

Failure to comply with regulations, including those set out above, prescribing the proper expenditure of Federal grant monies is addressed by 2 CFR § 200.339 (January 1, 2023), which authorizes the Federal awarding agency or pass-through entity to take the following actions in response:

(a) *Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.*

(b) *Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.*

(c) *Wholly or partly suspend or terminate the Federal award.*

(d) *Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).*

(e) *Withhold further Federal awards for the project or program.*

(f) *Take other remedies that may be legally available.*

More drastic yet, 2 CFR § 200.403(f) (January 1, 2023) requires misspent Federal grant funds to be refunded to the awarding agency, as follows:

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise.

NIOBRARA COUNCIL

COMMENTS AND RECOMMENDATIONS

(Continued)

1. **Bonus Payments** (Continued)

By expending Federal grant funds for gratuitous bonus payments made in apparent violation of controlling administrative requirements, the Council places itself in jeopardy of incurring the above sanctions.

Bonus Pay Reimbursements from State Funds

The use of State funds to make gratuitous bonus payments to Council employees engenders no less serious concerns than does, as explained above, the expenditure of Federal funds for that same purpose.

The State funds used to reimburse the Council for its various expenditures, including the gratuitous bonus payments at issue, are the result of General Fund appropriations made by the Legislature to the Commission for Program 338 (“Niobrara Council/Aid”). The language of Program 338 contains the following:

The program has been placed under the Nebraska Game & Parks Commission for administrative purposes only. The Program represents the State’s commitment to the work of the Niobrara Council, which plays a leadership role in the management of the Niobrara River corridor as part of the National Scenic River system.

Section C (“Purpose of this Agreement”) of the Agreement addresses the Program 338 funding, as follows:

The Legislature administratively located the appropriated funds for the Niobrara Council within the Commission’s budget. The appropriations associated with the Council are provided under a unique operating program and designated as Aid authority.

Likewise, Section E (“Terms and Conditions Applicable to the Niobrara Council”) (4)(b) of the Agreement says the following:

Interest income accruing to such [Program 338] funds shall be considered to be program income and subject to the same restriction on use as appropriated funds.

Section E(4)(i) of the Agreement provides requirements, moreover, for “vendor, suppliers and/or contractors paid with state or federal funds” – reiterating the public nature of the money legislatively appropriated to and eventually expended by the Council.

Should the Council cease to exist, Section E(7) of the Agreement requires unspent or unobligated funds “appropriated to the Commission for Program 338 and transferred to the Council” to be “returned by the Council, within 30 days of dissolution, to the Commission. . . . [and] dispersed pursuant to State law.”

Section F (“Terms and Conditions Applicable to the Commission”) (3) of the Agreement directs the Commission to “review billing invoices submitted by the Council and process same through the State’s accounting system”

Finally, Neb. Rev. Stat. § 72-2009(1) (Reissue 2018), which created the Niobrara Council Fund into which the Program 338 appropriations are deposited, contains the following:

The council may accept any private or public funds to carry out its work and such funds shall be remitted to the State Treasurer for credit to the fund. The fund shall consist of such funds and legislative appropriations made to the council. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the Niobrara Council Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Given all of the above, the public nature of the Program 338 funds utilized by the Council seems evident. What does remain subject to question, however, is the Council’s use of those State appropriations for gratuitous bonus payments to Council employees.

To start, nothing in the Agreement between the Commission and the Council appears to countenance such unnecessary expenditures. Section E(4)(c) of the Agreement provides the following:

NIOBRARA COUNCIL
COMMENTS AND RECOMMENDATIONS
(Continued)

1. Bonus Payments (Continued)

Such [Program 338] funds shall be used by the Niobrara Council for planning and management activities and administration thereof applicable to the federally designated portions of the river corridor in Brown, Cherry, Keya Paha and Rock counties, and pursuant to Nebraska Revised Statutes § 72-2006 through § 72-2012.

Section E(4)(d) of the Agreement authorizes Program 338 funds to be used also “for the acquisition or leasing of title easements to land” pursuant to Federal and State law.

Section E(4)(f) of the Agreements says the following:

Billing statements [from the Council] shall be submitted on an as needed basis to the Commission for reimbursement of expenses. Such statements shall include the time frame for the expenditures, a description of the expenditure to include goods or services purchased and general purpose of the expenditure, and the amount expended. The statement should also include the total amount being invoiced to the Commission with an indication of funds to be utilized (cash, general fund, federal).

(Emphasis added.) The above provisions of the Agreement indicate clearly that Program 338 reimbursements are allowable only for expenditures necessary for the performance of the Council’s duties, which are specified to include “acquisition or leasing of title easements to land” and the purchase of “goods and services.” None of those expenditures would include, it must be assumed, gratuitous bonus payments.

Further, such gratuitous bonus payments are suspect under Article III, § 19, the Nebraska Constitution, which provides, in relevant part, the following:

The Legislature shall never grant any extra compensation to any public officer, agent, or servant after the services have been rendered nor to any contractor after the contract has been entered into, except that retirement benefits of retired public officers and employees may be adjusted to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement.

The Nebraska Attorney General (Attorney General) has summarized this constitutional provision by explaining, “Nebraska law generally requires work be performed in order for payment to be received.” Op. Att’y Gen. 95071 (Sept. 13, 1995). The Attorney General has also observed, “A gratuity . . . is something acquired without bargain or inducement, or a gift.” Op. Att’y Gen. No. 97015 (March 3, 1997).

Even more to the point, the Nebraska Supreme Court (Court) has explained, “A payment of compensation to a public servant constitutes extra compensation whenever there is no legal obligation to pay such compensation.” *Myers v. Nebraska Equal Opportunity Com’n*, 255 Neb. 156, 163, 582 N.W.2d 362, 367 (1998) (quoting *Matter of Mullane v. McKenzie*, 269 N.Y. 369, 377, 199 N.E. 624, 627 (1936)).

The Attorney General has shed additional light on Article III, §19, as follows:

[T]he purpose of state constitutional provisions such as Art. III, § 19 which prohibit extra compensation to public employees after services are rendered is to prevent payments in the nature of gratuities for past services.

Op. Att’y Gen. No. 95063 (Aug. 9, 1995). Per the Court, “[T]he prohibition contained in Article III, section 19, Constitution of Nebraska, applies to the state and to all political subdivisions thereof.” *Retired City Civilian Employees Club of City of Omaha v. City of Omaha Employees' Retirement System et al.*, 199 Neb. 507, 512, 260 N.W.2d 472, 475 (1977).

Unquestionably, Article III, §19, would prevent the Commission from awarding its own employees with the type of gratuitous bonus payments made by the Council. It seems incongruous, therefore, that the Commission, as the administrator of Program 338, would reimburse the Council with those State appropriation monies for such unearned and nonobligatory perquisites.

NIOBRARA COUNCIL
COMMENTS AND RECOMMENDATIONS
(Continued)

1. Bonus Payments (Concluded)

A proper system of internal controls requires procedures to ensure, prior to disbursement, that all payments to Council employees, including bonuses, are made in strict accordance with applicable Federal regulations, the terms of the Agreement between the Commission and the Council, and State law, including Article III, § 19, of the Nebraska Constitution.

Without such procedures, there is an increased risk for not only loss or misuse of public funds but also violation of governing laws, regulations, and contractual provisions.

We recommend the implementation of procedures to ensure, prior to disbursement, that all payments to Council employees, including bonuses, are made in strict accordance with applicable Federal regulations, the terms of the Agreement between the Commission and the Council, and State law, including Article III, § 19, of the Nebraska Constitution.

2. Lack of Segregation of Duties

We noted that the Council lacked a sufficient segregation of duties. Although compensating controls were adopted by the Council, those controls did not completely eliminate the risk of errors or fraud occurring and going undetected. Specifically, we noted that the Executive Director was capable of handling all aspects of processing transactions from beginning to end, including the following:

Vacation and Sick Leave

The Executive Director was not required to maintain a timesheet. Nevertheless, in addition to earning sick and vacation leave, she was solely responsible for tracking her own leave balances and usage in the Council's accounting system.

Further, the Executive Director received payments from the Council for unused vacation leave, per the following provision, found at Section 8 (page 5), of her "Employment Agreement" with the Council:

Vacation days accrued but not taken shall not accrue year to year in favor of the Employee, and shall be paid to the Employee at her regular rate, annually, at the expiration of the calendar year during which vacation shall be accrued and not taken.

We noted that the Executive Director has received \$39,919, since 2005, for unused vacation leave, as shown in the table below:

NIOBRARA COUNCIL
COMMENTS AND RECOMMENDATIONS
(Continued)

2. **Lack of Segregation of Duties** (Continued)

Date	Check	Memo	Amount
1/20/2005	2343		\$ 1,549
1/19/2006	2692	2005 unused vacation time reimbursement	1,411
1/18/2007	3046		1,305
1/17/2008	3397	payment for un-used vacation days	1,689
1/15/2009	3740		1,932
1/21/2010	4074		2,039
2/17/2011	4404	vacation ck for un-used 2010 days	2,119
2/16/2012	4701	vacation ck for un-used 2011 days	2,121
12/20/2012	4937	2012 un-used vacation days compensation	1,621
1/16/2014	5256		2,104
1/15/2015	5521	reimbursement for un-used vacation days	2,134
1/21/2016	5815		2,133
1/19/2017	6078		2,136
2/15/2018	6365	2017 comp for un-used vacation days	2,211
1/17/2019	6574	2018 unused vacation days	2,213
1/16/2020	6758		2,214
1/21/2021	6926		2,215
1/20/2022	7123	un-used vacation day reimb	2,224
1/19/2023	7326		2,236
1/17/2024	7485		2,313
Total			\$ 39,919

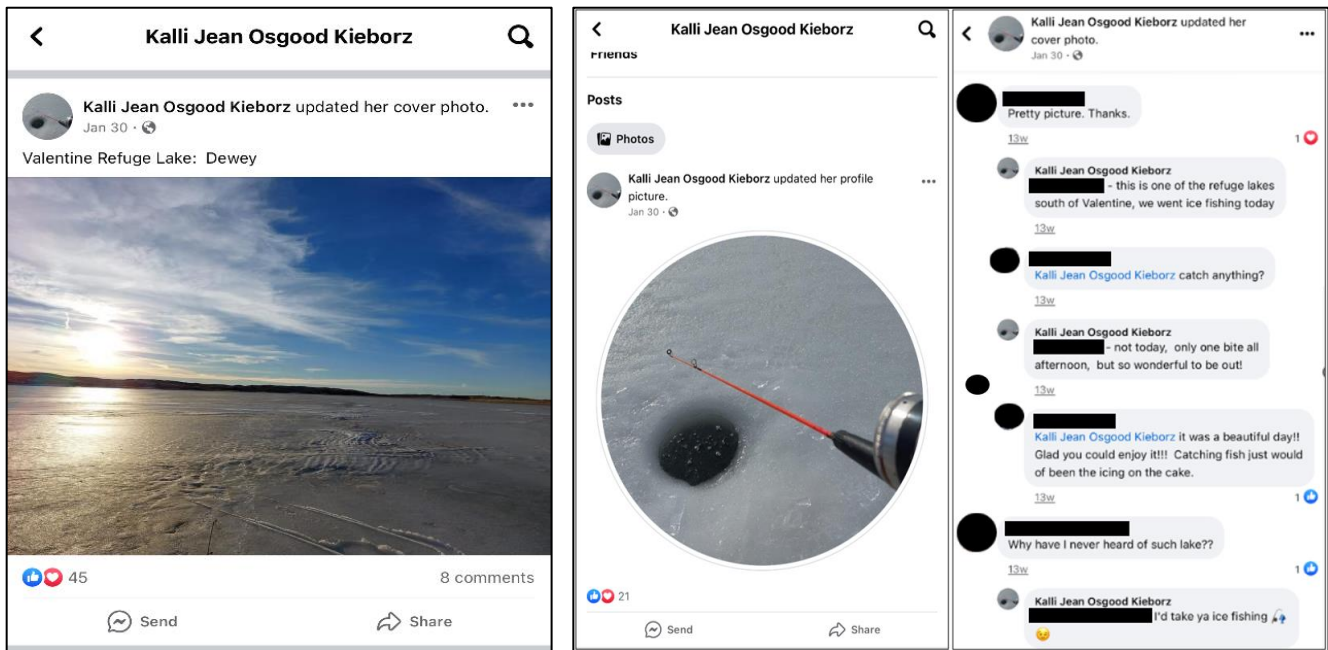
Unlike with vacation time accrued but not used, the Executive Director is not entitled, per Section 7 (page 4) of her “Employment Agreement” with the Council, to any payment for unused sick leave. Regardless, she has recorded neither vacation nor sick leave usage in the Council’s accounting system since April 2003 – a period of more than 21 years without any recorded leave whatsoever, for which she was paid nearly \$40,000.

Because the Executive Director is the only full-time employee of the Council, we were unable to verify with anyone else that, as reflected in the accounting system, she had taken no leave of any kind in over two decades.

Interestingly, subsequent to the period examined, we observed posts made on the Executive Director’s Facebook account that appear to depict her ice fishing during what may have been her normal working hours. According to the images below, posted on Tuesday, January 30, 2024, the Executive Director went ice fishing at the Valentine Refuge Lake, potentially during the time that the Council’s office was supposed to be open, anywhere from 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m.

NIOBRARA COUNCIL
COMMENTS AND RECOMMENDATIONS
(Continued)

2. **Lack of Segregation of Duties** (Continued)



Among the Executive Director’s various duties, as specified in Section 11 (pages 6-8) of her “Employment Agreement” with the Council, is the following:

Administer and arrange for staffing of the Niobrara Council office located in Valentine, Nebraska, from 9:00 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding holidays[.]

The above staffing requirement notwithstanding, we have received citizen complaints that the Council’s office has been unexplainably closed or unstaffed during regular working hours – allegations that, if true, cast further doubt upon the already dubious proposition that the Executive Director managed incredibly to eschew any type of work leave for more than 21 years.

This serious concern illustrates the Council’s need to implement a formal policy and review procedures for ensuring that leave records, such as timesheets, are properly maintained and reviewed by a second individual for all Council employees. Such exigency is made all the more pressing when, as in the case of the payments to the Executive Director for accrued but unused vacation leave, thousands of dollars could hang in the balance.

Automated Clearinghouse Payments

The Executive Director was responsible for not only reconciling the Council’s bank account and petty cash fund but also recording all expenditure and revenue transactions in the accounting system. Although not an authorized signer for the Council’s bank account, the Executive Director had the ability to process Automated Clearinghouse (ACH) payments from the bank account without prior Council approval.

During calendar year 2023, we noted that the Executive Director processed the following ACH payments, totaling \$24,097:

NIOBRARA COUNCIL
COMMENTS AND RECOMMENDATIONS
 (Continued)

2. Lack of Segregation of Duties (Continued)

Description	Amount
Federal Income Taxes	\$ 20,892
State Income Taxes	3,046
Unemployment Insurance Taxes	129
Safety Deposit Box Payment	30
Total	\$ 24,097

The ACH payments listed in the above table appear to be for legitimate expenses of the Council. However, Article II, Section 2 (“Spending Authority and Procedure of the Council”) of the Council’s Bylaws authorizes Council officers to do the following:

Upon approval by the Executive Committee of claims as set forth herein, the officers of the officers of the Niobrara Council may execute such checks, warrants or other documents of payment necessary to pay the same in a timely fashion.

(Emphasis added.) Further, during any month in which the Council does not hold a regular or special meeting, the same provision of the Bylaws authorizes the Executive Committee to approve and pay only the following:

[A]ll essential, recurring obligations of the Council, which items are specifically limited to those expenditures that are necessary for the continued operation of the Council and all of its activities, including wages, sanitation expenses, insurance, motor vehicle licensing, motor vehicle insurance, and other essential, recurring obligations[.]

Adherence to the above directives in the Bylaws for both approval of the Council’s claims and restrictions upon otherwise allowable expenditures is necessary to safeguard funds and to prevent potential fraud and financial abuse.

Payment to a Family Member

Lastly, we noted that the Council paid \$500 to the Executive Director’s sister in September 2023 to conduct eight Smith Falls State Park river user counts, every other week from Memorial Day to Labor Day, in accordance with the Cooperative Agreement between the U.S. Department of the Interior, NPS, and the Council, effective January 1, 2020, through September 30, 2025. The payment was reported as an expenditure for “Service Contract/Partnership Agreements” in the budget submitted to the NPS.

The check was signed by two members of the Council’s Executive Committee, as required by the Council’s Bylaws; however, based on a review of the Council’s meeting minutes, the Council neither publicly advertised, discussed, nor approved a formal contract or agreement for the services provided. As such, it appears the Executive Director hired her sister to perform the services without any prior approval by the Council.

This type of expenditure gives the appearance of a conflict of interest as defined by Neb. Rev. Stat. § 21-1987 (Reissue 2022), which is found in the Nebraska Nonprofit Corporation Act, and states, in relevant part:

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest

It is important for the Council to implement procedures to ensure service contracts or agreements with family members of the Council or Executive Director are properly approved by the Council in advance of the services provided to avoid the appearance or possibility of a conflict of interest.

NIOBRARA COUNCIL
COMMENTS AND RECOMMENDATIONS
 (Continued)

2. Lack of Segregation of Duties (Concluded)

A proper system of internal control requires an effective segregation of duties designed to ensure, among other things, the following: 1) the implementation of a formal policy and review procedures for ensuring that leave records, such as timesheets, are properly maintained and reviewed by a second individual for all Council employees; 2) adherence to directives in the Bylaws for both approval of the Council’s claims and restrictions upon otherwise allowable expenditures; and 3) the implementation of policies and procedures to ensure service contracts or agreements with family members of the Council or Executive Director are properly approved by the Council in advance of the services provided, to eliminate or reduce the threat of any perceived conflicts of interest.

Without such necessary components of internal control, there is an increased risk for not only errors or irregularities, including fraud, but also expenditures not being made in accordance with Council Bylaws. Due to a limited number of personnel, however, an adequate segregation of duties may not be possible without additional cost.

We recommend the Council review this situation and consider implementing procedures to prevent one person from being in a position both to perpetrate and to conceal financial errors or irregularities, including fraud. As always, the cost of hiring additional personnel versus the benefit of a proper segregation of duties must be weighed. We also recommend the Council implement procedures to ensure that employee leave balances and usage are properly reviewed each pay period and approved, by the Council, to ensure leave is recorded properly in the Council’s accounting system. Further, we recommend the Council implement procedures to ensure ACH payments are properly approved by the Council, or Executive Committee, prior to payment in accordance with the Council’s own Bylaws. Lastly, we recommend the Council implement policies and procedures to ensure service contracts or agreements with family members of the Council or Executive Director are properly approved by the Council in advance of the services provided, to eliminate or reduce the threat of any perceived conflicts of interest.

3. Annual Report Filings

We noted that none of the Council’s annual reports, from fiscal year 2016 through fiscal year 2023, describing Council expenditures, were filed timely with the Clerk of the Nebraska Legislature and the chairperson of the legislative Natural Resources Committee. The table below shows the number of days after December 1, the statutory deadline, that the late filings were made:

Report Fiscal Year	Due Date	Date Filed	Days Late
2016	12/1/2016	1/10/2017	40
2017	12/1/2017	1/11/2019	406
2018	12/1/2018	8/27/2019	269
2019	12/1/2019	3/27/2023	1212
2020	12/1/2020	3/27/2023	846
2021	12/1/2021	3/27/2023	481
2022	12/1/2022	3/27/2023	116
2023	12/1/2023	*	*
* The 2023 report had not been filed as of April 1, 2024.			

NIOBRARA COUNCIL
COMMENTS AND RECOMMENDATIONS
(Continued)

3. Annual Report Filings (Concluded)

Neb. Rev. Stat. § 72-2008 (Reissue 2018) requires, as is relevant, the following:

On December 1, 2016, and on each December 1 thereafter, the council shall electronically submit an annual report to the Clerk of the Legislature and the chairperson of the Natural Resources Committee of the Legislature describing expenditures made pursuant to the Niobrara Scenic River Act.

A proper system of internal controls requires procedures to ensure that the Council submits its annual report to the Nebraska Legislature in a timely manner, as required by State statute.

Without such procedures, there is an increased risk for not only failure to comply with State statute but also loss or misuse of public funds.

We recommend the Council implement procedures to ensure its annual report is submitted electronically to both the Clerk of the Nebraska Legislature and the chairperson of the legislative Natural Resources Committee by December 1, as required by State statute.

4. Health Insurance Reimbursement Overpayment

Included as compensation under her “Employment Agreement” with the Council, the Executive Director received reimbursements for health insurance, totaling \$7,692, during calendar year 2023. The reimbursements paid during the calendar year were supposed to be based on the January 2023 rates paid by employees of Pepsi-Cola in Valentine, Nebraska. However, we noted that the Council paid the Executive Director \$655 more than the amount paid by Pepsi-Cola employees, and no documentation was provided to support the variance.

Further, Section 6 (page 4) of the Executive Director’s “Employment Agreement” with the Council contains the following provision:

Employee shall receive, as part of the compensation package to be paid to Employee under the terms hereof, family coverage health insurance with Blue Cross Blue Shield, or its equivalent, with family coverages equal to those received by regular State of Nebraska employees.

The Council was unable to provide documentation to support that the rates paid by employees of Pepsi-Cola in Valentine, Nebraska, are equivalent to “family coverage health insurance with Blue Cross Blue Shield” and include “family coverages equal to those received by regular State of Nebraska employees.”

During calendar year 2023, State of Nebraska employees enrolled in the Regular Health Plan paid health insurance premiums for family coverage, totaling \$7,310, which is \$382 less than the amount paid to the Executive Director. The health insurance premiums paid by State of Nebraska employees is publicly available information on the Department of Administrative Services website (<https://das.nebraska.gov/forms/index.html#state-personnel-wellness-and-benefits.html>).

Additionally, the health insurance reimbursements paid to the Executive Director included \$1,167 for family vision and dental insurance coverage. The “Employment Agreement” with the Executive Director states explicitly, however, that the "Employee shall receive no dental, nor optometric, nor other medical insurance benefit except as currently provided." The Council was unable to provide documentation, such as an amendment to the Executive Director's “Employment Agreement” or Council meeting minutes, to support the approval of reimbursements for vision and dental coverage.

NIOBRARA COUNCIL
COMMENTS AND RECOMMENDATIONS
(Concluded)

4. Health Insurance Reimbursement Overpayment (Concluded)

Good internal controls and sound business practices require procedures to ensure that benefits paid to any employee are in accordance with the provisions of that individual's approved employment contract. Such benefits should also be adequately supported, and any modifications thereto should be properly documented and retained for subsequent review.

Without such procedures, there is an increased risk for not only improper benefit payments to employees but also loss or misuse of public funds.

We recommend the Council implement procedures to ensure: 1) benefits paid to any employee are in accordance with the provisions of that individual's approved employment contract; and 2) such benefits are adequately supported, and any modifications thereto are properly documented and retained for subsequent review.

5. City Council Employment

Since June of 2011, the Executive Director of the Council has worked also as a member of the City Council for Valentine, Nebraska. As a member of the City Council, the Executive Director receives \$2,400 each year in compensation for her duties. No documentation could be produced, however, to support the Council's formal approval of that additional employment in accordance with the terms of Executive Director's "Employment Agreement."

Section 14 (page 8) of the "Employment Agreement" contains the following:

During the term of Employee's employment, Employee shall devote her entire time and energy to the furtherance of the business of the Employer. Employee shall not serve in any advisory or other capacity for any entity whatsoever, nor shall Employee obtain or engage in any other gainful employment for any other person, firm, corporation or entity whatsoever, unless the same shall have been previously approved, in writing, by the Niobrara Council.

Good internal controls and sound business practices require procedures to ensure that the Council formally approves any additional employment by the Executive Director, and documentation of that approval is maintained in the personnel files for subsequent review.

Without such procedures, there is an increased risk for noncompliance with the express terms of the "Employment Agreement" between the Executive Director and the Council.

We recommend the implementation of procedures to ensure the Council formally approves any additional employment by the Executive Director, and documentation of that approval is maintained in the personnel files for subsequent review.

Council's Response to Comments and Recommendations: It was decided through a consensus of the Council that the items listed in the report should have a closer examination, utilizing our standing committees that best relate to the subject of the comment or recommendation within the report. The Revenue and Budget Committee and the Personnel Committee both have meetings set for July, prior to the August public board meeting to discuss in closer detail the comments and recommendations that were provided. Although we are not providing line item comments to the report at this time, we would like it noted that we take the comments and recommendations very seriously and that is the reason the committees have been assigned. The Committees should be ready to give a report at the August meeting for the full Niobrara Council board, and will hopefully have some solutions and recommendations of their own for consideration and possible action.



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NIOBRARA COUNCIL

INDEPENDENT ACCOUNTANT'S REPORT

Niobrara Council
Valentine, Nebraska

We have examined the accompanying Schedule of Revenues, Expenditures, and Changes in Fund Balance of the Niobrara Council (Council) for the period January 1, 2023, through December 31, 2023. The Council's management is responsible for the Schedule of Revenues, Expenditures, and Changes in Fund Balance based on the accounting system and procedures set forth in Note 1. Our responsibility is to express an opinion on the Schedule of Revenues, Expenditures, and Changes in Fund Balance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, and the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Schedule of Revenues, Expenditures, and Changes in Fund Balance is based on the accounting system and procedures set forth in Note 1, in all material respects. An examination involves performing procedures to obtain evidence about the Schedule. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of the Schedule of Revenues, Expenditures, and Changes in Fund Balance, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

We are required to be independent and to meet our other ethical responsibilities in accordance with relevant ethical requirements relating to the engagement.

In our opinion, the Schedule of Revenues, Expenditures, and Changes in Fund Balance, is based on the accounting system and procedures prescribed by the Council, as set forth in Note 1, in all material respects.

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; noncompliance with provisions of laws, regulations, contracts, or grant agreements that have a material effect on the Schedule of Revenues, Expenditures, and Changes in Fund Balance; fraud that is material, either quantitatively or qualitatively, to the Schedule of Revenues, Expenditures, and Changes in Fund Balance; and any other instances that warrant the attention of those charged with governance. We are also required to obtain and report the views of management concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our examination to express an opinion on whether the Schedule of Revenues, Expenditures, and Changes in Fund Balance is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over the Schedule of Revenues, Expenditures, and Changes in Fund Balance or on

compliance and other matters; accordingly, we express no such opinions. Our examination disclosed certain findings that are required to be reported under *Government Auditing Standards*, and those findings, along with the views of management, are described in the Comments and Recommendation Section of the report.

The purpose of this report is to express an opinion on the Schedule of Revenues, Expenditures, and Changes in Fund Balance, as described in paragraph one above. Accordingly, this report is not suitable for any other purpose. This report is a matter of public record, and its distribution is not limited.

June 6, 2024



Mike Foley
Auditor of Public Accounts
Lincoln, Nebraska

NIOBRARA COUNCIL
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE

For the Period January 1, 2023, through December 31, 2023

	Niobrara Council
REVENUES:	
Federal Grants	\$ 87,939
State Appropriations	41,432
Interest Income	973
TOTAL REVENUES	130,344
EXPENDITURES:	
Personal Services	92,768
Operating	48,077
Travel and Employee Reimbursements	4,680
TOTAL EXPENDITURES	145,525
Excess (Deficiency) of Revenues Over (Under) Expenditures	(15,181)
OTHER FINANCING SOURCES (USES):	
Adjustment to Fund Balance	(4,563)
TOTAL OTHER FINANCING SOURCES (USES)	(4,563)
Net Change in Fund Balances	(19,744)
FUND BALANCE, JANUARY 1, 2023	151,639
FUND BALANCE, DECEMBER 31, 2023	\$ 131,895
FUND BALANCE CONSISTS OF:	
General Cash	\$ 10,505
Petty Cash	200
Due From Other Government	121,190
TOTAL FUND BALANCE	\$ 131,895

The accompanying notes are an integral part of the schedule.

NIOBRARA COUNCIL

NOTES TO FINANCIAL SCHEDULE

For the January 1, 2023, through December 31, 2023

1. Criteria

The accounting policies of the Niobrara Council (Council) are on the basis of accounting, as prescribed by the Council. The Council manages the funds using QuickBooks accounting software to record its financial transactions. The accounting records of the Council are maintained, and the Schedule of Revenues, Expenditures, and Changes in Fund Balance have been prepared, based on the cash receipts and disbursements basis prescribed by the Council.

The following major revenue account classification are established and used by the Council:

Federal Grants – Revenue from the Federal government in the form of grants, or reimbursements.

State Appropriations – Appropriations are granted by the Legislature to make expenditures and to incur obligations. The amount of appropriations reported as revenue is the amount of expenditures.

Interest Income – Revenue from earnings collected on investment activity of the Council.

The following major expenditure account classifications are established and used by the Council:

Personal Services – Salaries, wages, and related employee benefits provided for all persons employed by the Council.

Operating – Expenditures directly related to the Council's primary service activities.

Travel and Employee Reimbursements – All travel expenses for any Council member, or employee, and reimbursements paid to Council members and employees for expenses incurred in carrying out their duties.

2. Reporting Entity

The Council is a separate nonprofit entity established by State statute that has been given authority to perform management functions related to the Niobrara scenic river corridor. The Nebraska Game and Parks Commission, which is part of the State of Nebraska reporting entity, provides administrative support to the Council, as requested, and serves as the budgetary conduit for State appropriations. For administrative purposes only, the State of Nebraska's Director of the Department of Administrative Services records financial activity of the Council in EnterpriseOne (E1), the State's accounting system, under the State funds established on behalf of the Commission. The Schedule of Revenues, Expenditures, and Changes in Fund Balance reflects only the financial transactions recorded in the Council's accounting system.

3. General Cash

General cash accounts are under the control of the Council and consist of cash on hand and demand deposits. State law requires collateralization of all deposits with Federal depository insurance or with U.S. Treasury and U.S. agency securities having an aggregate value at least equal to the amount of the deposits. The Council's demand deposits are insured up to \$250,000, and certificates of deposit/savings accounts are insured up to \$250,000 by the Federal Deposit Insurance Corporation (FDIC). Any cash deposits or certificates of deposit in excess of the FDIC limits are insured by collateral held by the pledging institution in the Council's name. At year end, the Council's bank balance totaled \$11,475, which was entirely insured.

NIOBRARA COUNCIL

NOTES TO FINANCIAL SCHEDULE

(Continued)

4. Due From Other Government

The Commission administers the Council's State Funds, including the Niobrara Council Fund, Niobrara Council Federal Fund, and the Niobrara Council Easement Defense Fund. These State Funds are under the control of the State Treasurer or other administrative bodies, as determined by law. All cash deposited with the State Treasurer is initially maintained in a pooled cash account. On a daily basis, the State Treasurer invests cash not needed for current operations with the State's Investment Council, which maintains an operating investment pool for such investments. Interest earned on those investments is allocated to funds based on their percentage of the investment pool.

As of December 31, 2023, the State held a balance of \$218 in the Niobrara Council Fund, \$32,644 in the Niobrara Council Easement Defense Fund, and \$88,328 in the Niobrara Council Federal Fund, on behalf of the Council.

5. Adjustment to Fund Balance

Adjustments to Fund Balance transactions are those recorded directly to a fund's asset account or equity account rather than through a revenue or expenditure account. During calendar year 2023, the Council requested reimbursement for Federal expenditures incurred in October 2023, totaling \$4,563, from the Niobrara Council Federal Fund administered by the Commission. These funds were reimbursed to the Council from the balance held in the Fund. The Commission has not submitted a request for reimbursement for the October 2023 Federal expenditures from the Federal awarding agency, the U.S. Department of Interior, National Park Service, as the Council has not been awarded Federal funds for the Federal fiscal year, October 1, 2023, through September 30, 2024, as of the date testing was performed.

6. Going Concern

The Council is funded primarily by State General Fund appropriations and grant funds from the U.S. Department of the Interior, National Park Service (NPS), in accordance with a Cooperative Agreement between that governmental agency and the Council.

In May 2023, the Nebraska Legislature reappropriated the June 30, 2023, balance held in the Council's funds, administered by the Commission, and appropriated \$52,500 of State General Funds and \$1,000 of Cash Funds for Fiscal Year 2023-2024 and the same amounts for Fiscal Year 2024-2025.

The most current grant award from NPS to the Council was issued on August 22, 2022, which increased the awarded Federal funds from \$300,000 to \$400,000, for the period January 1, 2020, through September 30, 2025. The full amount of the award has been spent as of September 30, 2023. However, NPS has not issued any additional grant awards to the Council as of April 2024. As a result, the Council's Federal expenditures for the month of October 2023 were paid from the fund balance held by the State in the Niobrara Council Federal Fund.

As of December 31, 2023, the Council had a balance of \$28,858 of unspent fiscal year 2024 State General Fund appropriations. Based on a discussion with the Commission regarding the December 31, 2023, balance held by the State in the Funds administered by the Commission, \$115,258 was restricted for easements and could be used only for such purposes. Therefore, as of December 31, 2023, the Council had only \$45,495 in available, unrestricted funds, as shown in the table below:

NIOBRARA COUNCIL

NOTES TO FINANCIAL SCHEDULE

(Concluded)

6. Going Concern (Concluded)

Description	Amount
Fund Balance on December 31, 2023	\$ 131,895
Unspent State General Fund Appropriations	28,858
Balance on December 31, 2023	\$ 160,753
Niobrara Council Easement Defense Fund Balance Restricted for Easements	(32,644)
Niobrara Council Federal Fund Balance Restricted for Easements	(82,614)
Unrestricted Balance on December 31, 2023	\$ 45,495

The significant decrease in awarded Federal grant funds raises doubt about the Commission’s ability to continue as a going concern. The Council is expecting NPS to amend the grant award issued on August 22, 2022, and award the Council an additional \$100,000 for the period October 1, 2023, through September 31, 2024. If NPS does not amend its award, however, the Council may seek guidance from the Commission, the Nebraska Legislature, or the Nebraska Administrative Services State Budget Division to determine further action, such as submitting a budget deficit request to the State.