

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

W. DON NELSON and JON
OBERG,

Plaintiffs,

v.

JOEY SPELLERBERG, in his
official capacity as Nebraska
State Treasurer; LEE WILL, in
his official capacity as Director of
the Nebraska Department of
Administrative Services; NEIL
SULLIVAN, in his official
capacity as State Budget
Administrator, State Budget
Division, Nebraska Department
of Administrative Services;
JESSE BRADLEY, in his official
capacity as Director of the
Nebraska Department of Water,
Energy, and Environment; and
TIM MCCOY, in his official
capacity as Director of the
Nebraska Game and Parks
Commission,

Defendants.

CASE NO.

**COMPLAINT FOR
TEMPORARY AND
PERMANENT INJUNCTION
AND DECLARATORY
JUDGMENT**

INTRODUCTION

1. For over 30 years, the Nebraska Environmental Trust has served to conserve, enhance, and restore the natural environment of Nebraska.

2. Passed in 1992, the Nebraska Environmental Trust Act established the Nebraska Environmental Trust “for the purpose of conserving, enhancing, and restoring the natural physical and biological environment in Nebraska.” Neb. Rev. Stat. § 81-15,168.

3. The Act also created the Nebraska Environmental Trust Board and defined a rigid grant-making process, which the Board must follow to provide complementary financial support from the Trust to public and private conservation projects in Nebraska.

4. In 2004, Nebraska voters approved a constitutional amendment to guarantee Nebraska Environmental Trust funding, earmarking a percentage of state lottery proceeds for conservation projects.

5. The Nebraska Environmental Trust is designed to fund projects that *complement* existing governmental and private efforts to conserve, enhance, and restore the state’s natural environments by leveraging the use of private resources on environmental needs with the greatest potential impact on future environmental quality.

6. The Trust achieves its purpose through a competitive grant process: organizations apply for grants, and then the Board considers the applications and awards funding for projects that accomplish conservation purposes.

7. In recent years, as Nebraska has faced budget deficits at the same time public officials have promised tax relief, the Legislature has raided the Trust to cover state expenses.

8. This past session, the Governor asked the Legislature to use Trust funds to deliver both a balanced budget and additional property tax relief.

9. The exclusive purpose of the Trust, however, is to conserve, enhance, and restore the natural environments of Nebraska, and this purpose is accomplished through a competitive grant process. Neb. Rev. Stat. § 81-15,168 *et seq.*; Neb. Const. art. III, § 24(3)(a)(ii).

10. Nevertheless, the Legislature complied, directing over \$13.5 million in transfers from the Nebraska Environmental Trust Fund to cover state expenses that otherwise would have been covered by the General Fund. This is in addition to \$15 million that the Legislature took from the Trust Fund in 2025.

11. This maneuver allowed the Legislature to appropriate the General Fund “savings” elsewhere, for purposes unrelated to conservation of the state’s natural environments, or to save those funds in an effort to balance the budget.

12. But the Nebraska Environmental Trust Fund may not be used to supplant other state funding.

13. Neither the Nebraska Constitution nor the Nebraska Environmental Trust Act permits the Legislature to direct lottery proceeds to the General Fund, no matter how many other funds the proceeds pass through on their way.

14. Plaintiffs, who are Nebraska taxpayers and lottery participants, bring this lawsuit to protect the Nebraska Environmental Trust and the state lottery from illegal appropriations.

15. Additionally, this lawsuit presents a matter of great public concern, as it involves issues that are unique to Nebraska’s government and relate to the fundamental distribution of power.

PARTIES

16. Plaintiff W. Don Nelson is a resident of Nebraska, a registered voter, and a Nebraska property owner. Nelson pays income, property, and sales taxes to the State of Nebraska. Nelson has participated in the state lottery. As such, Nelson has an equitable interest in the public funds at issue in this lawsuit.

17. Plaintiff Jon Oberg is a resident of Nebraska, a registered voter, a Nebraska property owner, and a former director of the Nebraska Department of Administrative Services. Oberg pays income,

property, and sales taxes to the State of Nebraska. Oberg has participated in the state lottery. As such, Oberg has an equitable interest in the public funds at issue in this lawsuit.

18. Defendant Joey Spellerberg is the Nebraska State Treasurer. Defendant Spellerberg is sued in his official capacity.

19. Defendant Lee Will is the Director of the Department of Administrative Services. Defendant Will is sued in his official capacity.

20. Defendant Neil Sullivan is the State Budget Administrator, a role he serves within the State Budget Division of the Nebraska Department of Administrative Services. Defendant Sullivan is sued in his official capacity.

21. Defendant Jesse Bradley is the Director of the Nebraska Department of Water, Energy, and Environment. Defendant Bradley is sued in his official capacity.

22. Defendant Tim McCoy is the Director of the Nebraska Game and Parks Commission. Defendant McCoy is sued in his official capacity.

BACKGROUND

A. The Nebraska Environmental Trust and the State Lottery

23. In 1992, the Legislature established the Nebraska Environmental Trust “for the purpose of conserving, enhancing, and restoring the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and natural areas of aesthetic or scenic values.” Neb. Rev. Stat. § 81-15,168.

24. Also in 1992, voters approved a state lottery.

25. The state lottery and the Nebraska Environmental Trust have been intertwined since inception. The Trust has always been funded by lottery proceeds. Since the lottery’s inception, nearly \$500 million in lottery proceeds have been transferred to the Trust Fund.

26. In 2004, voters amended the Nebraska Constitution to require that 44.5% of state lottery proceeds fund the Trust, thereby enshrining the statutory funding mechanism into the Constitution.

27. Another 44.5% of lottery proceeds is earmarked for education, and the remainder is transferred to the Nebraska State Fair Board and the Compulsive Gamblers Assistance Fund.

28. In other words, since 2004, the Legislature has lacked any discretion to distribute lottery proceeds as it sees fit. Distribution is governed by the Nebraska Constitution.

29. Like any trust, the Nebraska Environmental Trust is protected by a comprehensive range of duties, including the duty that trust funds are protected and administered in good faith, in accordance with the terms and purposes of the Nebraska Environmental Trust Act.

B. The Grant Process

30. As originally enacted, the Nebraska Environmental Trust Act established a competitive grant process to determine who receives awards from the Nebraska Environmental Trust Fund.

31. This competitive grant process continued through 2004, when voters approved the constitutional amendment guaranteeing funding from the lottery “to be used as provided in the Nebraska Environmental Trust Act.” Neb. Const. art. III, § 24(3)(a)(ii).

32. Still today, the Nebraska Environmental Trust Board, as required by the Act, distributes Trust funds through a competitive grant process. Each year, the Board awards about \$20 million to local and regional organizations who seek to conserve and enhance Nebraska’s natural environment.

33. Grants may not provide direct assistance to regulatory programs or to implement actions mandated by regulations (except

remediation). Nor may grants fund projects which have beneficiaries who can afford the costs of the benefits.

34. The Act further requires that the Trust “*complement* existing governmental and private efforts by encouraging and leveraging the use of private resources on environmental needs with the greatest potential impact on future environmental quality in Nebraska.” Neb. Rev. Stat. § 81-15,168 (emphasis added).

35. In short, Trust funds are distributed through a competitive grant process, and although Trust funds may complement other governmental efforts, the funds may not supplant those efforts.

C. Misappropriation of Trust Funds

36. In recent years, the Legislature has upended the grant process and misused the Nebraska Environmental Trust Fund as a piggy bank to cover other state expenses.

37. Specifically, the Legislature has begun to replace funding of various state expenses that would ordinarily be paid for out of the General Fund with funding from the Nebraska Environmental Trust Fund.

38. This replacement of funding allows the Legislature to appropriate the General Fund “savings” elsewhere, or to save those funds in an effort to balance the budget.

39. In other words, the Legislature is using Trust funds to supplant, rather than complement, other state funding, and it is doing so outside of the grant process.

40. For example, in 2023, the Legislature transferred \$14 million from the Nebraska Environmental Trust Fund to the Water Resources Cash Fund.

41. Historically, the Water Resources Cash Fund had been funded by the General Fund. But after the \$14 million infusion from

the Nebraska Environmental Trust Fund, the Legislature stopped funding the Water Resources Cash Fund with the General Fund.

42. In 2024, the Legislature mandated that any investment earnings on money in the Nebraska Environmental Trust Fund “shall be credited to the General Fund.” These ongoing transfers to the General Fund are not tied to any conservation purpose.

43. And in 2025, the Legislature transferred another \$15 million from the Nebraska Environmental Trust Fund to various funds within the Department of Water, Energy, and Environment, including the Water Resources Cash Fund, the Water Sustainability Fund, and the Nebraska Soil and Water Conservation Fund.

44. Specifically, in § 71 of L.B. 264 (2025), the Legislature directed the Treasurer to transfer \$3 million to the Water Resources Cash Fund by June 30, 2026, on such dates and in such amounts as directed by the Budget Administrator.

45. In § 72 of L.B. 264 (2025), the Legislature further directed the Treasurer to transfer \$8 million to the Water Sustainability Fund by June 30, 2026, on such dates and in such amounts as direct by Budget Administrator.

46. In § 73 of L.B. 264 (2025), the Legislature further directed the Treasurer to transfer \$2 million to the Nebraska Soil and Water Conservation Fund by June 30, 2026, on such dates and in such amounts as direct by Budget Administrator.

47. And in § 87 of L.B. 264 (2025), the Legislature directed the Treasurer to transfer another \$2 million to the Nebraska Soil and Water Conservation Fund on or after July 1, 2026, but before June 30, 2027, on such dates and in such amounts as direct by Budget Administrator.

48. The transfers to these other state-managed funds supplanted—rather than complemented—funding that had previously come from the General Fund.

49. These legislatively directed transfers are unlawful. They are inconsistent with the Nebraska Environmental Trust Act, the Nebraska Constitution, and the will of the voters, who in 2004 removed the Legislature’s discretion to allocate lottery proceeds.

D. Draining the Trust Fund to Balance the Budget

50. In 2026, the Legislature’s misappropriation of the Nebraska Environmental Trust Fund reached a breaking point.

51. The Governor proposed a \$40 million transfer from the Nebraska Environmental Trust Fund to address the budget deficit. Defendant Sullivan stated that taking from the Environmental Trust Fund “contributes toward delivering both a balanced budget and additional property tax relief.” Paul Hammel, *Pillen Increases Proposed Transfer from Nebraska Environmental Trust*, Neb. Exam’r (Jan. 24, 2026), <https://nebraskaexaminer.com/2026/01/24/pillen-increases-proposed-transfer-from-nebraska-environmental-trust/>.

52. Of course, Trust funds are only for conserving, enhancing, and restoring Nebraska’s natural environment—not for balancing the budget and providing property tax relief.

53. Ultimately, in L.B. 1072 (2026), the Legislature agreed with the Governor in part, transferring over \$13 million from the Nebraska Environmental Trust Fund to other state-managed funds.

54. Specifically, in § 117 of L.B. 1072 (2026), the Legislature directed the Treasurer to transfer over \$7.5 million to the Water Recreation Enhancement Fund before June 30, 2026, on such dates and in such amounts as directed by the Budget Administrator.

55. And in § 118 of L.B. 1072 (2026), the Legislature further directed the Treasurer to transfer \$6 million to the Water Resources Cash Fund on or after July 1, 2026, but before June 30, 2027, on such dates and in such amounts as direct by Budget Administrator.

56. Ordinarily, these two funds are supported by the General Fund. The transfers from the Nebraska Environmental Trust Fund allowed the Legislature to appropriate the General Fund “savings” elsewhere, for purposes unrelated to conservation of the state’s natural environments, or to save those funds in an effort to balance the budget.

57. The two transfers constitute a replacement of funding from the General Fund. In contravention of the Nebraska Environmental Trust Act, the transfers supplant, rather than complement, existing governmental efforts at conservation.

58. This was the first time the Legislature directed a transfer of funds from the Nebraska Environmental Trust Fund to the Water Recreation Enhancement Fund. The Legislature unlawfully attempted to authorize such a transfer through a budget bill.

59. The Water Recreation Enhancement Fund is used for “water and recreational projects” or “for campground expansion projects, road repair projects, and general infrastructure and maintenance projects.” Neb. Rev. Stat. § 37-1804(1). The Legislature has identified specific projects worth funding, including marina construction at Lake McConaughy and the Lewis and Clark State Recreational Area and the construction of an event center and lodge at Niobrara State Park. *Id.* § 37-1802(9).

60. None of these recreational purposes or man-made projects are related to conservation, enhancement, and restoration of Nebraska’s natural environment.

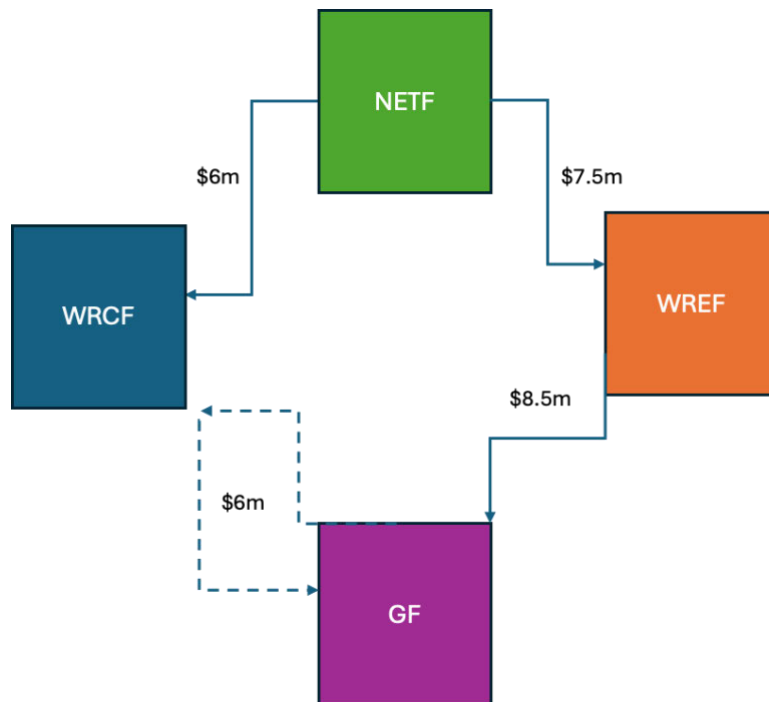
61. The Legislature nevertheless directed the transfer from the Nebraska Environmental Trust Fund to the Water Recreation Enhancement Fund. The Legislature did so because money in the Water Recreation Enhancement Fund can be transferred to the General Fund.

62. Indeed, in § 96 of L.B. 1072 (2026), the Legislature directed the Treasurer to transfer over \$8.5 million from the Water

Recreation Enhancement Fund to the General Fund on or after July 1, 2026, but before June 30, 2027, on such dates and in such amounts as directed by the Budget Administrator.

63. Ultimately, the Legislature replaced over \$13 million from the General Fund with funds from the Nebraska Environmental Trust, and it did so outside of the grant process.

64. As depicted in the following chart, the Legislature accomplished this by transferring \$7.5 million from the Nebraska Environmental Trust Fund (NETF) to the Water Recreation Enhancement Fund (WREF) and then immediately transferring \$8.5 million from the WREF to the General Fund (GF). The Legislature also transferred \$6 million from the NETF to the Water Resources Cash Fund (WRCF). In past years, this \$6 million would have come from the GF, but the Legislature was able to “save” that money by funding the WRCF with the NETF instead.



65. These unlawful transfers provided the Legislature with over \$13 million in “savings,” which it was able to use for purposes entirely unrelated to Nebraska’s natural environment.

E. Agency Misuse of Transferred Funds

66. The agencies who have received funds from the Nebraska Environmental Trust Fund have used those funds for purposes other than those designated by the Legislature.

67. The Nebraska Environmental Trust Fund may not be used to pay for, among other things, the administrative costs, expenses, or salaries of other agencies.

68. The Department of Water, Energy, and Environment (DWEE) administers the Water Resources Cash Fund, the Nebraska Soil and Water Conservation Fund, and the Water Sustainability Fund.

69. The Nebraska Game & Parks Commission administers the Water Recreation Enhancement Fund.

70. The express purpose of the Water Recreation Enhancement Fund is necessarily incompatible with the express purpose of the Nebraska Environmental Trust Act. *Compare* Neb. Rev. Stat. § 37-1804, *with* Neb. Rev. Stat. § 81-15,168.

71. Upon information and belief, DWEE has used funds transferred from the Nebraska Environmental Trust Fund to other state-managed funds within its control to pay for administrative costs, expenses, salaries, and other impermissible purposes—not for conserving, enhancing, or restoring Nebraska’s natural environment.

F. Demand

72. Plaintiffs sent each Defendant a demand to stop acting unlawfully by overnight mail, delivered on Friday, May 15, 2026.

Plaintiffs demanded a response by Wednesday, May 20, 2026, at noon. To date, Defendants have not responded.

**CAUSE OF ACTION
UNIFORM DECLARATORY JUDGMENTS ACT**

73. Plaintiffs re-allege and incorporate by reference the preceding paragraphs.

74. Under the Uniform Declaratory Judgments Act (UDJA), the Court has the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

75. The purpose of declaratory relief authorized by the UDJA is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.

76. Plaintiffs seek a declaration that L.B. 264 (2025) and L.B. 1072 (2026) constitute a series of unlawful appropriations and direct a series of illegal expenditures of public funds.

77. Specifically, Plaintiffs seek a declaration that article III, § 24 of the Nebraska Constitution and the Nebraska Environmental Trust Act prohibit the Legislature from directing the replacement of funds from the General Fund with funds from the Nebraska Environmental Trust Fund. The Legislature may not use the Nebraska Environmental Trust Fund to supplant other state funding.

REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court grant:

1. A declaration that §§ 71, 72, 73, and 87 of L.B. 264 (2025) constitute unlawful appropriations of public funds by directing unlawful expenditures of funds from the Nebraska Environmental Trust Fund.

2. A declaration that §§ 117 and 118 of L.B. 1072 (2026) constitute unlawful appropriations of public funds by directing

unlawful expenditures of funds from the Nebraska Environmental Trust Fund.

3. A declaration that article III, § 24 of the Nebraska Constitution and the Nebraska Environmental Trust Act prohibit the Legislature from directing the replacement of funds from the General Fund with funds from the Nebraska Environmental Trust Fund.

4. A declaration that the Legislature may not use the Nebraska Environmental Trust Fund to supplant other state funding.

5. A temporary and permanent injunction prohibiting Defendants Spellerberg, Will, and Sullivan, along with their agents, servants, and employees, and those persons in active concert or participation with them, from carrying out the transfers identified in §§ 71, 72, 73, and 87 of L.B. 264 (2025).

6. A temporary and permanent injunction prohibiting Defendants Spellerberg, Will, and Sullivan, along with their agents, servants, and employees, and those persons in active concert or participation with them, from carrying out the transfers identified in §§ 117 and 118 of L.B. 1072 (2026).

7. A temporary and permanent injunction prohibiting Defendant Bradley, along with his agents, servants, and employees, and those persons in active concert or participation with him, from expending any funds transferred pursuant to §§ 71, 72, 73, and 87 of L.B. 264 (2025).

8. A temporary and permanent injunction prohibiting Defendants Bradley and McCoy, along with their agents, servants, and employees, and those persons in active concert or participation with them, from expending any funds transferred pursuant to §§ 117 and 118 of L.B. 1072 (2026).

9. Attorney fees and costs to Plaintiffs.

10. Such further relief as the Court deems just and equitable.

DATED this 21st day of May, 2026.

W. DON NELSON and JON OBERG,
Plaintiffs

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