

# LOWER LOUP NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS MEETING

February 24, 2011

Ord, Nebraska

The February meeting of the Board of Directors of the Lower Loup Natural Resources District was held at the Headquarters Office, 2620 Airport Drive, Ord, Nebraska, on February 24, 2011. Chairman Gary Kruse called the meeting to order at 5:03 p.m.

## CALL TO ORDER

### Directors in attendance

Rollie D. Amsberry, Treasurer  
Tim Bartak  
Craig E. Frenzen  
Gary A. Kruse, Chairman  
Alan D. Petersen  
Darwin R. Sieh  
Henry J. Thoene

Darwin B. Anderson, Secretary  
James J. Eschliman  
Virgil W. Gellermann  
Michael P. Gutzmer  
Dean J. Rasmussen  
Bradley R. Staab  
Kim Walden

### Directors absent

James C. Adams  
N. Richard Hadenfeldt  
James C. Nelson  
Gerald P. Smith

Joseph L. Citta, Jr., Vice Chairman  
Thomas Knutson  
Lyle D. Rasmussen

### Staff in attendance

Leon "Butch" Koehlmoos, General Manager  
Robert T. Mohler, District Engineer  
Larry D. Schultz, I&E Coordinator  
Richard Woollen, North Cent. Dist. Forester

Dell Harris, Water Resources Specialist  
Tylr Naprstek, Water Modeling Coord.  
Rita Goldfish, Administrative Assistant

### Guests in attendance

Bryce Bauer, NRCS, Ord  
Craig Critel, NLRPP&ID, Ord

Jim Pinkman, NLRPP&ID, Ord

## NOTICE OF OPEN MEETING LAW POSTING

Chairman Kruse referred those in attendance to the open meeting law information posted in the Board room.

## APPROVAL OF VERIFICATION OF MEETING NOTICE, ADOPTION OF AGENDA AND EXCUSED ABSENCES

Chairman Kruse asked for verification of the meeting notice. General Manager Leon “Butch” Koehlmoos verified that the meeting notices were properly published in all newspapers. The meeting notice was also posted at the NRD Headquarters office in Ord, the NRD web site, and the eight field office locations.

**Anderson motioned, seconded by Gutzmer, to approve the verification of the meeting notice, adopt the agenda, and excuse all absent directors. Motion carried by roll call vote, all present voting yes.**

## MINUTES

Chairman Kruse asked for corrections and/or additions to the January 27, 2011, Board meeting minutes. None being heard, Kruse ruled that the January 27, 2011, Board meeting minutes would stand approved as submitted.

## TREASURER’S REPORT

Chairman Kruse directed the Board’s attention to the Treasurer’s Report as published in the regular and supplemental agendas.

Koehlmoos told the Board that a payment was made to USGS for the ELM Study. He said a portion of the total amount would be reimbursed by the Nebraska Department of Natural Resources. A payment had been made to Olsson Associates for the Area 28 Study that had been billed in October, 2010. Koehlmoos said that there was one typographical error in the Treasurer’s Report, a bill listed from Lower Elkhorn NRD should have been listed as Lower Niobrara NRD.

Anderson asked why only one bill was listed for a “cease and desist” notice and Koehlmoos referred the Board to the other publication bills listed in the regular agenda. Koehlmoos said that a bill from Sherman County Times would be reviewed. Anderson asked who would pay for the legal notices and if these bills could be passed on. Koehlmoos said that would be a Board decision and that he had increased the amount budgeted for legal notice publication.

**D. Rasmussen motioned, seconded by Eschliman, to approve the February, 2011, Treasurer’s Report and pay all the bills. Motion carried by roll call vote, all present voting yes.**

## PUBLIC COMMENTS

There were no public comments

## FORESTER'S REPORT

North Central District Forester Rich Woollen of the Nebraska Forest Service told the Board that the Corners for Wildlife Program had been funded for 2011 by the Nebraska Environmental Trust. He said that the program provides a financial incentive to plant trees and shrubs on pivot corners. He said that there were two options for contracts -- shrub thickets, preferred by wildlife biologists; or row planting.

Woollen said that the annual Tree Care Workshops will be held at sites around the state with the Kearney location closest to the Lower Loup NRD. He provided brochures of the workshop to the Board.

## NRCS REPORT

District Conservationist Bryce Bauer told the Board that the Soil Conservationist vacancy in Albion had been filled through the hiring of Jesse Haen, who comes to the position from the NRCS office in Neligh. He said Haen, a Wisconsin native, will start on March 14<sup>th</sup>.

Bauer reported that EQIP contracts were being funded with about \$800,000 earmarked. He said that HEL compliance is underway with about 20 contracts being reviewed per office. Any field over 20 acres would be reviewed.

Bauer said that CSP interviews were underway and should be completed by March 11<sup>th</sup>. The CSP budget has been scaled down to 12 million acres nationwide. Frenzen asked how many acres would be under CSP in Nebraska and Bauer said approximately 1 million.

Bauer said he and Sherry Asche met with Boone County FSA regarding sodbuster violations. The transfer of irrigated acres into the county accounted for many of the violations. He provided the Board with a power point presentation of some examples. Writing plans and compliance checks for this land would be difficult. He said that FSA could levy mandatory fines of up to \$600 per acre. He said those found out of compliance for two years are ejected from the program.

Koehlmoos said that the NRD has been, and continues to be, concerned about the enforcement of conservation compliance by NRCS. Many of the transfers of irrigated acres have been from Wheeler, Garfield or Rock Counties into Greeley, Boone, and Nance Counties. He said that most of the land with good irrigation potential is already under irrigation, leading to efforts to irrigate poorer land. The transfers are being driven by the high price of corn. Koehlmoos said that a potential solution to the issue would be a check-off in the transfer process requiring that the applicant consult with NRCS on the proposal. Koehlmoos said that, should the NRD begin saying no to transfers of irrigated acres onto HEL land, it could result in development in the Sandhills. Bauer said that, in terms of water quality, it would be better to farm sandy soils than HEL.

Sieh asked if the NRCS had time to do the consultations and Bauer said that his offices would make time. Gellermann said that many of the landowners have already done the dirt work when they come to the NRD seeking an irrigated acres transfer. Gutzmer asked if a consultation with FSA should also be required and Koehlmoos said he would need to check with them before he could recommend

that option. Bauer said he would recommend that an FSA consultation be included, and that a “1026” form be signed, since it is required before NRCS can provide planning assistance or enter the landowner’s property. Koehlmoos said that he had not contacted any FSA personnel regarding the matter and wasn’t comfortable recommending this step until he had. Harris asked if a landowner was required to file sodbusting paperwork when they re-opened CRP land and Bauer said they were required to have a conservation plan. Bauer asked if a transfer of irrigated acres would be allowed if the landowner opted out of an NRCS conservation plan and Koehlmoos said that it would not be a factor unless the Water Resources Committee advised the Board to implement that rule.

**Gutzmer motioned, seconded by Sieh, that the District require landowners to consult with NRCS and FSA before granting a transfer of irrigated acres. Motion carried by roll call vote, all present voting yes.**

Kruse asked that if a landowner was removed from the farm program, was just the parcel in question removed or all their land? Bauer answered that all land was removed. Koehlmoos said that, with a modification to the plan, the landowner could be reinstated and Bauer said that the landowner would still be out of the program for that year. He said that every parcel of land would be checked before reinstatement.

## ENGINEERING REPORT

### Request from North Loup River Public Power & Irrigation District

District Engineer Robert Mohler referred the Board to information included in the agenda regarding the request from the North Loup River Public Power & Irrigation District concerning a diversion dam near Taylor that was destroyed during flooding in 2010. He introduced Craig Critel and Jim Pinkman from the District. Critel provided the Board with a power point presentation on the dam reconstruction.

Kruse asked what the construction timetable was and Critel said the construction should be substantially completed by April 15<sup>th</sup> with total completion by May 15<sup>th</sup>. Sieh asked to what level of flood the structure was being built and Critel said it was being built to the original dam’s capacity. Pinkman said the new dam would resemble the dam at Burwell, a concrete structure with radial gates. Kruse asked if the new dam would be operational in May and Pinkman said it would be operational in April with dirt work completed in May. Walden asked if building to the original specifications would aid in receiving FEMA funding and Critel said that the requirement was to maintain the same “footprint” in constructing the replacement and that he felt the project was “still in the hunt” for FEMA financial assistance. Pinkman said that if FEMA assistance was made, it would cover only 75% of the project costs.

Walden asked if bonds were issued and Critel said they were. Pinkman said the bonds were issued in the fall of 2010 and got a 4.7% interest rate. Pinkman said his District had already repaired the Taylor-Ord Canal, spending about \$200,000. Critel said the request from the North Loup Public Power & Irrigation District was for financial participation from the Lower Loup NRD at 10% of the total project cost, or \$400,000. Koehlmoos said that the NRD Board’s established procedure was to hear the request and then consider action at the following meeting. Thoene asked if the cost of the

project was to be spread among all irrigation district customers and Critel said it would be. Critel said that the cost would be spread on a “per acre basis” among all the customers on the 22,000 acres served by the irrigation district. Pinkman said the project cost per acre was estimated to be about \$14.5 per acre as well as regular maintenance costs. Gellermann asked if the costs would be at that level regardless of FEMA assistance and Pinkman said that they would. Pinkman said that if FEMA assistance were granted, he did not expect any large sums for three or four years. Koehlmoos asked if the irrigation district had any other sources of funding and Pinkman said no. Mohler said that it might be wise to wait until the budget for the next fiscal year was penciled out. Mohler told the Board that the project plans would be available for their review.

#### FEMA Hazard Mitigation Plan

Mohler told the Board that work continues on the mitigation plan. He referred the Board to an e-mail from Rick Zubrod detailing requests for plan modifications from FEMA. He said that requests for funds could be made by the participants and they would be honored once the plan had FEMA approval.

### INFORMATION AND EDUCATION REPORT

#### North Central Region Envirothon

Information & Education Coordinator Larry Schultz told the Board that the North Central Region Envirothon would be held March 8<sup>th</sup> at Central Community College-Platte Campus in Columbus. The Envirothon was part of the District V and VI Ag Ed Contest. The top scores can qualify for the State Envirothon at Scottsbluff in May. The Canon Envirothon will be held in New Brunswick, Canada, in 2011.

Schultz said that over 27,000 attended Pheasant Fest at the Qwest Center in Omaha. Schultz worked in the NRD display which included a display of live owls from Papio-Missouri River NRD.

Schultz reported that a staff and safety meeting had been set for the Lower Loup NRD on March 2<sup>nd</sup>. Presentations on the retirement program and NRD benefits would be made. He said that free colorectal cancer screening kits would be made available to staff over 50 as part of the NRD Wellness Program.

Schultz said that the Information & Education group would meet March 8<sup>th</sup> and 9<sup>th</sup> in Grand Island.

### ASSISTANT MANAGER’S REPORT

#### Variance Committee

Assistant Manager Russ Callan was not present and Koehlmoos said the Variance Committee had met earlier in the day and referred the Board to the minutes included in the supplemental agenda. The Committee made three recommendations on three requests, voting to recommend approval of

requests of Franklin Teichmeier and Joe Hickman and recommend tabling the request from Michael Roth and Donald Roth. Three other requests were heard for the first time.

**Gellermann motioned, seconded by Thoene, to approve the variance request from Franklin Teichmeier to transfer of 108.7 acres from the W<sup>1</sup>/<sub>2</sub> of the NE<sup>1</sup>/<sub>4</sub> and the NW<sup>1</sup>/<sub>4</sub> of the SE<sup>1</sup>/<sub>4</sub> of Section 21, Township 13 North, Range 13 West to the SE<sup>1</sup>/<sub>4</sub> of Section 12, Township 13 North, Range 14 West, and to change the status of the existing well to a livestock use or inactive status; and to approve the variance request from Joe Hickman to transfer of 14 irrigated acres from Section 6, Township 16 North, Range 13 West to Section 32, Township 17 North, Range 13 West; and that surface water rights A-15487, A-9647, A-9854, A-9648, and A-9855 be adjusted to the remaining 55.57 irrigated acres. Motion carried by roll call vote, all present voting yes.**

#### Water Resources Committee

Koehlmoos told the Board that eight Directors and five staff members met on February 10<sup>th</sup> to consider options for possible penalties for the irrigation of uncertified acres. Schultz read the options aloud. He said that if the set-aside penalty be greater than the number of acres available to the landowner, the Board could agree to multiple years. Koehlmoos said that the concern with option 2 is that there is no visibility as to the implementation. Harris said a schedule of compliance could be utilized in the matters and Koehlmoos said that this is the process used now with irrigation runoff complaints.

Walden asked if an option were approved by the Board, would it be the precedent for future violations and Koehlmoos said he felt it would until the Board made further changes. Walden asked if there would be any issues with determining the penalty after the fact and Koehlmoos said the NRD's attorney, Don Blankenau, said it was appropriate as it followed a cease and desist order. Petersen asked if the result would be a pie wedge removed from a center pivot irrigated field and Koehlmoos said the landowner would have to present a schedule of compliance that met the penalty.

Koehlmoos said that he would be the NRD's compliance officer, who would review the schedule of compliance and determine if the penalty is met. He said that if it was not, he would return it to the landowner for adjustment, or if no adjustment was made, return the matter to the Board for further action. If the NRD Board and the landowner cannot resolve the matter, it would go to District Court.

Bartak said that he would be in favor of the loss of even more than two times the acres, to give the penalty even more impact. Amsberry said the Committee discussed making the penalty stricter, but felt that doubling the penalty for a second offense, requiring set aside of four times the acres, achieved that. Frenzen said he favored Option 2 because it was concise and did not restrict economic development. Koehlmoos said that Option 2 was a less visible penalty, whereas the set-aside in Option 1 was visible to anyone who saw the field where the violation occurred. Eschliman asked if the landowner could then proceed with normal operations when the penalty was met and Koehlmoos said they could.

**Thoene motioned, seconded by Sieh, to approve the Water Resources Committee's Option 1 as the penalty for the irrigation of non-certified acres in the Lower Loup Natural Resources District. Motion carried by roll call vote, all present voting yes.**

Koehlmoos said that another violation would be heard in a public hearing at the March meeting.

**D. Rasmussen motioned, seconded by Eschliman, to set the public hearing on a violation of the Lower Loup Natural Resources District's Groundwater Management & Protection Act for 5:30 p.m. on March 24, 2011. Motion carried by roll call vote, all present voting yes.**

**Eschliman motioned, seconded by Frenzen, to adopt the definition of "violator" as "the Landowner and Operator of the land on which the violation occurred." Motion carried by roll call vote, all present voting yes.**

#### Groundwater Management Area Activities

##### Irrigated Acres Certification Progress

Harris told the Board that there are numerous individuals who are providing proof of irrigation to certify acres, followed shortly by applications to transfer those irrigated acres. He said the transfer process is taking a great deal of staff time.

##### Area 28 Activities

Koehlmoos told the Board that Mike Lorenz is working on reports from the area. Harris said that the Water Resources Committee would review the issues at its next meeting. Gutzmer asked if there was any pesticide information from the reports and Koehlmoos said it was nitrogen management only.

#### ELM Update

Water Modeling Coordinator Tylr Naprstek told the Board that a meeting of the ELM technical group had been held the week prior. He said the locations for test holes to be drilled this summer had been selected. He said that the test holes in the Lower Loup NRD would be drilled in Greeley, Nance, Boone and Platte Counties. He said that the holes would be drilled to the bedrock to determine aquifer thickness and other data. Kruse asked how the locations for the test holes were made and Naprstek said they were selected based on the needs of the model.

Naprstek provided the Board with a power point presentation on the flow meter program funded by the Environmental Trust. Walden asked if the data gathered through the ELM Project was public information and Koehlmoos said it was.

## MANAGER'S REPORT

### Proposed Changes in Investment Bank

Koehlmoos told the Board that NPAIT (Nebraska Public Agency Investment Trust) had been the District's repository for short-term and long-term investments. He said that due to the drop in investment interest rates, there has been a poor return on investments. He said that a better return on investment could be received through a certificate of deposit. He said D. Rasmussen had investigated rates at a local bank and found a better rate.

**Frenzen motioned, seconded by Gutzmer, to approve providing the NRD Manager with the discretion to select a location for District investments at a financial institution providing the best return on investment. Motion carried by roll call vote, all present voting yes.**

### Proposed Changes to LLNRD Aagaard Farm Agreement

Koehlmoos told the Board that following a discussion with Callan on habitat for birds and the lack of stubble for cover, it became apparent that the NRD should use the Aagaard Farm to create some habitat. He said that the current tenant has grown corn and beans for a good profit and the lease rate should increase. He said otherwise, the farm could be farmed by NRD staff and wildlife habitat could be improved. Frenzen asked if the farm was no-tilled and Koehlmoos said no. D. Rasmussen asked if the farm was pastured and Koehlmoos said the grass served only as wildlife habitat.

**Frenzen motioned, seconded by Amsberry, to approve the modification the Aagaard Farm Lease by the General Manager to allow for higher lease rates for corn and soybean farming, or to create additional wildlife habitat through the planting of a stubble crop. Motion carried by roll call vote, all present voting yes.**

Kruse suggested a visit to the farm by the NRD Board at a future meeting.

### Copy of Resolutions approved at the Legislative Conference

Koehlmoos told the Board that a copy of the resolutions would be made available to any Director who requested it.

### New Hires

There were no new hires. Koehlmoos said that he and Bauer would interview a candidate for the Broken Bow TSP position.

## NARD REPORT

D. Rasmussen said the NARD Board would meet later in the month.

## NRC REPORT

NRC Representatives Dick Hadenfeldt and Tom Knutson were not present.

## RC&D REPORTS

### Loup Basin RC&D

D. Rasmussen told the Board that the RC&D met on February 15<sup>th</sup>. The group heard a presentation on loans for small businesses. He said the annual Junk Jaunt had ended and use of the Loup Basin Technology Center continues to increase.

### PrairieLand RC&D

Gellermann reported that the RC&D's meeting had been postponed to the next day. The House of Representatives had voted to completely cut funding for the RC&D program. Koehlmoos said that the funding issue for RC&Ds has been an annual occurrence.

## ANNOUNCEMENTS

Kruse said that Gutzmer had brought mounted pheasants for display in the NRD lobby.

Walden asked if the legislative bill that would change the funding for the Nebraska Environmental Trust had advanced and Koehlmoos said it had not.

Walden asked how the Upper Republican NRD would fund the purchase of irrigated land and Koehlmoos said it was through the occupation tax. Walden asked if the URNRD would then have a water bank of those acres and Koehlmoos said they could, but he thought the main plan of the URNRD was to use the wells to augment the streamflows in water-short years.

## ADJOURNMENT

With no further business before the Board, Chairman Kruse declared the meeting adjourned at 7:30 p.m.

Roster for attendance of this meeting and tally of votes cast on motions at this meeting are being filed with the official minutes of this meeting at the Lower Loup Natural Resources District's Headquarters Office, 2620 Airport Drive, Ord, Nebraska. Publication notification of this meeting was made via newspaper in each county within the District. The next Board of Directors meeting will be held Thursday, March 24, 2011, at 5:00 p.m., at the Headquarters Office in Ord, Nebraska.

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Darwin B. Anderson  
Secretary