

LOWER LOUP NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS MEETING

March 24, 2011

Ord, Nebraska

The March 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 March 24, 2011. Chairman Gary Kruse called the meeting to order at 5:05 p.m.

CALL TO ORDER

Directors in attendance

James C. Adams
Darwin B. Anderson, Secretary
Joseph L. Citta, Jr., Vice Chairman
Craig E. Frenzen
Michael P. Gutzmer
Thomas Knutson
James C. Nelson
Dean J. Rasmussen
Gerald P. Smith
Henry J. Thoene

Rollie D. Amsberry, Treasurer
Timothy E. Bartak
James J. Eschliman
Virgil W. Gellermann
N. Richard Hadenfeldt
Gary A. Kruse, Chairman
Alan D. Petersen
Lyle D. Rasmussen
Bradley R. Staab
Kim Walden

Director absent

Darwin R. Sieh

Staff in attendance

Leon "Butch" Koehlmoos, General Manager
Dell Harris, Water Resources Specialist
Tylr Naprstek, Water Modeling Coord.
Rita Goldfish, Administrative Assistant
Daniel J. Ray, Tech Ass't., Spalding

Russell Callan, Assistant Manager
Robert T. Mohler, District Engineer
Larry D. Schultz, I&E Coordinator
Richard Woollen, North Cent. Dist. Forester

Guests in attendance

Mark Sintek, RC, NRCS, Ord
Max Campbell, Buffalo County
Chad Buhl, Lindsay

Michael Brittenham, Columbus
Craig Critel, NLRPP&I District, Ord
Del Buhl, Lindsay

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.

Knutson motioned, seconded by Eschliman, 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 February 24, 2011, Board meeting minutes. None being heard, Kruse ruled that the February 24, 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 of \$222,300 was made as the District's contribution to the Whitetail Levee project. He said that with the Board's approval, he had invested \$250,000 in a 12-month certificate of deposit at the North Loup Valley Bank. He said that the interest rate was 1.81%, better than any other bank had quoted. He said that a number of buffer strip payments will be made.

D. Rasmussen motioned, seconded by Staab, to approve the March, 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. Koehlmoos said that Mac Campbell wished to speak to the Board regarding an irrigated acres transfer and that Campbell would arrive later.

FORESTER'S REPORT

North Central District Forester Rich Woollen of the Nebraska Forest Service told the Board that the Lower Loup NRD would host an NRD forestry workshop in June. He said that the work at the Aagaard Farm would be featured on a field tour as well as other aspects of the District's conservation tree program.

Woollen said that the Cooperative Conservation Partnership Initiative, part of EQIP, would be utilized for funding for windbreak renovation. The program covers four states. Woollen said that Nebraska's funding wasn't completely utilized the previous year so work was being done to assure that it was used in 2011, and has had about four inquiries for funding through the program. He said that \$100,000 had been allocated to Nebraska for windbreak renovation and between \$100,000 and \$200,000 was available for forest buffers.

Woollen said that tree lifting was underway at the Bessey Nursery and he expected tree planting to begin in the next week or two in the NRD. At this time, the NRD had sold around 110,000 trees. He presented the Board with a newspaper clipping on woody biomass being utilized by NPPD at the Sheldon power station. Citta said that the project was a partnership between NPPD and Nebraska Forest Service to utilize red cedar trees.

NRCS REPORT

Resource Conservationist Mark Sintek of Ord told the Board that District Conservationist Bryce Bauer was unable to attend the meeting and referred the Board to Bauer's report in the agenda. Gutzmer asked about what was stressed in recent NRCS training regarding endangered species and Sintek said that with federally funded contracts like EQIP, landowners have to comply with the Migratory Bird Act, so brush management and cedar tree removal must be avoided from April 1st to July 15th. He said those activities must also be avoided when in areas utilized by whooping cranes and the American burying beetle. Gellermann asked if the rules applied to prescribed burns and Sintek said that it did apply, specifically when cedar trees were taller than three feet. Citta said that NPPD had to comply with the same rules and had made arrangements for compliance with the proper agencies.

ENGINEERING REPORT

Request from North Loup River Public Power & Irrigation District

District Engineer Robert Mohler reminded the Board of the presentation from Craig Critel and Jim Pinkman of the North Loup River Public Power & Irrigation District at the February meeting. Mohler said that staff recommended that approval be given for financial participation of 10% of the local share of the dam replacement project, not to exceed \$400,000. He said that the participation would apply only to the dam and not any other structure. Should another agency participate financially in the dam replacement, the NRD's participation would be decreased accordingly.

Koehlmoos said staff discussed the options available to the NRD and from that discussion came the recommendations regarding the funds going to the dam replacement only. He said that depending

on how other projects in which the NRD is participating are progressing, funds could be made available to the Taylor Dam.

Frenzen motioned, seconded by Adams, to approve the Lower Loup NRD's financial participation in the North Loup River PP&I District's dam project to cover 10% of the local share of the dam replacement near Taylor, not to exceed \$400,000. Motion carried by roll call vote, all present voting yes.

PUBLIC HEARING ON COMPLAINT OF ALLEGED VIOLATION OF DISTRICT RULES & REGULATIONS – LLOYD C. & GERALDINE M. KEEHN TRUST

At 5:29 p.m. Chairman Kruse opened the public hearing on the alleged violation of Lower Loup NRD Groundwater Management Rules and Regulations by the Lloyd C. & Geraldine M. Keehn Trust. Kruse read into the record the newspaper proofs of publication of the hearing legal notice. Kruse said that, at the request of the alleged violator, the hearing would be continued to April 28, 2011, at 5:30 p.m. He then closed the hearing.

Koehlmoos reported that attorneys, representing both the alleged violator and the NRD, had reviewed District rules and the alleged violators had requested that an alternative option, available through District rules, be utilized. He said that the option was originally set up for runoff complaints, but could be used in this case. He said that, per the recommendation of the NRD's legal counsel, staff and the alleged violator would follow the procedure and the matter would be brought to the Board in April.

ENGINEERING REPORT (CONT.)

Whitetail Levee (S.I.D. #7) Recertification - Additional Request

Mohler told the Board that, in July 2009, they had approved financial participation for 30% of the actual costs involved in the Whitetail Levee Recertification, not to exceed \$222,300. Mohler said that S.I.D. #7 has requested additional funding as project costs exceed estimates by approximately \$300,000. He referred the Board to a letter from the group's attorney requesting additional financial participation for 30% of the excess cost. Mohler introduced Michael Brittenham, a representative for the S.I.D.

Brittenham told the Board that the project was nearly complete and he thanked the District for its support. He said that the S.I.D.'s original request was based on preliminary estimates in order to make the request by the deadline for inclusion in the NRD budget. He said the project was let for bids and Olsson Associates was selected based on the cost of engineering. He passed to the Board a list of the points that caused the project costs to over-run the estimates. He said that sales tax had to be paid, costing about \$21,000, and the removal of concrete which no longer met FEMA standards also increased the costs.

Knutson asked who bore the local costs and Brittenham said the 66 residents of the Whitetail subdivision. He said there were 104 total lots and the developer would pay the costs for the undeveloped lots. Brittenham said that each resident would pay about \$9,000 each, if the additional

NRD funds were not provided. Citta asked if any other agency was providing assistance and Brittenham said there were not. Walden said that the replacement of steel sheet piling with a poured concrete wall lowered the costs of the project. Brittenham said the project costs also increased with necessary land acquisition. Adams asked if the landowners would bear the entire costs without NRD assistance and Brittenham said they would. Kruse added that NRD assistance would only affect how much each landowner paid. Koehlmoos asked what portion of the project remained to be completed and Mohler said that only grass seeding remained. Brittenham pointed out the figure left to be paid in the agenda, \$61,298, was for erosion and retainage.

Kruse said that no action would be taken at the meeting and it would be considered at the April meeting. Eschliman asked what the costs would be to individual lot owners with the NRD assistance and Brittenham said between \$8,100 and \$8,200 each. Knutson asked why the percentage of NRD contribution was different between the Taylor Dam project and the Whitetail Levee project and Koehlmoos said NRD participation was based on the District's participation policy, and the benefits garnered through the project, such as flood control, erosion control, public safety and others.

Amsberry asked if there had been any new developments on the Bredthauer Dam situation and Mohler said that he had been contacted by an engineer who was going to review the site.

INFORMATION AND EDUCATION REPORT

North Central Region Envirothon

Information & Education Coordinator Larry Schultz told the Board that the North Central Region Envirothon was held March 15th at Central Community College-Platte Campus in Columbus. Schultz said the winter storm postponed the contest one week, which placed it in the week of the NARD Conference in Washington, D.C. He said that a biology professor at Central Community College, Steve Heinisch, had volunteered to give the students the tests in his absence. He scored the tests when he returned from the conference. The contest was won by a team from Ord High School and Aurora High School finished second. Both teams will qualify for the State Envirothon at Scottsbluff. Schultz provided the Board with a sampling of questions from the contest. Frenzen said that Director Staab's son Dusty was part of the winning Ord High School team. Callan asked what the next step in the contest was and Schultz said it was the State Envirothon at Scottsbluff.

Schultz said that the photos from the 2011 Washington Conference had been featured prior to the meeting.

ASSISTANT MANAGER'S REPORT

Variance Committee

Assistant Manager Russ Callan said the Variance Committee had met earlier in the day and referred the Board to the minutes included in the supplemental agenda. He said the request from Michael Roth and Donald Roth had been withdrawn from consideration by the applicants. Callan said that the request from Aaron Hinkle was to create a rotation of irrigated acres between two parcels of land. He said only one field would be irrigated each year.

Walden asked if the Hinkle request would result in diminishing irrigated acres over years and Callan said that with the variance, he would be able to irrigate the same amount as had been previously irrigated on that field.

Nelson motioned, seconded by Frenzen, to approve the recommendations of the Variance Committee to approve the variance request from Aaron Hinkle for the rotational transfer of 43 acres from Section 16, Township 21, Range 9 West to 35 acres on Section 23, Township 21, Range 10 West. Motion carried by roll call vote, all present voting yes.

Callan said that Roger Hagemeister had withdrawn his variance request.

Callan reported that Chad Buhl had requested a variance from the rule which required proof of irrigation two out of ten years from 1998 to 2008. He said that Buhl had proof of irrigation prior to 1998. He said the Committee recommended approval of the variance. Nelson said that Buhl had lost the lease on the property in 1997 and then purchased the property. Buhl had irrigated the property from a livestock pit and the property was outside the 10/50 line. Smith asked if the irrigated acres would remain with the property owner or the party leasing the land and Callan said that the Buhls had purchased the property.

Nelson motioned, seconded by Thoene, to approve the Variance Committee recommendation to approve the variance request from Chad Buhl for groundwater irrigation rights for acres previously irrigated in 1997 on the NE¹/₄ of the SW¹/₄ of Section 12, Township 19, Range 4 West. Motion carried by roll call vote. Directors voting yes: Adams, Amsberry, Anderson, Bartak, Citta, Eschliman, Gellermann, Gutzmer, Hadenfeldt, Knutson, Kruse, Nelson, Petersen, D. Rasmussen, L. Rasmussen, Smith, Staab, Thoene and Walden. Director absent during vote: Frenzen. Director absent: Sieh.

Callan told the Board that the Variance Committee heard a request from William Martinsen who wished to relinquish a surface water right on the Cedar River for a permit for a groundwater well to irrigate 28 acres.

Callan said that a variance had previously been granted to Mac Campbell, who later found that ownership of the property had reverted to the State Bank of Cairo. He said that the current owner, the bank, wished to seek the same variance. He said the Variance Committee decided to seek a determination from the Nebraska Department of Natural Resources as to whether the surface water right was valid.

Nelson motioned, seconded by Gellermann, to approve the Variance Committee recommendation that the variance request be tabled until a field evaluation by the Nebraska Department of Natural Resources on the status of the surface water right is completed and to consider the variance request following the review. Motion carried by roll call vote. Directors voting yes: Adams, Amsberry, Anderson, Bartak, Citta, Eschliman, Gellermann, Gutzmer, Hadenfeldt, Knutson, Kruse, Nelson, Petersen, D. Rasmussen, L. Rasmussen, Smith, Staab, Thoene and Walden. Director absent during vote: Frenzen. Director absent: Sieh.

Callan told the Board that another Water Quality Area, Area 18, had seen rising groundwater nitrate levels. He provided the Board with a chart showing data from wells sampled in the area. He said that the current readings would place the area under Phase II control. Staff had sought a variance from the District's rules to study the area another year and consider a Phase III designation should the area's nitrate levels continue to rise. He said that informational and educational presentations would be made to residents of the area and increased water sampling would take place.

Gutzmer asked if sampling was being done for pesticide levels in the area of high nitrates and Callan said that those levels were also being checked. Gutzmer asked how many samples were taken and for how many pesticides samples were taken. Callan said that the number of samples were based on what the budget would allow and the sampling is done as the Nebraska sample, meaning that the samples were tested for pesticides common to the state.

Koehlmoos said that deep soil sampling would be recommended for the hilly areas to see if some problem areas were perched in that area. Adams asked if the wells indicating high nitrate levels were irrigation wells or domestic wells and Koehlmoos said both were sampled. He said that the Variance Committee recommended suspension of the rule that creates a Phase II Groundwater Quality Management Area to allow for an additional year of study in Water Quality Area 18.

Nelson motioned, seconded by Knutson, to approve the Variance Committee's recommendation for suspension of the rule that creates a Phase II Groundwater Quality Management Area in Water Quality Area 18 to allow for an additional year of study. Motion carried by roll call vote, all present voting yes.

Koehlmoos said that an option for the Board could be adding the alluvial area of Area 18 to Area 28 to keep from imposing restrictions on landowners where the problem is not occurring. Citta said that work would still be done to educate and inform residents and producers in the area that water quality was a concern and that the study was underway. Adams said that each landowner receives a report on the water quality from their well. Smith said that sometimes the issues can be traced to sources other than fertilizer application, such as defects in the well's construction.

Callan provided the Board with a graph showing the nitrate levels in Area 28. He said that nitrate levels are still increasing in that area. Gutzmer asked why the situation was worsening and Callan said that the price of corn was increasing and increased nitrogen application might provide enough increase in yields to make a profitable difference. He said that residual nitrogen in the soil is quite extensive. Frenzen added that above normal rainfall is leaching the nitrates through the soil at a quicker rate. Citta said better data could be analyzed when the Area 28 Study was completed by Olsson Associates. Callan said that some of that data would be available by the fall.

Knutson asked if DEQ could become involved in the study area and Callan said that DEQ could do their own study of the area, but he said it would be more likely that DEQ would seek to partner with the NRD on improving water quality. Knutson asked how often DEQ did their own study and Koehlmoos said that DEQ tries to do a study in a different basin each year. Callan said that DEQ provided some "319" funding for the NRD's Area 28 Study.

Callan told the Board that Water Quality Area 12 in the Merna Valley area was another potential site for water quality management. He said that data taken from that area was starting to show nitrate levels near the trigger for Phase II management. The number of wells in Area 12 was low, so there might be some point-source issues trending the numbers higher.

Water Resources Committee

Callan referred the Board to the minutes from the Water Resources Committee. He said that the Committee discussed the penalty for individuals who self-report that they have illegally irrigated non-certified acres. He said the Committee has recommended that the penalty for those who self-report that they have irrigated non-certified acres be a one-to-one match. He said that an example would be if a party irrigated 5 non-certified acres, the penalty would be that those 5 acres could no longer be irrigated and 5 additional acres would not be irrigated the next year. Koehlmoos said that a less severe penalty provided incentive to the landowner to report the illegal irrigation.

Hadenfeldt asked if the land in question is then considered certified as irrigated and Callan said it would not be. Hadenfeldt asked if the landowner should be forced to certify the land as irrigated and Callan said the landowner would have to transfer irrigated acres to the land in order to irrigate it. Eschlman asked how likely it would be that staff would discover the illegal irrigation of a field and Koehlmoos said that given the quality of the infrared photography, there was a good chance that the illegal activity would be discovered. Callan said that the illegal irrigation was often uncovered when staff reviewed the photographs as part of the irrigated acres transfer process. D. Rasmussen asked if the landowner was allowed to determine which additional acres the penalty was applied to and Callan said they did.

Frenzen motioned, seconded by Citta, to approve the Water Resources recommendation that the penalty for a self-reporting violator who irrigated acres not certified to the District be the following: an equal number of acres as was involved in the violation be set aside (not irrigated) the following crop year. Motion carried by roll call vote, all present voting yes.

Callan said the Water Resources Committee discussed the number of acres that would be allowed for new irrigation under LB-483. He said that the criteria utilized in the second year of the process worked well and the Committee discussed the use of that criteria for the third year. He said that staff discussions with DNR make it apparent that law changes to allow water banking for non-fully appropriated basins are not likely, so holding back some acres would be of no value.

Nelson motioned, seconded by Adams, to approve the Water Resources Committee's recommendation that 3,000 new irrigated acres, allowed under LB 483, be made available in 2012 and that the ranking criteria remain the same.

Smith said that if the use of soil classification in determining the ranking for LB 483 acres was to continue, the applicants should be notified that sandy soils are not likely to rank high enough to qualify under the system. Callan said that each applicant is notified of their final ranking and that each applicant is provided with all the information used to determine that ranking. Smith said that landowners with sandy soils will never be ranked high enough to get the new irrigation. Harris said the ranking also depends on the number and quality of the other applications. Smith said it creates a

penalty for those located in the northern and western parts of the NRD. Citta asked if Smith thought that soil classification should not be emphasized in the process and Smith said that he did.

Eschliman asked if transferring irrigated acres from sandy soils to fields with heavier soils was creating erosion issues and Koehlmoos said that was another process, transfers were not the same as LB-483 acres. Callan said that different soils have different classes and FSA has determined which lands are irrigable. Hadenfeldt said that sandy soils still must maintain some cover to meet HEL guidelines and if the field meets those guidelines, perhaps that should be enough to allow them to qualify for new irrigated acres.

Smith motioned, seconded by Knutson, to amend the motion to remove the use of the ranking criteria and refer the ranking criteria back to the Water Resources Committee. Motion to amend carried by roll call vote. Directors voting yes: Adams, Amsberry, Anderson, Bartak, Citta, Eschliman, Frenzen, Gellermann, Gutzmer, Hadenfeldt, Knutson, Kruse, Nelson, Petersen, D. Rasmussen, L. Rasmussen, Smith, and Thoene. Director voting no: Staab. Director not present for vote: Walden. Directors absent: Sieh.

Main motion, as amended, to allow 3,000 new irrigated acres, allowed under LB 483, be made available in 2012 carried by roll call vote. Directors voting yes: Adams, Amsberry, Anderson, Bartak, Citta, Eschliman, Frenzen, Gellermann, Gutzmer, Hadenfeldt, Knutson, Kruse, Nelson, Petersen, D. Rasmussen, L. Rasmussen, Smith, Staab, and Thoene. Director not present for vote: Walden. Directors absent: Sieh.

Koehlmoos said that the ranking criteria for the LB 483 acres would be placed on the agenda for the next Water Resources Committee meeting. Gellermann said that it is important to note that not just sandy soils have lower classifications, some heavy soils do, too. He said that information on how soils are classified would be valuable in making decisions on ranking criteria.

Groundwater Management Area Activities

Irrigated Acres Certification Progress

Callan said there was nothing new to report.

Area 28 Activities

Callan told the Board that Mike Lorenz had made a presentation to the Water Resources Committee on the landowner reports in Area 28. Lorenz had compiled a list of violators of the NRD's reporting requirements. Lorenz will make a presentation to the entire Board at a future meeting.

ELM Update

Callan told the Board that field work and new test hole work would begin again shortly and updates would be provided in the future.

Callan introduced Mac Campbell, who had made a prior variance request. Campbell said that he was unaware that ownership of the land in question had changed and apologized to the Board.

MANAGER'S REPORT

New Hires

Koehlmoos told the Board that Sara Winslow had been hired as a Range TSP in Broken Bow. He reported that Congressional budget issues made funding for the position questionable. Citta asked when the funding question would be answered and Koehlmoos said that it would be a Congressional decision. Citta asked how many positions would be at risk and Koehlmoos said three full-time positions and five temporary positions.

NARD REPORT

Director's Report

D. Rasmussen said the NARD Board met in Lincoln on March 7th and had approved a four percent increase in dues. He said the officers were all re-elected to their positions for another term. He had been given a list showing the status on the legislative bills affecting natural resources. The insurance program continues to operate smoothly.

Washington, D.C. Report

Koehlmoos said that four Directors attended. Gellermann reported that all the Nebraska Congressional staff met with the NRD group. Each Senator and Congressman emphasized that budget cuts were the main focus. He said that issues discussed included FEMA and EPA regulations and continued funding for water projects that are already in progress. Knutson said that federal regulations and budget matters that affected surface water projects also affected NRDs. Hadenfeldt and Anderson both indicated that they enjoyed the conference. Koehlmoos said that there were good discussions with the Congressmen and Senators, which included the actions and regulations of the Environmental Protection Agency.

NRC REPORT

Hadenfeldt said that the Commission had not met and would not meet until June.

RC&D REPORTS

Loup Basin RC&D

D. Rasmussen told the Board that the RC&D met in Ord on March 15th. The group discussed its operations and budget if federal funding for the office is not provided and looked at options for cuts. He said that the RC&D met in Scotia and received a presentation from Linda Fettig of Rural Development on rural numbers from the 2010 Census.

PrairieLand RC&D

Gellermann reported that the RC&D met on the 25th and heard a report on the Shell Creek Project in Columbus on Monday night. He said that Coordinator Al Mittan indicated that it could be the last report for the RC&D in light of federal funding cuts. There would be steps outlined for office closings if no funding is provided. The Nebraska No-Till Project was outlined in a report included in the supplemental agenda.

ANNOUNCEMENTS

There were no announcements.

ADJOURNMENT

With no further business before the Board, Chairman Kruse declared the meeting adjourned at 7:03 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, April 28, 2011, at 5:00 p.m., at the Headquarters Office in Ord, Nebraska.

Darwin B. Anderson
Secretary