

# LOWER LOUP NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS MEETING

October 25, 2012

Ord, Nebraska

The October 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 October 25, 2012. Vice-Chairman Citta called the meeting to order at 3:00 p.m.

## CALL TO ORDER

### Directors in attendance

James C. Adams  
Darwin B. Anderson, Secretary  
Joseph L. Citta, Jr. Vice Chairman  
Virgil W. Gellermann  
Thomas Knutson  
Alan D. Petersen  
Darwin R. Sieh  
Bradley R. Staab

Rollie D. Amsberry, Treasurer  
Timothy Bartak  
Craig E. Frenzen  
N. Richard Hadenfeldt  
James C. Nelson  
Dean J. Rasmussen  
Gerald P. Smith  
Henry J. Thoene

### Directors absent

James J. Eschliman  
Gary A. Kruse, Chairman

Michael P. Gutzmer  
Kim Walden

### Staff in attendance

Leon "Butch" Koehlmoos, General Manager  
Dell Harris, Water Resources Specialist  
Irene Kreifels, Financial Secretary  
Jason Moudry, Water Programs Specialist  
Larry D. Schultz, I&E Coordinator  
Cheryl Hornickel, Programs Assistant  
Dan Ray, Technician, Spalding  
Mike Lorenz, Agronomist, Fullerton

Russell Callan, Assistant Manager  
Rita Goldfish, Administrative Assistant  
Robert T. Mohler, District Engineer  
Tylr Naprstek, Water Modeling Coordinator  
Richard Woollen, N.C. District Forester  
LeeAnn Smith, Water Programs Assistant  
Edward Drozd, Technician, Columbus

### Guests in attendance

Bryce Bauer, DC, NRCS, Ord  
Kim Stefka, Comstock  
David Lamb, Anselmo  
Jeff McPeak, Olsson Associates, Lincoln

Robert J. Prokop, Wilber  
Tom Schuele, Cedar Rapids  
Karen O'Connor, Olsson Associates, Lincoln  
Dean Thede, St. Paul

Cliff Loseke, Columbus  
Bob Foss, Petersburg

Ralph Pelster, Petersburg  
Ron Woitaszewski, Wood River

## NOTICE OF OPEN MEETING LAW POSTING

Chairman Citta 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 Citta 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. Koehlmoos said that item 8C, Lake Ericson, was added to the Engineering Report on the agenda according to proper reposting requirements.

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

## MINUTES

Chairman Citta asked for corrections and/or additions to the September 27, 2012, Board meeting minutes. Chairman Citta ruled that the September 27, 2012, Board meeting minutes would stand approved as amended.

## TREASURER'S REPORT

Chairman Citta directed the Board's attention to the Treasurer's Report as published in the regular and supplemental agendas. Koehlmoos said that \$250,000 to BankFirst went into a certificate of deposit. He said that payments to UltraGraphics of \$2,894.06 for printing and \$4,032.76 for postage were for the District newsletter, "In The Loup." He said a payment of \$114,000 to Cornerstone Mapping was for infrared aerial photography of the entire LLNRD. A payment of \$6,444.00 to Central District Health Department was for water quality testing on samples from around the NRD. He said that this cost is reimbursed by the state.

**Rasmussen motioned, seconded by Thoene, to approve the October, 2012, Treasurer's Report and pay all bills. Motion carried by roll call vote, all present voting yes.**

## PUBLIC COMMENTS

There were no public comments. Koehlmoos said Boone County Commissioner Tom Schuele had asked to address the Board and would arrive later.

PUBLIC HEARING-ALLEGED VIOLATIONS OF THE LLNRD'S  
GROUNDWATER MANAGEMENT AREA RULES AND REGULATIONS AND  
THE ENFORCEMENT OF THE NEBRASKA GROUNDWATER MANAGEMENT  
AND PROTECTION ACT

Chairman Citta opened the public hearing on the alleged violation of Lower Loup NRD Groundwater Management Area Rules and Regulations by Robert J. Prokop of Wilber at 3:08 p.m. Assistant Manager Russ Callan, acting as the District Inspector, submitted into the record the Lower Loup Natural Resources District Groundwater Management Plan; the Lower Loup NRD's Groundwater Management Area Rules & Regulations; the revision to the Water Quality Section of the Groundwater Management Plan; and the newspaper affidavits of publication of the hearing legal notice.

Callan then testified that a notice of violations was sent to Robert J. Prokop. Callan said that Prokop had illegal wells located in the NE<sup>1</sup>/<sub>4</sub> of the NE<sup>1</sup>/<sub>4</sub> of Section 33, Township 16 North, Range 6 West in Nance County. He said that Prokop had failed to submit 2010 yield data and had failed to complete and submit annual reports for 2010 and 2011. Callan submitted a packet of information from a public hearing held in July, 2010, regarding Prokop's alleged violations. The packet included copies of the investigation request, schedule of compliance, groundwater management act enforcement flow chart, copies of annual reports and notice of public hearing. He submitted a letter dated July 13, 2010, from the LLNRD to Prokop stating that failure to respond to reply by deadline, a public hearing had been scheduled for July 22, 2010. He submitted a copy of the Order to Cease and Desist #2010-03. He submitted a letter dated August 13, 2012, informing of alleged violations of the LLNRD's rules and regulations. He submitted a copy of the groundwater investigation request showing that Mr. Prokop was in operation of illegal wells. He submitted a copy of the groundwater investigation request showing that Mr. Prokop had failed to report or reported insufficient information on an annual report. He submitted copies of Mr. Prokop's 2010 report forms. He submitted a copy of the Groundwater Management Act flow chart. He submitted copies of the plan and schedule of compliance forms. He submitted an aerial photo indicating the location of the alleged illegal wells on Prokop's land. He submitted photographs of Prokop's alleged illegal wells. He submitted a copy of a letter to Callan from the Nebraska DEQ indicating the location of the alleged illegal wells. He submitted a letter from Prokop requesting a formal hearing before the LLNRD Board of Directors. He submitted a copy of the notice of public hearing sent to Prokop. He submitted a copy of the "return of service" from the Saline County Sheriff. He submitted copy of an affidavit of a motion to produce sent to the LLNRD by Prokop. He submitted a letter sent to Prokop indicating how the LLNRD would handle his request to view files. He requested the LLNRD Board of Directors make findings based on the evidence and testimony that Robert J. Prokop be found in violation of the Lower Loup NRD Groundwater Management Area Rules and Regulations.

Chairman Citta then asked for testimony and evidence from Robert J. Prokop. Prokop told the Board that the compliance officer has to be independent of the Board and all evidence must be met by District Court criteria and presented to the alleged violator 30 days prior to the hearing. He said that the criterion had not been met. He said that he could not comment on evidence he had not seen.

Prokop told the Board that he recorded all of his business. He said he recorded a conversation with NRD staff in July and it was not pleasant. He said that the wells in question were registered with the state and he said he could get affidavits showing they were. He said that someone trespassed on his

property to photograph the wells. He said the plastic casings were placed in 1963. He said that the matter of the wells had been addressed before. He said that an Aurora Co-op representative tried to submit water and soil samples and was told to “jump in the lake.” He said he was injured in an automobile accident and was hospitalized for several weeks. He said that the staff in Fullerton knew of the accident. He said that he visited the Fullerton office three times and was rudely treated and was also rudely treated in a telephone call to the NRD Assistant Manager. He said that in 2011, his tenant filled out the report. He said he objected on the grounds of “invasion of privacy” to give any public body his yield information. He said that he would only submit private information to the Farm Service Agency so that they might determine farm program payments. He said that if this matter went to trial, he felt privacy would be the key issue. He said that the Board had to rely on administrative staff, but that staff is not always helpful. He said that there was no question that in 2010 he was late in reporting, but felt local staff contributed to the issue.

Chairman Citta asked for rebuttal from the Lower Loup NRD. Callan told the Board that the irrigation wells on the Prokop property were never in dispute and agreed that they were properly registered. He said that the wells in question were four agricultural injection wells on the northeast portion of the property.

Chairman Citta closed the evidentiary portion of the public hearing.

Chairman Citta asked for comments from the Lower Loup NRD Board of Directors. Sieh asked about the privacy issue and Koehlmoos said the concern before the Board was the violations. NRD Attorney Tom Kruml told the Board that Mr. Prokop did have a right to privacy, under state statute, Nebraska NRDs do have the regulatory authority to seek the information to enforce the rules and regulations allowed to them under state law.

Citta asked if the LLNRD Board wished to make a finding based on the evidence presented.

Petersen asked if the wells were legal when they were constructed and Callan said that the Department of Environmental Quality said, in the letter, that the wells were illegal. Smith said that the wells would have to be updated to remain in compliance and asked if the NRD employee was acting properly when entering the Prokop property to photograph the wells and Kruml said that it was within the NRD’s regulatory authority. Thoene asked if the previous cease and desist orders were without value and Koehlmoos said that the certified correspondence was never picked up by Prokop.

**Thoene motioned, seconded by Gellermann, that the Lower Loup Natural Resources District Board of Directors find Robert J. Prokop in violation of the District’s Groundwater Management Area Rules and Regulations and that cease and desist orders be issued. Motion carried by roll call vote, all present voting yes.**

Citta closed the public hearing at 3:47 p.m.

PUBLIC HEARING-PROPOSED RULES AND REGULATIONS FOR THE  
IMPLEMENTATION OF THE LOWER LOUP NATURAL RESOURCES  
DISTRICT'S GROUNDWATER MANAGEMENT PLAN

Chairman Citta opened the public hearing on modifications to the Lower Loup NRD's Groundwater Management Area Rules and Regulations at 3:55 p.m. Callan submitted into the record the Lower Loup Natural Resources District Groundwater Management Plan; the NRD's rules and regulations under the Nebraska Groundwater Protection Act; the revision to the Water Quality Section of the Groundwater Management Plan; the proposed changes to the rules and regulations for the LLNRD's Groundwater Management Area Rules and Regulations; the newspaper proofs of publication; a copy of the letter requesting testimony from the Nebraska Department of Natural Resources; a copy of the letter requesting testimony from the Nebraska Department of Environmental Quality; a copy of a letter of notice to the Middle Loup Public Power and Irrigation District and its return receipt; a copy of a letter of notice to the North Loup River Public Power and Irrigation District and its return receipt, and a proposed modification to Rule 2R as exhibits to the hearing.

Chairman Citta asked for testimony from the Nebraska Department of Natural Resources and Callan read into the record a copy of a letter from Brian Dunnigan, Director of the Nebraska Department of Natural Resources. Callan read into the record a copy of the letter from Marty Link of the Department of Environmental Quality.

Chairman Citta asked for public testimony and David Lamb of Anselmo asked for an explanation of irrigated acres transfers from CRP under Rule 19 and Callan said that acres in CRP are treated the same as irrigated acres. There was no testimony offered in opposition or support or from a neutral standpoint. Citta asked for comments from the NRD Directors. None were heard.

Callan said that the modification to the definition of lagoon water was to include industrial and commercial waste water.

Knutson asked if there were responses from the Middle Loup or North Loup River irrigation districts and Callan said there were not.

Citta closed the hearing at 4:09 p.m.

Koehlmoos referred the Board to a draft *Order of Designation No. 2012-02*.

**Frenzen motioned, seconded by Bartak, to approve the proposed rules and regulations for the implementation of the Lower Loup Natural Resources District Groundwater Management Plan and adopt the Order of Designation No. 2012-02 regarding the modifications to the rules and regulations of the NRD's Groundwater Management Plan. Motion carried by roll call vote. Directors voting yes: Amsberry, Anderson, Bartak, Citta, Frenzen, Gellermann, Hadenfeldt, Knutson, Nelson, Petersen, Rasmussen, Sieh, Thoene. Directors voting no: Adams, Smith, Staab. Directors absent: Eschliman, Gutzmer, Kruse, Walden.**

## PUBLIC COMMENTS (CONT.)

Tom Schuele, Boone County Commissioner from Cedar Rapids, told the Board that he lived in southwest Boone County and said he was concerned with the transfer of irrigated acres within the NRD. He said that the new development created by the transfers has compromised the reliability of groundwater availability in his area. He said he hoped that the Board would consider carefully future requests for irrigated acres transfers. Schuele said he hoped that the Board might also consider pumping restrictions in the future.

Koehlmoos asked Schuele to consider writing a letter to the Board, addressing the issues that could be considered by the NRD's Water Resources Committee.

## PRESENTATION BY OLSSON ASSOCIATES ON THE DRAFT AREA 28 GROUNDWATER MANAGEMENT STUDY REPORT

Karen O'Connor, Geologist, and Jeff McPeak, Engineer, both with Olsson Associates in Lincoln, provided the Board with a power point presentation on the draft study report. The report included information on the geology of Area 28, the geographic distribution of the nitrate contamination, and recommendations for rule changes and other solutions. Among the suggestions: requiring producers not to exceed the NRD recommended application rates and consideration of revision to match the NU nitrogen calculator. Also recommended was the increased use of chemigation, transition from gravity to pivot irrigation, use of cover crops, and irrigation scheduling.

Koehlmoos said that it was possible that the water sampling done by the NRD was hitting "older" water and O'Connor said the sampling of shallow wells would provide information on whether current nitrogen management is working. Koehlmoos said that the report showed that where there was over-application of fertilizer, there were increased nitrates in the groundwater. Gellermann asked if the amount of irrigation water applied was considered and O'Connor said it was not. Hadenfeldt asked how the water was dated and O'Connor said that dating begins when the water reaches the groundwater aquifer.

## ACTION ON DRAFT AREA 28 GROUNDWATER MANAGEMENT STUDY REPORT

Citta said that until the study report is adopted by the Board, it remains a draft report. He said adoption would make the study report a document of record.

**Sieh motioned, seconded by Knutson, to adopt the Area 28 Groundwater Management Study Report. Motion carried by roll call vote, all present voting yes.**

## ENGINEERING REPORT

### Kaiser Road Structure – Howard County

Citta said that he recommended an executive session to discuss potential litigation under this item.

**Adams motioned, seconded by Smith, to move into executive session to discuss potential litigation. All LLNRD staff members were invited to attend the executive session. Motion carried by roll call vote, all present voting yes.**

The Board went into executive session at 4:55 p.m. and came out of executive session at 5:37 p.m.

**Smith motioned, seconded by Anderson, to move out of executive session and into regular session. Motion carried by roll call vote, all present voting yes.**

There was no action taken on the item.

### FORESTER'S REPORT

North Central District Forester Richard Woollen told the Board that he had participated in a meeting to discuss the Region 24 Complex fire and remediation work in the Niobrara Valley. He said that UNL Extension, the Middle Niobrara NRD, NRCS, FSA and Fire Relief Fund participated in the meeting at Norden. He said that he provided information on reforestation and salvage logging. He said they discussed Firewise and fuels management work. He said that FSA provided information on emergency funding and the Fire Relief Fund discussed available funds for re-fencing. He said there was also discussion of tree re-planting.

Woollen said that the tree seedling survival checks showed the need for moisture maintenance work. He said that anything providing moisture for the seedlings made the difference, things like drip irrigation, fabric moisture barriers, etc.

Woollen said the LLNRD had increased its tree seedling price to 80 cents each. He said that most NRDs were at 80 cents or higher.

### NRCS REPORT

District Conservationist Bryce Bauer told the Board that, under new rules beginning October 1<sup>st</sup>, local offices could no longer do their own wetland determinations. He said those determinations must be done by another office, so there will be an increase in travel by staff. Frenzen asked why the rule had been changed and Bauer said it was to avoid "conflict of interest." He said that it also preserved the relationship between the producer and the local office staff.

Bauer said that if cover crops become part of the plan for Area 28 groundwater quality work, the NRCS does provide payments up to 320 acres. He said payments are also made on irrigation water management and said there were a variety of options, including moisture sensor equipment.

He said that construction on the new building in Spalding is on pace and expected to move in on December 1<sup>st</sup>. He said that the new furniture for the office had arrived.

## ASSISTANT MANAGER'S REPORT

### Variance Committee

Assistant Manager Russell Callan told the Board that the Variance Committee had met earlier in the day to hear two variance requests. He said that both variance applications sought permits for supplemental wells on acres developed after 2006. He said that the Ralph Hilyard request was for land in Buffalo County near Ravenna. He said that the NRD's Groundwater Management Area Rules and Regulations do not allow for supplemental wells on such property.

**Nelson motioned, seconded by Adams, to deny the Ralph Hilyard variance request for a supplemental well. Motion carried by roll call vote, all present voting yes.**

Callan said that Gary and Victoria Caskey sought a supplemental well on acres developed after 2006. He said the irrigation was from a well on adjacent property just across the NRD boundary in the Lower Platte North NRD. He said that a supplemental well was not allowed under the NRD's Groundwater Management Area Rules and Regulations. He said that neither the Caskeys nor their representatives had appeared at either Variance Committee meeting where the request was heard.

**Nelson motioned, seconded by Amsberry, to deny the Caskey variance request for a supplemental well. Motion carried by roll call vote, all present voting yes.**

### Area 28

Callan said that there was nothing to report as the information on the study had already been presented.

## ENGINEERING REPORT

### FEMA Hazard Mitigation Plan

District Engineer Robert Mohler told the Board that the mitigation plan had been submitted to and received by FEMA. He said that FEMA has not responded, but was expected to in the near future.

### Lake Ericson

Mohler told the Board that he had been contacted by Joe Wadas of the Ericson Lake Corporation regarding repairs to the structural spillway. Mohler provided the Board with a power point presentation showing photographs of the issue. He said it appeared there was water moving under the spillway structure. He said that it was possible there could be a failure of the spillway. He said that he sent the slides to the Dam Safety Division of the Nebraska Department of Natural Resources and discussed it with that agency's representative.



## INFORMATION AND EDUCATION REPORT

### Statewide I&E Staff Quarterly Meeting

Information/Education Coordinator Larry Schultz told the Board that the I&E staff from around the state attended the meeting in Beatrice. He said that the group toured a livestock research farm and a Lower Big Blue NRD recreation area. The group reviewed recent activities including Husker Harvest Days, Nebraska State Fair and the upcoming Legislative Conference.

### Environmental Festival

Schultz told the Board that the Lower Loup NRD, NRCS, Central IV Extension, Loup Basin Health Department and Keep Loup Basin Beautiful hosted the annual Environmental Festival at Auble's Pond in Bussell Park in Ord. He said that post-event evaluations showed a very positive response from teachers and 150 students who attended. He said that his session on Water Bottle Rockets received good reviews.

Schultz said the latest edition of "In The Loup," the District newsletter, had been delivered and asked the Board to offer feedback.

## LONG-RANGE IMPLEMENTATION PLAN

Callan told the Board that the Long-Range Implementation Plan had been completed. He provided the Board with a slide presentation of the plan and discussed the various segments of the plan. He said the NRD is required to submit the plan to Nebraska DNR annually.

**Anderson motioned, seconded by Adams, to approve the Lower Loup NRD Long Range Implementation Plan. Motion carried by roll call vote, all present voting yes.**

## MANAGER'S REPORT

### Revised Interlocal Cooperative Agreement - Lower Platte River Basin Integrated Management Plan Coalition

Koehlmoos told the Board that the plan now incorporated all the suggestions provided, including an increase in the membership fee, from \$4,000 to \$20,000. He said there were other minor modifications.

Gellermann asked where the coalition would be headquartered and Koehlmoos said it might be headquartered at Lower Platte South NRD. He said that the next meeting would happen late in the year or early in 2013. Sieh asked how many NRDs were involved and Koehlmoos said there were seven.

### New Hires

Koehlmoos said that there were no new hires.

## NARD REPORT

### Director's Report

Rasmussen said that the NARD Board would meet November 11<sup>th</sup> and 12<sup>th</sup>.

## NRC REPORT

Hadenfeldt reported that the Commission would hold a special conference call meeting to select a bid for auctioning watershed property.

## RC&D REPORTS

### Loup Basin RC&D

Rasmussen told the Board that the RC&D met near Elyria on October 16<sup>th</sup>. He said that the group discussed its future and hasn't reached a decision. He said that the Butterfly Gardens project received \$226,000 in grant funds. He said that Happy Jack Chalk Mine is holding its Halloween fundraiser outside the mine after safety concerns were raised.

### PrairieLand RC&D

Gellermann reported that the RC&D had met in Madison on October 18th and continues to work on recycling projects.

## ANNOUNCEMENTS

Sieh reminded the Board that the NRD Board meeting would be held a week earlier, November 15<sup>th</sup>. Citta asked the Water Resources Committee to consider dates for the November meeting and selected November 8<sup>th</sup> at 10:00 a.m. Harris said that preliminary ranking work had been completed on LB-483 acres.

## ADJOURNMENT

With no further business before the Board, Chairman Citta declared the meeting adjourned at 6:32 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, November 15, 2012, at 5:00 p.m., at the Headquarters Office in Ord, Nebraska.

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Darwin B. Anderson  
Secretary