

LOWER LOUP NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS MEETING

April 25, 2013

Ord, Nebraska

The April 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 April 25, 2013. Chairman Kruse called the meeting to order at 5:00 p.m.

CALL TO ORDER

Directors in attendance

James C. Adams
Darwin B. Anderson, Secretary
James J. Eschliman
N. Richard Hadenfeldt
Thomas L. Knutson
Clifford P. Loseke
James C. Nelson
Darwin R. Sieh
Henry J. Thoene

Rollie D. Amsberry, Treasurer
Timothy E. Bartak
Virgil W. Gellermann
Randy Kauk
Gary A. Kruse, Chairman
Matt Lukasiewicz
Dean J. Rasmussen
Gerald P. Smith
Kim C. Walden

Directors absent

Joseph L. Citta, Jr., Vice Chairman
Alan D. Petersen

Michael P. Gutzmer

Staff in attendance

Leon "Butch" Koehlmoos, General Manager
Dell R. Harris, Water Resources Specialist
Irene F. Kreifels, Financial Secretary
Jason W. Moudry, Water Programs Specialist
Larry D. Schultz, I&E Coordinator
LeeAnn Smith, Water Resources Assistant

Russell G. Callan, Assistant Manager
Rita A. Goldfish, Administrative Assistant
Robert T. Mohler, District Engineer
Cheryl K. Hornickel, Programs Assistant
Tylr D. Naprstek, Water Modeling Coordinator
Richard L. Woollen, District Forester

Guests in attendance

Bryce Bauer, DC, NRCS, Ord
Howard Russell, Milburn
Gwenda Horky, Sargent
Raymond Sheldon, Sargent
Richard Bilka, Burwell
Paul Groeteke, Cedar Rapids

Duane Russell, Milburn
Dennis Derner, Bartlett
Kristina Lamb, Sargent
Allen Volf, Ord
Mike Pesek, Burwell
Jeff Jarecki, Albion

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 and also posted at the NRD Headquarters office in Ord and the eight field office locations. Koehlmoos said there was an agenda modification to the Public Hearing. The alleged violator was listed incorrectly and should be “Russell Farm & Ranch Corporation.” Koehlmoos said the public notices in the newspapers were published correctly. There is also a modification to the Manager’s Report. “Recommendation for Consultant on Clear Creek/Pibel Lake Watershed Project” was added. The modifications were made 24 hours before the Board meeting and were posted on the web site.

Smith motioned, seconded by Sieh, 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 Kruse asked for corrections and/or additions to the March 21, 2013, Board meeting minutes. Hearing none, Chairman Kruse ruled that the March 21, 2013, 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 he had been contacted by the Nebraska Game and Parks Commission about a potential hazard involving an area of the recreation area utilized by some visitors as a swimming beach. He said that the NG&P had concerns regarding boats and jet skis interacting near the swimmers. He said that a designated swimming area, marked by buoys, would allow better enforcement of boating rules regarding speeds and wakes, so he agreed to purchase three marker buoys for the area, with the agreement that Game and Parks would install and maintain the buoys.

Thoene motioned, seconded by Rasmussen, to approve the April, 2013, Treasurer’s Report and pay all bills. Motion carried by roll call vote, all present voting yes.

PUBLIC COMMENTS

Richard Bilka of Burwell was concerned about water rights and the depletion of groundwater/water levels. He had applied for additional acres and was denied, but his neighbor had received

more acres and would be able to irrigate. Koehlmoos said that Bilka's acres were requested during the LB-483 application process, and his neighbor's acres were from a transfer of acres.

Dennis Derner of Bartlett said that the water level in his area was down 5 to 6 feet and is concerned about the water situation. He has no more feed for his cattle and is having to sell. He mentioned possibly taxing irrigation water to compensate those who have no feed so that they can buy feed for cattle.

PUBLIC HEARING-ALLEGED VIOLATIONS BY RUSSELL FARM & RANCH CORPORATION OF THE LLNRD'S GROUNDWATER MANAGEMENT AREA RULES AND REGULATIONS AND THE ENFORCEMENT OF THE NEBRASKA GROUNDWATER MANAGEMENT AND PROTECTION ACT

Chairman Kruse opened the public hearing on the alleged violation of Lower Loup NRD Groundwater Management Area Rules and Regulations by Russell Farm & Ranch Corporation of Milburn at 5:13 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 Rules & Regulations for the Enforcement of the Groundwater Management and Protection Act, effective January 1, 2002; the revision to the Water Quality Section of the Groundwater Management Plan; and copies of the notice clippings from newspapers.

Callan said that Russell Farm & Ranch Corporation is the operator of groundwater-irrigated land located within the boundaries of the Lower Loup NRD's Phase I management area. Callan testified that Duane Russell received a notice of violating the Lower Loup NRD's rules and regulations. The alleged violation is of Rules 2, 13, 16, 17, and 18. Callan submitted into record a packet of information which included copies of the letters sent to Mr. Russell, the Groundwater Investigation Request, Plan and Schedule for Compliance, the documentation of when Mr. Russell received the complaint packet, the transfer documents, the well permit, and various maps showing the location of the irrigated fields.

Callan said the well in question, according to the Custer County assessor, is located on property owned by Todd R. Russell. The transfer documents and the well permit were approved based on the fact that Duane Russell signed that he was the landowner.

Callan said the property is currently under question by Duane Russell. Mr. Russell says he does own the property and is pursuing court action to prove that ownership. Callan said it seems there are transferred irrigated acres and a permitted and drilled irrigation well on another owner's property, which makes this a violation of the NRD's rules and regulations. Callan submitted into record his testimony.

Chairman Kruse then asked the alleged violator to present evidence and testimony. Howard Russell told the Board that Russell Farm & Ranch Corporation had worked out an agreement with neighbor Todd Reynolds to trade a couple of jagged parcels of land in the same area so the parcels would be straight. He said the agreement has been in place for about 15 years.

Duane Russell testified that land surveyors had been out several times to survey new property lines. He said there have been family disputes over ownership of the land and the use of it.

He said he had visited with NRD staff about drilling a well on the land, applied for a well permit, and was approved. The well was drilled. He was later notified by the NRD that the well had been drilled on land that was not legally in his name.

Duane Russell told the Board that he and his son had agreed to establish a wiper pivot to water 28 acres, 14 acres owned by Russell Farm & Ranch Corporation and 14 acres owned by Todd Russell. However, circumstances created a delay and an agreement was never signed.

Mr. Russell said that, according to Rule 13 of the Lower Loup NRD's Groundwater Rules and Regulations, any person can construct a water well on land which he owns, leases, or controls in any manner. Mr. Russell said he is the owner of the land and has taken the matter to District Court. They are waiting for its decision.

Duane Russell submitted into record a copy of the February, 2010, land trade agreement between Verne and Helen Reynolds, Inc./Todd Reynolds and Russell Farm & Ranch Corporation (Howard Russell). Mr. Russell also submitted into record a copy of the Russell Land Contract signed by Todd & Arika Russell and Russell Farm & Ranch Corporation (Duane Russell) in June, 2012.

Chairman Kruse asked for rebuttal from the Lower Loup NRD. Callan told the Board that according to legal documents the NRD has seen, the land in question is registered to Todd Russell, not Russell Farm & Ranch Corporation.

Chairman Kruse closed the evidentiary portion of the public hearing at 5:47 p.m.

Chairman Kruse asked for comments from the Lower Loup NRD Board of Directors.

Knutson commented that maybe the NRD should wait to decide on this matter until it hears the District Court's decision. Gellermann asked when the well permit was issued, and the date of approval was March 9, 2011.

Kruse closed the public hearing at 5:51 p.m.

There was additional discussion regarding actions in light of the upcoming court case. Knutson asked if the item should be tabled and Koehlmoos said the illegal well could be utilized if the matter was tabled.

Smith motioned, seconded by Anderson, that the Lower Loup Natural Resources District Board of Directors find Russell Farm & Ranch Corporation in violation of the District's Groundwater Management Area Rules and Regulations and that a cease and desist order be issued. Motion carried by roll call vote. Directors voting yes: Amsberry, Anderson, Eschliman, Gellermann, Kauk, Kruse, Loseke, Lukasiewicz, Nelson, Rasmussen, Sieh, Smith, and Thoene. Directors voting no: Bartak, Hadenfeldt, Knutson, and Walden. Director abstaining: Adams. Directors absent: Citta, Gutzmer, and Petersen.

APPEAL OF PREVIOUS BOARD DECISION BY CEDAR RIVER FEEDERS

Jeff Jarecki, attorney for Cedar River Feeders, was present to appeal the Board's decision to deny his client a variance to NRD's rules and regulations regarding the certification of lagoon water irrigated acres. Koehlmoos told Jarecki that their initial variance request was an appeal to the rules and that any further appeals would need to be through District Court.

Jarecki said that NDEQ has authority to regulate lagoon water, not the NRD, and referred to Nebraska Statutes.

Jarecki provided 17 exhibits, but since the matter was not heard at a public hearing, no action was taken. Koehlmoos said staff would review the documents.

Koehlmoos told the Board that policy needs to be considered regarding further appeals following a variance request.

FORESTER'S REPORT

District Forester Richard Woollen reported that NRD tree crews are getting the trees planted and that the moisture has been a good start for the seedlings.

Woollen also reported that Nebraska Buffer Strip payments are made either in the spring or fall. He said that although many expiring contracts are renewed, several cooperators cancel their contracts in order to crop the area.

Woollen reported that work had been done at the Aagaard Farm due to the mortality of some older trees. After some safety instruction, the trees were removed and chipped. Woollen said that all trees that have turned brown may not be dead and don't need to come out.

NRCS REPORT

Bryce Bauer reported that CSP signup will be starting in the near future. Bauer also reported that there will be an additional 2 to 3 million dollars for EQIP that were formerly sequestered funds. He said another CRP signup is underway.

ENGINEERING REPORT

Aagaard Farm Storage Building

District Engineer Robert Mohler reported that a summary of the features needed for the new metal storage building for the Aagaard Farm had been developed and was in the agenda. The facility will be used for equipment storage and an option for a meeting/presentation room, kitchen, and restroom will be included.

Board members were encouraged to let Mohler know of any ideas or changes they might have to the summary as presented. There was discussion on amp service, number of lights,

flooring, and size of the building. When the summary is complete, the NRD would send out Invitations to Bid.

Eschliman motioned, seconded by Adams, that the Lower Loup NRD seek bids on a 50 x 75 foot building and a 50 x 100 foot building. Motion carried by roll call vote, all present voting yes.

Headquarters Arboretum Connecting Trail

Mohler reported that the Headquarters Arboretum Connecting Trail will connect at the west end of the Ord Recreational Trail and loop through the Arboretum and reconnect with the original trail. Bids for the connecting trail project had been sent out and one bid was received. Beaumont-Ries Construction, headquartered in Ansley, submitted a bid for \$61,455. Construction would begin in July.

Sieh motioned, seconded by Adams, to accept the bid of \$61,455 from Beaumont-Ries for the Headquarters Arboretum Connecting Trail. Motion carried by roll call vote, all present voting yes.

Koehlmoos said the city of Ord may contribute some funds for the project.

Sargent Swimming Pool

Sargent City Clerk Gwenda Horky said the municipal swimming pool had a crack in it and the city was seeking financial assistance for a pool liner. Horky told the Board that a major crack had developed in the deep end of the 52-year-old pool and the crack had gotten larger over the years, creating drastic water losses in the facility. She said that the continuous addition of water meant colder water temperatures for swimmers and chlorine was leaking into the ground.

Horky said that the liner has a projected 35-year life and will be installed at a cost of \$37,815 by RenoSys Corporation. She said that the city would use Keno funds and money generated through several fundraisers. She said work on the project is expected to begin later in the summer, following several planned activities.

Koehlmoos explained to the Board that NRD policy was to have the Board hear the presentation for funding assistance and then hold off making a decision for a month. Koehlmoos stated that since the Programs & Projects Committee had met on the request earlier, an exception to NRD policy would be proper. It was commented that time could be saved by making a decision at this meeting.

Eschliman motioned, seconded by Knutson, to approve funding for the Sargent swimming pool at 10% of 37,815, not to exceed \$4,000.

Smith said that he was in favor of increasing the District participation to 15% of the project cost given the recreation benefits and the affects to both groundwater quality and quantity.

Smith motioned, seconded by Walden, to amend the original motion, and approve funding for the Sargent swimming pool at 15% of the local share of \$37,815, not to exceed

\$6,000. Motion carried by roll call vote. Directors voting yes: Adams, Amsberry, Anderson, Bartak, Eschliman, Gellermann, Hadenfeldt, Kauk, Knutson, Kruse, Lukasiewicz, Nelson, Rasmussen, Sieh, Smith, Thoene, and Walden. Director voting no: Loseke. Directors absent: Citta, Gutzmer, and Petersen.

Motion carried by roll call vote on the amended motion. Directors voting yes: Directors voting yes: Adams, Amsberry, Anderson, Bartak, Eschliman, Gellermann, Hadenfeldt, Kauk, Knutson, Kruse, Loseke, Lukasiewicz, Rasmussen, Sieh, Smith, Thoene, and Walden. Director voting no: Nelson. Directors absent: Citta, Gutzmer, and Petersen.

Auble's Pond Fishing Dock

Mohler reported that the city of Ord has requested financial assistance from the NRD for a second fishing dock at Auble's Pond and that their letter of request is in the supplemental agenda. The city is asking for 20% of the \$30,000 project. Mohler said the dock will be identical to the dock already at the pond and will be placed on the west side of the pond. He referred the Board to photos in the supplemental agenda of the present fishing dock.

Koehlmoos said that the Programs & Projects Committee had discussed the project and recommended approval of 20% of the local costs, not to exceed \$6,000. For the same reason mentioned earlier on the Sargent swimming pool vote, the Board chose to exempt the NRD's normal policy of holding a decision over for a month and to take action at this meeting.

Eschliman motioned, seconded by Rasmussen, to approve financial participation for a second fishing dock at Auble's Pond in the amount of 20% of the local costs, not to exceed \$6,000. Motion carried by roll call vote, all present voting yes.

INFORMATION & EDUCATION REPORT

Information & Education Coordinator Larry Schultz reported that the State Envirothon Contest will be held at the Chalco Hills Recreation Area in Omaha on May 4th and he would be assisting at the contest. A team from Ord will be attending.

Schultz reported that the 2013 Children's Groundwater Festival will be held May 7th at Central Community College in Grand Island. He will lead the "Water Drop Relay" session.

Schultz said that an RFP had been sent out for the web site.

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 variance requests. He said that the Gilbert Muhlback and William Packer requests were heard by the Committee for the first time and no action was needed.

Callan said that Joe Happ of Joseph J. Happ, Sr. Trust and J & E Happ Farms, LLC, wants to transfer 26.5 irrigated acres to the NE¹/₄ of Section 15, Township 18 North, Range 11 West in

Greeley County, Nebraska. Callan said this proposed transfer would involve adding a well to the system which would increase the amount of water pumped; and the transfer of acres not developed prior to 2006. The Variance Committee recommended denial of the Happ request.

Callan reported that Rick Behrendt of Behrendt Farms wants to transfer 142 irrigated acres from the E½ of the SE¼ of Section 7, Township 12 North, Range 14 West, Buffalo County, Nebraska, to a field in Section 2, Township 12 North, Range 15 West, Buffalo County, Nebraska, to allow him to maintain 52.9 acres and relinquish 5 acres. Callan said that variance request included moving water use upstream and moving it ahead of two other surface water users. The Variance Committee recommended approval of the Behrendt request.

Amsberry motioned, seconded by Nelson, to accept the Variance Committee recommendations to deny the Joseph J. Happ, Sr. Trust, J & E Happ Farms, LLC request and to approve the Behrendt Farms request. Motion carried by roll call vote. Directors voting yes: Adams, Amsberry, Anderson, Bartak, Gellermann, Hadenfeldt, Kauk, Knutson, Kruse, Loseke, Lukasiewicz, Nelson, Rasmussen, Sieh, Smith, Thoene, and Walden. Director abstaining: Eschliman. Directors absent: Citta, Gutzmer, and Petersen.

Groundwater Mangement Area Activities

1. Area 28

Callan reported that Mike Lorenz had met with him to discuss Area 28 annual reports statistics for years 2005 through 2012. Lorenz will give a report at an upcoming Water Resources Committee meeting.

Callan said he met with four of the six cooperators who are applying high rates of nitrogen.

2. Update on Robert J. Prokop's Cease & Desist Order

Callan reported that Mr. Prokop is not filing his paperwork on Area 28. He said that it will go to court in either August, September or October.

ELM Update

Callan said that they will meet in May.

MANAGER'S REPORT

Appointment of Representatives and Alternates to LPRBC Board

Koehlmoos told the Board that Directors Loseke, Adams, Sieh, Thoene, and Bartak were interested in serving on the Lower Platte River Basin Coalition Board. Sieh asked where the meetings are held and Koehlmoos said the Coalition meets in different places.

Loseke requested that his name be removed from consideration.

Knutson motioned, seconded by Smith, that Directors Adams and Sieh be appointed as Representatives of the LPRBC Board and Directors Thoene and Bartak be appointed as Alternates to the LPRBC Board. Motion carried by roll call vote. Directors voting yes: Amsberry, Anderson, Bartak, Eschliman, Gellermann, Hadenfeldt, Kauk, Knutson, Kruse, Loseke, Lukasiewicz, Nelson, Rasmussen, Smith, Thoene, and Walden. Directors abstaining: Adams and Sieh. Directors absent: Citta, Gutzmer, and Petersen.

Programs & Projects Committee Recommendations and Report

Koehlmoos said that the Programs & Projects Committee met earlier in the week and had discussion on several items.

NRD Cost-Share – Requests for Funding

Koehlmoos passed around sheets showing cost-share figures for various NSWCP cost-share programs the NRD administers. He said that, due to drought, planned grazing systems applications have increased significantly but there is little to no funding available for the requests. He said funding for the NSWCP program is provided by the Nebraska Department of Natural Resources to NRDs across the state. Funding is distributed based on resources needs and the Lower Loup NRD receives the second highest funding in the state.

Koehlmoos said that he has granted tentative approvals to landowners which allow the cooperator to complete the practice, reimbursing him if and when funding becomes available.

Koehlmoos said that one option to alleviate the backlog of applications would be to utilize local funding. There was discussion about transferring monies from budgeted funds for project participation to fund the NSWCP backlog. Walden said the fund would have to be replenished. There was also discussion about not allowing any new approvals for cost-share requests from NSWCP until state funding can be determined.

Eschliman motioned, seconded by Loseke, that the NRD approve the Projects/Programs Committee recommendation to put a “Hold” any new approvals provided to NSWCP requests and that \$200,000 be transferred from funding budgeted for project participation to the NSWCP program to alleviate some of the application backlog. Motion carried by roll call vote, all present voting yes.

Discussion with Bureau of Reclamation - Electrical Service at Davis Creek Recreation Area

Koehlmoos reported that staff had met with the Bureau of Reclamation regarding financial assistance to provide electricity at Davis Creek Recreation Area and said the Bureau estimated they could provide approximately \$15,000. Koehlmoos told the Board that staff had contacted Loup Valleys Rural Public Power District about extending electrical service to Davis Creek Recreation Area. He said that the REA had estimated the cost to extend overhead lines to the property boundary would be \$12,144. He said that buried electrical service to a transformer near the campgrounds, required by the Bureau of Reclamation, was estimated at \$12,920 and the transformer would cost around \$3,000.

Koehlmoos said security lights will be placed near the campgrounds, boat docks, picnic shelter and at restrooms. Electric water pumps will be installed.

Eschliman motioned, seconded by Adams, that bids be taken for electrical service at Davis Creek Recreation Area, with optional bids sought for a fish cleaning station, a dump station, and a picnic shelter. Motion carried by roll call vote, all present voting yes.

Pibel Lake/Clear Creek Watershed Project

Koehlmoos said that four bids were received for the Pibel Lake/Clear Creek Watershed Project. The Programs & Projects Committee had discussed the bids and recommended approval of the bid from JEO for \$71,000. The project will be funded in part by a 319 grant from the Department of Environmental Quality.

Eschliman motioned, seconded by Loseke, to approve the bid of \$71,000 from JEO for the Pibel Lake/Clear Creek Watershed Project. Motion carried by roll call vote, all present voting yes.

Water Administrative Assistant and Water Programs Assistant Job Descriptions

Koehlmoos said the Executive Committee met prior to the Board meeting to discuss a new staff position of Water Administrative Assistant. Duties would include helping with the paperwork for irrigated acres, transfer and variances.

Amsberry motioned, seconded by Eschliman, to approve the new position of Water Administrative Assistant at a salary of approximately \$40,000. Motion carried by roll call vote, all present voting yes.

New Hires

Koehlmoos said that Chase Pinckney from Burwell and Christy Berghorst from Berwyn have been hired to help plant trees.

NARD REPORT

Director's Report

Rasmussen said he didn't have a report, but mentioned the NARD Basin Tour of the Niobrara River Basin coming up in June. Koehlmoos said the tours are always interesting and encouraged directors to attend. They are to let Schultz know if they are planning to attend.

NRC REPORT

Hadenfeldt reported that the Commission wouldn't meet until June.

RC&D REPORTS

Loup Basin RC&D

Rasmussen told the Board that the RC&D met in Ansley. He thanked Thoene who had picked up computers for them. Rasmussen said the RC&D received \$75,000 in grants and reported that the tire grant went through. Rasmussen said the RC&D got a new trailer to pick up plastic and aluminum.

PrairieLand RC&D

Gellermann said that he hadn't been able to attend any meetings, but reported that PrairieLand was getting grants and are waiting for people to recommend projects.

ANNOUNCEMENTS

It was announced that the Water Resources Committee would meet on May 14th at 10:00 a.m. The next Programs & Projects Committee meeting is scheduled for May 22nd at 1:00 p.m. Woollen said the NARD Basin Tour would be held June 10-11.

ADJOURNMENT

With no further business before the Board, Chairman Kruse declared the meeting adjourned at 8:00 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, May 23, 2013, at 5:00 p.m., at the Headquarters Office in Ord, Nebraska.

Darwin B. Anderson
Secretary