

# LOWER LOUP NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS MEETING

January 27, 2011

Ord, Nebraska

The January 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 January 27, 2011. Chairman Gary Kruse called the meeting to order at 5:01 p.m.

## CALL TO ORDER

### Directors in attendance

James C. Adams  
Darwin B. Anderson, Secretary  
Joseph L. Citta, Jr., Vice Chairman  
Craig E. Frenzen  
N. Richard Hadenfeldt  
Gary A. Kruse, Chairman  
Alan D. Petersen  
Lyle D. Rasmussen  
Gerald P. Smith  
Henry J. Thoene

Rollie D. Amsberry, Treasurer  
Tim Bartak  
James J. Eschliman  
Virgil W. Gellermann  
Tom Knutson  
Michael P. Gutzmer  
Dean J. Rasmussen  
Darwin R. Sieh  
Bradley R. Staab  
Kim Walden

### Directors absent

James C. Nelson

### 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

Russell Callan, Assistant Manager  
Tylr Naprstek, Water Modeling Coord.  
Rita Goldfish, Administrative Assistant  
Mike Lorenz, Agronomy Tech., Fullerton

### Guests in attendance

Bryce Bauer, NRCS, Ord  
Ron Klimek, Loup City  
David Dozler, Albion

Jack Mansfield, Ord  
John Chramosta, Ravenna  
Richard Dozler, 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. The meeting notice was also posted at the NRD Headquarters office in Ord, the NRD web site, and the eight field office locations.

**Eschliman motioned, seconded by Sieh, 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 December 16, 2010, Board meeting minutes. Hearing none, Kruse ruled that the December 16, 2010, 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.

Sieh asked what a \$20,000 payment to Metropolitan Area Planning Agency of Omaha was for and Koehlmoos said it was for LIDAR photography of the District. Koehlmoos said that the utility bill from Loup Valleys RPPD was a larger amount than usual as it covered two months. Koehlmoos also directed the Board to bills for NRD apparel, the lobby furniture, and a new plotter printer. Koehlmoos noted that payments to Springdale Title and Realty were then billed to the appropriate party as part of title searches for new irrigated acres.

**Toene motioned, seconded by D. Rasmussen, to approve the January, 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 Nebraska Department of Agriculture had notified the District that funds are still available for the Nebraska Buffer Strip Program. He said that the program could stand alone or be combined with the Conservation Reserve Program.

Woollen said that the Forestry Initiative available through the EQIP program was available for landowners in the District and he hoped to have a number of applications. He hoped to have more tree plans approved through the program, which has been cut to \$300,000. The initiative provides cost-share for tree planting and fabric weed barrier, and rankings are done separately from other programs.

Koehlmoos said that funding for cost-share under NSWCP is nearly gone and budget cuts will likely cut those funds for the coming year. He said that if the funding is cut, there may be some approved cost-share applications that would need to be funded in other ways.

## NRCS REPORT

District Conservationist Bryce Bauer told the Board that the announcement of the Resource Conservationist vacancy in Albion brought seven applications. Interviews will begin in the next week and the applicant selected would likely be in place within six weeks.

Bauer said that 351 EQIP applications had been taken in the District. EQIP applications were divided into two sign-ups and the next deadline would be on the 18<sup>th</sup>. Bauer said the 351 applications would be ranked by next Tuesday. There were 100 applications for the Conservation Stewardship Program (CSP) and those will be ranked by March 9<sup>th</sup>. Bauer said that \$811,000 had been budgeted for EQIP in the Lower Loup NRD for the year. The State of Nebraska would get nearly \$18 million, with \$1.5 million going to organic farming programs; \$1.2 million to the CCPI; \$1 million to the Legacy program; and nearly \$4 million to Animal Feeding Operations. Lower Loup's \$800,000 allocation was the largest among the NRDs. He said that additional funding might be available when other state's return unused funding.

Bauer directed the Board to information regarding Civil Rights and Equal Opportunity from USDA that was included in the Board packets. He said that a No-Till Conference would be held February 16<sup>th</sup> at the fairgrounds in Ord. Frenzen asked how the \$18 million this year compared with the previous year and Bauer said it matched the previous year.

## ENGINEERING REPORT

### Lake Ericson Spillway Repair

District Engineer Robert Mohler told the Board that the dam at Lake Ericson was classified as a Class B dam, meaning it would create significant damage if it failed. He said that if it could be demonstrated that water would not overtop Highway 281 if the Ericson Dam failed, the dam could be reclassified as a Class A or low hazard dam. Mohler said that a dam breach analysis is being

considered for the lake, but the Nebraska Department of Natural Resources can't schedule it for approximately three more years.

Eschliman asked how many county bridges washed out in the June flooding and Mohler said he did not have that figure. Koehlmoos said that staff would contact county road superintendents to compile the number.

#### Loup River Levee Recertification

Mohler told the Board that work continues on the recertification project. He referred the Board to a progress report included in the agenda from the consultant.

Koehlmoos said that Anderson had taken digital photos of the Whitetail Levee work. Anderson, Gutzmer, and Walden provided commentary as the photos were projected.

### PUBLIC HEARING ON COMPLAINT OF ALLEGED VIOLATION OF DISTRICT RULES & REGULATIONS – RICHARD DOZLER & DAVID DOZLER

Chairman Kruse opened the public hearing on the alleged violation of Lower Loup NRD Groundwater Management Rules and Regulations by Richard Dozler of Albion and David Dozler of Albion at 5:30 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 Rules & Regulations; the revision to the Water Quality Section of the Groundwater Management Plan; the newspaper proofs of publication of the hearing legal notice; clippings of the printed hearing notices; and the certified mail return receipts from the inspector's letters sent to Richard Dozler and to David Dozler as exhibits to the hearing.

Callan then testified that a report was sent to Richard Dozler and David Dozler after NRD staff discovered the alleged violation. Callan said that staff was reviewing infrared photos as part of preparation for David Dozler's request for new irrigated acres granted to the NRD through LB 483. He said the photo showed a center pivot irrigating the uncertified land, owned by David Dozler, for which the new irrigation was being sought. The center pivot is owned by Richard Dozler and irrigates his field. Callan said he had discussed the matter with David Dozler and Richard Dozler and both had cooperated fully with the investigation. Callan said he and Harris visited the site and noted pivot tracks on the uncertified field. He submitted the Rules & Regulations Investigation Request on the incident as findings of fact.

Richard Dozler of Albion testified that he was initially unaware that he was in violation until he was notified by the District that use of his well to irrigate uncertified acres constituted a violation. He said that a visit to the NRD office to transfer irrigated acres allowed him to see how infrared photography allowed the District to monitor irrigation and he warned David Dozler to certify his acres as irrigated. He said "I know I did wrong because it's my water."

David Dozler of Albion testified that "I guess I'm the guilty one." He said he intended to apply for irrigated acres the prior year and missed the deadline. He said he had applied for new irrigated acres this year and that is where the issue began.

Chairman Kruse asked if there was additional testimony and none was heard. Kruse closed the evidentiary portion of the hearing.

Kruse asked for comments from the NRD Directors. Sieh asked if David Dozler paid irrigated or dry land taxes on the acres involved and Dozler said dry land. Richard Dozler said that he paid irrigated taxes on his field. Hadenfeldt asked if it was the first year for the pivot to be in place and Richard Dozler said it had been there for two crop years. Gutzmer asked how the violation was discovered and Callan said it was discovered when the application for new irrigated acres was researched. Kruse closed the hearing at 5:41 p.m. Kruse asked the Board to enter findings and consider the adoption of cease and desist orders. Citta requested that a range of potential penalties be made by the Water Resources Committee for consideration by the NRD Board.

**Gellermann motioned, seconded by Adams, that the Lower Loup Natural Resources District Board of Directors find Richard Dozler and David Dozler in violation of the District's Groundwater Management Rules and Regulations and that cease and desist orders be issued on the illegal activity of irrigating non-certified acres; and that the decision be referred to the District's Water Resources Committee for a recommendation of penalties to be assessed for consideration at the February 24, 2011, Board of Directors meeting. Motion carried by roll call vote, all present voting yes.**

Koehlmoos read into the record the Cease and Desist Orders, 2011-01 and 2011-02.

Eschliman asked if a seven-day waiting period applied in the matter and Koehlmoos said that the cease and desist orders go into effect immediately. Gutzmer asked if the matter would be publicized as information for other landowners in the District and suggested that it be considered.

## INFORMATION AND EDUCATION REPORT

### ACE Camp

Information & Education Coordinator Larry Schultz told the Board that planning was underway for the Adventure Camp about the Environment or ACE. He provided the Board with a rough draft of the camp's 2011 brochure. The camp date has been moved to June 5-8 at the State 4-H Camp at Halsey. The camp is offered to students who had completed the 6<sup>th</sup>, 7<sup>th</sup>, or 8<sup>th</sup> grades. Based on surveys of last year's 51 campers, some of the camp's activities had been modified. One of the new additions would be an archery activity. The cost to attend the camp had been increased from \$175 to \$180. The Lower Loup NRD offers a \$100 scholarship to students in the District to help cover the cost of the camp.

Koehlmoos asked how many Lower Loup students attended last year's camp and Schultz said the NRD had scholarships for five. Hadenfeldt asked if the scholarship amount should be increased and Schultz said that had been considered, but requiring a "buy-in" from the campers kept them from backing out at the last minute, something that had happened with full-scholarship recipients from other NRDs.

### Quarterly I&E Staff Meeting

Schultz said that I&E staff from around the state had met in Lincoln prior to the NARD Legislative Conference. Among the topics the group discussed were the ACE Camp, and Master Conservationist Awards.

Knutson asked for more information about the Master Conservationist Awards and Schultz said that the award was presented by the University of Nebraska and the Omaha World-Herald and honored individuals and groups for their efforts in natural resources conservation.

### Pheasant Fest

Schultz told the Board that he was among the volunteers to work in an NRD booth at the Pheasants Forever's Annual Conference and Trade Show called Pheasant Fest. The event would be held at the Qwest Center in Omaha over the next weekend. The NRD booth would feature activities for children including the Upper Big Blue NRD's "River Run" and Wildlife CSI.

Schultz said several Directors had requested additional information about the Nebraska Environmental Trust following the Legislative Conference. He passed to the Board a copy of the Nebraska Environmental Trust's Annual Report for 2010.

## 2010 STATIC WATER LEVEL REPORT

Assistant Manager Russell Callan told the Board that copies of the 2010 Static Water Level Report from last spring had been assembled and additional copies were available. He said it would also be available on the NRD web site. The District average was up just over a half a foot over levels in 2009. He said that there were some areas that did not see increases.

## ASSISTANT MANAGER'S REPORT

### Variance Committee Meeting

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 each of the requests was heard for the first time and no action was taken by the Committee.

### Groundwater Management Area Activities

#### Irrigated Acres Certification Progress

Callan told the Board that new maps had been created using a new plotter purchased by the District. He said that the maps provide much better details offered by the infrared photos.

## Area 28 Activities

Callan told the Board that Diggers Hotline officials had determined that soil sampling was among the activities that required a call to the hotline and that sampling without that notification was a violation of the law. He said that a bill introduced in the current session of the Legislature deals with the issue and Callan testified on behalf of the NARD in favor of exempting soil sampling from the requirement of contacting Diggers Hotline. He said that officials with utilities testified against the exemption.

Gellermann asked if a resolution from the Lower Loup Board stressing the importance of soil sampling for water quality work and the effect the requirement would have on that work would be warranted and Callan and Koehlmoos said it might be.

**Gellermann motioned, seconded by Anderson, to approve a resolution to reaffirm the Lower Loup NRD's requirement for soil sampling as part of the District's ongoing effort to improve groundwater quality. Motion carried by roll call vote, all present voting yes.**

Callan said that the next Monday was the deadline for producers in Area 28 to send in their annual reports. Lorenz and Drozd had been working with producers to get the forms completed and returned.

## ELM Update

Water Modeling Coordinator Tylr Naprstek told the Board that there was no update on the ELM Study. There are still funds available for flow meter cost-share through the District's Environmental Trust Grant and Naprstek urged Directors to share that information with their constituents. He said that, in exchange, the landowner must grant the NRD access to read the meters for a period of 10 years. About 40 percent of the data had been gathered for the Area 28 Study and he expected an update in the next months. Naprstek thanked the Board for the new plotter, saying it provided much better detail on maps.

Knutson asked how much funding the grant provided for flow meters and Naprstek said that it was a three-year grant totaling \$150,000. He said \$60,000 had been provided for the first year.

## MANAGER'S REPORT

### Legacy Partnership Team Grant Application Request

Koehlmoos told the Board that the request was to continue the reconnaissance work on invasive species in the Loup River system. He said that the request sought the Lower Loup NRD's continued participation and match funding of \$10,000.

Sieh asked if the funds were for monitoring or control of invasive species and Koehlmoos said they would cover both. He said that work would be done on some of the tributaries of the Loup River and control work on infestations found. He said the work would be done in partnership with County Weed Superintendents. Sieh asked if eradication would be done by helicopter and Koehlmoos said it

could be, but other means such as accessing infestations by four-wheelers and other means would be done as well. Thoene said that a County Weed Superintendent had expressed appreciation to him for the NRD's involvement.

**Adams motioned, seconded by Knutson, to approve the Lower Loup NRD's participation in the Legacy Partnership Team Grant Application and to approve up to \$10,000 in match funding over a two-year period. Motion carried by roll call vote. Directors voting yes: Adams, Amsberry, Anderson, Bartak, Citta, Eschliman, Frenzen, Gellermann, Gutzmer, Hadenfeldt, Knutson, Kruse, Petersen, D. Rasmussen, L. Rasmussen, Sieh, Smith, Thoene, Walden. Director voting no: Staab. Director absent: Nelson.**

#### GMDA Request for Assistance with Central Platte NRD Lawsuit vs. FSA on Release of Records

Koehlmoos told the Board that Central Platte NRD had been seeking partnerships in its quest to gain the release of data from USDA Farm Service Agency for irrigated acre information. He said that the information, which would have been available from FSA, had to be acquired over a lengthy time frame, costing the District time and money. He said the federal law known as the Privacy Act meant the data would not be released by the FSA, and Central Platte NRD filed suit. He said GMDA has approved financial assistance and requested its membership from all states to participate financially in the ongoing legal battle. He said Central Platte NRD lost in District Court and is appealing the ruling. GMDA's request ranged from \$500 to \$1,000.

Knutson asked if the Lower Loup NRD had already made a contribution and Koehlmoos said one had been approved, but not sent due to GMDA's participation. Walden asked why the lawsuit was being pursued when the data had since been accumulated and Koehlmoos said that the data is continuously updated by FSA, but still not available to the NRDs, requiring the NRDs to continue their own efforts. Frenzen said that it is also frustrating for landowners who must provide the information twice, to FSA and to the NRD. Koehlmoos said it is also frustrating because FSA and NRDs are supposed to be partners in natural resources conservation. Citta said that he felt the Lower Loup should honor its earlier commitment.

**Sieh motioned, seconded by Citta, to provide up to \$1,000 in financial support of the Central Platte NRD's legal expenses regarding the FSA release of records lawsuit per the request of the GMDA. Motion carried by roll call vote, all present voting yes.**

#### New Hires

Koehlmoos told the Board that several forms created using Microsoft Access and used by District staff are now out of date. He said that the forms need to be reformatted using up-to-date software and he sought to contract with a consultant to complete the job. He said the forms are primarily those used in water management and need to be linked to various data. He said the position would be discontinued when the work is complete. Koehlmoos said that bids would be solicited for the job. Citta said that he felt the Board should approve the work and management should determine the scope. Smith asked if it were something that could be shared with other NRDs and Koehlmoos said he would look into that possibility.

**Knutson motioned, seconded by Thoene, to authorize District management to proceed with hiring a consultant for improvements to the Access database. Motion carried by roll call vote, all present voting yes.**

## NARD REPORT

### Director's Report

D. Rasmussen said the NARD Board met in Lincoln following the Legislative Conference. He said that about half the NRD Directors attended the Legislative Conference. He moderated sessions on open meetings law and "Air & Water Alive." He said the NARD is doing well financially and the retirement program has about \$18 million in account. Koehlmoos said state budget concerns were expressed throughout the conference. D. Rasmussen said that the NARD Insurance Program is also in sound financial shape.

## NRC REPORT

### Commissioner's Report

NRC Representative Dick Hadenfeldt reported that the Natural Resources Commission met in Lincoln following the Legislative Conference. Hadenfeldt said that NRC has two new members, Jeff Steffen and Kenny Brockman. Jim VanMartre, who represented municipal water users, resigned following the meeting. There will be only four NRC meetings in 2011. Hadenfeldt said that there was some discussion regarding the Republican River Basin. NRC Representative Tom Knutson said that his first meeting was interesting and natural resources funding was the primary concern.

### Legislative Conference Report

Koehlmoos said that the Nebraska Environmental Trust and the funds it distributes are the focus of multiple bills in this session. He said that the NRD Managers and NARD Legislative Committee released a statement that said NARD and NRDs are willing to work with the Legislature to meet the requirements and shortfalls of the state, but hoped to maintain as much funding as possible to continue natural resources work.

He said that LB 529, the conservation easement bill, was a point of controversy and the NARD opposed the bill in its final vote. He said that 48 bills and one constitutional amendment were considered during the Legislative Conference.

## RC&D REPORTS

### Loup Basin RC&D

D. Rasmussen told the Board that the RC&D met to discuss its budget. There may be a reduction in hours for one staff member. He said the group also toured the Calamus Fish Hatchery

near Burwell, and that work on the ponds at the hatchery will be done this summer at a cost of about \$2 million. The RC&D tourism committee was investigating the potential to create a train that would travel between Grand Island and Ord as a tourist attraction.

### PrairieLand RC&D

Gellermann reported that he had attended his first meeting of the RC&D. He referred the Board to the reports from Al Mittan. He said that the group got a report on the Nebraska Food Coop, which has a store in St. Paul and which has purchased a grocery store in Wolbach. He said the RC&D also had a presentation on immigration and citizenship issues. Mexico's refusal to grant visas to its citizens is a major contributor to illegal immigration to the U.S.

Gellermann said he felt that the Legislative Conference was well organized and was well worth attending. Thoene said that there was also some discussion about combining NRDs in the same river basin.

### 2011 LLNRD COMMITTEE APPOINTMENTS

Kruse announced that his appointments to the Variance Committee and Water Resources Committee would remain as the previous year. He felt continuity was important in light of the numerous issues facing the District. He invited Directors who wished to serve, or who no longer wished to serve, to contact him regarding their appointment.

Water Resources Committee members will be: Adams, Amsberry, Citta, Eschliman, Frenzen, Gellermann, Hadenfeldt, Nelson, Sieh, and Thoene.

Variance Committee members will be: Amsberry, Citta, Gellermann, Nelson, and Thoene. Alternates are: Adams, Eschliman, and Sieh.

### ANNOUNCEMENTS

Hadenfeldt announced that the Natural Resources Commission had elected Dan Watermeier as Chairman and Dick Mercer as the Vice-Chairman.

ADJOURNMENT

With no further business before the Board, Chairman Kruse declared the meeting adjourned at 6:55 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, February 24, 2011, at 5:00 p.m., at the Headquarters Office in Ord, Nebraska.

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Darwin B. Anderson  
Secretary