

# LOWER LOUP NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS MEETING

April 28, 2011

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 28, 2011. Chairman Gary Kruse called the meeting to order at 5:01 p.m.

## CALL TO ORDER

### Directors in attendance

James C. Adams  
Timothy E. Bartak  
Virgil W. Gellermann  
Gary A. Kruse, Chairman  
Alan D. Petersen  
Lyle D. Rasmussen  
Henry J. Thoene

Darwin B. Anderson, Secretary  
James J. Eschliman  
Thomas Knutson  
James C. Nelson  
Dean J. Rasmussen  
Bradley R. Staab

### Director absent

Rollie D. Amsberry, Treasurer  
Craig E. Frenzen  
N. Richard Hadenfeldt  
Gerald P. Smith

Joseph L. Citta, Jr., Vice Chairman  
Michael P. Gutzmer  
Darwin R. Sieh  
Kim Walden

### Staff in attendance

Leon "Butch" Koehlmoos, General Manager  
Rita Goldfish, Administrative Assistant  
Mike Lorenz, Agronomy Technician  
Tylr Naprstek, Water Modeling Coord.  
Richard Woollen, North Cent. Dist. Forester

Russell Callan, Assistant Manager  
Dell Harris, Water Resources Specialist  
Robert T. Mohler, District Engineer  
Larry D. Schultz, I&E Coordinator

### Guests in attendance

Mark Sintek, RC, NRCS, Ord  
Al Schmidt, MLPP&ID, Arcadia

Dusty Staab, Ord  
Karen O'Connor, Olsson Associates, Lincoln

## NOTICE OF OPEN MEETING LAW POSTING

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

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

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

**Anderson motioned, seconded by Petersen, 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 March 24, 2011, Board meeting minutes. None being heard, Kruse ruled that the March 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 \$70,175 was made to USGS for work on the Elkhorn-Loup Modeling Study.

**D. Rasmussen motioned, seconded by Staab, to approve the April, 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.

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

Koehlmoos directed the Board to a report in the Supplemental Agenda. He said that earlier in the afternoon, a resolution had been reached with the complainants regarding violations of the District’s rules and regulations regarding the irrigation of uncertified acres. He said the complainants

had withdrawn their request for a formal hearing. The complainants had accepted the revised schedule of compliance. Koehlmoos said he had rejected the first schedule offer from the complainants. The complainants had admitted the violation of District's rules and regulations and were willing to "cease and desist" and sought alternate penalties. Koehlmoos said he, as compliance officer, would require the "two for one" penalty set previously by the Board. The complainants initially decided to go to public hearing, but then, to avoid the publicity, had submitted a letter stating they would accept the penalty and wanted reasonable consideration of a future transfer of irrigated acres to the 40 acres that were previously illegally irrigated. He said that 81 acres would be set aside until 2012. Koehlmoos said the amount of legal fees was regrettable, but those costs came with enforcement of the rules.

Knutson asked if Board action was required and Koehlmoos said that since he, as compliance officer, agreed to the complainants terms, no Board action was required. Adams asked if the District used only Don Blankenau or utilized a local attorney as well and Koehlmoos said only Blankenau worked on the violation, but the NRD's local attorney would be kept abreast of the matter for future cases.

### FORESTER'S REPORT

North Central District Forester Rich Woollen of the Nebraska Forest Service referred the Board to his written report included in the agenda. He said the *Corners for Wildlife* program saw good enrollment numbers in the District, especially in Custer, Greeley and Wheeler Counties. Woollen said that 207 acres were enrolled, providing \$20,660 in payments over a 5-year contract period. A "Corners for Wildlife" cover mix was used with the program.

Woollen said that the Barta Brothers Ranch near Rose was now owned by the University of Nebraska Foundation and was serving as a model ranch for students, providing research of value to the state's ranchers and livestock. He said NRD Conservation Technician Tyler Collier had spent one day planting trees at the Ranch. Woollen said that he, himself, had installed a drip irrigation system on the newly planted trees. Upper Elkhorn NRD had installed fabric weed barrier on another section of trees.

Woollen said that he had attended a meeting covering invasive species and passed to the Board copies of handouts regarding knotweed. He had additional copies of invasive species control on the Niobrara River scenic river system.

### 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 supplemental agenda.

Koehlmoos asked if any information was available about the potential relocation of the Greeley NRCS office to Spalding and Sintek said that he was unaware of any new developments. Adams said that the zeroed funding for the Loup Basin RC&D meant an additional employee for NRCS and Sintek reported that Sheila Luoma was now working in the Ord office.

## AREA 28 AQUIFER STUDY

NRD Water Modeling Coordinator Tylr Naprstek introduced Karen O'Connor of Olsson Associates, who provided the Board with a power point presentation detailing the progress of the Area 28 Aquifer Study.

O'Connor provided information on work that was complete or nearly complete, which included gathering data on hydrology and nitrate contamination already compiled by other agencies, including Central Platte NRD, Nebraska Department of Natural Resources, and Nebraska Department of Environmental Quality. She provided details on how the data was compiled and how it was being analyzed.

Adams asked what kind of rock the bedrock was and O'Connor said that in Area 28, the bedrock was limestone.

O'Connor stated that the test wells drilled for the project showed that the geology of Area 28 changes from east to west. She passed to the Board an example of a hydro-sleeve, a well lining tube used in the study. O'Connor provided some of the results from the field work, including information on nitrate levels.

O'Connor said that work progress and available budget is matching well. Koehlmoos asked how much local money was involved in the project and Callan said that approximately \$63,000 in funding through a "319" grant was being utilized and the rest was NRD funds. Koehlmoos said that there would be more reports from O'Connor as work progressed.

## ENGINEERING REPORT

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

District Engineer Robert Mohler reminded the Board of Michael Brittenham's presentation and request for additional assistance at the March Board meeting. He said that if the NRD approved funding of the overage at the 30% participation rate, the additional contribution would be \$91,453. He said that staff recommended the additional financial participation on the Whitetail project, but said that the Loup River Levee work would also likely bring a request for additional assistance. He said that at a meeting of the consulting engineers and city officials, discussion showed the potential need for a new toe drain, redundant structures and a peer review that would increase the project's costs. He referred the Board to additional cost details included in the meeting agenda that put current cost projections for the project at \$3.2 million.

Kruse asked what the construction schedule for the Loup River Levee project was and Mohler said that plans should be completed in August, Corps of Engineers approval is expected by December, construction would begin in the spring of 2012 and be completed in October, 2012, to meet FEMA accreditation requirements. Adams asked if FEMA funding would be provided and Mohler said he wasn't aware of FEMA funding, only FEMA approval. Koehlmoos said he was aware of only two financial participants in the project, the city of Columbus and the NRD. Koehlmoos said that Sieh attended the meeting today and said the city was planning to make additional requests to the NRD.

Kruse asked if the NRD had covered overages in the past and Koehlmoos said that the NRD had. Koehlmoos said that there was room in the budget because the Loup River Levee project would not require payment until 2012. Kruse said that because of the high dollar requests coming to the NRD, the District might need to spread the disbursements over multiple years. Adams said that covering overruns would lead to fewer projects getting funding and there were more requests coming.

Eschliman asked if the 30% participation was the maximum at which the NRD could participate and Koehlmoos said that it was not and that the participation was based on the project's benefits. He said that, under the guidelines, Director discretion also came into play in determining District participation. Knutson asked where the Whitetail subdivision was located and Koehlmoos said south of the river south of Columbus. Koehlmoos said that any uncovered costs would be assessed back to the landowners of the subdivision. Mohler said there were 115 landowners in the subdivision who would be assessed the costs.

Gellermann asked if any funds that had been budgeted but unused could be taken off the list and those funds used for this or other projects and Koehlmoos said that the NRD had not been notified that any of the projects were not proceeding. Knutson asked if the project could go on the next budget and Kruse said he would prefer to spread it over multiple years' budgets. Koehlmoos said the NRD is well under its levy limit and is restricted by the levy lid in Nebraska. Eschliman said land valuations will be a factor as well. Anderson asked if the funds would come out of the current budget or the next budget and Koehlmoos said he would likely pay it from the funds not expended on the Loup River Levee. D. Rasmussen asked if the Whitetail project was now complete and Koehlmoos said he believed that grass seeding was being completed.

**Gellermann motioned, seconded by Petersen, to approve the Lower Loup NRD's financial participation from the current budget in the Whitetail Levee (S.I.D. #7) Recertification project to cover 30% of the local share of the additional costs. Motion failed by roll call vote. Directors voting yes: Anderson, Gellermann, Kruse, and Petersen. Directors voting no: Adams, Bartak, Eschliman, Knutson, Nelson, D. Rasmussen, L. Rasmussen, Staab, and Thoene. Directors absent: Amsberry, Citta, Frenzen, Gutzmer, Hadenfeldt, Sieh, Smith, and Walden.**

#### Loup River Levee Recertification

Mohler referred the Board to the information included in the agenda and to the previous discussion. He asked that anyone with questions get in touch with him.

#### Request from Middle Loup Public Power & Irrigation District

Mohler referred the Board to a letter from Middle Loup Public Power & Irrigation District included in the agenda. Mohler directed the Board to a list of costs for the diversion dam. He suggested the Board consider only the costs for those items. Koehlmoos agreed and recommended that only engineering and construction costs should be considered by the Board through the participation policy. Mohler said that a bid opening had taken place and Parrett Construction of Valentine had the low bid. He said that construction had begun earlier in the month. Mohler said that the diversions are separated by an island. The south diversion would have radial gates. He provided the Board with

some photographs in a power point presentation. A concrete bridge was a new addition to the north diversion set-up. Mohler introduced Al Schmidt, Middle Loup PP&ID Manager.

Schmidt said the contractor is struggling with establishing a cofferdam and was now using larger piling. He said that increased flows were part of the problem. He thanked the Board for its previous contribution to his District. He said that the new dam would boast more safety features than the old dam.

Adams asked if there would be a backup power system and Schmidt said there would be an electric backup system with a manual override. Thoene asked when the project would be completed and Schmidt said it would be wrapped up by October 15<sup>th</sup>. He said that final payment would be made at that time and the project is being overseen by Olsson Associates. Adams asked what system would be used for this irrigation year and Schmidt said the cofferdam would be utilized like it was last season. Eschliman asked what chance there was for a financial contribution from FEMA and Schmidt said that FEMA has notified him that the application is eligible for advancement subject to approval from U.S. Fish & Wildlife. Koehlmoos said that FEMA officials had contacted the NRD regarding the consultation on the project. NRD staff had to offer a lengthy explanation of terms like “consumptive use” and others.

#### Lake Ericson Spillway Repair

Mohler told the Board that a breach analysis for determination on the hazard classification of Lake Ericson Dam had been completed. He said that the analysis had been completed by JEO and he referred the Board to a portion of the report included in the agenda. He said that recommendation from the analysis was that the Lake Ericson Dam met the qualification of a “low hazard dam.”

Koehlmoos said that he had responded to the report, saying that the review met the minimum requirements. He said he stated that the NRD was concerned not only with the bridge on Highway 281, but with the effect the failure of the dam would have on dams downstream, such as the Spalding Dam. He said that he notified them that he would convey his concerns to DNR if asked. Knutson asked if there was a request to the Board and Mohler said there was not at this time.

### INFORMATION AND EDUCATION REPORT

Information & Education Coordinator Larry Schultz introduced Dusty Staab, son of Director Brad Staab, who presented a Certificate of Appreciation to the District from the Ord High School FFA Chapter. He thanked the NRD for its contributions to camps and contests in which he and his fellow students had participated.

#### State Envirothon

Schultz told the Board that Dusty Staab was a member of the Ord High School team that had qualified for the State Envirothon contest which would be held May 7<sup>th</sup> at Scottsbluff. Schultz will serve as a volunteer at the contest. Schultz said that Loup City had also qualified, but would not be able to attend. Schultz said the NRD would provide the FFA Chapter with reimbursement of the \$100 state contest entry fee.

### Children's Groundwater Festival

Schultz told the Board that he had been invited to again present the "Water Drop Relay" at the Children's Groundwater Festival in Grand Island on May 10<sup>th</sup>. The presentation provides students with information on the water cycle, followed by an activity where the students act out a portion of the cycle.

### Tours

Schultz said the NARD Basin Tour would be held June 13-15, 2011, and would feature the Nebraska Panhandle as well as parts of Wyoming. He said the tour starts in Alliance, moves through the Pine Ridge, and into Wyoming to see the Pathfinder Dam. He said registration deadline is May 20<sup>th</sup>. The other tour is sponsored by UNL and the Kearney Chamber of Commerce. The tour would be in the Niobrara and Loup River Basins and would include a stop at Davis Creek Reservoir and a lunch at the Lower Loup NRD headquarters. The tour will be held July 12-14, 2011.

Schultz also said the NRD was offering scholarships to natural resources camps, including Range Youth Camp and Adventure Camp about the Environment, both in June. He said early registrations were down from last year.

Schultz told the Board that newspaper clippings would now be e-mailed to Directors, rather than placed in a clipping book passed around at meetings.

Nelson said that the Pathfinder Dam was a worthwhile stop and recommended that the other Directors visit if the opportunity presents itself.

## 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 Bruce Petska to certify acres that did not meet NRD rules had been heard for the first time and would be considered again the next month.

Callan said that William Martinsen wished to relinquish a surface water right on the Cedar River to drill a well to irrigate 22 acres. He said the Committee recommended approval of the request.

**Nelson motioned, seconded by Knutson, to approve the William Martinsen variance request to relinquish surface water permit A-12680 in exchange for a permit to drill a well to irrigate 22 acres in the NW¼ of Section 8, Township 19, Range 18 West in Boone County. Motion carried by roll call vote, all present voting yes.**

Nelson said that the request from the State Bank of Cairo aka Pathway Bank should be tabled until a determination can be made by the Nebraska Department of Natural Resources as to the standing of the surface water rights in question.

**Nelson motioned, seconded by Thoene, to table the State Bank of Cairo aka Pathway Bank variance request until the Nebraska Department of Natural Resources makes a determination on the status of the surface water rights in question. Motion carried by roll call vote, all present voting yes.**

Callan said that a request from Corey Hughes regarding certification of acres in Garfield County was heard for the first time and would be discussed again in May.

#### Water Resources Committee

Callan reported that the Water Resources Committee had met on April 20<sup>th</sup> to discuss the criteria for ranking requests for irrigated acres made available under LB 483. Callan said that, after presentations from staff, the Committee agreed to maintain the ranking criteria.

Adams said that Director Jerry Smith attended the Committee meeting and agreed that maintaining the criteria was the right move.

**Adams motioned, seconded by Eschliman, to approve the Variance Committee recommendation to maintain the ranking criteria in the LB 483 irrigated acres process. Motion carried by roll call vote, all present voting yes.**

Callan told the Board that the Water Resources Committee had reviewed the list of violators of District rules in Area 28. Callan said that letters had been sent to violators who had single violations. Area 18 action had been discussed and staff planned to expand vadose zone testing and water sampling to improve the available data. He said that the *Water Matters* newsletter was being sent to Area 18 residents as part of the public information component for the area.

Knutson asked what penalties could be implemented for violators in Area 28 and Callan said that the violator gets notification of the violation and a schedule of compliance. Callan said that if the completed schedule of compliance is approved by Koehlmoos as the compliance officer, the matter is resolved. The compliance officer could also require additional actions from the violator, who either agrees or requests a public hearing before the Board, who can then take a final action.

#### Groundwater Management Area Activities

##### Irrigated Acres Certification Progress

There was no report.

##### Area 28 Activities

There was no report.

##### ELM Update

There was no report.

## MANAGER'S REPORT

### Prescribed Burn Program

Koehlmoos told the Board that there were a couple of instances where prescribed burns broke out from the planned burn area. He said that the fire department was called in on one of the burns. He said that burning is not a fool-proof process but there were no injuries or major property damage.

Bartak said that a fire near Arnold burned an estimated 160 acres. The fire jumped the highway. He said that the fire at Callaway turned into a positive burn for the landowner, destroying a number of cedar trees.

Koehlmoos said that Burn Coordinator John Ortmann did an excellent job of preparation and planning, but burns are not foolproof. Eschliman asked who was liable for a burn that goes out of control and Koehlmoos said the landowner is the permit holder, but that did not mean the NRD could not be drawn into legal action.

### New Hires

Koehlmoos said that part-time summer help had been hired for tree planting. He said that Kristy Berghorst and Joshua Granger had been hired in Broken Bow, Kevan Edzards had been hired in Ord, and Nicholas Ray had been hired in Greeley.

## NARD REPORT

### Director's Report

D. Rasmussen said the NARD Board would meet in Alliance on June 13<sup>th</sup>. He provided the Board with a list of legislative bills affecting natural resources.

## NRC REPORT

Knutson 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 lost its coordinator when federal funding was withdrawn. He said the RC&D was still operational and rent was being paid. Determinations were being made as to which entity owned furnishings and other office materials.

### PrairieLand RC&D

Gellermann reported that the RC&D was in the same situation with no federal funding available. Staff and equipment had been removed, but the RC&D would continue to operate as a non-profit group and office space would be used in an area church. He said some funds remain in the treasury and some grant funds still to be administered for the Shell Creek and no-till projects.

Koehlmoos said that the RC&D program had some great accomplishments, but that without a dedicated funding source, it appeared unlikely they would survive. Koehlmoos said that it was likely that the NRD would be approached for funds. He asked the Board to consider the situation and direct staff as to its wishes.

Anderson provided the Board with a weed management brochure detailing knotweed as an invasive species. Koehlmoos reported that the Platte Valley Weed Control Authority grant application from the Environmental Trust had been approved. He said that the NRD had set aside \$5,000 as the local share for work on the North, Middle and South Loup Rivers. The grant would cover reconnaissance work on the Cedar and Calamus Rivers as well as work on the Elkhorn River.

### ANNOUNCEMENTS

There were no announcements.

### ADJOURNMENT

With no further business before the Board, Chairman Kruse declared the meeting adjourned at 7:14 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 26, 2011, at 5:00 p.m., at the Headquarters Office in Ord, Nebraska.

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Darwin B. Anderson  
Secretary