

# LOWER LOUP NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS MEETING

May 23, 2013

Ord, Nebraska

The May 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 May 23, 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  
Joseph L. Citta, Jr., Vice Chairman  
Michael P. Gutzmer  
Randy Kauk  
Gary A. Kruse, Chairman  
James C. Nelson  
Dean J. Rasmussen

Rollie D. Amsberry, Treasurer  
Timothy E. Bartak  
James J. Eschliman  
N. Richard Hadenfeldt  
Thomas L. Knutson  
Matt Lukasiewicz  
Alan D. Petersen  
Henry J. Thoene

### Directors absent

Virgil W. Gellermann  
Darwin R. Sieh  
Kim C. Walden

Clifford P. Loseke  
Gerald P. Smith

### Staff in attendance

Leon "Butch" Koehlmoos, General Manager  
Dell R. Harris, Water Resources Specialist  
Irene F. Kreifels, Financial Secretary  
Cheryl K. Hornickel, Programs Assistant  
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  
Richard L. Woollen, District Forester  
Tylr D. Naprstek, Water Modeling Coordinator

### Guests in attendance

Bryce Bauer, DC, NRCS, Ord  
Austin McKillip, Lincoln

Kurt Kroeger, Dannebrog

## 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 Engineering Report with the addition of “Howard County Road Structures.” The modification was made 24 hours before the Board meeting and was posted on the web site.

**Eschliman motioned, seconded by Knutson, 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 April 25, 2013, Board meeting minutes. Hearing none, Chairman Kruse ruled that the April 25, 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 the NRD had purchased the hydro lab from Hach Company with funds from the 319 grant. The NRD will keep the equipment for future use since matching funds were used. Koehlmoos also mentioned that the NRD prepaid Kittle Plumbing part of the cost of the pipe line at the Aagaard Farm. Koehlmoos said the Petska Backhoe expenses for Davis Creek and Pibel Lake recreation areas were for pumping the restrooms. Koehlmoos said the \$33,457 expense to USGS was part of the ELM grant and will be reimbursed.

There was a question regarding the \$1,000 postage expense and Koehlmoos explained that it was for funds that are purchased in bulk amount for the postage machine. Koehlmoos also explained the wildlife water guzzler which will be installed at the Aagaard Farm to hopefully attract more wildlife.

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

## PUBLIC COMMENTS

There were no public comments.

## PUBLIC HEARING-ALLEGED VIOLATIONS BY H&M FARMS, INC. 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 H&M Farms, Inc. (Kurt Kroeger) of Dannebrog at 5:09 p.m. Assistant Manager Russ Callan, acting as the District Inspector, submitted into the record the Lower Loup Natural Resources District's 1985 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 2003 revision to the Water Quality Section of the Groundwater Management Plan; a copy of the Board Policy Regarding Irrigation of Non-Certified Acres; and Affidavits of Publication and clippings from newspapers.

Callan said that Kurt Kroeger is the owner of groundwater-irrigated land located within the boundaries of the Lower Loup NRD's management area. He received a notice of violating the Lower Loup NRD's rules and regulations. The alleged violation is of *Rule 17 – Closure in the Issuance of Permits and Closure to the Expansion of Irrigated Acres*. Callan testified that Mr. Kroeger had irrigated non-certified acres.

A packet of information was presented to Kurt Kroeger on March 28, 2013. Callan submitted into record the packet of information which included the Groundwater Investigation Request, Plan and Schedule for Compliance, Groundwater Management Act Enforcement Flow Chart, a copy of the well permit, a copy of a map showing the acres that were irrigated, and a copy of the certified acres form.

Callan also submitted into record a copy of the letter dated April 11, 2013, from Mr. Kroeger requesting the formal hearing; and a copy of the letter Callan sent to Mr. Kroeger with a return receipt dated April 30, 2013, indicating the date and time of the hearing.

Callan further testified that when he was working on another project last fall, he noticed that there was a pivot on the infrared photography that did not have an irrigated acres certification over it. The NRD contacted Mr. Kroeger to find out what happened. The NRD had come to the conclusion that a potential violation had occurred. When the NRD and Mr. Kroeger discussed the situation, Mr. Kroeger made a request to speak with the Variance Committee about a transfer onto his property. Callan had verbally turned down the request because of the lack of irrigated history on the property from which he wished to transfer. At the Variance Committee meeting, the committee had rejected hearing the request because it felt the situation should be handled through the violation process. Callan wrote up an investigation request and put together the report packet and found that H&M Farms, Inc. had irrigated 24.1 acres that were not certified with the District and a violation had occurred. Koehlmoos, Harris and Callan met with Kurt Kroeger on March 28, 2013, to discuss options and Callan presented him with the complaint and report packet. On April 11, 2013, Callan

received the letter from Mr. Kroeger that he wished to have a formal hearing before the Lower Loup NRD Board of Directors.

Callan said, "I would request that the Lower Loup NRD Board of Directors make findings based on the documentary evidence and my testimony that H&M Farms, Inc. be found in violation of the Lower Loup Natural Resources District's Groundwater Management Area Rules and Regulations."

Callan submitted into record his testimony.

Chairman Kruse then asked the alleged violator to present evidence and testimony.

Austin McKillip, attorney for H&M Farms, Inc. questioned Kurt Kroeger who told the Board that the land in question involved two fields on his home place – "Home 90" and "Home 50". Kroeger testified that he did not agree that the alleged 24.1 non-certified acres were watered. He said that all the proper paperwork and permits were filled out to drill a supplemental well.

A map previously provided to Mr. Kroeger by Callan indicated that 178.5 acres were watered, but only 154.4 acres had been certified, a difference of 24.1 acres. Another map, drawn by Mr. Kroeger, showed a hay meadow consisting of just under 20 acres and areas of irrigation. Mr. McKillip submitted into record the two maps.

Mr. Kroeger testified that he had historically gravity irrigated the hay meadow. The present pivot was installed in 2006/2007. In 2007, Mr. Kroeger applied for and received an approved permit to drill a supplemental well to supply the pivot and indicated that 130 acres would be irrigated, including 96 acres previously certified, another 10 acres that were gravity, 2 more acres, and an additional 20 to complete the circle.

In 2008, certification of irrigated acres was required and Mr. Harlan Kroeger, landowner, filled out the forms. Mr. McKillip presented an affidavit from Mr. Harlan Kroeger indicating he had made a mistake when he agreed that there were 154 acres versus 175 acres. The affidavit was entered into the record.

Mr. McKillip provided maps and told the Board that Kurt Kroeger also owns a field known as "Bales" which is north and west of Kroeger's "Home Place", across the road. Certified acres total 50.34 (35.5 ac and 14.84 acres in red). Mr. Kroeger said the NRD proposed to him that he not irrigate acres (in yellow) for one year, and to permanently stop the pivot from making a full circle, eliminating the ability to irrigate 12.4 acres in the middle, which would cause a permanent reduction in property valuation.

Mr. Kroeger testified that if the sanction by the NRD is imposed, he would take the pipe from the gravity on "Home 90" which has a stream depletion factor of 51% to gravity irrigate "Bales" which has a stream depletion factor of 82%.

Mr. Kroeger testified that, to his knowledge, Callan had never visited the property in question. Kroeger said if the end gun was turned off as it went over the hay meadow, it would result in an additional 16.7 acres being irrigated, as shown on a map Callan drew up. Mr. McKillip submitted four additional maps into the record.

Mr. Kroeger testified that he had requested a variance and submitted an affidavit in support. He said the variance was never taken to the Board. Mr. McKillip entered the affidavit into the record.

Mr. McKillip said that the proposal by the NRD to address the alleged violation is both inequitable and inefficient. He said that Mr. Kroeger proposed to the Variance Committee and Callan to relinquish permanently his right to irrigate 14.3 acres on the Bales field that has an 82% stream depletion factor. The proposal was rejected. Mr. Kroeger said he would agree to relinquish the adjacent 35.5 acres in the Bales field for a period of time, or permanently, if the Board sees fit. Mr. McKillip said that either one of the options proposed by Mr. Kroeger would result in less water being withdrawn from the river and is more efficient in terms of irrigation practices.

Mr. McKillip mentioned that there are some procedural issues that could be brought up in an appeal process resulting in additional litigation, such as the NRD not visiting the site and the permanent diminution of Mr. Kroeger's property value if the recommendations of NRD staff are accepted. Mr. McKillip asked that one of the options put forth by Mr. Kroeger be adopted, options which are more efficient and better for the NRD and are more equitable to Mr. Kroeger,

Chairman Kruse asked for rebuttal from the Lower Loup NRD. Callan told the Board that the supplemental well agreement, which is what the NRD uses to base the original numbers on, showed about 150 acres on the piece of property that was signed to get the supplemental well. After that time, through processes regarding history, a few more acres were added and 154 acres were certified. Callan said the well permit applied for indicated 130 acres. He explained that a supplemental well can irrigate any acres associated with the agreement under that legal description. Since 130 acres is less than 154 acres, he said no red flags came up that 24 more acres were being added to the supplemental well agreement.

Callan said that the maps he gave to Mr. Kroeger were options to meet policy criteria. Callan said he did not visit the site but had been in contact with Mr. Kroeger numerous times. Because of the drought last year, the infrared photography distinctly showed what was irrigated and what was not. Mr. Kroeger had never told the NRD that the piece of ground under the pivot was not irrigated.

Chairman Kruse closed the evidentiary portion of the public hearing at 5:40 p.m..

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

Hadenfeldt asked why the offer of the 35 acres across the road was not accepted and Callan answered that the acres did not meet the irrigated history criteria for transfer. Mr. McKillip said irrigated history of the Bales piece of ground was unavailable because it was put into alfalfa. Mr. Kroeger requested the records from FSA, but they were archived. Mr. McKillip felt that the irrigated history would show that the ground was eligible for certification, but the records are still unavailable.

Citta asked about the certification of the 50 acres and Callan said the 50 acres were certified but could not be transferred. Mr. McKillip said H&M Farms, Inc. would be willing to give up the 14 and 35 acres to receive the 24 acres so the pivot could make a complete circle.

Citta asked if the Variance Committee could reconsider the new information. Callan responded that if a violation has occurred, the first thing that happens in a cease and desist order is that a plan and schedule of compliance is drawn up on how to fix it. A method of reconsideration could be determined in the plan.

Koehlmoos clarified that the purpose of the hearing tonight is to determine if a violation has occurred. Any negotiations and plans to fix the problem are supplementary to the question of whether or not a violation has occurred. If a violation is determined, there are options available to remedy the problem.

Gutzmer asked about drainage direction and commented that if the area to the northwest was determined wetlands there could be a natural resources opportunity available if the acres given up would preserve the hydrology of already established wetlands. That could be a part of negotiations.

Kruse closed the public hearing on the alleged violation of H&M Farms, Inc. at 5:50 p.m..

Koehlmoos said the Board needs to determine whether or not H&M Farms, Inc. violated and watered illegally on uncertified acres. If the Board determines that a violation has occurred, an order to cease and desist is issued and the alleged violator fills out a schedule of compliance which is reviewed by staff to see if it will bring the alleged violator under compliance in the future. This is where the negotiations take place. The Variance Committee did not go into negotiations because they felt the violation process was necessary. Koehlmoos didn't think it was a good idea to bypass the procedures that are in place to handle both complaints and variance requests.

Mr. McKillip said the procedures here do allow the Board to find a violation and impose the conditions. He said that is one of the options the Board has and the option H&M Farms, Inc. asked for. He said they aren't trying to bypass the rules and regulations; it is appropriate for the rules and regulations for the Board to make that decision.

Callan said the NRD has a policy regarding what happens when a violation has occurred.

Lukasiewicz asked about the penalty for acres retired for the next irrigation season. Callan said that the penalty is in the first year when two times the number of acres that were found to be illegally irrigated will not be able to be irrigated during the next irrigation season; and those acres that the NRD thinks were illegally irrigated still cannot be irrigated after that.

Mr. McKillip said that the concern of H&M Farms, Inc. is that they cannot make a full circle with the pivot ever again. Koehlmoos said the wedge in the circle is certified and irrigable through means other than the pivot.

Mr. McKillip said that in order to submit a schedule of compliance, H&M Farms, Inc. had to agree that the violation was alleged. He said there was a 24 acre violation alleged; H&M Farms, Inc. agreed that there were 20 acres alleged. H&M Farms, Inc. couldn't agree to the additional 4 acres alleged, so they weren't able to submit a schedule of compliance. Mr. McKillip said the cease and desist order can include conditions; it's not contrary to NRD rules. Koehlmoos said the conditions have to be submitted with the schedule of compliance. Mr. McKillip said a violation of 24 acres did not occur; a violation of 20 acres did.

Mr. McKillip said that he and his client have submitted, during this public hearing, what they propose to be a schedule of compliance. They are looking for Board approval of what was submitted. Koehlmoos said the NRD rules and regulations clearly show that once the Board has determined a violation has occurred, the schedule of compliance goes to the compliance officer for approval. Koehlmoos said he has not received a schedule of compliance.

**Citta motioned, seconded by Adams, that the Lower Loup Natural Resources District Board of Directors find H&M Farms, Inc. in violation of the District's Groundwater Management Area Rules and Regulations. Motion carried by roll call vote, all directors voting yes.**

Citta said he is optimistic that staff can find a workable compliance settlement with the individual. Kruse would encourage that it happen expeditiously since planting season is in process and decisions need to be made.

**Citta motioned, seconded by Adams, that the Lower Loup Natural Resources District Board of Directors issue Cease and Desist Order #2013-02 to H&M Farms, Inc. Motion carried by roll call vote, all directors voting yes.**

Koehlmoos said that the cease and desist order will be sent to H & M Farms, Inc. They will need to submit a schedule of compliance, which can be with NRD discussions in working out the details. The options in the schedule of compliance need to be within the NRD rules and regulations.

## FORESTER'S REPORT

District Forester Richard Woollen reported that he and Schultz participated in an Arbor Day celebration in Ord. He mentioned that several communities in the North Central District have achieved Tree City USA status, and part of that process is an Arbor Day Proclamation and a ceremony. Woollen said special recognition should go to Broken Bow which has been a Tree City USA every year since 1976. The program was started in 1975 and Auburn was the first community to be designated Tree City USA. Other cities included are: Columbus since 1986, Ord since 1996, and Bassett since 1998. He said that dedicated volunteers serve on tree boards in those communities and do a lot of work with community forestry.

Woollen reported that tree planting has been done for a couple weeks and drip irrigation systems are nearly all installed.

Woollen mentioned there have been several inquiries regarding the brown cedar and pine in shelterbelts and native stands due to dry conditions.

Woollen said that an amended version to LB-634, which has to do with wildfire protection, has moved on. He said there has been a lot of support for this bill and it has statewide benefits in terms of fuels reduction, increased training for fire departments, and more equipment.

## NRCS REPORT

Bryce Bauer reported that 10% of the compliance reviews are done. He requested \$500,000 for EQIP projects in the Lower Loup NRD, with most of it going for pivots. NRCS cost-shares

30% on pivots. He said that all the pivots that have gotten in have to plant the new pivot corners to grass for wildlife habitat for 10 years. The landowner is giving up 20 acres to get a pivot. EQIP rules say the ground must have been irrigated the past 4 or 5 years. Bauer said they assist with approximately 10 pivots per year. If additional money is received, there might be 10 more pivots.

Bauer said NRCS has started buying Toughbooks which is a laptop with a built-in GPS. It's survey grade and will be enough to do pipelines. The elevation will be more accurate than from a topographic map.

The local work group meeting for the 2014 EQIP program is scheduled for June 17<sup>th</sup>.

Bauer reported that Tad Judge is the new range conservationist in Burwell. Positions yet open are for a Spalding technician and an Albion soil conservationist.

## INFORMATION & EDUCATION REPORT

### State Envirothon

Information & Education Coordinator Larry Schultz reported that the State Envirothon was held in Omaha at Chalco Hills Recreation Area in Omaha on May 5<sup>th</sup>. A team from Ord High School finished 3<sup>rd</sup> overall in the contest. Schultz said a Concordia team will represent Nebraska at the Canon Envirothon in Montana. Schultz was team guide for another Concordia team and Medicine Valley. He referred the Board to a chart in the agenda which listed contest results.

### Children's Groundwater Festival

Schultz said the 2013 Children's Groundwater Festival was held May 7<sup>th</sup> at Central Community College in Grand Island. Schultz led the "Water Drop Relay" session for 4<sup>th</sup> graders. The Board viewed a video that Koehlmoos had taken of the session activity.

At the festival, Koehlmoos and Schultz accepted the Don Nelson Service Award on behalf of the Lower Loup NRD. The award is given to individuals and organizations that provide exceptional, long-term service to the festival. Schultz passed around the award.

## WATER RESOURCES COMMITTEE REPORT & RECOMMENDATIONS

### Minutes

The minutes of the meeting were provided in the agenda.

### Area 28 Report

Callan reported that Mike Lorenz presented a report to the Water Committee that contained information he had put together from the annual reports that had been submitted. He is going to put together a handout for the Directors which will contain a summary of the information presented. Also included in Lorenz's presentation was a list of violators, which included violations of not reporting and timing of application.

**Thoene motioned, seconded by Knutson, to recommend that the NRD proceed with notices of violation and complaints to violators in Area 28. Motion carried by roll call vote, all present voting yes.**

Olsson's Report – Discussions with Producers

Callan said he had recently met with four Area 28 producers who have been over-applying nitrogen on their fields. He said the meetings were good and they talked in detail. After discussing the information in Olsson's report and recommendations, the producers indicated to Callan they weren't going to do it.

Callan said the information in Olsson's report hasn't been publicized and he isn't sure how to get the Area 28 information to the producers. He has been visiting with Schultz about involving multiple types of media, broadcast and print, brochures, poster, and other.

**Thoene motioned, seconded by Gutzmer, to proceed with a media campaign to spotlight the ongoing water quality issues in Area 28. Motion carried by roll call vote, all present voting yes.**

With some of the information that Lorenz presented, the Committee discussed the implementation of a water meter program in Area 28. Callan said the largest list of violators he has now are people who report what they actually applied. The meters would be used to measure pumping of high-nitrate groundwater to provide the producer with data about how much nitrogen they are getting through the water. The original plan was that the NRD would have four years to implement a water measuring plan.

**Thoene motioned, seconded by Anderson, to direct staff to create a process for implementation of water meters in Area 28, with the report coming back to the Water Committee.**

Lukasiewicz wondered if staff could develop this process across the entire District. Callan said if we liked the process, it could be implemented in other areas. How wide of an area covered would be up to the Board. Area 28 would be a pilot study. Koehlmoos said that an advantage we have in Area 28 is the reporting process. He said if the NRD were to require meters in other areas of the District, it would seem logical that the NRD would also require annual reporting. Callan said that the meters being discussed at this time are metered for quality purposes, not quantity purposes.

**Motion carried by roll call vote, all present voting yes.**

Clarification of Appeal Process

Callan said that last month Cedar River Feeders was present at the Board meeting wanting to appeal the decision made by the Variance Committee to the Board. Staff didn't feel that was the proper method. The Board had already acted on the decision. The Water Committee discussed the situation to change NRD policy to say that the Variance Committee is the process used to appeal the NRD's rules and regulations. This change would clarify the procedure to the producers involved and to NRD personnel.

**Thoene motioned, seconded by Petersen, that NRD policy be modified to show that a variance request is the only appeal mechanism regarding rules and regulations available through the NRD.**

Citta questioned if the Variance Committee was the appeal to all the NRD's rules and regulations. Koehlmoos answered that the Variance Committee has been designated by the Board to listen to all requests on a variance to the NRD's rules and regulations. The Variance Committee acts on the request as a recommendation to the full Board. Citta stated that he feels "variance" and "appeal" is not the same thing. Koehlmoos responded that that is why the NRD is setting the policy to clarify that a variance request is the appeal to the rule.

Koehlmoos said that the modification to NRD policy would eventually be added to the rules and regulations. Until that time, it will need to be stated at each variance request session that this is the producer's appeal process and it will be made a recommendation to the Board. Once the Board acts on it, that is the appeal. The Variance Committee makes a recommendation, but the Board can either deny or accept the recommendation.

Koehlmoos said the modification would straighten out the process of 'how many times do you bring a person back after a decision has been made?'

**Motion carried by roll call vote. Directors voting yes: Adams, Amsberry, Anderson, Bartak, Eschliman, Gutzmer, Hadenfeldt, Kauk, Knutson, Kruse, Petersen, Rasmussen and Thoene. Directors abstaining: Citta, Lukasiewicz and Nelson. Directors absent: Gellermann, Loseke, Sieh, Smith and Walden.**

#### DNR's Draft of Rules & Regulations

Callan said that he and Naprstek attended a DNR informational meeting regarding how they are going to look at fully-appropriated status. DNR will be looking at sub-basins, which line up closely with the NRD's transfer basins. DNR is still taking comments, and Callan thought hearing dates would probably be this summer, as DNR's determinations will be made in the fall.

#### Static Water Levels

Callan said that the static water level report was provided to the Board at the March meeting and is now on the NRD web site.

#### New Irrigated Acres or Not

Callan said there was a decline in water levels in the past year due to drought conditions. Even if there is adequate rainfall this year, it is unclear what the groundwater level is going to do. The Water Committee felt it wasn't warranted to allow new acres in 2013. Thoene said it wouldn't be a popular move to allow new acres in the short-term. In the future, a decision regarding new acres will be made when more long-term data is available.

**Thoene motioned, seconded by Knutson, that no new irrigated acres be granted for 2013.**

Koehlmoos commented that, depending on the Board's decision, the NRD had contacted DNR that our projection was that approximately 3,000 new irrigated acres would be approved in 2013, so that is what DNR is anticipating. If the Board approves the motion, staff will contact DNR immediately to let them know that the Board has changed its mind to not add additional acres. Koehlmoos said it will probably have an effect on our next fully-appropriated determination.

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

#### Certification of Irrigated Acres – Recording on the Deed

Callan reported that in the beginning of the process of certification of irrigated acres, transfers were recorded on the deeds of the property. Acres presently are not being recorded on the deeds, so there are no deeds that have their certified acres listed on them except the ones that have transfers. If a producer were to buy a piece of ground, he wouldn't know how many certified acres are on the piece of property. He would have to call the NRD to find out.

Staff proposes to draft a resolution to present at the NARD Legislative Conference that would make NRDs the agency in charge of irrigated acres record management.

#### Certified Irrigated Acres Violations

Callan reported that NRD technicians reviewed the infrared photography/certified acres database for their areas and the process revealed several possible certification of irrigated acres violations. The technicians gave Harris a list of possible violators and he is in the process of trying to determine if a violation has actually occurred.

Callan said that several cooperators will most likely be getting letters informing them that they may be in violation of the NRD's rules and regulations. It is hoped that the majority of discrepancies can be cleared up with a phone call to the NRD. Harris estimates that approximately 15% of the producers on the list are in direct violation.

#### Transfer Criteria

Callan said that Knutson had constituents in his area who were concerned about the criteria regarding transfer of irrigated acres. The Water Committee has considered transfer criteria and ranking in the past and will most likely discuss it more in the future.

### ASSISTANT MANAGER'S REPORT

#### Variance Committee

Assistant Manager Russell Callan told the Board that William Packer had acres that were being irrigated with surface water that didn't have a permit. Packer came to the Variance Committee trying to get those acres converted to groundwater.

**Amsberry motioned, seconded by Thoene, that the William Packer variance request be denied, but has options available to get the area watered. Motion carried by roll call vote, all present voting yes.**

Callan reported that Gilbert Mulbach had applied for a supplemental well but acres were found that the NRD believed were not developed prior to 2006, so his well request was denied. Later, a 1999 Google Maps photo showed possible irrigation from a center pivot system on the property. With that information, the Variance Committee felt he could have the supplemental well as long as those acres did not get transferred.

**Amsberry motioned, seconded by Adams, that the Gilbert Mulbach supplemental well request be granted and that the irrigated acres be non-transferrable. Motion carried by roll call vote, all present voting yes.**

#### DEQ Basin Rotation

Callan reported that DEQ has a 5-year basin rotation where they look at surface water quality. Lower Loup is in that rotation this year. DEQ and the Dept. of Agriculture supplied the NRD with the equipment needed, in exchange for a place to drop off and process bacteria samples.

#### ELM Update

Tylr Naprstek reported that staff had visited with Steve Peterson and Jennifer Stanton, via tele-conference, to discuss the status of the ELM Study. Naprstek said the model is calibrated, details are being fine-tuned, and the process is winding down.

Naprstek referenced a map on the wall which showed the water-yielding aquifers in Phase III of the ELM model divided into two layers – the upper layer (results of geophysics, test holes) and the lower layer (Ogallala aquifer). The map is in preliminary form and has not yet been released to the general public.

Naprstek reported that the release of the Phase III report on the ELM model is scheduled for March, 2014. USGS will do a scientific review. We will have an updated stream depletion map; there will be 4 modeling grids for every section we have.

Gutzmer asked if there was a water quality comparison between the two layers and Naprstek answered that it showed quantity, not quality. USGS has other water quality information.

Staff also visited with Kent Zimmerman who informed staff that IWMPP, which is a big force behind ELM, is in dire straits with our current legislation. Naprstek commented that it was good that the ELM study is almost complete.

### PROGRAM/PROJECTS COMMITTEE REPORT & RECOMMENDATIONS

#### Electrical Service at Davis Creek Recreation Area

Koehlmoos reported that Callan and Jeff Sich from Loup Valleys RPPD visited Davis Creek to see what the electrical needs would be to supply power to the site. Previous estimates were short

of what was necessary to get power to the facility for all the future improvements the NRD was planning.

Loup Valleys RPPD submitted a bid for \$61,841.23. The bid includes an overhead power line from the road to the property line, an underground line, and 3 vault transformers.

**Eschliman motioned, seconded by Citta, to accept the bid from Loup Valleys Rural Public Power District for \$61,841.23. Motion carried by roll call vote, all present voting yes.**

#### Ansley Fishing Pier

Koehlmoos reported that the NRD had received a letter from the village of Ansley stating that they would like to get a handicapped-accessible fishing pier installed at their park pond. The consensus of the Committee was that staff would work with community officials on design, cost, and what they're needing, then bring the information back to the Committee.

#### Davis Creek Recreation Improvements

Koehlmoos reported that after the Committee approved the REA bid, it directed staff to put together specifications for the remaining part of the improvements, including security lights, fixtures and lighting of restrooms; and the pressurized public water system.

**Eschliman motioned, seconded by Rasmussen, to seek bids for the installation of security lighting and a pressurized public water system for the Davis Creek Recreation Area. Motion carried by roll call vote, all present voting yes.**

#### Columbus – East Flood Plain Management

Koehlmoos told the Board that he and Mohler met with David Bell of the Loup Power District and Lloyd Castner of the Columbus Chamber of Commerce to discuss the possibilities of floodplain management in the southeast part of Columbus where the ADM plant is located. Long-range plans would be to maybe extend the dike or get some of that area out of the floodplain.

#### Aagaard Farm Activities

Koehlmoos said that a tour of the farm might be in June. The consensus was to try to have the tour the same day as the Board meeting around 2 p.m.

#### LLNRD Web Site

Koehlmoos said that bids were sought for upgrading the NRD's web site. Ten firms responded with bids ranging from \$7,000 to \$70,000. Four firms were selected to give a demonstration of their products. Koehlmoos hopes a recommendation could be made to the Board in June.

Schultz commented that the range of bids probably has a lot to do with how the companies do business dealing with national customers vs. local entities. Kruse said that if the NRD develops

specifications, the bids need to be evaluated around those specifications. Koehlmoos said that \$15,000 was budgeted for this project.

### Howard County Road Structures

Koehlmoos reported that the NRD received an offer of a financial settlement from Howard County regarding the 5 road structures that had been altered or damaged. Koehlmoos referred the Board to the letter in the supplemental agenda from David Schroeder which listed the road structures and the amount the county was willing to offer the NRD to dismiss our agreement with them and turn the structures over to the county. The county's financial offer for the 5 road structures was \$7,612.69.

Koehlmoos then directed the Board to a list showing the life-cycle values of road structures that Mohler had prepared when staff met with the county to help them understand that the road structures had a value to the NRD.

Eschliman commented that the Committee felt this issue should go to the Board, so they did not make a recommendation.

Koehlmoos said we have easements and paperwork on three of the five road structures.

Discussion followed regarding what should be done with the proposal from the county.

Hadenfeldt said the county's offer is the NRD's actual investment. The structures are nearly 37 years old, silted in and  $\frac{3}{4}$  gone. He felt that the roads are the county's and if they don't want to protect them any better than they do, then the NRD should let the structures go.

Mohler estimated that the District has approximately 50 agreements for road structures.

Anderson said that each one of the structures built was to replace a bridge.

Adams questioned if this issue took a lot of staff time. He said staff is having to spend more time on water and acre issues and felt if the county wants to buyout, it would relieve responsibility on the NRD.

Koehlmoos would recommend that Kruse appoint a 2-3 member group of Directors to meet with the county board one-on-one to see if something could be worked out.

Kauk said he knew of landowners who wouldn't want the road structures close to their land to be reconstructed. Landowners change, circumstances change. Koehlmoos asked if that relieves the county of their agreement with the NRD to maintain the structures.

Eschliman suggested accepting the county's offer, plus some kind of penalty, so that anyone who wants to do the same thing in the future will have to pay more than the actual cost.

**Hadenfeldt motioned, seconded by Nelson, to accept the cash settlement offered by Howard County for the five road structures.**

Lukasiewicz asked if the landowner or the county was responsible for the structures going out. Koehlmoos answered that the NRD's agreement is with the county, that they would maintain the structures for the life of the projects.

Eschliman commented that he wasn't entirely in favor of the motion because it is contingent on the landowner reimbursing the county first. He said this agreement is with the county, not the landowner. He said the county should pay, then let them collect from the landowners.

**Eschliman motioned, seconded by Knutson, to amend the Hadenfeldt motion by striking the sentence, "This offer is contingent on the landowners reimbursing the County in the following amounts:" and add that the NRD is relieved of all liability. Motion carried by roll call vote, all present voting yes.**

**The amended Hadenfeldt/Nelson motion carried by roll call vote, all present voting yes.**

#### Sherman Dam Bank Stabilization

Koehlmoos reported that a request had been received from the Farwell Irrigation District for NRD financial assistance to restore an area west of the Sherman Dam that has severely eroded. The Committee discussed the situation and a motion was made to approve the request of participation of 20%, not to exceed \$4,000. The motion was later withdrawn.

Before making a recommendation to the Board, the Committee will further consider the request.

#### Pibel Lake Tree Removal

Koehlmoos reported that five bids were received from tree vendors to take out the cottonwood and pine trees at Pibel Lake. The Committee recommended the job be awarded to Loup Valley Tree Service in Arcadia for \$18,895.

**Eschliman motioned, seconded by Anderson, to approve the bid of Loup Valley Tree Service in Arcadia for \$18,895 for the tree removal project at Pibel Lake Recreation Area. Motion carried by roll call vote, all present voting yes.**

Koehlmoos added that the cost was added to the grant the NRD received from the Environmental Trust, so it isn't all coming from the NRD. Loup Valley Tree Service intends to start the job June 3<sup>rd</sup>. Koehlmoos said this will be total removal -- cut the trees, grind the stumps down to ground level, and haul away all the materials.

#### Projects Budget Workshop

Koehlmoos said the Committee wanted to look at some of the budget items that deal with programs and projects. Koehlmoos provided them with a packet of information.

#### Next Meeting Date

The Programs/Projects Committee will meet June 26, 2013, at 1:00 p.m.

## ENGINEERING REPORT

### Aagaard Farm Storage Building

District Engineer Robert Mohler reported that 14 invitations to bid were sent to building contractors and lumber yards in the area for the Aagaard Farm Storage Building. One bid was returned. Mohler referred the Board to Supplemental Agenda to look at the bid from Husker Sales & Service.

Mohler said that the contractor provided a Base Bid for a 50' x 75' building; an Alternate Bid for a 50' x 100' building; and an Add Alternate bid to furnish a 14' x 20' interior room to use for meetings, with restroom. The different features range in price from \$60,702.60 to \$105,024.32.

Koehlmoos said that staff had initial discussions with the Board for a 50' x 75' building to be used for storage. In discussions with the Programs/Projects Committee, staff said the NRD wanted to develop the farm and get more involvement at the farm with work groups, but there were no restroom facilities or lunch room. A larger building was discussed and the Committee suggested that the NRD get alternate bids on the additions.

**Anderson motioned to table this item until the NRD receives a second bid.**

Koehlmoos said we've missed the deadline to receive another bid. Anderson rescinded his motion.

**Anderson motioned that the NRD re-bid the storage building project.**

Koehlmoos said the bid received would need to be rejected and then send out a request for new bids.

Citta said we tried bidding, but could also re-bid or reject and negotiate.

Anderson withdrew his motion for lack of a second.

Eschliman said the cost of the building would be \$14.00 per square foot which he feels is reasonable.

**Bartak motioned, seconded by Amsberry, to accept the bid from Husker Sales & Service for \$105,024.32, which includes a 50' x 100' building, interior room, and a concrete/crushed rock floor. Motion carried by roll call vote, all present voting yes.**

## MANAGER'S REPORT

### Upper Elkhorn NRD Letter of Request on Field Office Salaries

Koehlmoos told the Board that the NRD had received a letter from Upper Elkhorn NRD regarding field office salaries. He said the NRDs have agreements that were set up in 1972 on sharing the secretarial assistance. A memo from Julie McBride, field office secretary in Burwell, indicates that they have been active with Upper Elkhorn's constituents.

Koehlmoos said we receive \$45,423 from other districts based on percentage of cost, and we pay out \$16,840. Koehlmoos said he wouldn't want the agreement modified.

**Adams motioned, seconded by Citta, to reject the Upper Elkhorn NRD request regarding field office salaries. Motion carried by roll call vote. Directors voting yes: Adams, Amsberry, Anderson, Bartak, Citta, Eschliman, Gutzmer, Hadenfeldt, Kauk, Knutson, Kruse, Lukasiewicz, Nelson Rasmussen, and Thoene. Director not present during vote: Petersen. Directors absent: Gellermann, Loseke, Sieh, Smith, and Walden.**

#### New Hires

There were no new hires.

#### NARD REPORT

##### Director's Report

Rasmussen said the next NARD meeting will be June 9-10.

#### NRC REPORT

Hadenfeldt reported that the Commission will meet in June.

#### RC&D REPORTS

##### Loup Basin RC&D

Rasmussen told the Board that there will be a scrap tire collection on June 22<sup>nd</sup> and limit it to 400 tons.

##### PrairieLand RC&D

No report.

#### ANNOUNCEMENTS

Koehlmoos passed around copies of Rule 15 which deals with variance requests to NRD rules and regulations.

Koehlmoos also passed out Don Blakenau's opinion regarding NRD authority.

Eschliman questioned if the NRD attorney should attend Board meetings when we have a public hearing on variances. Koehlmoos responded that there wasn't a question on procedure, but it was up to the Board.

## ADJOURNMENT

With no further business before the Board, Chairman Kruse declared the meeting adjourned at 8:18 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, June 27, 2013, at 5:00 p.m., at the Headquarters Office in Ord, Nebraska.

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Darwin B. Anderson  
Secretary