

LOWER LOUP NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS MEETING

November 21, 2013

Ord, Nebraska

The November 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 November 21, 2013. Chairman Kruse called the meeting to order at 5:05 p.m.

CALL TO ORDER

Directors in attendance

James C. Adams
Darwin B. Anderson, Secretary
Joseph L. Citta, Jr., Vice Chairman
Virgil W. Gellermann
N. Richard Hadenfeldt
Gary A. Kruse, Chairman
Matt Lukasiewicz
Alan D. Petersen
Darwin R. Sieh
Henry J. Thoene

Rollie D. Amsberry, Treasurer
Timothy E. Bartak
James J. Eschliman
Michael P. Gutzmer
Thomas L. Knutson
Clifford P. Loseke
James C. Nelson
Dean J. Rasmussen
Gerald P. Smith
Kim C. Walden

Director absent

Randy Kauk

Staff in attendance

Leon "Butch" Koehlmoos, General Manager
Dell R. Harris, Water Resources Specialist
Cheryl K. Hornickel, Programs Assistant
Larry D. Schultz, I&E Coordinator
Anne Freeman, Program Secretary
LeeAnn Smith, Water Programs Assistant
Mike Lorenz, Agronomist, Fullerton

Russell G. Callan, Assistant Manager
Irene F. Kreifels, Financial Secretary
Richard L. Woollen, District Forester
Rita A. Goldfish, Administrative Assistant
Jason Moudry, Water Programs Specialist
Edward F. Drozd, Technician, Columbus

Guests in attendance

Bryce Bauer, LDC, NRCS, Ord
Jeff Lehr, Duncan
Guy Mills, Jr., Ansley
David Jensen, Columbus

Tom Kruml, Kruml Law Office, Ord
Barbara Lehr, Duncan
LeRoy Behnk, Elgin
Chris Shank, Columbus

NOTICE OF OPEN MEETING LAW POSTING

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

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, posted at the NRD Headquarters office in Ord and the eight field office locations, and on the NRD web site. Koehlmoos said there were no modifications to the agenda.

Smith motioned, seconded by Eschliman, 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 October 24, 2013, Board meeting minutes. Hearing none, Chairman Kruse ruled that the October 24, 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 reported on an additional bill just received for \$3,000.00 from McCaslin, LLC, for mulching dead trees at the Aagaard Farm. Koehlmoos highlighted expenditures to Kruml Law Office for \$664.34 for ongoing legal expenses; City of Ord for 6,000.00 for Auble’s Pond dock project; Cornerstone Mapping for \$114,000.00 for infrared photography; Hach Company for \$3,370.00 for a new spectrophotometer; JEO Consulting for \$9,230.00 for Pibel Lake watershed planning; and Gateway Motors for \$68,200.00 for two Chevrolet pickups.

Loseke questioned the expenditure of \$1,000.00 to Totalfunds by Hasler. Koehlmoos responded that it was funds for the postage meter.

Sieh motioned, seconded by Loseke, to approve the November, 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.

FORESTER'S REPORT

District Forester Rich Woollen reported on publications and cost-share funding sources for conservation trees. He said tree information is also put on the NRD website. Woollen said that there has been a Forestry Initiative the past three years where funds are set aside for forestry practices. He said some of those funds are used for windbreak renovations through EQIP; and, per the 4-state cooperative agreement, if the funds for Nebraska aren't used up, they go back to one of the other states. Woollen said that EQIP cost-shares 75% and also allows fabric weed barrier. He said several windbreaks are cost-shared through the NSWCP program.

NRCS REPORT

Bryce Bauer, LDC with NRCS, reported that they have until December 20th to rank the EQIP applications. Bauer said he attended a presentation by Gabe Brown of Bismarck, North Dakota. Brown talked about no-till, crop rotation, and cover crops. Bauer said the presentation was very interesting.

PUBLIC HEARING -- ALLEGED VIOLATIONS OF LLNRD RULES & REGULATIONS BY LEHR, INC.

Chairman Kruse opened the public hearing on the alleged violation of Lower Loup NRD Groundwater Management Area Rules and Regulations by Lehr, Inc., at 5:17 p.m. Assistant Manager Russ Callan, acting as the District Inspector, submitted into the record the Lower Loup Natural Resources District Groundwater Management Plan; the Lower Loup NRD's Rules & Regulations for the Enforcement of the Groundwater Management and Protection Act, effective January 1, 2002; the revision to the Water Quality Section of the Groundwater Management Plan; affidavits of publication; and copies of the notice clippings from newspapers.

Callan said that Lehr, Inc. is the owner and operator of irrigated land located within the boundaries of the Lower Loup NRD's Phase III Management Area. Callan testified that Jeff Lehr received a notice of violating the Lower Loup NRD's rules and regulations. The alleged violation is of Rule 14. Also, Lehr, Inc. has late Phase III reports or no reports submitted by the January 31st deadline. Callan submitted into record a packet of information which included copies of the letters sent to Mr. Lehr, the Groundwater Investigation Request, Plan and Schedule for Compliance, and the documentation of when Mr. Lehr received the complaint packet.

Callan said that he met with Mr. Lehr last spring and discussed the findings of Olsson's report. Following the meeting, Mr. Lehr had indicated that he still was not going to do the reports, and Callan told him that he would have to start the complaint process.

Callan testified that on November 13, 2013, Mr. Lehr came to the office and discussed the situation. Following the meeting, Mr. Lehr met with Mike Lorenz in Fullerton and filled out as much of the reports that he had information for. Also, Mr. Lehr filled out a Plan and Schedule of Compliance form, which has not yet been signed by the compliance officer.

Chairman Kruse then asked the alleged violator to present evidence and testimony. Jeff Lehr introduced himself and he asked Callan to read a letter from him into the record. Mr.

Lehr's letter of testimony indicated that the whole ordeal has been a learning process for him, and that he now understands the reason for the reports and how important nitrogen management is on some of the land he farms. Mr. Lehr said he feels that he has been a good steward of his land and has not over-applied nitrogen. He said he hasn't been very proactive in documenting and reporting information. He said his cost for soils samples is around \$800, and filling out the forms and paperwork the NRD requires costs him much more in time and energy. He said the results have fluctuated little in his 25+ years of farming. Lehr further testified that he feels nitrogen management is imperative if nitrogen amounts are to be reduced in the drinking water and ensure that our water quality is better in years to come.

Chairman Kruse asked the District inspector for rebuttal evidence. Callan waived the opportunity.

Chairman Kruse closed the evidentiary portion of the public hearing.

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

With no comments being heard, Chairman Kruse closed the hearing at 5:25 p.m. on the alleged violation of Lehr, Inc.

Koehlmoos said the Board now has two options: 1) find Lehr, Inc. in violation of the District's rules and regulations per the evidence that was submitted; or 2) dismiss the complaint.

Koehlmoos said that Lehr understands the process better now, but did submit his required reports late, therefore, in violation. Lehr has already submitted an acceptable Plan and Schedule of Compliance.

Koehlmoos said that if the Board dismisses the complaint, the process reverts back to Day 1, meaning if Lehr is late submitting another report, there will need to be another hearing process. If the Board finds Lehr in violation of the rules and regulations, the Board would approve the Order to Cease and Desist, it would be sent to Lehr, and if there was any further violation, it would go to district court.

Tom Kruml, attorney for the NRD, said that if the Board dismisses the complaint, it is, in effect, saying that no violation had occurred. He said the other option is to say that the violation did occur, enter the Order to Cease and Desist, and then the violator would have 10 days to come into compliance. In this case, the Plan and Schedule of Compliance has already been submitted but not signed due to the hearing proceedings. Kruml said the paperwork could be signed and the problem solved.

Koehlmoos said it is staff's recommendation to issue the Order to Cease and Desist since a violation to the NRD's rules and regulations has occurred.

Adams motioned, seconded by Petersen, that the Lower Loup Natural Resources District find Lehr, Inc. in violation of the District's Groundwater Management Area Rules and Regulations and that the Order to Cease and Desist No. 2013-02 be issued.

Koehlmoos read the Order to Cease and Desist No. 2013-02 to the Board.

Citta requested that the minutes reflect that Jeff Lehr has acted in good faith working with Callan and Lorenz trying to catch up on his late paperwork and submitting a Plan and Schedule of Compliance. He said Lehr has tried to correct as many of the violations as could be accomplished.

Gutzmer asked what the consequences were for being in violation and wondered what the NRD was ceasing and desisting. Koehlmoos answered, "His violation of submitting his annual reports on time." Koehlmoos said that with the issuance of the Order to Cease and Desist, if Lehr, Inc. continues to violate Rule 14 and if any year's report is late, the Board can take the violation to district court and the judge would decide the penalty. It would be out of the NRD's hands and there would be no hearing process. Koehlmoos said the decision whether or not to take the violation to district court would be up to the Board.

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

COMPLAINT BY GUY MILLS OF CUSTER COUNTY CONCERNING IRRIGATED ACRES CERTIFICATION

Koehlmoos said that Harris had been working with Guy Mills on a violation of irrigating non-certified irrigated acres. It was requested that Mills get the acres certified, but those acres don't meet the current rules of having irrigated history in 2 out of 10 years. It was explained to Mills that this is a variance process and recommended to him that he make a request to the Variance Committee. Mills requested to speak to the Board, though, outside Public Comments, so the Board could make a decision.

Mills told the Board that he became aware of the problem when he received a letter from the NRD in June about a potential violation with his irrigation system. Mills said he filed all eight of his irrigated acres forms with the assessor in 2007 and said they were identical to the certification forms the NRD had. Mills wanted it entered into the record that he had gone to the county assessor, did everything he was supposed to do according to the NRD's rules and regulations, and had sent in all his forms.

Mills said there were three mistakes on the form/map that was sent to him on June 18th, including the landowner name, tract number, and number of acres. He said he has been paying irrigated taxes on 72 acres that have been certified with the assessor, but said the NRD had no record of those acres being certified. Mills said there has been an office error and that the NRD had lost some paperwork submitted during the certification process, leaving some of his currently irrigated acres uncertified.

Mills asked the Board to vote to correct the error so that the 72 acres that were on the form would match the 72 acres recorded in the assessor's office.

Mills said this wasn't a variance issue because it doesn't meet the criteria. He said it is an office error that should be corrected. He said DNR did not have the form indicating 72 certified irrigated acres.

Chairman Kruse told Mills that no vote would be taken by the Board tonight, but that the matter would be handled through normal channels. He said Mills could make his claim to the Variance Committee.

INFORMATION & EDUCATION REPORT

Land Judging

Information & Education Coordinator Larry Schultz reported on the State Land Judging Contest held last month and said that a team from Fullerton High School qualified for the National Land Judging Contest in Oklahoma. He said the NRD would offer a \$250 scholarship to the team if they plan to attend the contest.

Annual Awards Dinner

Schultz said the Annual Awards Dinner will follow next month's Board meeting on December 19th. He said dinner would begin at 6:30 p.m. Last year, to accommodate the awards dinner, the Board approved an earlier start time of 4:30 p.m. for the Board meeting.

Adams said the NRD should extend a banquet invitation to employees who have retired from the NRD. It was the consensus of the Board to do so.

Smith motioned, seconded by Knutson, that the December 19th Board meeting begin at 4:30 p.m. Motion carried by roll call vote, all present voting yes.

Schultz said the quarterly newsletter is at the printer's office. He said the Direct Mail system would be used again to get the 16,000 to 17,000 copies sent.

Koehlmoos mentioned upcoming committee meetings – Programs/Projects will meet December 18th at 1:00 p.m.; Variance may meet on December 18th; Water Resources may meet in December but a date has not been set.

Schultz passed around a signup sheet for Directors interest in attending the Legislative Conference which is scheduled for January 28-29, 2014.

Koehlmoos mentioned the Washington, DC, conference which will be held March 22-26, 2014.

PROGRAMS/PROJECTS COMMITTEE REPORT

Koehlmoos said there was no Programs/Projects Committee meeting in November due to staff being gone.

2013 LONG-RANGE IMPLEMENTATION PLAN

Callan reported that the Directors were given a draft copy of the 2013 Long-Range Implementation Plan which was recommended by the Executive Committee. Callan asked Directors to review the document for approval in December.

ASSISTANT MANAGER'S REPORT

Area 28 Activities

Kruse announced that the Board would be going into Executive Session to discuss matters involving Area 28 activities.

Citta motioned, seconded by Rasmussen, to go into Executive Session to discuss litigation filed by Robert Prokop and include Koehlmoos, Callan, and Tom Kruml in the discussion. Motion carried by roll call vote, all present voting yes.

Eschliman motioned, seconded by Citta, to come out of Executive Session. Motion carried by voice vote, all present voting yes.

There was no action taken following the Executive Session.

Variance Committee

The Variance Committee did not meet in November, but may meet on December 18th.

Water Resources Committee

Callan said he appreciated the cooperation of NRCS on the criteria for the rules and regulations regarding transfers. He said staff is proposing that landowners meet with NRCS to get a conservation plan developed when there is a piece of property to be transferred. After the plan is signed by the producer, NRCS and NRD, the plan will be filed at the NRD office. Callan said that when there is a transfer, the landowner has to file on the deed of the property. He said the document will state that there are conditions, and that the conditions are on file at the NRD office. Callan said that whether or not the producer is in the farm program or not, the NRD's rules take over the enforcement of the conservation plan.

Callan said that NRCS would determine whether the transfer parcel of land was highly erodible or not. If a new development is not considered HEL, no conservation plan would be needed; but if a field is determined to be HEL, then a conservation plan would be required as part of the transfer process.

Walden questioned how new acres would be handled if they were to be authorized again. Callan said that when new acres were granted in the past, most of that property was not highly erodible. He said the 'new acre' criteria was reviewed every year. Koehlmoos said that new acres would probably not fall into this transfer criteria.

Toene motioned, seconded by Gellermann, that the NRD adopt the new criteria for transfer of irrigated acres which includes utilizing the USDA conservation plans as one of the determining factors in approval or denial of requests for the transfer of irrigated acres.

Koehlmoos wondered if this motion would allow the NRD enough time to pull the transfer moratorium, or does the NRD need more time to get the documents in place and hold off on pulling the moratorium for a month or two. Callan said that he thought it would be OK to wait at least until the December meeting.

Smith said that the NRD wasn't creating new rules, but is working with rules that are already established.

Bartak said he thought the new criteria is a good idea now, but may create problems in the future. Callan said that the conservation plans are flexible and can be changed as technology changes. He said the deed wouldn't change but the producer would need to work with NRCS regarding changes. Callan said the Board sets the conditions, and they can be changed.

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

Callan thanked Bryce Bauer of NRCS for his help and input.

ELM Update

Callan said there was no report.

MANAGER'S REPORT

Disposal of District Fire Equipment

Koehlmoos reported that when John Ortmann was the TSP Burn Specialist, the NRD had purchased several items of equipment for use in prescribed burns. The equipment is no longer being used and Koehlmoos said he would like to dispose of it. He said he has received one request for torches from the North Loup Fire Department. Koehlmoos said he would like to take that request and a list of equipment to the Programs/Projects Committee and have them come up with a plan that is fair and equitable, or just give it to North Loup. Koehlmoos was seeking Board input whether to pursue the disposal of the equipment or hold on to it in case the NRD gets back into the burning business. Koehlmoos said he would rather donate the equipment to someone else because of liability issues.

Kruse asked the value of the equipment and Koehlmoos answered up to \$4,000. He said the biggest piece was the portable sprayer. All the equipment was purchased with District funds.

Sieh motioned, seconded by Rasmussen, to donate the District fire equipment to North Loup.

Smith thought it would be more fair to advertise the equipment to make it available to more people. Petersen suggested sealed bids.

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

Smith motioned, seconded by Adams, that staff make a list of the fire equipment for sale and advertise it in the next newsletter. Motion carried by roll call vote. Directors voting yes: Adams, Amsberry, Anderson, Bartak, Citta, Eschliman, Gellermann, Gutzmer, Hadenfeldt, Knutson, Kruse, Loseke, Lukasiewicz, Nelson, Peterson, Rasmussen, Smith, Thoene, and Walden. Director voting no: Sieh. Director absent: Kauk.

New Hires

There were no new hires.

NARD REPORT

Director's Report

Rasmussen reported that the NARD Board met in Crofton on November 11th. He said the insurance program was in very good shape, with only one large claim. He said the Board passed a motion that each NRD contribute \$1,000 toward the new Agriculture Building at the State Fairgrounds.

NRC REPORT

Commissioner's Report

Hadenfeldt reported that the Water Sustainability Task Force last met in September. Knutson said the top topic of discussion centered around who was going to manage the funds, if funds are allocated, as far as the Commission is concerned. He said it was concluded that the Commission membership would be revamped to include task force members. The new Commission would then include representation for other entities, as well.

Koehlmoos said the new Commission would have 13 basin members. The new representation would also include public power, irrigation districts, and metropolitan areas, a total of 14 new members. Koehlmoos said the \$50 million will likely come from sales tax.

RC&D REPORTS

Loup Basin RC&D

Rasmussen reported that the RC&D met at the brewery in Ord. He said that representatives from Loup County were at the meeting and are wanting to put up a new Legion building. Rasmussen said RC&D's grant writer will help them with writing a grant. He said there will be an open house at the RC&D office in Burwell on December 17th.

PrairieLand

Gellermann said the RC&D met in Newman Grove with the Shell Creek Watershed group. He said \$500,000 will be put into the tire recycling program. He said anyone who is in PrairieLand communities and is interested in holding a tire recycling, let him or Koehlmoos know. PrairieLand has a person who would help write grants.

ANNOUNCEMENTS

Callan reported that Naprstek participated in a webinar regarding the ELM model – an overview of what it took to build the model and the purposes it has served. Callan said that the lines for the webinar were maxed out and no more people could log on. Koehlmoos said there has been positive feedback. The webinar was taped for people to view later.

Smith inquired about what the NRD would do when engineering problems occur. Koehlmoos said to bring the problems to him and he would direct them to qualified people to handle. Koehlmoos mentioned that he has been in contact with the Upper Big Blue NRD about entering into an interlocal agreement with their district to get engineering assistance on a fee basis. Koehlmoos said he will continue to work on this agreement and will bring a proposal to the Programs/Projects Committee.

ADJOURNMENT

With no further business before the Board, Chairman Kruse declared the meeting adjourned at 7:10 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, December 19, 2013, at 4:30 p.m., at the Headquarters Office in Ord, Nebraska.

Darwin B. Anderson
Secretary