

MINUTES
LOWER REPUBLICAN NATURAL RESOURCES DISTRICT
Lower Republican NRD Meeting Room, 30 North John Street, Alma, NE

January 12, 2012

Variance Hearing at 2 p.m. immediately followed by the Regular Board Meeting

Board of Directors Meeting

A notice of the meeting was announced over radio station KRVN and published in the newspapers within the District.

INFORMATIONAL MATERIAL MAILED OUT PRIOR TO MEETING:

1. Agenda, 1/12
2. LRNRD Board Meeting & Index of Decisions, 12/11
3. Treasurer's Report, 12/11
4. Manager's Report, 1/12
5. Assistant Manager's Report, 1/12
6. NRCS Report, 1/12
7. Variance Requests
 - a. **Tom Kruse**
 - b. **Harvey E. Bruntz Estate**
8. Change in Location of Certified Acres on Contiguous Property
 - a. **Keri Rutt**
 - b. **Mary Etta Massey**
 - c. **Rob Hinrichs**
 - d. **Tim Schmidt/Richard Coe**
9. Rural Water Treasurer Report, 12/11

MATERIALS HANDED OUT AT THE MEETING:

1. Agenda, 1/12
2. Water Usage Report

Chairperson Nelson Trambly called the regular monthly meeting of the Lower Republican NRD Board of Directors to order at 2:00 p.m.

Nelson Trambly informed the audience of the Open Meetings Law posters posted in the meeting room.

Directors present: Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf.

Absent: Roger Nelson.

Others present: Jerry Kovarik, NRCS, Keri Rutt, Upland, Lee Carskadon, Edison, Dean tenBensel, Arapahoe, Tom and Judith Maline, Holbrook, Tom Kruse, Hildreth, Irvin and Roberta Reed, Grand Island, Bill & Myra Schleusener, Grand Island, Maynard Gall, Naponee, Michael Klein, Holdrege, Ray Winz, Holdrege, Lynda Pearson, Arapahoe, John Laux, NE G & P, Alma. Staff present: Michael Clements, Bryan Lubeck, Shirlee Poyser and Kristi Coe.

Michael Clements asked for nominations for Chairperson, Nelson Trambly and Marlin Murdoch were nominated. Nelson Trambly was selected as Chairperson with 6 votes in favor.

Michael Clements asked for nominations for Vice-Chairperson, Marlin Murdoch and Bill Bose were nominated. Marlin Murdoch was elected Vice-Chairperson with 8 votes in favor.

Michael Clements asked for nominations for Secretary, Bill Bose and Brad Wulf were nominated. Bill Bose was selected as Secretary with 6 votes in favor.

Michael Clements asked for nominations for Treasurer, Clark Andrews, Dave Bartels and Matt Harrison were nominated. Dave Bartels was elected as Treasurer with 6 votes.

Officers:

Nelson TramblyChairperson
 Marlin MurdochVice Chairperson
 Bill Bose.....Secretary
 Dave BartelsTreasurer

Motion #1 by Jim Moore seconded by Brad Wulf to accept the Executive Committee as Nominated. Motion carried.

Ayes 10 Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf. Nays – 0. Absent 1 Roger Nelson.

Planning Committee:

Nelson Trambly
 Bill Bose
 Marlin Murdoch
 Dave Bartels
 Brad Wulf
 Matt Harrison - Alternate

Representatives:

Roger Nelson.....NARD Representative
 Nelson TramblyNARD Alternate
 Toby tenBensel.....Southwest Nebraska RC&D Representative
 Clark Andrews.....Southwest Nebraska RC&D Alternate
 Brad Wulf.....Trailblazer RC&D Representative
 Mike ClementsTrailblazer RC&D Alternate
 Marlin MurdochNRRMDA Representative
 Toby tenBensel.....NRRMDA Alternate
 Brad Wulf.....Rural Water District Advisory Committee Rep.

Scholarship Committee: (3 Directors and 2 Staff personnel)

Clark Andrews
 Dave Bartels
 Toby tenBensel
 Bryan Lubeck
 Jo Siel

Motion #2 by Bill Bose seconded by Matt Harrison to accept the Planning Committee, Representatives and Scholarship Committee as Nominated. Motion carried. Ayes 10 Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews. Nays – 0. Absent 1 Roger Nelson.

Motion #3 by Bill Bose seconded by Marlin Murdoch to authorize the Lower Republican NRD Board Chairperson, Treasurer and the District's General Manager, Assistant Manager and Administrative Bookkeeper/Assistant to sign and open on all LRNRD accounts and LRNRD Rural Water Accounts. Motion carried. Ayes 10 Bill Bose, Matt Harrison, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels. Nays – 0. Absent 1 Roger Nelson.

Motion #4 by Jim Moore seconded by Dave Bartels to approve the minutes from the December meeting. Motion carried. Ayes 10 Matt Harrison, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose. Nays – 0. Absent 1 Roger Nelson.

Motion #5 by Brad Wulf seconded by Jim Moore to accept the December treasurer's report as distributed. Motion carried. Ayes 9 Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose. Nays – 1 Matt Harrison. Absent 1 Roger Nelson.

Motion #6 by Bill Bose seconded by Marlin Murdoch to go into Closed Session at 3:00 p.m. for Attorney Client Privileges to discuss Occupation Tax. Motion carried. Ayes 10 Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit. Nays – 0. Absent 1 Roger Nelson.

Motion #7 by Dave Bartels seconded by Bill Bose to resume into regular session at 3:30 p.m. and declare that no actions of the board, official or unofficial, were taken during said Closed Session. Motion carried. Ayes 10 Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit, Jim Moore. Nays – 0. Absent 1 Roger Nelson.

Attorney Steve Seglin updated the board and audience on the Occupation Tax. In 2006 the Legislature passed the law which allowed NRD's with had an Integrated Management Plan to assess a \$10 per acre charge to irrigated acres, this piece of legislation was litigated and declared constitutional.

When this was litigated before the Supreme Court, the Supreme Court said that the Occupation Tax is constitutional and is different than a property tax. This is a tax on the activity of irrigation. This is very complex to explain, on irrigated land there is a Real Estate Tax that you pay on the land, if you irrigate land it is taxed higher than dry land. The law says however, that the Occupation Tax is on the activity of the irrigation not on the irrigated land. However, the tax is assessed the same way that your property tax is assessed. The NRD certified irrigated acres, hopefully that matches up with your property tax statement on the land that is valued as irrigated land.

Earlier in July 2011 when the Supreme Court declared this law constitutional the NRD assessed a \$10 per acre Occupation Tax on all irrigated acres within the NRD's boundaries. Which includes surface irrigation and groundwater irrigation, this is part of the reason that the Supreme Court said that the law was constitutional because it applies across the board to the activity of irrigation, regardless of whether you are irrigating by ground or surface water. However, there is an exemption in the law. The Supreme Court also mentioned since the tax is on the activity of irrigation the landowner should have the choice of whether or not they are going to irrigate. Knowing that their land may be assessed by the County Assessor as irrigated land. In the statute there is a provision for irrigators to exempt themselves from this \$10 per acre tax on the activity of irrigation. Once a year (every year) you have to certify with the NRD on or before March 1st that you are not going to irrigate that land. Then the NRD through the County Assessor will take that \$10 per acre assessment off the land that you certified you are not irrigating. This does not have to be approved by the NRD Board.

The statute says the landowner has the opportunity to opt out of this tax by certifying on or before March 1. The NRD is in the process of preparing forms and will remind everyone that by March 1st landowners need to file this certification, then you will not be taxed the \$10. This is only a temporary opt out. This has to be done every year that you are not going to irrigate. Many have government incentive programs but none the less you still have to file this certification if you do not want to be assessed the \$10 per acres charge.

You will already be assessed \$10 per acre for the year 2011. Unfortunately, there is nothing that can be done about that. The NRD has researched and not found any way to make that retroactively apply the March 1st date.

The County Assessor has no authority to refund any money that is paid for taxes. There is statute that says once you pay a tax, the County Assessor gets to keep that tax. The only way they can refund this, is if you protest the payment within 30 days. Then you have to state a reason why the tax was unlawful. The Supreme Court has said this tax is lawful. Unfortunately, there is nothing the NRD can do to allow you to retroactively reclaim that exemption.

Both the Legislature and the Supreme Court have spoken on this and the Supreme Court has interpreted the statute. Once the tax has been levied there is no way the NRD can take that tax off. The timing of this has been unfortunate where the landowner did not have the opportunity to opt out.

Mike Clements interjected that a bill for a law is constitutional until proven unconstitutional. When the Supreme Court made their ruling, they upheld the constitutionality of that particular law. It was never unconstitutional. The Upper Republican has continued to collect the Occupation Tax throughout the years that it was in court. People have the opportunity to come in by March 1st to exempt yourselves from that tax for that particular year. As an irrigator every year you need to automatically come in and request the exemption.

Mike Clements had nothing further to add to his report. A copy of his report is in the minute book.

Bryan Lubeck had nothing further to add to his report. A copy of this report is in the minute book.

Kristi Coe discussed certified acres and the amount of water used in 2011 by county.

John Laux spoke to the board about Mike Cleveland's WILD NE contract SE¼ Section 24-2-16 Franklin County.

Motion #8 by Marlin Murdoch seconded by Jim Moore to approve Mike Cleveland WILD NE contact agreement. Motion carried. Ayes 10 Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit, Jim Moore. Nays – 0. Absent 1 Roger Nelson.

Jerry Kovarik gave the NRCS report. Jerry spoke about the EQIP, WHIP and CSP programs. The CSP extended the sign-up deadline to January 13, 2012

Bryan Lubeck asked the board to consider increasing the NSWCP maximum payout amount of \$3,500. The thought was to help those with more costly projects. The NRD has had the \$3,500 maximum for years so the money can be spread out to more producers.

Motion #9 by Bill Bose seconded by Jim Moore to not make any changes to the NSWCP program at this time. Motion carried. Ayes 7 Toby tenBensel, Nelson Trambly, Dave Bartels, Bill Bose, Terry Hoit, Jim Moore, Marlin Murdoch. Nays – 3 Brad Wulf, Clark Andrews, Matt Harrison. Absent 1 Roger Nelson.

Motion #10 by Jim Moore seconded by Dave Bartels to approve Tom Kruse's Variance request changing meter 05-8-2147 (G-036637) reading usage for 2008, 2009, 2010 and 2011 back to zero. Motion carried. Ayes 10 Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly. Nays – 0. Absent 1 Roger Nelson.

Motion #11 by Clark Andrews seconded by Marlin Murdoch to approve the Harvey E. Bruntz Estate Variance Request to drill a new well on the Trust property for irrigation purposes, but not to exceed the current wells pumping volume (current well G-069271). The well registered to this land is owned by the tenant and will have to be registered as either an inactive well or turned into a stock well. Motion carried. Ayes 6 Brad Wulf, Clark Andrews, Dave Bartels, Matt Harrison, Marlin Murdoch, Toby tenBensel. Nays – 4 Nelson Trambly, Bill Bose, Terry Hoit, Jim Moore. Absent 1 Roger Nelson.

Motion #12 by Marlin Murdoch seconded by Toby tenBensel to approve Keri Rutt's Change in Location of Certified Acres on Contiguous Property. Motion carried. Ayes 10 Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly. Nays – 0. Absent 1 Roger Nelson.

Motion #13 by Matt Harrison seconded by Jim Moore to approve Michael Massey's Change in Location of Certified Acres on Contiguous Property. Motion carried. Ayes 10 Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf. Nays – 0. Absent 1 Roger Nelson.

Motion #14 by Brad Wulf seconded by Matt Harrison to approve Robin Hinrich's Change in Location of Certified Acres on Contiguous Property. Motion carried. Ayes 10 Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews. Nays – 0. Absent 1 Roger Nelson.

Motion #15 by Jim Moore seconded by Toby tenBensel to approve updating the Master Plan. Motion carried. Ayes 9 Bill Bose, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels. Nays – 1 Matt Harrison. Absent 1 Roger Nelson.

Motion #16 by Bill Bose seconded by Jim Moore to approve the Rural Water treasurer's report as presented. Motion carried. Ayes 10 Matt Harrison, Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose. Nays 0. Absent 1 Roger Nelson.

Mike discussed the updates to the rules and regulations. On page 14 is where the additions start that we are considering adding to the rules and regulations.

Motion #17 by Toby tenBensel seconded by Bill Bose to set the hearing date for the Rules and Regulations for February 9th, 2012 at 1:00 p.m. Motion carried. Ayes 10 Terry Hoit, Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison. Nays 0. Absent 1 Roger Nelson.

Motion #18 by Dave Bartels seconded by Brad Wulf to go into Executive session at 5:04 p.m. to discuss Litigation, KS vs. NE US Supreme Court. Motion carried. Ayes 10 Jim Moore, Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit. Nays 0. Absent 1 Roger Nelson.

Motion #19 by Jim Moore seconded by Dave Bartels to move to come out of executive session at 5:26 p.m. and declare that no actions of the board, official or unofficial, were taken during said Closed Session. Motion carried. Ayes 10 Marlin Murdoch, Toby tenBensel, Nelson Trambly, Brad Wulf, Clark Andrews, Dave Bartels, Bill Bose, Matt Harrison, Terry Hoit, Jim Moore. Nays 0. Absent 1 Roger Nelson.

The next regularly scheduled board meeting will be February 9th starting with the Rules and Regulation Hearing at 1 p.m.

Secretary

Date