

October 13, 2005
Nemaha Natural Resources District
Regular Meeting
Tecumseh, Nebraska

1. **CALL TO ORDER/ROLL CALL/MOMENT OF SILENCE**

Chair Jim Wirth called the three hundred sixty-seventh meeting of the Nemaha Natural Resources District Board of Directors to order at 8:05 p.m. Thursday, October 13, 2005, at the NRD Headquarters in Tecumseh, Nebraska.

DIRECTORS	John Albrecht	Roland Meyer	Chuck Starr
PRESENT:	Jeff Crunk	Dave Neddenriep	Duane Sugden
	Orval Gigstad	Gerald Royal	Bruce Walker
	Ted Godemann	Jim Rush	Dan Watermeier
<i>*Left early</i>	Ron Heskett	Steve Sherrow	Paul Weber
	David Hunzeker	Don Siske	Tom White
	Scott Kudrna*	Mike Speece*	Jim Wirth

STAFF	Bob Hilske, Manager
PRESENT:	Scott Nelson, Assistant Manager
	Jane Kuhl, Administrative Assistant
	Lisa Bartels, Secretary
	Shawn Kreienhop, Watershed Project Coordinator

GUESTS	Diane Droge, Pawnee City	Mike Korber, Pawnee City
PRESENT:	Ferd & Carol Friedly, Pawnee City	Leon J. Bohm, DuBois
	Lyle & June Hess, Pawnee City	Nathan Farwell, DuBois
	Robert Bowhay, DuBois	Lisa Beethe, Elk Creek
	Edward Bohm, DuBois	LaWayne Mach, Pawnee City
	Phanetta Bohm, DuBois	Lewis Rogers, Pawnee City
	Charles Flanagan, Pawnee City	Linda Rogers, Pawnee City
	Betty Flanagan, Pawnee City	Nick Rogers, Pawnee City
	Paul Phillippe, DuBois	Bryan Mellage, Auburn
	A. Mellage, Auburn	Randy Bann...?
	Gary Farwell, DuBois	Andy Farwell, DuBois
	David Rogers, Pawnee City	Shirley Oenbring, Pawnee City
	Bryce Rogers, Pawnee City	Scott Farwell, DuBois

Following the Pledge of Allegiance, a moment of silence was observed.

2. **PROOF OF PUBLICATION**

Proof of Publication was presented and is on file.

3. **EXCUSED ABSENCES**

None.

4. **OPEN FORUMS**

All directors, staff, and guests introduced themselves.

5. **MINUTES**

White moved, seconded by Siske, to approve the minutes as submitted. Motion carried on consent agenda.

6. **TREASURER'S REPORT**

White moved, seconded by Siske, to approve the Treasurer's Report as submitted. Motion carried on consent agenda.

7. **STAFF REPORT**

Hilske and Nelson reviewed their written reports.

8. **AGENCY/ASSOCIATION REPORTS**

A. Natural Resources Conservation Service

A written report was distributed to all board members.

B. Five Rivers RC&D

Kudrna stated their next meeting would be the following week.

C. Nebraska Association of Resources Districts

Gigstad reported on the Annual Conference, which had a large attendance. He also reported on some of the awards presented at the banquet.

D. Nebraska Natural Resources Commission

Watermeier stated their meeting centered largely around discussion on LB962 and the appropriation issues.

E. Pawnee County Lake Steering Committee

Hilske reported on the meeting held earlier in the week, referring to a written report distributed to board members. Crunk commented that no direct motion had been made to vote for a master plan.

F. Water Policy Task Force Report

Sugden reported on the funding options discussed, one of which was to reinstate the one cent levy by NRDs. They also worked on 39 pages of changes to LB962. Sugden further commended Ann Bleed on her work with these issues and added that he had signed up for another four-year term since his ends December 31.

9. STANDING COMMITTEES

C. Executive Committee

1. ***Concern Regarding Access Easements on Steamboat Trace Right-of-Way:*** Hilske reported that Richard Andrew had contacted him with concerns about an easement approved last month for a WRP access. Speece added that Mr. Andrews was not in attendance, probably due to a recent family tragedy. No action.

5. ***Donation of NRD's Used ATV to Game & Parks:***
Godemann moved, seconded by Sugden, to donate the NRD's used ATV to the Game & Parks Commission to assist with law enforcement at NRD recreation areas. Sherrow asked if trade-in value had been included in the budget, and Hilske reported it had not. Hilske stated this ATV was 10 years old and was scheduled for replacement. Hunzeker questioned what control we would have on how the ATV would be used. Hilske replied that an agreement would be drawn up setting forth the requirements for its use. Hunzeker also questioned whether it would be better to trade the ATV in on a new mower. Wirth explained that the Game & Parks Conservation Officer had asked in the past if the District would consider providing an ATV to help better patrol the trail. Crunk questioned whether the same request had been made again this year. He added that it would be a mistake not to trade in the ATV when purchasing a new one. After further discussion, **motion carried.**

AYE: Albrecht, Gigstad, Godemann, Kudrna, Meyer, Neddenriep, Royal, Sherrow, Speece, Starr, Sugden, Walker, Watermeier, Weber, White, Wirth
NAY: Crunk, Heskett, Hunzeker, Rush, Siske

2. ***Discussion on District's Ability to Use Eminent Domain for Lake Neiamoka Project:***
Godemann moved, seconded by Sugden, to go into executive session to review the District's eminent domain procedures and the letter from the District's attorney regarding this issue. Starr questioned whether this would be specific to a particular project, and Hilske replied that it would be in regard to the attorney's opinion on the eminent domain issue as it relates to the Lake Neiamoka project.
Motion carried.

AYE: Albrecht, Crunk, Gigstad, Godemann, Heskett, Meyer, Neddenriep, Royal, Sherrow, Speece, Siske, Starr, Sugden, Walker, Watermeier, Weber, White, Wirth
NAY: Hunzeker, Rush
ABSTAINING: Kudrna

The board went into executive session at 8:44 p.m.

Godemann moved, seconded by Sugden, to return to regular session. Motion carried.

AYE: Albrecht, Crunk, Godemann, Heskett, Hunzeker, Kudrna, Meyer, Neddenriep, Royal, Rush, Sherrow, Speece, Siske, Starr, Sugden, Walker, Watermeier, Weber, White, Wirth

NOT VOTING: Gigstad

The board returned to regular session at 9:25 p.m. Wirth explained that the letter from the attorney indicated that the use of eminent domain in this project would be fairly limited and would have to meet at least one of the NRD's 12 statutory responsibilities. It would also have to meet the test for public benefit. Hilske added that our attorney stated he would be willing to come to a meeting to discuss this further if needed. No action was taken on this issue.

3. *Selection of Consulting Firm to Determine Potential Lake Neiamoka Recreation Benefits:*

Godemann moved, seconded by Sugden, to negotiate with Big Muddy Workshop to do the recreation benefit analysis on the Lake Neiamoka project. Godemann stated two firms had provided proposals: Big Muddy Workshop and JEO; however, JEO had never done this type of analysis before. White asked about quotes for the analysis, and Hilske replied that it appeared they would be able to do it for the budgeted amount, which is \$10,000. Starr asked for some specifics on how this motion originated. Wirth stated that last month the board discussed the fact that there was not a cost-benefit ratio in the Olsson's pre-feasibility study and that this would be needed; therefore, an amount was put into the budget. Hilske added that the intent was that this information would be very important in discussing the master plan with the Louisiana Purchase Group, determining the District's role, determining the types of facilities that might be needed for a public recreation area, and if there would even be enough benefits to pursue this project. Before the board could decide in January whether they want to participate in this project, it would be necessary and beneficial to have these figures. Starr commented that he is very interested in the staff's opinion about this project, but there seems to be a pattern of agenda items that come up without any discussion. He felt that if these issues needed to be addressed, the board or Pawnee County Lake Committee needs to determine a timeline or master plan instead of an individual putting something on the agenda. He also felt referring to this agenda item as Lake Neiamoka implies we have a relationship with this group, and he asked that it be referred to as the Pawnee County Lake project. Godemann reminded the board of the tasks that were assigned to the Manager in the August, 2003, minutes. Sherrow asked if the letter received from the Big Muddy Workshop is an engineering services agreement or just a statement of what they can do. Hilske explained that he had provided a draft scope, which stated we would do a generalized

review with the consultant of the type of recreation facilities we might envision. Sherrow asked if this study would be necessary before the board could make a decision regarding its future role in the project and if the Big Muddy Workshop is qualified to do the study; Hilske answered yes to both questions. Rush asked if we already have the expertise to do this study ourselves. Sherrow felt that our staff would not have the capability to formally perform the analysis. Hilske agreed that a lot of this could be done by staff; however, having an independent firm perform the study would ensure the highest amount of integrity possible. Wirth agreed that an outside firm would lend credibility to the study. Starr felt that the results of this study would be based upon the questions that are being asked yet he did not know what questions are being asked and that without board or committee input, the questions and subsequent results may reflect only one or two people's opinions. Godemann felt the procedures proposed to be followed, which included a kickoff meeting with the consultants, would answer some of that. Upon roll call vote, **motion carried.**

AYE: Albrecht, Gigstad, Godemann, Heskett, Kudrna, Neddenriep, Sherrow, Speece, Sugden, Walker, Watermeier, Weber, White, Wirth

NAY: Crunk, Hunzeker, Meyer, Royal, Rush, Starr

ABSTAINING: Siske

4. *Discussion on Engineering Services, Staff Liaison Role, & Steering Committee Role in Lake Neiamoka Project:*

Starr moved, seconded by Rush, that the staff consult with Olsson Associates regarding their understanding of the District's relationship with Olsson

Associates serving as a "sole consultant for future studies" and that this item be placed on the November agenda. Starr explained that in December, 2003, the Board

passed a motion that Olsson's was to be the sole consultant for future studies in return for attending meetings and reimbursement of expenses. Starr clarified that he wants to make sure of Olsson's understanding regarding this possible situation. Hilske then read the motion from December, 2003, as follows: *Sherrow moved, seconded by Sugden, to accept the proposal from Olsson Associates to provide Mike Sotak's consulting services at an average of 12 hours/month at no charge except for reimbursement of direct expenses incurred in exchange for designating Olsson Associates as sole consultant for future studies but not including design or construction services for the project.* Hilske stated Nelson had talked to Mike Sotak regarding this issue and the hiring of other consultants and that Sotak agreed that this was the way to proceed. Hilske added that he did not think the NRD had made any payments to Olsson Associates in the past 12 months. Upon roll call vote, **motion carried.**

AYE: Crunk, Gigstad, Godemann, Heskett, Hunzeker, Kudrna, Neddenriep, Royal, Rush, Sherrow, Siske, Starr, Sugden, Walker, Weber, White, Wirth

NAY: Meyer, Watermeier

ABSTAINING: Albrecht

NOT PRESENT: Speece

Starr moved, seconded by Rush, that staff consult with the board and/or the Pawnee County Lake Committee regarding specific questions or actions pertaining to the Pawnee County Lake project prior to taking action on their own.

Hilske asked for a definition of action. Starr explained in May, 2005, we made a motion for Scott Nelson to act as a liaison with the Louisiana Purchase Group. Over several months, Nelson provided beneficial information to the board. However, we have progressed to the point where the Manager is now directly involved in discussion with the Louisiana Purchase Group, we have put money in the budget for a study without discussion, and now we have agreed to fund a study without discussion. Starr added it is his understanding that NRCS has been contacted about government programs in this area, and as a result it may be prohibitive to landowners; and we have also talked about eminent domain on specific issues. It was Starr's understanding that the master plan was to be used to set goals and directions for steps to be taken with this project. Starr thought the weight of the board is in favor of the project, and the staff has their own opinions on the project. He did not think we are micromanaging by looking into the entities we are dealing with and develop a master plan that fits our needs. This motion lets the board address the issues and guide the staff as to the actions they should take. Sherrow agreed that we need to have a master plan and wondered if Starr would be proposing one. Starr replied that as the project stands now, he was opposed to it and, therefore, would not propose a master plan. Godemann felt this motion was very broad and that the staff does a good job of providing information. Starr felt it is the board's responsibility to give good direction to the staff and that they have not been doing that. Upon roll call vote, **motion failed.**

AYE: Crunk, Hunzeker, Rush, Starr, Weber

NAY: Albrecht, Gigstad, Godemann, Heskett, Kudrna, Meyer, Neddenriep, Royal, Sherrow, Siske, Sugden, Walker, Watermeier, White, Wirth

NOT PRESENT: Speece

Starr moved, seconded by Rush, for any director having a financial interest in this Pawnee County Lake project to inform the staff and the board in that regard.

Sherrow questioned whether this is already required by law. Wirth stated that accountability and disclosure laws already exist. Watermeier asked if this would add a higher level of information beyond what is already required by law. After further discussion and upon roll call vote, **motion failed.**

AYE: Crunk, Hunzeker, Rush, Starr

NAY: Albrecht, Gigstad, Godemann, Heskett, Kudrna, Meyer, Neddenriep, Royal, Sherrow, Siske, Sugden, Walker, Watermeier, Weber, White, Wirth

NOT PRESENT: Speece

Starr moved, seconded by Rush, to remove Scott Kudrna from the Pawnee

County Lake Committee. Starr stated he had filled out a form of disclosure when an NRD dam was built on his property and had abstained from any discussion or voting regarding that site. Starr added that the board had voted in February to add Kudrna to the committee but that he was not aware until just recently that Kudrna owned property in the project area. However, it appears some board members may have known for quite sometime. Starr referred to Jim Cook's presentation a few years ago regarding director responsibilities and conflicts. Kudrna stated he had talked to his lawyers and the state NRD lawyers and that his current neighbors in Pawnee County know about his interest; and staff knew before he was even on the board; and he had written a letter to all board members outlining his interests. Rush questioned how this situation was different than another board member who was told that he could not vote on issues with this project because of a potential financial interest even though he wasn't actually a landowner. Godemann asked how anyone knew for sure that Kudrna's land would be within the project area since we do not have a defined project area yet. Starr felt an opinion from an attorney is just an opinion and may not stand up in court. He added that Kudrna did not disclose his interest until after Starr had brought it up to him, though Kudrna replied that he had the letter to the board ready to mail prior to their discussion. Starr clarified that this applied only to Kudrna because he is also a voting board member and did not apply to other landowners who are on the committee. Starr added that he felt Kudrna should not participate in the discussion at all. Lisa Beethe questioned whether it would help to provide copies of the conflict of interest papers or have them on file for review by board members. Starr pointed out that when he last checked a month ago, Kudrna had not yet filed with the Accountability and Disclosure Commission. Kudrna stated he had filed the papers where the NRD told him but that he was getting an opinion from the Commission and awaiting their reply. Upon roll call vote, **motion failed.**

AYE: Crunk, Rush, Starr

NAY: Albrecht, Gigstad, Heskett, Meyer, Neddenriep, Royal, Sherrow, Sugden, Walker, Watermeier, Weber, White, Wirth

ABSTAINING: Godemann, Hunzeker, Kudrna, Siske

NOT PRESENT: Speece

A. Programs & Projects Committee

1. **Approval of Fencing Bids on Hartmann Site:** Bids received for about 8,000 feet of fencing on this 32-acre mitigation site are as follows:

Contractor	Bid (per linear foot)
Quality Contracting, Inc.	\$1.47
Skyline Construction	\$1.52

Sherrow moved, seconded by Meyer, to accept the bid of \$1.47/linear foot from Quality Contracting, Inc., for fencing the Hartmann mitigation site. Motion carried.

AYE: Albrecht, Crunk, Gigstad, Godemann, Heskett, Hunzeker, Meyer, Neddenriep, Royal, Rush, Sherrow, Siske, Starr, Sugden, Walker, Watermeier, Weber, White, Wirth

NOT PRESENT: Kudrna, Speece

2. **Approval of Repair Bids on Otoe County Structures:** Bids received for repair work on Wilson Creek 3-3, Wilson Creek 9-1, and Ziegler Creek Z-5-3 are as follows:

Contractor	Total Bid
Kuhl Trenching & Excavating, Inc.	\$4,386.00
Borrenpohl Excavating	\$7,575.00

Sherrow moved, seconded by Meyer, to accept the low bid of \$4,386.00 from Kuhl Trenching & Excavating, Inc., for the repair work on Wilson Creek 3-3 and 9-1 and Ziegler Creek Z-5-3. Motion carried.

AYE: Albrecht, Crunk, Gigstad, Godemann, Heskett, Hunzeker, Meyer, Neddenriep, Royal, Rush, Sherrow, Siske, Starr, Sugden, Walker, Watermeier, Weber, White, Wirth

NOT PRESENT: Kudrna, Speece

3. **Approval of Agreement with Iron Horse Project Participants to Pay for Engineering Costs:** Sherrow explained that this agreement with help facilitate payments to engineering firms while the landowners are awaiting federal reimbursement, which would then be signed over to the NRD.

Sherrow moved, seconded by Neddenriep, to authorize the District to enter into an agreement with Iron Horse Project landowners to facilitate payments for projects relating to Iron Horse EQIP work. Motion carried.

AYE: Albrecht, Crunk, Gigstad, Godemann, Heskett, Hunzeker, Meyer, Neddenriep, Royal, Rush, Sherrow, Siske, Starr, Sugden, Walker, Watermeier, Weber, White, Wirth

NOT PRESENT: Kudrna, Speece

- 4. Action on the Purchase of a New Riding Mower:** Sherrow reported that the committee recommends deferring action to allow more investigations by staff.

B. Operations & Education Committee

- 1. Discussion of Non-Trail Related Encroachments on the Steamboat Trace Right-of-Way:** White stated that the committee suggested checking into possible adverse possession laws as it affects parts of the trail right-of-way that are currently being farmed. No action.
- 2. Review/Action on Tree Program Prices and Fees:** Changes to the tree program prices are follows:

	2004/05	Proposed 2005/06
Trees	\$0.60/tree	\$0.65/tree
Planting Charge	\$0.90/tree	\$1.00/tree
Packaging/Handling Charge (for trees only)	None	\$2.00/order
Tree Shelters: Solid	\$1.25	\$1.50
Tree Shelters: Mesh	\$0.50	\$0.60
Tree Planter Rental	\$25.00	\$40.00

White moved, seconded by Sugden, to approve the tree program price changes as presented. Motion carried.

AYE: Albrecht, Crunk, Gigstad, Godemann, Heskett, Hunzeker, Meyer, Neddenriep, Royal, Rush, Sherrow, Siske, Starr, Sugden, Walker, Watermeier, Weber, White, Wirth

NOT PRESENT: Kudrna, Speece

10. ANNOUNCEMENTS, NOVEMBER MEETING DATE/TIME & AGENDA ITEM REQUESTS

Crunk moved, seconded by Godemann, to start winter board meeting hours of 5:00 and 6:00 for December-March. Wirth stated because this was not an agenda item, it could not be considered; Crunk withdrew his motion. This item will be placed on the November agenda. Heskett asked to have the Consent Agenda topic on the November agenda since it is not often used. Crunk asked to have an agenda item regarding the master plan for the Pawnee County Lake on the November agenda since no direct motion had been made to authorize preparing the plan.

11. CONSENT AGENDA

White moved, seconded by Godemann, to approve the consent agenda. Consent agenda items: Minutes, Treasurer's Report. **Motion carried.**

AYE: Albrecht, Crunk, Gigstad, Godemann, Heskett, Hunzeker, Meyer, Neddenriep, Royal, Rush, Sherrow, Siske, Starr, Sugden, Walker, Watermeier, Weber, White, Wirth
NOT PRESENT: Kudrna, Speece

12. ADJOURNMENT

Albrecht moved, seconded by Siske, to adjourn. Motion carried.

AYE: Albrecht, Crunk, Gigstad, Godemann, Heskett, Hunzeker, Meyer, Neddenriep, Royal, Rush, Sherrow, Siske, Starr, Sugden, Walker, Watermeier, Weber, White, Wirth
NOT PRESENT: Kudrna, Speece

The meeting adjourned at 10:45 p.m. The next regular meeting of the board of directors will be Thursday, November 1, 2005, at 8:00 p.m. at the NRD headquarters at 62161 Hwy 136 in Tecumseh.

(Approved 11/10/05)

Secretary, Nemaha Natural Resources District