

**North Platte Natural Resources
District Board of Directors Meeting**

October 14, 2021

The regular meeting of the North Platte Natural Resources District (NRD) Board of Directors was called to order at 3:00 p.m. MDT, October 14, 2021, by Roger Eirich at the North Platte NRD Conference room, 100547 Airport Road, Scottsbluff, Nebraska (Agenda item #1). Notice of the meeting was given to the public by publishing a legal notice in the October 7, 2021, Scottsbluff *Star-Herald*. Eirich informed meeting attendees that this meeting would be conducted in accordance with the Open Meetings Act, a copy of which is posted in the meeting room for public inspection (Agenda item #2).

Board members present: Kent Andreas, Gary Darnall, Roger Eirich, Chuck Henkel, Pete Lapaseotes, Ryan Reuter, and Dan Weinreis. Board members absent: Mark Westphal and Dave Deines.

Chairman Eirich called for a motion to excuse Deines and Westphal from the meeting.

Motion made by Reuter, seconded by Henkel to excuse board member Deines and Westphal from the meeting. Motion passed.

Ayes: Andreas, Darnall, Eirich, Henkel, Lapaseotes, Reuter, Weinreis

Nay: none

Abstain: none

Absent: Deines, Westphal

Others present: John Berge, Scott Schaneman, Danielle Schafer, Travis Preston, Kyle Ann Hopkins, Todd Filipi of NPNRD staff; Thad Kuntz, Adaptive Resources, Inc; Steve Smith, Megan Dockery, and Adam Hoelsing of Simmons Olson Law Firm. Sarah Gray from NRCS, Lex

Larsen JG Elliot, Wyatt and Kimi Kramer and Robert Brenner legal counsel representing the Kramer's.

The following items of informational material were made available to the Directors electronically prior the Board Meeting:

1. Meeting Notice
2. Agenda
3. Minutes, North Platte Natural Resources District Board of Directors Meeting, September 9, 2021.
4. Treasurers Report
5. Manager's Report
6. Minutes, North Platte Natural Resources District Water Resources Committee Meeting, September 30, 2021.
7. Minutes, North Platte Natural Resources District Joint Committee Meeting, September 30, 2021.
8. Letter from Steven C Smith, Regarding Complaint by Wyatt & Kimi Kramer, dated September 17, 2021.
9. Motion to move the November 2021 Regular Board Meeting to November 18th due to the Veteran's Day Holiday.
10. Hazard Mitigation Adoption Resolution Number 21-21 dated October 14th, 2021.
11. Agenda from the District Operations Committee Meeting dated August 12, 2021.
12. Copy of the Nebraska Erosion & Sediment Control Act Complaint Form and Written Details of Claim from Wyatt & Kimi Kramer.
13. North Platte Natural Resources District Rules & Regulations for Implementing the Erosion & Sediment Control Act, Adopted by the Board of Directors – April 12, 2018.

14. Letter from Steven C Smith, regarding Legal Counsel on the Complaint by Wyatt & Kimi Kramer, dated August 3, 2021.
15. Investigative Report by the North Platte Natural Resources District, regarding Erosion Issues July 27th, 2021, Along the South Channel of the North Platte River.
16. Minutes, North Platte Natural Resources District, District Operations Committee, August 12, 2021.
17. Multiple Pictures taken by the North Platte Natural Resources District, regarding the Complaint by Wyatt & Kimi Kramer.

3. Approval of Minutes of Previous Meeting

The Board reviewed the minutes of the September 9, 2021, regular Board meeting.

Moved by Reuter, seconded by Weinreis, to approve the minutes of the September 9, 2021 regular Board meeting. Motion passed.

Ayes: Andreas, Darnall, Eirich, Lapaseotes, Reuter, Weinreis,

Nay: none

Abstain: Henkel

Absent: Deines, Westphal

Ryan Reuter reviewed the Treasurer's report with the Board. Motion made by Henkel, seconded by Weinreis, to accept the Treasurer's report and pay the bills as listed. Motion passed.

Ayes: Andreas, Darnall, Eirich, Henkel, Lapaseotes, Reuter, Weinreis,

Nay: none

Abstain: none

Absent: Deines, Westphal

5. Comments from the Public

There were no comments from the public.

6. Manager's Report

Administrative:

Flu Shot Clinic – On October 21, we will be holding our annual health fair for employees where they will be able to get flu shots, COVID shots and blood screenings.

Personnel Manual – In reviewing some of our personnel policies, Danielle, Scott, and I determined that there may be some need to amend this policy in the future to account for some necessary changes to the short-term disability program.

Projects and Programs:

SW Infrastructure – As you know, for several months we have been working with DNR to determine if there was an appropriate nexus for the NRD to work with surface water districts in the area to assist them with much needed infrastructure upgrades and repairs. This would be done for those districts to aid the NRD in IMP requirements. We are going to aid them in seeking federal funding to be matched by state funding and have a conference call with the Bureau planned for a discussion of WaterSmart as a funding mechanism. We are also working on an FAQ document and a list of some of the assistance that these districts might be able to perform for us.

Drought Planning – As you will note in the minutes from the Water Resources Committee, that committee will be considering some potential amendments to the Drought Plan that will require some rules changes if they choose to go forward with additional regulation in the case of drought.

Telemetry – As you will note in the minutes from the Water Resources Committee, that committee is looking at ways that we can make our Telemetry project more cost-effective.

Schaneman Recharge Project – We are anticipating seeing orders from the Department of Natural Resources this next month that will authorize the operation of the Schaneman Recharge facility next year for intentional recharge.

Morill/Lyman/Henry Joint Water Board – The Joint Water Board has approached us about doing a temporary lease of some farm ground that they own near their well fields for wellhead protection and for returns of consumptive use back to the system. We have drafted a contract for their review and are expecting to hear back from them soon.

“Urban” Forestry Program – Todd and I are working on a pilot project to put into place an “urban” forestry program to address some of the dead and dying trees in our municipal canopies. This would be a simple cost-share program for tree removal and replacement.

Robust Review – This District, along with the other Upper Platte NRDs is prepared to move forward with the Robust Review of our water savings activities, and we are awaiting a scope from our consultants as the last step.

NSWCP for Fire Damage – As you may recall, there are several landowners that suffered fire losses this summer that have approached us for cost share for dirt work, reseeding and fencing. We are awaiting information from NEMA before we proceed with those applications to determine whether any cost-share would be reimbursable from the state in the event of a declared disaster.

Insurance Coverage for District – I have had several phone calls with Nate Fox, our insurance agent for LARM to determine whether there will be continuing coverage offered through LARM after this year.

City of Scottsbluff – Scott and I have been working with the City of Scottsbluff related to some concerns of theirs with persistent flooding that occurs on the Winters Creek diversion near Target. We have met with the district and some downstream appropriators to determine whether a permanent fix is possible.

Water Conserving Crops – Scott and I hosted a zoom with several staff from extension about millet and field peas as water conserving and nitrogen digesting crops. This was a very informative session that outlined some significant obstacles to such an alternative cropping program.

Erdman Request – As you know, Senator Erdman sent a follow-up inquiry related to our response to his Legislative Resolution – LR 23, an interim study to determine whether NRDs were fulfilling their originally intended purpose. We have drafted a response for Roger’s signature and will transmit that to the committee staff tomorrow.

StreamNet – This university program is a series of water quality samplers in several different areas of our District on surface water flows. I received a briefing on this project a couple of weeks ago, and it is very impressive. Unfortunately, the researchers are finding very high nitrates coming out of the Gering Valley Drain. NPNRD may partner with them in the future for real time sampling of groundwater near the surface water samples that are being collected.

Outreach:

Chamber Ag Committee – I was the featured speaker at the Chamber Ag Committee last week to discuss our highly successful water tour.

Range and Land Judging – I will be meeting with my counterparts from South Platte and Upper Niobrara White NRDs to discuss how our staffs will work with these contests in the future.

Water for Food Global Forum – I presented (virtually) on a panel at the Water for Food Global Forum earlier today in reference to nitrates.

I will be attending the Manager’s Meeting in Chadron on November 2.

7. Presentation on Soil Conservation and Tree Department

Todd Filipi provided the Board an update on resource programs and projects. There were 70,000 trees sold in FY 21 of which 60% in this fiscal year were planted by NPNRD Staff. Quantity and diversity of tree stock may be limited and will more than likely show a 30% increase in tree prices, Filipi noted that the retail prices from the NPNRD may need to go up as well.

125 larger trees have been delivered and planted in area communities for the Fall tree program, formerly the Re-tree program.

Filipi and Resource Technician Ken Ridgeway continue to work with producers that have been affected by the recent wildfires in this District. The needs of those producers mainly range from reseeding of pastures, perimeter and cross fencing as well as replacing damaged water systems.

There has been some interest from producers in new grass plantings and the use of cover crops in their operations, but plantings have been few mainly due to the extended dry weather.

The Resource Department is currently looking at different options on a grass drill and will likely pursue a grant through the Nebraska Environmental Trust to secure some of the funds needed for a new seed drill.

Filipi finished his presentation by showing a few short video clips of the revitalization project of Spotted Tail Creek.

8. Water Resources Committee Report

Berge provided the report from the committee highlighting the following topics discussed during the meeting.

Telemetry program costs are far higher than what was initially anticipated. The cost of data along with the maintenance costs of the network are becoming hard to justify as a cost savings to the District taxpayers. The need to switch the network over to 5G or convert to satellite is a cost that will surely need to be discussed in the very near future. The largest issue with the telemetry network is the reliability of communication, via cellular and satellite technology. The Water Department Staff are constantly troubleshooting units that do not communicate. Consistently one third of the network is down due to connectivity issues. These issues will need to be discussed and decisions will need to be made regarding the life of the telemetry program.

The drought plan was discussed among the Committee members and largely the feelings of the Committee were that the plan revolved around education and information but was absent

language regarding actual irrigation management measures during drought, such as triggers for allocation reduction. Committee members felt it would be necessary to re-examine the drought plan and look for ways to address water management issues in water short years.

The unified plan was discussed with nothing more to really add to the discussion. Berge discussed the positive aspects of the plan as well as the pitfalls. Berge said there was no real certainty in the plan regarding a fully appropriated status.

A nitrate sampling presentation was given by Craig Uhrig during the Committee meeting and more information regarding the data collected will be presented to the Board in upcoming months.

There were no action items or recommendations that needed to be considered from the Water Resources Committee meeting.

9. District Operations and Executive Committees Joint Committee Report

Ryan Reuter Chairman of the Joint Committee will present the report during Item 12 on the agenda.

10. Consideration of Changing the Date for the Regular Board Meeting in November

Motion made by Henkel, seconded by Reuter to move the November Board meeting date to November 18th at 3:00 p.m. Motion passed.

Ayes: Andreas, Darnall, Eirich, Henkel, Lapaseotes, Reuter, Weinreis

Nay: none

Abstain: none

Absent: Deines, Westphal

11. Consideration of Resolution on the District Hazard Mitigation Plan

Motion made by Andreas, seconded by Reuter to adopt Resolution 21-21 the most recent and FEMA approved version of the North Platte NRD Multi-Jurisdictional Hazard Mitigation Plan Update in its entirety. Motion passed.

Ayes: Andreas, Darnall, Eirich, Henkel, Lapaseotes, Reuter, Weinreis

Nay: none

Abstain: none

Absent: Deines, Westphal

12. Consideration of the District Operations Recommendation on the Erosion and Sediment Control Act Complaint by Wyatt Kramer

Ryan Reuter and Chairman Roger Eirich asked Berge to summarize this item. Berge began the discussion by providing background on the complaint filed by Wyatt and Kimi Kramer. Berge went on to provide explanation to why the recommendation to dismiss the complaint was warranted based on lack of authority for streambank erosion in the District Rules and Regulations. Berge mentioned that there was also an inability to properly process and provide any remedy for the complaint because of the lack of soil loss tolerance levels for this type of erosion established by the Natural Resources Conservation Service. Berge stated the conflict-of-interest allegation against Attorney Steve Smith could not be supported based on the outcome and decisions of the Joint Committee meeting held on September 30, 2021. Berge concluded by saying, this time in the meeting will be an opportunity for the Kramer's to discuss their complaint and concerns in front of the full Board of Directors.

Wyatt Kramer asked that the CD of videos and the maps provided with the complaint documents be available for viewing.

Robert Brenner Attorney representing the Kramer's requested that the Board does not allow Smith any opportunity to provide comment on the boundary dispute and ongoing litigation between the Kramer's and Shirley Hardt, and that his request be recorded in the minutes. Berge assured Brenner that it would. Brenner also stated that he and his clients believe this District has authority to act and complete the erosion complaint filed by the Kramer's. Mr. Brenner concluded by stating the ethical standards regarding the actions of Mr. Smith were still in question.

Kramer asked to approach the smart board and began to describe the issues he and his wife have been dealing with regarding excessive erosion along the South Channel of the North Platte River. Kramer pointed out on the displayed map, the boundaries of their property as well as the boundaries of their neighbors who he felt were being impacted by excessive erosion as well. He went on to state that the absence of adequate fencing on the Hardt side of the channel was causing a water quality issue for not only him but his neighbors as well. Kramer went on to explain that He and His wife have resided on the property since 1995, and that adequate fencing containing the cattle on the Hardt side of the river channel has always been an issue, but not to the extent as it is today with Glen Summers as the tenant. Kramer also described the increasing infestation of cattails in the channel and how those cattails were impeding the flow of the river and allowing more and more sediment to be built up inside the channel creating the inability for the river to flow like it should. He continued to say that if the cattle owned by Summers were not allowed to enter the stream, it would eliminate the issues with excessive sediment buildup in time, which in turn would eliminate the infestation of cattails in the channel.

Kramer then asked for the videos he provided be shown.

After the videos had been shared with the Directors, Kramer stated, all this could be resolved with adequate fencing provided by Hardt and Summers so as their cattle would not be allowed to enter the channel.

Lapaseotes asked Kramer if the South Channel had gone dry in the past, especially in years of drought?

Kramer replied, no it has never been dry.

Lapaseotes then asked Kramer where would the cattle water if not in the river, and if he had ever spoke to Hardt or other tenants about putting up a hot wire on their side of the river.

Kramer responded by saying, he had conversations in the past with other tenants about the possibility of installing a hot wire on their side of the channel, but Hardt's would never allow them to do it. Kramer also stated that erosion concerns could be alleviated by either selecting sites along the river channel to make entrances for only watering or providing stock water with a well and pump system.

Weinreis added to the discussion by sympathizing with Kramer regarding the boundary dispute and provided his own experiences with adverse possession claims that seem to be a continued issue on land bordering a constantly adjusting river channel.

Kramer continued to discuss his understanding of the law regarding accretion land, suggesting that the thread of the river is normally the boundary line and that each landowner along the river needs access to the water in the river.

Kramer then discussed the complaint he and his wife had filed and referred to certain rules in the NPNRD Erosion and Sediment Control Act. Kramer read the following rules aloud: Rule 9. C last sentence reading "The investigator may utilize the services of professional staff, consultants, or technicians of other State or Federal agencies, if necessary". Rule 14A. "Soil and water conservation practices, applicable only to land used for agricultural, horticultural, or

silvicultural purposes, may include: (1) permanent practices, such as planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, grade control structures, tile outlets, and other practices approved by the District. (2) temporary soil and water conservation practices, such as planting of biennial crops, use of strip-cropping, contour planting, conservation tillage or residue management system, and any other cultural practices approved by the District. The District shall maintain a complete list of approved permanent and temporary soil and water conservation practices as part of its local erosion and sediment control program”. Rule 10 last sentence stating, “Application of the soil-loss equation formulas will be made by someone whose qualifications to make such determinations can be supported in court”. Kramer concluded by saying that there must be an agency that has the authority to handle such erosion issues.

Smith then asked to approach the Board.

Brenner then stated that Smith should not be able to comment about any litigation between Kramer’s and Hardt.

Smith began by stating there were no conflict issues and that he had disclosed to the Board his prior engagement with Shirley Hardt and Glen Summers and that the attorney/client relationship had ended. He felt the disclosure was adequate even though a member of the Board may have felt it wasn’t disclosed in a timely manner. Smith went on to cite part of Nebraska Statute 2-4608:

- (1) Except to the extent jurisdiction has been assumed by a municipality or county in accordance with section 2-4606, the district may inspect or cause to be inspected any land within the district upon receipt of a written and signed complaint which alleges that soil erosion is occurring in excess of the applicable soil-loss tolerance level.

Smith explained how and why Neb. Rev. Stat § 2-4608 and the NRD'S Rules and Regulations, including 5,7,8 and 10, do not authorize or require the Board to take action on the Kramers' filed complaint due to the lack of any established soil-loss tolerance level and the directive that soil losses from stream bank erosion could not be calculated. Regarding Kramers' assertions to the Board about trespassing and the boundary dispute to the accretion land involved, Smith reminded the Board that the District Court had the only jurisdiction to decide these questions and the Board could not consider or resolve those issues.

Andreas stated that he was in support of Smith and believes there were no issues regarding a conflict.

Weinreis added that he understood the concerns the Kramer's brought forward, but those concerns do not give him the right to change his official duty as an NRD Board Member.

Lapaseotes echoed the same response as Weinreis.

Motion made by Henkel, seconded by Andreas to dismiss Complaint 44 filed by Wyatt and Kimi Kramer. Motion passed.

Ayes: Andreas, Henkel, Lapaseotes, Reuter, Weinreis

Nay: Darnall

Abstain: Eirich

Absent: Deines, Westphal

13. Adjourn

There being no further business, the Chairman called for a motion to adjourn.

Motion made by Lapaseotes, seconded by Henkel to adjourn at 4:28 pm., MDT. Motion passed.

Ayes: Andreas, Darnall, Eirich, Henkel, Lapaseotes, Reuter, Weinreis

Nay: none

Abstain: none

Absent: Deines, Westphal