

N-CORPE

Nebraska Cooperative Republican Platte Enhancement Project

Board of Directors Meeting Minutes AGUST 16, 2017 Curtis Community Center, 201 Garlick, Curtis, NE

Agendas were sent to board members and others requesting agendas, Agendas were posted at www.ncorpe.org and in the following offices: Twin Platte NRD; Lower Republican NRD, Middle Republican NRD; and Upper Republican NRD.

Board Members Present: Terry Martin (Upper Republican NRD); Jim Meismer (Twin Platte NRD) Benjie Loomis (Middle Republican NRD); Tim Kahrs (Lower Republican NRD)

Others Present: Kyle Shepherd (NCORPE); Jasper Fanning (Upper Republican NRD); Dean Large (Upper Republican NRD); Jack Russell (Middle Republican NRD); Scott Dicke (Lower Republican NRD); Kent O. Miller (Twin Platte NRD); Nate Jenkins (Upper Republican NRD); Silvia Johnson (Middle Republican NRD); Todd Siel (Lower Republican NRD); Kevin Fornoff (Middle Republican NRD) Bill Sellers (NCORPE); Pierre Dean (NCORPE); Butch Haag (Middle Republican NRD); Senator Mike Groene; (North Platte); Bill Henry (Lincon County Commissioner); Lynn Frederick (North Platte); Rod Clough (Farmer); Kyle Clough; Levi Fisher; Shad Lantis (North Platte); Cole Schaffer (Rancher); Lynn Flaming (Rancher); Julie Stenger (Lincoln County Assessor); Ken Anderson (North Platte); Jim Smith (Wallace, Business Owner); Randy Robinson (Farmer/Rancher); Marvin Knoll (Farmer/Rancher); Gib Sinder (Farmer); Cathy Gauerholz (Hershey); Ryan Sellers (North Platte); Rusty Wills (Jinx Cattle Company); Bob Shirely (Jix Cattle Company Maywood); Pat Aylwood (Dickens); Andrew Hack (North Platte); Jim Bartell (Wallace); Jordan Maassen (North Platte); Brandon Fletcher (North Platte); Dan Estermann (Wellfleet); Marlene Estermann (Wellfleet); Bruce Fulk (Wallace); David Anderson (Wallace); Conrad Nelson (Wallace School Board); Kirk Olson (North Platte); Andrew Olson (Hershey); Dennis Stucky (Wellfleet);

Information Sent to Board Members: Agenda; Minutes from June 21, 2017 meeting; Bills paid June 16 through August 14, 2017; Financial Statements Nine months ended March 31, 2017; 2018 NCORPE Budget drafts; In-Kind Contributions; North Platte Telegraph article by John Berge; Email thread between Bill Sellers and Senator Mike Groene.

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Terry Martin called the meeting to order at 10:00 a.m. and designated NCORPE General Manager Kyle Shepherd to chair the meeting. Shepherd pointed out that there were copies of the Open Meeting Act posted in the back of the room.

Roll call was taken. Voting representatives from the Upper Republican NRD (Terry Martin); Middle Republican NRD (Benjie Loomis); Twin Platte NRD (Jim Meismer); Lower Republican NRD (Tim Kahr) were represent.

Open Forum

Conrad Nelson from Wallace School Board stated that he's in support of what ever gets more tax income to the community. Kirk Olson told the board that they're trying to get the NCORPE property back into private hands to generate tax revenue for the county. Olson further stated that investigation was done and they see no reason the property can't be sold and they would like to see it sold as quickly as possible. Julie Stenger from the Lincoln County accessors office says that she supports the sale of NCORPE's land to get it back in to the tax roll. She stated that they are appealing the TERC's ruling and if that is not won then the Lincoln County tax payers would have to refund taxes paid by NCORPE. She also mentioned that should the NCORPE's land not be sold that she wants to make the public aware of the state statute 77202 that allows for government entities that is not using land public use to pay in-leu of tax. She continued that she was in meetings at the beginning of the project that it was mention that in-leu of tax would have been looked into and she now questions why haven't that been pursued as yet. She encourages the that in-leu be pursued if they are unsuccessful in having the land sold to bring the revenue back into the various tax districts. Pat Aylwood wanted to know if land was being leased for grazing and if so why does NCORPE feel that they should not pay taxes. Kyle Shepherd confirmed that there was land open to public bidding for such purpose and based on TERC's ruling as NCORPE is tax exempt they should not collect tax dollars to pay taxes. Shepherd asked if there were any further questions and then moved to the next agenda item as there were no other questions.

Minutes of June 21, 2017 Meeting:

Jim Meismer moved to approve the minutes of June 21, 2017 meeting as presented and was seconded by Terry Martin.

Roll Call, Upper Republican- Yes; Middle Republican- Yes; Lower Republican- Yes; Twin Platte- Yes. Vote: 4-Yes, 0-No. Motion Approved

Financial Report

Payables – Shepherd presented the payables to the board and opened the floor to questions. Jim Meismer and Benjie Loomis asked if fencing work was still be done and Shepherd responded that fencing was completed in July of this year. Shepherd also stated that there might be a mile of fencing that would have to be done over the next few years. Shepherd brought it to the boards attention that a bill from the Lincoln county should not

be paid as advised by legal-council based on the TERC's recent ruling. Benjie Loomis asked about the tire removal and Shepherd responded that fee occurred as a semi load was removed and others were given to the pipeline construction to be used. Ken Anderson of North Platte said that he noticed that mileage is being paid out and wants to know how many 4-door pickups does NCOPE own. Shepherd responded that NCORPE currently owns 4 pickups but sometimes trucks may not be usable or available.

Terry Martin moved the motion to accept the payables as presented excluding the Lincoln County Property Tax and was seconded by Benjie Loomis.

Roll Call, Lower Republican – Yes; Middle Republican – Yes; Upper Republican – Yes; Twin Platte – Yes. Vote 4- Yes, 0 – No – Motion Approved.

Financial Statements - MMS

There was no representative from MMS thus Shepherd presented the financial statement to the board and opened the floor to questions.

Terry Martin moved the motion to accept the Financial Statements as presented and was seconded by Jim Meisner.

Roll Call, Middle Republican – Yes; Lower Republican – Yes; Twin Platte – Yes; Upper Republican – Yes; Vote 4- Yes, 0 – No – Motion Approved.

Project Update

Managers' Report

Bill Sellers (Range Manager) has been working with producers with summer grazing, did pipeline and NRCS tours, completed fence removal and new fence installation, Public Relations story about public access, took annual aerial photos of property, attended the grazing conference, and some of these tasks were assisted by hourly employees.

Mike Keller (Operations Manager) Completed fence removal and installation, performed maintenance on equipment, assisted with North Pipeline, and used hourly employees to assist with some of these tasks.

Kyle Shepherd (General Manager) Worked on agenda items, worked on the budget, assisted with the audit, worked on wind development, LR tour, public relations and assisted with public information requests.

Property Management / Operations

HDR update on wind proposals

Kyle Shepherd advised the board that no HDR representative could not make it to the meeting. He also stated no proposals were given for the wind project and he's still in communication with about 7 developers. Benjie Loomis asked if RFPs were only sent to a small group and Shepherd replied yes. Scott Dicke asked if the RFP was on the website and Shepherd responded that it was on the website. Jim Meisner asked HDRs current position and Jasper Fanning replied that their work is completed. Kent O. Miller said that

they should have been at the meeting to speak to the board about the outcome. Jim Meismer agree that they gave a good proposal and need to give the board an explanation of what had happened. Terri Martin wanted to know if there's still enough interest in the project. Shepherd responded that he feels that the RFP window may have been too short. Martin asked what may have cause the disinterest and Nate Jenkins responded that timing may have been an issue.

Third Party Audit

Shepherd advised that that RSM would not be able to be physically present at this meeting but can communicate via conference call. Shepherd said that RSM feels that they have collected all the information needed and should have a draft report available within thirty days. That would give the managers some time to review it and it should be ready for October's meeting. Shepherd told the board that the proposal that was given by RSM had differed from the actual contract that was given in July, thus he and Terri Martin were reluctant to sign. Shepherd said that there doesn't seem to be any major changes to the contract. Andrew Guill a Partner at RSM was conferenced in and explained that basically only the wording was changed for legality with the exception of a portion that said that all transactions would be tested. He's given the board the decision to determine the number that testing that they would require.

Terry Martin moved a motion to authorize Kyle Shepherd and Terry Martin to sign a revised arrangement letter once management has made their decision. Motion was seconded by Tim Kahrs. Roll call, Twin Platte – Yes; Upper Republican – Yes; Middle Republican – Yes; Lower Republican – Yes; Vote 4- Yes, 0 – No – Motion Approved.

North Pipeline Update

Kent O. Miller advised that the North Pipeline is mostly completed and construction should be totally completed within 30 days. Testing will be done as soon as next week.

Land Trade Options – Update

Shepherd said that the appraisals are completed for the land trade and the trade is progressing and the interested parties are dealing with financing.

Land Sale Update

Kyle Shepherd said that he was invited to Senator Groene's open house in Wallace. There was a strong support for the sale of the land for various reasons, primarily for tax reasons. The item was added to the agenda to be discussed since he saw the number of persons that attended while he was there. Shepherd said that NCORPE's attorney Don Blankenau has given the common law reasoning on why NCORPE should not sell the land. He also stated that he's talked with NCORPE's bond attorneys about how the sale of NCORPE's land would affect the bonds. Shepherd plans to meet with them next week to look deeper into it. The attorneys are concerned that the sale of the property at a reduced rate may complicate paying out the bonds as they were based on land values at the time the property was sold. Shepherd gave an example of buying irrigated acres for \$100 then selling as range acres for \$25 leaving \$75 needed to satisfy the bond people and tax people. Andrew Olson said that \$14,000,000 occupation tax should go towards

payment of the bonds so the land should have nothing to do with the bonds. Jasper Fanning replied that the bond agreement and issuance included a mortgage of the land. Butch Haag said that Bruce Lefler told them that the bonds are backed by occupational taxes. Shepherd said that Bruce Lefler is not a bond attorney hence the reason he'll be meeting with one next week. Lynn Fredrick asked if the sale of the pivots and pumps went to a slush fund or if it went to the bonds. Shepherd responded that it went to towards replacement property which is allowed by the bond documents. Jasper Fanning added that the bond provisions included to either remitting towards bond payment or purchasing like property or equipment. When the equipment was sold those funds were used for the construction cost for the pumps used for augmentation. Thus, the second bond issuance for construction was lower by the amount of funds received from the sales. Senator Mike Groene asked if the funds from the two quarters sold went towards the payment of the bonds. Both Shepherd and Fanning said that they went to bond payment. Senator Groene asked if the funds that were applied to the bonds made a normal bond payment of just the funds associated with it. Fanning replied the amount received was paid to the bond. Senator Groene asked if it was a normal bond payment to which Fanning replied no. Marvin Knoll asked if we had to come up with the difference between dry land and irrigated when the payment was made to the bond. Fanning Replied no, because the property was listed as property likely to be sold along with the eight pivots and was funded under the taxable bonds. Senator Goene asked if the bond company agree to that, and wasn't it in the papers that those eight circle was a part of the \$84 million? Fanning replied that it was within the \$83 million but it was taxable as there were both taxable bonds and non-taxable bonds issued. The properties that were likely to be sold were under the taxable bonds. Senator Groene asked if the funds went to pay the bonds off for the construction cost how is the expenses of NCORPE being paid. Senator Groene told Fanning that occupation tax could not be used for NCORPEs expenses and Fanning respectfully disagreed. Fanning said that NCORPEs attorneys within the statutes would say otherwise. Senator Groene told the board that other legal opinions will be coming to the board other than that of Mr. Blankenau as he has just one opinion and he's not a judge. Shepherd responded that Blankenau's opinion is not the only one that NCORPE has been receiving. Senator Groene said that they will help out the board members with selling the land as he understands that the board is under pressure because of the legal opinion of Mr. Blankenau. Senator Goene continued that some of them with help will other opinions and appreciate some help with getting LB218 passed so NCORPE would have a choice to sell the land in black and white. Senator Groene said that he's seen handouts of Mr. Berge 's article and said that he'll like his reply tomorrow in North Platte paper. Marvin Knoll asked if the bond company is looking at the value of the land and not the occupational tax. Fanning replied that when the land was first purchased that there were risks as it had not been done before. To get lower rates NCORPE was advised to mortgage the land in additional to the occupational tax. Thus, if NCORPE no longer existed the bond holder could get their value back by converting the land back to irrigated land. Senator Groene gave another example of when occupation tax guaranteed a bond namely the Golden Spike in North Platte. Fanning responded that that occupation tax was not authorized under the streamflow enhancement portion. Senator Groene responded that occupation tax is occupation tax. Fanning responded that there are specific statues related to the streamflow enhancement bonds and the occupational tax that's able to be

accessed on irrigated lands and a difference in statutes than what the senator is referring to. Senator Groene said that he's been told why NCORPE cannot sell the land but no one on the board could say why does NCORPE want to keep the land. Benjie Loomis said that there are other underlining issues as they have spoken with Senator Hughes and if we start separating water from the land then entities from Colorado can purchase water rights in Nebraska. Senator Groene said that NCORPE has already done that by opening Pandora's Box. Kyle Shepherd said to respect boards members time we will continue with the meeting and not take any other questions at the time as open sessions was done.

Legislative Communications and Update

LB218 is still in committee and there were no further updates the time.

Draft Budget

Shepherd presented the proposed budget to the board and opened the floor for questions. Jack Russell said that he was hoping that the draft was more detailed and hoped that the audit was completed for the budget was presented. Mr. Russell also said that they would need the budget prior to the board meeting. The budget was tabled until the next board meeting and operations would continue as usual with no major purchases.

Terry Martin moved to go into executive session to discuss threatening and pending litigation. To be included were NCORPE, NRD staff and board members. The motion was seconded by Benjie Loomis.

Roll call; Twin Platte – Yes; Upper Republican – Yes; Middle Republican – Yes; Lower Republican – Yes. Vote 4 – Yes, 0 – No motion Approved. The board entered executive session at 11:45 a.m.

Terry Martin moved to go into open session. The motion was seconded by Benjie Loomis.

Roll call; Twin Platte – Yes; Upper Republican – Yes; Middle Republican – Yes; Lower Republican – Yes. Vote 4 – Yes, 0 – No. Motion Approved. The board exited executive session at 12:27 p.m.

The meeting was adjourned at 12:30 pm as there were no further matters to discuss.

Benjie Loomis, Board Secretary

Date