

**RULES OF PROCEDURE  
OF  
THE LOWER ELKHORN NATURAL RESOURCES DISTRICT  
FOR  
PUBLIC HEARINGS FOR RULE 14 OF ITS  
GROUNDWATER MANAGEMENT AREA RULES AND REGULATIONS**

ARTICLE 1 - ESTABLISHMENT: The Lower Elkhorn Natural Resources District (hereinafter called the "District"), is a political subdivision of the State of Nebraska, authorized to establish any rule and/or regulations reasonably tied to its legislatively enacted duties.

ARTICLE 2 - OFFICERS AND STAFF

Section 1- DISTRICT OFFICERS: Pursuant to statutory authority, the District Board of Directors ("Board") shall elect a Chairperson, a Vice-Chairperson, and a Secretary of the Board.

Section 2 - DUTIES OF OFFICERS:

- A. Chairperson: The Chairperson shall preside over public hearings of the District, and, on behalf of the Board, shall exercise general supervision over the affairs of the hearings before the Board. The Chairperson, or in his/her absence the acting Chairperson, shall have the authority to:
1. administer oaths;
  2. compel the attendance of witnesses;
  3. make determinations of points of order and procedure;
  4. sign all official documents and communications of the Board relative to public hearings;
  5. establish public hearing dates;
  6. have the District publish notice for public hearings; and
  7. may (but is not required to) retain a hearing officer to assist the District in the conduct of public hearings and to advise the District on issues which it requests the hearing officer to advise it regarding the Board's duties and responsibilities. It may be advisable that the hearing officer retained be an attorney at law for certain hearings conducted by District. The role of the hearing officer would be to assist on preliminary hearing matters, to organize the presentment of facts and witnesses to the board, to rule on objections and motions presented to the board, as well as to generally advise the board as to all legal and regulatory matters.
- B. Vice-Chairperson: The Vice-Chairperson shall have the responsibilities and authorities of the Chairperson during the absence or disability of the Chairperson from a public hearing. The Vice-Chairperson shall have the authority to act as Chairperson in the event a conflict of an interest by the Chairperson at a public hearing.
- C. Secretary: The Secretary shall be responsible for keeping a complete and

accurate record of all District public hearings, including keeping of records and minutes and shall certify all official acts of the Board, including votes of each board member on all matters for which a vote is required or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the District.

In the event of the absence or disability of both the Chairperson and Vice-Chairperson, the Secretary shall preside over the public hearing, provided however, that the first and only item of business shall be the election of a Chairperson pro-tempore, or in the absence of a quorum, to announce that all hearing matters to come before the District is continued to the next public hearings of the District and to announce the date, time and location of the next public hearing of the Board. In the absence of the Secretary, the Chairperson shall appoint a Secretary pro-tempore.

ARTICLE 3 - GENERAL RULE: In all matters not otherwise provided for by statute, these Rules of Procedure or the most recent edition of Robert's Rules of Order available to the Board, as interpreted by the presiding officer (Chairman, Acting Chairman, or Hearing Officer as appropriate), shall govern the conduct of the Board at public hearings.

#### ARTICLE 4 - PUBLIC HEARINGS

Section 1 - GENERAL PROVISIONS: Public hearings of the District may be held at the call of the Chairperson of the District, or by any three (3) members of the Board, and at such other times as the District determines it is necessary to conduct its affairs, responsibilities and duties to enforce Rule 14 of its Groundwater Management Area Rules and Regulations. Notice of such public hearings shall be posted and/or published in accordance with Nebraska law. All public hearings of the District shall be open to the public. Executive sessions of the District are permitted provided that statutory cause exists. No action shall be taken by the District during any executive session. Any member or members of the Board constituting less than a quorum of the District may visit any premises involved in a public hearing without public notice being provided, provided that approval from either the Chairperson or General Manager has been given. The Chairperson and/or General Manager of the Board may designate the place of hearings for any regular or special meeting called.

Section 2 - RECORDS: The District shall adopt rules for transaction of its business and shall keep a record of its motions, votes of each member on each motion and its other transactions, determinations and findings. The records of the District shall be maintained in the District office. The Board, upon a request of either a member of the public or the District, may (but is not required to) provide a court reporter to transcribe oral testimony received at a public hearing. The cost of the court reporter shall be paid by the party requesting the presence of a court reporter at a public hearing.

Section 3 - QUORUM: A quorum of the District shall be a majority of the regular District board members to transact business. No official business of the District shall be transacted by the District without a quorum present and no public hearing shall be opened at any public hearing of the District unless a quorum is present.

Section 4 - CANCELLATION OF PUBLIC HEARINGS: Whenever it is ascertained that a quorum of the District is or will not be present at any public hearing, the Chairperson shall dispense with the public hearing by opening the public hearing and informing all in attendance that a public hearing cannot be held due to lack of a quorum and that all matters which were to have been presented to the District shall be continued to the specific date, time and location for the next public hearing of the Board.

Section 5 - VOTING: The following rules shall apply to all actions of the District which require adoption of a motion:

- A. Majority: No action of the District shall be official unless such action is authorized by a vote of a majority of the members of the Board.
- B. Voting Method: All votes of the District shall be voice (roll call) vote duly recorded as to the vote cast by each voting member; except when a motion for ballot is properly made, seconded, and passed by a majority of the Board present, voting shall be by ballot.
- C. Voting Required: Except in the case of a conflict of interest, as specified by state statute, all voting members of the District present at each public hearing of the District shall vote on each matter for which a public hearing is held.

Section 6 - ORDER OF BUSINESS: The order of business at public hearings of the District shall be as listed below, provided that such order of business may be changed by the Chairperson upon the consent of a majority of those members present.

- 1. Roll Call;
- 2. Approval of Agenda;
- 3. Approval of Notice;
- 4. Public Hearings in the following order:
  - (i) matters continued from prior public hearings where evidence has been adduced;
  - (ii) matters continued from prior public hearings where no evidence has been submitted;
  - (iii) matters of first impression where members of the public have indicated a desire to present evidence; and
  - (iv) the last ten minutes of the public hearing shall be allocated to matters where no members of the public have indicated a desire to submit evidence; and
- 5. Adjournment.

#### ARTICLE 5 - PUBLIC NOTICE AND HEARINGS

Section 1 - ACTION BY DISTRICT STAFF: All persons appealing an action or decision of the District staff shall notify the District of the appeal, at which time the District shall schedule a public hearing, cause public notice of the public hearing to be published, and shall transmit all records regarding the appeal to the Board for its consideration.

Section 2 - NOTICE OF PUBLIC HEARING: Public notice of any matter which requires action of the District at public hearing shall be given by publication thereof in a newspaper of

general circulation in the District as required by statute. Proof of such publication of shall be obtained by the District and maintained in the records of the Board to the extent required by statute.

Section 3- **APPLICATIONS FOR CONTESTED HEARINGS:** All property owners or their designated representatives must complete an application form as provided by the District properly setting forth that the owner is contesting an action of either the District or its staff. This application must be submitted to the District on or before seven (7) days prior to the public hearing where the issue is to be heard by the Board. All owners having failed to properly complete an application within the necessary timeframe shall be entitled to one (1) continuance of the hearing in order to comply with this rule. Should the owner fail to comply prior to the second hearing, however, the District may dismiss, reject, continue, or taken any such action as deemed appropriate by the Board.

Section 4 - **CONTENTS OF NOTICE OF PUBLIC HEARING:** Any notice of public hearing shall contain the minimum statutory requirements under the Nebraska Open Meetings Act.

Section 5 - **CONDUCT OF PUBLIC HEARINGS:** Hearings shall be scheduled for no more than one (1) hour in length unless the Chairperson shall elect to exceed the time limitation. The District shall utilize an agenda prepared by District staff to determine the order of business at each public hearing. Public hearings shall be heard in the order prescribed in above, except that the Order of Business may be changed by the Chairperson. Each public hearing shall be conducted in accordance with the following procedure:

- A. The Chairperson shall request proof of notification of public hearing from District staff. In the event such public hearing notice was not published properly, the Chairman shall continue such public hearing to the specified date, time and place and shall instruct District staff to publish such notice, including the revised date, time and place of such public hearing.
- B. The Chairperson shall request verification from District staff that the matter to be heard at public hearing is complete in all respects. If District staff indicates that the matter is incomplete in some form, such matter shall be automatically continued to the next public hearing of the District and the Chairperson shall state the date, time and place of such next public hearing.
- C. The Chairperson shall make a determination that the District has the authority to act on the matter presented to the Board.
- D. First priority shall be given to any member of the public is present and desires to proceed with the public hearing or for anyone that has submitted a written request for a continuance of the hearing. If no member of the public is present to submit evidence relative to a matter, such matter shall be automatically placed at the bottom of the Order of Business. If no one is present when the public hearing for this matter is called again during the final ten minutes of the hearing, the Board may consider this as no desire to submit evidence about this matter, and may include this matter with any actions taken under the bottom of the Order of Buisness or may continue it until the next scheduled hearing.

- E. If the public hearing is to proceed, the Chairperson shall call for a motion to open the public hearing and the District shall hear testimony in the following order:
1. Presentation of the matter by the property owners or their attorney or other authorized representative, not to exceed ten minutes in total;
  2. Comments and questions by any members of the public either in support of or in opposition to the District staff position, not to exceed five minutes each;
  3. Recording of any written communications or comments received by the District regarding the matter;
  4. Presentation of comments or recommendations by District staff or other technical staff, legal counsel, agency, or consultant serving the Board, or from which the District has sought input or advice;
  5. Rebuttals or final statement by the property owners or their attorney or other authorized representative as well as then from District staff or their representatives, not to exceed five minutes for both sides; and
  6. Comments and questions by members of the Board.
- F. After all public comments have been heard; the Chairperson shall call for a motion to close the public hearing and shall call for a motion for action on the matter. Additional public comment shall not be permitted after the closing of the public hearing, except at the discretion of the Chairperson. Board members may discuss the matter prior to any motion in order to clarify the issues pertaining to such matter. Any motion which is made and seconded is open for discussion by the Board members only, unless the Chairperson specifically invites additional comments by the public or staff. The Chairperson shall have the authority to limit discussion by the Board or the public if such discussion is repetitious or irrelevant.

Section 6 - **VOTING:** Action on any matter requiring a public hearing by the District must be made through passage of a motion. Failure of a motion due to lack of second or due to lack of the minimum required majority voting shall not constitute any action by the Board. Each motion on any matter requiring a public hearing shall be decided by a roll call vote of all members present. All voting shall be in accordance with the requirements of these Rules of Procedure. If a sufficient number of District members are not present after any abstentions, action on the matter shall be continued to the next public hearing of the Board, as determined by the Chairperson and the Chairperson shall verbally indicate to all persons present at the public hearing the date, time and place of such public hearing . The votes cast by each member of the District shall be recorded in the minutes of the Board.

Section 7 - **RULES OF CONDUCT:** The following rules of conduct shall apply to and at all public hearings conducted by the Board:

- A. Representation: Any member of the public may appear in person, by agent or attorney and may present any supporting witnesses, evidence, statements and arguments in support of their position. Persons in support of or in opposition to a matter may appear in person, by agent or attorney and may present witnesses, evidence, statements and arguments in favor of or in opposition to the matter. Any person interested in any matter before the District shall have the right to be heard and such persons shall not be required to enter any written statement at the public hearing.
- B. District Participation: Board members shall be provided adequate opportunity to examine witnesses and question any evidence, statements and arguments presented in the interest of a fair and complete hearing.
- C. Authority of the Chairperson: The Chairperson shall have the authority to prohibit repetitious or irrelevant testimony and comments and shall have the authority to limit the length of testimony by each person to a length of time deemed appropriate for a fair and complete hearing.
- D. Orderly Conduct: Every person appearing before the District shall abide by the order and direction of the Chairperson. Discourteous, disorderly, or contemptuous conduct shall not be permitted by the Chairperson and the Chairperson shall have the authority to have any person guilty of such conduct either removed from the hearing room or barred from providing further testimony.
- E. Speaker Conduct: All speakers should be allowed the privilege of making an appropriate presentation without interruption, subject to the time restrictions enumerated herein. If a speaker becomes flustered or defensive by questions, it is the responsibility of the Chairperson to stay calm and maintain the order and decorum of the hearing.

ARTICLE 6 - DISPOSITION OF MATTER:

Section 1 - MOTIONS: The final disposition of any matter brought before the District shall be in the form of a motion, properly seconded and adopted.

Section 2 - DISMISSAL: A matter under appeal may be dismissed from consideration by the District in accordance with the following situations:

- A. Dismissal: The District may dismiss an appeal after one (1) continuance if the petitioner or his/her authorized representative fails to appear to present the appeal or if such appeal has been improperly or incompletely filed and has not been modified after original consideration by the Board.
- B. Lack of Jurisdiction: The District shall dismiss an appeal if it finds that it has no authority or jurisdiction over the matter contained in the appeal.
- C. Automatic Dismissal: Failure by the District to approve a motion shall be automatically deemed a denial of said appeal and shall be dismissed accordingly.

Section 3 - **WITHDRAWAL OF APPEAL:** An appeal filed with the District may be withdrawn from consideration in accordance with the following situations and limitations:

- A. Withdrawal without Prejudice: An appeal may be withdrawn provided a written or verbal request from the petitioner or his/her agent or attorney is received by the District at any time prior to any motion by the District for action on said appeal.
- B. Withdrawal Not Permitted: No appeal may be withdrawn after a motion has been made and seconded and a vote of the District has been ordered by the Chairperson.

Section 4 - **CONTINUANCE:** Any matter presented for consideration at public hearing may be continued to the next public hearing of the District in accordance with the following:

- A. Request by Public: A member of the public or his/her agent or attorney may request a continuance of a matter, in writing, at any time prior to action on a motion of the District regarding such matter is appropriate unless additional continuances are sought by the District.
- B. Motion by the Board: Any member of the District may at any time move to continue a matter before the Board. Such a motion when duly seconded and approved by a vote of the District shall continue the matter to a date, time and place specified in the motion. The District may include in such motion, such specific instructions for re-notification of the public and publishing of a public hearing notice if the District determines such would be in the best interest of a fair and complete public hearing.
- C. Improper Notice: If the Chairperson shall find that proper notice of the public hearing has not been given, the Chairperson shall automatically continue the public hearing to the next public hearing of the District and the Chairperson shall instruct District staff to publish proper notice of the public hearing. The Chairperson shall also state the date, time and location of the next District public hearing at which the affected matter shall be heard.

Section 5 - **APPROVAL:** The District may approve or appeal a matter presented before the District. Such approval may take either of the following forms:

- A. Conditional Approval: A motion to approve a matter may be conditional upon compliance with a requirement or requirements imposed by the Board. Such conditions of approval shall be specifically stated in the motion to approve and recited to the public. The District may impose a time limit for the fulfillment of any such condition or conditions. The affected parties shall be required to notify the District of the fulfillment of all such conditions. In the event any condition is not fulfilled or the time for compliance has expired, the District staff shall issue a written request to the affected party to show cause why the Board's conditional approval should not be revoked. The District may investigate the matter and take such remedial action as it deems appropriate to assure the proper enforcement of

its decisions.

- B. Unconditional Approval: If the District has no conditions to impose upon a matter, the District may approve the matter as presented.

Section 6 - **SUBCOMMITTEES**: The Board may by resolution adopted by a majority of the members, designate a special subcommittee consisting of at least three (3) Board members to exercise any duties relating to public hearing matters as allowed by law. The designation of such a subcommittee shall not relieve the Board, or any individual director of any responsibility imposed upon it, him or her, by law. The Chairperson of the Board shall appoint the subcommittee chairperson, vice-chairperson, and may designate subcommittee members or may delegate the designation of his or her subcommittee chairperson.

#### ARTICLE 7 - DISTRICT RECORDS

Section 1 - **RESPONSIBILITY**: It shall be the duty of the District to maintain all its records and files, including official minutes of the Board. The District staff shall keep and maintain such records and files.

Section 2 - **MINUTES**: The Secretary of the District Board shall prepare an accurate record of all public hearings and official actions of the District and the minutes representing such record shall be made available to the public to the extent required by Nebraska law. All decisions rendered by the District shall be considered filed in the Office of the District at 9:00 a.m. the next regular business day for the purpose of appeals. Such minutes shall not, however, become official minutes of the District until approved by the Board at its next meeting. The District shall have the authority to require modifications to such minutes prior to approval to create a more accurate or detailed record of the Board's actions.

Section 3 - **AUDIO OR VIDEO TAPE RECORDINGS**: The Secretary of the District Board may make taped or other mechanical recordings of the Board's public hearings. Such recordings, if made, shall remain on file in the office of the District at least until the official minutes for which the Board's proceedings were recorded have been prepared and approved by the Board. Such recordings shall not be removed by any person other than by order of a court of competent jurisdiction. Interested persons may listen and/or watch such recordings in the office of the District and may transcribe any information on such recordings. Neither the petitioner nor any member of the public may themselves take audio or video recordings of the proceeding.

Section 4 - **HEARING RECORDS**: A file shall be maintained for each public hearing as heard by the Board. Such files shall contain the proof of public notice and such other supporting materials and exhibits pertaining to such hearing matter as submitted by the public or District, together with a copy of the section of the Board's official minutes which indicate the Board's action regarding the hearing matter.

#### ARTICLE 8 - AMENDMENTS OR SUSPENSION OF RULES OF PROCEDURE

Section 1 - **AMENDMENTS**: These Rules of Procedure may be amended by the District at any



meeting of the District upon the affirmative vote of a majority of the attending Board.

Section 2 - SUSPENSION: The suspension of any rule or procedure set forth herein may be authorized by the District at any public hearing of the District upon the affirmative vote of a majority of the attending board members, provided however, that no rule or procedure which is required to comply with Nebraska law shall be suspended.

ARTICLE 9 - SEPARABILITY: If any section, clause, provision, or portion of these Rules of Procedure shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section, clause, provision or portion of these Rules of Procedure.

ARTICLE 10 - CERTIFICATE OF ADOPTION: The foregoing Bylaws and Rules of Procedure of the Lower Elkhorn Natural Resources District are hereby adopted by affirmative vote of the District on this \_\_\_\_ day of September, 2014.

ARTICLE 11 - GOVERNING DOCUMENTS: These Rules of Procedure for Public Hearings before the Lower Elkhorn Natural Resources District shall govern and control all such proceedings except where they are in direct contradiction with either the existing Bylaws or Groundwater Rules and Regulations of the District, both of which shall be deemed to preempt these rules.

\_\_\_\_\_  
Signature of Chairperson

\_\_\_\_\_  
Attest by Secretary