

**Finance, Expenditure and Legal  
Subcommittee Meeting Minutes  
December 7, 2010**

A meeting of the Papio-Missouri River Natural Resources District’s Finance, Expenditure and Legal Subcommittee was held at the Natural Resources Center, 8901 South 154<sup>th</sup> Street, Omaha, NE, on December 7, 2010. The meeting was called to order by Chairperson Tesar at 8:24 p.m.

**Quorum Call:** Quorum call was taken. The following were in attendance.

| <b>Subcommittee Members Present</b> | <b>Subcommittee Members Absent</b> | <b>Other Directors Present</b> | <b>Others in Attendance</b>             |
|-------------------------------------|------------------------------------|--------------------------------|---|
| Larry Bradley                       |                                    | Scott Japp                     | John Winkler                            |
| John Conley                         |                                    | Fred Conley                    | Marlin J. Petermann                     |
| Dorothy Lanphier                    |                                    | Rick Kolowski                  | Jim Becic                               |
| Jim Thompson                        |                                    | Gus Erikson                    | Carey Fry                               |
| Rich Tesar                          |                                    |                                | Martin Cleveland                        |
|                                     |                                    |                                | Jeremy Vokt, Bland & Associates         |
|                                     |                                    |                                | Justin Frauendorfer, Bland & Associates |
|                                     |                                    |                                | Jeff Greenwald, USACE                   |
|                                     |                                    |                                | Chuck Leinen, NRCS                      |
|                                     |                                    |                                | Paul Peters                             |
|                                     |                                    |                                | Rick Drews                              |
|                                     |                                    |                                | Lori Laster                             |
|                                     |                                    |                                | Amanda Grint                            |
|                                     |                                    |                                | Shawn Melotz                            |
|                                     |                                    |                                | Michael O’Hanlen                        |

**Adoption Of Agenda**

- **It was moved by Director John Conley and seconded by Director Lanphier that the agenda be adopted.**

Roll call was taken on the motion. The motion carried on a vote of 5 to 0.

Voting Yea: Bradley, Conley, Lanphier, Thompson, Tesar

Voting Nay: None

Abstaining: None

Absent: None

**Proof Of Publication:** Public notice of the meeting was posted at all District offices and published in the Omaha World-Herald on December 2, 2010. The proof of publication affidavit is included with the file copy of these minutes.

**FY 2010 Audit:**

District Accountant Carey Fry along with Justin Frauendorfer and Jeremy Vokt of Bland & Associates addressed the subcommittee to detail the changes in the audit report from the draft that was presented to the subcommittee in November. Mr. Frauendorfer stated that District staff has already addressed most of the findings from the draft audit report.

The following people addressed the subcommittee:

- Shawn Melotz, 10404 N. 132<sup>nd</sup> Street, Omaha, NE

There was discussion.

- **It was moved by Director Thompson and seconded by Director Bradley that the Subcommittee recommend to the Board that the FY2010 Audit Report and management letter, prepared by Bland and Associates, be accepted and that the General Manager be directed to file an authenticated copy of the audit report with the Nebraska Auditor of Public Accounts and the Nebraska Natural Resources Commission.**

Roll call was taken on the motion. The motion carried on a vote of 5 to 0.

Voting Yea: Bradley, Conley, Lanphier, Thompson, Tesar

Voting Nay: None

Abstaining: None

Absent: None

**Heron Haven Construction Fund Transfer:**

Jim Becic stated that the Heron Haven project site was acquired 18 years ago and a concept plan for wetland restoration was developed in 1992. The District has applied for funding from the U.S. Army Corps of Engineers yearly since 1998 but has yet to receive funding for the project. USACE indicated that funding would be available for this project in September, after the District budget was adopted by the Board. The District did not anticipate receiving funding for the Heron Haven project and therefore did not allocate funds for the project in the budget. District staff is requesting that \$155,902 be transferred to the Heron Haven project from the MoPac Trail – Construction Costs project for Fiscal Year 2011. The remaining project expenses will be in the Fiscal Year 2012 budget.

The following people addressed the subcommittee:

- Michael O’Hanlen, 3630 N. 114<sup>th</sup> Street, Omaha, NE

There was discussion.

- **It was moved by Director John Conley and seconded by Director Bradley that the Subcommittee recommend to the Board that \$155,902 be transferred from the MoPac Trail - Construction Costs (Hwy 50 to Lied Bridge) to the Heron Haven Project and that a \$155,902 payment be sent by January 1, 2011 to the US Army**

**Corps of Engineers, Omaha District for design and implementation of the Heron Haven 206 Wetland Restoration Project.**

Roll call was taken on the motion. The motion carried on a vote of 5 to 0.

Voting Yea: Bradley, Conley, Lanphier, Thompson, Tesar  
Voting Nay: None  
Abstaining: None  
Absent: None

**Papio Creek Watershed Structure W-3:**

a. Construction Change Order and Over 110% of Budget

Martin Cleveland updated the subcommittee on the progress of the W-3 project. During construction, unsuitable material was discovered at the base of the dam. In the past, fill and debris had been placed in a channel on the site that was not encountered during the geotechnical investigation. The unsuitable material had to be removed, piled, and then placed as a cover on the backside of the dam. Chuck Leinen with NRCS stated they had negotiated the cost to complete the work with the contractor. This change order will put the project over 110% of the approved amount. District staff is requesting that the change order be approved and that the Assistant General Manager be authorized to execute further contract modifications totaling a maximum of 10% of the original construction contract amount.

There was discussion.

- **It was moved by Director John Conley and seconded by Director Bradley that the Subcommittee recommend to the Board that the Assistant General Manager (as per agreement with NRCS) be authorized to execute Contract Modification No. 2 in the amount of \$144,073.08 with Pruss Excavation for the Papio W-3 Rehabilitation Project, that the Assistant General Manager be authorized to execute future contract modifications totaling a maximum of 10% of the original construction contract amount and that Account No. 510-4479-W-3 Rehabilitation Project be allowed to exceed 110% of the budgeted amount.**

Roll call was taken on the motion. The motion carried on a vote of 4-yea and 1 abstention.

Voting Yea: Bradley, Conley, Thompson, Tesar  
Voting Nay: None  
Abstaining: Lanphier  
Absent: None

b. John and Mary Camden Property – Temporary Easement Extension

Martin Cleveland explained that due to a wet construction season and unforeseen site problems like unsuitable soil, the project will not be completed prior to the expiration of the temporary construction easement obtained from John and Mary Camden. District staff is requesting that the process begin to acquire an additional 6 month easement from the Camdens, which will push the deadline back to November 17, 2011, by which time the project should be completed.

There was discussion.

- **It was moved by Director John Conley and seconded by Director Bradley that the Subcommittee recommend to the Board that the General Manager be authorized to commence the right-of-way process to acquire an additional 6 month long temporary easement form John and Mary Camden for the continued construction of Papio Creek Watershed Structure W-3 Rehabilitation project.**

Roll call was taken on the motion. The motion carried on a vote of 5 to 0.

Voting Yea: Bradley, Conley, Lanphier, Thompson, Tesar  
Voting Nay: None  
Abstaining: None  
Absent: None

#### **Dial Realty Note**

- **It was moved by Director John Conley and seconded by Director Bradley that the Subcommittee enter Executive Session to discuss potential litigation associated with the Dial trust deed default.**

Roll call was taken on the motion. The motion carried on a vote of 5 to 0.

Voting Yea: Bradley, Conley, Lanphier, Thompson, Tesar  
Voting Nay: None  
Abstaining: None  
Absent: None

The Subcommittee went into Executive Session at 9:36 p.m.

- **It was moved by Director Thompson and seconded by Director Bradley that the Subcommittee return to Regular Session.**

Roll call was taken on the motion. The motion carried on a vote of 4-yea and 1 not voting.

Voting Yea: Bradley, Conley, Thompson, Tesar  
Voting Nay: None  
Abstaining: None  
Not Voting: Lanphier  
Absent: None

The Subcommittee returned to Regular Session at 10:44 p.m.

- **It was moved by Director Tesar and seconded by Director Bradley that the Subcommittee recommend that the following resolution be adopted:**

**WHEREAS, on or about March 10, 2006, Dial Realty Development Corp. (“Dial”) delivered to the District a Deed of Trust, now recorded with the**

**Douglas County Register of Deeds as Instrument No. 2006-037608, having as the trust property Lots 114 and 115 in Elk Ridge, and Lots 8 through 14 in Elk Ridge Replat 2, subdivisions in Douglas County, Nebraska, securing the future payment of \$580,000 of Dial's contributions towards the cost of the Dam Site 13 Project in Douglas County; and,**

**WHEREAS, on or about October 26, 2010, the District served upon Dial, and recorded with the Douglas County Register of Deeds as Instrument No. 2010 099560, a Notice of Default alleging a breach by Dial of the terms of such Deed of Trust; and,**

**WHEREAS, Dial subsequently informed the District that it is unable to pay the debt secured by such Deed of Trust and offered to give to the District a deed to such secured property in lieu of foreclosure of such Deed of Trust and other collection efforts; and this Board of Directors has determined that it is in the best interests of the District that the District accept such offer and obtain title to the trust property without the need for further legal proceedings,**

**NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Papio-Missouri River Natural Resources District that the General Manager of the District should be, and is hereby, authorized and directed to now accept Dial's offer of a deed in lieu of foreclosure by the District of the Deed of Trust; and that the General Manager should be, and is hereby, authorized to cease further collection efforts on said debt, execute a release of liability by Dial Realty Development Corp. on the Deed of Trust, and execute such other and further documents, approved as to form by District Legal Counsel, as the General Manager deems necessary to effectuate the transfer to the District of title to such trust property.**

Roll call was taken on the motion. The motion carried on a vote of 4 to 0.

Voting Yea: Bradley, Conley, Thompson, Tesar

Voting Nay: None

Abstaining: None

Absent: Lanphier

**Adjournment:** Being no further business, the meeting adjourned by acclamation at 10:48 p.m.