



**PAPIO-MISSOURI RIVER
NATURAL RESOURCES DISTRICT
BOARD OF DIRECTORS MEETING MINUTES
May 8, 2014**

PLEDGE OF ALLEGIANCE

NOTIFICATION OF OPEN MEETINGS ACT POSTING AND MEETING PROCEDURE

MEETING CALLED TO ORDER: A regular meeting of the Papio-Missouri River Natural Resources District Board of Directors was held at the Natural Resources Center, 8901 S. 154th St., Omaha, NE on May 8, 2014. The meeting was called to order by Chairperson Fred Conley at 7:00 p.m.

QUORUM CALL: The following Directors were present for the Quorum Call:

Patrick Bonnett	Dave Klug
Fred Conley	Patrick Leahy
John Conley	Rich Tesar
Curt Frost	Jim Thompson
Scott Japp	Ron Woodle

ADOPTION OF AGENDA:

- **MOTION NO. 1** It was moved by Director Rich Tesar and seconded by Director Dave Klug that the agenda be adopted.

Roll call vote was held on the motion. The motion carried on a vote of 8-yea and 2-abstention.

Voting Yea	-	Bonnett, Conley (John), Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay	-	None
Abstaining	-	Frost, Japp
Excused Absence	-	Fowler
Absent	-	Fowler

ADOPTION OF CONSENT AGENDA:

- **MOTION NO. 2** It was moved by Director Jim Thompson and seconded by Director Rich Tesar that the following resolution be adopted:

BE IT RESOLVED that the following resolutions on the consent

agenda are hereby adopted.

Agenda Item 3.A.:

BE IT RESOLVED that the following Director(s) have an excused absence from the May 8, 2014, Board of Directors Meeting:

Tim Fowler

Agenda Items 7.A., and 7.B.:

BE IT RESOLVED that the April 10, 2014, Papio-Missouri River NRD Board meeting minutes and the April 9, 2014, Dakota County Rural Water Advisory Board meeting minutes are approved as printed.

Roll call vote was held on the motion. The motion carried on a vote of 8-yea and 2-nay.

Voting Yea	-	Bonnett, Conley (John), Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay	-	Frost, Japp
Abstaining	-	None
Excused Absence	-	Fowler
Absent	-	Fowler

PROOFS OF PUBLICATION OF MEETING NOTICE: Notice of the meeting was published in the Omaha World Herald on May 1, 2014. The District's March 14-April 10, 2014, expenditures were published in The Burt County Plaindealer on April 16, 2014. The Chairperson ordered the Proofs of Publication recorded in the minutes of this meeting. (They are contained as part of the file copy of these minutes.)

AGENCY AND ASSOCIATION REPORTS:

A. Natural Resources Conservation Service Report: Neil Jensen, NRCS District Conservationist at the Omaha NRCS office, gave his report on NRCS activities. His report is posted to the website and attached to these meeting minutes.

B. Nebraska Association of Resources Districts Report: Director Tesar updated the Board on the upcoming NARD Board Meeting and Basin Tour being held June 9-10, 2014, in North Platte, Nebraska.

C. Legislative Report – Husch Blackwell: John Winkler informed the Board that Husch Blackwell would present a detailed report in June, after the primary elections have occurred. Husch Blackwell and staff will brief new candidates on the mission and goals of the Natural Resources District.

D. Lower Platte River Corridor Alliance Report: Meghan Sittler's written report is

posted to the website and attached to these meeting minutes.

PUBLIC HEARING – Thompson Creek Levee Improvement Project – Proposed Right-of-Way Acquisition:

Chairperson Fred Conley appointed GM Winkler as the Hearing Officer. GM Winkler called the hearing to order at 7:05 p.m. Hearing Officer Winkler submitted the following exhibits for the record:

- Exhibit 1** Agenda
- Exhibit 2** Notice of Public Hearing
- Exhibit 3** Proof of Publication of Hearing Notice Affidavit
 - ◆ Omaha World-Herald – April 28, 2014
 - ◆ Omaha World-Herald – May 1, 2014
- Exhibit 4** Explanation of the Purpose of the Meeting
- Exhibit 5** Letters to Landowners
- Exhibit 6** Project Location Map
- Exhibit 7** Thompson Creek Levee Improvement Project Plans by Papio-Missouri River NRD
- Exhibit 8** Thompson Creek Levee Improvement Project Right-of-Way Map
- Exhibit 9** Thompson Creek Levee Improvement Project Legal Descriptions
- Exhibit 10** U.S. Army Corps of Engineers’ August 17, 2010, Flood Damage Reduction Segment Inspection Report for Big Papio Right Bank

Paul Peters, District Legal Counsel, stated the requirement of the Public Hearing as dictated by Nebraska State Statute 232-29. Staff member Martin Cleveland briefed the audience on the purpose of the project and the need to acquire permanent and temporary easements for the Thompson Creek Levee Improvement Project. General Manager Winkler opened the floor to the public. There was no public comment. Hearing Officer Winkler closed the Public Hearing at 7:12 p.m. and returned the floor to Chairperson Fred Conley.

PUBLIC HEARING – Western Sarpy Clear Creek Flood Reduction Project – Proposed Right-of-Way Acquisition:

Chairperson Fred Conley appointed GM Winkler as the Hearing Officer. GM Winkler called the hearing to order at 7:13 p.m. Hearing Officer Winkler submitted the following exhibits for the record:

- Exhibit 1** Agenda
- Exhibit 2** Notice of Public Hearing
- Exhibit 3** Proof of Publication of Hearing Notice Affidavit
 - ◆ Omaha World-Herald – April 28, 2014
 - ◆ Omaha World-Herald – May 1, 2014
- Exhibit 4** Explanation of the Purpose of the Meeting
- Exhibit 5** Letters to Landowners
- Exhibit 6** Western Sarpy Clear Creek Project Features Map
- Exhibit 7** Clear Creek Landowners Map

- Exhibit 8** West Chute Plan Map by U.S. Army Corps of Engineers, dated April 23, 2014
- Exhibit 9** Tract Map for Hruska Property

Paul Peters, District Legal Counsel, stated the requirement of the Public Hearing as dictated by Nebraska State Statute 232-29. Staff member Martin Cleveland briefed the audience on the purpose of the project and the need to acquire permanent and temporary easements belonging to Robert and Georgia Hruska for the Western Sarpy Clear Creek Flood Reduction Project. General Manager Winkler opened the floor to the public.

The following individual made comment:

- Ryan Hruska, 902 Summit Ridge Drive, Papillion, Nebraska

Hearing Officer Winkler closed the Public Hearing at 7:19 p.m. and returned the floor to Chairperson Fred Conley.

SUBCOMMITTEE REPORTS:

A. Programs, Projects and Operations Subcommittee: Director John Conley reported that the PPO Subcommittee met on May 6, 2014, and gave a brief recap of the meeting.

- **MOTION NO. 3** It was moved by Director John Conley that the following recommendation be adopted:

PPO Recommendation #1: Draft Voluntary Integrated Management Plan for the Lower Platte River – It is recommended that the draft Integrated Management Plan for the portion of the District within the Lower Platte River Basin be adopted by the District.

The following individual addressed the Board:

- Shawn Melotz, 10404 N. 144th Street, Omaha, Nebraska
- **AMENDED MOTION:** A motion was made by Director Scott Japp and it was seconded by Director Curt Frost to change the name of the plan to the Voluntary Integrated Management Plan for the Portion of the District within the Lower Platte River Basin.

There was additional discussion by the Directors and staff regarding the name and the impact it would have if changed. Marlin Petermann stated he didn't know the hazards of changing the name of the plan regarding the funding provided by LB 1098.

Roll call was held on the amended motion. The amended motion failed on a vote of 3-yea, 6-nay and 1-abstention.

Voting Yea - Frost, Japp, Leahy
 Voting Nay - Bonnett, Conley (John), Klug, Tesar, Thompson, Conley (Fred)

Abstaining - Woodle
Excused Absence - Fowler
Absent - Fowler

The Chairperson called for roll call on the original motion. The original motion carried on a vote of 7-yea, 2-nay and 1-abstention.

Voting Yea - Conley (John), Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay - Frost, Japp
Abstaining - Bonnett
Excused Absence - Fowler
Absent - Fowler

- **MOTION NO. 4** It was moved by Director John Conley that the following recommendation be adopted:

PPO Recommendation #2: Interlocal Agreement with Nebraska Game & Parks for Operation & Maintenance of the Danish Alps State Recreation Area Project – It is recommended that the General Manager be authorized to execute the proposed Interlocal Agreement with the Nebraska Game and Parks Commission for the management, operation and maintenance of the Danish Alps State Recreation Area Project, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

Roll call was held on the motion. The motion passed on a vote of 8-yea and 1-nay.

Voting Yea - Bonnett, Conley (John), Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay - Frost
Abstaining - None
Excused Absence - Fowler
Absent - Fowler

* Director Japp was out of the room during the roll call vote.

B. Finance, Expenditure and Legal Subcommittee: Director Rich Tesar reported that the FEL Subcommittee met on May 6, 2014, and gave a brief recap of the meeting.

- **MOTION NO. 5** It was moved by Director Rich Tesar that the following recommendation be adopted:

FEL Recommendation #1: Refinance of the Washington County Rural Water #2 System Bank Loan – It is recommended that the General Manager be authorized to execute the proposed loan agreement with Washington County Bank, as presented to the Subcommittee, to refinance a portion of the Washington County Rural Water #2 System debt.

There was director discussion on this item.

Roll call was held on the motion. The motion carried on a vote of 8-yea and 1-abstention.

Voting Yea - Bonnett, Conley (John), Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay - None
Abstaining - Frost
Excused Absence - Fowler
Absent - Fowler

*Director Japp was out of the room during the roll call vote.

FEL Recommendation #2: Excess Property Located at WP-5 – This item failed in Subcommittee and no action was taken by the Board.

•• **MOTION NO. 6** It was moved by Director Rich Tesar that the following recommendation be adopted:

FEL Recommendation #3: Missouri River Floodway Purchase Program – Amendment to the Interlocal Agreement with City of Bellevue for 1600 Front Street – It is recommended that the General Manager be authorized to execute the proposed Amendment 1 to the Interlocal Agreement with the City of Bellevue for the Missouri River Floodway Purchase of the 1600 Front Street property in Sarpy County, Nebraska, calling for the total project cost to be increased to a not-to-exceed amount of \$60,500, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

Roll call was held on the motion. The motion carried on a vote of 10-yea.

Voting Yea - Bonnett, Conley (John), Frost, Japp, Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay - None
Abstaining - None
Excused Absence - Fowler
Absent - Fowler

•• **MOTION NO. 7** It was moved by Director Rich Tesar that the following recommendation be adopted:

FEL Recommendation #4: Missouri River Floodway Purchase Program – Acquisition of 1600 Front Street – It is recommended that the General Manager be authorized to execute for, and on behalf of the District, the proposed purchase agreement in the form as presented to the Subcommittee, providing for the purchase by the District from Steven Wright, of his property located at 1600 Front Street in Sarpy County, Nebraska for the purchase price of \$45,000, subject

to the adoption of the amended Interlocal Agreement by the City of Bellevue, and subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

Roll call was held on the motion. The motion carried on a vote of 10-yea.

Voting Yea - Bonnett, Conley (John), Frost, Japp, Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay - None
Abstaining - None
Excused Absence - Fowler
Absent - Fowler

•• **MOTION NO. 8** It was moved by Director Rich Tesar that the following recommendation be adopted:

FEL Recommendation #5: Dam Site 15A Land Acquisition – Proposed Purchases – It is recommended that the Board of Directors reject the following counteroffers received from landowners for Papio Dam Site 15A Project tracts, that is, the counteroffer for Tract 1 in the amount of \$144,285, the counteroffer for Tract 2 in the amount of \$1,929,600, the counteroffer for Tract 4 in the amount of \$3,266,935, the counteroffer for Tract 7 in the amount of \$140,736, the counteroffer for Tracts 3 and 8 in the amount of \$2,532,972, the counteroffer for Tract 9 in the amount of \$15,200, the counteroffer for Tracts 13 and 15 in the amount of \$7,000,000, and, the counteroffer for Tract 19 in the amount of \$36,450.

There was discussion on a letter dated May 1, 2014, that was sent by Paul Peters, District Legal Counsel. Paul Peters stated the letter went to landowners to explain how property valuation was based, that being on the fair market and reasonable value of each parcel, and not by what other landowners were offered.

Roll call was held on the motion. The motion carried on a vote of 8-yea, 1-nay, and 1-abstention.

Voting Yea - Bonnett, Conley (John), Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay - Frost
Abstaining - Japp
Excused Absence - Fowler
Absent - Fowler

TREASURER'S REPORT:

•• **MOTION NO. 9** It was moved by Director John Conley and seconded by Director Jim Thompson as follows:

BE IT RESOLVED that the Treasurer is authorized to expend

general funds to pay: (1) claims listed in the April, 2014, financial report; and, (2) any claims made prior to the next Board meeting for (a) earned salaries of District employees, (b) withholding taxes, (c) social security payments, (d) retirement program contributions, (e) utilities, (f) registration fees and expenses for upcoming meetings and conferences, (g) certified completed CAP and Special Project Area applications, (h) invoices which offer a credit or discount for payment made prior to the next Board meeting, (i) postage, and, (j) building and grounds contract expenses.

BE IT FURTHER RESOLVED that the Treasurer is authorized to pay, from the respective operating accounts of the Dakota County, Thurston County and Washington County Rural Water Supply System, the Elkhorn River Bank Stabilization Project, the Elkhorn Breakout Project, the Elk/Pigeon Creek Drainage Project, and the Western Sarpy Drainage District, the project bills listed on the April, 2014, financial report, and future claims for project utilities.

BE IT FURTHER RESOLVED that the financial reports be affixed to and made a part of the minutes.

Roll call vote was held on the motion. The motion carried on a vote of 8-yea and 2-abstentions.

Voting Yea - Bonnett, Conley (John), Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay - None
Abstaining - Frost, Japp
Excused Absence - Fowler
Absent - Fowler

•• **MOTION NO. 10** It was moved by Director Jim Thompson and seconded by Director Rich Tesar that the General Manager be authorized to execute a proposed agreement for District Legal Services with Husch Blackwell, LLP, in the form as presented to this meeting.

Dave Newman, Attorney for Husch Blackwell, introduced himself to the Board of Directors. GM Winkler explained that the proposed contract is on an hourly basis, no value billing, and will be reviewed every 6 months. The General Manger also stated that the District will budget the same as it has in previous years for legal services. Paul Peters will continue to work for the District during the transition period.

Roll call vote was held on the motion. The motion carried on a vote of 9-yea and 1-abstention.

Voting Yea - Bonnett, Conley (John), Frost, Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay - None
Abstaining - Japp
Excused Absence - Fowler

Absent - Fowler

CHAIRPERSON'S REPORT: Chairperson Fred Conley stated a great deal of time has been spent on the Voluntary Integrated Management Plan and asked the General Manager on what the procedures would be moving forward. GM Winkler stated the District would hold a Public Hearing at the June 12, 2014, Board Meeting. Possible changes to the Plan resulting from the Public Hearing would be incorporated into the document and the final Plan would be brought back to the Board in July for adoption. The Plan can be accessed through the District's website at www.papionrd.org.

A motion was made by Director Curt Frost that the Advisory Committee involved in this project be reviewed via a report card. GM Winkler explained that the Stakeholder Advisory Group was asked for input but had no approval authority regarding the Plan and that the members of the group knew this information from the very beginning. The motion died for lack of a second.

GENERAL MANAGER'S REPORT: GM Winkler gave his report. The GM report has been posted to the website and is attached to these meeting minutes. There was additional discussion.

INFORMATIONAL ITEMS:

A. Future Meetings: The Chairperson reviewed the following upcoming meetings with the Directors:

May 22, 2014	Papillion Creek Watershed Partnership Meeting, 10:00 a.m., NRC
May 26, 2014	Memorial Day, P-MRNRD Offices Closed
June 8-10, 2014	NARD Board Meeting and Basin Tour, North Platte, NE
June 10, 2014	P-MRNRD Subcommittee Meetings
June 12, 2014	P- MRNRD Board Meeting
June 26, 2014	Papillion Creek Watershed Partnership Meeting, 10:00 a.m., NRC

B. Next Meeting – The next regularly scheduled meeting of the P-MRNRD Board of Directors will be held on June 12, 2014, at the NRC.

- **MOTION NO. 11** It was moved by Director Patrick Bonnett and seconded by Director John Conley to go into Executive Session to discuss taking the Changes to the Tract 11 Acquisition for Dam Site 15A from the table.

Director Jim Thompson stated this item must be taken from the table prior to going into Executive Session.

- **SUBSTITUTE MOTION** It was moved by Director Patrick Bonnett and seconded by John Conley to take from the table Changes to the Tract 11 Acquisition for Dam Site 15A.

Roll call vote was held on the substitute motion. The motion carried on a vote of 8-yea, 1-nay and 1-abstention.

Voting Yea	-	Bonnett, Conley (John), Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay	-	Frost
Abstaining	-	Japp
Excused Absence	-	Fowler
Absent	-	Fowler

- **MOTION NO. 12** It was moved by Director John Conley and seconded by Director Patrick Bonnett to go into Executive Session for the purpose of modifying the plans for the Papiio Dam Site 15A Flood Control Reservoir and Recreation Area Project to incorporate the entire 40-acre Vollmer tract into the project Master Plan, the Board finding that such plan modification, and the acquisition of fee simple title to such tract by the District, are necessary for the purposes of the flood control, wildlife habitat and recreation features of the project.

Roll call vote was held on the motion. The motion carried on a vote of 6-yea and 4-nay.

Voting Yea	-	Bonnett, Conley (John), Klug, Leahy, Tesar, Conley (Fred)
Voting Nay	-	Frost, Japp, Thompson, Woodle
Abstaining	-	None
Excused Absence	-	Fowler
Absent	-	Fowler

The Board went into Executive Session at 8:05 p.m.

- **MOTION NO. 13** It was moved by Director Jim Thompson and seconded by Director Patrick Leahy to come out of Executive Session.

Roll call vote was held on the motion. The motion carried on a vote of 10-yea.

Voting Yea	-	Bonnett, Conley (John), Frost, Japp, Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay	-	None
Abstaining	-	None
Excused Absence	-	Fowler
Absent	-	Fowler

The Board came out of Executive Session at 8:17 p.m.

- **MOTION NO. 14** It was moved by Director Patrick Bonnett and seconded by

Director John Conley that the following Resolution be adopted:

It is resolved that the General Manger is hereby directed to modify the plans for the Papio Dam Site 15A Flood Control Reservoir and Recreation Area Project to incorporate the entire 40-acre Vollmer tract into the project Master Plan, the Board hereby finding that such plan modification, and the acquisition of fee simple title to such tract by the District, are necessary for the purposes of the flood control, wildlife habitat and recreation features of the project.

The following individual addressed the Board:

- David Vollmer, 17670 Ida Street, Omaha, Nebraska

There was discussion on the estimated cost of relocating the power line, driveway, and telephone pole to the Vollmer property if the District purchased 11 acres for the Dam Site 15A project. Staff member Lori Laster informed the Board that OPPD's estimate to move the power line is \$60,000, and that she did not have confirmed prices to relocate the driveway or the telephone pole. There was additional discussion on what the purchase price per acre Mr. Vollmer was offered. Chairperson Fred Conley read the Resolution and asked for the roll call vote.

Roll call vote was held on the motion. The motion failed on a vote of 4-yea, 5-nay and 1-abstention.

Voting Yea	-	Conley (John), Tesar, Thompson, Conley (Fred)
Voting Nay	-	Bonnett, Frost, Japp, Klug, Leahy
Abstaining	-	Woodle
Excused Absence	-	Fowler
Absent	-	Fowler

There was further discussion on how to move this item forward and the Board discussed making a motion of reconsideration in order to discuss their options.

- **MOTION NO. 15** It was moved by Director Patrick Bonnett and seconded by Director John Conley to make a motion of reconsideration on the plans for the Papio Dam Site 15A Flood Control Reservoir and Recreation Area Project to incorporate the entire 40-acre Vollmer tract into the project Master Plan, the Board finding that such plan modification, and the acquisition of fee simple title to such tract by the District, are necessary for the purposes of the flood control, wildlife habitat and recreation features of the project.

Roll call vote was held on the motion of reconsideration. The motion carried on a vote of 9-yea and 1-nay.

Voting Yea	-	Bonnett, Conley (John), Frost, Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay	-	Japp

Abstaining - None
Excused Absence - Fowler
Absent - Fowler

Paul Peters informed the Board that the motion to pass the Resolution was back on the table for Directors discussion and reminded them they had the ability to go back into executive session if necessary. Once discussion ensued, the Board was encouraged by District Legal Counsel to go back into executive session. Director Patrick Bonnett asked the Chairperson to call the question to go into Executive Session.

- **MOTION NO. 16** It was moved by Director Patrick Bonnett and seconded by Director Patrick Leahy to go into Executive Session for the purpose of modifying the plans for the Papio Dam Site 15A Flood Control Reservoir and Recreation Area Project to incorporate the entire 40-acre Vollmer tract into the project Master Plan, the Board finding that such plan modification, and the acquisition of fee simple title to such tract by the District, are necessary for the purposes of the flood control, wildlife habitat and recreation features of the project.

Roll call vote was held on the motion. The motion carried on a vote of 8-yea and 2-nay.

Voting Yea - Bonnett, Conley (John), Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay - Frost, Japp
Abstaining - None
Excused Absence - Fowler
Absent - Fowler

The Board went into Executive Session at 8:28 p.m.

- **MOTION NO. 17** It was moved by Director John Conley and seconded by Director Rich Tesar to come out of Executive Session.

Roll call vote was held on the motion. The motion carried on a vote of 10-yea.

Voting Yea - Bonnett, Conley (John), Frost, Japp, Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay - None
Abstaining - None
Excused Absence - Fowler
Absent - Fowler

The Board came out of Executive Session at 8:47 p.m.

Chairperson Fred Conley reminded the Board of the motion that was on the floor. The following individual addressed the Board:

➤ David Vollmer, 17670 Ida Street, Omaha, Nebraska

Director Jim Thompson asked Mr. David Vollmer to come to the table and to identify himself. Director Thompson explained the reasoning behind the action of the resolution was to allow further negotiations between him and the District's Subcontractor, Midwest Right-of-Way Services. There was further discussion. Director John Conley read the proposed Resolution.

- **MOTION NO. 18** It was moved by Director John Conley and seconded by Director Patrick Bonnett that the following Resolution be adopted:

It is resolved that the General Manger is hereby directed to modify the plans for the Papio Dam Site 15A Flood Control Reservoir and Recreation Area Project to incorporate the entire 40-acre Vollmer tract into the project Master Plan, the Board hereby finding that such plan modification, and the acquisition of fee simple title to such tract by the District, are necessary for the purposes of the flood control, wildlife habitat and recreation features of the project.

Roll call vote was held on the motion. The motion carried on a vote of 7-yea and 3-nay.

Voting Yea	-	Bonnett, Conley (John), Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay	-	Frost, Japp, Klug
Abstaining	-	None
Excused Absence	-	Fowler
Absent	-	Fowler

- **MOTION NO. 19** It was moved by Director Rich Tesar and seconded by Director Dave Klug to adopt the following Resolution:

BE IT RESOLVED by the Board of Directors of the Papio-Missouri River NRD that District Legal Counsel should be and is hereby authorized and directed to file and pursue on behalf of the District an appeal to the Nebraska Court of Appeals from the April 24, 2014, order of the District Court of Washington County in the case of City of Fort Calhoun, etal. V. Papio-Missouri River NRD, Case No. CI 13-184, such order denying the NRD's motion for new trial on the District Court's order overruling the NRD's Motion to Dismiss the plaintiff's complaint.

Paul Peters updated the Board on the status of the three lawsuits filed by the City of Ft. Calhoun against the District regarding the merger of Washington County Rural Water #1 and Washington County Rural Water #2 Supply Systems, in which all three cases were overruled in the Court of Washington County. Paul read the proposed Resolution to the Board. Counsel would complain to the Nebraska Court of Appeals Judge that the City of Ft. Calhoun had no right or authority to sue the District. Paul added that there are several cases tried in Nebraska Supreme Court that ruled that a City has no Constitutional right to overturn a Political Subdivision's decision. There was further discussion.

Roll call vote was held on the motion. The motion carried on a vote of 8-yea and 2-abstentions.

Voting Yea	-	Bonnett, Conley (John), Klug, Leahy, Tesar, Thompson, Woodle, Conley (Fred)
Voting Nay	-	None
Abstaining	-	Frost, Japp
Excused Absence	-	Fowler
Absent	-	Fowler

ADJOURNMENT: Being no further business, at 8:57 p.m. the Chairperson declared that the meeting was adjourned.

NOTE: These minutes reflect the actions and votes taken at the May 8, 2014, Board of Directors Meeting of the Papio-Missouri River Natural Resources District and are not an official transcript of the meeting. The audio cast of this meeting can be found on our website at www.papionrd.org.

I, the undersigned, Secretary of the Papio-Missouri River Natural Resources District, hereby certify that the foregoing are true and correct minutes of a meeting of the Board of Directors of the District held on May 8, 2014, that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and readily available for public inspection at the office of the District; that such subjects were contained in said agenda at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; and, that all news media requesting notification of the meeting of said body were provided advance notification of the time and place of said meeting.

Richard Tesar
District Secretary

Below is the State Statutes that allows the NRD to implement a 10 per acre tax on all irrigated lands.

go to page 13 of the IMP Action item 1.17

go to page 13 of the IMP Action item 1.3.2

states potential timing dam

2-3226.05. River-flow enhancement bonds; repayment of financial assistance; costs and expenses of qualified projects; occupation tax authorized; exemption; collection; accounting; lien; foreclosure.

(1) A district with an integrated management plan as described in subsection (1) of section 2-3226.01<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=2-3226.01>> may levy an occupation tax upon the activity of irrigation of agricultural lands within such district on an annual basis, not to exceed ten dollars per irrigated acre, the proceeds of which may be used for (a) repaying principal and interest on any bonds or refunding bonds issued pursuant to section 2-

3226.01<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=2-3226.01>> for one or more projects under section 2-

3226.04<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=2-3226.04>>, (b) the repayment of financial assistance received by the district pursuant to section 2-3226.07<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=2-3226.07>>, or (c) payment of all or any part of the costs and expenses of one or more qualified projects described in section 2-

3226.04<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=2-3226.04>>. If such district has more than one river basin as described in section 2-

1504<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=2-1504>> within its jurisdiction, such district shall confine such occupation tax authorized in this section to the geographic area affected by an integrated management plan adopted in accordance with section 46-

715<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-715>>.

Questions I want answered regarding the IMP:

1. According to the USGS report the hydrologically connected area along the Platte River only extends out 2 miles on each side of the river. So why is our maps showing a wider area of connected lands?

BLH - The USGS doesn't determine the hydrologically connected area (HCA), the NDNR does. It's true that the HCA includes only the bottom ground on either side of the Platte or Elkhorn Rivers but the IMP encompasses both the groundwater and the surface water so the area that drains to the Platte and Elkhorn is also included.

HB - Hydrological connection, for purposes of an IMP, is defined by Nebraska law. USGS may be using a different definition on its map.

2. Not all land next to the Platte River in hydrologically connected within the 2 mile limit. What study do you have showing all of what you claim is hydrologically connected?

BLH - There is no 2 mile limit. The HCA is based on the NDNR's Annual Evaluation of Availability of Hydrologically Connected Water Supplies. The IMP area includes both the hydrologically connected groundwater and the surface water drainage area.

46-714. River basin, subbasin, or reach; stay on new appropriations; notifications required; hearing; natural resources district; duties; status change; department; natural resources district; duties.

(1) Whenever the Department of Natural Resources makes a preliminary determination that a river basin, subbasin, or reach not previously designated as overappropriated and not previously determined to be fully appropriated has become fully appropriated, the department shall place an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in such river basin, subbasin, or reach. The department shall also provide prompt notice of such preliminary determination to all licensed water well contractors in the state and to each natural resources district that encompasses any of the geographic area involved. Such notice to natural resources districts shall be by certified mail. The notice shall be addressed to the manager of the natural resources district or his or her designee and shall include the signature of the Director of Natural Resources. Immediately upon receipt of such notice by the natural resources district, there shall be a stay on issuance of water well construction permits in the geographic area preliminarily determined by the department to include hydrologically connected surface water and ground water in such river basin, subbasin, or reach. The department shall also notify the public of the preliminary determination that the river basin, subbasin, or reach is fully appropriated and of the affected geographic area. Such notice shall be provided by publication once each week for three consecutive weeks in at least one newspaper of statewide circulation and in such other newspaper or newspapers as are deemed appropriate by the department to provide general circulation in the river basin, subbasin, or reach.

3. Why are you limiting well permits when the DNR has to show the ground water is hydrologically connected to the river?

BLH - The NDNR has determined the area in which groundwater is hydrologically connected to Platte and Elkhorn Rivers and that area is used for the groundwater control. The control puts a limit on the expansion of irrigated acres. The number of additional acres allowed per year is yet to be determined. Currently, the District limits new groundwater irrigated acres to 2,500 per year.

HB - The cited statute presumes a mandatory IMP. However, PMRNRD is implementing a voluntary IMP. It is true there has not been a determination that the stretch is fully appropriated. Any restrictions on irrigation will comply with constitutional protections of water rights held by land owners.

46-715. River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.

(1)(a) Whenever the Department of Natural Resources has designated a river basin, subbasin, or reach as overappropriated or has made a final determination that a river basin, subbasin, or reach is fully appropriated, the natural resources districts encompassing such river basin, subbasin, or reach and the department shall jointly develop an integrated management plan for such river basin, subbasin, or reach. The plan shall be completed, adopted, and take effect within three years after such designation or final determination unless the department and the natural resources districts jointly agree to an extension of not more than two additional years.

4. We have up to 5 year to complete an IMP plan for the DNR after they have designated a river overappropriated. Why are we doing this now when we do not have a ground water problem in the Platte River system according to USGS reports?

BLH - A basin can no longer be designated as overappropriated. That designation was made as part of LB 962 in 2004 only and can't be made by the NDNR. IMPs are expected to be completed within 3 years from the start of the planning process. A 2 year extension is possible resulting in up to 5 years to complete the IMP. The USGS provides scientific guidance but does not have a regulatory role in Nebraska. The NDNR, the agency responsible for surface water regulation and evaluation of the long term availability of hydrologically connected supplies, preliminarily determined the Lower Platte River Basin "Fully Appropriated" in December 2008. That determination was reversed but showed that the Lower Platte was close to fully appropriated. The Board chose to begin the process prior to becoming fully appropriated to be proactive in its approach to the management of the groundwater resources.

HB - Nebraska law provides for voluntary IMPs without waiting until a river is fully appropriated. It is a proactive measure to avoid such a situation. The NRD Board voted in November 2011 to develop a voluntary IMP.

b) A natural resources district encompassing a river basin, subbasin, or reach that has not been designated as overappropriated or has not been finally determined to be fully appropriated may, jointly with the department, develop an integrated management plan for such river basin, subbasin, or reach located within the district. The district shall notify the department of its intention to develop an integrated management plan which shall be developed and adopted according to sections 46-715<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-715>> to 46-717<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-717>> and subsections (1) and (2) of section 46-718<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-718>>. The objective of an integrated management plan under this subdivision is to manage such river basin, subbasin, or reach to achieve and sustain a balance between water uses and water supplies for the long term. If a district develops an integrated management plan under this subdivision and the department subsequently determines the affected river basin, subbasin, or reach to be fully appropriated, the department and the affected natural resources district may amend the integrated management plan.

5. The statutes state may jointly with the department, develop. Why did the PMNRD misinform the board and staff regarding my questions?

BLH - I am not aware of any misinformation given to the Board. The IMP has been developed jointly with the NDNR.

6. Is it not correct if we allow the DNR to develop the plan then when the river is full appropriated then we can amend an integrated management plan?

BLH - The IMP is being developed jointly with the NDNR. Yes, should the Lower Platte be preliminarily determined to be fully appropriated, the IMP may be amended and the final determination may be not fully appropriated. Draft rules have been established by NDNR allowing for such but they have not been finalized or adopted.

HB - It is true that an IMP can be amended if a river becomes fully appropriated. This does not mean the NRD has to take this course.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and ground water users shall be considered. An integrated management plan shall include the following: (a) Clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the geographic area subject to the integrated management plan; (c) one or more of the ground water controls authorized for adoption by natural resources districts pursuant to section 46-739<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-739>>; (d) one or more of the surface water controls authorized for adoption by the department pursuant to section 46-716<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-716>>; and (e) a plan to gather and evaluate data, information, and methodologies that could be used to implement sections 46-715 <[46-715](#)> to 46-717<[46-717](#)>, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based. The plan may also provide for utilization of any applicable incentive programs authorized by law. Nothing in the integrated management plan for a fully appropriated river basin, subbasin, or reach shall require a natural resources district to regulate ground water uses in place at the time of the department's preliminary determination that the river basin, subbasin, or reach is fully appropriated, but a natural resources district may voluntarily adopt such regulations. The applicable natural resources district may decide to include all water users within the district boundary in an integrated management plan.

7. Show me your goals to sustaining a balance between water uses and water supplies so that the economic viability is obtained in the effect area when you are restricting future growth and limiting water restriction that will result in economic reduction for agriculture users?

Goal 1: “Develop and implement water use policies and practices that contribute to the protection of existing surface and groundwater uses while allowing for future water development.”

Goal 2: “Develop and maintain a water supply and use inventory based on the best available data and analysis.”

The IMP was developed to protect the existing uses and allow additional uses through planned expansion. There is no economic reduction for agricultural users. All current users have the continued right to use the resource for beneficial purposes and new uses are allowed.

8. What is the plan to compensate the land users that have the constitutional right to use the water under their land and their right to be compensated as a taking?

HB - The question incorrectly assumes there will be a Taking.

9. How do you propose we fund the compensation for the water planned to be taken from the land owner?

HB - Again, the question incorrectly assumes there will be a Taking.

10. What is the anticipated cost associated with the taking of the land owners water rights?

HB - Once again, the question incorrectly assumes there will be a Taking. The NRD will respect all constitutional and statutory protections of water rights. The NRD is taking this action to ensure existing water user's rights are not adversely impacted.

11. What incentive programs authorized are we going to provide to assist water users to avoid over appropriations?

BLH - Overappropriated was a designation used by the Legislature and can't happen again without legislative action. Action Items 3.1.2 and 3.2.5 directs the District to evaluate cost-share programs for conservation and agricultural crop water management.

HB - Incentive programs are addressed in 5.0 of the IMP.

Nothing in the integrated management plan for a fully appropriated river basin, subbasin, or reach shall require a natural resources district to regulate ground water uses in place at the time of the department's preliminary determination that the river basin, subbasin, or reach is fully appropriated, but a natural resources district may voluntarily adopt such regulations. The applicable natural resources district may decide to include all water users within the district boundary in an integrated management plan

12. If we do not regulate ground water before the fully appropriated shall require a natural resources district to regulate ground water uses in place at the time. Wouldn't Implementing this IMP would them allow the NRD to regulate ground water when we are determent to be fully appropriated?

HB - The question is not at all clear. NRDs have options under the statute, when a river reaches fully appropriated status, as to whether they regulate ground water uses in place prior to the river being fully appropriated.

3) In order to provide a process for economic development opportunities and economic sustainability within a river basin, subbasin, or reach, the integrated management plan shall include clear and transparent procedures to track depletions and gains to streamflows resulting from new, retired, or other changes to uses within the river basin, subbasin, or reach. The procedures shall:

(a) Utilize generally accepted methodologies based on the best available information, data, and science;

13. What method are you using to base the science on?

BLH - The current method for the evaluation of hydrologically connected water resources uses the "Jenkins Method" for the assessment of groundwater depletions to streamflow. The proposed methodology would still utilize Jenkins but calculate the effects relative to the system somewhat differently. The NDNR recently release an RFP for development of a numerical groundwater flow model covering the Districts portion of the Lower Platte. Upon completion of the model it would become likely "best available" and be utilized for the evaluation.

(b) Include a generally accepted methodology to be utilized to estimate depletions and gains to streamflows, which methodology includes location, amount, and time regarding gains to streamflows as offsets to new uses;

14. What are the locations and amounts and volume of the timing gains to streamflows as offsets to new uses?

BLH - As this IMP is being developed on a voluntary basis, offsets are not necessary.

(c) Identify means to be utilized so that new uses will not have more than a de minimis effect upon existing surface water users or ground water users;

15. What means are we using to determine new uses will not have more than a de minimis effect upon existing surface water users or ground water users?

BLH - As this IMP is being developed on a voluntary basis, de minimis effect consideration is not necessary.

(d) Identify procedures the natural resources district and the department will use to report, consult, and otherwise share information on new uses, changes in uses, or other activities affecting water use in the river basin, subbasin, or reach;

16. What procedures are the natural resources district and the department will use to report, consult, and otherwise share information on new uses, changes in uses, or other activities affecting water use in the river basin, subbasin, or reach?

BLH - As this IMP is being developed on a voluntary basis, it is not necessary to list the procedures.

(e) Identify, to the extent feasible, potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement;

17. Identify all water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement plans, locations and use cost associated with such project?

BLH - As this IMP is being developed on a voluntary basis, it is not necessary to make these identifications.

HB - The question appears to be premature as the IMP will develop this information (if any) as the IMP progresses.

(f) Develop, to the extent feasible, an outline of plans after consultation with and an opportunity to provide input from irrigation districts, public power and irrigation districts, reclamation districts, municipalities, other political subdivisions, and other water users to make water available for offset to enhance and encourage economic development opportunities and economic sustainability in the river basin, subbasin, or reach; and

18 Why was not the Bell Creek Drainage board consulted?

BLH - It was an oversight that has been corrected.

HB - The reference to Bell Creek has been deleted from the IMP.

19. What offsets to enhance and encourage economic development opportunities and economic sustainability within the river basin?

BLH - As this IMP is being developed on a voluntary basis, offsets are not necessary.

(g) Clearly identify procedures that applicants for new uses shall take to apply for approval of a new water use and corresponding offset.

20 What is the procedures that applicants for new uses shall take to apply for approval of a new water use?

BLH - The procedures for applying for a variance from the stay on additional irrigated acres will be outlined in the rules and regulations adopted after the final adoption of the IMP. The Board will make the final decision regarding those rules and regulations.

(b) In any river basin, subbasin, or reach designated as overappropriated and subject to this subsection, the department and each natural resources district encompassing such river basin, subbasin, or reach shall jointly develop an integrated management plan for such river basin, subbasin, or reach pursuant to subsections (1) through (4) of this section. Each integrated management plan for a river basin, subbasin, or reach subject to this subsection shall be consistent with any basin-wide plan developed pursuant to subdivision (a) of this subsection. Such integrated management plan shall be developed after consultation and collaboration with irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to participate in such process. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and each natural resources district shall adopt the agreed-upon integrated management plan. If agreement cannot be reached by all parties involved, the integrated management plan shall be developed and adopted by the department and the affected natural resources district pursuant to sections 46-715<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-715>> to 46-718<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-718>> or by the Interrelated Water Review Board pursuant to section 46-719<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-719>>.

21. The Bell Creek Drainage District and the city of Arlington were not consulted. I am sure they would not agree to this IMP. Why doesn't the Interrelated Water Review Board do the study since all parties are not going to agree with the plan?

BLH - The Bell Creek Drainage District has now been consulted and has had an opportunity to provide feedback on the draft IMP. They will also be consulted as a stakeholder going forward. The Village of Arlington does not draw its water from the hydrologically connected Elkhorn River Alluvium and therefore was not consulted for this planning process.

HB - The SAC has already completed its work, but additional public input is sought during the public hearing process.

(c) Any integrated management plan developed under this subsection shall identify the overall difference between the current and fully appropriated levels of development. Such determination shall take into account cyclical supply, including drought, identify the portion of the overall difference between the current and fully appropriated levels of development that is due to conservation measures, and identify the portions of the overall difference between the current and fully appropriated levels of development that are due to water use initiated prior to July 1, 1997, and to water use initiated on or after such date.

22. How are you going to account for the cyclical supply for the variation including drought?

BLH - The above statute refers to overappropriated areas but the accounting is accommodated in the current and proposed methodology for assessing the availability of hydrologically connected water supplies performed by the NDNR.

23. How are you going to account and compensate for the one implementing conservation measures?

BLH - The above statute is for overappropriated areas.

HB - Conservation measures will be taken into account in the studies under the IMP.

(d) Any integrated management plan developed under this subsection shall adopt an incremental approach to achieve the goals and objectives identified under subdivision

24. What are the incremental levels and trigger points?

BLH - The above statute is for overappropriated areas.

(iii) During the ten years following adoption of an integrated management plan developed under this subsection (5) or during the ten years after the adoption of any subsequent increment of the integrated management plan pursuant to subdivision (d)(iv) of this subsection, the department and the affected natural resources district shall conduct a technical analysis of the actions taken in such increment to determine the progress towards meeting the goals and objectives adopted pursuant to subsection (2) of this section. The analysis shall include an examination of (A) available supplies and changes in long-term availability, (B) the effects of conservation practices and natural causes, including, but not limited to, drought, and (C) the effects of the plan on reducing the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section. The analysis shall determine whether a subsequent increment is necessary in the integrated management plan to meet the goals and objectives adopted pursuant to subsection (2) of this section and reduce the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section;

25. Who is the available and long term supply of water and the potential uses of this water?

BLH - The above statute is for overappropriated areas.

26. What are the effects of conservation practices and natural causes, including, but not limited to, drought?

BLH - The above statute is for overappropriated areas.

HB - This may be part of the studies under the plan. It does not have to be known in advance.

27. Where are the subdivision located at?

HB - See Figure 1 and Figure 2.

(6) In any river basin, subbasin, or reach that is designated as fully appropriated or overappropriated and whenever necessary to ensure that the state is in compliance with an interstate compact or decree or a formal state contract or agreement, the department, in consultation with the affected districts, shall forecast on an annual basis the maximum amount of water that may be available from streamflow for beneficial use in the short term and long term in order to comply with the requirement of subdivision

(4)(b) of this section. This forecast shall be made by January 1, 2008, and each January 1 thereafter.

28. Provide copy of all interstate compact or decree or a formal state contract or agreement and annual reports?

BLH - The above statute is for over and fully appropriated areas so it does not apply to this voluntary IMP. Additionally, there are no compacts, decrees, state contracts, or agreement that apply to the IMP area.

HB – We are not aware of any that affect this portion of the River. There are some upstream.

46-716. Integrated management plan; surface water controls.

(1) The surface water controls that may be included in an integrated management plan and may be adopted by the Department of Natural Resources are: (a) Increased monitoring and enforcement of surface water diversion rates and amounts diverted annually; (b) the prohibition or limitation of additional surface water appropriations; (c) requirements for surface water appropriators to apply or utilize reasonable conservation measures consistent with good husbandry and other requirements of section 46-231<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-231>> and consistent with reasonable reliance by other surface water or ground water users on return flows or on seepage to the aquifer; and (d) other reasonable restrictions on surface water use which are consistent with the intent of section 46-715<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-715>> and the requirements of section 46-231<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-231>>.

(2) If during the development of the integrated management plan the department determines that surface water appropriators should be required to apply or utilize conservation measures or that other reasonable restrictions on surface water use need to be imposed, the department's portion of the integrated management plan shall allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty days unless extended by the department, to identify the conservation measures to be applied or utilized, to develop a schedule for such application and utilization, and to comment on any other proposed restrictions

29. What surface water controls are being utilized and implemented by the DNR and NRD's?

BLH - A limit on the expansion of surface water irrigation appropriations will be established by the NDNR following the Districts establishment of a limit on groundwater irrigation expansion.

HB - These are set out in section 4.

46-717. Integrated management plan; scientific data and other information; department; natural resources district; duties.

(1) In developing an integrated management plan, the Department of Natural Resources and the affected natural resources districts shall utilize the best scientific data and other information available and shall review and consider any rules and regulations in effect in any existing ground water management area that encompasses all or part of the geographic area to be encompassed by the plan. Consideration shall be given to the

applicable scientific data and other information relied upon by the department in preparing the annual report required by section 46-713<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-713>> and to other types of data and information that may be deemed appropriate by the department. The department, after seeking input from the affected natural resources districts, shall specify by rule and regulation the types of scientific data and other information that will be considered in developing an integrated management plan. The natural resources districts shall adopt similar rules and regulations specifying the types of scientific data and other information necessary for purposes of this section. Existing research, data, studies, or any other relevant information which has been compiled by or is in possession of other state or federal agencies, other natural resources districts, and other political subdivisions within the State of Nebraska shall be utilized. State agencies and political subdivisions shall furnish information or data upon request of the department or any affected natural resources district. Neither the department nor the natural resources districts shall be required to conduct new research or to develop new computer models to prepare an integrated management plan, but such new research may be conducted or new computer models developed within the limits of available funding if the additional information is desired by the department or the affected natural resources districts.

(2) During preparation of an integrated management plan for a fully appropriated river basin, subbasin, or reach or of an integrated management plan under subdivision (1)(b) of section 46-715<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-715>>, the department and the affected natural resources districts shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or by the affected natural resources districts. They shall also actively solicit public comments and opinions through public meetings and other means.

30. When and where are all irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin going to be provided solicit public comments and opinions through public meetings and other means?

BLH - The above statute applies to fully appropriated basins. Those entities listed in the statute were invited to participate in the Stakeholder Advisory Committee.

HB - This is part of the public hearing process.

46-718. Integrated management plan; hearings; implementation order; dispute; procedure.

(1) If the Department of Natural Resources and the affected natural resources districts preparing an integrated management plan reach agreement on (a) the proposed goals and objectives of the plan for the affected river basin, subbasin, or reach, (b) the proposed geographic area to be subject to controls, and (c) the surface water and ground water controls and any incentive programs that are proposed for adoption and implementation in the river basin, subbasin, or reach, they shall schedule one or more public hearings to take testimony on the proposed integrated management plan and the

proposed controls. Such hearings shall be held within forty-five days after reaching agreement and within or in reasonable proximity to the area to be affected by implementation of the integrated management plan. Notice of such hearings shall be published as provided in section 46-

743<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-743>>. The costs of publishing the notice shall be shared between the department and the affected natural resources districts. All interested persons may appear at the hearings and present testimony or provide other evidence relevant to the issues being considered.

31. What are the surface water and ground water controls and any incentive programs that are proposed for adoption and implementation in the river basin?

BLH - The surface water control is listed in question 29. The groundwater control is proposed to be a limit on the expansion of groundwater irrigated acres. There are no incentive programs proposed at this time, only action items to evaluate incentive type programs.

32. Provide copy of all PMNRD addressing water quantity issues?

HB - The question is not clear, but this appears to ask for information not required to initiate an IMP.

33. Identify all potential conjunctive management projects?

BLH - The action item calls for evaluating conjunctive management. Until that evaluation is completed there is no list of potential conjunctive management projects.

HB - There is no requirement that all potential projects be identified in advance.

34. Who are and the amount of future water needs?

BLH - Future water needs have been assessed in some ways but a better understanding is needed.

35. What are the current and future water conservation programs for both urban and rural?

HB - This is not required to develop an IMP.

36. Where are the additional water supply locations?

HB - This does not have to be determined in advance.

37. What are the procedures and polices to protect public water supply, fish and wildlife and public recreation?

BLH - There are no procedures or policies in this IMP specific to those protections.

46-739. Management area; controls authorized; procedure.

(1) A district in which a management area has been designated shall by order adopt one or more of the following controls for the management area:

(a) It may allocate the amount of ground water that may be withdrawn by ground water users;

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-609>> and 46-651<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-651>>;

(d) It may require the installation of devices for measuring ground water withdrawals from water wells;

(e) It may adopt a system which requires reduction of irrigated acres pursuant to subsection (2) of section 46-740<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-740>>;

(f) It may limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of ground water withdrawals from water wells used for irrigation or other beneficial purposes;

(g) It may require the use of best management practices;

(h) It may require the analysis of water or deep soils for fertilizer and chemical content;

(i) It may impose mandatory educational requirements designed to protect water quality or to stabilize or reduce the incidence of ground water depletion, conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements;

(j) It may require water quality monitoring and reporting of results to the district for all water wells within all or part of the management area;

(k) It may require district approval of (i) transfers of ground water off the land where the water is withdrawn, (ii) transfers of rights to use ground water that result from district allocations imposed pursuant to subdivision (1)(a) of this section or from other restrictions on use that are imposed by the district in accordance with this section, (iii) transfers of certified water uses or certified irrigated acres between landowners or other persons, or (iv) transfers of certified water uses or certified irrigated acres between parcels or tracts under the control of a common landowner or other person. Such approval may be required whether the transfer is within the management area, from inside to outside the management area, or from outside to inside the management area, except that transfers for which permits have been obtained from the Department of Natural Resources prior to July 16, 2004, or pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act shall not be subject to district approval pursuant to this subdivision. If the district adopts rules and regulations pursuant to this subdivision, such regulations shall require that the district deny or condition the approval of any such transfer when and to the extent such action is necessary to (A) ensure the consistency of the transfer with the purpose or purposes for which the management area was designated, (B) prevent adverse effects on other ground water users or on surface water appropriators, (C) prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement, and (D) otherwise protect the public interest and prevent detriment to the public welfare. Approval of any transfer of certified water uses or certified irrigated acres under subdivision (1)(k)(iii) or (iv) of this section shall further be

subject to the district having complied with the requirements of section 46-739.01<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-739.01>>;

(l) It may require, when conditions so permit, that new or replacement water wells to be used for domestic or other purposes shall be constructed to such a depth that they are less likely to be affected by seasonal water level declines caused by other water wells in the same area;

(m) It may close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits on compliance with other rules and regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was designated; and

(n) It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a management area was designated.

38. What method or combination of methods are you planning to regulate ground water?

BLH - The above statutes refer to a groundwater management area as part of a Districts Groundwater Management Plan and not an IMP. The groundwater control proposed for this IMP is listed in the answer to question 31.

HB - This is addressed in section 4.

39. What plans are there for water transfer?

BLH - None at this time.

(6)(a) The district may establish different provisions for different hydrologic relationships between ground water and surface water?

(b) For management areas a purpose of which is the integrated management of hydrologically connected ground water and surface water, the district may establish different provisions for water wells either permitted or constructed before the designation of a management area for integrated management of hydrologically connected ground water and surface water and for water wells either permitted or constructed on or after the designation date or any other later date or dates established by the district. Permits for construction of new wells not completed by the date of the determination of fully appropriated shall be subject to any conditions imposed by the applicable natural resources district.

40. Provide the different locations for the different hydrologic relationships and what policies will be implemented in each subdistrict?

BLH - There is not currently a need to implement different provisions as the IMP is for a single hydrologic setting.

HB - This question is far beyond the scope of the IMP.

(7) If the district has included controls delineated in subdivision (1)(m) of this section in its management plan, but has not implemented such controls within two years after the initial public hearing on the controls, the district shall hold a public hearing, as provided in section 46-712<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-712>>, regarding the controls before implementing them.

41. Does the 2 year window start once the initial public hearing on the controls?

BLH - The above statute reference is for a groundwater management area and not for an IMP.

(8) In addition to the controls listed in subsection (1) of this section, a district in which a management area has been designated may also adopt and implement one or more of the following measures if it determines that any such measures would help the district and water users achieve the goals and objectives of the management area: (a) It may sponsor nonmandatory educational programs; and (b) it may establish and implement financial or other incentive programs. As a condition for participation in an incentive program, the district may require water users or landowners to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established and shall further condition participation upon satisfaction of the requirements of section 46-739.01<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=46-739.01>>.

42. List all controls in each management area?

BLH - The above statute reference is for a groundwater management area and not for an IMP.

HB - This is addressed in section 4.

43. What are the trigger points for each subdistrict?

BLH - There are no subdistricts and no trigger points proposed in the IMP.

44. List all financial, other incentive programs and incentive program?

BLH - The IMP calls for evaluating the need for incentive programs. There are none at this time related to this IMP.

HB - This is addressed in section 5.0 and does not have to be decided in more detail at this time.

46. Provide copy all State Statutes that requires the NRD's to regulated and manage surface water?

BLH - The Department is responsible for regulating surface water permits in the state.

HB - Surface water has historically been regulated on the state level. Neb. Rev. Stat. 46-715(2)(d)authorizes/requires NRDs to include groundwater controls listed in 46-716 in an IMP. However, this statute refers to NDNR as regulating surface water.

47. What and where are the additional water resources development opportunities?

BLH - That is not yet known and requires additional study.

HB - These do not have to be identified in advance.

48. What are the water funding resources?

BLH - There are numerous funding sources available depending upon the potential project. Without a specific project, it is somewhat difficult to give a precise answer.

HB - Possible funding sources are to be identified as the plan is implemented.

49. What are your plans for water banking?

BLH - The IMP proposes to study the potential for a water bank.

HB - These do not have to be identified in advance.

50. How will the NRD obtain revenue from the water banking program?

BLH – The NRD is not required to obtain revenue from a water bank. The bank would likely be a tool to be used to facilitate water use transfers to improve the overall use of the resource.

51. What is the plan for a ranking system on new wells?

BLH - The IMP proposes to study the need for a ranking system.

HB - This is referenced in 1.1.2.

52. What additional revenue sources will be used to fund the IMP projects?

BLH - There are numerous funding sources available depending upon the potential project. Without a specific project, it is somewhat difficult to give a precise answer.

HB - It is not required to be determined in advance.

53. Since our position of the Platte River is not in the Platt River Recovery Program area take out anything that refers to this program!

BLH - The Department currently works with The Platte River Recovery and Implementation Program. The PRRIP can potentially improve the flow of water to the Lower Platte River and the action item was included to indicate that the Department would continue to work with PRRIP and that the District might work with PRRIP should it be in the Districts interest.

Nebraska State Constitution<<http://nebraskalegislature.gov/laws/browse-constitution.php>> » XV-4

Print Friendly<<http://nebraskalegislature.gov/laws/articles.php?article=XV-4&print=true>>

XV-4. Water a public necessity.

The necessity of water for domestic use and for irrigation purposes in the State of Nebraska is hereby declared to be a natural want.

1. Natural want

Ground waters, whether they be percolating waters or underground streams, are a natural want in this state. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

This section declares the necessity of water for domestic use and for irrigation purposes to be a natural want. Hickman v. Loup River P. P. Dist., 176 Neb. 416, 126 N.W.2d 404 (1964).

2. Appropriation

Claim made and rejected that appropriation of surface and ground waters without compensation violated this section. Dischner v. Loup River P. P. Dist., 147 Neb. 949, 25 N.W.2d 813 (1947).

54. Provide legal opinion from our legal counsel on how we can take water away from property owners without just compensation for the taking?

HB - See No. 10.

3. Miscellaneous

The statutory law and judicial decisions of the Nebraska Supreme Court show a clear intention to enforce and maintain a rigid economy in the use of public waters in order to secure the greatest benefit possible from the waters available for irrigation. The state has the right, under both the police powers and the Nebraska Constitution, to regulate the use of natural rivers and streams so that waste is eliminated. In re Water Appropriation Nos. 442A, 461, 462 & 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

55. Provide legal opinion from our legal counsel and financial and feasible study for the greatest benefit uses of the water you what to divert away from agriculture for other uses?

HB - The question is not clear, but seems to reference state constitutional provisions regarding priority of water use and rights. These rights will be respected and complied with.

Constitution as well as statutes recognizes and encourages irrigation. Landowner may improve land by artificial application of water in reasonable and careful manner, without liability to adjoining owner except for negligence or willful act proximately causing damage. Spurrier v. Mitchell Irr. Dist., 119 Neb. 401, 229 N.W. 273 (1930).

56. Provide legal opinion from our legal counsel does not irrigation use have a Constitution right over industry?

HB - Yes, it does.

Nebraska State Constitution<<http://uniweb.legislature.ne.gov/laws/browse-constitution.php>> » I-21

Print Friendly<<http://uniweb.legislature.ne.gov/laws/articles.php?article=I-21&print=true>>

I-21. Private property compensated for.

The property of no person shall be taken or damaged for public use without just compensation therefor.

57. Provide legal opinion from our legal counsel?

HB - Not clear what the question is. The cited proposition of law is correct.

Neb. Const. art. I, sec. 21 (1875).

The right to use water for a beneficial purpose is a property right, subject to the constitutional provisions regulating the taking of private property for public use. Loup River Public Power Dist. v. North Loup River Public Power & Irr. Dist., 142 Neb. 141, 5 N.W.2d 240 (1942).

58. Provide legal opinion from our legal counsel on how we can take water away from property owners without just compensation for the taking?

HB - See No. 10.

Revised Statutes<<http://www.nebraskalegislature.gov/laws/browse-statutes.php>> »
Chapter 02<<http://www.nebraskalegislature.gov/laws/browse-chapters.php?chapter=02>> » 2-3226.06

Print Friendly<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=2-3226.06&print=true>>

2-3226.06. *Payment to water rights holders; authorized.*

The Legislature finds that water rights holders who lease and forego water use to assist in the management, protection, and conservation of the water resources of river basins must be paid. It is the intent of the Legislature to provide payment to such water rights holders through the financial assistance provided in section 2-3226.07<<http://www.nebraskalegislature.gov/laws/statutes.php?statute=2-3226.07>>

59. What is the cost of taking the water use of land owners way and how do you plan to compensate them?

HB – Incorrectly assumes there will be a Taking.

A recent analysis by University of Nebraska Professor Ray Supalla contains several findings that have implications for the state’s design of programs aimed to compensate irrigators for consumptive use reductions:

We found that if Nebraska implements a long-term program and wants to fully compensate irri-gators using the least cost approach, they should: (1) use land retirement instead of allocation; (2) use a land purchase instead of a land leasing approach; and (3) use a regulatory with com-pensation policy for retiring land, instead of a voluntary willing buyer and willing seller ap-proach. Land retirement is cheaper than allocation because it allows for more reduction in on-farm capital costs. Purchasing instead of leasing land is cheaper because with a lease you essen-tially “purchase” the land multiple times over the 50-year period that was analyzed. Regulated reduction in acres, with compensation equal to the estimated change in farm income, is cheaper than a voluntary willing buyer and willing seller approach because it eliminates the need to pay a premium price to induce the voluntary sale or lease.⁸⁸

60. Why was not buyout in the IMP plan when it is considered a cheaper way to compensate irrigators for their water taken?

HB - Buyouts are not required in IMPs, but could be the subject of a study. Incorrectly assumes there will be a Taking.

Nebraska State Constitution Article I-21

Nebraska State Constitution<<http://uniweb.legislature.ne.gov/laws/browse-constitution.php>> » I-21

Print Friendly<<http://uniweb.legislature.ne.gov/laws/articles.php?article=I-21&print=true>>

I-21. Private property compensated for.

The property of no person shall be taken or damaged for public use without just compensation therefor.

61. Provide legal opinion from our legal counsel?

HB - Not clear what the question is. It is correct that private property may not be taken for public use without compensation.

Source

Neb. Const. art. I, sec. 21 (1875).

The right to use water for a beneficial purpose is a property right, subject to the constitutional provisions regulating the taking of private property for public use. Loup River Public Power Dist. v. North Loup River Public Power & Irr. Dist., 142 Neb. 141, 5 N.W.2d 240 (1942).

Right of irrigation district to appropriate water is property and this right is protected by way of damages when water is diverted. Nine Mile Irr. Dist. v. State, 118 Neb. 522, 225 N.W. 679 (1929).

Riparian rights under an appropriation of water are property. McCook Irr. & Water Power Co. v. Crews, 70 Neb. 115, 102 N.W. 249 (1905).

A riparian's right to the use of the flow of the stream passing through or by his land is a right inseparably annexed to the soil and such right is entitled to protection as such, the same as private property rights. Crawford Company v. Hathaway, 67 Neb. 325, 93 N.W. 781 (1903).

2. Public use

Private property may not be taken under the power of eminent domain for a private use. Burger v. City of Beatrice, 181 Neb. 213, 147 N.W.2d 784 (1967).

62. Provide legal opinion from our legal counsel how can private property that is taken by eminent domain to build a dam be uses for private benefit?

HB - The question incorrectly assumes dams will be built and they will be used for "private benefit." Eminent domain cannot be used for private benefit, but rather for a public purpose.

63. The Statutes states you shall tax all area affected by an integrated management plan. Why did you tell the public they will not have to pay the occupation tax?

HB - The occupation tax language has been removed from the draft IMP.