

**Finance, Expenditure & Legal
Subcommittee Meeting Minutes
August 11, 2009**

A meeting of the Papio-Missouri River Natural Resources District's Finance, Expenditure & Legal Subcommittee was held at the Natural Resources Center, 8901 South 154th Street, Omaha, Nebraska, on August 11, 2009. The meeting was called to order by Chairperson Tesar at 8:03 p.m.

QUORUM CALL: Quorum call was taken. The following subcommittee members were in attendance.

Subcommittee Members Present	Subcommittee Members Absent	Other Directors Present	Others in Attendance
Rich Tesar	Larry Bradley *	John Swope	John Winkler
Rick Kolowski		Jim Thompson*	Marlin Petermann
Dorothy Lanphier		David Klug	Martin Cleveland
John Conley		Scott Japp	Carey Frey
Fred Conley **			Trent Heiser
			Paul Peters
			Amanda Grint
			Barb Sudrla
			Ralph Puls
			Lori Laster
			Ralph Puls
			Jean Tait
			Shawn Melotz
			Emmett Egr
			Jim Becic
			Jack Borgmeyer

* = Excused Absence

** = Alternate Voting Member

Adoption Of Agenda

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

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier

Voting Nay: None

Abstaining: None

Excused Absence: Bradley

Absent: Bradley

PROOF OF PUBLICATION: Public notice of the meeting was posted at all District offices and published in the Omaha World-Herald on 6 August, 2009. The Chairperson ordered the Proof of Publication recorded in the minutes of this meeting.

Adoption Of FY 2010 Budget:

General Manager John Winkler gave the Subcommittee members an update on the changes in the budget since the last meeting. With these updates the total general budget would be \$66,534,262.80 with a total property tax requirement of \$16,610,013.63. Based upon a projected 2.5% increase in valuation (except for Sarpy County's preliminary projection of a 2.02% increase) the tax levy would be 0.032994. He noted that final valuations would not be available until mid-August and that the property tax levy could be slightly higher or lower once the final valuations were available.

Director Lanphier had questions pertaining to the Special Reserve/Bond Fund. It was determined that the name would appear in the budget as the Special Reserve or Bond Funds. There was extended discussion regarding the Papillion Creek Watershed Partnership and the NRD's accountability in the Partnership. A request was made to create a basic Partnership balance sheet showing the NRD's beginning balance, the NRD's contributions and the expenses for the Partnership.

The following individual(s) addressed the Subcommittee:

➔ Shawn Melotz, 10404 N. 132nd St., Omaha, NE

➤ **It was moved by Director Fred Conley and seconded by Director Kolowski that the Subcommittee recommend to the Board that the following resolution be adopted:**

BE IT RESOLVED by the Board of Directors of the Papio-Missouri River Natural Resources District that the attached budget document incorporated herein by reference, showing Total Requirements of \$83,369,262.80 as follows,

Operating Budget – General	\$66,534,262.80
Special Reserve Fund	\$16,785,000.00
Uninsured Liability Sinking Fund	\$50,000.00

and Property Tax Requirement of \$16,610,013.63 be and is hereby adopted as the Fiscal Year 2010 budget of the Papio-Missouri River Natural Resources District.

BE IT FURTHER RESOLVED that the Board of Directors of the Papio-Missouri River Natural Resources District hold a Public Hearing to set the Final Property Tax Request and Tax Levy for Fiscal Year 2010 at the September 10, 2009 Board of Directors meeting, after final valuations have been received from Douglas, Sarpy, Dodge, Washington, Burt, Thurston and Dakota Counties.

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley,

Voting Nay: None

Abstaining: Dorothy Lanphier

Excused Absence: Bradley

Absent: Bradley

Whitted Creek Stream Restoration Project:

- **It was moved by Director John Conley and seconded by Director Kolowski to go into Executive Session for the purpose of discussing the negotiations for Whitted Creek Stream Restoration Temporary Construction Easement with MCV1, LLC.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier

Voting Nay: None

Abstaining: None

Excused Absence: Bradley

Absent: Bradley

The Subcommittee entered into executive session at 8:45 p.m.

- **It was moved by Director John Conley and seconded by Director Lanphier to return to Regular Session at 8:55 p.m.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier

Voting Nay: None

Abstaining: None

Excused Absence: Bradley

Absent: Bradley

- **It was moved by Director Fred Conley and seconded by Director Kolowski to recommend to the Board that the General Manager be authorized to execute a temporary construction easement with MCV1 LLC for the payment of \$14,521.50, subject to approval as to form by District legal counsel.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier

Voting Nay: None

Abstaining: None

Excused Absence: Bradley

Absent: Bradley

Papio Creek Watershed Structure W-3 Rehabilitation:

- **It was moved by Director Fred Conley and seconded by Director Kolowski to go into Executive Session for the purpose of discussing the Papio Creek Structure W-3 Rehabilitation Project negotiations for:**
 - a. **O. Jeff Eich Right-of-Way Purchase Agreement**
 - b. **John and Mary Camden Right-of-Way**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier
Voting Nay: None
Abstaining: None
Excused Absence: Bradley
Absent: Bradley

The Subcommittee went into Executive Session at 8:57 p.m.

- **It was moved by Director Fred Conley and seconded by Director Kolowski to return to Regular Session at 9:25 p.m.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier
Voting Nay: None
Abstaining: None
Excused Absence: Bradley
Absent: Bradley

- **It was moved by Director Fred Conley and seconded by Director Kolowski that the Subcommittee recommend to the Board that the General Manager be authorized to execute a purchase agreement with O. Jeff Eich for the acquisition of permanent easement for the payment of \$2,500, subject to approval as to form by District legal counsel.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier
Voting Nay: None
Abstaining: None
Excused Absence: Bradley
Absent: Bradley

- **It was moved by Director Fred Conley and seconded by Director John Conley that the Subcommittee recommend to the Board that the following resolution be adopted:**

WHEREAS, on its own motion, the Papio-Missouri River Natural Resources District ("the DISTRICT") has proposed a project ("the PROJECT") to rehabilitate the works and improvements comprising the DISTRICT'S Public Law-566 Dam Site W-3; and,

WHEREAS, The PROJECT is a plan, facility, work and program within the contemplation of Section 3-3229, R.R.S., 1997, which authorizes the DISTRICT as follows:

“... to develop and execute, through the exercise of powers and authorities granted by law, plans, facilities, works, and programs relating to (1) erosion prevention and control, (2) prevention of damages from flood water and sediment, (3) flood prevention and control, (4) soil conservation, ... (6) development, management, utilization, and conservation of ground water and surface water, (7) pollution control, ... (9) drainage improvement and channel rectification”

and,

WHEREAS, the Board of Directors of the DISTRICT does hereby find and determine as follows, to-wit:

A. The PROJECT is of predominantly general benefit to the DISTRICT with only incidental special benefit, within the contemplation of Section 2-3252, R.R.S., 1997; and therefore the PROJECT should be carried out with any available funds of the DISTRICT; and,

B. The DISTRICT has identified certain permanent and temporary easements and restrictions ("the EASEMENTS"), hereinafter described, in, on, over and across lands owned by JOHN CAMDEN AND MARY CAMDEN, HUSBAND AND WIFE, AS JOINT TENANTS ("CONDEMNNEES"), that are necessary for the PROJECT; and,

D. The DISTRICT has negotiated in good faith with CONDEMNNEES in that the DISTRICT retained an licensed real estate appraiser to appraise the damages from the DISTRICT'S acquisition of the EASEMENTS; the DISTRICT offered to CONDEMNNEES an amount of money equal to the full fair market value of the appraised damages that will be sustained by CONDEMNNEES as a result of the DISTRICT'S acquisition of the EASEMENTS; and, the DISTRICT'S representatives made reasonable efforts by conference, telephone and correspondence to induce CONDEMNNEES to accept the DISTRICT'S offer, but such offer has been refused, counterproposals by CONDEMNNEES are unreasonable and unacceptable to the DISTRICT, such negotiations therefore have failed, and the parties therefore are at an impasse.

E. Economic and physical feasibility necessitate that the PROJECT be constructed in the location of the EASEMENTS; and,

F. Approvals by other agencies are not required; and,

G. It is necessary that the DISTRICT exercise the right of eminent domain, granted to it by Section 2-3234, R.R.S., 1997, in order to acquire the EASEMENTS for the PROJECT, as follows, to-wit:

EASEMENTS

1. PERMANENT EASEMENT(S). The DISTRICT, including its officers, agents, employees and contractors, shall have the permanent and exclusive rights to construct, reconstruct, operate, maintain, repair, manage and regulate the PL 566 Project Site W-3 grade stabilization structure (hereinafter referred to as the "DAM") and the reservoir thereby impounded (hereinafter referred to as the "RESERVOIR") in, on, under, over and across the tracts of land in Washington County, Nebraska, referred to collectively as the "PERMANENT EASEMENT" in the page(s) of legal descriptions and diagrams attached hereto respectively as Exhibits "A", "B" and "C" and incorporated herein by reference, and the following additional permanent rights, to-wit:

a) The permanent right to have vehicular, equipment and pedestrian ingress and egress to and from the DAM and RESERVOIR over and across all portions of the PERMANENT EASEMENT; and,

b) The permanent and exclusive right to use the PERMANENT EASEMENT for excavation, borrow and spoil of earthen materials; and,

c) The permanent right to PERMANENT EASEMENT flow and conduct into the creek immediately downstream of the DAM any waters or water-borne silts and sediments that originate, flow, emanate, discharge, seep or spill from the DAM, its principal or auxiliary emergency spillways, or from the RESERVOIR, including, without limitation, those that appear as surface or subsurface flow, seepage, percolation or springs.

2. TEMPORARY CONSTRUCTION EASEMENT. The DISTRICT, including its officers, agents, employees and contractors, shall have the temporary and exclusive right to use the tract of land in Washington County, Nebraska, referred to as the "CONSTRUCTION/PARKING EASEMENT" in the legal description and diagram attached hereto collectively as Exhibit "D" and incorporated herein by reference, for vehicular maneuvering, parking and servicing, equipment storage and other lawful purposes during the period of time between the commencement and the completion of the DISTRICT'S construction of the rehabilitated DAM and RESERVOIR in the PERMANENT EASEMENT; provided, however, such period of time shall not exceed one year beginning with commencement of such construction.

3. TEMPORARY INGRESS AND EGRESS EASEMENT. The DISTRICT, and its officers, agents, employees and contractors, shall have the temporary and non-exclusive right to use the tract of land in Washington County, Nebraska, referred to as the "TEMPORARY CONSTRUCTION ACCESS EASEMENT" in the legal description and diagram attached hereto collectively as Exhibit "E" and incorporated herein by reference, for vehicular, equipment and pedestrian ingress and egress between the PERMANENT EASEMENT and the public roads rights-of-way during the period of time between the commencement and completion of the DISTRICT'S construction of the rehabilitated DAM and RESERVOIR in the PERMANENT EASEMENT, provided, however, such

period of time shall not exceed one year beginning with commencement of such construction.

4. ADDITIONAL CONDITIONS. The EASEMENTS shall be subject to the following additional conditions, to-wit:

a) The EASEMENTS are intended as supplementary and additional to the easement grants to the DISTRICT for the original PL 566 Project Site W-3 dam and reservoir that were made by James L. Christensen & Mildred J. Christensen in the instrument dated April 26, 1982, recorded on December 13, 1982 in Book 138 at Page 395 of the records of the Register of Deeds of Washington County, Nebraska, (partially released by the DISTRICT in the instrument dated February 10, 1984 and recorded on March 2, 1984 in Book 145 at Page 04-06 of the records of the Register of Deeds of Washington County, Nebraska).

b) CONDEMNEES shall not be responsible for, nor authorized or entitled to participate in, construction, re-construction, operation, maintenance, repair, management or regulation of the DAM and RESERVOIR

c) CONDEMNEES may make such non-commercial, recreational uses of the PERMANENT EASEMENT as shall not interfere with the DISTRICT'S construction, re-construction, operation, maintenance, repair, management or regulation of the DAM and RESERVOIR; provided, however, CONDEMNEES shall not:

i) Construct, re-construct, operate or maintain in the PERMANENT EASEMENT any structures or fixtures, or other non-portable improvements that could be damaged by the DISTRICT'S authorized activities in the PERMANENT EASEMENT;

ii) Introduce or permit the introduction of grazing livestock, trees, woody vegetation, herbicide or other chemicals or materials on the DAM, or introduce or permit in the PERMANENT EASEMENT any other practices or instrumentalities that could promote, or result in, loss of vegetative cover, structural weakness, deterioration or erosion of the DAM;

iii) Deposit or excavate earthen or other material in, on or from the DAM, the RESERVOIR or other portion of the PERMANENT EASEMENT; provided, however, CONDEMNEES shall be entitled to the accumulated silts and sediments dredged or otherwise excavated by the DISTRICT from the floor of the RESERVOIR from time to time, provided that, within thirty (30) days after written notice by the DISTRICT to CONDEMNEES of the DISTRICT'S intent to perform such excavation(s) and of the excavation method to be employed, CONDEMNEES shall designate and make available to the DISTRICT, for the duration of such excavation, a tract of land abutting the PERMANENT EASEMENT sufficient for the DISTRICT'S temporary use as a spoil area or stilling basin (depending on GRANTOR'S method of excavation) to facilitate the DISTRICT'S delivery and GRANTORS' reception of such silts and sediments.

d) The DISTRICT shall not be required to prevent or retard evaporation, release or escape of waters, silts and sediments detained by the DAM, nor maintain any minimum water level in the RESERVOIR; provided, however, that:

i) The principal spillway of the DAM will be set to operate at water surface elevation 1,231.0 feet (± 0.5 feet) above mean sea level (NGVD 1929), thereby establishing the elevation of the normal pool of the RESERVOIR; and,

ii) The emergency (auxiliary) spillway of the DAM will be set to operate at water surface elevation 1,243.5 feet (± 0.5 feet) above mean sea level (NGVD 1929), thereby establishing the elevation of the flood pool of the RESERVOIR.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the DISTRICT that the foregoing findings and determinations are hereby adopted by the DISTRICT; and that, in the absence of a voluntary grant of the EASEMENTS to the DISTRICT in accordance with the DISTRICT'S offer, the DISTRICT'S Legal Counsel should be, and is hereby, authorized and directed to initiate the filing of a petition in the County Court of Washington County, Nebraska, on behalf of the DISTRICT, for the appointment of appraisers, to ascertain and determine the damages sustained by CONDEMNES from the DISTRICT'S taking of the afore-described EASEMENTS, pursuant to the procedures governing eminent domain, as provided by Section 76-701, et seq., R.R.S., 1997, to-wit:

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley,

Voting Nay: None

Abstaining: Dorothy Lanphier

Excused Absence: Bradley

Absent: Bradley

Sandy Point And Little Sioux Bend Sale Agreements:

- **It was moved by Director Fred Conley and seconded by Director Kolowski to go into Executive Session for the purpose of discussing sale agreements for Sandy Point and Little Sioux Bend.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier

Voting Nay: None

Abstaining: None

Excused Absence: Bradley

Absent: Bradley

The Subcommittee went into Executive Session at 9:27 p.m.

- **It was moved by Director Fred Conley and seconded by Director Kolowski to return to Regular Session at 9:40 p.m.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier
Voting Nay: None
Abstaining: None
Excused Absence: Bradley
Absent: Bradley

- **It was moved by Director Fred Conley and seconded by Director John Conley that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed offer to sell real property for Little Sioux Bend, Iowa in the amount of \$185,835.00 for 190.61 acres and the offer to sell real property for Sandy Point Bend, Iowa in the amount of \$263,861.00 for 251.60 acres, subject to minor changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier
Voting Nay: None
Abstaining: None
Excused Absence: Bradley
Absent: Bradley

West Papillion Regional Basin WP-5 Right Of Way Acquisition – Tract #2:

- **It was moved by Director Fred Conley and seconded by Director Kolowski to go into Executive Session for the purpose of discussing right-of-way acquisition for West Papio Regional Detention Basin WP5.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier
Voting Nay: None
Abstaining: None
Excused Absence: Bradley
Absent: Bradley

The Subcommittee went into executive session at 9:42 p.m.

- **It was moved by Director Fred Conley and seconded by Director Kolowski to return to Regular Session at 9:47 p.m.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier
Voting Nay: None

Abstaining: None
Excused Absence: Bradley
Absent: Bradley

- **It was moved by Director John Conley and seconded by Director Kolowski that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed purchase agreement for Tract 2 (Hansen Tract) in the amount of \$1,817,600 for 64.91 acres of land for the West Papillion Regional Basin No. 5 project, subject to such other terms and conditions as the General Manager determines necessary and legal counsel approves as to form.**

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

Voting Yea: Tesar, Kolowski, F. Conley, J. Conley, Dorothy Lanphier
Voting Nay: None
Abstaining: None
Excused Absence: Bradley
Absent: Bradley

ADJOURNMENT: Being no further business, the meeting adjourned by acclamation at 9:48 p.m.

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