

**PERSONNEL, LEGISLATIVE AND PUBLIC AFFAIRS
SUBCOMMITTEE MEETING
December 9, 2008
6:30 p.m.**

AGENDA

Personnel, Legislative and Public Affairs Subcommittee:

Dave Klug, Chairperson
John Schwope, Vice Chairperson
Fred Conley
Tim Fowler
Richard Patterson

Alternate Members: Dorothy Lanphier
Jim Thompson

Staff Liaison: Emmett Egr
Christine Jacobsen

1. Meeting Called to Order –Chairperson Klug
2. Notification of Open Meetings Act Posting and Announcement of Meeting Procedure – Chairperson Klug
3. Quorum Call
4. Adoption of Agenda
5. Proof of Publication of Meeting Notice
6. Briefing on Changes to the P-MRNRD Wage and Salary Administration Program – John Winkler and Roxanne Krasno, Silverstone Group
7. Review and Recommendation of the Papio-Missouri River NRD Bonding Authority Legislation – John Winkler
8. Adjourn

Agenda Item 6

Roxanne Krasno, Silverstone Group, will be briefing the Board regarding changes to the P-MRNRD Wage and Salary Administration Program.

MEMORANDUM

Date: December 4, 2008
Updated: December 9, 2008

To: Personnel, Legislative and Public Affairs Subcommittee

From: John Winkler
Hal Daub
Ron Sedlacek
Steve Grasz

RE: Papio-Missouri River NRD bonding authority for watershed enhancement projects including flood control - draft legislation for 2009 Legislative Session.

The purpose of this memorandum is to summarize the recommended language for bonding authority legislation for the 2009 legislative session and to set forth the considerations and issues which shaped the recommended language. The Draft Bonding Bill is attached for review.

I. **Summary of Recommendations for 2009 Legislation:**

Based on review of the complete legislative history of LB 272 (2007) and LB 880 (2008), it is recommended that the proposed bonding authority legislation for 2009 consist of the following: The language of LB 880, as amended by AM 1787 (committee amendments) and AM 2455 (Kopplin amendment) **minus** the language in AM 2455 which would have effectively given veto authority over dams or other projects to local zoning authorities (AM 2455 Sections (2)(a) and (2)(b) on page 4.) In addition, the draft 2009 bill (see attached draft of bill) contains a new provision requiring a public vote to authorize any bonds resulting in a special bond levy exceeding two cents per one hundred dollars of taxable valuation on property in the district. Consequently, the primary differences between the proposed 2009 bill draft and last year's bill (as amended during its consideration by the Legislature) are the requirement for a public vote on bonds that would exceed two cents of the Districts statutory authority of four and half cents per 100 of assessed valuation, as described above, and deletion of language giving local zoning authorities veto power over NRD projects.

II. **Issues and Considerations Which Shaped the 2009 Legislation:**

A. **Eminent Domain Authority.**

To achieve majority support, the 2009 legislation must again ensure the use of eminent domain power is carefully limited, in the context of projects using bond funds, and the NRD must communicate this clearly to all stakeholders and

constituents. The authority to issue bonds, coupled with the power to take land by eminent domain, has been a major concern for some constituents and state senators. It will also continue to be important to address and correct misinformation about alleged use of eminent domain for the benefit of private developers. (i.e., Bennington Lake.) It must be made clear that the District, per current statute and case law, can only use eminent domain for the benefit of the general public good.

B. Property Taxes.

Another major concern for many senators has been the prospect of increased property taxes. This will continue to be a concern in the upcoming legislative session. Therefore, the 2009 bill must continue to keep the NRD's bonding authority within the existing four and half cent tax levy, and this must be communicated clearly throughout the process. Per the attached property tax table (attachment #2) the Papio NRD currently utilizes less than two percent of the total property taxes levied throughout the District as a whole.

C. Alternatives to Flood Control Reservoir Construction.

The 2009 bill continues to address a holistic system approach to flood control and water quality issues by not focusing solely on the construction of reservoirs by fully utilizing, where feasible and practicable, other strategies and practices (i.e. low impact development, flood plain buyout etc). An amendment to last year's bill, AM 2455, addressed this issue and the new bill contains the same language.

D. Public Access to Reservoirs Funded with Bond Proceeds.

Amendment 2455 to last year's bill also addressed the issue of public access. Public access has been, at times, an emotional issue and opponents of the prior legislation have sometimes misstated the facts on this subject. This aspect of the bill will be addressed with facts refuting past misrepresentations on public access. The 2009 bill draft again provides public access to any permanent water pool greater than twenty surface acres.

E. Public Vote on Bonds.

All bonds authorized by the proposed legislation are to be issued within the existing tax levy limit of four and half cents per one hundred dollars of taxable valuation. Nonetheless, in order to maintain public accountability and to address the concerns of some legislators regarding NRD spending authority, especially in the current economic climate, the draft legislation contains a provision requiring a public vote for bonds resulting in a special bond levy exceeding two cents per one hundred dollars of taxable valuation of district property. Any agreement to further amend the bill so as to require a public vote for issuance of any and all NRD bonds, regardless of size, would be unwise as it may make even small projects subject to a lengthy and expensive election process. This provision as currently written gives the Board of Directors the flexibility needed to address vital public health and safety issues while simultaneously ensuring fiscal constraint. This provision is not without precedent in Nebraska statutes. Section 23-3621 R.R., 2004 provides a similar limiting requirement with respect to county's issuance of bonds for the purpose of owning, operating, constructing and equipping a sewage

disposal system and plant or improving or extending an existing system (see attachment #3).

F. Flood Control Levies.

The need for funds to repair, replace and/or rehabilitate flood control levies is a very important additional reason why the Papio-Missouri River NRD needs bonding authority. This fact will be given additional emphasis in discussion of the 2009 bill, especially in light of the experience thus far of Waterloo, City of Omaha and the District itself.

G. Reservoir Size.

The bill addresses concerns regarding the size of water impoundments by continuing to contain a limit of four hundred surface acres for projects funded with the bonds.

H. Competitive Bidding.

Some opponents of LB 880 argued the NRD should use competitive public bidding on any projects involving private developers. It is unclear how such a requirement would work where; for example, a developer has existing ownership or contractual rights to property outside of the NRDs process or control. Consequently, it is not a realistic or workable idea. The NRD must be prepared to address this issue with senators.

I. HDR Study.

Before introducing the 2009 bill, it is essential to communicate the results of the HDR Stage IV study to all state senators. Currently, the Papillion Creek Watershed Partnership is finalizing a draft watershed plan and draft policies to present to a public officials meeting in early February. Partnership members will then begin the approval process in their respective jurisdictions for the watershed management plan and the policies.

J. Financial Management.

Two state senators had argued in the past that the Papio-Missouri River NRD needs to have “fiscal controls” and “mechanisms in place to manage the money coming in” from the bonds before they could support bonding authority. This issue is addressed by the NRD through the creation of the special reserve fund and the yearly budget and auditing process. Furthermore, additional accounting staff will be hired to assist in monitoring bond and grant funds and their reporting and accounting.

K. Project Timelines.

Attachment #4 compares example timelines for similar projects funded by currently available funding mechanisms (pay as you go system). As the timelines demonstrate projects that use to take nine years to complete now take up to 17 years to complete. The District will highlight this fact during the legislative

process as an example of how the current funding mechanism available to the District is ineffective and inefficient.

I have attached letters of support from the Mayor's of Omaha and Valley. In addition, I have attached a resolution from the Omaha City Council which supports the Papio Missouri River NRD's effort to secure bonding authority from the Nebraska Legislature in order to provide protection for lives, property and the environment within the Papillion Creek Watershed. The City of Bellevue, Papillion and La Vista will be discussing similar resolutions of support with their respective Mayors and Councils over the next two months.

In conclusion the 2009 proposed bonding bill is enabling legislation to allow the Papio NRD Board of Directors the ability to finance vital capital intensive projects with bonding authority. Bonding authority has been granted to a wide spectrum of political subdivisions from cities and counties to community colleges who, arguably, have less of a mandate to provide protection for lives, property and the environment. Nothing in this proposed bill calls for a tax increase of any kind outside of the Districts current statutory authority of four and half cents. Nothing in the bill allows the District to violate current state law and in fact the bill's provisions place a number of restrictions on District activities.

Therefore, management recommends that the Personnel, Legislative and Public Affairs Subcommittee recommend to the Board of Directors that the draft bonding bill be adopted, subject to changes deemed necessary by the General Manager, and the General Manager be authorized to work within the legislative process to seek passage of said bonding bill by the ~~One-hundred-and-first~~ Legislature of the State of Nebraska.