

**Finance, Expenditure & Legal
Subcommittee Meeting Minutes
November 10, 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 November 10, 2009. The meeting was called to order by Chairperson Tesar at 9:01 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	Rick Kolowski *	Fred Conley	John Winkler
Larry Bradley		Scott Japp	Marlin Petermann
John Conley			Martin Cleveland
Dorothy Lanphier			Brian Henkel
Jim Thompson **			Trent Heiser
			Paul Peters
			Amanda Grint
			Pat Teer
			Carey Fry
			Lori Laster
			Jean Tait
			Barbara Sudrla
			Paul Peters
			Jason Tonjes, Bland & Assoc.
			Justin Fraunhofer, Bland & Assoc
			Jack Borgmeyer
			Shawn Melotz

* = Excused Absence

** = Alternate Voting Member

Adoption Of Agenda

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

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

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

Voting Nay: None

Abstaining: None

Excused Absences: Kolowski

Absent: Kolowski

Proof Of Publication: Public notice of the meeting was posted at all District offices and published in the Omaha World-Herald on November 5, 2009. The Chairperson ordered the Proof of Publication recorded in the minutes of this meeting.

Discussion of FY 2009 Audit:

Jason Tonjes, Bland and Associates, briefed the Subcommittee on the FY 2009 Audit. He reported that the funds and account balances are materially correct and there were no deficiencies or reportable incidences. He also noted that they were recommending that the Papillion Creek Watershed Partnership Fund be established as a separate account. He also pointed out that the District has addressed the separation of duties deficiency noted in past audits. There were several questions.

No action is required at this time. The Audit will be brought back for action at the December 8th FEL Subcommittee meeting and final approval at the December 10th Board meeting.

Papio WP-5:

a. Papio Valley Parcel – Conflict of Interest – Paul Peters, District Legal Counsel, reported that he had a conflict of interest with regard to the NRD’s intended acquisition of the Papio Valley parcel for the WP-5 Project. He suggested that the Board retain Steve Seglin of Crosby Guenzel to represent the District in the right of way acquisition of Tract No. 5 (Papio Valley Land Co.). He noted that Mr. Seglin is the legal counsel for the Lower Platte South NRD and is one of the most experienced lawyers in the State in handling eminent domain cases. There were several questions.

- **It was moved by Director John Conley, and seconded by Director Thompson that the Subcommittee recommend to the Board that because of District legal counsel’s conflict of interest, attorney Steven G. Seglin, of the firm of Crosby Guenzel, LLP, should be retained to represent the District in connection with the acquisition of WP-5 Project Tract No. 5 (Papio Valley Land Co.); and that the General Manager of the District should be and is hereby authorized to execute for and on behalf of the District an agreement with such attorney for such representation, containing such terms and provisions as the General Manager determines necessary.**

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

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

b. Negotiations for WP-5 Tracts 1, 11 and 6

- **It was moved by Director Thompson and seconded by Director John Conley that the Subcommittee go into executive session to discuss negotiations for WP-5 Tracts 1, 11 and 6.**

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

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

The Subcommittee went into Executive Session at 9:45 p.m.

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

The Subcommittee returned to Regular Session at 10:00 p.m.

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

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

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

RESOLUTION

WP-5 Project Tract Nos. 1 and 11

WHEREAS, on its own motion, the Papio-Missouri River Natural Resources District ("the DISTRICT") has proposed to construct, operate and maintain the West Papillion Regional Basin No. 5 Project ("the PROJECT"), consisting of a multi-purpose flood control dam, reservoir and public recreational project, as generally described and depicted in the DISTRICT'S plans for the PROJECT, including the diagram presented to this meeting and incorporated herein by reference as Exhibit "A"; and,

WHEREAS, The PROJECT is a plan, facility, work and program within the contemplation of Section 2-3229, Neb.Rev.Stat., which provides as follows, to-wit:

"2-3229 Districts; purposes. The purposes of natural resources districts shall be 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, (5) water supply for any beneficial uses, (6) development, management, utilization, and conservation of ground water and surface water, (7) pollution control, (8) solid waste disposal and sanitary drainage, (9) drainage improvement and channel rectification, (10) development and

management of fish and wildlife habitat, (11) development and management of recreational and park facilities, and (12) forestry and range management. ****.”

and,

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

A. The PROJECT is reasonable and feasible and is and will be of predominantly general benefit to the DISTRICT, with only incidental special benefit, within the contemplation of Section 2-3252, Neb.Rev.Stat.; and, the PROJECT should be carried out with any available funds of the DISTRICT; and,

B. The DISTRICT has identified certain parcels of land in Sarpy County, Nebraska (“the ACQUISITION PARCELS”) that, because of the public uses that will be made of PROJECT lands, waters and facilities, are necessary to be acquired in fee simple for purposes of construction, operation and maintenance of the PROJECT, to-wit:

Tract 1 (Rohwer), described and depicted in the legal description and diagram presented to this meeting and incorporated in this resolution by this specific reference as Exhibit “B”; and,

Tract 11 (DDF), described and depicted in the legal description and diagram presented to this meeting as Exhibit “C” and incorporated in this resolution by this specific reference as Exhibit “C”; and,

C. The District has negotiated in good faith with the respective owners of the ACQUISITION PARCELS (“the LANDOWNERS”) in that the District has retained a professional real estate appraiser who has appraised and determined the total fair market values of the ACQUISITION PARCELS and the damages that will be sustained by the respective LANDOWNERS as a result of the DISTRICT’S acquisition of fee simple title to the ACQUISITION PARCELS (“the APPRAISED COMPENSATION”); the District offered to the LANDOWNERS amounts of money equal to the APPRAISED COMPENSATION; and, the District’s representatives made reasonable efforts by personal contacts, telephone conferences, correspondence and other methods to negotiate in good faith with the LANDOWNERS and to induce them to accept the APPRAISED COMPENSATION, but that the DISTRICT’S offers have been refused, counter-proposals by the respective LANDOWNERS are unreasonable and unacceptable to the District, and such negotiations have failed and are at an impasse; and,

D. Economic and physical feasibility necessitate that the PROJECT be constructed in Sarpy County, as designed by the DISTRICT, alongside the current channel of the West Papillion Creek, at the locations of the ACQUISITION PARCELS; and,

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

F. Fee simple title to the land in the ACQUISITION PARCELS is necessary to be acquired by the DISTRICT for the PROJECT, among other things, in order to provide for permanent pool storage and periodic

flood pool inundations; in order to provide for construction, operation and maintenance of public bicycle and pedestrian trails and other public recreational improvements; in order to provide for any necessary future utility relocations and stabilization measures; and, in order to satisfy the public access requirements of Section 2-3290.01(4), Neb.Rev.Stat.; and,

G. It is necessary that the DISTRICT exercise the right of eminent domain, granted to it by Section 2-3234, Neb.Rev.Stat., in order to acquire fee simple title to the ACQUISITION PARCELS for purposes of the PROJECT.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the DISTRICT that the foregoing findings and determinations should be and are hereby made and adopted; and that, in the absence of voluntary conveyances of fee title to the respective ACQUISITION PARCELS to the DISTRICT for the APPRAISED COMPENSATION, 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 Sarpy County, Nebraska, on behalf of the DISTRICT, pursuant to the procedures governing eminent domain provided by Section 76-701, Neb.Rev.Stat., et seq., for the appointment of appraisers to ascertain and determine the damages that will be sustained by the respective LANDOWNERS from the DISTRICT'S acquisition of fee title to the ACQUISITION PARCELS.

Roll call was taken on the motion. The motion carried on a vote of 4 to 1.

Voting Yea: Tesar, Thompson, Bradley, J. Conley

Voting Nay: Lanphier

Abstaining: None

Excused Absence: Kolowski

Absent: Kolowski

- It was moved by Director Thompson and seconded by Director Bradley that the Subcommittee recommend to the Board that the following resolution be approved:

**RESOLUTION
WP-5 Project Tract No. 6**

WHEREAS, for purposes of construction, operation and maintenance of its West Papillion Regional Basin No. 5 Project ("the PROJECT"), the Papio-Missouri River Natural Resources District ("the DISTRICT") has attempted to negotiate for the acquisition of fee title to the parcel of land in Sarpy County, Nebraska, referred to as Tract No. 6 in the DISTRICT'S plans for the PROJECT ("Tract No. 6"), and has offered to the owner(s) of Tract No. 6 the fair market value appraised by the DISTRICT'S appraiser, to-wit, the sum of \$3,862,970, for such acquisition; and,

WHEREAS, Tract No. 6, that includes a subtract of approximately 5.0 acres ("the FARMSTEAD"), consists of the easterly 101.657 acres of a larger parcel of land ("the VANDEVENTER FARM") comprising 156.4 acres, more or less, described and depicted in the legal description and

diagram attached hereto collectively as Exhibit “A,” and incorporated in this resolution by this specific reference; and,

WHEREAS, the owners of the VANDEVENTER FARM have proposed to sell to the DISTRICT the entire VANDEVENTER FARM for the sum of \$5,943,200, which is equal to the amount heretofore determined by the DISTRICT’s appraiser as the fair market value thereof, if the DISTRICT additionally commissions a survey delineating the boundaries of the FARMSTEAD, the cost of which survey is estimated to be \$1,500; and,

WHEREAS, the purchase by the DISTRICT of the entire VANDEVENTER FARM for purposes of the PROJECT would be a reasonable and feasible enhancement to the PROJECT.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the DISTRICT that the General Manager of the DISTRICT should be and is hereby authorized to execute for and on behalf of the DISTRICT an agreement between the DISTRICT and the owners of the VANDEVENTER FARM, providing for the purchase of the VANDEVENTER FARM by the DISTRICT for the sum of \$5,943,200 plus the cost of the aforesaid survey of the FARMSTEAD, and containing such other terms and conditions, including relocation costs estimated at \$30,000, as the General Manager determines reasonable and 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, Thompson, Bradley, J. Conley, Lanphier
Voting Nay: None
Abstaining: None
Excused Absence: Kolowski
Absent: Kolowski

Papio Creek Watershed Structure W-3 Right of Way – Temporary Easement – Camden Property

- **It was moved by Director John Conley and seconded by Director Bradley that the Subcommittee enter into Executive Session to discuss Papio Creek Watershed Structure W-3 Right of Way – Temporary Easement – Camden Property.**

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

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

The Subcommittee went into Executive Session at 10:02 p.m.

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

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

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

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

No action taken.

King Lake Floodway Property Acquisition: Lori Laster, Stormwater Management Engineer, reported that the District had a signed purchase agreement for property currently owned by Jay Gould and recommended that the purchase agreement be approved.

- **It was moved by Director Thompson and seconded by Director John Conley that the General Manager be authorized to execute for and on behalf of the District the Purchase Agreement in the form as presented to this meeting providing for the purchase by the District from Jay Gould, etal, of 0.32 acres of floodway land for the purchase price of \$64,000, subject to 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, Thompson, Bradley, J. Conley, Lanphier
Voting Nay: None
Abstaining: None
Excused Absence: Kolowski
Absent: Kolowski

ADJOURNMENT: Being no further business, the meeting adjourned by acclamation at 10:15 p.m.