

Northwest Arkansas Conservation Authority
Meeting Minutes
February 26, 2009

A board meeting of the Northwest Arkansas Conservation Authority (the Authority) was held at 3:00 p.m. on Thursday, February 26, 2009. The meeting was conducted at the First Security Bank Annex located at 100 W. Emma Street, Springdale, Arkansas. Board members attending were Chairman Mick Wagner, Vice Chairman George Spence, Treasurer Bruce McElroy, Secretary Jack McHaney, Larry Fletcher, Frank Holzkamper, Robert Hukill, Fred Jack, Bob McCaslin, John Ratzki, and Chris Weiser.

Also attending were John Sampier, the Authority's executive director, Charles Harwell with Cypert, Crouch, Clark and Harwell, Steve Yonker with Burns and McDonnell, Bob Morgan with Beaver Water District, Mike Laird, Jack East, and Jason Welch with BRB Contractors, Chuck Nickle and Britt Vance with USI Engineering, Belva Plumlee and Mike Bender with the city of Bentonville, Philip Moore with Congressman John Boozman's office, Kris Raper with Senator Mark Pryor's office, Robert Smith with the *Arkansas Democrat Gazette*, John Henley with *The Morning News of Northwest Arkansas*, and Michael Lindsey with Morgan Keegan.

Chairman Mick Wagner asked John Sampier and Steve Yonker to update the board on engineering authorization #5 from Burns and McDonnell. Mr. Yonker stated that authorization #5 would allow Burns and McDonnell to evaluate a variety of advanced filtration options that the Authority might consider implementing. Mr. Sampier stated that the study does not obligate the Authority to add advanced filtration to the plant and that it is meant solely to provide information on the available options. Mr. Spence asked why the Authority should authorize additional engineering until they know for sure what the discharge limits for the regional wastewater treatment plant will be. Mr. Sampier said that by authorizing the study now the Authority would be ready to move forward immediately upon final notification of discharge limits. Mayor Jack asked how much the additional engineering will cost. Mr. Yonker stated that it will cost \$46,700. Mr. Spence made a motion to approve authorization #5 with Burns and McDonnell and authorize the executive director to sign the necessary documents on behalf of the board. Mayor Jack seconded the motion, which was approved with dissent.

The next item on the agenda was consideration of treatment plant bids. Mr. Sampier stated that the bids received in January would expire on March 15. Mr. Yonker said that BRB Contractors is the apparent low bidder with a bid of \$24,110,000 to construct the treatment plant. BRB's bid has been reviewed and judged satisfactory by the engineers. Mr. Sampier reminded the board that the bid award will require final approval from the Arkansas Natural Resources Commission before it can be signed. Charles Harwell informed the board that BRB successfully meets the threshold of the state statute that gives preference to Arkansas companies. Mr. Harwell believes that BRB is indeed a firm resident in Arkansas. Mr. Spence made a motion to adopt Resolution 2009-4 awarding the low bid to BRB Contractors as outlined below:

RESOLUTION NO. 2009-4

WHEREAS, the Northwest Arkansas Conservation Authority seeks to build, operate and maintain a wastewater treatment facility and wastewater collection system; and,

WHEREAS, the Northwest Arkansas Conservation Authority has retained engineers to study the future capacity requirements of the wastewater collection system, the size and location of the wastewater treatment plant as an integral part; and,

WHEREAS, Burns & McDonnell were the engineers retained by the Northwest Arkansas Conservation Authority to design the wastewater treatment plant; and,

WHEREAS, consistent with state law, the Northwest Arkansas Conservation Authority advertised for bids to construct the wastewater treatment plant; and,

WHEREAS, bids were opened on January 15, 2009, and the firm of BRB Contractors, Inc. has submitted the lowest responsive bid of \$24,110,000.00.

WHEREAS, at the time of submitting bids, one of the bidders, Van Horn Construction, Inc., of Russellville, Arkansas, requested the preference for Arkansas contractors pursuant to Arkansas Code Annotated § 19-11-259. Based upon the information submitted by BRB Contractors, Inc., which information was reviewed by Charles L. Harwell, legal counsel for Northwest Arkansas Conservation Authority, and the recommendation of counsel, the Northwest Arkansas Conservation Authority finds that BRB Contractors, Inc. is a firm resident in Arkansas as that term is defined in Arkansas Code Annotated § 19-11-259 and, therefore, eligible under said statute to be awarded the contract to build the wastewater treatment plant; and,

WHEREAS, the bid of BRB Contractors, Inc. is recommended by Burns & McDonnell, the consulting firm who designed the wastewater treatment plant.

NOW, THEREFORE, BE IT RESOLVED BY THE NORTHWEST ARKANSAS CONSERVATION AUTHORITY that the bid of \$24,110,000.00 submitted by BRB Contractors, Inc. for the purpose of constructing the wastewater treatment plant be accepted as the lowest qualified bid; that in doing so, the Northwest Arkansas Conservation Authority makes the specific finding that BRB Contractors, Inc. is a firm resident in Arkansas and, therefore, entitled to the award; and that the Chairman and Secretary are hereby authorized and directed to execute an agreement with the firm of BRB Contractors, Inc. for the construction work as set forth in the agreement. Said agreement shall be incorporated as an attachment to this resolution.

PASSED AND APPROVED THIS 26th DAY OF FEBRUARY, 2009.

Mayor Jack made a motion to amend Resolution 2009-4 to replace the signatories on the bid award and construction contract from the Chairman and Secretary to the executive director. Mr. Spence seconded the motion, which was approved by the board without dissent.

The board opened a discussion of change order #1 for the construction of the treatment plant. Mr. Yonker stated that the bid and contract just approved for the construction of the treatment facility includes installation of a conventional filter process. If the Authority decides to install a different filtration process the contract will need to be changed. Change order #1 would remove the conventional filter system from the construction contract and reduce the total contract amount by \$1.23 million. Mr. Yonker said the board could go ahead and remove the filtration system now or they could wait until the Environmental Protection Agency (EPA) responds to the Authority's latest permit request and then make a decision on the preferred method of filtration at that time and issue any required change order. A representative from BRB Contractors told the board that they would honor their bid for sixty days, but if the board does plan to remove the conventional filters they will need to decide within this time frame. Mr. Yonker stated that if the Authority was required to add a new filtration process to the plant then they would rebid this portion of the project separately.

Mr. Sampier informed the board that the Authority and the Arkansas Department of Environmental Quality have submitted a discharge permit request to the EPA calling for a phosphorus limit of 1 milligram per liter for three years with the understanding that future limits would be based on negotiations with the EPA. The EPA is supposed to respond to this request by March 26. Mr. Fletcher asked when the three year permit limit would expire. Mr. Yonker stated that the permit would expire three years to the day it was officially issued or in 2012.

Mr. Weiser stated that it would set a bad precedent to willingly accept a 0.1 milligram per liter discharge limit for phosphorus. He said that there is no scientific evidence that such a low limit would improve a stream that may not even be considered impaired. The cities of Springdale and Rogers are funding a stream study that will provide a better picture of the stream's health and the EPA should wait until all of the data is available before making any determination on discharge limits.

Mayor McCaslin said that he believes future discharge limits will become increasingly strict. Therefore, he recommended that the Authority position itself to meet future regulations now instead of waiting. He did not want to limit the Authority's options based on the impact that accepting a 0.1 milligram per liter phosphorus discharge limit might have on neighboring facilities.

Mr. Weiser asked how much an advanced filtration system might cost. Mr. Yonker estimated that the additional capital cost would be \$5 or \$6 million. He also added that operating costs would be higher as well. Mr. Spence recommended that the engineers provide an estimate on the cost the Authority might pay if they installed conventional filters now, but have to go back in three years and add advanced filtration.

Mr. Sampier added that the Authority is not accepting a 0.1 milligram per liter discharge limit and that staff and counsel continue to argue that a 1.0 milligram per liter limit is the appropriate level for the regional treatment plant.

Mr. Spence made a motion to table discussion of change order #1 until the next board meeting. Bruce McElroy seconded the motion, which was approved by the board without dissent.

The board set the next meeting date for March 31 at 3:00 p.m. There being no further business, the meeting adjourned at 3:37 p.m.

Approved:

Jack McHaney, Secretary