

Northwest Arkansas Conservation Authority
Meeting Minutes
January 21, 2009

A board meeting of the Northwest Arkansas Conservation Authority (the Authority) was held at 3:00 p.m. on Wednesday, January 21, 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, Larry Fletcher, Travis Greene, Frank Holzkamper, Robert Hukill, Fred Jack, Bob McCaslin, Jack McHaney, and John Ratzki.

Also attending were John Sampier, the Authority's executive director, Charles Harwell with Cypert, Crouch, Clark and Harwell, Steve Yonker with Burns and McDonnell, Chuck Nickle, Britt Vance and Charles Killian with USI Engineering, Belva Plumlee and Mike Roberts with the city of Bentonville, Philip Moore with Congressman John Boozman's office, John Hicks with Senator Blanche Lincoln's office, Tom McAlister with Rogers Water Utilities, and Michael Lindsey with Morgan Keegan. Members of the news media were duly notified according to the Arkansas Freedom of Information Act.

Mr. Wagner opened the floor for consideration of the November meeting minutes. Fred Jack made a motion to approve the minutes as submitted. Bruce McElroy seconded the motion, which was approved by the board without dissent.

Michael Lindsey presented the financial statements through December 31, 2008. The Authority ended the month with total assets of \$46,774,827 and liabilities of \$48,301,896. To date, the Authority's operating fund has earned revenue of \$69,761 and has incurred \$191,005 in expenses. Taking into account, bond interest, depreciation and amortization, and interest earned on bond funds the Authority had a net change in total assets of approximately (\$1,275,573). George Spence made a motion to receive the financial statements as presented. Mayor Jack seconded the motion, which was approved by the board without dissent.

John Sampier provided an update on the most recent State Tribal and Assistance Grant application. Mr. Sampier stated that they are still working out the details of receiving the award and asked that the board consider a resolution authorizing staff to prepare and submit all the necessary documents. Mayor Jack made a motion to approve Resolution 2009-1, which is provided below. Mr. Spence seconded the motion, which was approved by the board without dissent.

RESOLUTION NO. 2009-1

WHEREAS, the Northwest Arkansas Conservation Authority desires to apply for funds through the federal STAG Grant program.

NOW, THEREFORE, BE IT RESOLVED BY THE NORTHWEST ARKANSAS CONSERVATION AUTHORITY that the John Sampier, Executive Director, is hereby authorized to execute and deliver on behalf of the Northwest Arkansas Conservation Authority any and all documents and instruments required regarding the STAG Award, and any and all other documents that may deem necessary to carry out the aims and objectives of this authority per this resolution.

PASSED AND APPROVED THIS 21st DAY OF JANUARY, 2009.

Mr. Sampier provided an update from the executive director. He said that the Arkansas Department of Environmental Quality and the Authority have proposed to set the treatment facility's discharge limit for phosphorus at one milligram per liter. The Environmental Protection Agency (EPA) has objected to this proposed limit. The EPA contends that the Authority should meet a 0.10 milligram per liter discharge level. Mr. Sampier said that he and ADEQ have argued that the Authority should be treated the same as the other municipal wastewater treatment plants that discharge into the Illinois River watershed, which have a one milligram per liter discharge limit for phosphorus. This discharge level resulted from negotiations between the state of Oklahoma and municipalities with a wastewater treatment plant in the Illinois River. The phosphorus limit is scheduled to be reconsidered by all related parties in 2012.

The Authority and ADEQ requested EPA approval for issuing a permit at the current one milligram per liter limit with the understanding that the discharge limit could change in 2012. The EPA denied this request. ADEQ has informed the Authority that they will not receive a discharge permit until the EPA's objections are addressed and some resolution is reached. Mr. Sampier met with a lawyer who specializes in environmental permitting law to discuss the Authority's situation and determine what options are available.

Philip Moore said that Congressman John Boozman planned to contact the EPA to get an update on the situation. John Hicks recommended that Arkansas' congressional delegation prepare a joint letter in support of the Authority. Bob McCaslin recommended that the Authority allow the congressional delegation to try to assist the Authority before retaining the services of a lawyer. Charles Harwell recommended that if the discussions with the congressional delegation, the EPA, ADEQ, and the Authority's staff aren't successful then they hire additional legal counsel to advise the Authority.

Steve Yonker informed the board that to achieve a 0.1 milligram per liter limit the Authority would have to upgrade their treatment process and add additional equipment. The cost of the new equipment could be \$5 million or more. Mr. Yonker said that he didn't understand the EPA's rationale since they recently approved a wastewater treatment plant in Branson where the phosphorus discharge limit was 0.50 milligrams per liter. He said that they have received very competitive bids for construction of the treatment plant as currently designed and worried that they might risk losing these low bids. Therefore, Mr. Yonker stated that the Authority could approve the bids and then issue a change order or rebid the entire contract based on the final discharge limits. Mr. Spence asked how much the construction bids came in under estimates. Mr. Yonker said they were approximately \$2.5 million less than expected. Mayor McCaslin said that the required change order would represent a very large percentage of the overall project and didn't feel comfortable signing a contract and then issuing a significant change order. Mayor Jack agreed with Mayor McCaslin. Mayor McCaslin made a motion to table the bid award resolution for construction of the treatment facility. John Ratzki seconded the motion, which was approved by the board without dissent.

Mick Wagner opened a discussion of the construction bids for the conveyance lines. The board agreed that the conveyance lines are not dependent on the final discharge permit limits. Larry Fletcher made a motion to approve a bid from Rosetta Construction for the Brush Creek conveyance line at a total price of \$4,148,240 with the language amended to remove the

contingency that the bid is conditional upon issuance of a discharge permit. Mr. Spence seconded the motion, which was approved by the board without dissent.

RESOLUTION NO. 2009-2

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 necessary pipe lines, lift stations and other appurtenances of such a system; and,

WHEREAS, USI Consulting Engineers, Inc., were the engineers retained by the Northwest Arkansas Conservation Authority to design a collection system along Brush Creek referred to as Contract II-Brush Creek Wastewater Conveyance System Improvements; and,

WHEREAS, consistent with state law, the Northwest Arkansas Conservation Authority advertised for bids to construct the sewer collection system ; and,

WHEREAS, bids were opened on December 10, 2008 and the firm of Rosetta Construction, LLC, has submitted the lowest responsive bid of \$4,148,240, which bid is recommended by USI Consulting Engineers, Inc., the consulting firm who designed the project.

NOW, THEREFORE, BE IT RESOLVED BY THE NORTHWEST ARKANSAS CONSERVATION AUTHORITY that the bid of \$4,148,240 submitted by Rosetta Construction, LLC for the purpose of constructing the Brush Creek segment of the sewer collection system referred to as Contract II-Brush Creek Wastewater Conveyance System Improvements be accepted as the lowest qualified bid and that the Chairman and Secretary are hereby authorized and directed to execute an agreement with the firm of Rosetta Construction, LLC 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 21st DAY OF JANUARY, 2009.

Larry Fletcher made a motion to approve a bid from Crossland Heavy Construction for the Little Osage conveyance line at a total price of \$9,602,000 with the language amended to remove the contingency that the bid is conditional upon the issuance of a discharge permit. Mr. Spence seconded the motion, which was approved by the board without dissent.

RESOLUTION NO. 2009-3

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 necessary pipe lines, lift stations and other appurtenances of such a system; and,

WHEREAS, USI Consulting Engineers, Inc., were the engineers retained by the Northwest Arkansas Conservation Authority to design a collection system along Little Osage Creek referred to as Contract I-Little Osage Creek Wastewater Conveyance System Improvements; and,

WHEREAS, consistent with state law, the Northwest Arkansas Conservation Authority advertised for bids to construct the sewer collection system ; and,

WHEREAS, bids were opened on December 10, 2008 and the firm of Crossland Heavy Contractors, Inc., has submitted the lowest responsive bid of \$9,602,350.00, which bid is recommended by USI Consulting Engineers, Inc., the consulting firm who designed the project.

NOW, THEREFORE, BE IT RESOLVED BY THE NORTHWEST ARKANSAS CONSERVATION AUTHORITY that the bid of \$9,602,350.00 submitted by Crossland Heavy Contractors, Inc. for the purpose of constructing the Little Osage Creek segment of the sewer collection system referred to as Contract I-Little Osage Wastewater Conveyance System Improvements be accepted as the lowest qualified bid and that the Chairman and Secretary are hereby authorized and directed to execute an agreement with the firm of Crossland Heavy

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 21st DAY OF JANUARY, 2009.

Mr. Spence made a motion to authorize the executive director to retain the services of outside legal counsel for consultation regarding discharge permit limits while also continuing to work with the state's congressional delegation. Jack McHaney seconded the motion, which was approved by the board without dissent.

Chuck Nickle provided an update from engineering and informed the board that there are ten easements that will have to be condemned. Mr. Harwell said that the Authority will receive an order of possession for the easements once the condemnation suit is filed and that the funds for these properties will be placed in escrow pending final settlement.

There being no further business, the meeting adjourned at 3:58 p.m.

Approved:

Jack McHaney, Secretary