

Little Missouri Scenic River Commission Meeting Minutes

June 5, 2018

Ramada Grand Dakota Hotel, Dickinson ND

Chair Schettler called the meeting called to order at 6:03 pm MT

Those in attendance

Chair Joe Schettler, Vice Chair Gene Allen, Dudley Stuber, Pam Hestekin, Garland Erbele, Dave Glatt, Secretary Melissa Baker, John Hanson, David Lee Crighton.

Chair Schettler called for an approval of the agenda and entertained a motion to accept the agenda.

Motion to approve the agenda made by Pam Hestekin. Second by Gene Allen. Motion carried.

Chair Schettler called for an approval of the Oct 11, 2017 minutes.

Motion to approve the minutes made by Garland Erbele. Second Dudley Stuber. Motion carried.

Secretary Baker reviewed a questionnaire in the commission folders for members to complete. This information will be used to construct a short bio to be used on the LMSRC website. They will be picked up at the conclusion of the meeting.

Reports

Secretary Baker highlighted the beginnings of the LMSRC website. NDPRD will host the LMSRC website. Meeting notices will be noticed on the Secretary of State's website and the NDPRD website. The intention is to scan and post previous meeting minutes to establish a historical record for the LMSRC on the Website.

Jan Swenson asked the Secretary of State's office to take down the subscription for LMSRC information, as there was no advance notice of this meeting sent out through the subscription notice. Secretary Baker stated we would address it with the Secretary of State's website and the process of posting the notice by NDPRD. It may have not been posted in the correct location on the Secretary of State's website. The sign in sheet that is current at this meeting will be used to create an email list for future meeting notices.

Chair Schettler asked Secretary Baker to address the Commission Process Recommendation. This recommendation gives very short operating procedures for the Commission. One of the main things this will address is the concern from the last meeting about the amount of time between meetings. Mr. Erbele, Mr. Hanson and Secretary Baker provided input on the process recommendation presented.

Secretary Baker highlighted the section on the officers and their duties. Mr. Stuber asked about the continuation of the chair and vice chair for the 3-year term. He interpreted the term limits to be officers would serve for 3 years from the beginning. Secretary Baker explained the reason

behind the staggered terms of the officers and how those terms might interact with each individual's county commission seat. In addition, she explained the 1, 2, and 3 year terms would be for the initial rotation, and that once the member terms out and a new officer is elected, that individual would serve for a 3 year term. Secretary Baker invited any information on the representation on the commission by the county commissioners to see if any clarification within the operating procedures needs to be considered.

Secretary Baker continued to explain the meeting and minute's process section. Mr. Hanson expressed concern about the amount of time between meetings in order to approve the minutes. Mr. Hanson would like to recommend something different such as having minutes by the close of the meeting. He recommends publishing the minutes right away to reduce inaccuracies in how meeting proceedings are presented publically. Secretary Baker feels there may be room to do something different. She explained the capture of accurate minutes in real time is not possible, and staff generally spend several hours reviewing recordings post meeting to prepare accurate minutes. She feels it would not be feasible to have accurate minutes at the close of meeting. Chair Schettler and Secretary Baker discussed the idea of approval of minutes via email; however, there is the question on whether or not this would violate the open record laws. Another idea discussed was a teleconference within a week to 10 days to approve the minutes.

Mr. Glatt asked if it was possible to post a draft of the minutes on the website. Secretary Baker feels this would be at the discretion of the commission. Mr. Hanson feels we must sacrifice some convenience for accuracy. Mr. Allen agreed with the suggestion of posting a draft of the minutes with a note subject to approval at the next meeting. The minutes could be revised at a future meeting. Secretary Baker cautioned that the speed with which opinions are written based on what happened at the meeting would always be faster than the meeting minutes themselves can be completed.

Mr. Stuber asked why we could not follow what other commissions and school boards do where within 30 days they would meet to approve the minutes. Mrs. Hestekin indicated we need to double check the open meeting laws to make sure what we can do legally. Secretary Baker asked if the solution for this meeting would be to post a draft of these minutes within 30 days with a note indicating they have not been approved, and we find out from the Secretary of State's office on how we can approve minutes at a conference call later. Mrs. Hestekin indicated she feels this should address the open meeting laws, but must make sure the document states this is a draft of the unapproved minutes.

Secretary Baker went on to recap the conflict of interest section. Mr. Stuber asked if we have to disclose we have property adjacent to the river. Chair Schettler was wondering if this statement would be needed because all members were appointed to the commission because they do have an interest and that the commission is an advisory commission that does not make any rules.

Mr. Erbele indicated depending on the issue coming before the commission, that any one of the members could have a conflict of interest. Because we are an advisory committee and to

temper that concern somewhat in that by disclosing that interest would be sufficient to allow the commission to proceed with the issue. Whether or not that member should refrain from voting on that issue would depend on how comfortable other members of the commission feel in letting that individual vote on the issue.

Mr. Stuber felt the commission members should be speaking on behalf of the county they represent, not as an individual, and where would he draw the line as a landowner. He is concerned about if this is a conflict of interest and opens up personal litigation he would rather not sit on the commission. He is worried about the liability he would be taking on. Secretary Baker sought the advice of legal counsel on this section. Many of these policies go to the point of recusing yourself from voting on issues and did not include language to that effect because this committee is only to advise and not make decisions on what to do. Secretary Baker felt her conversation with legal counsel was that this was not necessary. Legal counsel also felt it was not needed. Secretary Baker included it at the request upon one individual. It is up to the commission as to whether this would stay in the procedures.

Mr. Erbele indicated the commission could possibly propose policy or direction on items, which will give conflict of interest from individuals. We will have to deal with it at some point. Mr. Hanson felt he had no problem disclosing conflict of interest. Mr. Stuber is more concerned with errors and omissions and felt it might be easy for him to not recognize what conflict he might have on an issue.

Mr. Hanson agrees with the conversation but he understands the statutory purpose of the commission was to deal with the river in its entirety. If that is the case then the statutory part of this does not help us. If the commission only acts on certain matters, everyone should be held within the statutory part of this commission. Disclosure would cover the conflicts and members need to act with integrity.

Mr. Allen offered additional explanation for the disclosure indicating that if he had a client where the issue affected this client, he would have to disclose it and step back, declining to vote on the issue. If it is something that would affect the county, he may want to step back from that vote as well. Mr. Hanson asked what would happen with a school board member where the school may want to build and the member owns a construction company, would the school board member need to disclose that and would they have to recuse themselves? Mrs. Hestekin indicated yes, in all honesty they should. The individual would then not have the ability to review the bids etc. that may be different from what we are discussing.

Chair Schettler called for motion to approve section #1 of the operating procedures as presented.

A motion to approve section 1 - the officers and duties section of the operating procedures was made by Garland Erbele. Second by Pam Hestekin. Question by Mr. Glatt to add a clarification of the rotation of the officers to start with or if we were going to assume it would work itself out in the next few meetings. Secretary Baker indicated it is at the pleasure of the commission and we would need a motion to amend if we wanted to add the language in. Mr. Allen indicated we could deal with that in a separate motion and perhaps seek the opinion from

the Attorney General's office on the terms and the way the commission statute is interpreted. There was no further discussion. There were no comments from the public. ***Motion carried by unanimous vote as written.***

Chair Schettler called for motion to approve section 2 of the operating procedures as presented.

A motion to approve section 2, items 1-6 - the meetings section of the operating procedures was made by John Hanson. Second by Gene Allen. There was no further discussion and no public comments made. ***Motion carried by unanimous vote to approve section 2, items 1-6 as written***

Secretary Baker recommended Section 2 items 7 and 8 be moved to the next meeting. Draft minutes from this meeting would be posted within 30 days. We would seek clarification on approving minutes between meetings and finalize items 7 and 8 at the next meeting.

Chair Schettler called for motion to table 2.7 and 2.8 of the operating procedures and take them up at the next meeting.

A motion to table section 2 items 7 and 8 of the operating procedures and take them up at the next meeting was made by Secretary Baker. Second by Garland Erbele.

Chair Schettler called for public comment.

Jan Swenson likes a list of motions be approved at end of the meeting and they be posted under item 7. It keeps it clean with the commission telling what was done and it is not second hand.

Chair Schettler called for Discussion.

Mr. Hanson appreciates the process in daily work is needed as long as accuracy is not compromised. We have tried to find guidance from prior meetings, which would have been useful but have not found any minutes. He expressed he does not want to make the same mistake twice.

Secretary Baker indicated a list of motions and their votes from the meeting could be presented at the end of the meeting, but it would slow the meeting down. Functionally the recording secretary would need to read back the motions each time to make sure the wording is correct. A break would be needed at the end of the meeting to allow the recording secretary to pull those motions out of the minutes, format them and bring them up for everyone to be able to see in order to approve that list. It is possible but will change the dynamics of the meeting and slow things down. There was no further discussion.

There was clarification that we will be following through with items 2.7 and 2.8 in a draft form until the next meeting until we can get input that is more formal on the legality. Secretary Baker stated that draft meeting minutes will be posted within 30 days of the meeting.

Chair Schettler called for a vote in favor of tabling 2.7 and 2.8 and moving with draft of minutes to be posted within 30 days of the meeting. ***Motion carried by unanimous vote to table 2.7 and 2.8 with a draft of the minutes to be posted within 30 days of the meeting.***

Mr. Allen commented for clarification that in the interest of time and mostly for guidance as we redraft 2.7 and 2.8, that we have a list with the understanding it will not be verbatim of the motion that will appear in the final minutes, but the intent would be there and they would be final in the approved minutes. It would be more of a summary of what we have done – highlights. Secretary Baker indicated for the more substantial motions we would need to have them verbatim. Mr. Allen commented we could have a list highlights that may not be written in stone but would provide the general highlights of what the commission accomplished at the meeting, and the final version would be in the approved minutes.

Mr. Glatt asked if we could incorporate into the minutes whether the vote was unanimous and not necessarily have two different versions. Secretary Baker indicated if we could find a function that would allow us to post the minutes of the meeting earlier then the motions would be part of the minutes and we would not need to pull them out. The purpose of 2.7 was in response to a request to provide information so it is not misconstrued. In lieu of having the minutes available at the end of the meeting, 2.7 is something that feasible if not efficient. Mr. Glatt further clarified that in 2.7 if a motion were a unanimous vote you would state unanimous and if not you would need a roll call, such as pass or fail 5 to 2 for example. Secretary Baker indicated better wording would be motions and outcomes, incorporate the voice vote and if we needed to do a roll call for it then that would be part of an outcome.

Chair Schettler called for motion to approve section 3 – the conflicts of interest of the operating procedures as presented.

Chair Schettler called for public comment.

Scott Klemen commented that the reason the county put Mr. Schettler on the committee is because he has an interest in the river and should not have to abstain from any decisions. He knows firsthand the issues, has no issue with the disclosure, and should be allowed to vote. The County Commission put him on this committee and the committee should not tell him he could not vote.

Mr. Stuber indicated it does not mean you cannot vote but should disclose why.

Mr. Allen indicated if there is a decision specific to the one individual versus anyone else, then that is something else and the Committee should not be micromanaging a specific permit.

Secretary Baker indicated individuals were put in this commission because they do have direct interest. The disclosure is in transparency and still allows the commission to do the work that it was set out to do.

Mr. Klemen does not have an issue with the disclosure but in the earlier discussion, it was brought up that they would refrain from voting on issues that conflicted with just one industry

that Joe might know more about than anyone else, he does not feel he should refrain from voting. As long as it does not lead to a recusal from voting.

Mr. Hanson spoke to the integrity of any member or board needs to be looked at in long-term not short term with whoever's interest it is. Members need to act with integrity for the good of the commission.

Chair Schettler called for a motion to approve section 3 – conflicts of interest of the operating procedures.

A motion to approve section 3 of the operating procedures was made by Gene Allen. Second by Dudley Stuber. There was no further discussion. Motion carried by unanimous vote to approve section 3.

Future meeting date for the Commission annual meeting was discussed.

Chair Schettler asked for suggestions on timing for the next meeting. Mr. Hanson indicated late fall, early winter may be best. June – August are not good. October and early November are bad. Late November/early December may be good but weather may be a factor. Spring is also a bad time. Mr. Hanson would like to see a meeting held on the river – late fall early winter meeting may not be conducive to that. This could be a possibility for a special meeting.

Mr. Erbele indicated with legislative session many commission members may not available. Mr. Hanson indicated late fall early winter would allow the opportunity for legislative input.

A motion was made by John Hanson to hold the annual meeting the first Tuesday of September.

Secretary Baker indicated she is unavailable the first week after Labor Day.

Motion withdrawn by Mr. Hanson due to the conflict of the commission secretary during that time each year.

A motion was made by John Hanson to hold the annual meeting the second Tuesday of September. Second by Pam Hestekin. There was no further discussion and no public comment. Motion carried by unanimous vote.

Bryce Klausen from the North Dakota State Water Commission provided an update on water permits and the Little Missouri Initiative project to be implemented this summer. On the temporary water permits currently being issued, conditions are being attached that are specified from the June 22, 2017 revised interim policy. They are interim, as the State Water Commission has requested input of the Little Missouri Scenic River Commission. Currently there are four temporary water permits upstream of the Long X Bridge and 12 temporary permits downstream. Per statute – state law to maintain the free flowing nature of the Little Missouri River, accomplished in part by the state engineers following standard operating procedures, which are followed by all temporary water permit applications received in the Little Missouri Basin. The temporary water permits for industrial use that are between Medora and the Long X Bridge are limited to 200-acre feet and a maximum withdrawal rate of 2.23 cubic feet per

second. There is a 20 cubic feet per second minimum flow condition attached to the permits based upon the USGS gage in Medora. If flows are below 20 cfs, withdrawals must cease. The have implemented a tiered rate withdrawal system based on the gage at the Long X Bridge for permits that are downstream of the Long X Bridge. A breakdown of the tiered withdrawal rate system was presented. For this system to continue to function we have a finite number of 10 active depots that will be allowed. If more active depots are needed in the future, the tiered withdrawal system would be revised. They have modified the maximum volume of authorized temporary water permits so during the low flow portions of the year we have maximized volume of 200-acre feet and during the higher flow portion of the year, the maximum volume is 600-acre feet. This allows for better management of the system.

The Little Missouri River Initiative was introduced to better understand the hydrological process between Medora and the Long X Bridge. The State Water Commission, USGS and National Park Service will work together to monitor, gauge and take samples in seven locations. They will be continually monitored in real time through cellular service and other options that are being investigated. Four field measurements are scheduled throughout the summer and fall.

Secretary Baker asked if cell service were not available would the gauges still capture the information, and can that information downloaded? Mr. Klausen indicated this was correct.

In answer to another question on what information will be gathered by the initiative posed by Mr. Glatt, Mr. Klausen indicated the real time readings will include the stage height of the river and samples collected will be onsite.

Mr. Hanson asked for a timeline of the Initiative. Mr. Klausen indicated at this point it would be for this summer and that depending on the results as we go forward, we may decide to focus in on sections.

Terry Fleck asked who was underwriting the expense of the Initiative. Mr. Klausen indicated the State Water Commission, the National Park Service and the USGS office are contributing resources to this project.

Nick Blotksy asked when and where the information would be available for the public. Mr. Kalusen indicated this has been discussed; however, there is no good timeline right now.

John Patch, State Water Commission, expounded on the information that will be gathered from the water quality sampling posed by Mr. Glatt. The information will be general chemical and they will run a metal trace to identify ground water influences, etc. A full suite of analytics will be done.

Jan Swenson asked if there were any other reaches of the river that will be involved. Mr. Klausen indicated they had talked about the entire river but at this time, only the reaches currently identified will be studied with the resources currently available.

Mr. Erbele indicated the study initiated from a meeting with the National Park Service from last fall to better understand the hydraulic and dynamics of the river and focus specifically on that area that captured both of the National Park units.

Matt Linneman with the NDDOT indicated the NDDOT spent the last part of the year on a draft environmental impact document, which is out now for public comment. Public meetings were held last week on the project. Mr. Linneman's presentation centers on an overview of the Highway 85 project from I-94 to the Watford City bypass from a two lane to a 4 lane and specifically information on the Long X Bridge. He is providing information specifically on the Long X Bridge and the Little Missouri River. The NDDOT/Federal Highway is the lead agency with three cooperating agencies – the National Park Service, US Forest Service, and the US Army Corps of Engineers. There are three options for Long X Bridge. They are focusing on LX3 option, which is identified as the preferred alternative in the environmental impact study. The LX3 proposal identifies building a new four-lane structure east of the Long X Bridge and the removal of the current Long X Bridge. The new bridge would be a five span versus the old, which is a three span. New bridge will include five piers – two on south bank, two in river, and one on north bank. To build the new structure they would use cofferdams or earthen ring dikes, and a causeway or bypass to allow river flow would be maintained by the installation of temporary culverts or leaving part of the channel open. The new bridge is a little bit shorter than the existing bridge. The new bridge width is about 85 feet to allow two lanes of traffic going each way.

Mr. Erbele asked if the increased number of piers would cause difficulty with ice jams. Mr. Linneman indicated they did not expect that and even with more piers in the water, there appears to be no effect to the flow of the river.

Temporary easements and construction stage areas were indicated. Impacts associated with the building including measuring temporary impacts with construction equipment along the length of the river approximately 185 feet. Permanent impacts include the footprint of the piers and everything else to be removed. There will be some re-alignment of the roadway to the new bridge. Total proposed project of bridge replacement is about 1.75 miles long. Some of the commitments identified included the surface of the deck of the bridge. There will be some surface grinding to reduce the noise and limit the construction and powder activities to certain hours, lighting during night time hours, fencing etc. A detailed demolition plan will be needed from the contractor as well. The stage and screen gauges identified earlier in the meeting will continue to be in place on the new structure. Rock and rip rap will be buried below the grade line. Fish spawning restrictions will also be followed. Addressing hazardous materials has also been identified as a commitment. The current Long X Bridge is a historical bridge and is up for adoption. It is eligible for listing on the National Register of Historical Places. Mr. Linneman explained how the NDDOT reached the decision to remove the existing bridge even though there is an adverse effect to doing so. The cost of the Long X Bridge replacement is \$36 million. The total project (62 miles) cost is \$480 million. The project also includes wildlife crossing areas and extended truck climbing lanes. Mr. Linneman is hopeful to start construction on project in the spring of 2019. Comments can be directed to Mr. Linneman at the DOT by June 25, 2018.

Mr. Hanson complimented Mr. Linneman on his presentation. Mr. Hanson indicated he has noticed the landowner on the south side of the bridge has indicated there are repeated

intrusions by the public on his land. Mr. Linneman indicated the NDDOT is addressing this with all landowners involved near the project.

Ken Leitz who is the landowner on the southeast side of the bridge also expressed his concerns on losing the view from his property and having to deal with increased noise. Mr. Linneman responded he would continue to work with him to help with line of sight, access issues, sound and vibration. They have identified some alternatives to work with to address these issues. Mr. Leitz thinks the view on the new bridge is misleading if his measurements are correct. Mr. Linneman indicates the high ground will be cut down and there may be some screening ideas that can be utilized for the view.

Mr. Hanson asked why the east side was decided upon rather than the west side. Mr. Linneman indicated the stability of the ground was one of the biggest issues. There was more movement on the west side than the east side. The material, which would need to be removed on the west side, provides stability to the movement of the land on that side. Engineering was the main reason for selecting the east side rather than the west side.

Chair Schettler asked Mr. Linneman if there was anything he wanted the commission to do for him. Mr. Linneman would invite any formal comment.

Chair Schettler asked the commissioners if they wanted to provide any comments regarding the bridge. Secretary Baker indicated the direction would be for the commission to provide a motion to provide a comment if so desired. No motion was made.

Chair Schettler asked for any other business.

Mr. Erbele asked for clarification on the annual meeting to be held the second Tuesday of September in 2018 or 2019? Chair Schettler indicated he felt it might be better to have it the second Tuesday of September 2018 to address the tabled operating procedure item. Agenda items would need to be submitted by August 11, 2018 to Secretary Baker.

Mr. Hanson asked if the commission members could bring items to the meeting. Secretary Baker indicated the chair decides on the topics submitted through the secretary. Other items could be considered for addition to the agenda under other business.

Mr. Erbele reminded the commission of the idea to hold the annual meeting be held on the river and asked if this should be considered. Mr. Hanson would be in favor of this idea but also indicated some logistical concerns needed to be addressed such as the time of day, refreshments, etc. The meeting could be held in Killdeer with a field trip to the river. Mr. Stuber was wondering on getting tables, chairs, level ground, etc. Mr. Hanson indicated the committee could overcome some of those with the meeting in nearby communities with field trip to the river. Mr. Stuber feels we are a commission on dealing with the river and questioned whom a meeting on the river would benefit. Mr. Hanson felt individuals could learn more. Mr. Stuber indicates he is all for learning just looking at the logistics. Mr. Allen felt the Chair should decide the location of the meeting.

A motion was made to schedule the annual meeting on September 11, 2018 at the discretion of the chair to choose the location with input from others was made by Gene Allen. Second by John Hanson. There was no further discussion. Motion carried by unanimous vote.

Chair Schettler asked for any additional business.

Chair Schettler asked for any additional comments from the public.

Jan Swenson felt the meeting should be held on the river and organizations are available to help with logistics. She continued to express the powers and duties of the commission state that the commission may advise local or other units of the government to afford the protection to maintain adequate scenic historic and recreational qualities of the Little Missouri River and its tributary streams. She feels this should be expanded beyond 1.7 miles on a proposed expansion for Highway 85. Even though the commission did not provide any comment, she feels the commission should think beyond the river – what the river is and what the river provides, what we need to be grateful for and what we need to sustain and protect. Therefore she feels the meetings should be held on the river. She feels it is important and the commission is important.

Ken Leitz offered the use of his barn near the Long X Bridge for the next meeting.

Chair Schettler called for a motion to adjourn.

Secretary Baker asked commission members to complete the bio questionnaire in their packets.

Secretary Baker made a motion to adjourn the meeting. Second by Dave Glatt. Motion carried by unanimous vote.

Meeting adjourned at 9:25 pm MT