

The following minutes have not been approved. They are in draft only. Following the next meeting of the Little Missouri Scenic River Commission, approved minutes will be published.

Little Missouri Scenic River Commission Meeting

August 6, 2018

Ramada Grand Dakota Lodge

DRAFT MINUTES

Chair Schettler called the meeting to order at 2:05 pm.

Those in attendance

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

Chair Schettler asked H. Patrick Weir, Billings County Representative to introduce himself.

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

Motion to approve the agenda made by Gene Allen. Second by John Hanson. Motion carried by unanimous vote.

Chair Schettler called for an approval of the June 6, 2018 minutes.

The following comments/clarifications were identified by Dave Glatt.

At the bottom of page 7, starts with the paragraph "In answer to another question." The last sentence, which states the state's inspection of the river samples will be doing on site helps in specific for sending in water quality samples; was changed to "Water samples will be collected on site."

The following comments/clarifications were identified by John Hanson:

On page 2, third paragraph. "Mr. Hanson would like to recommend and he explained that the last meeting minutes may have had inaccuracies", was changed to "Mr. Hanson recommends publishing the minutes right away to reduce the inaccuracies that are recorded in the proceedings and presented to the public."

Motion to approve the minutes from the June 6, 2018 meeting with the corrections outlined above was made by John Hanson. Second by Pam Hestekin. Motion carried by unanimous vote.

Chair Schettler entertained a motion to remove the tabled petition 2.7 and 2.8 of the Commission Process Recommendations.

Motion made by Melissa Baker. Second by Pam Hestekin.

Melissa Baker recapped the information discussed at the June 6 meeting and provided the following changes for 2.7 and 2.8

- 2.7 - "The meeting minutes will be posted in a draft form on the Little Missouri Scenic River web page, as soon as they are available and no later than 3 weeks after the meeting,"
- 2.8 - "Meeting minutes will be presented for approval at the next committee meeting. And then they will be posted on the little Missouri scenic river commission page with the website within 7 days.

Melissa also introduced Lori Voight who was brought in to transcribe the meeting in order to help get the meeting minutes done more quickly, and keep the dynamics of the parks and recreation office from interfering with the timeliness of getting the minutes posted.

Chair Schettler called for any discussion and recognized Patrick Weir.

Patrick informed the committee of his conflicts of interest, since it was his first meeting as the representative of Billings County, and the Commission Process document indicates members must disclose any situation where an actual or potential conflict of interest may exist. He indicated he intends to vote in the interest of Billings County.

Chair Schettler stated there was a lot of discussion about conflicts of interest during the approval process. He clarified that all members have interest.

There was no further discussion.

Motion made by John Hanson to adopt the amendments to 2.7 and 2.8. Second by David Crighton. Motion carried by unanimous vote.

Jon Patch, director of the water appropriations of the North Dakota Water Commission, provided the following report. A process of intensive monitoring of the river between Medora and the Long-X Bridge, called the intense monitoring initiative, has begun at five locations between Medora and the Long-X Bridge, seven including the two end points, staging or gaging of the river will be done to calculate the flow of the river. The first reading was on June 18th. The second is today. Two more timeframes will be identified. Water samples are being collected to provide information to establish a good history and data set in order to make good sound scientific-based decisions on any of the temporary water permits being granted.

Instrumentation is also being set out to continuously collect information on the height of the

river using a unit called the SWC Presens. The information is transmitted back to the database in Bismarck. It collects all types of sensor data out there.

Conditional permits for industrial use from the river are not being issued. But in the stretch from Medora to the Long-X Bridge, temporary permits at four to six, depot locations have been issued. Flow conditions are in effect at which time if there is any pumping it has to be curtailed or suspended. That is at 20 cfs at the Medora gage.

Downstream of the Long-X Bridge, permits have been issued in 10 locations. And there are conditions on these where if you have more than one depot location, you can't run them simultaneously per depot owner, permit holder. And the conditions are that you must have a 30 cfs minimum flow going by the gage at the Long-X Bridge for these to be operational or they could be shut down. Flow conditions have greatly exceeded these standards this summer.

Jon provided information and history on the revised interim policy water appropriations has been operating with. It was presented to the State Water Commission in June of 2017. The State Water Commission is requesting the Little Missouri Scenic River Commission to weigh in on the policy before being finalized.

Melissa Baker asked if there is correlating flow data with the water permit and how they are being used. Jon indicated the area that is being intensively monitored as identified before does not have any water permit use. So there is nothing that we can extrapolate from that area. There is no monitoring downstream of the Long-X Bridge between there and the confluence of the Little Missouri River and Lake Sakakawea.

Melissa Baker asked if there are any plans to monitor in that area in the future. Jon replied it is something that as we grow into and we perfect the equipment we can look at obviously placing these in as many places as we would like to along the river.

Chair Schettler asked for input from the Commission members on the proposed recommendation. His views are that sheltering pumps and motors from view depend on the water level and if they may or may not be seen from the river.

Melissa Baker stated it is a scenic river, and this is a state water permit, and the Commission has been charged with looking at the scenic values of the river, and she thinks that the State Water Commission is appropriately considering that in the recommendation level that they are in.

Gene Allen stated the rights of the landowners as a landowner are one thing, and the rights of the permit holder, whether or not a permit holder is a landowner, are another thing. He does not think this policy infringes on the normal landowner. He feels the engineers have done a good job of walking the line between allowing water permits and preserving the scenic quality/conditions of the river. So I would propose that we adopt the proposed recommendation. I will put that forward as a motion.

Chair Schettler clarified the motion made by Gene Allen is to approve the proposed water policy.

Melissa Baker encouraged the use of the word support as the Commission is not the decision maker here. We are providing guidance, so we may support.

Chair Schettler indicated it hasn't been seconded, so it can be change it if you would like to.

Patrick Weir commented the state engineer has made a significant attempt to conform to the scenic Little Missouri River, but wondering if it wouldn't be more appropriate instead of the five paragraphs to just say reasonable precautions will be taken to minimize the audible and the visual impact.

Gene Allen indicated he would accept the amendment if it is specified. Chair Schettler indicated a second would be needed before it could be amended. Patrick Weir stated if Gene is willing to change it to those five conditions, we can use one paragraph that says reasonable precautions shall be taken by the permit holder to minimize the visual and audible disruption.

Melissa Baker indicated that amendment does not speak to the distance to make sure that any fluids or oils will be contained before they have a chance to enter the stream. Item number four in the proposed policy is put in there specifically for that reason.

Patrick Weir felt there would be civil penalties if not criminal for a permit holder to permit the intake pumps to be leaking pollutants and oil and that type of thing into the river.

Dave Glatt added the State Water Commission deals with the environmental impact. Yes, there are regulations, and it can be cumulative when it is after the fact. There are some common sense things that can be done to minimize that potential without putting any permit holder in a precarious position.

Patrick Weir suggested to revise Gene's motion again that reasonable conditions will be taken to minimize the visual and audible disruptions in the scenic Little Missouri River Valley, and that the pumps and motors have to be set back a reasonable distance from the shoreline to avoid the risk of pollutants. Dave Glatt suggested using reasonable containment rather than reasonable distance. Patrick Weir responded reasonable containment makes sense.

John Hanson indicated he was generally satisfied with the discussion including Pat's contributions, and asked if there was a corrected motion on the table?

Gene Allen mentioned that unless and until we have the State Water Commission do something different, this is the policy that is in place. So if you think that it should be modified, this is the place to do it. Chair Schettler also wants it understood that we can only recommend modifying. It is ultimately up to the State Water Commission to decide.

Chair Schettler stated the amended motion has been to remove everything but precautions shall be taken to minimize the visual and audible disruption to the scenic river valley. Patrick Weir felt based on the discussion with Joe and John, to leave in the wording on pumps and motors shall be set back to ensure there is no contamination of the Little Missouri River. So the motion would include number one as presented: ***That reasonable precautions shall be taken to minimize the visual and audible disruptions of the Little Missouri River Valley*** and number four ***pumps and motors shall be set back to avoid pollution.***

John Hanson indicated that is the motion he will second.

Chair Schettler called for any more discussion and recognized Melissa Baker.

Melissa commented that while she is not in support of weakening the language here on the visual and the audible disruptions on the river. She thinks that the State Water Commission tried to find a good balance. She can support what is here.

Chair Schettler called for any more discussion and recognized Garland Erbele.

Garland stated before the vote he will abstain since he has an inherent interest in this. Chair Schettler asked if anyone in the audience have any comments before the vote. He recognized Jan Swenson, executive director of the Badlands Conservation Alliance.

Jan pointed out that this policy has a list of six guidelines. She feels that if there is a concern about industrial water withdrawal that we should certainly be monitoring that section where water is actually being withdrawn at this time. And without that in place she does not feel this commission should go ahead and do anything on this interim policy until those requirements are fulfilled.

John Hanson agreed and asked Garland or Jon why a 7th gage was not placed downstream of the Long-X Bridge and downstream of where there are active temporary permits? And would it be possible to put that gage in? Garland stated there are a couple of items to consider. Number one, the USGS operates gages in Medora and on the Long-X Bridge. As Jon indicated, this monitoring system is just now being developed. The goal is that we will expand that. The second consideration is that the policy recommendation says that any permit is subject to cancellation or curtailment if it is deemed to significantly impact the free flowing state of the river. So that leaves the discretion to the State Water Commission should there be an impact in the section below the Long-X Bridge, to go in there and cancel it or curtail the pumping from the river.

John Hanson asked Jan if this explanation alleviates some of your concern that in the future there would be a gage put further downstream. Jan Swenson replied ultimately, no. It does not because there is nothing stopping the State Water Commission from doing what it is doing right now under this interim policy. She does feel it is essential that monitoring be expanded to the

area where there is actual water withdrawal happening. She feels the Commission is in the position, by how they express themselves, to influence that happening.

Melissa Baker stated there is nothing precluding the State Water Commission from operating under this policy, while we progress through perhaps maybe another year of this while the monitoring is put into place and we can understand this issue better.

David Crighton asked if the river ever dried up from the pumps. Chair Schettler answered not from pumping water. It has never been dry around the pumps.

Chair Schettler called for any other discussion? If not, we will vote on the motion.

The motion is the Little Missouri Scenic River Commission supports the State Water Commission's proposed policy to include that reasonable precaution shall be taken to minimize the visual and audio disruptions to the scenic Little Missouri River Valley. Pumps and motors shall be set back from the shoreline a sufficient distance to ensure any fluids or oils that may leak will be contained before they have a chance to enter the stream. Portable containment for pump and motor fluid leakage may be required upon order of the state engineer. We will conduct a roll call vote. Please indicate yay or nay when I call your name.

John Hanson? Yes

Dave Glatt? Yes.

Pam Hestekin? Yes

Patrick Weir? Yes.

David Crighton? Yes.

Melissa Baker? No.

Gene Allen? Yes.

Chair Schettler indicated it is six to one without the Chair. Motion Carries.

A motion was made by Melissa Baker that the State Water Commission put in a monitor downstream and report back to the commission at the annual meeting in the fall of next year. Second by Dave Glatt.

Patrick Weir felt the motion was appropriate but asked Garland if that was part of the State Water Commission's plan anyway, to put additional monitors from the Long-X Bridge down to the confluence. Garland Erbele indicated their goal would be to see that done, and if a recommendation is received, we can get it accomplished.

Chair Schettler commented the motion is fine but maybe the wording is that we will encourage the State Water Commission, and to have information in a year for us. He indicated immediately downstream of the Long-X Bridget there is access, but after that access is pretty tough. He offered to allow access to the river through his property.

Garland Erbele responded their original goal was to understand the hydrology between Medora and the Long-X Bridge where there are some tributaries to try and understand it. Once it is

worked out it, it would be a simple thing to expand and put in the monitoring devices.

Gene Allen commended the staff for doing what they were doing in monitoring the quality of the river and identify pollution early.

Motion was amended by Melissa Baker to state This commission supports the ongoing effort to put additional monitoring gages downstream of the Long-X Bridge. Second by Patrick Weir.

Chair Schettler called for any other discussion or public comment.

Dave Glatt withdrew his second on the original motion.

Chair Schettler called for a voice vote to support the State Water Commission's effort to put in additional water monitoring stations where possible downstream of the Long-X Bridge. Motion carried by unanimous vote.

5 minute Break

Chair Schettler reconvened the meeting. He called on Jen Turnbow from KLJ to report on the Little Missouri River Crossing in Billings County.

Jen introduced Troy who will be helping with the presentation. She began by stating an environmental impact statement is being conducted on the project to connect the east and west river roadway network in Billings County. The pre-approval is a 35 mile per hour gravel road and a bridge crossing. The lead agencies are the Federal Highway Department, Billings County, and the North Dakota Department of Transportation. Two cooperating agencies are the U.S. Forest Service, and the U.S. Army Corps of Engineers. The project is also driven by different users such as recreationists, the oil and gas industry and emergency services.

The project has history as far back as 2006 when the first notice of intent was published in the federal register. There have been several revisions in the federal register, and we did present to the Little Missouri Scenic River Commission in 2007 or 2008. Then there was a long kind of time span where the commission did not meet until recently. At that time the Commission said that once things get a little narrowed down, please come back and visit us and that is why we are here today. In addition the commission said that any of those basic river crossing alternatives were refined. We looked at different variations throughout the project life since it has been going on for 12 years. A draft environmental impact statement is currently out for public viewing. We are accepting comments until August 20, 2018.

There have been two public hearings one on July 23 and one on July 26. Throughout this process we have identified the following alternatives: alternative A, alternative K option 1, alternative K option two, and alternative K option 3. There is also the no-build option which is alternative L. All of the alternatives are carried forward in the EIS as well as any impacts associated with them. The preferred alternative is alternative K option one. As we go into the

final environmental impact statement and recommendation, an alternate will be selected.

Troy provided a brief overview on the preferred Alternative K option 1. It starts on the west side and traverses about 8.3 miles until it intersects with the east river road. It will be designed and posted at 35 miles per hour. It will be a typical gravel road that you see in Billings County with a 28 foot graded gravel width and gravel surface. Of that 8.3 mile distance we say approximate two miles will be new construction. That means it generally follows existing roadways until you get down to the river bottom and across the river. Approximately 50% of this roadway is on U.S. Forest Service property, and about 40% is private land, and then 10% that falls in the North Dakota state trust lands. There are expanded study areas on the west end and also on the east end when we get down to the river. It gives the county some flexibility with the landowner to help with the ranching operation. The proposed bridge will be approximately 600 feet long with two abutments and two piers that would be in the channel. We anticipate construction to be in one construction season. In the EIS we talked about two seasons because of the weather and if we get a late start.

Jen Turnbow pointed to the temporary and permanent wetlands impact in the Draft EIS. The overall project estimate is \$11.2 million for construction and utility relocations and will be finalized after the final design is done. The next steps include the public hearings already conducted, the draft EIS which is currently available for public and agency review, followed by response to the comments and agency review and updating of the EIS. From there it moves to final EIS and then record of decision. After the record of decision is signed by Federal Highway Administration, the project can move to final design and construction.

Patrick Weir indicated there had been some references to an early design for the bridge back in 2007 and reviewed them in the minutes from that meeting. There was a discussion of four options of this Little Missouri crossing. The final alternative was the bridge structure. At that time the commission consensus is that none of the alternatives would be in violation. He asked why are they back today undergoing the same process. Is this to advise this commission of what your suggested alternative is?

Jen Turnbow responded that it was her understanding is that the commission can decide if they would like to advise or not advise on the project. She recapped the scope of what may have been presented in 2007 at Patrick's request.

Patrick Weir concluded that at the 2007 commission meeting, the thought was that they didn't think this bridge violated the act, but they wanted specifics. Since then the plan didn't go anywhere and then there was no further meeting so that the record is clear.

Jen Turnbow agreed and stated the constant has always been that this is proposed as a bridge.

Gene Allen indicated it would be helpful to have a context of the other options in order to properly evaluate option 1. Jen indicated it is all in the draft EIS. We talked about the preferred because that is what the lead agencies identify as the preferred alternative. Gene indicated

their preferred may not be the Commission's preferred. He would like to see what the alternatives are, and to have this gathering see it so we can compare. Jen provided additional information on the other alternatives. She indicated that Federal Highway has to choose an alternative for the property.

Chair Schettler indicated the commission probably cannot advise on the location of the preferred alternative. We are concerned with the river from bank to bank. He continued asking if there were any other questions or public comment. He recognized Dave Short, 4th generation owner of the Short Ranch.

Dave Short indicated his family has always taken great pride in being temporary stewards of the Little Missouri Valley and the badlands for over a century. He and his family are asking if the bridge is needed. Billings County has 563 total households. Along the river, Billings County has six to eight total households. He does not feel there has been sufficient emergency services data to support the reason for the construction of the bridge. He feels the county commissioners and KLJ have done everything possible to create the need, and the public has spoken loud and clear, they don't want it. He indicated that on the drop down to the river that they randomly say two miles is two miles of pristine virgin badlands. This has never been farmed and cottonwoods have never been cut down. It is some of the best mule deer habitat in western North Dakota, and there are bighorn sheep every time you drive out there. The dust and the noise created will destroy the wildlife habitat forever. He stated that his family is 100% against this project and will use all of their resources fighting it.

Patrick Weir commented that he certainly understands the family's feelings. I do want to take a bit of exception however, to the comments about there is no data for the need for emergency services. He explained that at the Bismarck public hearing, the sheriff of Billings County made a very emotional, heartfelt statement about the fact that he does have personal knowledge of rescues made across the river. Dave asked if any facts were stated on the number of emergency calls and who Patrick was representing. Patrick replied that he represents Billings County, is a lawyer, and he has done work for Billings County on this issue. Patrick continued indicating the sheriff did say that the bridge in his opinion was necessary for public safety. The road supervisor testified that it was necessary for public safety. The emergency services director testified that it was necessary for public safety. They did not have data in computer form, but they could presumably come up with instances where they have had great difficulty in crossing the river. Dave Short replied there has been no concrete data supporting the emergency need.

Patrick Weir stated that he I wanted the record clear, that he understands Dave's point. His point is that at the Bismarck meeting, three people testified that there is a public need for safety. They have rescued people and they anticipate in the future with the Maah Daah Hey Trail being used more and more that the numbers will go up.

Dave Short commented one of the reasons people ride the Maah Daah Hey Trail is for the remoteness of the area. And just like when you climb Mount Everest, you take a certain risk and you want that thrill in it. That is one of the things that we are fighting so hard to get

across; the sheer remoteness of the Little Missouri River and the badlands. Patrick understood Dave's point, but he felt the people that are living west of the river, whether it is six or eight families, have a right to emergency services. As to the visitors including the bikers on the Maah Daah Hey Trail, he asked if we are to tell them, you go out and there will be no emergency services. We can't get to you. You break your neck; you are on your own.

Dave Short commented we would do the common sense thing. He felt it is quicker to go down I-94 and directly across the Little Missouri River on an interstate bridge, which is already there. And up on the west side of the river. Patrick replied he is not an expert on how much time it would be and he will be guided by what the emergency people tell him in terms of response time. He did appreciate Dave's comments.

John Hanson commented in almost every way he could empathize with Dave and his family. He stated what we would have today if we were in opposition to every road that was suggested to be built. Or for every water line, power line, and utility line. Where would we be if we hadn't agreed to allow those improvements? So I can appreciate that too. But on whole, I am surprised that the discussion continues. I agree with you, there is a preponderance of question about the validity of this project at this time. Thank you for coming to talk to the commission.

Chair Schettler asked for any other public comment? He recognized Sandy Short and her daughter Sarah.

Sarah and Sandy addressed the Commission stating that while none of the family lives in North Dakota anymore, they are determined to put a stop to this foolishness. She indicated there are multiple different reasons not to do it. The cost, the location, the use and the necessity, and that it just doesn't make sense. And not just for the Short ranch. She does not believe the 35 mph speed limit will be obeyed. KLJ has told us at the other two meetings this year, a hundred to 200 vehicles per day. There are not that many emergencies per day so this is oil traffic.

Chair Schettler reviewed ND Century Code as it relates to the Little Missouri Scenic River Act, chapter 61-29. It basically says for the Commission, the river is defined as bank to bank. I think for our commission's purposes, we need to focus on the channel itself because that is what we are tasked with. He asked for any additional discussions, comments, or motions?

Gene Allen indicated we just dispensed considerable time, and it took a couple of meetings, for us to really hash out and come to a conclusion on what we should do regarding the revised interim policy. The bridge is going to be seen, the traffic is going to be heard, up and down the river if we're concerned about the quality of the experience of those who are using the river. And so it seems to me that if we are going to be consistent, we're not putting a bridge; that we're not going to be in favor of putting a bridge across that river.

Patrick Weir asked if KLJ asked this Commission if it had any opposition on the Long-X Bridge. Is it a fact that the commission said they had no comment on the Long-X Bridge? Melissa Baker commented that it is fair to say that this Commission did not take any action. There was no

motion made about the Long-X Bridge, and this is an unfair equivalency. Yes, there were two bridges in parallel next to where a bridge currently is, but that is a different thing than a new bridge in a new area.

Patrick Weir agreed. He was just curious about whether or not the commission took any action because he was not in attendance. Melissa and Chair Schettler both indicated no action had been taken.

Melissa Baker thinks this is the same discussion as with our recommendation to the water commission. We know that there will be an impact to the recreation experience and the scenic and the solitude nature of that experience. She thinks this commission's charge is to discuss that.

Chair Schettler disagrees that it will be a fairly negative impact for everyone, because if there is new road and a new bridge, there will be people to use it to go and experience nature. He is not sure it is a completely fair statement that that will be the only use on the road, because everybody knows it will not be. But it will open up the country good or bad.

Chair Schettler called for any additional discussion. He outlined the options to the commission: He looked up the old minutes from 2007, and the commission at that time said none of the options would be in violation of the Little Missouri State Scenic River Act. He does think we need to do something whether we support or do not support KLJ/Billings County Commission, or if we want to pick one option over another, or we sign a statement that we don't have any recommendations.

John Hanson commented that because Billings County could not arrive at a decision in however many years, it is too much, too soon to expect our group to make an informed decision. I would recommend that some discussion be held. Give us all a chance to continue to go through this EIS document.

Chair Schettler stated that is our dilemma. The comment period for the draft environmental statement is August 20. Any comments we want to make as far as the Commission, needs to be done today.

Gene Allen offered a motion to recommend the alternative L, no build. Second by John Hanson.

Patrick Weir offered an alternative motion to support Billings County; a motion to accept KLJ's motion to build a bridge.

John Hanson clarified the rules of order with Chair Schettler in that we need to vote on the first motion and then could entertain his motion.

Chair Schettler recapped the motion on the floor made by Gene Allen to recommend the option

L, no build. Second by John Hanson. He called for any other discussion

Patrick Weir commented that it should be on the record that in response to John's comment since Billings County has not been able to make a decision on this bridge, he sees no reason why this Commission in this short period of time should make a recommendation. The history of Billings County's attempts to put a bridge there has met with opposition from various groups that were opposed to a bridge any place on the Little Missouri River. So it is not a matter of Billings County not being able to decide. Also, Billings County didn't tell Kadrmus, Lee and Jackson where to put the bridge. Kadrmus, Lee and Jackson in their scoping and studies, decided this was the logical best place for a bridge.

A comment from the audience asked Chair Schettler if the gentleman who is speaking should recuse himself since he has a conflicting interest. Chair Schettler responded that as he has stated before, we all have a conflicting interest in this proposal.

Gene Allen commented that Patrick is defending Billings County and he would not recommend that he recuse himself.

Chair Schettler called for any other discussion and recognized Jim Arthaud, chair of the Billings County Commission.

Jim feels there have been some misnomers and misstatements. The NEPA, National Environmental Protection Association, in conjunction with the cooperating agencies, chose the best location for the bridge in Billings County. I realize that the motion is for a no build. It has been proven through the document and many studies that there is a need for the bridge for various reasons. He spoke to the issues of safety, commerce, recreation, the tearing up of roads. For Mr. Short to say that it is quicker to go up around Sentinel Butte is a misnomer. One of our main safety hubs is at Fairfield, down Blacktail Road and cross that river and you are in there if it is a panic, probably 35 or 40 minutes. You are not going 70 miles around. He indicated he has been on public record many times saying that the bridge belongs on public land. But the process didn't allow it to be on public land. He indicated the Short family had been informed the bridge would be located on their land. It was not Billings County's preferred alternative. It was what NEPA's 12 year process did for us. Recreation in Billings County has increased tremendously since the Short family has lived here. It has multiple benefits and multiple needs and multiple purposes.

Dave Short replied the county supervisor Jim is referring to thinks there should be a bridge, but not that location because of the entire roadway that has to be built. He stated in talking to one of the county commissioners from Golden Valley County they said it doesn't make sense. Nobody in the Golden Valley commission wants it. He indicated his family would love to sit down with Jim and discuss if the bridge is for tourists, emergency and recreation, and if it is, that a smaller bridge with a 10-ton limit be built so we don't have the oil field going through there and make it for that purpose. He stated the family was open to different ideas.

Jim Arthaud responded that Billings County is an oil and gas producing county. The county has never hid under the bed to say the bridge is not going to help oil and gas. One of the county's biggest accomplishments was hiring North Dakota State University, Upper Great Plains Institute to get a GIS model of the oil and gas to try and have some seamless movement of traffic so we don't have double impacts of traffic. We've always said safety, commerce, recreation, is the interlinking of our county. He stated unequivocally that there is a need for this bridge in Billings County.

Chair Schettler recognized David Glatt.

David stated this is an extremely emotional position on both sides of this issue. I'm not going to go into whether they are both equally valid or not. But as a commissioner, I will refer us back to what the law is. I go back to the law and the law states that the purpose of this Commission will be to preserve the Little Missouri River as nearly as possible in the present state, which shall mean that the river will be maintained in a faithful and natural condition. Free flowing is defined as flowing as close to its natural condition or without any modification of the water. My interpretation of that is putting the bridge over the river is not messing with the free-flowing state of the river. The law really confines us on what that water can be used for. It is bank to bank as you stated. So I am a little conflicted with whether or not there is a position that we can take.

Chair Schettler recognized Melissa Baker.

Melissa Baker indicated she was looking at another part of the law than what the Chair was looking at. Chapter 61-2905. It says that the Commission may advise local or other units of government to have the protection adequate to maintain the scenic, historic and recreation qualities of the Little Missouri River. She feels it is important that we scope ourselves to what the law has asked of us to do, which is to talk about the Little Missouri River. And we are talking about the river itself, and we have to remember also that our role is to advise. Billings County's role here is to decide. We are to advise local and other governments to have protection adequate to maintain the scenic, historic and recreation qualities. So I think that we can advise that this is something that would affect the scenic, historic, and recreational qualities. And we also have to frame this in that what we talk about is the river.

Chair Schettler recognized Patrick Weir.

Patrick indicated the law is peculiar because the intent is to maintain the river in a free-flowing natural condition. In his personal opinion, he thinks Mr. Glatt's interpretation is correct. This bridge does not impede in any way the free-flowing condition of the Little Missouri River.

Chair Schettler asked for any other discussion and recognized Melissa Baker.

Melissa's question to the committee would then be do no bridges fall under the scope of the Committee? Do we not bring bridges before this commission anymore? Because we have two

today and we could have two next time. And if we do have that many bridges in front of this commission, does it change the nature of the river? And if it changes the nature of the river, is it not our charge to speak to that? We are not the decision maker, somebody else has to weigh all the viewpoints and make the decision. But we have been charged with considering the scenic, historic, and recreation qualities of this river. And do bridges affect that recreational and scenic value of this river?

Patrick Weir commented on the scenic and recreational value of the river. We can argue endlessly to what this statute means.

Melissa Baker replied in that she would refer to what Dave said earlier. We are about the channel of the river. And we are charged with deciding whether or not to advise. We may advise. We don't have to.

Chair Schettler asked for any other discussion. Right now we have a motion and a second to recommend option L, which is a no build. We will proceed with a voice vote.

John Hanson? Yes

Dave Glatt? No

Garland Erbele? No

Pam Hestekin? No

Patrick Weir? No

David Crighton? No

Melissa Baker? Yes

Gene Allen? Yes.

Chair Schettler indicated the Motion fails 5 to 3.

Chair Schettler called for any other discussion, and recognized John Hanson.

John Hanson questioned if Jim Arthaud had any indication how they addressed the long stretch of uncrossable waterway or EMS, commerce, development, recreation, etc. in Burleigh or Morton County. Jim indicated they are two separate counties on each side of the river while the Little Missouri River splits Billings County into an east and west side.

Chair Schettler called for any other discussion, and recognized Dave Glatt.

Dave Glatt stated his respect for Melissa's comment and that while he is conflicted, he stands by his vote.

Chair Schettler called for any other discussion, and recognized Pam Hestekin.

Pam Hestekin also expressed feeling conflicted when she sees both sides of the issue. She also stands by her vote, because she feels this is needed.

Chair Schettler called for any other discussion, and recognized John Hanson

John Hanson expressed his concern last summer about fire and the access of emergency personnel in fire and ambulance situations. He requested two small creek crossings capable of handling heavy emergency vehicles on federal land that was very controversial. You have to have a policy dealing with emergency services, access to the land for recreational purposes, for commerce, etc. There should be a universal way of looking at that.

Chair Schettler called for any other comments. No motions were made so the Commission will not make any recommendations.

5 minute Break

Chair Schettler reconvened the meeting. He introduced on the next item on the agenda, the ranch bridge in Dunn County, built by Mr. Wylie Bice. Chair Schettler recognized Loren Wickstrom, field manager with the ND field office of the Department of Interior Bureau of Land Management, for a report.

Loren Wickstrom stated on July 10th, a letter was sent requesting the Little Missouri Scenic River Commission advise or help us with the comments in deciding on the alternatives for a bridge that was constructed in Dunn County. We have received an application from the applicant for a right of way. It is a 300-foot long, 3-span, single lane bridge already constructed that crosses the river. The east half of the bridge is on private land. The west half of the bridge crosses public land. There is a 73-acre parcel of BLM land that is part of a larger grazing allotment called the Lost Bridge Grazing Allotment. There is approximately 13 acres of surface disturbance that has occurred, and there is the gravel road associated with the bridge. There are also some holding ponds that are used for irrigation water, as well as, oil and gas activities, and there is some alfalfa that has been planted that slots over on to the BLM land. The BLM is writing an environmental assessment to analyze the potential impacts of whether or not to grant the right of way and the access road. The general consensus is that we will reclaim the alfalfa field that is in trespass and reclaim the holding pond. We have asked the applicant not to do any reclamation until we finish completing this environmental assessment. The main purpose of the public scoping process stage we are in right now is to write an environmental assessment. We want to obtain feedback on relevant issues that may influence the scope of the environmental analysis. Advisement requests are wanted including alternatives to guide the process for developing the environmental assessment. We are permitting the bridge as it is presently built. Another alternative would be to relocate the bridge, and then another alternative would be to remove the bridge. I look forward to your recommendations.

Garland Erbele asked if what timeline they are working with. Loren explained the applicant has hired a third-party consultant and once we receive all of the scoping comments which are due August 13, we will develop a purpose and need and develop our alternatives for the environmental assessment. We could potentially have a draft document out in October.

Chair Schettler recognized Patrick Weir.

Patrick asked if the environmental study is being done on your own or if there a third party? Loren explained the applicant has hired a third-party consultant to write the document, however they are assisting. His archeologist, wildlife biologist, and hydrologist have been out on location.

Chair Schettler asked if a survey has been done recently. Loren indicated the surveyors have only done a desktop survey with air photos, not an on the ground survey

Chair Schettler recognized Melissa Baker.

Melissa asked what consideration if any will the status of the Little Missouri River being a scenic river has in the environmental assessment. Loren indicated it should be an issue so more than likely we will address it in the visual part of the environmental assessment. That is where we're really looking to the Commission to help provide us with some of alternatives.

Dave Glatt asked what the normal procedures for something like this would be. He expressed his dismay on how somebody can build a bridge and nobody knows about it. He would like this Commission to make a comment indicating that the Commission receives notification of anything that deals with the Little Missouri River and what we legally are tasked to address. Normally, somebody would apply and build a bridge, and you would go through the EA at this point in time. Is this after the fact of the matter?

Loren replied that they are writing this environmental assessment after the fact. He was first made aware of the bridge a little over a year ago. He has been working with the applicant to help resolve this issue and this is where he is at now. Writing an environmental document after the fact. That is not an ideal situation.

Patrick Weir asked how is it possible that the Corps of Engineers could grant the permit to build this bridge over the Little Missouri River, and the Interior Department wouldn't have been notified. How is it possible that two agencies of the Federal government concerning a bridge over this river could be acting so independently? And a follow up question is how in the world did you find out about it?

Loren stated he I asked the same question of the Army Corps of Engineers and he had a very strongly worded conversation with them. He does not think it will be happening in the future. However, it is my understanding that the Army Corps of Engineers has different levels of permits and this was a general permit, I believe it is a 401 permit which does not require a very robust review. It is a very, very tabletop exercise. The applicant obtained the permit from the Army Corps of Engineers, and there was no contact with any of the partners or other agencies or any public comment made available to the Army Corps of Engineers. The Army Corps of Engineers in their defense, they did, in his understanding, do some cultural surveys and some threat of endangered species surveys. Whether or not they were also tabletop exercises you

would have to ask the Army Corps of Engineers. Secondly, he found out from a member of the public.

Patrick Weir stated the application says that the dam was sited, so it will not obstruct the flow of water in the little Missouri. Are we given to understand that at least the Army Corps of Engineers made sure that this bridge is not disturbing the flow of the Little Missouri River?

Loren replied it is a three-span bridge and he knows that the property owner was careful how he situated the bridge to minimize impacts, but the reality is that half of the bridge is on public land.

Chair Schettler recognized Garland Erbele.

Garland asked if he is correct in assuming that the Corps of Engineers understood that the bridge was constructed entirely on this land. Loren replied you would have to ask the Army Corps of Engineers. He does not know if that is a true statement. He thinks they are really just looking at the riverbed. Garland stated certainly that includes the banks of the river.

Chair Schettler asked for any other comments. Any comments from the public? He recognized a member of the audience and asked him to step to the front of the room, use the microphone and introduce himself.

He introduced himself as Travis Caldwell, the builder of the bridge for Wylie Bice. He explained the original application to the Army Corps of Engineers for the permit was always going to be and always will be a private bridge to expand the ranch and the operations around there. The guidelines received from the Army Corps of Engineers said to not disturb more than a half-acre. That information was provided to a structural engineer and he drew up some plans. He attended a meeting of the Army Corps of Engineers where additional guidelines were presented to him. At that point he came back with the engineered bridge plans. The process was six to nine months and after receiving the permit in the mail the bridge was built. He indicated the abutment of the bridge was thought to be included in the grazing allotment that already belonged to the ranch. He stated a right of way was applied for and for one reason or another; it was lost although he thought it was handled.

Melissa Baker pointed out that she called Army Corps of Engineers today and asked them for a copy of the permit application. That application is in the meeting packets.

Chair Schettler recognized Dave Glatt.

Dave stated that getting the permit in six to nine months is not a long process at all. Travis felt it was an extremely long process. Dave expressed his admiration for the bridge and its construction. His biggest issue is notification and if the Corps is approached to put something over the Little Missouri River, they should have a list of people to notify, including the Little Missouri Scenic River Commission. The bridge is built, and they can go through a process and

evaluate it. But his biggest concern is that even with the general permits, there should be some notification on it.

Chair Schettler asked for any additional comments or questions and recognized Garland Erbele.

Garland asked if he heard correctly that an application had been made for an easement. Travis stated we already had a grazing allotment on that land, and we knew we needed to come across there, so we really wanted to just do a land trade. He stated we understood that process would take a long period of time – two to three years. Wylie owns some land that the bighorn sheep are calving in, as we understood they are really territorial about where they calve out so we wanted to trade that land for the little sliver that we would go across. Furthermore our intentions are to be compliant with the BLM and do whatever it is that we need to do.

Chair Schettler asked for any other questions and any questions or comments from the public.

Jan recognized Jan Swenson.

Jan stated this brings up a whole big issue of communication. We have talked about two bridges that cross the Little Missouri State Scenic River. Mr. Glatt has probably gone as far as anybody here in stating what the future of the Little Missouri State Scenic River is if we as a state, and you as a commenting or recommending commission don't chime in here. The people at this table, have incredibly unique and in her estimation an honorable position, to speak for the state's singular scenic river in a unique landscape that all North Dakotans care about. She feels the Commission can start this process and get it figured.

Chair Schettler asked if there were any other public comments and recognized Patrick Weir.

Patrick stated that was an eloquent statement from Jan and he agrees with much of what was said. But again, just so the record is clear, the law that enacted the Little Missouri State Scenic River Act clearly says the commission members are appointed by the county, and represent the above named counties. And as I said at the outset in talking about conflicts of interest, it is my understanding of the way that the law is drafted that I am to represent the interest of Billings county.

Chair Schettler asked for any additional questions and recognized Dave Glatt.

Dave stated we should issue a letter stating our displeasure at not receiving notice. Saying that we want advance notice and even though it is not required in their law, that we have a mandate. Second and I know I did say that it is bank to bank and free flow, but there is a statement in here also that we may advise as relates to the scenic, historic and recreation qualities of the Little Missouri River. He thinks at minimum, the Commission should be asking for or sending a letter that we were a little dismayed by this, and in the future if they would make the effort to notify this Commission. I will make a motion to that effect. The motion was second by Patrick Weir.

Gene Allen stated in 2014, we were not a functioning commission, so I don't know in terms of this one, but going forward I would want to give notice. So we can't really, although we would love to, give them a horn.

Dave Glatt felt that is a fair statement. We should state as we move forward so we don't get in this position again.

Chair Schettler recapped the motion:

Motion to send a letter to the U.S. Army Corps of Engineers wanting to be informed about any applications that apply to the Little Missouri River was made by David Glatt. Second by Patrick Weir.

Chair recognized Garland Erbele.

Garland asked; let's assume that we've gone through that process. How would the Commission handle this?

Chair Schettler stated as far as the BLM's suggestions on deciding what to do, I would let them figure it out. But he felt moving that bridge or removing that bridge is going to cause more damage than anything.

Patrick Weir indicated that he had seconded Dave's motion and he agrees for the record that it appears to him that what Mr. Bice did is entirely inadvertent, and he assumed that he had the right to do this. He agrees with the chairman in that it is a non-navigable river and that the law provides that ownership on the bank extends to the middle of the river. If he thought he owned the land on the other side or had permission or whatever, he's not sure that this commission, would have anything to say about it. But he seconded the motion because he found it odd that Billings County has been working on their bridge for 25 or 30 years and spent millions of dollars on it and Mr. Bice gets permission from the Corps of Engineers and he builds his own bridge. He thinks Mr. Glatt is right. He indicated he wouldn't say displeasure, but our interest is that at minimum, these Federal government agencies get their act together and we're notified.

Chair Schettler asked for any other discussion. He made a suggestion for someone to make an amendment to clean this up the motion and amend it to have Melissa at Parks and Rec send this letter of recommendation to the Corps of Engineers and the commission signs it.

Melissa Baker indicated she will draft the letter along with the recommendation to the State Water Commission.

A motion was made by Dave Glatt. Second by Patrick Weir.

Chair Schettler stated first, we will vote on the amendment to the motion that Melissa Baker

draft and send a letter to the U.S. Army Corps of Engineers wanting to be informed about any applications that apply to the Little Missouri River. All of those in favor signify by saying Aye. Members all answered with Aye. Opposed – none.

Motion was made for Melissa Baker of the Parks and Rec to draft and send a letter to the U.S. Army Corps of Engineers to be involved in the Little Missouri River decisions. Motion carried by unanimous vote.

Chair Schettler asked if the commission wanted to make a recommendation to the BLM for the environmental assessment, or if we have a preferred resolution, or no recommendation?

Pam Hestekin agreed it would cause more damage to remove the bridge that is already established.

John Hanson feels there needs to be a process moving forward to see to it that in one way or another these types of things are not repeated.

Chair Schettler recognized Dave Glatt.

Dave stated as for the purpose of the water quality aspect and the construction, he does not think removal of the bridge is the right way to go. John Hanson agreed with this statement.

Dave Glatt stated the bridge looks well-constructed and that is not our issue.

Motion was made by Dave Glatt that the commission draft a letter to the BLM stating we do not recommend removal of the bridge at this point in time.

Patrick Weir stated that while he does not disagree with the motion, he would not advocate taking the bridge out, but he wonders if the commission is acting hastily. He stated we do not know what the environmental impact statement is going to say.

Chair Schettler clarified it is an environmental assessment.

Patrick Weir continued he would like to see the outcome of the environmental assessment. He very likely will vote not to take that bridge down, but feels the commission may be acting hastily.

Dave Glatt stated maybe he should modify the motion to say without the identification of any impacts to deliver water quality levels the recommendation would be to, etc. Otherwise we stay silent on the issue and don't provide any comment at all.

Gene Allen indicated he would second a motion to take no action.

Melissa Baker asked if there is a path other than supporting our opposing one of the potential

alternatives for this commission to take in order to advise the agency to consider the impacts to water quality as part of the environmental assessment. And to consider the impacts to the recreation experience as their assessment, as opposed to this Commission taking a specific alternative when the assessment has not been done?

Dave Glatt indicated it would be more of restating the loss. To look at these parameters in the general environmental assessment, and whatever that is we will come to a conclusion.

Joe Schettler asked for any other discussion?

Chair Schettler indicated Dave's motion of a letter of comment to the BLM to leave the bridge in place needs a second.

Dave Glatt withdrew his motion. He likes Melissa's comment and to look at the assessment of the bridge. Chair Schettler agreed with that point and asked for any other comments or motions?

The next meeting is scheduled for September 10, 2019, with the option of more meetings if the need arises.

Motion to adjourn was made by Gene Allen. Second by Dave Glatt. Motion carried by unanimous vote.