

Montana State Library Commission
Final Meeting Minutes for May 18, 2006
Helena, MT
Teleconference

Attendees:

Commissioners:

Don Allen, Cheri Bergeron, Caroline Bitz, Cindy Carrywater, Ron Moody, Bruce Morton and Nora Smith

Staff: Jim Hill, Sue Jackson, Kris Schmitz, Darlene Staffeldt and Julie Stewart

Visitors: No visitors.

The meeting was called to order at 9:05 a.m. by Vice Chair Caroline Bitz as Chairman Ron Moody was not in attendance.

Professional Education and Employment Scholarship Grants (PEEL Scholarships)

Bitz asked if there was any discussion about the PEEL grants information provided by the State Library.

Sue Jackson updated the Commission on the PEEL process. The PEEL Advisory Committee met and the Commission has their recommendation. At the time they made the recommendation, they only had a tentative list of admissions by the University of Washington's Information School. This list was finalized and received by Jackson on May 17, 2006. The University of Washington (UW) has admitted 16 Montanans to the program to begin in 2006. Thirteen of those are people that applied for the PEEL scholarship. However, their thirteen and our thirteen vary a little. On the recommendation the Commission received, one person who was recommended for a scholarship, Brenda Wilson, was not accepted into the UW program. Of the Advisory Committee alternates, only Megan Stark was admitted. Khrys Suckow and Ryli Clark were not admitted. That means that out of the thirteen people recommended by the Committee for scholarships, ten of them have been accepted, just not in the same order as the Committee recommended.

Bitz asked if we do have any alternates now.

Jackson said there are no alternates right now. There were three people admitted by the University that were not recommended for a scholarship and they are Rachel Rockafellow, Brooke Snow and Cheryl Tallant. Those three people have been admitted into the UW program, but the Committee did not recommend them for a scholarship.

Ron Moody joined the meeting.

Jackson explained that we have heard from UW and they have admitted people differently that we had assigned scholarships. UW required a lot more information such as test scores, transcripts and letters of recommendations that the PEEL scholarship application did not include. There is different information and that may explain how we reached different conclusions.

Staffeldt stated we would like the Commission to basically take action on the recommendation from the Scholarship Committee as it is presented. We will follow up from that based on what we got from UW.

Bitz asked if anyone else had questions or comments regarding the PEEL grants.

Carrywater asked if we would have to vote on this again for Megan Stark or once we do this, is it good.

Staffeldt stated that if the Commission takes this recommendation, then it's good. We'll move through funding the nine that are for sure on the top and we'll work with Brenda as far as any appeal process. Once we confirm that she is not going to be accepted at UW or is not going to move forward with any appeal, then we'll go on down to Megan and offer the scholarship to her. It leaves us with no alternates and at this point we think that the Committee recommendation was not to fund any of the others, so we would hold the money for a second round or hold it until next year's round. If you take the action recommended here, we can move forward without further action from the Commission at this time.

Allen moved that we accept recommendations from the PEEL Scholarship Committee. Smith seconded the motion. Motion passed unanimously.

Moody resumed being chair for the remainder of the meeting.

MSL/UM – Heritage Contract

Bruce Morton asked that the record show he recused himself and will abstain from any votes on this topic.

Staffeldt referred to the memo she sent the Commissioners. She had hoped to have items 11 through 17 resolved, but those items have not been resolved yet. Jim Hill received some new information the morning of the meeting. Staffeldt said we do need to move forward, though we haven't gotten a final contract to approve yet. Staffeldt is hopeful there will be some discussion at the meeting and the Commission will authorize her to work on the issues and sign a contract. We would like to get a signed contract by the end of May so that the transition can happen by the first of July.

Hill said we've been negotiating with the University over the past week some changes they made late in the game due to their intellectual property people becoming more involved in this contract. Taking a look at this contract from the point of view of the

usual University system operations and not in terms of this public service operation which they are taking on through this contract. The language that was not included in the version sent to you, sections 11-17 were those sections that they had changed considerably to make ownership of the data and products more in terms of the University with the Library being authorized full use instead of the reverse which had been the case with the contract with the Nature Conservancy. We've had conversations with them over the last few days and they have agreed to place the language substantially back into the form that it was. I expected to get the revised language back yesterday, but Jim didn't receive it until the morning of the Commission meeting. It looks as though they've made substantial changes to put it back as it was with the Nature Conservancy. There are a few changes that we'll have to understand our intent and their stated intent that the Library will retain ownership of the data and products and that we would be willing to grant them full use of those products. In essence, we have that hand shake agreement that that's what we'll have.

Staffeldt said the contract will be reviewed by the Library's attorney and we will still have to have Department of Administration review the contract also. Again, at this point, there isn't a final contract, but Staffeldt hoped that the Commission would give her the authorization to make sure that everything falls into place and give her the authorization to sign the contract by the end of May.

Moody asked if the Commissioners had questions or comments.

Allen had a few concerns, but one of the concerns has been dealt with. That was the fact that the Library owns the data. The other question he has is that it seems in any agreement you have with anyone, you always need a fail safe that says that at some point in time we just don't like each other and we would like to do away with the contract. He would like a clause in the contract that provides for termination without cause and it's not in the current contract. Allen said he will probably vote against the contract if a termination without cause clause is not included.

Staffeldt agreed with Allen in that the contract does not have a termination without cause clause. However, the Library has worked with Jim Scheier, the Library's attorney on the contract. He feels that the four possible ways for termination in the contract give us plenty of ways to terminate. The contract we're looking at right now is only a one year contract. It's an annual contract, so even if there is not a fault clause to get out, the most we would have to honor this contract is for a one year time frame. Staffeldt is trying to find a compromise.

Allen asked if the split from Nature Conservancy was a mutual thing or how did it come about.

Staffeldt said it was a mutual agreement. They wanted out and we felt that they could get out. There were increasing costs and there were considerable changes that were being made by Nature Conservancy nationwide. They have pulled away from these programs in all other states except for our program and one other state.

Allen asked what type of termination agreement we had with them.

Staffeldt said that contract had the same language as is in the current contract.

Bergeron asked if that meant that could have terminated at any time without cause.

Staffeldt said no there was not a termination without cause clause in that contract and there is not one in this contract. At this point we're not having success getting that in with the University and Staffeldt feels that she doesn't want to push it any harder.

Moody asked if there were any other questions regarding termination of the contract? Moody said as he read the contract it wasn't clear what would happen at the end of the contract period in terms of settling obligations other than those that were listed under item 19, which is basically justifiable expenses and bills would be paid by the responsible party. At the end of one year, the end of this contract, if the Library decides they do not want to renew this contract, we simply pay the outstanding bills and discontinue the relationship. Is that correct?

Staffeldt said that is correct.

Staffeldt said the Nature Conservancy would probably continue but there is a significant increase in price when we get to July 1. Our discussions at earlier meetings had indicated to Nature Conservancy that we were ready to move forward. Staffeldt said there is some pressure to get a contract so the move could actually happen before the July 1 deadline. It is getting to a critical point mostly for the sake of the staff, to have settlement and all their benefits transferred.

Allen said we've talked about the Nature Conservancy charging an overhead charge. Will the University be charging an overhead fee also? Is that not in the contract or is it not going to happen?

Hill said the Nature Conservancy did not charge us an overhead. The over arching Conservancy, not the local version, but the national Conservancy put an overhead on the local program based on personnel services. They were going to have to cover the personnel services cost of the Nature Program to the national program, which would be a big hit. They don't put an overhead on our contract and had not intended to. The University does not put an overhead on our contract either. We provide space for the folks here. No money changes hands for that.

Allen said we were talking about a 20% at some point. Has that gone away because we're providing services too?

Hill said he thought perhaps Allen was referring to the fact that all of the projects that the Heritage Program does over and above the core, when they contract with BLM or the Forest Service or DEQ to do work for those agencies, the Heritage Program pulls an

overhead on those contracts. The Nature Conservancy has allowed them to keep that overhead within the program. The arrangement with the University system is that for the first two years of this contract, the University will also allow the Heritage Program to keep 100% of the overhead they pull on their miscellaneous contracts for the benefit of the program. Then following the first two years, the University intends to be putting at least \$50,000 a year into the program and if that is the case, then they will reduce the overhead amount they allow the program to keep just to 50% of the overhead, but they be compensated by putting \$50,000 in the program. If they don't manage to come up with the \$50,000, they will start pouring back some of that overhead. There's two parts to this operation that is taking place. There's a transfer agreement between the Nature Conservancy and the University and that language is covered in the transfer agreement. We did not include that language in our agreement.

Bitz mentioned a press release from Sara Groves that the Natural Heritage Program won the International Technology award. She finds that quite impressive and feels that at this point, it's time to move ahead and make the transfer to the University of Montana and contingent on the language being approved by the attorney and the Department of Administration, she appreciates everyone's questions and thoroughness, but thinks at this time it is important to move ahead with this.

Moody thinks having the one year specification on the contract really does build in a no fault termination clause, but thinking ahead to what our decision making situation is going to be when we get near or at the end of the one year contract and how it will be similar to the situation to what you are presenting to us now, in which if our decision is to not go ahead immediately staff will be hurt, that is a strong pressure to decide to do only one thing which is to approve the contract. Where this raises a concern at this point, we're not even looking at the final language. It is a major issue that the Library owns the intellectual property produced by the Heritage Program. What we have now is Staffeldt's assurance that the Library will hold out for that in negotiations. It doesn't seem like good business to either approve or disapprove a contract that was totally completed. Moody said maybe we should pay Nature Conservancy their personnel charge for a month or two to make sure our concerns about ownership about intellectual property are worked out prior to signing that first contract.

Bitz asked if Staffeldt could give the Commission some assurance regarding the intellectual data ownership?

Staffeldt said that the pieces in the new contract that Hill had a chance to look at prior to the Commission meeting, specify that the Library will own the data with the University having rights to use it. Staffeldt assured the Commission that she will not sign a contract that goes far from the conversations that the Commission and the Library have had. As far as Moody's comments, the budget is very tight so we don't have the money to pay some of the Nature Conservancy's personnel charge,. Staffeldt promised she would look carefully at these services and how the Heritage Program moves forward and we will try to be ready for a change of contract if that is what we think is necessary. Staffeldt feels we have to give the University a chance to see if they can work this program with the

Library. She doesn't want to see this program die. She feels we need to honor the contract and work forward with a positive attitude, but she will be fully aware and watchful. If we have to pull the contract in a year, we'll do it. We've had so many discussions and studies and the two best ways to handle the Heritage Program were a contract with the University or bringing it into the State Library. We ran into a lot of concerns as far as bringing it into the State Library at this time. We can work at that over the next few years and see if we want to make that change. Staffeldt assured that she will do her very best to make sure this contract reflects all of the Commission's concerns.

Bitz said she feels really comfortable with the four different ways to terminate the contract with a year and thinks it's very doable and doesn't think there would be a problem getting out of it if we needed to.

Moody asked if there were any motions on the topic.

Bitz moved that the Commission request the State Librarian to sign the contract providing that the language has been added by the attorney and the Commission leave it to the attorney and the State Librarian to iron the language out.

Moody asked for a second to the motion.

Smith seconded the motion.

Moody suggested that we make the motion pursuant to acceptable language on ownership of intellectual property.

Bitz agreed to that and Allen agreed to that also.

Bergeron stated that she is still uneasy. She thinks the Commission ought to see the contract before Staffeldt signs it because it seems that the Commission finds things that the lawyer seems to be missing and we have concerns that have been voiced and she is uncomfortable not having everyone take a look at the contract before it's signed.

Allen asked what the timeframe is for having a completed contract that the Commission would have a chance to examine.

Hill said what got in the way to having a completed contract for the Commission prior to the meeting was a new person weighing in on the University's end regarding intellectual property. When we managed to take that discussion back to those on board with this relationship, they assured us that the language would be put back and we are going that direction. Hill is confident that we are all on board with constant attention to these last minute details and that within days we will have a contract that is in final form.

Allen asked when Staffeldt feels she has to sign the contract.

Staffeldt said by May 31, 2006. She said she would send that contract back out to the Commission.

Allen suggested having another conference call once we have the final contract in our hands. The Commission has responsibility here and it is important that we don't pass that responsibility onto the staff. He suggests we defer it and have another conference call when the completed contract is ready.

Moody asked if it's reasonable to have this contract prior to May 31.

Staffeldt believes it is.

Moody said he shares Bergeron's concerns and though he's not looking for a way to create a problem, he thinks the University created this problem by proposing different language ownership on intellectual property. He prefers to preserve Caroline's motion but table to a subsequent conference call when we've actually read the contract.

Allen asked what action needs to be taken to do that.

Moody said someone moves to table the motion.

Allen moved to table Bitz's motion.

Bergeron seconded the motion.

Allen, Smith, Carrywater, Bergeron were in favor. Bitz was opposed.

The motion is tabled to a subsequent conference call meeting prior to May 31st.

It was agreed to have a conference call on May 26, 2006.

Moody said there will be one item at the meeting simply being voting on Bitz's motion.

Staffeldt said we would set it up for May 26 and get a contract to the Commission prior to May 26, 2006. She will be adding Hill and Schmitz to the Commission forum discussion group so that when she's gone, one of the two of them is always in charge and so any electronic messages can be alerted to them. Allen asked to be added also. His email address has been changed and he wasn't able to access the list serve.

Meeting adjourned.