



City of Grand Forks  
Staff Report

**APPROVED & ACCEPTED**  
*by City Council*

09/03/2024

*Maureen Storstad*  
Maureen Storstad  
City Auditor

**Committee of the Whole – August 26, 2024**  
**City Council – September 3, 2024**

---

**Agenda Item: Red River Valley Water Supply Project Legal Support**

---

**Submitted by:** Todd Feland, City Administrator  
Dan Gaustad, City Attorney

---

**Staff Recommended Action – Approve engagement letter with Nazareus Stack & Wombacher LLC to provide legal support and advice regarding the Red River Valley Water Supply Project (RRVWSP) Project Participation Agreement (PPA) and Associated Exhibits.**

---

**August 26, 2024 – Committee Recommended Action:** Motion by Osowski, second by Vein to move to City Council with a recommendation to approve. Motion carried unanimously.

---

**September 3, 2024 – Council Action:** Motion by Osowski, second by Weigel to approve consent agenda. Motion carried unanimously.

---

**BACKGROUND:**

RRVWSP is an estimated \$1.2 billion strategic economic development initiative and long-term emergency water supply project for the State of North Dakota and will serve nearly 50 percent of North Dakota's population. The City of Grand Forks (City) is a major stakeholder and partner of the RRVWSP and makes up almost 17 percent of the proposed project allocation. Currently the RRVWSP is a partnership between the State of North Dakota, Garrison Diversion Conservancy District (GDCCD), and Lake Agassiz Water Authority (LAWA). The State of North Dakota has committed to a 75% (State) and 25% (local) cost share agreement and has legislative intent of \$953 million from the State of North Dakota over the next several biennia. The local cost is currently being financed with Bank of North Dakota (BND) 40 year/2% interest loans. The RRVWSP is currently underway with \$240 million in approved 2023-2025 ND Biennium funding under a 75% (State) and 25% (Local) capital cost share agreement.

The current City's domestic and industrial nomination, which includes East Grand Forks, is 28.10 cfs or 18.1 MGD. The City is currently collaborating with other regional northeast area water systems to include East Grand Forks to further ensure the region makes the best and most optimum decisions from long term water supply perspectives. For the Grand Forks/East Grand Forks, the total project annual core system cost of participation (year 2034 in 2024\$) is \$2,275,700.00 and the associated and projected end user bill impact (year 2034 in 2024\$) is \$3.64/month. As part of the FY 2025 City Budget, the City has created a new Water Enterprise Fund – 5350 for the RRVWSP with an initial utility rate fee of \$0.04/1,000.

GDCCD and its consultants currently are conducting user outreach to the various and affected water supply systems. The City of Grand Forks has a goal to have the PPA and Associated Exhibits reviewed, negotiated, and approved, in 2025 and after the 2025 North Dakota Legislative Session with GDCCD, LAWA and its participating users.

The PPA is a complex legal, technical, and financial agreement of the RRVWSP. The PPA has nine (9) attached exhibits summarized as follows.

- A. Project Elements and Costs.
- B. User Nominations.
- C. Prior Expenses.
- D. Capital Cost Responsibility.
- E. Operations, Maintenance, Administration, and Reserve Responsibility.
- F. StateMOD Documentation.
- G. Operational Framework.
- H. Debt Repayment Obligation Schedules.
- I. Project Layout Maps.

#### **ANALYSIS AND FINDINGS OF FACT:**

- To begin the final review of the PPA and its technical exhibits, the City Council in May 2024 approved technical support services of Precision Water Resources Engineering (PWRE) in support of the review and analysis of the PPA and its technical exhibits. PWRE is a Colorado based firm specializing in complex water resource system modeling and water rights evaluations.
- The PWRE Project Tasks are as follows and in the amount of \$146,658.00 and from the Water Works Enterprise Fund. The project tasks will be completed over the next year.
  - Project Management.
  - StateMOD Model Review.
  - PPA Technical Aspects/Exhibits Review and Evaluation.
  - Presentation Preparation.
- Nazarenus Stack & Wombacher LLC and Mr. Brian Nazarenus as lead counsel will augment the City's administrative and technical PPA and Associated Exhibits review team. Nazarenus Stack & Wombacher LLC and Mr. Nazarenus have a wealth of applicable Western United States water rights agreement negotiations experience on regional water supply projects with multiple project stakeholders.
- The following City team members would support and lead the RRVWSP on behalf of Grand Forks.
  - Mayor Bochenski – LAWA Board Member.
  - Council Member Vein – GDCD Board Member.
  - City Attorney Gaustad.
  - City Administrator Feland.
  - City Engineer Grasser.
  - City Finance Director Storstad.
  - Water Works Director Parvey.

#### **SUPPORT MATERIALS:**

- Nazarenus Stack & Wombacher LLC Grand Forks Engagement Letter.
- Brian M. Nazarenus Bio.

**NAZARENUS  
STACK &  
WOMBACHER LLC**

**Brian M. Nazarenus**  
Direct Line: (720) 506-9602  
Cell: (303) 263-8973  
Email: [bnazarenus@nswlaw.com](mailto:bnazarenus@nswlaw.com)

August 15, 2024

**Via email to:**

Mr. Todd Feland  
City Administrator  
City of Grand Forks, ND  
[tfeland@grandforksgov.com](mailto:tfeland@grandforksgov.com)

Mr. Daniel L. Gaustad  
Pearson Christensen, PLLP  
24 North 4<sup>th</sup> Street  
Grand Forks, ND 58203  
[dan@grandsforkslaw.com](mailto:dan@grandsforkslaw.com)

**RE: Engagement of Nazarenus Stack & Wombacher LLC for the City of Grand Forks**

Gentlemen:

You have asked this firm to represent the City of Grand Forks, North Dakota (“Grand Forks”) regarding the Red River Valley Water Supply Project, as further described below. We are pleased to represent Grand Forks under the terms and conditions of this engagement letter.

The North Dakota Rules of Professional Conduct generally recommend that attorneys provide their clients with written agreements in an effort to avoid misunderstandings. N.D.R. Prof. Conduct 1.2, comments 6-8. This letter will confirm the terms and conditions under which this firm will undertake to represent Grand Forks. Please read this letter carefully and if it accurately sets forth the terms of our firm's engagement, sign it and return it to me.

**SCOPE OF LEGAL REPRESENTATION**

You have asked us to provide Grand Forks with legal advice and representation related to the Red River Valley Water Supply Project and Grand Forks’ participation in the Project, including review and advice concerning the Project Participation Agreement for the Project. We will conscientiously represent Grand Forks in this matter, but please bear in mind that we cannot promise or guarantee the outcome of this or any other matter.

Although the preceding paragraph sets forth our understanding of the scope of our engagement, it has been our experience that clients often ask us to undertake work outside of the initial scope of engagement. When we mutually agree to extend the scope of engagement, we typically do not amend our initial letter of engagement unless requested to do so by the client. This agreement

August 15, 2024

Page 2

shall be deemed to be a continuing agreement in that if at any time the firm advises or represents Grand Forks in connection with any additional matter, that representation shall be under the same conditions and at the same fees as those expressed herein, unless we both agree in writing to the contrary. Of course, the firm reserves the right to decline representation at any time.

Although I am licensed in Colorado, Oklahoma, and Wyoming, I am not currently licensed in the State of North Dakota. It is possible that I may seek admission to the North Dakota Bar by reciprocity if this representation develops and continues for a significant amount of time. *See* N.D. Admission to Practice R. 7A. However, if I do not seek admission to the North Dakota Bar, it is understood that my representation of Grand Forks would be in active participation with Mr. Gaustad, Grand Forks' City Attorney, or at his discretion another attorney in his office, pursuant to N.D.R. Prof. Conduct 5.5(b)(4). (Also note that even if I were to be admitted to the North Dakota Bar, I would expect to represent Grand Forks in active participation with Mr. Gaustad or an attorney in his office.)

#### **CONFLICTS AND POTENTIAL CONFLICTS**

The firm has no apparent conflicts related to this representation. However, we do represent many other clients on a broad range of matters, and it is sometimes difficult to identify a conflict or potential conflict. If we become aware of a conflict, we will promptly discuss it with you. We reserve the right to withdraw from representation if we feel that we cannot properly represent Grand Forks' interests. If at any time during our representation you have any questions or concerns regarding our firm's representation of Grand Forks, you agree to bring those matters to our attention as soon as possible so that we may address and resolve them immediately.

#### **FEES AND COSTS**

Fees for services rendered will be based on the reasonable value of those services in accordance with Rule 1.5(a) of the North Dakota Rules of Professional Conduct based upon the following factors: the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the amount involved and the results obtained; the time limitations imposed by the client or the circumstances; and the experience, reputation, and ability of the lawyer(s) performing the services.

I will be the primary attorney working on this matter. My billing rate is \$510 per hour. Where it is appropriate to do so, the matter will be staffed by my partner Stacy Brownhill or our paralegal Teresa Johnson. Ms. Brownhill's billing rate is \$320 per hour, and Ms. Johnson's billing rate is \$210 per hour. Our billing rates generally depend on the attorney's years of experience and the factors mentioned above. Although the firm adjusts rates from time to time, the above rates will remain in place at least through 2025.

The time for which Grand Forks will be charged will include, without limitation, telephone and office conferences, factual and legal research, drafting of legal documents, pleadings, emails,

letters, and other documents, and travel time. Time is generally kept and charged in increments of one-tenth of an hour, although we can make other arrangements should you so require. Prior to sending statements, we carefully review them for accuracy and to assure that work is being performed in an efficient manner.

In addition to our fees, we will bill for costs and expenses incurred in performing services, such as photocopying, messenger and delivery service, research, and recording and filing fees. Certain of the costs charged are comprised of direct costs and an allocation of indirect costs. Fees and expenses of third parties, such as title companies, appraisers, environmental consultants, or expert witnesses, will generally be the responsibility of Grand Forks and billed directly to it, unless other arrangements are made.

Fees and expenses will generally be billed monthly and are payable upon your receipt of our billing statement. We expect bills to be paid promptly, as delayed payment adds to our overall cost of providing legal services. You agree that you will review our statements carefully upon receipt and notify us immediately if you have any questions or concerns. If we do not hear from you within 15 days after the statement is mailed or otherwise transmitted, we will assume that the statement is acceptable to Grand Forks as fair and reasonable. If you do have any questions or concerns, we agree to respond to your inquiries or concerns immediately. It is extremely important to our relationship and our ability to represent Grand Forks that any questions or concerns over our billing statements be resolved immediately.

#### **FILE RETENTION POLICY**

At the end of this matter, and upon final payment of all sums outstanding, the firm shall return any original file materials that Grand Forks provided. Grand Forks will be provided with copies of relevant documents on an ongoing basis, and it is the Grand Forks' responsibility to retain those documents, including printing and retaining copies of all emails sent to or received from the firm. The firm shall not be responsible for maintaining file materials longer than five years. It is the firm's current policy to destroy all materials in its possession five years after the conclusion of a particular matter.

#### **CLIENT RESPONSIBILITIES**

You understand and agree to keep the firm informed at all times of any changes in contact information and to assist in providing information to the firm in a timely manner, as requested.

#### **WITHDRAWAL FROM REPRESENTATION**

If billed amounts are not paid when due, you agree that the firm has the right to postpone or defer providing additional services, or to withdraw from the engagement upon providing you with reasonable notice of our intent to do so.

August 15, 2024  
Page 4

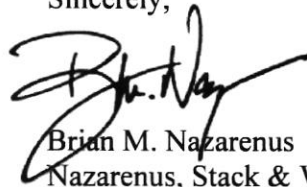
As our client, Grand Forks will have the right at any time to terminate our services and representation upon written notice to the firm. However, termination will not affect Grand Forks' obligation to pay for all services rendered and costs advanced or incurred on its behalf of prior to the date of termination.

\* \* \* \* \*

If the foregoing terms are acceptable to Grand Forks, please sign and return to me a copy of this letter to confirm agreement to the foregoing. If you ever have any questions regarding any of these terms, or any billing statement or other matters related to our representation, please contact me directly at telephone numbers (720) 506-9602 or (303) 263-8973 (cell).

In closing, I look forward to working with you on this matter and thank you and the City of Grand Forks for your trust and confidence.

Sincerely,



Brian M. Nazareus  
Nazareus, Stack & Wombacher LLC

---

I agree to the foregoing and authorize Nazareus Stack & Wombacher LLC to represent the City of Grand Forks, North Dakota, in connection with the above-described matter.

By: \_\_\_\_\_  
Name:  
Title:

## **BRIAN M. NAZARENUS**

For more than 30 years, Brian's practice has focused almost exclusively on helping water users find, secure, and defend their water rights in Colorado and the Western U.S. His clients include municipalities, water and wastewater sanitation districts, mines, golf course developers, energy companies, and various commercial facilities. Brian serves as a trusted advisor, providing strategic guidance on long-term water planning and water rights projects.

In Colorado, Brian's experience includes the adjudication of surface and underground water rights, the development and adjudication of augmentation plans, water rights transfers, and exchange cases. Brian has also litigated and negotiated settlements regarding complex tribal water claims and represented clients in state permit proceedings in other Western States.

Brian also has substantial experience with permitting water projects under Federal environmental laws, including 404 permitting, NEPA, and the Endangered Species Act, and with working with the relevant Federal agencies in the environmental permitting process.

**Water Rights in Colorado.** Brian has handled substantial water rights litigation involving both trial and appellate matters before the Colorado Supreme Court, the Colorado Court of Appeals, the Colorado Water Courts, and the Colorado State Engineer.

Brian's representative water rights work in Colorado includes:

- Serving as lead counsel in the adjudication of water rights for several Colorado power plants.
- Serving as lead counsel in the adjudication of complex water rights systems for large mining operations in Colorado.
- Serving as lead counsel in the adjudication of municipal water supplies for major Denver suburbs.

**Water Rights in Other Western States.** Brian also represents clients in other western states in major water rights litigation, including litigation in federal court regarding Tribal Water Rights. In addition to appearing before federal district courts, he has argued appeals regarding water rights matters to the Tenth Circuit Court of Appeals.

Brian's representative water rights work in other Western states includes:

- Litigation regarding Tribal Water Rights in Oklahoma, resulting in an historic water rights settlement that was enacted in federal legislation.
- Multiple complex matters, including litigation in federal court and related settlements, involving Bureau of Reclamation and Corps of Engineers projects.
- Federal court representation in actions against water projects based on the Endangered Species Act.
- Representing municipal clients in state administrative permit proceedings.

- Environmental permitting for complex, multi-facility projects.

**Regulatory Leadership.** Brian served as a member of the Colorado Water Quality Control Commission from 1999 to 2008, including as the Commission's Chair from 2006-2007.

#### **Activities & Affiliations**

- American Bar Association Natural Resources and Litigation Sections
- Wyoming Bar Association
- Colorado Bar Association Water and Environmental Law Sections

#### **Distinctions**

Brian is recognized in *Colorado Super Lawyers*, *Best Lawyers in America* and *Chambers USA* for his work in water rights, natural resources and environmental law. In addition, Brian has been selected "Best Water Lawyer" in *Law Week Colorado's* annual Barrister's Best issue in 2010, 2012, and 2014-2019. Brian has earned an AV-Preeminent Rating by *Martindale-Hubbell*.

#### **Education**

##### **University of Colorado**

- Juris Doctor, 1987
- B.A., History, 1980

#### **Bar Admissions**

- Colorado (1987)
- Wyoming (1994)
- Oklahoma (2012)