



BURLEIGH COUNTY WATER RESOURCE DISTRICT MINUTES

Tuesday, February 7, 2014

Tom Baker Meeting Room – City/County Building

Present: Terry Fleck, Kathleen Jones, Gordon Weixel, Dennis Reep, Cary Backstrand, Michael Gunsch, Houston Engineering Services, Inc.; Dave Bliss, Bliss Stebbins Law Firm; and Mona Livdahl.

President Fleck called the meeting to order at 8:01 a.m. noting a quorum was present.

1-14-14 Minutes: Kathleen moved to approve, Dennis seconded. Motion Carried.

1-20-14 Minutes: Dennis moved to approve, Kathleen seconded. Motion carried.

1-28-14 & 1-31-14 Meeting Summary: Cary moved to approve, Kathleen seconded. Motion carried.

Financial Reports:

End of January: Kathleen reviewed noting we currently have \$506,954.73 in the bank, and the bills total \$16,150.87 leaving a balance of around \$490,000. She requested to move \$200,000 into a designated reserve account. **Cary moved to approve moving \$200,000 in to our reserve account, Gordon seconded.** Kathleen noted we have Burnt Creek Floodway and Apple Valley and asked that we store this amount away and hopefully by May we can recoup some funding through the prior SWC cost share funding requests. Michael noted the Board will also be receiving the tax payments by that time. There was a question as to if we are making interest on the monies - noted with the interest rate, we have it in savings at a rate of 0.1% the money market was at 0.5%. Consensus was to leave it in savings. Questioned the benefit of a Reserve Fund - noted it is dedicated for projects that we have coming up, i.e. Hogue Island rip rap to stabilize the bank. Etc... Kathleen noted we also have monies from the farm land rental and Brookfield funds that have to be separating into special funds. **Motion Carried.**

Pledge Securities: Kathleen reviewed noting that on the 30th of January and with the required pledge and the par value, our monies are insured.

Bills: Noted the bills totaling \$16,150.67. Kathleen reviewed the bills. **Kathleen moved to approve, Dennis seconded.** Kathleen asked that since we are trying to get a firm handle on these projects, she would ask that all contracted personnel bill by project versus monthly, etc. Also Board members need to separate the billing time out by projects. **Kathleen amended her motion and moved that we bill by project in the future and also approve the bills. Dennis seconded. Motion carried.**

Review and Approve 2014 Portfolios: Chairman Fleck noted that the portfolio list had been sent out and since no one called, we assume everyone is comfortable with their portfolio.



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Meeting Schedule: We have a conflict on June 10th with the meeting space and Michael will allow us to meet at HEI. Gordon noted that the first Tuesday of the month in March does not work for him, and March 4th is a conflict for Dennis and Gordon. Meeting dates have changed to March 6th and April 3rd on the schedule. **Gordon moved to approve portfolios and meeting dates as changed. Kathleen seconded. Motion carried.**

McDowell Dam:

Gordon noted the requested grant for monies from the Heritage Fund was denied. The paddle boat purchase will be discussed later.

Tractor Warranty Issue: Greg talked about the warranty issue. Noted he has been in contact with Bobcat and they are getting close to a real bona fide offer to submit to the Board. Greg noted by next month we should have the two options in writing. The warranty covers all parts and labor on the tractor. Noted we will wait until we have the options in writing to discuss. Kathleen asked for information on the Coyote Tractor as well as finding out what the tractor we currently have is worth on trade.

Paddle Boat Purchase: Questioned if we should purchase or wait until 2015. Consensus that they had been approved already.

RV Park: Gordon noted until we know what is going on with the water supply we need to hold on this.

Water Permit: Cary noted last he heard it was being forwarded to Dan Ferrell, but have not heard anything yet. Kathleen asked that we put this on hold until we do hear from the SWC and also until we can put a program together to present to the Bis Parks and Rec. It was discussed from a budgeting standpoint the Board should to wait until we get the flashboard and water permit. Because Apple Creek has limited flows we will put it in the SWC hands - we will also need to secure easements first for the supply line location. Chairman Fleck discussed the meeting with the Sports Fishing group - noting dam repairs are on the bottom of the list for the SWC. Cary discussed the dams that have been transferred to the control of the local water resource districts. When repairs are needed, it is a split between the SWC and WRD. Currently in Burleigh County we only have Neideffer and McDowell Dam. Most of the WRD don't have the funding available to repair or maintain these dams. Noted in that aspect of only having the two dams, we are in good shape. Michael noted that the SWC is looking at increasing their participation rate in the dam repairs in their new policy to 75% versus the 50% that was in the original draft.



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Dennis noted that when McDowell Dam was given to the WRD, the agreement stated that we would set costs aside for the repairs. The distance from McDowell Dam to Apple Creek is about 1-1/4 mile. **Kathleen moved that we secure easements from Apple Creek to McDowell Dam so that when the SWC approves, we are ready. Cary seconded.** Cary felt that rather than securing the easements, he would prefer the engineer bring this to us and see if this is the prudent thing to do. Kathleen asked that we table this until next month and by consensus we have Michael bring this to the next meeting. **Kathleen withdrew her motion, Cary withdrew his second.** Cary noted we do have the authority to condemn for these easements and while he is not a fan of doing, we can and it is an option to look at.

Drainage Complaints:

Eldin Spiers: Still waiting on UTTC regarding their drainage plans.

Mark Swenson: This issue is complete and we are waiting for the draft letter from Michael.

River of Hope: Cary took pictures noting the overflow was lowered but the development construction is still taking place. There is an opening from the bottom pond to Hay Creek and if we don't have a big spring runoff, it should be ok. If they do have damages they would be able to file civil charges. Michael noted that the BCWRD did inform the City that you would respond to the complaint after review and provide your expectation of actions.

Liechty Homes: Dave reported that we received a letter from Kelsch, Kelsch, Kranda & Ruff Law firm asking that we put the complaint on hold until litigation is complete. It will be removed from the agenda.

Tom DeKrey: Cary reported that Craig Odenbach was to take another look at it and not sure if he did. The Highway Department was to go out and stake it, but we are not sure if this was done either. Discussed Board action noting we need to get something to the landowner that he is in violation of obstructing a watercourse. He either needs to restore the watercourse or come up with a plan as to what he will do to handle the flows. Michael noted that based on the committee meeting, the discussion was that the Board order the obstruction be removed and he provide an engineering plan as to what he intends to do. We need a documenting showing the new location and that it has adequate capacity. We need to take formal action to have him provide us with this document. Cary noted he has not heard from the County Highway Department if it the dirt was stake for removal. The landowner has put fill into the main channel which is a natural watercourse - we can order him to reestablish the natural watercourse or realign it to divert around the edge of the property. Discussed issuing an order to remove the obstruction from the natural watercourse or provide an engineered plan to divert the flows so he has a choice. The order typically states it has to be done in 15 days or a defined timeline. He appeal and questioned if this needs to be at that level yet.



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It was noted that the landowner is still hauling fill in. Noted that we will have Craig look at it and if the landowner hasn't done anything then we can send the letter. **Cary moved that we issue an order to the landowner that he remove the obstruction and/or provide this Board an engineered plan as to how he will modify the watercourse and give him 30 days to get back to the BCWRD. Dennis seconded.** Dennis asked if this would be a true engineered plan or his. Noted it would need surveying data, etc. and would need an engineer to prepare the document. Noted whatever plan he comes up with needs to be submitted by a qualified professional. **Motion Carried.** Cary asked who will draft the letter. Michael will draft and send to Dave for review and then send it out. Craig responded later noting there was some surveying done.

Country Creek 3rd: Michael reviewed noting the information went out to the residents and Gibbs Township. Michael had a meeting with Marcus Hall, County Engineer and Commissioner Doug Schonert regarding Country Ridge 1st and 2nd and they will not approve new plats until this issue is resolved. In a phone conversation with Michael, Brad Krogstad with KLJ noted he agrees that if it is fixed it will alleviate the problem; the issue is who will pay for this. Michael talked to John Hauck, Gibbs Township and he noted they had no idea the easements were provided to Gibbs Township. Noted a second letter will go out today and talk about who can do things regarding this issue and who possibly should. There is a meeting next with Marcus and the developer to discuss the options to move forward. The agenda went out for the approval of Country Ridge 1st and 2nd preliminary plat, if there is no answer or resolution, we can't approve the preliminary plat. Within the next 30 days they lose that time for approval and construction in 2014 – the developer would like the preliminary plat approved now, then they will potentially have to resolve the issue before final plat approval. Gibbs Township is not obligated to do the maintenance nor is this Board or the County so currently it appears left to the landowners. The sediment was generated by the developer's project, county and others, so who is paying for this is unknown. There needs to be a long term plan for maintaining this channel as part of the solution. Dave felt that there is nothing more that this board can do other than to put in the letter that they can seek legal action and do a civil suit. The preliminary plat has not been approved but is on the next planning commission agenda. Noted the Board has already written a letter in opposition and if the meeting does result in a solution this Board can say we approve subject to specific conditions. Discussed that we need to figure out who is charged with the responsibility for cleaning these channels. Kathleen and Michael will be at the meeting and noted we need to focus them on what needs to be done. Cary felt we need a guarantee that the developer cleans this up as a condition to preliminary approval. We will also need to work with the landowners to make them understand that they own this channel and need to set up a HOA or some entity to continue to take care of this in the future. Dennis asked where we fit in. The sediment in the channel is obstructing the watercourse - if the watercourse is obstructed by the negligent act of someone, if we order the obstruction to be removed we can order the person responsible and at this time it is the developer.



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Chairman Fleck noted we do have drainage complaints. It is an artificial watercourse but it is a watercourse. The issue is if we issue an order, who do we issue the order to? The County is now in a position to create ordinances to deal with these types of issues in the future outside the ETA. Cary noted that as far as the preliminary plat is concerned, if the developer wants to move this ahead and we can drop our opposition if they clean up the problem. Discussed carrying it further and ask for long term maintenance agreement. Michael noted it is a noncompliance issue as it is maintenance - if we also have a City approved SWMP and they passed it off to the County, and the County can, if any feature of the SWMP is out of compliance, the individual landowner could end up picking up that problem. Now if the County tells the landowners that they are not in compliance and ask to fix it - at that time the landowner can go after the developer in a civil suit. Michael will have that discussion with Marcus. Consensus of the Board is that the preliminary plat should not be approved until there is a resolution to the problem.

Missouri River Flood Hazard Mitigation Studies:

SWC Cost Share: Has been sent in have not heard anything yet.

Ash and Ward Coulee: A survey was completed and AE2S has provided a memorandum regarding the hydrology, though we have not responded yet. Consensus was that the coincidental flows between the urban runoff and Burnt Creek overflows are such that we need to analyze with base flow. Michael will request them to model the full 100 year overflows through the channel and this would provided us a basis to compare urban flows to those from Burnt Creek. Michael will have them provide this Board with a model of that environment as to what then might need to be done. The perspective on the design is the City can't build detention or stormwater features outside the City Limits. Michael noted there are some jurisdictional questions to be resolved. The public informational meeting on this project will be at 5 pm on February 20th. Kathleen felt that a segment of agricultural people will be present who will be strongly opposed to development impacting them. Discussed the fact that there is one landowner along this reach that farms over the creek bed; which has obstructed the natural flows. It was noted that it is a natural watercourse and if he is obstructing it, we can issue an order to remove the obstruction. Noted Michael and Kathleen will be gone but we need to have representation there. Dennis will attend as this is now his portfolio. Prior to the meeting Michael will brief those who can attend on the various issues. Noted Dave Pierce from Hay Creek Township should also be present for the briefing.



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Missouri River Correctional Center:

MRCC Status on Levee Options: An email was sent to Keith Magnusson and Dave Krabenhof and they have their money allocated until June, 2015, and if they have a project authorization they can carry it for another two years. MRCC is still on board with this. By June of 2014 the SWC can have a preapproval for the projects which would open the door for preapproval on this project. Until the policy changes, this Board needs to wait. The question is that when that policy change occurs, what role does this Board want to play in contacting the constituents of MRCC area to reconsider the project? It was the consensus of the Board that we let the residents know when this happens. Chairman Fleck noted that with the vote tally posted on the website, there are people who feel that they voted wrong and now know that the road project has nothing to do with the protection that we are trying to provide them. We can accept petitions to move forward.

Letter to residents on results of ballot: Informational only.

Break at 9:41 a.m. reconvened at 9:51 a.m.

Fox Island Flood Control Project: On hold.

SWC: Cost share request and final report is on Michael's desk he will bring it next month hopefully and will do the final report and project close out.

Hogue Island Flood Control Project:

Clean up and demolition: Bohlman cleaned up all the houses and the stockpile of sandbags that was to be moved. By today the site should be cleaned up with the exception of the material stockpile left for the bank shaping.

Final payments on homes and split with SWC: Pending

Bank Stabilization:

COE 404 permit and Sovereign Lands permit are approved.

Change order #2: Should be ready for March, pending review of costs and SWC issues. A public information meeting will be after bank stabilization and clean up is done, likely in the spring or early summer.



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Kathleen has been contacted by three 3 people who are interested in purchasing the lots and questioned having an auction in or about June. Kathleen felt we should list a reserve no lower than \$5,000. Discussed when the cleanup is done and the public meeting, it is incumbent to present to the constituents how much money was spent on their behalf - since they don't want flood protection, we have acquired the lands, and we will put the restrictions on the lots if they want the protection down the future to have flood control that option remains in place. These lands can be used for two purposes, public use or just sell it outright with the deed restrictions. In discussions with Al Veitmeyer it was noted that we will be unable to get the lots appraised - the greatest value would be to a landowner living there. It was discussed setting the reserve and let people bid from there. Discussed a boat ramp - noted the residents don't want another boat ramp there. It was questioned as to whether we can't put a boat ramp or they don't want it - noted they don't want it. Chairman Fleck questioned at the public hearing if we should let them know that it is a great piece of public access to the river. It was noted that the residents don't want it opened to the public and questioned what the return on investment is. Michael noted that in the larger picture of what is going on to protect these people, and the efforts of this Board that a response should be done relative to protecting the island. Currently they don't have flood protection and didn't want it - and we need to establish our position as a body – therefore the restrictions on this island, such as no additional platting; the County Commission has stated no additional platting due to limited access and this Board should consider putting on the other restrictions to protect the public and maybe the County needs to consider having new residents placed 3 feet or more above the 100 year flood elevation. It was noted that when we get to the public meeting, we need to have the full context and direction for these people. Questioned if Todd Sando from the SWC could pull the monies due to no project, noted no as these lands are being preserved for that flood plain protection. The response was no that the SWC does not have the option to pull funding, though assuredly they would be disappointed that a project did not proceed.

Burnt Creek Flood Control Project:

SWC Cost Share Request: Michael noted they are waiting on cost share agreement and will check on its status.

Special Assessment District: The special assessment district was approved by the BCWRD and County Commission therefore authorization is needed to complete the plan set for bidding – we will need to modify the project for sediment removal and levee restoration. **Cary moved that we allow HEI to proceed with the plan set for bidding. Kathleen seconded.**



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Kathleen noted most of the levee damage has been done by ATV's and snowmobilers and if we can put something on the south levee to stabilize it better. Michael noted that we could gravel it but it would somewhat invite traffic. The gate is supposed to be locked but you can drive around the fence - noted we can close that off but then need to discuss maintenance. The questioned was asked if we have signs prohibiting the use of it. Noted we don't but should prohibit the use of the dike on both sides. Michael will look at the fencing and signage issues. There are no trespassing signs but they need to reference no vehicle traffic also. The proposed plan set will cover the signs.

Dennis asked about the discussion of unequal benefits but equal assessments for the assessment district and if we can look at a different assessment rate for landowners. Michael noted that the Board will have an assessment district after February 1st with new valuations and ownerships. Then the Board can use these to certify our assessments to the County Auditor. A question was raised as to if the district can release or forgo the very the small amounts of assessments, and if so can we look at the landowner to the North to look at as each year we recertify those district areas. The question is under the drainage law the benefit of assessment for protection is the same as the original vote. Noted some assessment districts do decrease the amount due to the benefit. Dave clarified the law noting you can't go over the amount but it does not say you can't go under. Chairman Fleck asked that Kevin Glatt help us understand the minimum standard performance. Cary asked that now that the County Commission approved, it is now our project and they are out of it as far as assessments are concerned. At the Monday night meeting the assessment district was established - not the amounts. It was noted that if we don't assess them a value now, we can once they build on a property for those will very small assessments. Early fall the Board will need to certify the assessments for the County Auditor. Kathleen will talk to Kevin about the minimum standard performance. **Motion Carried.**

Sunny View Flood Control:

Kathleen noted at a cost of approximately \$50,000 the project is done. The Richter's have refused to give the BCWRD an easement to construct the project. **Kathleen moved that unless the neighbors come back to us with a petition and bond, we send a letter out letting them know the flood control project is suspended. Dennis seconded.** Michael noted that BCWRD evaluated the stormwater management impacts on the Richter's property and in essence we developed a SWMP and suggested the Board adopts that report as the stormwater master plan for the watershed and related properties. Michael recommended that we include in our letter that the SWMP Master Plan is included in the Boards determination and documented and that we adopt that report. **Kathleen amended her motion that we include in our letter that the SWMP Master Plan is included and documented and approved, Dennis seconded.**



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Cary asked about the last paragraph about condemning land and we elected not to pursue if we should state “at this time”. Dave noted that does not mean it is permanent but felt we could add that language. **Kathleen amended her motion to also include “at this time”, Dennis seconded the amendments. Motion Carried.**

Apple Valley:

Check has been received as well as the bank loan documents received.

Informational only – no action needed.

Missouri River Snagging:

Michael noted we need the technical analysis before we bring the stakeholders in for discussion. Cary noted that we had made a motion to get the permits to the COE and asked where we are at. Michael noted that we have the background information prepared for the COE, but don't have the practicable alternative analysis completed. We would need that information for the impacts related to the permit - the USGS may be able will do this analysis with their geomorphological model and we can incorporate that back into the permit. Kathleen questioned cost - Michael noted that if USGS participates 50% and the SWC participates in the cost as they had in the original USGS study the costs could be minimal. We had only participated \$15,000. Cary felt that we took the lead in this but needed to see if the other stakeholders are still interested in participating. Chairman Fleck felt that the staff level has not changed and feels they are still interested. Kathleen asked if we could put a presentation together at the July meeting in Grand Forks. It was noted that Katie had made her presentation at the Decembers Water Users meeting.

County Planning Meeting Coordination:

Michael reviewed noting the summary on the January 28th and 31st meetings. Noted this appears moving forward in the right direction, but will take some time as this is not a simple task. A copy of the summary is contained in the meeting minutes. Michael recommended that we have Marcus continue to work on these issues and then bring this to the BCWRD and City so that everyone's expectations are the same. Boundaries would be mapped. The next step is that we are waiting for Marcus to get back to us in response to the draft.

Other Old Business:

Records Retention: Michael found briefing book records from 2002 to 2007 - noted that he will take to Mona to get them scanned.



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New Business:

Community Rating System: Michael reviewed and noted this has to do with reductions on flood insurance for the CRS. Ray Ziegler and Mary Senger from Emergency Management will try to attend this course and put together a program so that in June they can launch a program to get it to FEMA to get the rate reductions in place for flood insurance. They could reduce rates from 5 to 10% and with the revisions to the flood plains can reduce it further. The County is willing to take this on, but the ETA's will not get this discount as they are not under the same flood plain administrative authority. There is discussion as to how FEMA deals with this. Townships are covered as long as Ray Z supervises this role. Paragraph 2 states that the City will not participate – a question was raised asking if it would be incumbent to send it to the City Commissioners and highlight the second paragraph. Michael noted that until they are in a position to launch in June or July, which is when they would bring the City in. This memorandum is asking that we pay HEI to bring the data back and the cost of \$7,130 is our cost to participate. Dennis asked if this training gets someone certified and questioned why a government entity would pay for someone to get certified. Michael noted that this is what we need to determine and HEI was acting on behalf of the BCWRD's request for information and cost. Dennis felt that since Ray is participating we should not as this is certification for an individual versus training noting however it is difficult to get into this course. Discussed having Mary and Ray's department split the cost if they are not able to attend and we send HEI.

Discussed the urgency of this - Michael noted that Ray had wanted to do this sooner, but could not get the City to cooperate. Michael felt that if Ray could go, we would be ok to go. Chairman Fleck felt that it was incumbent on us to send a letter to the County Commissioners noting someone needs to attend. Noted the question is can Ray or Mary sign up for the course this late in the schedule. Kathleen noted that we did put the monies in the budget but we need to contact Mary and Ray and ask them if they can move quickly and have the county people certified and we would split the cost with them. Noted we could decide at our March meeting. Kathleen will have this discussion with Ray Ziegler and Mary Senger. Dave felt that it is elective on the part of the Board but felt it is a selling point for the company or individual who has the training. Kathleen will talk to Ray and email out a status and response on direction.

Correspondence:

Michael disclosed that HIE is working on the Daybreak and Hamburg Additions.



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SOV' S-1883: Questioned the outfall structure on the Missouri River. Michael noted that Misty Waters currently has a large septic tank and they routinely pump it and haul the waste to Pioneer Park as they have no treatment plant on site. They were to have constructed a lift station to pump these flows through a force main to the Pioneer Park lift stations – instead they appear to be installing a packaged water treatment plant and it discharges treated water to the river. There is a similar system in place for the Hawk Tree development area on Burnt Creek.

Other Business: Dennis asked if we could have a display hooked up so that we would be able to have our books on the screen monitor. Michael will check into that option.

With no further business the meeting adjourned at: 11:30 a.m.

Respectfully Submitted:

A handwritten signature in cursive script that reads "Mona Livdahl".

Mona Livdahl, BCWRD Admin. Secretary