



BURLEIGH COUNTY WATER RESOURCE DISTRICT MINUTES

Tuesday, April 3, 2014

Tom Baker Meeting Room – City/County Building

Present: Terry Fleck, Kathleen Jones, Dennis Reep, Gordon Weixel, Cary Backstrand, Dave Bliss, Bliss & Stebbins Law Firm; Michael Gunsch, Houston Engineering, Inc.; Commissioner Doug Schonert, Burleigh County Commissioner and Mona Livdahl, Personalized Management Services, Inc.

Chairman Fleck called the meeting to order at 8:07 a.m. noting a quorum was present.

Approval of Minutes 3-6-14: Cary moved to approve, Kathleen seconded. Motion Carried.

Approval of Minutes 3-20-14: Dennis moved to approve, Cary seconded. Motion carried.

Financial Reports:

Kathleen reviewed the financials noting the P&L for three months. The bulk of real estate taxes have been received. Current bank balance is \$500,238.74. Discussion took place regarding reimbursements to the SWC on the Hogue Island buyouts. **Kathleen moved to move another \$50,000 dollars into our savings/reserve account from our checking account. Cary seconded.**

Kathleen discussed the amounts in our reserve noting there are specified dollar amounts for projects that the BCWRD has. The additional \$50,000 requested for move is to pay off the SWC for the Hogue Island buyouts and if there is a balance left we can move it to the Burnt Creek project. **Motion carried.** Chairman Fleck asked if we have received all the tax dollars as of this year. Kathleen will talk to Clyde and find out where we are at. Discussed the in lieu of taxes are which are for people/companies who don't have to pay taxes but do contribute a percentage. Kathleen noted that as she reviewed last year there are areas where we overspent against budget. Kathleen noted we need to be diligent in how we spend in tax dollars.

State Audit Report: Kathleen reported that no later than July 15th we will have a firm report. Kathleen noted there are 3 areas of concerns that had been noted:

1. An adjustment of funds transferred electronically were deposited 2012 and should have been 2013.
2. Area of concern was the minutes - when projects go out for bid we need to list each bidder and the amount.
3. BCWRD needs policies in place for the organization.

Kathleen noted she had looked at the counties policies and of the 14 policies, 11 do not apply to us. Contact was made with Sean Fredericks, Legal Counsel for the Fargo Water Boards and he provided three firm policies: Financial Policies, Capital or Fixed Policies, and Fraud Prevention Policy. **Kathleen moved to accept the three policies as presented. Dennis seconded.** Cary noted this is the first time he has seen these and did not have a problem accepting providing we could modify at a later date. It was noted we could. Dave Bliss stated that he had reviewed the



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policies and does not see any issues in adopting these policies. **Motion carried.** Noted these would be kept in Mona's office.

Address: The BCWRD does not have a firm address. **Kathleen moved to adopt Personalized Management Services, Inc. and their phone number as our official phone number and address. Gordon seconded.** The PMS office is staffed during business hours Monday - Friday. Once BCWRD establishes an office and phone number, Mona can forward to the correct portfolio person. **Motion Carried.** Kathleen noted that the office does have a small conference room in the event of a special meeting needed.

Quickbooks: Personalized Management Services currently have Quickbooks and only 3 licenses. Should BCWRD ever leave, they will need a license to have a copy. **Kathleen moved to purchase an additional license for an approximate cost of \$800 so that the Treasurer and Chairman, if needed, are able to access. Cary seconded. Motion Carried.**

Safety Deposit Box: Gordon will be taking pictures of McDowell Dams inventory and we will also need a safety deposit box to keep these documents in. The cost is \$20/year. **Kathleen moved to proceed with getting a Safety Deposit Box. Cary seconded. Motion Carried.**

Organizational Issues: Kathleen noted BCWRD is required to carry both liability and property insurance. The suggestion was made to group these insurances on an excel spread sheet and leave this with legal counsel. **Kathleen moved that BCWRD put Dave Bliss in charge of all our insurance policies, bond, liability, and place on a spreadsheet which we can review annually With the use of an tickler system on the PMS Computer system. Gordon seconded.** Dave (Legal Counsel) noted That Mona (PMS) also have copies of these. Discuss BCWRD members strongly recommended that the portfolio holder of McDowell Dam keep a copy as well. All insurances will be reviewed annually (December). Mona will also put in her reminders. All insurance for BCWRD's property are insured by the ND Insurance Reserve Fund, liability Insurance is with Bain Insurance.

Discussion told place regards to buildings this is covered by the North Dakota Fire and Tornado Fund. Al Vietmeier, Burleigh County's Assessor and he will go out to McDowell Dam to assess the buildings. **Motion carried.**

Water Managers Manual: Kathleen noted we need to purchase this Manual noting every board member should have one. **Kathleen moved to purchase 3 more at \$30 each, Gordon seconded.** Dennis asked if these are updated, Cary noted they were. Chairman Fleck asked if this is available electronically, Cary noted not at this time. **Kathleen amended her motion to 4 copies at \$30 each for Dennis, David, Gordon and Mona. Gordon seconded the amendment. Motion carried.**



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Revisions to Travel Expenses: Noted on page 43 the increases are highlighted on meals and mileage. No motion needed, informational only. Mileage is at .56 cents; Meals First Quarter - \$7, Second Quarter - \$10.50, Third Quarter \$17.50.

Insurance: Dave reviewed discussing how the agencies work. There was a request to get an E&O Policy through Steve Bain. He has not heard back from him yet. Dave requested that an actual physical copy of the policy should be kept with PMS & Bliss & Stebbins Law Office.

Approval of Bills: Kathleen moved to approve the bills in the amount of \$45,941.19. Cary seconded. Motion carried.

Drainage Complaints:

Eldin Spier/UTTC:

Dave Thompson from Toman Engineering and Kevin Bittner was present. Toman Engineering presented a water project to to the Board regarding property that Steve McCormick and Ron Koch would like to develop in this area. A SWMP is needed. The City of Bismarck had asked that BCWRD incorporate this plan with the United Tribes issue

Michael noted there is a master plan of this area that does not rely on infiltration. The original UTTC plan was no retained water in the UTTC land. The additional channel going to Apple Creek has limited flows and there could be serious issues with downstream impacts. The drainage acres are over 80 acres and may require a permit. Chairman Fleck thanked Mr. Bittner for presenting this in order to be proactive. Cary noted at this time we have only one complaint but due to the layout of the land, this is a difficult area to develop.

Sanford Mees: Cary reported that Mr. Mees had filed a complaint earlier regarding a neighbor. At that time, a pipe was put in. The landowner is building a roadway through there and has a permit from the county. Ray Ziegler and Cary Backstrand had gone to visit and informed Mr. Mees of the complaint forms. The landowner Ed Jasczkowiak is building the road and does have a permit from the county and the fill is looking better. He has hired Swenson and Hagen and is planning a culvert. Cary noted at this time we don't have a complaint but did inspect it and did not find any issues with it. Ray Ziegler was present and noted he pulled the entire file and reviewed - Ray noted he had seen some rebar and Mr. Jasczkowiak agreed to cut that out of there and all else looked to be in compliance. It was noted that until we receive a complaint, this can be removed from the agenda.



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Eldin Spier: Discussed removing from the agenda - noted it is still an open complaint and should wait until we know what they are proposing.

McDowell Dam:

Paddle Boats: Gordon noted everything is in order for the paddleboats. The order has been signed and sent.

Heritage Fund: Informational, we have an opportunity to go back and in the future for walking paths, etc. we should consider it. Chairman Fleck noted there is confusion on the legislative intent and does not feel the groups he is involved in are clear either on the legislative intent.

Insurance on New Building: Gordon deferred to Kathleen and Dave. Kathleen noted we have insurance pending on building 4 we need to have an inspection done on it as it does have electric installed. Forrest noted he will have someone out on Monday to do the inspection. Kathleen asked that as soon as Forrest gets that to let her know.

Aero Club: Rod Matzke from the Aero Club attended noting he is spokesman and Treasurer of the club. Mr. Matzke provided a history of the Aero Club; they have been at McDowell Dam for 18 years. Anyone can use the area to fly but they must have an AMA (American Model Aeronautics) card which provides coverage. The field gets 2.5 million in liability and 5 million in aggregate insurance. They do 2 air shows per year one in June and one in August. They sanction these events and carry another 2.5 million in liability. They are club number 407 in the AMA - which is the mother organization. Mr. Matzke stated that in 2002 they asked to be on county property and to develop it. In 2006 with the BCWRD's permission they acquired more land for a shelter. Through a matching grant with the Parks and Recreation District and private donations, they completed the roadways, shelters, camper hookups have electricity in the shelter, 10 x 12 building. BEK fiber has been put in as well as a camera system. The main complaints they deal with are when people go in the no fly area - generally have 4 or 5 complaints per year, last year only had one. Kathleen asked that they put together the history so that as new board members come about they can include this in their new board packets. Mr. Matzke noted that he will provide the update. Mr. Matzke stated that the reason he is present is that the original contract stated one building. It is stated in the contract the building is Missouri Slope Model Aero Club's and they are now comfortable where they are at and they would like to donate the 24 x 40 foot shelter and the 10 x 12 Butler building (has all the master controls) and they would like to transfer ownership of those buildings to the Burleigh County Water board. Currently the Aero Club carries theft insurance on the Butler building. The estimated value of the Butler building is \$13,000, but he is uncertain if that is replacement or built value. The shelter they have has approximately \$12,000 in it. Mr. Matzke noted that depending on the cost of the insurance the Aero Club would consider doing a share on the



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insurance costs. Mr. Matzke stated that the club takes care of their maintenance and upgrades to the area. Noted Forrest and his staff spray for the dandelions. Chairman Fleck deferred to legal counsel on how we accept this. The current lease expires in 2018.

Chairman Fleck asked Dave Bliss that if the BCWRD does accept all of this and we talk about a cost share that we do a new lease that goes to 2025. Mr. Matzke noted the Club will continue to take care of the grounds. Chairman Fleck noted that we need to keep the exclusive use to the Aero Club. Dennis questioned the advantage to BCWRD to owning these. Kathleen referred to the fencing law for farmers. If it is attached to real property it remains with the property and because we are doing this and that is the reason for ownership. Kathleen noted the insurance premium on both properties would be under \$100. Chairman Fleck noted we allowed them to put their buildings on our property so indirectly we assume liability. Legal Counsel felt that with regard to the insurance they could clarify that the Aero Club will continue to maintain the sheds and all the respective duties and responsibilities will be listed (i.e. spraying for dandelions). The board assumes property insurance for the buildings; the club assumes liability for the upkeep of the building. Rod asked that we relay the copy of the insurance to the Bismarck Parks and Rec for their file. Kathleen asked to put this in the same policy as building 4 for insurance purposes.

Tractor: Noted that Bobcat needs to get us an invoice for the warranty insurance.

St. Gabriels: Noted this is informational only for August 2nd.

Inventory: Gordon noted he will go out and take pictures once the area dries up. Kathleen asked Gordon to date stamp the photos.

Water Permit Applications: Cary noted the SWC has stated that they are approved, but we need signed copies for approved signatures. Michael talked to Bob White on Tuesday and they are to review the flashboards first. The design has changed in the diversion so BCWRD will need a new permit. Michael noted that he will show the potential route so the diversion remains the same and he can let Todd Sando know. -There are 4 land owners to contact regarding easements for this project. With the-BCWRD's consensus HEI will start contacting the residents for easements and take the new route to Bob White at the SWC to see if he has issues with the route. Chairman Fleck asked if we want to identify the costs and then go back to the Burleigh County Commissioners and ask for a dedicated mill to cover this project for financial support. Kathleen requested that Michael break this into phases. Kathleen noted that if we do the easements this year which would be approx \$40,000 and break this into sections over a 2 to 5 year period. It was noted that there is a 35% cost share option for this project from the SWC. Chairman Fleck felt the need is there to do the project but the monies aren't available. Kathleen noted that if Michael breaks this into 3 segments, in June when we report to the County Commissioners, we can propose this to them.



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Kathleen noted that we are missing a lot of visitors to the park by missing the Aero Club and asked Greg to get counters down there. Questioned when the SWC will approve the list, Michael noted they do not give dates but we are on the prioritization list. Dennis asked regarding the phasing noting that we should build up funds and then do it all at once. Michael felt that we could do easements first, then design, then the actual construction process. Kathleen noted in 2015 and she asked of Forrest and Greg to come in and give Kathleen an idea for a 3 year period of what we need to do at McDowell Dam as well as costs. Chairman Fleck felt we should go to the county for a dedicated half a mill to 3/4 mill to run McDowell Dam as this is an unusual situation. Chairman Fleck felt that running a facility and making a profit was never part of the water resource board.

Kathleen asked about the Operating Manuals and asked if it is time to revamp the plan so when we go to the County Commission we can ask about the different projects. Michael noted the Master Plan was done 5 years ago and asked to sit down with Gordon, Greg, Forrest and discuss the planning and where we are going with this. Kathleen proposed that in the next 60 days Forrest and Greg get together and determine the Capital Improvements that we would like and a timetable of 5 years and bring this back to the board. Greg asked to include Wendy Anderson as she was part of the Master Plan. Kathleen asked for something by the June meeting. Chairman Fleck asked legal counsel on McDowell Dam and how we could get this done. Chairman Fleck noted he did not want a motion, but would ask that everyone think about this before the next meeting. Kathleen also asked everyone on this board to look at Grant monies and keep your eyes open on this - i.e. conservancy district, heritage funds, etc. Cary questioned the McDowell Dam contract. Kathleen noted that the Executive Board meeting we have scheduled will be to speak to the contracts we now have. In going through the contracts with the State Auditor, a lot of things need to be reviewed. Cary felt that we should look at divesting this Dam completely and turn it over to the state. BCWRD needs to look at Fordville Dam. Dennis felt that perhaps we should find out how they fund theirs. Noted most are funded by mill levy but Gordon will be charged with looking into this. Dave felt that we should take a new look at it and will research and revisit the trust document with McDowell Dam.

Drainage Complaints:

Mark Swenson: Did an onsite inspection on the 13th. Cary noted a letter had been drafted and will send to Mel Bullinger for his review. Michael noted by May we will have the letter sent to him.

Chairman Fleck noted that since no complaint was filed, we need to leave it to Cary's discretion on how to handle. If we receive a call, refer them to the website.



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River of Hope: - Cary noted he has worked with the City of Bismarck on this. No drainage structures from pond to pond, in a meeting with the city they got a hold of the developer to make an opening so it goes in to Hay Creek but still does not apply to the water management plan they have. Cary wants to hold this open until this is complete to make sure the developer builds it correctly.

Tom DeKrey: A watercourse was determined through his land. His neighbor is hauling in fill for his property and in doing so plugged the natural watercourse. Cary noted they met with the landowner, Mr. Kvanig and we had also sent a letter giving him until March 15th to get this opened up. A ditch block in the county was removed and it helped with the drainage. We gave Mr. Kvanig until March 15th to come up with a temporary solution, and May 1, 2014 to develop an analysis by a Registered Professional Engineer. The permanent solution must be implemented no later than June 1, 2014.

Marcia Olson: No written complaint received, she had sent an email. Craig Odenbach from Houston Engineering looked at it and it was a situation whereas it did not involve a watercourse, so we have no authority to do anything. It was a landscaping issue between neighbors. Cary noted they provided some help on what could be done, but have no real authority. This issue can be removed from the agenda.

Matthew Koch: Mr. Koch lives south of the University of Mary and filed a complaint with two issues - drainage and blocking a natural watercourse. Cary noted they went to look at and there is a flow easement on the plat which no one has authority on. It was found that there is a dedicated drainage easement which was intended to be maintained and allowed to function as the flow of water through this area. Trees have been planted in this area which conflicts with its intended purpose. A letter was sent letting Mr. Koch know of the findings.

Cary moved to dismiss both complaints of Matthew Koch's - the watercourse and the drainage complaint as the area was less than 80 acres and also that we remove from our agenda.

Kathleen seconded. Motion carried.

Rick Kramlich: Mr. Kramlich was present and discussed the issue of an earth berm by his neighbors. Mr. Kramlich noted he received our reply but asked if it needs to be evaluated by the State Engineer as per the statute. Cary noted that the board has the authority to make that determination. Mr. Kramlich questioned the low spot - Cary noted we generally look back at the past pre-built photos and if it was a water course. Mr. Kramlich questioned in the past what other course of action other people have taken and without it being a water course does he have any other options. Cary noted that since there is no watercourse, we do not have the authority to issue an order. Michael noted that from the standpoint of taking civil action, any older documentation is needed, will need to work with the City - look for all available data, old



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topography, etc. The other part is proven damages. Rick asked if he could utilize HEI as a water engineer. Questioned if this would be a conflict of interest it was noted that since this was not a actual complaint, he can visit with Michael at any time. **Cary moved that we dismiss this complaint as we do not have statutory authority. Dennis seconded. Motion Carried.**

Country Creek 3rd:

Michael reviewed noting the Developer Agreement which went before Richard Rhea. The agreement was developed by Swenson Hagen. The issue now is that the developer does not own the property. The Developers Agreement was signed by Rod Swenson who is the owner - the agreement needs to be signed by both the developer (Mariners) and the owner so basically the current Developer Agreement is unacceptable. From a development perspective and compliance issue it was noted the water is not going around the corner as it was not graded to do that. It can be graded, the SWMP states it should go around the corner and if it changes, an agreement needs to be signed to change it. Travis Kastet has given an easement and said he would sign for it to relocate the easement so we can build where the low ground goes and where it should go. As far as the lower alignments it would go down lower and into the trees. They will recommend that Shoal drive will not need new culverts put in. Kathleen asked if Michael can get everyone involved on board by Monday. Planning approves the final plat and it is part of the Developers Agreement as to where it goes, but the County Commissioners needs to hold. HEI will pursue the easement from Travis. Jason and Travis asked for HEI to stake the center line for where the ditch goes. Noted this easement will vacate the prior easement. In order to pass the second resolution we may need a special meeting if not it will be at the May meeting. The Developers Agreement states that developer is paying for certain items however the owner needs to know how much he will be responsible for.

Michael provided a copy of the assessment district and what it will cost. The cost per lot is \$540 for a total of about \$40,000 - this does not include construction costs. Chairman Fleck asked for clarification as he thought Steve Mariner, the developer, was paying for this. BCWRD has final design, preliminary engineering report, construction management services, and assessment district. Michael noted there will be no actual cost to the BCWRD.

Assessment District: Greg Mariner will be doing all the construction activity, and will coordinate with the landowner. In the assessment in appendix E they created the cost to fix it to the original SWMP or deepen it to provide additional flood protection. Overall, the landowners in the lower area will be paying \$2100 while the rest will pay \$500. From the distribution the ones in yellow are set up for 100% those in red are set up for 50% - and the \$2100 assessed ones will stay the same. The developer is paying the majority of the costs. Michael noted that the road is eventually going to be widened. The detention needs to be expanded as the highway right of way cannot be part of the SWMP. At the public hearing we can fix the assessments -



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assessments are assigned by lot not acreage. It was questioned on how we vote farmland. Michael noted they define the parcel based on plat description and it is equivalent to the number of lots that are in. We cannot assess until the plat is final. It was noted for the assessments it will be benefit based for the cost.

Michael noted he will need to meet with Marcus relative to the Developers Agreement and possibly modify before Monday night. The SWMP also needs to be revised. The board's direction at this time is that the Developers Agreement needs to be modified to recognize the owner. The preliminary info can be provided to the developer, we should work and receive the easement for Travis. Marcus needs to decide on the detention. Question the gate and if we want to ask about it. Kathleen asked if we can bond this. Michael noted we have \$170,000 coming back from the SWC. It was noted the assessment district will cover the costs we incurred - the maintenance assessment is in the assessment district numbers. The assessment will go one or two years. Questioned if we can split the assessment district to have some pay it off in one year while others have a five year timeline. It was noted that the assessment is based on actual costs. Kathleen questioned how long the \$10,000 will last for future maintenance. Michael thought it would be approx. \$750 per year in maintenance costs. Michael asked by consensus if we can proceed.

Dennis asked for the move ahead fast reasoning. It was noted that Mariner has their equipment on site to build the roads. Kathleen felt that we should table the resolution until next month. April 7th is the planning commission meeting. We will revisit at the May meeting. Questioned: what to do for the Resolution as the resolution is needed to establish a project, Resolution 2 once passed takes you to the public hearing. The drop dead date is October 1 to get it to Kevin Glatt for taxes. Michael will continue to work to get the easements. Consensus to table the Preliminary Engineering Report and Resolution #2 at this time.

Missouri River Flood Hazard Mitigation Studies: The cost share for Sibley and MRCC in the amount of \$16,168 was received from the State Water Commission. This can be removed from the agenda.

Missouri River Correctional Center: Consensus to remove from the agenda.

Fox Island Flood Control Project:

The letters were sent to the residents of Fox Island letting them know the status of this project. It had been the consensus of the residents to not continue with the project until Lincoln Township has accrued sufficient funding. A request has been submitted to the State Water Commission for cost share reimbursement.

Final Feasibility Assessment Report: Kathleen moved to receive the final report, Cary seconded. Motion carried.



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Hogue Island:

Michael has visited with Bohlman Trenching and he will get us the price for the rock. Once it is completed we have Change Order 3 - which the State Water Commission will not pay. Kathleen noted, David, Gordon and herself have already met regarding the future of the island and are ready to schedule a public meeting. Kathleen noted they would like to schedule the public meeting in May and do a straw poll on the project. Kathleen noted she will call the residents personally to get them to come. There are 107 residents out there. Kathleen noted she is apprehensive on buying the rock. Kathleen felt that by the end of May we could advertise and is asking Joe Ibach to give a fair market value on these lots so we can put some type of a reserve. The only holdup is what type of reserve we can put on the lots. We are getting a price on the rock and the board can decide at the May 13th meeting.

Burnt Creek Flood Control Repair:

Michael noted they are working on this and need to meet with the Bismarck Parks and Recreation district regarding the easement before we can advertise. We need to make sure Randy Bina is in on this meeting.

Missouri River Snagging and Clearing:

Michael reported that Larry is visiting with Ed who is doing the debris analysis. Between May and September they are looking to finish the final report and are looking to expand this to removal of debris.

Whispering Bay Meeting:

Michael reviewed noting that Whispering Bay development changed the drainage - there is some erosion and the residents are concerned that urban development is causing it. In 2004 someone excavated this area and they are not sure who did this. They were looking to having the City pay for it. It was noted this is not the BCWRD's issue.

County Planning: No updates - table until May meeting.

Old Business:

Records Retention: In progress. We will still need to set a date to go through the back room and see what needs to be thrown. Mona is getting a quote from Laurence McMerty from Docustore on scanning the current books we have in the back room.

Missouri River Coordinator: Michael reviewed noting the meeting he held with the contractor - they are in the process of developing a work plan.



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HB1338: Chairman Fleck noted we don't have to take a position on this and at this time will defer until May. Mona will email the information to the board members.

SWC Project Summaries Draft submittals: Need authorization to send to the SWC. **Dennis moved that we forward, Kathleen seconded. Motion carried.**

County Commission Quarterly Report: Kathleen noted that in working with the auditor it was noted that the Counties policy is that we do a presentation the end of June and in December versus quarterly.

Ward Coulee SWMP: Dennis asked if anything has been heard regarding this issue. Michael noted they are still doing the analysis we provided them with the outfall this was just sent out. Dennis asked that if anyone hears anything to forward it to him.

With no further business, the meeting adjourned at 12:50 p.m.

Mona Livdahl

Mona Livdahl