BURLEIGH COUNTY WATER RESOURCE DISTRICT MINUTES
Tuesday, August 20, 2013
Tom Baker Meeting Room – City/County Building

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

Call to order: Chairman Fleck called the meeting to order at 8:03 a.m. noting a quorum was present, Cary Backstrand is absent.

Commissioner Schonert left, after being provided a copy of the 2014 Budget to be presented to the Burleigh County Commission.

7-9-13 Minutes: Kathleen moved to approve the minutes as presented, Gordon seconded, Motion carried.

7-24-13 Minutes: Kathleen moved to approve the minutes as presented, Ken seconded, Motion carried.

Cary Backstrand arrived.

Financial Reports:

End of July Financial data: Reviewed, no action taken.

Proposed 2014 Budget: Ken reviewed the 2014 budget noting past few years of expenses from 2011 to 2014. The Board has been using monies from reserves over the last few years, and in 2013 the reserves were drawn down quite a bit. Ken noted a good portion of our budget is based on reimbursable expenses. The budget will be presented to the County Commissioners tomorrow. We will be asking for 2 mills - each mill is around $341,400. The statute states that we can request up to 4 mills. One of the expenses coming up this year is the Burnt Creek Project which will be paid for with county funds, we will however visit today about setting up a Special Assessment district where the Board could bond and get back funds for new expenses. It is also important to note a lot of our projects do not necessarily happen in the year in which they are budgeted. A copy of the budget has been provided to Commissioner Schonert and a copy will be provided to Clyde Thompson, Burleigh County Auditor. Overall, most Water Resource Districts retain around 2 mills in reserves. Chairman Fleck noted it is our responsibility to relate to the mood regarding increases in property taxes. **Ken moved to approve the budget, Cary seconded.** Ken will make the presentation tomorrow to the county commissioners, **Motion carried.**

Treasurer Transition 2014: Noted Ken's term will be completed in December and we need someone to replace him as Treasurer. Kathleen noted she would consider it.

Invoices: Cary moved to approve the bills in the amount of $147,975.82, Gordon seconded. Michael reviewed Apple Creek Industrial Park invoice should be labeled 937 – 3-D Specialties for Hogue Island signs should be 937 as well, since they are related to assessment projects. A roll call vote was taken:

Kathleen:	**Yes**
Ken:	**Yes**
Gordon:	**Yes**
Cary:	**Yes**
Chairman Fleck:	**Yes**

Motion Carried.

McDowell Dam:

Update on Building Project: Forrest noted the staff has been constructing the building that was approved, noted the screws for putting the metal had to be ordered and were not in yet. Forrest invited the Board out to take a look at it. Photos were emailed to the Board of the progress thus far. Chairman Fleck noted he had lunch with Commissioner Peluso and he complimented the facilities at McDowell Dam.

Bobcat Warranty Survey: Forrest noted he sent one in previously noting he was less than impressed with the services. A new survey was received; Mona will send it to Forrest to complete and return.

NRCS Report: Gordon noted one of the items in the report that they asked us to look at was monitoring the toe drains. Forrest and Greg are monitoring the toe drains on a monthly basis; they have mowed and sprayed the leafy spurge and have looked for gopher activity on the dam but haven't seen any activity.

Water Permit Application: Gordon and Cary met with the State Engineer a while back and have not received any written status on it. Cary noted we are at a point where we need to request our attorney draw up a letter to request a written status on this project. We have two water permits out there - one is raising the water levels from Apple Creek, at that time we were told that we needed to permit the flash boards before they could proceed with the first permit. We applied for that and have not heard anything back on the flashboards either. Consensus was to have Dave Bliss prepare and Chairman Fleck sign the letter.

Watercraft: Greg indicated he would like to update the watercrafts (paddle boats) at McDowell Dam. Greg handed out the memo with the price quotes noting that in September the rates for purchasing drop significantly. The proposal is to purchase five (5) watercrafts. Ken noted in the proposed budget we show an expense line for McDowell Additional for $15,000. Greg noted he was hoping with the purchase of five (5) we would get a better price. Kathleen noted she would prefer an estimate on the freight. Consensus was to get an estimate to purchase the watercraft, including freight costs that could be considered at the September Board meeting.

Land Lease: The advertisement was run and we received no response. Discussed was held regarding contacting Rudy Wolf, the current leaseholder, to determine if he is interested in renewing before we run another advertisement.

Drainage Complaints:

Eldin Spier: A letter was sent to Mr. Spier's regarding his complaint. The United Tribes Technical Center (UTTC) is in the process of rewriting their Storm Water Master Plan and it has been a slow process. Michael noted he has been in contact with Mel Bullinger and they are waiting for the update.

Emery Koppang: Michael received a call from Brandon Enervold with Bismarck Septic Systems and Landscaping who said he is interested in submitting a proposal on the project. Mr. Enervold has a small Bobcat with tracks. Michael noted HEI stake the drainage to provide grade control. He has also been in contact with Mr. Koppang. Michael noted the Board has authorized the work to be completed if the quote is reasonable. The action would now be to approve and have Dave contact the Emery's as to the scheduling for the work. Michael noted we have a price quote proposal in the book from the Emery's; however there is a conflict of interest as the contractor it related to the Emery's. Mr. Koppang has a stipulation or condition to the work on his property that it be completed by a contractor not connected to the Emery's. Dave noted we cannot deny the bid based on being related, however since Mr. Koppang has a condition as to who can come on his property, we need to heed his wishes. It was the Board's consensus that Cary and our engineer proceed to set this up.

On the legal issues, Dave noted the judge can terminate the current lawsuit, which he has asked Judge Sonna Anderson to do. The Emery's have 60 days to appeal, if this should happen. At this time, we have not received any response. Dave noted he received a call from Mr. Emery noting they did not wish to proceed on the appeal, but has not received anything in writing.

Mark Swenson / U Mary: The complaint review is still ongoing. Cary has met with the North Dakota Department of Transportation noting some of the water went east before they rebuilt the highway and they would consider putting in a culvert to restore those flows. The concern is that there are homes built since then to the east and what impact that might create. Another possible solution is putting in a second pipe draining on east side of the highway rather than the west side. This is still under review. Cary plans on meeting with someone from the University of Mary on their long range plans, which now calls for a detention area.

Michael noted the University of Mary is already constructing the buildings, but they currently do not have an approved SWMP. They have submitted a revised SWMP that includes detention which decreases flows, but it has not been approved by the City. Cary and Michael will prepare a memorandum for the City laying out alternatives and advising them on several issues for their consideration. Michael noted the WRD does not need to do this, but he advised the University of Mary engineering consultant review this memorandum as well. Chairman Fleck noted it was referred to us and we need to facilitate and help guide the resolution.

Country Creek 3rd Addition: Michael reviewed noting at the last meeting the BCWRD Board directed HEI to further review this situation. Discussed whether this is a SWMP compliance issue and/or actual design issue. It was noted the site was surveyed to tie down elevation and existing grading information. Art Goldammer has resolved the natural drainage issue between the homes he was constructing and his neighbors. From a grading standpoint we have about one to two feet of sediment which appears to have accrued in the drainage channel from the original design. If this was trimmed out drainage would be improved. The real issue is located at the corner where the flows turn south, which appears to be a compliance issue. There is around a foot to a foot and a half of standing water before it overflows. If you straight graded it around the corner, the cuts could be around 4 feet, but that may not be necessary. Sediment is an ongoing issue, which has built up in about 3 to 5 years, partially due to new development upstream, but is also a maintenance issue. Michael discussed Runnel Road and possibly lowering the culverts in that area to increase capacity and reduce backwaters. It was noted there is no Home Owners Association (HOA) for this area. Michael noted that while partially a compliance issue, the question is who enforces compliance after the developer is gone? The same developer has proposed Country Ridge 1st and 2nd and has been notified that this issue needs to be resolved before Country Ridge 1st and 2nd are approved. Michael noted he is waiting for the models from Swenson & Hagen before continuing any review. The next step is to tie down the costs and create a plan for implementation. The real question might be if there is a future HOA to take care of it, or whether the developer does. Kathleen questioned having a discussion with the developer, Marcus and Michael could have it, to see how open he is to forming a HOA, or tackling the problem. Noted the homeowners in this area can form a HOA to provide for the maintenance - the developer can but still needs to know the cost of the solution. Michael noted it will cost around $5,000 to $6,000 to finish the analysis, and get Marcus documentation, which could allow him to proceed with a possible the Scholl Drive diversion; and whether he approves the SWMP for Country Ridge 1st and 2nd. Michael noted it appears the developer constructed the channel according to how it was supposed to be in the SWMP, but it has never been maintained. Noted Mariner was the developer and this appears to be a developer issue. Cary moved to proceed with the analysis and then discuss cost recovery when it is done, Ken seconded. A roll call vote was taken:

Kathleen:	**Yes**
Ken:	**Yes**
Gordon:	**Yes**
Cary:	**Yes**
Chairman Fleck:	**Yes**

Motion Carried.

Prairie Wood Subdivision: A letter dismissing the complaint went out.

Kevin Forde: Informational letter as to where drainage goes was sent out to Mr. Forde.

Mirage Place: Michael noted it appears it is an obstruction to a watercourse related to the construction of a residence. Michael was unable to contact Sherry Ell and would like to see if this issue could be resolved between neighbors.

Justin Bubach – Rock Creek Subdivision: Michael noted he looked at it briefly, seems to be a drain tile permit question. Michael will get a hold of him and will do a site inspection and will email and copy the Board on this.

John Aman: Cary got a hold of Mr. Aman re: drainage issue within the City of Lincoln. Cary will meet with him in the next few weeks to take a look at the issue.

New Complaint Request Forms: Michael reviewed noting that they have been updated and we now have four new forms for the various obstructions/complaints which include a Drainage Complaint; Obstruction to a Watercourse Complaint; Noncomplying Dam or Dike Complaint; and Roadway Obstruction or General Water Resource Related Complaint. **Cary moved to accept the county complaint forms and have them placed on the website for the public to use. Kathleen seconded. Cary amended his motion noting that this would be subject to review by our attorney, Dave Bliss, Kathleen seconded. Motion carried.**

Break at 9:10 a.m. reconvened at 9:27 a.m.

Fox Island Flood Control Project:

Michael reviewed the alternative review draft proposed project noting staked the levee alignment and some design modifications will need to be made during final design. The Board needs to vote on the alternatives and take that proposal to the public for a meeting or hearing and then a vote. It was noted Apex completed the design of the Riverwood Drive/Mills Avenue project which is now under construction. Apex also designed the flood control gates on Tavis Road and Mills Avenue.

Michael noted he worked with Marcus to put together the simplest plan as well as alternatives with the greatest level of protection. Noted the Fox Island residents had petitioned this Board to put together a project. The shortest route was along Tavis Road and Larson Road back up to Whispering Drive which would protect 48 residents. The number of residences protected for the alternatives are as follows: Segment A: 48; Segment B+B2: 73; Segment B+B3: 80; and Segment B+B1: 116. It is proposed that Lincoln Township pay for Segment B of road grade raise and the residents would pay for the remaining roadway and the levee through a special assessment process. Without cost share total cost is around $26,000 per lot, while with the SWC cost share is around $17,000 per lot. Burleigh County currently acts as the local township authority for Lincoln Township, and if they contributed for the grade raise, the cost could be reduced to around $13,622 and with SWC cost share would drop it to $7,200. This would presume they would not assess these costs. The Lincoln Township grade raise portion is eligible for SWC cost share, so they could potentially recover 60% for the eligible construction costs. This Board would need to take action on formalizing the request to Lincoln Township to consider participation in the Fox Island flood control project. Chairman Fleck asked for public comments:

Jim Volk: Mr. Volk stated that he lives on Gallatin Loop and is on the wrong side of the dike and asked what the plan is on raising the roadway on Gallatin Loop and secondly if we are requesting the homeowners on the south side of the dike to bear the cost of the project. Michael noted the grade raise is roughly 1.2 feet, which will require work on the driveways to the south but there is no cost to be assessed to those south of the levee, perhaps the pavement which is township cost could be, but it is not proposed to do so at this time. Mr. Volk asked what support or cost share can be provided if they want to protect their own lots. It was noted neither the Burleigh County WRD, nor the State Water Commission (SWC) can provide financial support for private individuals projects. The SWC does have a cost share program for agricultural dikes, but not sure if it is applicable to individual private residences. For ring dikes the BCWRD has to sponsor the SWC program for ring dikes. Michael noted that this question has not been addressed with the SWC, and the residents are directed to address this question to John Paczkowski at the SWC, as it is a policy issue. Mr. Volk asked about road construction noting on Gallatin Loop the work was to be potentially limited to the north side of the roadway. Michael noted this was reviewed, but determined not to be practical due to current right of way limitations, therefore the project will impact both sides of the roadway.

Don Roloff, President of Fox Island HOA: Mr. Roloff thanked the BCWRD for assisting in the efforts with the flood control. Mr. Roloff questioned the road raise on Gallatin, noting the driveway segment that will be altered if there will be a cost to the homeowner - Michael noted there would not be a cost as this would be part of the project.

The approximate road raise is roughly 1.2 feet, which meets the County's 2011 flood design requirement. Mr. Roloff asked if the vote fails what the next step is. Michael noted if the residents choose not to approve, the residents who petitioned for this project can come back and ask for another alternative project, or the project could be abandoned. This second attempt could also be based on where the votes came from, etc. After that Lincoln Township would have to make the decision as to what they want to do. Michael noted there are some variables in the amounts right now. Mr. Roloff asked if it did fail and we had to go through another process how long we have until Lincoln Township decides. Noted that is really based on Lincoln Township's decision as they likely do not want to wait for the next vote. If they participate as the alternative is proposed, the Board can proceed with the vote. Michael questioned if the Board wanted another public informational meeting, noting there is a cost associated with each meeting and asked Mr. Roloff to visit with the HOA and let us know. Mr. Roloff felt that it could be managed through the HOA meetings, but would like an expert there to answer questions noting the big question is the cost and assurances we will get funding support. Michael noted Lincoln Township is the main decision at this point in tying down the costs. The project has to be voted on without SWC cost share, and you are unable to vote contingent on SWC cost share.

Marcus Hall noted as for timing, we are in two plus years after the event and the Lincoln Township would like to get this project going, noted they would not go through a second round of voting and if this does not go the township will decide. Marcus noted the importance of protecting the City of Bismarck's wastewater treatment plant and this project is critical.

Richard Gaurke: Noted he wrote a letter and discussed the neighbors who do not want this project. Mr. Gaurke feels the major problem is the causeway project noting they have had diesel pumps running 24/7 and questioned if there is any oversight. Mr. Gaurke noted he owns property and is in the process of selling. Marcus noted this particular road has had five different projects taking place in that site, noting the County is in the final stages to establish the pump station to replace Washington Street's gates noting Apex Engineering is monitoring the project. Chairman Fleck asked about the petitions that were being carried and asked where the people were at. Mr. Gaurke noted they were at the public meeting. Michael noted that HEI designed the initial grade raise putting in the initial culverts and roadway in place prior to the 2011 flood. Michael noted when this Board received the petition from the residents that they don't want the project or to be protected, the Board excluded them from the future alternatives, and honors their wishes; however there are others who petitioned for a project in 2099 that remain to be addressed.

Donovan Wagner: Mr. Wagner questioned if the vote is majority. Michael stated that every dollar you are assessed it equal to one vote, but it is a simple majority of those voting that is require for it to pass. He questioned if cost share is based on the maximum protection - noted yes. Donovan asked for a break down on all the alternatives and the costs associated with them to present to the HOA.

Chairman Fleck suggested Michael work with the Fox Island HOA to get this issue resolved as well as Gordon was it is his portfolio. Consensus was to allow this to proceed.

Ken moved that the BCWRD formalize the request to Lincoln Township to consider participation in the Fox Island Flood Control Project for the preferred alternative as recommended on page 79. Gordon seconded. Marcus asked if he would be able to work with Michael first to get a good understanding of what he is to present to the township. Consensus was that this was understood as part of the motion. A roll call vote was taken:

Kathleen:	**Yes**
Ken:	**Yes**
Gordon:	**Yes**
Cary:	**Yes**
Chairman Fleck:	**Yes**
Motion Carried.	

Missouri River Flood Hazard Mitigation:

MRCC Assessment District Memo: Michael noted the assessment district is the next step in the process. Three different alternatives were looked at to approach the assessment benefit distribution. The option discussed was to hold a public information meeting in September and then possibly follow up with a public hearing during the Board meeting in October. **Cary moved to proceed with the recommendation of the memorandum to proceed with the public informational meeting in late September followed by the Public Hearing at our regular Board meeting in October. Kathleen seconded. A roll call vote was taken:**

Ken:	**Yes**
Kathleen:	**Yes**
Gordon:	**Yes**
Cary:	**Yes**
Chairman Fleck:	**Yes**
Motion carried.	

Sibley Island: Michael updated noting they are working on the feasibility memorandum at this time and have separated the project into two components. Marcus is working on the 48th Avenue and Washington Street grade raise, and there is a portion that was pulled out on Washington Street that is affecting by the COE's ownership and will now need to be included in the WRD project components. This will separate the project into two special assessment districts. Marcus noted in the initial plan it was to regrade Washington Street south to the park entrance, the COE created a situation whereas it was easier to get out of the project and put the last segment of roadway into the Water Resource District's project. The township will bear the costs for this segment as they intended to now, noting this will be easier all around as the WRD would have needed to get the levee permits anyway. Noted this will not change the project assessment costs.

Sandy River Drive: Michael noted they created backwater maps for this area so people know where they stand based on a projected flow. Kathleen and Michael have a meeting on Friday with Advanced Engineering (AE2S) regarding the Ash and Ward Coulee SWMP and how that influences the areas in the river bottom. Michael will provide the time of the meeting to Marcus. Marcus noted one of the components was the raising of Sandy River Drive at the last township meeting, they had asked to move forward, but they will take another vote and possibly back out of that project, then it comes down to having a levee along the shore line. It was noted the levee along the river will not happen due to high costs.

Hogue Island Flood Control Project:

Public Auction Results: Michael updated noting the minutes of 7-24-13 which outlines the results of the properties that were sold. Michael has had conversations with the bidders noting they will have the structures out before the October 15th Deadline. Clint Feland needs a special use permit to move his to the areas intended and the location for where the Rodgers house would be place isn't platted or zoned so he can't place the building just yet, so we may be asked to consider an extension. This issue has not been raised with the Board and is simply background discussion.

Insurance: Dave noted that in terms of the insurance we contracted with Fire and Tornado fund for structural insurance, once the properties were sold we took the insurance off. The county is covering liability insurance and the current owners have their own insurance. Magnus and Bernard properties had title defects, noted that we have the defects cured for both and the Board now has clear title on both.

Cleanup plans: Michael noted that small projects are difficult to get proposals on, so the cleanup plans will be combined with the demolition plans in order to get it done this year. the project will be advertised this week or next.

Bank Stabilization: The cost share request and then sovereign lands and COE permit applications will be filed shortly. This will be a separately bid project as the SWC cost share should be in place in advance of the project award.

Levee Project Development: On hold for now.

Dave and Chairman Fleck thanked Kathleen and Cary for their hard work on the Hogue Island project.

Burnt Creek Flood Control Repair Project:

SWC Cost Share Agreement: The cost share has been approved, and we are waiting on the agreement for signing.

Special Assessment District: Michael reviewed noting the BCWRD has the ability to raise through the creation of a federal special assessment district roughly $20,000. Once the Board creates this district they can levee a maintenance fee annually. This process is provided for in the ND Century Code. It also provides the ability that once you complete a project you can have a cost recovery. Based on the BCWRD direction, this is ready to take to the County Commission for their 2/3 vote to establish a project but there needs to be a public hearing held first. Discussed taking to the County Commission and complete this as a joint hearing and decision. The next step is to visit with Chairman Woodcox and ask how they would entertain this issue. If they are opposed to the idea there is no reason to hold a public hearing. Discussed having Dave discuss with Chairman Jerry Woodcox as to the process and logistics. Dave noted they added the public hearing later to the Century Code and there is no petition process involved in this. Consensus to have Michael and Dave discuss with Chairman Jerry Woodcox to explain what is done and why we need to do it. Ken has the portfolio. **Kathleen moved to have Michael and Dave discuss with Chairman Woodcox as to what is done and why we need to establish the Special Assessment District. Cary seconded.** Cary asked that Chairman Woodcox and Chairman Fleck be included as well as Commissioner Schonert. Noted as this is Ken's portfolio, if he is available, Chairman Fleck will not attend. Chairman Fleck questioned when the work will be done - noted not this year. A roll call vote was taken:

Ken:	**Yes**
Kathleen:	**Yes**
Cary:	**Yes**
Gordon:	**Yes**
Chairman Fleck:	**Yes**

Motion carried.

Park Board Easement: Michael has visited with Randy Bina and Greg Smith relative to the ability to obtain an easement to relocate the levee on the old oxbow along the Burnt Creek outfall. Noting they are open to this but the Board would have to create the legal document for the easement, and then they would need to take this to their board to approve. Discussed the option to obtain title to that property, but due to the complexities we will get the easement at this time and just fix the project. Dave can review the easement document after it is prepared by the surveyor.

Construction 2014: Michael noted it should be bid before spring of 2014.

Sunnyview:

Richter meeting: Michael stated the meeting was held, completion of the summary is pending and he needs to finish up the summary.

Apple Valley Cooperative Lagoon Project:

Pay Request No 1: Approved under expenses.

Extension and Change Order: An extension and change order was provided for the timeline, there may be another extension down the road.

Special Assessment District: A handout was provided and by statute Kevin Glatt, Burleigh County Auditor, needs the indication that this district will be taxed by August 20th. Michael provided Kevin with the original statement provided in 2011. Two loan payments notices came through which will be provided to Kevin. By November 1st, the Board will need to get Kevin a final certified list for assessment tax statements. **Ken moved to provide this documentation to Auditor Glatt. Kathleen seconded. A roll call vote was taken:**

Ken:	**Yes**
Kathleen:	**Yes**
Cary:	**Yes**
Gordon:	**Yes**
Chairman Fleck:	**Yes**

Motion carried.

Draw on project loan account: A draw on the loan account will be on completion as this is the simplest approach given project status and near completion. One draw has already been made on engineering costs on the front end.

Missouri River Snagging and Cleaning:

Application Development: Michael had Larry Kramka, HEI Senior Environmental Project Manager prepare a memorandum on the next step in the process. The BCWRD needs to proceed to continue to develop the application process. Consensus was to proceed.

Other Old Business:

County Planning Meeting: Meeting was cancelled.

Records Retention Update: Nothing done yet

Apple Creek Industrial Park: The petition has been provided and it is now back in the residents hands to determine if they wish to proceed. Until the petition and bond is provided to the BCWRD, nothing needs to be done.

SWC Funding: A funding inquiry has been submitted to the SWC to see what is eligible for cost share, on the Apple Creek Industrial Park, we have not received a response yet.

Paperless Initiative: Ken discussed the IPad's that the Garrison Diversion will be purchasing. They had there IT do a review and he does not feel we need to duplicate the review efforts. Discussed having books still printed for the first couple of meetings until everyone is use to them. Ken will take charge of getting the IPads for members and key advisors. Noted Mona and Michael do not need one, we will only need 7 as to include Commissioner Schonert. Discussed having one extra as a backup. **Ken moved to proceed with purchasing the IPads with carrying case for our members and key advisors, Kathleen seconded.** Cary questioned the funds, noted we have funds under office equipment and supplies. **Motion Carried.**

New Business:

Website Maintenance Support Agreement: Cary moved to sign the agreement, Kathleen seconded. Motion Carried.

Payroll Liabilities: Mona requested an exception for the two check signing rule as the liabilities are electronically filed. **Cary moved to allow submitting payment for payroll liabilities without two signatures, Kathleen seconded. Motion carried.**

Application to register for Income Tax Withholding: Consensus to have Chairman Fleck sign.

Correspondence: Michael reviewed noting nothing of significance. Michael disclosed that Houston Engineering, Inc. is assisting Kevin Turnbow on South Bay Development water permit isssues.

Michael noted that at the last meeting the Board put out an offer to the City of Bismarck to assist with SWMP reviews. Since he has had several conversations with Mel, they did get several RFQ's submitted. The City understands the BCWRD's current review process and will likely inquire at their discretion. Noted if this Board were requested to assist they would invoice the City direct for costs as these are their obligation to complete.

Next Meeting: Cary noted he will not be able to make the September 10th meeting.

Meeting adjourned at 11:20 a.m.

Mona Livdahl

Mona Livdahl,
BCWRD Secretary