

Wednesday, March 10, 2020

Farmers Union Ditch Meeting

Board Present:

Sam Rosti, Lloyd Akins, Paul Akins, Tom Foster, Mike McGowan

Craig Waddell - Ditch Rider

Rosalie Cope, Secretary/Bookkeeper

Jerry Kiser, Attorney for FUD

Sam Rosti called the meeting to order at 5:34 p.m.

Minutes from the February meeting were mailed to the Board prior to the meeting for review.

Tom Foster moved to approve the minutes; motion was seconded by Mike McGowan.

Paul Akins moved to approve the financials; motion was seconded by Lloyd Akins.

DITCH RIDER REPORT

The Ditch Riders are currently cleaning the section of the canal from Linder toward the West. They are still working on installation of blocks near Eagle Hills golf course.

ATTORNEY'S REPORT

Jerry Kiser provided the Board with copies of the recorded survey conducted by J.J. Howard. J.J. Howard has communicated with all of the property owners affected and pins have been set. There are quite a few properties with encroachment issues. Some of the encroachments could fall under adverse possession however the property is owned by Farmer's Union. Jerry would like to review the CC&R's for the subdivision in relation to use of common areas and will draft a letter to property owners informing them of the encroachments.

Jerry Kiser provided the Board with a draft letter to Robert & Colleen Thomas reminding them of their obligation to do annual maintenance on their portion of the canal as per the agreement originating with Eberhardt's. Craig reported there are trees down, debris in the canal and the headgate is decaying.

Sam asked what steps need to be taken if the Thomas' don't comply with the agreement. Jerry stated they would be notified that they are in violation of the agreement and Farmer's Union will terminate the agreement. If the agreement is terminated Farmer's Union has an easement that is spelled out in the agreement to

go in and do maintenance. The Thomas' do have a right to submit to arbitration to determine if they are in fact in breach. Jerry said they have been sent several letters notifying them of their obligation to maintain their portion of the canal. Lloyd said if they do take it to arbitration what happens. Jerry said arbitration is simply to determine if they are or are not in breach of the agreement. Farmer's Union needs to give the property owner notice and an opportunity to cure the alleged failure. They will have 60 days to remedy alleged breaches of the agreement that will not result in any physical impediment to water flow or 10 days to remedy any alleged breaches where such breach may impede water flow. If the breach is not remedied or submitted to arbitration then the permission granted to perform maintenance shall be deemed reposed and the agreement shall be terminated.

Lloyd, Mike and the Ditch Rider's will meet onsite to document issues. Once the violation is better identified Jerry will issue a letter notifying the property owner they are in breach of the agreement giving 10 days notice on issues that will impede water flow. The other issues can be dealt with at a future date. Jerry stated if the situation is not remedied within the 10 days and they do request arbitration they are still required to perform the maintenance. If they don't perform the work Farmer's Union has the right to go ahead and perform maintenance with pending arbitration.

TRASH RACK

Jerry provided the Board with bids for the trash rack to be constructed upstream of Willow Lane. He thinks Farmer's Union may have to obtain a floodway permit for this project. Jerry stated there are a lot of things excluded from the bids including permitting. Jerry reported ACHD has requested to re-bid the project in the fall, closer to when the work will be done. He is concerned the 20' width is not wide enough in the event of a flood and under the new floodway provisions. The width should be the same as the bridge. ACHD would also like to know if Farmer's Union would be willing to provide them with copies of the invoices and receipts once the project is complete. The agreement does not require Farmer's Union to provide invoices or receipts. Upon review the Board would like the plans to be revised with the rails 3' apart and the width to be more in line with the width of the canal. If ACHD agrees to allow for plan revisions the Board will allow ACHD to re-bid. The bids need include permitting, storm water prevention plan, traffic control, rip rap, bonding, etc. which are excluded in the current bids. Farmer's Union will want to begin work as soon as the water is out, so bids need to be in place prior to September. After some discussion the Board is now leaning toward accepting the lowest bid as required by ACHD and contracting the bidder to do the work rather than trying to build the structure in-house. Lloyd and Mike are going to do a site visit to determine if the location can be moved closer to the Wylie Bridge where the canal is not quite as wide.

CITY OF BOISE

Jerry provided the Board with the response letter from the City of Boise regarding issues at the Whitewater Park.

- 1) Jerry reiterated Farmer's Union has never given official final approval of the project.

- 2) The City claims the property belongs to the State and they cannot restrict access. The signage/easement issue was the central issue from the beginning that led to the language in the contract regarding the City restricting public access to the Farmer's Union right-of-way. If the land does in fact belong to the City and they have no right to restrict access why did they agree to it in the contract? Jerry is going to research the documentation behind this issue.
- 3) Jerry stated Farmer's Union did not ever receive a proposal or plan for signage. The Board should be entitled to signage plans for approval.
- 4) The primary purpose of the agreement above everything else is to ensure water delivery. Farmer's Union controls the structure, headgates and bladders in a way to ensure water is being delivered. The slues channel can be opened at any time to see if it will suck the sand downstream.

What easements and rights-of-way does Farmer's Union have that were referred to in the agreement that would require the public be kept away from? Under the agreement the public was given access to the overlook area, the park area, basically everywhere except the canal and the diversion structure.

Jerry said when the two islands were proposed the bank was to be excavated. The Board did not approve of the plans and communicated that in excavating that portion of the bank an eddy would form where sediment will collect; the bank needs to run straight to the intake structure. The City went ahead and created a cut-out where an eddy does in fact form and sediment collects.

CAPITAL VIEW

Jerry reported the storage water report from 2018 shows the account balance at intake to be 113.10 acre feet which he believes is after water bank. The report shows Capital View used 58.3 acre feet leaving the balance for carryover at 54.8 acre feet. The 2019 report shows 112.7 acre feet in initial storage, 16.7 acre feet used and a carryover balance of 96.0 acre feet. Capital View did not notify the Farmer's Union Board of their intention to take storage water in 2019 but it appears they did. Capital View was billed for 22 inches in 2018 and the Board agreed to bill for 22 inches again for 2019. Jerry will let the River Master know Capital View is entitled to 200 gpm from July 1 to August 31. Jerry is going to draft a letter for Rosalie to send along with the billing. Farmer's Union will need notice in 2020 as to when the water is going to be used. Jerry sent emails to Pete Newton regarding the 2019 season along with a letter they did not sign & return. Mr. Newton did send a reply email stating Capital View does not think they should have to pay for O&M and conveyance loss.

The Board reviewed the Capital View assessment and the question was raised regarding how much storage water was used in 2019. Jerry Kiser is going to work with the River Master to confirm storage water usage.

Rosalie asked when the Board would like to finish the onsite review of the headgate book. They agreed to meet next week.

Rosalie reported Boyd Nielsen/Storage 55 has decided to keep the water shares for now.

Rosalie asked if the Board wants to renew the membership with the Northwest Irrigation Operators. Membership was obtained in 2019 in order to be included in the herbicide pool. Sam stated Craig has been working with Wilbur-Ellis so there is probably no need to renew the membership at this time.

Rosalie provided the Board with a sample of the Pump Log Worksheet for final review. Rosalie will update the binders provided to the Ditch Riders so preliminary readings can be taken before water comes in. The Board would like readings to be taken bi-monthly.

Tom Foster moved to adjourn the meeting; motion was seconded by Mike McGowan. Meeting adjourned at 9:15 p.m.