

Tuesday, April 11, 2023

Farmers Union Ditch Meeting

Board Present:

Sam Rosti, Paul Akins, John Schram, Corey Blaine, Bert Browen

Rosalie Cope, Secretary/Bookkeeper

Andrew Waldera, Attorney for FUD

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

Minutes from the March meeting were mailed to the Board prior to the meeting for review. Paul Akins moved to approve the March minutes; motion was seconded by John Schram. Motion was unanimously approved.

The Ditch Riders were unable to attend the meeting however Seth reported the canal is currently running at 40 cfs.

ATTORNEY'S REPORT

Andy received a call from the Army Corps of Engineers. They are updating the Boise River flood control modeling. They are working to update the model for their own flood control curve review but also in conjunction with Water District #10 and Ada County to identify where channel improvements will provide the most benefit and what the consequences are. They had questions regarding the Farmer's Union headgate operations during flood control. During flood control operations are the gates open and at what level do the gates overtop? Paul and Sam explained the way the gates are set up they will not overtop and are not open during flood control. The system is set up for water to bypass the box and divert back to the river. The box culvert is approximately 650' long and the gates are located in the back of the box. There is also the option to install aluminum check boards in the event something goes wrong with the gates. The second set of gates is located at the Clover property. The maximum capacity of the canal is 350 cfs. When the canal is running at full capacity it is approximately 200 cfs. The Army Corps of Engineers is trying to determine how much pressure the canal could take off the River channel during flood control operations. Andy is going to respond that after completion of the water park the canal is a closed system and does not take water during flood control situations.

Andy reported everything the Water Users sponsored or supported during Legislation went through.

All of the requested appropriations from the Idaho Water Resource Board, DEQ and IDWR have been funded. It is a good time to apply for grants. John Schram called ASCS and NRCS and is meeting with them tomorrow to review piping the tail of the

canal. Some discussion was had regarding piping or lining a portion of the canal along Highway 55 where the old gravel pit is. Andy reiterated there is a cost share component as part of the grant funds.

The Cresta Del Sol License Agreement is signed and Andy will have it recorded. He included by reference the two engineering studies, the seepage studies done by GeoTek and an additional engineering and design study of the drainage system they are building into the wall which was done by a separate engineering company. The City of Star denied permits, infrastructure or utilities until there is a final license agreement with Farmer's Union. Andy asked what the Board's position is on billing Toll Brothers not only for the legal and engineering work related to drafting the license agreement but also for the work done previously to deal with the bank cut. The Board agreed to bill Toll Brothers for work related to the bank cut.

Andy has not received a final set of plans from Mr. Erlebach for the crossing the Board approved on his property. He will need the plans in order to draft a license agreement.

GWC CAPITAL – SPRING VALLEY SUBDIVISION

Intermountain Gas contacted Andy to obtain a license agreement to bore under the box culvert to install a steel sleeve for the gas line. The stainless steel utility sleeves underneath the box culvert do not meet the specifications for Intermountain Gas. Under normal circumstances the Board would not allow this kind of work to be done during the irrigation season. Typically they have to cap the sleeve but in this case the concrete bottom in the box culvert provides a cap. Sam suggested charging a fee of \$25,000 and asking Intermountain Gas to accept all liability.

Paul Akins moved to approve a license agreement for Intermountain gas to bore 6' under the box culvert in the canal to install a steel sleeve; Intermountain Gas is to accept all responsibility and pay a fee of \$25,000. Motion was seconded by Bert Brown. John Schram is not in favor of charging the fee. Motion was approved.

PRISTINE DEVELOPMENT

Rosalie determined which water users on headgates 135 or 138 were theoretically short of water shares and contacted those shareholders to see if they would be interested in purchasing some of the Pristine Development shares. Cory Hofman on headgate 135 and Bret Hormuth on headgate 138 would be interested in some of the water. After discussion it was determined that since Pristine Development signed all 1,934 shares over to Jared and Mellissa Lindsay. Farmer's Union would need something in writing from the Lindsay's stating how many shares they wish to retain for their property and how many shares they wish to revert back to the company. The Board is in agreement that the best way to handle disbursement of the shares is to put them out to bid amongst those on the wait list and those on headgates 135 and 138. The plan will be agreed upon at the May meeting if the shares are turned back.

Andy reviewed the Capital View Arbitrator's award and based on the 1916 contract between FUD and CVID's predecessor; the 1921 Arbitrator's Award between Farmer's

Union and Capital View's predecessor; the 1953 (or 1955) Agreement between Farmer's Union and Capital View; and the 1984 Agreement between Farmer's Union and Capital View he concluded Capital View's O&M assessment was to be (is to be) as equalized as possible to that of the Farmer's Union shareholders with the exception of Farmer's Union-specific capital improvements or expenditures (e.g., any canal enlargements or BOR/ACE charges regarding Company-specific storage space allocations). All other routine O&M is chargeable in proportion to Capital View once the other Farmer's Union-specific expenses are backed out.

Andy calculates (at least with respect to natural flow) Capital View is to receive delivery of 350 inches (7.0 cfs as decreed by the SRBA) with wet water delivery expectation at the Capital View pumps of (in aggregate) ~290 inches of water (which is 350 inches less 17% carriage loss set by the arbitrator in 1921).

In terms of O&M expenses, the 1916 contract made clear that Capital View did not receive Farmer's Union stock shares, but that Capital View water would be equalized out to Farmer's Union shares for assessment purposes at the Company quantity of 11 inches of water per share. In terms of Capital View's 350 inches, this means that Capital View is assessed as would be 31.8 "shares" of Farmer's Union stock after backing out Farmer's Union-specific expenses. To this point, the 1916 contract states that Capital View will be charged "the same annual maintenance as is paid by the stockholders of Farmer's Union upon one share. The maintenance charges herein provided for shall be paid by Capital View at the same time and in the same manner as assessments for maintenance are paid by the stockholders of Farmer's Union."

In 1921 the arbitrator confirmed that Capital View liability for O&M was for the entire length of the canal, not just the first few miles to the Capital View point of diversion. Andy agrees with the 1916 contract in that it did not contemplate the "shorter stretch" concept.

To the point of equipment purchases, if the expenses of the Company benefit the entire canal (and are not a capital improvement specifically benefitting Farmer's Union alone), then they are a properly chargeable component of the Capital View O&M assessment once Farmer's Union-specific charges are backed out (e.g., Farmer's Union contract repayment rates for *its* storage water contracts, which have nothing to do with Capital View).

Corey spoke to the Capital View Board President who said the assessment has always been handled by Pete Newton and the rest of the Board did not get involved. Andy is going to discuss with Capital View the possibility of eliminating the complicated "true-up" worksheet and charging them the same assessment as Farmer's Union shareholders. Capital View could still decide on an annual basis if they are going to lease or use storage water. Farmer's Union would also not dictate how the water is distributed between the Capital View pumps.

Andy asked if the Bureau of Reclamation has asked Water District 63 for approval to abandon the out of basin last to fill rule. The Bureau wants to get the rental pool to agree that all leases, in-basin or out of basin are last to fill. If out-of-basin is last to fill then no one will want to lease to out of basin uses, i.e. Bureau uses when there is a willing buyer in-basin and the Bureau won't be able to find flow augmentation water. In Basin leases provides financial flexibility to those in-basin. The City of Pocatello in Basin 1 is suing the Idaho Water Resource Board and the I.D.W.R. over the Basin 1 rental pool rules on last to fill rule. The City of Pocatello is stating water needs to fill on a priority basis according to State law and it is up to the space holders to determine if they are going to lease their water. The Bureau is asking water District 63 to intervene.

Nate Runyan at Ardurra has agreed to serve as the on-call engineer for Farmer's Union for basic plan review. Andy is meeting with him on Monday and will provide him with the standards and specs for approval.

Paul looked into moving the money market savings accounts to online savings accounts which are paying quite a bit more interest. The online accounts are only available to individual customers, not business accounts.

Sam asked Rosalie to speak to the Star Fire District regarding making a donation for use of the meeting room. Donations can be made directly to Star Fire District. Corey Blaine moved to make an annual donation of \$1,200 for use of the meeting room for monthly Board meetings and the Annual meeting; motion was seconded by John Schram. Motion was unanimously approved.

John Schram moved to approve the financials; motion was seconded by Paul Akins. Motion was unanimously approved.

Paul Akins moved to adjourn the meeting; motion was seconded by Corey Blaine. Motion was unanimously approved. Meeting adjourned at 8:44 p.m.