

Tuesday, May 10, 2023

Farmers Union Ditch Meeting

Board Present:

Sam Rosti, John Schram, Corey Blaine, Bert Browen

Seth Kettering, Sean Kettering – Ditch Riders

Rosalie Cope, Secretary/Bookkeeper

Andrew Waldera, Attorney for FUD

Guests: Tracy Baggerly – Eagle Rodeo; Brad Candau – West Beacon Light LLC; Nate Runyan – Ardurra

Sam Rosti called the meeting to order at 5:46 p.m.

TRACY BAGGERLY – EAGLE RODEO

The Eagle Rodeo is relocating to property donated to the City of Eagle by GWC Capital in the Big Gulch development. Mr. Baggerly had been corresponding with Andy Waldera prior to the meeting in regards to getting a license agreement for rodeo traffic to exit the rodeo using part of the canal road. The plan changed several times and ITD has now approved a revised plan to widen Equest Lane to allow for two lanes of traffic. The Rodeo is required to have a separate emergency access which is now what they are asking Farmer's Union for. The Canal road would only be used in the event of an emergency either on the highway or the public access road. The Canal road joins a private lane on the property and is approximately 20' wide. The Rodeo would install blockades above the contestant parking area to prevent use of the Canal road. The Board approved the revised plan. Andy will issue a three year license agreement.

BRAD CANDAU – CANDAU ESTATES SUB.

In the midst of construction work on the property to hook up to the infrastructure for Candau Estates, Austin with G&E notified Sam they discovered a leak or seepage they needed to pump near the bridge that was installed last fall. There are two viable options to de-water the site in order to address the seepage. One option is to re-route the canal; the other is to dig down and set pumps 3-4' below invert of the pipe to pull water down into a trench, run it up the hill, clean the water and empty clean water back into the canal. Once the water is contained they can complete the utility work. The plan is to install a 10 mil pond liner from bank to bank with a clay plug. The liner will wrap the pipe to prevent water running underneath and go from the floor of the bridge below the trench to undisturbed ground approximately 1' and bring up to 2' above water level. They will extend the liner approximately 5' past the wing walls and down 5' below into undisturbed ground. The life expectancy of the 10 mil pond liner

underground without uv ray exposure is up to 200 years. If it is in the sun life expectancy is approximately 20 years. The original material in the hillside is a silty-sand therefore the cut-off wall lined with a Bentonite 50/50 silt mixture or clay soil would be needed to fill above the embankment behind the liner on both the north and south sides. The encasement pipe should have been a minimum of 15' past the 25' of easement however there is nothing in the design plans that required them to span the easement on both sides. There is currently 40' of 16" encasement pipe which would be extended 20 'beyond the easement. The Board is willing to let the work be done during the season and thinks the best option is to build a bypass channel that will open and close during construction in order to re-route the canal approximately 100' to the north then return the canal to its original condition when the work is complete. Nate Runyan with Ardurra said the plan they are describing is within reason from an engineering standpoint. He would like to see plans for the proposed work. The Board asked Mr. Runyan to work with Mr. Candau's engineers on plan approval. Once he is satisfied with the plans Andy will issue an Addendum to the original license agreement that covers the design changes. The Board asked they also work closely with Seth.

There was further discussion as to whether or not the 30" cut off walls extending down from the concrete aprons upstream and downstream were ever installed as part of the original construction. Seth has pictures of the pre-cast box when it was installed and there are no concrete aprons in the pictures. If there are no concrete aprons there are also not cut-off walls. Seth and Sean are going to probe to see if they can locate walls. If the aprons and wall were not installed they will be required to put in as part of the current work. Andy stated the ¾" road mix in the utility trench was a design plan and is an Idaho Public works standard however in the soil conditions in this situation it created a French drain. They were supposed to backfill the box culvert area with a Bentonite mix however there is nothing in the plans outlining the requirement for Bentonite. Instead it was in the language in the agreement. The Board asked Andy if Mr. Candau should be responsible for the additional engineering and legal fees associated with the Addendum. Andy is going to draft the Addendum with the same stock language as his original development agreement stating "this is for the benefit of the Developer not for the benefit of the Company therefore the Developer agrees to pay all reasonable legal and engineering fees associated with the negotiation of drafting this agreement."

ATTORNEY'S REPORT

Andy reported Farmer's Union entered into a discreet services contract with Nate Runyan with Ardurra in regards to the Candau bridge issue. He has also issued a more general contract for Nate and the staff at Ardurra to be the primary on-call engineer for Farmer's Union.

Andy suggested the Board have Nate Runyan review the stormwater management plan for the Candau property. He does not want to address the issue until the bridge issue is resolved however it does warrant further discussion. Andy sent a letter to Star City Council asking the City to require installation of centralized storm water control facilities and reiterating that Farmer's Union does not approve of any discharge into

the canal. The City Engineer sent storm water design plans to Andy which were a part of the application Farmer's Union did not originally receive. The storm water design is for two seepage basins (engineered drainage ponds) and V ditches on each side of the road containing gravel in-ditch dams to cascade the water and direct to the basins. The system is not designed to discharge directly into the canal but there are concerns about infiltration of water from the drainage basin near the bridge saturating the sub surface above the canal. Percolation/seepage at the canal level could threaten the integrity of the canal bank. The current stormwater management plan meets code but the ponds are not retention ponds which are designed for evaporation but rather infiltration ponds designed for seepage. As long as there is not water traveling into the Canal Farmer's Union can't require a different system. Sam was under the impression the catch basins were to be piped under the Canal and connect to the system in Cresta Del Sol. Andy stated there is a plat note that requires the homeowners are to manage their stormwater and retain on-site. Mr. Candau is still required to design for the roads. Andy will convey to the City that typically this plan is adequate however it may not be a good plan on a hilltop where there is a canal. Once Nate has had a chance to review the plans the Board would like to have him communicate their concerns regarding public safety with the City engineer. If the pond nearest the canal fails or the seepage causes the Canal to fail the water will run into Cresta Del Sol.

Corey did not see silt vents on-site and said there is water running into the Canal. In this case the timeframe for the work is so small there is not a major concern however he would like to see silt fence required on the uphill side of the canal during all phases of construction in the Standards and Specs.

Minutes from the April meeting were mailed to the Board prior to the meeting for review. John Schram moved to approve the April minutes with corrections; motion was seconded by Sam Rosti. Motion was unanimously approved.

DITCH RIDER REPORT

Seth reported the canal is at 145 cfs with 100 cfs of Farmer's Union water. The gauge on the Collister trash rack is working. The trash rack needs some modifications in the off-season.

Seth wanted to discuss who is responsible for taking care of the tail and the Dry Creek Spill. He spoke to a representative from Dry Creek who said it is the responsibility of Farmer's Union. Seth is going to work with him to jointly maintain.

Seth reported Drainage District 2 has been in there this year and cleaned it out from the pond to the east. They dug a small ditch and bypassed the "briar" patch to evacuate the water. Sam thinks Gary Olsen may have done the work on his own so Mike McGowan wouldn't get flooded. Andy stated the boundary of Drainage District 2 is south of the Foothill Ditch. The draw in question is a natural feature and Farmer's Union should have a prescriptive drainage easement to where it dead ends and empties into the Foothill Ditch. Sam said it is called the Newman. Andy thinks

Farmer's Union has a right to maintain it to meet drainage needs. Seth can clear some of the brush which impedes water flow.

The Board would like to straighten the drain ditch through the Farmer's Union property and line with concrete. The Ditch Riders can do a lot of the dirt work and clean up but someone will need to be hired to do the earth moving and leveling on the hill for a pad for the shop. Sam suggested Bennett Construction.

The owners of 24082 Blessinger Road contacted Rosalie to inquire about putting in a crossing on their property. Since that is not part of the Farmer's Union canal but is part of the drainage system they will need to maintain flow in order to accommodate a drain for the Canal. A license agreement is not necessary however the Board would like to review plans to ensure the crossing is sized to accommodate a 36" pipe or box culvert if they are planning to drive over it. They will need to meet the requirements for emergency vehicle access.

The Board discussed shutting off water delivery to those with delinquent assessments who are on an individual pump or headgate. The Company can't interfere with water delivery on a lateral to those that are not delinquent however, Andy thinks the Company has the ability to turn water delivery off where the infrastructure allows. The Board does not want to shut off water delivery to delinquent accounts. They would rather go through the lien process with those still outstanding at the end of the year. The interest rate allowable for past due accounts is under State Statute which allows the State Treasurer to set. The Board agreed to set the terms for assessments to be due on a net 30 basis rather than by March 15th.

Rosalie spoke to Zach Bruneel who is listed as the point of contact for the Hutton Lateral. He explained Corey Barton Homes purchased all of the property on the lateral with the exception of his property therefore there are only two water users on the lateral. Rosalie asked if the Board would consider dissolving the lateral and issuing individual shares to Mr. Bruneel and CBH so individual invoices could be sent out. She thinks this would solve the delinquent assessment issue. Andy stated according to State Statute a lateral is considered to be three or more water users therefore headgate 133 no longer constitutes a lateral. The Board approved Rosalie to make contact with CBH and Mr. Bruneel and split the shares accordingly.

ATTORNEY'S REPORT

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.

Andy sent a draft e-mail to Capital View regarding calculation of the annual assessment for the Board to review prior to the meeting. The Board authorized Andy to send the email.

Andy sent the Board an email regarding the canal survey issue Jerry was working on with Susan Buxton at the State Parks Department. Jerry wants to know if the Board is agreeable to the "Preliminary" record of survey that was attached in the email. If so, he will forward it to Ms. Buxton.

Andy is fine with the record of survey with one question regarding the easement boundaries. The surveyed easement boundaries show each side extending 30 feet from the top of bank on both sides in on-grade locations and typically Farmer's Union

claims 25 feet from top of bank on both sides. There is an area on the survey that spans the river intake, pipeline and outlet back to open ditch on the downstream end. He is under the assumption that area is located in Esther Simplot Park and is covered by a separate grant of easement from the City of Boise as part of the Whitewater Park license agreement. Andy will get back to Jerry and have him send to Susan Buxton.

Andy would like to get a copy of the final agreement for the Whitewater Park. He has a copy of the December 2014 agreement but does not have an agreement with the final design plans. In the 2014 Agreement the City was to provide Farmer's Union with an easement for the 400' of culvert from the River bank headgate to the open channel.

Jerry has been working with Susan Buxton on the survey issue to show where the easement is. These lands are not part of a Federal program therefore Farmer's Union can go back on the City to require them to keep the public out.

Representatives from headgates 75 and 78 have contacted Andy to help resolve issues between them. He asked if the Board would approve him to have a limited involvement in helping them resolve the issues. The Board approved for Andy to spend limited time assisting them.

Andy asked how the ditch riders are currently paid. He said Black Canyon and Minidoka are trying to get out of paying overtime and ICRMP has issued a written statement to them stating the irrigation worker exemption does apply to irrigation districts and canal companies. Andy does not think the opinion would hold up if someone were to take them to court. Under the Fair Labor Standards Act ditch riders can't be salaried exempt employees. The question then becomes do they fall under one of the agriculture exemptions. They do not fall under the traditional agriculture exemptions but there is an irrigation worker exemption to the overtime provisions which Andy does not think irrigation districts or canal companies qualify for either. There is also an off-farm irrigation worker exemption that exempts irrigation workers from overtime eligibility provided that 90% of the water the entity delivers is used for agricultural purposes. The exemption does not define what agricultural purposes are but it is a very narrow exemption. Farmer's Union currently classifies ditch riders as salaried non-exempt employees. The Board does not think the amount of overtime typically paid is an issue and do not want to take anything away from the Ditch Riders.

PRISTINE DEVELOPMENT

Rosalie contacted Jared Lindsay and asked him to send a letter to the Board outlining how many shares he wishes to retain and how many he would like to revert back to Farmer's Union. She has not received anything from him yet.

FOSTER PROPERTY

Bert Browen, John Schram and Seth Kettering met with representatives from NRCS following last month's meeting. John provided the Board with a map of the property from Google Earth with a line from the end of the canal through the property which works out to be approximately 1,100 feet. NRCS has a \$900,000 funding limit but they

are two years out. Their target is a 50/50 cost share and they pay for pipe but they don't pay for installation. They discussed canal capacity and discussed the need for 36" pipe. They also discussed a program the State of Idaho has called WQPA which is an annual grant but the deadline is quickly approaching. John has an application which seems pretty simple. John has a contact that is a bidder for Knife River who recommended using ADS pipe which is much cheaper. It is \$145 per ft. for 1,100 feet is \$159,000 and approximately \$3,000 to move so the cost would be approximately \$160,000 to install. Half of that would be significant. John looked into other options and found an Aqua 40 liner which is 24' wide and is approximately \$20,000 for 1,100 ft. Farmer's Union would have to install but the manufacturer would supervise and weld. In either case site work needs to be done. Corey has experience with this and thinks he could work with the Ditch Riders to install. Andy stated in-kind work or contributions qualify for cost share contributions. Farmer's Union needs to have a plan in place to re-route the water while the site work is being done. The liner is a good option but the Board is leaning toward piping. Once the pipe work is done it doesn't have to be dealt with again and would free up more usable space on the property. John will fill out the grant application and the Board would like to address further in the fall.

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

John Schram moved to adjourn the meeting; motion was seconded by Corey Blaine. Motion was unanimously approved. Meeting adjourned at 9:35 p.m.