

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

October 18th, 2017

SPECIAL MEETING MINUTES

HOBART LAKE OUTLET PROJECT

MEMBERS PRESENT: Chairman Jerry Hieb, Manager Shawn Olauson

VIA-TELEPHONE: Manager Bruce Anderson, Manager Dale Jorissen, Manager Bret Fehr, Mike Opat- Moore Eng., Josh Hassell- Moore Eng., Sean Fredricks- Ohnstad Twichell

Chairman Hieb called the meeting to order at 1:00pm.

Chairman Hieb started the discussion with the Change Order in the construction agreement with Excavating Services & Aggregate (ESA), he then asked Mike O. to explain what was happening.

Mike O. started with a brief history... The bid was opened on Aug. 8, 2017 then awarded at BCWRD meeting shortly thereafter. Then the situation with the permit and the state initially denying the extension request, then the need to submit a new permit application. Being told things would be expedited, it still took six weeks to get processed. Timelines were being tracked with the contract between BCWRD and ESA. In the documents, there are specific deadlines in which you must get your awards taken care of so that things don't drag out to long and the contractor is not left out there hanging. One of these triggers is sixty days after the award by which they have to have some direction, we made the State Engineers office aware of that, and they hopefully would get the permit done in time to avoid these issues. Unfortunately, they did not respond soon enough and they didn't get us the permit notification until Oct. 12th it ended up the contract was beyond those dates. Mike O. has been in contact with ESA during this process giving them updates, they (ESA) stated they still want to do the project and want to get started, but they were nervous about the completion dates. They were told even if the permit came back within the deadline, we recognize it was squeezing the completion date tight. Soon as the deadlines were exceeded, then basically the contract goes into default. Now we are in a whole different situation, contractor could just walk away or he could dictate the terms he wants to stay on the job. Mike O. told the contractor we will work with the board and try to negotiate something, he requested a schedule from the contractor.

Moore Eng. received a letter from Lee Cook (ESA) on Monday and he laid out his terms, not only for completion date but also for other terms in increase of costs. Mr. Cook is willing to start work immediately, but he wants the ability to stop working on Nov. 15th and at his discretion he can continue working if he wanted to. But if it gets to be too cold, then he could leave and come back

in the spring. Mr. Cook said there is no guarantee when in the spring he will be able to work, he wanted enough time where he was comfortable and wouldn't have to deal with rain or snow and whatever else. He was looking at a July 15th completion date. After receiving that letter Josh H. and Mike O. reviewed it with Sean F. to verify the contracted items, and Mike O. discussed with Lee Cook to verify where he was coming from and to determine/negotiate some of these terms. Also, Mike O. met with Chairman Hieb at the office and developed some terms, put together a draft Change Order along with Josh H. then sent that over to Mr. Cook. On this draft, there is a substantial completion date of May. Also doing an adjustment on the cost of the pipe which is basically driven by Hurricane Harvey, as well as additional mobilization that was referred to in their letter if they move to come back in the spring after they pull out in the winter. Mr. Cook responded and said he carefully reviewed the draft, he also stated he didn't feel it addressed his risks well enough, so he countered with a completion date of June 15th. Then instead of looking at a cost adjustment at just the pipe and mobilization, and possible working in colder weather-he suggested a flat increase of 10% on all the bid items. Josh H. and Mike O. did an analysis on this, there is about \$25,000 in just doing an adjustment to the pipe plus the mobilization cost, so we (Moore Eng.) didn't think his request for \$30,000 (which is what 10% amounts to) was out of line. It will be easier to track as well.

The Change Order documents were then updated and Sean F. reviewed it. Essentially, what Change Order 1 will do, it amends the completion date so that it moves it out to June 15th, 2018 for substantial completion, which is the ability to move water. Final completion will be punch list items and seeding completion to be in July 2018, and we asked him to submit a schedule for what he (Mr. Cook) was planning to get done between now and Nov. 15th 2017, we included that as a Milestone. We wanted to make sure he moved in and got started this fall so that at least he was on site and if weather was good it would be easier to keep him working, as opposed to having him not work and reach a milestone he might not even move in until the spring. So, Change Order covers this and 10% of all unit prices except for material testing, we didn't see any reason to increase that. This was sent over to Mr. Cook and he responded that he agreed with this if the board approved it he would approve it, and begin working immediately.

Mike O. stated before the board takes any action on this, lets discuss the funding. We've been shooting for a completion date of Oct. 31 with the original contract, so that we were better assured it was all going to be done by the end of 2017, which is when the current FEMA Disaster program funding expires. We (Moore Eng.) reached out to Justin Messner at the state level, he confirmed that there are projects already seeking an extension of that deadline until March 2018, as soon as that is approved they will follow up with an extension request to extend this project through Oct or potentially till the end of 2018. Mr. Messner didn't foresee any issues with that getting extended, there is another project part of the same declaration seeking an extension also. No guarantees, but things look favorable there that the funding will still be in place next year.

Josh H. pointed out that as a part of the negotiating process, it was worked with ESA and discussed the liquidated damages. Because we were shooting to make sure it was done by Dec. 31 the original contract had \$3,500 per day for liquidated damages for every day they weren't complete. That was definitely a big risk factor for ESA, so we negotiated that and discussed it with Chairman Hieb and knocked that down to \$500 per day with the Change Order. Chairman Hieb asked if anyone had any questions? Manager Anderson asked if the \$500 for liquidation is after the June or Dec. date? Josh H. replied that it would be after the June 15th date, and if the Milestones were not met for Nov. that would start to accrue also. Manager Anderson also asked

if the easements we have in line with the land are ok to be used through the deadline of June, or do we have to re-negotiate them? Josh H. and Sean F. stated the easements go for three years. Manager Anderson also asked if ESA does work next spring, do the farmers need to leave a corridor again like they did this year or where does ESA plan on starting work? Josh H. stated the work to be done on this Milestone is the two RR borings and that they get the top soil stripped, and start on installation of the pipe. So hopefully the weather is good so they can progress as far as they can on the installation of the 24" pipe. But, we will have to re-evaluate here come this winter as to how far they have gotten due to some of these areas need to be left clear in the springtime. Manager Anderson asked if ESA is planning on doing the boring for the highway also or the aqua block? ESA's intent is to get all the borings completed weather depending, but RR ones they have listed as a priority. Then they can go back to the highway one if they have time this fall. Manager Anderson asked so the same company boring the RR will be boring the highway? Josh H. stated that he believed they are all one subcontractor. Mike O. relayed that ESA will be on site on Monday, they have a meeting with Darren Bjornson. Manager Anderson planned to be there also.

Chairman Hieb asked if there were any more questions?

Manager Fehr asked if Nov. 15th is a determination if Mr. Cook wants to stop by then, or is that not a hard date? Mike O. stated that was Mr. Cooks date saying when he wanted to make his decision as to when to continue to keep going. He did state when it gets colder after that date it takes longer to warm up machinery, if the board was willing to pay upkeep charges to continue working as long as the board directed him to do that. We would have to negotiate that. Mr. Cook did provide his basis so that we can calculate it, if board would want to do that.

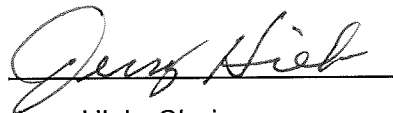
Chairman Hieb stated going back to the easement discussion, he had received a letter from Mr. Lewis stating there are no changes made to his abstract pertaining to his easement. Sean F. stated that does not happen overnight, it has not been recorded yet and he will get an updated abstract once the easement is recorded. Chairman Hieb will pass this information along to Mr. Lewis.

Just for discussion Mike O. stated we should discuss all the options out there. One option would be to just try to walk away from the contract if you don't like the terms, but there are a couple issues. We may have issues with the contractor requesting a settlement to lost profits, that would be one thing that is on the table. Probably more importantly, if we tried to re-bid this we are not going to get anything near as good of a bid even with this adjustment. Moore Eng. recommendation is to proceed with the Change Order and to get Mr. Cook working to get this thing done. Sean F. stated you could terminate for convenience you have the right to do that, then the issue is allegations and arguments regarding any expenses ESA has incurred to date. Chairman Hieb stated he thinks we should go ahead with the Change Order, and would entertain a motion to be made that will go along with the Change Order presented by Moore Eng. and that we should go forward with all those changes. Manager Anderson asked if commissioners are on board with this, so they are aware of the extra cost? Chairman Hieb visited with Commissioner Froelich pertaining to this, he said it stands to reason that we are going to have to make some changes. Commissioner Froelich in his opinion didn't think we would have trouble going ahead with this. Mike O. stated he will follow up with the Commissioners to explain the situation. Manager Anderson made motion that board accepts this proposal extending, and keeping same

contractor and getting started as soon as we can according to engineer and attorney advice. Seconded by Manager Fehr. Upon roll call vote, motion carried unanimously. Mike O. did quick point out that we fully expect the increases in the Change Order will be covered as part of the FEMA grant, so 85% of the adjustments would be covered through FEMA as long as extensions come through we should be ok.

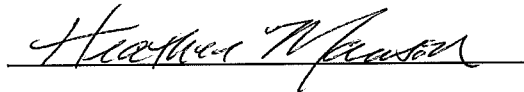
Meeting adjourned at 1:25 P.M.

APPROVED:

A handwritten signature in cursive script, appearing to read "Jerry Hieb", is written over a horizontal line.

Jerry Hieb, Chair

ATTEST:

A handwritten signature in cursive script, appearing to read "Heather Manson", is written over a horizontal line.

Heather Manson

Secretary-Treasurer