

BOXELDER BASIN REGIONAL STORMWATER AUTHORITY
MEETING MINUTES
September 22, 2011

DIRECTORS PRESENT: Larry Lorentzen
Lee Tucker
Ken Sampley
Vic Meline
George Reed

DIRECTORS ABSENT: None

PRESIDING: Ken Sampley

ALSO PRESENT: Rex Burns, Authority Manager
Lisa Work, Recording Secretary
Greg White, Attorney
Todd Juergens, Larimer County Construction Manager
Andrea Faucett, Ayres Associates
Mark Peterson, Larimer County Engineer
Dave White
Jim Fry
Alex Neilson

1. Call to Order

The meeting was called to order by President Sampley at 4:09 p.m.

ADDITIONS OR DELETIONS FROM THE AGENDA

None

OLD BUSINESS

None

NEW BUSINESS

2. Review and approve minutes of August 25, 2011

Director Meline requested on page 3 end of first paragraph change *is* to *it*.

Director Meline moved to approve minutes as amended. Director Lorentzen seconded motion. President Sampley polled the Board. Motion passed unanimously.

President Sampley pointed out that Agenda item #8, discussion concerning the management services contract with Local Government Solutions, LLC, was discussed in the work session prior to

this Board Meeting. At that time the Board provided some direction to Manager Burns to come back with more detailed information that would help the Board in doing an evaluation of the services that have been provided to date. The Board thinks that would be useful moving forward in providing some additional detail of what type of services that are going to be provided and to evaluate those services. The Board is going to provide a sample format for LGS's use. The discussion was of the nature that what was listed in the actual contract seems to be more based on general activities and didn't have a lot of metrics in regard to performance. The Board felt there needed to be more detail included in that regard. The Board has asked Manager Burns to go back and do that. The Board intends to then have a work session in advance of the next Board meeting to discuss this and then take a formal action at the next meeting. It wasn't felt that there was enough information to give the evaluation.

Director Meline asked about item 10 for an executive session. President Sampley explained that there is not additional information regarding negotiations for that item so will not be having an executive session tonight.

3. Public comment

None

4. Coal Creek Flood Hazard Mitigation Project Progress Review

Todd Juergens, Construction Manager with Larimer County Engineering Department presented the project update noting that:

- The inlet canal project: They have stripped all the topsoil. The trees have all been removed and they have started to construct the road that will run adjacent to the flood bench this morning. They are scheduled to start excavation on the inlet canal on Monday morning.
- Dredging has been shut down for the past 2 weeks to allow for cleaning out the dewatering ponds. They have reached a point where the ponds were full enough of sediment that they were not effective anymore. They were having a lot of trouble keeping the water clean and had a lot of shut downs because of turbid water. The contractor made the decision to shut down for 2 weeks. Pond number 2, which is the second pond from the north, has been abandoned. They are using that as a stockpile area to take materials out of ponds 1, 3, and 4. Dredging is scheduled to start again this weekend on Sat. When they start dredging again they will be working 12 hour shifts from here on out instead of the previous 24 hour shifts. That is being dictated by the capacity of the ponds and the time needed for the water to settle out to a point that it can be returned to the reservoir.
- President Sampley asked if flocculants are still being used. Mr. Juergens explained that they are still being used. One thing they discovered toward the end of the last week of dredging was that the ponds were so full that they were starting to move sludge from pond to pond rather than turbid water. The flocculants aren't effective at that point. They are designed to treat dirty water and not mud. That was one of the decision points in the last meeting was that things weren't working anymore, not due to a design flaw, but due to the fact that things were just full. They have removed 105,000 yards of material out of the reservoir. They needed some time to clean those out to create some storage space again and be able to go back to work so there is surface area available in those ponds

- Sheet pile started on the inlet canal 2 weeks ago. The North side of the canal is complete. The South side of the canal is about 50% complete. They should be finished in the next couple of days. They needed to bring in some different equipment to get minimum tip elevation on the pile.
- Excavation in the canal is scheduled for 30 days of excavation: about 2000 yards a day; there is 40,000 yards total; that leaves 10 days on the end for fine grading and top soiling of the canal banks.
- On the status report it is noted the unofficial dredging amount as of the week of September 16th was 105,000 yards. That quantity comes from the contractor's calculation of the data that comes from the dredge. The surveyed quantity at the end of August was 92,200 yards which is 54% of the total quantity. They should finish by the end of October with the dredging.
- President Sampley asked if there are any change orders or revisions. Mr. Juergens answered that there are no new change orders. President Sampley asked with changing the dredging schedule to 12 hour shifts if the contractor will still be able to finish dredging within the contracted time period. Mr. Juergens said that he believes they will be done at the end of October. Mr. Juergens stated that there are no financial implications to the Authority regarding the changed dredging schedule.
- Director Lorentzen asked if the CDOT agreement/easement has been signed. Mr. Juergens said that the agreement has been signed. Director Lorentzen then asked if the railroad agreement has been signed. Mr. Juergens explained that the ditch company attorney and the railroad company attorney are dealing with the agreement at this point. The agreement will be between the ditch company and the railroad and that the agreement has been back and forth. Mr. Juergens believes there is an issue with the insurance underwriting and the railroads requirements. Mr. Juergens is not exactly sure where those discussions are right now. President Sampley mentioned that this item needs to be on the Project Status Report so the item doesn't get forgotten in future reports.
- Manager Burns asked if the excavation on the channel west of I-25 is going to proceed upstream or downstream. Mr. Juergens explained that the intent is to excavate starting at I-25 and excavate everything west, jump County Road 7 and continue west so the water runs away from them. The canal is getting lowered as it is re-graded. Manager Burns asked if the trucks will then have a circular route through the CDOT site. Mr. Juergens explained that there is an easement on the CDOT site as a turn around. The trucks come in and out off CR 7 all the way through the project, turn around on the CDOT property then come back in line to get loaded so they can exit on CR 7. The original intent was to cycle through the water district property and the CDOT property but CDOT is going to pave the new road coming into their site. Mr. Juergens didn't want the responsibility of running trucks on a newly paved road. So they worked with CDOT to have a 120 foot by 140 foot easement as a turnaround on their property.
- Director Lee asked if the south bank of the canal is going to be lowered. Mr. Juergens explained that the south bank will not be lowered by this project. The ditch company might be doing some work on the south side but this project will not be lowering the elevation of the existing berm on the south side of the canal.
- Director Reed asked what they are doing with all the material being taken out of the canal. Mr. Juergens explained that the material that comes out of the inlet canal will be disposed of on Larimer County's property on Owl Canyon Road.

5. Eastside Projects Progress Review

Andrea Faucett with Ayres Associates distributed a project update report to the Board and presented the project update noting that:

- After the presentation last month, where 4 alternatives were presented, it became clear that one of the alternatives rose to the top from the Board's perspective. Ayres is now in a holding pattern until some negotiations can occur on that option.
- There was an original budget of \$54,000 and there is just under \$20,000 remaining. Ayres has accomplished what they set out to do with this scope of work. At this point in time it doesn't make sense to keep working as they have answered the questions that the Board had on this project. The Authority now needs to move forward in areas other than engineering and then can catch back up.
- Manager Burns asked what Ayres needs to move forward. Ms Faucett explained that Ayres cannot move forward until the Authority has a better handle on right of way for the project. Ayres has offered to provide exhibits or whatever is needed for meetings. Ayres is not currently working on Authority work at this time.
- Director Reed asked about the topographical information discussion from a previous meeting. Ms Faucett gave a status update regarding the LIDAR flights being that the Authority, the County and the Town of Timnath are all interested in receiving the information provided. There is some delay with Steve Smith with North Poudre to sign the contract with NRCS. Ms Faucett does not know the reason the contract hasn't been signed. The Authority's piece for the data would be \$11,100. Director Tucker asked how far north the flight would go. The Authority would be getting data through the ARDEC site and beyond. Manager Burns asked for an explanation of LIDAR. Ms Faucett explained that it is very detailed topographic data that is cost effective. Director Reed asked if President Sampley could investigate if there is some problem with North Poudre signing the contract. President Sampley asked about the east side or middle trib budget. Kevin Houck from CWCB mentioned to President Sampley they have not been invoiced for their portion. Manager Burns will invoice CWCB for those funds.

6. Discussions Concerning Financial Scenarios

President Sampley pointed out that Manager Burns has provided the financial scenario information to the Board via email. He mentioned that some of the internal Fort Collins financial staff looked at the data and he provided some comments to Manager Burns and the Board regarding that information.

Manager Burns distributed a report to the Board that includes all the financial scenario spreadsheets. There are 16 scenarios total. As he explained, there are 8 plus 4 scenarios that are the shorter "pay as you go" time and 4 that have to do with a longer debt period. The reports do not reflect the comments provided by the City. Manager Burns did request similar comments from Larimer County and the Town of Wellington. Manager Burns asked the Board where they would like to have him go from here. Manager Burns has the understanding that the 3 entities are waiting for

the Authority to get back to them with a recommendation on this matter. Manager Burns would like to expedite the process of getting whatever IGA amendment through the 3 governments. If the Board wishes to have a work session to go into this more in more detail that could happen in the next couple of weeks.

President Sampley pointed out that after the last meeting they were looking at scheduling a meeting of the entities to go through the scenarios. Then it was discussed that it might be better as a Board to get the financial models together with any comments and changes needed to provide to the entities. Then provide a recommendation from the Board to the entities and the entities can look at the models and entertain the Board's suggestion. It seems the meeting was premature. Director Lorentzen agreed that there is an extensive amount of data to go through before presenting to the entities. President Sampley asked what direction the Board would like to take on this matter. Director Lorentzen suggested if the Board is going to make a recommendation they should have the language in front of them and take a formal action on that recommendation. President Sampley states the comments on the spreadsheets were pretty extensive so he doesn't feel comfortable with the Board making a recommendation based on the current data. Manager Burns suggested that he will work on the spreadsheets and the Board can have a meeting in 2 to 3 weeks. Director Reed suggested October 6, 2011 for a meeting. President Sampley asked if this would be the only item for that special meeting. Manager Burns explained that the Authority Fees need to be discussed at that time as well. Director Lorentzen suggested that if the Board is going to take action at the meeting it needs to be a Special Meeting versus a Work Session. President Sampley brought up some of the comments he has regarding the spreadsheets. Director Meline asked if the spreadsheets were forwarded to the County if comments could be returned to the Board by October 6th. Mark Peterson agreed the County could return comments in about a week. President Sampley explained that he is leaning toward a bonding approach in order to get the funds to get the projects under construction. Director Lorentzen agreed and added that if the entities are wanting a sunset in the IGA that the paragraph in the IGA requiring unanimous approval of the entities to bond needs to be amended to state the intent is to bond the projects.

7. Financial Report for August 2011

Manager Burns met with the accountants at Rickards & Co. He discussed with them the Board's concerns regarding the letter that accompanies each month's financial statements. Rickards is adamant that the language protects all parties as there is a difference between audited financial statements and monthly financial statements. Each month's accounting is simply a monthly information sheet for the Board to be informed about the financial status of the Authority. Rickards is not willing to change the language of the cover letter with the monthly statements.

Manager Burns also discussed with the accountants some minor changes that the Board had requested. Looking at page 3 (first supplemental) that the percentages are not accurate. What Rickards has done is taken where the Board stands at a point in time as a percentage of the annual budget. The last column, the percent of the budget, is numerically accurate. President Sampley is referring to the very last bottom cell that says 15,036%. He questions that calculation and doesn't feel there should be a calculation in that cell. Manager Burns will bring that up again with the accountants. Director Lorentzen requests they add a column between the variance and the percent of the budget to show percent of the year.

Director Lorentzen also mentioned that the audit was changed but now the accountants report doesn't match the audit. Referencing the budgetary comparison information under the service area rate study, it is still at zero percent. It doesn't show the \$67,000 through the actual 2010 audit. Manager Burns needs to send the corrected year end audit to the accountants and will let them know the change that needs to be made.

Manager Burns explained that on this month's claims that the LGS bill is higher due to time spent on the financial modeling in August and that project is getting finished up.

President Sampley asked about the bill to the Auditor stating past due. Manager Burns explained that the accountants had assumed the first payment and the second payment were equal when they were not. This past due invoice reflects the difference between the 2 invoices.

President Sampley commented that in discussions earlier in the meeting, regarding the services and anticipated services of the Manager, per the contract exhibit B states that the manager should be compensated at the stated rate and shall be compensated for a minimum of 24 hours a week and to a maximum of 40 hours per week. There was a statement that it was anticipated to be a 40 hour per week position and not sure that is accurate. Manager Burns explained that originally it was anticipated to be a 40 hour week position but it didn't turn out to be because the Coal Creek project is being managed by the County. Manager Burns did state that it would be worthwhile to clean up some of the language in the services agreement through this process. President Sampley noticed that 56 hours were for the financial models which are almost a $\frac{3}{4}$ time FTE. As talked about earlier, in retrospect, the preference would be for the Board to consider that a separate task and been given a time period for the Board to review instead of just being billed the hours spent. Manager Burns agreed that if that were the way it was done then it would be treated as a separate project. He also agreed that is probably the way this will be treated in the future with proposals to the Board.

Director Lorentzen motioned to pay the claims for goods and services through August 31, 2011. Director Meline seconded the motion. Director Reed asked about the timesheets and public relation activities that were never charged for but performed. Manager Burns explained that the time period of the timecards does not reflect the same time period as the Manager's Activity Report. President Sampley polled the Board. Motion passed 4 to 1 with Director Lee opposed.

Manager Burns explained that the audit report has been changed to properly reflect the status of the expense for revision of the service area for last year. The Authority received a notice from the State Auditor that they have not received the 2010 audit. Poysti & Adams has sent in the audit and been in contact with the State Auditor. The State Auditor also wants the Authority to submit an application for exemption showing that they don't have to provide an audit for 2008. Manager Burns explained that legally the Authority has to submit an audit for any year in existence. The problem is no financial activity was done until 2009 so the Authority needs to fill out a 4 page form stating that there was no financial activity until 2009.

8. Discussion Concerning Format for Review of Management Services Contract with Local Government Solutions, LLC

President Sampley pointed out this item was discussed earlier.

9. Manager's Report

Manager Burns met with Dennis Harmon of Water Supply and Storage Company. The Water Supply and Storage Company owns the Larimer County Ditch. The Larimer County Ditch comes from the west to the east and circles the ARDEC site and then flows from north to south. So, they will be adjacent to either site a detention pond might be built. Manager Burns met with him to explain what the Authority is working on and get an idea of what their operations are and how that fits with the City of Thornton's operations. Mr. Harmon has asked for a grading plan for the ARDEC site and the Thornton site.

Manager Burns also met with Mark Sears who is the manager of the City of Fort Collins Natural Areas Program. They have had a program for the purpose of separating the Town of Wellington from the City of Fort Collins. Over the years they have purchased several properties in the area of Giddings Road, County Road 9 and County Road 11 going north. Most of their purchases have been west of the interstate as far north as between CR 56 and 58. Because of this, Mr. Sears has recent information about property values in that area. He committed to helping more with real estate work that the Authority may be doing to secure a site for the East Side Storage Facilities. They buy the development rights on farmland and secure that with a conservation easement. The farmer can farm the land but has no right to develop or take it out of farming later. Manager Burns hopes to work with him on some of the right of way acquisition along Boxelder Creek.

Manager Burns discussed the development of the database for a revised Authority fee structure and that has recently been developed further with the outcome of the last Board Work Session and incorporated a factor that allows for the density (the impervious density) that is the ratio of impervious area of a property to the total lot area. When graphed out on a scatter diagram there are slope breaks that correspond to the land uses so Manager Burns has suggested an Authority Fee arrangement that would be based on the slope breaks and has also suggested discount factors for the larger properties that have a much more tenuous connection to the downstream runoff system. The report was handed out tonight and Manager Burns would like to discuss it further at the meeting on October 6, 2011. To discuss the progression, the Authority needs to finalize the authority fee structure so it can be plugged into the database the GIS people have provided to determine how much revenue would be provided by a given base rate. The Authority will have to adopt a base rate based on the change in the IGA by the end of 2011. That base rate will have to go into the billing for the bills sent out in 2012 for fees due in 2011. If a revision to the IGA is not adopted in a timely fashion, the Authority may choose to use the same base rate used in the past.

As to the Authority billing preparation, LGS is taking the County's information and putting it into software that is publically available. This is a necessary precursor to whoever does the billing in 2012. Because the County's database is proprietary software that is not available to LGS, LGS is using Access and QuickBooks software to store that data.

East Side Storage development is at a standstill because of negotiations for property and the question of whether Timnath will be joining the Authority.

The financial management scenarios have been discussed at great detail. That incorporated a sequencing plan that would be important to developing a strategy to maximize the Board's chances of obtaining a second PDM grant. That strategy is to get all of the Board's ducks in a row to write the grant application in the fall of 2013. There are several tasks that are interrelated that will take about 2 years to get the ducks in a row to make that application. If that grant fails, then a second grant application could be made the following year or could be made whenever the East Side Storage development has been completed. The second grant application would be more favorable because the East Side Storage would not be part of the cost side of the benefit cost equation and it would thus have a much more favorable benefit cost ratio. The sequencing is a very important part of the financial management scenarios. Director Lorentzen asked if Manager Burns has talked with the County Emergency Manager about what the Authority would have to do to become eligible as an entity to apply for a PDM grant. Manager Burns has not but will give Eric a call.

Director Reed brought up the need for the database used to compute revenue to be maintained or updated as impervious surfaces are created, i.e. a new residence and also brought up prorated fees and billing. Manager Burns agrees that any database will need to be updated and maintained with owner name changes etc. Director Lorentzen explained that when the Town of Wellington pays the stormwater fees to the Authority they are prorated based on the month of the certificate of occupancy. Director Reed also commented on the target date for the PDM grant application as something that the Authority needs to keep its sights on as far as the steps toward that application. He mentioned maybe in the form of a metric or something similar. Manager Burns explained that President Sampley discussed this in terms of the metric of LGS's performance. Those are milestones that have to be accomplished in a timely fashion to make the grant application. President Sampley suggested that they take what is in the Management plan and the schedule and reflect that in the performance plan of the consultant/manager.

Director Reed commented that he is uncomfortable not having anything documented from Timnath. He would like to know if there is any way to anything in writing such as a letter of intent or a memorandum of understanding. President Sampley explained that it would need to be an intergovernmental agreement or an IGA. Once the Board talks with the entities about the financial models and what the approach is that would be the time to meet with Timnath. Director Reed is concerned that some of the numbers being used in the financial scenarios includes numbers the Authority isn't sure of. President Sampley pointed out that there are with and without Timnath in the scenarios so the ramifications for term or debt payment and how much you are going to charge fee wise. Director Lorentzen added that until Timnath sees what the costs are they aren't going to commit to anything. Manager Burns added that the terms haven't been defined yet so Timnath is holding off until they are defined. Manager Burns mentioned that in his latest discussion with Timnath's representative, Mr. Toronto, he is getting pressure from various directions to get the matter resolved speedily.

Director Lorentzen asked about the signatory for checks. Manager Burns explained that is in process and it hasn't been formally changed so Director Lorentzen needs to sign the checks tonight.

President Sampley asked about the grant application in relation to building a larger storage facility and not needing the amount of improvements downstream then what is the use for the grant. Manager Burns explained that hydrolic improvements will still be needed at the intersection of

Larimer Weld ditch and Boxelder Creek. The objective of those improvements is to lower the surface of the Larimer Weld canal to let more water come from the Cooper Slough area and provide the benefit to that area. President Sampley asked if that means the amount of the grant goes down and the bc ratio goes up. Manager Burns added that it may mean the East Side storage provides the benefit instead of the Middle Basin improvements. President Sampley mentioned that Manager Burns may need to look at it both ways because if you can show higher benefits you might get higher participation.

10. Executive Session for the purpose of discussing the acquisition of property under C.R.S Section 24-6-402(4)(a) C.R.S. and discussing issues relative to matters that may be subject to negotiations, and /or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) C.R.S. regarding the East Side Storage Project.

President Sampley stated the Board will not be moving into Executive Session tonight.

11. Adjournment

Director Reed moved to adjourn and Director Meline seconded. President Sampley polled the Board and with all in favor the meeting adjourned at 5:38 pm.

Approved this 27th day of October, 2011

A handwritten signature in blue ink, appearing to be "Dan Sampley", written over a horizontal line.