**Flat Creek Water Improvement District (FCWID)**

**Board of Directors Meeting**

**Monday, October 5, 2015 (9:00-10:30 a.m.) & Continued on Tuesday, October 13, 2015 (12:00-1:00 p.m.)**

**Teton Conservation District**

**420 W. Pearl St., Jackson, WY**

*In attendance: FCWID - Bill Wotkyns, Franz Camenzind, Missy Falcey, Lance Ash, Larry Pardee, Alice Widdess; Legal Counsel - Matt Turner, Mimi Faller; TCD – Carlin Girard; Public - Joe Burke, Sandy Buckstaff, Mike Welch,*

**(Draft) MINUTES OF MEETING**

1. **The meeting was called to order at 9:02 AM.**
   1. Introductions: Matt Turner & Mimi Faller (FCWID Legal Counsel); Mike Welch & Sandy Buckstaff (Public).
2. **Approval of Minutes of 9/14/15 FCWID Board Meeting**
   1. Motion to approve was made by Missy Falcey.
   2. Discussion: Lance Ash made recommended changes and corrections needed under III, a, i.
      1. **ACTION ITEM:** Alice Widdess to make changes and corrections, obtaining approval from Missy Falcey, Secretary.
   3. Motion was modified to include the changes and corrections made by Lance Ash; Franz Camenzind seconded; Motion approved.
3. **Treasurer’s Report** 
   1. Invoices for 2016 Budget Requests of $12K each to TOJ & TCD have been submitted.
      1. Lance Ash reports that FCWID has received the $12K payment from the TCD.
   2. The WY Department of Audit required Local Government Annual Report Summary TYE 6-30-2015 is due 12/31/2015 and requires a signing off from an accounting firm.
      1. Lance Ash reports the he has reached out to several accounting firms to sign off and only found one, Linsenmann & Linsenmann, who indicated they will charge somewhere between $1,200-$1,800.
      2. A motion was made by Missy Falcey that we move forward with the services from Linsenmann & Linsenmann.
         1. Discussion ensued with Franz Camenzind asking if there may be other accounting firms available in town. Carlin Girard suggests we look for a firm from out of town. Due to time restraints, it was agreed to move forward with Linsenmann & Linsenmann.
      3. Franz Camenzind seconded the motion; Motion approved.
   3. Lance Ash stated the bank reconciliation meets with his approval.
   4. Lance Ash reported that he is working on the P&L Statement with Alice Widdess and Toran Accounting where some line items are being moved around.
4. **Approval of Vouchers**
   1. Lance reports on three vouchers totaling $1,720.00.
   2. Franz Camenzind made a motion to pay all vouchers; Motion seconded by Missy Falcey; Motion approved.
5. **Data Collection**
   1. Brian Remlinger of Alder Environmental, LLC introduced himself giving his background experience, qualifications, and his suggested strategy for moving forward with data collection on the creek that would be helpful in finding ways to mitigate wintertime flooding.
      1. Discussion ensued on a strategy to obtain access to the creek for data collection on lands belonging to property owners.
   2. Franz Camenzind brought up a discussion on the importance of using what data we already have and what needs to be added in order to compare what has happened in the past to what is currently happening.
      1. Suggestions of adding interviews, historical photos, stream flows, air temps were discussed.
   3. Missy Falcey pointed out that the end user of this data would be an icing expert.
      1. Bill Wotkyns discussed that he and Missy Falcey reached out to one icing group, TetraTech.
         1. **ACTION ITEM:** Brian Remlinger is to work with Carlin Girard and place a call to TetraTech to explore a possible collaborative working relationship for a study.
   4. Bill Wotkyns pointed out the need to find the $20,000-$50,000 to pay for a study, and mentioned that the TCD has said they will help finance.
      1. **ACTION ITEM:** Bill Wotkyns will proceed to reach out to Sandy Shuptrine, TCD Board of Supervisors, to let her know what the FCWID is working on, and our need for this study financing in time for the TCD Board Meeting on Tuesday, October 20th.
      2. Discussion ensued that an RFP (Request for Proposal) may be required to be submitted in this process.
   5. Bill Wotkyns explains to the board that, in the essence of time, he personally reached out to Brian Remlinger to begin this project, and the FCWID should pay Brian for this initial time (approximately 5 hours of work) to start the project.
      1. Franz Camenzind thanked Bill Wotkyns for taking the lead.
      2. Lance Ash pointed out, from an invoicing standpoint, we are in need of an end of the month invoice.
   6. Bill Wotkyns brought up to Brian Remlinger that Tom Wesche has collected data on the creek, and it may be helpful to the study.
6. **Legal Counsel Items**
   1. Matt Turner, FCWID Legal Counsel, made some general points:
      1. Executive Sessions – Matt Turner reminded the board that for some future legal discussions, the board might want to adjourn its regular board meeting that is open to the public, and proceed into Executive Sessions where it would be more appropriate for some discussions on legal matters, thus protecting the liability to the board.
         1. Bill Wotkyns suggested we hold these Executive Sessions to occur quarterly, or as needed, and Matt Turner and Mimi Faller would attend that portion of the meeting.
   2. Resolution to move current budget expense line items.
      1. Matt Turner explained that a Form Resolution has been drafted by his office in conjunction with Lance Ash’s help. State Statute requires a resolution, and it is a “stand alone” resolution.
      2. Matt Turner recommended using this Resolution for all budget alternations that may occur in the future.
      3. Franz Camenzind made a motion to approve the Budget Change Resolution; Missy Falcey seconded the motion; Motion approved.
   3. Town of Jackson MOU
      1. Bill Wotkyns points out this MOU is a first attempt.
      2. Matt Turner commented that he does not see these MOUs as necessary, since they have no legal effect, and expressed concern that he has legal concerns that could generate liability with the parties involved.
      3. Missy Falcey asked if there is an alternate document that would relieve the liability issues, yet achieves a communication issue (i.e. Operating Agreement).
         1. Matt Turner replied that there does exist the Bylaws of each board, which could be operated off of; and adds that his concern is putting obligations into a document that are additional to State Statute.
         2. Joe Burke shared that St. John’s hospital have used a document titled a Business Associate Agreement that covers liabilities.
      4. **ACTION ITEM:** Matt Turner is to receive Lance Ash and Franz Camenzind’s comments to the MOU, and Matt is to go through the MOU and offer edits to the document.
      5. Larry Pardee joined the meeting, and was asked by Bill Wotkyns if Audrey Cohen-Davis (TOJ Town Attorney) is aware that this MOU with the TOJ is underway.
         1. Larry Pardee responded, yes, Audrey Cohen-Davis is aware, and that Bob McLaurin, TOJ (Town Administrator) asked Larry Pardee to get the document underway, and was sent the working draft to review.
         2. Larry Pardee explained that he sees this MOU between the TOJ & FCWID as a formal plan to build a relationship between the TOJ & the WID – a “line in the sand” that gets something down on paper to create a line of communication.
      6. Bill Wotkyns pointed out this MOU is time sensitive, due the fact that the second week in November is the earliest we have seen frazzle ice forming in the creek.
         1. Larry Pardee pointed out the meeting schedule for Town Council – October 19th and then November 2nd.
            1. Bill Wotkyns mentions the development of this MOU may take a special meeting for the WID between those two meetings.
7. **FCWID Access Agreements for emergency mitigation**
   1. Matt Turner, FCWID legal counsel, expressed he has liability concerns with the Access Agreements for the WID which he would prefer to discuss during an Executive Session of the FCWID board.
   2. Matt Turner explained that he has drafted two Access Agreements – one is for obtaining data only which he recommends be signed by every property owner within the WID district; and the other is a “stronger” Agreement that he suggested be used for property owners in targeting key locations.
      1. Bill Wotkyns recommended we move forward with these two Access Agreements as written, and that modifications can be made in the future.
      2. Carlin Girard mentioned that the TCD has used many access forms, and recommends the FCWID move forward with the two Access Agreements, and landowners like options for flexibility.
   3. Bill Wotkyns shared that he looked at the stronger Access Agreement from a landowner’s perspective, and wondered how a landowner will deal with any property damage caused by access.
      1. Larry Pardee shared that in the past, when trees and bushes were damaged by access to the creek through a property owner’s land, the TOJ paid for the damage (in one case it amounted to near $15,000).
   4. Missy Falcey questioned the stated requirement in the Agreement that property owners need to mark their utility lines, and suggested the WID provide resources to help them identify these things.
   5. Lance Ash pointed out that State Statutes are not clear on access rights, which may make it more difficult to gain insurance coverage. Therefore, he recommends using a very strong Access Agreement to present to property owners.
   6. FCWID Board of Director’s Liability Insurance and Bonding was discussed.
      1. Is the FCWID Board covered?
         1. Larry Pardee shared that in the Budge Drive slide incident, the Government Liability Pool covered the loss of the TOJ well house.
      2. **ACTION ITEM:** Matt Turner’s office is to look over the FCWID Board of Directors Liability Insurance and Bonding to determine the coverage for the board. Lance Ash and Alice Widdess are to provide copies to Matt Turner’s office.
   7. Discussion ensued on how to “sell” the Access Agreement to Property owners – especially those who have property in the “choke” areas.
      1. Importance of getting these Agreements out in advance of a “situation on the creek” is vital.
      2. Strategy was discussed:
         1. **ACTION ITEM:** Bill Wotkyns is to work with Shawn O’Malley (TOJ Public Works) to identify the 11 or so “choke areas”, and identify the landowners in these areas. Then the FCWID Board members will team up so that two board members knock on the door of the landowners to introduce the Access Agreement, and suggest the landowner take it for review with their own attorney.
         2. **ACTION ITEM:** Larry Pardee to check with TOJ (Bob McLaurin and Audrey Cohen-Davis to determine: 1) if there are any signed Agreements by landowners on file from the past; 2) if there are any signed or verbal agreements with the TOJ for access to their properties on the creek.
         3. Larry Pardee also pointed out that, in the past, some landowners hired their own contractors to do mitigation work in the creek, and suggested the FCWID Board take that into consideration how the FCWID handles these situations, asking if the WID is liable in these situations?
            1. Franz Camenzind asked if private citizens have the right to go on the creek; or are they breaking the law, which would exempt FCWID from any liability.
         4. Sandy Buckstaff stated that his property is located at one of the choke points, and that he will sign the Access Agreement. He recommended the FCWID board could use this in communications with other property owners saying, “This person has signed the Access Agreement, as they want to cooperate with the mitigation process for Flat Creek.”

It was pointed out that some property lines on the creek actually extend to the middle of the creek, some all the way across the creek, while others only go to the edge of the creek.

* 1. Matt Turner urged each Board member to look over their own personal umbrella insurance policies to determine if they have D&O insurance coverage.
  2. Missy Falcey stressed the importance of communication with all WID District landowners, suggesting a meeting at Teton County Library within the next few weeks.
  3. Bill Wotkyns questioned how long these recently developed Access Agreements are effective? Is it until the property is sold? Or is it something that “goes with the property”?
  4. Matt Turner pointed out importance of Brian Remlinger, or whatever contractor is hired, has their own insurance coverage.
  5. Franz Camenzind made a motion to approve the two Access Agreements (one for monitoring and data collection, and the other granting overland access for creek mitigation); Lance Ash seconded the motion.
     1. Discussion took place: Missy Falcey expressed interest in Carlin Girard’s observations and comments, and stated that if these Agreements need modification in the future, this process would occur.
     2. Motion approved.

1. **Billing to Town of Jackson, Teton County School District, other municipalities for property tax assessments**
   1. Bill Wotkyns explained that the State Statute says the FCWID must improve the property in order to submit a bill to the TOJ.
      1. Matt Turner clarified that “improvement” means a physical improvement, and general flood fighting is not considered an improvement to the property.
   2. **ACTION ITEM:** Matt Turner to talk with Audrey Cohen-Davis to discuss and find out TOJ’s position on how they want to handle their properties being assessed – by bill or assessment?
2. **Meeting adjourned @ 10:55 AM – Missy Falcey made a motion to continue the meeting on Tuesday, October 13, 12:00-1:00 PM @ TCD offices; Lance Ash seconded the motion; Motion approved.**

**Continuance of Flat Creek Water Improvement District - Tuesday, October 13, 2015; 12:00 PM**

*In attendance: FCWID—Bill Wotkyns, Franz Camenzind, Missy Falcey, Lance Ash, Larry Pardee, Alice Widdess; TCD - - Carlin Girard; Public - - Joe Burke, Sandy Buckstaff*

1. **Meeting was called to order @ 12:01 PM**
   1. Bill Wotkyns pointed out this is a continuation of the FCWID Board Meeting held on October 5, 2015.
2. **Flood Management Outline & Teton County Multi-Hazard Mitigation Plan**
   1. Updates on progress were reported and discussed:
      1. Larry Pardee presented a FCWID District Map with primary “choke areas” on the creek marked with stars.
         1. Bill Wotkyns pointed out that these are the focus areas where our objective is to proceed with getting approval of Access Agreements by contacting the property owners via a personal visit from two board members.
         2. Larry Pardee pointed out that the stars on the map are points where, historically, were entered for creek mitigation (breaking up the ice).
         3. Franz Camenzind asked Larry Pardee if the TOJ experienced any trouble getting permission from the landowners for any of these access points?
         4. Discussion ensued pointing out other needed access points, bringing the number from 9 to 11 access points.
      2. Franz Camenzind pointed out the need for immediate communication with all district members.
         1. Discussion ensued on how to proceed with effective communication to our district members, and how we develop effective communications so we know when access to the creek is needed:
            1. **ACTION ITEM:** Franz Camenzind to draft a composite outline, taking Shawn O’Malley’s outline, maps, etc., and creating one outline to present to the FCWID board.

Franz Camenzind commented on the procedure for when we get close to having to go into the creek for mitigation:1)Notification to Shawn O’Malley; 2) Shawn O’Malley contacts FEMA.

* + - * 1. **ACTION ITEM:** Bill Wotkyns to contact Lisa Delaney (FCWID website designer) to create a message board on our website (Carlin Girard’s suggestion). The purpose is to help property owners along the creek know what to look for and encourage reporting. FCWID Board members to let district members know about the message board at our upcoming meetings.
      1. Monitoring of the creek:
         1. Discussion ensued of ways to do better monitoring on the creek.

It was suggested that Brian Remlinger include creek monitoring for 3 months in his scope of work.

Missy Falcey asked if the TOJ was monitoring on a daily basis, and Larry Pardee answered affirmative.

Bill Wotkyns suggested we assign one specific “choke point” to the TOJ for daily monitoring.

Carlin Girard (TCD) said the TCD staff could be available to paly a role in monitoring (i.e., weekdays and weekends).

Franz Camenzind suggested we accumulate a list of potential volunteers together, including FCWID board members, who can monitor the creek.

Bill Wotkyns suggested dividing the length of the creek into thirds, and make assignments for monitoring.

Franz Camenzind recommended the need for one key person to be responsible and reported to for monitoring (i.e. Brian Remlinger).

Bill Wotkyns asked, “What if Brian says no?” Larry Pardee answers that the TOJ would be involved, as it is their responsibility to do so.

* + 1. Franz Camenzind reported that he has done research on what else can be used besides sandbags for diverting flooding – and they are water tubes.
       1. To be effective they must be put directly on the ground, requiring shoveling the snow to clear space on the ground.
       2. Franz Camenzind suggested that property owners/HOAs might want to invest in these tubes.
       3. He pointed out that they must be put in place early enough in the season, before the ground freezes, and they are not to be filled all the way with water.
       4. They were used in North Dakota on the Red River.
       5. **ACTION ITEM:** Franz Camenzind is to look into pricing of these water tubes with various companies.
  1. Discussion took place on the urgency for the board members to contact all property owners in the specified “choke points” along the creek.
     1. Bill Wotkyns proposes that he and Missy Falcey take some of the list and proceed to contact these owners by phone and in person re: Access (two board members would call on the property owner).
     2. Missy Falcey asked if we have a plan B in place for when a property owner objects to giving access and won’t sign the Access Agreement? She suggested the board be prepared for these conversations with property owners.
        1. Discussion ensued about whether or not the WID has a legal right to access properties for mitigation of the creek.
  2. **ACTION ITEM:** Informational meeting will take place on November 2, 2015 – 4:00-6:00 PM. @ The Teton County Library. Auditorium room was reserved by Missy Falcey, and will hold a maximum of 49 people.
     1. **ACTION ITEM:** Alice Widdess to work with Franz Camenzind to design a postcard mailing for this meeting.
     2. **ACTION ITEM:** Alice Widdess to research when the HOA meetings (annual meetings and regular meetings) take place for all HOAs within the District and report those to the FCWID board.
     3. **ACTION ITEM:** The FCWID Board needs to give Carlin Girard advance notice of maps, etc. that are needed for the November 2nd meeting.
     4. **ACTION ITEM:** Bill Wotkyns and Missy Falcey are to work on an Agenda for this informational meeting that will be emailed to the FCWID board for edits.
     5. **ACTION ITEM:** Alice Widdess to place ad for the meeting in the *JH News & Guide*.
     6. **ACTION ITEM:** Alice Widdess to look into getting the meeting posted on the JH Chamber of Commerce calendar.
  3. List of Contractors for Flat Creek Mitigation:
     1. **ACTION ITEM:** Larry Pardee is pulling together rate sheets and commitments from various contractors who will be available and interested in helping with creek mitigation and emergency situations that develop.

1. **TCD/FCWID MOU Status**
   1. Sandy Shuptrine’s signature has been obtained and the document is on file with the TCD, FCWID and Matt Turner’s office.
2. **FCWID Tax Assessment to District Property Owners**
   1. How to assess property owners – via acreage/formula or flat fee?
      1. Board members were given a copy of Emily Hagedorn’s research and findings on Watershed Improvement Districts and the requirements for assessing properties.
   2. Update on outreach to Teton County Assessor’s office
      1. Lance Ash reported – Alice Widdess and Lance Ash to meet with the Teton County Assessor’s Office and Teton County Treasurer on October 23, 2015.
         1. Purpose is to determine the process and timelines for the assessment process which will be reported at the November 2, 2015 FCWID Board meeting.
   3. Discussion took place on whether or not an election is needed for the assessment levying.
      1. The Wyoming Watershed District Manual indicates no election process is required.
3. **FCWID Election for two Director Positions**
   1. Alice Widdess reported that the required Affidavit Mailing to LLCs, Corps, Ltds, Trusts, & HOAs was mailed on September 18, 2015; candidate bios are posted on the [www.fcwid.org](http://www.fcwid.org) website; ballots are mailed to all district landowners and registered voters with candidate bios enclosed. Public media outreach was done with the *JH News & Guide* and reporters Ben Graham and Mike Koshmrl, and Ben Graham wrote an article that appeared in the Weekly.
4. **Grant Opportunities for future funding** 
   1. **ACTION ITEM:** Bill Wotkyns announced he will attend the HMGP Mitigation Grant Funding Meeting – Tuesday, October 27 @ the Teton County Emergency Operations Center.
      1. Franz Camenzind reported on the grant information he received from TCD re: 25/75 split of funds, which he pointed out, will affect our budget. The filing takes place in February and is funded in October 2016.
      2. Bill Wotkyns suggested we look into funding the supply of water tubes for mitigation through this grant; or consider the elevation of the pathway near Garaman Park.
5. **TCD/FCWID Quarterly Board Meeting – FCWID Progress Reports**
   1. **ACTION ITEM:** Alice Widdess was assigned to prepare and work with Missy Falcey on these progress reports.
6. **New Business**
   1. Bill Wotkyns pointed out that the TCD Board of Supervisors (Tom Campbell) have mentioned they are amenable to help with funding for creek mitigation projects, and he recommends taking Brian Remlinger’s proposal for data collection to the board. Bill Wotkyns reported that he has taken steps to get on the next TCD Board of Supervisor’s Board meeting that takes place October 20, 2015.
      1. Larry Pardee made a motion to accept Brian Remlinger’s proposal and pass it to the TCD Board of Supervisors for review; Franz Camenzind seconded the motion. Motion approved.
   2. Lance Ash reported that in reading through the state manuals that govern the FCWID, he finds that we cannot have a “negative budget”, even though we have money in our bank account.
      1. Bill Wotkyns suggested Lance reach out to Laura Ladd or Lisa Paddleford (Meridian) for advice.
      2. Lance Ash is reaching out also to Matt Turner to research.
   3. Bill Wotkyns requested all FCWID board members sign the “stronger” Access Agreement.
      1. **ACTION ITEM:** Alice Widdess to send to all FCWID board members including Sandy Buckstaff for their signatures.
7. **Meeting adjourned at 1:05 PM**. Missy Falcey made the motion to adjourn; Motion seconded by Lance Ash; Motion approved.

Respectfully submitted, ***The Minutes have been approved:***

Alice Widdess, FCWID Administrative Manager \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Chairman Date*

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*Treasurer Date*