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# BEAVER SLOUGH DRAINAGE DISTRICT BOARD OF SUPERVISORS MEETING

June 10, 2015

Meeting of the Beaver Slough Drainage District Board of Supervisors was called to order at 5:02pm.

**Purpose:** Devote the meeting to Garden Valley issues – options moving forward; what is listed in the agenda are not the absolute options – they are open to discussion, and include opportunities for additions

**Facilitator:** Lisa DeBruyckere, Creative Resource Strategies, LLC

**Introductions:** (See attached meeting roster for those attending)

Fred Messerle provided background information. The district was formed in 1906, described initially (before the highway and railroad were present), and was never groundtruthed to property lines. Assessments since district establishment have evolved. Where the Garden Valley road, highway, and railroad currently exist may involve some boundary discrepancies. The goal is to protect the area from the high tides during summer time as well as provide drainage. The district has four eight-foot culverts and tide gates to protect the area and facilitate drainage – this infrastructure is functioning, but is at the end of its life.

From April through October, the average daily high tide is 6.8 feet. Without water control structure/tide gate at the entry point to the river, all of the land will flood every day, twice daily, during the high tide cycle.

The district's policy and practice has been to maintain the tide gate infrastructure and canal infrastructure. Historically, the district has not maintained any of the channel past the ODOT culvert (into Garden Valley). When the district was formed, Garden Valley consisted of two parcels (the George parcel and a portion of the Russ estate – two owners), and did not include the railroad or highway. The George property was subdivided in the 1960s – there was no provision made at that time for the China Camp Creek channel. The last time that channel was cleaned may have been the mid-1980s, but that is unverified.

A discussion was started 6-7 years ago regarding what could be done to replace the infrastructure, which was installed in 1995, and includes culverts at the end of their life. Sizing and water velocity requirements (fish passage criteria) exponentially increase the cost of replacing the culverts. The Oregon Department of Fish and Wildlife acquired the Jorgerson parcel, and in conjunction with the China Camp Creek Gun Club and The Nature Conservancy (project manager for ODFW parcel as part of Winter Lake project), we have worked toward a compatible restoration that allows the district to be able to rebuild its infrastructure and manage water levels independently within agricultural units 3, 2, and 1 and Garden Valley. The benefit of working these projects together include efficiencies managing water levels independently on a 12-month basis, including maintaining agricultural production in units 1 and 3 (some grazing in unit 2) as well as the ability to be able to provide overwinter coho habitat (key to making these projects viable).

The Winter Lake Restoration project is 100% funded (Oregon Watershed Enhancement Board and US Fish and Wildlife Service Coastal Wetlands Grant), and the China Camp Creek project, which includes the new tide gate structure and bridging and upgrading and reconstruction of the north dike, etc. is about 80% funded (Oregon Department of Fish and Wildlife, Oregon Watershed Enhancement Board, US Fish and Wildlife Coastal Wetlands grant). These projects are pass-through grants that require no pay-back.

The project goals are to protect the drainage district from high tides and manage water levels re: what individual property owners want. The district is developing a water management plan – no property will be any worse than it is presently (re: flooding), and no property will be able to adversely affect any other property – the district is responsible for achieving those goals.

The Winter Lake is about 90% designed – the tide gates infrastructure is between 30 and 50% designed (now that the foundation for the structure has been designed, the rest of the project design will move quickly). Originally, the district contemplated construction in 2015, however, in 2014, there was a failure on two culverts on the north-south canal (temporary repair), and there were access issues (a condemnation suit was filed to gain access), and repairs were completed. The condemnation suit and litigation continued

through the winter and into spring; the settlement agreement, acceptable to both parties, will be presented to the Board at the conclusion of tonight's discussion. The expense of that litigation will be between \$500,000 and \$600,000 (\$25-30/year per acre). At the annual landowners meeting, \$2 million in bonds were authorized (in anticipation of what the litigation may have cost). The impact of that bond levy, depending on the interest rate and time period, will be a 20-25 year bond; it will be a separate levy will most likely not start until fiscal year 2016-2017 (there is not enough time in 2015 to get the levy in place). It is an obligation on the property; it doesn't become a lien on the property until, like other property taxes, it is defaulted. The bond levy is applied on an acreage basis equally to every acreage in the district.

Comments: Retired small homeowners in Garden Valley are endangered – not the large landowners. Twenty-one people had absentee ballots and did not show up at the meeting – they were cast as abstained, which calls into question whether there was 51% of the vote. But even if they had shown up, the large landowners own more acreage than the smaller landowners. Each landowner voted and then the shares were counted – the small landowners could not have stopped the bond.

ORS547 is clear – the district votes on acreage, not on ownership.

Comment: When you own more acreage, you take on more risk.

Comment: But those of us in Garden Valley have no way of making more income to pay for a bond – we receive no benefits from being in the district. When we purchased the property, we were not aware that we would become part of the Beaver Creek Drainage District.

The water levels in unit 2 will not affect the water levels in other units.

Comment: Could the bond also pay for the legal fees of the Garden Valley landowners that participated in the litigation?

The intent of this initial meeting was to begin the discussion and articulate the discussion points as well as the options.

Comment: Was this a double majority bond election? Did it have to have 51% of the electorate (landowners) voting?

It had to have 51% of the acreage voting, according to the law.

Comment: We heard rumors that we were siding with Waterman's, and that is a false statement. None of us had any knowledge of what was going on until we were served. We did not side with them. We did seek outside attorneys; they advised us to use an attorney that knew what was going on with the existing litigation, which is why the Garden Valley landowners used the same attorney as the Waterman's. We did not band with the Waterman's.

Comment: Can a landowner have the option of pre-paying or frontloading the bond levy payment?

## **ELEVATIONS AND WATER MANAGEMENT**

The district water management plan includes three units and Garden Valley. Landowners in each management unit will come to an agreement about what water levels they want within their unit, and the district will comply with their wishes. The plan will have annual input reviews, it's on the website, and the maximum level is 5.5 feet. Anything over 5.5 feet is considered flood stage. Summer time levels in unit 2 are at the 4-foot level (bank full level). In the agricultural units (1 and 3), a 3.5-foot level will exist other than periodic flooding for irrigation purposes. Garden Valley is a work in progress – it's 3.5 feet and moves on up as it goes through Fosters through Rose-Burris/Miller, Kincaid, etc.

All the landowners are responsible for their own flap gates on the interior culverts.

Subsidence has occurred over the past 100 years, so the approach to water management has to be in moderation to avoid unintended consequences. We're still modeling water levels. Depending on what the Garden Valley management plan influences whether or not another water structure is needed, especially if summer irrigation is desired. If Garden Valley does not want to irrigate, we will need a water structure to avoid flooding that area.

The ODOT culvert is undersized, which limits the amount of water that moves. The railroad trestle is fairly narrow, and the China Camp Creek channel on the east side of full of sediment and vegetation. In 2012, Ducks Unlimited shot elevations in the Garden Valley area. Invert is the current bottom of the water level or the bottom of the pipe. On the upper reaches, there is some freeboard, but as you move into the lower reaches, the invert of the creek is actually higher than the field level. There are several places there in which the creek is running out into the field. The soil is highly organic, and the area has experienced a considerable amount of subsidence because of lack of silt retention and rebuilding. We seek to be able to raise the level above field level in the winter time to provide access to overwintering coho as well as potentially foster silt retention and cease the subsidence and perhaps even gain some soil.

In Garden Valley, the Wisely-Roseburg Resources level is at 3.5 feet, there's quite a break between there and the Foster property, which is at 6.5 feet, and as we move into the Burris-Miller-Rose level, it's closer to 8 or 8.5 feet.

Comment: So those above won't be affected.

Exactly. It's obvious from looking at the invert, from Foster on down, the lack of channel depth in China Camp Creek precludes any damage. The district is working in the 4-6 foot level, so we need to be sure we don't do anything on the outside to impact the properties in Garden Valley. The only time this could be a problem is if we charge irrigation into the Unit 1 system during the summer time. The district has an obligation that if we do back flood for irrigation, we won't flood unintended areas.

Comment: Typically, none of our property floods during the summer time.

Bear in mind that if ODOT has to meet fish passage requirements and replace the culvert, and that could be a game changer.

Comment: We don't want flooding to move the beavers back up into our system.

Beaver management is a reason why China Camp Creek channel is full right now. There are trappers available to manage beavers.

Comment: What are the details on the bridge Roseburg is putting in? Will you be doing any drainage?

Comment: If you put in a tide control structure, would you put it at the railroad trestle?

Because of the restrictions with the ODOT culvert and the channel restrictions as you move on up, we don't get a big rise when we back flood (because we don't have the capacity), and the new structures will move 3x as much water as we are capable of now on a drainage basis, and at least that much or more on a back flood basis. Everything we do once this infrastructure is built is on a gradual basis. We have consensus with all stakeholders to incrementally manage water levels to avoid unintended consequences.

There is no grade, to speak of, in units 1-3, essentially within one foot throughout. The ditches will have capacity, but no grade to them.

Comment: Would the ODOT structure, if replaced, be a four foot structure?

If you left the ODOT culvert as is, it would not flood Garden Valley except for the lower reaches (e.g., Roseburg Resources (in the summer)).

## OPTIONS

### A. Status Quo

### B. Manage Drainage – Maintain Channel

**1. Landowner Organized and Administrated** - Manage the drainage in the Garden Valley channel via a landowner organized effort. Historically, the drainage district has only maintained to the highway. The district provides the tide gate infrastructure, and whatever goes on within the individual units is the responsibility of the landowners. On the west side, landowners have maintained their own culverts and dikes if they didn't want to take water when the consensus was to take

water. If the landowners were to organize and administer the maintenance on the China Creek channel, it's about 3,700 feet from the highway to the end of the Olson, it would cost about \$1/foot, or about \$4,000-\$5,000. If it were maintained on a regular basis, it would bring the cost down considerably because you would create firm ground that would not require mats to work to clean out the drainage.

Comment: Why hasn't the district cleaned out the channel? Why isn't it considered one of the main canals?

The district has never considered it part of the district maintenance, but the question could be asked.

The district levy (\$15/acre) is to provide for the tide gate structure and the major canals, and the interior drainage on the individual parcels is the responsibility of the individual parcel landowners. The district has said they can bring two things to the table:

- Include the cost of the permitting to clean the ditch as part of the permitting the district does.
- From the ODOT culvert, under the trestle, and for the next 100 yards, the district would entertain the idea of permitting and putting a sediment trap on the east side of the highway to pick up the sediment. The material could then be used to offset the subsidence.

**2. BSDD Managed as per ORS 547.405-430**, if a landowner files a complaint with the district that drainage system is not working because of obstructions, including allowing sediment to build up or beaver dams, the landowner can ask the district to ask the landowner to correct the situation, then the district can correct it and bill the offending landowner. If the offending landowner does not pay the bill, then a lien can be placed on the property.

Comment: Several properties don't border China Creek. If there is a property along China Creek that needs to be cleaned out, would you bill the offending properties that don't border China Creek?

## **C. Property Ownership/Management Adjustments**

**1. Conservation Easements** – A legal process that allows a landowner to retain ownership while giving up some property rights for compensation.

You need three things in place for a conservation easement –

- You first get an appraisal that includes the different attributes of the property. If you agree to give up some of those rights, your property value is reduced.
- Someone needs to legally hold or administer the easement (e.g., nonprofit or government agency).
- You need a funding source to support the easement.

The problem is that there are limitations – the parcels are small, you can't build on the lower creek area in the wetlands, and there is little merchantable timber. You could potentially do a block of landowners as a conservation easement.

Ducks Unlimited, land trusts, The Nature Conservancy and others do easements.

**2. Property Sale** – Requires a willing buyer. There are some grant programs. You have to show a conservation benefit if the grant is a conservation benefit. The problem here is that there are no large adjacent landowners unless you consider large timber companies.

Oregon's land use laws make it difficult to conduct conservation easements because of the minimum 5-acres required.

## **D. Remove Property from the District**

The district has two parameters – that it's all landowners or none, and that if, in fact, it did happen, the district would have no liability for any water that came back up from the outside.

Comment: I've read that requires 75%, not all or none.

If the district has liability and responsibility to protect that area, it must have an income stream. The district has provided service to Garden Valley. For 106 years, it has provided a vehicle to drain that area and protect it from high tide cycles in the summer time.

Comment: Was there ever a tide gate at the trestle?

No.

Comment: The only way we might have a problem is if you create a problem that causes back flow into our lands. You want us to sign a waiver that says we would not sue you if your project back flowed into our lands. You are saying that a project would have an impact on Garden Valley, even if it is only the first 2 or 3 properties.

The district is obligated to make sure this doesn't happen.

Comment: Can your project influence landowners outside of the district?

Comment: The board chose to condemn one of the member properties and modified the lawsuit to include most of Garden Valley. What are you afraid of as far as liability if you have not done something wrong?

It was not the district that asked the other landowners be joined to the lawsuit. It was at the request of the Waterman's attorney. It was not something the district asked for or wanted.

Comment: The lawsuit came from you. How could you sue your own members? We had to pay to defend ourselves?

There's not a whole lot of sense to this entire situation.

How do people want to move forward?

Comment: The attorneys are working on the language to move us forward.

Comment: What do you require from us to get out of the district?

A liability waiver, and that it be all or none.

Comment: The title companies have to represent us down the road if our properties get flooded. So the title companies are not going to let us out. The two lawyers are working to ensure the wording addresses the title insurance needs. The wording cannot say the district will have no liability whatsoever. The title company has to be willing to accept this.

Comment: It's a catch-22. Are any of you willing to negotiate the terms of staying in the district?

Comment: We already do that.

Comment: We put out enough attorney fees to clean out the ditch for years.

What is preventing all of you from coming together and working through this?

Comment: We have no say. The board will override us because it's an acreage vote. If we had the best laid plans, the district is going to do what they are going to do anyway.

There has never been a concerted effort from Garden Valley to express its goals to the district for water management. There is a full provision to create a water management plan for Garden Valley. As landowners, you have to take the responsibility to come to an agreement about what you want to do in that area and how you want to manage it.

Comment: There shouldn't be any effect on Garden Valley because of the new water control structures you are building.

Comment: The drainage will be changed.

The distance is the same. The capacity of this tide gate is about 3x what the current capacity is. We're doing some irrigation now. If any irrigation is going to adversely impact Garden Valley, we'll have to put a water control structure there to prevent that.

My company will have to put a lid on a culvert to protect our property.

What stopped discussions about creating a water management plan from moving forward?

Comment: We got a summons in the mail from court that said we had to answer the court for a lawsuit they brought against us for quiet title.

Comments: It's them against us. We don't even get a treasurer's report. Why couldn't we have gotten a bond way back then for the tide gate? We found out about all of this by accident when Sharon was looking at it on the internet. We felt betrayed. We started this whole process working with them on the China Creek project, and they said we would have a good neighbor policy, but that's a problem when you get sued.

We have had over 300 meetings, contacts, and presentations since 2008 in regards to this project. The information has been available. We have known since 2008-2009 that if this district and landowners were going to survive, we had to replace our infrastructure, and to do that, we had to meet fish passage criteria (exacerbated by listing of coho salmon). None of us have any control over that. That issue is being faced by every resource organization, whether it be county highway departments, ODOT, timber companies, agriculture . . . everybody.

Comment: It was a total surprise that you served us with a lawsuit saying you wanted access to our property, and then when we go to a court hearing, you say you don't need it.

We won't solve the legal issues here. The hope is that we can get a settlement and get an end point.

Comment: Should we not wait until the attorneys get back to us?

We won't make a decision tonight. My understanding was, from the May 12 settlement conference, and what we as a district have been told, the district made the commitment to sponsor this meeting and be cooperative relative to finding a solution for Garden Valley. There's some communication issues here with who is responsible for what. The district is involved in the litigation, too, and we're constrained by what we can and cannot do and say.

We need to go back to our individual legal teams, understand where we are at and what the end game is, and what options exist.

Comment: Are there other parameters legally other than signing a waiver if we want to get out of the district?

When the issue was broached at the settlement conference, the only two points the district made was that it was all or none, the district needs to be released from liability. It's not workable if every other property is in or out.

Comment: Have you been in touch with the title companies to tell them what you were doing? They should have notified us?

I cannot speak for what the title company attorneys are doing or not.

Comment: You are supposed to be informing them of what you are doing to change our properties.

Comment: Has anyone contact our title companies to inform them that there is a possibility of changing our property, e.g., from pasture to a lake?

This process has been public from the get go. We put a lot of effort into outreach to ensure people are informed. We have had over 300 meetings, we have a website, and we've done as much as we felt we could do to be public and transparent. We have permitting,

grant funding, and district operational processes; to my knowledge, relative to the title companies, we have no obligation or responsibility to inform individual entities what the district plans or proposals are.

Comment: Where was the district obligation to send people information prior to the lawsuit?

In 2009-2010, we did a mailing to district landowners. All of our board meetings and budget meetings have been properly noticed. The annual landowners meeting has been properly noticed. The drainage district assessment is listed as a special assessment on the property tax bills.

Comment: What year did they start calling this the Beaver Slough Drainage District?

1906.

Comment: No. I've got a tax statement that says otherwise – it says drainage 66. No name, no nothing.

That is something you'll have to take up with the assessor's office.

Comment: Most of all of our title insurance has no mention of a drainage district on it.

Many of the deeds within the district that say "subject to the statutory of the Beaver Slough Drainage District, including the power of assessment." I've seen some that do and some that do not.

Comment: The purpose of this meeting is to provide us with how to file to get out of the district, and so far, you want a liability waiver from anyone. You haven't told us what forms we need to file, etc.

My understanding was our obligation was to put together the information we presented tonight that shows the elevation and impacts, but it was never my understanding we had any responsibility to provide the process or any of that.

Comment: The board could take people out of the district by defining the district. If ¾ agree, then all would go out. Or individuals could petition to do it. We're more of a benefit to you than you are to us. The district should be getting us out of the district. You should draw a boundary and take out us small landowners. We have five acres of less. We're not much of a financial asset unless you raise bonds or levy's.

Comment: If the district is going to allow us to get out, why would we approve a bond? I understand the ones we are paying for, but new ones?

The cost of the bond levy to pay for the litigation is not going to be inexpensive for anyone. The district now has an obligation to pay for the litigation.

Comment: It's kind of like a wrongful lawsuit because we didn't talk to the district before we were served. The way the suit was listed was "quiet title," which means they could access our property, and our house.

The ability to have a fully transparent conversation about this issue is impeded by the fact that this issue is in litigation.

Comment: They were supposed to tell us what is required to ask to get out of the district. If we get a liability waiver from everyone and bring it to the board, is any other information required?

The proper forms would need to be filled out.

Comment: This is a way to break the ice and get us talking. Our title company lawyer is working with the district attorney to get the correct wording.

Comment: Most everybody here wants out of this drainage district. There's no tide gate down at the end of the road. Whether there is a drainage district or not, the water only flows up the valley in the winter time. It has to flood that whole valley over the fence posts before it goes into Garden Valley. I don't see where the benefit is – in the past or the future.

Comment: 100 years ago, there was not railroad or road.

Comment: There is a deadline when fish passage criteria must be met, and ODOT will need to replace the culvert. The highway will need to be widened.

That will be the trigger. When they widen that highway, ODOT will need to put a floodway through there. If Garden Valley goes out of the district, would we be responsible for the floodway?

Comment: That would be ODOT's responsibility.

Comment: 20 years ago, they did a study about widening the highway, and they abandoned it.

Ultimately, that road will get widened. The district and board has a responsibility to look at those issues. My question is, "Do we have enough information here relative to the questions that we came up as well as the questions that need to be asked of our legal teams? Is there a comfort level there?"

The best way people solve problems is talking. We have questions to get answered for you.

Fred Messerle committed to getting the answers to the questions asked during the meeting. It is helpful to obtain landowner emails.

Comment: Most of the Garden Valley landowners don't have email. We don't even have a television.

We will ask the questions and mail the answers.



name  
date 6/10/2015

project  
BSDD - BOS Meeting - Harden Valley

tasks

| Name                  | Phone          | e-mail                     |
|-----------------------|----------------|----------------------------|
| Fred Messerle         | on file        | on file                    |
| Verna Rose            | on file        |                            |
| Les Paul              | on file        |                            |
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