



**MINUTES  
DEVILS LAKE WATER IMPROVEMENT DISTRICT  
REGULAR MEETING**

**COUNCIL CHAMBERS, CITY HALL, 3<sup>rd</sup> Floor  
December 1, 2011  
6:00 P.M.**

**PRESENT:** Randy Weldon  
David Skirvin  
Brian Green  
Noel Walker  
Kip Ward

**ABSENT:** None

**AUDIENCE:** Dr. Toni Pennington, Tetra Tech, Raylene Erickson, Mitchell and Dana Moore, Mark Christie, Mark Highland, Catherine Pruett, Salmon Creek Watershed Council, Larry Brown, Marilyn Kauffman, Gary McGrath

**STAFF:** Paul Robertson, Seth Lenaerts

**MEDIA:** Patrick

Skirvin called the regular DLWID Board of Directors meeting to order at 6:00 P.M.

**Special Order of Business**

On the Erosion Study, Dr. Toni Pennington, Tetra Tech, Inc., Portland Office presented a PowerPoint and her colleague, Bob Mussetter, who performed half of the work on this project, participated from a remote area by phone.

Dr. Pennington presented a background on the RFP and a history of the lake.

There is a base elevation 8.3 MSL. Since 1998, the District has controlled water rights that allow 1360 acre feet for recreational water storage at 9.53 MSL from April to October. Dr. Pennington reminded her audience that much of Tetra Tech's project was extrapolated from existing information. The entire presentation is available on DLWID.org, under Research.

The following information was contained in the PowerPoint presentation:

Historic aerials from 1939 to 2007 (100 aerials); inundation mapping, effects of waves at 9.53 MSL Shoreline Assessment. Photographic survey by parcel.

Land use; vegetation; bank stabilization.

Vegetation types; Land Use Categories; Bank Stabilization; Shoreline Condition.

Photo Survey. Inundation Mapping. Ten-year and 100-year flood stages.

Wave Action from: Natural—wind, and human-induced—wakeboard and waterskiing.

Normalized Wind Wave Energy.

Boating Assumptions: 20 to 40 boats are on the lake during summer months, except during peak holiday seasons. 75% are wakeboard vessels and 25% are waterski boats.

Estimated boat wave energy as a percent of the local wind energy: 40 to 45% is from wind energy on the shoreline. Boats generate 28 to 31% of the total wave energy along the shoreline.

This varies greatly depending on location.

### **Summary**

Based on Tetra Tech's analysis, the relative impact of wind- or boat-driven wave energy varies, depending on the location (prevailing and seasonal winds) and site specific conditions, including soil type, bank protection, and the leading edge of the lake bottom toward the shoreline more than vertical height of the lake level. This study did not observe damage attributable to changes in lake level, due to the limitations of the available data and the relatively limited vertical change in the height compared to the energy from seasonal winds.

Skirvin stated that Robertson would present his analysis and concerns regarding the report.

Robertson said that after studying the RFP and comparing it to the report, he felt the report was incomplete. The District asked for additional information to be considered, such as, how does the lake level during summer impact it when soils are saturated throughout the summer? There were no recommendations provided. The contract asked for recommendations.

Much of the wave assessment hinges on abutments. Riprap needs to be assessed.

The report lacks synthesis, although it has some good components. There was no mention of the non-impoundment level—it looks only at a slight change, not the entire change.

The Executive Summary needs to compare with the final Summary and the body of the document.

There was no discussion of the role of vegetation recruitment and no mention of the grass carp.

There was nothing about armoring in general. Where is information about this half-foot increment where you were unable to find direct erosion?

Further discussion about the conclusions and detailed information that was omitted.

Robertson stated, "We cannot riprap the entire lake. Vegetation is going to be a required component to the health of the lake. What about vegetation layers? There is not enough information on that.

It would be interesting to have the impacts of vegetation along the shoreline—how it would impact erosion or slow wave energy." On the wave action study, Robertson expressed more concerns. How is wave energy impacting the shoreline?

Further discussion between Robertson and Pennington about details within the document.

Pennington said generalizations would have to be made. Robertson responded that he would like to see generalizations.

Green suggested that the report should describe the different types of sites and how they are impacted. He asked Robertson to provide Pennington a copy of his assessments of the report.

Skirvin asked if Board members had any questions.

Weldon asked for clarification on how they arrived at the 9.0 and 9.53=2.5 acres with a 15-mile lake perimeter. Discussion continued on the survey completed by the Water Resources Department.

Skirvin asked about the margin of error in the models. Mussetter said that there could be as much as ten feet or more in some places.

Weldon: If 16% of the shoreline is eroding and there is 15 miles of shoreline, you could note that there is 2.4 miles of erosion.

Weldon questioned the size of waves between the wakeboards and the ski boats. He said wakeboard boat waves are substantially taller than 9 inches. He feels that they are measuring the waves at approximately half of their actual size.

Skirvin directed Tetra Tech to work with Robertson, addressing his concerns. Try to get the report completed by mid-January and have a final document ready for the February 2 meeting.

Robertson summarized some of the public questions that had been submitted, most of which had been addressed in the discussion and Dr. Pennington noted that most of the information could be downloaded. She then departed with the thanks of the Board.

## **Consent Agenda**

### **Minutes of the previous meeting and the financial report**

**Skirvin moved and Ward seconded approval of the November Minutes and the financial report. Vote: Unanimous. Motion carried.**

## **Public Comment**

**Mark Hyland:** His family has owned property for 43 years on the lake. He owns a property at 2170 NE Lake Drive. He is a commissioner on Tigard Water Dept. and thanked the Board for their dedication and service. He said that, after reading the 34-page study, it might not be relevant, since he is not sure of the purpose of the study. During discussions of lake levels over a year ago, there was a list of 9 or 10 people who were concerned about erosion. This report indicates 65 percent of the lake shoreline is ripped or armored. Of the other 35%, 72% is uninhabited shoreline which is located primarily near Devils Lake State Park. He is concerned about the District spending \$30,000 and time on a project that seemed to be self-serving for a few of those people who need to do something to protect their property. Why are we considering lowering the lake because we think it will minimize erosion? The volume of water helps to reduce the amount of photosynthesis that causes blooms. We have a number of people who indicated they didn't have access to their boats or docks—they were high and dry. If the difference in a foot means the people can use their boats, then the lake level should remain at 9.53. He said he wanted to commend Tetra Tech for their efforts on this study and feels they did a pretty good job in addressing whether the lake level is a major contributor to the erosion of the lake. Let's leave the lake level where it is.

**Catherine Pruett:** She is Director of the Drift Creek Watershed Council involved in the Salmon River Estuary Restoration project at the old Pixieland site. She said they are working on enhancement projects, educating kids, and performing other public outreach. She has worked on a number of water quality testing projects. She has a couple of areas of concern within the Devils Lake and adjacent watershed areas—the East Devils Lake Road flooding issue and other ecological issues. She is working with others trying to get an advisory team together to leverage funding to fix the flooding. She is concerned about the contamination of Devils Lake. She believes inspections and potential sewerage of the lake can do much toward correcting this issue, although it will be contentious and expensive. She encourages the District to move forward for ecological reasons and public safety. She said her group would like to work with the City to obtain matching grants to make it more palatable. She has a meeting scheduled with David Hawker and Paul Robertson.

Walker asked what gave her the impression that the lake was polluted and she said she has read about it.

**Mark Christie:** Has a home at 3184 NE Loop Drive. He began by thanking the Board for their hard work. He said he agrees with Mark Hyland's statements (his brother-in-law). He said it appeared that the Board was attempting to rewrite the Tetra Tech report; during the questioning and analysis, it did not seem that the District received what they had requested. He said he felt the Board was previously heading in the right direction with the septic revitalization. All of a sudden, it seems the lake is not safe. Everything needs to be data driven with quantitative information that the layman can understand. Anything involving the lake needs to be data driven.

**Marilyn Koffman:** Has a rental home east of Regatta Park, where she has seen nine loads of sand dumped by the City in Regatta Park. It is drifting into her dock area which a boat can no longer access. Can it be dredged? Robertson said he would provide her with the contact information of DSL—Carrie Landrum, who is the oversight person for Devils Lake. She could then determine if a fill permit had been issued and go from there.

**Larry Brown:** Has a home at 35 Indian Shores. He said he agrees with the comments of Christie and Hyland. He also wanted to comment on the CAFÉ issue. He said he has been in the real estate business for 35 years, much of it commercial. He has taken a second look at the price and the value of the property in question. It is assessed at \$600,000. Even if the price could be reduced to \$400,000, it is in one of the worst areas of the lake. Years ago, it was one of the nicest swimming areas of the lake. He said that what the District is currently paying for office space--\$1,200 for 2,000 square feet of space is the best deal in the state. It is not even triple-net, since the landlord pays utilities, taxes, insurance and maintenance. The District could probably get by with less space now that the Board meetings are being held in the City Council Chambers. He said the District's mission is not to get into the real estate business, but to maintain the health of the lake. He commented briefly against the mandating of septic inspections. He is not against encouraging people to upgrade their septic systems—he is against the city's plan to shut off residents' water for non-compliance to their policies, as they are planning to do to Road's End residents. Shutting someone's water off is not a moral concept.

**Mitchell Moore:** 2929 NE Loop Drive. He sent comments to the Board previously that Skirvin said he would attach to the Minutes. Regarding Dr. Pennington's presentation, it does appear that there might have been some intent to change the report. Although it could possibly be improved, the results are obvious. The lake level is the only issue over which the Board has control. He emphasized—the lake is not polluted! There is no sewage flowing into the lake. There has been no test showing *E.coli* from sewer, except when the city has dumped sewer into it. We need to work on a public information campaign to stress that the lake is perfectly safe.

## **Unfinished Business**

### **The Devils Lake Plan**

#### **Septic Tank Revitalization Program (Lenaerts)**

Lenaerts has been waiting for the last six months for the city council to address this issue.

On November 7, DLWID Board members and staff attended a City Council workshop to discuss the possibility of a septic inspection ordinance and options to accelerate sewer extension around the lake. No decisions were made at the meeting, just discussions.

On November 14 at their City Council meeting, the issue of septic inspection and sewer were addressed. The City Manager listed some possible actions that the City Council could pursue.

Staff will prepare an ordinance for City Council to review. A meaningful conversation can be had about which properties will be included and who will do the inspections, when they will occur and how often. Lenaerts feels the ordinance could be drafted within two months.

Issues to be addressed during the inspections will be how many gallons of water are used, the age of the system (the mayor is most interested in those residents who do not have any records), proximity to the lake and the type of material of the system. The inspections would take place in late summer and there would be a provision to work on a second year.

Staff was directed to consider the possibility of requesting DLWID to develop a proposal for a general obligation bond for a tax to study sewerage the lake. The City Manager pointed out that we do not have a good estimate of how much this project will cost. A sewer feasibility study would be necessary. How would it be done? What would it cost? How would financing be arranged?

Geography around the lake makes it challenging.

The City Council was not interested in assessing a systems water charge at this time.

Lenaerts said that the City Manager also discussed developing incentives for sewerage. This would be something that would be addressed "in house."

Lenaerts feels that progress is being made. He will attend City Council and staff meetings, seeking funding opportunities to study sewerage.

Green said feasibility studies were completed in the past for the west side of the lake—why not ask the city what they have. Lenaerts said they did not seem to have much confidence in those studies. Walker said 26 years ago we were told sewer would be installed within five years and it never happened. Now it could cost as much as \$30,000 per resident. We need to talk about whether it is feasible for that kind of money to be spent and the good that would come out of it. We would still have the nutrients in the lake.

Skirvin said a feasibility study would be the only way to do it.

Weldon said nutrients sift from above. Nutrients on the bottom of the lake are going to stay there.

The Board is just trying to control the nutrient load that is still flowing into the lake.

Robertson agreed. We are looking at new inputs and ongoing inputs, doing a nutrient study. When they did the diagnostic study, they did not account for what was coming out of the sediment. How valuable is the possible \$30,000 per parcel to shut off all septic systems to the lake? Is it worth it?

#### **Update on House Bill 5022 and the Coast Zone Management Act**

Lenaerts reported that DEQ proposed several changes to the Onsite Waste Water Management Program in the Coastal Zone in the last legislative session. There are some major changes that will impact us. DEQ will require septic tank inspections and reporting to be submitted to DEQ at the time a property changes hands and will require reporting of the septic tank pumping events to DEQ

to verify proper management and disposal of waste. Fees would range from \$25 to \$75 for reports. Permit fees and license fees would be doubled for violators installing or modifying a septic system without a permit. Maintenance program requirements would expand to include sand filters and pressurized distribution drain fields. A fee would be established of from \$30 to \$50 for consultations on land-use planning. They still have to go through a rule making process—this month or in January. It should take about a year for the rules process to be completed and implementation might occur in 2013.

### **SOS--Save our Shoreline Campaign (Lenaerts)**

#### **East Devils Lake State Recreation Area Rain Garden Project**

This project was completed on November 28.

Lenaerts said the initial meeting with State Parks & Recreation was on September 23, 2010.

He showed a PowerPoint presentation on the project's progress.

From September to May of 2011 the design was discussed and then the black plastic was laid down. June, 2011, the cooperative agreement was signed. October of 2011, an RFP went out and Jon M. Thompson Construction was awarded the site preparation. Site preparation was done November 17 and 18 with Nancy Nelson, archaeologist from OPRD in attendance. We completed the planting of a variety of plants on the 3,800 square foot area with Spiro Landscaping on November 28.

From now to July, 2013, DLWID will perform maintenance on the project. July, 2013, Oregon State Parks will assume the maintenance.

### **Oregon Restoration Project**

In July we had a meeting and began working with BLM and the Salmon Creek Watershed Council and 15 or so other agencies. This project will supply free plants to us if we help collect seeds. They have the resources to supply free plants to everybody who participates in the project; some of these plants would cost as much as \$4 each. The benefits are great. We can have first access to the plants as they mature. Monday, they are holding a meeting where they will discuss the Memo of Understanding. Lenaerts suggests that the District sign on to this project to become a partner. Skirvin asked for time to read the proposal and consider it; a decision will be made in January.

### **Vegetation Management**

Robertson noted that the two contractors responding to the RFP for the grass carp consultant were interviewed by the panel (Weldon, Green and Robertson) and the panel's recommendation will be presented by Green.

Green reported that they interviewed Dr. Raymond, E&S Environmental Chemistry, Inc. and Joe Eilers from Max Depth Aquatics, Inc. Both were well qualified; however, the final decision came down to Joe Eilers' contacts and prior projects with ODFW, his responses to the questions on the scientific issues, and how he would convince ODFW that grass carp was the right thing at this time. The panel felt that in communicating scientist to scientist, Eilers would be the more persuasive.

Robertson said that both were interviewed on the same day.

Walker asked if the Board could determine how Eilers feels about grass carp.

Green said that Eilers indicated he would present the idea of grass carp being the best solution on a scientific basis. He would not argue against the grass carp.

Skirvin said it is more important to argue the scientific aspect of the issue and let someone else be the cheerleader for the grass carp.

Eilers performed work for the District in 1994 and 2005. Green said that Eilers mentioned that there are scientific studies in Europe relative to grass carp.

**Green moved for the District to hire Joe Eilers of Max Depth Aquatics, Inc. to be the lead scientist on behalf of the District for reintroduction of grass carp into Devils Lake. Weldon seconded the motion.**

Discussion: Ward said he feels that a report should be vetted to show that grass carp reintroduction is the best solution to the problem; otherwise, it is not a legitimate study. What if the study shows that it is an unfavorable solution?

Green said it is very easy to make the point that Coho will be protected if the large-mouth bass is kept at bay. Eilers is positive on the grass carp issue; however, he said he is not going to be a cheerleader, but he will go in presenting it as having a scientific advantage. He will be conservative: He would recommend that when the weeds begin re-appearing, some very limited reintroduction be made. He would suggest erring on the side of too few fish rather than too many.

Weldon said that this would not necessarily be an ongoing thing. We could demonstrate that we are working on the nutrient and septic system study. We are doing our part, but we need protection for the next 20 years to keep the lake the way it is now.

Skirvin said the District has looked at a variety of methods for controlling vegetation other than grass carp and most of them are extremely costly. Funding them is not in line with our budget. There are positives and negatives with any program, but this one is within our budget to accomplish. Ward asked if grass carp is the only tool.

Robertson said that at the previous meeting, the Board said they would take another look at some of the previous studies. The intern who is arriving soon will get those numbers together. In 2006, we took existing data and did the best we could do, although we did not nail down all details. The intern (David Phillips) will spend 90 hours fine-tuning a few of the best of those methods. This will also be helpful in the presentation to ODFW.

Green informed Ward and the others that the Board has looked at other options again and again.

Ward mentioned a weed-harvesting tool that he has read about.

Robertson said that they would take a look at mechanical harvesting tools. There are other lakes that are using these tools; however, he cautioned, one issue may be the relatively remote location of Devils Lake's for transporting purposes.

**Vote: Unanimous. Motion carried.**

### **Sewer (Brian Green)**

Green said he is awaiting the final version of the feasibility report from the city and project engineers. He has not heard from the project engineer for a couple of weeks after their discussion of some items to be run by the city attorney. No further update.

Green asked if there had been any mention during the septic/sewer workshop on using the same LID model at other locations around the lake.

Lenaerts said that they had discussed some areas around the lake where this model could be utilized.

Robertson said that there is a lot of momentum now. The last LID was 15 years ago. This is a model to move forward for the west side of the lake and throughout the rest of the watershed.

Green said the obvious cost benefit of this project is that the property owner pays the cost of his sewer.

### **Communications Report**

Robertson said the Board meeting is being recorded live tonight and this version will be broadcast throughout the month. He said he has received requests from KYTE FM radio and others requesting on-line audio. He said it appears to be something that could be provided since they don't have Channel 4. They would be able to listen to the audio off the web—getting quotes from people during these meetings. Skirvin said he was okay with the idea. He asked if the Board could receive copies of each meeting. Robertson said turn-around time would be a few days; the District will receive a DVD of each meeting. He said our Minutes are a true record.

### **Safety Report**

There were no incidents to report.

### **DNA Bacterial Source Tracking**

The pump has been received. We are past the window of time when we were going to do this project. After the summer, we can take another look at the issue. Robertson will remove it from the agenda for now.

### **Audit RFP**

Robertson said he has been working with Grimstad and Associates on the Review that is scheduled for completion December 31. Board members will receive a copy of the report, along with the Secretary of State. There will be no face-to-face presentation on the Review.

### **Internship**

David Phillips, a graduate student will be arriving December 12 to work for up to 90 hours. He will work on the detailed assessment of alternative sources of vegetation management. It will be primarily through his winter break through January. He might be available to present the results of his work at the January meeting.

## **New Business**

### **Insurance**

Robertson reported that he met with Isham and Sprague regarding staff insurance coverage. He said that the current plan is good and could be reduced to the \$469.92 without losing any services. He recommends moving to the Silver Plan. It would come in under the total limit per contract employee. He added that the wellness program calls for a health club membership at the City's health club for \$274. If it exceeds the amount in the budget, Robertson will make up the difference. He said he was trying to maintain the same basic coverage without increasing the employee deductible amount. The idea is to stay under the contracted rate.

**Skirvin moved to switch the employee insurance to the Silver Plan, requiring the employee to absorb the amount of the City's health club membership that exceeds the allocated budget amount. Walker seconded the motion.**

**Vote: Unanimous. Motion carried.**

### **SDAO Conference**

This conference is the Special Districts annual conference. Robertson reported that there is a complimentary registration for the first 50 registrants. It is a two-night conference at Sun River. He provided a "Conference at a Glance" sheet of the session offerings.

It is designed for both Board members and staff with four concurrent sessions running on Governance 101, public records, safety committees, land-use, internal investigations, understanding and auditing financial statements, legal ethics, social media, public contracting laws and more.

**Green moved to allocate funds for Robertson's expenses of \$751.83 to attend the conference. Skirvin seconded the motion.**

Discussion: Skirvin said he assumed that Robertson could drive the District vehicle to save on fuel and mileage costs. Robertson said he would work the days into his schedule.

Weldon noted that he has attended two of the SDAO meetings and learned valuable information.

Skirvin requested that Robertson submit specific session information to the Board.

**Vote: Unanimous. Motion carried.**

Robertson cautioned that if the 50 free registrations had been filled, additional cost for registration would be required. Robertson was instructed to register immediately next year if there was a limited-time offer, and then the Board could make a decision at the following meeting.

**Skirvin moved to allow Robertson to spend the additional amount for the registration fee in the event he is not one of the 50 first attendees to register for no charge. Walker seconded the motion. Vote: Unanimous. Motion carried.**

### **Non-Agenda Items**

**Walker:** He would like to check on the time-line of the erosion issues and the cause. He asked when the District began maintaining the higher water level.

Robertson replied—1998. In 2006, the dam was repaired. The lake level was impounding water up to 9.9 and after the impoundment affected the state park, it was determined that our limit was 9.53.

Prior to 2006, water was receding below 9.53. In 2009, we held it at 9.53.

Walker asked if there was a correlation between more water and the appearance of algae in the lake.

Robertson said that there is some logic to it, but whether or not that plays out is unclear. Much depends on the sun. Walker said he did not wish to trade erosion control for blue-green algae.

Skirvin requested that staff place the Memorandum of Agreement (for the plant partnership) that Lenaerts requested a decision on be placed on the agenda for next month.

Ward: Thanked Robertson for his work on the Tetra Tech report. He did not feel Robertson was attempting to rewrite the contract, just to hold the company accountable. He was at the City Council meeting and did not feel that David Hawker was attempting to railroad anyone into a sewer system.

### **Adjournment**

The meeting adjourned at 9:15 P.M.

The next Board meeting will be held on January 5, 2012 at 6:00 PM.

Respectfully submitted, Linda Burt