



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

**LINCOLN CITY COUNCIL CHAMBERS
July 2, 2015
6:00 P.M.**

PRESENT: Brian Green, chairman
David Skirvin
Kent Norris
Tina French
Bill Sexton

ABSENT: None

PUBLIC SPEAKERS: Richard Danielson
Ann Norris
Miles Schlesinger
Craig Selvidge
Mark Highland

STAFF: Paul Robertson, Lake Manager
Elizabeth Daniel, intern

(Video: 0:00)

Chairman Brian Green convened the meeting at 6:02 p.m.

I. ROLL CALL

Five directors present, including newly elected members Tina French and Bill Sexton and incumbent Kent Norris, who was re-elected.

II. SWEARING-IN OF BOARD MEMBERS

Tina French, Bill Sexton, and Kent Norris were sworn in to office.

III. ELECTION OF OFFICERS

a. Chairman

French nominated Norris to be chairman.

Green nominated David Skirvin to be chairman.
Norris was elected chairman by voice vote.

b. Vice Chairman

Norris nominated French to be vice chairman.
Green nominated Skirvin to be vice chairman.
French was elected chairman by voice vote.

c. Treasurer

Skirvin nominated Sexton to be treasurer.
Sexton was elected treasurer without opposition

Kent Norris assumed the chair.

IV. REGULAR MEETING DATE/TIME/PLACE

Board discussed possibly changing the meeting date in the future but agreed to keep the meetings on the second Thursday of each month.

V. CONSENT AGENDA

a. David Skirvin moved to approve the consent agenda, including the minutes and financial report of the June 2015 meeting. Green seconded. Unanimous vote in favor.

b. Norris moved that because funds were insufficient to cover the May special election the board will transfer \$24.00 from the contingency fund to elections. Green seconded. Unanimous vote in favor.

VI. COMMENTS from CITIZENS PRESENT on AGENDA/NON-AGENDA ITEMS

(Video: 9:40)

Norris outlined the public comment policy. Comments were limited to 5 minutes apiece.

RICHARD DANIELSON, 1824 NW 26th Street, Lincoln City: Spoke about his history with Lincoln City and the lake. He read text by former resident John Betts (sp?), who wrote about the former Anchorage, swimming, boat races, algae, fish, weeds. He said the lake is now an embarrassment.

I. UNFINISHED BUSINESS (Agenda Support Item A)

a. The Devils Lake Plan

i. Septic/Sewer

SEE STAFF REPORT re: pending items.

ROBERTSON: The county has provided a summary buildable lands inventory, giving an estimate of future housing density. When we sewer the lake, need to consider density and storm water runoff. Full inventory will be shown at the next meeting.

FRENCH: Asked about impact of sewer on building development. Does not want sewer to restrict development.

ROBERTSON: This will give a reason to be mindful of impact of development. Perhaps this will be an opportunity for the city and county to create an Urban Growth Management Agreement.

GREEN: On June 22, the Lincoln City City Council formally approved the Voyage LID and will put the project out for bid. Also good that they designed into the system a storm water separator that separates out sediment, oil, and grease from runoff. If sewer increases impermeable area by increasing development, the separators should offset the increased runoff.

ii. Save our Shoreline (SOS)

SEE STAFF REPORT: re: no update

iii. Vegetation Management

SEE STAFF REPORT re: no update

b. Communications Report

(Video: 26:30)

SEE STAFF REPORT re: strategies for public outreach (Internet, Channel 4, social media (YouTube, Facebook), AM radio 1610 broadcasts, radio interviews, Clearwater E-Newsletter, 100 Years on the Lake presentations, Know Your Lake column ad in News Guard).

ROBERTSON: Summer E-Newsletter released, noted effort by new intern; Devils Lake Revival will be July 18, pontoon boat obtained; Taft High School athletic roster advertising request.

c. Safety Report

SEE STAFF REPORT re: no incidents; eyewash station to be tested weekly in order to keep it clean.

d. MidCoast TMDL

SEE STAFF REPORT re: public meeting expected in July

e. East Devils Lake Road

SEE STAFF REPORT re: Collaborative Assessment Meeting in May, and options for a solution to road flooding.

ROBERTSON: Discussed options for DLWID role as a stakeholder.

Board members expressed interest in hearing presentations in order to decide on a level of participation in the future.

f. Harmful Algal Blooms

(Video 41:15)

SEE STAFF REPORT re: proposed contract from Dr. Alex Horne, which was discussed at the June 29, 2015, special meeting.

ROBERTSON: Contract bid of \$116,000 exceeds limit for a no-bid contract; could reduce cost by removing \$22,000 for permitting.

Board discussed permit process.

g. Replacement of the Water Impound Device (the dam) (Video 48:44)
SEE STAFF REPORT re: no update.

FRENCH: Proposed tabling dam removal project because board has received conflicting advice.

French moved to table the proposal to remove the dam. Sexton seconded.

GREEN: Suggested contacting parties in order to get more information.

Board continued discussion of dam removal, priorities for funding.

FRENCH: Because of conflicting testimony regarding the benefits in removing and/or replacing the impoundment structure, I'd like to make a motion to table the replacement of the water impoundment device indefinitely. Sexton seconded.

French, Sexton, Norris voted aye. Skirvin, Green voted nay. Motion carried 3-2.

NORRIS: Noted offer from Devils Lake Neighborhood Association to dredge sand from D River.

Norris made a motion that the Devils Lake Water Improvement District Board, through Paul, engage the Devils Lake Neighborhood Association to see if they are still willing to donate their time, equipment, and efforts to dredge the D River, and if so, then start the permitting process. Green seconded.

SKIRVIN: Suggested simpler motion to direct Paul to explore permit process and costs.

Board discussed options, possibility of dredging more often.

Norris withdrew his motion and restated it.

Norris made a motion that Paul engage the Devils Lake Neighborhood Association and those individuals who in the past have volunteered their equipment, time, and efforts to dredge the D River, and see if they are willing to still do that, and if so, we are willing to pay the permitting fees and pursue a permit. Skirvin seconded. Unanimous vote in favor.

h. Water Quality (Video 1:01:53)
SEE STAFF REPORT re: monitoring program.

ROBERTSON: Water quality changes quickly and frequently; harmful algal bloom (HAB) is increasing; primarily microcystis, which produces toxin. Discussed testing procedure. E. coli

detected near K Street in Neotsu. Could be an animal; will be monitored to see if it continues and could be a septic failure.

FRENCH: Asked about protocol after E. coli found and role of DLWID in identifying and reporting failed septic systems.

ROBERTSON: Can be reported to county sanitarian, but clear evidence needed. Discussed history of city and county role in septic inspection programs.

Board continued discussion of DLWID's role in addressing failed septic systems; issues with Thompson Creek properties, which will not get sewer systems; how to handle complaints; possibility of getting reports from septic companies; possibility of encouraging city to impose mandatory septic inspection.

SEXTON: Commented on 3rd Street sewer pump station outflow pipe blocking a canal; material needs to be cleaned out.

II. NEW BUSINESS (Agenda Support Item B) (Video 1:36:45)

a. Internship: Elizabeth Daniels

SEE STAFF REPORT re: intern report

III. NON-AGENDA ITEMS

FRENCH: Read the following proposal:

DEVILS LAKE NEIGHBORHOOD ASSOCIATION AND MITCHELL MOORE SETTLEMENT PROPOSAL

June 26, 2015

1. Devils Lake Water Improvement District Board of Directors and all named Directors in Lincoln County Circuit Court Case No. 15CV12185 (collectively "defendants" or "District") agree to rescind by written resolution (in the form attached), the following motion passed during the April 9, 2015, Regular Board Meeting regarding water rights Certificates 89980 and 69267: "[W]e modify all of our existing water rights, certificates, and permits so that we are entitled to impound water to an elevation of 9.0' above mean sea level, which equates to approximately 998.5 acre-feet of storage, and impounding water no earlier than June 1 and then only if the lake level is below 9.0' above mean sea level on June 1; otherwise to begin impoundment only by June 15 and impounding water only through October 15 at the latest with a combination of water drawdown in August and September as required by the existing water rights."
2. Defendants agree to transmit a copy of the signed, written resolution to the Oregon Water Resources Department ("OWRD"). Included in the transmittal should be notification to OWRD that (a) the District rescinds and withdraws any notice of intent to abandon or relinquish any portion of water right certificates 89980 and 69267; and (b) provides notice under ORS 540.610(3) that the District has and intends to continue maintaining facilities ready, willing and able to make full use of the water rights of use under certificates 89980 and 69267.
3. Defendants will provide copies of the transmittal required under Paragraph 2 and a copy of a certified receipt of mailing or other acknowledgement that OWRD received the transmittal.

4. Upon plaintiffs' receipt of the transmittal receipt to OWRD, plaintiffs will dismiss Lincoln County Circuit Court Case No. 15CV12185 without prejudice under ORCP 54A(l)(a) with all parties bearing their own costs, disbursements and attorney fees.
5. Defendants agree to perform the activities described before 5:00 pm on July 15, 2015.

French moved to accept the above proposal. Norris seconded.

GREEN: Objected to lack of notice for this proposal. He suggested tabling the proposal to give public an opportunity for input.

Board continued discussion.

GREEN: Another point to consider is possible conflict of interest between Bill Sexton's role as lake contractor and his new position as a board member.

SEXTON: Said he gains no profit from any decision made by the board.

GREEN: Cited Oregon Government Ethics Law regarding outside employment of public officials, suggested allowing more time for Sexton to provide notice.

SEXTON: No comment.

Norris called for vote.

French, Sexton, Norris voted aye. Green and Skirvin voted no. Motion passed 3-2.

French moved to adopt the following resolution:

DEVILS LAKE WATER IMPROVEMENT DISTRICT

Resolution No. 2015-07

RESOLUTION RESCINDING THE APRIL 9, 2015, DECISION TO MODIFY WATER RIGHTS

WHEREAS, the Devils Lake Water Improvement District holds in trust water right Certificates 89980 and 69267 and Permit S-52672 for the benefit of its patrons;

WHEREAS, on April 9, 2015, the Devils Lake Water Improvement Board passed a motion to modify Certificates 89980 and 69267 and Permit S-52672 stating:

"[W]e modify all of our existing water rights, certificates, and permits so that we are entitled to impound water to an elevation of 9.0' above mean sea level, which equates to approximately 998.5 acre-feet of storage, and impounding water no earlier than June 1 and then only if the lake level is below 9.0' above mean sea level on June 1; otherwise to begin impoundment only by June 15 and impounding water only through October 15 at the latest with a combination of water drawdowns in August and September as required by the existing water rights."

WHEREAS, the April 9, 2015, motion stated above is the subject of Lincoln County Circuit Court Case No. 15CV12185;

NOW, THEREFORE, BE IT RESOLVED, that:

1. The motion made and passed on April 9, 2015, to modify the District's water right Certificates 89980 and 69267 and Permit S-52672 is hereby rescinded and made null and void effective immediately;
2. The District has a facility capable of handling the entire rate and duty authorized under certificates 89980 and 69267 and Permit S-52672;
3. The District is otherwise ready, willing, and able to make full use of the rights under Certificates 89980 and 69267 and Permit S-52672; and
4. The District will transmit a copy of this signed resolution by certified mail, return receipt requested, to the Oregon Water Resources Department forthwith.

Norris seconded the motion

GREEN: All that under non-agenda items. Unbelievable.

French, Sexton, Norris voted aye. Green and Skirvin voted no. Motion passed 3-2.

NORRIS: Spoke in favor of utilizing the full water right of 9.53 feet, which allows for optimum depth for recreation during summer months. I would like to attempt to reach this depth again this summer. We had a mandate from the voters to change the policy back to maximum impoundment. There is little evidence that 6 inches of water will reduce erosion and/or cause septic drain fields to saturate the water table.

Norris moved to change board policy to impound 9.53' beginning April 15 though October 15. Sexton seconded.

SKIRVIN: Suggested reconsidering the April date. There is a lot of early spring rain. When you do impound at 9.53 in April and have 6 inches of water going over that dam, it causes a lot of inundation problems and shoreline plants can't get established. Historically, if you wait until June 1, you provide the spring flushing, you don't get that extra back up and can still hit 9.53 and you can still provide some really good salmon passage. I am not going to support an April 15 establishment. I ask that you consider, at least, the date.

FRENCH: We don't have to exercise it; it just gives us the option

GREEN: Read Joe Eilers' comments from the April 19 workshop related to lake level, septic field inundation, shoreline vegetation, natural hydrology, shoreline erosion.

French, Sexton, Norris voted aye. Green and Skirvin voted no. Motion passed 3-2.

IV. ADDITIONAL COMMENTS from CITIZENS on NON-AGENDA ITEMS

(Video: 1:58:50)

ANN NORRIS, 3279 East Devils Lake Road, Otis: Spoke about a tax lot on Thompson Creek with a house that was condemned because of failed septic, owners are out of state. Asked for action by both the neighborhood association and DLWID.

MILES SCHLESINGER, 212 SE Keel Ave, Lincoln City: I don't think Mr. Green is in a position to criticize Mr. Sexton on conflict of interest. He has been lobbying for sewers and I think that is a very good job but he is also a lawyer and he can get potential business because people have to form LIDs. This is a small community and Sexton doesn't get much from the

water district. Brian Green doesn't get much either. By working together, and not picking each other apart, you can make the lake cleaner and better and benefit the community. Bickering over Bill's contract is ridiculous. He should be given a 12-month contract not a 3-month contract.

RICHARD DANIELSON: (Points at Sexton) Keep your job. Be the lake contractor. Who else would put up this crap? Brian, I think you should retire with dignity. Skirvin, you are on a sinking ship that sunk. Time to jump. Let the board morph into what it will be. Hopefully, it will do good. I am banking on it, the lake is banking on it. You spent two hours obstructing progress. You seem to forget the lake is dead. It has been dead since 1986 or so, whenever the dam was put in and it is still dead. You are saying it helps us water ski. We can't let weeds grow because we have jets on our boats and they get clogged. The lake is not your playground; it is Oregon's lake. I have been in contact with county sanitarian, city manager, and the mayor and they all pass the buck. Any building built should have septic brought up to EPA standards. There are over 500 septic systems put in since the '70s. Homeowners should volunteer to get their inspections. Do your job and get it done.

CRAIG SELVIDGE, 925 NE East Devils Lake Road, Lincoln City: There were infrared pictures done of the lake that showed the septic systems. What happened to those reports?

ROBERTSON: The bulk of it is on our website; it is called the enviroscan study.

SELVIDGE: Why not look at that technology again and show areas that are problematic.

FRENCH: We need a mechanism after we identify a problem. We need authority and that is where we are falling short.

MARK HIGHLAND, 2170 NE Lake Drive, Lincoln City: Welcomed new board members. Thanked Brian and David for their work. Thanked French for her line of questioning. It is the best line of questions I have heard. I have suggested numerous times that we take random sampling and say your house will be inspected and we will pay for the inspections. We have listened ad nauseam that septic systems and failing septic systems are the major cause of lake problems but it's never been solidified. Welcome, Elizabeth.

V. BOARD COMMENTS AND ANNOUNCEMENTS

(Video: 2:15:30)

FRENCH: The Devils Lake Neighborhood Boat Parade is tomorrow night at Regatta Grounds at 7:30 with fireworks at 9 pm. Recognized Miles. We had a great meeting with Paul, and new Visitor and Convention Bureau head, the new mayor, and the promoter of Devils Lake Dash. I'm happy to be here.

NORRIS: The recent election showed that the public wants to be engaged by board. We will engage the public more intimately with what is taking place and we want you involved in what is taking place on the lake. You will make board successful and this lake better. Be ready, you will be asked to do things.

GREEN: I want to work with the new board members and have some positive results and have a positive attitude going forward. I think we had a great meeting. With respect to the end of the meeting, I had no doubt regarding the ultimate lake level decision. We know what that is going

to be. I can move past that. I would like to have seen us get off on the right foot with respect for process. If the lake level item would have been on the agenda with proper notice, I would have rather talked to Bill privately but there was not opportunity. I think we all could have done Bill a favor by postponing this a month. I don't mean to say I intend to do anything about it. I think there is a risk there that could have been avoided. Having said that, I want to work positively with you guys and let's get some stuff done. I think the first 95% of the meeting was great.

SKIRVIN: Welcome to the new board members and congratulations. We managed over troubled waters and we can move forward and do good things for the lake. Let's set some dates for doing a prioritization workshop. Paul had said he wants captains for boats for the revival. Bill, are you going to be able to do that?

SEXTON: Yes, I will be available.

SKIRVIN: I may not be in town. Owner of pontoon boat possible captain? I have lots of kids life vests that I would loan.

FRENCH: Should we set a date for the workshop at the community college?

Board discussed options and scheduled Monday, July 20, 2015, at 6 pm.

SEXTON: Thank you to all the public that got involved in our campaign. It is a major part of what we can do when concerned citizens get motivated toward a better outcome. Based on that outcome, it tells me it is time for a cleaner, healthier lake environment. I will move forward in accomplishing these very important topics as an elected board member and I shall respond to the public with everything available to achieve and accomplish the common goal to save our lake and keep moving forward with sound and factual information that is not only beneficial to the lake but is the voice of the public. Please feel free to contact me anytime for questions and answers. Thank you to my wife.

VI. ADJOURNMENT

Green adjourned the meeting at 8:29 p.m.

A Goal-Setting Workshop will be held at 6:00 pm Monday, July 20, 2015, at Oregon Coast Community College, Lincoln City.

The next regularly scheduled board meeting will be August 13, 2015, at 6:00 p.m.

| Respectfully submitted,
Marilee Harrison, substituting for Rick Mark