

October 20, 2020 Special Session

The Board of County Commissioners met at 7:00 p.m. in special session in the Granite County Museum and Cultural Center in Philipsburg with Chairperson Bill Slaughter and Commissioner Scott Adler attending in person and Commissioner Charles Hinkle attending through Zoom. Also attending were County Attorney's Office Paralegal Claudette Parke and Executive Assistant Mike Kahoe. The session convened with the pledge of allegiance. The Board is practicing the recommended social distancing (keeping people at least 6-feet apart) in order to slow or stop the spread of the novel Coronavirus (COVID-19). Masks were worn by many people in attendance. The session was livestreamed through the Zoom computer program available to the public to view the session and comment, and the public was also allowed to attend in person and provide comment.

Commissioner Slaughter made introductions of county personnel attending and Flint Creek Dam consulting engineer Jeremiah Theys. He indicated that Commissioner Hinkle is participating in the meeting through Zoom.

Commissioner Slaughter announced that the purpose of the meeting is the dilemma regarding the Commission's involvement with the Flint Creek Dam Project and how it is required to be maintained by Granite County. He reviewed that Granite County became the owner in 1997 from the Montana Power Company and \$1 million in cash. Over time an electrical generating system was installed (by Hydrodynamics) and the county would get 10% of the revenue from hydroelectric production. At that time, the Commission thought that the revenue would not outreach the expenses and they thought it would always be enough money to maintain the dam without using public money. As time went on, additional regulation and permitting requirements from FERC, (Federal Energy Regulatory Commission) from where Granite County gets its license to generate electricity, has exhausted the Flint Creek Dam fund. The Commissioners have done a lot of safety work on the dam over the years, but what was unexpected is the number of regulatory things that the FERC demands. The unanticipated high maintenance costs are the result of the FERC's regulations and demands and studies; the FERC not only tells the county what to do, but also tells the county who they have to hire to do it. The Commission has written to the Montana congressional delegation and the responses received indicated that the FERC has no oversight from congress. The current Commission had to take \$100,000 out of the county's safety net (Payments In Lieu of Taxes funds). It was very hard to do and it stuck in the Commission's craw, and Commissioner Hinkle voted against it, but contractors and engineers had to be paid for work completed.

Commissioner Slaughter referred to the memo dated October 19, 2020 from County Attorney Blaine Bradshaw which suggested an option of finding a buyer. What's not an option is to abandon our contract with Flint Creek Hydro LLC (formerly Hydrodynamics). The county is actually buying the hydroelectric system over time, with 90% of revenue going to Hydrodynamics, who built the hydro system at its expense. If the contract is breached, it is likely that the county would lose. There may be a fact that these FERC demands could not have been anticipated, which could change the agreement in the county's favor. The county has been pursuing a larger portion of the revenue with Hydrodynamics, but

Hydrodynamics has not been responsive. What precipitated this meeting is that this is the first time public funds have been used on the project.

Project engineer Jeremiah Theys, with Great West Engineering of Helena, reviewed that when the facility started generating power, for the first 20 years the county gets 10% of the revenue, next twenty years goes to 20% and after 40 years the county owns the facility. If a facility is generating power then FERC is involved, and there are additional requirements with high hazard facilities, which are usually private dam owners in urban areas. Great West Engineering started getting involved in 2016 to assist the county to get into compliance with the FERC. He explained the expenses, annual recurring costs of about \$10,000; every five years a full physical inspection is required and there are very few engineers in the state that meet FERC's qualifications to do the full inspection. Recommendations come from that inspection and after the last five-year inspection, the FERC wanted a Probable Maximum Flood Analysis (PFMA) and a focused spillway assessment, after the Oroville, California disaster. Commissioner Slaughter noted that this is just part of the FERC regulations. Jeremiah Theys continued that the gabions needed repair, so that was a project, and the controlling gates inside the dam were leaking after being there for about 100 years, so they were replaced as a safety project. Luckily, the dam is in fairly good shape now, with only minor things to be done. Most of the capital improvements on the dam have been completed, so major projects should not have to be budgeted for. But, another Part 12-D inspection is coming up in 2021, which is done every five years. There could be resulting studies come from that. Also, in 2020 there is also an earthquake analysis, and the Owner's Dam Safety Program (ODSP) requires an independent audit. Jeremiah Theys said that he does not believe there will be any major projects, but possibly signing and sirens and that type of thing. He reviewed the result of the revenue versus expense analysis. Also, every five years the independent extensive physical inspection of the dam, and in 2022, a full-scale functional Emergency Action Plan exercise will need to be done. The end result is that there is estimated to be a deficit of \$474,725. Commissioner Slaughter indicated that the Commission has always been willing to do projects involving public safety.

Jim Waldbillig inquired about the total revenue to date. It was estimated at \$800,000. (Note: Actual revenue from power production only from March 2013 through September 2020 is \$581,095.) Scott McDonald wanted to know if the Commission would invest in this project at this time. The Commissioners answered that they would not. Katie McDonald inquired about what is the end game; it is not only a FERC issue, but also issues with the homeowners; an earthquake recently in Lincoln, she felt it in Philipsburg. She would be looking for a buyer as soon as possible. Commissioner Slaughter stated that the life of the generating equipment is unknown to the county at this time. He then asked which options the public would prefer: To try to sell the dam? Work with Hydrodynamics to try to increase the county's share of revenue? He stated that it's the county's dam, what do you want to do?

Betty Munis commented that it seems that the options have different timelines. May have to do a combination of the options. She inquired what is the upside of keeping the project. Commissioner Slaughter said that he does not see a downside of getting rid of it.

Elena Gagliano referred to Page 3 of the agreement, Item D; one part stands out to her that “the Georgetown Lake dam and Georgetown Lake dam reservoir are not part of the agreement.” Hydrodynamics had to do all the repairs to get it ready to produce electricity to get the FERC license. Is there going to be a public comment period, written, after this meeting? She suggested that the license be relinquished and offered to Hydrodynamics and then they lease the dam and lake from the county. The residents at the lake have more interest in the reservoir than anyone in the county.

Commissioner Slaughter said that the written public comment would be accepted for two weeks from the date of this public meeting. He continued that Hydrodynamics has shown no interest in leasing the dam or lake.

Betty Munis inquired what the plan or action or timeline is to decide. Commissioner Slaughter said that the county has already started on most of the plans. Betty Munis noted that the county must not be alone in this, there must be other public entities that own similar projects. Commissioner Slaughter responded that out of over thirty dams that the FERC inspects in the northwest, this is the only one that is publicly owned.

Scott McDonald asked why are the 90% partners (Flint Creek Hydro) not communicating with the County. Commissioner Adler said that they are a private enterprise. Jim Waldbillig inquired about how much is left of the contract. The response was that it is estimated about 30 years. Jim Waldbillig estimated that there will be about \$30 million dollars of power produced in that time. Commissioner Slaughter indicated that the county had obtained an offer from Hydrodynamics, but the Board felt it was unreasonable; the Board then made a counteroffer to Hydrodynamics and has not heard back. Commissioner Slaughter noted that the county is required to release so much water for power production. Katie McDonald inquired if the lake level is the responsibility of the county and the response was yes. She said that it would include the liability also. The spillway was discussed and Katie McDonald had heard that the county would be fined if the water goes over the spillway. The Board responded that is not true.

Paul Tallon noted that his job is with Flint Creek Hydro LLC (Hydrodynamics) and he does not see anything about the grants for dam repair in the financial information presented and he noted that representatives of Hydrodynamics are not here tonight for legal reasons. Also, he said that he believes Hydrodynamics’ engineer Ben Singer is on Zoom for this meeting. Commissioner Adler noted that Paul Tallon is the person the Commission calls to regulate the outflow from the lake because the outflow is adjusted and regulated through the power plant. Engineer Jeremiah Theys responded that only revenue from power production is included in the charts he presented.

(Note: Flint Creek Hydro LLC and Granite County are going to present their dispute before a mutually agreed upon mediator (retired Judge Ed McLean) on October 28, 2020 at the Granite County Courthouse.)

Commissioner Slaughter said that he is a Commissioner who has always supported agriculture while he has been on the Board. He noted that he will be going off the Board soon and people should think about their agricultural representation.

Commissioner Slaughter thanked the public for their participation and invited them to any Commission meeting to further discuss the matter.

Commissioner Hinkle said that the county must look at accumulating several million dollars in the dam fund before it is turned over to future generations. He said he is not going to vote to use PILT funds on the dam.

Scott Sylvester inquired if it is preferable to get a low interest loan or to use PILT funds? Commissioner Slaughter noted that according to the engineer, the dam is in good condition, with no foreseen large expenditures. Jeremiah Theys noted that the spillway was within inches of tolerance of meeting the regulations or the spillway would have had to be replaced. Scott McDonald inquired if the main valves are in good condition. The response was that the old valves, about 100 years old, were recently replaced.

Betty Munis stated that when she is interested in buying property she investigates what needs to be done. Jeremiah Theys noted that when power was not being produced, the dam was inspected by Montana DNRC and some deficiencies were noted at that time; but when power is being produced, FERC gets involved. Commissioner Slaughter said there is a law in Montana, which County Attorney Blaine Bradshaw is investigating, which could provide an avenue of negotiation due to unforeseen expenses (law is referenced in the County Attorney's memo dated October 19, 2020 which was referenced earlier in meeting). He noted that the dam was given to Granite County along with \$1 million; the county did not purchase the project. The people of Granite County own the dam and people are welcome to give comments to the Commission at any time.

Commissioner Slaughter called for any additional public comment and there was none.

People signing in were Paul Tallon, Jeremiah Theys, Katie McDonald, Jim Waldbillig, Tom Rue, Scott McDonald, Betty Munis and Scott Sylvester with the *Philipsburg Mail* newspaper.

The session adjourned at 8:10 p.m.