

Minutes of TIFA LLC Meeting
May 28, 2015
10:00 a.m.
City of Titusville Water Resources
Mourning Dove Water Plant
2836 Garden Street
Titusville, Florida 32796

Persons in Attendance

Mike Brown, Miami Corporation, TIFA Management Committee Member
Dwight Severs, City of Titusville, TIFA Management Committee Member
John Peterson, City of Titusville, Water Resources Manager
Sean Stauffer, City of Titusville, Water Resources Director
Richard Broome, City of Titusville, City Attorney
Andrew Jantzer, City of Titusville, Water Resources Deputy Director
Glenn Storch, Glenn Storch, P.A., representing Farmton Water Resources
Barbra Goering, Farmton Water Resources
Susan Pattock, Farmton Water Resources (by telephone)
Pat Gagliardi, Farmton Water Resources (by telephone)
Jim Perry, GMS LLC

Jim Perry conducted the meeting.

Action Items

I. Approval of the Minutes of the TIFA LLC Meeting of April 14, 2015 and April 22, 2015 (Presenter: Jim Perry)

Member Severs moved to approve the minutes of the April 14, 2015 and April 22, 2015 meetings as presented. Member Brown concurred and the minutes were approved.

II. Approval of CPH Change Order No. 2 (Presenter: Sean Stauffer)

Mr. Stauffer stated, at the last TIFA meeting staff was given direction to go back and contact CPH to negotiate the existing change order at that time. On April 24th Richard Broome and Glenn Storch spoke with CPH, discussed the various items and concerns. CPH has responded with a revised change order with an amount reduced approximately \$7,000 from the original. Also, we have a table prepared by Mr. Peterson that goes through the history of the change order and the amounts each of the items have changed. Staff is recommending approval of the change order and we would be happy to answer any questions you have on the specifics.

Mr. Storch stated, Richard [Broome] did a wonderful job with negotiations and that is one of the reasons it came out so well.

Mr. Broome stated, Glenn [Storch] did a great job and we presented the issues that the board wanted us to present.

Member Severs stated, I would like to know the status of WR-5A because it could impact the change order with another change order request based on some of the happenings with the new well.

Mr. Stauffer stated, I sent you an email and you may not have seen it. I also sent detailed information about WR5 did you see that as well?

Member Severs responded, yes.

Mr. Stauffer stated, we know we have had some expensive issues with drilling a well. A week or two we came back and they had found an area where they lost circulation of the well, they found a cavity, they came back with a recommendation to drill the borehole deeper down to 140 that was the same recommendation that BFA had provided during the review of the issue. They went ahead and did that drilling then the recommendation was to run a caliper log so we could be sure where we wanted to set the casing. That had been reviewed by BFA I don't believe that Devo had the opportunity to review that but it seemed like everybody was on board with that. The casing point was picked and the next step was to move forward with reaming out the borehole at 17" basically creating a larger hole. That work started last week, they were not able to reach the depth on Friday so they left a little bit early and they wanted to restart it on Tuesday. What has happened is they have once again reached this area where there is a cavity underground and the integrity of the hole itself isn't holding up, basically it is falling down on itself so they had gotten down to 120 feet the day before then when they came back they checked the depth and it had gone up to 113 feet so that means about 7 feet of sand and other material has now fallen into the borehole. CCI has come back with a recommendation to us, I know it has already gone to Jim [Boyd] I don't know Barbra [Goering] if you have had a chance to see any of this and there were three options. The third option, which BFA has said they would recommend is CCI's recommendation to go ahead and try to vibrate more casing in with the idea that if you push the casing down hopefully that will case off the cavity so you won't have issues with material coming down. One of the other concerns and the reason why they stopped drilling yesterday was because as they were drilling and pulling material out they were finding that it was material from higher up. The concern would be if you kept doing that and kept drilling then you might have a subsidence issue and clearly we don't want any ground subsidence because then that ruins the current site that we are on and we can't move again.

Member Brown stated, that also has some pretty heavy duty ramifications for your well drilling contractor if it subsides on top of that drill from behind that drilling head.

Mr. Stauffer stated, his equipment, yes. We would be back to the same scenario that we experienced with WR-3. This morning I spoke with Jim Boyd, he has sent the recommendations from CCI over to Devo and at this point we are waiting to see what the Farmton side's recommendation is. As far as change orders and additional time we talked about the additional borehole that was done down to 140 feet that will incur some additional costs. There is also some additional time to do the work, the caliper log was approximately \$5,000 so there will be some additional time with that. I had Katrina (Bowman) put together a short estimate of what additional costs we would be looking at to deal with the situation. Of course if we have to bring the vibratory hammer equipment back out there will be some additional time and costs associated with that.

Member Brown stated, you have a crane that will accompany that as well. I think we have those costs in an old change order,

Mr. Stauffer stated, we do and in fact we have line item amounts for that but these are things that are upcoming.

Mr. Storch asked, on the existing change order is there anything that would not be done as a result of these changed circumstances?

Member Severs stated, I see it as CPH or CCI maybe asking for additional things.

Mr. Storch stated, so there may be a request for additional after this one.

Member Severs stated, because they are having to do more work.

Mr. Stauffer stated, yes. When they submitted this information they didn't contemplate doing the caliper log, they didn't contemplate a deeper borehole, nobody knew we would find this cavity.

Member Severs stated, as you will recall we had quite a little conversation about BFA's recommendations, which ultimately were concurred in by Devo and then we had this nastygram from CPH and CCI saying what are you doing trying to tell us how to drill these wells and you are interfering with us. It is interesting to me the very first recommendation of BFA was to go down to 140 feet and guess what that is what they are doing now. In addition part of their recommendation was to do the caliper log and guess what, now that is what they are doing. I'm not an expert on the subject but it illustrates that CPH didn't advise the well driller to go down deep enough on WR-5 to start off with. Now they are encountering the same thing, a couple hundred feet away so what it illustrates is frankly I think we had bad advice on WR-5 in addition I haven't been convinced at all they ever complied with the Halliburton method based upon all the information and answers we got. In addition, we had the fundamental problem of the acidification staying in there for three days. What the motion was last time on this segment of task 7 and 8 was to cut it in half, which is \$20,000. What they have come back with is a \$4,000 reduction.

Mr. Storch stated, I don't remember the motion being cut it in half. I remember we walked through and said what we agreed to.

Mr. Broome stated, they said have a goal and one of those items was let's see if we can't get it.

Member Severs stated, I'm reading from the minutes, item 7 and 8 we split that in half.

Mr. Storch stated, yes but I will tell you in negotiations and you directed us to negotiate, in negotiations rather than treating this as an individual we treated it holistically to try to get as much reduction as possible. I thought Richard (Broome) did a great job of getting it reduced by \$7,000.

Mr. Broome stated, I threw it at the end as half, I said that is where we want to get and they did not agree to that.

Mr. Storch stated, it was a negotiation and you did the best you could with the negotiation. What concerns me here is you are looking at basically two different things. You have a negotiation where you have the reduction, a significant reduction in your change order that has to be done anyway but now you have a potential additional change order as I understand it that we may be looking at. That is a different issue to negotiate. I personally would take advantage of the negotiation you have and the reduction for the other things and then come in and work on the second change order as a totally separate change order just from a negotiation standpoint. Take advantage of what you have been able to negotiate and then go to the next stage if you have to. If they are incompetent, I don't know if they are, because you are right I'm in the same boat that you are, I don't know what is the right thing but if they are incompetent for not taking the hydrologist's advice if they are going ahead and doing these things that is a different matter to look at. But from a contractual standpoint if you are just looking at these two change orders, the first change order has been negotiated and you can take advantage of it now

we have to look at the second change order and whether we want to proceed that is a different issue.

Member Severs stated, speaking from a contractual standpoint I still have the fundamental question, which I asked in the very beginning particularly as it relates to CPH, they have a lump sum for construction services for well drilling of \$28,000. Now they want an additional amount maybe \$11,000 or \$12,000 additional amount and admittedly CCI clearly said our fees are based upon a certain number of hours CPH did not do that. If you read the contract they are going to provide these construction services for all these wells for \$28,000 and now they want an additional \$12,000. That doesn't seem right to me.

Mr. Storch stated, I understand that although we have to recognize there have been changed circumstances, you now have an extra well.

Member Severs asked, why was there a change of circumstances, whose fault was that? I know Barbra [Goering] doesn't like hearing that because we talked about it.

Ms. Goering stated, I don't think we will ever know. I think Farmton's attitude at this point is let's get the very best negotiation we can and let's keep going with the drilling. I really do agree with Glenn [Storch] that this sounds like it is going to be a whole new discussion and I think we can have it be a whole new discussion.

Member Severs stated, part of my concern is that yes, there were some concessions but honestly some of these concessions are some things that should never get asked for to begin with.

Mr. Storch stated, I understand that but listening to negotiations they certainly had arguments as well as to why there should be no concessions. I think we did well by what we were able to accomplish and I was surprised that we got that far.

Member Severs stated, they show approximately \$4,000 in reduction for items 7 and 8. What does that represent?

Mr. Storch stated, all I know is we had a potential \$ 27,000 bill and we have less than that now, \$7,000 less. From a percentage standpoint that is significant.

Member Severs stated, they generally go through and make justifications for their billing and I understand that. My simple question is what is the reduction of \$4,000, what does that represent?

Ms. Goering stated, I thought it was a reduction of \$7,000.

Member Severs stated, I'm talking about items 7 and 8.

Mr. Storch stated, we weren't looking at items 7 and 8, we were looking at a total holistic negotiation and we were looking at reducing \$27,000 down to approximately \$20,000. If that is the case that is more than 25% it is not a bad reduction for what we were trying to accomplish.

Member Severs stated, I don't disagree with that but we are talking about almost \$200,000 extra that TIFA is having to pay because of well failures.

Mr. Storch stated, we don't have the evidence to blame CPH for the well failures. Obviously, there are some issues as to whether or not some of these things just happen. I know that wells do fail I know sometimes you can do the best research you can do and then you come down to it and find something different. The initial determinations are based on modeling and then you go from there. As far as the fact that we need to proceed that is what is very important to us, we have got to proceed.

Member Severs stated, nothing I have ever done has caused any delay by asking these questions. I feel as though I have a fiduciary obligation to ask these questions.

Mr. Storch stated, I feel like you have also succeeded in not only asking the questions but also getting a response by getting that 25% or more reduction in that change order. I thought that was very impressive and TIFA should be very proud of that. I don't like the idea of mixing the two pieces together because you are coming up with a new issue and whatever that change order may be because of the conditions

Member Severs stated, I want to make sure we know where we are headed.

Mr. Storch stated, that is a different discussion.

Member Severs stated, the motion last time as it relates to these suggestions, we end up making suggestions, his motion was to authorize staff to revise the proposed language such that suggestions not recommendations be made to CPH relative to the construction of Well WR-5 adding language that TIFA will look to CPH to assure that the new well WR-5 is constructed properly and that CPH will be accountable for such construction. Frankly, that is part of the reason I'm asking the question because I want to make sure we achieved what we wanted and hopefully, not at additional cost.

Mr. Storch stated, you made that motion for the language to be in there in the change order we haven't approved the change order yet. I think you need to add that language to the change order now to let them know this because although we agreed to it I don't think we have given that language to CPH.

Ms. Goering stated, we made those suggestions and said they were only suggestions. I don't think it needs to be in the change order.

Mr. Stauffer stated, that was us getting forward moving with the drilling, our suggestions were sent as a separate document.

Mr. Storch asked, have we provided that to them?

Ms. Goering responded yes, a long time ago.

Mr. Storch stated, as we are looking at this next one it will give us a little negotiating ability.

Mr. Broome asked, can I confirm, I think Glenn [Storch] asked the question earlier I don't know if we got an answer or maybe we did, I want to be clear that the change order we discussed over the phone and negotiated had certain amounts for the new well.

Mr. Stauffer stated, yes.

Mr. Broome stated, if TIFA were to approve the proposed change order now for the reduction to \$20,000, is there anything in that change order that is not going to be done or has the scope of work changed from what was negotiated because it had to do with the new well. Given what has happened since we negotiated that is there any difference now or change to that change order that we are being asked to approve, the work that was contained within that change order?

Mr. Stauffer stated, there will only be more work.

Mr. Broome stated, I understand there will be more. Is there any change in what was proposed under that previous change order, is anything different because of what happened?

Mr. Storch responded all of the work that we provided for in the change order is under consideration has to be done.

Mr. Stauffer stated, that would be considered the baseline of the work that you do if a well went perfectly. Things that we just talked about, the caliper log, the additional borehole drilling, those are things that we are taking extra steps to ensure the success of setting the casing.

Mr. Broome stated, so it is extra work but then we changed to what the Change Order 2 proposed.

Mr. Storch stated, that is why I see this as two different matters. You have the one piece in place that is going to be the contract and then if there are other issues then we can talk about it.

Member Severs stated, I agree we can always talk about them but I see this highly interrelated.

Mr. Storch stated, I understand.

Member Severs stated, your advice and recommendation would be to approve the change order.

Mr. Storch stated, that would be my advice.

Member Severs asked, Mr. Broome what is your advice?

Ms. Goering stated, as staff we recommend it to our managers.

Member Severs stated, city staff has said it is good in their eyes.

Mr. Broome stated, all I can tell you is that the direction we gave was a goal of getting a reduction in this change order of 50%. We tried, my effort was to get them to 50% or less, what they proposed is 25%. My opinion is that you are not going to get a further reduction. If we are sent back with marching orders to get a further reduction I want to tell you that is not likely. Whether or not I recommend you approve this I have to rely on staff's recommendation with regard to whether the work they proposed or did was suitable. I certainly can't weigh in on that. I think that we did make significant headway in getting the reduction based on our conversations especially based on the fact that things were done in the field, they were given advice to move forward, they were given recommendations to move forward, things happened throughout the process that they are wanting to get reimbursed for. That was difficult to argue against the fact that they were proceeding with what they perceived to be the authority to proceed. We have in the various change orders made statements that we were going to reserve our right to make claims so I don't know where this board sits if they want to continue to say we are paying you, however, this is not releasing our claims we are merely paying the change order, we continue to reserve our right to those claims. That was not mentioned in the negotiation from the other side that this was a settlement of claims. I'm not sure that would be acceptable to them but you could certainly always try it, we are going to pay the change order, however, be advised that we continue to retain our right with regard to any claims we may have. If I were them I would not accept that but I just want to let you know.

Mr. Storch stated, for the record when I'm always looking at negotiation I'm looking at what you are looking at as far as the options and our options are obviously you have the option of some litigation but that litigation will cost far more than what we are asking for is what worries me. To me I thought we did a good job of getting as much as we possibly could compared to what the option was and unfortunately, as he says there are a number of bases for defense if we are going to go for any litigation. I was surprised that we were able to get as far as we got. I was very pleased they saw the light.

Member Severs stated, based upon the recommendations of the respective city and Farmton and their attorneys I would move to approve the change order with the reservation of rights provision.

Member Brown stated, if we are comfortable with the reservation I will concur.

Mr. Storch stated, I am.

Ms. Goering stated, okay. It is silent now and I don't know what that means. It doesn't say it is a settlement.

Mr. Storch stated, it is not a settlement.

Ms. Goering stated, it is consistent with our last change order.

Mr. Storch stated, obviously it is not something that we are looking at ever doing because the cost of litigation is expensive.

Member Severs stated, I understand. The reason I would be inserting that in there if BFA raised some concerns about some other wells and some additional things and if that happened it would be good to reserve the right.

Mr. Storch stated, if additional evidence came to light I agree. I don't think it hurts anything.

Ms. Goering stated, it is consistent with what we did in the last change order and we are doing what is consistent.

Mr. Stauffer asked, is it the goal to incorporate the reservation of rights language within the change order document?

Member Severs stated, I would think that it should be.

Mr. Storch stated, it doesn't hurt.

Member Severs moved to approve change order no. 2 in the amount of \$20,376.92 with the reservation of right provision. Member Brown concurred and the motion passed.

III. Approve Two Additional Authorized Signers to Northern Trust Checking Accounts (Presenter: Pat Gagliardi)

Member Severs moved to approve Tom Abbate and Glenn Storch as additional signers to the Northern Trust Checking Accounts. Member Brown concurred and the motion passed.

Financial Items and Reports

IV. Ratification of Expenses Paid from Operating Account and Request for Reimbursement (Presenter: Jim Perry)

Member Severs moved to ratify expenses paid from the operating account and request for reimbursement in the amount of \$9,900.22. Member Brown concurred and the motion passed.

V. Approval of Capital Call Notice (Presenter: Pat Gagliardi)

Ms. Gagliardi stated, on the second page we list the individual invoices that were paid as part of the capital call, three to CPH, one to Advance Well Drilling and one to Felix & Associates totaling \$416,051.16 divided between the city and Farmton Water Resources.

Member Severs moved to approve a capital call notice. Member Brown concurred and the motion passed.

Staff Reports/Informational Items

VI. Area IV Phase 2 Update (Presenter: Sean Stauffer)

Mr. Stauffer stated, at this point all the electrical systems are in, all the poles and lines are in and it is powered up. WR-8 and WR-9 now have power meters and the next step is the contractor will move forward with doing the disinfection. The fencing is up on four of the well sites, they are doing the final grading on the road and getting ready to sod and seed. They are getting ready to pour concrete at WR-1 and WR-2. I described last month we had a new project manager and things are moving along a lot faster and he has continued with that momentum.

Mr. Storch asked, when do you anticipate water to begin to flow in Phase 2.

Mr. Stauffer stated, we still are a couple weeks out. I mentioned the critical path item was getting power to WR-8 and WR-9 because those wells need power to run them, that will be the water source. They will have to be cleared first. They will probably just use one and the well will have to be cleared and once the well gets cleared then they can use that to clear the pipeline. We are still a couple weeks out, they have not started the clearing process.

Member Severs asked, on the second contract when was the completion date?

Mr. Stauffer responded July 20th.

Mr. Broome stated, on the new well WR-5 you gave us the report earlier talking about the problems we are having. I started to get that feeling that it really was not looking good. Given that, is there any recommendation from staff of anything we should do to put this in a better position should it fail and we may have to make claims? I'm curious, is there anything you recommend, whether we want BFA or anybody else on site at certain situations to ensure things are being done properly. Is there something you can recommend?

Mr. Stauffer stated, at this point I don't. They really haven't started any construction, they put in the casing the 18" and that is fine. Now they are basically drilling a hole and they are having trouble with the hole.

Mr. Broome stated, at some point they are going to have to say this hole is not going to work and move to another hole.

Member Severs stated, you still always have the option of going back to the original WR-5 because we left that open.

Mr. Stauffer stated, that is right.

Member Severs stated, we have specific recommendations from BFA and I think from CCI on how it could be fixed.

Mr. Stauffer stated, right if there was a catastrophic failure but we are not there yet. We have not experienced ground subsidence at WR-5A we have a plan to move forward, those things have not happened. That is the reason we stopped where we are now and are looking at some different methods to save it.

Member Brown stated, based on personal experience, I have seen this very same issue happen before with a residential well and it was repaired just in the fashion they are going about this right now and the well continues to work today and that was 20 years ago and I was writing the checks. I'm comfortable with the process because that is exactly what a different well driller did 20 years ago. There is not a lot that has changed but when he lost circulation and couldn't regain that he went back and drove the casing and had to go a little bit deeper, closed off the cavity just as we are doing and continued drilling the well.

Member Severs stated, the zone we are drawing from is way below 140 feet.

Mr. Stauffer stated, it is below and we plan to set the casing below this cavity anyway. It is a hurdle we need to get over so we can get on with the rest of construction.

Ms. Goering stated, the rest of what is going on is proceeding pretty well.

Mr. Storch stated, the only thing I would ask is within the next two weeks or so if you can keep us informed as to the progress.

Ms. Goering stated, you are welcome to join the weekly call.

Member Severs asked, we have extended the completion date for the well driller until when? It seems like they would be asking for an additional extension of time and rightly so.

Mr. Stauffer stated, they probably will. They got an additional 30 days or so with the last change order but that did not contemplate the issue we have now.

Member Severs stated, from my perspective I have no problem granting the additional time that it has taken for us to basically decide on methodology of drilling the well because that is outside of their control and if that is two weeks or 30 days, fine because we basically told them to hold off because we are trying to decide exactly what to do.

Mr. Stauffer stated, we should have something probably within an hour or two.

Member Severs stated, there is no need for us to take action at this meeting about extension of time.

Member Brown asked, will there be need for action on the part of the committee once the determination is made as to direction? Will there be the need for an emergency meeting next week whenever we decide on which option to pursue?

Mr. Stauffer stated, I don't believe so I think we can move forward.

Member Brown stated, with the understanding that there will another change order as a result of the work.

Member Severs stated, there is going to be the additional cost that the well driller is incurring.

Member Brown stated, he has mobilization expenses, additional equipment and then time on top of that.

Mr. Storch stated, it sounds like this will be much more clear in two weeks.

Mr. Stauffer stated, I think in two weeks we will have a lot better handle on what this is causing. I feel comfortable because what CCI has recommended is the same thing as BFA, they are in consensus.

Other Business

Public Comment

Next Scheduled Meeting

The next meeting will be July 9, 2015 at 10:00 a.m.

Open Items

Adjournment

Member Brown moved to adjourn the meeting at 10:45 a.m. Member Severs concurred and the meeting adjourned.