



Missouri Department of Natural Resources

MINUTES

MISSOURI SOIL AND WATER DISTRICTS COMMISSION

TELEPHONE CONFERENCE CALL

LEWIS AND CLARK STATE OFFICE BUILDING

JEFFERSON CITY, MISSOURI

March 9, 2012

COMMISSION MEMBERS PRESENT VIA TELEPHONE: Charles Ausfahl, Kathryn Braden, Thomas Bradley, Richard Fordyce and Gary Vandiver

EX-OFFICIO MEMBERS PRESENT: SARA PARKER PAULEY, DEPT. OF NATURAL RESOURCES: Dru Buntin;

EX-OFFICIO MEMBERS PRESENT VIA TELEPHONE: DEAN PAYNE UNIVERSITY OF MISSOURI: Dave Baker

ADVISORY MEMBERS PRESENT: SOIL & WATER CONSERVATION PROGRAM: Colleen Meredith

ADVISORY MEMBERS PRESENT VIA TELEPHONE: MASWCD: Steve Radcliff; NRCS: Dick Purcell

STAFF MEMBERS PRESENT: April Brandt, Kerry Cordray, Alan Freeman, Christa Moody, Jesse Higginbotham, Theresa Mueller, James Plassmeyer, Bill Wilson

STAFF MEMBERS PRESENT VIA TELEPHONE: Jeremy Redden; Ken Struempfler

OTHERS PRESENT: ATTORNEY GENERAL'S OFFICE: Tim Duggan

OTHERS PRESENT VIA TELEPHONE: MSWCDEA: Sandy Hutchison; **Holt Landowner:** Roger Heck; **Moniteau SWCD:** Nancy Kirby; **Jefferson SWCD:** George Engelbach

A. CALL TO ORDER

Chairman Richard Fordyce called the meeting to order in Jefferson City, Missouri, at the Lewis and Clark State Office Building at 1:00 pm. Poll of commission members was taken: Charles Ausfahl, Kathryn Braden, Thomas Bradley, Gary Vandiver, and Richard Fordyce were present, which made a quorum.

B. SOIL AND WATER CONSERVATION PROGRAM DIRECTOR'S COMMENTS

Colleen Meredith reminded the commission of the March 20 – 21, 2012, commission meeting at the Big River Watershed. The afternoon of the 20th will be tours of the Big River Watershed and the commission meeting is on the 21st. The informational packet is in the mail.

MINUTES--MISSOURI SOIL & WATER DISTRICTS COMMISSION

March 9, 2012

Page 2

C. REQUESTS

1. Holt SWCD – Heck Farms Payment of DWP-1 Structure (Tabled 2/10/12)

Kathryn Braden made a motion to remove the Holt Soil and Water Conservation District (SWCD) Heck Farms Payment of DWP-1 Structure from the table.

Charles Ausfahl seconded the motion. Thomas Bradley, Gary Vandiver, Charles Ausfahl, Kathryn Braden and Richard Fordyce voted in favor of the motion and the motion passed unanimously.

Jim Plassmeyer presented the Holt SWCD Heck Farms Payment of DWP-1 Structure. This request was tabled at the November 28, 2011, January 11, 2012, and February 10, 2012 commission meetings so staff could gather additional information regarding Roger E Heck and Donna M. Heck Trust's contracts SGE 106-11-0059 and SGE 106-11-0062, DWP -1 Sediment Retention and Erosion Control Structures.

During the February 10, 2012 phone conference call meeting, staff provided the commission with the total cost to correct the practices in order for them to meet NRCS standard and specifications. During the meeting, Mr. Heck stated if the structures were brought up the required heights, he felt they would be too steep for him to farm safely and he did not think he would be able to get an easement from his neighbor to temporarily back water on their property. The commission's motion when tabling the issue was to have Mr. Heck contact his neighbor to see if he could get an easement.

Mr. Heck sent a letter to the commission dated February 20, 2012, that stated he contacted the neighbor to request an easement. The neighbor would not give Mr. Heck an easement to back water onto his property. Without the easement from the neighbor, the corrections to the practices cannot be done and therefore, the practices will not meet NRCS standard and specifications.

Mr. Heck's letter further stated that if he had known these structures would need to be larger structures than what was originally planned and an easement would have been required from the neighbor, he would not have started the project in the first place. Mr. Heck is asking the commission to grant a variance on contract SGE 106-11-0059 and not require repayment of \$10,000 in cost-share funds he received from the initial construction of the practice following the flawed design from NRCS. Mr. Heck is also willing to cancel contract SGE 106-11-0062 in the amount of \$1,658.17. The letter from Mr. Heck states that they would assume maintenance responsibility for all structures and release NRCS and the soil and water district and Program from responsibility of any failure of these structures. As a reminder, Jim Plassmeyer read the variance authority the commission possesses in 10 CSR 70-1.010 which states that: "Unless prohibited by any federal or state law, commission may grant individual variances to Soil and Water

MINUTES--MISSOURI SOIL & WATER DISTRICTS COMMISSION

March 9, 2012

Page 3

Districts Commission rules upon presentation of adequate proof, that compliance with sections 278.070 to 278.300, or any rule or regulation, standard, requirement, limitation or order of the commission will have an arbitrary and unreasonable impact on landowners participating in soil and water conservation eligible practices. In determining under what conditions and to what extent a variance may be granted, the commission shall exercise a wide discretion in weighing the equities involved as well as the advantages and disadvantages in approving or disapproving a request for a variance”.

Jim Plassmeyer presented for commission consideration: Due to inability of the landowner to bring the practice up to NRCS standards and specifications consider granting a variance to Mr. Heck to allow him to forgo repayment of the \$10,000 for contract SGE 106-11-0059. The landowner has agreed to assume all responsibility for the structures involved with contract SGE 106-11-0059. In addition, have program staff inform the Holt SWCD to cancel contract SGE 106-11-0062 in the amount of \$1,658.17.

Kathryn Braden clarified the motion from the February 10, 2012 commission meeting, that stated Mr. Heck was to take a member from the Holt SWCD Board of Supervisors or NRCS personnel or both to visit the neighbor. Mr. Heck stated he did not take anyone with him to speak to his neighbor. The neighbor does not want, even temporarily, water backed up in his back yard. Kathryn Braden then asked Mr. Heck why he did not ask a board supervisor or NRCS to go with him. Mr. Heck stated that he thought they were busy and had other work to do when the neighbor would not provide a variance.

Kathryn Braden also wanted to ensure that a lawsuit cannot be filed against the Soil and Water Districts Commission or NRCS by future owners of this land. Richard Fordyce stated that the commission did not require this from the two other Holt landowners at the November commission meeting. Kathryn Braden was concerned that a precedent would be set that would not support the Holt SWCD or NRCS. Gary Vandiver stated that Mr. Heck constructed this practice as he was instructed to from the beginning and that Mr. Heck has not done anything wrong.

Charles Ausfahl made a motion to allow Mr. Heck to forgo repayment of the \$10,000 for contract SGE 106-11-0059. Mr. Heck has agreed to assume all responsibility for the structures involved with contract SGE 106-11-0059. In addition, have program staff inform Holt SWCD to cancel contract SGE 106-11-0062 in the amount of \$1,658.17. Gary Vandiver seconded the motion. Kathryn Braden requested that Tim Duggan send an agreement to Mr. Heck taking all responsibility for the structures. A poll vote was taken. Thomas Bradley, Kathryn Braden, Charles Ausfahl, Gary Vandiver, and Richard Fordyce voted in favor of the motion and the motion passed unanimously.

MINUTES--MISSOURI SOIL & WATER DISTRICTS COMMISSION

March 9, 2012

Page 4

Richard Fordyce apologized to Mr. Heck for the length of time it took to resolve this issue and hoped that Mr. Heck would still work with the Holt SWCD in the future.

2. Supervisor Appointments

a. Pulaski SWCD

Jesse Higginbotham presented the Pulaski SWCD supervisor appointment. The Pulaski SWCD would like to appoint Mr. Gary Smith to the board of supervisors, to complete the unexpired term of Mr. Lynn Sharp, who submitted a letter of resignation on February 24, 2012. The term will expire May of 2013.

For commission consideration: Approve the appointment of Mr. Gary Smith to the Pulaski Board of Supervisors. Kathryn Braden made a motion to approve Mr. Gary Smith to the Pulaski board of Supervisors. Thomas Bradley seconded the motion. A poll vote was taken. Charles Ausfahl, Gary Vandiver, Kathryn Braden, Thomas Bradley, and Richard Fordyce voted in favor of the motion and the motion passed unanimously.

D. ADJOURNMENT

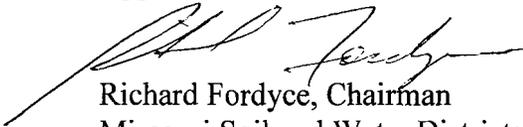
Charles Ausfahl moved the meeting be adjourned at 2:16 pm. Thomas Bradley seconded the motion. A poll vote was taken. Kathryn Braden, Thomas Bradley, Gary Vandiver, Charles Ausfahl, and Richard Fordyce voted in favor of the motion and the motion passed unanimously.

Respectfully submitted,



Colleen Meredith, Director
Soil and Water Conservation Program

Approved by:



Richard Fordyce, Chairman
Missouri Soil and Water Districts Commission
/clm