



## MEETING SUMMARY OF THE CHARTER TOWNSHIP OF TEXAS FLOODING TASK FORCE MEETING HELD ON December 19, 2018

A meeting of the Charter Township of Texas Flooding Task Force was held on December 19, 2018, commencing at approximately 10:30 a.m. at the Texas Charter Township Hall.

### 1. INTRODUCTIONS

Supervisor John Hinkle opened the meeting, thanking everyone for taking the time to attend and inviting the Task Force members to introduce themselves. The following members of the Task Force were present:

- Kalamazoo County Commissioner Dale Shugars
- Engineer Tom Smith, Prein & Newhof
- Engineer Tom Wheat, Prein & Newhof
- Derek Haroldson, DEQ
- Jeff VanBelle, Deputy Drain Commissioner
- Travis Bartholomew, RCKC Deputy Director
- Kendra Gwin, City of Portage Public Services Director
- Jennifer Jones, Restorative Lake Sciences
- Jim Roberts, Crooked Lake Association
- Senator Elect Sean McCann
- Kalamazoo County Commissioner Elect Christine Morse
- Russ Walters, Crooked Lake Association
- Amy Coon, Eagle Lake Association
- Len Bosma, Eagle Lake Association
- Dian Latora, Pine Island Development Representative
- Aaron Collins, Bass Lake Representative
- Mark Rose, Vineyard Development Representative
- Texas Township Trustee Nick Loeks
- Texas Township Superintendent Julie VanderWiere
- Texas Township Supervisor John Hinkle

Kalamazoo County Commissioner Dale Shugars introduced Commissioner Elect Christine Morse. He reported that the current Commission and suspects the next commission would be supportive of allocating monies to the County for Flood Relief. Hopefully  $\frac{1}{4}$  of that would go towards Texas Township as there are other areas of Kalamazoo County that are also dealing with flooding issues. He stated that taxable valuation is significant in Texas Township and this is a very important issue for Kalamazoo County.

Christine Morse stated that she has been attending the meetings and has met with the Drain Commissioner to get brought up to speed on the flood mitigation.

Supervisor Hinkle invited Senator Elect Sean McCann to the table. He also advised that he is working to get up to speed. He reported that he is happy to help with the issues.

### 2. FLOODING STATUS

Jim Roberts (Crooked Lake) reported that Crooked Lake is  $\frac{1}{4}$  inch below the all-time high.

Amy Coon (Eagle Lake) reported that Eagle Lake still at the all-time high. More people are flooded each day and the problem is not going away.

Mark Rose (Vineyards) reported that the Vineyards is about the same from the last meeting.



## **MEETING SUMMARY OF THE CHARTER TOWNSHIP OF TEXAS FLOODING TASK FORCE MEETING HELD ON December 19, 2018**

Dian Latora (Pine Island Development) reported that Pine Island Development is about the same. She advised that the Drain Commission started on a project in their development but had to stop due to the weather.

Len Bosma (Eagle Lake) commented that the levels are at their worst 2-3 days after a rain event.

Jeff VanBelle (Drain Commission) commented that if we see another 3-4 inches we will have road issues. He reported he had to suspend the Pine Island project due to weather and that there are now properties on PQ Ave that are being impacted now that hadn't been before.

Russ Walters (Crooked Lake) questioned if most impact is after 3-4 days of a rain event, then this isn't run-off. It is an issue with the water table. Tom Smith (Prein & Newhof) agreed that the water table is the issue if the greatest impact is after 3-4 days. Russ Walters then stated that if that is the case, then it isn't a lake problem but a Township problem.

### **3. FLOOD STUDY UPDATE**

Tom Wheat reported that both the Flood Study and the Water Quality Analysis are done. Prein & Newhof resubmitted the 2<sup>nd</sup> set of answers to the DEQ's correction request. They have determined a Screening plan and pumping plan. We continue to work through the routing plan as we obtain the required easements.

Everything has been submitted to the DEQ.

Len Bosma asked if the screening device could be described.

Tom Wheat advised that we are only required to screen from Crooked Lake to the wetland and not Eagle Lake to Crooked Lake. The screen is an agricultural product used to pump from rivers to farm fields. River Screen is the name of the company. It looks like a hamster wheel that utilizes high pressure spray that blasts out and clears the screening device. This is one of the issues with the device as debris can clog up the device but that will be the contractors issue to resolve.

John Hinkle asked how effective the screening device is?

Tom Wheat reported they are using a #24 size mesh. The Starry Stonewort is the invasive species that will require screening. The #24 mesh is .7 millimeters in size, which is smaller than what was required by DEQ for the Selkirk Permit to screen the same invasives.

Derek Haroldson (DEQ) asked if the permit needed to be updated as the screen size seems to have changed. Tom Wheat agreed that it did need to be updated.

Russ Walters asked if the screening device would be able to operate in the ice. Tom Wheat reported that the vendor for the River Screen product said that they do have winter applications, so yes it will operate in the winter. Tom Wheat reported that the cost itself is approximately \$10k.



## **MEETING SUMMARY OF THE CHARTER TOWNSHIP OF TEXAS FLOODING TASK FORCE MEETING HELD ON December 19, 2018**

Jennifer Jones remarked that the smaller the mesh, the less amount of water it can handle. Tom Wheat advised that the manufacturer said that their device can handle 3000 gpm. Jennifer Jones inquired if they had seen the operational data on the device and suggested that maybe they should vet it out better before purchasing.

Travis Bartholomew (RCKC) advised that Tom Wheat is spot on. You can add another screening device if the one can't handle the gpm. He has experience with these with agricultural uses.

Tom Smith stated that the screening device will address the invasive species but we still need to work to address the endangered species.

### **4. FEMA GRANT UPDATE**

Tom Smith reported that the FEMA Mitigation Grant is funding to reduce future damage using the Benefit Cost Analysis. The comparison is the cost to reduce flooding vs. the cost of the project. Tom selected the houses that were the lowest for the survey. They were all at the 100 year flood level or just above it. Recently the DEQ provided another level that is higher but it is not official therefore can't be used for the data in the FEMA Grant. Tom Smith further advised that FEMA won't award the grant without the houses in the 100 year level. Submitting at this point for the grant is pointless. We could re-evaluate next year to see if there are enough changes.

In order to submit for the FEMA Grant using the Damage Assessment exact damage costs will be necessary. We are not able to determine the exact damage costs at this time because so much of it is still under water.

Len Bosma inquired if this was raised to a more political level, like Congressman Upton, would this help?

Tom Smith responded that FEMA criteria is very distinct, therefore pushing is not likely to have an impact.

Amy Coon (Eagle Lake) asked why the 100 year mark is so important and questioned why anyone would build that low?

Tom Smith stated that FEMA is trying to help and usually they help through acquisitions. This is to reduce the damages long term with a structure. The lower the structure is, the more likely it will be flooded and have a positive impact on making an improvement.

Len Bosma asked the Representatives present; Is there any help or anything to pursue politically?

Commissioner Shugars answered specifically probably no but it would take time possibly 1 year or so to get appropriations. He suggested that a thoughtful letter could be written with a specific ask that could be sent to the White House to ask for assistance.

Len Bosma responded that we as a group should be proactive and become a squeaky wheel.



## **MEETING SUMMARY OF THE CHARTER TOWNSHIP OF TEXAS FLOODING TASK FORCE MEETING HELD ON December 19, 2018**

Jeff VanBelle commented that we do not have long history of claims to help out. Our grant would score higher if we could show that there were more claims. FEMA is for the bigger problem.

Tom Smith commented that FEMA is more willing to help those that built incorrectly with in the 100 year flood plain.

John Hinkle commented that Congressman Upton's office previously stated that our issue has not risen to the level for assistance yet.

Russ Walters suggested that we keep communication going with Upton's Office because it takes time to get notice and help. We need to get their attention.

### **5. DEQ PERMIT UPDATE**

Derek Haroldson reported that the original DEQ permit application was submitted in October. On November 21<sup>st</sup> a correction letter was sent to the Township and Prein & Newhof. DEQ received the response to the correction letter on December 10<sup>th</sup>. Those responses were reviewed December 13<sup>th</sup> and 4 more correction responses were requested by the DEQ for further clarification. DEQ received those responses on Dec 14<sup>th</sup> and they were reviewed on Dec 17<sup>th</sup>.

Derek Haroldson advised that the permit application is nearly complete. It describes what is being proposed and who is being affected. However, in consultation with the Threatened and Endangered Species Unit, our permit request will be "Red Filed" which will require comments from EPA and Fish and Wildlife due to the Massasauga Snake. This is due to there being a potential that the project will have an effect on them.

When the project is noticed to the public, the EPA and Fish and Wildlife will also receive notice and have to provide comment. This will delay the project by 90-120 days.

Derek Haroldson commented that he needed to meet with Tom Smith and Tom Wheat to clarify the extent of the additional water. He would like to see an overlay on who the property owners are that will be expecting additional significant impacts.

He further advised that he has staff reviewing the AeM Water Quality report. They will be providing comment.

Derek Haroldson commented that he spoke with Julie VanderWiere yesterday for the public notice and advised that we would need to get authorization/permission from affected property owners who will be significantly impacted before a permit is issued. He advised that this is being required by the Water Resources Division (which DEQ is a part of). This does not have to occur before the Public Notice but before the permit is issued. This is a legal issue and any action must be "otherwise lawful".

Julie VanderWiere asked who makes the determination on what the significant impact is?

Derek Haroldson responded that the DEQ will make that determination.



## **MEETING SUMMARY OF THE CHARTER TOWNSHIP OF TEXAS FLOODING TASK FORCE MEETING HELD ON December 19, 2018**

Julie VanderWiere asked who is the WE and when will the decision be made?

Derek Haroldson responded that DEQ will work with the Township to make the determination. He stated that Julie provided a large data set to the DEQ for the public notice all the way to US131.

John Hinkle asked if one person could stop the permit?

Derek Haroldson answered that an objection from a significantly impacted landowner can stop the permit. The project must be lawful. Michigan Common Law can't put additional run off on another persons' property. This would not be "otherwise lawful".

Derek Haroldson further stated that the DEQ has not provided direction to the Township previously because we did not have the downstream impacts previously. He advised that in order to make a determination of significant impact he will need to work with Prein & Newhof for more details.

Jeff VanBelle inquired is DEQ was looking at vertical height?

Derek Haroldson responded both vertical height and inundations (wide). We don't have surveys that show this and are not going to require surveys because it be very time consuming and costly.

Tom Wheat asked what level of detail is required?

Derek Haroldson responded that the DEQ is not going to require a survey or to define exact wetland areas. We are compromising with aerial photos, wetland maps and contour data.

Jeff VanBelle commented that Derek makes reference to dredging projects but this is only a temporary project.

Derek Haroldson responded that one year is only temporary but it is long enough to have a negative impact on property.

Tom Wheat will the DEQ be making the determination if objection is lawful or not. This process will be very transparent.

Nick Loeks inquired if the long term solution is the same process? He asked if the overflow structure from Bass Lake to Crooked Lake would also need to be screened?

Derek Haroldson responded that he thinks it will be different. The gravity flow will not move as much water and will not have as much impact.

Tom Wheat responded that Selkirk Lake still needed a screening device that is maintenance.

Jeff VanBelle commented that pumping is different than the gravity flow and will require different regulations.



**MEETING SUMMARY OF THE CHARTER TOWNSHIP OF TEXAS  
FLOODING TASK FORCE MEETING HELD ON December 19, 2018**

Nick Loeks stated that there are roughly 550 property owners affected. You are saying 1 property owner can stop this?

Derek Haroldson responded that yes that is possible.

Christine Morse commented that it might serve the Township to do some research and see what is legal.

Derek Haroldson responded that the AG's Office is their legal counsel and that is the office this will go through.

Christine Morse inquired what does the case law say? Can one owner stop the project?

Derek Haroldson responded that Part 303 states it must be otherwise lawful.

Nick Loeks asked if historical flow could play into it?

Derek Haroldson responded that it could. Eagle Lake and Crooked Lake never had an outlet but Crooked Lake and Bass Lake may have been connected.

Jim Roberts inquired if there were other Threatened and Endangered Species issues with a Frog and a Turtle?

Derek Haroldson responded that those are at the State level and one is Threatened and one is Endangered.

Jim Roberts reported that the Associations have spoken with legal counsel and he did not see that one property owner could stop the permit.

Derek Haroldson advised that he needed clarification on to what extent it can be stopped and that the Water Resources Division Management is making the decision.

Len Bosma inquired is there were minutes or a policy or something in writing in reference to the requirement?

Derek Haroldson responded that he has only been advised verbally what would be required.

Amy Coon asked if the AG's office had been consulted yet?

Derek Haroldson responded that he has not consulted with them yet, but he did not know if Water Resources Division had or not. He commented that the DEQ needs to make sure if they issue the permit it meets the law. It does not make sense to issue the permit if it is going to be immediately contested.

Amy Coon responded that we need to get this answered from legal counsel because we know that there are Bass Lake residents that are opposed.

Russ Walters responded that the bar has been raised significantly higher. When can I tell people on the lake a permit can be issued? Or are we just wasting our time?



## **MEETING SUMMARY OF THE CHARTER TOWNSHIP OF TEXAS FLOODING TASK FORCE MEETING HELD ON December 19, 2018**

Derek Haroldson responded that what we have been talking about is what is required to call the application complete. Issuing the permit is another issue all together.

Russ Walter asked if he could at least tell us what year it will be issued?

Derek Haroldson responded at least in 2019 but the legal question on permission is a big one. So until that is answered he can tell a specific date. We are pretty close to a public notice though.

Tom Wheat responded to sum up where we need to go; The impact has to be low enough that it is not significant.

Len Bosma commented that the DEQ needs to be more forthcoming in what they are saying, pointing out that this is not directed at Derek, but this is unacceptable.

Derek Haroldson responded that he expects there to be questions. They need to clarify case law to back our answer. People have a right to need to know more.

Russ Walters inquired if there were other people that could throw up road blocks? Groups that can put hurdles up? At what point are the hurdles too high and we need to stop? If the answer is NO then just tell us.

Derek Haroldson responded that he can ask his boss and his boss's boss but if we want firmer direction from higher in the DEQ we can ask for that thru the AG's office. He advised that he has asked most of the questions that he needs to. We need to be certain if we tell you one landowner can stop the permit that that is legal. The land owner authorization needs to be addressed.

Tom Smith inquired what the timeline for the Red File is?

Derek Haroldson responded that EPA has 90 days to respond. If there is a Public Hearing then they have 120 days. DEQ advised when their deadline is. Fish and Wildlife will provide comments to the EPA and then the EPA will provide their comments. They will receive their notice when everyone else does.

Tom Smith responded that 90 days is a lot for this group.

Derek Haroldson responded that Fish and Wildlife may want to do a site visit.

Tom Smith inquired if there was a way to get rid of the Red File requirement by reducing the flooding impact?

Derek Haroldson responded it may be possible but there are still impacts. If it was simple enough to make a change he would recommend that.

Tom Smith asked if we reduced to 1000 gpm would that make the Red File requirement go away?

Derek Haroldson stated he does not know for sure. We could submit and ask but there will still be controls.



## **MEETING SUMMARY OF THE CHARTER TOWNSHIP OF TEXAS FLOODING TASK FORCE MEETING HELD ON December 19, 2018**

Jennifer Jones responded that obviously there is a lot to be considered. She asked if the Rattle Snake was based on the MNFI date?

Derek Haroldson responded that MiWaters data was used. We don't have the GIS data it is preferred if we get a hit, then they ask for additional information. He advised that they used MNFI to supplement the data. Buffer from wetlands east of 8<sup>th</sup> Street, Rota- Kiwan and Al Sabo.

Jennifer Jones inquired if the snake was actually spotted in this area?

Derek Haroldson responded that they do not need to observe the species just show there is a potential.

Jennifer Jones commented that temporary flooding of the wetland won't get rid of the species. They will come back when the water comes down. She also advised that the Starry Stonewort is not viable this time of year because they are dormant and they treat for them with herbicides.

Derek Haroldson advised that right now no they are not viable but this project will last one year. This needs to be addressed because we can't be confident they won't be passed. Preventing transfer is a primary concern.

Jennifer Jones stated denying permit because of the snake when it may not be present and the invasive are dormant right now. However, obtaining permission is definitely an issue to spend time addressing.

Derek Haroldson responded that the snake has been recently documented in the downstream areas. He further stated that we will have to work through this. EPA doesn't just object period they will give specific measures to take.

Commissioner Shugars asked if the DEQ Director made this decision?

Derek Haroldson advised that the Assistant Director of Water Resources did.

Commissioner Shugars asked what are the concerns from the Bass Lake residents'?

Derek Haroldson responded that he can't speak for the Bass Lake residents. He knows there are concerns with the project but is not aware of anything definitive.

Commissioner Shugars stated the optics do not look good. It feels like someone made a phone call to someone. Even a special assessment takes 51% vote to confirm. There are two roads here one legal and one political. The legal taking is not good. On the political side there are a few stopping the project. We need to have some common sense when deciding this issue. He asked if the Governor declared an Emergency would that make a difference? Down the road there will be health issues to contend with so we need common sense to prevail and to assist with the frustration levels.

Derek Haroldson responded that DEQ does realize the seriousness of this issue. He has seen the impacts himself and will engage the Director.



## **MEETING SUMMARY OF THE CHARTER TOWNSHIP OF TEXAS FLOODING TASK FORCE MEETING HELD ON December 19, 2018**

Jim Roberts asked Tom Smith how high will Bass Lake rise at 3000 gpm?

Tom Smith responded that using the model at a steady state it is approximately 6 inches.

Jim Roberts then asked if any of the Bass Lake residents in attendance would like to comment on the impact?

Clare Todd responded that she did not want to comment but she did have questions. She inquired if the screening device was going to spray out?

Tom Wheat responded that it will spray out into Crooked Lake, not into the Wetland.

Another Bass Lake resident advised that her initial concerns were of the water quality, invasive species and how much the water level was going to increase. If the water level breached the road in Rota Kiwan that would render the road unusable. She added that she is concerned about what would happen to her property?

Clare Todd commented that she was surprised when AeM used a motor boat to test the water quality. Bass Lake has not allowed motors on the lake for 35 years.

Jeff VanBelle commented that if a permit is issued there will be many check and balances in place. The first 14 days will be the most critical and the first few days there will probably be hourly checking.

Clare Todd commented that her concerns are the invasive species, water quality and water level.

Jennifer Jones asked Derek Haroldson when dealing with aquatic nuisance in a Special Assessment District, people can object but if the SAD is approved it will go forward.

Derek Haroldson responded that this is different than a SAD; it goes through the ANC program. If there were a SAD that included land owners downstream that would be different.

John Hinkle asked what if the Drain Commission established a drainage district? Would that be different?

Derek Haroldson responded that it may be different but you would still need to get easements in place.

Commissioner Shugars thanked Clare Todd and the Bass Lake residents for answering questions. He expressed to Clare Todd that it was important for her to be part of the Task Force.

John Hinkle commented that we need to know from the DEQ the definition of Significant Impact and also an opinion from the AG's Office on the authority that will be required.



**MEETING SUMMARY OF THE CHARTER TOWNSHIP OF TEXAS  
FLOODING TASK FORCE MEETING HELD ON December 19, 2018**

**6. MDOT UPDATE**

Tom Wheat reported that Michelle O'Neil from MDOT has given us verbal approval for the permit subject to DEQ approval for the permit.

**7. COMMENTS/QUESTIONS**

Jim Roberts inquired when will the DEQ decide the definition of Significant Impact by?

Derek Haroldson stated that he should have all the questions resolved before January 11, 2019

Commissioner Shugars recommended that the Township contact the MTA for assistance.

**The next Task Force Meeting was scheduled for Wednesday January 16<sup>th</sup> at 10:30am.**

Submitted by Superintendent Julie VanderWiere  
December 28, 2018