

**Mirror Pond Ad Hoc Committee  
Minutes  
February 12, 2014**

Committee Members Present: Don Horton, Executive Director, BPRD, City Councilor Victor Chudowsky, City Councilor Mark Capell, Ted Schoenborn, BPRD Board, Scott Wallace, Chair, BPRD Board, Mel Oberst, City Community Development Director, Ned Dempsey, Citizen Member and Mike Olin, Citizen Member.

Committee Members Absent: Matt Shinderman, Citizen Member.

BPRD Legal Counsel: Neil Bryant.

BPRD Staff Present: Jim Figurski, Mirror Pond Project Manager and Paula Lowery, BPRD Executive Assistant.

Media Present: Hillary Borrud, The Bulletin, James Williams, The Source and Kandra Kent, KTVZ.

Visitors: Dave Dunahay, Jynx Frederick, Yancy Lind, Peter Lofeler, Dick Connelly, Linda Connelly, Rondo, Allison Marshall, Spencer Dahl, Mike Hollern, Craig Lacy, Todd Taylor, Mike McLandress and Mark Rubbert.

Chair Scott Wallace convened the meeting at 2:04 pm.

Mark Capell moved to approve the minutes of the January 10, 2014, meeting. Victor Chudowsky seconded the motion. All committee members voted aye. Motion passed.

**Memo appointing citizen member to PacifiCorp negotiating team**

Scott Wallace explained he had circulated a memo to the committee regarding appointing a citizen member to the team negotiating with PacifiCorp and based on the committee's response, Ned Dempsey was appointed to the negotiating team.

**Independent dam inspection update**

Mark Capell clarified that HDR, a firm that employees his brother, is not being considered to conduct the dam inspection, and therefore eliminates any potential conflict of interest with his role on the committee.

Jim Figurski reviewed the request for proposal (RFP) process and reported four firms submitted proposals. He stated the selection committee met and reviewed the proposals and Gannett Flemming was selected based on their qualifications, ability to complete the work in the proposed timeframe and scope of work. He cited the qualifications of the firm's key principals and noted they have a local contact on the team. He stated it is anticipated the inspection will

be done around the second week of March, depending upon river levels, and the committee would receive a report by the end of March.

### **Review and discussion of “Mirror Pond Decision Tree”**

Jim Figurski referred to a draft Mirror Pond Decision Tree previously provided for the committee via email and explained the components of the document. He reviewed those elements of the decision tree that identify requirements, financial options, action items and projected timelines. Victor Chudowsky asked if funding is being sought in advance of a decision to use the existing dam or building a new dam. Jim stated that he believes investigation of funding sources need to be investigated at the start of the process and how that fits into the entire scheme of where the process is going. He stated the funding sources could be connected to any decision point. Scott Wallace stated that we may want to form a small group that looks at funding sources in terms of more details about what options are available and begin that work right away to identify immediate as well as long-term revenue streams. Jim asked the committee to provide input on the document and noted that it will be updated on a regular basis as we learn more about the direction we are going, the decisions presented to us and the options related to those decisions. Victor asked if the existing dam is used, is the projected timeframe appropriate for the repair process. Jim explained it depends upon the extent of any modifications to the existing dam and any regulatory requirements that are unknown at this time. He stated he had projected longest case scenarios for each of the elements. Mel Oberst asked if potential appeals to the decision-making to state and federal agencies are projected in the timeframe. Jim stated he did not include appeals in the projections as he was basing the information on a straight permitting process assuming we have a plan that does not generate an appeal. Scott stated the decision tree does not include what the ownership and future management of the dam would look like, and he believes we need to be exploring that option now so as negotiations continue we know what we can and can't do. Don Horton suggested a financing committee could also evaluate the ownership of the dam. Victor stated he would be willing to participate on a financing committee. Mel noted that the decision tree indicates the project will be a six-year process from beginning to end. Jim explained some of the steps could run concurrently and some of the pieces may overlap, and the process is subject to the decision points surrounding ownership and the various unknowns. Don stated this document is meant to be used as a guide and our goal is to get through this as quickly as possible. He stated it is our hope that we continue to move forward and the route we take will be a shorter route. Mark Capell stated this lays out a process to inform the public about what has to happen and in what order. Mel noted the results of the dam inspection will influence the decision about whether we go forward with the existing dam, and if we are not going to have the existing dam we are in a different scenario all together, and that may happen sooner than we think.

### **Next steps discussion**

Don Horton reported on the most recent meeting with PacifiCorp and stated that discussions are going well. He stated the discussion has included what might happen to the dam in the future and what the transfer of ownership might look like. He stated he would provide more details in that regard in executive session. He stated he believes we have made some headway and we are going in the right direction. Mark Capell stated PacifiCorp did a lot of work in

providing information for the meeting. He stated that their willingness to repair the dam is something that he really appreciates and it is a great step forward. He stated their funding the repair of the dam is not adding to the value of the dam from their perspective and they are doing it for the community. Scott Wallace asked if this will allow PacifiCorp to begin to generate power again. Don stated PacifiCorp will be able to generate power following the repair.

### **Other Reports**

Ted Schoenborn reported the City Club of Central Oregon would like to host a program on Mirror Pond in March presenting three competing ideas of maintaining the historic level of Mirror Pond, a hybrid dam, and a free flowing river. He stated he has asked Scott Wallace and Victor Chudowsky to appear on the panel and asked for committee input on who could effectively represent the positions surrounding the hybrid dam and free flowing river. He briefly explained the format of the program. He stated the last presentation at the City Club generated a robust discussion that helped to inform people about the situation, and he feels it is beneficial for the committee and the community to engage in a broader discussion.

Don Horton stated PacifiCorp will conduct a tour of the dam and powerhouse. The committee agreed to consider a date during the first week in March. Don will confirm a date for the tour.

Don Horton reported that he and Ted Schoenborn will be attending the NRPA Legislative Forum in Washington, DC, March 25-26, and meetings have been scheduled with all Oregon legislators. He asked the committee to provide recommendations for points of discussions regarding Mirror Pond.

### **Public Comment**

Yancy Lind presented a joint letter from the Central Oregon Flyfishers, Deschutes Chapter Trout Unlimited, Native Fish Society and Association of Northwest Steelheaders, proposing that fish passage be considered a key goal in the deliberations, development of alternatives and selection of a preferred alternative Mirror Pond concept. He stated at the last meeting of the Mirror Pond Ad Hoc committee it was clear that some members of the committee did not want to consider fish passage and it was characterized as a burden that should be avoided. He stated they do not agree with this position and believe fish passage should be considered not just because it may be a legal requirement, but because it is the right thing to do. He stated a healthy river with a healthy ecosystem that supports fish, and the wildlife that rely on them, should be a core value of the city of Bend, and all users will benefit as the Deschutes River continues its recovery to a healthy river. He stated he has worked with ODFW and they have provided an estimate of under \$300,000 to install a fish passage. He stated there are only three barriers between Wickiup and Lake Billy Chinook and they are all artificial barriers within the city of Bend.

Spencer Dahl addressed the committee citing water flows subject to recent weather and winter stock run dates. He stated that Mirror Pond will likely be full before March 1. He stated the pond will be full before the dam is repaired, providing the hole doesn't get much bigger or one

of the other needle bays that are leaking now blow out also. He stated the question is whether fixing the one bay help accelerate the other eleven from blowing out, and will the fix cause the dam to fail further. He stated that is a question the engineers should answer before the fix is done.

Craig Lacy addressed the committee regarding the negotiations with PacifiCorp. He shared history regarding PacifiCorp's relicensing with FERC and noted a number of stakeholders wanted a fund to be set up to dredge the pond, provide fish passage and provide more public access. He stated that PacifiCorp offered the dam to the city for \$1, and as negotiations with FERC progressed it was determined that PacifiCorp was not required to have a FERC license and the offer was withdrawn. He stated he is concerned that PacifiCorp will make a similar offer now and he thinks there are a lot of liabilities that will come about through the decommissioning process and the committee should be aware of what those liabilities are under state law. He stated the cost of decommissioning needs to be understood by the people doing the negotiations. He stated the new owner will incur the same liabilities and the annual cost of maintenance and repairs, and the issue of fish passage, a dredging fund will need to be set up, and the cost to eventually retire the project.

Ron Federspiel asked about the difference in definition between preserve and maintain the pond as noted on the decision tree. Jim Figurski explained preserve refers to keeping Mirror Pond in its historic form, and maintain, as it pertains to the sediment, refers to a maintenance plan to keep it as it looks today. He stated the decision tree is related to preserving the pond initially and how you keep it that way after the initial decision is made.

Mark Rubbert addressed the committee stating that he is a mechanical engineer and he has been following this project. He stated his specialty is solving problems and he has a solution to the fish passage through a process he is currently patenting, and he has figured out a way to dredge the pond and maintain it economically. He stated he has the permits in place to start that this year and if the committee is interested in hearing more about it, he would like to provide a short presentation, as long as he is compensated in some way.

As there was no further business the meeting was concluded at 2:10.

Chair Scott Wallace convened an executive session at 2:15 pm pursuant to ORS 192.660(2)(e) for the purpose of discussing real property transactions. The executive session was concluded at 3:10 pm.

Prepared by,

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