

MINUTES OF A CALLED MEETING OF THE BOARD OF DIRECTORS OF
TARRANT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER ONE
HELD IN THE DISTRICT OFFICE IN FORT WORTH, TEXAS, ON THE
11th DAY OF AUGUST, 1932, AT 7:45 O'CLOCK P. M.

The call of the roll disclosed the presence of all Directors as follows:

W. R. Bennett
E. E. Bewley
W. K. Stripling
C. A. Hickman
Joe B. Hogsett

Director Bennett presided in his capacity as President of the Board.

Director Stripling acted in his capacity as Secretary of the Board.

At this time and place proceedings were had and done as follows, viz:

1.

Attached to these Minutes as "Exhibit A", and here referred to as a part hereof, is an itemized statement of the financial condition of the District as of Aug. 11, 1932. This shows Check No. 2940, for the sum of \$28.31, as having been issued since July 11, 1932. It also shows proposed voucher checks, consecutive numbers, Nos. 2941 to 2962, both inclusive, for the total sum \$779.45. There was full examination of the proposed voucher checks and the data to support the same. Whereupon Director Hogsett made a motion that the proposed voucher checks, consecutive numbers 2941 to 2962, both inclusive, do be executed, issued and delivered to the respective persons entitled to receive the same. This motion was seconded by Director Hickman. Upon a vote being taken the motion was carried and it was so ordered.

2.

Attached to these Minutes as "Exhibit B" is an opinion rendered by the Attorneys of the District, concerning the responsibility of the District

to furnish to the Contractors, without cost to them, a quarry wherefrom there might be taken rock for the crushed stone blanket and rip-rap required to complete the Eagle Mountain main dam. Said opinion as here referred to is a part hereof. Also attached to these Minutes as "Exhibit, C" is a letter written on August 11, 1932, directed to the District and signed "Trinityfarm Construction Company, By D. J. Woodward, Jr., Vice-President". Said letter relates in part to the rock hereinbefore referred to. The said exhibit here referred to is a part hereof. There was full consideration of this matter and the Directors had the advice of their Engineers and Counsel. Director Stripling made a motion that the District do purchase the right to take said rock, to be approximately eight thousand (8,000) cubic yards, from a quarry to be opened on certain land owned jointly by Mr. A. G. Carter and the Estate of H. C. Meachum, Deceased, subject, however, to these conditions:

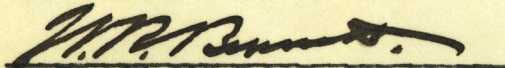
(a) That Rock to be approved by the Engineers as suitable material may be found in the proposed quarry; and that the purchase relate only to the quantity of the material found to be suitable.

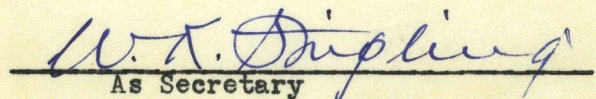
(b) That the purchase price for material actually accepted be 25 cents per cubic yard;

(c) That the Contractors bear all of the expense of taking said rock from said quarry and transporting the same to the place of use, regardless of the distance which the rock must be hauled. Adoption of this motion was seconded by Director Hogsett. Upon a vote being taken the motion was carried and it was so ordered.

No further business was presented, and the meeting was adjourned.

APPROVED:


As President


As Secretary

"E X H I B I T A"
8/11/32:7:45

VOUCHER CHECK NUMBER 2940
ALLOWED SINCE MEETING HELD ON
JULY 11, 1932

<u>NO.</u>	<u>ISSUED TO</u>	<u>COVERING</u>	<u>A M O U N T</u>
2940	J. K. Peden	Pro-rata Taxes	\$ 28.31
			<u>\$ 28.31</u>

VOUCHERS NOS 2941 TO 2963, INCLUSIVE
ALLOWED AT MEETING HELD ON
AUGUST 11, 1932

<u>NO.</u>	<u>ISSUED TO</u>	<u>COVERING</u>	<u>A M O U N T</u>
2941	Bandy Reproduction Company	Photostats	\$.40
2942	Wm. Capps Building Company	Room Rent for August	40.00
2943	Fort Worth Blueprint Company	Blueprints	5.14
2944	Fort Worth Brief Printing Company	Printing of Brief	39.00
2945	Ireland Hampton	Reimbursement	11.92
2946	McKenzie-Uvalde Construction Cos.	Electric Current Bridge- port Dam	5.36
2947	Ritchie, Cartan & Turner Co., Inc.	Office Supplies	3.74
2948	The Southwest Telephone Co.	Bridgeport Dam Telephone	6.40
2949	Southwestern Bell Telephone Co.	Office Telephone Service	18.90
2950	Texas Power & Light Co.	Bridgeport Dam Electric Current	7.86
2951	Vera, Reynolds & Company	Insurance Premium — Improve- ments on Rominger Land	55.38
2952	Western Union Telegraph Company	Telegrams	1.35
2953	A. L. Culwell	Reimbursement	1.95
2954	W. E. Rohus	Labor Bridgeport Dam	6.75
2955	T. G. Rohus	Labor Bridgeport Dam	8.25
2956	C. F. Wilson	Labor Bridgeport Dam	3.00
2957	Clieve Weatherby	Labor Bridgeport Dam	8.55
2958	T. T. Mitchum	Labor Bridgeport Dam	5.25
2959	R. E. Smith	Labor Bridgeport Dam	1.50
2960	Dan Jackson	Labor Bridgeport Dam	15.75
2961	O. A. Welch	Labor Bridgeport Dam	8.00
2962	W. E. Yancy, County Auditor	Audit of Tax Collector's Account with District	525.00
2963	A. L. Culwell	Salary, Custodian Bridgeport Dam	<u>100.00</u>
			\$ 879.45

DISTRIBUTION OF VOUCHERS NOS. 2941 TO 2963, INCLUSIVE

Legal	\$ 42.00	Preparation & Sale of Bonds	\$13.99
Office	54.24	Bridgeport Dam	179.12
Land Department	65.10	Auditing Tax Collector	525.00
			<u>\$ 879.45</u>

CONDITION OF FUNDS AUGUST 11, 1932

	<u>CONSTRUCTION FUND</u>	<u>INTEREST & SINKING FUND</u>
BOOK BALANCE July 11, 1932	\$ 774.46	\$ 155,848.19
Receipts: Interest Bank D/B	6.36	361.22
Taxes, Penalty, etc.		8,560.22
	<u>\$ 780.82</u>	<u>\$ 164,769.63</u>
Disbursements:		
Vo. #2940	\$28.31	
Vo. #2941 to #2963, inclusive	<u>354.45</u>	<u>525.00</u>
BOOK BALANCE AUGUST 11, 1932	\$ 398.06	\$ 164,244.63

COMPARISON OF DEPOSITORY SECURITY AND DISTRICT FUNDS

BOOK BALANCE:

Construction Fund	\$398.06
Interest and Sinking Fund	<u>164,244.63</u>
TOTAL	<u>\$ 164,642.69</u>

DEPOSITORY SECURITY

265,000.00

EXCESS DEPOSITORY SECURITY

\$ 100,357.31

UNPAID DIRECTORS FEES, LEGAL SERVICES AND SALARIES FOR THE MONTH OF JULY, 1932, AS FOLLOWS:

W. R. Bennett	\$ 30.00
E. E. Bewley	30.00
W. K. Stripling	30.00
C. A. Hickman	30.00
Joe B. Hogsett	30.00
Sidney L. Samuels	416.66
Ireland Hampton	625.00
E. B. Cheatham	250.00
Alice McConnell	125.00
TOTAL	<u>\$ 1566.66</u>

TARRANT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER ONE
BONDS AUTHORIZED \$6,500,000.00

Series "A" Bonds #1 to #2000, inclusive	OUTSTANDING	\$2,000,000.00
Series "B" Bonds #2001 to #3500, inclusive	OUTSTANDING	1,500,000.00
Series "C" Bonds #3501 to #5000, inclusive	OUTSTANDING	1,500,000.00
Series "D" Bonds - 419 Bonds Sold	OUTSTANDING	419,000.00
Series "D" Bonds	UNSOLD	<u>1,081,000.00</u>
TOTAL		<u>\$ 6,500,000.00</u>

"E X H I B I T B"
8/11/32

Fort Worth, Texas,

August 9, 1932.

The Board of Directors of
Tarrant County Water Control and
Improvement District Number One,
406 Capps Building,
Fort Worth, Texas.

Gentlemen:

RE: Whether District has responsibility to recompense the Contractors because they not permitted to take rip-rap stone, or rock, for crushed stone blanket from approximately five (5) acres of land out of the J. Armendaris Survey of land situated just East of the Eastern abutment of the Eagle Mountain Dam:

On yesterday you requested an opinion from your attorneys, which we now give:

1.

CONDENSED STATEMENT OF FACTS ON WHICH THE OPINION IS BASED:

(a) The five acres of land in question was embraced in the number of acres designated in the contract between the District and Mr. Carter and the Meacham Estate. The written contract, however, in the other portions thereof, does not disclose that the five acres was embraced. This contract was executed and in the District's possession prior to the time the contract for construction was let. The deed executed in April, 1930, embraced the five acres. It has since been ascertained that neither the District's Land Committee, nor Mr. Carter, were aware of the fact that the five acres had been included. Mr. Carter and the Meacham Estate Executors desire to retain the title to this five acres, and will insist that it be re-conveyed to them, due to the mutual error above related.

(b) After the District had prepared its plans, specifications and proposed contract, and had advertised for bids for construction, but prior to the time the contract was actually let, Major John B. Hawley, as Engineer for the District, delivered to your present contractors a copy

S.H.

of the proposed contract, together with detailed plan and specifications and drawings, covering the proposed works. Also, prior to the time of the placing of bids he went upon the ground with your present contractors (especially Mr. Horton, representing Uvalde Construction Company, and Mr. Robinson, representing McKenzie Construction Company) to show them the conditions which would surround the execution of the contract. This especially with reference to the location of the materials. The diary of Major Hawley, under date January 19, states that he went upon the ground with the proposing contractors to show them the conditions surrounding the work. The names of the contractors are not given. Major Hawley is absent in France. Mr. Dwight Horton, of Uvalde Construction Company, now makes a statement in substance as follows:

That before formulating the bid which they afterwards filed, he, together with Mr. Robinson, of McKenzie Construction Company, was taken to the dam site by Major Hawley, for the purpose of investigating the location of borrow pits, and other conditions to surround the work; that at about the same time they made a similar trip to the Bridgeport Work; that they were wholly satisfied that acceptable rock could be obtained from land owned by the District surrounding the Bridgeport work; that they were in doubt as to the rock for rip-rap and crushed stone blanket at the Eagle Mountain works, and that they expressed this doubt to Major Hawley on the ground. Major Hawley specifically pointed out the rock deposits on the land of Hodgson (not to be owned by the District), at the West end of the dam, and stated that rock from that deposit would be acceptable. In addition he took them to the Eastern abutment of the dam and upon the five acres of land in question; that the rock layer on that land was exposed on three sides. Major Hawley stated that the District would have title to that particular tract of land; that the District would make the rock available to the Contractors just as they would do as to other borrow pit materials; that it would be necessary for the District to acquire the title to that land; that the rock was acceptable and might be used. It was estimated that the rock from the particular tract would prove to be between 8,000 and 9,000 cubic yards; that there would be no charge for the stone so taken. Mr. Horton further stated that

S.H.

their bid as actually made, and upon which contract was awarded, was actually influenced by their belief that stone from this tract would be available. Mr. Nichols relates that prior to the letting of the contract Mr. Bentley of the Uvalde Construction Company, telephoned him from Dallas and stated that he wished to have no misunderstanding that the rock from said five acre tract would actually be available to the contractors without cost. Mr. Nichols replied that he would check the matter with Major Hawley; he did so, and Major Hawley verified the agreement as to what had been understood by Mr. Horton. Mr. Nichols thereupon telephoned Mr. Bentley and told him that Major Hawley had verified their prior understanding. Thereafter the bid of the contractors was formulated, filed and accepted.

The questions submitted to us are two, and we will state them in order deemed to be the relative order of their importance, and make comment with supporting statements of facts as follows:

(1) Was it within the apparent scope of the authority of John B. Hawley, as District Engineer, to make the representations hereinabove related?

By reference to Chapter 25 of the Acts of the 39th Legislature of Texas, under which your District operates, we find the following pertinent provisions:

"Section 52. District Engineer. The District Engineers may employ a competent civil engineer, who shall be an officer of the District, to be known as 'District Engineer.'" and;

"Section 118. Anyone desiring to bid on the construction of any works shall be furnished with a copy of the Engineer's report showing the work to be done and all details thereof."

From your Notice to Bidders and General Information, we find the following:

Notice to Bidders — page (a) "Bidders are expected to inspect the site of the work and inform themselves of all local conditions," and

General Information — page (c) "The notice provides that bidders shall inform themselves of all local conditions. Certain borings and test pits

"have been made at the dam sites, logs of which are available to bidders.
"These and the character of materials in the valley and on abutting hill
"sides should also be examined and studied by bidders. Bidders are at liberty
"to make further tests and borings if they so desire. The District Board of
"Directors expects all Bidders to fully investigate and study all available
"data and the terrain of the dam sites. Failure to do so may be deemed suf-
"ficient cause for rejection of a proposal."

Index to Contract Drawings, page (f), under item "500-1"
Topography of Main Dam Site. We understand that these drawings were in the
possession of the proposing contractors prior to the time they went upon the
land in question with Major Hawley at the time hereinbefore referred to. An
examination of this drawing shows the Eastern abutment of the Eagle Mountain
Dam extending across the J. Armendaris Survey to a point near the eastern
line thereof and somewhat near to the Southeast corner of that Survey: This
extension is shown to be across the land out of the Armendaris Survey, which
was not "colored green," on the District map exhibited to Mr. Carter as a
basis of purchase.

General Conditions of the Agreement. Item 28, page 9: "It
"is mutually agreed between the parties to this agreement that the Engineer
"shall supervise all work included herein."

CONCLUSION AS TO QUESTION ONE:

We conclude, as a matter of law, and upon the above facts,
that it was within the apparent scope of the District Engineer to make the fore-
going representations to the proposing contractors. This would be true even
though his real authority did not extend so far. He was, however, an officer of
the District and by the District had been delegated to make known to prospective
contractors the conditions which would surround the work.

9. H.

2.

Did the signing of the actual construction contract, by reason of its terms, after the occurrence of the fact above related, operate as a waiver by the contractors of any rights which they might have had by reason of the prior representations as to the conditions under which the work was to be done?

We have examined the contract as a whole and find certain provisions which appear to have relevance to the present inquiry, as follows:

Proposal — page 8, (h) "The undersigned bidder hereby proposes to do all the work and furnish all necessary labor, tools, equipment, materials, apparatus and appliances, and to complete all the work on which he bids." On the same page, we find,

Item 6. Rip-rap Paving; Item 7. Gravel Blanket; Item 7a. Crush Stone Blanket.

Detailed Specifications, page 1, Paragraph 4: "Material for Embankment. Embankment shall be made of acceptable material located on land provided by the owner. The location and limits of all borrow pits shall be approved by the Engineer. No overhaul will be allowed on embankment material on either dam or levee."

Item 7 (c), page 7. "Crushed stone from adjacent hills may be used in the blanket under the rip-rap."

Item 8A, page 8: "The Bridgeport Dam. Sound lime stone rock of the vicinity may be used," and

Item 8B, page 8: "As an alternate, a crushed stone blanket may be placed under rip-rap on the up-stream slope of dam, and at Eagle Mountain this stone may be crushed from shell rock taken from adjacent hills."

Item 21, page 16: "The owner will furnish to the contractor the land upon which the dam and its appurtenances shall be built, including the necessary borrow pits, spoil banks, etc."

Errata and Addenda, page 2: Land Purchased. "The contractors are expected to ascertain from the District officers the land purchased or ex-

"pected to be purchased by the District."

CONCLUSIONS BASED ON THE FOREGOING

The contract as a whole does not present any language specifically to repel an intent that the contractors should be permitted to take, without cost, rock from the land believed by the contractors to be owned by the District, unless their general undertaking to furnish "all material, labor and equipment" would so operate: The contention of the Contractors doubtless will be that they agreed to furnish "all material," including rock, under the implicit, and not antagonistic, condition that approximately 8,000 cubic yards of the required rock might be taken from the land in question. If asserted, this contention will be difficult to meet, particularly due to the fact that the conversation between Major Hawley and Mr. Horton and Mr. Robinson, prior to the time the (then proposed) contract was executed, may be sufficient to constitute a prior practical construction of the contract, to have vitality after the actual execution thereof. One other consideration is that evidence concerning matters leading up to the making of a contract is admissible to establish the true intent of the parties concerning any matter not otherwise established by the language of the contract. The blue print map No. "500-1" (hereinbefore referred to as being in the possession of the Contractors at the time they were on the ground with Major Hawley, and before they formulated their bid) shows the dam as being planned to extend nearly to the eastern line of the land in question: This fact would lend much support to the contention being made by the Contractors. Upon these considerations, we are of the opinion that the signing of the contract cannot assuredly be said to have nullified the stated prior understanding of intent between the Engineer and the Contractor: We would regard a lawsuit involving the present facts as one uncertain as to the result.

RESUME :

1. We find that it was within the apparent scope of the authority of John B. Hawley, as District Engineer, and as officer of the District, to make the representations made by him.

2. In case of litigation, upon our present facts, the Contractors would be presenting affirmative equitable considerations, as against our somewhat technical defense. We therefore are not able firmly to advise you that the signing of the contract, as written, operated to nullify the interpretation placed on the (then proposed) contract by your Engineer at a time prior to its execution.

Respectfully,

Frederick Hampton
A. L. Mumford

"EXHIBIT C"

8/11/32

TARRANT COUNTY WATER CONTROL AND
IMPROVEMENT DISTRICT NUMBER ONE

BOARD OF DIRECTORS

W. R. BENNETT, PRES.
E. E. BEWLEY, VICE-PRES.
W. K. STRIPLING, SEC'Y
JOE B. HOGSETT
C. A. HICKMAN

OFFICE CAPPS BUILDING

PHONE 3-2848

SIDNEY L. SAMUELS (ATTORNEYS
IRELAND HAMPTON)

HAWLEY AND FREESE
ENGINEERS

ED. B. CHEATHAM, OFFICE

FORT WORTH, TEXAS.

August 11, 1932

Mr. W. R. Bennett, President of
Board of Directors of
Tarrant County Water Control and
Improvement District Number One,
406 Capps Bldg.,
Fort Worth, Texas.

Dear Mr. Bennett:

I have made satisfactory arrangement with the Fort Worth National Bank for a loan of Twenty-Six Thousand (\$26,000.00) Dollars, in favor of the Trinityfarm Construction Company, to draw interest at Eight (8%) per cent per annum from date, being the same rate applicable to the estimate due us by the District on yesterday.

As part of the arrangement for the loan Trinityfarm Construction Company agrees, in the event the District is not in funds on September 10, 1932, to accept payment of the current estimate then due it in bonds of the District at Ninety (90).

Upon the consummation of the loan above referred to, Trinityfarm Construction Company will not exercise its right to declare the District in default on account of the non-payment of the estimate, which matured on yesterday, nor for non-payment of the estimate which will mature September 10, 1932, in the event the District is not then in funds.

I will prepare and present to you for acceptance an assignment of revenues in favor of the Fort Worth National Bank, which I will thank you to sign upon presentation.

Col. Horton, representing Uvalde Construction Company and the McKenzie Construction Company, is present as this is being written, and advises me that his Companies would not be disposed to declare the District in default for non-payment of the estimate of their favor, which matured on yesterday, provided, rip-rap material at the East end of the dam is made immediately available at the expense of the District, as per agreement with the District Engineers prior to the awarding of contract, for resumption of their work, and further that if such material is immediately provided and they are thereby enabled to continue their work, his Companies would be willing to take bonds at Ninety (90) for the estimate which will mature on September 10, in the event the District is not then in funds.

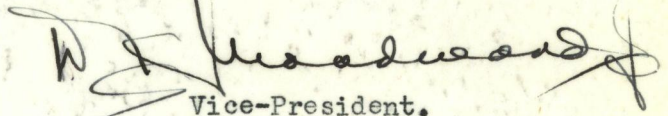
Col. Horton further states that his Companies will make such arrangements here, or elsewhere, as they deem proper, with reference to the amount of the estimate which matured on yesterday, and which draws interest in their favor at Eight (8%) per cent.

Col. Horton will confer with Mr. McKenzie in San Antonio tomorrow, and will wire you confirmation of the foregoing, or any modification thereof, which they deem advisable.

Yours very truly,

TRINITYFARM CONSTRUCTION COMPANY,

BY

A handwritten signature in dark ink, appearing to read "W. J. Headward", written over a vertical line that extends from the "Yours very truly," salutation.

Vice-President.