**WARRICK COUNTY-VANDERBURGH COUNTY**

**JOINT DRAINAGE BOARD**

**NOVEMBER 15, 2017**

The Warrick County-Vanderburgh County Joint Drainage Board met in session this 15th day of November, 2017 at 2:02 p.m. in Room 301 of the Civic Center Complex, Evansville, Indiana, with President Marlin Weisheit presiding.

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| **Call to Order** |

President Weisheit: We’ll call the Warrick County-Vanderburgh County Joint Drainage Board meeting of November 15, 2017 to order.

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| **Pledge of Allegiance** |

President Weisheit: If we’ll all stand and do the Pledge.

(The Pledge of Allegiance was given.)

President Weisheit: Thank you.

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| **Approval of the July 20, 2017 Joint Drainage Board Meeting Minutes** |

President Weisheit: Okay, we’ll start out with the approval of the July 20, 2017 Joint Drainage Board meeting minutes.

Madelyn Grayson: President Weisheit, there was one correction. There was a scriveners error on page 21. I had put E&S Railroad and it should be NS Railroad, for Norfolk Southern. I’ve corrected that.

President Weisheit: Okay, thank you, Madelyn. Anybody have any other questions on the minutes from the last meeting?

Commissioner Ungethiem: I make a motion to approve, as amended.

Commissioner Shoulders: I second the motion.

President Weisheit: I have a motion and a second. All in favor say aye.

All Commissioners: Aye.

President Weisheit: The motion carries.

**(Motion approved 5-0)**

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| **Discussion About Pigeon Creek** |

President Weisheit: Okay, discussion about Pigeon Creek. Well, that’s what we’re all here about. You know, I know we waited until Ron could be with us, and I appreciate Ron Bacon being with us today. Ron, do you have anything to add to start us out today, as far as progress you hopefully are making?

Ron Bacon: Well, a couple things, we did, my LA did some research up in Indy, and he actually got into the archives. On the situation of where the Vanderburgh County Commissioners, I think, if I can get this correct, then designated Pigeon Creek a navigable waterway, but only for 5.9 miles. That is documented in the archives and that. Now, there is a way to try to get that improved upon, and there’s something about, I’ve got it here, it says navigable waterways and DNR’s natural resources keeper record, the first portion of that document…..wait just a minute. Okay, one solution is that the Natural Resource Commission may, by rule, declare a waterway to be a recreational stream, which must be navigable in I.C.14-29-8, and there are some options that’s possible to do that. So, this Board, my understanding is, could request that DNR look into that. There’s something, I don’t have it right here in front of me, but it’s got to do with the high water mark. I think that’s one possibility of one place we could go. If that could get designated, then that gives us more options. That’s the one thing we can do in that respect, but that’s the only thing, otherwise outside of you guys declaring it a navigable waterway, but we could ask DNR to do so. What that would get us, I don’t know for sure. We would have to do some more research—

President Weisheit: It would be a start, wouldn’t it?

Ron Bacon: --but it’s a start, and find out what’s, it’s a possibility with that. I think we had talked about before, about the Corps only being able to go…even if we could get them to do it, they could only go in that 5.9 miles that they’re responsible for. You know, if we could get them to do it within the next ten years or so.

Joe Harrison, Jr.: It’s, can I ask a question? I think it’s up to, is it up to Diamond Avenue where it’s declared navigable? I think maybe—

Commissioner Ungethiem: I think it’s a little bit short of Stringtown Road.

Joe Harrison, Jr.: Yeah, right around Garvin Park area?

Commissioner Ungethiem: Yeah.

Ron Bacon: Yeah.

Joe Harrison, Jr.: That’s what I thought.

Ron Bacon: Where it’s declared now.

Joe Harrison, Jr.: And, you know, after the Commissioners did that, they repealed that statute.

Ron Bacon: Right.

Joe Harrison, Jr.: Where you couldn’t do it again. So, that’s why they can’t, why you all can’t do it now. I guess you can request DNR—

Ron Bacon: I think you request DNR to do it. That’s the way my LA read it, that it was done afterwards.

Joe Harrison, Jr.: And, once that’s declared navigable, you think there’s more options for money? Is that—

Ron Bacon: Right.

Joe Harrison, Jr.: --and then you can get in there and clean up without going through—

Ron Bacon: Well, I think it may give us more options to be able to do things—

Joe Harrison, Jr.: Okay.

Ron Bacon: --once it’s declared navigable. So, that’s the only thing we could—

Commissioner Ungethiem: And you think money options may be available through DNR?

Ron Bacon: Through DNR, yeah.

Commissioner Ungethiem: Because it’s navigable?

Ron Bacon: Because if it’s navigable, then we can look into that. We haven’t done that yet, because it’s not declared navigable anyway, so it’s not going to do us, you know, it wouldn’t do us any good at this point.

Commissioner Ungethiem: Yeah.

Joe Harrison, Jr.: So, is it declared navigable in Warrick County?

Ron Bacon: No.

President Weisheit: It’s a regulated drain.

Ron Bacon: It’s a regulated drain.

President Weisheit: Yeah, but we have access to the regulated drains.

Ron Bacon: They have access to a regulated drain.

President Weisheit: And, we’re actually required to maintain it, the way I understand it.

Joe Harrison, Jr.: Can it be navigable and a regulated drain? I mean, I don’t know.

Ron Bacon: I don’t know.

Commissioner Ungethiem: I would assume so.

Ron Bacon: Yeah, I would assume so, but, I mean—

Commissioner Shoulders: Do you know, Jeff?

Jeff Mueller: We have some, I think. (Inaudible, not at microphone.)

Ron Bacon: That are both?

Jeff Mueller: I think so. I’m not positive.

Commissioner Shoulders: Sorry to put you on the spot.

Jeff Mueller: I mean, again, the navigability and a regulated drain, they’re two different issues.

Joe Harrison, Jr.: Right, right.

Jeff Mueller: So.

Ron Bacon: Uh-huh.

Commissioner Shoulders: Okay.

Jeff Mueller: Yeah, but, I think, there is one drain that may partially be in both in Union Township. I would have to go back and check.

Commissioner Shoulders: Okay.

Joe Harrison, Jr.: I was just wondering if that precluded you from being navigable, if you’re a regulated drain.

Jeff Mueller: I don’t know.

Joe Harrison, Jr.: But, if you know of an example, I guess not.

Jeff Mueller: Well, I could, you know, find out if in other counties that’s the case, because, as I’ve said before, we don’t have a lot of regulated drains in Vanderburgh County, compared to most other counties.

Commissioner Shoulders: Okay.

Jeff Mueller: It might be, well, I was going to say, it’s not navigable in Gibson County though either, forget it.

President Weisheit: Thank you, Jeff.

Jeff Mueller: Yeah.

Ron Bacon: So, that’s one—

President Weisheit: One option.

Ron Bacon: -- you know, one option to look at that and go into that, but the Board would need to do that. So, I’ve got the information if you want to.

President Weisheit: Well, at this point—

Commissioner Ungethiem: Is there an application or something we would have to fill out for DNR?

Ron Bacon: It doesn’t say that here on what he sent me. So, if there is—

Joe Harrison, Jr.: I mean, if not, you can just make a motion and second—

Ron Bacon: Yeah.

Joe Harrison, Jr.: --and put it in the minutes and send it up.

President Weisheit: I think that would be a start, if you guys are okay with that, unless you’ve got any other further questions.

Ron Bacon: Because they do it by, they’ll do it by Rule.

Joe Harrison, Jr.: Right, they would have to.

Ron Bacon: By statute, they would have to do it. So, we would request for them to do so, and then we can find out, at that point, if we ask them, they can either say yes or no and tell us why.

Joe Harrison, Jr.: And, as far as where you would say, you would say from the stopping point right now in Vanderburgh County through Warrick County?

President Weisheit: To the river, I would think. From wherever it stops now to the river.

Joe Harrison, Jr.: Okay.

President Weisheit: Wouldn’t you think?

Ron Bacon: Well—

Joe Harrison, Jr.: Well—

Ron Bacon: --no, you’re going the wrong way I think.

Joe Harrison, Jr.: No, the other way.

Ron Bacon: You want to go the other way, because it’s already declared navigable from the 5.9 to the river.

President Weisheit: Oh, to the river, okay.

Joe Harrison, Jr.: Yeah.

Ron Bacon: So, we’re wanting to go farther back.

President Weisheit: Okay.

Ron Bacon: And, if it’s declared navigable, the way I figured this out, I mean, it wouldn’t help us on everything, but as far as trying to get in there and clean things out, if it’s declared navigable, that gives us, it might give us the ability to go in there.

President Weisheit: And might create some funds.

Ron Bacon: Without having to….pardon?

President Weisheit: It might create some funds through DNR.

Ron Bacon: Right, but also it would still give us the right to go in there without contacting every little one inch landholder that we were talking about the last time, that it was going to cost thousands of dollars just to contact them to say can we get in there to clean something up.

Commissioner Shoulders: So, do we need a motion for this then?

Ron Bacon: I would assume the Board would, yes.

Commissioner Shoulders: Oh, wait, Jeff has something else.

Jeff Mueller: I’m not, we’re getting a little bit crossed, because when I talked to DNR, when it’s navigable by their standards, and they take ownership, they take ownership of the streambed.

Ron Bacon: Uh-huh.

Jeff Mueller: But, they still don’t have rights to go outside the streambed. That’s what DNR told me.

Ron Bacon: Okay.

Jeff Mueller: So, because they said they have the same problems that we would have, in that they have to stay within the streambed, and that gives them ownership of the streambed and the materials underneath the streambed. That’s what George Bowman from, he was Deputy Director of DNR explained to me.

Joe Harrison, Jr.: But, that’s still better than what we have now, because we’ve only got it from Diamond Avenue to the river now, and that’s the streambed.

Jeff Mueller: Yes, right, as far as what DNR has declared navigable, under the Rules of 1816 Navigability. Under the Rule that was used in 1816 navigability, to determine what was navigable, because they went back and researched records and said, you know, Joe was taking a barge up to his sawmill, or something, back in those years, and that’s why, that’s how they determined what was navigable in those original standards. That’s their listing—

Ron Bacon: Uh-huh.

Jeff Mueller: --from their original listing. Yeah, I do think there is some, there might be some other ways to, like you said, apparently you can get them by Rule. Because they’ve told us before, this is our Rule, this is our definition as today, but that always can be, I guess, added to or whatever.

Ron Bacon: Right.

Jeff Mueller: Based on whatever, so.

Ron Bacon: And, if we get them to do that, I mean, even if, I don’t know about money, but the availability of being able to get in there is what I was thinking of, coming upstream, even if it’s not the land, but we talked about a barge going in and cleaning out, which we still didn’t have the ability to do that now, get that done—

President Weisheit: That is a possibility.

Ron Bacon: --because we don’t…yeah, right.

Jeff Mueller: Right, right.

Ron Bacon: Yeah, so, then that would be able to give us that ability to go all the way up there.

Jeff Mueller: Right.

Ron Bacon: Even if we don’t get any money.

Jeff Mueller: Yeah, yeah.

Ron Bacon: At least have the ability—

Jeff Mueller: You might have access through the water.

Ron Bacon: Get access through the waterway.

Jeff Mueller: Right.

President Weisheit: Jeff, you don’t see anything negative of us doing that today, do you? I mean, I trust your opinion.

Jeff Mueller: I don’t know, I mean—

President Weisheit: It’s a start.

Jeff Mueller: --I don’t know what kind of legal issues you’ll get into on it. You know, I don’t know.

Joe Harrison, Jr.: They still have to do it.

Ron Bacon: They’ve still got to do it. Yeah, all we can do is ask.

Joe Harrison, Jr.: I mean, it may take, we may be older and grayer by then.

Jeff Mueller: Well, the only other thing is, you might have a landowner file a taking clause, right, Mr. Harrison?

Joe Harrison, Jr.: Again, it wouldn’t be our Rule.

Jeff Mueller: Right, but, I mean, someone, if you’re saying not towards us, but someone may challenge DNR saying you’re making a taking. That would be the only thing I would see.

Joe Harrison, Jr.: I would rather it be the State than the County on that part.

Jeff Mueller: It wouldn’t be against us, but, you know, I never assume that a landowner’s going to go along with you, because you’ll get 99 out of 100 that will, and the other one’s a….we’re on a public mic.

President Weisheit: Right.

Ron Bacon: Right.

President Weisheit: We’ve all been there.

Commissioner Ungethiem: Jeff, do you know what the DNR uses to designate the streambed? Is it at low—

Jeff Mueller: It’s the normal—

Commissioner Ungethiem: --water, is it high water, is it—

Jeff Mueller: It’s not high water, it’s normal channel water elevation, is what Mr. Bowman told me.

Commissioner Ungethiem: I assume that all changed when the dams were put in.

Jeff Mueller: But, I don’t think, again, it all came about from a court suit involving mineral takings within a streambed. So, that’s why I say they have ownership of the streambed at some water mark. And from my own personal experience in mining, for example, they own, underneath the Wabash, so a company I worked for, we mined coal underneath the Wabash, we actually had to have a lease from DNR for right where the river went. We had to pay them a royalty. So, that’s what they said the whole case came about was from an ownership of the materials in the streambed. That’s what drove it, according to Mr. Bowman. So, he told me that, they actually then had DNR personnel go to county courthouses and do some kind of research to determine what was being navigated, based upon when Indiana became a state. I said 1816, yeah, 1816 is the State, 1818 is the County, isn’t it?

Commissioner Ungethiem: Uh-huh.

Jeff Mueller: Yeah, okay.

President Weisheit: Any other discussion? I’m okay with…I would entertain a motion.

Commissioner Shoulders: So, we need a motion to send to the State? Or, do we feel that we—

Ron Bacon: To DNR.

Commissioner Shoulders: I mean, yeah, to DNR. So, I’ll make the motion—

President Weisheit: To request DNR to make it a navigable, the rest of it navigable right-of-way?

Commissioner Shoulders: Yes.

Joe Harrison, Jr.: Through Warrick County, I guess.

Commissioner Shoulders: Yes.

President Weisheit: Yeah.

Commissioner Johnson: I’ll second.

President Weisheit: We have a motion by Ben, a second by Bob. All in favor say aye.

All Commissioners: Aye.

President Weisheit: Opposed?

(None opposed)

President Weisheit: The motion carries 100 percent.

**(Motion approved 5-0)**

President Weisheit: Okay. Any other discussion, Ron, today with you?

Ron Bacon: I checked, and as far as the discussion we had as taking the water, another alternate route. There was supposed to have been a letter sent to INDOT, and I don’t think that was done, according to the minutes. So, I was checking this morning…requesting that they look, you know, that they look into that possibility, because they’re going down with it to do that. So, I don’t think that’s been done.

Joe Harrison, Jr.: I’ll still do that.

Ron Bacon: Okay.

Joe Harrison, Jr.: I think that’s when I was stricken with my illness. I’m sorry, I didn’t get that done.

Commissioner Ungethiem: I did have an opportunity to talk with Rusty Fowler of INDOT about that.

Ron Bacon: Uh-huh.

Commissioner Ungethiem: And, he said that, you know, they would entertain that, but with all of the stuff that they’ve got to do with other roads, it may not be a very high priority for them. So, we can send that letter. He didn’t give me a whole lot of hope that that was going to be high on their priority list.

Ron Bacon: But, what I would like to see, as a Representative and the General Assembly of the Representatives down in this area, once that letter is sent, I think I can rally my troops a little bit to put a little pressure somewhere else, you know, that tells them, basically, you know, that asks them to look at that and make it a priority.

President Weisheit: It might not even be feasible, but it’s definitely worth looking at.

Joe Harrison, Jr.: Sure.

Ron Bacon: But, it’s worth looking into, yeah, and, you know, if engineering-wise they can’t do it, we understand. Like I said, we know it’s a 20 foot, it’s only a 20 foot all the way down to the river, and looking into that.

Commissioner Ungethiem: But, it’s 20 foot in five miles, instead of 20 foot in 20 miles.

Ron Bacon: Right. So, if we can get them to at least, you know, entertain looking into that, and then I’ll get my colleagues to ask…once that, if you guys get that letter done, Joe, if you would let me know when you’re doing it and when it’s been done, then I’ll actually probably put a letter together and get my Representatives and Senator colleagues down here also to—

Joe Harrison, Jr.: Do you want to see it before it goes out?

Ron Bacon: That would be good.

Joe Harrison, Jr.: Okay.

Ron Bacon: Then we could do that, and then we could put a little, not trying to put pressure on INDOT, but put pressure on INDOT’s boss. That’s kind of where we’ll go with that, but that’s more of a political side.

President Weisheit: Thank you, Ron, appreciate that.

Ron Bacon: Uh-huh.

President Weisheit: Any other discussion on Pigeon Creek?

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| **New Business** |

President Weisheit: If not, we’ll move on to new business, but anybody else got anything else there? Does anybody have any new business they would like to bring up today in reference to this? Jason, Steve from Warrick County back there, do you got any ideas today, or anything you want to add. I mean, I appreciate you guys stopping by. Anything from Gibson County?

Commissioner Douglas: No.

Commissioner Ungethiem: There was some discussion at the last meeting about looking at the possibility of areas where we could put retention facilities to help retain water. Has anything been done in that respect, along the Pigeon Creek flow way to look at possible retention areas where we could retain water under a large rain?

President Weisheit: I’m not aware of anything at this time, but I will check on that too. I think we was talking about the mines, wasn’t we?

Commissioner Ungethiem: Uh-huh.

President Weisheit: So, I will follow up on that and see if anything has been looked at there.

Ron Bacon: I did mention it to Carrie when we had some discussions about that, that we had that discussion, but they would need to know…one of the things we talked about was where, you know, who’s going to decide where the retention pond needs to be done, you know, and so forth, so engineering-wise and all of that.

Commissioner Ungethiem: Well, I think there was some discussion as Pigeon Creek wound its way through—

Ron Bacon: Uh-huh.

Commissioner Ungethiem: --the mine area, if there was an opportunity to divert it during high water flows, and then pump it off at a later time.

Ron Bacon: Yeah.

Commissioner Ungethiem: If there was a space available to do that. At that time we didn’t know of a space available.

Ron Bacon: Right.

Commissioner Ungethiem: But, if there was something that worked, it would be good to be able to divert some of that water so it doesn’t all—

Ron Bacon: I agree, but we just, you know, it’s a matter of who knows what space is going to work. So, I’m not an engineer—

President Weisheit: And that’s something, I’m sure—

Ron Bacon: --so I don’t have any idea.

President Weisheit: --DNR would have to work in the mining industry—

Ron Bacon: Yeah.

President Weisheit: --there as they are making plans, I mean, it might be an opportunity.

Ron Bacon: Yeah, because they’re doing, they do that all the time. With the expansion now, DNR is telling them where to do their drainage, and on the expansion that they’re doing now in Warrick County.

President Weisheit: Okay, any other business to be brought up? Anybody have anything to add?

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| **Setting of Next Joint Drainage Board Meeting:**  **Wednesday, March 28, 2018 @ 2:00 p.m. in Room 301** |

President Weisheit: If not, we probably ought to set a time for another meeting today, that works for everybody. We met last in what, July? Here we are in November. Would you guys think something maybe springtime? I mean, there’s no need meeting every month, I know, until we…keep it on the agenda and keep things moving. We can always call a special meeting, I’m sure, if we need to, if something comes up.

Commissioner Shoulders: February, is that—

President Weisheit: That’s what I was thinking, somewhere in there, February or March.

Commissioner Douglas: I would need the latter part of March. I will be out February and the first part of March.

President Weisheit: Okay. Let’s see, Ron, when do you get busy in the spring.

Ron Bacon: In the spring I get unbusy.

President Weisheit: Yeah, that’s what I was thinking.

Ron Bacon: We’ll be in session until the end of March, until probably the third week of March.

Joe Harrison, Jr.: Maybe the beginning of April or so?

Ron Bacon: No, we’re just the short session this year.

Joe Harrison, Jr.: Okay.

Ron Bacon: That’s why I’m—

Joe Harrison, Jr.: That last week of March, the 26th? Will you be done by then?

Ron Bacon: We normally should be, unless something catastrophic happens, and they make us stay longer. But, I don’t see that being a problem this year. So, I would say the last week of March is pretty good.

Joe Harrison, Jr.: The 28th maybe? It’s a Wednesday.

President Weisheit: That would work for me. Would we like to make a motion that we set our next meeting for March 28th?

Commissioner Douglas: So moved.

President Weisheit: Okay.

Commissioner Ungethiem: Second.

President Weisheit: A motion and a second. All in favor say aye.

All Commissioners: Aye.

**(Motion approved 5-0)**

President Weisheit: And, the same time, I guess, 2:00?

Joe Harrison, Jr.: Let’s see if we can get the room first.

President Weisheit: If not, Madelyn, you can send us an email out and work around it.

Madelyn Grayson: I’ll send a meeting notice out.

President Weisheit: Okay.

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| **Adjournment** |

President Weisheit: Anything else to discuss today? If not, I would entertain one more motion. I appreciate everybody coming today, and appreciate Vanderburgh County allowing us to meet here and keep this on the agenda and keep things moving.

Commissioner Ungethiem: Motion to adjourn.

Commissioner Johnson: Second.

President Weisheit: All in favor?

All Commissioners: Aye.

**(Motion approved 5-0)**

President Weisheit: Meeting adjourned. Thank you all.

(The meeting was adjourned at 2:23 p.m.)

**Those in Attendance:**

Marlin Weisheit Bruce Ungethiem Ben Shoulders

Bob Johnson Alan Douglas Jeff Mueller

Joe Harrison, Jr. Madelyn Grayson Ron Bacon

Others Unidentified Members of Media

**WARRICK COUNTY-VANDERBURGH COUNTY JOINT DRAINAGE BOARD**

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**Marlin Weisheit, President (Warrick County Commissioner)**

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**Bruce Ungethiem, Vice President (Vanderburgh County Commissioner)**

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**Ben Shoulders, Member (Vanderburgh County Commissioner)**

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**Bob Johnson, Member (Warrick County Commissioner)**

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**Alan Douglas, Member (Gibson County Commissioner)**

(Recorded and transcribed by Madelyn Grayson.)