

**MANDAN REMEDIATION TRUST (MRT)**  
**March 1, 2011**

**Meeting:** 211th Official Meeting  
**Date:** March 1, 2011  
**Location:** Mandan City Hall, 205 2nd Ave. NW  
**Time:** 10:00 A.M.

The MRT meeting was called to order by Jim Neubauer. Fritz Schwindt and Dave Glatt were present. Also attending were Scott Radig and Marilyn Mertz, Department of Health; Paul Trauger, Morton County Auditor; Bruce Strinden, Morton County Commissioner.

**Minutes.** February 1, 2011 minutes were reviewed. Revisions were made.

**Motion.** Schwindt moved to approve the February minutes, as amended; second by Glatt. All ayes. Motion carried.

**Bank Statement.** We have the Bank of North Dakota statement for the period of January 31, 2011 showing a balance of \$8,525,838.97. It is simply to acknowledge that we have received it. We have \$5 million in a CD and \$3 million for interest for 0.81 percent and 0.75 percent.

**Pay Request.** The city of Mandan's wastewater invoice for industrial waste surcharge. The total bill is \$2,695.13. Of that, the current amount is \$1,896.51.

Radig reviewed the bill because the latest bill was quite a bit higher. It seems to fluctuate from month to month. Radig sent an e-mail to LBG to ask them about that. It turns out the date on the billing is not necessarily the date that they read the meter so that evens things out quite a bit. The last billing was for almost six weeks because they did the reading before the Christmas holidays and it went to the end of January.

**Motion.** Schwindt moved approval of payment to the city of Mandan in the amount of \$2,695.13 for industrial wastewater surcharges. Second by Glatt. All ayes. Motion carried.

**Pay Request.** LBG invoice through February 15, 2011 for \$39,651.79. It is higher but it includes Ken Kyttas' trip to Mandan. Radig commented going into 2011 the increase based on the consumer price index into the new year is 1.025 percent increase that applies to the hourly rates.

**Motion.** Schwindt moved to approve payment to LBG for their February 15, 2011 invoice for services through January 31, 2011 for \$39,651.79; second by Glatt. All ayes. Motion carried.

**LEC Costs.** Schwindt gave a brief recap of the events that started back from 2009 when the county commissioners came to us and requested participation in costs to install the groundwater drainage system that would go beneath the floor in the LEC.

At that time they requested \$197,051 and that included all the total costs for the engineering and the bid price from R3 for installation of the system. It did not include the cost for sealing the basement floor or any carpet replacement. Those were estimated at about \$30,000 by the county. LBG who was at the meeting identified items that they thought were related to the diesel contamination. They came up with a list of 5 or 6 items that amounted to about \$33,000 of the construction costs that were directly related to the diesel contamination. At that point in time we had asked the county to include all the project costs. Schwindt did not think there was any commitment by the MRT to pay any additional costs for flooring and those kinds of things, but we wanted to be able to see what the entire project was going to end up costing before it made any kind of decision. We didn't hear anything from the county until the July 2010 meeting at which time Paul Trauger came and presented us a summary of information that indicated that the total project costs had increased to \$399,065.70 and the county indicated that about \$200,000 of that was allocated to the trust as diesel related costs. The sealing of the floor had increased to about \$75,000. Schwindt distributed the raw project numbers. The carpet replacement was around \$20,000. The county also discovered that there were surface water drainage problems coming into the basement. They addressed some of those issues as well. The construction costs for the groundwater portion of the project had increased to \$169,000 due to some change orders that had been executed by the county.

In November, the county commission then presented the MRT with some revised costs of \$367,652.84 and the county requested that the MRT pay \$346,258.14 as diesel related costs. The difference of about \$21,000 was related to the costs for fixing up the basement that was related to the surface water damage.

The MRT did review all invoices that the county provided and came up with a total cost of \$372,751.92. That was for the entire project. Schwindt went back and looked at all the items that LBG said were directly related to diesel fuel contamination and looked at those including the change orders associated with the quantities and came up with a construction cost of \$44,666 compared to the original amount that LBG had suggested of \$33,000 so there were some increased costs. Schwindt prorated the engineering and advertising costs based on the percent of the bid item costs similar to what LBG had done. So if we include those costs, just our participation in the drain system was \$62,149. I also looked at including all the costs for sealing the floor and the carpeting together those were \$101,932; adding those two numbers together would get a total suggested participation on behalf of the MRT of \$164,081. The table summarizes those different costs.

One of the items of discussion at a previous meeting was disposal of the contaminated concrete. That was one of the big items included in the original bid. Actually, according to the invoices the quantities that were actually paid for was zero.

So the concrete that we discussed at the last meeting really wasn't all that contaminated and was just handled as regular construction debris. That was my attempt at trying to rationalize something. Schwindt indicated we need to have some discussion with the county.

Commissioner Strinden . That's why we are here. If you were going to discuss this issue today, we wanted to be here to possibly answer any questions and certainly any entity faced with this situation would certainly want to be looking for some relief. The bill we had presented and it looks like you have the same one. When the county broke out our costs for what we had to do because we had some surface water that came down from the top and we have since repaired the area over there that was causing that but that obviously didn't have nothing to do with the diesel fuel spill. That was another issue that resulted from ground level. We had come up with an amount that the trust could legitimately address of about \$319,000. When you subtract it out the other amount I certainly understand that the Remediation Trust for a variety of reasons would not want to pay that entire amount, but we submitted those costs in the trust column we thought were legitimate and could certainly be paid for by the Remediation Trust because of the fact because you do have that discretion in the original Trust Agreement. It is pretty much up to the MRT Trust to decide what you are or are not going to pay for.

Swindt . I don't think there is any disagreement providing some relief for alleviating any contamination in the LEC. This is certainly within the scope of the trust and that's why we are willing to entertain anything at all. I don't think there is any disagreement with that at all. I think the primary difference between what you had suggested in round numbers is \$320,000 and what I put together is I don't think at least in my mind that the trust is responsible for installing a groundwater management system for the Law Enforcement Center. If you back out those costs and the associated engineering that's the primary difference, that's where we are at. The MRT has maintained for a long time that the county needed to address the groundwater drainage issue within the LEC and that there were diesel related costs associated with doing a system like that and that the MRT would be willing to pay those additional costs that are directly diesel contamination related. That's what Schwindt tried to do in his summary.

Commissioner Strinden - We certainly don't disagree initially when the bill we are backing up now. my hindsight is 20/20 as is probably yours. when they originally went down and started getting ready to construct that I know we had engineers and architects, the Health Department was involved and I failed to understand from the beginning why there wasn't a groundwater removal system put in. That's not your fault, my fault or anybody's fault, but it was in my view anyway very poorly handled from the get go when we discovered that contamination. When the diesel fuel came, the water was the vehicle that brought it not only in the case of the LEC, but any other building areas that were affected. The groundwater was the vehicle that carried it and I know we have had the discussion: Was it the fuel or was it the water? So at any rate I would certainly hope the trust would consider at least paying for a portion of that separation

system, ventilation system that we put underneath the LEC at the recommendation of LBG.

Quite honestly LBG engineering was nothing short of genius on what they did which is why we chose to use LBG as opposed to using some other company. When we started with this project, number one we felt they did a wonderful job doing everything they did for Mandan so at that point there probably would be no one in the world who would have more expertise than what LBG did. I think everybody was pretty comfortable with where we went there. It's never cheap, but cheap isn't always good either. I think what we ended up with was a fix that is going to take care of this building for as many years as we choose to use it. It gave us back 10,000 square feet that was fundamentally unusable.

The other danger that existed was had we done nothing, the groundwater level at some point is going to come up again. We just don't know when. At that point our fear at least as a county commission, was that if the water table pushed the diesel contamination back up into that lower level again just because of the chemical sensitivities that people have and I think the public awareness of what had happened and had we gotten any fumes up into the other part of the building again, which we did have before, we could have been faced, honestly, with what I would consider the disastrous position of having to abandon the building and start over somewhere else. As a county commission we felt that when we started this project that we really had no choice in it. As you make your decision on this, we would very much appreciate your consideration and whatever you can do for us on it. We house both Morton County and Mandan Law Enforcement in that building. Quite honestly one of the reasons I can take the responsibility maybe or the blame for pushing this project forward because I felt to a degree that we were ignoring the welfare of our people that were in that building. Well, having said that I just wanted to make those comments regarding the project.

Schwindt - There were a couple of items where I deviated from LBG: LBG did not include as part of their recommendation on what was diesel related, but we did include removal of all the floor covering. There was a \$10,000 cost associated with that. Then there was another \$10,000 cost for removing the basement floor in areas where the system was expanded because of soil contamination on the south end. Between the two there was \$21,000 so those were costs that I included as part of the trust responsibility. One could argue that the flooring was old. Certainly there were some problems with it whether it was related to diesel fuel or not remains an issue for discussion I suppose, but what I had assumed was in order to seal all the floor we needed to remove all the old flooring so that's why I included all those costs.

Commissioner Strinden . There's no doubt that was legit. I was down there all during the process of this whole thing going on. A lot of that flooring was pretty heavily contaminated as they were pulling it up and taking it out.

Neubauer . Concrete or the carpet?

Commissioner Strinden . Some concrete, but more carpet. The concrete in spots was--I think they did a pretty good job of cleaning that up both in terms of the solvent and some grinding so when they did put the epoxy on they could get it to adhere to the surface without that it probably would not have. The epoxy part of it was very expensive. They did put a vapor barrier in there. It's just a little bit of extra assurance.

Schwindt . I included all that \$72,400 cost as being diesel related. So I guess what we have gone from the initial request from the county for participation of \$197,051. What I am suggesting is we pay \$164,081.

Trauger . Take it back to the commissioners and see if they are willing to accept it.

Neubauer . O.K. I don't know what Glatt's thoughts are on this. We've also got a Hold Harmless Agreement. I don't know if you guys were sent a copy or not. We had talked about it earlier.

Commissioner Strinden . I think we had agreed if the commission felt that the settlement from the MRT was reasonable that we would have a signing.

Schwindt . Have you had a chance to look at the proposed agreement?

Commissioner Strinden . No. We were kind of aware that there was something around but the commission has not seen it.

Neubauer will e-mail it to them.

Commissioner Strinden . I think we had agreed if it was acceptable to us if the settlement was reasonable.

Neubauer . Question on your spreadsheet, Fritz. I am just trying to tie things out to the total of \$373,000. If I take your original bid amount, add the change orders, and get the \$169,000 and dump the other stuff down here. If I add those items and then engineering- the \$169,000 plus \$78,000 engineering plus the \$155,000.

Schwindt . No, because this was the amount authorized. This was actually constructed and paid for.

Neubauer -- So it is the \$144,000 plus the \$78,000 plus the \$155,000.

Glatt . Is there an issue with the city? I think that system will be used this spring. See any discharge- is the city tied into that?

Neubauer . Waste--Steve Himmelspach has met with the county and some of those folks to see if and when it starts filling and I informed Steve. I think they check it on a monthly basis to see if anything is flowing out.

Glatt . I understand the groundwater will raise about one foot.

Schwindt -- Kytta had asked when he was here last month whether the county had gotten a permit for a discharge to the sanitary sewer.

Neubauer . Himmelspach will take care of that. Chuck Schaefer and Himmelspach talked right after our last meeting. Himmelspach went out to take a look.

If \$164,000 is the number I think it is worth something for the MRT on the release of the indemnity. Whether it is money in addition to the \$164,000 that Schwindt has recommended, it's worth another \$36,000 we could give a \$200,000 offer. There might be other things that are in here to say \$200,000. Throw it out there for Glatt's and Schwindt's thoughts.

Glatt . I think at this point based on Schwindt's rationale I can follow it and it makes sense to me, I would stay with the \$164,000.

Neubauer . In my mind, it is worth something to say, here's a payment and the release really says, we are done. You operate the system in a manner that it is supposed to be operated and there won't be a comeback to the city or the MRT for any additional cost. That has some monetary value to it.

Schwindt . I guess that would be a change from what we have done on any of the other properties downtown where we paid for the remediation costs and got the same kind of an agreement so it would be a change from what we have historically done. As far as trying to justify that cost to the auditors and what's it based on? I guess that would be my initial concern.

Commissioner Strinden . I certainly understand that part of it, however, showing the auditors the full amount that the county paid for part of which I would not presume to have related at all to diesel. But if you look at the approximately \$320,000 that was spent, I think the trust as far as the auditors are concerned would probably make a case for this is the portion that the trust decided to pay.

**Sidewalk.** Trauger -- We had a problem with the ground level, I don't know if it is caused from the removal of fuel or something like that since we fixed the alley. I noticed with our door coming in there is a 2-inch gap between. We will have to redo our sidewalk coming in. I don't know if it is sinking down or what. We pumped some out of there a few years back. Right now there is a 2-inch gap, sinking down on the east side of the LEC. We will have to tear it up and redo that front entrance. It is dangerous right now.

Schwindt . We put some wells on the east side. I don't think we went into that area by the entry on the east side.

Trauger . I don't know what is causing it, but there is a two-inch gap in there. The janitor has a cone sitting in there. When spring comes, we will have to go in there and see what is underneath there.

Schwindt . I guess there would be one well that is relatively close to that area.

Radig . We haven't really extracted any fluids out of that area for two years.

Trauger . Are you guys going to be tending your pumping stations?

Radig . They are, but that zone was shut off two years ago.

Neubauer . There is even sidewalk issues going on in front of Library Square II if you walk over on that side.

Trauger . I don't know if it was caused or not, but I know the other day there was a pretty good gap there.

Neubauer . As far as \$164,000 to \$200,000 need to find justification to pay more of the engineering than 24 percent--\$118,000--another 75 percent of the engineering, but that's it.

Commissioner Strinden -- If it would be appropriate, Trauger and I unless you have any further questions we don't need to remain here. You gentlemen can discuss this and maybe Neubauer you could give us something as to what your final number is going to be and also regarding that. Our commission meets next week. We will put it on our agenda for next week.

Glatt . This is a good table for rationale (Referring to a handout from Schwindt.).

Commissioner Strinden . Whatever your final decision is if you would have Neubauer get that to Trauger and we will put it on the agenda for next week along with the Hold Harmless Agreement if that is ready to go for our consideration.

Neubauer . I will send it over to Trauger this afternoon or when we are done here. It's gone through Malcolm Brown and gone through the mayor.

Commissioner Strinden -- Commissioner Bitz was chairman when we were here last time and he seemed to be receptive to signing that agreement too. Thank you very much.

Trauger and Strinden left.

Schwindt . I was thinking of something else that we might be able to do. One could consider more of the cost of the LBG engineering costs. That initial \$17,000 because they did do some soil borings to determine what the soils were like underneath

there. Of course, they had to do that in order to even design the system properly, but also to see what kind of contamination there was. One might be able to say that we could pay the entire \$17,000 for the initial engineering rather than \$4,000 that I have there so that would kick up another \$13,000 to get it to \$177,000.

Glatt . I think you could justify that. We can think on it for a bit. I'm OK with \$164,000. There is some flexibility on our end.

Neubauer asked. Are these all considered kind of changes?

Schwindt -- They were just additions. It got into the fixing of the interior and then the carpeting primarily. Those were in addition to other items.

Neubauer . We could move those over to total completed work.

Schwindt . The problem was when I was trying to do sums on the table I did the subtotals it wouldn't let me do the grand total on the bottom.

Neubauer . I can clean up the spreadsheet a little bit so it runs a total completed down to \$372,000 so it makes Trauger's number based on that.

Schwindt . For whatever reason there was a dollar between what I came up and what he came up with.

Neubauer -- He used rounding. Is \$164,000 the number?

Glatt . I'm comfortable.

Schwindt . It is a justifiable number at this point in time. It is based on some kind of rationale.

Glatt . Give them that number. I fully expect them to come back.

Neubauer -- I will get my walking instructions to offer more.

Schwindt . Another thing I thought of putting in here but knowing where it would go is that the railroad had paid only half of the construction costs of the changes that were required during the initial construction of the facility. I think the total cost for the changes that the county had to do was \$150,000 and the railroad offered them \$75,000. Then they took that. When they had the contamination again it must have been in Q5 or some place in there. Not sure when it was. Then there was an additional amount of cleaning. I don't remember those numbers now if it was \$25,000 or \$50,000. That's when the railroad said.

Neubauer . Take it or leave it.

Schwindt . And the county said, no we are not going to sign that agreement and they got zero. The railroad didn't give them anything is my understanding. There is a little bit of rationale.

Glatt . I think it is good to stick with this.

Neubauer . Writing to them will definitely get picked up by the *Trib*. I don't know if you want to throw those out there for consumption for public's .

Glatt . No.

Schwindt . I just wanted you guys to be aware of that.

Glatt . On a bigger scale, I do think they provided a fix now. That is going to make that basement a viable basement and if they did nothing that water would be an issue. It would be an issue this year the way things are going. I am anxious to see how this all works. I think it will work well. It is a good move.

Neubauer . Will our SVE wells around the building help the groundwater?

Glatt -- It won't help the groundwater, but the vapors maybe.

Radig -- They are only operating to take vapors.

Neubauer . Would we be seeing the levels in those wells going up- the groundwater whether it is the groundwater and diesel products?

Radig . They will be going up as well, but they are not designed to lower the water table.

Glatt . We are able to intercept some of those vapors. My understanding they are going down considerably as well.

Neubauer . Interestingly, they talked about the contaminated carpet, but I don't quite understand how the concrete is not contaminated, but then the carpet is. I think it was the glue that was used to put the carpet down.

Glatt . It did have a very definite odor.

Neubauer . We trenched enough lines on that basement.

Glatt -- That was frustrating. You expected the concrete to be more contaminated.

Neubauer . The bad glue to all the carpet in the basement covered the odors.

Schwindt . I think there was some diesel that was off gassing that you could smell down there. If there is anything you guys want to add or subtract from this.

Neubauer . I don't think so. For my purposes, I will make the spreadsheet more readable.

Glatt . I appreciate you working on this, Fritz.

Neubauer . Is there anything else?

**Task Order for 2011.** Radig indicated there is the Task Order for 2011 Operations and Maintenance for the fluid level measurements and the bio respiration testing, which Ken Kytta brought last month and I reviewed it. Overall, it is 16 percent less than 2010. The fluid level monitoring is less than \$1,000 difference. The big changes were decreases for the O&M and the bio respiration testing. We are almost \$341,000 in 2010 and in 2011 it is almost \$286,000. Considering the reduction in wells and everything else and continued to decrease. Those decreases aren't going to keep going down all that much more. I recommend that it be approved.

**Motion.** Schwindt moved approval of the 2011 LBG operating tasks of \$286,000. Second by Glatt. All ayes. Motion carried.

**Legislative Bill.** Radig indicated it has not been voted on by the Senate yet. It passed the House. I provided the testimony about three weeks ago.

Neubauer . Will that allow us to move forward and wrap up?

Glatt . At the end of the day it is going to come down to the Health Department having a comfort level and about the method to ensure dollars are available if additional work is needed we can talk about insurance and have that discussion. Then we would have to have a discussion on how much the state or city we want to buy into future site liability.

Radig . The actual strategy for shutting down the system itself we won't be able to finalize yet.

Schwindt . Did you get a chance to look at the stuff Kytta provided on shutting down the RTO?

Glatt . I did as it was in the minutes.

Schwindt . It was a pretty good summary of things.

Glatt . I don't have any issues there. There could still be odors associated with the proposal although not a health issue, but more an aesthetic issue.

Schwindt . I guess after thinking about it a little bit more based on his suggestions it might take a permit modification, which will cost a bunch of money I suppose, but one of the things that might make some sense instead of operating at 1,500 degree peak operating where you get 97 or 99 percent destruction. One of the options he had in there was drop it to 1,200 degrees. Another one was 600 degrees. I guess maybe it would make some sense to do that.

Glatt . We could circle back to the Health Department and see what the permit says and how much flexibility there is for operational changes.

Schwindt . To see whether, in fact, we would have to go through an extensive permit modification to drop the operating temperature down to 1,200 degrees instead of 1,500.

Glatt . I don't know if we identify different type of constituents if they are not totally incinerated or use something else.

Schwindt . It seemed like there would be some relatively quick payback on that. What they showed on their current monthly gas usage at 1,500 degrees is \$2,160 a month and if we went to 1,200 degrees it would be \$1,250. I would have to look in the minutes. It seems at 1,200 degrees you are still getting a pretty high destruction. As far as mass is concerned, he said we are already below the regulatory limits as far as mass is concerned.

Glatt . I agree with that.

Schwindt -- There is a RTO modification of \$5,600 in a permit modification for \$3,000 so if we could eliminate the \$3,000 permit modification. I don't know if we can or not.

**Next Meeting.** April 5, 2011 at 10:00 a.m.

**Motion to Adjourn.** Glatt moved to adjourn at 11 a.m. Second by Schwindt. All ayes. Motion carried.