

In the Matter Of:
East Chicago Waterway Management

DISTRICT BOARD OF DIRECTORS' MEETING

December 16, 2020



Iseminger & Associates, Inc.
877-337-7379

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2 **EAST CHICAGO WATERWAY MANAGEMENT**
3 **DISTRICT BOARD OF DIRECTORS' MEETING**

4
5 **City of East Chicago, Engineering/Annex Building**
6 **4444 Railroad Avenue**
7 **East Chicago, Indiana**
8 **Via Zoom/Telephone Conference**

9
10 **December 16, 2020**

11 **5:00 p.m.**
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15 **Transcript of the East Chicago Waterway Management**
16 **District Board of Directors' Meeting had in the**
17 **above-entitled matter on the 16th day of December,**
18 **2020, at 5:00 p.m., via Zoom Video/Telephone**
19 **conference, before Dawn M. Iseminger, RPR, and**
20 **Notary Public, within and for the County of**
21 **Porter, State of Indiana.**

1 A P P E A R A N C E S

2 JOHN FEKETE, President

3 KEVIN DOYLE, Vice President

4 RAYMOND LOPEZ, SR., Treasurer and Fiscal Officer

5 HENRY RODRIGUEZ, Secretary

6 PATRICK RODRIGUEZ, Board Member

7 JOHN BAKOTA, Board Member

8 FERNANDO TREVINO, FMT Consulting

9 Also Present: Tim Anderson, CliftonLarsonAllen

10 David Alonzo, BMO Harris Bank

11 Rick Nagle, EPA

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District Board of Directors' Meeting
12/16/2020

1 MR. FEKETE: I'd like to call to order the
2 board meeting of the East Chicago Waterway
3 Management District. Today's date is Wednesday,
4 December 16, 2020, and the time is 5:05. This
5 meeting will be held by Zoom video conference and
6 teleconference in accordance with Governor
7 Holcomb's executive orders 20-43, 20-46, and 20-50
8 relating to stage five re-opening of the COVID-19
9 state of emergency.

10 The first order of business is the call to
11 order and the roll call.

12 John Bakota?

13 MR. BAKOTA: Here.

14 MR. FEKETE: Henry Rodriguez?

15 MR. HENRY RODRIGUEZ: Here.

16 MR. FEKETE: Patrick Rodriguez?

17 MR. PATRICK RODRIGUEZ: Here.

18 MR. FEKETE: Ted Zagar?

19 (No response.)

20 MR. FEKETE: Kevin Doyle?

21 MR. DOYLE: Here.

22 MR. FEKETE: Ray Lopez?

23 MR. LOPEZ: Here.

24 MR. FEKETE: John Fekete, I'm here. Okay.
25 We have a quorum.

1 The next order of business is the
2 executive directors' report, Mr. Trevino from
3 FMT Consulting.

4 MR. TREVINO: Yes, I'd like to start off by
5 going over the contents of your board packet. You
6 have the agenda for today's meeting. You have a
7 copy of the public meeting notice that was sent to
8 the paper and also posted on our website. You
9 have a copy of the proposed 2021 executive and
10 public board meeting announcement, and it
11 basically specifies the dates and times and venue
12 for our 2021 executive and public board meetings.

13 You have the board minutes for
14 November 18, 2020. You have a letter -- you
15 have a copy of the FMT Consulting, Inc.,
16 performance evaluation. It's the report for a
17 performance evaluation for 2020. You have a
18 copy of the entitled, "FMT Consulting, Inc.,
19 2020, additional hours approval memo." And
20 this was the memo that was approved at the last
21 board meeting, and so now you have a signed
22 copy of it for your reference.

23 You have a copy of the eight-hour
24 refresher safety training documents provided
25 after I went through my training. You have the

1 claim docket with the date of December 16,
2 2020, for approval consideration along with the
3 affiliated purchase orders and the check
4 register list and the checks that are
5 affiliated with the claim docket.

6 You have a copy of the First Merchants
7 Bank statement for account ending in 608 and
8 along with the check images, and that's for the
9 month of November 2020. You also have a copy
10 of the First Merchant Bank statements for
11 account ending in 616 for the month of
12 November 2020, and a copy of the 21-month CD
13 held with First Merchants for account ending
14 515 with the run date of December 14th, 2020.
15 You have BMO's ECI facility trust report dated
16 November 30, 2020, and you also have a copy of
17 CD rates effective December 15, 2020, provided
18 by Mr. David Alonzo.

19 You have a copy of the letter of direction
20 to BMO Harris related to direction on an
21 expiring CD, and that's dated December 16,
22 2020. You have a copy of a presentation,
23 bullet items, with a revision date of
24 December 15, 2020, and it's entitled, "Summary
25 of EPA Analysis of ArcelorMittal Prior Years

1 SEP Credits for GLLA Projects."

2 You have a copy of the Army Corps' report
3 dated December 16, 2020. And you have a copy
4 of Attorney Ellen Gregory's report to the board
5 with a revision date of December 15, 2020.

6 I'll just give a couple updates to the
7 board. We continue to work with Attorney
8 Wieser on easement and leases requested by west
9 shore pipeline and NIPSCO for areas in the
10 south tank farm. I've had a couple meetings
11 with the two appraisers to kick off their work.
12 We went to visit the site and had another
13 meeting to make sure they had the proper
14 paperwork and documentation for their
15 appraisals. I attended an eight-hour refresher
16 HAZWOPER training course on December 3rd.

17 The BMO letter of direction regarding an
18 expiring CD from the trust is in your packet.
19 The recommendation takes into account the trust
20 dollars needed for the 2021 budget along with
21 trying to keep a balance of roughly \$500,000 in
22 the money market. We also have approval of the
23 2021 executive and public board meetings, the
24 announcement. And that's in your packet also
25 and it's on the agenda for approval

1 consideration. We have a presentation from EPA
2 regarding their assessment of the ArcelorMittal
3 SEP project costs qualifying as work-in-kind
4 for the Great Lakes Legacy Act projects.

5 Meetings with IDEM, EPA, and the Corps,
6 and BP continue regarding follow up of the ECI
7 wrecker sites; and I'll let Attorney Gregory
8 give a little more information in her report.

9 As I mentioned a copy of my 2020
10 performance evaluation is in your packet. I
11 want to thank the board members for providing
12 their feedback, which is very useful in my
13 continued goal of providing the best
14 performance possible in 2021; so thank you.

15 The user fees. Our 2020 user fee
16 collection rate is around 99 percent. We
17 continue to work through the M&M delinquent
18 account. Attorney Wieser is working on that,
19 so hopefully we'll come to some resolution on
20 that.

21 The PCA and tipping fee agreement. The
22 district continues to work with the Corps to
23 try to come up with an amended PCA. We've
24 agreed to a PCA modification and that has been
25 approved by our board, and that has been sent

1 to the Corps' management for their review.
2 After going through some of their management
3 levels, they have shared with us some of their
4 comments; so we've reviewed their comments.
5 Ellen and Todd Radle (phonetic) have reviewed
6 their comments, and we believe that the
7 proposed changes are acceptable, nothing major.

8 I also sent a string of e-mails that I
9 shared with the board that summarizes the PCA
10 status.

11 Regarding an update on the Great Lakes
12 Legacy Act project. We have received a
13 proposed project agreement modification from
14 EPA and the team is reviewing it. Phase one
15 dredging of the Lake George canal east section
16 was completed Friday. They were originally
17 forecasting to dredge around 33,000 cubic yards
18 of sediment. Their current forecast is they
19 dredged around 20,000 cubic yards. So they'll
20 be reviewing the basis for the discrepancy.

21 The Corps' 401C permit and the MOU with
22 EPA to dispose of Great Leaks Legacy Act
23 sediment in the CDF were finalized prior to
24 dredging. I've been working with AECOM, and
25 AR, BP, on the Wood Technical design criteria

1 memo regarding the sheet pile wall and the
2 south tank farm groundwater management.

3 A project team meeting was held with the
4 City of East Chicago that included AR, BP,
5 AECOM, myself, and Ellen. From the mayor --
6 I'm sorry, from the city side, it included
7 Mayor Copeland and various of his staff
8 attending, and we discussed the Great Lakes
9 Legacy Act project status, the sheet pile wall,
10 and groundwater management in the south tank
11 farm.

12 The other topic that was discussed was the
13 redevelopment of the south tank farm; so I'll
14 continue to work with the city and the project
15 team on some of the action items that came from
16 that meeting.

17 The west tank farm pipeline removal
18 project, as a reminder, has been postponed to
19 2021. So when we get closer to the date, I'll
20 provide an update.

21 Ellen and I continue to work with BP on
22 the south tank farm and the sheet pile wall
23 term sheet negotiations, and that's regarding
24 the south tank farm redevelopment and various
25 parcels of property that BP has expressed

1 interest in. I submitted the 2019 Great Lakes
2 Legacy Act reimbursement invoice to BP. The
3 project manager has communicated they reviewed
4 it and they didn't have any issues with it, and
5 they will be submitting it for approval.

6 BP has a new project manager, Eric Larson,
7 and he'll be taking Sasa Jazic's place. So
8 I've had a couple meetings with their project
9 team to work through the transition.

10 The Canal Street bridge project. AECOM
11 continues to work on the design and permitting
12 for the dolphins along the waterway. The
13 Corps' report is in your board packet. Mike
14 Nguyen is on vacation, so he won't be available
15 to provide that update.

16 And Attorney Ellen Gregory will be
17 providing an update on various legal matters.
18 And as I mentioned earlier, we have a
19 presentation on the agenda from EPA regarding
20 the qualifying cost share for the ArcelorMittal
21 SEP dredging project.

22 That concludes my report. And I see Rick
23 Nagle has joined us. Hey, Rick.

24 Any questions?

25 (No response.)

1 MR. FEKETE: Hearing none, the next order of
2 business would be actually the acknowledgment of
3 the performance evaluation for FMT Consulting, and
4 I would like to summarize in saying that all the
5 performance evaluation submittals and responses,
6 that it was very good. It granted anywhere
7 between four and five, and the only comment was
8 regarding the management of files where we have
9 been kind of unable to check on that due to the
10 COVID restrictions. So, Fernando, very good job.
11 Thank you very much.

12 MR. TREVINO: Thank you.

13 MR. FEKETE: The next order of business is
14 the approval consideration of the November 18,
15 2020, board meeting notes. Mr. Patrick Rodriguez.

16 MR. PATRICK RODRIGUEZ: John, I would like to
17 make a motion to strike out Page 30, Line 4
18 through 9, of the meeting. It's not relevant to
19 conversation or conducive to the meeting. It's
20 just bantering with respects to the background on
21 one of the participant's screen. So I would like
22 to strike all those lines out of the minutes of
23 the meeting.

24 MR. FEKETE: Okay. I take that as a motion
25 to strike?

District Board of Directors' Meeting
12/16/2020

1 MR. PATRICK RODRIGUEZ: Yes.

2 MR. FEKETE: Do I have a second?

3 JOHN BAKOTA: Second.

4 MR. FEKETE: Let's have a roll call vote.

5 John Bakota?

6 MR. BAKOTA: Yes.

7 MR. FEKETE: Henry Rodriguez?

8 MR. HENRY RODRIGUEZ: Yes.

9 MR. FEKETE: Patrick Rodriguez?

10 MR. PATRICK RODRIGUEZ: Yes.

11 MR. FEKETE: Ted Zagar?

12 (No response.)

13 MR. FEKETE: Kevin Doyle?

14 MR. DOYLE: Yes.

15 MR. FEKETE: Ray Lopez?

16 MR. LOPEZ: Yes.

17 MR. FEKETE: John Fekete, and I vote yes. So
18 with that motion, the minutes have been approved.

19 The next order of business is the monthly
20 executive and public meeting announcement for
21 2021. You have that before you. Are there any
22 questions or additions?

23 (No response.)

24 MR. FEKETE: Hearing none, I'll entertain a
25 motion to approve the prepared public meeting

District Board of Directors' Meeting
12/16/2020

1 announcement for 2021. I'll entertain a motion.

2 MR. BAKOTA: Motion to approve.

3 MR. FEKETE: Do we have a second?

4 MR. LOPEZ: Lopez seconds.

5 MR. FEKETE: Okay. All in favor will signify
6 by saying "aye."

7 (All signify aye.)

8 MR. FEKETE: Okay, we got everybody. That
9 motion is approved.

10 MR. TREVINO: John, do you mind, just for the
11 written notes, the monthly meeting that the board
12 approved is for both meetings, the executive and
13 public board meeting, would happen on the third
14 Wednesday of each month. 4:00 executive meeting.
15 5:00 public meeting. And all meetings will be
16 held in accordance with the Indiana governor's
17 executive orders regarding the continuity of
18 government operations during COVID-19 pandemic in
19 effect at the time of the meeting. Presently,
20 they're all planned to be held via Zoom. And if
21 they're held differently, then we'll go through
22 whatever public meeting requirements are to notify
23 the public.

24 MR. FEKETE: Thank you for your input.

25 The next order of business is the

1 accounting consultant report, Mr. Anderson.

2 MR. ANDERSON: Hi, guys. Can you hear me
3 okay?

4 (All signify yes.)

5 MR. ANDERSON: Does everybody have a copy of
6 the financial statements? I call your attention
7 to Page 2, the statement of cash receipts and
8 disbursements. This is through the end of
9 November. The cash receipts, we've got interest
10 income of \$43,000. The user fees, as Fernando
11 mentioned, \$357,000. And then our transfer from
12 the trust account was \$276,000. So our cash
13 receipts for the 11 months is \$678,000. And you
14 can see our disbursements, legal fees,
15 engineering, accounting, all the way down through
16 the projects, our cash disbursements through
17 November, \$349,000. So our cash has increased
18 \$329,000 since the beginning of the year. The
19 beginning of the year we had \$3.6 million in cash,
20 and at the end of November we have \$3.9 million.
21 And down on the bottom left it shows that 745- is
22 in our operating account for your budget. 1.6 is
23 in the user fee checking account, almost 1.7. And
24 we've got 1.5 in CDs, is how that money is spread
25 out.

1 Page 3 has each individual account and
2 shows how the money comes out of the operating
3 account for our cash disbursements, and that's
4 basically all we use that operating account
5 for, is to write checks for our budgeted items.
6 The user fee money goes into the user fee
7 checking account. That's in the second block.
8 And then down at the bottom shows the CDs as
9 they matured in 2020, and we repurchased CDs.

10 Page 4 shows the budget for 2020 and where
11 we are with respect to all those budgeted
12 items. We had budgeted \$1,092,000, and we had
13 written checks for \$349,000. You have a claims
14 docket before you today with \$23,000 in
15 disbursements. And so our unused budget at the
16 end of today after you approve the claims
17 docket is \$720,000. Which if you add back the
18 claims docket, that's what's in our cash at the
19 end of November.

20 Typically, this close to the end of the
21 year we run pretty close on some items on the
22 budget as we spend the money. But there's
23 nothing on your claims docket today that is in
24 excess of any budgeted item.

25 Any questions, guys?

District Board of Directors' Meeting
12/16/2020

1 MR. FEKETE: Looks good.

2 MR. ANDERSON: That's all I've got,
3 Mr. Chairman.

4 MR. FEKETE: Okay. The next order of
5 business is the approval consideration of the
6 accounts payable voucher register dated
7 December 16, 2020. I'll entertain a motion to
8 approve.

9 MR. PATRICK RODRIGUEZ: This is Patrick. I
10 make a motion.

11 MR. FEKETE: And I have a second from
12 somebody.

13 MR. HENRY RODRIGUEZ: I'll second.

14 MR. FEKETE: Okay. Henry.

15 All right. We'll have a roll call vote.
16 John Bakota?

17 MR. BAKOTA: Yes.

18 MR. FEKETE: Henry Rodriguez?

19 MR. HENRY RODRIGUEZ: Yes.

20 MR. FEKETE: Patrick Rodriguez?

21 MR. PATRICK RODRIGUEZ: Yes.

22 MR. FEKETE: Ted Zagar?

23 (No response.)

24 MR. FEKETE: Kevin Doyle?

25 MR. DOYLE: Yes.

District Board of Directors' Meeting
12/16/2020

1 MR. FEKETE: Ray Lopez?

2 MR. LOPEZ: Yes.

3 MR. FEKETE: John Fekete, I vote yes. That
4 motion is approved.

5 The next order of business is the BMO
6 trust report, Mr. Alonzo.

7 MR. ALONZO: Good evening. Okay, I'm going
8 to run through the report. Then we've got to talk
9 around the CD that's coming due. So you do have
10 the report. Of course Page 1 will always go to
11 the historical value chart just showing where we
12 were back in '96 all the way up to now with values
13 and distributions.

14 Page 2 of the report, towards the middle
15 column, will show the values of the account.
16 So the total value was \$4,549,651. That was a
17 difference of \$47 of a gain from our last
18 meeting. One thing to remember of course is
19 that the CDs that we're in, because of the
20 terms, only pay interest at the maturity. So
21 this is why for a while we've just been seeing
22 that \$47 worth of interest coming from the
23 money market balance.

24 Going to the third page, it highlights
25 really the three accounts we have, which is

1 one, the money market. Total value on that one
2 right now is \$569,651. Just as a reminder, we
3 always like to keep around that half million
4 dollars in there for budget expenses or things
5 that might come up. We do have a CD that's
6 coming due at the end of the month for
7 \$1,480,000. At the end of this month, there
8 will be some interest that of course will be
9 credited to that account at the end. And then
10 just as a heads up, about seven months from now
11 we will have a CD coming due for \$2.5 million
12 in July of 2021. So with the CD that's coming
13 due, the \$1,480,000, interest rates right now
14 are 13 months at .3; 25 months at .4; and 55
15 months at .5.

16 So with the CD that's coming due, we're
17 hoping that maybe within 13 months if we were
18 to go in and lock in the CD at 13 months at
19 .2 percent, the recommendation that I was
20 making would be that we would take the CD, put
21 1.2 million into the 13-month at .3, which will
22 then mature into January of 2022. Hopefully,
23 rates will be a little better then. Of course
24 at the beginning of every year we do have the
25 withdrawal from the trust for the budget

1 expenses. So I would recommend that we take
2 the remaining balance -- and I'm just giving a
3 rough estimate here. It would be about 200 to
4 95,000 or so, to put that into the money
5 market. So 1.2 into the CD. New CD at 13
6 months at .3. The remaining balance of the
7 maturing CD going into our money market in
8 anticipation of that money coming out very
9 shortly for the budget expenses. And then of
10 course we will have two and a half million
11 dollars coming due in July. So that gives us
12 quite a bit of flexibility into the new year.

13 Any questions around that?

14 (No response.)

15 MR. FEKETE: Hearing no questions, I'll
16 entertain a motion to approve the recommendation
17 that Mr. Alonzo just presented to us.

18 MR. BAKOTA: Motion to approve, Bokota.

19 MR. FEKETE: Okay. Do I have a second?

20 MR. LOPEZ: Second, Lopez.

21 MR. FEKETE: We'll have a roll call vote.

22 John Bakota?

23 MR. BAKOTA: Yes.

24 MR. FEKETE: Henry Rodriguez?

25 MR. HENRY RODRIGUEZ: Yes.

District Board of Directors' Meeting
12/16/2020

1 MR. FEKETE: Patrick Rodriguez?

2 MR. PATRICK RODRIGUEZ: Yes.

3 MR. FEKETE: Ted Zagar?

4 (No response.)

5 MR. FEKETE: Kevin Doyle?

6 MR. DOYLE: Yes.

7 MR. FEKETE: Ray Lopez?

8 MR. LOPEZ: Yes.

9 MR. FEKETE: John Fekete, I vote yes. That
10 motion is approved, and we will proceed
11 accordingly with the letter describing it.

12 The next order of business is the EPA
13 presentation, Mr. Nagle.

14 MR. NAGEL: Thanks for having me this
15 evening. I think the primary purpose is for me to
16 let you know some developments in terms of EPA's
17 ability to accept cost share under the Legacy Act,
18 and it has a pretty big impact on the work we're
19 going to be able to do collectively. I can also
20 quickly give you an update on 2021 budget approval
21 process. I think I'll do that first so we don't
22 forget it. And that's just to let you know the
23 concurrence that EPA needs to give on a couple
24 bits to provide to IDEM is in progress. It's
25 moving along pretty well. I haven't got any big

1 questions lately. Jean has been out of the office
2 a couple days, my program counterpart, so I'll
3 touch base with her tomorrow to get a more formal
4 update on where it is on the program side. But
5 just internally, it should be to regional counsel
6 on Friday, which means then it officially goes to
7 the division director shortly after that because
8 the regional counsel recommends the approval to
9 Ed Nam, our division director. So we're getting
10 close. I'll keep monitoring it and give Fernando
11 the latest update on budget 2021 concurrence.

12 So back to the primary reason I'm on
13 tonight, and that's to talk to you about some
14 developments on the EPA side. As you all are
15 probably aware, the Legacy Act requires that
16 local sponsors provide service-in-kind cost
17 share in order for EPA to provide funds in a
18 matching program. And EPA over the last decade
19 or so has gotten plenty of money, which is
20 always a surprisingly good thing in government,
21 and we've been able to fund a lot of great
22 projects both here in Indiana and in other
23 parts of the basin, the Great Lakes basin.

24 We have been working over the years to try
25 and expand the pool of service-in-kind match

1 and in things we can take as eligible match
2 both because the types of -- the folks that
3 we're dealing with on most of these projects
4 don't usually have a lot of hard cash laying
5 around. For a while, at the very beginning of
6 the program, we had -- Michigan had a bond
7 fund, Indiana had the NRD settlement moneys,
8 and so there was cash. After the first couple
9 of years of the program, the cash dries up and
10 we're working hard to get -- use projects that
11 stakeholders are doing within an area of
12 concern to act as the service-in-kind match for
13 our projects.

14 You may remember that as part of that
15 effort to scrounge around and find
16 service-in-kind match to fuel our efforts back
17 at the end of 2019, we did a project agreement
18 modification of the project agreement that
19 governs the work on the Lake George branch, and
20 that project agreement captured the
21 ArcelorMittal harbor dredging done pursuant to
22 the SEP, the Supplement Environmental Project,
23 that they are required to do in and around the
24 harbor, and so we had figured out that that was
25 an eligible type of work, and we pegged it, you

1 know, from now into the future that we capture
2 that work.

3 One of the things that was going on behind
4 the scenes back in 2019 and into 2020 was we
5 were doing research on what the law says in
6 terms of the timing of capturing work, and
7 there's some specific provisions in Great Lakes
8 Legacy Act that talk about this. And what I've
9 been doing in conjunction with a couple of
10 other folks that do Legacy Act work is
11 researching what exactly we need to do to be
12 able to accept that kind of work, and the
13 ArcelorMittal SEP presented a very interesting
14 and compelling example of the kind of work we
15 want to get because it's very clearly
16 acceptable work. It's dredging sediments in an
17 AOC. What more could you ask for in terms of
18 eligible work? But there was the question of
19 how far back could we count it. It was going
20 on as early as 2012, and what did we have to do
21 to be able to accept that past work as an
22 eligible match just like we could do into the
23 future.

24 And so that's where the bullet points that
25 are in your packet come into play, because it's

1 a bit of a legal analysis that we went through.
2 I provided a scintillating letter to Ellen that
3 goes through the legal logic. And so instead
4 of giving you the letter and putting you to
5 sleep, we distilled in into some bullet points
6 for you to follow along with the logic that the
7 agency is using to justify capturing this past
8 work.

9 I don't think there's any action item
10 tonight. This is to explain to you what the
11 background is. We're contemplating another
12 modification to the project agreement. I don't
13 know that we're going to put any past SEP
14 service-in-kind work moneys into this one. I
15 think we're going to hold off on that. But the
16 day will come in the not too distant future
17 when we put together a project agreement that
18 we hope will use this rather large amount.
19 It's going to be, 11-, \$12 million of past work
20 into it as the service-in-kind match for
21 probably the junction region projects.

22 So this is again background for you to
23 know that we've been doing this legal research
24 to justify using the old ArcelorMittal SEP
25 work. The good news is that ArcelorMittal,

1 it's painless to them. They've done the work.
2 It's all done. The money has been spent. Now
3 we're just figuring out how to capture that and
4 get it into the system.

5 So let me go to my bullet points so I can
6 follow and guide you through the process. So
7 basically what we did was bullet point one
8 there, we had already gone through the analysis
9 that a supplemental environmental project
10 dealing with sediments was an eligible project,
11 and so what we wanted to do was say, All right,
12 what's the timing trigger that would allow us
13 to say this is when we can start? So the first
14 step was to determine if the work substantively
15 meets the agency's requirements. Of course, as
16 I said earlier, a sediment work within an area
17 of concern meets the criteria. The fact that
18 it's a supplemental environmental project
19 that's part of a consent decree is of no
20 concern. The Great Lakes Legacy Act says in no
21 uncertain terms that the work done under
22 consent decrees --

23 COURT REPORTER: You broke up. I'll read
24 what I have. "That's part of a consent decree..."

25 MR. NAGEL: So in no uncertain terms the

1 Great Lakes Legacy Act says that we can accept
2 work done under consent decrees. We did an
3 internal analysis on whether work under a SEP
4 required headquarters consultation and determined
5 that it didn't. That's an internal EPA thing.
6 But it's good for you guys to know that we can
7 accept SEP without having to go through a long,
8 tortured headquarters consultation.

9 And that brings us to read what the meat
10 of the analysis is, and that's the timing
11 component. So the agency looks at the timing
12 of the work. There is language in the Clean
13 Water Act sections of the Great Lakes Legacy
14 Act that basically state that the administrator
15 and the non-essential sponsor shall enter into
16 an agreement under which the non-essential
17 sponsor shall carry out such work. And then
18 only work carried out following the execution
19 of the agreement shall be eligible for credit.

20 So it's important to note here that
21 "agreement" is used in this section. And in
22 other sections of the Legacy Act there are
23 references to "Project Agreements." Capital P,
24 capital A, "Project Agreement," which let's us
25 in this subsection look at other agreements

1 that the drafters clearly were thinking about
2 the fact that there would be other types of
3 agreements that would be important in executing
4 projects. And as you can imagine, you know,
5 the Legacy Act has project agreements which are
6 the agreement between the local sponsor and the
7 agency. But the local sponsor then would have
8 sub agreements. The agency might have
9 agreements to implement its pieces of the work.
10 So I think it's just a clear recognition that
11 there are agreements, there are sub agreements,
12 there's probably subcontractors that have
13 agreements, so you're not -- you know, the
14 concept that there would be one master
15 agreement that took up all of the work just
16 isn't how life functions in these kind of
17 situations, and so what we're doing is looking
18 at kind of the real world and saying that when
19 the law says we need to have an agreement with
20 a federal sponsor and an agreement to execute
21 such work, then what we're doing is just kind
22 of building in the real world into how we're
23 interpreting the law. And again I think as
24 part of our analysis, we looked at the fact
25 that we are charged with being expansive and

1 trying to generate cost share and that local
2 sponsors do all kinds of good work in their
3 areas of concern and shouldn't really be
4 punished for whether, you know, an agreement
5 was exactly -- or whether the good work
6 happened before or after a certain type of
7 agreement.

8 So what we ended up doing was looking at
9 the arrangement between, "Is there an agreement
10 for such work with a local sponsor?" And in
11 this case we've got the 2012 tipping fee
12 agreement between the -- and I'm kind of
13 skipping down a little bit but I wanted to do
14 it in a little bit different order -- the 2012
15 tipping fee agreement, and that's the agreement
16 with the local sponsor to do the SEP work, to
17 do the work on behalf of the project. The
18 original Great Lakes Legacy Act project
19 agreement happens in 2013, and of course it
20 takes us all a long time to get those kind of
21 agreements pulled together.

22 But that's the agreement that establishes
23 the relationship between the administrator and
24 the local sponsor. And again when we put those
25 two together, we have an agreement to do the

1 work before the work took place in 2012, and
2 the local sponsor was the Waterway Management
3 District who then signed up for the program in
4 2013.

5 So that's basically an analysis. We ran
6 that past regional counsel all the way up the
7 chain to the regional counsel. It's been
8 approved by the regional counsel. And the
9 vision director, Chris Korelski, who runs
10 GLNPO, they've given us the blessing to move
11 forward and use this paradigm, use this
12 construct, to go out and find eligible project
13 cost share both here -- because, of course, the
14 ArcelorMittal SEP was the poster child, the
15 example one, so this one has been expressly
16 approved. And then there are some other areas
17 of concern that are also using this construct
18 to try and go back and look at how cost share
19 was generated and whether there were agreements
20 that we could put together to kind of expand
21 the envelope a little bit.

22 So again I think the big change -- I
23 wouldn't say "change." But the big
24 interpretive shift is that we tended to be a
25 little bit conservative and say in many cases

1 that we couldn't take cost share from an
2 element of the project unless it was in a
3 project agreement expressly. And again looking
4 at the plain language of the law, it doesn't
5 say "Project Agreement." It says "Agreement."
6 And in terms of statutory construction, that we
7 feel that gives us the flexibility to expand
8 the definition of "Agreement" to put agreements
9 together in a way that let's us cast the net
10 more widely and take in more share.

11 So basically that's what I've got for you
12 guys tonight. I'm certainly happy to answer
13 questions. I don't know if, Ellen, did I
14 cover -- Ellen and Fernando, did I cover what
15 you were looking for?

16 MS. GREGORY: Yeah. I thought that was a
17 great presentation.

18 MR. TREVINO: I agree.

19 MR. FEKETE: Having read through this and
20 being somewhat familiar with both the SEP and
21 other things, I thought you did a very good job of
22 explaining the process that you went through and
23 your research. So I feel very comfortable in
24 what's being presented to us today.

25 MR. TREVINO: Yeah. And the purpose, you

1 know, various reasons for the presentation is to
2 give the board some comfort in starting to move
3 forward on subsequent project activities with the
4 information from EPA that this prior year's
5 ArcelorMittal SEP dredging cost can count -- can
6 go into the cost share bucket. It allows us to do
7 a significant amount of work, so, you know, the
8 project team, myself, Ellen, EPA, and others are
9 going to start taking a look at what makes sense
10 for the next step. And one of the ones we have on
11 our radar is to complete the remedial design for
12 the Grand Cal' River and the Indiana Harbor ship
13 canal. So I want to thank Rick for taking the
14 time to work with us, putting the letter together
15 and the bullets together and the presentation.

16 I think it goes a long way in our goal to
17 make the board feel comfortable on taking the
18 next steps.

19 MR. NAGEL: Again, if you have questions
20 about it, if things come up as we're starting to
21 look at the next projects that would be fueled by
22 this service-in-kind work, just let us know.
23 We'll have a chance to revisit how this all fits
24 together with a project agreement and what it can
25 be used for within the AOC in the coming months, I

1 would say. I hope, so we can start to work on
2 that stuff.

3 Again, thanks very much.

4 MR. FEKETE: Thanks again, Rick.

5 MR. TREVINO: Likewise, Rick.

6 MR. FEKETE: That was very good. I
7 appreciated that.

8 Next order of business is the U.S. Army
9 Corps of Engineers' report, and Mr. Nguyen is
10 not with us. Fernando, did you want to hit
11 some of the highlights for the record?

12 MR. TREVINO: Sure. The dredging was
13 completed on December 13th. The Corps plans to
14 start their post dredging survey so they could
15 confirm final payment.

16 The oil boom coordination. Nothing -- he
17 is saying there's nothing significant to report
18 in his report, but there has been a development
19 with some oil sheen observation along the Indy
20 Boulevard and the concern for removing oil
21 booms during the oil sheen. So there is
22 ongoing discussion on coordination of the oil
23 booms with an ongoing sheen in that area.

24 The PCA revisions. The Corps and the
25 district have reached an agreement on the PCA

1 amendment. Corps submitted the PCA amendment
2 package to the division on August 27, and
3 basically they're going through their approval
4 process.

5 The Corps has entered into an agreement
6 with EPA to dredge the Lake George dredge
7 material, which as mentioned earlier was
8 completed on December 13th.

9 The Corps real estate staff requested
10 additional information on the Leer (phonetic)
11 credit, and it was received on July 24, and
12 they're reviewing the additional information.

13 The Parkway improvement project. The
14 construction was completed at the end of April
15 of this year, and they're working to close out
16 that contract.

17 That concludes a quick summary of
18 Mr. Nguyen's Army Corps' report.

19 MR. FEKETE: The only thing that I would add
20 in the way of numbers is that you had mentioned
21 earlier that the original project was for removing
22 in Lake George east 35,000 cubic yards.

23 MR. TREVINO: 33-.

24 MR. FEKETE: 33-. Okay. And they've
25 actually just removed 20,000.

1 MR. TREVINO: Yeah. That 20,000 isn't
2 official. So I'm sure the Corps will be following
3 up on that report.

4 MR. FEKETE: Okay. But at least that part of
5 the project was done. Very good. I thank you
6 very much.

7 Next order of business is the Attorney
8 Ellen Gregory report.

9 MS. GREGORY: Ellen Gregory with Ellen
10 Gregory Law. Fernando had mentioned it a couple
11 of times, both in his report and summarized in the
12 Corps' report, but the PCA language amendments
13 have now been routed to Corps' headquarters with
14 the hope that we'll get an answer from them over
15 the next several months, hopefully.

16 Fernando and I continue negotiating with
17 BP on the property transfer and real estate
18 term sheet. We're in the process of discussing
19 with BP reimbursement, for BP to reimburse the
20 district for costs related to the property
21 transfer issue. And Rick wrote that a group
22 call has been set up. So we're periodically
23 meeting with EPA and IDEM and also BP and the
24 Corps. EPA and IDEM are seeking to kind of
25 close out all the ECI parcels, including the

1 CDF and the non-CDF parcels, a couple of
2 parcels in Hammond and several non-CDF parcels
3 in East Chicago. We'll be doing periodic calls
4 until those parcels are all resolved and each
5 of them has a home in terms of either having a
6 plan for mediation or being closed out by
7 whichever agency is the one that each parcel is
8 assigned to, whether that be EPA or IDEM. So
9 those calls will be continuing on into 2021.
10 And that's all I have.

11 MR. FEKETE: Any questions for Miss Gregory?

12 (No response.)

13 MR. FEKETE: Thank you. I thank everybody
14 for their attendance.

15 Any new business to come before the board?

16 (No response.)

17 MR. FEKETE: Any other business?

18 (No response.)

19 MR. FEKETE: Any public comments?

20 (No response.)

21 MR. FEKETE: Hearing none, the next board
22 meeting is January 20, 2021, at 5:00 p.m., and
23 continuing on with our Zoom approach.

24 We will see you all then. So I will
25 entertain a motion to adjourn.

1 MR. BAKOTA: Motion to adjourn.

2 MR. FEKETE: Do we have a second?

3 MR. HENRY RODRIGUEZ: Second.

4 MR. FEKETE: All in favor to adjourn, signify
5 by saying "aye."

6 (All signify aye.)

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C E R T I F I C A T E

I, Dawn M. Iseminger, Registered Professional Reporter (RPR), and Notary Public within and for the County of Porter, State of Indiana, do hereby certify that I appeared on the aforementioned date, time, and location, for the East Chicago Waterway Management District Board of Directors' Meeting.

I further certify that I then and there reported in machine shorthand the proceedings of said Special Meeting, and that the testimony was then reduced to typewriting from my original shorthand notes, and the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am not related by blood or marriage to any of the parties, nor am I an employee of any of the parties or of their attorneys or agents, nor am I interested in any way, financially or otherwise, in the outcome of said litigation.

Dated this 18th day of January, 2021.

Dawn M. Iseminger

Dawn M. Iseminger, RPR
My Commission expires: 9/22/2025



District Board of Directors' Meeting

12/16/2020

Index: \$1,0..Arce

<hr/>	<hr/>	<hr/>	<hr/>
\$	2	5:00 13:15	administrator 26:14 28:23
\$1,092,000 15:12	2 14:7 17:14 18:19	5:05 3:4	AECOM 8:24 9:5 10:10
\$1,480,000 18:7,13	20,000 8:19	<hr/>	affiliated 5:3,5
\$12 24:19	20-43 3:7	6	agency 24:7 26:11 27:7,8
\$2.5 18:11	20-46 3:7	608 5:7	agency's 25:15
\$23,000 15:14	20-50 3:7	616 5:11	agenda 4:6 6:25 10:19
\$276,000 14:12	200 19:3	<hr/>	agree 30:18
\$3.6 14:19	2012 23:20 28:11,14 29:1	7	agreeed 7:24
\$3.9 14:20	2013 28:19 29:4	<hr/>	agreement 7:21 8:13 22:17,18,20 24:12,17 26:16,19,21,24 27:6,15, 19,20 28:4,7,9,12,15, 19,22,25 30:3,5,8 31:24
\$329,000 14:18	2019 10:1 22:17 23:4	9	agreements 26:23,25 27:3,5,8,9,11,13 28:21 29:19 30:8
\$349,000 14:17 15:13	2020 3:4 4:14,17,19 5:2, 9,12,14,16,17,22,24 6:3,5 7:9,15 11:15 15:9, 10 16:7 23:4	9 11:18	Alonzo 5:18 17:6,7 19:17
\$357,000 14:11	2021 4:9,12 6:20,23 7:14 9:19 12:21 13:1 18:12 20:20 21:11	95,000 19:4	amended 7:23
\$4,549,651 17:16	2022 18:22	96 17:12	amount 24:18 31:7
\$43,000 14:10	21-month 5:12	99 7:16	analysis 5:25 24:1 25:8 26:3,10 27:24 29:5
\$47 17:17,22	25 18:14	<hr/>	Anderson 14:1,2,5 16:2
\$500,000 6:21	<hr/>	A	announcement 4:10 6:24 12:20 13:1
\$569,651 18:2	<hr/>	ability 20:17	anticipation 19:8
\$678,000 14:13	<hr/>	accept 20:17 23:12,21 26:1,7	AOC 23:17 31:25
\$720,000 15:17	<hr/>	acceptable 8:7 23:16	appraisals 6:15
<hr/>	<hr/>	accordance 3:6 13:16	appraisers 6:11
1	3	account 5:7,11,13 6:19 7:18 14:12,22,23 15:1, 3,4,7 17:15 18:9	approval 4:19 5:2 6:22, 25 10:5 11:14 16:5 20:20 21:8
1 17:10	3 15:1 18:14,21 19:6	accounting 14:1,15	approve 12:25 13:2 15:16 16:8 19:16,18
1.2 18:21 19:5	30 5:16 11:17	accounts 16:6 17:25	approved 4:20 7:25 12:18 13:9,12 17:4 20:10 29:8,16
1.5 14:24	33,000 8:17	acknowledgment 11:2	AR 8:25 9:4
1.6 14:22	3rd 6:16	act 7:4 8:12,22 9:9 10:2 20:17 21:15 22:12 23:8, 10 25:20 26:1,13,14,22 27:5 28:18	Arcelormittal 5:25 7:2 10:20 22:21 23:13
1.7 14:23	<hr/>	action 9:15 24:9	
11 14:13	4	activities 31:3	
11- 24:19	4 11:17 15:10 18:14	add 15:17	
13 18:14,17,18 19:5	401C 8:21	additional 4:19	
13-month 18:21	4:00 13:14	additions 12:22	
14th 5:14	<hr/>		
15 5:17,24 6:5	5		
16 3:4 5:1,21 6:3 16:7	5 18:15		
18 4:14 11:14	515 5:14		
	55 18:14		

24:24,25 29:14 31:5	block 15:7	carried 26:18	comments 8:4,6
area 22:11 25:16	BMO 5:20 6:17 17:5	carry 26:17	communicated 10:3
areas 6:9 28:3 29:16	BMO's 5:15	case 28:11	compelling 23:14
Army 6:2	board 3:2 4:5,10,12,13, 21 6:4,7,23 7:11,25 8:9 10:13 11:15 13:11,13 31:2,17	cases 29:25	complete 31:11
arrangement 28:9		cash 14:7,9,12,16,17, 19 15:3,18 22:4,8,9	completed 8:16
assessment 7:2		cast 30:9	component 26:11
attended 6:15	Bokota 19:18	CD 5:12,17,21 6:18 17:9 18:5,11,12,16,18,20 19:5,7	concept 27:14
attending 9:8	bond 22:6		concern 22:12 25:17, 20 28:3 29:17
attention 14:6	bottom 14:21 15:8	CDF 8:23	concludes 10:22
Attorney 6:4,7 7:7,18 10:16	BP 7:6 8:25 9:4,21,25 10:2,6	CDS 14:24 15:8,9 17:19	concurrence 20:23 21:11
aware 21:15	branch 22:19	chain 29:7	conducive 11:19
aye 13:6,7	bridge 10:10	Chairman 16:3	conference 3:5
<hr/>	brings 26:9	chance 31:23	conjunction 23:9
B	broke 25:23	change 29:22,23	consent 25:19,22,24 26:2
<hr/>	bucket 31:6	charged 27:25	conservative 29:25
back 15:17 17:12 21:12 22:16 23:4,19 29:18	budget 14:22 15:10,15, 22 18:4,25 19:9 20:20 21:11	chart 17:11	consideration 5:2 7:1 11:14 16:5
background 11:20 24:11,22	budget along 6:20	check 5:3,8 11:9	construct 29:12,17
Bakota 3:12,13 12:3,5, 6 13:2 16:16,17 19:18, 22,23	budgeted 15:5,11,12, 24	checking 14:23 15:7	construction 30:6
balance 6:21 17:23 19:2,6	building 27:22	Chicago 3:2 9:4	consultant 14:1
Bank 5:7,10	bullet 5:23 23:24 24:5 25:5,7	child 29:14	consultation 26:4,8
bantering 11:20	bullets 31:15	Chris 29:9	Consulting 4:3,15,18 11:3
base 21:3	business 3:10 4:1 11:2,13 12:19 13:25 16:5 17:5 20:12	city 9:4,6,14	contemplating 24:11
basically 4:11 15:4 25:7 26:14 29:5 30:11	<hr/>	claim 5:1,5	contents 4:5
basin 21:23	C	Clean 26:12	continue 6:7 7:6,17 9:14,21
basis 8:20		clear 27:10	continued 7:13
beginning 14:18,19 18:24 22:5	Cal' 31:12	close 15:20,21 21:10	continues 7:22 10:11
behalf 28:17	call 3:1,10,11 12:4 14:6 16:15 19:21	closer 9:19	continuity 13:17
big 20:18,25 29:22,23	canal 8:15 10:10 31:13	collection 7:16	conversation 11:19
bit 19:12 24:1 28:13,14 29:21,25	capital 26:23,24	collectively 20:19	Copeland 9:7
bits 20:24	capture 23:1 25:3	column 17:15	copy 4:7,9,15,18,22,23 5:6,9,12,16,19,22 6:2,3 7:9 14:5
blessing 29:10	captured 22:20	comfort 31:2	Corps 7:5,22
	capturing 23:6 24:7	comfortable 30:23 31:17	
		comment 11:7	

Corps' 6:2 8:1,21 10:13	describing 20:11		estimate 19:3
cost 10:20 20:17 21:16 28:1 29:13,18 30:1 31:5,6	design 8:25 10:11 31:11	E	evaluation 4:16,17 7:10 11:3,5
costs 7:3	determine 25:14	e-mails 8:8	evening 17:7 20:15
counsel 21:5,8 29:6,7, 8	determined 26:4	earlier 10:18 25:16	excess 15:24
count 23:19 31:5	developments 20:16 21:14	early 23:20	execute 27:20
counterpart 21:2	difference 17:17	easement 6:8	executing 27:3
couple 6:6,10 10:8 20:23 21:2 22:8 23:9	differently 13:21	east 3:2 8:15 9:4	execution 26:18
COURT 25:23	direction 5:19,20 6:17	ECI 5:15 7:6	executive 3:7 4:2,9,12 6:23 12:20 13:12,14,17
cover 30:14	director 21:7,9 29:9	Ed 21:9	expand 21:25 29:20 30:7
COVID 11:10	directors' 4:2	effect 13:19	expansive 27:25
COVID-19 3:8 13:18	disbursements 14:8, 14,16 15:3,15	effective 5:17	expenses 18:4 19:1,9
credit 26:19	discrepancy 8:20	effort 22:15	expiring 5:21 6:18
credited 18:9	discussed 9:8,12	efforts 22:16	explain 24:10
Credits 6:1	dispose 8:22	eight-hour 4:23 6:15	explaining 30:22
criteria 8:25 25:17	distant 24:16	element 30:2	expressed 9:25
cubic 8:17,19	distilled 24:5	eligible 22:1,25 23:18, 22 25:10 26:19 29:12	expressly 29:15 30:3
current 8:18	distributions 17:13	Ellen 6:4 8:5 9:5,21 10:16 24:2 30:13,14 31:8	F
D	district 3:3 7:22 29:3	emergency 3:9	facility 5:15
	division 21:7,9	end 14:8,20 15:16,19, 20 18:6,7,9 22:17	fact 25:17 27:2,24
date 3:3 5:1,14,23 6:5 9:19	docket 5:1,5 15:14,17, 18,23	ended 28:8	familiar 30:20
dated 5:15,21 6:3 16:6	documentation 6:14	ending 5:7,11,13	farm 6:10 9:2,11,13,17, 22,24
dates 4:11	documents 4:24	engineering 14:15	favor 13:5
David 5:18	dollars 6:20 18:4 19:11	enter 26:15	federal 27:20
day 24:16	dolphins 10:12	entertain 12:24 13:1 16:7 19:16	fee 7:15,21 14:23 15:6 28:11,15
days 21:2	Doyle 3:20,21 12:13,14 16:24,25 20:5,6	entitled 4:18 5:24	feedback 7:12
dealing 22:3 25:10	drafters 27:1	envelope 29:21	feel 30:7,23 31:17
decade 21:18	dredge 8:17	environmental 22:22 25:9,18	fees 7:15 14:10,14
December 3:4 5:1,14, 17,21,24 6:3,5,16 16:7	dredged 8:19	EPA 5:25 7:1,5 8:14,22 10:19 20:12,23 21:14, 17,18 26:5 31:4,8	Fekete 3:1,14,16,18,20, 22,24 11:1,13,24 12:2, 4,7,9,11,13,15,17,24 13:3,5,8,24 16:1,4,11, 14,18,20,22,24 17:1,3 19:15,19,21,24 20:1,3, 5,7,9 30:19
decree 25:19,24	dredging 8:15,24 10:21 22:21 23:16 31:5	EPA's 20:16	
decrees 25:22 26:2	dries 22:9	Eric 10:6	
definition 30:8	due 11:9 17:9 18:6,11, 13,16 19:11	establishes 28:22	
delinquent 7:17			

Fernando 11:10 14:10 21:10 30:14	good 11:6,10 16:1 17:7 21:20 24:25 26:6 28:2,5 30:21	Henry 3:14,15 12:7,8 16:13,14,18,19 19:24, 25	items 5:23 9:15 15:5, 12,21
figured 22:24	government 13:18 21:20	Hey 10:23	<hr/> J <hr/>
figuring 25:3	Governor 3:6	highlights 17:24	January 18:22
files 11:8	governor's 13:16	historical 17:11	Jazic's 10:7
finalized 8:23	governs 22:19	Holcomb's 3:7	Jean 21:1
financial 14:6	Grand 31:12	hold 24:15	job 11:10 30:21
find 22:15 29:12	granted 11:6	hope 24:18	John 3:12,24 11:16 12:3,5,17 13:10 16:16 17:3 19:22 20:9
fits 31:23	great 7:4 8:11,22 9:8 10:1 21:21,23 23:7 25:20 26:1,13 28:18 30:17	hoping 18:17	joined 10:23
flexibility 19:12 30:7	Gregory 7:7 10:16 30:16	hours 4:19	July 18:12 19:11
FMT 4:3,15,18 11:3	Gregory's 6:4	<hr/> I <hr/>	junction 24:21
folks 22:2 23:10	groundwater 9:2,10	IDEM 7:5 20:24	justify 24:7,24
follow 7:6 24:6 25:6	guide 25:6	images 5:8	<hr/> K <hr/>
forecast 8:18	guys 14:2 15:25 26:6 30:12	imagine 27:4	Kevin 3:20 12:13 16:24 20:5
forecasting 8:17	<hr/> H <hr/>	impact 20:18	kick 6:11
forget 20:22	half 18:3 19:10	implement 27:9	kind 11:9 23:12,14 27:16,18,21 28:12,20 29:20
formal 21:3	happen 13:13	important 26:20 27:3	kinds 28:2
forward 29:11 31:3	happened 28:6	included 9:4,6	Korelski 29:9
Friday 8:16 21:6	happy 30:12	income 14:10	<hr/> L <hr/>
fuel 22:16	harbor 22:21,24 31:12	increased 14:17	Lake 8:15 22:19
fueled 31:21	hard 22:4,10	Indiana 13:16 21:22 22:7 31:12	Lakes 7:4 8:11 9:8 10:1 21:23 23:7 25:20 26:1, 13 28:18
functions 27:16	Harris 5:20	individual 15:1	language 26:12 30:4
fund 21:21 22:7	HAZWOPER 6:16	information 7:8 31:4	large 24:18
funds 21:17	he'll 10:7	input 13:24	Larson 10:6
future 23:1,23 24:16	headquarters 26:4,8	interest 10:1 14:9 17:20,22 18:8,13	latest 21:11
<hr/> G <hr/>	heads 18:10	interesting 23:13	law 23:5 27:19,23 30:4
gain 17:17	hear 14:2	internal 26:3,5	laying 22:4
generate 28:1	Hearing 11:1 12:24 19:15	internally 21:5	Leaks 8:22
generated 29:19	held 3:5 5:13 9:3 13:16, 20,21	interpreting 27:23	leases 6:8
George 8:15 22:19		interpretive 29:24	
give 6:6 7:8 20:20,23 21:10 31:2		invoice 10:2	
giving 19:2 24:4		issues 10:4	
GLLA 6:1		item 15:24 24:9	
GLNPO 29:10			
goal 7:13 31:16			

left 14:21	matters 10:17	months 14:13 18:10, 14,15,17,18 19:6 31:25	orders 3:7 5:3 13:17
Legacy 7:4 8:12,22 9:9 10:2 20:17 21:15 23:8, 10 25:20 26:1,13,22 27:5 28:18	mature 18:22	motion 11:17,24 12:18, 25 13:1,2,9 16:7,10 17:4 19:16,18 20:10	original 28:18
legal 10:17 14:14 24:1, 3,23	matured 15:9		originally 8:16
letter 4:14 5:19 6:17 20:11 24:2,4 31:14	maturing 19:7	MOU 8:21	<hr/> P <hr/>
levels 8:3	maturity 17:20	move 29:10 31:2	packet 4:5 6:18 7:10 10:13 23:25
life 27:16	mayor 9:5,7	moving 20:25	packet also 6:24
lines 11:22	means 21:6	<hr/> N <hr/>	painless 25:1
list 5:4	meat 26:9	NAGEL 20:14 25:25 31:19	pandemic 13:18
local 21:16 27:6,7 28:1, 10,16,24 29:2	meeting 3:2,5 4:6,7,10, 21 6:13 9:3,16 11:15, 18,19,23 12:20,25 13:11,13,14,15,19,22 17:18	Nagle 10:23 20:13	paper 4:8
lock 18:18	meetings 4:12 6:10,23 7:5 10:8 13:12,15	Nam 21:9	paperwork 6:14
logic 24:3,6	meets 25:15,17	needed 6:20	paradigm 29:11
long 26:7 28:20 31:16	members 7:11	negotiations 9:23	parcels 9:25
looked 27:24	memo 4:19,20 9:1	net 30:9	part 22:14 25:19,24 27:24
Lopez 3:22,23 12:15,16 13:4 17:1,2 19:20 20:7, 8	mentioned 7:9 10:18 14:11	news 24:25	participant's 11:21
lot 21:21 22:4	Merchant 5:10	Nguyen 10:14	parts 21:23
<hr/> M <hr/>	Merchants 5:6,13	NIPSCO 6:9	past 23:21 24:7,13,19 29:6
M&m 7:17	Michigan 22:6	non-essential 26:15, 16	Patrick 3:16,17 11:15, 16 12:1,9,10 16:9,20,21 20:1,2
major 8:7	middle 17:14	note 26:20	pay 17:20
make 6:13 11:17 16:10 31:17	Mike 10:13	notes 11:15 13:11	payable 16:6
makes 31:9	million 14:19,20 18:3, 11,21 19:10 24:19	notice 4:7	PCA 7:21,23,24 8:9
making 18:20	mind 13:10	notify 13:22	pegged 22:25
management 3:3 8:1,2 9:2,10 11:8 29:2	minutes 4:13 11:22 12:18	November 4:14 5:9,12, 16 11:14 14:9,17,20 15:19	percent 7:16 18:19
manager 10:3,6	modification 7:24 8:13 22:18 24:12	NRD 22:7	performance 4:16,17 7:10,14 11:3,5
market 6:22 17:23 18:1 19:5,7	money 6:22 14:24 15:2, 6,22 17:23 18:1 19:4,7, 8 21:19 25:2	<hr/> O <hr/>	permit 8:21
master 27:14	moneys 22:7 24:14	office 21:1	permitting 10:11
match 21:25 22:1,12,16 23:22 24:20	monitoring 21:10	officially 21:6	Phase 8:14
matching 21:18	month 5:9,11 13:14 18:6,7	operating 14:22 15:2,4	phonetic 8:5
	monthly 12:19 13:11	operations 13:18	pieces 27:9
		order 3:1,10,11 4:1 11:1,13 12:19 13:25 16:4 17:5 20:12 21:17 28:14	pile 9:1,9,22
			pipeline 6:9 9:17
			place 10:7 29:1

plain 30:4	24:2	receipts 14:7,9,13	resolution 7:19
planned 13:20	providing 7:11,13 10:17	received 8:12	respect 15:11
play 23:25	provisions 23:7	recognition 27:10	respects 11:20
plenty 21:19	public 4:7,10,12 6:23 12:20,25 13:13,15,22, 23	recommend 19:1	response 3:19 10:25 12:12,23 16:23 19:14 20:4
point 25:7		recommendation 6:19 18:19 19:16	responses 11:5
points 23:24 24:5 25:5	pulled 28:21	recommends 21:8	restrictions 11:10
pool 21:25	punished 28:4	redevelopment 9:13, 24	review 8:1
posted 4:8	purchase 5:3	reference 4:22	reviewed 8:4,5 10:3
poster 29:14	purpose 20:15 30:25	references 26:23	reviewing 8:14,20
postponed 9:18	pursuant 22:21	refresher 4:24 6:15	revision 5:23 6:5
prepared 12:25	put 18:20 19:4 24:13,17 28:24 29:20 30:8	region 24:21	revisit 31:23
presentation 5:22 7:1 10:19 20:13 30:17 31:1, 15	putting 24:4 31:14	regional 21:5,8 29:6,7, 8	Rick 10:22,23 31:13
presented 19:17 23:13 30:24	<hr/> Q <hr/>	register 5:4 16:6	River 31:12
Presently 13:19		reimbursement 10:2	Rodriguez 3:14,15,16, 17 11:15,16 12:1,7,8,9, 10 16:9,13,18,19,20,21 19:24,25 20:1,2
pretty 15:21 20:18,25	qualifying 7:3 10:20	related 5:20	roll 3:11 12:4 16:15 19:21
primary 20:15 21:12	question 23:18	relating 3:8	rough 19:3
prior 5:25 8:23 31:4	questions 10:24 12:22 15:25 19:13,15 21:1 30:13 31:19	relationship 28:23	roughly 6:21
proceed 20:10	quickly 20:20	relevant 11:18	run 5:14 15:21 17:8
process 20:21 25:6 30:22	quorum 3:25	remaining 19:2,6	runs 29:9
program 21:2,4,18 22:6,9 29:3	<hr/> R <hr/>	remedial 31:11	<hr/> S <hr/>
progress 20:24	radar 31:11	remember 17:18 22:14	
project 7:3 8:12,13 9:3, 9,14,18 10:3,6,8,10,21 22:17,18,20,22 24:12, 17 25:9,10,18 26:23,24 27:5 28:17,18 29:12 30:2,3,5 31:3,8,24	Radle 8:5	reminder 9:18 18:2	removal 9:17
projects 6:1 7:4 14:16 21:22 22:3,10,13 24:21 27:4 31:21	ran 29:5	removal 9:17	report 4:2,16 5:15 6:2,4 7:8 10:13,22 14:1 17:6, 8,10,14
proper 6:13	rate 7:16	REPORTER 25:23	safety 4:24
property 9:25	rates 5:17 18:13,23	repurchased 15:9	Sasa 10:7
proposed 4:9 8:7,13	Ray 3:22 12:15 17:1 20:7	requested 6:8	scenes 23:4
provide 9:20 10:15 20:24 21:16,17	re-opening 3:8	required 22:23 26:4	scintillating 24:2
provided 4:24 5:17	read 25:23 26:9 30:19	requirements 13:22 25:15	screen 11:21
	real 27:18,22	requires 21:15	scrounge 22:15
	reason 21:12	research 23:5 24:23 30:23	seconds 13:4
	reasons 31:1	researching 23:11	section 8:15 26:21
			sections 26:13,22
			sediment 8:18,23 25:16

District Board of Directors' Meeting

12/16/2020

Index: sedi..Wies

sediments 23:16 25:10	sponsors 21:16 28:2	tank 6:10 9:2,10,13,17, 22,24	trust 5:15 6:18,19 14:12 17:6 18:25
sense 31:9	spread 14:24	team 8:14 9:3,15 10:9 31:8	type 22:25 28:6
SEP 6:1 7:3 10:21 22:22 23:13 24:13,24 26:3,7 28:16 29:14 30:20 31:5	staff 9:7	Technical 8:25	types 22:2 27:2
service-in-kind 21:16, 25 22:12,16 24:14,20 31:22	stage 3:8	Ted 3:18 12:11 16:22 20:3	Typically 15:20
settlement 22:7	stakeholders 22:11	teleconference 3:6	<hr/> U <hr/>
share 10:20 20:17 21:17 28:1 29:13,18 30:1,10 31:6	start 4:4 25:13 31:9	tended 29:24	unable 11:9
shared 8:3,9	starting 31:2,20	term 9:23	uncertain 25:21,25
sheet 9:1,9,22,23	state 3:9 26:14	terms 17:20 20:16 23:6, 17 25:21,25 30:6	unused 15:15
shift 29:24	statement 5:7 14:7	thing 17:18 21:20 26:5	update 8:11 9:20 10:15,17 20:20 21:4,11
ship 31:12	statements 5:10 14:6	things 18:4 22:1 23:3 30:21 31:20	updates 6:6
shore 6:9	status 8:10 9:9	thinking 27:1	user 7:15 14:10,23 15:6
shortly 19:9 21:7	statutory 30:6	thought 30:16,21	<hr/> V <hr/>
show 17:15	step 25:14 31:10	time 3:4 13:19 28:20 31:14	vacation 10:14
showing 17:11	steps 31:18	times 4:11	values 17:12,15
shows 14:21 15:2,8,10	Street 10:10	timing 23:6 25:12 26:10,11	venue 4:11
side 9:6 21:4,14	strike 11:17,22,25	tipping 7:21 28:11,15	video 3:5
signed 4:21 29:3	string 8:8	today 15:14,16,23 30:24	vision 29:9
significant 31:7	subcontractors 27:12	today's 3:3 4:6	visit 6:12
signify 13:5,7 14:4	submittals 11:5	Todd 8:5	vote 12:4,17 16:15 17:3 19:21 20:9
site 6:12	submitted 10:1	tomorrow 21:3	voucher 16:6
sites 7:7	submitting 10:5	tonight 21:13 24:10 30:12	<hr/> W <hr/>
situations 27:17	subsection 26:25	topic 9:12	wall 9:1,9,22
skipping 28:13	subsequent 31:3	tortured 26:8	wanted 25:11 28:13
sleep 24:5	substantively 25:14	total 17:16 18:1	Water 26:13
south 6:10 9:2,10,13, 22,24	summarize 11:4	touch 21:3	waterway 3:2 10:12 29:2
specific 23:7	summarizes 8:9	training 4:24,25 6:16	website 4:8
specifies 4:11	Summary 5:24	transfer 14:11	Wednesday 3:3 13:14
spend 15:22	Supplement 22:22	transition 10:9	west 6:8 9:17
spent 25:2	supplemental 25:9,18	Trevino 4:2,4 11:12 13:10 30:18,25	widely 30:10
sponsor 26:15,17 27:6, 7,20 28:10,16,24 29:2	surprisingly 21:20	trigger 25:12	Wieser 6:8 7:18
	system 25:4		
	<hr/> T <hr/>		

withdrawal 18:25

Wood 8:25

work 6:7,11 7:17,22
9:14,21 10:9,11 20:18
22:19,25 23:2,6,10,12,
14,16,18,21 24:8,14,19,
25 25:1,14,16,21 26:2,
3,12,17,18 27:9,15,21
28:2,5,10,16,17 29:1
31:7,14,22

work-in-kind 7:3

working 7:18 8:24
21:24 22:10

world 27:18,22

worth 17:22

wrecker 7:7

write 15:5

written 13:11 15:13

Y

yards 8:17,19

year 14:18,19 15:21
18:24 19:12

year's 31:4

years 5:25 21:24 22:9

Z

Zagar 3:18 12:11 16:22
20:3

Zoom 3:5 13:20