

THE MAYOR AND THE CITY COUNCIL MET IN SPECIAL SESSION FEBRUARY 16, 2023, IN THE COLEMAN THEATRE AT 6:00 PM WITH THE FOLLOWING MEMBERS PRESENT:

Bless Parker, Mayor
Brian Estep, Councilmember Ward 1
Kevin Dunkel, Councilmember Ward 2
Dwain Sundberg, Councilmember Ward 3
Brad Williams, Councilmember Ward 4

Bo Reese, City Manager
Ben Loring, City Attorney
Melissa Moore, City Clerk

Notice of a special meeting of the Miami City Council, Miami, Oklahoma, called by Mayor Bless Parker, was displayed in the main lobby of the Miami Civic Center and by posting on www.miamiokla.net starting at 9:30AM on February 14, 2023, pursuant to 25 O.S. §311(9) (a) and (b) and the agenda was displayed and posted in the same manner on February 15, 2023, at 4:45PM.

THE COUNCIL MAY DISCUSS AND CONSIDER ANY ITEM LISTED IN THIS AGENDA:

1. Call to Order

Mayor Parker called the meeting to order at 6:03PM.

2. Explain Procedures of the Meeting

Mayor Parker explained that there is a handout available that provides the procedures of the meeting.

3. Invocation

Invocation by Retired Pastor of First Christian Church, Leon Weece.

4. Pledge of Allegiance

Mayor Parker led the Pledge of Allegiance.

5. Welcome and Introductions

City Manager Bo Reese introduced the panel members and thanked everyone for attending. Panel members included Larry Bork with Goodell, Stratton, Edmonds & Palmer, LLP; Walker Stanovsky and Shannon O'Neil with Davis, Wright, Tremaine, LLP; Dai Thomas with Tetra Tech, Inc.; Joseph F. Halloran, Mayor Parker, Councilmember Brad Williams, Councilmember Brian Estep, Councilmember Kevin Dunkel, Councilmember Dwain Sundberg, and City Attorney Ben Loring. Reese recognized dignitaries in the audience: Chief Doug Lankford of the Miami Nation, Commissioner Mike Furnas, and a representative of the Quapaw Tribe. Reese provided a brief overview of the agenda and the procedures for the public input.

6. Brief History and Update on Civil Litigation

Larry Bork provided a brief history on the state civil litigation case City of Miami et al. v. GRDA. The first lawsuit with Grand River Dam Authority (GRDA) was in nineteen ninety-four (1994). Bork emphasized that flood control was included in the project from the beginning. Bork provided supporting documents that GRDA's engineers were concerned about the rule curve in the nineteen eighties (1980's). Bork explained that in two thousand and four (2004) McCool et al. v. GRDA Oklahoma Court of Appeals determined that the government did not authorize GRDA to flood people's property. Bork explained that the new license request is for no rule curve which would allow GRDA to raise the power pool level again. Bork presented historical flood studies and findings from nineteen forty-two (1942) through two thousand and seven (2007). In nineteen forty-two (1942) the Corps determined that the easements should have been acquired to elevation seven hundred sixty (760). Bork explained that in nineteen ninety-nine (1999) Dalrymple et al v GRDA, the Ottawa County District Court found GRDA liable for the increased elevation and duration of flooding. Bork explained that in the City of Miami, Oklahoma v. FERC (and GRDA) the United States Court of Appeals for the DC Circuit noted that, "there was extensive evidence of damage cause by flooding that was attributed to the operation of the Pensacola Dam."

Bork explained that between the nineteen forties (1940's) to nineteen sixties (1960's) the City had no information and available studies were not disclosed. In the nineteen eighties (1980's) the City was given incorrect information, they were told that there was no backwater effect. Bork stated that in the current nineteen ninety-two (1992) license the City did not have the information needed to understand the effects of the licensing process. Bork provided facts to some fictional statements that have been made, such as a buyout will kill the town. Bork explained that GRDA would probably only buy easements on land that has already been flooded. Bork clarified that the City claim is three point two (\$3.2) million dollars, and the City is one (1) of four hundred fifty (450) plaintiffs in the state civil litigation. If the City dropped their portion of the lawsuit, the lawsuit with the other plaintiffs would still proceed. Bork provided an update on the civil litigation which was that there is an appointment of a referee and modeling of natural vs dam caused flooding. The referee will decide and then case trials will begin.

No action taken.

7. Presentation on Current Licensing and Relicensing/ Rule Curves

Walker Stanovsky explained that the dam operations are meant to be determined in a collaborative process which balances power output with other factors, including flood control. Stanovsky stated that Davis, Wright, Tremaine is trying to assist the City with restoring a place in the balance for upstream communities. The license to operate the dam is issued by the Federal Energy Regulatory Commission (FERC) and the term is between thirty (30) and fifty (50) years. The relicensing began in twenty-seventeen (2017) and normally takes five (5) years, the current license has been extended until two thousand twenty-five (2025). Stanovsky explained that backwater flooding is caused by the physical presence of the dam and reservoir, sedimentation, vegetation, future changes, and operational decisions. Stanovsky explained that the flooding from the project caused the sediment from Tar Creek to pollute the City and surrounding area.

Shannon O'Neil explained that FERC could provide the following solutions: modifications to dam operations, infrastructure improvements, monitoring & maintenance, improved communication, flood cleanup & recovery, and require GRDA to acquire property and/or easements. O'Neil explained that if GRDA was required to acquire property and/or easements they must seek to negotiate the purchase first. The Federal Power Act does grant eminent domain authority, but only if an agreement cannot be reached. Possible solutions outside of the license are all the relief available from FERC, damages, funding for future improvements, economic development, GRDA governance reform, and joint legislative advocacy. O'Neil explained that you can share your story with FERC by writing Kimberly D. Bose and Debbie-Anne Reese at FERC. Citizens have the option to do so by mailing comments or stories or submitting them online at the FERC website. O'Neil explained that FERC representatives do read the comments or stories and that FERC needs to know your personal narratives and experiences.

No action taken.

8. Tribal Interest

Joseph F. Halloran explained that the Tribes are interested in working together to have a safe place to work and live. Halloran stated that Tribes were not involved in the relicensing in the past due to funding. GRDA and FERC did not acknowledge that Tribal Lands had been affected by this project and therefore the Trust Lands in the project boundary were never recognized. If there are federal lands within the project boundary, then the Federal Power Act authorizes the Department of Interior to impose conditions on the license. In twenty sixteen (2016) Jack Dalrymple came and informed the Tribes about the relicensing process. Halloran explained that they invited FERC to come and speak with the Tribes and they did. Halloran explained that it was stunning to see that their interests were not considered at all in previous licensing. The Tribes and the Department of Interior worked together to create a map of the federal lands in the project boundary. Finally, FERC admitted that there are federal lands affected by the dam. Since then, the Tribes have been very engaged in the relicensing process including the sedimentation and how that affects vegetation on Tribal Lands. Halloran explained that then a federal amendment was included on a bill which only affected this dam relicensing project which excluded the

Department of Interior from issuing conditions on the license. This amendment tried to cut the Tribes out of the relicensing process. Halloran emphasized that the Tribes are committed in partnering with the City on the relicensing process.

No action taken.

9. Presentation on Technical Studies for Relicensing

Dai Thomas explained that there are three (3) relicensing models/studies: flood routing model, hydraulic model, and sediment transport model. The flood routing model focuses on predicting the water-surface elevation in Grand Lake based on inflows and outflows (dam operation). The hydraulic model predicts behavior of waterflow. The sediment transport model predicts the changes in riverbed elevation. The flood routing model was portrayed as a picture of a bathtub in Thomas's presentation to explain that if more water is coming in than going out then that will lead to rules about how the water can be released downstream. The hydraulic model predicts the water-surface elevation, depth, and velocity. Thomas explained that the rule curve is the target elevation that GRDA would try to maintain throughout the year. Thomas showed the sediment transport model and predictions for the riverbed over the next forty (40) year period. The sediment transport model predicts the changes in bed elevation, changes in bed sediments, and the sediment volume to the lake. Thomas explained that they do not have confidence in the model that GRDA developed and has worked with FERC to fix the model.

No action taken.

10. Frequently Asked Questions

Bo Reese thanked everyone for their presentations and then began with the frequently asked questions.

Q: Why does this take so long? A: Walker Stanovsky explained that FERC licensing always takes a long time. This time there were some delays regarding quorums and studies. Stanovsky explained that the licensing project is complicated, and it takes a long time. Larry Bork explained that the Civil Litigation moved up to the court of appeals and then was kicked back down and there are four hundred fifty (450) cases. Bork explained that this is also a complicated process with a lot of elements. Stanovsky stated that unlike litigation, the relicensing process will come to an end and the City will live with the results.

Q: What if we win? Reese explained that if the civil litigation is won then the funds will go back into the City infrastructure. Bork explained that if the plaintiffs win then they will be awarded damages, and attorney's fees are paid. Shannon O'Neil explained that a win is that the license will include modifications that are beneficial to the City of Miami.

Q: What if GRDA is pushed to purchase easements and they buy all the property and push everyone out of town? A: Bork explained that GRDA will not have any interest in purchasing property that has not flooded. GRDA could be interested in purchasing property and/or easements that have repeatedly flooded.

Q: What is the City's plan? A: Reese explained that the City constantly works on the plan. Part of the plan involves removal of blighted structures that have been flooded and abandoned. Once the blighted structures are removed then some areas will go back to green space if they cannot be used. Another part of the plan is to have a significant part in planning on what happens when the City floods. This involves raising the roads that flood and creating an island. Reese explained that this is the plan with or without the help of GRDA. Ben Loring explained that highway 125 road is one of the most important roads to get raised due to life safety issues but must be done at the state level. Loring also explained that Steve Owens is also a state highway and would have to be raised by the state. Mayor Parker clarified that when the City knows it will be flooded, an emergency response team is housed on the south side of the river for possible emergencies.

Q: What is the Inhofe Amendment? A: Joseph Halloran explained that in 2018 the Tribes were able to file that there are federal lands in the project area. This provided the Department of Interior the power to work with FERC and make requirements. Senator Inhofe added an amendment to a bill that for this project Federal Lands will not be considered Federal Lands. This amendment was specifically added to remove the Department of Interior from this project. A: Stanovsky stated that right now the bill is confusing and is a subject of much debate. O'Neil explained that the Department of Interior can provide conditions that are mandatory requirements that FERC and the licensee must follow.

No action taken.

11. Public Input

Bo Reese explained the procedures for the public input section. Even with the presentations running later than anticipated, citizens were given time to ask questions or provide comments.

Pat Laub expressed her concern about the homeless population living in unoccupied homes and in homes that needed to be demolished due to flooding. Her question was can GRDA be sued for homes that need to be demolished. Bork explained that there is a statute of limitations but every new flood is a new cause of action. Mayor Parker explained that the Good Neighborhood Coalition is working on a plan to address homelessness.

Chief Doug Lankford asked what is a win with FERC? Shannon O'Neil explained that a win with the case in the Court of Appeals would be for a determination in what easements GRDA should acquire. Regarding the licensing a win would be better operating conditions for the City of Miami.

Mark Osborn explained that flooding has decimated our community and a solution is vital to the economic growth of the community. There have been significant gains in our cause and provided encouragement.

Martin Lively thanked the panel members for hosting the meeting and for eloquently breaking down such a complicated subject. Lively expressed his concern that there is not public discussion between EPA and FERC regarding the upstream hazardous materials located in the floodplain.

Rebecca Jim expressed her thanks for the meeting and reminded everyone to tell their story to FERC and to sign the please do not flood me petition. Jim also mentioned the flood survey that her team has continued to take in the community.

Mike Lillie asked what the life expectancy of the dam is. The answer is as long as the maintenance and upkeep is done and the dam is safe and secure. Lillie asked specifically when the sedimentation is considered. Dai Thomas answered that the dam still has a long-life expectancy.

No action taken.

12. Recap and Final Remarks

Bo Reese thanked the Council Members and panel members for their participation in this meeting. Councilmember Estep thanked the citizens for attending. Mayor Parker thanked the team of experts for their hard work. Mayor Parker addressed some information that was circulating in the community such as the City was offered a settlement. Mayor Parker stated that was not true and he emphasized that the former Mayors are part of the team still working on this project. Bo Reese explained that the City has two choices: one to stop fighting and hope that GRDA does the right thing, or continue to fight for the future of our community. Retired Pastor Leon Weece led a prayer for leaders of the community.

No action taken.

13. *Action Item* Adjournment

Councilmember Estep moved to adjourn. Councilmember Dunkel made the second. The Council was polled with the following results:

Estep, Aye

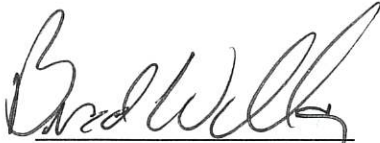
Dunkel, Aye

Sundberg, Aye

Williams, Aye

Parker, Aye

Mayor Parker declared the meeting adjourned at 9:38PM.



Councilmember Williams



Councilmember Sundberg



Councilmember Dunkel



Councilmember Estep



Mayor Bless Parker

ATTEST: 

Melissa Moore, City Clerk

