

A special meeting of the WEST COAST INLAND NAVIGATION DISTRICT COMMISSIONERS was held Friday, March 30, 1962 at the Manatee County Office Building.

Present were:

Ellsworth G. Simmons, Chairman, Hillsborough County
H.H. Anger, Vice-chairman, Charlotte County
L. Elmer Bustle, Treasurer, Manatee County
A.L. Anderson, Secretary, Pinellas County
Mack H. Jones, Lee County
Boyd R. Gernhard, representing Sarasota County
vice Warren S. Henderson

George Kumpe, Executive Director
J. Hardin Peterson, Sr., Special Counsel
Joe K. Herrin, Engineer
Dewey A. Dye, Jr., General Counsel

Absent:

Warren S. Henderson, Sarasota County

ADMINISTRATION

The Chairman called the meeting to order at 10:15 A.M. Minutes of the March 9, 1962 meeting were approved as presented. Vouchers #3002 through #3012 covering current bills were approved for payment.

The Chairman expressed regret that Commissioner Henderson could not be present at the meeting and welcomed Honorable Boyd R. Gernhard whom the Board of County Commissioners of Sarasota County had designated as their official representative for the meeting.

Commissioner Fred Haigh of Sarasota County was also welcomed to the meeting.

PROGRESS REPORT

The Director announced that the invitation to bid for Section 4 was out with bids to be opened around April 19.

Several unresolved items involving extra cost items were presented. If financing can be arranged there is only one spoil island, spoil area S-39, that assuredly cannot be eliminated before bids are opened. Elimination will require successful negotiations between owners of spoil area S-38, 38-A and B with the contractor which may take place only after the advertised "comprehensive" bulkhead line has been approved and necessary dredge and fill permits issued.

Each Commissioner spoke on the cost items in his County. Mr. Jones said that Lee County would like to get all possible spoil from Section 2 dredging for use on the proposed air strip on Gasparilla Island. The Director said additional spoil from the cut could be available, and Mr. Jones said Lee County had money set aside for the air strip project and would be glad to buy any quantity available at reasonable prices.

Commissioner Anger reported that in Charlotte County the owner of an island adjacent to spoil area C-25 has indicated he would contribute \$3,000 to eliminate the spoil area by placing spoil behind the bulkhead line.

The owner of a peninsula north of spoil area C-30 has agreed to contribute \$7,600 to eliminate spoil area C-31 by placing material on the peninsula.

It was pointed out that residents of Lemon Bay have asked whether the 2500' floating pipeline criterion approved by the

Corps of Engineers for three spoil areas in Section 4 could be applied to Section 2 to eliminate spoil islands. The question was answered that additional pipeline length is a determination made by the Corps of Engineers after justification by the State Board of Conservation.

At this point Commissioner Haigh was asked to give a summary of action taken by Sarasota County at a meeting attended by Col. Kumpe and Mr. Dye on March 29. Mr. Haigh expressed pleasure at the cooperation experienced during the past few weeks on the elimination of spoil islands in Sarasota Bay.

He stated that Sarasota County had sent a resolution to the Corps of Engineers pleading with them that the contractors bid on upland spoil areas exclusively with the understanding that the bay bottom sites will be used only if efforts have failed to obtain the areas. The resolution was read into the record. (Resolution filed in "Sarasota Official" correspondence.)

Mr. Haigh reviewed the status of the seven problem (island) spoil areas in Sarasota County:

Island 24-C, south of Blackburn Point Bridge - understand this has been eliminated.

27-1 Alt. - A pipeline easement in the vicinity of Sarabay Acres is "almost 97% assured" of signing on Monday, April 2. The Chairman reminded that this was the last Board meeting before the deadline for changes in specifications expire unless another one is called. Mr. Dye said this pipeline easement involved an extra cost item which would be discussed later.

S-33 Alt. - Remaining open water spoil site in a chain of three islands, S-31, 32 and 33 Alt., for which the Board of Conservation gained Corps of Engineers' approval to increase the pipeline length. It can be eliminated by a contribution of \$6,100 by local interests.

S-34 (Cedar Cove Island) - A great deal of work has been done towards developing an alternate solution which would carry the material across Siesta Key and place the spoil on the Gulf beaches there. Surveys, drafting, signing of easements, needed to be completed and a contribution of \$11,600 must be arranged. It is hoped that some statement can be obtained from the Internal Improvement Board that they would not consider this beach spoiling as constituting a permanent enlargement of uplands. Sarasota County Commissioner Johnson Warren will go to Tallahassee on April 2 and 3 and make this request.

S-36 Alt. (Florence Manor) - Suitable easements for uplands have been signed and so the island spoil area may be eliminated.

S-39 (Ed Wright) - Bulkhead line change and dredge and fill permits must be and have been advertised - there is complete agreement among the Board of County Commissioners and residents for setting this bulkhead line, the only catch is time. The Chairman asked Mr. Haigh if he recognized that the District would have to proceed as they are (on spoil area S-39) and Mr. Haigh said he understood that was the only course the District could follow. Mr. Wright has stated he would negotiate with the contractor to fill spoil areas S-38 A and B to eliminate spoil area S-39, but results cannot be guaranteed until and unless

negotiations with the contractor are successful. Mr. Gernhard pointed out that Mr. Wright will negotiate only if spoil may be placed on both spoil areas S 38-A and B.

Mr. Haigh said that he thought it was reasonable to assume that the IIB acted affirmatively on the Edwards Islands area (spoil area S-40), action concluded last week by the Board of County Commissioners.

S-40 Alt. - was reported as in very much the same status as the Ed Wright area; hearings are set and there is complete agreement on approval by the Board of Commissioners, but the time element is critical. Mr. Gernhard said that after the April 3 meeting of the Board of County Commissioners, if this application were acted on affirmatively, a wire would be sent the Trustees in Tallahassee to permit their approval in time to eliminate from the advertisement spoil areas S 40-1 Alt. and 41-Alt. Mr. Simmons suggested it would be very helpful if a copy or sketch of the bulkhead line they were asking for could be presented to the Trustees so they could more readily act on the request. Mr. Dye said he would be in Tallahassee at the April 3 meeting and would assist in any way he could.

Mr. Haigh concluded his summary by saying that it was felt that the problems were substantially well in hand, two islands are eliminated as are also, except for two contributions required, S-33 Alt. (\$6,100) and S-34 Alt. (\$11,600). In addition the grantors of two pipeline easements require that spoil be placed in the Gulf rather than on the beach. (24-B

P/L 13 and 24-1 Alt. P/L 2A) at a cost to local interests of \$13,000 per pipeline. Mr. Haigh said that Sarasota County had not found any way that they could legally make any of these payments and asked that WCIND work with the County on supplying the contribution, as keystones or key points in what it is hoped will eliminate spoil islands in Sarasota County.

Commissioner Bustle reported that for Manatee County arrangements have been completed for placing spoil intended for M-11 on County-owned Leffis Key, that contribution of \$500 has been made by the County and that on April 2 Mr. Dye will have the easement for the County to sign.

Commissioner Anderson said that in Pinellas County a contribution of \$8,000 was needed to reduce the size of spoil area P-39 by placing material on spoil area P-40 and of \$13,100 to eliminate spoil area P-42 by placing spoil on spoil area P-41 and spoil area P-43, as reported at the last meeting of the Commissioners.

Mr. Dye read a summary of other extra cost items required for Section 4: two pipelines to the Gulf @ \$13,000 instead of five as originally expected; diking costs; spoil area S 35-8, \$1,000; S 35-4, \$800; S 37-1, \$800; S 40-1, \$2,000 and S 35-5 (to be paid by owner). He said that these were costs which must be paid in order to use the areas and, except for the last area, are the only usable areas in the vicinity, that two estimates have been secured from contractors.

The Chairman reminded Board members of the \$500 commitment by Manatee County and the fact that Lee County has money in hand

for spoil they wish to purchase for the construction of the air strip on Gasparilla Island and said that he didn't feel the matter should be "fish in one county and fowl in another." Mr. Haigh said he was willing for Sarasota County to pick up the tab for these charges if there were any way legally that it could be done. Commissioner Anderson said that WCIND should consider the public interest to keep the bays free of spoil areas if possible and made a motion that inasmuch as Sarasota County has no funds to pay these costs on private lands that WCIND pay the costs and that WCIND do the same for Manatee and Lee Counties.

The Chairman asked legal counsel if the Board was being "blackjacked" into paying these extra costs and Mr. Dye said that would be a matter of opinion. Mr. Jones said that this method of handling the matters would result in confusion and jealousy and that he would have preferred condemnation proceedings. Mr. Bustle said that he felt it should become a matter of policy for the Board, that Manatee County had not considered that WCIND would be in a position or have the inclination to pay for fill on any private property; that he felt that action taken should apply to all counties in the District, that the matter should be approached as a matter of policy. Mr. Jones pointed out that it was too late for Lee County to pack up and take these benefits as the work has been completed up to Charlotte Harbor, and that Lee County had felt that the policy of the Board was that when a property owner wanted to enhance his property he would pay, but WCIND should not do it.

Chairman Simmons pointed out the very fine cooperation evidenced in trying to eliminate spoil islands in Section 4 and the time limit involved and that he himself had mixed emotions on the matter, that it is a matter of policy.

Chairman Simmons said that the Boards of County Commissioners have limitations of expenditures without advertising for bids. Mr. Peterson said there was no specific requirement for advertisement in the acts setting up WCIND or applying to special districts and that the WCIND Board was charged to act only in their best judgement of public interest, and, therefore, had the right to make expenditures along this line. He read a formal opinion on this matter which was made a part of the record (Page 354). Mr. Simmons said that as a member of the Board he would accept Mr. Peterson's opinion but that he believed in the principle of competitive bids, Mr. Peterson agreed. Commissioner Anderson pointed out that the Pinellas matter was one in which competitive bidding has been had, and that what was proposed was in essence the elimination of an island by a change order from which public benefits will accrue. "You are fully supported by the legal authority in Pinellas County in your views." Mr. Simmons said action must be taken in Section 4 without delay and that time was getting short in Pinellas County.

Commissioner Anderson withdrew his motion.

The attorney stated that \$500 contribution on S27 P/L 3B and \$800 on spoil area S 37-1 (Palmer Ranch) was the most economical way of obtaining permission to use these areas. Commissioner Anderson made a motion that on the recommendation of the attorney

WCIND pay these costs as being in the public interest and the interest of the Navigation District. The motion carried.

The Director pointed out that some additional extra costs might be encountered in eliminating spoil area S-34, such as the pipeline crossings of several private access roads. Mr. Dye said that the Birdsell property might involve damages to shrubbery and grounds which might need to be repaired or replaced. Commissioner Anderson moved that inasmuch as the amounts presented are estimates only that representatives of this Board should have complete authority, since it is to the public interest and in the best interest of the District, to proceed within reasonable limits of these estimates. The motion carried. The Chairman reaffirmed that approximate amounts were being approved, that the Director and the staff were to see that settlements were reasonable.

Commissioner Anderson moved that the District pay \$13,000 each for spoil areas 24-X P/L 13 and S 24-1 Alt. P/L 2A, costs necessitated because of a change in construction procedures by the Corps of Engineers, such payments being in the interest of the public and the Navigation District. The motion carried.

Commissioners Jones and Bustle commented that placing spoil on uplands would enhance the value of the land. Mr. Haigh stated that in attempting to obtain areas no consideration was given to enhancement, it was a matter of getting any land available so as to eliminate spoil islands. Mr. Ralph Davis pointed out that on S-33 Alt., a historical site owned by Dr. Eide, the owner did not ask for the spoil, that the County

was begging for the area because there was no other place to put it. It was pointed out that this was a swampy area which bred a disease-bearing mosquito. Mr. Bustle asked if the District could spend public money to put fill on private property. Mr. Peterson said it could not on private property, unless "you find it is for the best interest of the District and the public." Mr. Haigh said that he was trying to gain financial support through the Mosquito Control Board but could not get a solution for the March 30 meeting; that if WCIND would take care at this time of these contributions to keep islands out of the bay the County would continue to work on other financial solutions. Commissioner Anderson made a motion that "in the opinion of the Board after hearing the facts and the statements it is proper and in the best interest of the District and the public to eliminate the area S-33 Alt., by putting the spoil from it in the spoil area S-32." The motion carried with two dissenting votes, Mr. Bustle and Mr. Jones. Mr. Bustle was not convinced that the Board had the right to move islands out of the Bay by putting such spoil on private property and Mr. Jones saying it would have been best to have condemned the property. Chairman Simmons said he agreed with Mr. Jones and Mr. Bustle but voted "aye" in the public interest. Mr. Gernhard said that he would furnish sworn affidavits as to the desirability of eliminating these islands and also would furnish documentation from the State Board of Conservation.

Regarding the Sanderling beach area, S-34 Alt., the owners will not contribute any portion of the \$11,600 contribution and

will not approve spoil on the beach unless the County and the Trustees waive any interest in possible extension of uplands. Chairman Simmons reminded the Board that the spoil islands were not areas the Trustees would normally have granted and there was a commitment to the Trustees by the District that everything possible would be done to eliminate islands. "In obtaining island spoil areas we incurred an obligation to do what we could to eliminate them." Mr. Dye said it was up to the Board to determine whether or not it was reasonable; Mr. Jones said he didn't think this was any way to save money. Mr. Bustle asked if this would not set some kind of a precedent and would it not obligate the Board on Pinellas County's request. Chairman Simmons said it was setting some precedent but it was to get Section 4 under contract and that Pinellas County was already under contract. Mr. Anger said that in the interest of time something must be done. Commissioner Anderson moved approval of expenditure of \$11,600 by WCIND to eliminate spoil area S-34 and place the spoil in the Gulf at the Sanderling Club beach, as being in the best interest of the public and the Navigation District, recommending to the County and the IIB that they waive any interest in possible extension of uplands. The motion carried with Commissioners Jones and Bustle voting against it and Mr. Jones stating that this was an improper way of getting spoil areas.

Chairman Simmons requested Mr. Jones to determine how much spoil was needed for the air strip on Gasparilla Island.

Commissioner Bustle asked the Board to consider paying additional costs for having some spoil now destined for spoil

areas M-12 and 15 on Perico Island pumped across Anna Maria Key to the County Beach. Commissioner Jones moved that the staff look into the feasibility of this proposal. Motion carried.

Chairman Simmons asked what the Board's feeling was on the request of Pinellas County concerning spoil areas P-40 and 41. Mr. Anderson said that no funds were available in Pinellas County for the purpose. The Director said that the contractor would be in that area about June or July. Chairman Simmons asked that these matters and the one in Manatee County be left until the next meeting.

Mr. Dye was asked to check with the Attorney General's office while he is in Tallahassee on the action taken at this meeting.

Venice - The Director stated that a letter had been sent to the Mayor and the President of the City Council of Venice asking that a representative be named from the City with whom the District staff could work on utilities along the Waterway.

Bridges - The Director reported that an authenticated copy of the 3-way agreement between the State Road Department, Sarasota County and WCIND had been received.

The Director reported that the Road Department budget for the fiscal year includes an item for working on the fender systems only of the Stickney Point and Blackburn Point Bridges. A statement of the Corps of Engineers requirements to assure the safety of these bridges will be sent to the First District office in Bartow and any costs they cannot bear will be brought back to the District for consideration. Chairman Simmons felt the Road Department would do

this work. Mr. Gernhard said that a resolution would be considered at Tuesday's meeting of the Sarasota Commissioners asking the Road Department to cooperate on this bridge work.

The Progress Report was accepted.

NEW BUSINESS

The next meeting was set for April 9, 1962 at 2 P.M. at the Manatee County Office Building.

Mr. Dye thanked Mr. Haigh for personally going into the field with WCIND staff and working with the people, giving the feeling that they were working with one of their own members and not strangers.

Mr. Peterson reported that Mr. Minthorne had written twice in regard to the report the WCIND committee made to the Board on the alleged conflict of interest by Mr. Merrin. He felt he should bring this to the attention of the Board but could recommend no Board action unless the Board thinks his report was not complete.

The Director said that the early records of the District were not very extensive and asked that a committee might review the terms and duties of Mr. Merrin's employment. Mr. Bustle and Mr. Dye were asked to review this matter with the help of anyone they desired and bring back a report at the next meeting.

The meeting adjourned at 12:05 P.M.

W. L. Anderson

Secretary

C. J. Himmis

Chairman

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J. HARDIN PETERSON, JR.

TELEPHONE MUTUAL 2-2174
P. O. BOX 111

March 29, 1962

Honorable Ellsworth Simmons, Chairman
West Coast Inland Navigation District
Tampa, Florida

Dear Chairman Simmons:

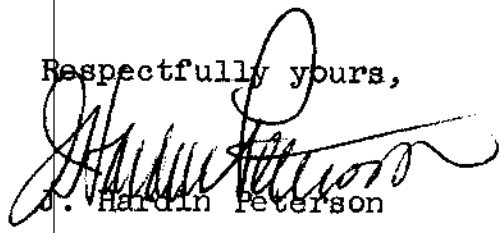
Your letter of March 9, 1962, copy of which is attached hereto, it is my opinion that the West Coast Inland Navigation District could legally pay for the elimination of the two island spoil areas and pay for the placing of the spoil on the Corey Causeway, if, in the judgment of the Navigation District, it is to have the spoil deposited at Corey Causeway instead of the islands and if the Board of Commissioners of the District consider it proper and to the interests of the District to do so. It is possible that an arrangement could be made with Pinellas County that some portion of the area in which the deposit is made may be used as a rest area or embarking or disbarking area for those using the canal.

In your letter you asked the question as to whether it would be necessary to take competitive bidding. In my opinion, it is not necessary. In Chapter 61-1590, which is the act amending and reenacting the acts relating to the West Coast Inland Navigation District, the only provision requiring advertisement for bids appears in Section 18, and that does not relate to a situation such as we are discussing in this opinion.

While West Coast Inland Navigation District is authorized specifically by statute, yet, Chapter 374 relating to canal authority and navigation districts, etc. does not require advertisement.

Thus, however, the provision for the audit of the accounts of the District, in view of the generally accepted thought that in public matters there should be an opportunity for competition, I would suggest that the matter be discussed with the auditor who handles the continuous audit.

Respectfully yours,



J. Hardin Peterson

JHP/rap

PROGRESS REPORT

9 March 62 - 30 March 62

CONSTRUCTION

By letter of March 14 the Corps of Engineers informed the Navigation District that changes in the plans for Section 4 would be accepted up to 11 days prior to the opening of bids.

Section 4 was advertised on March 19 with a bid opening date set for April 19.

LANDS

Lee County - Information from the Corps of Engineers was furnished to the County with respect to fill from the Waterway being deposited on the proposed County air strip on Gasparilla Island.

Charlotte County - The Corps of Engineers furnished an estimate of \$7,600 to eliminate spoil area C-31 by moving 66,400 cubic yards of material to a peninsula immediately north of spoil area C-30. Maximum pipeline would be 3,400'.

Sarasota County, Section 2 - County action was completed on all spoil areas except for the small private portion of spoil area S-2. Mr. Van Ferguson reported discrepancies in the purchase applications in that they extended beyond the recommended bulkhead. Revised sketches were prepared for action by the Board of County Commissioners on March 27.

Section 4 - Deeds to the 9 island spoil areas were returned by the Corps of Engineers with the request that they be deeded to the Navigation District who in turn would deed them to the United States. In requesting the revised deed, Navigation District asked that spoil area 24-C be excluded as no longer required.

The Corps of Engineers accepted proposed spoil area 24-E or a pipeline easement across Casey Key across from this spoil area. Acquisition of spoil area 24-E is in process.

The Corps of Engineers furnished two estimates on the elimination of certain spoil islands:

a. Spoil area S-33 can be eliminated at a contribution of \$6,100 by moving the 40,800 cubic yards intended for it to spoil area S-32. Maximum pipeline distance would be 3600'.

b. Spoil area S-34 can be eliminated by contribution of \$11,600 for the movement of 75,600 cubic yards across Casey Key to the Gulf near the Sanderling Club. The original estimate of \$10,600 was increased when the beach owners indicated that fill must be placed along the entire 1400' rather than the 700' frontage included in the first estimate.

c. Spoil area 35-5 (Gregg)- Contribution of \$10,500 would permit the placing of 54,500 cu. yds. of material in the area, dredge between stations 1+00 and 11+00 in Cut 37, maximum pipeline should be about 3,000'.

The Dunn application (spoil area S-36) as newly amended) requires another advertisement and public hearing. The Navigation District is negotiating a spoil area on the uplands behind the proposed bulkhead line, approval has been promised by the owners.

The Board of County Commissioners has advertised a comprehensive bulkhead line along the west shore of Sarasota Bay from spoil areas S-35-3A to 38-B. Decision on this line cannot be made in time to permit elimination of spoil area S-39 by a contribution by owners for fill on spoil areas 38, 38-A and 38-B. Mr. Ed Wright has stated that he would negotiate with the contractor to fill spoil areas 38 and 38-B once these areas may be filled but could not guarantee an agreement being reached. Mr. Wright's statement was predicated upon bulkhead line changes and dredge and fill permits being obtained without his participation. The Navigation District has agreed to submit the bulkhead line and dredge and fill application.

Use permits from the State Road Department were requested for use of the drainage ditch along U.S. 41 for spoil area S 24-E and for pipeline crossing under or over State Road 784 (Midnight Pass Road) in connection with spoil areas S-31, the proposed spoil area at Sanderling Club, spoil area S 35 2-R and S 35 3-A.

On March 23 the Corps of Engineers requested a small additional right of way tract on Venice Inlet. Acquisition will not delay letting the contract for Section 4.

Statements of objections to any spoil islands were received from Mr. and Mrs. Saul Stern and Mr. M. Berkowitz of Sarasota.

Manatee County - The Corps of Engineers furnished an estimate of \$500 to eliminate spoil area M-11 by placing material on county-owned Leffis Key. 6,600 cubic yards of material are involved with a maximum pipeline of 2700'. The Board of County Commissioners agreed to provide this contribution and request was forwarded to the Corps of Engineers requesting acceptance of the contribution.

BRIDGES

Chairman John R. Phillips of the State Road Department acknowledged receipt of the March 5 resolution passed by the Board of Commissioners of the Navigation District on funding the Albee Bridge.

ADMINISTRATION

Senator Smathers and Congressman Cramer acknowledged receipt of the Navigation District resolution supporting the Tampa Bay-St. Marks study.

Senator Holland informed Chairman Simmons that the improvement of the Sunshine Skyway borrow channel had been approved under a procedure applicable to small projects (Section 107 of the 1960 Rivers & Harbors Act), that further Congressional action would not be required. Maintenance of the Sunshine Skyway channel will be included in future maintenance of the West Coast Waterway. Funds for the initial improvement of the Sunshine Skyway channel could be available after July 1, 1962 from the Section 107 program if funds requested in the President's budget message are appropriated.

Current Florida Waterway Committee brochure on waterways in the state was reviewed and suggested changes made to the editorial committee:

The Navigation District mailed out legal notices required for spoil area 40-1.

Mr. Dye, Mr. Merrin and the Director visited Jacksonville on the afternoon of March 9 to discuss Section 4 land problems.