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## **HRCIDTA SUIT RELATED DAMAGES**

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## **HRCIDTA Suit Related Damages, REDUX – 3/14/23<sup>1</sup>**

In early January RME produced a report for Barber Valley Development (BVD) exploring a variety of economic issues associated with the Harris Ranch Community Improvement District (HRCID#1). Section V of that report dealt with damages that had been incurred by BVD, the Harris Family Limited Partnership (HFLP), and Harris Ranch homeowners.

To recap, late in 2021 the Harris Ranch CID Taxpayers' Association (HRCIDTA) filed for Judicial review of the HRCID#1's decision to reimburse BVD, issue bonds, and levy taxes on homeowners in the CID. As a result of HRCIDTA's suit all reimbursements from the HRCID#1 to BVD/HFLP were put on hold, a situation that persists as this is being written roughly 17 months later and counting.

The January report concluded the section on damages with the note that:

“ . . it cannot be emphasized strongly enough that this is a snapshot of financial damages at a moment in time. The wheels of justice turn slowly. The suit is not resolved. Inflation is still running and continues to run well above historic levels. Interest is continuing to accumulate.

It is well within the realm of possibility that the current situation's impact on BVD and homeowners in the CID could persist for another year, or longer.

All of the damage numbers listed above are increasing on a daily basis and will continue to increase until the suit is resolved.”

In the previous report RME concluded, on the first anniversary of the suit, 10/2022, that inflation and interest related damages to BVD/HFLP and Harris Ranch homeowners associated with the interruption in the operations of HRCID#1 totaled about \$2.9 million.

As will be shown on following pages, that number is now up to about \$4.1million and increasing at a rate of about \$270,000 per month.

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<sup>1</sup> This report builds on the RME, 1/3/23, report, “Critique Of The Barber Valley Development / City Of Boise Harris Ranch CID” and replaces chapter V of that report.

## **DAMAGES OVERVIEW**

Larry Crowley and Bill Doyle formed HRCIDTA and filed for judicial review to challenge the CID in mid 2021. They contend that either the COB or the developer should be responsible for improvements to the district, not homeowners in the CID. While HRCIDTA contend that the CID itself is illegal their request for judicial review only directly addresses two items. Their suit challenges the CID board's resolution to authorize \$7.3 million in payments to BVD and the issuance of \$5.2 million in bonds.

As a result of HRCIDTA's suit, the mechanics of bond placement forced HRCID#1 to pause both the \$7.3 million payment to BVD as well as the placement of additional bonds. Further, as a result of the pausing all reimbursements to BVD and bond placements for funding, the initiation of the remaining development agreement CID improvement projects have been put on hold.

HRCIDTA's request for judicial review on 10/5/2021 directly challenged the reimbursement of three projects and the associated accrued interest. These items are presented in the following Table 1.

**Table 1 - Projects approved for reimbursement by the CID Board on 10/5/2021.**

GO20-6	East Parkcenter Blvd. Roundabouts at Wise Way, - Old Hickory and Shadywood	\$197,026.95
GO21-2	Dallas Harris Estates TH #9	\$1,670,900.05
GO21-3	Dallas Harris Estates TH #11	\$4,009,490.97
Sub Total		\$5,877,417.97
GO21-1	Accrued Interest due on reimbursed projects )	\$1,390,833.17
Grand Total		\$7,268,251.14

At the moment in time that HRCID#1 recommended bonding and reimbursing the projects and interest payments detailed in the preceding table, another six projects totaling \$8.2 million were qualified for HRCID#1 approval and reimbursement. Those projects are detailed Table 2 below.

**Table 2 - Projects approved for reimbursement by the CID Board on 2/21/2023 and additional projects submitted for reimbursement approval.**

<b>ID #</b>	<b>Project Name</b>	<b>Project Reimbursements Approved by CID Board 2/21/2023</b>	<b>Additional reimbursements submitted for CID Board Approval</b>
G022-1	Haystack Subdivision No. 1, SW 12 & 13 Roadways & Improvements	\$1,428,172.44	
G022-2	Dallas Harris South Sub No.1, SE5, Roadways & Improvements	\$1,660,319.34	
G022-3	Dallas Harris So. Sub. No. 2, SE7,SE8 & SE-11 Roadways & Improvements	\$1,167,812.36	
G020-3	Harris Ranch Community Infrastructure District #1		\$99,955.60
G020-7	2007 Conservation Easement		\$1,979,000.00
G021-4	Southern Half Roadway Parcels- Portions of Phase 2,6,8,9 &11 Rights of Way		\$1,874,000.00
<b>Total</b>		<b>\$4,256,304.14</b>	<b>\$3,952,955.60</b>
<b>Grand Total<sup>2</sup></b>			<b>\$8,209,259.74</b>

Combining the \$7.3 million in projects the HRCID#1 recommended for reimbursement with the other \$8.4 million in projects BVD has completed and are qualified for reimbursement, the total amount put on hold as a result of the HRCIDTA suit comes to \$15,477,511.

While the suit may have put a hold on HRCID#1's ability to reimburse BVD it has no effect on the terms by which BVD constructed projects included in the development agreement and paid contractors accordingly. In other words, regardless of the outcome of HRCIDTA's suit, BVD is still entitled to be reimbursed for the projects detailed above. Further, assuming the HRCID#1 prevails in the suit, BVD is expected to complete additional projects consistent with the development agreement with remaining CID funds, funds that have been substantially diminished as a result of the HRCIDTA suit.<sup>3</sup>

<sup>2</sup> In the 1/3/2023 RME report the grand total was \$8,427,021.67. Subsequent review by HRCID#1 and BVD adjusted the number downward by \$218,000.

<sup>3</sup> In terms of BVD's eligibility for reimbursement the \$7.3 million in Table 1 and the \$8.2 million in Table 2 are functionally identical as regards HRCID#1's obligation to reimburse BVD. Both sets of projects, and a few still to come, are all part of the same development agreement HRCID#1 was designed to fund. The

**HRCIDTA Impact on Projects Approved for Reimbursement by the CID Board on 10/5/2021.**

The BVD/HRCID#1 contract stipulates that the CID will pay interest on BVD's costs, from the time projects are completed until the date they are scheduled for reimbursement at an interest rate of Prime+2 percent. For the seventeen months that reimbursement has been stalled, the Prime+2 rate is 7.13%. Applying that interest rate to the \$5.9 million of capital costs and \$1.4 million of accrued interest approved by the HRCID#1 on 10/5/2021 results in additional interest charges of \$733,639.

There is a problem with the 7.13% interest rate mentioned in the previous paragraph: It is less than inflation even with the inclusion of the two percent adder.

Briefly, the interest rate paid by the HRCID#1 is designed to compensate BVD's borrowing costs. It is not designed to compensate BVD going forward in, effectively, a lending role. If BVD is to remain undamaged for fronting the cost of these projects, and then carrying them for 17 months and counting, BVD must not only be compensated at the Prime+2 percent interest rate, it must also be compensated for 17 months of inflation.

Subtracting the 7.13 percent HRCID#1 (prime+2) rate from 9.25 percent inflation and adding 2 percent results in a "true-up" percentage rate of 4.12 percent. Applying that interest rate to the \$5.9 million of capital costs and \$1.4 million of accrued interest approved by the HRCID#1 on 10/5/2021, results in additional interest charges of \$343,332 and \$81,246 respectively for the two categories.

To summarize, for the projects recommended for reimbursement on 10/5/2021, BVD is entitled to the original reimbursement amount of \$7,268,251, plus interest and inflation related impacts \$1,158,217, for a grand total of \$8,426,468.<sup>4</sup>

For details, please see lines 1 – 5 in the damages table on page 9.

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only substantial difference is that the projects in Table 5 were approved by the HRCID#1 board for reimbursement at a given point in time. That act fixed the dollar amounts of capital and interest that the CID intended to reimburse for a given set of projects(s) and set in motion the issuance of bonds and associated levies for that purpose.

<sup>4</sup> The interest and inflation related numbers must be viewed as low end numbers. They are moving targets, typically growing over time, that will only be calculable after the suit is resolved.

### **HRCIDTA Impact on Additional Projects Qualified for Reimbursement.**

At the time HRCIDTA sued for judicial review regarding the approval for reimbursement of the \$7.3 million discussed in the previous section, BVD had completed additional CID related projects worth \$8.2 million that qualified for reimbursement. Unlike the projects in the \$7.3 million group, the latter group does not include an identified accrued interest component. A value for that item will need to be calculated and added at a later date.

The BVD/HRCID#1 contract stipulates that the CID will pay interest on BVD's costs, from the time projects are completed until the date they are scheduled for reimbursement at an interest rate of Prime+2 percent. For the seventeen months since 10/5/21 the Prime+2 average is 7.13%.

Applying the 7.13% (prime+2) interest rate to the \$8.2 million of capital costs of projects qualified for reimbursement on 10/5/21 results in interest costs of \$828,622.<sup>5</sup>

As detailed in the previous section, the HRCID#1 interest rate of 7.13% is less than inflation. Applying the same "true-up" rate of 4.12 percent to the \$8.2 million of capital costs results in additional interest and inflation related charges of \$479,548.

To summarize, for the remaining projects qualified for reimbursement on 10/5/2021, BVD is entitled to the original cost of \$8,209,260, plus subsequent interest and inflation related impacts of \$1,308,170, for a grand total of \$9,517,430.<sup>6</sup>

For details, please see lines 6 - 9 in the damages table on page 9.

### **HRCIDTA Impact on Purchasing Power of Remaining Funds**

The CID bonding limit for improvement projects is set at \$50 million. Prior to the HRCIDTA suit, about \$34 million remained un-reimbursed. After deducting the combined \$15,477,511 discussed in the preceding two sections, approximately \$18.9 million remains available for CID related Harris Ranch improvement projects.

The original \$50 million bonding limit is not indexed to inflation. As a result, any delay in utilizing the money remaining in the fund decreases its purchasing power.

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<sup>5</sup> In the previous section HRCID#1 documented an interest amount for reimbursement for based on the time from project completions up to the point when they authorized reimbursement and bonding. RME assumes that there will be a similar associated interest amount for the projects in this section. However, as of this writing that number is unknown, and thus the values in this section are likely understated.

<sup>6</sup> Op. Cit. 18.

Since HRCIDTA filed suit last year the Bureau of Labor Statistics indicates that there has been 9.25 percent inflation for the 17 months. The result of that inflation has decreased the purchasing power of the remaining \$18.9 million in the CID GO fund available for improvement projects by about \$1,600,151.

If HRCIDTA's suit settled today, the \$1,600,151 reduction in buying power of the remaining CID funds must be considered as damages to homeowners in the CID.

For details, please see lines 10 - 12 in the damages table on page 9.

### **Damages Summary**

HRCIDTA's suit for judicial review put on-hold roughly \$15.5 million due to BVD/HFLP in October of 2021 associated with a variety of projects and interest for which the CID board had granted approval for reimbursement and/or were qualified for reimbursement.

The effect of the delay has resulted in inflation and interest related damages to BVD/HFLP and the homeowners in the CID.

The 17-month delay to date has resulted in inflation and interest related to BVD and the HFLP of about \$2.5 million.

The effect of the delay has also resulted in inflation and interest related damages to homeowners in the CID of \$1,600,151.

Total combined inflation and interest related damages to the BVD/HFLP and the CID homeowners comes to about \$4.1 million at the time of this writing.

**Finally, as stated in the previous iteration of the study, it cannot be emphasized strongly enough that this is a snapshot of financial damages at a moment in time. The wheels of justice turn slowly. The suit is not resolved. Inflation is still running and continues to run well above historic levels. Interest continues to accumulate.**

**All of the values for damage listed above are increasing on a daily basis and will continue to increase until the suit is resolved and reimbursements resume.**

**As a rough estimate, damages are accruing at about \$270,000 per month!**  
**HRCIDTA Suit Related Damages**

Line No.	Item	Percent	Approved for Reimbursement	Total Impact	Incremental Impact
	Inflation and Interest True-up		10/5/21	3/20/23	
1	Interest	7.13%		\$ 733,639	\$ 733,639
2					
3	Capital	4.12%	\$ 5,877,418	\$ 6,220,750	\$ 343,332
4	Capitalized Accrued Interest	4.12%	\$ 1,390,833	\$ 1,472,079	\$ 81,246
5	Sub Total		\$ 7,268,251	\$ 8,426,468	\$ 1,158,217
			Awaiting Approval for Reimbursement		Incremental Impact
	Inflation and Interest True-up		10/5/21	3/20/23	
6	Interest	7.13%		\$ 828,622	\$ 828,622
7					
8	Capital	4.12%	\$ 8,209,260	\$ 8,688,807	\$ 479,548
9	Sub Total		\$ 8,209,260	\$ 9,517,430	\$ 1,308,170
		Percent	Remaining GO Funds	Total Impact	Incremental Negative Impact
	Inflation Affect		10/5/21	3/20/23	
10	Inflation 10/21 - 3/2023	9.25%	\$ 18,901,994	\$ 17,301,843	\$ 1,600,151
11					
12	Grand Total				\$ 4,066,538
<b>Summary Statistics</b>					
13	BVD and HFLP Totals		\$ 15,477,511	\$ 17,943,898	\$ 2,466,387
14	HR HOA Totals		\$ 18,901,994	\$ 17,301,843	\$ 1,600,151
15	Grand Total		\$ 34,379,505	\$ 35,245,741	\$ 4,066,538

#### Notes

**Lines 3, 4, and 8,** True-Up percentages. The terms of the CID call for BVD to be compensated at Prime+2 for funds that BVD spent on projects details in the development agreement projects. For the past 17 months Prime+2 has averaged 7.13% while inflation for the same period was 9.25%. To make BVD whole, BVD needs to be compensated for the difference between inflation and the 7.13% "prime+2" to break even, plus an additional 2% (for a total of 4.12%) to achieve the intended amount of compensation detailed in the CID contract.

**Lines 1 and 6,** Prime+2 average for the 17 months since 10/5/21 = 7.13%.

**Line 4D,** This is the amount of interest in addition to the 10/5/21 authorized amount going forward to 3/30/23.

**Line 10,** Percent = BLS Inflation 10/21 - 3/23