

Barnes County Water Resource District
PO Box 306
Valley City, ND 58072
(701)-845-8508

January 10, 2011

MINUTES

Present: Pat Hurley, Duane Lettenmaier

Absent: Jeff McMillan

Also present: Mike Opat, Commissioner Eldred Knutson.

The meeting was called to order by Pat Hurley, acting Chairman.

Board member, Duane Lettenmaier moved to approve the minutes of the December 2010 meeting. Hurley seconded, the motion carried.

Hurley moved to table the financial reports due to the Barnes County Auditor's office not having the accounting system updated with the 2011 Commissioner approved budget. Duane seconded the motion, the motion carried.

Mike Opat, engineer for the District, informed board members that Sellin Brothers Inc. proposal (SBI). SBI submitted a written counterproposal on December 16, 2010 with details of the counter proposal discussed at the December 13th, 2010 meeting. The proposal included the utilization of riprap armorment at specific locations at the beginning and end of phase I, and installation of a geotextile product over the remainder of the spillway included in Phase I. Mike was unable to determine whether or not the suggested geotextile product are currently available or if it is even manufactured; Mike contacted SBI to inquire, but SBI could not provide any evidence the product is still manufactured. Instead, SBI submitted yet another product for consideration and included calculations to support its selection of the product; Mike reviewed the calculations that were submitted and determined they were incorrect, and had not been completed by an engineer or anyone with expertise in geotextile applications. To date, SBI has not submitted an acceptable proposal for protecting the spillway to remedy SBI's failure to timely complete Phase I. The potential for erosion and catastrophe downstream still exists.

Hurley moved, seconded by Lettinmaier to reject Sellin's proposal for a time extension. Hurley called for a roll call vote. The results are as follows: Hurley-yes; Lettenmaier-yes. The motion carried. Hurley moved to deny Sellin's counter proposal for armoring the spillway (change order), seconded by Lettenmaier. The motion carried. Hurley called for a roll call vote. The results are as follows: Hurley-yes; Lettenmaier-yes. The motion carried.

SBI formally requested full payment of the \$150,000 previously withheld, and for the District to waive its rights to later assess liquidated damages. The District was advised by Sean Fredricks, attorney for the District, that by withholding the \$150,000 the District does not waive any of their other remedies available under the contract and under North Dakota law, and the District should reserve all other remedies, including liquidated damages. Hurley moved to decline SBI's full payment request through the spring of 2011 to determine if emergency work is necessary. Lettenmaier seconded the motion. Hurley called for a roll call vote. The results are as follows: Hurley-yes; Lettenmaier-yes. The motion carried. Hurley moved to decline SBI's request to refrain from assessing any liquidated damages. Lettenmaier seconded the motion. Hurley called for a roll call vote. The results are as follows: Hurley-yes, Lettenmaier-yes. The motion carried.

At the December meeting SBI agreed to indemnify the Board and hold the Board harmless regarding any damages arising out of or relating to SBI's work, the project, or the contract documents.

Discussion was held on the possibility of spring flooding. It was the consensus of the board that in the event that substantial flooding appears likely in 2011, the District will approach SBI to determine if SBI is willing to properly armor the entire upper spillway to protect the Clausen Springs Dam and downstream communities. If SBI agrees, the District will permit SBI to utilize as much on-site material as possible, but SBI will be responsible for any additional costs at its own expense, and not at the expense of the Barnes County Water Resource District or the Project. Following SBI's completion of emergency repairs, the District will then release the \$150,000 retainage to SBI, less the costs and damages (including excess engineering, legal and other expenses incurred as a result of, and reacting to, SBI's defaults).

If SBI is not willing to perform any requisite emergency work, the District will continue to withhold the \$150,000 to complete any emergency repairs, and to offset any other damages as a result of SBI's failure to complete. If the cost of completing the emergency repairs together with damages does not exceed \$150,000, the District will release any remaining retainage to SBI. If there is no flood in the spring of 2011, the District will release retainage, less any damages incurred in the meantime, to SBI.

The District formally requested that Mike and Sean prepare a written notice of change order denial, and written notice of the Districts withholding of the \$150,000.

Discussion was held on the progress of the Emergency Action Plan (EAP) for the Clausen Springs Dam. Mike reported that the proposal will be ready to review in February at the District's regular monthly meeting. The Secretary was instructed to notify Emergency Officials (Barnes County Emergency

Management, Barnes County Sheriff's Department, Kathryn Fire Department Fire Chief, Kathryn First Responders) to attend the February 14th regular meeting. The Secretary was also instructed to keep the North Dakota State Water Commission and the North Dakota Game & Fish Department notified on the progress of the EAP development.

Hurley reported that letters of support were sent to Legislators and Senator's in support of a funding increase to the USDA's predator control program.

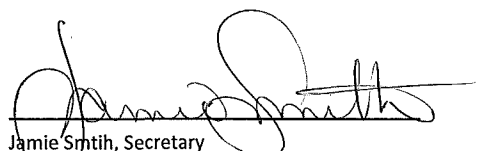
Commissioner Eldred Knutson was present to discuss the matter of agenda publication. Eldred reported that the County Commission passed a motion requiring the Barnes County Water Resource District to forward their agenda to the Auditor by the Wednesday before their regularly scheduled meeting for publication in the official county newspaper. Eldred also provided a copy of a document that he received from the North Dakota Attorney General's Office in regards to open record laws. The Board expressed their appreciation to Eldred for coming to the meeting to clarify the Commissioners intentions. The Board then presented a legal opinion from the Boards Attorney, Sean Fredricks, regarding the Boards compliance to Open Records/Open Meeting Laws and that North Dakota law does not require the Board to publish its meeting notices or agendas. It was decided to take the Commissioner's motion under advisement and to request a legal opinion from the District Attorney, Sean Fredricks, in regards to having to email/send the agenda to the County Auditor on the Wednesday prior to the regularly scheduled meetings.

A brief discussion on current projects was held in order to inform newly appointed board member.

Bills were presented and approved for payment.

Being no further business, Lettenmaier moved to adjourn. Hurley seconded the motion. The motion carried.

Respectfully submitted by,



Jamie Smith, Secretary
Barnes County Water Resource District