

Barnes County Water Resource District
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03-14-2011
Minutes

Present: Chairman Jeff McMillan, Board Member Duane Lettenmaier

Absent: Board Member Pat Hurley

Also present: Mike Opat- Moore Engineering, Marlyn Maasjo, Commissioner-John Froelich, Brent Gustufson-NRCS, Steve Urness-News Dakota, Dave Luessen-Valley City Times Record, David Shey-FSA.

Meeting called to order by Chairman, ^{Jeff} Jeff McMillan. Board member, Duane Lettenmaier moved to approve the minutes of the February regular meeting. Chairman McMillan seconded the motion. The motion carried. Chairman McMillan moved to approve the Revenue and Expenditure Reports, seconded by Lettenmaier, the motion carried.

Marlyn Maasjo addressed the board in regards to water issues in Thordenskjold Township. Mr. Maasjo rents Sections 16/15 and 9/8 in Thordenskjold and has been experiencing lost cropland due to wet conditions. Mr. Maasjo requested to re-open a drain that was dug approximately 10 years. Brent Gustufson from the NRCS, noted that the reason for the closure of this drain was because the drain was not dug as present to the NRCS, and inevitably went through 3 or 4 wetlands, causing them to close drain. Brent stated that another drain could be dug but that the landowners would have to sign a Temporary Minimal Affects. Discussion was held on the condition of the Thordenskjold drain. This drain is scheduled to be cleaned the summer of 2011. Ultimately if something is dug to relieve flooding in these sections's the water would flow to the Thordenskjold Drain. The Secretary was asked to research how to handle this and to research maps. The Board will contact Mr. Maasjo and let him know what the next step is.

Discussion was held on Wade Bruns request to approve his drain tile application's prior to acquiring a signed NRCS statement. Mr. Bruns sent a letter to the NRCS stating that he will utilize proper setbacks, non-perforated drain tile, or mitigate the wetlands that are shown on the Master Copies of Wetland Maps (1985 or 1986) maintained by the USDA, NRCS. Mr. Bruns also committed to develop a Mitigation Plan for each of the potential drain tile sites. Gustafson said that Mr. Bruns can do this. When asked what would be done if the drain tile is installed and wetlands are drained, Gustafson stated that he will use the Farm Bill to protect the wetlands. Discussion was held on approving all of the Bruns application's that has meet all of the other Barnes County criteria, since NRCS was ok with Mr. Burns' proposal Chairman. McMillan moved to table this issue until Board member Pat Hurley is present.

Discussion was held on the Arlen Huber complaint that was received. There was a miss communications with the State Water Commission resulting in the complaint going unanswered since the October meeting. Mr. Huber filed two complaints. Complaint #1 against the Farm Service Agency (FSA) and complaint #2 was filed against the Barnes County Highway Department.

Complaint # 1: Section 13, T138N R56W; Mr. Huber states "FSA looked the other way-never did job and spot checked. Has not kept its law of 1985-hasn't enforced". He notes in the complaint that "Never dries out anymore, the farmers received payment for drainage construction, also-seems no one gets spot checked for draining or tiling". He goes on to say "Wet years when I was a kid, but not water like these years in canals, but not on grain fields anymore". Mr. Huber claims to have "lost \$8,000.00 of hay this year (2010) with no recovery". David Shey from the FSA was in attendance to answer questions. Discussion was held on weather Barnes County Water Resource has jurisdiction over a Federal Agency. The District does not have jurisdiction. After discussion, Duane moved to table the complaint until Board member Hurley is present. Chairman McMillan seconded the motion, the motion carried.

Complaint #2: Section 13, T138N R56W; Mr. Huber states "About 3 years ago Barnes County Highway Department contracted two six feet metal culverts to be set south of my land-under highway to replace a replace a five foot one". He continues by stating "the last two years, Highway has run over about 300' by 6" deep". "I believe they (the culverts) are higher set and slanted". "A \$250,000.00 box culvert was reduced to two six feet culverts, \$40,000.00. Where is the \$210,000.00"? Kerry Johnson, Barnes County Highway Superintendent, was in attendance to answer questions. Mr. Johnson stated that the Barnes County Highway Department did replace a five foot culvert in that location. The Department ordered a

Hydraulic study in 2007-2008, the results of this study indicated that a double eight foot box culvert would be best suited for this location. The Barnes County Highway Department requested federal dollars for funding assistance on this project. In summary the project was not eligible for federal disaster funding. Since the box culvert costs were higher than what the County could afford, Mr. Johnson felt that a suitable cost effective solution would be to install two six foot culverts. Mr. Johnson noted that one of the two pipes that was installed was specifically set at the same elevation as the previous five foot culvert. He did state that the second six foot pipe was installed at a slightly higher elevation to keep it out of the mud. He felt that the pipes were correctly set as both of them still are roughly half full of water. Mr. Johnson stated that if the pipes would be dry if they were impeding the flow of water. Chairman McMillan requested that Mr. Johnson submitted a written document to the Board stating his reasoning. Lettenmaier moved to table the complaint until Pat Hurley was present, McMillan seconded the motion. The motion was tabled.

Mike Opat of Moore Engineering was present to discuss Clausen Springs Dam Auxiliary Spillway project. Mike stated that the State Water Commission has installed a gauge to monitor water levels. Monitoring will begin this week. Mr. Opat presented the Board with the completed EAP. The Secretary was instructed to obtain signatures. After all signatures are gathered the EAP can be dispersed.

Discussion was held on emergency preparations for possible spring flooding. The following resolution was presented and read by the Secretary;

BARNES COUNTY WATER RESOURCE DISTRICT
RESOLUTION OF EMERGENCY REGARDING
CLAUSEN SPRINGS DAM

WHEREAS, the Barnes County Water Resource District (the "District") is a North Dakota water resource district and political subdivision under Chapter 61-16.1 of the North Dakota CenturyCode.

WHEREAS, the District owns, operates, and maintains the Clausen Springs Dam in Barnes County, North Dakota (the "Dam"

WHEREAS, in 2009, substantial flooding caused significant erosion to the Dam, which nearly led to a catastrophic failure of the Dam. WHEREAS, a failure of the Dam would be catastrophic for the community of Kathryn, North Dakota, and potentially for other communities and properties downstream of the Dam.

WHEREAS, following the 2009 and 2010 spring floods, the District undertook an improvement project to repair the Dam, including auxiliary spillway improvements (the "Project").

WHEREAS, the District solicited cost-share from the State of North Dakota and other political subdivisions as a means of constructing the Project, including the North Dakota State Water Commission, the North Dakota State Game and Fish Department, the Red River Joint Water Resource District, and the Barnes County Commission.

WHEREAS, the District advertised the Project for bids, including a timeline for completion of Phase I of the Project, which required the lowest responsible bidder to complete Phase I by December 17, 2010, to protect the Dam from erosion in the event of any spring flooding.

WHEREAS, the Phase I timelines were a significant aspect of the bidding process in light of the potential for a failure of the Dam, and the Board ensured the Phase I schedule was a prominent aspect of the bidding process in the interest of protecting the health, safety, and welfare of the residents of Barnes County, including those communities and properties downstream of the Project.

WHEREAS, Sellin Brothers, Inc. ("SBI"), was the low bidder for the Project, and the District ultimately awarded a contract for the Project to SBI.

WHEREAS, SBI failed to complete Phase I in accordance with the contractual deadlines, a substantial violation of the contract.

WHEREAS, spring flooding appears imminent, and as a result of SBI's substantial defaults, the District must prepare a contingency plan in advance of any spring flooding to avoid any significant erosion of the Dam, and to ultimately avoid a potentially catastrophic failure of the Dam.

WHEREAS, the current snow water equivalent within the Clausen Springs Dam watershed is similar to the snow water equivalent in the watershed in 2009 and 2010, years when significant flooding occurred.

WHEREAS, in addition to the potential for flooding as a result of high precipitation levels currently in the watershed, the District cannot predict the amount of additional snowfall and rain that may fall in the watershed prior to the spring melt.

WHEREAS, failure to construct emergency repairs of the Dam as a result of SBI's defaults and failure to timely complete Phase I of the Project could result in erosion and, possibly, a failure of the Dam, and could present a significant threat to the health, safety, and welfare of Barnes County residents.

WHEREAS, installation of emergency protection measures to protect the Dam from potential erosion and to prevent a potentially catastrophic failure could require up to three weeks to complete.

WHEREAS, under normal circumstances, in accordance with Chapter 48-01.2 of the North Dakota Century Code, the District must first direct its engineer to prepare plans and specifications before awarding a construction contract for a public improvement in excess of \$100,000.

WHEREAS, in accordance with N.D. Cent. Code § 48-01.2-04(2), the District may dispense with public bidding and advertisement requirements if an emergency exists, and may contract for the construction of a public improvement without seeking bids if necessary in an emergency situation.

WHEREAS, in light of the flood emergency situation quickly emerging in Barnes County, and in light of the failure of SBI to remedy its defaults regarding its failure to complete Phase I in time to prepare for a 2011 spring flood, the District's engineer cannot timely prepare plans, specifications, or cost estimates regarding emergency repairs, improvements, or remedial measures to the Dam, and cannot identify or even estimate in a timely manner which emergency repairs, improvements, or remedial measures might be necessary or might exceed \$100,000.

NOW THEREFORE, BE IT RESOLVED, that an emergency flood situation exists in Barnes County that threatens the integrity of the Dam as a result of SBI's failure to timely complete Phase I of the Project and, as a result, the Dam could be at significant risk of eroding or failing.

BE IT FURTHER RESOLVED, that it is necessary for the District's engineer, Moore Engineering, Inc., to determine what emergency repairs, improvements, or remedial measures may be necessary to prevent the Dam from failing during a substantial spring flood event.

BE IT FURTHER RESOLVED, that, to the extent the District, in consultation with its engineer, identifies any necessary repairs, improvements, or remedial measures as necessary for purposes of ensuring the integrity of the Dam and to avoid any catastrophic failure, it is necessary for the District to dispense with public bidding and advertising requirements and to contract for the construction of any requisite repairs, improvements, or remedial measures, in accordance with Section 48-01.2-04(2) of the North Dakota Century Code.

BE IT FURTHER RESOLVED, that, to the extent the District, in consultation with its engineer, concludes any repairs, improvements, or remedial measures are necessary to ensure the integrity of the Dam, the District authorizes its engineer to procure a qualified and competent contractor or contractors, without the need for public bidding and advertising, to promptly construct the requisite repairs, improvements, or remedial measures.

BE IT FURTHER RESOLVED, that the District authorizes its engineer to negotiate reasonable contract amounts with a contractor or contractors to promptly construct the requisite repairs, improvements, or remedial measures to the Dam, taking into consideration the emergency flood situation that exists.

BE IT FURTHER RESOLVED, that the District authorizes its engineer and attorney to prepare all necessary contracts, and authorizes its Chair to execute all necessary contracts, at reasonable contract amounts to ensure prompt construction or completion of the requisite repairs, improvements, or remedial measures to the Dam, taking into consideration the urgency of the emergency flood situation that exists.

BE IT FURTHER RESOLVED, that the 2011 Spring Flood emergency declaration and the remedial steps identified in this RESOLUTION are necessary to promptly provide the requisite repairs, improvements, or remedial measures to the Dam to avoid a potentially catastrophic failure of the Dam, in the interests of protecting the health, safety, and welfare of the residents of Barnes County, especially those communities and properties downstream of the Dam, and to protect property and prevent substantial property damage to the greatest extent possible.

APPROVED:

Jeff McMillan, Chair

ATTEST:

Jamie Smith
Secretary-Treasurer

Lettenmaier moved to approve the Resolution of Emergency Regarding Clausen Springs Dam, McMillan seconded the motion. A roll call vote was taken; McMillan-yes, Lettenmaier-yes. The resolution was approved.

A short discussion was held on the mediation request by Sellin Brothers. It was decided that it was in the best interest of Barnes County to let Ohnstad, Twitchell and Moore Engineering handle the mediation process.

Discussion was held on the McKee Dam located in Section 27 of Valley Township. It was decided to contact the landowners and bring it to their attention that the District is looking into the conditions of the Dam. The Secretary was instructed to write this letter and to contact the State Water Commission to further investigate the background of the dam.

Board member Lettenmaier gave a report on the Corps of Engineer's flood meeting in Lisbon on March 9th. The Corps reported to the assembled group that flooding would depend on the melt and the

amount of precipitation received in the next few weeks. The Corps also reported that the pool level at Bald Hill Dam is at its lowest level possible and has been since February. A Retention studies along the Sheyenne was discussed and it was noted that the Sheyenne Joint Water Resource District commissioned a study of possible retention sites. Lettenmaier was asked to solicit effected Barnes County Landowner's opinions. Mike Opat will assist the Secretary with compiling a list of landowners for the possible Tomahawk and Bald Hill Creek sites.

Jerry Loibl, City of Fingal, left notice with the office that the City of Fingal would like to reinstate the ditch block that is located west of town on County Road 34. A brief discussion was held. It was the consensus of the board that this would be up to the road authority. The Secretary was instructed to notify Mr. Loibl that he should contact the Barnes County Highway Department.

Chairman McMillan will be attending the Upper Sheyenne Water Resource District meeting in Carrington on March 16th.

Brent Gustufson informed the Board that he has accepted a promotion and will be leaving the Valley City NRCS office. He is expecting his replacement to be in place by June. The Board expressed their appreciation and wished him well.

Duane moved to approve the bills that were submitted for payment. McMillan seconded the motion, the motion carried.

Being no futher business, Lettenmaier moved to adjourn the meeting, McMillan seconded the motion, the motion carried. The next meeting will be held on April 11.

Respectfully submitted,

Jamie Smith

Secretary, Barnes County Water Resource District