

Barnes County Water Resource District  
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**EMERGENCY MEETING**

May 26, 2011

Law Office's of Ohnstad Twitchell-West Fargo, ND

Present: Chairman McMillan, Shawn Fredricks and Chris McShane-Ohnstad Twitchell  
Present via conference call: Pat Hurley and Duane Lettenmaier

The emergency meeting was called to order by Chairman McMillan at 3:30 pm.

Discussion was held on a mediated settlement between the District and Sellin Brother's Inc. in regards to the Clausen Springs Auxiliary Spillway repair project.

Sean Fredricks presented to the District a possible mediated settlement agreement. Discussion was held. Hurley moved to approve the mediated settlement agreement as presented. Lettenmaier seconded the motion. The Chairman called for a roll call vote. The results are as follows; McMillan-yes, Hurley-yes, Lettenmaier-yes. The motion carried.

The following Mediated Agreement was signed:

1. Sellin Brothers, Inc. (SBI) will pay Barnes County Water Resource District (BCWRD) the sum of \$150,000.00 which amount is already being held by BCWRD and may be retained by BCWRD to meet this payment obligation.
2. SBI will not be required to do any further work on the Clausen Springs Dam Auxiliary Spillway Improvement-2010 project.
3. The dispute giving rise to this Mediated Settlement Agreement is settled hereby and shall not be labeled or considered to be a termination either for convenience or for cause of SBI.
4. The retainage in the approximate amount of \$37,500.00 shall be released by BCWRD to SBI immediately.

5. BCWRD rather than SBI will be responsible for payment for project materials including ACB Mats and Fabric furnished by Submar, including freight but not for storage costs stored at St. Josephs, Minnesota.
6. Neither party shall disparage one another in the future. This obligation of no disparagement shall be enforced both by BCWRD and SBI upon their respective directors, officers, employees and agents.
7. BCWRD will hold SBI harmless from any claim of SBI's subcontractor Wanzek, up to \$6,517.00 (171.5 sq. ft. @ \$38 per sq. ft.).
8. Sellin will be afforded reasonable time to remove its equipment from the project site.
9. This Mediated Settlement Agreement constitutes a release of each party, its officers, directors, employees and agents by the other from all claims and obligations regarding the project but formal documents of settlement and release will be executed if submitted and if consistent. Herewith. The release herein involved includes release of United Fire and Casualty Insurance Company, the surety on the project. No claim will be made by BCWRD against said surety.
10. Any disputes regarding promulgation and enforcement of this Mediated Settlement Agreement will be resolved by binding arbitration without appeal, Mediator Richard L. Pemberton acting as arbitrator on the same terms as he has acted as mediator herein.

Discussion was held on moving forward with the repair project. Hurley moved to have Moore Engineering prepare bid documents for the remaining portion of the project and to proceed with bid advertising the project. Chairman McMillan called for a roll call vote. The results are as follows; McMillan-yes, Hurley-yes, Lettenmaier-yes.

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

Respectfully submitted,

Jamie Smith, Secretary  
Barnes County Water Resource District