

Barnes County Water Resource

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Minutes

04/09/2012

Present: Chairman-Jeff McMillan, Vice Chairman- Pat Hurley, Manager-Duane Lettenmaier, Manager-Jerry Hieb, Manager-John Kohler, District Legal Council- Sean Fredricks and District Engineer-Mike Opat.

Also present: Donald Jorissen, Duane Farnquist, Kevin Harstad, Scott Legge, Scott Gullickson, Amanda Brandt-NRCS, Harold Pross, John Schwehr, Henry Berger, Greg Mueller, Kim Amann, Ryan Berger, Larry Reidman, Tim Wallery, Edward and Ann Marie Thom, Neil Amann, Lloyd Wieland, Dave Luessen-VCTR, John Froelich-BC Commission, Roger Berntson-BC Commission, Dean Carpenter.

Chairman McMillan called the meeting to order at 8:00 AM. Vice Chairman Hurley moved to approve the minutes of the March meeting with corrections. Manager Kohler seconded the motion. All were in favor, the motion carried. Manager Lettenmaier moved to approve the Revenue and Expenditure reports for the month of March. Vice Chairman Hurley seconded the motion. All were in favor, the motion carried.

Legal Drain #2

Donald Jorissen addressed the board regarding the extension and cleanout of the Legal Drain #2. Mr. Jorissen felt that the drain did not need to be extended and felt that the assessment district for the legal drain should not have to pay for this work. He also stated that he felt that the board had not followed proper procedure and that he was not in favor of the extension because of this. He however would be in favor if the costs were not taken from the drain assessment fund and if the district followed proper procedure by securing a permit and proper right of way easements. Scott Legge spoke regarding the cleanout location. He stated that he was not in favor of starting on the top end of the drain. However, the drain did need to have a cleanout. Neil Amann expressed concern over how the cleanout was handled and felt that communications with landowners were less than sufficient. John Schwehr stated that the culverts in State Highway #1 were lowered by the NDDOT some years ago and that if the survey elevations were taken from these culverts prior to the cleanout that would explain why the excavation had gotten so deep. An audience member questioned who would benefit from the extension of this drain. The same audience member suggested that Manager Lettenmaier may have a conflict of interest. Sean Fredricks discussed with the board regarding the proper determination of a conflict of interest. Mr. Fredricks explained that normally he would have a private discussion with the manager in question and ask a series of questions. Then depending on those answers he would make a

recommendation to the board to ask the manager to refrain from voting on the topic in question. Manager Lettenmaier stated that he would feel more comfortable if he abstained from any procedural votes as he owns land that may receive benefit. Mr. Fredricks recommended that Duane not participate in the voting regard Legal Drain #2. Vice Chairman Hurley made note that he did not have a problem with Lettenmaier voting but since there was concern from the audience he would support Lettenmaier non participation. Vice Chairman Hurley moved to have Manager Lettenmaier refrain from voting due to a possible conflict of interest. Manager Kohler seconded the motion. Chairman McMillan called for a roll call vote. The results are as follows; Hurley-yes, Hieb-yes, Kohler-yes and McMillan-yes. All were in favor, the motion carried.

Discussion was held regarding the United States Fish & Wildlife Service (USFWS) easement located in the SW ¼ Section 2 T140N R60W (Potter Township). The temporary agreement to lower the wetland is valid through June of this year. This agreement was made between the Barnes County Water Resource District and the USFWS. Subsequently the landowner will not be responsible for any easement violations. The USFWS is willing to work with the District to set a reasonable elevation for the wetland at the request of the District. Amanda Brandt, District Conservationist with the NRCS stated that she was in agreement with this.

Mr. Fredricks advised the Board that the project needs to be on record and that a permit is needed for any deepening, widening or extension of the drain. He suggested that the Board request the District Engineer to complete a review of the work to determine if a permit was needed and to review the existing right of way. If a permit is required, he suggested that the board instruct the Engineer to complete a permit application. If additional right of way is needed the board was instructed that they will need to acquire it. Manager Kohler moved to have Moore Engineering review the drainage and to review the right of way to determine if a permit and additional right of way is needed. Vice Chairman Hurley seconded the motion. All were in favor. The motion carried. Manager Kohler moved to have Moore Engineering complete an application for the drain extension if one is required. Vice Chairman Hurley seconded the motion. Chairman McMillan called for a roll call vote. The results are as follows; Hurley-yes, Kohler-yes, Hieb-yes and McMillan yes. The motion carried.

Manager Lettenmaier suggested that the culvert in County Road #11 North is plugged (Between the NE ¼ of section 10 and the NW ¼ of section 11, T140N R60W (Potter Township). He stated that the original 36" culvert had been buried during the time that John Windish was Highway Superintendent. A 30" culvert was installed when the road was raised and this is now plugged. Lettenmaier stated that he felt that his land was not draining yet because of this culvert.

Discussion was held on how to manage the drain should the extension be approved. Chairman McMillan suggested the installation of a gate. Discussion was held on completing a reassessment of benefit for Legal Drain #2. Moore Engineering has completed a review of the LIDAR data and has identified the watershed that contributes to the drain.

Griggs County/Pierce Township Complaint

The Secretary reported that she had received an email from Tom Moe, Griggs County Water Resource District Lawyer. The email stated that Griggs County would be sending aerial pictures of the alleged Barnes County Drainage. Mr. Moe states that the drainage also includes the following sections in Pierce Township: 1,12,11,16,17,19,20,21,22,25,26,27,28,29,32,34,&36 and the following sections in Uxbridge Township: 1,2,4 & 5. Mr. Moe suggests amending the Griggs County Complaint to include all of the above locations. A brief synopsis of the history of this complaint the engineer's findings and legal opinion was given by Mr. Fredricks. The Board instructed Mr. Fredricks to send notice to Griggs County that no evidence of construction of drainage by private parties was found during the engineer's review of the parcels identified in the complaint. And to note that the Barnes County Water Resource District does not have authority over township road ditches constructed, operated, improved, or maintained by townships. Mr. Fredricks was also asked to address their wishes to "amend" the existing complaint to include 21 different sections. The District will not accept any attempts to "amend" the current complaint especially in 21 sections that would require expensive investigations. It was the consensus of the board to suggest that the Griggs County board facilitate a discussion with Stutsman, Barnes and Griggs counties to discuss a mutually- acceptable resolution to general water problems, otherwise Barnes County will dismiss the complaint.

Application to Install a Subsurface Drain for Eldon Maasjo in the Northeast Quarter of Section 19 and the East Half of the Southeast Quarter of Section 19 in Nelson Township

The Board reviewed an *Application to Install a Subsurface Drain* dated March 8, 2012, for Eldon Maasjo. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicant seeks to install a drain tile system in the Northeast Quarter of Section 19 and the East Half of the Southeast Quarter of Section 19 in Nelson Township, Barnes County, North Dakota. The project will include two gravity outlets; the first outlet on the south end will discharge directly into a natural watercourse. The second outlet in the Northeast Quarter will outlet in the northeast corner and will include buried pipe approximately 300 feet through a township road ditch to the east, along the north boundary of Section 20, until discharging into a natural watercourse.

Mike Opat reviewed the application and recommended that the Board require Applicant to install and maintain erosion protection in both natural watercourses. In addition, Mr. Opat recommended that the Board require Applicant to obtain an easement to install and maintain buried pipe along the north boundary of the Northwest Quarter of Section 20. With regard to the outlet in the Southeast Quarter that will discharge directly into a natural watercourse, no *Thirty-Day Notice* was necessary under N.D. Cent. Code Section 61-32-03.1 and the Board cannot require Applicant to obtain any flowage easements from downstream landowners. With regard to the buried pipe outlet from the Northeast Quarter, Applicant previously provided a *Thirty-Day Notice* to the owner of the Northwest Quarter of Section 20, Mr. Monte Peterson. Manager Kohler subsequently learned that Applicant intends to bury a pipe along the north boundary of the Northwest Quarter of Section 20, and, therefore, this project did not require a *Thirty-Day Notice*. Mr. Peterson did not submit any comments to the Board.

According to records on file with the Barnes County Recorder's Office, Applicant owns the Northeast Quarter and the East Half of the Southeast Quarter of Section 19 of Nelson Township.

It was moved by Manager Kohler and seconded by Manager Lettenmaier to approve *Application to Install a Subsurface Drain* dated March 8, 2012, for Eldon Maasjo in the Northeast Quarter of Section 19 and the East Half of the Southeast Quarter of Section 19 in Nelson Township, subject to the following conditions:

- 1) That Applicant obtain and record (with the Barnes County Recorder's office) an easement (and not just a written consent), to permit Applicant to install, construct, and maintain buried pipe along the north boundary of the Northwest Quarter of Section 20 of Nelson Township, Barnes County, North Dakota;
- 2) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 3) That Applicant provide and maintain adequate erosion protection at any and all outlets into natural watercourses;
- 4) That Applicant obtain written permission from the Nelson Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches, or to bore through its township road;
- 5) That Applicant notify the Barnes County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 6) That Applicant notify the Barnes County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; and
- 7) That Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

Application to Install Drainage for Dean Carpenter in the Northwest Quarter of Section 1 and the Northeast ¼ of the Northeast Quarter of Section 2 in Thordenskjold Township

The board reviewed Mr. Carpenter's drainage application dated 10/26/2009. Mr. Carpenter would like to install a culvert that would drain a wetland in the NE ¼ of Section 2 of Thordenskjold Township. Mr. Carpenter stated that he would like to do this because this slough routinely fills up and inundates 125th Ave SE. The proposed project will discharge into the Thordenskjold Drain. The proposed location is within the confines of the drain assessment. Discussion was held on downstream notification requirements. Mr. Fredricks indicated that downstream easements may not be required as this project will essentially be a lateral drain into a legal drain. Mr. Fredricks suggested that Mr. Carpenter's application be submitted for review by the Board professional staff. Manager Kohler move to submit Mr. Carpenter's application to drain to the District's engineer and legal counsel for review. Manager

Hurley seconded the motion, all were in favor. The motion carried. Mr. Carpenter was instructed to submit the \$500.00 application fee.

Thordenskjold Drain maintenance and reassessment of benefit

Manager Hurley reported that maintenance is past due on the drain. He stated the south end of the drain is especially in need of a cleanout and that culvert repairs are needed. Manager Hurley requested that the District move forward with a re-assessment of benefit for the drain so that the District can commence the much needed maintenance and repairs. Mike Opat showed the board a map of the contributing water shed for the drain and explained that this was established using LIDAR data with a 100 year rainfall event in mind. Discussion was held. Mr. Opat will provide lists and percentages of benefit at the next regular meeting in May. Mr. Fredricks will prepare the reassessment documents in preparation for next month's meeting. Mr. Fredricks informed the board that a hearing must be held and notice must be published and sent to landowners to be reassessed.

Sanborn Lake Outlet Project

H&S Contracting has requested that the outlet be opened to lower lake levels so that work can be completed late this spring. Chairman McMillan reported that the outlet was opened on April 02, 2012 at 10:00 AM. Discussion was held on the construction of a field access between the Southwest ¼ section 34 and the SE ¼ Section 34 T141N R59W (Stewart Township). The board was advised that this field access cannot be installed without Mr. Offner's permission. Mr. Offner's request for payment for a flowage easement was also discussed. There was discussion on flow easements that still need to be obtained. The Secretary was instructed to supply copies of unsigned easements to the portfolio holders of this project. Chairman McMillan and Manager Lettenmaier will make individual onsite visits to obtain signatures.

Discussion was held on a culvert located between the Southwest ¼ if Section 26 and the Northwest corner of the Northwest ¼ Section 34. George Piatz, Stewart Township Chairman, reported via telephone that water was running along the east side of the culvert and that Stewart Township would be closing the road due to safety concerns. The board had installed this culvert last fall and it is possible that it was not compacted enough prior to sending water through it. It was decided to request that Kerry Johnson, Barnes County Highway Superintendent, look at the site and suggest how the District should repair the culvert. The Secretary was instructed to contact Wade Klubben to request a repair estimate based on Mr. Johnson's repair recommendation. Manager Hurley moved to approve Mr. Klubben to complete the repair work contingent on his price estimate. Manager Kohler seconded the motion. All were in favor. The motion carried.

The Secretary reported that Application to drain # 3689 was withdrawn because it was for an open ditch. An application for a permanent drain was submitted for the outlet based on the Emergency Drain License application.

Discussion was held on how to finance this project. Discussion was held on the possibility of an assessment district.

Dwight and Karin Boom Drainage Complaint against Warren Van Bruggen, Section 35 Meadow Lake Township

The original complaint was dated 04/29/2011. The Board acted on the complaint and ordered to close the drain by August 19, 2011. A letter from Dwight and Karin Boom was received on March 8, 2012 stating that the drain had not been filled in, new drainage had been constructed during harvest and that Mr. Van Bruggen had filled in a wetland area. Manager Hurley and Manger Lettenmaier both completed an onsite investigation and found that there was no additional drainage constructed, that the closure was satisfactory and that the wetland area had not been filled in. Notice of the manager's findings will be mailed to both Mr. and Mrs. Boom and Mr. Van Bruggen.

Hemen Township-request for drainage assistance

The Board reviewed a letter received from Jesse Pabst, Hemen Township Chairman, requesting assistance with a clean out of a drainage system located in Sections 23, 26, 35 and 36. Mr. Pabst states in his letter that the Township would appreciate any funding which may be available to assist with the clean out. Discussion was held. Manager Hurley requested that NRCS first review the area prior to the development of a clean out project as there may be impacts to wetlands. Fredricks recommended that Hemen Township first hire an engineer to review proposed project and to apply for a permit if any part of the project was to include: lowering of culverts or deepening or widening of a water course. Discussion was held regarding permitting. No permit is needed from the District for routine maintenance; however landowners are advised to contact NRCS to see if a form AD 1026 may be required. It was decided to recommend that Hemen Township hire an engineer to complete preliminary review and permitting of the project.

ND Highway #9 Temporary culvert, SE ¼ Section 22 and the NE ¼ Section 27 Edna Township

An email from John Thompson, Valley City District Engineer, NDDOT, was reviewed. In the agreement it states that the District will remove the culvert unless both parties agree otherwise. Mr. Thompson was inquiring about the District's intentions for the culvert. Manager Lettenmaier moved to formally request that the NDDOT allow the culvert to permanently remain in place. Manager Hurley seconded the motion. All were in favor. The motion carried. The Secretary was instructed to send a formal request to the NDDOT requesting that the culvert remain in place.

Lower Sheyenne River Bald Hill Creek Retention

A number of people were in attendance regarding the Lower Sheyenne Joint Water Resource's study on a proposed retention site on Bald Hill Creek. Various concerns were raised regarding impacts to agricultural land, infrastructure and location of structure. Mr. Opat informed the audience that these concerns have not yet been identified and that further study would be needed to do so. The Lower Sheyenne River Joint Water Resource District would like to complete a study to identify if the land would

support a structure and if so where. Once that is determined, then the impacts could be identified and addressed. The Lower Sheyenne Joint would like to know if Barnes County would support this study. Numerous audience members again voiced their disapproval for the project at any phase. Neil Amann, Sibley Trail Township stated that the Township was against any further studies and project development of any kind. Commissioner, John Froelich, stated that the Barnes County Commission would not support this unless further studies are completed for a possible structure near Cooperstown. The Commission feels that it would be more beneficial to both than to simply do one. Ben Jacobs stated that he has had conversations with BNSF regarding a possible structure and that they were opposed. No decision was made by the board.

Hobart Lake Outlet project

Discussion was held on the variables in cost between culvert sizes. Discussion was held on acquiring downstream flow easements. It was decided to establish a list and to start this process. The District has not heard back in regards to the Hazard Mitigation grant.

RR obstruction to water course, NE ¼ Section 29, Hobart Township

Edward and Ann Marie Thom inquired if there had been any progress with the RR regarding the installation of a culvert. Manager Hurley reported that there wasn't really any progress with the RR, but that he was able to line up a large pump to pump the water. Manager Hurley will continue to work with the Thom's on this issue.

Financial Report-Harold Rotunda

Mr. Rotunda reported on the financial standing of the Board. Mr. Rotunda complimented the Board on the amount of work that had been completed in the last three years. However this came at a price. Because of the extent of work that had been completed the Districts funds are quite limited for this fiscal year.

Drainage Pipe-Ashtabula Lookout Addition, Getchell Township

The Board reviewed a letter from John V. Boulger in regards to the District's recommendation to install a drainage pipe in a property access between Trygve Skolness and Butch and Kelly Flath. Mr. Boulger states that the Flath's installed drainage pipe on Skolness's property without permission or easement. Discussion was held. It was decided to notify Flath's that they would have to file a complaint against Mr. Skolness prior to any further action by the District.

Drainage Complaint; Dazey Township E1/2 of Section 1, Sibley Trail Township N ½ and W 1/4 of the S ½ of Section 6 Barnes County, and the S ½ of Section 36

A complaint was filed by Lloyd Wieland regarding drainage in the above mentioned townships and locations. The Secretary will be forwarding this complaint to the District Engineer and Lawyer. Upon the Engineers review the Board will address the complaint.

Point of Clarification of Minutes of 08/08/2011 regular meeting Re: culvert installation recommendation in Cuba Township

The minutes should have read that Hurley recommended that a 24" culvert be installed on the East side of the road in the section line between section's 18/19 of Cuba and a 24" culvert will be installed in section 18 in the field access.

Ten Mile Lake Outlet

Preliminary work has been completed to this point. Discussion was held on how to pay for additional studies to develop a project to manage lake levels. Commissioner John Froelich stated that if the Board presented him with a preliminary estimate for additional engineering costs, he would address the rest of the County Commission to seek cost share in the expense.

Fox Lake

Kerry Johnson, Barnes County Highway Superintendent, reported that the equalizer culvert under the RR track is plugged under county road #22 by the Rail Road Via-duct. Mr. Johnson asked how involved it would be to lower the lake by establishing a temporary outlet on the South end of Fox Lake. After discussion the Board recommended that Mr. Johnson review the original agreements that were made with the Rail Road to see if there is an allowance for maintenance.

Bills

Bills were reviewed for payment. It was decided to request an itemized bill from Houston Engineering regarding work completed on the Sanborn Lake Outlet. Manager Hurley moved to approve all bills for payment except Houston Engineering. Manager Kohler seconded the motion. The motion carried.

Being no further business, Manager Hieb moved to adjourn, seconded by Manager Kohler. All were in favor. The motion carried.

Respectfully submitted,

Jamie Smith

Secretary

