

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

09/10/2012
Minutes

Present: Vice Chairman-Pat Hurley, Manager- John Kohler and Manager- Jerry Hieb
Attorney- Sean Fredricks, Engineer- Mike Opat
Absent: Chairman- Jeff McMillan
Also Present: See attached

The meeting was called to order by Vice Chairman Hurley at 8:00 AM.

Manager Kohler moved to approve the minutes of the August meeting. Manager Hieb seconded the motion. All were in favor.

Manager Hieb moved and Manager Kohler seconded to approve the revenue and expenditure reports. All were in favor. The motion carried.

Discussion was held on the cost of the removal hearing. Discussion was held on building rent. No action was taken on either of the subjects.

ATV use at Clausen Springs

Commissioner Froelich reported to the board that he has passed on the ATV problem at Clausen Springs to the Park Board. Clausen Springs is a protected wildlife habitat and is closed to ATV use. The North Dakota Game and Fish will install and provide a sign.

Drain Application Fee schedule

Fredricks presented the following resolution:

BARNES COUNTY WATER RESOURCE DISTRICT

RESOLUTION OF POLICY REGARDING DRAINAGE PERMIT FEES

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

WHEREAS, in accordance with Chapter 61-32 of the North Dakota Century Code, the District must consider, process, and approve or deny drainage permits, including subsurface or "tile" drainage permits.

WHEREAS, all permit applications, both surface and subsurface applications, require the District to conduct certain investigations and reviews before the District can make a final decision on a permit application, including land ownership, watershed impacted, impacts to downstream landowners, and other items, all in accordance with N.D. Cent. Code §§ 61-32-03 and 61-32-03.1, and Chapter 89-02-01 of the North Dakota Administrative Code.

WHEREAS, water resource districts' budgets are composed of those dollars generated by a maximum four mill levy, which typically does not generate substantial general fund dollars for water resource districts.

WHEREAS, water resource districts, including the District, must pay for the costs of conducting investigations and reviews of drainage permit applications, including applications for subsurface drainage projects, out of their general funds, and use of limited general fund dollars minimizes water resource districts' ability to construct other projects or to perform other tasks to benefit members of their districts.

WHEREAS, in light of the financial difficulties the District has encountered as a result of investigating, reviewing, and processing multiple drainage permit applications, including several applications for subsurface drainage permits, the District has concluded it is necessary to adopt a formal policy regarding the expenses associated with applications.

NOW THEREFORE BE IT RESOLVED that the terms contained in this RESOLUTION OF POLICY represent the District's official policy regarding drainage permit application fees.

BE IT FURTHER RESOLVED that each applicant submitting an *Application to Drain* or an *Application to Install a Subsurface Drain* will deposit \$500 with the District for the costs of all legal and engineering fees, and other actual costs.

BE IT FURTHER RESOLVED that if the actual costs incurred by the District as a result of its investigation, review, and processing of any *Application to Drain* or *Application to Install a Subsurface Drain* exceed the \$500 fee submitted by an applicant, the applicant must reimburse the District for any actual costs over and above \$500 incurred by the District as a condition to the District's final decision regarding the applicant's *Application to Drain* or *Application to Install a Subsurface Drain*.

BE IT FURTHER RESOLVED that this RESOLUTION OF POLICY supersedes and effectively terminates any previous resolutions or policies enacted by the District regarding application or permit fees.

Manager Kohler moved to approve the resolution as presented. Manager Hieb seconded the motion. All were in favor. The motion carried.

Griggs County Water Resource District Drainage Complaint

The Board next considered the Drainage Complaint filed by the Griggs County Water Resource District, dated November 14, 2011. Jim Lindseth from the North Dakota State Engineer's Office recently contacted Jamie Smith; apparently the chair for the Griggs County Water Resource District contacted Governor Dalrymple and alleged that the Barnes County Water Resource District was not properly addressing the Griggs County Board's Drainage Complaint. Sean Fredricks prepared a letter for Jim Lindseth in response to these allegations; a copy of Mr. Fredricks' September 7, 2012, letter is on file with the secretary/treasurer. In the letter, Mr. Fredricks pointed out that the Board's engineer had conducted an investigation, including a site inspection, of Sections 1, 11, and 12 in Pierce Township (the sections identified in the Complaint) and concluded there was no evidence of illegal drainage in those sections. Further, Mr. Fredricks explained to Mr. Lindseth that the Barnes County Board had been accommodating in refraining from dismissing the Griggs County Board's Complaint, and the Barnes County Board had cooperated with the Griggs County Board to the greatest extent possible. However, in light of the fact that there was no evidence of any new drainage illegally constructed, Mr. Fredricks explained to Mr. Lindseth that the Board had no choice but to dismiss the Complaint at this point.

Under Section 61-32-03, the current drainage complaint statute, and even under Section 61-21-67, the older statute identified by the Griggs County Board, the test for whether or not a party constructed illegal drainage is if they constructed new drainage of a pond, slough, lake, or sheet water, or any combination thereof. If so, the Barnes County Water Resource District must determine if the watershed area drained is 80 acres or more. Further, a permit is not required for mere maintenance of an existing drain under Section 89-02-01-05(1) of the North Dakota Administrative Code. The North Dakota Administrative Code, Section 89-02-01-02(7), defines "Maintenance" as removal of silt or vegetation from an existing drain; maintenance does not include deepening or widening of an existing drain. In other words, if a party is simply removing silt and vegetation from a natural watercourse, that activity does not require a permit. However, if a party is deepening or widening the contours or side slopes of an existing drain or natural watercourse, that type of activity may require a permit if the watershed area affected is 80 acres or more. In that instance, if the landowner did not first obtain a drainage permit, then a complaint of illegal drainage would be the remedy.

In this case, the Complaint filed by the Griggs County Board identified Sections 1, 11, and 12 in Pierce Township as the Sections where illegal drainage had occurred. At a meeting of the Barnes County Water Resource District on January 17, 2012, attended by the Griggs County Water Resource District, the Griggs County Board confirmed the Sections where they alleged illegal drainage had occurred were Sections 1, 11, and 12 in Pierce Township.

The Board directed their engineer, Mr. Mike Opat, to investigate and inspect the alleged illegal drainage. Mr. Opat concluded there was no evidence of any illegal drainage; he found there was no new drainage beyond silt and debris removal from existing drains and natural watercourses. That type of activity does not require a drainage permit, as provided in N.D. Admin. Code Section 89-02-01-05(1). The Barnes County NRCS District Conservationist also inspected the alleged drainage and similarly concluded there was no evidence of any wetland violations in Sections 1, 11, and 12.

The Barnes County Water Resource District only has jurisdiction over drainage issues to the extent the drainage affects a "pond, slough, lake, or sheet water, or any series thereof," with a watershed area of 80 acres or more. Mr. Fredricks advised the Board that, since maintenance of an existing drain or ditch does not require a permit, the Barnes County Water Resource District has no choice but to dismiss the Griggs County Water Resource District's Drainage Complaint.

Manger Kohler, seconded by Manager Hieb, moved to dismiss the Griggs County Water Resource District's Drainage Complaint. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite Notice of Decision and to provide the decision to the parties of record. In this instance, the Griggs County Water Resource District neglected to identify any alleged construction participants. With that in mind, the Barnes County Board will notify the Griggs County Water Resource District; Bartley and Greenfield Townships in Griggs County; Pierce Township in Barnes County; and the North Dakota State Engineer's Office.

Application to Install a Subsurface Drain for Richard Winter in the Southeast Quarter of Section 14 in Noltimier Township

The Board reviewed *Application to Install a Subsurface Drain No. 2012-04* dated June 7, 2012, for Richard Winter. 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 Southeast Quarter of Section 14 of Noltimier Township, Barnes County, North Dakota. The project will cover 110 acres and will discharge directly into a natural watercourse in the northeast corner of Section 23 of Noltimier Township.

Mike Opat reviewed the application and indicated the project will discharge directly into a natural watercourse, and he recommended that the Board should require Applicant to install and maintain erosion protection. Because the proposed project will discharge directly into a natural watercourse, the application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1 and the Board cannot require Applicant to obtain any flowage easements from downstream landowners.

According to records on file with the Barnes County Recorder's Office, Kathleen Winter owns the Southeast Quarter of Section 14 and the Northeast Quarter of Section 23 of Noltimier Township where Applicant intends to install the tile system.

It was moved by Manager Kohler and seconded by Manager Hieb to approve *Application to Install a Subsurface Drain No. 2012-04* dated June 7, 2012, for Richard Winter in the Southeast Quarter of Section 14 in Noltimier Township, subject to the following conditions:

- 1) That Applicant obtains easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 2) That Applicant provide and maintain adequate erosion protection at any and all outlets into the natural watercourse in the northeast corner of Section 23 (Applicant is solely responsible for any damages to the natural watercourse as a result of the tile project);

- 3) That Applicant notify the Barnes County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 4) 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
- 5) 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.

Sanborn Lake Outlet

The Red River Joint Water Resource District will be processing the local portion of the State Wide significance permit. Discussion was held on the right of way issues with this project. Vice Chairman Hurley and Manager Kohler still intend on meeting with landowners to resolve this dispute. Kurt Tompkins, District Manager for the US Fish & Wildlife Service, requested a map of the project right of way. The Secretary will mail a cop of the maps to Mr. Tompkins.

Potter Township Drainage-David Lettenmaier

Mr. Lettenmaier expressed his continued concern for County Road #7 1 mile north of the City of Sanborn. This is between Kevin Harstad's and Duane Lettenmaier's land. David Lettenmaier stated that the water is too high on each side of the road and that it too will fall victim to inundation if something isn't done. It was noted that this portion of County Road #7 has never been inundated and that it has only been flagged due to high water. A lengthy discussion was held regarding NRCS and USFWS policy and how each program was administered. Mr. Lettenmaier requested that the Barnes County Water Resource District act as a sponsor to look into proactive measures to prevent inundation. Currently the NRCS is completing a wetland determination and the Barnes County Highway Department is completing a hydrology study. It was decided to continue to look into this issue and to provide support to the NRCS, Barnes County Highway Department and the USFWS.

Eckelson Lake/water course maintenance project

Vice Chairman Hurley reported that K2S Engineering will be checking elevations on the watercourse to see if it is at the correct elevation.

Fox Lake

The culvert at the via duct is plugged, the Barnes County Highway Department is working on resolving this issue with the rail road. The Secretary reported that the State Water Commission

called the office and reported that they had received a call from the ND Game & Fish Department stating that there has been illegal drainage activity occurring at Fox Lake. Fredricks advised that North Dakota Statue requires a written complaint prior to any action by a water resource district. Since the District does not have a formal written complaint, no action will be taken. Amanda Brandt, District Conservationist, stated that the NRCS has received a formal written complaint and that they are investigating the alleged illegal drainage.

Manager Reports

Discussion was held on manager vouchers. It was decided that managers will submit their vouchers starting from the last meeting going forward. No other reports were given.

Other

Neil Aaman asked if the Board has had a chance to look into the first drop structure. Discussion was held on how to resolve the issue of water sitting at the first drop and not running out. Vice Chairman Hurley suggested that the low area in front of the structure be leveled off so that water does not pool. Manager Kohler reported that Klubben Excavation will be cleaning out from the drop structure west. He will be completing no more than \$10,000.00 worth of work. Discussion was held on the sloughing repair that needs to be completed. This site is eligible for FEMA reimbursement. FEMA will be closing the 2011 disaster in October. This work need to be completed and paid for prior to the deadline. Manager Hieb moved to authorize the Secretary to pay the contractor up to \$1,700.00 prior to the next meeting upon completion of work. Manager Kohler seconded the motion, all were in favor. The motion carried.

Ten Mile Lake

Paul Abrahamson reported to the board that he and two others have spoken to several landowners. There appears to be some interest in developing an assessment district. Mr. Abrahamson said it would be beneficial if the District could determine a lake elevation so that producers knew how much sheet water would be removed. It was decided to ask the NRCS to establish an elevation so as to not adversely impact wetlands.

Being no further business, Manager Kohler moved to adjourn. Manager Hieb seconded the motion. All were in favor, the motion carried. The next regular meeting will be on October 8th, 2012.

Respectfully submitted,

Jamie Smith, Secretary

