

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

December 8, 2014

MEETING MINUTES

PRESENT MEMBERS: Chairman - Jerry Hieb; Manager Bruce Anderson; Manager Shawn Olauson; Manager Bret Fehr; Manager Dale Jorissen; Mike Opat – Moore Engineering; Sean Fredricks – Ohnstad Twichell and Commissioner Froelich.

Also Present: See Attached List

Chairman Jerry Hieb called the meeting to order at 9:00 am.

Manager Olauson made a motion to approve the November 10, 2014 Minutes with corrections. Manager Anderson seconded motion. Motion approved.

Manager Anderson made a motion to approve the November 20, 2014 Special Hurley/Lettenmaier Meeting Minutes. Manager Olauson seconded motion. Motion approved.

OLD BUSINESS

RRJB – Manager Anderson reported on the Red River Joint Board meeting held at the State Convention on Dec 4th in Bismarck. Current projects were discussed. Gary Thompson, chairman of RRJB, reminded that dues were to be paid asap.

BNSF

APPLICATION FOR SURFACE DRAIN No. 4494 for BNSF Railway Company, c/o Tran Systems, in the Northwest Quarter of Section 19 of Eckelson Township

The Board reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN No. 4494 for Applicant BNSF Railway Company, submitted by TranSystems on BNSF's behalf. The Board has reviewed this project periodically and previously requested additional information from BNSF. BNSF's attorney submitted a letter dated August 29, 2014, in which BNSF contended a surface drain permit is not required under the ICC Termination Act, 49 U.S.C. § 10501(b); however, BNSF indicated their willingness to submit a permit application and to seek cooperation from the Barnes County Water Resource District. The Board previously approved the permit at its October 13 meeting, but BNSF never submitted the original permit application; and, therefore, the Board had to request a certified copy of the application from the State Engineer's office. The State Engineer's office recently submitted a certified copy of the application to Sean Fredricks; and, therefore, Sean recommended that the Board re-approve the permit. The Board agreed that re-approval was a prudent step since the parties who recently filed Obstruction Complaints against BNSF may want to appeal the Board's decision not to include any condition to require BNSF to install additional openings through their right of way.

Under the application, Applicant seeks to insert fill within 0.56 acres of wetland in the Northwest Quarter of Section 19 in Eckelson Township, Barnes County, North Dakota. More specifically, BNSF is constructing improvements to their main line track, including a railroad siding on the north side of the main line track, in the Northwest Quarter of Section 19, a project that will include wetland impacts. A permit is required because the project results in surface drainage as result of the placement of fill within the wetland which thereby reduces the amount of storage volume in the wetland and sheds runoff onto other areas.

BNSF Railway Company does not warrant title to its property, but records on file with the Barnes County Recorder's office indicate BNSF does own or control its railroad right of way.

Mike Opat prepared draft responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code, and the Board accepted Mike's proposed responses; the Board approved Mike's draft responses. The Board further determined no hearing was necessary under Section 89-02-01-

09.1(2) of the North Dakota Administrative Code because the Board will already require Applicant to obtain any other permits that may be necessary, including any requisite permits or approvals from the United States Army Corps of Engineers to construct the project. Further, analysis conducted by BNSF reveals the reduction in volume within the wetland may result in water backing up and inundating additional areas north of the railroad, but that these impacts are negligible.

Adjacent landowners have filed Obstruction Complaints under N.D. Cent. Code § 61-16.1-51; however, Sean Fredricks has indicated the Barnes County Water Resource District does not have jurisdiction over BNSF Railway Company's railroad tracks under Section 61-16.1-51 for a number of reasons. First, Sean indicated the North Dakota Supreme Court has concluded water resource districts only have jurisdiction to compel additional openings or culvert capacity increases to the extent the railroad is along the course of a legal assessment drain, under Burlington Northern v. Benson County Water Resource District, 618 N.W.2d 155 (N.D. 2000). Further, the railroad right of way and mainline existed prior to enactment of the obstruction statute, Section 61-16.1-51. In addition, federal law preempts state law in this situation since the water resource district does not have jurisdiction to compel a culvert opening, and a number of federal statutes preclude or prohibit a private party from compelling an additional opening or an increase in culvert capacity through the railroad mainline. In light of these issues, the Board concluded the permit did not require a hearing. Further, adjacent landowners have attended meetings and have interacted with the Board over the previous months and have had every opportunity to voice their concerns regarding the project. The Board concluded that the installation of fill by BNSF Railway Company for purposes of improving its main line track will not result in adverse impacts to adjacent properties. To the extent the Board can suggest that BNSF install an additional opening to accommodate adjacent landowners, the Board will suggest that separately.

Manager Anderson, seconded by Manager Fehr, moved to approve APPLICATION FOR SURFACE DRAIN No. 4494 for BNSF Railway Company, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant will not construct or improve the project in any manner that exceeds the dimensions indicated in BNSF's application;

- 2) That Applicant obtain an easement from the owner of any land, besides land owned by Applicant, on which Applicant will construct the drain; and

3) That Applicant notify the Barnes County Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, submit an additional permit application; and

4) 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. The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to all parties of record.

VC Little Dam/Kathryn Dam – Mike Opat hopes to have his survey crew ready to go, in the next couple of weeks, collecting information on both dams. Ron from Barr Engineering and Mike are looking into all options and getting cost share prospects, for both dams, so over the winter we should have a plan put together. Mike has been talking to Rich – from the Corp of Engineers regarding the flow of the river.

Maple River – Mike updated right of way process also informed district of the state Permit Process and that should be ready by the first of the year and bidding can proceed in January, 2015.

Thordenskjold Drain – Mike informed district that title for acre of land in question by Nome (old dump) has not been resolved yet so the district may have to have Luke in Sean Fredricks Office do the paper work for a quick title so this extention project for Thordenskjold Drain gets finished. Jim Storhoff told the district he is not apposed to signing an easement for his property on Thodenskjold extention project. Discussion on the cleaning of Thordenskjold Drain followed. Managers Anderson and Olauson will check out areas for cleaning that were discussed.

Manager Fehr made a motion for Sean Fredricks to proceed with a Quick Title on the land by Nome (old dump). Manager Olauson seconded motion. Motion passed with a roll call vote.

Sanborn Lake – Chairman Hieb checked with the State on permit procedures. The original permit for Sanborn Lake was an emergency permit. Now the district has to go through regular procedures for the permit and if we have the right of ways all the way to the river it will take, at the least, 6 months. If we keep working on the Permanent Permit and if we need to operate the Sanborn Lake outlet in an emergency situation, we could apply to the state for an Emergency Permit and get one, as long as we are working for the permanent permit. Discussion followed on the level of the lake and operating of outlet. Josh from Moore Engineering has been in contact with BC State's Attorney, Carl Martineck, with information needed for easements to proceed. Commissioner Froelich stated easement letters will be going out as soon as they are prepared and request landowners to return within a certain time period. Sean Fredricks was appreciative for all the work that was being done, by Commissioner Froelich, to get the right of way easements finished, as this is a very important Permit for BNSF, Barnes County and all others involved.

Todd and Michael Vogel - Michael and Todd Vogel addressed the water district and wanted direction on what they have to do to comply with the letter they received from the water district, regarding the Hurley/Vogel complaint. Sean Fredricks explained what the statute says about the complaints from Mr. Hurley. Mike then explained what was surveyed on the obstruction and diversion complaints. Vogel's would like to take out culvert and make opening bigger and leave open because they are not sure how frozen the ground is to do more. Discussion followed. Letter reads that the dike needs to be removed by December 29th. The District was okay with the Vogel's taking out the culvert and leaving an opening (as long as it does not hold back 50 acre feet) while they proceed to get a permit from the State. Sean Fredricks explained to the Vogel's what they needed to get a State Permit. BCWRD said Mike Opat can share information with Vogel's Engineer (when they get one). Drainage complaint will not be addressed till NRCS is finished with their investigation.

10 Mile Lake - Paul Abrahamson addressed the district. Manager Anderson had gone out to 10 Mile Lake, for an onsite visit. Keith Weston sent a scientific report from Richard Weber with the National Tech Center in Fort Worth, Texas. Moving forward we need to get background work done. See when we can meet with Keith Weston for understanding the report information. Get cost share moneys to help with costs. Corp of Engineers has a 404 permit that would allow a structure to be built to maintain the 1433 level, (level it is at now) or 1430 level. Discussion followed on permits, costs and project progress. Paul will go ahead and look into getting August transcription done and keep project moving forward.

Hobart Lake - Jerry went over a letter from the State Health Department stating the sulfate and chloride levels in Hobart Lake are high. When Sheyenne River is high and Devils Lake water is already in the mix, there is concern for the amount

of Hobart water that could be discharged into the river at flooding time. Mike Opat then explained that he has talked with the State Engineer and Health Dept. explaining the water from Hobart is already getting to the Sheyenne River without our help. Hearing set for State Wide Significance Permit meeting on Monday, December 15, 2014 at BC Highway Dept. 9:30 am. Hobart is an HMGP with FEMA project and the state needs to sign off on project. Because we have a time line for the Permitting process, which is close to being done, Mike is mailing out an extension request with all the updates on the project, incase our time line runs out. Easements have not gone any further then what Manager Anderson has handed out to landowners involved. Only two have responded to Manager Anderson.

Griggs/Barnes WRD - Managers Fehr and Jorissen had no update at this time.

Snagging and Clearing – Mike Opat reported Brady, with Moore Engineering, went out with maybe a couple of contractors that had worked on the (Cass)Sheyenne and Wild Rice Rivers. Brady showed contractors the Sheyenne River from Kathryn north to Valley City. They figured it did not look to bad at the amount of debris or difficulty in taking out the debris, with most of it being along pasture land. It could get done in the non winter months. They will come back and look at the ice conditions and operation of the dam, later this winter. A lot of debris could get removed for \$100,000 through the Snagging and Clearing District. BCWRD could submit a request to the State Water Commission to review at their next meeting in March 2015. Discussion followed. Manager Anderson made a motion to authorize Mike Opat to write up an application for Cost Share of \$100,000 to the State Water Commission for Snagging and Clearing along the Sheyenne River. Shawn Olauson seconded. Motion approved with a roll call vote.

Legal Drain 2 (Stewart Drain) – Manager Anderson explained the cleaning that was done by Scott Cummings from the silted in culverts to Hwy 1. Frozen dirt at the gate site, so the gate cannot be opened till spring. Shawn Anderson has closed all gates in Legal Drain 2. Discussion was brought up about who was benefitting from Legal Drain 2 and not participating in the assessment. Manager Anderson will talk to the Advisory Board for Legal Drain 2 and review the areas that are in question and the boundary of the drain and maybe percentages for the drain. This will be put on the agenda for January 2015, for discussion to have Mike Opat do the reassessment list on Legal Drain 2.

NEW BUSINESS

Annual BCWRD Meeting Schedule for 2015. Manager Olauson made a motion to approve the 2015 yearly meeting schedule, every 2nd Monday at 9:00 am of each

month, for the BCWRD. Manager Fehr seconded. Motion approved with a roll call vote.

Engineering Contract – Sean Fredricks explained the State Water Commission rules to be eligible for cost share, every three years the water districts have to publish notice and interview for engineering services. Moore Engineering submitted a proposal. Only proposal received. We will schedule the interview for our January 12, 2015, our regular monthly BCWRD meeting. Manager Olauson made a motion to approve the Qualification Report. Manager Anderson seconded. Motion approved with a roll call vote. See Attachment

Bills – Mike Opat explained his bill on 10 Mile Lake. Manager Anderson handed in a bill from CR Excavating for payment. Manager Olauson made a motion to pay the bills of \$203,839.67. Manager Jorissen seconded. Motion approved with a roll call vote.

Manager Olauson made a motion to adjourn. Manager Fehr seconded. Adjourn at 11:45 am.

Respectfully submitted,



Linda McKenna

Secretary

Barnes County Water Resource Board

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

Managers

*Jerry Hieb – Chairman; Bruce Anderson
Shawn Olauson, Bret Fehr and Dale Jorissen*

9:00 am

December 12, 2014

Special Hurley/Vogel Complaint Meeting

Present: Chairman Jerry Hieb, Managers: Bruce Anderson, Shawn Olauson, Bret Fehr; Dale Jorissen & Commissioner John Froelich.

VIA Phone: Sean Fredricks and Mike Opat.

Others Present: See Attached Sheet.

Chairman Hieb opened the meeting with a background on the complaint and what was decided at the December 8, meeting. Chairman Hieb opened up discussion from Managers Anderson and Fehr. Sean Fredricks addressed the district managers informing of what the statute said and that the district did follow the law. Pat Hurley addressed the district with his concerns. Mike Vogel explained their reason for building the crossing. Discussion between Pat Hurley and Mike and Todd Vogel on where there could be another crossing. Mike Vogel and Pat Hurley have both talked with Aaron Carranza (at different times) at the State Water Commission.

State Water Commission recommends, when determining capacity of a dike, DO NOT CONSIDER CULVERT(S) IN DETERMINATION.

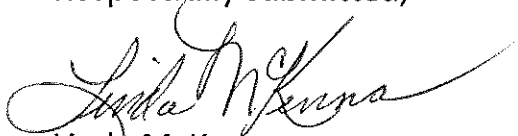
Chairman Hieb summed up that Vogel's should take out culvert and make opening bigger, by December 29, 2015, and then apply for a Dike Permit from the State. BCWRD approves for Mike Opat, Moore Engineering, to share their information with the Vogel's engineer when they retain one.

Pat Hurley handed out a map, for managers to look at, of the Vogel Dike. Pat Hurley offered to help the Vogel's with a south crossing, if they were to go that route.

Sean Fredricks informed the district and all in attendance, the Vogel's could be assessed for costs of these complaints.

Agenda items addressed Manager Anderson entertained a motion to adjourn. Bret Fehr seconded meeting adjourned at 10:10 am.

Respectfully submitted,



Linda McKenna

Secretary/Treasurer

Barnes County Water Resource District