

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

June 8, 2015

MEETING MINUTES

PRESENT MEMBERS: Chairman Jerry Hieb; Manager Shawn Olauson; Manager Bret Fehr; Manager Dale Jorissen; Mike Opat and Joshua Hassell – Moore Engineering; Sean Fredricks – Ohnstad Twichell P.C.; Commissioner John Froelich

Absent: Manager Bruce Anderson

Also Present: See Attached List

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

Manager Olauson made a motion to approve the May 11, 2015 meeting minutes. Manager Jorissen seconded. Motion approved.

OLD BUSINESS

Albert Wittenberg Drainage Complaint Against Don Jorissen

The Board next considered Albert Wittenberg's Drainage Complaint against Don Jorissen. Mr. Wittenberg submitted the Drainage Complaint under N.D. Cent. Code § 61-32-07 in May of 2015. In it, Mr. Wittenberg alleges Mr. Jorissen constructed drain improvements in the Northeast Quarter of Section 8 of Getchell Township. According to records on file with the Barnes County Recorder's office, Donald Jorissen and Carol Jorissen, Trustees, under the Carol L. Jorissen Revocable Living Trust, own the North Half of the South Half of the Northeast Quarter and the North Half of the Northeast Quarter of Section 8; Bruce Shanenko and Jeanne Shanenko, Trustees, under the Bruce and Jeanne Shanenko Living Trust, own the South Half of the South Half of the Northeast Quarter of Section 8. Mr. Wittenberg

alleges Don Jorissen constructed new ditching in the spring of 2015 somewhere in the Northeast Quarter of Section 15. The Board considered whether or not any drainage constructed in the Northeast Quarter of Section 8 was illegal or unpermitted drainage in violation of N.D. Cent. Code §§ 61-32-03 and 61-32-07.

Sean Fredricks has advised the Board that if Mr. Jorissen constructed any new ditching, or deepened or widened existing ditches, the 80-acre standard applies under Sections 61-32-03 and 61-32-07. In other words, if the watershed area drained by the new drainage or by the deepening or widening of existing drainage is 80 acres or more, the work would have required a permit under Section 61-32-03. Further, if the work was truly deepening or widening, and was beyond mere maintenance of existing ditches, the work required a permit (if the watershed area impacted is 80 acres or more).

Under North Dakota law, maintenance of an existing drain or ditch does not require a permit:

89-02-01-05. Exceptions to permit required.

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain.

89-02-01-02(7): "Maintenance" means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.

Regardless of whether or not the watershed area is 80 acres or more, if the work was simply "maintenance" of existing ditches, the work did not require a permit and the Board must dismiss the Complaint. However, if the work was, in fact, deepening or widening, and not just silt or vegetation removal from the existing ditches, then the work may have required a permit (if the watershed area drained is 80 acres or more).

The Board previously directed Mike Opat and Moore Engineering to investigate the Northeast Quarter of Section 8. Mike conducted an investigation and found no evidence of any ditching improvements on the Northeast Quarter of Section 8.

Sean Fredricks indicated that, under Section 61-32-03, and under Chapter 89-02-01 of the North Dakota Administrative Code, a landowner need only obtain a drainage permit for improvements to an existing ditch if the improvement includes deepening or widening of the ditch; North Dakota law does not require a new permit for maintenance of an existing ditch. In this case, there is no evidence of any deepening or widening of any existing ditches, nor is there any evidence of any new ditches constructed on the Northeast Quarter of Section 8. With that in mind, the Board lacks jurisdiction over maintenance of an existing ditch, and the Board has no choice but to dismiss the Complaint.

In light of the lack of jurisdiction over this alleged ditching, the Board determined dismissal is the only option available for the Board. Manager Jorissen, seconded by Manager Olauson, moved to dismiss the Drainage Complaint due to lack of jurisdiction under Sections 61-32-03 and 61-32-07. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite Notice of Decision and to send the decision to the parties of record.

Albert Wittenberg Drainage Complaint Against John Ihry

The Board next considered Albert Wittenberg's Drainage Complaint against John Ihry. Mr. Wittenberg submitted the Drainage Complaint under N.D. Cent. Code § 61-32-07 in May of 2015. In it, Mr. Wittenberg alleges Mr. Ihry constructed drain improvements in the North Half of the South Half of Section 26 of Ashtabula Township. According to records on file with the Barnes County Recorder's office, John and Peggy Ihry own the North Half of the South Half of Section 26 of Ashtabula Township. Mr. Wittenberg alleges John Ihry constructed new ditching in the fall of 2014 somewhere in the North Half of the South Half of Section 26. The Board considered whether or not any drainage constructed in the North Half of the South Half of Section 26 was illegal or unpermitted drainage in violation of N.D. Cent. Code §§ 61-32-03 and 61-32-07.

Sean Fredricks has advised the Board that if Mr. Ihry constructed any new ditching, or deepened or widened existing ditches, the 80-acre standard applies under Sections 61-32-03 and 61-32-07. In other words, if the watershed area drained by the new drainage or by the deepening or widening of existing drainage is 80 acres or more, the work would have required a permit under Section 61-32-03. Further, if the work was truly deepening or widening, and was beyond mere maintenance of existing ditches, the work required a permit (if the watershed area impacted is 80 acres or more).

Under North Dakota law, maintenance of an existing drain or ditch does not require a permit:

89-02-01-05. Exceptions to permit required.

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain.

89-02-01-02(7): "Maintenance" means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.

Regardless of whether or not the watershed area is 80 acres or more, if the work was simply "maintenance" of existing ditches, the work did not require a permit and the Board must dismiss the Complaint. However, if the work was, in fact, deepening or widening, and not just silt or vegetation removal from the existing ditches, then the work may have required a permit (if the watershed area drained is 80 acres or more).

The Board previously directed Mike Opat and Moore Engineering to investigate the North Half of the South Half of Section 26. Mike conducted an investigation and found no evidence of any ditching improvements on the North Half of the South Half of Section 26.

Sean Fredricks indicated that, under Section 61-32-03, and under Chapter 89-02-01 of the North Dakota Administrative Code, a landowner need only obtain a drainage permit for improvements to an existing ditch if the improvement includes deepening or widening of the ditch; North Dakota law does not require a new permit for maintenance of an existing ditch. In this case, there is no evidence of any deepening or widening of any existing ditches, nor is there any evidence of any new ditches constructed

on the North Half of the South Half of Section 26. With that in mind, the Board lacks jurisdiction over maintenance of an existing ditch, and the Board has no choice but to dismiss the Complaint.

In light of the lack of jurisdiction over this alleged ditching, the Board determined dismissal is the only option available for the Board. Manager Jorissen, seconded by Manager Olauson, moved to dismiss the Drainage Complaint due to lack of jurisdiction under Sections 61-32-03 and 61-32-07. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite Notice of Decision and to send to the decision to the parties of record.

Snagging & Clearing - Joshua Hassel-from Moore Engineering – in the next couple of months, Brady will be contacting landowners for access to property for this project.

Legal Drain #2 – Reassessment and clean out. Question was with Railroad property in this area. District will include Railroad in re-assessment district. District has set a hearing date, which is July 13th, our next water district meeting, to approve the resolution which includes the assessment list, Josh has presented. Manager Fehr made a motion to approve the resolution and new assessment list. Manager Olauson seconded. Motion APPROVED with a roll call vote.

Joshua Hassel also discussed the clean out bidding process of Legal Drain #2. Manager Anderson will take this information and work with the Legal Drain #2 advisory board on how to proceed with maintenance.

Hobart Lake - Joshua Hassel reported that it may be two months for the state to review information on Hobart project, because of a back log of projects at the state office. FEMA has extended Phase One deadline thru August, as 5-11-2015 was the expiration date. Josh will be working with FEMA to make sure all details for this project meet all the criteria asked for by FEMA. Discussion about recent heavy rain that hit this area again and the need to keep pushing forward with project. Phase one project is funded and will proceed.

VC Little Dam/Kathryn Dam – No update at this time, but Mike Opat will check out and keep pushing forward.

Throdenskjold Extension - Sean Fredricks will be getting an easement ready for the City of Nome Mayor to sign. Joshua Hassel will be the contact person if any questions arise.

Sanborn Lake – Commissioner Froelich had no update for this meeting.

10 Mile Lake – Paul Abrahamson was not able to attend so Dale Jorissen gave the district an update. Discussion about the meeting Paul and Keith plan to have with the Corp of Engineers in July. Manager Fehr made a motion to have Moore Engineering put together some numbers for Paul to have for this meeting with the corp. Manager Olauson seconded. Motion APPROVED with a roll call vote.

Griggs/Barnes WRD – Manager Fehr brought in updated plans that had been changed from previous plans. No major changes, just working through what has been decided on. Discussion followed. Landowners in water shed area have to be notified of this assessment project and be included in vote on assessment project.

Manager Jorissen - Gene Jewett had a concern for a railroad culvert that ran through his property and blow dirt along a fence line has built up **not** allowing water to run through culvert. He was told he would have to get a 1026 form, from all surrounding landowners to clean up this blockage. Amanda feels he has to come in and talk with her at NRCS.

NEW BUSINESS

Kip Kovar, an Engineer with Garrison Diversion District. Kip showed maps and discussed with the BCWRD of *preliminary* work to bring Missouri water to the Red River Valley Water Supply Project. This preliminary work is looking at going thru the Baldhill Creek area. Kip will also meet with Griggs County WRD on their meeting coming up on Wednesday.

DORTHY ORTS COMPLAINT - Mike Opat had a map and explained what was happening in complaint area. Drain tile is draining into township road ditch. Discussion followed. Sean will draw up a letter to Wade Bruns asking for more information (foot prints) on the tiling that he did.

Shawn Anderson - Dike Complaint - Mr. Anderson had the wrong section on complaint so Mike Opat is going to have to have another month to check out this complaint. This is an area was cleaned back in 2011 and spoil piles are their causing problems for Mr. Anderson. Land owners need to allow Engineers to get out and look at complaint area. Manager Olauson made a motion to have Moore Engineering check complaint area. Manager Fehr seconded. Motion approved with a roll call vote.

David Lettenmair Tile Appl. - David Lettenmair came forward to address the district. Mike Opat also had some questions on the application. Discussion followed. Sean Fredricks will send out notices to downstream landowners.

Karla Burchill – Ellsbury Twp - Shawn Olauson had Karla Burchill come forward with a complaint on extra water in their pasture. They had their pasture land refenced last fall. They then got a letter from township stating the fence was in the township right of way. The township had okay for the old fence to be put in over twelve years ago. Two water ways go through this pasture land and the township had done some water distribution work and now they have lots of silt in this pasture. Discussion followed. BCWRD has no jurisdiction over township matters. Managers suggested some options for Ms. Burchill; file a drainage complaint and/or get a drainage permit to clean silt from area.

Chairman Hieb – brought up an area in Marsh Township - Sec 18 (NW Corner Charles O'Brien land) regarding a culvert that may have been covered up or is just plugged and water keeps building up and backing onto Kiefert's land. Discussion followed. Township does not have any records of doing anything in this area. Chairman Hieb will go to a Marsh Township meeting with information.

Roxanne Fritz Complaint - Fish & Wildlife is evaluating this area for an easement and it has spoil piles that have not been returned to their natural state after some maintenance work done to open during a time of high water. (This is same issue as Shawn Anderson's complaint and the Eckelson Lake Project back in 2011.) Moore Engineering will do some investigation on this situation.

Red River Joint Water Resource District is requesting 2 mills from BCWRD for the calendar year of 2016. Discussion followed and is tabled till July meeting.

Jim Broten Tile – Manager Jorissen finally got info from Mr. Broten that only 74 acres were tiled.

Bills were discussed and Manager Olauson made a motion to pay the bills in the amount of \$47,176.23. Manager Jorissen seconded. Motion Approved with a roll call vote.

Manager Fehr made a motion to adjourn with a second from Manager Olauson. Meeting adjourned at 11:35 am.

Respectfully submitted,



Linda McKenna

Secretary

Barnes County Water Resource Board