

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

November 9, 2015

MEETING MINUTES

PRESENT MEMBERS: Chairman Jerry Hieb, Managers: Bruce Anderson, Shawn Olauson, Bret Fehr, Dale Jorissen; Mike Opat – Moore Engineering; Sean Fredricks – Ohnstad Twichell P.C.; & Commissioner John Froelich

Also Present: See Attached List

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

Manager Anderson made a motion to approve the October Minutes with correction. Manager Olauson seconded. Minutes approved as corrected.

Griggs/Barnes Joint Meeting 10/28/15 - Manager Anderson made a motion to amend the minutes as discussed. Manager Jorissen seconded. Minutes approved as amended.

BCWRD minutes for August 10, 2015, under the 10 Mile Lake, should read “naturally flow north and south” not east and south. Manager Olauson made motion to correct August 2015 minutes. Manager Jorissen second. Motion approved for August 2015 correction.

OLD BUSINESS

Shawn Anderson/Kreie - Shawn Anderson is concerned about getting easements on bottom end of this huge water shed, that has been opened to Elstons. Brad Belmore informed the district that the culvert and dike have been taken out and he has a permit application for a walk bridge crossing, to the State Water Commission. Discussion followed. All has been complied with for water district order.

Anderson/Harstad Obstruction Complaint – Discussion regarding, this natural water course, pipeline interfering with the water flow, cattail obstructions and township roads. If this is a pipeline easement issue the District has no jurisdiction. Leave on agenda for a couple more months.

Application to Install a Subsurface Drain for Marty Udem in the Northeast Quarter of Section 30 in Rogers Township

The Board reviewed an *Application to Install a Subsurface Drain* dated October 7, 2015, for Marty Udem. The Board reviewed the criteria in Section 89-02-01-09 of the North Dakota Administrative Code and concluded the project does not meet any of the “statewide” elements, and the Board concluded therefore 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 30 in Rogers Township, Barnes County, North Dakota. The project will include two surface inlets on the north side of the project. Surface inlets often require surface drainage permits in addition to tile permits, but only to the extent the watershed contributing to those inlets is 80 acres or more in accordance with Section 61-32-03. In this case, the contributing watersheds for both inlets are less than 80 acres. The project includes a pump outlet that will discharge via an underground pipeline across a portion of the Southeast Quarter of Section 30 that will daylight and discharge directly into a natural watercourse in the Southeast Quarter of Section 30.

Mike Opat reviewed the application and recommended that the Board require Applicant to install and maintain erosion protection where the project discharges into the natural watercourse in the Southeast Quarter of Section 30 to protect the watercourse and downstream landowners from erosion. 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. However, the Board will require Applicant to obtain an easement from the owner of the Southeast Quarter of Section 30 regarding installation and maintenance of an underground pipeline across that parcel. According to records on file with the Barnes County Recorder's Office, Marty Udem owns that portion of the Northeast Quarter of Section 30 Applicant intends to tile. Todd Vogel and Everett Vogel are the record owners of the Southeast Quarter of Section 30.

Manager Anderson moved, and Manager Fehr seconded the motion, to approve *Application to Install a Subsurface Drain* dated October 7, 2015, for Marty Udem in the Northeast Quarter of Section 30 in Rogers Township, subject to the following conditions:

- 1) That Applicant obtain and record (with the Barnes County Recorder's office) a permanent easement (and not just a written consent) that permits Applicant to install, operate, and maintain a buried pipe from the record owners of the Southeast Quarter of Section 30, Rogers 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 the natural watercourse in the Southeast Quarter of Section 30 of Rogers Township;
- 4) That Applicant notify the Barnes County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;

- 5) 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;
- 6) That Applicant must close all outlets during flood occurrences or under conditions that may cause adverse impacts to downstream landowners, as determined by the Board; 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.

John Triebold Tile Application - Mike Opat was to see if any surface draining had been done previous to this application. (Sec 20 Oriska Twp.) Joshua Hassell had gone through photos from 1959 into the 1980's. It seems to have some scares, but it was difficult because of the crop on the area, unclear photos and how levels were taken. State says, if there is clear evidence something has been done that needed a permit you must proceed, but this is not clear. Linda will contact Mr. Triebold that he will have to get written permission from the DOT to drain into their right of way. District will have on agenda for December 2015 meeting.

Greg Shanenko - Albert Wittenberg Drainage (141-58W) Getchell Twp. NW Sec 2. Mike Opat referred to a map on this complaint and clearly there had been widening & deepening of this area. Albert had started this as an EPA 319 program. This should have had a permit as it is in a water shed of over 80 acres. Discussion followed. Manager Anderson made a motion for Mr. Wittenberg to put in a ditch block at the level of the field up closer to the slough, and needs to have a 4 foot top. Albert can then apply for a surface permit from the state. Manager Fehr seconded. Motion approved with a roll call vote.

Obstruction to Drain Complaint filed by Greg Shanenko against Shawn Wittenberg

The Board next discussed Greg Shanenko's OBSTRUCTION TO DRAIN COMPLAINT against Shawn Wittenberg regarding a dike or ditch block in the Southeast Quarter of Section 28 of Getchell Township. Mike Opat presented a map of the area and explained that Josh Hassell conducted a Lidar analysis of the dike or ditch block and the surrounding area. Mr. Shanenko indicated his willingness to apply for a surface drainage permit or a tile permit to resolve his drainage issues, and either would obviate the need for the dike or ditch block. The Board will table this matter to allow Mr. Shanenko to apply for the appropriate permit.

Shawn Wittenberg Drainage Complaint Against Greg Shanenko

The Board next considered Shawn Wittenberg's Drainage Complaint against Greg Shanenko. The parties were both present to discuss the matter. Mr. Wittenberg submitted the Drainage Complaint, under N.D. Cent. Code § 61-32-07, dated October 15, 2015. In it, Mr. Wittenberg alleges Greg Shanenko constructed drain improvements regarding an existing drain in the Northeast Quarter of Section 28 of Getchell Township. According to records on file with the Barnes County Recorder's office, Greg Shanenko and Darlene Shanenko own the Northeast Quarter of Section 28 as co-Trustees of the Darlene A. Shanenko Revocable Living Trust. Mr. Wittenberg alleges Greg Shanenko constructed ditch improvements as far back as the fall of 1994. Mr. Wittenberg's Complaint indicates the watershed area impacted by the alleged drainage is only 25 acres. The Board considered whether or not any drainage constructed in the Northeast Quarter of Section 28 was illegal or unpermitted drainage in violation of N.D. Cent. Code §§ 61-32-03 and 61-32-07.

Mike Opat conducted an investigation of the alleged drainage and found no evidence of any man-made drainage improvements constructed by Mr. Shanenko.

Rather, Mike indicated the excess water from a natural depression on the Northeast Quarter of Section 28 sometimes naturally overflows.

Sean Fredricks advised the Board that if Mr. Shanenko 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 any 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).

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 surface drainage permit for maintenance of an existing ditch, nor does North

Dakota law require a permit for natural overflows of natural depressions. 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 28. In addition, Mr. Wittenberg has conceded the watershed area impacted by any alleged drainage is only 25 acres, far less than the 80-acre permitting threshold under Section 61-32-03. With that in mind, the Board lacks jurisdiction over the Complaint, and the Board has no choice but to dismiss the Complaint.

In light of the lack of jurisdiction over this Complaint, the Board determined dismissal is the only option available for the Board. Manager Anderson, second by Manager Jorissen, 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.

Albert Wittenberg - Introduced Shelly Nelson from the Soil Conservation Office. Shelly explained that the officials, from BC Soil Conservation that where working with Albert on his EPA project did not let him know that there may be other entities/permits that may be needed for this project. Shelly would like to go back to her board and discuss this topic. Shelly will come back to our managers with information.

Hobart Lake - Mike Opat informed the district we are clear to go from the state and Josh Hassel is submitting everything into FEMA so we can get out of phase 1 (design) and into working on phase 2, which is construction. State will be reviewing the cost of construction and estimated cost verses the benefits of the project. Over the winter months, we can start acquiring right of ways for construction in the spring/summer. Condition in the Permit is - ***who is responsible for running the project*** and the State Engineer will need to approve this. Josh is working with the ND Dept. of Health on the water quality, but the district managers will have to decide on the operator of the gate. (This will have to be put into the permit before we can operate project.) Discussion followed.

Darin Bjornson from Columbia Grain asked about emergency flooding conditions and are their provisions in the permit. May have to apply to the State Water Commission if an Emergency Permit is needed. Discussion followed.

Kathryn Dam – Mike Opat asked the Managers which design the district is planning on going with so we can get in on the US Fish & Wildlife funding cycle, & moving ahead on analysis for the project. Discussion followed. Manager Anderson made a motion to use Option #1 and Dale Jorissen second. This **Motion Failed with a roll call vote**, with Managers Anderson & Jorissen voting YES and Managers Fehr, Olauson & Hieb voting NO. Manager Fehr made a motion to use Option #2. Manager Olauson second. **Motion Approved with a roll call vote**, with Managers Olauson, Fehr & Hieb voting YES and Managers Anderson & Jorissen voting NO.

NEW BUSINESS

Hurley/Vogel Complaint – Manager Hieb updated district on this complaint. Mike Vogel removed crossing, as requested from the Water District. District has to have two Managers go out and check for completion of Dike Complaint. Discussion followed.

Legal Drain 2 - Manager Anderson updated district regarding maintenance of drain and taking out only the 2 gates at Fred Offners. Neil Amman addressed the managers regarding the 2 gates. Manager Anderson made a motion to remove the 2 gates by Offners. Manager Olauson second. Motion approved with a roll call vote.

Dan Hovde Obstruction Complaint - This is a new complaint and Moore Engineering did not get a chance to go out and look over. Manager Olauson made a motion to have Moore Engineering go out and look over the area of the complaint. Manager Anderson second. Motion approved with a roll call vote.

Thordenskjold Drain Maintenance - Manager Anderson updated cleaning process for the drain. Maintenance work to be done up to a cost of \$40,000.

10 Mile Lake – Paul Abrahamson explained about the testing process. Lori Frank, Dale Jorissen and Paul went out and got the testing done. (This saved district \$1,000). Paul hopes to have a meeting with the Corp of Engineers, in Bismarck, sometime in November, if not in December. ND State website has all this testing information. Manager Fehr made a motion to pay the Lab Testing Cost for 10 Mile Lake in the amount of \$1,616.50. Manager Jorissen second. Motion approved with a roll call vote.

Snagging/Clearing Project – Mike Opat informed district that Brady from Moore Engineering is working on this as a winter project.

Griggs/Barnes WRD – Chairman Hieb informed that at the Cooperstown WRD Meeting, they all agreed with Sean Fredricks addenda for the joint board. It was agreed upon to have 3 Managers from each district. Discussion followed. Manager Olauson volunteered to be the third member on this joint board along with Manager Jorissen and Fehr.

State Water Convention was discussed.

Bills – Manager Anderson made a motion to approve the bills in the amount of \$15,950.46. Manager Olauson second. Motion approved with a roll call vote.

Meeting adjourned 12:35 pm.

Respectfully submitted,



Linda McKenna

Secretary/Treasurer

Barnes County Water Resource Board