

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

February 12<sup>th</sup>, 2018

## MEETING MINUTES

MEMBERS PRESENT: Chairman Jerry Hieb, Managers – Bruce Anderson, Shawn Olauson, Bret Fehr, Scott Legge, Mike Opat -Moore Engineering, Sean Fredricks -Ohnstad Twichell

Also Present: See attached List

Chairman Hieb called the meeting to order at 9:00a.m. He then started the meeting by welcoming new WRD Manager Scott Legge. He introduced him to the rest of the board along with Mr. Opat, Mr. Fredricks and Commissioner Froelich.

Manager Anderson made a motion to approve the minutes from the January 8<sup>th</sup>, 2018 meeting. Seconded by Manager Olauson. Motion carried. Minutes approved.

There was discussion on Portfolio Holders. Manager Olauson is now on the Upper Sheyenne Joint Board, Manager Legge is now on Office/Finance and will also be on the Griggs/Barnes Joint Board, Manager Fehr is now on the Red River Joint Board.

## OLD BUSINESS

**Hobart Lake:** Mr. Opat started discussion stating not much is happening obviously over the winter, he presented an invoice to the board for approval from Moore Eng. He stated that the invoice is substantially higher than projected, this is due to the continuing work with ESA to get paperwork correct and on-site project management. It was asked if this invoice is all extra cost, Mr. Opat replied that this is the total with some added extra costs in there. He also stated that going forward the amount should be much less. There was discussion on the bidding process and going with the lowest bidder. Mr. Opat stated that now that the contractor has been out there, hopefully it will go more smoothly.

**Griggs/Barnes Joint Board:** Chairman Hieb asked if the Joint Board has received all the paperwork regarding everything Renaissance Eng. has done for the Silver Creek project? Mr. Fredricks stated that they are open records, so any documents that Ren. Eng. has belong to the board. An open records request can be made and they must provide them. Manager Fehr stated that there is a meeting on February 26, 10:00a.m. this will be the first meeting with the new

members. Commissioner Froelich asked what the Barnes Co. total is so far that has been spent on this project? Secretary Manson will email him that paperwork. Mr. Mutschler asked if there has been a response from the Corps regarding the letter sent to them from Ren. Eng.? Manager Fehr stated that we have not heard back from them. Mr. Mutschler then asked what the Joint Board has accomplished, Manager Fehr stated debate and discussion. Mr. Mutschler replied with nothing, he stated that sending that letter to the Corps stalled this project and that the Griggs Co. members knew they were all going to resign. Mr. Grossman had presented his letter he sent to Toni E. (COE) regarding the project. There was discussion on more watershed in other counties that should be in the assessment district. There was also discussion on dissolving this, Chairman Hieb suggested having the Joint Board meet to see where everyone stands. Manager Anderson stated that he is in favor of abandoning the project and starting over doing things the right way. The board asked Secretary Manson to make sure Tom Moe has a notification of the upcoming meeting.

**10 Mile Lake:** Manager Anderson read an email from Paul Abrahamson stating these are the latest elevations for 10 Mile. **NO CHANGES.**

**Please note the PS.**

12/10/2017 from direct observation of Moore Engineering Elevation Marker at **freeze-up** was 1431.00 msl

11/07/2017 from the NDSWC Observation Well 142-060-10CCC-2 elevation was 1433.57 msl

This is the SWC last reading made for 2017.

**PS** The **SWC Aerial Photos Project** can be viewed at <ftp://aerial.swc.nd.gov>.

The BC WRD Office thoughtfully saved **very early aerial photos** in the storage area that may be helpful to this project. Contact with the project leader may invoke an interest by them. Please note in the February minutes these early Barnes County aerial photos have been saved.

**Todd Wendel-Drain Tile Application:**

**Application to Install a Subsurface Water Management System for Todd Wendel in the North Half of Section 27 in Potter Township**

The Board reviewed an *Application to Install a Subsurface Water Management System* dated December 4, 2017, for Todd Wendel. Under the application, Applicant seeks to install a drain tile system in the North Half of Section 27 in Potter Township, Barnes County, North Dakota. The project will include a gravity outlet that will discharge along the north boundary near the northeast corner of Section 27; the tile discharge will flow north under 34<sup>th</sup> Street SE via an existing 24-inch culvert through the township road; the tile discharge will flow north across the East Half of Section 22, then east through County Highway 11 via an existing culvert; from there, the tile discharge will flow across portions of the Northwest Quarter of Section 23 and the North Half of the Southwest Quarter of Section 23 before ultimately reaching a natural watercourse. With regard to the outlet into the 34<sup>th</sup> Street right of way, the discharge will occur outside of township road right of way before flowing north through the township road ditch.

The Board provided THIRTY-DAY NOTICES to Charles and JoAl Wagner as the owners of the East Half of Section 22, to Erling Noecker as the owner of the Northwest Quarter of Section 23 and the North Half of the Southwest Quarter of Section 23, and to Barnes County and Potter Township as road authorities with right of way along the course of the outlet. The District provided the notices to the Wagners and Erling Noecker based on the deeds provided by

Mr. Wendel, including the addresses contained in the deeds. Erling Noecker later contacted Ohnstad Twichell and provided the St. Paul address, and Sean Fredricks issued copies of the all of the THIRTY-DAY NOTICE documents to Mr. Noecker at his St. Paul address. Ms. Jenny Noecker later contacted Manager Anderson and indicated she owns a portion of the Noecker property as well. The deeds provided by Mr. Wendel did not identify Ms. Noecker's ownership interest. Sean Fredricks issued copies of the THIRTY-DAY NOTICE documents to Ms. Noecker at the address she provided. In addition, the North Dakota address for Mr. Wagner identified in the deeds provided by Mr. Wendel, and as indicated by White Pages following an online search for addresses by Ohnstad Twichell, was no longer current. Following the return of the mailings to that address, Ohnstad Twichell conducted a more detailed Accurint search for a current address for Charles and JoAl Wagner and found an Arizona address; Sean Fredricks issued copies of the THIRTY-DAY NOTICE documents to the Wagners at that address.

None of the downstream landowners submitted "technical evidence," as that phrase is defined under Section 61-32-03.1, to demonstrate how Mr. Wendel's project could adversely impact their properties. Mr. Wagner contacted Sean Fredricks and Heather Manson to express his concerns regarding the project, but did not submit the requisite "technical evidence" required under the tile law that would allow the Board to attach a condition to Mr. Wendel's permit that he obtain consent from the Wagners. In other words, despite the Wagners' concerns, because they failed to submit "technical evidence," the Board has no legal authority to attach any conditions to Mr. Wendel's permit that could mitigate any potential damages to the Wagners. Further, because the tile outlet initially discharges outside of township road right of way, the Board cannot require applicant to install erosion protection or to provide other protection for the road right of way.

According to records provided by Mr. Wendel, Charles and JoAl Wagner own the East Half of Section 22, and Erling and Jenny Noecker own the Northwest Quarter of Section 23, and the North Half of the Southwest Quarter of Section 23. Further, Todd Wendel owns the North Half of Section 27 that he intends to tile.

Manager Anderson moved, and Manager Fehr seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2018-01* dated December 4, 2017, for Todd Wendel in the North Half of Section 27 in Potter Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2018-01.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District will recommend that Applicant consider complying with the following:

- 1) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 2) That Applicant obtain written permission from the Potter Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches;
- 3) That Applicant obtain written permission from Barnes County to discharge into, or otherwise utilize, any of its County highway ditches;
- 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.

Commissioner Froelich stated that the zoning board is looking at requiring a permit to dump water in the county/township road ditch. They also are discussing considering drain tile as a utility, the states attorney is checking into this and will keep us informed. Commissioner Froelich stated that if/when this permit gets passed, the BCWRD should notify applicants they need to also go to zoning. Mr. Fredricks relayed that the WRD cannot require the applicant to fill out the permit from zoning, they can only inform the applicant that they should involve planning/zoning. He also stated in the future if/when this is passed we (WRD) can include this language in our notices.

**Robert Bruns-Drain Tile Application:** Mr. Bruns had called and talked with Secretary Manson before the meeting, he has contacted his neighbor about an easement and has not heard back from that landowner. He will bring paperwork to the WRD office once he has it.

Chairman Hieb brought up that he did meet with the Mayor of VC, they discussed the Mill Dam and the Little Dam. He stated there was a common view about turning the Little Dam over to the city, beings it is within city limits.

## **NEW BUSINESS**

**SWC 2019-2021 Biennium:** Mr. Opat handed out the last project request for cost share list, for the board to look over and add projects to. He relayed that if you don't submit the project on the list, and you ask for money later- the policy states you will have to wait until the next biennium. By the next meeting the board must have a finalized list to present to the SWC. There was discussion on adding Silver Creek to the list for a preliminary engineering request or study. There was also discussion on Eckelson issue becoming an assessment drain. This will be on the agenda for the next meeting, the final project must be decided by the March 12<sup>th</sup> meeting.

Commissioner Froelich brought up a question for Mr. Opat and Mr. Fredricks regarding Hobart Lake. There was discussion at the County Commission about the cost over run on Hobart Lake Project, Commissioner Froelich was directed to ask why the County Commission/BC taxpayers must pick up that additional cost? Some of the Commissioners feel it's the responsibility of the engineering firm. Chairman Hieb stated that we (WRD) were a victim of circumstance for the state. Mr. Fredricks stated that the SWC help us out with things they don't help other boards with, because of the good working relationship with them. Mr. Opat added that he would classify this as a policy change, we were the first board the SWC had done this to, along with the new State Engineer. Commissioner Froelich will relay these comments back to the Commissioners, Mr. Opat offered to come to a commission meeting to discuss this.

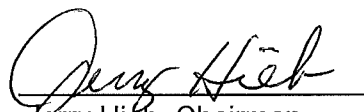
**Engineer Report:** Mr. Opat stated he had nothing else to report.

**Legal Report:** Mr. Fredricks stated he had nothing else to add, but there will be a Water Topics meeting on February 21, 2018. There was some discussion on trainings for managers, there will be some this coming summer and one in March regarding drain tile.

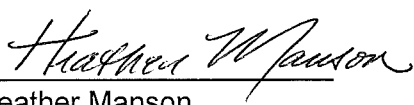
**Bills:** Manager Olauson made a motion to pay bills, with the addition of the Moore Eng. bill of \$74,837.72 for Hobart Lake. Seconded by Manager Fehr. Upon roll call vote motion carried unanimously.

Meeting adjourned at 10:42 am.

APPROVE:

  
Jerry Hiéb, Chairman

ATTEST:

  
Heather Manson  
Secretary-Treasurer

Barnes County Water Resource District  
PO Box 306  
Valley City, ND 58072

February 12<sup>th</sup>, 2018  
Meeting Attendance

PLEASE SIGN IN BELOW

---

Donald Jorissen

~~John A. [unclear]~~

Arvid Winkler

John Franklin

Lee [unclear]

Bob [unclear]

Ron Matlock

[unclear]