

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

June 11<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.

Manager Anderson made a motion to approve the minutes from the May 14<sup>th</sup>, 2018 meeting. Seconded by Manager Olauson. Motion carried. Minutes approved as printed.

### OLD BUSINESS

**Hobart Lake:** Beth Dooley (ESA) was present, she handed out photos of the site and gave an update. She discussed the amount of hours ESA has spent dewatering last month, and the amount of work done with the project – she stated they were done with close to ½ of the project as of today's date. She stated the rainfall and current amounts of water have taken up a lot of time. She asked the board for an extension on the Substantial Completion date of June 15, 2018 to be pushed to July 14, 2018 – with the final payment dates changing from July 18, 2018 to August 17, 2018. She also stated that compaction is an issue and they are spending enormous amounts of time drying the soil, they are also adding a lot of rock to the bottom of the pipe to get a good base. She then stated that the extension request she presented is truly what ESA can work with as far as getting the project done.

Chairman Hieb asked Mr. Opat for his input. Mr. Opat handed out to the board a change proposal from ESA, and stated procedurally this (extension request) is supposed to be given to Moore Eng. and then copied to other parties. Procedurally there are things there that need to be addressed, but Mr. Opat along with Mr. Hassell have had a chance to review the proposal. Mr. Opat stated that he does not want to come off as unsympathetic but we must look at it in terms of the contract. He stated as far as frost and rainfall are concerned those are not abnormal conditions when you look at it defined in the contract. None of the NDAWN gauges around the site showed above normal rainfall, so that was not abnormal as defined in the contract. Then the issue with water in the channel, this is the outflow from the lake so it is not totally unexpected that there may be water coming down the channel. From a contractual standpoint he recommended the board deny the

extension request based on those factors. Mr. Fredricks also recommended a denial of the extension request, and that he does not see how the board would benefit by granting this extension. Manager Anderson asked if there will be any ramifications from SWC or FEMA if the project is not completed on time? Mr. Opat stated that he believed our FEMA funding has been extended to August, and there no funding from SWC with this project. After more discussion the board decided to deny the extension request, and will re-visit the liquidated damages issue when the project is complete. Mr. Opat and Mr. Hassell will draft a letter of denial, followed by a letter from Mr. Fredricks on the boards behalf. They will put in an abeyance until the project is completed, then the board will re-visit. Mr. Opat also handed out a Pay Application #3 from ESA, total amount of work completed was \$18,079.55. There was more discussion on the \$13,000.00 of liquidated damages, with that taken off it brings the new total to \$5,079.55. Manager Legge made a motion to pay the Pay Application #3 in the amount of \$5,079.55 to ESA. Seconded by Manager Fehr. Upon roll call vote, motion carried unanimously.

Mr. Opat also wanted to give an update on the Operating Plan which is a key component of the permitting, drafts have been made and reviewed. The final draft was submitted to the state, we are awaiting approval. This brought up discussion about requirements for water quality testing, what is budgeted for this or do we do it ourselves and buy a tester. Discussion led to the board wanting more information on quotes from testing companies for discussion at next meeting.

Chairman Hieb asked Mr. Fredricks how the easements and purchase agreements were coming? Mr. Fredricks replied that the board won the motion in the Colville matter, that court case is supposed to proceed and we are hoping they come to agree to resolve this.

Chairman Hieb relayed that he has had communicated with Mr. Lewis and his easement has not been finalized yet, there were differences of opinion. Mr. Lewis was present, he relayed he wants the documents to match with the agreed terms that were discussed with Manager Anderson and Chairman Hieb. Mr. Lewis is frustrated at how long this process has taken, he claims the attorney has edited documents and added provisions that were not in the original agreement. He stated that the character of the agreement is completely changed, and he is done negotiating. Mr. Fredricks responded that he has heard these claims from Mr. Lewis a lot but has not seen or heard any evidence of what Mr. Lewis is referencing. Mr. Lewis handed the two documents for Mr. Fredricks and the board to review. Mr. Fredricks tried to explain to the Lewis's that one document was a purchase agreement, the other was a flowage easement. There was lengthy discussion on the documents, the meets and bounds along with the future ownership rights of the property – and the maintenance language. Mr. Opat stated that these are two different documents with two different purposes, they are not going to have the same language in them. Mr. Fredricks explained the purchase agreement states we have come to an agreement on terms, this is not something you record at the recorder's office. The flowage easement you do record, the terms are very different in terms of formatting and what you can record and what you can't. There is a "merge of clause" that states the terms of the purchase agreement will survive closing – which means all the terms will be valid moving forward.

It was decided by the board to meet with the Lewis's privately to discuss the documents and their concerns.

**Kathryn Dam:** Mr. Opat discussed the project and stated that the cost share application was completed and submitted to the SWC. He did relay that policies are ever changing, but we should hopefully know quickly where we are going to stand with this.

**Griggs/Barnes Joint Board:** Manager Fehr reported that the board is in the process of reorganizing, different legal counsel and possibly seeking different engineering. There is a Joint Board meeting scheduled today after this meeting.

**10 Mile Lake:** Manager Anderson read the email from Mr. Abrahamson stating... These are the latest elevations for 10 Mile. **6/6/2018** from direct observation of the Moore Engineering Elevation Marker was 1431.9 msl, an increase of 0.1ft. The new measurement taken at the NDSWC Observation Well 142-060-10CCC-2, 5/15/2018, is 1433.86  
Mr. Opat has handouts with information on Ten Mile Lake regarding Elevation – Volume Table.

**VC Little Dam:** Nothing new to report with this, there was discussion on when to approach the City of Valley City. Chairman Hieb stated he will work on this.

**Eckelson Lake Snag/Clear:** Manager Legge started conversation with the water is rising. Then discussion led to the process of creating a snagging/clearing district, with this the board and County Commission would have to conduct a joint hearing – proceeded by a published notice. Mr. Fredricks has sent an email to the Auditor and states attorney to let them know this may occur, along with a draft of the resolution for the Commission consideration.

Mr. Opat stated this snag/clear is the same process as the river, just a different form – with cattails instead of trees. Manager Legge stated that we want to clear the channel as best we can to then see what is open, keeping the cattails down might be enough. He also stated there should be some money out there to do this, so it does not come from the public per say.

Mr. Opat passed around a draft map that showed the boundary of what would be included in the assessment district, we cut it off at the County line (there is a small area in Stutsman Co.). The total is around 80,000 acres depending on how we factor in parcels. The other map shows what is identified as the project reach, it shows from Eckelson Lake and going north east to Hwy #1 where the cut off is marked. Mr. Opat recommended to go bigger rather than smaller to make sure everything is covered. He also wanted to point out that he included Fox Lake and an area north of this in the project, the board can choose to take them out later if they like. After small discussion the board chose to keep them in the project.

Manager Olauson made a motion to approve the “RESOLUTION SETTING THE HEARING REGARDING ECKELSON SNAGGING AND CLEARING DISTRICT NO. 2018-01.” Seconded by Manager Anderson. Upon roll call vote, motion carried unanimously.

Commissioner Berntson asked for a specific time when the hearing will be handled for the three Commissioners to be present, Mr. Fredricks stated 10:00 am on July 9<sup>th</sup>. Commissioner Froelich asked for a reminder email and letter, Mr. Opat will also send out copies of the maps for the Commission.

## **NEW BUSINESS**

**Engineering Services Selection:** Mr. Fredricks stated that this process happens every three years under NDSWC cost share. If you want to be eligible for cost share funding regarding engineering with projects you must go through his process. He went on and read the report that goes through all the procedures, developing a project which would be an outline of our general services. Submissions must be in our office by July 5<sup>th</sup>, 5:00pm – then the board can discuss

which firms submitted qualifications of service at the July 9<sup>th</sup> meeting. Manager Fehr made the motion to approve the Agency Selection Committee Initial Report. Seconded by Manager Legge. Upon roll call vote, motion carried unanimously. Mr. Fredricks stated he will arrange publications in the Times Record for this.

**Monte Peterson – Complaint:** Mr. Peterson was present to discuss his complaint that is in Nelson twp the NW ¼ & NE ¼ of sect 7, the board watched the videos he provided. He explained that his neighbor has placed some rock through an old fence line, Mr. Peterson has discussed this with his neighbor and offered to help maintain or remove them – but nothing has transpired. The water backs up through a drainage ditch, it is currently permeating the rocks somewhat and flowing around them very slowly – the standing water is killing off his crop. He stated that this is a pretty significant watershed area, and he asked the board for their thoughts. The board decided to have Secretary Manson mail Mr. Manstrom a copy of the complaint, and letter so he is aware of what is going on. Chairman Hieb will call and discuss this with both parties to see if they can remedy this on their own, if not at the next meeting the board will involve Mr. Opat.

**Vernell Lindemann – Complaint:** Mr. Lindemann discussed his complaint with Chairman Hieb over the phone and mailed his form with photos in for the meeting, his issue is in Raritan twp SE ¼ of sect 23. The board directed Secretary Manson to mail Mr. Utke a copy of the complaint and letter so he is aware of what is going on. Manager Fehr made the motion to have Mr. Opat start his analysis. Seconded by Manager Olauson. Upon roll call vote, motion carried unanimously.

**Dennis Laumb – Drain Tile Application:** Mr. Laumb has submitted a drain tile application for Rogers twp sect 21, the area is under 80 acres. The board reviewed the application, Commissioner Froelich asked if the tile drains into any county road ditches? After discussion, Manager Anderson responded no, it is draining into a natural watercourse. The board will keep the application on file.

**Engineer Report:** Mr. Opat mentioned there is a SWC Regional Meeting hosted by Commissioners on July 25<sup>th</sup>, the meeting is at 10:00 am at the Gaukler Wellness Center in Valley City. He stated if a board member attends they can give an update on the Kathryn Dam Project.

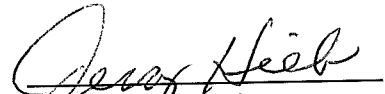
**Legal Report:** Mr. Fredricks mentioned he will be at the Water Topics and Legislative meetings, and stated work is still being done to get snagging/clearing cost share to be an eligible item again by the next biennium.

Mr. Opat also mentioned that the Upper Maple River Dam is working like it's supposed to, he did state that it also shows that more work needs to be done on the other tributaries.

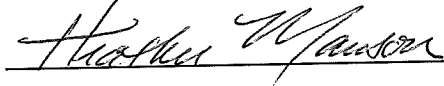
**Bills:** Manager Olauson made a motion to pay bills as presented with the addition of ESA pay application #3 in the amount of \$5,079.55. Seconded by Manager Anderson. Upon roll call vote, motion carried unanimously.

Meeting adjourned at 11:08 am.

APPROVE:

  
Jerry Heib, Chairman

ATTEST:



Heather Manson  
Secretary-Treasurer

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

June 11<sup>th</sup>, 2018  
Meeting Attendance

PLEASE SIGN IN BELOW

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Arvid Winkler

Joan Frazier

Mr. Wayne Didi

Rodger Berntson

~~Don At~~

~~Mike Matus~~

~~Mike P~~

Bill Dooley, ESA