

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

July 9, 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 9:00 a.m.

Manager Anderson move to approve the minutes from the June 11, 2018 meeting. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously. Minutes approved as printed.

OLD BUSINESS

Hobart Lake: Beth Dooley (ESA) was present to discuss the status of the project with the Board. Beth indicated ESA is nearing the boring at County Road 22. The control structures are installed, with cement work left to complete. She noted the last 120 feet to the boring location has been slow due to water inundation, though ESA is running pumps 24 hours a day.

Mike Opat presented Application for Payment No. 4 submitted by ESA for work completed from the beginning of June through June 28. ESA's payment request is in the amount of \$34,658.05. Mike noted the Board previously withheld \$13,000.00 regarding ESA's failure to meet their Milestone 1 deadline. In addition, Mike noted June 16, 2018, was the substantial completion deadline, and ESA has not met that deadline. At \$500.00 per day, the Board could withhold up to \$11,500.00 from Application for Payment No. 4 as liquidated damages regarding ESA's failure to meet their substantial completion deadline. Mike recommended the Board approve Application for Payment No. 4 in the amount of \$10,158.05, which would include \$13,000.00 withheld regarding the Milestone 1 deadline and \$11,500.00 regarding the substantial completion deadline, for a total of \$24,500.00 withheld as liquidated damages from Application for Payment No. 4. Manager Legge moved to approve Application for Payment No. 4 in the amount of \$10,158.05, with \$24,500.00 withheld as liquidated damages, as recommended by Moore Engineering. Manager Anderson seconded the motion. Upon roll call vote, the motion carried unanimously.

Mike reported that Minnesota Valley Testing submitted the low bid for water quality testing at the amount of \$687.60 per test. The water quality testing is required under the permit approved by the North Dakota State Engineer's office, and Mike anticipated there would likely be approximately four tests per year. Manager Olauson moved to hire Minnesota Valley Testing to conduct water quality testing for the Hobart Lake Project as required under the permit approved by the North Dakota State Engineer's office. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously.

Mike noted the Board previously requested an extension regarding FEMA funding through August 1, 2018. Josh has been in contact with FEMA, and they gave every indication they would approve an additional extension if requested. Manager Anderson moved to authorize Moore Engineering to submit an additional extension request to FEMA. Manager Olauson seconded the motion. Upon roll call vote, the motion carried unanimously.

Mike discussed the operation and maintenance (O&M) plan the Board drafted during the "statewide significance" permitting process. The State Engineer's office recently reviewed the O&M plan and noted that they approved the plan, but simply wanted some additional permit language specifically incorporated into the plan. Mike incorporated the terms requested by the State Engineer's office and circulated copies of the revised draft O&M plan for the Board's review. Manager Fehr moved to approve and adopt the new O&M plan for the Hobart Lake Project prepared by Mike Opat. Manager Olauson seconded the motion. Upon roll call vote, the motion carried unanimously. Commissioner John Froelich noted his disappointment that ESA is late on the project and further noted that missing the FEMA deadline would cost Barnes County a lot of money. Beth Dooley indicated she understood the time sensitivity involved.

Sean Fredricks indicated there are some outstanding title issues regarding the Sjostrom property that his office is working on with the Sjostroms' counsel. On other right of way issues, the Lewises were present to once again discuss their right of way. Jerry suggested the possibility that the Board did not previously approve the Purchase Agreement with the Lewises; instead, Jerry indicated he met with the Lewises and signed the draft Purchase Agreement with the changes requested by the Lewises before the Board had the opportunity to review the modifications. Jerry suggested the Board approve the Lewis Purchase Agreement, signed in 2017, to ensure the Board has the approval in the record. Manager Anderson moved to approve the Purchase Agreement with the Lewises previously signed by Chairman Hieb and Secretary-Treasurer Manson. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously.

Chairman Hieb recommended creating a committee to negotiate with the Lewises and to hopefully assuage any concerns the Lewises still had regarding the Flowage Easement draft. Sean Fredricks noted that if the Board creates a committee, the committee will be subject to North Dakota's open meetings laws, which would require a meeting notice and agenda filed and posted with all of the requisite parties under North Dakota law, as well as minutes from each meeting. The Board understood the legal ramifications of creating a committee to negotiate. Manager Fehr moved to authorize Jerry Hieb and Bruce Anderson to act as a committee to negotiate with the Lewises. Manager Legge seconded the motion. Upon roll call vote, the motion carried unanimously. Chairman Hieb will ensure either Jamie Smith or Secretary-Treasurer Manson

handles creation of the agenda, providing the proper notices, filing the agenda, and taking minutes for each meeting.

Kathryn Dam: Mike Opat explained the Board previously submitted a cost-share application to the North Dakota State Water Commission. Beth Nangare from the State Water Commission contacted Mike and indicated they are in the process of reviewing the cost-share application.

Griggs/Barnes Joint Board: Manager Fehr reported the Griggs-Barnes Joint Water Resource District recently appointed Sean Fredricks as their legal counsel. Manager Fehr further reported the Joint Board is in the process of conducting its engineering selection process as required under the North Dakota State Water Commission cost-share policies.

10 Mile Lake: Manager Anderson indicated he heard from Paul Abrahamson, who reported the lake has decreased approximately .7 ft.

VC Little Dam: Chairman Hieb noted the Board cannot make any headway on this matter until the City of Valley City installs their new Commissioners. Once that process is complete, Chairman Hieb will approach the City to discuss.

Engineering Services Selection: Secretary-Treasurer Manson previously reported that Moore Engineering and Bolton & Menk are the two firms who supplied qualifications statements in response to the Board's request for qualifications regarding the engineering selection process. Sean Fredricks presented a draft SECOND REPORT and explained the draft report. The report outlines the steps the Board has taken so far, identifies Moore and Bolton & Menk as the two firms that supplied qualifications statements, and sets interviews with the two firms for August 13, 2018. Manager Anderson moved to approve the draft SECOND REPORT. Manager Olauson seconded the motion. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare interview invitations to send to the two firms, and directed Sean to include language to notify the firms the interviews would only be 15 minutes.

Monte Peterson Complaint for Water-Related Issues Filed Against Les Manstrom: Mr. Manstrom was present to discuss the matter with the Board. Chairman Hieb met with Mr. Peterson to discuss the matter. Chairman Hieb relayed Mr. Peterson's concerns; Mr. Peterson is primarily concerned about the rocks on Mr. Manstrom's property that ultimately impede drainage. Chairman Hieb noted Mr. Peterson is willing to withdraw the Complaint and to discuss the corn stalk issue with Mr. Manstrom. Manager Legge agreed that is a better option for the parties in light of the fact that the Board can only act within its statutory authorities. In this case, the Board does not have any authority over corn stalks or corn residue that may impede drainage. Les Manstrom noted he removed the rocks in the area, and indicated he is certainly willing to discuss the corn residue issues with Mr. Peterson.

Chairman Hieb indicated that Mr. Peterson authorized the Board to withdraw his Complaint. With that in mind, the minutes will reflect that Chairman Hieb withdrew Mr. Peterson's Complaint on his behalf and at his direction.

Vernell Lindemann Dam/Dike Complaint Against Bradley Utke: The Board next considered Vernell Lindemann's Complaint against Bradley Utke. Mr. Lindemann filed a COMPLAINT FOR WATER-RELATED ISSUES, dated June 6, 2018, against Mr. Utke regarding allegations of an illegal or unpermitted dam or dike in violation of N.D. Cent. Code §§ 61-16.1-38 and 61-16.1-53. Both Mr. Lindemann and Mr. Utke were present to discuss the matter with the Board.

Mr. Lindemann explained his land in the Southeast Quarter of Section 23 in Raritan Township is in CRP. This spring, Mr. Lindemann returned after being away for most of the winter and noticed a dike or some other structure located immediately adjacent to his land on Mr. Utke's property in the Northeast Quarter of Section 23. Mr. Utke responded that he was simply attempting to mitigate flooding caused by the legal upstream drainage.

The Board previously directed Mike Opat to investigate the matter and to report back to the Board. Mike contacted both landowners and obtained permission to access their properties. Mike had a survey conducted by his staff and presented a map with survey points of the properties in question.

Under North Dakota law, if a dike is "capable of retaining, obstructing, or diverting" more than 50 acre-feet of water, the structure requires a permit. Similarly, if a "low-hazard dam" is "capable of retaining, obstructing, or diverting" more than 50 acre-feet of water, the dam requires a permit. A "low-hazard dam" means a dam located in a rural or agricultural area, like this structure.

In either case, the 50 acre-feet threshold applies. Mike reviewed the survey data and noted the structure is constructed in a pothole. Ultimately, Mike concluded, based on the survey, the structure will not retain, obstruct, or divert 50 acre-feet of water.

Sean Fredricks noted that, under Sections 61-16.1-38 and 61-16.1-53, the Barnes County Water Resource District only has jurisdiction over dikes or low-hazard dams to the extent the structures retain, obstruct, or divert more than 50 acre-feet of water. In this instance, because the structure does not meet the 50 acre-feet threshold, the District lacks jurisdiction over the structure and lacks authority to order Mr. Utke to remove it. With that in mind, Sean noted the Board had no choice but to dismiss Mr. Lindemann's Complaint.

Manager Legge moved to dismiss Mr. Lindemann's COMPLAINT FOR WATER-RELATED ISSUES filed by Vernell Lindemann due to lack of jurisdiction under Sections 61-16.1-38 and 61-16.1-53. Manager Olauson seconded the motion. 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 the parties of record, and to include the data generated by Moore Engineering.

Application to Install a Subsurface Water Management System No. 2018-01 for Conservation Development Cooperative in the Northwest Quarter of Section 1 and the Northeast Quarter of Section 2 of Weimer Township: The Board reviewed an *Application to Install a Subsurface Water Management System No. 2018-01* dated June 18, 2018, for Conservation Development Cooperative. Jamie Middel was present to discuss the application on behalf of the Applicant. Under the application, Applicant seeks to install a drain tile system in the Northwest Quarter of Section 1 and the Northeast Quarter of Section 2 of Weimer Township, Barnes County, North Dakota. The project will include an underground pipeline that will run from the Northwest Quarter of Section 1 to the north and east into the East Half of Section 36 of Minnie

Lake Township, where the underground pipeline will daylight and discharge into a natural watercourse.

Because the project will discharge directly into a natural watercourse, no THIRTY-DAY NOTICE was necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1. Under the tile law passed during the 2017 Legislative session, the Board cannot attach any conditions to require Applicant to obtain written permission from downstream landowners, nor can the Board require Applicant to install erosion protection in the natural watercourse that will serve as the outlet. However, the Board can recommend those steps.

According to records provided by the Applicant, Henderson Farms, Inc., owns the Northeast Quarter of Section 2 and the Northwest Quarter of Section 1 in Weimer Township, where Applicant intends to install the tile system. Further, Mark and Shirley Stowman own the East Half of Section 36 in Minnie Lake Township, where Applicant intends to install the underground pipeline to discharge into the natural watercourse that will serve as the outlet.

Manager Fehr moved, and Manager Olauson seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2018-01* dated June 18, 2018, for Conservation Development Cooperative in the Northwest Quarter of Section 1 and the Northeast Quarter of Section 2 in Weimer 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 Henderson Farms, Inc., for purposes of installing, constructing, and maintaining a tile system;
- 2) That Applicant obtain written permission from both Weimer Township and Minnie Lake Township to install, operate, and maintain buried pipe in any of their township road ditches;
- 3) 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
- 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.

Eckelson Lake Snagging and Clearing District: Chairman Hieb opened the hearing regarding the Eckelson Lake Snagging and Clearing District proposed by the Board in accordance with the snagging and clearing procedures under North Dakota law. Chairman Hieb introduced Mike Opat, and Mike proceeded to explain the process involved in creating this snagging and clearing district. More specifically, Mike noted this hearing is a statutory hearing for purposes of creating a snagging and clearing assessment district. Under State law, four out of five water managers would ultimately have to approve creation

of the district, along with four out of five Barnes County Commissioners. Three Barnes County Commissioners were present at the hearing. Mike explained the snagging and clearing district is a one-time district with a \$100,000.00 cap. In other words, the Board can only levy up to a maximum of \$100,000.00 for a snagging and clearing project in this area. Further, the Board cannot assess more than \$.50 per acre on agricultural properties, and \$.50 per \$500.00 of value for non-ag properties. The District would have to exhaust the proceeds from this district before creating another district to conduct snagging and clearing in this same area.

Barnes County Commissioner Roger Berntson indicated he supports the creation of the district and the proposed project, but noted that he questioned whether or not landowners within the Fox Lake area will benefit from the project. Manager Legge noted the Fox Lake water does ultimately get to Eckelson, especially during high water events. He noted Fox Lake has to fill first, but that the high water ultimately drains to Eckelson Lake.

Mike Opat noted that, under the proposed district as currently constituted, everyone within the district is at the 100 percent level. The Board could modify the benefit percentages if they feel that some landowners do not receive the same level of benefit, potentially including landowners within the Fox Lake area. At \$.50 per acre for everyone within the Lake Eckelson watershed, under the draft snagging and clearing assessment list, the Board would levy \$38,500.00 maximum, at 77,116 acres. Mike noted the Fox Lake area is just over 9,350 acres. Ultimately, the project proposed would likely cost less than the \$38,500.00, and the Board certainly had some room to modify those benefits if the Board agreed some landowners did not receive the same benefit.

Commissioner Berntson and Commissioner Froelich both indicated they would agree to 10 percent assessments for landowners within the Fox Lake area. Mike noted the District would raise \$34,508.00 as a maximum under that scenario.

No one else present had any further comments, and Chairman Hieb closed the hearing.

The Board further discussed the benefits of the proposed project within the watershed and agreed to reduce the Fox Lake area to 10 percent benefits. Sean Fredricks presented a RESOLUTION AUTHORIZING THE CREATION OF ECKELSON SNAGGING AND CLEARING DISTRICT NO. 2018-01. Approval of this resolution would complete the Board's process. Manager Anderson moved to approve the RESOLUTION AUTHORIZING THE CREATION OF ECKELSON SNAGGING AND CLEARING DISTRICT NO. 2018-01, with the modified assessment list with reduced benefits for the Fox Lake area. Manager Legge seconded the motion. Upon roll call vote, the motion carried unanimously.

Sean Fredricks noted the Barnes County Commission would still have to approve their resolution with at least four of the five Commissioners voting in favor. The Commission will discuss this at their July 17 Commission meeting. Mike Opat indicated he would attend the Commission meeting to discuss the project and the process with the Commission. Sean Fredricks previously provided the draft Resolution to the Barnes County State's Attorney and the Barnes County Auditor.

Sanborn Lake: Commissioner Froelich suggested that the Board inspect the project to see if the water is nearing the inlet. The Board would have to apply for an emergency permit to operate the project since neither the Board nor the County finalized the downstream Flowage Easements. Sean Fredricks recommended that the Board finalize the downstream right of way so the Board could ultimately finalize its permit for the project. Manager Anderson will check the water elevation.

Engineer Report and Legal Report: Neither Mr. Opat nor Mr. Fredricks had any additional items to report.


Bills: Manager Olason moved to approve the bills as presented with the addition of the ESA Application for Payment No. 4 in the amount of \$10,158.05. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously. There being no further business to discuss, the meeting was adjourned.

APPROVE:



Jerry Hieb, Chairman

ATTEST:



Sean M. Fredricks
Acting Secretary

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

July 9th, 2018
Meeting Attendance

PLEASE SIGN IN BELOW

DuWayne Didi
Gregory John

Dana Didi

Arvid Winkler

Beth Dooley, ESA

Vernell Lindemann

Joan Fraclius

Paul Fisher

Janie Model

Rodger Berntson

Bob