

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

August 13, 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.

There was discussion on the July 9<sup>th</sup>, 2018 minutes. Manager Olauson made a motion to approve the minutes with the corrections that were discussed. Seconded by Manager Legge. Motion carried, minutes approved with corrections stated. The July 26<sup>th</sup>, 2018 Special Hobart Meeting minutes Manager Fehr made the motion to approve the minutes with the corrections discussed. Seconded by Manager Anderson. Motion carried, minutes approved with corrections stated.

## OLD BUSINESS

**Hobart Lake:** Mr. Opat started the discussion with an update on the project. ESA has basically all the pipes in and the channels have been graded to and away from the inlet, he relayed that they (ESA) will be moving to the three downstream crossings this week. As far as constructions goes, there is a little bit of grading on the south side of the highway to get the water to come to the culvert that is by the road. ESA has expressed concerns about this. There is about 4 feet of water over the top of the ditch and they called in the locate, we showed there is a phone line in there. Mr. Opat suggested the board remove that part of the work from the contract, let the project operate to get the water down so it isn't hitting the ditch and then bring someone in if needed to shape the ditch up. Mr. Opat stated if the board agrees he will work on a Change Order to remove that part of work from the contract. Manager Anderson asked if the dike on the west side will be removed Mr. Opat replied yes, the ditch removal will get the water to go down and it will be finished by this fall or next year. It depends how long it takes for the water to go down.

Mr. Hassell has been checking the water quality and flow gages on the river, right now he estimates we should be able to let 6 cfs out he will keep an eye on things. For the time being Mr. Hassell has all the water quality testing set up and ready to go when the project is ready to operate.

Mr. Opat also reported that the State Engineers Office has approved the O&M Plan, they will send a memo stating the approval. One thing is the state does not require signatures and they suggested that we remove that part, Mr. Opat asked if the board agrees to this he will remove the signature page. Chairman Hieb replied yes for the removal.

The last item Mr. Opat had was the submittal of Pay Application #5 from ESA, and they have requested payment for the amount \$38,479.80. He explained at this point ESA has accrued liquidated damages in the amount of \$13,000 for missing a Milestone last fall, as of the last meeting they were 23 days late of substantial completion and that accrued \$11,500 and since last meeting through yesterday was an additional \$17,500. So that total is at \$41,750 and that exceeds the amount ESA is requesting in Pay Application #5, it would be our recommendation that there would be a payment of zero dollars this time. For now, even though it is payment of zero dollars the appropriate process is to approve the Pay Application and then Mr. Fredricks will send out the Set-Off Notice to inform them they are not being paid because of these reasons. Manager Olauson made the motion to approve Pay Application #5. Seconded by Manager Legge.

There was some discussion on where ESA will be working and proceeding east by Karch's or Thomsen's crossing. It was brought up that the dirt removal on some property has not happened yet, it has been sitting on the property since last November-it stated in the easement that this would be removed off the property and rocks will be picked up along with any vegetation that had to be will be re-seeded. Mr. Opat stated that will all be checked on and that there are areas where some work has been done but not completed. The board is aware of this. A concern was brought up about the pile of gravel in the twp right of way on the shoulder of the road by Mr. Colville's ravine, it was explained the gravel is there for the culvert installation and that needs to be completed. It was suggested that flags should be put by the gravel piles, there was some discussion on if the twp should put up flags beings it is in their right of way.

Mr. Darren Bjornson was present, he is concerned there is no water by the elevators or in the ditch on the east side of the twp road. There is a culvert there and it is plugged he asked if ESA is going to unplug the culvert, so the east side will fill up with water again? Mr. Opat relayed that when everything else is done and the pipe is operational they will open the culvert, it must be opened otherwise it is considered an obstruction and someone could file a complaint. It has to be opened up. Mr. Bjornson asked if the water quality work is all done? Mr. Opat relayed that from the data that Mr. Hassell has it could be opened half way, the reason it is not flowing is the work that has to be done downstream yet.

Back to the motion made to approve Pay Application #5 by Manager Olauson. Seconded by Manager Legge. Upon roll call vote, the motion carried unanimously.

Manager Anderson asked Mr. Opat how much has been paid to ESA to date? Mr. Opat stated \$250,315.27. Manager Olauson asked about the Colville situation, Mr. Fredricks stated his office recommended trying to resolve this issue so both parties do not incur cost. Nothing has been heard back from Mr. Colville's attorney, Mr. Fredricks stated if they refuse we will continue with litigation. Chairman Hieb stated that he has visited with Jason Sjostrom and he is waiting to hear back from him. Mr. Fredricks relayed when his office did a title review they found an issue that Mr. Sjostrom must resolve, we have a signed purchase agreement and with that we have the right

to run water and continue with the project. Mr. Sjostrom and his attorney will let the board know when the issue is resolved, and then they can sign the easement.

**Kathryn Dam:** Mike Opat reported that the meeting with the SWC went better than anyone could have hoped. He gave a history of the project and explained that he and Chairman Hieb attended the meeting with the SWC Commissioners. He stated they explained how the WRD inherited this dam because it was abandoned, and that we (WRD) had no way to pay for its maintenance out of our general fund. They asked the Commissioners for more funding, then he explained how the SWC has changed their cost share policy. The SWC Commissioners unanimously approved the project at 75% funding with all eligible costs. Now there is \$754,887.00 funding for this project from the SWC, Mr. Opat stated that moving forward with this we need to work on the final design plan and specs – the permitting process through the winter and then get bids out early spring. Manager Legge made the motion to have Moore Eng. to proceed with the project. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously.

Chairman Hieb mentioned that he has been asked a few times do we (WRD) really need a water lawyer and engineer at meetings. He stated hadn't we had that and the know-how, we wouldn't have been successful at this SWC meeting. So yes, we do need them, and they do a great job.

**Griggs/Barnes Joint Board:** Manager Fehr reported there is not too much going on, we are doing the Engineer Selection Process also and are conducting interviews today after the BCWRD meeting. We have appointed legal for the Joint Board, Sean Fredricks with Ohnstad Twichell.

**10 Mile Lake:** Manager Anderson read the email sent from Mr. Abrahamson....

These are the latest elevations for 10 Mile. **8/11/2018** from direct observation of the Moore Engineering Elevation Marker was **1430.8** msl. From the previous reading on 7/7 of **1431.2**, the new reading represents a **decrease of 0.4 ft**. The new reading equates to **5403.49**-acre feet per Moore Engineering figures or a decrease of **1057.95-acre feet** from the 7/7 reading. The NDSWC Observation Well 142-060-10CCC-2, 7/26/2018 reading of **1433.96 msl** is a **decrease of 0.09 ft** from the 6/13/2018 of **1434.05**. Mr. Abrahamson also attached a Volumetric Table with new figures, this was handed out to the board.

**VC Little Dam:** Chairman Hieb reported that he has made some progress, he visited with Mayor Carlsrud and Brenda Klein about this. They will discuss it with the city administrators and get back to Chairman Hieb with a meeting time. Chairman Hieb then asked how many dams in Barnes County are under the WRD jurisdiction? Mr. Opat will bring the list of all the dams and the listed owners to the next meeting. The question of if an accident happened on private property with one of these dams, could that bring some litigation our way was brought up. There was some discussion if it is out of line to have the water board give all the little dams in these pastures to the landowners? Mr. Fredricks stated that there would need to be a three-party agreement between the WRD, the landowner and the state. Manager Fehr stated he would like to look more into this, turning some dams over to the landowners with a three-party agreement. Manager Anderson relayed that he has no problem with the WRD taking responsibility of the dams along the rivers, but the one's in these pastures are mostly stock dams.

Chairman Hieb brought up in discussion how costly the complaints and tile applications have been, he asked if there was any way of recovering some of the costs? Mr. Fredricks stated that three legislative sessions ago the WRD Assoc. supported a bill to allow water boards to recover

their funds in complaint situations. He went on to explain that the water boards however are limited in terms of the situation where they can recover those funds, he stated that if there is a frivolous complaint the legislature thought it was fair to recover the costs against the person who filed the frivolous complaint. He did state that the legislature did not want to prevent or discourage people from filing legitimate complaints by forcing them to pay the expenses. The Lindemann-Utke complaint was brought up in this discussion, Mr. Fredricks stated in this situation the WRD cannot recover costs.

**Engineer Services Selection:** The interview for the Eng. Service Selection started with Mr. Opat (Moore Eng.) he stated he appreciates the opportunity to interview, then handed out material for the board to review. He gave a background on the firm, it has one of the largest team of water resource engineers in the Red River Valley. They currently work with 13 different water boards as well as some significant flood control projects, in the past we have worked with BCWRD with assessment drains and permitting assistance also water complaints. He stated that the BCWRD has over half of the complaints that his firm deals with and that does have a big impact on the water boards budget. He talked about ways to streamline the complaint process to keep the cost down, he stated he will do what he can on his end. He suggested the board taking their policy to another step, and get all parties present not only to notify but get them in here so the board can explain to them what the criteria is before the board has jurisdiction. With better communication between all parties, maybe we can get it worked out before we do site visits and rack up big bills. This is something we can all try to improve on moving forward. Mr. Fredricks will prepare the Final Report for approval at the next meeting.

**Snagging/Clearing – Eckelson Lake:** Manager Legge reported that the assessment district has been passed/approved. He stated if the cattails are going to get sprayed this year it must be done soon, if we don't have money are we not going to spray – or can we borrow money from our (WRD) general fund to spray then pay it back next spring when money starts to come in? Mr. Fredricks explained that if the board has money in the general fund, yes you can borrow against it and pay it back. Chairman Hieb asked what a rough estimate would be for spraying? Manager Legge stated it is around seven miles and a rough estimated cost of \$5,000. Manager Legge then asked if the culvert that the county put in on the Rogers/Sanborn road where Eckelson Lake drains through is put in at a certain level? Mr. Opat believed it was put in to match the existing culvert. Manager Legge stated there was water movement and that is a good thing, if the cattails are sprayed this year it will keep movement flowing. He then asked what the board thought and that he was open to waiting until next year to spray if that is what's decided. Manager Olauson replied that we should get it started now, it is the time to spray let's get it done. Manager Olauson made the motion to borrow money from the general fund to spray cattails, then pay it back when the money from assessments come in next spring. Seconded by Manager Fehr. Upon roll call vote, the motion carried unanimously.

## **NEW BUSINESS**

**Helicopter Spray Legal Drain II:** Manager Anderson talked with Shawn Anderson, they want spraying done this year again. Discussion on having Mike Larson (Larson Helicopters) spray again, it was stated that he did a great job last year. Manager Anderson made the motion to contact Mike Larson to have him spray our two Legal Drains again, and for some reason he can't do it to let us know so we can get someone else. Seconded by Manager Fehr. Upon roll call

vote, the motion carried unanimously. Chairman Hieb then stated that the farmers can coordinate their private spraying with Mr. Larson on their own, and the WRD will provide Mr. Larson's information like what was done last year.

**Road Report – Stewart/Anderson Twp:** Manager Anderson reported some road damage in Stewart Twp in an area by George Piatz's it is ½ mile south by the intersection then east on the north side of the road, he had photos for the board to look at. Manager Anderson was told that the water from Legal Drain II has caused this damage and the WRD should pay for the cleanout farther west that was suggested, and the repair along the road. He said that rock has been replaced along the road and packed in to help it from sluffing off more. After discussion the board decided that it is not all Legal Drain II water causing this issue, and it is a twp road. Manager Anderson made the motion to contact Wade Klubben to fix the ditch, with the revision that Legal Drain II account pays ½ of the bill and Stewart Twp pays the other ½ of the bill. Seconded by Manager Fehr. Upon roll call vote, the motion carried unanimously.

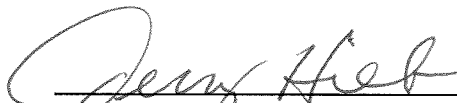
Manager Anderson and Manager Legge reported they went out to Sanborn Lake, brought back photos for the board to look at. There is at least 4 ft of water leading up to the control structure up to the gate. The inlet to the control structure is covered, Manager Anderson is going to get the key to check the wheel. Commissioner Froelich asked if water is 4 ft above the bottom of the culvert? Both Manager Anderson and Manager Legge were out there and they both replied yes that is correct. Manager Anderson stated that we will be needing an emergency permit if the water gets up and threatens the RR again, or a permanent permit if we can get the easements downstream.

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


**Bills:** Manager Olauson moved to approve the bills as presented. Seconded by Manager Fehr. Upon roll call vote, the motion carried unanimously.

There being no further business to discuss, the meeting was adjourned at 10:46 a.m.

APPROVE:

  
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Jerry Hieb, Chairman

ATTEST:

  
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Heather Manson  
Secretary-Treasurer

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

August 13<sup>th</sup>, 2018  
Meeting Attendance

PLEASE SIGN IN BELOW

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John Fraelit

Darren Bjornson

Arvid Winkler

Chris Gross