

Barnes County Water Resource District

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Valley City, ND 58072

701-845-8508

September 19, 2018

### **SPECIAL MEETING MINUTES**

PRESENT: Chairman Jerry Hieb, Manager Bruce Anderson, Manager Shawn Olauson, Manager Bret Fehr, Commissioner Roger Berntson

VIA TELEPHONE: Mike Opat & Josh Hassell, Moore Engineering; Sean Fredricks and Chris McShane, Ohnstad Twichell.

Chairman Hieb called the Special Meeting for the BCWRD board to order at 2:05 p.m. The sole purpose of the meeting is to discuss one item, the flowage easement from Keith Colville. He stated that he thought Mr. Fredricks and Mr. Opat might have some different options the board can consider bringing this to a close. Mr. Fredricks said really there are two options... one is the settlement proposal communicated by Mr. Colville's attorney, and the other option is to proceed with the Board's ongoing eminent domain litigation. Mr. Fredricks explained the Board previously acquired a flowage easement from Mr. Colville by commencing a quick-take eminent domain action; the Board has the easement and now must litigate the value of the easement in the eminent domain action. The Board offered Mr. Colville \$102.00 for the small downstream flowage easement, in an area that is already subject to water. He explained that with quick take if you get the access and right of way you basically argue about the value later, we are in that stage right now.

He then asked Mr. McShane to explain what the proposal is from Mr. Colville's attorney... Mr. McShane indicated Colvilles' want \$3,000 for the easement and payment of their attorneys' fees; if the parties are unable to agree to terms regarding the attorneys' fees, the parties would agree to submit the dispute to the Court for determination of "reasonable" fees.

Mr. McShane explained that if the Board does not accept the Colvilles' offer, the Board will have to obtain an appraisal. Mr. Fredricks reminded the Board that, at the commencement of this project, the Board decided not to obtain appraisals or to conduct surveys for right of way; landowners seemed to be supportive of the project, and the Board wanted to save the County the expenses of appraisals and surveys. With that in mind, the Board will, at the very least, have to secure an appraisal of the Colville easement. Also, by law if the matter proceeds to trial, the Board will be responsible for Colvilles' "reasonable attorneys' fees."

The Board discussed the fairness of paying the Colvilles' several times more than the value of their easement and not paying other landowners at the same rate. The fairness issue is troubling to the Board, and the Board is also concerned about landowners holding out on future projects.

Manager Anderson asked if this issue will jeopardize our FEMA funding. Mr. Hassell explained this project is funded by FEMA as part of the Hazard Mitigation Grant Program, and FEMA wants this project completed soon to finalize cost-share. Mr. Hassell is in the process of seeking an extension, and will ask FEMA if the Colville easement and related expenses will qualify for cost-share.

The Board is concerned about the prospect of agreeing to pay attorneys' fees when Mr. Colville will not disclose the amount of fees he has incurred. Mr. McShane noted the Board does not have to agree to pay an open-ended amount of attorneys' fees; if the Colvilles' will not provide an amount, the parties can agree to submit the matter to the court to determine "reasonableness."

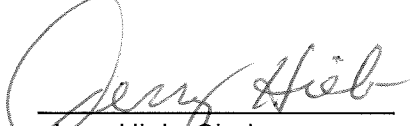
Mr. McShane explained the Board's potential risks if they do not agree to accept the Colvilles' offer and proceed to trial. Mr. McShane noted the Board would be responsible for the costs for Moore's participation and assistance in litigation, the appraisal costs, and Chris' fees. In all, that exposure could be anywhere from \$40,000 to \$60,000. In addition, the Court may award the Colvilles' "reasonable attorneys' fees." The Supreme Court is currently considering a case regarding the definition of "reasonable attorneys' fees." Mr. McShane stated he would be more than happy to take this matter to trial if that is what the Board chooses, but he just wanted the Board to understand the potential financial risks. Manager Anderson stated that sooner or later the Board has to stand up to unreasonable demands, to protect the project and Barnes County taxpayers, and to avoid similar situations in the future. The Board does not want future landowners to hold-out under the belief that they can hold a project hostage in return for unreasonably high payment for right of way.

Manager Fehr made the motion to counter with an offer of \$369 (which is \$300 an acre x 1.23 acre), and no attorneys' fees. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously. The Board is concerned about setting a troubling precedent for future projects, and does not believe paying the Colvilles' ten times the value of their right of way is fair to the other landowners or to Barnes County taxpayers.

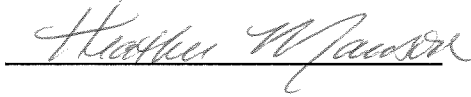
Mr. McShane will communicate the Board's counteroffer to Colvilles' counsel, and will otherwise begin to prepare for trial. Chairman Hieb asked to be kept in the loop regarding appraiser selection. Mr. McShane welcomed any ideas, and noted managers can let him know about possible appraisers by the end of the week (to ensure Mr. McShane can meet the court's trial schedule).

Meeting was adjourned at 3:07 pm.

APPROVE:

  
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Jerry Hieb, Chairman

ATTEST:

  
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Heather Manson  
Secretary-Treasurer