

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

April 8<sup>th</sup>, 2019

## MEETING MINUTES

**MEMBERS PRESENT:** Chairman Jerry Hieb, Managers – Scott Legge, Daniel Buttke, Bruce Anderson, Mike Opat - Moore Engineering, Sean Fredricks – Ohnstad Twichell, Commissioners John Froelich, Shawn Olason, Vicky Lovell

**ABSENT:** Manager Bret Fehr

Also Present: See attached List

Chairman Hieb called the meeting to order at 9:00 a.m.

Manager Anderson made the motion to approve the March 11<sup>th</sup>, 2019 minutes. Seconded by Manager Legge. Motion carried, minutes approved.

## OLD BUSINESS

**Hobart Lake:** Mr. Fredricks had nothing to report. Mr. Opat reported that Mr. Hassell has been communicating with Emergency Services and working with FEMA to cover all the costs on the project. He explained that the only remaining cost on the legal expenses is the Colville matter, the FEMA folks felt that was over and above what they normally would cover. Justin M. at the state is currently working on that, all the other additional costs have been covered and that is good news. Once we get the final word from them we will get that closed out and show where we are at, the costs haven't changed much from what was last shown to the board. As far as operating the project conditions look favorable to be moving some water out of there the first step is to get a water quality test done, after that comes back hopefully we can get it going if the river is still favorable. Manager Anderson is working on setting up the water quality testing. Manager Anderson stated that the base that holds the crank on at the drain valve was lifted off the cement, he thought it was suppose to be anchored? He did report that things are working, Mr. Opat said if it works now we can go back and check on this a little later. Commissioner Froelich asked for a copy of the final report from Moore Eng. when the project is closed, Chairman Hieb said the Commission will get the report.

**Kathryn Dam:** Mr. Fredricks introduced Mike Manstrom (Dougherty & Co.) who helped underwrite the bond for the project, Mr. Manstrom has personally worked with Valley City and Barnes Co. for the past 25 yrs. Mr. Manstrom presented an interest rate and resolution that was

prepared by Ohnstad Twichell to authorize the issuance, the interest rate is at 2.15% for 24 months and the bonds are callable anytime. Mr. Fredricks explained that this in anticipation of the cost share funding the board has secured for the project. He also explained all bonds that any WRD issues are backed by the full faith and credit of the county in which you reside, that is why all the information was needed in this situation from the auditor. Manager Anderson noticed the completion date on the bond states 2020, then asked what happens if the project takes longer to complete? Mr. Manstrom explained that another bond would be re-issued. Manager Legge made the motion to approve the Resolution Authorizing the Issuance of Bond. Seconded by Manager Buttke. Upon roll call vote the motion carried unanimously.

**Griggs/Barnes Joint Board:** Chairman Hieb and Joint Board Manager Lukens attended a Stutsman Co. water meeting, they explained what the Joint Board is trying to do with Silver Creek. Stutsman Co. is acquainted with the issue, he reported that it was a very good meeting. Chairman Hieb reported there was talk about a possibility of creating a tri-county board. There is a Griggs/Barnes Joint meeting scheduled after this meeting.

**10 Mile:** Manager Anderson received the email from Paul A. it read...  
No surface readings are available. The NDSWC has not begun their 2019 measurements.

**VC Little Dam:** Chairman Hieb had nothing new to report from the last meeting.

**Dams owned by BCWRD:** Mr. Fredricks had nothing new to report from the last meeting.

**Eckelson Lake:** Manager Legge started the discussion by asking about the water quality testing for Eckelson Lake. Mr. Opat reported from what he understood the quality is similar to what is in Hobart so there are similar criteria to deal with in the operating plan, if it is decided to move water out of there. Manger Legge asked the board their thoughts on pumping some water out of Eckelson Lake into LD #2, is something the board should take on. Mr. Fredricks reminded the board that a separate assessment district will need to be created for this. There was discussion on how much water is coming in, how high the water is currently, who is affected most, and the results from the water quality testing. Chairman Hieb expressed his own thoughts, cost wise if we can get the water to flow naturally by itself without causing problems to someone else he felt that would be best. Manager Legge stated at this point it's tolerable for people if we were to take the water down a little further it would also take some pressure off the roads, but with this pumping should the board take on that extra cost? The board agreed to look at this again in May.

Joe Pesek was present with some concerns with the Eckelson Lake Snag/Clear district. He lives in Eckelson twp sec 7 and has two landlords who live in S ½ of sec 5, he stated that in the sense that the water would contribute to the assessment district if it ever got that high don't worry about snag/clear we would have bigger problems. He stated it's a 13-mile trip for his water to go where the assessments start, that's why he is questioning why he's in the assessment district. He asked if these parcels can be changed? Mr. Fredricks explained this is a one-time assessment district and the board has already certified the list no changes can be made; the idea was at the hearing the board would be able to take into consideration comments regarding benefits and issues like

this. This process between the WRD and County took around four months and at that time you could probably modify things, but not now. Chairman Hieb then explained when the board was going through this process, at the hearing some of the attendees in the Fox Lake area discussed being assessed at a cheaper rate and the board agreed. Chairman Hieb then stated that when you go by the book and think everything is fine, when you look back in hindsight there are generally some things that could be done differently. Manager Legge reminded everyone that this assessment won't happen again unless more money is needed to keep the channel open. Mr. Fredricks reiterated that the board made their decision on the best information they had and if the board wanted to do this again they would have to repeat the whole process. Mr. Pesek asked if another project comes forward that he be notified, he will be put on the notification list.

Manager Anderson stated he received a call from Scott Gullickson regarding the area where the watershed divide goes into Eckelson Lake and the James River, some people got assessed into this where it clearly goes the other way. Manager Legge said next time if we have to do this we will make sure to draw a better line there.

Kent Lettenmaier was present he gave Chairman Hieb a letter requesting a culvert since he's been taxed without his knowledge or consent for draining water, which he does not drain. There is a twp road that needs a culvert in it, he has never asked the twp for it because the twp has never taxed him to drain water into Eckelson Lake. He's requesting that the water board install a culvert. Mr. Fredricks reminded the board that the WRD has no jurisdiction over twp roads and that you cannot install or require someone to install a culvert on a twp road, that is a township issue we (WRD) cannot contribute public dollars to a private project. Mr. Lettenmaier stated he is also going to apply for subsurface drainage to go into Eckelson Lake. Mr. Lettenmaier stated that he agrees 100% that Elston's should get some relief from high water, it's obvious from what Mr. Legge said he plans on pushing a water district eventually where everybody will get taxed and there will be a quote legal drain. And that's ok too as long as everybody knows about it, this could have been done a lot easier without hard feelings by notifying.

## **NEW BUSINESS:**

### **Drain Tile Application-Brad Noeske:**

#### **Application to Install a Subsurface Water Management System No. 2019-01 for Brad Noeske in the North Half of Section 35 and the East Half of the East Half of Section 34 in Baldwin Township**

The Board reviewed an *Application to Install a Subsurface Water Management System No. 2019-01* dated March 25, 2019, for Brad Noeske. Under the application, Applicant seeks to install a 230-acre drain tile system in the North Half of Section 35 and the East Half of the East Half of Section 34 in Baldwin Township, Barnes County, North Dakota. The project will include a gravity outlet located in the northeast corner of Section 35; the outlet will discharge directly into a natural watercourse that flows into the Southeast Quarter of Section 26 and into Section 25.

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 require Applicant to obtain consent from downstream landowners since the project will discharge directly into a natural watercourse. Further, the Board cannot require Applicant to install erosion protection to protect the natural watercourse, though the Board strongly recommends installation of erosion protection to protect the natural watercourse and to avoid erosion.

According to records submitted by Applicant, Noeske Real Estate, LLP, a North Dakota limited liability partnership, owns the North Half of Section 35 and the East Half of the East Half of Section 34 of Baldwin Township.

Manager Legge moved, and Manager Anderson seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2019-01* dated March 25, 2019, for Brad Noeske in the North Half of Section 35 and the East Half of the East Half of Section 34 in Baldwin Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2019-01, subject to the following condition:

- 1) That Applicant notify the Barnes County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets.

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 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
- 2) 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.

**Drain Tile Application-Joe Killoran:**

***Application to Install a Subsurface Water Management System No. 2019-02 for Joe Killoran in the North Half of Section 36 in Springvale Township***

The Board reviewed an *Application to Install a Subsurface Water Management System No. 2019-02* dated March 12, 2019, filed April 3, 2019, for Joe Killoran. Under the application, Applicant seeks to install a 108-acre drain tile system in the North Half of Section 36 in Springvale Township, Barnes County, North Dakota. The project will include a pump outlet located in the

southeast corner of the Northeast Quarter of Section 36; the tile discharge will flow south a short distance across the Southeast Quarter of Section 36 until discharging into a pond on the Southeast Quarter of Section 36.

The application would normally require a THIRTY-DAY NOTICE to the owner of the Southeast Quarter of Section 36 under N.D. Cent. Code § 61-32-03.1. However, in this situation, Applicant obtained a “notarized letter of permission” from Ken Kohler regarding the tile system and the discharge over the Southeast Quarter of Section 36. Under Section 61-32-03.1(2)(b), because Applicant submitted a “notarized letter of approval” from the downstream landowner of the Southeast Quarter of Section 36, up until the tile discharge ultimately discharged into a pond, no THIRTY-DAY NOTICES were necessary, and the Board cannot require Applicant to obtain consent from the downstream landowner as a condition to the Board’s approval of the permit.

According to records submitted by Applicant, Joseph Killoran and Lora Killoran own the North Half of Section 36 of Springvale Township. Further, Kohler Farms, a North Dakota partnership, of which Ken Kohler is the principal, owns the Southeast Quarter of Section 36.

Manager Legge moved to approve the application without any conditions. The motion failed for the lack of a second. The Board discussed the possibility of including a condition that Applicant turn off the pump to mitigate damages downstream during flooding situations. Manager Anderson then moved, and Manager Buttke seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2019-02* dated March 12, 2019, filed April 3, 2019, for Joe Killoran in the North Half of Section 36 in Springvale Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2019-02, subject to the following conditions:

- 1) That Applicant notify the Barnes County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets; and
- 2) That Applicant must turn off any pump outlets and otherwise close all outlets during “critical flood periods,” as determined by the District.

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 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

2) 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.

**Sanborn Lake:** Mr. Opat reported that the RR has not asked for any relief yet on Sanborn Lake. Manager Anderson stated he looked at the outlet last fall, there was 3 ½ to 4 ft of water covering the outlet gate. Mr. Opat stated he has reached out to Matt Lindsay at SWC about a possible emergency permit if the water continues to rise. Mr. Lindsay said they are trying to turn around those permits as fast as they can, could be at least a couple weeks. Mr. Opat reminded the board that we want to avoid what happened last time with the legal issues and restoring damaged property every time you operate this thing. Mr. Fredricks reminded the board of the agreement with BNSF that says we will acquire the permits and the ROW to turn this into a permanent project at some point. Manager Anderson asked Kurt Tompkins (USFWS) his thoughts on going through his easements like last time, he stated it would be temporarily again and we will have to talk more on something permanent. Chairman Hieb stated in his opinion there needs to be a permitted drain all the way down to the Sheyenne River with a control structure. There was discussion on what had happened in the past, Commissioner Froelich suggested the WRD get the easements the Co. will pay for it we have committed the money to do this. He also reminded the board that the people who signed original easements did not get paid, if we go forward with this they will get paid. Commissioner Froelich stated there needs to be a dialogue on who is going to do this project because we have set aside the money for it. Chairman Hieb stated to keep this on the agenda.

**Thordenskjold Drain-repairs:** Mr. Opat went through information from a while back and found a quote from Industrial Builders that included wing wall repairs, lowering some culverts, and replacing a culvert. He went through the old quote which stated on 51<sup>st</sup> St. \$7,000 for culvert repair, 50<sup>th</sup> St. was \$11,000 for remove and replace walls, 49<sup>th</sup> St. \$25,000 for remove and replace walls, another option was to rip out the concrete box and replace with culverts. After more discussion it was decided to keep this on the agenda, Mr. Opat will have Brady W. get ahold of Industrial Builders for a new quote.

Ed Thom was present he asked the board for any ideas on how to get the water to go under the RR tracks by his place. Mr. Opat remembered this has been going on for a while and it was thought there was a culvert under there, but the RR says there isn't. He remembered that we couldn't force them to do anything, but he will have Brady W. check to see if there is anything that can be done. Mr. Fredricks explained that we have no authority to order the RR to install a culvert,

and also reminded the board that the WRD will have to maintain it if by chance they were to put in a culvert. Chairman Hieb said he is interested to see if Brady can come up with anything.

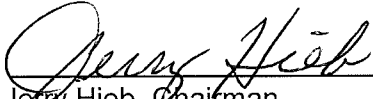
**Engineer Report:** Mr. Opat asked how Clausen Springs looked, it was reported that no water was going over the spillway or anything. Mr. Opat has been checking with the Maple River and the Minnie Lake tributary. He talked about some flooding issues around the area.

**Legal Report:** Mr. Fredricks had nothing new to report, he talked a little about snag/clear in the session.

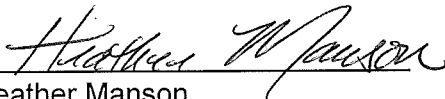
**Bills:** Manager Legge made the motion to pay bills presented at the meeting. Seconded by Manager Buttke. Upon roll call vote, the motion carried unanimously.

There being no further business to discuss, the meeting was adjourned at 10:38 a.m.

APPROVE:

  
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Jerry Hieb, Chairman

ATTEST:

  
\_\_\_\_\_  
Heather Manson  
Secretary-Treasurer

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

April 8<sup>th</sup>, 2019  
Meeting Attendance

PLEASE SIGN IN BELOW

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Kent Littenmair

Joe Pesek

Donald Jorssen

John Fralich

Da Wayne Dider

Ed Thom

Ann Marie Thom

Elroy Roberts

Arvid Winkler

KURT TOMPKINS

~~Don~~

Vicky Lovell

Shawn Olson

MAJ RPD