

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

May 13<sup>th</sup>, 2019

## MEETING MINUTES

**MEMBERS PRESENT:** Chairman Jerry Hieb, Managers – Scott Legge, Bret Fehr, Bruce Anderson, Mike Opat - Moore Engineering, Sean Fredricks – Ohnstad Twichell, Commissioners Shawn Olauson, John Froelich

**ABSENT:** Manager Daniel Buttke

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 April 8<sup>th</sup>, 2019 minutes as printed. Seconded by Manager Legge. Motion carried, minutes approved.

## OLD BUSINESS

**Hobart Lake:** Manager Anderson started with an operations update, the gate has been opened a little more than two weeks. The water has been tested and will continue to be tested every two weeks, the numbers have been coming back very favorable. It has only dropped an inch so far it is going to be a slow process, but the numbers are good, and it is flowing. Chairman Hieb asked if there is anything else pending with the Hobart Project? Mr. Fredricks stated in terms of getting the Colville deal recorded they are working with Mr. Colville's legal to get this done. Mr. Opat has been working on getting the numbers finalized for the financials to get everything closed out and provide an update. Moore Eng. is working on pin setting the points of all the certificates and that should wrap up most of the costs, Mr. Hassell is working on cross referencing numbers in our records vs what FEMA has on their website that has been submitted. There are some discrepancies, Mr. Hassell is double checking on everything to make sure things are accurate.

**Kathryn Dam:** Mr. Opat reported he has met with both landowners on both sides of the river, they are both in support of the project and are currently working with us on land access. He stated we are now at the 90% level plans of the project; the next step is to go back to the landowners and show them everything to make sure they are still on board. The Devils Lake Operating Committee met last week, he offered to go meet with them to discuss the project and talk about our wish to have them drop the flows in the fall as much as they could, so we are dealing with less water. Moore Eng. has been going through the design process and reaching out to

contractors, the water flow management during construction is a real risk factor for everybody. Mr. Opat & Mr. Hassell put project paperwork together and submitted it to the DL Operating Committee, if there were any questions they would ask them to come to the meeting. They will meet Thursday to discuss and let Mr. Opat know what they decide.

Mr. Opat stated with the plans at the 90% level and expecting no issues with landowners we may be able to start submitting permits, and hopefully get us in a position to get it bid out late summer or early fall. With hopes of starting to work in October. Manager Fehr made the motion to authorize Moore Eng. to get the permits submitted as needed. Seconded by Manager Legge. Upon roll call vote, the motion carried unanimously.

**Griggs/Barnes Joint Board:** Chairman Hieb reported that Stutsman Co. has agreed to a Tri-County Joint Board. Mr. Fredricks sent Stutsman Co. attorney a draft Joint Board agreement, they had a couple additions that the board was fine with. He stated this would create a separate Joint WRD that would include two members from each board. It was asked if we keep the Griggs-Barnes Joint Board? Mr. Fredricks suggested keeping it and meet on an as needed basis. Manager Legge made the motion to approve the agreement with the Tri-County Joint Board with Stutsman & Griggs Counties. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously. Mr. Fredricks reported that there was an open records request from Dave Mutschler, and that all the WRD's are gathering the information he plans on sending the reply later this week.

**10 Mile:** Manager Anderson read the email from Paul A....

These are the latest elevations for 10 Mile. **05/10/2019** from direct observation of the Moore Engineering Elevation Marker was **1432.4** msl. The new reading represents **1.6 ft INCREASE** from 11/9 and represents **9215.55**-acre feet, a change of **3812.06**-acre feet from **5403.49** on 11/9 or a **70.5% INCREASE** in acre feet.

The NDSWC Observation Well 142-060-10CCC-2, no spring readings have been recorded.

There was some discussion on what to do with this, it was stated that the board agreed to monitor things. Mr. Opat stated going back years on this the board asked for a bond from the landowners to stake the money to investigate this, there were difficulties getting people to sign the petition and to put money up ahead without knowing ahead of time what the project was going to be and how much benefit they were going to get out of it. That is how we ended up where we are now. He thought it was left that the board agreed to pay for tests to learn how the water quality set with the river, to have that data as a baseline to see how much water can be moved. He will look back on those results. He mentioned that the Silver Creek project could potentially come before this, but if the landowners would come forward with the bond money and a signed petition to start the project we potentially would have to act. After more discussion about doing another set of water quality test, the board decided to leave things as they are now and to consider water testing later.

**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 reported that it is naturally running right now, not running fast, but it is running.

**Sanborn Lake:** Charlie Brandenburg was present to discuss the outlet on Sanborn Lake. He stated the City of Sanborn's roads are crap and the sewage lagoons are full, he is wondering what the status of the drain is and will it ever be opened without an emergency declaration? Manager Anderson gave a report from the 5-7-19 BC Commission meeting where he represented the WRD and addressed these concerns there. After that there was discussion on easements that have been acquired and one's that have not, Kurt Tompkins (USFWS) was present he relayed to the board which landowners have wildlife easements on their properties. He stated he will work with the board, there has to be a plan for him to look over and present to his supervisor. There was discussion on possibly mitigating 17.92 acres, Mr. Tompkins said it is a possibility. That led to the discussion of the going rate of mitigated acres, it was stated that it is anywhere from \$2,000 to \$3,000 dollars an acre along with attorneys' fees for handling. Chairman Hieb went onto explain to Mr. Brandenburg that until we acquire the easements downstream the outlet needs an emergency permit. Mr. Brandenburg thanked the board for their time and information.

**Thordenskjold Drain-repairs:** Mr. Opat has reached out to Industrial Builders to see if they would honor the previous quotes, they wanted a chance to go out there and look at the current conditions to make sure nothing has changed drastically. When they have a chance to do that they will get in touch with Mr. Opat.

Mr. Opat mentioned that he did reach out to the RR, they confirmed their records show there isn't a culvert there regarding Ed Thom's issue. He reported they did indicate they are willing to take a closer look to see if there is a problem that they can help with. Ed Thom thanked Mr. Opat for his work on this, Mr. Opat will keep the board informed on the RR's decision.

## **NEW BUSINESS:**

**Darren Bjornson-water issue:** Manager Anderson explained that on the other side of the track from Ed Thom's, Hobart twp had to install a culvert on the frontage road going east on Burea. Mr. Bjornson stated that if some of Thom's water comes his way he will have NRCS issues, there was discussion on the culvert the twp put in it is equalizing just fine. Chairman Hieb for clarification explained that this amounts to if there is a culvert put in through the RR, the next one needs to be the same size so they all work together and equalize. Mr. Bjornson agreed, we will wait to see what the RR decides.

## **Joel McClean-Complaint:**

### **COMPLAINT FOR WATER-RELATED ISSUES Filed by Joel McClean Against Robert Neevel**

The Board next considered Joel McClean's COMPLAINT FOR WATER-RELATED ISSUES against Robert Neevel. In the Complaint, Mr. McClean alleges Mr. Neevel plans to install a culvert through 97th Avenue SE, a township road that runs north-to-south between Sections 7 and 8 of Greenland Township. More specifically, Mr. McClean alleges Mr. Neevel plans to install the culvert to drain water from the Southwest Quarter of Section 8 to the west road ditch along the

east boundary of the Southeast Quarter of Section 7. Mr. McClean alleges the drainage would then flow north and would ultimately drain onto his property in the Northeast Quarter of Section 7. Mr. McClean does not allege Mr. Neevel has constructed any drainage improvements at this point. Further, installation of a culvert through Greenland Township's road would require coordination and approval from Greenland Township.

Sean Fredricks explained that, by law, the Board only has jurisdiction under the drainage complaint statute, Section 61-32-07 of the Century Code, to the extent a party has constructed drainage improvements without a permit that meet the permit threshold under Section 61-32-03. In this case, Mr. McClean's complaint acknowledges Mr. Neevel has not constructed any drainage improvements; rather, the complaint is apparently an attempt to preclude Mr. Neevel from installing a culvert through a township road at some point in the future. The Board does not have jurisdiction or authority under Section 61-32-07 to prohibit some future act.

Sean further explained that, even if Mr. Neevel or Greenland Township did install a culvert through 97th Avenue, as anticipated by Mr. McClean, the Board would lack jurisdiction over the culvert. The North Dakota Supreme Court has held on several occasions that townships, and not water resource districts, have sole decision-making authority and jurisdiction regarding culverts through township roads. The only exceptions are township road culverts along the course of legal assessment drains owned by water resource districts, or adjacent to legal assessment drains. In this case, there is no legal assessment drain in the vicinity of 97th Avenue and, therefore, the Barnes County Water Resource District would lack any jurisdiction over the culvert allegedly planned by Mr. Neevel, under Section 61-32-07 or otherwise.

With these jurisdictional issues in mind, the Board had no choice but to dismiss Mr. McClean's COMPLAINT FOR WATER-RELATED ISSUES.

Manager Anderson moved to dismiss Mr. McClean's COMPLAINT FOR WATER-RELATED ISSUES. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare a NOTICE OF DECISION and to otherwise notify the parties of record.

**Drain Tile Application-Larry Pederson:** Mr. Fredricks reported that we sent out 30-day notices on this as required by law, the 30-days has not expired yet, so the board is in no position to decide on this. This is tabled until next meeting.

**Engineer Report:** Mr. Opat had nothing new to report.

**Legal Report:** Mr. Fredricks reported that the legislative session has concluded, he thanked everyone who submitted emails and traveled to Bismarck. He discussed the snag/clear bill that passed and explained the SWC does have the authority to provide cost share for snag/clear projects. He stated that we don't know how the SWC is going to handle those requests yet, they could put them on low priority or have WRD's wait until the next biennium. Mr. Opat stated we could submit a request now and see what happens. The board discussed, Commissioner Froelich suggested that the board should get the cost share request process going now. Manager Legge

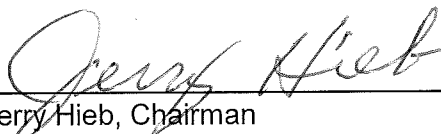
made the motion to have Mr. Opat start the cost share request process for snag/clear to start from where the last project finished. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously.

Commissioner Froelich mentioned the board should investigate mitigating the acres at Offner's. He personally would support adding something to the WRD budget to pay for that, of course he cannot speak for the Commission, adding a reasonable number because that is really the big hang up. Kurt T. (USFWS) said that this is a possibility, he will inquire and start the process to see what he comes up with.

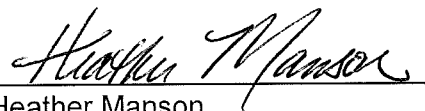
**Bills:** Manager Fehr made the motion to pay bills as presented. Seconded by Manager Legge. Upon roll call vote, the motion carried unanimously.

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:

  
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Heather Manson  
Secretary-Treasurer

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

May 13<sup>th</sup>, 2019  
Meeting Attendance

PLEASE SIGN IN BELOW

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Donald Jorissen  
Arvid Winkler  
Charlie Brundage  
LeRoy Treboles  
Ora Egan  
Kert Lettenmaier  
Shawn Olson  
Don Fralich  
Ed Thom - 845-3586  
Ann Marie Thom  
KURT TOMPKINS  
Dan Wogslund