

Barnes County Water Resource District

PO Box 306

Valley City, ND 58072

701-845-8508

June 10th, 2019

MEETING MINUTES

MEMBERS PRESENT: Chairman Jerry Hieb, Managers – Scott Legge, Bret Fehr, Bruce Anderson, Daniel Buttke, Sean Fredricks – Ohnstad Twichell, Chris Gross-Moore Engineering, Commissioners Shawn Olauson, John Froelich

ABSENT: Mike Opat – Moore Eng.

Also Present: See attached List

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

Manager Legge made the motion to approve the May 13th, 2019 minutes. Seconded by Manager Fehr. Motion carried, minutes approved.

OLD BUSINESS

Hobart Lake: Chris Gross with Moore Eng. reported that they are in the process of doing a reconciliation exercise with DES, and a final report will be given to the WRD. He also reported that the project is in operation and that Brady W. is going to be out to inspect the inlet, and when he is done Mr. Opat will inform the board of his findings either via email or at the next meeting. Manager Anderson went over the water sample data everything in within specs, he stated that it is running wide open and will be monitored weekly now due to Devils Lake being open.

Kathryn Dam: Mr. Gross explained that the design is ongoing, there are three permit applications from the SWC that need approval before sending them in. First is a Construction permit, then Sovereign Lands permit, and finally a Water Appropriations permit which has a \$50 fee. There was some discussion, and a motion to authorize Moore Eng. to submit the three permit applications with the \$50 fee required by Manager Legge. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously.

Mr. Gross also reported the draft ROW documents with the maps have been sent out to the landowners, at this time those documents have no dollar amount to them they are more for review. He asked the board as we get closer to acquiring ROW is the board wanting to do more of a meets & bounds legal description or leave it more generic? Moore Eng. had recommended doing the meets & bounds, Mr. Fredricks also advised to do this. After more discussion, a motion to

authorize Moore Eng. to do the survey necessary to do meets & bounds was made by Manager Fehr. Seconded by Manager Buttke. Upon roll call vote, the motion carried unanimously.

Griggs/Barnes Joint Board: Manager Fehr reported there is a meeting after this meeting, and that we are moving forward with the Tri-County Board for the Silver Creek Drainage issue. Manager Legge asked who will be representing Barnes County? After discussion, Manager Anderson made the motion to appoint Chairman Hieb and Manager Fehr as delegates for the Tri-County Board with Manager Legge as an alternate. Seconded by Manager Buttke. Upon roll call vote, the motion carried unanimously. Mr. Fredricks expressed a couple things to consider with this new joint board, they will have to make decisions like where are they going to be located and when are they going to meet. He discussed a few things to think about, he would like to see the board based out of BC because we have experience with bonds. Something else is insurance, are we going to partner with BC or obtain own insurance in either case NDIRF provides the insurance we must have a local agent.

10 Mile: Manager Anderson read the email from Paul A....
These are the latest elevations for 10 Mile. **06/06/2019** from direct observation of the Moore Engineering Elevation Marker was **1432.8** msl. and represents 10177.87-acre feet. The new reading represents **2.0 ft INCREASE** from **11/9/2018 of 1430.8** msl, (5607-acre feet) A change in Acre Feet of **4571** from **5607** on **11/9** or a **81.5% INCREASE** in acre feet.

The NDSWC Observation Well 142-060-10CCC-2, **5/14/2019** is **1435.27**

Mr. Abrahamson also attached a table that shows the historic elevation levels and latest changes, this will be kept on file at the WRD office. There was discussion of how long this should stay on the agenda with no action, Mr., Fredricks suggested discussing this with Mr. Opat as he knows the history. The board decided to have Mr. Opat check with SWC about establishing a level for 10 Mile, then we can move forward on a possible project.

VC Little Dam: Chairman Hieb had nothing new to report from the last meeting, there was discussion on having Mr. Opat discuss the three different options to get conversation going on this again.

Dams owned by BCWRD: Mr. Fredricks had nothing new to report from the last meeting. He did touch base with the state, they will get to it when they can.

Eckelson Lake: Manager Legge reported that it is naturally running right now into the Sheyenne, it will more than likely stabilize where it is at right now unless there is a big event. It is high, but it is moving.

Sanborn Lake: Mr. Fredricks reported that Manager Anderson and Mr. Opat had some interaction with the RR. Mr. Fredricks heard from their engineer last week he sent them a copy of the agreement, explained the project status and that the county had attempted to acquire downstream ROW but that hadn't happened, also that we don't have a permanent permit. They had discussed what it would take to acquire that permit, and the RR is going to conduct a survey on water levels will get that information to Mr. Fredricks. There was much discussion on the level of Sanborn Lake, the amount of mitigation acres and the potential cost for that, Kurt T. (USFWS)

was present and explained their Restored Wetland policy. Commissioner Froelich expressed to the board that unless the mitigation acres are taken care of the downstream easements don't mean anything and suggested to have Mr. Opat do another survey. Mr. Fredricks agreed that it would be good to look at the survey and update it to the extent necessary for the downstream easements. After more discussion Manager Legge made the motion to authorize Moore Eng. to engage USFWS to investigate mitigation options and to update the downstream flowage easement survey. Seconded by Manager Fehr. Upon roll call vote, the motion carried unanimously.

Thordenskjold Drain-repairs: Mr. Gross reported that Industrial Builders had increased the pricing in each site by \$1,500 from what they quoted in the past, that would put the number for repairs on 51st St @ \$8,400 and the number for repairs on 50th St @ \$12,500 and the number for repairs on 49th St @ \$26,500. Mr. Gross also mentioned that Industrial Builders would do the work, but only when they are in the area. After discussion Manager Anderson made the motion to have Moore Eng. coordinate with Industrial Builders the repairs on wing walls for Thordenskjold Drain for \$47,400. Seconded by Manager Legge. Upon roll call vote, the motion carried unanimously. Manager Anderson stated it was brought up there is some sediment fill in downstream from Carpenter's, then asked the board's thoughts on having Scott Cummings do a clean out. Manager Fehr made the motion to have Scott Cummings do a clean out as necessary by Carpenter's. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously.

Drain Tile Application-Larry Pederson:

Application to Install a Subsurface Water Management System No. 2019-03 for Larry Pederson in Section 11 in Skandia Township

The Board reviewed an *Application to Install a Subsurface Water Management System No. 2019-03* dated April 26, 2019, for Larry Pederson. Under the application, Applicant seeks to install a 253-acre tile system in Section 11 in Skandia Township, Barnes County, North Dakota. The project will include a single gravity outlet via an underground pipeline that will cross 43rd Street SE and will daylight and discharge in the Southwest Quarter of Section 2; from there, the tile discharge will flow across a small portion of the Southwest Quarter of Section 2 until ultimately discharging into a natural watercourse that flows north and east.

The Board provided a THIRTY-DAY NOTICE to Skandia Township, as well as landowners in the Southwest Quarter of Section 2 and the East Half of Section 2. Bertel Pedersen, the owner of most of the Southwest Quarter of Section 2, provided a "Notarized Letter of Permission," to provide consent and permission for the project. None of the other downstream landowners provided any "technical evidence" to object to the project. With that in mind, the Board cannot require Applicant to obtain consent from downstream landowners as a condition to the permit.

According to records supplied by Applicant, Larry and Patricia Pederson own all of Section 11; Bertel Pedersen owns most of the Southwest Quarter of Section 2, with the exception of Auditor's

Lot 1, owned by Michael and Brenda Schell. Curtis and Rae Kvilvang own the East Half of Section 2, with the exception of Auditor's Lot 1 of the East Half of Section 2 owned by Gerold Busche.

Manager Legge moved, and Manager Fehr seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2019-03* dated April 26, 2019, for Larry Pederson in Section 11 in Skandia Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2019-03, 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 obtain written permission from the Skandia Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches; to install, operate, and maintain buried pipe in any of its township road ditches; or to bore through its township road;
- 2) 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
- 3) 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.

NEW BUSINESS:

Complaint – Neil Sad:

COMPLAINT FOR WATER-RELATED ISSUES filed by Neil Sad against Chad Haugen and Leland Haugen

The Board next discussed Neil Sad's COMPLAINT FOR WATER-RELATED ISSUES against Chad Haugen and Leland Haugen. Under the Complaint, Mr. Said alleged the Haugens are illegally pumping water without a surface drainage permit, and that they constructed ditching improvements.

Manager Bret Fehr alerted the Board and Sean Fredricks that he farms land adjacent to the Haugens' property, property that may be impacted by the pumping and the surface improvements. Before the Board proceeded with any further discussions regarding the Complaint, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Fehr's potential conflict in the matter.

Sean explained the law in North Dakota regarding conflicts, Section 44-04-22 of the North Dakota Century Code, provides the relevant standard. That statute provides:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

Sean indicated the North Dakota Supreme Court and the Attorney General's Office have taken narrow views of situations where a public official can abstain from participating in a matter. A public official must have a "direct and substantial personal or pecuniary interest" in the matter. The mere appearance of a conflict is not enough to allow the public official to refrain from participating, and a public official cannot unilaterally decide not to participate or to abstain from voting. The North Dakota Supreme Court adopted a "rule of necessity" that requires public officials to participate in matters before their respective boards. The public policy rationale is that public officials have a duty to vote on issues before them, and cannot avoid participation simply to avoid the appearance of impropriety.

The Section 44-04-22 test requires a multi-step analysis. In this case, Manager Fehr farms property that may be impacted by this pumping and drainage. Sean indicated that, under Section 44-04-22, this situation creates a "direct and substantial personal ... interest" conflict under Section 44-04-22. Sean indicated that, with that in mind, the remainder of the Board should next vote on whether or not Manager Fehr should "participate in or vote on" issues related to this Complaint. The remainder of the Board voted unanimously to conclude Manager Fehr should not participate in discussions regarding the Complaint, or regarding the pumping and surface improvements, and should not otherwise vote on any matters before the Board regarding the Complaint, or regarding the pumping and surface improvements. More specifically, Chairman Hieb and Managers Anderson, Legge, and Buttke all voted to prohibit Manager Fehr from participating in and voting on issues regarding the Complaint, or regarding the pumping and surface improvements.

With the conflict issues concluded, the Board proceeded with discussion of the Complaint. Chad Haugen was present and acknowledged he is pumping water as alleged in the Complaint. He indicated he would remove the pump and otherwise refrain from further pumping. However, the surface improvements are still an issue, even if the Haugens remove the pump. The Board directed Mike Opat to examine the alleged drainage, but to wait to commence the investigation until the next Board meeting, unless any of the Managers contact Mike to direct him to proceed.

Drain Tile Application-John Dimmer:

Application to Install a Subsurface Water Management System No. 2019-04 for John Dimmer in the Northwest Quarter of Section 20 in Springvale Township

The Board reviewed an *Application to Install a Subsurface Water Management System No. 2019-04* filed May 29, 2019, by John Dimmer. Under the application, Applicant seeks to install a 101-acre drain tile system in the Northwest Quarter of Section 20 in Springvale Township, Barnes County, North Dakota. The project will include a single gravity outlet located near the northeast corner of the Northwest Quarter of Section 20; the outlet will discharge through an existing culvert under 39th Street SE, into a natural watercourse that flows north into Section 17 of Springvale Township.

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. Further, under the tile law passed during the 2017 Legislative session, the Board cannot require Applicant to obtain any consent or easements from downstream landowners.

According to records supplied by Applicant, John Dimmer owns the Northwest Quarter of Section 20 in Springvale Township.

Manager Fehr moved, and Manager Legge seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2019-04* filed May 29, 2019, for John Dimmer in the Northwest Quarter of Section 20 in Springvale Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2019-04, 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 install and maintain erosion protection in the natural watercourse that serves as the outlet for the project;

- 2) 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

- 3) 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-Shawn Wittenberg:

Application to Install a Subsurface Water Management System No. 2019-05 for Shawn Wittenberg in the North Half of Section 29 in Noltimier Township

The Board reviewed an *Application to Install a Subsurface Water Management System No. 2019-05* filed by Shawn Wittenberg on May 30, 2019. Under the application, Applicant seeks to install a 106-acre tile system in the Northeast Quarter, the East Half of the Northwest Quarter, and the Southwest Quarter of the Northwest Quarter of Section 29 in Noltimier Township, Barnes County, North Dakota. The project will include several gravity outlets that will discharge directly into a slough in the North Half of Section 29.

Because the project will discharge directly into a slough, 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 install erosion protection at the outlets into the slough, though the Board recommends installation of erosion protection. Further, Section 61-32-03.1 prohibits the Board from acquiring any permission or written consent from any adjacent landowners.

According to records provided by Applicant, Shawn Wittenberg owns the Northeast Quarter, the East Half of the Northwest Quarter, and the Southwest Quarter of the Northwest Quarter of Section 29, subject to a life estate in Ralph Wittenberg.

Manager Fehr moved, and Manager Anderson seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2019-05* filed by Shawn Wittenberg on May 30, 2019, regarding the North Half of Section 29 in Noltimier Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2019-05, 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 obtain written consent from the owners of any land adjacent to the slough that will serve as the outlet for the project;
- 2) 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
- 3) 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.

Kerry Johnson Barnes County Highway Superintendent approached the board with concern about an erosion area down the Sheyenne River on county road 21S. He discussed the area and showed the board photos from 2017 when it was first fixed, but all of that has been washed out and is gone. He wanted the board to be aware of this, he is looking for some help with engineering and thought having backing from the WRD could help with looking for cost share. Mr. Fredricks stated there are some cost share options to protect public infrastructure and this could possibly qualify. Mr. Opat is going to visit the site with Mr. Johnson, Secretary Manson was asked to put this on the July agenda and we will wait to hear Mr. Opat's report.

Engineer Report: Mr. Gross had nothing new to report. He did relay to the board that Moore Eng. will be having a golf tournament at the Country Club in VC on July 17th, the official invite will be coming soon.

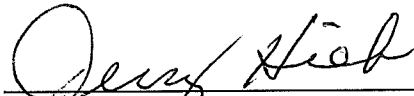
Legal Report: Mr. Fredricks reported there will be a Manager Training session on July 26th, 2019. When he gets more information, he will pass it along to the board.

Manager Anderson brought up a concern and potential complaint regarding an approved tile application from Joe Killoran, there was discussion on the map that was submitted with the tile application. Manager Buttke wants to look into this first, but if the permit is not accurate he will submit a complaint.

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

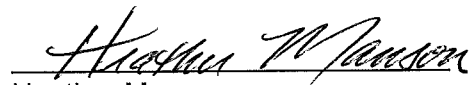
There being no further business to discuss, the meeting was adjourned at 10:50 a.m.

APPROVE:



Jerry Hieb, Chairman

ATTEST:



Heather Manson
Secretary-Treasurer