Barnes County Water Resource District
PO Box 306
Valley City, ND 58072
701-845-8508
July 22, 2019

SPECIAL MEETING MINUTES

PRESENT: Chairman Jerry Hieb

VIA TELEPHONE: Manager Bruce Anderson, Manager Scott Legge, Manager Dan Buttke, Mike Opat Moore Eng., Sean Fredricks Ohnstad Twichell

Chairman Hieb called the Special Meeting to order at 9:07 a.m., then turned the meeting over to Mr. Opat to discuss the SWC requirements that were sent to us. Mr. Opat reported at the last meeting the board authorized Moore Eng. to submit and emergency permit application information was compiled, and it was sent off. On Thursday Mr. Opat received and email from Matt Lindsay (SWC) indicating they had looked at the application, they were trying to determine whether or not the situation meets the definition of an emergency for the administrative code. Mr. Lindsay emailed a series of six items that they had questions about one was what the implication is to the RR, another was what the access issues are for emergencies and otherwise, they want to know if the water levels have been tracked, also want to know if a water quality test has been done, or if there are any aquatic nuisance species, and lastly they want to know what's happened in the last eight years that a permanent permit was never obtained.

Mr. Opat has started gathering information for these items, Mr. Fredricks has been in contact with Rick St. Germaine (Eng. for BNSF) we are waiting for their information for item one. Mr. Opat hopes to send a response back to Mr. Lindsay by the end of the day. Mr. Opat relayed to the board the conversation he had with Mr. Lindsay regarding the water quality testing the OSE wasn't necessarily concerned about this with the emergency permit, the permit application has been circulated to the other agencies and they heard back from Peter Wax with the Dept. of Health he raised concerns about the water quality. He is assuming the water quality will be similar to Hobart Lake. He relayed that Mr. Lindsay said the state could issue the permit through the State Engineers Office but they have no control over what the Dept. of Health can do, he thought they would have authority to shut the project down if they didn't like the water quality. As far as we know there have been no tests on Sanborn Lake for water quality. Josh Hassell (Moore Eng.) has reached out to MVTL to see if they are available to do the test, they are going to be in the area for Hobart testing today. MVTL reported the cost would be similar to the Eckelson Lake testing, there was discussion on how many samples to take at Sanborn Lake they have the four different basins.

Mr. Fredricks reported that he has been in contact with the BNSF engineer and he has expressed the concerns that BNSF has, from their perspective the board has a contractual obligation and they are

expecting us to meet that obligation. He also stated that if their tracks are topped or if there are any damages as a result of this, they will sue the board the urgency is on the WRD. There was discussion on doing what we can to get the water moving and also working towards obtaining a long-term permit. Discussion was held on the emergency status, Mr. Opat stated while the board and the RR may think it's an emergency if the State Office doesn't think it's an emergency then we have an issue. He reported that the engineer from the RR sent over some more recent survey shots as of July 12th the water was at 1429.91, in their previous letter they stated the low point in the tracks is 1430.5 the elevations are higher now then what they were back in 2011.

Manager Anderson has talked with a couple landowners, one mentioned if the WRD would spray the cattails and keep the channel all the way along his sprayed he would consider signing. Mr. Opat talked about the last time the board did the emergency permit and drained water, he stated prior to that there was an application submitted for a drainage permit and it came back deemed of statewide significance. That combined with the issue of the easements the permanent permit was put on hold, then we moved forward and got the emergency permit which didn't require statewide or easements and got water drained-but we never went back to finish the permanent permit process.

Mr. Fredricks stated the immediate issue is getting the water quality testing done. Manager Legge made the motion to authorize water quality testing to be done, one sample in each of the four basins. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously. Manager Anderson asked if the water quality comes back and we can't drain the water can BNSF hold us accountable? Mr. Fredricks stated per our contract they can. This led to discussion on the contract with BNSF. Manager Anderson then asked what if the board acquires ROW and all the permits, but the water quality comes back we can't drain? Mr. Fredricks indicated that could be a possibility, in that scenario we have an agreement with BNSF with all sorts of potential liability laying out there — and on the other side you have regulatory implications.

There was discussion on holding an informational meeting with the downstream landowners, it is good to notify everyone about what is going to happen and what we are working on before the water starts coming. Manager Legge made the motion to hold a Special Meeting on Monday July 29th, 2019 at 9:00 am. Seconded by Manager Buttke. Upon roll call vote, the motion carried unanimously. The discussion went to ROW acquisition documents Chairman Hieb stated he felt we should go with something simple. Manager Legge made the motion to use the simplified contract for Monday's meeting. Seconded by Chairman Hieb. Upon roll call vote, the motion passed.

With nothing more to discuss the meeting adjourned at 9:50 a.m.

APPROVE:

Jerry Hield, Chairman

ATTEST:

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Heather Manson Secretary-Treasurer