

Barnes County Water Resource District

Po Box 306

Valley City, ND 58072

701-845-8508

September 14, 2020

MEETING MINUTES

MEMBERS PRESENT: Chairman Jerry Hieb, Managers – Bruce Anderson, Bret Fehr, Scott Legge, Chris Gross - Moore Eng. (via phone), Sean Fredricks – Ohnstad Twichell (via phone), Commissioner Shawn Olauson

ABSENT: Manager Dan 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 August 10, 2020 minutes as printed, seconded by Manager Fehr. Motion carried; minutes approved as printed.

OLD BUSINESS

Hobart Lake: Manager Anderson reported that he drove the area yesterday, the drain is open, and water continues to come in just as fast as it is flowing out.

Kathryn Dam: Mr. Gross gave an update that the Memorandum of Agreement has been sent to OSE, we have no feedback yet on the approval of the Sovereign Lands permit this is the only permit we are still waiting on. Mr. Gross also mentioned Moore Eng. setup a meeting with the COE to discuss the drawdown of the river to get a better understanding of the river levels will be moving into this fall. He stated once we receive the last permit and get a plan for the mussel relocation, we will move towards the bidding process. Mr. Gross explained online bidding, he answered questions the board had on the e-bidding software for the bid opening. Commissioner Olauson asked if the e-bid meets all the state requirements, Mr. Fredricks & Mr. Gross both stated yes and explained. After discussion Manager Legge made the motion to authorize Moore Eng. to take the project to a bid upon receiving the final permit from the Sovereign Lands office. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously. Chairman Hieb gave a brief update on the historical signage.

10 Mile Lake: Mr. Gross reported over the last month they have been obtaining generic release forms to get 1026's from NRCS for landowners of the Eastern Alternative Route, Mr. Hassell has provided Mr. Abrahamson and update and the names of the remaining landowners we need to get signed generic forms from. He went onto explain that some of these are very critical

when placing the east alignment, so we know where all the wetlands are. He also stated that overall, they have been getting a very good response from landowners. He explained once we get the rest of the generic forms signed Moore Eng. can continue with the prelim design of the Eastern Alternative, then get results out to the petitioners, landowners and the board for feedback so we can keep moving forward with this project. Mr. Gross informed the board that all the signed generic release forms Moore Eng. has received to date have been forwarded to NRCS with a request for information pertinent to the project. Mr. Abrahamson reported that 10 Mile Lake is down three inches with a current elevation of 1434.64, and the Spiritwood Aquifer is down .03 feet with an elevation currently at 1438.6.

Griggs-Barnes-Stutsman Joint WRD Report: Chairman Hieb reported that there is another landowner meeting via zoom on September 21st, they will be discussing some minor adjustments in the alignment. They are continuing to work on finding solutions to all landowner's issues within the project area.

VC Little Dam: Chairman Hieb had nothing new to report from last meeting. Bob Koeplin reached out to Chairman Hieb see if he could help with this at all, there was discussion held on the communication with the City of Valley City regarding the repurpose of the dam. It was suggested to still pursue a meeting with Mayor Carlsrud.

Eckelson Lake: Manager Legge reported that water has dropped a little over a foot, it still flowing out at a good rate and Fox Lake is continuing to run into Eckelson Lake.

Sanborn Lake: Mr. Gross reported there has been no communication back from the state regarding the permanent permit at this time. Manager Anderson reported that the drain is currently still closed.

Clausen Springs Dam: Mr. Gross reported that the EAP Update is complete. As far as the Dam repairs, we are waiting on the seeding to establish, Mr. Woodard and Mr. Gross do not feel comfortable accepting it yet. Mr. Gross stated the board should be in a position to accept it at the October meeting.

Thordenskjold Drain: Manager Anderson reported he has not heard back from Scott C. on the estimate for the culvert repairs and cleanout.

Meadow Lake: Mr. Gross reported we are still awaiting funding approval. Del Ray Enger has gotten commitment from some townships regarding bond money that the board is likely to require to move the project forward. Mr. Enger indicated that he also has made a request to the BC Commission to pay a portion of the bond, Commissioner Olauson stated that the BC Commission has not acted on that request to date. Discussion held if the board should set a bond amount, Manager Legge asked if this will be an assessment project? It has been discussed in past meetings that the board is in favor of an assessment district, this would be created by a vote from the benefitting parties. After more discussion, the board agreed to wait until funding is approved before setting a bond amount. Manager Anderson has been receiving calls of concern from Don Berge, he assured him that a route to move water has not been determined yet and that water will not be dumped on anyone unsuspectingly. Mr. Gross agreed and explained that a lot of things must be considered once funding is approved, field data needs

to be collected and a most efficient route needs to be identified yet. No action was taken by the board, waiting for correspondence if funding is available.

Kathleen Rehder Complaint Against Howard Borg -- COMPLAINT FOR WATER-RELATED ISSUES

The Board next considered Kathleen Rehder's COMPLAINT FOR WATER-RELATED ISSUES against Howard Borg, dated July 8, 2020. In the Complaint, Ms. Rehder alleged that Howard Borg has constructed unpermitted drainage in Section 28 in Ashtabula Township, in Katie L. Olson Third Subdivision, in violation of N.D. Cent. Code § 61-32-03. The Board previously directed Chris Gross and Moore Engineering to investigate the matter and Chris prepared a written report with his findings.

Under Section 61-32-03, drainage improvements only require a permit if the watershed area impacted is at least 80 acres. Based on the elevation data collected by Moore, including LiDAR data, Chris concluded the watershed area impacted by any drainage constructed by Mr. Borg was less than 80 acres and, therefore, did not require a permit.

Sean Fredricks advised the Board that, if any drainage activity does not require a permit, the Board does not have jurisdiction over the drainage activity under Sections 61-32-03 and 61-32-07 of the North Dakota Century Code. In light of Moore's findings that Mr. Borg did not construct any drainage that required a permit, Sean advised the Board they lack jurisdiction over his drainage activities and had no choice but to dismiss Ms. Rehder's Complaint.

In light of the Board's lack of jurisdiction over Mr. Borg's activities, the Board determined dismissal was the only option available for the Board. Manager Anderson moved to dismiss the COMPLAINT FOR WATER-RELATED ISSUES filed by Kathleen Rehder due to lack of jurisdiction under Sections 61-32-03 and 61-32-07 of the North Dakota Century Code. Manager Legge seconded the motion. Upon roll call vote, the motion carried unanimously.

The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to the parties of record.

Complaint – Doris Aas/Bradley Maasjo: Mr. Gross gave an update they have determined there are three wetlands identified in the complaint, they are all located in the NW ¼ of section 13. He explained it becomes unclear because it is not stated on the complaint where the illegal drainage occurred. Discussion was held on the complaint. Manager Anderson reported he talked with the renter of the Maasjo land there was drainage done around 12-15 years ago, NRCS was involved the area was filled in and there has been no manipulation of drainage in that area since. Mr. Gross explained to the board that a landowner can be in compliance with NRCS, but still trigger illegal drainage that requires a permit with the state engineer's office, each agency has different

requirements. After discussion, the board directed Mr. Gross to contact both parties to discuss then from there determine if an onsite investigation is necessary.

Chairman Hieb began discussion on invoices submitted for work completed on the Texas crossing, and work done on culverts in Stewart Twp. It was questioned who is responsible for Sanborn Drain and legal obligations, Mr. Fredricks explained that the culverts are not necessarily a WRD matter and reminded the board of their limited general funds. After lengthy discussion, Manager Legge made the motion to pay the bill contingent upon if the County agrees to pay, if they choose not to pay then the WRD will pay. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously. Manager Legge motioned to pay the bill for the work done on the Texas crossing out of the WRD funds, then send a bill to the County. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously.

NEW BUSINESS

Drain Tile Application – Fred Schroeder: Mr. Fredricks explained to the board we received the completed application on 8-22-20, thirty-day notices have been sent out to downstream landowners. This is an alternative to what the board approved with the old application to appease the downstream landowners to some degree. He stated that we are not in a position to approve this today. Discussion was held on the old permit, Mr. Fredricks explained that permit stands and they applicants can act on it, this alternative application appeases downstream landowners to try to avoid civil litigation between the parties we would assume. That is not the board's concern of course. Mr. Bruns was present he feels he tried to facilitate to provide a solution to move this application along but made a worse situation. He is concerned with the timing it is taking to approve this application, he stated it is getting very late in the season to complete this project. He requested if there is no push back can the board make the decision today contingent upon, Mr. Fredricks interjected stating by law the board cannot approve the application until the thirty-day notice expires. The statute does not allow the board to do that. Mr. Bruns then asked if the board would consider holding a Special Meeting to approve the tile application instead of waiting until the October meeting. He had offered to pay for the Special Meeting. After lengthy discussion, it was mentioned to wait until the October meeting. Manager Fehr stressed the fact that a poorly designed plan to start with is no reason for the board to rush this with a special meeting. No action was taken by the board.

The board discussed the laterals regarding Legal Drain II, Secretary Manson sent out the information requested at the last meeting. There have been some landowners with questions about this, after discussion the board agreed to stay with the Legal Drain II Advisory Board's decision that all laterals are the responsibility of the landowner. Mr. Fredricks added for the board to keep in mind that you cannot use legal drain funds for private components unless it benefits the entire drain. The Advisory Board can discuss this more in detail at their February meeting.

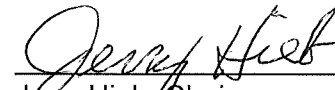
Engineer Report: Mr. Gross had nothing more to add.

Legal Report: Mr. Fredricks explained to the board that every three years under SWC cost share rules, WRD's need to go through an Engineer Selection Process in order to qualify for cost share with engineering costs on legal projects. After discussion, the board agreed to have this on the October agenda Mr. Fredricks will prepare the Initial Report for the board's consideration.

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

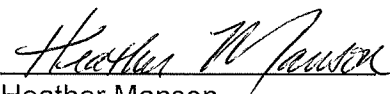
With nothing further to discuss the meeting was adjourned at 11:20 a.m.

APPROVE:



Jerry Hieb, Chairman

ATTEST:



Heather Manson
Secretary - Treasurer

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

September 14th, 2020

PLEASE SIGN IN BELOW

Alvan Olson

Kathy (AAS) Sadik

Ed Thom

Ann Marie Thom

Pade Bruns

David Winkler