

Barnes County Water Resource District

Po Box 306

Valley City, ND 58072

701-845-8508

October 12, 2020

## MEETING MINUTES

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

Also Present: See attached list

Chairman Hieb called the meeting to order at 9:03 a.m.

Manager Anderson made the motion to approve the September 14, 2020 minutes as printed, seconded by Manager Fehr. Motion carried; minutes approved as printed. Discussion was held on the September 28<sup>th</sup> Emergency Drain minutes; Manager Legge motioned to approve the minutes as amended with the correction discussed. Seconded by Manager Fehr. Motion carried; minutes approved with correction.

## OLD BUSINESS

**Hobart Lake:** Manager Anderson reported the water is down about a foot and making some headway. He mentioned that the river flow is low due to Devils Lake water being shut off, along with the Bald Hill Dam being shut down for the mussel relocation for the Kathryn Dam Project. The sulfate levels have jumped because of this but are being monitored. One of the testing locations is having bank stabilization work being done, so for the time being two tests are being done weekly. Conditions are still favorable to keep the drain open. He also mentioned the cattails were sprayed.

**Kathryn Dam:** Mr. Gross reported the mussel relocation occurred last week, it went well, Game & Fish will share the compiled video and pictures when it is ready for distribution. He also reported that we have not received the official signed Sovereign Lands Permit yet, Mr. Hassell will reach out to see what the holdup is. Mr. Gross explained that once we have the signed permit, we will have the ability to open bids on November 6<sup>th</sup>, 2020. He stated plans will be signed and stamped this week and reminded the board that the bid opening will be virtual online. The board asked for a starting timeframe, Mr. Gross explained we are looking at possibly December 1<sup>st</sup>, it looks that we are setting up to have a favorable winter construction period. We have a substantial completion date as end of February 2021, so it is completed prior to the spring runoff. Manager Anderson asked how the construction period will affect the Hobart Lake Drain, Mr. Gross explained that every contractor has to setup a water control plan, this will

all be taken into consideration and discussed at the pre-construction meeting. Mr. Gross will send out the exact details of bidding closer to date.

**10 Mile Lake:** Mr. Gross reported they are waiting on one landowner to sign the generic release form; they have sent everything they have gotten thus far to NRCS. He explained that they have come up with a slightly different path that goes further north of the Eastern Alignment that was presented at the landowner meeting. The reason for this is that there is a significant number of wetlands in the Eastern Alignment and with some of them it would be very difficult to mitigate or even go through/around them. This information has been forwarded onto Paul Abrahamson and Eric Broten. Mr. Gross went onto explain if this looks good, they will continue to pursue this and move forward with the hydraulic analysis of this alignment. Then hold landowner meetings to present these designs and considerations. Paul Abrahamson was on the line and had nothing new to report but gave the board the latest water levels of 10 Mile, he stated that 10 Mile Lake is down one and a half feet with an elevation of 1433.14 and the Spiritwood Aquifer is down four tenths with a current elevation of 1438.56.

**Griggs-Barnes-Stutsman Joint WRD Report:** Chairman Hieb and Manager Fehr reported they are moving forward, getting paperwork in order to move the project towards a vote. There are still some concerns with routing, the Final Engineer's Report will be provided at the Oct. 21<sup>st</sup> zoom meeting.

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

**Eckelson Lake:** Manager Legge reported that water from Fox Lake is still draining into Eckelson Lake, and Eckelson Lake is draining. There is not a lot of change, water is going down slowly.

**Sanborn Lake:** Manager Anderson reported there is no change the drain is currently closed; an elevation was shot by Houston Engineering it is 1427.3. He mentioned that they are syphoning the slough by Ed Thom's. Mr. Gross reported there has been no communication back from the state regarding the permanent permit at this time, discussion was held on the time it is taking for this and the fact the drain cannot be opened unless permit is approved. Manager Anderson mentioned the cattail spraying has been done.

**Clausen Springs Dam:** Mr. Gross reported the Final Inspection is complete, he recommended the board accept and close the project out. The withholding amount is listed in the bill statement, this will be approved during that discussion.

**Thordenskjold Drain:** Manager Anderson reported the cattails have been sprayed, he has not heard back from Scott C. on the estimate for the culvert repairs. Scott is planning on doing the cleanout this fall.

**Meadow Lake:** Mr. Gross reported the cost share application has been submitted for that, we are still awaiting funding approval. He explained to the board the BC Hazard Mitigation Plan has expired, and due to covid it is not likely to be completed until the end of the year. The funding application is contingent upon each applicant's county having a Hazard Mitigation Plan, when that expired it put the application on hold until the Hazard Mitigation Plan for Barnes

County is updated. Moore Eng. is working with the State to see if the application can be done through the State Hazard Mitigation Plan, in the time being the County will continue to work on theirs. The Barnes County Emergency Manager will inform us when the plan is complete.

**Complaint – Doris Aas/Bradley Maasjo:** Mr. Gross stated they will be surveying the filled in area discussed in the complaint this week. From there they will analyze the survey data to determine if the filled in areas have been removed again or if they are still in place. The written report will consist of three things typically looked at in a drainage complaint if work has been done, if so, was it more than minimum maintenance or work that would require a drainage permit. He will have a written report for the November meeting. Jeff Aas was present during the lengthy discussion about what the investigation report will consist of, maps, how data is collected/how far back in time, and timeline of the decision on the complaint. Also discussed was the previous work done years ago that was out of compliance with NRCS on the Maasjo land. During the discussion Mr. Fredricks explained to all participants that WRD's look to see if there has been any deepening, widening, or straightening of the channel that would require a permit. NRCS has different rules that are not applicable in this case, Mr. Gross added that each agency has different requirements. The written report from Mr. Gross will be reviewed and discussed at the November meeting.

#### **Drain Tile Application – Fred Schroeder:**

#### **Application to Install a Subsurface Water Management System No. 2020-07 for Fred Schroeder in the South Half of Section 36 in Noltimier Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2020-07*, dated August 5, 2020, and filed August 22, 2020, filed by Fred Schroeder. Under the application, Applicant seeks to install a 165-acre drain tile system in the South Half of Section 36 in Noltimier Township, Barnes County, North Dakota. The Board previously approved a permit for a similar tile project for Mr. Schroeder in the South Half of Section 36 in Noltimier Township, Permit No. 2020-02. Under Permit No. 2020-02, Mr. Schroeder proposed two gravity outlets; the northern outlet would have included a pipe that would have run under 126th Avenue SE, and would have daylighted and discharged across a portion of the Southwest Quarter of Section 31 of Weimer Township for a short distance before discharging into a natural watercourse in the Northwest Quarter of the Southwest Quarter of Section 31; the natural watercourse flows to the southeast, under 30th Street SE and across the Northwest Quarter of Section 1 of Alta Township. The south outlet would similarly have included a pipe that would have run under 126th Avenue SE in the southeast corner of the Southeast Quarter of Section 36, and would have daylighted and discharged near the southwest corner of the Southwest Quarter of Section 31, into the north road ditch along 30th Street SE; the discharge would have flowed to the east through the north road ditch, along the south boundary of the Southwest Quarter of Section 31, until ultimately discharging into the same natural watercourse as the discharge from the north outlet.

The downstream landowner in the Southwest Quarter of Section 31 of Weimer Township, Satrom LLLP, submitted a "technical evidence" report to object to the project proposed under *Application to Install a Subsurface Water Management System No. 2020-02*. Satrom LLLP, alleged the project would have resulted in adverse impacts to the Southwest Quarter of Section 31.

While considering under *Application No. 2020-0*, the Board's engineer, Mr. Chris Gross, did not agree with the conclusions contained in the Satrom report. Mr. Gross ultimately concluded the "technical evidence" report did not provide adequate technical evidence to support the contention by Satrom LLLP that the project would result in adverse impacts to the Southwest Quarter of Section 31 of Weimer Township. The Board ultimately concluded there was not reliable evidence the project would "flood or unreasonably harm" the downstream property, and, therefore, the Board had approved Permit No. 2020-02 at its meeting on July 27, 2020, without including any condition that Mr. Schroeder obtain a "Notarized Letter of Approval" from the Satrom LLLP as a condition to the permit. Satrom LLLP did not appeal the Board's decision and, therefore, Permit No. 2020-02 is valid. However, Mr. Schroeder indicated he submitted *Application No. 2020-07* with a modified plan in an attempt to address any concerns previously voiced by Satrom LLLP. Under *Application No. 2020-07*, Mr. Schroeder modified the outlet plan for his project. The new plan consolidates the entire drainage system into a single outlet (the south outlet). Under the new plan, the gravity outlet will be in the southeast corner of the Southeast Quarter of Section 36 of Noltimier Township. The outlet will discharge via a pipeline that will run to the southeast, diagonally through and under 126th Avenue SE and 30th Street SE at the intersection of the two roads; the pipe will outlet into the south road ditch along 30th Street SE; the tile discharge will then flow east, through the south road ditch, along the north boundary of the Northeast Quarter of Section 2 and the Northwest Quarter of Section 1 of Alta Township until ultimately discharging into the natural watercourse that runs to the southeast from the Southwest Quarter of Section 31 of Weimer Township and into the Northwest Quarter of Section 1 of Alta Township.

The Board provided THIRTY-DAY NOTICES to the downstream landowners from the outlet to the natural watercourse in the Northwest Quarter of Section 1 of Alta Township, as required under N.D. Cent. Code § 61-32-03.1. More specifically, the Board provided THIRTY-DAY NOTICES to the downstream landowners of the Northeast Quarter of Section 2 and the Northwest Quarter of Section 1. The Board also provided notices to Alta Township and Noltimier Township. Under Section 61-32-03.1, no downstream notices are required to landowners downstream of the outlet of tile discharge into a natural watercourse. None of the downstream landowners submitted any "technical evidence" to object to the project. With that in mind, under Section 61-32-03.1, the Board cannot require Applicant to obtain any consent from downstream landowners as a condition to the permit. Steve Winter did execute a notarized letter in which he provided general consent regarding the project, though his letter was not clear if he was providing consent on behalf of WFFP, LLLP, as a downstream landowners, or on behalf of Alta Township (Steve Winter is an Alta Township officer). The Board can require Applicant to install and maintain erosion protection at the outlet into Alta Township's road ditch. However, by law, the Board cannot require Applicant to obtain Noltimier Township permission to locate any pipeline in any of its township road right of way or through any of its roads, nor can the Board require Applicant to obtain Alta Township's permission to discharge into its road right of way. Barnes County and Alta Township previously enacted ordinances regarding work within road right of way; Sean Fredricks will include the County's permit form with Mr. Schroeder's permit materials.

According to records supplied by Applicant, the Darrell and Rebecca Schroeder Land Partnership, LLLP, owns the South Half of Section 36 of Noltimier Township. With regard to downstream properties, WFFP, LLLP, owns the Northeast Quarter of Section 2 of Alta Township; and Jon and Andrea Richman own the Northwest Quarter of Section 1 of Alta Township.

The Board next discussed whether or not the project's gravity outlet should include a control structure, as allowed under Section 61-32-03.1. The Board required outlet structures on the gravity outlets when the Board approved Permit No. 2020-02. However, in that case, the Board concluded requiring control structures on the outlets would be reasonable because of the discharges directly across the Southwest Quarter of Section 31. In this case, the project will discharge south of 30th Street SE, directly into a township ditch. Ultimately, the Board concluded erosion protection at the outlet into the road ditch should adequately protect the township road, and that the project would not likely result in any further adverse impacts downstream in this case; further, the downstream landowner in the Northeast Quarter of Section 2 has not objected to the project.

Manager Fehr moved, and Manager Buttke seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2020-07*, for Fred Schroeder, regarding a proposed tile system in the South Half of Section 36 of Noltimier Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-07, 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 provide, install, and maintain riprap or other ditch stabilization materials satisfactory to Alta Township at any and all outlets into Alta Township's road right of way.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the Board will recommend that Applicant comply 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;
- 2) that Applicant obtain written permission from the Noltimier Township Board of Township Supervisors to install, operate, and maintain any buried pipe in any of its township road ditches, or to bore through any of its township roads;
- 3) that Applicant obtain written permission from the Alta Township Board of Township Supervisors to install, operate, and maintain any buried pipe in any of its township road ditches, or to bore through any of its township roads; and
- 4) 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.

Sean Fredricks noted once again the Board cannot enforce any ordinances enacted by Barnes County or Alta Township, but Mr. Fredricks will notify the County and the Township of the Board's decision, and he will include the County's permit form with Mr. Schroeder's permit materials.

## NEW BUSINESS

**Engineer Selection Process:** Mr. Fredricks explained that the board went through this process in August of 2018 and reminded that it must be done every three years in order to qualify for cost share with engineering costs on legal projects from SWC. He stated that we technically do not have to move on this right away, we have a few months yet to do this. This will be on the agenda later in early 2021.

Several board members and the WRD office have been getting numerous amounts of calls regarding tiling projects without permits. Mr. Fredricks explained if a tile project is greater than 80 acres and a permit is not acquired, if a complaint is filed with the board, they can order the tile system closed. Chairman Hieb brought up the calls coming to the office about Kent Sortland tiling in Svea Twp. the board asked Mr. Fredricks to contact Mr. Sortland to remind/notify him of tiling requirements.

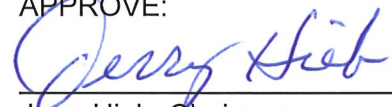
**Engineer Report:** Mr. Gross had nothing more to add.

**Legal Report:** Mr. Fredricks stated that the legislative session is approaching, he will email the board to keep them informed.

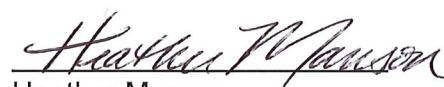
**Bills:** Motion to pay bills by Manager Legge. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously.

With nothing further to discuss the meeting was adjourned at 10:33 a.m.

APPROVE:

  
Jerry Hieb, Chairman

ATTEST:

  
Heather Manson  
Secretary - Treasurer

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

October 12<sup>th</sup>, 2020

PLEASE SIGN IN BELOW

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Fred Schroeder

Alvan Olson

Gode Brun

Joel Aas

Arvid Winkler

Joel Aas

Hathey Aas Eide