

Barnes County Water Resource District

Po Box 306

Valley City, ND 58072

701-845-8508

November 9, 2020

MEETING MINUTES

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

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 October 12, 2020 minutes. Seconded by Manager Buttke. Motion carried; minutes approved as printed.

OLD BUSINESS

Hobart Lake: Manager Anderson reported that the water quality testing is coming back favorable to keep the drain open, it is currently open full bore. He also reported that improvements were finished through the drain channel along the Lewis Dam, he is very happy with how it came out.

Kathryn Dam: Mr. Gross reported that 5 bids were received and opened, they ranged from \$799,000 to \$1.83 million dollars. After review and confirmation, the low bid came in at \$799,769.50 from Veit & Company Inc. Mr. Gross stated the bid is reasonable, the bidders understand the content of the project, and everything was within the range of bids. He also relayed that he feels the project will go very well with Veit & Company as they are very good with winter style projects such as this. After discussion, the board agreed then Manager Legge motioned to accept the bid and to issue a Notice of Award to Viet & Company for \$799,769.50. And to authorize Chairman Hieb to sign the Construction Contract. Seconded by Manager Fehr. Upon roll call vote, the motion carried unanimously. Mr. Gross also reported that we have received the Sovereign Lands Permit, no action is needed from the board on this, now we can hope for good winter conditions and low water in the river system.

10 Mile Lake: Chairman Hieb and Manager Fehr discussed the landowner meeting that was held; and shared the maps that were handed out. Manager Fehr stated that some landowners requested a map of impacts the project will have on their properties. Josh Hassell will prepare footprint maps of direct impacts for landowners. He then briefly discussed the potential alignments that were presented, he explained pros and cons, and which one would be more

ideal. Mr. Hassell explained that another landowner meeting will need to be held in the future to go over the comments from landowners on the potential alignments. Paul Abrahamson called in to report the latest water level of 10 Mile Lake is 1433.24, and the Spiritwood Aquifer has an elevation of 1438.55. No action was taken by the board.

Griggs-Barnes-Stutsman Joint WRD Report: Chairman Hieb and Manager Fehr reported the meeting has been postponed until the engineer is feeling better.

VC Little Dam: Nothing new to report from last meeting.

Eckelson Lake: Manager Legge reported that it is still draining slowly, but it is draining.

Sanborn Lake: The State has not granted our permanent permit request as of today, Mr. Hassell reported that the SWC has sent out Solicitation of Reviews to the WRD and to all the agencies involved. Mr. Gross reminded the board that this is what we have been waiting for, the State Eng.'s Office will review all comments and then determine if the project is of statewide or interdistrict significance. A draft O&M with comments from agencies has been provided to show the boards efforts to mitigate any of those concerns. He explained that we should know more in 30-45 days. Manager Anderson asked if a comment letter from the WRD would be beneficial, after more discussion Moore Eng. will draft the letter. Manager Legge motioned to authorize Heather to sign the letter to the OSE in response to the Solicitation. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously.

Clausen Springs Dam: This project is complete.

Thordenskjold Drain: Manager Anderson reported that Scott Cummings wants to know if he should start at the top of the drain and work his way down for the cleanout, or just do certain miles? Discussion was held on the Advisory Board for this drain, the WRD has not heard from them for some time now. Manager Buttke stated the first 2-3 miles on the North end are the worst, once you go past the old RR tracks it flows better and goes more downhill. After more discussion, Manager Legge made the motion to clean out the top first 3 miles this year. Seconded by Manager Fehr. Upon roll call vote, the motion carried unanimously.

Meadow Lake: Mr. Gross gave an update on the status of the funding request. At this time, it doesn't appear that the County's Hazard Mitigation Plan will be updated until at least after January 1st, 2021. This puts a halt on moving forward for this project.

Complaint – Doris Aas/Bradley Maasjo:

Doris Aas Complaint Against Bradley Maasjo -- COMPLAINT FOR WATER-RELATED ISSUES

The Board next considered Doris Aas' COMPLAINT FOR WATER-RELATED ISSUES against Bradley Maasjo, dated July 14, 2020. In the Complaint, Ms. Aas alleged that Bradley Maasjo has constructed unpermitted drainage in Section 7 in Norma Township, in violation of N.D. Cent. Code § 61-32-03. The Board previously directed Moore Engineering to investigate the matter and

Moore prepared and submitted a written report dated November 2, 2020. Josh Hassell explained Moore's report.

Mr. Hassell explained that the complaint did not specifically identify the locations of the alleged drainage. Josh indicated Moore investigated two drainage paths from sloughs, referred to as the "North Swale" and the "South Swale." Moore conducted an on-site investigation on October 22, 2020, and surveyed the paths. Moore then compared the survey data to LiDAR elevation data collected in 2008 and 2011, and the comparisons revealed a change in elevation; based on this evidence, Moore concluded drainage features had clearly been constructed in the West Half of Section 7 of Norma Township, and that those features drain sloughs.

Sean Fredricks explained that, under Section 61-32-03, "[a] permit is required before any person may construct a drain for the purpose of draining waters from a pond, slough, lake, or sheetwater . . . having a watershed of 80 acres . . . or more." Under Sections 89-02-01-05 and 89-02-01-02(7) of the North Dakota Administrative Code, "maintenance" of existing drains or ditches does **not** require a permit; "maintenance" means removal of silt and vegetation from a drain, and does not include deepening or widening a ditch or drain.

Mr. Hassell explained that, following Moore's determination that drainage features had, in fact, been constructed, Moore next evaluated if the work was construction of drainage that would require a permit, or if the work was simply "maintenance" that does not require a permit. In this case, Moore found that both drainage paths had "clearly been manipulated or changed at some point in the past 12 years," and that the improvements in both the North Swale and the South Swale were far more than mere sediment or cattail removal. Rather, Moore's report indicated that "[due to the amount of cut, this is considered more than a channel cleanout and a permit may be required.]"

Under Section 61-32-03, even if an improvement is more than mere "maintenance," drainage improvements only require a permit if the watershed area impacted is at least 80 acres. Moore's watershed analysis revealed that the North Swale improvements drain a watershed greater than 80 acres and, therefore, those improvements required a permit under Section 61-32-03. However, the South Swale improvements did not drain a watershed area of at least 80 acres; with that in mind, those improvements did not require a permit under Section 61-32-03.

Both Jeff Aas and Bradley Maasjo participated in the meeting by phone and both posed questions to Mr. Hassell regarding the watershed determinations.

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, and the Board will have no choice but to dismiss that portion of the Complaint regarding the South Swale. However, with regard to the North Swale, Moore confirmed the improvements were more than mere "maintenance," and that the improvements drain a slough and a watershed greater than 80 acres; because Mr. Maasjo did not obtain a permit before constructing these improvements, the Board had no choice but to order Mr. Maasjo to close or fill those improvements under Section 61-32-07.

According to Barnes County records, Bradley Maasjo owns the North Half of the Northwest Quarter of Section 7, and David Maasjo owns the remainder of the West Half of Section 7.

In light of the Board's lack of jurisdiction over the South Swale, 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 Doris Aas 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.

Manager Legge moved to dismiss that portion of the COMPLAINT FOR WATER-RELATED ISSUES regarding the South Swale due to lack of jurisdiction; to declare the improvements to the North Swale as unpermitted and illegal drainage improvements; and to order Bradley Maasjo to close or fill the unpermitted and illegal North Swale improvements by 5:00 p.m. on January 1, 2021. The motion failed for lack of a second.

Manager Fehr then moved to dismiss that portion of the COMPLAINT FOR WATER-RELATED ISSUES regarding the South Swale due to lack of jurisdiction. Manager Anderson seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Legge moved to declare the improvements to the North Swale as unpermitted and illegal drainage improvements, as alleged in the COMPLAINT FOR WATER-RELATED ISSUES; and to order Bradley Maasjo to close or fill the unpermitted and illegal North Swale improvements by 5:00 p.m. on January 1, 2021. Upon roll call vote, Chairman Hieb and Managers Anderson, Fehr, and Legge voted in favor of the motion. Manager Buttke abstained. The motion was successful.

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

NEW BUSINESS

Shawn Wittenberg Tile Application:

Application to Install a Subsurface Water Management System No. 2020-08 for Shawn Wittenberg in Section 20 in Noltimier Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 2020-08*, dated October 6, 2020, and filed October 14, 2020, for Shawn Wittenberg. Under the application, Applicant seeks to install a 207-acre drain tile system in Section 20 in Noltimier Township, Barnes County, North Dakota. The project will include a pump outlet in the Southwest Quarter of Section 20; the pump will discharge on Applicant's property and will flow for approximately a quarter of a mile before ultimately discharging into Adams Slough.

Because the project will discharge across Applicant's property and will ultimately discharge into a slough, no THIRTY-DAY NOTICES were necessary to any downstream landowners under N.D. Cent. Code § 61-32-03.1. The Board cannot require Applicant to install any erosion protection in Adams Slough, but will recommend that Applicant do so. The project will not include any discharge into any township or county road ditches so the County's road ditch permit will not apply to this permit.

According to records supplied by Applicant, Robert Wittenberg owns the North Half of Section 20, and Shawn Wittenberg owns the remainder interest; Shawn and Kimberly Wittenberg own the Southwest Quarter and the West Half of the Southeast Quarter of Section 20; and Laura Martin, Todd Wittenberg, Kurt Wittenberg, and Albert Wittenberg own the East Half of the Southeast Quarter of Section 20.

Manager Fehr moved, and Manager Buttke seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2020-08*, dated October 6, 2020, and filed October 14, 2020, for Shawn Wittenberg, regarding a proposed tile system in the Northwest Quarter of Section in Noltimier Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-08, 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 must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Barnes County Water Resource District.

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 install and maintain erosion protection at the discharge into Adams Slough; 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.

Kent Sortland Tile Application: Mr. Fredricks explained that he had touched base with Mr. Sortland after the last meeting, additional documentation was submitted. He explained the project consists of 90 acres in the NE ¼ of sect 22 in Svea twp. There are two outlets one is east bound and discharges into a road ditch then into Svea Drain, the second outlet directly discharges into Svea Drain. 30-day notices were sent to the BC Highway Dept. for discharging into the county road ditch. No action was taken by the board today, this will be on the December agenda. Mr. Sortland was present and stated that he did get a variance from planning/zoning for this application.

Mr. Sortland also discussed Svea Drain No. 1, he asked for an assessment district to be set up for this drain. He explained there is more water coming into the drain than from when it was created, it has become more work for the landowners to clean out. He explained currently landowners are maintaining and adding laterals to the drain. The board explained to Mr. Sortland that assessments are usually landowner driven, they then discussed bond money for the engineer work that would need to be done, a hearing to discuss assessment rates would take place, and more than likely a vote.

Mr. Fredricks pointed out that first landowners should all agree to do this, if they agree, they then approach the board for a petition/bond document to be prepared. Mr. Gross reminded the board that this was brought up in 2019 by Richard Hansen but did not happen. Moore Eng. did a watershed delineation and determined there was 6.4 square miles or 4,000 acres of watershed that go into the approximate 2.5 miles of Svea Drain No. 1. A watershed map was given to Mr. Sortland for him to start conversation with landowners.

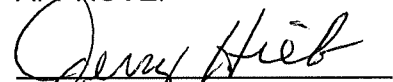
Engineer Report: Mr. Gross had nothing more to report.

Legal Report: Mr. Fredricks had nothing more to report.

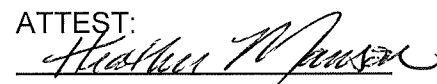
Bills: Motion to pay bills by Manager Fehr. Seconded by Manager Legge. Upon roll call vote, the motion carried unanimously.

With nothing further to discuss the meeting was adjourned at 10:31 a.m.

APPROVE:



Jerry Hieb, Chairman

ATTEST:


Heather Manson
Secretary - Treasurer

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

November 9th, 2020

PLEASE SIGN IN BELOW

Kent Sorthms
Kathy (Aas) Sadek

Mike Opat via phone

Paul Ahlstrom via phone

Jeff Aas via phone

Joel Aas via phone

Brad Maasjo via phone