

**Barnes County Water Resource District
Po Box 306
Valley City, ND 58072
701-845-8508**

April 12th, 2021

MEETING MINUTES

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

Also Present: See attached list

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

Manager Legge motioned to approve the March 8th, 2021 minutes. Seconded by Manager Fehr. Motion carried; minutes approved as printed. Manager Fehr motioned to approve the 10 Mile Lake Informational Meeting minutes. Seconded by Manager Anderson. Motion carried; minutes approved as printed. Manager Legge motioned to approve the Sanborn Lake Special Meeting minutes. Seconded by Manager Fehr. Motion carried; minutes approved as printed.

OLD BUSINESS

Kathryn Dam: Josh Hassell reported that the contractor has provided the onsite survey documents to get the next pay application worked out, they plan to wrap up the fence on the Tangen side along with tree planting and final seeding. Veit plans to start early May with a completion date in early June, he will let the board know when work begins. Secretary Manson discussed the new statement received from Starion Bank regarding the bond interest payment, Starion got a new software system and the statement sent in February has an incorrect interest amount listed. The board asked Chris Gross and Josh Hassell to review and confirm before sending additional payment. After more discussion, Manager Fehr motioned to pay the bond interest difference to Starion once it is figured out. Seconded by Manager Buttke. Upon roll call vote, the motion carried unanimously.

10 Mile Lake: Chris Gross passed out a summarization of landowner concerns discussed after the Informational Meeting held in Dazey. Josh Hassell discussed all the landowner comments listed on the handout. Chris Gross then explained that all the landowner comments involved downstream impacts, alignment locations, wetlands, and water quality, most of these will be

taken care of during the permitting process. After lengthy discussion, the board finalized the assessment map and the percentage of benefit. Now, Mr. Gross explained Moore Eng. can enter in the parcel data from tax rolls and create a preliminary list. Mr. Fredricks then touched base on the possible Joint Powers Agreement with the Stutsman Co. WRD. Chairman Hieb suggested we approach Stutsman Co. WRD to get the conversation started.

VC Little Dam: Chris Gross reported a 12-month extension was granted to finalize and close out the feasibility study by the SWC, this deadline is now June 30th, 2022. Chairman Hieb has visited with the City Administrator; the City is interested in moving forward with a WRD sponsored project then afterwards possibly transfer ownership of the dam to the City. Discussion was held on how low head dams are a high priority on the project list at the OSE. Chris Gross will set up a meeting with the City Adm. and Chairman Hieb.

Sanborn Lake: BJ Kratz, ND Game & Fish Fishery Biologist, was in attendance. The board discussed the difficulties in trying to maintain the lake elevation at 1427.0, the board asked to run the drain fluctuating between 1427 and 1426 elevation to keep in compliance with all entities involved. After lengthy discussion, Mr. Kratz and the board agreed to maintain an elevation near 1427.0 but not going below 1426.5, he reminded the board that anything below 1426.5 requires approval from other entities such as USFWS and Dept. of Health. Mr. Kratz will discuss this agreement with the Bismarck office and have them draft a letter for Mr. Lindsay (SWC). It was stated that the SWC Real Time Gages will be installed later this month to help monitor the lake elevation.

Legal Drain 2 – culverts: Discussion was held on the culvert quote provided by True North Steel, along with the different gages and types of culverts. The board reviewed the assessment funds, discussed erosion control upstream and downstream of these pipes. After more discussion, Manager Legge motioned to replace the culverts by Offner's and Diemert's, also to use and order the aluminized 12 - gage pipe. Seconded by Manager Fehr. Upon roll call vote, the motion carried unanimously.

Manager Anderson then discussed the culverts on 112th Ave. SE & 29th St. SE just east of the drop structures, he reported that the road is beginning to cave in. Discussion was held on if these are part of LD2 or township responsibility. Mr. Fredricks explained to the board that the WRD has legal authority to utilize assessment funds for culverts along the course of the drain, or if these culverts have an impact to the LD2 outlet structure. After more discussion, the board agreed to verify if these culverts are within the course of Legal Drain 2 before taking any action.

NEW BUSINESS

Boom – VanBruggen Complaint:

Dwight Boom Complaint Against Warren Van Bruggen -- COMPLAINT FOR WATER-RELATED ISSUES

The Board next considered Dwight Boom's COMPLAINT FOR WATER-RELATED ISSUES against Warren Van Bruggen, dated March 5, 2021. In the Complaint, Mr. Boom alleged that Warren Van Bruggen constructed unpermitted drainage in the South Half of Section 35 in Meadow Lake Township, in violation of N.D. Cent. Code §§ 61-32-03 and 61-32-07. The Board previously directed Moore Engineering to investigate the matter and Moore prepared and submitted a written report dated April 9, 2021. Josh Hassell explained Moore's report.

Sean Fredricks explained that, under North Dakota law, specifically Section 61-32-03 of the North Dakota Century Code, "[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 Moore conducted a watershed analysis with LiDAR, conducted a site visit, and conducted and obtained drone photos of the drainage. The onsite investigation revealed clear signs of ditching and drainage improvements in the South Half of Section 35. Photos attached to Moore's report show clear signs of drainage improvements. Further, Brady Woodard from Moore Engineering spoke with Mr. Van Bruggen, and Mr. Van Bruggen acknowledged he had completed the drainage and ditch improvements. He further indicated he constructed the drainage in an effort to alleviate flooding caused by a pipe recently installed upstream of the South Half of Section 35. To the extent Mr. Van Bruggen believes the upstream drainage is unpermitted, he could certainly file a complaint with the Board.

With regard to the watershed area drained by the improvements, Moore's LiDAR review indicated the watershed area was far greater than the 80-acre threshold. In fact, the maps attached to Moore's report indicate the drainage area is over 1,000 acres.

Mr. Hassell indicated that Moore Engineering ultimately concluded Mr. Van Bruggen had, in fact, constructed drainage improvements in the South Half of Section 35 of Meadow Lake Township, and that the improvements drain sheetwater with a watershed area greater than 80 acres. According to North Dakota law, those improvements required a surface drainage permit and Mr. Van Bruggen did not obtain a permit.

The Board reviewed and concurred with Moore's report and conclusions. With that in mind, the Board had no choice but to order Mr. Van Bruggen to close or fill those improvements in accordance with Section 61-32-07.

According to records on file with the Barnes County Recorder's Office, Warren and Cheri Van Bruggen own the Southeast Quarter of Section 35, and Janet Van Bruggen owns the Southwest Quarter of Section 35 of Meadow Lake Township.

Manager Legge moved to declare the drainage improvements constructed in the South Half of Section 35 of Meadow Lake Township as unpermitted and illegal drainage improvements, as alleged in the COMPLAINT FOR WATER-RELATED ISSUES filed by Dwight Boom; and to order Warren Van Bruggen to close or fill the unpermitted and illegal improvements by 5:00 p.m. on May 31, 2021. Manager Anderson 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.

Vernell Lindemann – Tile Application:

Application to Install a Subsurface Water Management System No. 2021-05 for Vernell Lindemann in the West Half of Section 9 in Raritan Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 2021-05*, dated March 17, 2021, and filed March 22, 2021, for Vernell Lindemann. Under the application, Applicant seeks to install an 87-acre drain tile system in the West Half of Section 9 in Raritan Township, Barnes County, North Dakota. The project will include six gravity outlets that will all discharge into a natural watercourse in the West Half of Section 9.

Because the project will discharge directly into a natural watercourse, no THIRTY-DAY NOTICES were necessary to any downstream landowners under N.D. Cent. Code § 61-32-03.1. Further, because the project will discharge into a natural watercourse, the Board cannot require Applicant to obtain consent from downstream landowners as a condition to the permit, nor can the Board require Applicant to install erosion protection at the outlets into the natural watercourse. However, the Board will recommend that Applicant install and maintain erosion protection at all of the outlets, to protect the natural watercourse and to protect downstream landowners.

According to records supplied by Applicant, Vernell and Patricia Lindemann own the West Half of Section 9 of Raritan Township.

Manager Fehr moved, and Manager Anderson seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-05*, dated March 17, 2021, and filed March 22, 2021, for Vernell Lindemann, regarding a proposed tile system in the West Half of Section 9 in Raritan Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-05, subject to the following condition:

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 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 all outlets into the natural watercourse in the West Half of Section 9 of Raritan Township; 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.

Shawn Wittenberg – Tile Application:

Application to Install a Subsurface Water Management System No. 2021-06 for Shawn Wittenberg, in the Southeast Quarter of Section 28 and the East Half of the Southwest Quarter of Section 28 in Getchell Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 2021-06*, dated March 19, 2021, and filed March 29, 2021, for Shawn Wittenberg. Under the application, Applicant seeks to install a 141-acre drain tile system in the Southeast Quarter of Section 28 and the East Half of the Southwest Quarter of Section 28 in Getchell Township, Barnes County, North Dakota. The project will include a single gravity outlet in the southeast corner of the Southeast Quarter of Section 28; the outlet will discharge into a natural watercourse that flows southeast.

Because the project will discharge directly into a natural watercourse, no THIRTY-DAY NOTICES were necessary to any downstream landowners under N.D. Cent. Code § 61-32-03.1. Further, because the project will discharge into a natural watercourse, the Board cannot require Applicant to obtain consent from downstream landowners as a condition to the permit, nor can the Board require Applicant to install erosion protection at the outlet into the natural watercourse. However, the Board will recommend that Applicant install and maintain erosion protection, to protect the natural watercourse and to protect downstream landowners.

According to records supplied by Applicant, Shawn Wittenberg owns the Southeast Quarter of Section 28 and the East Half of the Southwest Quarter of Section 28 of Getchell Township.

Manager Fehr moved, and Manager Anderson seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-06*, dated March 19, 2021, and filed March 29, 2021, for Shawn Wittenberg, regarding a proposed tile system in the Southeast Quarter of Section 28 and the East Half of the Southwest Quarter of Section 28 in Getchell Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-06, subject to the following condition:

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 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 the natural watercourse in the Southeast Quarter of Section 28; 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.

Surface Drain Permit No. 5514 – Bruce & Connie Smith: Mr. Fredricks explained the Smith's have submitted a surface drain application to the OSE, the state is currently conducting a solicitation of views for various agencies to provide comments. He went onto explain that the OSE will forward the permit application back to the WRD for the final decision on the permit application. Discussion was held on downstream landowners Mr. Fredricks explained that once the permit application comes back to the board, they can direct Moore Eng. to determine if there will be downstream impacts, if it is determined there are downstream impacts it is requirement to acquire those downstream easements. The board agreed they had no comment at this time.

Dittmer/Shanenko – Svenningson Complaints: Mr. Dittmer was in attendance to discuss his complaint. After discussion Mr. Gross explained that the WRD only regulates

drainage permits if the drainage area is over 80 acres, and if work was done to deepen, widen or realign the watercourse. The WRD does not have jurisdiction over if there has been illegal draining of certified wetlands. The board suggested that Mr. Dittmer file a complaint with NRCS office. Mr. Dittmer then chose to withdraw his complaint and thanked the board for the help. Mr. Shanenko was called to discuss his complaint; he chose to withdraw his complaint.

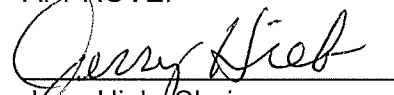
Engineer Report: Chris Gross had nothing else to report.

Legal Report: Mr. Fredricks had nothing else to report. He stated the Legislative session will wrap up at the end of the month, gave the board an update on SB2208 and SB1437.

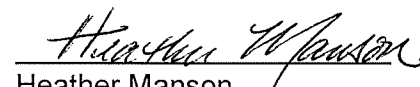
Bills: Manager Legge motioned to pay bills as presented. Seconded by Manager Buttke. Upon roll call vote, the motion carried unanimously.

With nothing further to discuss the meeting was adjourned at 12:10 p.m.

APPROVE:


Jerry Hieb, Chairman

ATTEST:


Heather Manson
Secretary - Treasurer

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

April 12th, 2021

PLEASE SIGN IN BELOW

Shan Olawson
Donald Jorissen

BCC

Andy Jewett
Tom Jewett

Dwight Boon

Karin Boon

BJ KRATZ

NDGIF

Ron Dittmer
Gene Jewett

Via Phone...

Paul Abrahamson
Sean Friedrichs
Mike Opat
Bruce & Connie Smith
Josh Hassell - Maure Eng.