

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

Meeting Minutes
July 12th, 2021

MEMBERS PRESENT: Chairman Jerry Hieb, Managers – Scott Legge, Bruce Anderson, Bret Fehr (via phone), Dan Buttke, Chris Gross – Moore Engineering, 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 Anderson motioned to approve the June 14th, 2021; minutes as printed. Seconded by Manager Buttke. Motion carried; minutes approved as printed. Manager Anderson also motioned to approve the June 21st, 2021, Special Meeting minutes. Seconded by Manager Legge. Motion carried; minutes approved as printed.

Chairman Hieb was contacted by Jeff Aas, he has not received confirmation that the illegal drainage within the complaint filed has been filled in. Sean Fredricks discussed the Notices of Decision that was sent out, Chris Gross mentioned the email correspondence to the board that Manager Buttke confirmed the drainage was filled in by 11-30-2020. Sean Fredricks stated that the WRD doesn't normally send out a notice indicating work has been completed, and the law does not require a Notice of that nature; the Board can direct Mr. Fredricks to prepare a Notice regarding remedial work at their discretion, but to save on costs, the Board does not typically take that step. No action was taken by the board.

OLD BUSINESS

Hobart Lake: Manager Anderson reported that the drain is still closed. Chairman Hieb discussed his acceptance of the bid submitted from Star Enterprises for the repairs to the Johnson stock dam. Sean Fredricks explained the BC Commission inquired about the legal status on this stock dam, then went onto explain that the WRD does have a Joint Powers Agreement with the BC Commission; under the agreement, the County Commission agreed to fund operation and maintenance of the Project. At the last meeting the board was unclear if the Hobart Project caused these damages; the contractor that conducted the inspection suggested the Project may have contributed to the damages, but there is no conclusive evidence the Project caused them. Mr. Fredricks indicated that, while the Board agreed in their agreement with the Johnsons, that the Board would be responsible damages caused by the Board

or by the Project, the Board did not agree to be responsible for all general maintenance of the Project, including items unrelated to the Project. The Board is hesitant to use Project funds to pay for the repair of a private stock dam, the WRD cannot fund regular maintenance unrelated to the Project. Manager Legge motioned to authorize Sean Fredricks to draft a letter to the Johnsons for Chairman Hieb's signature to clarify that the Board will handle the repairs in this instance, but that the Board will not be responsible for maintenance in the future unless the Johnsons can demonstrate the Project caused damages. Seconded by Manager Fehr. Upon roll call vote, the motion carried unanimously.

Kathryn Dam: Chris Gross passed out Veit's Pay Application No. 3 in the amount of \$182,871.12 for the boards review and approval, this covers all items installed to date, after this we move forward towards project closeout. Chris has been in contact with Bob Koeplin (BC Parks) the sign is in production and will more than likely come in under budget. Moore Engineering is working with the OHF on cost share reimbursement submittal. Manager Legge motioned to approve Veit's Pay Application No. 3 in the amount of \$182,871.12. Seconded by Manager Buttke. Upon roll call vote, the motion carried unanimously.

VC Little Dam: Chairman Hieb reported he has had no contact back from the City of VC. Chris Gross has been working with the SWC on the cost share submittal, at this point the application will get submitted for review at the October SWC Full Commission meeting.

Smith Surface Drain Application 5514 Hearing:

APPLICATION FOR SURFACE DRAIN NO. 5514 for Bruce and Connie Smith in the North Half of Section 11 of Rosebud Township

The Board reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN No. 5514 for Applicants Bruce and Connie Smith. Under the application, Applicants propose to convert an emergency surface drainage permit granted to Applicants by the State Engineer's Office in 2020 into a permanent Surface Drainage Permit. Applicants propose to install a 16" PTO pump in the Northwest Quarter of the Northwest Quarter of Section 11. The objective of the project is to partially drain a slough in the North Half of the Northeast Quarter of Section 10 that floods frequently. The project will pump water to the east, across the North Half of Section 11, to an area that naturally drains east into Bear Creek. The project will include installation of approximately 500 feet of pipeline.

According to records on file with the Barnes County Recorder's office, Delray Dykstra owns the North Half of Section 11. The Applicants have approached Mr. Dykstra, and he has no problem with the project. The pump would be located on Mr. Dykstra's property, and the pipeline would similarly be located on Mr. Dykstra's property. Further, Duane Ten Pas owns the downstream property in the Northwest Quarter of Section 12. The Board concluded Applicants will have to obtain an easement from Mr. Dykstra regarding the pump and the pipeline on Mr. Dykstra's property. With regard to Mr. Ten Pas' property, the Board concluded no flowage easement will be necessary; Bear Creek will be able to accommodate the drainage.

The U.S. Fish and Wildlife Service has a waterfowl easement regarding the slough in the North Half of the Northeast Quarter of Section 10. In light of this easement, and to ensure downstream parties did not

object to the project, the Board advertised for a public hearing regarding the Application at this meeting, in accordance with N.D. Admin. Code § 89-02-01-09.1(2), preceded by published notice in the *Valley City Times-Record*. The Board conducted the hearing and opened the meeting to public comments. No downstream parties objected to the project at the hearing. Further, Mr. Kurt Tompkins from the U.S. Fish and Wildlife Service participated in the hearing; he indicated his willingness to work with the Applicants regarding permissible elevations under the easement over the slough in the North Half of the Northeast Quarter of Section 10. Chairman Hieb closed the hearing.

The Board previously directed Moore Engineering to prepare responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. Chris Gross prepared responses, and indicated the project “will not significantly increase the potential for erosion, increase the duration of floods, or impact the operation of water control devices downstream. Sustained flows are minor and limited to the capacity of the installed pump (7000 gpm or 15.6 cfs).” The Board will require Applicants to obtain easements from the owner of the North Half of Section 11, where Applicants intend to construct the project, and Applicants will have to work with USF&W regarding the easement over the slough.

Manager Anderson moved to approve APPLICATION FOR SURFACE DRAIN No. 5514 for Bruce and Connie Smith, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) that Applicants will not construct or improve the drain in any manner that exceeds the dimensions indicated in the Application;
- 2) that Applicants obtain and record easements from the owner of the North Half of Section 11 regarding the pump, pipeline, and drainage until it reaches Bear Creek; and
- 3) that Applicants notify the Barnes County Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, submit an additional permit application.

Manager Legge seconded the motion. Upon roll call vote, the motion carried unanimously.

In addition to those conditions, the Board will also recommend that Applicants obtain consent from U.S. Fish and Wildlife Service regarding slough elevations, and that Applicants 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.

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

10 Mile Lake: Manager Anderson read the report submitted by Paul A., a copy of this is on file at the WRD office. Chris Gross reported that he and Josh Hassell presented the 10 Mile Project, discussed the assessment process and the Joint Powers Agreement with the Stutsman Co. WRD, there was no discussion from the public as no landowners attended. The Stutsman Co. WRD did approve to enter into a Joint Powers Agreement with the BCWRD with the condition that if the assessment vote fails the agreement will be null and void. Sean Fredricks explained that the JPA he sent to Stutsman Co. already contained that language. After discussion, Manager Legge motioned to approve and sign the Joint Powers Agreement with Stutsman County. Seconded by Manager Anderson. Upon roll call vote, the

motion carried unanimously. Chris Gross then discussed the Preliminary Assessment District that needs to be finalized by the board, also a concern of what to do about the land that will continue to stay inundated with water with an elevation of 1430. Sean Fredricks suggested inviting these landowners to the next meeting to get their input and voice their opinions before sending out ballots. The board discussed which sections were most concerning and agreed to invite these landowners to attend the next meeting.

Sanborn Lake: Chris Gross reported that the permit is on its final review by the OSE, when that is complete it will get sent back to the WRD to review and finish processing.

Legal Drain 2 – culverts: Chris Gross reported that two bids were submitted for the culvert replacement on the Diemert and Offner sites, submittals were from Star Enterprises and Wade Klubben. After discussion, Manager Legge motioned to accept the bid from Wade Klubben in the amount of \$25,270.00 and enter into an agreement. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously. George Piatz and Commissioner Pete Paulson approached the board regarding the two culverts east of the drop structures, they explained that Stewart Twp. does not have enough funds to cover the 40% of these culvert replacements. They want the WRD to contribute more, Sean Fredricks explained how the WRD can legally utilize assessment funds. After more discussion, Commissioner Paulson stated the township will talk it over and decide after they see cost numbers.

Boom – VanBruggen Complaint: The Board next discussed the status of the ditch improvements constructed by Warren Van Bruggen. The Booms were present to discuss the matter.

In a NOTICE OF DECISION dated April 22, 2021, Sean Fredricks notified the parties of the Board's decision that Mr. Van Bruggen had, in fact, constructed unpermitted drainage improvements in the South Half of Section 35. The NOTICE also directed Mr. Van Bruggen to close or fill the unpermitted drainage by May 31. However, at the June meeting, the Board granted Mr. Van Bruggen an extension to June 22. None of the parties appealed the Board's decision, and all appeal periods have now expired.

The NOTICE OF DECISION directed Mr. Van Bruggen to "close or fill" the unpermitted and illegal drainage improvements, as required under Section 61-32-07 of the North Dakota Century Code. Mr. Van Bruggen pushed topsoil from the adjacent field into the ditch improvements. The Booms suggested Mr. Bruggen did not compact the topsoil and, as a result, they were concerned the topsoil will wash out quite easily.

Chris Gross inspected the remedial work and indicated Mr. Van Bruggen did fill in the ditches with a considerable amount of topsoil from the adjacent field, but he also agreed Mr. Van Bruggen did not compact the topsoil. Mr. Fredricks indicated the statute requires Mr. Van Bruggen to "close or fill" the unpermitted drainage; the statute does not go into detail into what type of work would meet the "close or fill" requirements. Manager Legge felt Mr. Van Bruggen had taken affirmative steps to remedy the unpermitted drainage, and he moved to declare that Mr. Van Bruggen had adequately remedied the unpermitted and illegal drainage. The motion failed for a lack of a second.

The Board discussed the necessity for compaction to ensure the fill installed by Mr. Van Bruggen does not simply wash out at the next precipitation or drainage event. Manager Anderson moved to conclude that

Mr. Van Bruggen had not adequately or sufficiently “closed or filled” the unpermitted and illegal drainage on the South Half of Section 35 of Meadow Lake Township, and to give Mr. Van Bruggen until 5:00 p.m., on August 1, 2021, to adequately “close or fill” the unpermitted and illegal drainage. Manager Buttke seconded the motion. Upon roll call vote, Chairman Hieb and Managers Anderson and Buttke voted in favor of the motion. Managers Legge and Fehr vote in opposition to the motion. The motion passed.

Sean Fredricks will send the parties a letter.

The Board indicated the letter should also warn Mr. Van Bruggen that the removal of topsoil from the adjacent field could actually qualify as construction of new, unpermitted drainage.

Wolsky – Carpenter Complaint:

COMPLAINT FOR WATER-RELATED ISSUES - Gene Wolsky Drainage Complaint Against Dean Carpenter

The Board next considered Gene Wolsky’s COMPLAINT FOR WATER-RELATED ISSUES against Dean Carpenter. Both parties were present to discuss the Complaint. In the Complaint, Mr. Wolsky alleged Dean Carpenter constructed illegal and unpermitted drainage improvements in the North Half of Section 13 of Cuba Township, Barnes County, North Dakota. According to records on file with the Barnes County Recorder’s office, Dean and Helen Carpenter own the North Half of Section 13 of Cuba Township.

The Board previously directed Moore Engineering to investigate the Complaint. Chris Gross inspected the alleged drainage and, while Mr. Gross noted that there is clear evidence dirt has been moved, with cuts up to 3 feet, there was no evidence of any channel construction or dirt removal beyond mere cleanouts. Rather, Mr. Gross indicated the culverts were cleaned out to their original invert elevations.

Sean Fredricks indicated that, under North Dakota law, construction of new drainage that impacts a watershed area of 80 acres or more requires a permit. Specifically, Section 61-32-03 of the North Dakota Century Code provides:

61-32-03. Permit to drain waters required – Penalty. Any person, before draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so....

The North Dakota Administrative Code further provides:

89-02-01-03. Permit required. In addition to North Dakota Century Code section 61-32-03, a permit is required for:

3. Modification of a previous permit, which includes deepening, widening, or extending a drain.

Clearly, construction of a new ditch, or deepening or widening of an existing ditch, requires a permit under North Dakota law. However, “maintenance” of an existing ditch does not require a permit:

89-02-01-05. Exceptions to permit required.

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain....

89-02-01-02(8): "Maintenance" means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.

In this case, Mr. Gross concluded Mr. Carpenter did not deepen or widen the existing ditch, nor did he construct a new ditch. Rather, Mr. Gross found Mr. Carpenter cleaned an existing ditch to match the original culvert invert elevations. Since Mr. Carpenter's dirt removal did not include deepening or widening, the work was mere "maintenance" that did not require a permit. With that in mind, the Board has no choice but to dismiss the Complaint.

In light of the lack of jurisdiction over the Complaint, Manager Anderson moved to dismiss the COMPLAINT FOR WATER-RELATED ISSUES filed by Gene Wolsky due to lack of jurisdiction under Sections 61-32-03 and 61-32-07. 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.

SWC Engineer Services Selection Process: Commissioner Olauson stated the BC Commission has some questions about the ranking process, he discussed the question of recent and current work done for the WRD and how a firm that has done no work could get such high scores. Sean Fredricks explained that the seven criteria questions are dictated by state law, and that each Manager is suppose to conduct their own ranking. Manager Anderson mentioned that having the rankings at 1-10 leaves a lot of room for interpretation, he feels it would be easier with two firms to rank 1-2. Sean Fredricks emailed to the board a copy of the draft Final Report which showed Houston Eng. receiving 312 points and Moore Eng. receiving 288 points. There was more discussion on the ranking process. Manager Anderson stated that Moore Eng. has done a tremendous job with the 10 Mile Lake Project and has made great headway, he expressed concerns if that project will move forward with a different engineering firm. There was discussion regarding cost share with this project, Manager Legge stressed the importance of cost share and stated that our projects won't happen without it. After more discussion, Sean Fredricks is going to touch base with the state and ask if the WRD can proceed with approving the Final Report with Houston Eng. and keep Moore Eng. on to complete the 10 Mile Lake Project, and still meet the requirements to qualify for cost share moving forward. No action was taken by the board regarding the Final Report, the board will wait on correspondence back from the state.

NEW BUSINESS

Cattail Spraying: Sean Fredricks emailed the board a copy of the contract agreement for cattail spraying. The board noted that the WRD is only responsible for spraying Legal Drains, landowners can bring maps of their areas to be sprayed along with their contact information to the WRD office, Heather will send them to Mike Larson. Manager Legge motioned to approve and enter into an agreement with

Larson Helicopters for the 2021 cattail spraying. Seconded by Manager Anderson. Upon roll call vote, the motion carried unanimously.

Greenland & Rosebud Twp.'s Stream Crossing Determination: Sean Fredricks explained that the OSE emailed a copy of this to the WRD, this does not require any action from the board, but it is always helpful for boards to see how these processes go. He went onto explain that if the Twp.'s were to reconstruct or replace culverts they must meet the standards indicated in the report. The only way this could possibly impact the board is if a Legal Drain was involved. Chairman Hieb discussed his conversation with a twp. supervisor regarding an issue with a culvert being removed within a section line, Sean Fredricks reminded the board that the WRD has no jurisdiction over twp. culverts, they do only if a Legal Drain is involved. No action was taken by the board, this report will be kept on file at the WRD office.

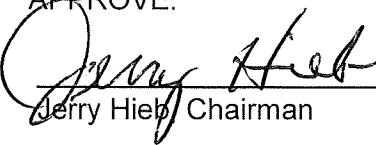
Engineer Report: Chris Gross had nothing new to report.

Legal Report: Sean Fredricks had nothing new to report.

Bills: Manager Legge motioned to pay the 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 11:50 a.m.

APPROVE:


Jerry Hieb, Chairman

ATTEST: 
Heather Manson
Secretary - Treasurer

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

July 12th, 2021

PLEASE SIGN IN BELOW

Shawn Olson BCC

Donald Jorissen
Conne Smith & Bruce Smith

Mike Opat Houston Engineering

Arvid Winkler

Dwight + Karin Boon

Pete Paulson

Dean Cayente

Via phone...

Paul Abrahamson
Kurt Tompting