

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

**Meeting Minutes
August 9th, 2021**

MEMBERS PRESENT: Chairman Jerry Hieb, Managers – Scott Legge, Bruce Anderson, Bret Fehr, Dan Buttke, Chris Gross – Moore Engineering, Barnes County Commissioner Shawn Olauson

Also Present: See attached list

Chairman Hieb called the meeting to order at 9:02 a.m.

Manager Fehr motioned to approve the July 12th, 2021 minutes as printed. Seconded by Manager Anderson. Motion carried; minutes approved as printed.

OLD BUSINESS

Hobart Lake: Manager Anderson reported that the drain is currently closed. Chairman Hieb mentioned that the repair work to the Johnson Dam has not begun, he will call Mike Morehouse to check on the status of this. Manager Anderson discussed his conversation with Jody Jacobson who inquired about using the WRD pump to move water from his property (the triangle) to the east side of the twp. road, this would alleviate some issues he is having with his sump pump. Discussion was held on the usage agreement for the WRD pump, no action was taken by the board on this.

Kathryn Dam: Chris Gross presented Veit's Final Pay Application in the amount of \$2,418.00 for the boards review and approval, all work has been completed. He stated the final cost share reimbursement requests are being completed for submittal to all the agencies. After discussion, Manager Fehr motioned to approve Veit's Final Pay application in the amount of \$2,418.00. Seconded by Manager Legge. Upon roll call vote, the motion carried unanimously.

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 handed out an elevation contour map of the lake along with a preliminary assessment map. A meeting notice with an invite to attend was sent out to 13 landowners whose land would still be inundated with water at the 1430 elevation for comments and discussion. The board must decide today if they want to reduce the benefit percentage of the land that will continue to be inundated. Rick Herbert stated that he doesn't feel that he should be assessed when he receives no benefit, and his land will continue to stay under water. Another landowner stated that he is in absolute favor of the project and feels if any landowner gets even a little benefit from this project they should be

assessed. Dale Jorissen stated that he is in favor of the project, he also mentioned all the money the twp.'s has spent on repairs due to 10 Mile Lake. He would like for people to think ahead and vote yes for this project, that way we can be prepared if there is another event by having a working legal drain. Discussion was held on votes and the voting process, configuration of votes per acre. Chris Gross reminded the Board that they cannot assign benefit to the way they think someone will vote, they must follow the process, and assign to what they feel the representation of the benefit that land is going to receive directly or indirectly. After more discussion, Manager Legge motioned to set the benefit rate at 75% on the 2,400 acres at the 1428 elevation and lower. Seconded by Manager Fehr. Upon roll call vote, the motion carried unanimously. Chris Gross will make these updates and finalize the preliminary maps and assessment list, he stated moving forward the Board can discuss potential Hearing dates with Sean Fredricks at the next meeting.

VC Little Dam: Nothing new to report, the cost share applications will be submitted for review at the October DWR Full Commission meeting.

Sanborn Lake:

Chris Gross and Josh Hassell have worked with the State Engineer's Office and the Game & Fish Department regarding the permit for the Sanborn Lake Outlet Project. Under state law, the State Engineer's Office had to determine if the application should be of "statewide or interdistrict significance"; if so, the Board would have to conduct a lengthy permitting process that would include a public hearing and would require the State to ultimately make a final determination on the permit. Alternatively, if the State concluded the application was not of "statewide or interdistrict significance," the Board would have to conduct its own analysis regarding project impacts and other considerations, but the process could proceed more expeditiously, and the Board would ultimately make the final determination on the permit.

Chris Gross and Josh Hassell have worked with the State Engineer's Office and the Game & Fish Department regarding the permit throughout the process. Operation of the project and elevations was the primary issue remaining and the Board ultimately came to an agreement the Game & Fish Department on that issue. With that in mind, the State ultimately concluded the permit was not of "statewide or interdistrict significance," and the State forwarded APPLICATION FOR SURFACE DRAIN NO. 5458 to the Board for final determination, in accordance with Sections 89-02-01-08 and 89-02-01-09.1(2) of the North Dakota Administrative Code. However, although the Board has final decision-making authority regarding the permit, the State's decision included the following caveat:

Upon review, the [North Dakota Department of Water Resources ("DWR")] has determined that the proposed drainage under this Application is **not** drainage of statewide or interdistrict significance so long as is **not** drainage of statewide or interdistrict significance *so long as the DWR Special Conditions and Recommendations are incorporated into an approved permit*.... (Emphasis added.)

In other words, the State concluded the application is not of "statewide or interdistrict significance," but only to the extent the Barnes County Water Resource District's final approve of

the permit includes the conditions and recommendations requested by the State. Those requested conditions and recommendations include:

1. The District must follow its Operation and Maintenance Plan dated May 10, 2021, regarding the Opening and Closing Gate sections under Section IV. Plan of Operation, for the Project. Any changes to the Operation and Maintenance Plan must be approved by the Department of Water Resources.
2. The Lake must not be drained below the target water surface elevation of 1427.0 feet (NAVD 88).
3. The Aquatic Nuisance Species rules and preventative measures by the North Dakota Game and Fish Department must be followed for the Project.

1. The North Dakota Game and Fish Department recommendations should be considered to minimize the impacts to fish and wildlife resources.

The Board will follow its own O&M plan, prepared by Moore Engineering; the Board and Game & Fish agreed on operation and elevations; and the Board agrees the project should include compliance with ND Game & Fish's Aquatic Nuisance Species rules and preventative measures. With that in mind, the Board agreed incorporation of the State's proposed conditions and recommendations is acceptable.

The Board next considered Moore Engineering's proposed responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board agreed with Moore's conclusions in those responses, including the conclusion that, in light of the Board's willingness to comply with the State's proposed conditions and recommendations, and because the Board has acquired the necessary right of way for the project, the project will not result in adverse impacts. The Board further determined no hearing was necessary under 89-02-01-09.1(2) of the North Dakota Administrative Code; again the Board has acquired the requisite right of way to accommodate the project, and the Board has already worked closely with Game & Fish and with BNSF. In fact, the project will protect BNSF's right of way.

Manager Legge moved to adopt Moore Engineering's responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code, and to approve APPLICATION FOR SURFACE DRAIN NO. 5458 regarding the Sanborn Lake Outlet Project, subject to all Special Conditions and Recommendations of the Department of Water Resources, and to authorize the Secretary-Treasurer to sign PERMIT FOR SURFACE DRAIN NO. 5458. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously

Legal Drain 2 – culverts: Secretary Manson reported that Stewart Twp. has decided to go ahead with replacing the culverts east of the drop structures, those have been ordered. Wade Klubben has submitted a cost estimate for the installation of those culverts.

SWC Engineer Services Selection Process: The Board agreed to table this till the next meeting to hear Sean Fredricks report on his discussion with the State regarding cost share with Moore Eng. to continue with the 10 Mile Lake project. Commissioner Olauson relayed to the Board that a motion was approved

by the County Commission requesting the Board to re-evaluate the ranking system for selection of an engineering firm with this current selection process, the Auditor will be sending out a letter to the WRD. Chairman Hieb stated that he would absolutely go against this because the WRD is a separate entity of its own.

Cattail Spraying: The board will continue to spread the word about this, Secretary Manson asked if all maps can be submitted by Thursday for them to be emailed to Mike Larson. Manager Legge mentioned that with Legal Drain 2 there will be no channel spraying, Milestone will be sprayed for weeds along the banks of the channel.

Boom – VanBruggen Complaint: At the last meeting the Board concluded that work done by Mr. VanBruggen was insufficient. Sean Fredricks sent a Notice to Mr. VanBruggen of the board's conclusion which directed him to complete closing or filling in the illegal drainage by August 1st. Photos were submitted by the Boom's showing the recent work done by Mr. VanBruggen, they are concerned that this area will still drain as the level is still lower than before and the fill is soft loam. Discussion was held on if the recent work completed is adequate. The board discussed the need to be clearer with their directive of work to be completed with future complaints. After discussion, Manager Anderson motioned to accept the work done by Warren VanBruggen as complete and to consider this complaint closed. Manager Buttke seconded the motion. Upon roll call vote Managers Legge, Buttke, Fehr and Anderson voted yes, with Chairman Hieb voting no. Motion carried with the yes votes.

NEW BUSINESS

Aas – Maasjo Verification Report: Jeff Aas had contacted Chairman Hieb and asked if the board's engineer confirmed that the closure of the illegal drainage was sufficient in their complaint, and if a report will be sent out to the parties involved. Manager Anderson read Sean Fredrick's email... he mentioned that the Board is not required by law to send an additional notice to confirm the drainage was sufficiently closed or filled, also the Board is not required by law to conduct an additional engineering review and analysis of remedial work. He also explained that if the Board concludes, by whatever means the Board deems appropriate, that the remedial work was sufficient, the Board can reach that conclusion, and can do so on record in the minutes. Manager Legge suggested for future complaints, when remedial work is complete both parties involved do a site visit and if work is satisfactory, they sign off as complete. If parties cannot agree then the WRD can discuss having the District's Engineer do a follow up inspection. The Board will discuss this at the next meeting with Sean Fredricks. With the Aas-Maasjo complaint Manager Legge motioned to direct Moore Engineering to conduct a follow-up inspection and prepare a verification of closure report, and to have Sean Fredricks prepare a Notice. Manager Anderson seconded the motion. Upon roll call vote, the motion carried unanimously.

Tim Hass – cleanout waterway Ash. twp sec 25: Mr. Hass was present to ask the board for cost share participation in a clean out of the waterway behind his farm, this was done back in 1998, he has been working with Kurt Tompkins (USFWS) on elevations for the culvert and clean out specifications which will be similar to the 1998 work completed. Manager Anderson read Sean Fredrick's email mentioning

that by law, WRD's cannot use public funds for private projects. Chris Gross explained that the Board does not have jurisdiction over a clean out, if Mr. Hass wants to facilitate more efficient drainage in and around his property that is fine, the Board has no financial obligation to this. If he were to exceed the threshold of drainage from a regulatory standpoint, that is when the board would get involved and require a permit, he then explained that process. Mr. Hass will continue to work with Kurt T., no action was taken by the board.

Engineer Report: Chris Gross had nothing new to report.

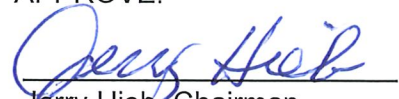
Legal Report: No legal report.

Manager Fehr mentioned a Utility Permit request by Cass Co. Electric in Weimer Twp., an application was submitted on August 4th for boring underneath a creek, this will be discussed at the September meeting, there was not sufficient time to review for this meeting. Manager Anderson was contacted by Aaron Larson about cleaning out some cattails in sect. 35 of Weimer Twp. These two items could be related, more information is being requested.

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

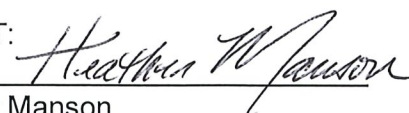
With nothing further to discuss the meeting was adjourned at 11:27 a.m.

APPROVE:



Jerry Hieb, Chairman

ATTEST:



Heather Manson
Secretary - Treasurer

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

August 9th, 2021

PLEASE SIGN IN BELOW

Tim Harv

Dale Gau

David Winkler

Alvan Olson

Reckel Jossin

Mike Spatt

via phone....

Kurt Tompkins

Paul Abrahamson