

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

**Meeting Minutes
August 8, 2022 - 9:00 a.m.**

MEMBERS PRESENT: Chairman Jerry Hieb, Managers Bruce Anderson, Scott Legge, Bret Fehr, and Dan Buttke; Sean Fredricks, Ohnstad Twichell (via WebEx); Mike Opat, Houston Engineering; and Barnes County Commissioner Shawn Olauson.

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

Manager Legge moved to approve the minutes from the Board's meeting on July 11, 2022 meeting with the correction discussed. Manager Anderson seconded the motion. Upon roll call vote, the motion carried.

OLD BUSINESS

VC Little Dam

Mike handed out a potential project schedule for the Board to review, the goal is to get sixty percent level of plans completed by the September meeting, that should be enough of a detailed plan set to submit permit applications. Mike anticipates the COE review to go quickly, but the DWR review will be three months or longer, based on the recent submittals they've received. Mike discussed deadlines for permit submittal and construction funding, once everything is approved, advertise for bids then open bids late May 2023. That gives the contractor the ability to start Summer 2023 if they want to or the Board can give a long enough construction window to where the contractor could work through fall and winter. Mike will have an updated cost estimate by September/October, he will let all parties involved with the JPA know. He explained for the next year costs incurred will be on the engineering side of things and some permit application fees, bigger costs will come once construction starts. Discussion was held on funding. Sean explained the bonding process and potential timing. Manager Anderson expressed concerns about issuing bonds too soon; Sean agreed and noted the Board does not want to be in a situation where the Board proceeds with a bond issue based on the estimate, but then encounters an unforeseen circumstance with additional expenses that exceed the amount of the bond issue. The Board agreed to wait until closer to construction to issue bonds and to utilize the Board's general fund until then; Sean will prepare a Declaration of Official Intent for the Board's consideration at the next meeting, a document that will allow the Board to pay itself back with bond proceeds following the bond issue. Mike also reported that crews have been back out and collected some updated survey information that they are processing now.

NRCS-RCPP Program

Mike and Manager Anderson went on a tour of the watersheds and potential sites/problems with NRCS staff on July 18th, they spent the whole day driving around the County, met up with officials from Meadow

Lake Twp. and looked at their issues to if there is any way to incorporate them into this program. Mike reported throughout the day he got a sense from NCRS staff that yes, they see there are problems here, but can we quantify enough damages to offset the cost from a federal perspective? Mike noticed a lot of skepticism during the tour. He talked with Kristi Fisher she feels everyone got off on the wrong foot at the initial meeting and agreed to come to the September meeting to have another discussion. Mike suggested a couple things for the Board to consider, one being the Board could meet again with NRCS officials again now that they have seen things and have a better understanding, then decide how to move forward. Or the Board could use funds towards a traditional Legal Drain type project, or something of that sort, but keep in mind that it will be more difficult to qualify for Federal funding. After discussion, the Board agreed to have Kristi attend the September meeting for more discussion, they can then decide how to move forward.

Thordenskjold Drain – structure repairs

Mike indicated the entire drain may require reconstruction and the project may require a drain extension, along with crossing improvements to accommodate stream crossing standards. The channel is basically a five-year channel and would require improvements to meet a ten-year design. Currently, the assessment district does not likely capture the benefits of the drain. Probably construct in phases; downstream end first. But first, the Board suspects there are miles of landowners who benefit from the Drain so the Board may want to conduct a reassessment as the first step. Mike then discussed the inspection report which shows the wing walls are in bad shape, the boxes are well past their life expectancy and to try to reattach wing walls with no issues is likely not an option, Houston Eng.'s recommendations at this point is to no keep those structures in place. Mike explained if those structures need to be replaced and sized appropriately, the Board could consider looking at the whole drain as a system to make sure everything all the way through is sized correctly to handle things. Sean explained the Board could consider going with a new project to ethe process of doing a large project with an assessment vote or go through a reassessment and engage the public to get a sense of what they want and where they feel improvements need to be made. Sean then explained with the reassessment process the Board will conduct a benefit analysis to compare the existing assessment district to actual benefits, this requires mailings/publications, and the Board must conduct a hearing. Discussion was held on culvert conditions, it was stated that nothing jumped out as being an imminent threat, Kevin Ussatis was present to discuss his driveway culverts in sect 23 and the culverts in the Storhoff driveway in sect 24. Manager Fehr mentioned that he feels the Board should move forward with the benefit analysis and master plan for the culverts, then tackle other issues as they arise. Mike suggested inviting landowners to the next meeting to get their input, the Board agreed. After discussion Manager Fehr moved to direct The Board directed Mike to conduct benefit/assessment analysis. Manage Legge seconded the motion. Upon roll call vote, the motion carried unanimously. A notification will be sent out by mail to the landowners regarding a public informational meeting, to explain the potential necessity for a reassessment and to explore project options. Mike will work with Heather on the notification and landowner names. The informational meeting will take place during the September regular WRD meeting at 10 a.m.

RRJWRD – bank stabilization

Mike reported that funding was approved by the RRJWRD, a cost share application has been submitted to the SWC as well. Mike has had discussions with SWC staff about applying for Devils Lake Outlet Mitigation funds, it was discussed internally and determined that does not fund studies, only specific damage repair projects the State can confirm are directly caused by the Devils Lake Outlet. Unfortunately, no money from there can be utilized for the study, but if sites are discovered during this first step, there is a possibility of going back for site specific funding if it can be proved the damage was caused by the Outlet. If the SWC approves cost share with the already approved cost share from RRJWRD there should be no

local dollars utilized. The inventory process will begin this fall, Mike will report on the findings, the Board will decide how to proceed. This continues to move forward.

Mike worked with Manager Anderson and Heather to get a cost share application put together then submitted it to the Red River Joint Water Resource District. RRJWRD will consider the request at the Executive Meeting on July 13th. Sean has prepared a cost share agreement with the RRJWRD for the Board to consider, after discussion Manager Legge moved to approve and authorize Chairman Hieb and Secretary Manson to sign the cost share agreement with RRJWRD. Manager Anderson seconded the motion. Upon roll call vote, the motion carried unanimously. Mike and Sean then explained if the RRJWRD considers the cost share request, the plan is to follow with a cost-share request to the SWC.

Sanborn Lake

Manager Anderson reported the elevation is 1426.15, Manager Legge closed the drain on 8-3-22, the drone inspection was done on 8-5-22. He mentioned the Texas crossing on the Offner property has a soft spot that needs repair, Mike will look at this on the drone footage. Ben Vig had questions about his flowage easement. Mike and Manager Anderson did a site visit. Mike discussed with Sean and they confirmed the easement obtained from the Vigs covers the issues Mr. Vig has raised. Chairman Hieb asked if there was any progress with the BNSF agreement, Mike explained there has been no success there yet. John Triebold requested when cattails are being sprayed to have directly in front of the culvert going through sect. 34 be sprayed, it is getting missed.

Clausen Springs Dam:

Mike reported that we have cost share in place for the EAP updates with the RRJWRD he estimates the total to be around \$5,000 the RRJWRD will cover 65% of this. He also passed out three charts from the current EAP for discussion on where to incorporate Dispatch within those charts. Mike mentioned possibly designating a Water Manager to be the first point of contact, someone who is close and can check on things regularly and be the first to put their eyes on the dam in case of an event situation. Discussion was held on possible people/entities in the area who could do this. Mike will take the comments received from Dispatch then present a draft revision to discuss at the September meeting. Mike then discussed the safety component of the dam, the last inspection report was done in 2019, the Board took action to address vegetation along with vent pipe and other issues. Another inspection will take place in 2022. Mike talked with the State and is working with the GeoTech people that are familiar with the dam, to develop a scope of work that addresses what the State is looking for in terms of the rating deficiencies and what the Board should be thinking about with the design life of the dam. Mike also suggested coordinating with the State to get the water drawn down long enough to inspect the conduit pipe, he reported there were some separations showing up the last time it was inspected. The Board agreed, after discussion Manager Anderson moved to authorize Houston Engineering to start the inspection process for Clausen Springs Dam. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously.

Mike went onto explain the reasoning of the poor rating on the Dam Safety Evaluation is because there are unknowns with seepage and stability listed in past reports. Mike handed out a breakdown of future activities for the Dam listing a hydrology and hydraulics review being done, he mentioned there is a high likelihood of cost share being available from the State and RRJWRD for this. He also mentioned a Geotechnical evaluation being done, including soil borings, a stability and seepage analysis, there is also a high likelihood of cost share being available from the State and RRJWRD for this. This handout will be beneficial for future budgeting of these activities. The Board agreed that these need to be done to ensure the dam is safe.

Complaint – Rasmusson/Bonde

Howard Rasmusson -- Drainage Complaint Against Arlen Bonde -- COMPLAINT FOR WATER-RELATED ISSUES

The Board next considered Howard Rasmusson's COMPLAINT FOR WATER-RELATED ISSUES against Arlen Bonde, dated June 6, 2022. Under the Complaint, Mr. Rasmusson alleges Mr. Bonde constructed illegal and unpermitted tile drainage improvements in Section 2 in Spring Creek Township, in violation of N.D. Cent. Code §§ 61-32-03.1 and 61-32-07. Mr. Rasmusson further alleges Mr. Bonde's tile project damages Mr. Rasmusson's property in Section 35 of Skandia Township. The Board previously directed Mike Opat to investigate the matter.

Under North Dakota law, the District only has jurisdiction over tile drainage to the extent the tile requires a permit under Section 61-32-03.1. Under Section 61-32-03.1, only tile projects with a tile footprint of 80 acres or more require a permit from the District. Landowners who install a project less than 80 acres must provide "notification" to the District under N.D. Cent. Code § 61-32-03.2, but systems under 80 acres do not require permits under Section 61-32-03.1.

Mr. Bonde previously submitted a "NOTIFICATION TO INSTALL SUBSURFACE WATER MANAGEMENT SYSTEM" dated March 14, 2022, to the District. Under Mr. Bonde's NOTIFICATION, he provided the requisite notice to the District of his intention to install a 72-acre tile project in the Northwest Quarter of Section 2 of Spring Creek Township. Mike Opat engaged Ellingson Drainage regarding Mr. Bonde's tile project and obtained a copy of Mr. Bonde's tile plan. Under Section 61-32-03.1, Mr. Bonde's tile plan is a "closed" record and is not available for public review, but Mr. Opat confirmed the tile system Ellingson installed was a 72-acre system. Houston Engineering subsequently conducted a drone flight over Mr. Bonde's property and verified that Mr. Bonde's tile system is a 72-acre system.

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 61-32-03.1 and 61-32-07 of the North Dakota Century Code. Further, in this case, Mr. Bonde complied with the "notification" requirements under Section 61-32-03.2. Because Mr. Bonde did not construct a tile system that required a permit under Section 61-32-03.1, and because Mr. Bonde complied with the notification requirements under Section 61-32-03.1, Sean Fredricks advised the Board they lack any further jurisdiction over his tile system and had no choice but to dismiss Mr. Rasmusson's Complaint.

In light of the Board's lack of jurisdiction, the Board determined dismissal was the only option available for the Board. Manager Fehr moved to dismiss the COMPLAINT FOR WATER-RELATED ISSUES filed by Howard Rasmusson due to lack of jurisdiction under Sections 61-32-03.1, 61-32-03.2, and 61-32-07 of the North Dakota Century Code. 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.

Stewart-Anderson Drain

The Board reviewed the estimate submitted by Wade Klubben for ditch cleaning, repair road slope, rip rap from drop structures to east culverts totaling \$16,800. The Board expressed concern that the scour hole repair is not listed on the estimate, discussion was held on the importance of getting these taken

care of, and if the rip rap from the drop structures to the culverts was necessary. Manager Legge will contact Wade to verify that he will fix the scour holes and determine what that cost is alone, Mike suggested to get another cost estimate and review at the next meeting. John Triebold discussed cattail spraying; it was agreed that all cattails west of the drop structures should be sprayed. Discussion was held on the ditch downstream of the drop structures, the Board needs to decide if they want to proceed with what Wade has outlined, or shape it up then seed it to get some vegetation going again? Mike suggested getting another cost estimate and review at next meeting. Manager Anderson mentioned with the current weather Wade could get the work done sooner, rather than waiting another month with the possibility of wet conditions. It was agreed that if the Board is considering the seeding option the more wet time would be better to get that going. After more discussion, Manager Anderson moved to authorize Manager Legge to work with Wade Klubben on the scour hole repair and seeding not to exceed \$17,000. Manager Buttke seconded the motion. Upon roll call vote, the motion carried unanimously.

Peterson Slough – CR #20

At the July meeting it was mentioned that the WRD may have an easement to drain water out of Peterson Slough along County Road 20. Dick Monson has nothing in his abstract regarding an easement, Heather looked in the office files, did not find anything. Mr. Monson has stated that he will give the WRD an easement. Kerry Johnson (BC Highway Superintendent) was present, he explained with this potential grade raise the road would be brought up two feet, it would be wider with shoulders and rip rap. He is confident that this stretch of road will get approved by the state. Discussion was held on the potential surface permit, this is probably not statewide significance, but will take some time because of the back log at the state. The Board then discussed possible excavation and clean out costs, tree removal, pipe replacement, labor, and future maintenance. After much thought the Board agreed that because the WRD has no easement this falls on Mr. Monson to continue with private maintenance, while Kerry continues pursuing the grade raise. The Board thanked Kerry for coming in to discuss, no action was taken by the Board.

Meadow Lake Twp. – drainage project Del Ray Enger

Mike recapped the discussion of a potential drainage project on the western side of Meadow Lake Township that was held at the July meeting, at that meeting the Twp. Officers said they were going to work on this potential project on their own. The township made some calls to the Bank of ND and were told they could borrow money, but they needed an assessment district first. Mike has concerns that the township does not quite understand everything involved with project development, permitting, construction, and operation and maintenance; the township only seems interested in pursuing an assessment district to access low-interest funds from the Bank of North Dakota and may not fully grasp that the Barnes County WRD would then own and operate the project after an assessment vote. Mike talked with Del Ray Enger and pointed him in the right direction on how the township can do their own assessment district. Manager Legge reported he received a call from Meadow Lake Twp. officers, they are frustrated with the answers they get from their legal counsel regarding the process of creating an assessment district, their engineer has never done one and the township does not want to put any money up front. Manager Legge will keep the Board updated on this.

NEW BUSINESS

Cattail Spraying – Larson Helicopters

Sean sent out a draft agreement with hiring Larson Helicopters to do the fall cattail spraying for the Board to consider, it is like our past agreements. Manager Anderson mentioned that this year Mike Larson will not be doing private landowner spraying, he will only be spraying the WRD's Legal Drains. After discussion, Manager Legge moved to approve the agreement with Larson Helicopters for the fall cattail spraying. Manager Buttke seconded the motion. Upon roll call vote, the motion carried unanimously.

Drain Tile Application – Alan & Roger Triebold

Application to Install a Subsurface Water Management System No. 2022-09 for Alan Triebold and Roger Triebold in the East Half of Section 5 in Oriska Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2022-09*, filed by Applicants Alan Triebold and Roger Triebold on July 20, 2022. Under the Application, Applicants seek to install a 182-acre drain tile system in the East Half of Section 5 in Oriska Township, Barnes County, North Dakota. The project will include a gravity outlet that will discharge via a pipeline that will run from the east boundary of the Southeast Quarter of Section 5 to the southeast, across the Section 5/4 section line and across a portion of the Southwest Quarter of Section 4 of Oriska Township; the pipeline will daylight and discharge into a natural watercourse in the Southwest Quarter of Section 4.

According to County tax roll information supplied by Applicants, Alan Triebold owns the Southeast Quarter of Section 5 of Oriska Township; Roger Triebold owns the Northeast Quarter of Section 5; and Edith Smith owns the Southwest Quarter of Section 4 where Applicants intend to install the project pipeline and tile outlet.

Manager Fehr moved, and Manager Legge seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-09*, filed July 20, 2022, for Alan Triebold and Roger Triebold in the East Half of Section 5 in Oriska Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-09, subject to the following conditions:

1. Applicants will install and maintain erosion protection at any and all outlets into the natural watercourse in the Southwest Quarter of Section 4 of Oriska Township.
2. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
3. Applicants will not install Applicants' tile system within 20 feet, on either side, of any rural water lines Barnes Rural Water District has in the East Half of Section 5 in Oriska Township under any blanket easements, or otherwise beyond Barnes Rural Water District's existing easement.
4. Applicants must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-09 in advance of any proposed alterations to outlet locations, the addition of any

outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicants' permit. However, for Applicants' protection, and to ensure protection of Applicants' tile system, the Board will recommend that Applicants comply with the following:

1. The Board recommends that Applicants obtain and record an easement from the owner of the Southwest Quarter of Section 4 to install and maintain pipeline and Applicants' tile outlet.
2. The Board recommends that Applicants obtain written consent from Oriska Township to install and maintain Applicants' pipeline within any of Oriska Township's statutory section line right of way.
3. The Board recommends 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.

Sean Fredricks will provide copies of the Board's NOTICE OF DECISION, SUBSURFACE WATER MANAGEMENT PERMIT No. 2022-09, Applicants' downstream flow map, and the Barnes County Permit Form to the Department of Water Resources, Barnes Rural Water District, Edith Smith, Oriska Township, and Jessica Jenrich. Under the new tile law, Applicants' detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Drain Tile Application – James Richman

Application to Install a Subsurface Water Management System No. 2022-08 for James Richman in the South Half of Section 33 in Weimer Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2022-08*, filed by Applicant James Richman on July 26, 2022. Under the Application, Applicant seeks to install a 226-acre drain tile system in the South Half of Section 33 in Weimer Township, Barnes County, North Dakota. The project will include a gravity outlet located near the northeast corner of the Southeast Quarter of Section 33 and a second gravity outlet located near the northwest corner of the Southeast Quarter; both outlets will discharge directly into a natural watercourse in the Southeast Quarter of Section 33 that flows to the east.

According to County tax roll information supplied by Applicant, Maynard & Jeanette Satrom LLLP, a North Dakota limited liability limited partnership, owns the South Half of Section 33 of Weimer Township.

Manager Fehr moved, and Manager Legge seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-08*, filed July 26, 2022, for James Richman in the South Half of Section 33 in Weimer Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-08, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the natural watercourse in the Southeast Quarter of Section 33 of Weimer Township.
2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
3. Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines Barnes Rural Water District has in the South Half of Section 33 in Weimer Township under any blanket easements, or otherwise beyond Barnes Rural Water District's existing easement.
4. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-08 in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the District 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 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 will provide copies of the Board's NOTICE OF DECISION, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-08, Applicant's downstream flow map, and the Barnes County Permit Form to the Department of Water Resources; Barnes Rural Water District; Maynard & Jeanette Satrom LLLP; and Jessica Jenrich. Under the new tile law, Applicant's detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Snagging/Clearing 2022-2023

Mike explained that if the Board is considering doing this again, he suggested getting the cost share application process going and submitted. He mentioned that this topic keeps getting brought up at the SWC meetings, there is a lot of debate over what should be funded and to what extent. After more discussion, Manager Anderson moved to authorize Mike and Heather to submit a cost share application on behalf of the Board. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously.

Engineer Report

Mike received a call from Eric Broten regarding Ten Mile Lake, he and Manager Anderson met with Eric, he discussed a potential project idea that goes along the north side of Barnes County #4. Mike passed out a map with a potential route, he explained that the water could go down not as low as what the projected project had, but this could provide some relief at a fairly low cost. Discussion was held on IF a surface permit application would be submitted, then the WRD goes through the permitting process with conditions. The applicant, if approved, could then construct that potential project. The Board agreed if Eric would decide to go this route, it would be worth the effort, but would not completely solve the problem. No action was taken by the Board.

Legal Report

Sean reported the SWC meets this Thursday, they will be discussing the snagging/clearing cost share policy. The Drainage Committee meeting is coming up on Aug. 23rd, also a couple statewide meetings are coming up, Sean will keep the Board informed on those happenings.

Bills

Manager Legge moved to approve the bills as presented. Manager Buttke seconded the motion. Upon roll call vote, the motion carried unanimously.

With nothing further to discuss, the meeting was adjourned at 12:01 p.m.

APPROVED:


Jerry Hieb, Chairman

ATTEST:


Heather Manson, Secretary-Treasurer

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

August 8th, 2022

PLEASE SIGN IN BELOW

Shawn Olanson

BCC

Les. Hanson

Kevin Assati's

ARVID WINKLER

John Triebold

Arlene Bordee

Alan Triebold

Roger Triebold