

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

Meeting Minutes

September 12, 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 (via WebEx).

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

Manager Anderson moved to approve the minutes from the Board's meeting on August 8, 2022 as printed. Manager Legge seconded the motion. Upon roll call vote, the motion carried.

OLD BUSINESS

VC Little Dam

Mike reported there has been some positive developments, BJ Kratz with Game & Fish mentioned they are able to contribute money for this project. Mike worked with Heather to prepare and send a letter to the Dept. Director explaining the project and to formally request \$15,000 and are awaiting a response. Mike presented explained the permitting process. Manager Legge moved to authorize Houston Eng. to draft the state construction permit application and to authorize Secretary-Treasurer to sign and submit it to the Department of Water Resources. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously. Chairman Hieb mentioned that Steve Krentz would contribute up to \$50,000 like he has with past projects. We haven't heard anything yet; the understanding is the money will be coming. Sean previously sent out a Declaration of Intent for the Board to review. By executing this document, the Board could later reimburse its general fund with bond proceeds following the bond issue for the project. The Board agreed last month to hold off on the bond issue until we have a better sense for final costs. After discussion Manager Legge moved to approve and authorize Heather to sign the Declaration of Official Intent. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously. Mike presented the preliminary design for the Board to review.

NRCS-RCPP Program

Mike had reached out to Christie Fischer after the drive around with NRCS staff in July, she agreed to attend a meeting for more discussion to make sure everyone is on the same page. Mike was unable to follow up with her to confirm her attending today, keep this on the agenda for the October meeting.

Thordenskjold Drain

The Board discussed the next steps for purposes of proceeding with a reassessment. The Board agreed to have an informal discussion with the landowners in the SW quadrant that would be added to the assessment district, to get their feedback, before proceeding with the formal process. The preliminary benefit analysis suggests properties in Ransom County benefit from the Drain. The Board agreed engaging the Ransom County WRD prior to commencing any formal process should be a priority. Chairman Hieb requested a list of Ransom County landowner names and parcel descriptions that could be included in the assessment district via reassessment; Mike will work on this and send it to Jerry. Chairman Hieb will then contact Scott Olerud, Ransom County water manager, and report at next month's meeting. Manager Buttke reported the wing wall repair on the Ussatis driveway has not been completed yet.

RRJWRD – bank stabilization

Mike and Sean have both reviewed the proposed cost-share agreement with the State Water Commission. After discussion Manager Legge moved to approve the cost-share agreement with the SWC and to authorize Chairman Hieb to sign the agreement. Manager Anderson seconded the motion. Upon roll call vote, the motion carried unanimously. Mike presented Task Order #3 for Houston Engineering to begin work on inventory of the bank erosion and slope issues from Bald Hill Dam downstream. After discussion Manager Anderson moved to approve Task Order #3 for engineering services. Manager Buttke seconded the motion. Upon roll call vote, the motion carried unanimously.

Sanborn Lake

Manager Anderson reported the elevation as of this morning is 1426.13, and that the gate is currently still closed. Manager Anderson will continue to check the gate once a month by opening and closing it to make sure it is operational. Mike reviewed the drone footage of the project; he did not see any erosion or major issues.

Clausen Springs Dam:

Mike reported the Board talked about doing an inspection of the conduit pipe, and reported DWR has camera system they plan to utilize for the dam inspection this fall. Manager Buttke was out and confirmed the draw down is operational. BJ Kratz is willing to coordinate the draw down and get it lowered. Mike is coordinating between BJ Kratz and DWR staff regarding timing of the inspection. Mike will attend and will come back with any recommendations on repairs or any other maintenance items needed. No action was necessary today. Mike explained that, with the funding in place for the EAP Update, we should keep this moving forward. The Board discussed who should be responsible for primary inspections and observations for each emergency level for notifications. Commissioner Olauson was going to contact the Sheriff's Office and Park Manager; he was unable to attend today. The Board agreed to talk with a few more entities and tabled this until the October meeting.

Stewart-Anderson Drain

Manager Legge reported that Klubben Excavating has completed the repairs from the drop structures to where the drain goes into the natural, grass has been seeded, the scour holes have been filled and packed during the repair. Wade has submitted a bill totaling \$15,500 for the work that has been completed. Kevin Harstad reported the culvert in CR#11 North of Sanborn just east of Dean Scoular's is rusted through and should be replaced, and Klubben Excavating has submitted an estimate for this project. Don Jorissen asked how the finances are in the drain account; Heather reported there is around \$40,000 in the account,

these bills today have not been paid out. Manager Legge stated the cattail spraying is working well, a lot of culverts have been replaced. After discussion Manager Legge moved to authorize Klubben Excavating to replace the culvert in CR#11 and to do ditch work as necessary to accommodate the culvert, and to replace a culvert east of Dean Scoular's farm site and associated ditch work. Manager Anderson seconded the motion. Upon roll call vote, the motion carried unanimously. The Board noted the project will require favorable weather conditions and that timing will further depend on the availability of culverts.

Meadow Lake Twp. – drainage project

Mike mentioned that he did not have a specific update on this. Manager Legge explained his last understanding is that the Township wants to make this project an assessment drain, but no representative for the Township was present for discussion. Sean suggested the Board consider how much the Board would require for a bond if the Township elects to submit a petition to the Board to request that the Board pursue a legal assessment project. The Board will likely require at least \$50,000 as bond security; if the vote was then successful, the Board would refund the bond dollars with proceeds from the bond issue, but if the vote failed, the Board would keep the bond dollars to reimburse the Board's general fund. The Board agreed that further discussion will be necessary with the Township to ensure the Township understands the legal assessment process. No action was taken by the Board at this time.

Cattail Spraying – Larson Helicopters

Manager Anderson reported that spraying will be complete next week, he has an additional area for Hobart Drain to be sprayed. Heather will email this additional information to Mike Larson.

Snagging/Clearing 2022-2023

Mike and Sean have both reviewed the cost-share agreement from the State Water Commission and both recommend approval. Sean explained that some State Water Commissioners have recently voiced opposition to cost-share for snagging and clearing projects; as the SWC considers its cost-share policy over the coming month, cost-share for snagging and clearing could be at risk. He encouraged the Board to contact Legislators and State Water Commissioners to request support for this funding avenue that our County relies on. Manager Legge moved to approve and authorize Chairman Hieb to sign the cost share agreement with the SWC. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously. Mike will coordinate with Industrial Builders to get the ball rolling. Discussion was held on if the Board should focus on a specific area or continue from where we stopped last time. After discussion, the Board agreed to continue south all the way to state #46. Mike suggested using some of the information we get from the drone footage to put together some images to share with our Legislators and Commissioners so they can get a better understanding of some of the issues in Barnes County. Sean discussed past agreements with IBI. Manager Anderson moved to direct Sean to draft an agreement with IBI and authorize Chairman Hieb and Heather to sign. Manager Legge seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Anderson reported Hobart Drain is currently open with an elevation of 1417.27. He also reported the elevation for 10 Mile Lake is currently 1433.40.

NEW BUSINESS

Water Manager Per Diem

Sean discussed the Legislature during the last session approved HB1216 which indicates that water managers are entitled to up to the same amount of compensation/per diem as Legislators; the previous the max was at \$135, but on July 1st 2022 that increased to \$193. He explained that the Board does have the authority to approve a motion to increase if they choose, though he reminded the Board that budgets have already been submitted. He explained that most other WRDs have approved the increase, though some have held off to avoid ramifications from their commissioners. The Board agreed that if a person is in this position for the money, they are in it for the wrong reasons, but also mentioned how hard it is to fill vacancies on the Board. Sean pointed out all the extra things this Board does, and how hands-on this Board is. The Board agreed to table this discussion until the January 2023 meeting.

Application to Install a Subsurface Water Management System No. 2022-10 for Allen Dolliver in the North Half of Section 6 in Marsh Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2022-10*, filed by Applicant Allen Dolliver on September 7, 2022. Under the Application, Applicant seeks to install a 150-acre drain tile system in the North Half of Section 6 in Marsh Township, Barnes County, North Dakota. The project will include a single pump outlet, located near the southwest corner of the Northeast Quarter of Section 6; the pump will discharge directly into a natural waterway that runs to the east.

According to County tax roll information supplied by Applicant, Allen and Carol Dolliver own the Northeast Quarter of Section 6, and Bruce and Kathy Anderson own the Northwest Quarter of Section 6 of Marsh Township.

Before discussing the merits of *Application No. 2022-10*, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Anderson's potential conflict in the matter. Manager Anderson owns property that will be tiled under this particular application. Sean explained the law in North Dakota regarding conflicts, Section 44-04-22 of the North Dakota Century Code, provides the relevant standard. That statute provides:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

The Section 44-04-22 test requires a multi-step analysis. In this case, Manager Anderson clearly has a direct and substantial personal interest in the matter that creates a clear conflict. Manager Legge moved to declare that Manager Anderson has a conflict in the matter and should not participate in any votes regarding *Application No. 2022-10*. Manager Fehr seconded the motion. Upon roll call vote, Chairman Hieb and Managers Fehr, Legge, and Buttke voted in favor of the motion. Manager Anderson abstained. The motion was successful.

There is an additional conflict statute specific to water resource districts, Section 61-16-08.1 of the Century Code, that provides the County Commission with discretionary authority to appoint alternate water managers if a full-time member has a conflict. However, that statute was effectively superseded by Section 44-04-22 when the Legislature adopted Section 44-04-22 in 1995 (Section 61-16-08.1 went into effect in 1985). Section 61-16-08.1 does not provide a definition for what qualifies as a “conflict of interest” and does not provide a mandatory process; rather, the legislative history of Section 61-16-08.1 indicates the Legislature approved that statute to provide a process for water managers to avoid situations where they are not comfortable voting on a matter and is not a mandatory process. Conversely, the process under Section 44-04-22 is mandatory for conflict situations, provides a detailed test for determining if a conflict exists, and provides a detailed process for a Board to proceed even if a conflict does exist. The Legislature enacted Section 44-04-22 after passing the vague and optional Section 61-16-08.1 and, therefore, the process under Section 44-04-22 controls all conflict matters.

With the conflict issue concluded, the Board proceeded with discussion regarding the application.

Manager Fehr moved, and Manager Legge seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-10*, filed September 7, 2022, for Allen Dolliver in the North Half of Section 6 in Marsh Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-10, subject to the following conditions:

1. Applicant will re-establish any areas disturbed installing or maintaining Applicant’s tile system.
2. Applicant will install and maintain erosion protection at any outlet into the natural waterway in Section 6 of Marsh Township.
3. 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.
4. 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 North Half of Section 6 in Marsh Township under any blanket easements, or otherwise beyond Barnes Rural Water District’s existing easement.
5. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-10 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, Chairman Hieb and Managers Fehr, Legge, and Buttke voted in favor of the motion. Manager Anderson abstained. The motion was successful.

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 comply with the following:

1. The Board recommends that Applicant obtain an easement or other consent from the owners of the Northwest Quarter of Section 6 to install and maintain tile components.

2. The Board recommends 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. 2022-10, Applicant's downstream flow map, and the Barnes County Permit Form to the Department of Water Resources, Barnes Rural Water District, Bruce and Kathy Anderson, 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.

Application to Install a Subsurface Water Management System No. 2022-11 for Jack Bruns in the West Half of Section 12 in Valley Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2022-11*, filed by Applicant Jack Bruns on September 7, 2022. Under the Application, Applicant seeks to install an 89-acre drain tile system in the West Half of Section 12 in Valley Township, Barnes County, North Dakota. The project will include two gravity outlets. The first outlet will be located near the northeast corner of the Northwest Quarter of Section 12 and will discharge directly into a pond or slough. The second outlet will discharge via a 4-inch pipeline that will commence at the southwest corner of the Northwest Quarter of Section 12 and will run south into and across a portion of the Southwest Quarter of Section 12; the pipeline will daylight and discharge directly into a pond or slough in the Southwest Quarter of Section 12.

According to County tax roll information supplied by Applicant, John Bruns owns the Northwest Quarter of Section 12 of Valley Township, and Walter and Rebecca Schroeder own the Southwest Quarter of Section 12.

Manager Fehr moved, and Manager Anderson seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-11*, filed September 7, 2022, for Jack Bruns in the West Half of Section 12 in Valley Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-11, subject to the following conditions:

1. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
2. Applicant will install and maintain erosion protection at any and all outlets into the ponds or sloughs in the North Half of Section 12 of Valley Township.
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 West Half of Section 12 in Valley 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. 2022-11 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 comply with the following:

1. The Board recommends that Applicant obtain an easement or other written consent from the owners of the Southwest Quarter of Section 12 to install and maintain tile components.
2. The Board recommends 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. 2022-11, Applicant's downstream flow map, and the Barnes County Permit Form to the Department of Water Resources, Barnes Rural Water District, Walter and Rebecca Schroeder, 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.

Engineer Report

Mike reported he is still waiting to hear from BNSF on the possibility of updating our agreement with them regarding Sanborn Lake, he hopes to have an update at the next meeting. Mike has tried to contact Eric Broten with no correspondence back regarding Ten Mile Lake. The Board agreed to drop this and wait to hear from Eric.

Legal Report


Sean reported the Drainage Committee met for the last time; he discussed both bills that are being recommended separately. Sean will keep the Board informed on those happenings.

Bills

Manager Legge moved to approve the bills as presented with the addition of the Klubben Excavating bill. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously.

With nothing further to discuss, the meeting was adjourned at 10:48 a.m.

APPROVED:

 *Jerry Hieb* v.c.
Jerry Hieb, Chairman

ATTEST:


Heather Manson, Secretary-Treasurer

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

September 12th, 2022

PLEASE SIGN IN BELOW

Donald Garrison