

Barnes County Water Resource
PO Box 306
Valley City, ND. 58072
701-845-8508

06/11/2012
Meeting minutes

Present: Vice Chairman- Pat Hurley, Manager-Duane Lettenmaier, Manager-Jerry Hieb and Manager-John Kohler

Absent: Chairman-Jeff McMillan

Also present: Donald Jorrissen, Duane Farnquist, John Schwehr, Tim Schwehr, Brad Noeske, Commission-John Froelich, Neil Aaman, James McAllister, E.J. McAllister, Scott Legge, Amanda Brandt-NRCS District Conservationist, Commissioner-Roger Berntson, Alen Holen, Harold Pross, Shelly Nelson-Barnes County Soil Conservation District, Daniel Hovde, Franklin Peterson, Douglas Harland, Michael Storhoff, Darin Tingley, Milo & Karen Bucholz, Barry and Cheryl Borg, Myrna Olstad, and Mike Haugen.

The meeting was called to order by Vice Chairman Hurley at 8:00 A.M.

Manager John Kohler moved and Manager Duane Lettenmaier seconded, to approve the minutes of the May meeting. All were in favor. The motion carried.

Manager Kohler moved and Manager Jerry Hieb seconded, to approve the revenue and expenditure reports. All were in favor. The motion carried.

Application to Install a Subsurface Drain for Brad Noeske in the Northeast Quarter of Section 13 and the East Half of the West Half of Section 13 of Noltimier Township

The Board reviewed *Application to Install a Subsurface Drain* dated April 16, 2012, for Brad Noeske. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicant seeks to install a drain tile system in the Northeast Quarter of Section 13 and the East Half of the West Half of Section 13 in Noltimier Township, Barnes County, North Dakota. The system will include two outlets. The first outlet for the portion in the Northeast Quarter will discharge in the

southeast corner of the Northeast Quarter, directly into a natural watercourse that flows to the east through an existing culvert. The second outlet, for the portion in the East Half of the West Half of Section 13, will discharge near the southeast corner of the East Half of the West Half and will flow to the east across a portion of the Southeast Quarter of Section 13. The plan for the system submitted by Applicant with his application indicates the project will require road ditch cleanouts; however, Applicant has since indicated the project will not include any ditch cleanouts. The Board, Sean Fredricks, and Mike Opat all noted that any ditch "cleanout" that entails more than silt and/or cattail removal may require a surface drainage permit under Section 61-32-03 of the North Dakota Century Code.

Because the proposed project will discharge across a portion of the Southeast Quarter of Section 13, the Board issued a *Thirty-Day Notice* under N.D. Cent. Code § 61-32-03.1 to the owners of the Southeast Quarter; however, Applicant has indicated Mr. Earl McAllister, the owner of the Southeast Quarter and the owner of the Southwest Quarter of Section 18 in Weimer Township, is one of the construction participants regarding Applicant's tile project. Mr. McAllister did not submit any comments regarding the project.

According to records on file with the Barnes County Recorder's Office, Applicant owns the Northeast Quarter of Section 13 and the East Half of the West Half of Section 13, where Applicant seeks to install the tile system. Earl and Violet McAllister own the Southeast Quarter of Section 13 of Noltimier Township and the Southwest Quarter of Section 18 of Weimer Township, parcels over which Applicant will discharge a portion of the tile project.

It was moved by Manager Hieb and seconded by Manager Kohler to approve *Application to Install a Subsurface Drain* dated April 16, 2012, for Brad Noeske in the Northeast Quarter of Section 13 and the East Half of the West Half of Section 13 in Noltimier Township, subject to the following conditions:

- 1) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 2) That Applicant obtain written permission from the Noltimier Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches, or to bore through its township road;
- 3) That Applicant notify the Barnes County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;

4) 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; and

5) 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.

Upon roll call vote, the motion carried unanimously.

Legal Drain #2 (Stewart-Anderson Drain)

Discussion was held on the removal of trees in the drain. Clarification of cost share for tree removal was made. There will be a cost share of 50% for trees removed along side of the drain immediately outside of the drain right of way. This will apply for the removal of trees on the Jesse Pabst and the Todd Wendel land. Discussion was held on sloughing repair. Manager's Kohler and Hurley will be soliciting three bids for this work. Discussion was held on the advisory board's recommendation to complete cat tail and sediment removal from the drop structure to gate #4. Managers Kohler and Hurley have solicited three contractors for estimates for this work. Discussion was held on drain signage. The current signage is not compliant with road safety standards. Manager Kohler moved to purchase new signage for the drain. The motion was seconded by Manager Hieb. All were in favor. The motion carried.

Discussion was held on extension work that had been completed by Manager Lettenmaier. It was decided to request a 6 month extension from the USFWS to allow time to resolve the extension dispute. Manager Lettenmaier stated that he had spoken to Kevin Harstad and Dan Elston. Mr. Harstad and Mr. Elston are willing to wait to see the results of the NRCS wetland determination. Vice Chairman Hurley stated that he to has spoken to Mr. Harstad and Mr. Elston. Vice Chairman Hurley stated that Mr. Harstad indicated to him that he did not want to wait for the wetland determination and that he wanted the portion of the extension that is on his land closed. Manager Lettenmaier presented two bills from Lake View Trucking. Discussion was held on who was responsible for these bills. Vice Chairman Hurley stated that Manager Lettenmaier should pay for the bills as they were acquired due to work that was beyond the scope of the cat tail cleanout. Vice Chairman Hurley asked for Manager Lettenmaier's

resignation. Don Jorrisson stated that the bills should not be paid for by legal drain funds. Mr. Jorrisson stated that Manager Lettenmaier is the only person benefiting from the extension. Discussion was held on the expiration of the USFWS Temporary Drainage Permit. The current permit expires this week leaving no time to resolve the dispute and completed needed repairs. Manager Kohler moved and Manager Hieb seconded, to request a 6 month extension from the USFWS . Roll call vote was taken. The results are as follows: Manager Hieb-yes, Manager Kohler-yes, and Manager Hurley-yes. Managers absent and not voting: Chairman McMillan. Manager's not voting due to conflict analysis: Manager Lettenmaier. All were in favor, the motion carried. Manager Kohler moved and Manager Hieb seconded to authorize Chairman McMillan to sign the extension documents. Roll call vote was taken. The results are as follows: Manager Hieb-yes, Manager Kohler-yes, and Manager Hurley-yes. Managers absent and not voting: Chairman McMillan. Manager's not voting due to conflict analysis: Manager Lettenmaier. All were in favor, the motion carried. Vice Chairman Hurley stated that it was unfair that the contractor has not been paid and that these bills have been outstanding since the end of December of 2011. Vice Chairman Hurley requested Manager Lettenmaier's resignation and that the Board pay the contractor. Discussion was held on a possible payment plan. Manager Hieb stated that he feels that the Board is partly responsible as they should have been following Manager Lettenmaier's project more closely. Manager Hieb suggested that Duane should pay for all remaining bills and that the Board should pay for the restoration work. Discussion was held. Don Jorrisson stated that he felt that Manager Lettenmaier should not only pay for the bills but should be removed from the Board because he has squandered tax payer's money. Vice Chairman Hurley suggested that this matter be tabled until the end of the meeting so as to move on with other scheduled agenda items.

Application to drain with surface drainage #3810, Warren Van Bruggen

Discussion was held on the establishment of a operation and maintenance plan for this proposed project. Discussion was held on requiring the applicant to operate the drain in accordance to an approved operation and maintenance plan. Vice Chairman Hurley suggested that the board draft and plan that was in accordance with NRCS regulations regarding wetland elevation. Mr. Van Bruggen stated that he did not want to adversely impact his neighbors and downstream roads. Mr. Van Bruggen also stated that his intent for the drain is to simply protect his farmstead and would operate the drain according to the board's operation plan.

Thordenskjold Drain-Re assessment of benefit hearing

Vice chairman Hurley asked Mike Opat, District Engineer, to give a history of the drainage in the Thordenskjold Basin. Mr. Opat reported that the watershed boundary was established using LIDAR information and that the watershed was comprised of roughly 14,500 acres. Vice Chairman Hurley asked for input from the audience. Many audience members expressed

interest in how the assessment money would be spent and what types of maintenance would be performed. Manager Kohler stated that the assessment dollars would be used to provide maintenance in the form of sediment and cat tail removal, repairs to culverts and signage of the drain. Manager Kohler stated that the reassessment of benefit is necessary to establish adequate funding for the completion of the maintenance to allow the drain to function more efficiently. Discussion was held in regards to the inadequacy of road crossings. Vice Chairman Hurley reported that he had received a call regarding the drain crossing County Road 38E between the cities for Kathryn a Nome. Vice Chairman Hurley stated that an evaluation of the crossing should be completed as well. Mylo Bucholz stated that he felt that the current board was not capable of managing the drain. Mike Storhoff expressed concern over the drain not functioning properly and asked if assessment dollars could be used to improve his crossing. Mr. Storhoff said that the drain washes out his driveway and has done so multiple years in a row. Discussion was held on the possibility of adding control structures to the drain to control the speed of the drain. Darren Tingley stated that the drain in its current state is not functioning properly and that maintenance needs to be completed. He also stated that there is a field crossing in the SW ¼ of Section 21 that should be removed. Mr. Tingley reported that he owned this land and that he was agreeable to the crossing's removal. Dan Lund asked about charging landowners for the assessment using a benefit ratio. Discussion was held. Franklin Peterson and Doug Harland asked that the board review the NW 1/4 of Section 34 Norma Township. Both Peterson and Harland stated that they were not opposed to the reassessment but that the acres in the NW ¼ do not flow to the east. The Secretary received a call from Don Miller. Mr. Miller owns the NE ¼ of Section 36 of Thordenskjold Township. Mr. Miller has requested that the board remove the NE ¼ of Section 36, Thordenskjold. Gerald Langemo stopped by the office and asked that his land that is located in the E ½ of the SE ¼ of Section 21 and the SW corner of the SW ¼ of Section 22, Norma Township, be excluded from the assessment. Mr. Langemo stated that these areas's are under a permanent wetland easement with the USFWS and do not receive any drainage benefit. The board agreed to review the entire watershed and to eliminate those acres that would receive little or no benefit. Vice Chairman Hurley and Manager Kohler will review the watershed with the District's engineer.

Stewart Township- stream crossing between section's 9/10

This subject was tabled until the July meeting.

Myrna Olstad complaint filed against Allen Dolliver and Winter's Farms, SW ¼ Section 15, T139N R58W, Marsh Township

The Board next discussed the Drainage Complaint filed by Myrna Olstad against Allen Dolliver and Winter's Farms dated April 24, 2012. Mike Opat conducted a site inspection of the alleged drainage. Mike concluded there was no evidence of anything more that maintenance done in

the area. In addition, Amanda Brandt similarly investigated allegations of Swampbuster violations, and concluded that this is a natural drainage way and it is not making agricultural production possible.

Manager Hieb reported that he had completed an onsite investigation. Manager Hieb felt that slough may have filled overflowed, eroded and then the operator slopped the area to make farming easier. Opat reported that he reviewed the LIDAR and that the watershed did not consist of 80 acres or more. Fredricks advised the board that a permit would not be required by law. Manager Lettenmaier moved to dismiss the complaint and to facilitate communications between the parties to resolve the issue. Vice Chairman Hurley seconded the motion. All were in favor. The motion carried.

Hobart Lake

Barry Borg presented questions regarding the proposed outlet. Mr. Borg was advised that the District was waiting on a reply from the ND Department of Emergency Service in regards to the Hazard Mitigation Grant. The District will not proceed until funding is properly in place. Discussion was held on changing the project alignment and how that would affect funding. Discussion was held on financing and maintenance of this project. All agreed that this should be in place prior to any construction. It was unanimously decided to require a petition and \$100,000.00 bond to establish an assessment District to provide for the operation and maintenance of this outlet. Managers Hieb and Kohler will notify landowners in the Hobart area of this decision. Barry Borg stated that the roads are in poor condition due to the high water.

Goose Lake

Tim Schwehr and John Schwehr asked if anything is being done with Goose Lake. Vice Chairman Hurley stated that Goose Lake has been overcome by Eckelson Lake. Hurley also reported that only elevations were being gathered at this point. John Schwehr suggested that maybe the board may want to consider an assessment district to pay for the maintenance.

Sanborn Lake Outlet

A letter was received from Jade M. Rosenfeldt, legal counsel for Fred Offner. Ms. Rosenfeldt states in her letter that Mr. Offner will not sign a flow easement. It also indicates that Mr. Offner has now suffered loss. The letter did not specifying the loss. It was decided to have Mr. Fredricks draft a response stating the Board is willing to install a crossing in exchange for the flow easement. If this exchange is not satisfactory to Mr. Offner then Mr. Offner will need to indicate what would be satisfactory. Discussion was held on the expiration of the USFWS Temporary permit. Manager Hieb moved to request a six month extension from the USWS and

to authorize Vice Chairman Hurley to sign. Manager Lettenmaier seconded the motion. A roll call vote was taken and the results are as follows: Manager Hieb-yes, Manager Kohler-Yes, Vice Chairman Hurley-Yes, and Manager Lettenmaier-yes. Managers absent and not voting: Chairman McMillan. All were in favor, the motion carried. Discussion was held on the sedimentation of the channel. It was agreed that this sedimentation would need to be removed and that erosion control would need to be placed to prevent this in the future.

Application to Drain with Drain Tile #2012-02, Wayne Langer

Fredricks reported that downstream notices were sent and that there is a 30 day waiting period. Manager Kohler reported that he understood that Mr. Langer has already acquired downstream easements. Manager Kohler will contact Mr. Langer and request that he submit a copy of the easements.

Ten Mile Lake

Discussion was again held on how to fund this project. It was decided to request that interested landowners sign a petition and to bond \$75,000.00 to pay for the cost of establishing the district.

Manager Report:

Manager Hieb reported that he received notice that Charlie Olsberg of Kathryn was concerned with possible erosion on "Dog Creek". Manager Hieb stated that he had traveled to Kathryn. While in Kathryn, he was unable to make contact with Mr. Olsberg. Manager Hieb was advised by a citizen of the City of Kathryn that Mr. Olsberg has been dumping into the creek and is in violation of State Health Department codes. It was decided that Mr. Olsberg would have to take care of this issue prior to any board investigation on alleged erosion.

Manager Hieb reported that he and the Secretary had submitted for a FEMA grant for the erosion repairs needed at the Kathryn Dam. This grant, if received would be a 50% cost share up to \$5,000.00.

There were no other reports given.

Legal Drain #2-(Stewart/Anderson Drain)

Discussion continued on who was responsible for the outstanding bills. Manager Lettenmaier stated that he would be willing to pay the bills after the project was complete. Discussion was held on the definition of complete. Barnes County Commissioner John Froelich suggested that the bill be paid and then bill the appropriate party. Vice Chairman Hurley suggested that the District pay the contractor and again asked for Manager Lettenmaier's resignation. Hurley

moved to pay the contractor and bill the responsible party. Manager Kohler seconded the motion. A roll call vote was taken and the results are as follows: Manager Hieb-Yes, Manager Kohler-yes and Vice Chairman Hurley-Yes. Managers absent and not voting: Chairman McMillan. Manager's not voting due to conflict analysis: Manager Lettenmaier.

Manager Kohler moved to approve the bills as presented. The motion was seconded by Vice Chairman Hurley. All were in favor. The motion carried.

Vice Chairman Hurley, Mr. Fredricks and Mr. Opat will be attending a joint meeting this afternoon with Stutsman County Water Resource District and Griggs County Water Resource District.

Being no further business, Manger Kohler moved to adjourn the meeting. Vice Chairman Hurley seconded the motion. All were in favor, the motion carried.

Respectfully submitted,

Jamie Smith
Secretary
Barnes County Water Resource District