

Barnes County Water Resource District

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February 9, 2015

MEETING MINUTES

PRESENT MEMBERS: Chairman Jerry Hieb; Manager Bruce Anderson; Manager Shawn Olauson; Manager Bret Fehr; Mike Opat – Moore Engineering; Sean Fredricks – Ohnstad Twichell Law Firm (via phone).

Absent: Manager Dale Jorissen

Also Present: See Attached List

Chairman Hieb called the meeting to order at 8:59 am.

Manager Olauson made a motion to approve the January 12th Meeting Minutes. Manager Fehr seconded. Motion approved.

OLD BUSINESS

Finalize Engineering Firm - Manager Olauson made motion to approve the final report for Moore Engineering as our engineering firm. Manager Fehr seconded. Motion approved with a roll call vote.

Sheyenne River Snagging/Clearing District - Sean Fredricks informed the managers they need to set a Resolution Hearing for March 9 (next WRD meeting) with at least 3 County Commissioners at this meeting. Sean's Office has drafted documents for the commission to review. Sean's Office will publish the Notice of

the Hearing. After that meeting we will need a vote of 4 out of 5 Commissioners and 4 out of 5 BCWRD Managers to approve the creation of this Snagging and Clearing District. We can assess up to \$.50 per acre, a onetime assessment amount. Jerry asked about a time line for this winter. Mike Opat did not think much could be done this winter, because the district needs to wait for the cost share application to come back from the State. Mike also said that some snagging/clearing, along this area, could be done in the warmer months and the rest done later next fall. First and foremost we need to get the District set up. Sean will send a copy of the resolution to State's Attorney. Bruce made a motion to approve the Resolution for this Snagging and Clearing Hearing on March 9. Shawn Olauson second motion. Motion approved with a roll call vote.

Hobart Lake - Mike Opat mentioned the State Wide Significance process meeting for Hobart Lake set for 9:30 am (Monday) Feb. 23rd at the Barnes County Highway Dept. Conference Room. Mike is continuing to work with the State Dept. of Health on the water quality issue and operating limits. Joint Powers Agreement has been approved by the County Commission so we are just about ready for this to be finished.

Hurley/Vogel Complaint - Mike Vogel addressed the district regarding the letter from Aaron Carranza with the ND State Engineers Office. Mr. Vogel understands from the letter that he did not need a state permit. Discussion followed regarding the 10 year flow and what standard this area is. Mike Opat mentioned that the State Engineers Office will provide the 10 year flow information. Chairman Hieb suggested Vogel's get an engineer to provide them with the information needed for this project and to contact State Engineers Office for the flow information.

RRJB - Bruce Anderson reported on the Red River Retention Authority meeting held in January. Baldhill Creek, possible dam sight, was discussed. No other info at this time. Next RRJB meeting will be coming up in March.

BNSF – Sean Fredricks had contact with BNSF attorney about two months ago and talked them about the Grotberg and Pesek complaints that were before the district and that we are hoping that there will be an amicable solution between all parties. Dwight Grotberg addressed the district and said he has been trying to contact BNSF attorney regarding the project cost and invited them to attend this water district meeting today. No response from BNSF. Dwight has also contacted our Senator John Hoven, but no response from him, as of yet. Dwight explained the water situation in this area. Sean Fredricks offered to touch base with BNSF attorney to get the cost estimate in this project. Sean explained that Federal Laws stand in the way on why the district has not acted on these complaints and that is why district was hoping that the landowners and BNSF could come to an agreement. No time deadline for this obstruction complaint.

VC Little Dam/Kathryn Dam – Mike Opat reported that his survey crew was able to complete the survey work need on these projects. Mike handed out the proposal for the Little Dam and cost share information that was sent into the state. John Froelich was opposed to the fish ladder concept, but agreed to the study for the two dams. Mayor Workhoven addressed the district with map handouts of the Valley City Flood Control Project and how the Little Dam project may affect the cities flood control project. Perry Kapaun, BC Wildlife, addressed the district on their concern with the fish ladder effect and how the fishing could be affected along the river. Discussion followed. Manager Anderson made a motion to have Moore Engineering do the preliminary study for the Little Dam Project. Manager Olauson seconded the motion. Motion approved with a roll call vote.

Thordenskjold Drain - Sean Fredericks office is still working on the land title portion of this drain addition. No further information at this meeting.

Sanborn Lake - Commissioner Froelich addressed the district on the progress of the easement project and a mailing should be going out this week.

Commissioner Froelich informed the district that the BC Commission signed the Joint Powers Agreement for the Sanborn Lake Project. Manager Olauson made a motion to approve the Joint Powers Agreement. Manager Fehr seconded the motion. Motion approved with a roll call vote.

10 Mile Lake - No update at this time.

Griggs/Barnes WRD - Bob Brooks, from Griggs County WRD, informed that the assessment area is being drawn up and they are working on the percentages for the area. An evaluation of all the culverts is also being worked on. A seasonal wetland area will have to be protected so Griggs County is looking into what needs to be done and working with NRCS. Discussion followed.

Baldhill Creek (not agenda item) - Neil Amann addressed the district on his and others concerns about this project. Discussion followed. No action can be taken as it was not published agenda.

NEW BUSINESS

Jerome Garrahy -Manager Hieb informed the district that Mr. Garrahy will be sending drainage application into the state.

Lidar - Ryan Odenbach explained about the (inkind) Lidar program that can be used to assist water districts and County Commission with engineering costs on culvert locations, pin point water shed drainage areas, obtained water quality and erosion of areas can be detected, all from data that has already been obtained. Tools available through this web site. These tools have already been used on the Minnesota side (Wild Rice) of the Red River. Soil Conservation is interested in this tool being important to an area, but it needs to be utilized by more than one district to really give effective information. Ryan went over his handout of the James River Basin onetime Lidar cost. This program should be developed in the

next 2 years, with some products being on the web site in a year. Manager Anderson made a motion to contribute \$1,000.00 from the BCWRD, contingent on if the Barnes County Commission contributed the same amount. Manager Fehr seconded. Motion approved with a unanimous Roll Call Vote.

Obstruction to Drain Complaint Filed by Milo Buchholz Against Scott Cummings

The Board next considered Milo Buchholz's OBSTRUCTION TO DRAIN COMPLAINT against Scott Cummings dated January 27, 2015. The property that is the subject of this Complaint, the Northeast Quarter of Section 27 of Norma Township, was also the subject of a criminal trespass action against Mr. Buchholz, Barnes County Case No. 02-2013-CR-00019. In the criminal action, Mr. Buchholz pled guilty to criminal trespass regarding drainage he had constructed on the Northeast Quarter of Section 27, property owned by Myron and Mary Nelson. As a condition to Mr. Buchholz's plea, the Court directed the Nelsons to procure a contractor to fill in the illegal drainage and for Mr. Buchholz to reimburse the Nelsons for the costs. The Nelsons procured Scott Cummings as the contractor to fill in the illegal drainage. Under the OBSTRUCTION TO DRAIN COMPLAINT filed by Mr. Buchholz in this matter, Mr. Buchholz alleges that Scott Cummings filled in the drainage beyond the permissible threshold required by the District Court.

Sean Fredricks advised the Board that the Board lacked jurisdiction under the obstruction statute, N.D. Cent. Code § 61-16.1-51, to collaterally attack the criminal proceedings, including the filling of the drainage by the Nelsons' contractor. Rather, Sean indicated Mr. Buchholz should bring this matter before the Court if he believes the filling was excessive or somehow beyond the permissible threshold indicated by the Court in the criminal action.

Amanda Brandt indicated that even if the Board were to consider the Obstruction Complaint despite the criminal action, the filling conducted by the Nelsons' contractor was in accordance with NRCS standards. Amanda noted NRCS permits, and actually, requires violators to fill-in drainage in excess of the original elevation to allow for settling.

Kurt Tompkins also noted that the United States Fish and Wildlife Service recently purchased an easement on the Nelsons' property in the Northeast Quarter of Section 27, and that under federal law, the Board could not order any removal of the fill anyway. Sean Fredricks concurred that federal law preempts the obstruction statute under state law and that, even if the fill were excessive, the Board would lack jurisdiction under federal law to order removal of the fill or any portion of the fill.

Finally, the Board noted the Nelsons' contractor filling-in illegal drainage does not materially affect the free flow of waters regarding permissible drainage.

The fill meets NRCS standards, for example, to the extent the fill sufficiently addresses potential settling. Further, and more importantly, fill installed to remedy illegal drainage does not “materially affect the free flow of waters” as contemplated under Section 61-16.1-51.

Manager Fehr moved to dismiss the OBSTRUCTION TO DRAIN COMPLAINT. Manager Anderson seconded the motion. Upon roll call vote, the motion carried unanimously. Sean Fredricks will provide notice to the parties of record.

Jerry Hieb - Reported State Water Commission notified BCWRD that David & Elisa Zubrod submitted a water permit application to divert and appropriate water from ground-water sources. No action from BCWRD to be taken information only.

Bills - Managers discussed Anderson Excavating bill included in the January bills. Manager Anderson made a motion to pay the January Bills in the amount of \$ 12,446.20. Manager Fehr seconded motion. Motion approved with a roll call vote.

Manager Fehr made a motion to Adjourn and Manager Olauson seconded. Meeting adjourned at 11:58 am.

Respectfully submitted,

Linda McKenna

Secretary

Barnes County Water Resource Board