

Barnes County Water Resource District

P O Box 306

Valley City, ND 58072

701-845-8508

October 10, 2016

Meeting Minutes

Members Present: Chairman Jerry Hieb, Manager Bruce Anderson, Manager Shawn Olauson, Manager Dale Jorissen, Manager Brett Fehr, Sean Fredricks- Ohnstad Twichell & Mike Opat- Moore Engineering

Also Present: See attached list

Chairman Hieb called the meeting to order. Manager Anderson moved to approve minutes as corrected, Manager Olauson seconded motion. Motion approved.

Old Business:

Pross Complaint: Discussion was held. Chairman Hieb will talk to John Thompsen about culvert with gate. Will table it until next meeting.

Dan Hovde would like it recorded in our minutes that he is no longer represented by Mr. Garass.

APPLICATION FOR SURFACE DRAIN NO. 4833 for Albert Wittenberg in the Northwest Quarter of Section 2 of Getchell Township

The Board next reviewed Albert Wittenberg's APPLICATION FOR SURFACE DRAIN No. 4833. Under the application, Applicant seeks to construct channel improvements to existing channels and waterways in the Northwest Quarter of Section 2 of Getchell Township. Applicant previously constructed improvements to the existing channels in accordance with the EPA 319 Program. Applicant intends to construct and maintain channel improvements north of the slough in the Northwest Quarter of Section 2, and additional channel improvements in the southeast portion of the Northwest Quarter, south of the slough and wetlands in the Northwest Quarter of Section 2, as specifically indicated on the project map provided by the North Dakota State Engineer's office regarding the Application.

The improvements previously constructed by Mr. Wittenberg are the subject of a Drainage Complaint filed by Greg Shanenko with the District under N.D. Cent. Code § 61-32-07. In response to the Drainage Complaint, Mr. Wittenberg indicated he believed his compliance with the EPA 319 requirements satisfied the permitting and approval requirements for his project, and that he was not aware his project also required a State surface drainage permit under N.D. Cent. Code § 61-32-03. The District considered the Drainage Complaint and concluded Mr. Wittenberg's project did, in fact, require a surface permit under Section 61-32-03, and the District ordered Mr. Wittenberg to close or fill the unpermitted drainage in accordance with Section 61-32-07. However, the District agreed to hold the order in abeyance while Mr. Wittenberg sought an after-the-fact surface drainage permit.

The State reviewed Mr. Wittenberg's surface application and concluded the project is not of "statewide or interdistrict significance." With that in mind, the District processed the application in accordance with Section 61-32-03 and N.D. Admin. Code § 89-02-01-09.1(2). As required by law, the Board has to determine if the project would "flood or adversely affect downstream lands"; if so, the District must require Applicant to obtain flowage easements from downstream landowners. The District conducted a public hearing regarding the application in accordance with Section 89-02-01-09.1(2) to allow downstream landowners the opportunity to express any concerns they might have regarding the project or potential impacts. The District conducted the hearing on September 12, 2016, preceded by notices to downstream landowners. Mr. Greg Shanenko, owner of the land in the East Half of Section 2 of Getchell Township, contended Mr. Wittenberg's project would result in additional drainage that would not normally flow over his property. Mr. Steve Winter farms property in the North Half of Section 11 of Getchell Township, and Mr. Winter expressed similar concerns regarding additional water as a result of the project.

After receiving the Drainage Complaint from Mr. Shanenko, the District directed Mr. Wittenberg to install a ditch plug in the south channel improvements, south of the wetlands in the Northwest Quarter of Section 2, to prevent drainage of the wetlands and to reduce or limit any downstream impacts while Mr. Wittenberg applied for the after-the-fact surface permit. Amanda Brandt, District Conservationist for NRCS, subsequently conducted a site visit and mapped the location of the ditch block installed by Mr. Wittenberg, 111 feet south of the wetland in the Northwest Quarter of Section 2. The map prepared by NRCS is included as Exhibit A to the application. Following the public hearing regarding the application, the District reconsidered the project and the application and any potential impacts and ultimately concluded that, in light of the ditch block 111 feet downstream of the wetland in the Northwest Quarter of Section 2, the project would not drain the slough or wetlands and would not result in adverse impacts to downstream landowners. The Board did, however, indicate the ditch block installed by Mr. Wittenberg is not yet leveled and compacted, and the District will require Mr. Wittenberg to complete proper leveling compaction as a condition to the District's approval of the permit.

According to records on file with the Barnes County Recorder's office, Kurt Wittenberg and Albert Wittenberg own the Northwest Quarter of Section 2 of Getchell Township. With regard to downstream landowners, White Farms LLLP owns the Southwest Quarter of Section 2; Bruce and Jeanne Shanenko, Trustees of the Bruce and Jeanne Shanenko Living Trust, own the Southeast Quarter of Section 2; Albert Wittenberg owns the Northwest Quarter of Section 11; and Mark and Andrea Winter own the Northeast Quarter of Section 11.

The Board reviewed and approved responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code, prepared by Mike Opat. The Board further determined no additional hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code. The Board will require Applicant to install and maintain a ditch block in the south channel improvements, downstream from the wetland in the Northwest Quarter of Section 2, to prohibit the project from draining the wetland and to eliminate adverse impacts to downstream landowners. In addition, the Board will require Applicant to obtain permission from Getchell and Ashtabula Townships regarding any improvements constructed within their road right of way. The Board concluded that, in light of these measures, the project will not result in any additional adverse impacts.

Manager Olauson, seconded by Manager Fehr, moved to approve APPLICATION FOR SURFACE DRAIN No. 4833 for Albert Wittenberg, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant will not construct or improve the drain in any manner that exceeds the dimensions indicated in the application, including a drain length of 2,200 feet of improved channel; a 10-foot bottom width; and 6:1 side slopes;
- 2) That Applicant obtain an easement from the owner of any land, besides land owned by Applicant, on which Applicant will construct the drain; and
- 3) That Applicant install and maintain a ditch block 111 feet south of the wetland boundary in the Northwest Quarter of Section 2, as depicted in the maps prepared by NRCS and attached to the application as Exhibit A, including proper leveling and compaction, at the elevation depicted in Exhibit A.
- 4) That Applicant obtain written permission from both Getchell Township Board of Township Supervisors and Ashtabula Township Board of Township Supervisors to construct, operate, and maintain any surface drain improvements or other improvements in either of their respective township road ditches, or to otherwise utilize any of their township road right of way;
- 5) That Applicant notify the Barnes County Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, submit an additional permit application; and
- 6) 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. The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to all parties of record. The Board noted the NOTICE OF DECISION should notify Mr. Wittenberg that if he fails to properly complete leveling and compaction of the ditch block, and if he otherwise fails to complete proper installation of the ditch block identified in the conditions above, by November 14, 2016, the Board will declare the permit ineffective, and the Board will act on its previous order to close or fill the unpermitted drainage.

S Wittenberg/Shanenko Complain: Anderson said the project was not done. Manager Anderson made a motion to hire contractor to remove the block. Seconded by Manager Jorissen. Roll call vote, Managers Olauson, Anderson, Jorissen voting yes, Manager Fehr voted no, chairman Hieb voted yes. Motion carried.

Snagging/Clearing: Discussion. Will discuss again at next meeting.

Hobart lake Update: Mike Opat stated that purchase agreements are out. Application for permit from Corps of engineers.. motion to authorize Moore engineering to prepare a 404 surface drain permit and allow Sarah Halverson to sign, by Manager Fehr, seconded by Olauson, roll call vote approved unanimously.

Kathryn Dam: Discussion was held. No decision was made.

10 mile lake: Paul Abrahamson reported 1431.5 elevation. Discussion was held.

Griggs/Barnes: Manager Fehr reported that they hired Sarah Halverson as secretary. Will have a meeting October 17, 2016.

Stewart update: Anderson will drive up and take a look at it when more has been done. Will get a bill from the county for it.

Thordenskjold: Manager Anderson didn't think Scott Cummings had gotten to it yet.

Tim and Dianna Logan: Chairman Hieb will check and see if they will withdraw the complaint.

New Business: No new business

Bills: Manager Olauson made a motion to approve the September bills. Seconded by Manager Jorissen. Roll Call vote all in favor. Passed. Motion made by Manager Anderson to pay True North and CR Excavating according to specification conference between Chairman Hieb and Kerry Johnson. Manager Fehr seconded and it passed with unanimous roll call vote.

Chairman Hieb adjourned meeting at 11:45.

Respectfully submitted,

Sarah Halverson

Secretary BC Water District