

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

Special Meeting
Barnes County Highway Dept. Conference Room
01-17-2012
Minutes

Present: Chairman- Jeff McMillan, Vice Chairman- Pat Hurley
Manager-Duane Lettenmaier, Manager-Jerry Hieb

Absent: Manager- John Kohler

Also present: Sean Fredricks-BCWRD attorney, Mike Opat-BCWRD Engineer, Kerry Johnson-Barnes County Highway Superintendent, Amanda Brandt- NRCS, Griggs County Water Resource District- Lee Monson, Allan Jacobson and Robert Brooks, Griggs County WRD attorney- Tom Moe, Griggs County Commissioner-Robert Johnson, Officers from: Bartley Township, Greenfield Township, Dover Township all of Griggs County and Pierce Township of Barnes County. Please see attached list for individual names.

Chairman McMillan called the meeting to order at 9:10 AM. McMillan stated that this was a joint meeting to try to resolve multi-county drainage issues that were brought to light by a complaint that was filed by the Griggs County Water Resource District (GCWRD). Chairman McMillan asked that Sean Fredricks, Attorney for the Barnes County Water Resource District (BCWRD), outline the complaint.

The complaint that was filed by GCWRD is as follows;

“Please take notice that the Griggs County Water Resource District (hereinafter ‘Griggs’ does hereby make its Complaint in regards to an alleged unpermitted drainage project situated in Pierce Township, Barnes County, ND.”

“This complaint is made pursuant to Section 61-21-67 North Dakota Century Code, (N.D.C.C.), wherein a water board shall notify the offending landowner(s) if the board determines that a drain or ditch had been opened contrary to the applicable law or the board’s own rules regarding same.”

“Specifically, and according to the best belief and knowledge of Griggs, it appears that a natural drain has been straightened and deepened in the vicinity of Sections 1, 11, and 12 in Pierce Township, Barnes County, ND. Griggs is without any knowledge or belief if this drainage

project was permitted by the Barnes Water Board. Further, it appears that in addition to existing culverts at the following locations, several large culverts (3) – 36 inch) have been placed under each of the roadways between said Sections 1 & 12; and between Sections 11 & 12 of said township.”

“Further, that water emanating from the above locations will flow into Griggs County, and specifically in and to Bartley and Greenfield townships. Roadways between Sections 31 & 32; Sections 29 & 28; and Sections 28 & 27 of Bartley township will be impacted by the above listed drainage/culvert project; and roadways between Section 36 of Bartley and Section 31 of Greenfield Township will be impacted by the above listed drainage/culvert project. In addition the private farmstead residence located at the N ½ of Section 31 in Greenfield Township will also be impacted severely by the above listed drainage/culvert project.”

“To date, no notice has been given by the Barnes County Water Resource Board to Griggs of this drainage project pursuant to Section 61-16.1-10 (5) - Responsibilities and Duties of Water Resource Boards- (downstream impacts).”

“In addition, if the above listed culverts were placed by Pierce Township, then and in that event, notice to the Barnes County Water Board should have been made pursuant to Section 24-06-34 (N.D.C.C.) at least thirty days prior to said project commencing. Griggs is without any knowledge or belief if this requirement was met.”

“Griggs specifically requests that the Barnes County Water Resource Board investigate the above, and if applicable, proceed to close the non-complying drain or in the alternative, the offending landowners be notified of the alleged unpermitted drainage and a hearing heron set pursuant to Section 61-21-67, (N.D.C.C.) Griggs specifically requests timely notice of any such hearing.”

“Dated this 14th day of November, 2011”.

Signed by Robert Brooks, Chairman
Griggs County Water Resource District

Mr. Fredricks reported that he, Mike Opat- BCWRD Engineer and Jamie Smith-BCWRD Secretary, had completed a document investigation. That documentation noted that the drain in question had been cleaned out in 2000 with the approval of the ND. State Water Commission, the Corps of Engineers, NRCS and the Board. Mr. Fredricks requested that Griggs County clarify whether the complaint was about the 2000 cleanout or if it was related to a more recent cleanout.

Tom Moe, GCWRD Attorney, stated that this complaint was in regards to recent activity and not the cleanout in 2000, and suggested that Barry Ronningen (GCWRD) give a report as he was the inspecting manager. Mr. Ronningen reported that he had viewed the area in question and that

he had found that there were three (3) recently installed larger culverts added to the water course. He also stated that he had viewed where the drain had been widened to get the water to move to the new culverts at least 60" into the field outside of the road right of way. Mr. Ronningen presented the board with photos.

Fredricks informed the group that water resource districts do not have authority or jurisdiction over culverts through township roads, in the absence of a legal assessment drain. Discussion was held on stream crossing standards. Mr. Opat explained the stream crossing design standards for township and county roads under North Dakota law. He also reported that Moore Engineering had been hired by Pierce Township to prepare a hydrology study to properly size culverts to comply with the stream crossing standards, and that the three (3) culverts that were installed were justified by the study that Moore had completed.

GCWRD still had concerns over whether or not private parties had constructed illegal field drainage and requested that the BCWRD complete a physical inspection of the entire water course to the Stutsman County line. Fredricks explained that water resource districts are not policing agencies, and that they lack authority to enter upon any private party at any time to investigate vague allegations of illegal drainage; the Board's authorities are complaint-driven under North Dakota law, and the Board must first receive a drainage complaint regarding drainage in a specific location to trigger its authority to enter upon private party to conduct physical inspection or action.

Fredricks indicated that the Board lacks jurisdiction over culverts through township roads, and GCWRD had agreed the 2000 cleanout was not the subject of the complaint. Fredricks asked if the alleged field drainage constructed by private parties was the real subject of the complaint at this point. GCWRD and their attorney, Mr. Moe, agreed the alleged illegal field drainage constructed by private parties was the subject of the complaint. Mr. Fredricks suggested that the current complaint alleges some type of illegal activity in Sections 1, 11, and 12 of Pierce Township, and that the Board could investigate those. GCWRD and Moe agreed. Fredricks suggested that, if the investigation reveals some type of illegal drainage, GCWRD should amend its complaint to include more specific allegations. Moe agreed GCWRD would consider amending depending upon the outcome of the Board's investigation; if the Board's investigation reveals illegal drainage, Fredricks will contact Moe, and they will discuss the possibility of GCWRD submitting an amended complaint with more specific allegations, and possibly under a different complaint statute.

GCWRD suggested a Tri-County Drainage Plan. It was decided to consider this, however at another point in time, after the parties resolve the current complaint.

Hieb moved to complete a physical inspection of Section's 1,11 & 12 of Pierce Township and to have Moore Engineering investigate and compare Lidar mapping of sections 1, 11 & 12 to determine if any illegal drainage had occurred. Hurley seconded the motion. All were in favor. The motion carried. McMillan will complete a physical investigation of this area and coordinate with the NRCS and Moore Engineering; NRCS wants to determine if any Swampbuster violations have occurred. McMillan will present a report of his findings at the Board's next meeting.

Robert Brooks requested that a copy of this meeting's minutes be sent to his personal address, and the Board agreed.

Being no further business, Hurley moved to adjourn. Lettenamier seconded the motion. All were in favor. The motion carried.

The meeting was adjourned.

Respectfully submitted,

Jamie Smith

Secretary

Barnes County Water Resource District