

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD
HELD ON THURSDAY, JANUARY 16, 2014 AT 9:00 A.M., IN THE COMMISSIONERS ROOM,
SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Chris McFarland, Jim Bosse, Mark Breker, Richard Engst and Roger Zetocha.
Absent: None. Also present: Al Carton, Forman. Attorney Sean Fredricks and Chris Gross, Engineer
joined the meeting via conference call.

Approve the December 19, 2013 minutes and December 2013 financial statement. (Engst/Bosse,
unanimous)

Motion to approve payment of the following bills: (Zetocha/Engst, unanimous)

68855 James Bosse	Travel	14.00
68856 Mark Breker	Travel	20.16
68857 Richard Engst	Travel	147.28
68858 Hardware Hank	Dr # 11 - Postage	13.07
68859 Moore Engineering, Inc.	Shortfoot Creek Study-Final-\$9085.00; Paul Mathews	
Hearing/Dr # 11 - \$692.50 and Tewaukon Watershed Assessment List - \$125.00 =		9902.50
68860 ND Water Resource Districts	2014 Dues	475.00
68861 ND Water Users Ass'n	2014 Dues	300.00
68862 Ohnstad Twichell	General-347.50; Loren Ellefson #4237-\$96.80; Quandt's -	
\$783.64; Dana Banish-\$80; Ray Zajac - \$51.48; Doug Harris - \$195.90; Katie Vculek - \$396.00 and		
Dr # 11-Paul Mathews-\$3134.00 =		5085.32
68863 Roger Zetocha	Travel	58.80
9151 Mark Breker	2 PD less 18.36 taxes	221.64
9152 Sherry Hosford	Salary plus extra compensation less 719.22 taxes	
		3097.45
9153 Richard Engst	9 PD less 123.20taxes	956.80
9154 Jim Bosse	3 PD less 27.54 taxes	332.46
9155 Chris McFarland	4 PD less 36.72 taxes	443.28
9156 Roger Zetocha	2 PD less 23.61 taxes	216.39
DD Sargent County Bank	Withholding taxes	1443.30

Approve renewal of CD # 15075 for twelve months. (Engst/Zetocha, unanimous)

Paul Mathews Right-of-Way issue was discussed and both Chris McFarland and Sherry Hosford were subpoenaed during the hearing. The attorney's now have until January 31 to submit briefs to the judge for his consideration in making his decision on the right-of-way matter.

The **Mahrer/Ellefson Complaint** was discussed and agreed to invite both the Mahrer's and Mr. Ellefson to the February meeting to find out if the conditions have been met for Mr. Ellefson's permit.

Cole Vculek, Crete and Emeric Erickson, Milnor met with the Board to discuss Permit #3656 for Brian Vculek which was approved in 2010. Emeric explained to the Board the project and asked for an amendment to said permit. After conferring with Attorney Fredricks and his request of a map of this project, the Board agreed to wait until a Surface Application on this area, which has been sent to the state by Mr. Vculek, has been returned to the Board so an overview of the entire project can be viewed by the Board. This amendment also affects the Katie Vculek and Farrar Family Farm Irrevocable Applications for Subsurface Drain.

Attorney Fredricks next spoke to the Board regarding tile permit applications, wetland issues, and "**statewide significance**" issues. The 2011 legislature enacted a new tile permitting statute whereby applicants submit their applications directly to the Water Resource Districts (WRD) and not to the State Engineer's Office and the WRD's process them; approve them with conditions, etc. The Board recently received an application from Greg Nelson; Milnor stating that the State Engineer's Office has determined it is of "statewide" significance. Some important issues have been discovered on other applications specifically landowners who are leaving the farm program and aren't mitigating wetland impacts since they don't have to deal with NRCS, but this Board still has the wetland issues to consider as one of the elements for determining if the project is of "statewide significance". Attorney Fredricks and others have met and had a conversation with the State Engineers Office and are still trying to figure out how to make sure everyone understands the State's position and how Water Boards should consider this issue moving forward. With that information presented to the Board, Mr. Fredricks recommended that the Board table any decision on the applications of Douglas Harris, Harlan Klefstad and EB Farms Project # 1 until more information is available.

Greg Nelson, Milnor met with the Board regarding his Application for Surface Drain No. 4249 to drain wetland in the N1/2 and SE1/4-17-132-55 and the S1/2-8-132-55 all in Willey Township. Mr. Nelson proposes the outlet for drainage will cross from Section 8 over Section 9 of Willey Township and discharge into the unnamed tributary along Sargent County Road 8 (135th Ave SE). Sean Fredricks discussed with Mr. Nelson the complexity of this project as the State Engineer has determined that proposed surface drainage to be of statewide significance because the project will convert wetlands from previously non-contributing areas to permanently contributing areas that will eventually contribute to the Wild Rice River. In addition, the project is likely to have a negative impact to the fish and wildlife values associated with the wetlands. Mr. Fredricks explained that this permit will have to go through a pretty extensive process and under the Red River Joint WRD's joint board agreement, the RRJWRD must process all statewide significance permits. The process takes time and effort and is certainly expensive. The RRJWRD will cover a good portion of that, but the engineer will have to do some work that the RRJWRD will not cover. Mr. Nelson agreed to work with the attorney and engineer in proceeding with this project. Motion to authorize the Secretary to send a letter to RRJWRD requesting assistance in processing this permit. (Zetocha/Engst, unanimous)

Chris Gross reported on the **Milnor Drain box culverts** that he plans to meet with the surveyors on site next week and then prepare preliminary plans and a cost estimate for the Board to consider at the March meeting.

At the Board's meeting in December of 2013, **Mr. Dana Banish** discussed his plan to install tile behind the dike on his property. The tile system would be less than 80 acres and therefore would not require a tile permit under North Dakota law. Mr. Banish inquired into the possibility of utilizing his pump permitted under APPLICATION FOR SURFACE DRAIN NO. 4171. Mr. Banish also discussed the possibility of installing a second pump or outlet, separate from his pump under Permit No. 4171. The Board discussed the matter with Sean Fredricks and Chris Gross and they both echoed the Board's concerns that utilization of the surface pump for his tile system would technically be a violation of Permit No. 4171. Alternatively, if Mr. Banish installed a pump or outlet upstream of the dike and upstream of the surface pump permitted under Permit No. 4171, that system would not augment the permitted surface system and would not require any amendment to Permit No. 4171. The Board, Sean, and Chris all agreed the two outlet system would be permissible without amending Permit No. 4171. Sean will notify Mr. Banish of the Board's position.

Jim Bosse addressed **Drain No. 11** work that is scheduled for this spring, specifically a washout in Section 9 of Sargent Township. Jim would like to have a letter sent to the adjacent landowners informing them of this proposed work and that no farming is allowed on the drain right-of-way to allow the contractor access to the drain. Jim and Sherry will work on obtaining the names of those landowners and Sean Fredricks will assist with preparing a letter for mailing.

Obstruction Complaint Filed by Gladys Shockman Against Divide Township, Dickey County

The Board next considered Gladys Shockman's Obstruction Complaint against the Divide Township Board of Township Supervisors in Dickey County, North Dakota. Sean Fredricks advised the Board that this Complaint alleges inadequate culvert crossings through a township road as well as the necessity for a ditch cleanout. Sean advised the Board that it lacks jurisdiction under the obstruction complaint statute, N.D. Cent. Code § 61-16.1-51, to address these issues.

Sean advised the Board that the North Dakota Supreme Court has held on several occasions that the road authority with jurisdiction over a road has sole decision-making authority and jurisdiction regarding culvert installation and placement. Water resource districts do not have jurisdiction over culverts through township roads. With regard to the comment in the Complaint that, "The ditch on west side needs cleaning out on the township road," Sean indicated that a township is solely responsible for routine township road cleanouts and not water resource districts. Under Section 24-06-26.3 of the North Dakota Century Code, Ms. Shockman may address township road ditch issues with Divide Township.

Sean advised that, in the absence of jurisdiction over culverts through township roads and in light of township jurisdiction over township road ditch cleanouts, the Board had no choice but to dismiss Ms. Shockman's Obstruction Complaint.

Manager Engst moved to dismiss Ms. Shockman's Obstruction to Drain Complaint. Manager Bosse seconded the motion. Upon roll call vote, the motion carried unanimously. Sean will provide notice to the parties of record.

Application to Install a Subsurface Drain for EB Farms, Inc., in the Northeast Quarter of Section 4 in Hall Township

At the Board's December meeting, the Board approved *Application to Install a Subsurface Drain* dated December 10, 2013, for EB Farms, Inc. However, the Board wanted to review the application again

with Sean Fredricks and Chris Gross to reconsider easement issues and other items, and the Board concurred with its previous decision.

More specifically, 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 4 in Hall Township, Sargent County, North Dakota. The project will include a pump outlet in the northeast corner of the Northeast Quarter of Section 4; the project will discharge directly into the Tri-County Drain. The Tri-County Joint Water Resource District owns and operates the Tri-County Drain.

Because the project will discharge directly into the Tri-County Drain, the application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicant to obtain any flowage easements from downstream landowners. The Board will require Applicant to obtain a *Utility Permit* from the Tri-County Board regarding utilization of the Tri-County Drain, and including erosion protection requirements.

According to records on file with the Sargent County Recorder's Office, Mary Jane Scheive, Scott Seltveit, and Greg Seltveit own all of that portion of the Northeast Quarter of Section 4 Applicant intends to tile. Applicant leases the property from the Seltveits.

It was moved by Manager Engst and seconded by Manager Breker to confirm the Board's previous approval of *Application to Install a Subsurface Drain* dated December 10, 2013, for EB Farms in the Northeast Quarter of Section 4 in Hall Township, subject to the following conditions:

- 1) That Applicant obtain written permission from the owner of the Northeast Quarter of Section 4 of Hall Township where Applicant will construct the tile system;
- 2) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 3) That Applicant notify the Sargent 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;
- 4) That Applicant obtain an approved *Utility Permit* from the Tri-County Joint Water Resource District regarding any and all outlets into the Tri-County Drain; 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.

Meeting adjourned at 11:20 a.m.

CHRIS MCFARLAND – CHAIRMAN

ATTEST:

SHERRY HOSFORD - SECRETARY