

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

Managers present: Chris McFarland, Luke Siemieniewski, Jim Bosse, and Richard Engst. Absent: Roger Zetocha. Also present: Attorney Sean Fredricks; Chris Gross, Engineer; Bernie Vculek, Oakes and Brian Vculek, Crete.

Approve the September 18, and October 10, 2014 minutes and September financial statement. (Siemieniewski/Bosse, unanimous)

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

70203	James Bosse	Travel and brome grass	156.30
70204	Richard Engst	Travel	75.04
70205	Moore Eng., Inc.	Permit fees-\$198.05-O'Brien; \$198.55-H & R Land Co.; \$264.00-Donald Dathe; \$132.15-Kasowski; \$65.90-Loren Ellefson/Edwin Erickson; Dr # 2-\$1272.50; Dr # 11-\$1047.50; Dr # 12-\$411.15; Tewaukon Watershed-\$1826.65 – Total =	5416.45
70206	Ohnstad Twichell	General-\$1115.00; Loren Ellefson - \$51.00; Marc O'Brien Application-\$187.00; T Mund-\$170.00; Zajac-\$85.00; Dathe-\$293.00; Kasowski-\$777.14; Dr # 7(S & I Fund)-\$2750.00;Dr # 12-\$714.00; Dr 7 maintenance fund-\$1199.25 = Total=	\$7341.39
	70207	Lucas Siemieniewski Travel	24.64
70208	Starion Bond Services	Drain No. 7 fees	900.00
70325	Marboe Township	Crossing between Sections 7 & 8	7500.00
10096	Sherry Hosford	Salary less 24.22 taxes	292.45
10097	Richard Engst	4 PD less 38.32 taxes plus 21.00 meals	462.68
10098	James Bosse	6 PD less 56.66 taxes	663.34
10099	Chris McFarland	3 PD less 27.54 taxes	332.46
10100	Lucas Siemieniewski	2 PD less 18.36 taxes	221.64
DD	Sargent County Bank	Withholding taxes	330.20

PAUL MATHEWS RIGHT OF WAY ISSUE: Chris Gross, Engineer for the Board presented the Certificate of Survey to the Board. Ohnstad Twichell filed a draft Order, including the legal description from the survey, with the court on October 9, 2014. The Court has not yet executed the draft Order.

GWINNER DAM: Chris Gross reported that his office is working up alternative options for this dam and also that new funding may be available from the ND State Water Commission. He plans to present a recap of the options at the November Board meeting.

BRUMMOND-LUBKE AND NELSON DAM REPAIRS: Following the October 10th Special Meeting, Chris Gross has contacted Comstock Construction, Inc. and awarded the projects. The contractor plans to begin work soon and have the work completed before year end.

LOREN DAVID APPLICATION # 4539 AND LOREN ELLEFSON/EDWIN ERICKSON, JR. APPLICATION # 4506: The ND State Engineer's Office has informed the Board that both of these projects are "statewide significance" permits. Attorney Fredricks and Engineer Gross suggested that all parties be invited to the November meeting of this Board so the process for this type of a permit can be discussed with everyone.

DRAIN NO. 11: Jim Bosse reported that Dakota Improvement has cleaned out Drain No. 11 on the south branch and other areas in the southwest branch of the drain. The contractor plans to have the worked completed in the southwest branch by October 24th. Chris Gross updated the Board that all the field surveys are completed and he will present a report on alternatives and costs to the Board at the December meeting.

A discussion followed on a map prepared by Chris Gross outlining the Sargent County Drain No. 11 watershed to include Ransom County. Board members would like to meet with the Ransom County Water Resource Board to discuss the possibility of a Joint Agreement between the two Boards' to expand the assessment area. There are 97 square miles of watershed in Ransom County and 261 square miles of watershed in Sargent County. After a lengthy discussion with Board members and also the Vculek's it was decided that two of the Sargent County Board members and Engineer Gross would meet with the Ransom County Board to discuss this project. Brian Vculek would also like to be included in the meeting. The Water Board Secretary will schedule a meeting with the Ransom County Water Board.

Application for Surface Drain No. 4508 for Tom Mund in the West Half of Section 28 of Willey Township

The Board reviewed an *Application for Surface Drain No. 4508* dated July 3, 2014, for Tom Mund. Mr. Mund was present to discuss the permit application. Under the application, Applicant seeks to construct and install a drain pipe system in the West Half of Section 28 in Willey Township, Sargent County, North Dakota. Mr. Mund previously submitted an identical plan under Permit No. 4007, approved by the Sargent County Water Resource District in 2012. Mr. Mund later requested an amendment to the original plan to include surface ditches in lieu of buried underground pipelines. The Board amended Permit No. 4007 to include Mr. Mund's plan for surface ditching in March of 2014. Subsequent to the amendment, Mr. Mund again approached the Board and requested that the Board once again amend Permit No. 4007 to permit the original buried underground pipeline plan. Mr. Mund conceded the rationale for the requested amendment was that he could not obtain the flowage easements required under the amended plan for surface ditching, as identified in the Sargent County Water Resource District's NOTICE OF AMENDED DECISION from March 14, 2014. The Board indicated at the time that Mr. Mund would have to apply for a new permit as opposed to amending the permit to allow the original plan simply as a means of avoiding the flowage easement requirement. Mr. Mund submitted a new permit application with the original underground pipeline plan.

The project proposed under Application No. 4508, under the application materials forwarded by the North Dakota State Engineer's office, would include ten segments of underground pipe in various locations in the West Half of Section 28, installed in trenches constructed by Applicant. The system would ultimately outlet into a pond in the northeast corner of the Northwest Quarter of Section 28. The pond would then outlet into State Highway 13 right of way, through an 18-inch culvert in DOT right of way.

When the Board reviewed the original underground pipeline plan, Chad Engels indicated the plan would actually provide flood benefits to downstream landowners during larger flood events because depressions in the West Half of Section 28 would be drained and would provide additional flood storage during high water events. In addition, Mr. Engels noted the pipes would meter the flow. When the Board reviewed the surface ditching plan, the Board noted the increase in volume downstream, especially in light of the fact that the underground pipelines would no longer meter the flow. In addition, the Board found the wetland located immediately south of Highway 13 along the Northwest Quarter and Northeast Quarter line would be impacted as a result of the additional water. Therefore, the Board required downstream flowage easements as a condition to the amended Permit No. 4007 regarding the surface ditching plan. Mr. Mund inquired into why the Board would consider requiring flowage easements under Permit No. 4508 if the Board did not require them under the original underground pipeline plan under Permit No. 4007 since the plan was identical.

The Board and Chris Gross discussed the fact that the underground pipeline plan would also result in an increase in volume downstream, impacts not recognized under the original plan. In addition, the Board discussed the potential benefits in light of the storage factor originally noted by the Board under Permit No. 4007. Typically, the Board concludes that additional volume downstream is equivalent to an adverse impact that an applicant must mitigate, usually through a flowage easement. In addition, the neighboring property, owned by LaVerne Colby, would be adversely impacted since the project would drain the shared slough, a potential violation under the Farm Program. Chris Gross identified the potential for prolonged wetness downstream because of sustained flows as a result of the project, along with the impacts to the shared slough.

The application includes a diagram of the ten proposed segments of underground pipeline along with an attachment that identifies the pipe diameters. Mr. Mund offered the possible solution of eliminating segments 7, 8, and 10 depicted in the diagram, segments that would impact shared sloughs and would, therefore, reduce the amount of downstream flows. The Board agreed elimination of segments 7, 8, and 10 would reduce downstream flows and would reduce potential impacts to neighboring ponds and sloughs.

Chris Gross provided proposed responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code regarding the plan, with segments 7, 8, and 10 eliminated, and the Board adopted those responses.

According to records on file with the Sargent County Recorder's Office, Tom and Shirley Mund own the West Half of Section 28 of Willey Township. LaVerne and Carolyn Colby own the East Half of Section 28, and David McFarland owns the Southeast Quarter of Section 21.

Tom Mund suggested Chairman McFarland may have a conflict regarding this issue. Chairman McFarland indicated that, while he does not own downstream property, his father owns it, and Chris is involved in his father's farm and receives some payments regarding the Southeast Quarter of Section 21. Mr. Fredricks identified this as a technical conflict under Section 44-04-22 since Chairman McFarland has a "direct and substantial personal or pecuniary interest" regarding downstream flows on the Southeast Quarter of Section 21. However, Mr. Fredricks noted that the conflict in and of itself is not the end of the consideration. Rather, under North Dakota law, a Board member must participate in a vote despite the conflict unless the remainder of the Board concludes the Board member should not participate. With that in mind, Mr. Fredricks conducted a vote of the remaining members to determine if Chairman McFarland should participate in any votes regarding Mr. Mund's permit. Upon roll call vote, Manager Engst, Manager Siemieniowski, and Manager Bosse all voted "no," and unanimously agreed that Chairman McFarland should not participate in any vote regarding Mr. Mund's permit.

It was moved by Manager Engst and seconded by Manager Siemieniewski to conclude that no hearing was necessary and that the project will not result in adverse impacts under Section 89-02-01-09.1(2) of the North Dakota Administrative Code; to conclude that the project will all be constructed on Applicant's property and that, in light of the elimination of segments 7, 8, and 10, the project will not result in adverse impacts to downstream landowners, especially in light of the 18-inch culvert that serves as the ultimate outlet in DOT right of way; and to ultimately approve *Application for Surface Drain No. 4508*, as amended by Mr. Mund at the meeting to eliminate segments 7, 8, and 10 from the proposed plan, in the West Half of Section 28 in Willey Township, subject to the conditions attached by the State Engineer's office, and 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 will not construct, install, or improve the underground pipelines regarding segments 1 through 6 and segment 9 in any manner that exceeds or varies from the dimensions identified in "Attachment A" of the application;
- 3) That Applicant must apply for a new surface drainage permit in the event Applicant seeks or intends to install or construct segments 7, 8, or 10, or any other additional pipeline;
- 4) That Applicant obtain written permission from the North Dakota Department of Transportation to discharge into or otherwise utilize any of its Highway 13 road ditch;
- 5) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 6) That Applicant notify the Sargent County Water Resource District in advance of any other proposed improvements to the underground pipeline system, or any proposed increase in the capacity or drainage area of the underground pipeline system, including an additional permit application; and
- 7) 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, Managers Engst and Siemieniewski voted in favor of the motion. Manager Bosse voted in opposition to the motion. The motion carried.

DENNIS MCLAEN AND NANCY BULTEMA: Dennis McLaen, Rutland and Nancy Bultema met with the Board to request permission to drain land along State Highway 11 just north of Rutland, to the east and ending up in the Wild Rice River. The Board informed Mr. McLaen that he would need to apply for a Surface Drainage permit to the State Water Commission. A form was given to Mr. McLaen. The project is located in Section 13-130-54.

DRAIN NO. 7: Chris Gross reported that the project through Milnor City is complete and everyone seems very satisfied with the final project. He will present final payment for approval to the Board in November.

DRAIN NO 2 CULVERT SIZING: Motion to authorize Moore Engineering. Inc. to provide culvert size recommendation through County Road # 14 that lies along Drain No. 2 in Herman Township in two locations – between Section 4 and 10 and also Section 10 and 11. (Siemieniewski/Bosse, unanimous)

POST ISSUANCE DEBT COMPLIANCE: Motion to approve the Sargent County Water Resource District Post-Issuance Debt Compliance Policy and Procedures. (Bosse/Engst, unanimous)

AGENCY SELECTION COMMITTEE – INITIAL REPORT: Motion to approve the attached Agency Selection Committee – Initial Report in accordance with the North Dakota State Water Commission's Cost-Share Policy Procedure, and General Requirement and in accordance with Chapter 54-44.7-03(1) of the ND Century Code. (Engst/Siemieniewski, unanimous)

PRINTER/COPIER: Authorize purchase of an HP Office jet Pro X576dw Multifunction Printer for use in the relocated Water Board Office. Cost of said purchase is \$1229.51. (Engst/Siemieniewski, unanimous)

Meeting adjourned at 11:55 a.m.

CHRIS MCFARLAND – CHAIRMAN

ATTEST:

SHERRY HOSFORD - SECRETARY