

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD  
HELD ON THURSDAY, DECEMBER 15, 2011, AT 9:00 A.M., IN THE COMMISSIONERS  
ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Jim Bosse, Mark Breker, Richard Engst, and Roger White. Absent: Chris McFarland. Also present: Chad Engels, Moore Engineering, Inc.; and Sean Fredricks, Ohnstad Twichell, P.C.

Approve November 17, November 21, and December 1, 2011, minutes and November financial statement. (Breker/Engst, unanimous).

Approve payment of the following bills: (Engst/White, unanimous).

65270 James Bosse	Travel	794.47
65271 Mark Breker	Travel	931.01
65272 Dakota Improvement Inc.	Drain 11 lower culvert and clean out	5,000.00
65273 Richard Engst	Travel	748.45
65274 Louie Gaukler	Tewaukon Watershed beaver control	350.00
65275 Heitkamp Construction	Tewaukon Watershed project	26,144.50
65276 Jerry's Backhoe Service	Dr # 9-\$480; Dr # 11-\$330	810.00
65277 Mike Keiper	Drain # 4 piling tile	500.00
65278 Midwest Helicopters	#2-\$643.50; #8-\$107.25; #9-\$240.50; #11-\$7846.00;	
SCWC#1-\$100.75 and Tewaukon Watershed-\$458.25 – spraying drains		9,396.25
65279 Moore Engineering, Inc.	Shortfoot Creek Retention Study	16,778.75
65280 Roger White	Travel	587.80
6545 Mark Breker	15 PD plus \$9 meal less 236.28 taxes	1,572.72
6546 Sherry Hosford	Salary plus \$2500 extra compensation less 449.06 taxes	2,367.61
6547 Richard Engst	9 PD less 108.19 taxes	971.81
6548 Roger White	9 PD plus \$9 meal less 110.60 taxes	978.40
6549 Jim Bosse	15 PD less 234.87 taxes	1,565.13
DD Sargent County Bank	Withholding taxes	1,813.39

The Board's Secretary-Treasurer will submit all Drain 4 outlet billing to the City of Forman in accordance with the parties' Joint Powers Agreement.

Roger White spoke with State Engineer Todd Sando at the North Dakota Water Convention regarding the Silver Lake Dam Study. The State is not currently undergoing any study. At the Board's January meeting, the Board will discuss who is responsible for O&M of the Silver Lake Dam.

Ohnstad Twichell ordered an Owners and Encumbrances Report regarding the drain right of way dispute with Mr. Paul Mathews. Ohnstad Twichell will report when they receive the results of the Owners and Encumbrances Report.

Manager Breker reported that the Hamilton/Breker culvert project is complete.

With regard to the Joe Breker land sale, Joe Breker previously paid the Board \$17,500 in exchange for a Quit Claim Deed. However, under the Purchase Agreement executed by the parties, Mr. Breker must forward an additional \$500 to the Board before the Board will execute and provide a Quit Claim Deed. Sean Fredricks notified Mr. Breker of this requirement by letter. Manager Breker indicated he would contact Joe Breker to check on status.

The Board opted to table the Drain No. 9 reassessment and the Drain No. 8 proposed extension until their January meeting.

With regard to the Tom Heimbuch tile application, the Heimbuch's previously indicated to the Board that they had provided the requisite 30-day notices to downstream landowners in accordance with N.D.C.C. § 61-32-03.1. At a previous meeting of the Sargent County Water Resource District, both Sean Fredricks and Sherry Hosford asked for copies of the notices provided to downstream landowners or some other evidence that the Heimbuch's provided the requisite 30-day notices. Neither Sean nor Sherry has heard back, and there is no evidence the parties ever supplied the 30-day notices required under North Dakota law. The Board will not act on the application until the Board receives some type of evidence the Heimbuch's provided the legal notice required under law.

Emeric Erickson application and letter to the Board/Emeric Erickson ordered to close drainage field: Chairman Bosse investigated the site regarding the Board's previous Order to Mr. Erickson to close illegal drainage. Chairman Bosse confirmed that Mr. Erickson had, in fact, complied with the Board's Order prior to the November 28, 5:00 p.m., deadline. The Board will discuss Mr. Erickson's

application at their January meeting. Mr. Engels has not yet received any further communication from the State Engineer's office, but the State Engineer's office did indicate that they agree with the Board's assessment that the application is a surface application.

The City of Forman has verbally indicated they will accept maintenance responsibilities regarding the grates regarding the floodwater outlet project. The Board will revisit and discuss once again at their January meeting.

Mark O'Brien appeared before the Board to request "permission" to clean out/repair a drain in Section 15 of Tewaukon Township on property owned by Lois Brekke. This would be a clean out of a natural existing drain. Ms. Brekke has provided Mr. O'Brien with verbal permission. Apparently, this drain suffered a substantial washout during an event over the summer. Mr. O'Brien is seeking permission to change the route of the existing natural watercourse or drain as it currently exists. Mr. O'Brien plans to construct the work in the spring. The Board indicated that if the work will include drainage of a watershed greater than 80 acres, Mr. O'Brien should first obtain an application to drain. Mr. O'Brien will contact the Board's Secretary-Treasurer to request a surface application.

The Board next discussed Rick Hoistad's Flood Easement regarding Silver Lake. Mr. Hoistad suggested previously that the easement does not permit the Board to maintain a permanent pool on his property. Sean Fredricks and Sherry Hosford examined the August 20, 1997, Flood Easement over property owned by Mr. Hoistad. Mr. Fredricks indicated the Easement specifically permits the Board to inundate the property "on a seasonal and/or permanent basis . . . ." The Easement appears to permit inundation of the property.

The Board next discussed a potential flood protection project for the City of Cogswell. LeeAnn Even, David Even, Larry Albertson, and Erik Gilbertson (engineer with KLJ) met with the Board to discuss potential options regarding an outlet for a slough northeast of the City of Cogswell. This slough has created major spring flooding for the City; especially spring flooding in 2011 in the northeast portion of town. The City offered four potential options:

1. Replacing or supplementing the existing drain tile through town;
2. Construct an open ditch along the existing route of the tile;
3. Construction of an open ditch parallel to the county road going south; and
4. Construction of an open ditch to the west.

The City's preference is item number 2, an open ditch along the route of the existing tile project. However, this project would likely face regulatory difficulties. There are wetlands in the area, so mitigation would be necessary, and the existing right of way would certainly not be sufficient. The existing tile is 4.5 to 5 miles in length, and the Board thinks the tile is a 12-inch pipe.

Chad Engels offered another option; he suggested a lift station to permit the water to cross the road. This option would simply require purchase of flowage easements downstream.

If the Board ultimately agrees to partner with the City, the City would have to identify the wetland issues in cooperation with Tom Jones from NRCS. More specifically, Tom would have to set some elevations of the sloughs to the south to determine if a project that would result in drainage to the south into that set of sloughs would be feasible. Chad noted that once the City has those elevations, we can estimate dirt quantities, and the Board and the City would be in a better position to set an estimated cost for a project. This type of partnership would require a joint powers agreement between the Board and the City of Cogswell. The Board will discuss again at their January meeting; in the meantime, the City of Cogswell will meet with Tom Jones.

Casey and Dennis Decker met with the Board to discuss their request for an extension of Sargent County Drain No. 7. The Decker's indicated a number of neighbors would like to see an extension of Drain 7 many miles to the west. Chad Engels and Sean Fredricks explained the process for developing a new drain (an extension of this magnitude would likely require a new legal drain process). The Decker's suggested that the landowners in the area may not want a legal drain necessarily, though they will discuss further with landowners in the area. The Board explained to the Decker's that if the landowners would like the Board to proceed with a legal drain process, development of a drain of this magnitude would likely require a \$60,000 bond from the landowners.

Chad Engels next discussed the Shortfoot Creek feasibility study with the Board. Moore Engineering currently has a draft report prepared that identifies potential retention sites in the watershed. Chad went through the draft report with the Board and explained various sites, and what further study would

require, including soil borings. If soils are favorable, the Board would have to proceed with additional soil analysis, at which point the Board could potentially then move on to preparation of embankment designs, which would be necessary for preparing a potential cost estimate for a project. Chad will bring in a proposal at the Board's January meeting to discuss the next possible phase for this study. The Board will have this matter on its January agenda.

Motion to amend the 2011 Sargent County Water Resource District budget approved. (Breker/Engst, unanimous).

Motion to authorize the Secretary-Treasurer to make minor year-end transfers, and to make transfers to/from obligated funds approved (Breker/Engst, unanimous).

The Board next reviewed NDDOT request for drainage on highway right of way and utility permit 81519. The Board does not normally approve these requests for drainage, but this one is a request from the Sargent County Water Resource District regarding the Forman outlet project, and the Sargent County Board has a drainage permit for this project; therefore, the Board can actually approve this request. Motion to approve the request approved (Engst/Breker, unanimous).

The Board discussed letters recently received from U.S. Fish and Wildlife/Tewaukon Refuge regarding Mike Lock, Jon Bergh, Dennis McLaen, and Kurt Breker. The Board does not have any permits before them, but Jack Lalor notified all of the parties of their obligation to obtain drainage permits in the event they are draining watersheds greater than 80 acres. No action is required from the Board at this point regarding any of these items.

Motion to approve extra compensation for the Secretary-Treasurer at an amount of \$2,500 approved (Breker/Engst, unanimous).

The Board briefly discussed culverts along Drain 11, but decided to table the matter until the January meeting when Manager McFarland is present.

Manager Breker reported that IBI recently completed the Texas crossing on Drain 12, and indicated that the Board would likely receive a bill soon from IBI.

Chairman Bosse will talk to Ryan Construction regarding the possibility of repairing the Cogswell drain. The Board will discuss this matter at its January meeting.

Chad Engels presented Partial Payment Request No. 3 (includes Change Order No. 5 regarding a manhole with a sluice gate). The total Partial Payment No. 3 with release of certain retainage is \$88,550.78. Motion to approve Partial Payment No. 3 approved. (Breker/Engst, unanimous). The Board will submit a request for payment from the City of Forman in accordance with the parties' Joint Powers Agreement. The Board will discuss operation of the sluice gate at the January meeting.

There being no further business, the Board adjourned at 12:00 p.m.

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James Bosse, Chair

ATTEST:

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Sean M. Fredricks, Acting Secretary