

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, DECEMBER 15, 2016 AT 8:00 A.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Roger Zetocha, Richard Engst, Korey Martinson, and Todd Stein. Absent: Luke Siemieniewski. Also present: Chris Gross, Board Engineer; Tyler Leverington, Ohnstad Twichell Law Office; and Scott Mahrer, Forman.

Approve November 16 and 17, 2016 minutes and November financial statement. Manager Martinson moved to approve. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

**Approve renewal of CD # 13893** for twelve months. Manager Stein moved to approve. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

**Approve transfer of the following funds:** From General Fund to Drain No. 2 - \$2,911.59; from General Fund to Shortfoot Creek - \$7,465.20. Manager Stein moved to approve. Manager Engst seconded the motion. Upon roll call vote, the motion carried unanimously.

**Budget Amendments:** Drain No. 2 from \$1,000.00 to \$18,556.00; Drain No. 4 from \$65,000.00 to \$92,045.59; Drain No. 9 from \$1,000.00 to \$2167.36; Drain No. 7 (aka WC#1) from \$15,000.00 to \$68,955.86; Drain No. 7 Sinking Fund (aka WC#1 I&S) from \$92,000.00 to \$465,609.89; Drain No. 11 from \$100,000.00 to \$149,971.44; Drain No. 12 from \$1,000.00 to \$1,254.20; Tewaukon Watershed from, \$5,000.00 to \$22,622.68; Jackson Improvement from \$-0- to \$173,900.56. Manager Stein moved to approve. Manager Engst seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Engst moved to approve payment of the following bills. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

74135	Cogswell Community Ctr	Hall Rental – Dr#11	50.00
74136	Dakota Valley Services	Dr # 7 utility relocation	25,000.00
74137	Richard Engst	Travel	83.16
74138	Farmers National Co.	Dr # 11 appraisal fee	4,500.00
74139	JAV Construction Inc.	Dr # 7 simple cleanout	9,050.00
74140	Jerry’s Backhoe Service	Dr # 11 beaver dam removal	180.00
74141	Landmark Drainage LLC	Dr # 7 payment #2	131,472.78
74142	Korey Martinson	Travel	101.52
74143	Moore Eng. Inc.	General-\$310.20; Shortfoot Creek Study-\$6,244.99; Dr#11-\$46,432.75; Dr#7I&S-\$11,324.54; Gwinner Dam - \$336.25; Dr#8-\$87.80; Storm Lake-\$335.60; Dr#7-right-of-way - \$630.00; Tewaukon District - \$587.80 = TOTAL	66,289.93
74144	Ohnstad Twichell	General-\$1121.92; Dr#4-\$601.00; Storm Lake-\$450.00; Dr#7 project-\$3050.35; Dr#11 project-\$2426.05; Julie and Bernie Vculek Tile Application-\$31.50; NDFFA Permit-\$340.50; Greg Nelson Application - \$137.00; =	8,158.32
74145	Richland Co. WRD	ADM fees for RS#1	719.19
74146	Todd Stein	Travel	95.04
74147	Roger Zetocha	Travel	270.00
12962	Sherry Hosford	Salary less taxes 494.75	1505.25
12963	Richard Engst	5 PD less 45.90 taxes	554.10
12964	Roger Zetocha	4 PD less 66.97 taxes	413.03
12965	Korey Martinson	3 PD less 44.79 taxes	315.21
12966	Todd Stein	3 PD less 27.54 taxes	332.46
	DD Sargent County Bank	Withholding Taxes	988.65

**DRAIN NO. 7 CHANNEL IMPROVEMENT PROJECT:** Brent and Blake from Landmark Drainage LLC arrived at the meeting and reported on the Drain No. 7 project. The second crossing is not connected to the west because the culvert is frozen in and must be removed in the spring to meet the compaction specifications. Moore Engineering, Inc. as well as Landmark Drainage, LLC both agreed that it would be in everyone’s best interest (the WRD and the township road authority) to postpone installation of the third crossing until spring due to weather conditions. The crossing is flagged with 8 foot fiberglass caution signs and the ditch has been barricaded. Korey Martinson reported that he had been watching the project and had concerns about the rock on the roadside and visibility of objects that were covered after the snow. The contractor felt that he has addressed any hazards and is hopeful that in the spring, possibly May, 2017 that they can proceed with the project and estimate about one and a half months’ worth of work remaining. Dewatering is the largest part of the project and they are hopeful that conditions will allow this time frame for continuing the project. Chris Gross indicated that there could be liquidated damages for the failure to complete this project (November 18, 2016 was the deadline for completion) as per the Construction Contract. The board indicated that they are OK with a Change Order to continue this project next spring. Chris will prepare the document for consideration at the January 2017 meeting. Approve and authorize payment No. 2 for \$131,472.78 as recommended by the

engineer and also approve Change Order 3 (+\$1,570.00) which includes the removal of one North Dakota State Water Commission groundwater monitoring well (Sta. 103) – cut off top (to be salvaged by NDDOH) and cut off casing pipe a minimum two feet below proposed channel grade and fill casing to remain with bentonite. Manager Engst moved to approve. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

**DRAIN NO. 11:** Landowners present at the meeting – Paul Mathews, Bob Banderet, Randy Ptacek and Kathy Marquette are requesting a reassessment of Drain No. 11. Board members have concerns about the cost of the reassessment and want to do some research on the process. There was concern expressed on: 1) how does the same land get assessed in both Drain No. 11 and the Jackson-Sargent project; 2) which watershed the land receives a benefit; 3) Cogswell City not paying anything toward the drain maintenance (Sherry noted that the City is in fact paying \$1,440/ year on a \$1.00 assessment and \$5,760/year on a \$4.00 assessment) and 4) Ransom County not contributing any assessment dollars. The process to reassess would include the board making a determination if it is necessary; the process would take several months to look at the benefit analysis; study the watershed; send out mailings; conduct a public hearing; take comments from the public; review the map and present the findings. The board and Sherry thought the last reassessment of Drain #11 was conducted in 1983 and several landowners feel that there may be many changes from 1983 to 2016. Kathy Marquette questioned how someone is considered qualified to conduct a reassessment of a legal drain. She further questioned how the Board's engineer, Moore Engineering is qualified to reassess Drain #11. Chris stated that Moore Engineering has worked for WRDs for decades and has significant history of conducting this type of reassessment work which makes them qualified to assist the Sargent County WRD reassess Drain #11.

Chris continued stating that, historically, it has been consistent that the land located closer to the drain receives the higher percentage of benefit. Factors to be considered in a reassessment are 1) land type (cropland, pasture, wetland); 2) proximity to the drain and 3) watershed boundary. The concern expressed by the board is the cost of doing a reassessment. Chris commented that some counties in the northern Red River valley are doing reassessments of their drains that were last assessed in the 1960's and are costing upwards of \$5,000 for a very small legal drain. Drain No. 11 is 40 miles long and has a watershed of over 300 square miles so he is hesitant to provide any dollar amount for a reassessment without first doing some research and visiting with the board's attorney. It was the general consensus of the board to initiate an engineering proposal (at no cost to the board) to take Drain #11 through the reassessment process. The board will review and consider the proposal at the January 2017 meeting. Chris stated that even with a reassessment of Drain #11, it is unlikely that Ransom County will still not be assessed into the drain unless the Ransom County WRD would agree to the assessment. Some additional questions were asked about the proposed project that the board has approved a resolution of necessity and Chris explained the purpose of the November 2016 meeting in Cogswell was to meet with the landowners who have right-of-way, easement property or mitigated wetlands that would be involved in the project. These issues take the longest and getting this information in a timely manner is very helpful to the board. Once these areas are addressed the board plans to conduct additional informational meetings with the Drain # 11 landowners. Todd Stein also asked about the proposed project including the railroad culvert west of Cogswell that is a concern of many landowners and Chris replied that the Resolution of Necessity would need to be changed if this area were included.

Brian Vculek arrived at 8:45 a.m.

Greg Nelson arrived at 9:15 a.m.

**DRAINAGE OF STATEWIDE OR INTERDISTRICT SIGNIFICANCE:** The Board has received notification from the Office of the State Engineer that Surface Drain Permit Application No. 4826 submitted by Bernard Vculek, Crete, ND and Surface Drain Permit Application No. 4820 submitted by Gregory Nelson, Milnor ND have both been determined that the proposed drainage under each application is drainage of statewide or interdistrict significance. The board invited both applicants to this meeting to review the criteria for proceeding with the application process. Brian Vculek is present representing his father/applicant Bernard Vculek. Sean Fredricks, attorney for the board prepared a memo for the board to review with the applicants. In the absence of Mr. Fredricks, Tyler Leverington discussed the information that each applicant must first prepare and submit to the Sargent County WRD in an organized format. Mr. Nelson asked if he could make any changes to the application; Chris noted that he could modify without re-applying with the State only if the change does not materially alter the project. Brian Vculek is interested in taking his project through the process. Mr. Nelson is still unsure about his project and would like to first visit with an engineering firm to get some of his questions answered. Upon Brian Vculek's decision to proceed the minutes will reflect that the board will proceed with the process and also recognize that, as a member of the Red River Joint Water Resource District (RRJWRD), the Sargent County WRD will have to forward all "Statewide significance" permit applications to RRJWRD; in turn, RRJWRD will process the applications and conduct the process at RRJWRD's expense. That will result in significant savings to the applicants and the Board.

**GWINNER DAM:** Chris Gross reported on contacts he made with several agencies to proceed with breaching the Gwinner Dam. Moore Engineering, Inc. is moving forward with all the necessary permits and plans to have

all the documents ready for approval and signatures at the January board meeting. There is still some interest in relocating this dam and the board agreed to invite the Ransom County Water Board members to the January meeting to have dialogue with them on Sites 6 and 7 (both located in Ransom County).

**DRAIN NO. 8:** Luke and Todd were unable to meet with Rutland City earlier this month on the Jacobson Plumbing and Heating bill for work on said drain. No other discussion. Tabled.

**DRAIN NO. 7 CLEANOUT:** The work was completed on the simple cleanout and the cost was \$9,050.00. As this was less than the quote the board approved in November, Richard authorized additional cleaning to include ½ mile more which extended to the western edge of Section 11 in Milnor Township. It was also noted that, according to the contractor, the culvert in the township road is 8 inches too high and the culvert in County Road # 12 is 18 inches too high. A portion of the area cleaned was located on the Gainor WPA (S1/2-13-132-54) and special conditions apply for cleaning. Richard met with Kent Sundseth, Refuge Manager and received a General Activities Special Use Permit from the USFW Tewaukon Refuge for a signature. Richard signed the permit on November 30, 2016 and it is in the Drain No. 7 file listing the conditions of the permit. Motion by Manager Martinson to approve the additional work on the simple cleanout to include Sections 11, 13, 14 in Milnor Township at a cost of \$9,050, which was \$8,500 less than the estimate. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

**MAHRER-ELLEFSON COMPLAINT:** Mr. Ellefson was invited to the meeting today but he cancelled last night. Richard reported that the pipe is plugged but there were questions on how it was plugged and Richard said that he was unable to go out there and inspect. The deadline for closure of this illegal drainage system was December 1 and as it is not closed, the board will hire a contractor to plug the project. The Board's notice required plugs in two spots, and the notice included a map of both spots, so the Board will have to ensure compliance with its order. As per information from a map of the project, there are two sites that must be filled. There is a metal plate covered with clay covering one of the pipes but it does not cover the entire pipe and the other site is under water and would need to be plugged. A track Bobcat is needed to remove the metal plate and to install a plug put in the pipe. Manager Martinson made a motion to authorize Richard to contact either JAV Construction or Comstock Construction to remove the plate and put a plug in the pipe immediately south of the pump station and when conditions allow, to plug the pipe west of the pump station. Costs incurred to do the work will be assessed against the Ellefson's taxes. Manager Stein seconded the motion. Roll call vote: Aye: Martinson, Stein and Zetocha. Nay: Engst. Absent and not voting: Siemieniewski. Motion carried.

**STORM LAKE MAINTENANCE DISTRICT:** Chris reported that he and Sean had a conference call with Kent Sundseth, Refuge Manager, Tewaukon National Wildlife Refuge to discuss the ownership of Storm Lake Dam. In a letter dated November 21, 2016, Mr. Sundseth states that the USFWS has owned and maintained the Dam since it was constructed to maintain a water right secured by the agency in 1934. The Dam was designed to work with a diversion wall in Drain # 7 to provide water to Storm Lake during the dry years for wildlife purposes. Approximately 30 years ago, the diversion wall was removed from the drain, likely during drain maintenance. The slide gate that was part of the Dam was removed about the same time. Though the dam will not likely be able to provide water to Storm Lake without the diversion wall and slide gate, the current fixed elevation of the structure continues to maintain the water right secured by the Service in 1934. FWS inspects the Dam annually to ensure it continues to serve this function. Mr. Sundseth further states that USFWS has not divested ownership of the Storm Lake Dam or the fee title lands that move water to it in wet years. The Dam is found in the USFWS records, as are replacement cost estimates the Service would incur in the event that the structure should fail. USFWS plans to continue maintaining the Dam in the future at a level that ensures the Service water right is maintained. Chris and Sean are waiting on North Dakota State Water Commission concurrence of Kent's information at which time, this matter will be closed.

**HEAD OF THE MOUNTAIN NATURE PRESERVE 2016 SITE VISIT SUMMARY:** Board members received a copy of the site visit summary as prepared by ND Parks and Recreation including a summary of noxious weeds controlled, prairie monitoring and recommendations for prairie management. A copy is on file in the office.

Meeting adjourned at 12:15 p.m.

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ROGER ZETOCHA – VICE-CHAIRMAN

ATTEST:

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SHERRY HOSFORD – SECRETARY-TREASURER