

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, DECEMBER 17, 2015 AT 9:00 A.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Luke Siemieniewski, Jim Bosse, Roger Zetocha, Korey Martinson and Richard Engst. Absent: None. Also present: Board Attorney Sean Fredricks; Chris Gross, Board Engineer; Brian Vculek, Crete; Dan Delahoyde, Jackson Township Chairman; Mike Bassingthwaite, Interstate Engineering, Inc.; Tom Jones, NRCS; Larry Roney, Oakes and Gerry Bosse, Cogswell.

**RICHLAND-SARGENT NO. 1 PROJECT:** Mike Bassingthwaite, project engineer, updated the board on Phase 1 Extension and Channel Improvement Project Construction Issues including: completion date, seeding, spoil piles, wetland issues and channel condition in spring. Board members approved payment of a bill to Comstock Construction Inc. for \$555.00 which was to remove silt in front of some flapgates.

Approve the November 19, 2015 minutes and November financial statement. (Engst/Zetocha, unanimous)

**Approve renewal of CD # 13893** for twelve months. (Bosse/Engst, unanimous)

**Approve transfer of the following funds:** From Drain No. 2 to General Fund - \$1,400.00; from Drain No. 9 to General Fund - \$21,000.00 and from Drain No. 12 to General Fund - \$16,000.00. (Engst/Bosse, unanimous)

**Budget Amendments:** Drain No. 4 from \$64,000.00 to \$78,275.55; Drain No. 8 from \$10,000.00 to \$17,640.55; Drain No. 7 Sinking Fund from -0- to \$89,486.36; Drain No. 9 from \$1,000.00 to \$1,156.90; Drain No. 11 from, \$100,000.00 to \$321,945.61; Richland/Sargent Joint Board from \$75,800.00 to \$100,476.10 and (Zetocha/Engst, unanimous)

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

72531	James Bosse	Travel	158.13
72532	Burlwood LLP	Permit refund	650.00
72533	Cole Vculek Farm	Permit refund	180.70
72534	Dakota Improvement Inc.	Drain No. 11 ditch cleanout and culvert installation	37097.20
72535	Dell Marketing LP	Computer software	238.80
72536	Dickey County WTB	DS Administration fees	521.75
72537	Richard Engst	Travel	93.15
72538	Korey Martinson	Travel	146.63
72539	Moore Eng., Inc.	Engineering general fees - \$388.50; Dr # 11-\$58,488.00; Jackson Township/Quandt Brothers complaint - \$337.25; Gwinner Dam - \$22,481.80; Beverly Kelley Complaint - \$82.25; Jay Harris permit - \$227.25; Julie Vculek permit - \$384.75 =	TOTAL \$82,389.80
72540	Ohnstad Twichell	General - \$700.00; Kelley/Hemminger-\$869.00; Dr # 11-Paul Mathews-\$425.00; Gwinner Dam - \$255.00; Jackson Township/Quandt - \$85.00 – Dr # 4 – Rick Hoistad - \$1151.00	TOTAL 3485.00
72541	Lucas Siemieniewski	Travel	75.90
72542	True North Steel	Dr # 11 culverts/Jackson Twp./Sec 27	1145.69
72543	USDA	Beaver Dam Removal – Dr # 7	1400.00
72544	Roger Zetocha	Travel	28.75
11584	Sherry Hosford	Salary plus extra research work less 720.66 taxes	3129.34
DD	Sargent County Bank	Withholding taxes	1038.29
11699	Richard Engst	5 PD less 45.90 taxes	554.10
11700	James Bosse	6 PD less 55.83 taxes	664.17
11701	Roger Zetocha	1 PD less 9.18 taxes	110.82
11702	Lucas Siemieniewski	3 PD less 27.54 taxes	332.46
11703	Korey Martinson	6 PD less 112.33 taxes	607.67
DD	Sargent County Bank	Withholding Taxes	443.56

**LARRY RONEY COMPLAINT:** Mr. Roney submitted a Drainage Complaint to the board for land located in the SE1/4-12-130-59 (Dickey County) for potential flooding. The board informed Mr. Roney that another complaint has been filed regarding this drainage and the parties will be meeting with this board later this morning and invited him to remain at the meeting to hear discussion on the original complaint filed by Jackson Township Supervisor, Dan Delahoyde.

**GWINNER DAM:** Access Agreements have been drafted and are being circulated by board members to landowners. Motion to authorize the Chairman and Secretary-Treasurer to sign the access agreements as they are returned to the board for the Gwinner Dam Improvement Study. (Zetocha/Engst, unanimous)

**RICK HOISTAD LITIGATION:** Sean Fredricks informed board members that the depositions are completed. The trial date is set for February 24-26, 2016 in Forman.

**DRAIN NO. 7:** A North Dakota State Water Commission cost share request form and cover letter was completed for Drain No. 7 Channel Improvements. The intent of the project is to improve the capacity of the existing road ditches and will allow water to enter the channel with greater efficiency. The project will provide a deeper channel with an adequate gradient and side slopes. Total cost of the preliminary engineering is \$17,755.00 and a request to the State Water Commission has been prepared requesting 35% of the eligible costs for an amount not to exceed \$6,214.25. Motion to authorize the Secretary-Treasurer to sign the documents requesting cost share. (Engst/Martinson, unanimous)

**DRAIN NO. 2:** Richard reported that the work is completed on the drain. Sherry stated that the county road department agreed to purchase the 2 - 30'x30" culverts and bands and a bill will be sent to the county for these items.

**Application to Install a Subsurface Drain for Julie Vculek in the Northwest Quarter of Section 24 in Harlem Township**

The Board reviewed an *Application to Install a Subsurface Drain* dated November 19, 2015, for Julie Vculek; Brian Vculek was present to discuss the application and the project with the Board. The Board reviewed the criteria in Section 89-02-01-09 of the North Dakota Administrative Code and concluded the project does not meet any of the "statewide" elements, and the Board concluded therefore 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 Northwest Quarter of Section 24 in Harlem Township, Sargent County, North Dakota. The project will include a pump outlet that will discharge directly into a large pond in the Northwest Quarter of Section 24.

Because the project will discharge directly into a natural water body, 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. Chris Gross recommended the Board require Applicant to install and maintain erosion protection at any and all outlets into the pond.

According to records on file with the Sargent County Recorder's Office, Julie Vculek owns the Northwest Quarter of Section 24 of Harlem Township.

It was moved by Manager Engst and seconded by Manager Martinson to approve *Application to Install a Subsurface Drain* dated November 19, 2015, for Julie Vculek in the Northwest Quarter of Section 24 in Harlem Township, 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 provide and maintain adequate erosion protection at any and all outlets into the natural water body lying partially on the Northwest Quarter of Section 24;
- 3) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 4) 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;
- 5) That Applicant must close all outlets during flood occurrences or under conditions that may cause adverse impacts to downstream landowners, as determined by the Board; and
- 6) 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.

**JACKSON TOWNSHIP/QUANDT BROTHERS COMPLAINT:** The following people arrived at the meeting: Steve Hansen, Oakes; Steve Kasowski, Oakes, John Quandt, Oakes; Sparky Engquist, SC Road Supervisor and Virgil Nogowski, SC Road Dept. The drainage complaint filed by Jackson Township alleges that the Quandt Brothers dug drainage ditches in township right of ways without permit or permission from the township in violation of township zoning. Comments were taken from each person in attendance. Chris Gross, engineer stated that he wanted to hear from all parties today and collect data. Moore Engineering., Inc. has investigated the alleged drainage prior to the snowfall and will analyze all the information and Mr. Gross will make a recommendation to the Board based on the information. Several pictures were provided by parties present as well as survey data provided by John Quandt that states an average removal of 1.3 feet; John suggested the project only included sediment removal. Steve Kasowski indicated the purpose of the project was

to cleanout cattails, weeds, and sediment to alleviate flooding in the ditches, and to allow drainage to flow from his farmstead; the high water table in the area is threatening his farmstead. After all comments were received the data will be reviewed by board members and the engineer and make a conclusion on the drainage complaint which appears to have three different projects – 1) north/south on the Dickey-Sargent county line; 2) East/west on County Road No. 3 and 3) south on the Jackson Township road 115 Ave SE between Section 19 and 20. Chris and the Board will have to determine if each project drains a watershed of 80 acres or more and if each project was more than maintenance, the standards for whether or not the projects required state surface drainage permits. The findings will be discussed at the February 2016 meeting. Sean Fredricks explained the Township’s zoning and permitting requirements are separate issues; the Township may have separate jurisdiction over these projects, but the failure of any party to obtain a township permit is not within the Sargent County Water Resource District’s jurisdiction by virtue of Jackson Township’s drainage complaint. Larry Roney filed an additional drainage complaint regarding the same issues.

**DRAIN NO. 8:** Chris Gross provided the Board a preliminary assessment district and a benefit list for review and approval regarding DRAIN 8 IMPROVEMENT PROJECT NO. 2016-01. Following a lengthy discussion on the area the board agreed that a meeting with the city and townships of Ransom, Rutland, Tewaukon and Weber should be held in order to inform these parties of the proposed project, potential assessments against each, and what benefits would be gained for these entities. The Sargent County Commission has allocated \$100,000.00 payable over a ten-year period and are on board with this project. The Secretary was instructed to set up a meeting with the Rutland City Council and township boards on January 4<sup>th</sup> to discuss the project. Approve the following resolutions and documents regarding DRAIN 8 IMPROVEMENT PROJECT NO. 2016-01 and authorize the Chairman and Secretary-Treasurer to sign the Resolutions and Certificates: Motion by Manager Zetocha and seconded by Manager Bosse. Upon roll call vote, the motion carried unanimously. The Board will conduct the initial project hearing regarding the assessment vote during its meeting on February 18, 2016, at 9:30 a.m.

- 1) RESOLUTION OF NECESSITY
- 2) RESOLUTION APPROVING ENGINEER’S REPORT
- 3) RESOLUTION DETERMINING BENEFITTED PROPERTY AND SETTING INITIAL HEARING
- 4) Declaration of Official Intent
- 5) Secretary’s Certificate
- 6) Managers’ Certificate (approving Preliminary Assessment List)
- 7) Landowner Letter
- 8) Ballot Instructions
- 9) Notice of Hearing
- 10) Preliminary Assessment List

**PAUL MATHEWS LITIGATION:** The Board received an opinion from the North Dakota Supreme Court regarding the action against Nancy I Mathews, Phyllis Delahoyde, and Paul Mathews. The Supreme Court overturned the decision of the District Court.

According to Attorney Fredricks, the District Court ruled the Mathews family conveyed fee simple ownership to the County in 1917 & 1918 (the Board’s predecessor). More specifically, the District Court held the language of the right of way deed was not conclusive regarding the interest conveyed to the county in 1917 and 1918, and reviewing the document itself was not enough to determine if the document conveyed a fee simple interest or an easement interest. After concluding the language was ambiguous, the District Court reviewed how the parties have treated this property over the past 100 years. Based on its review, (including the fact that the Mathews family has not paid taxes on the property) the District Court concluded the 1917 and 1918 right of way deeds conveyed the property to the county in fee simple.

Paul appealed, and the Board submitted briefs to the Supreme Court last spring. Mr. Fredricks stated that, after we briefed the case, but before Chris McShane argued the case before the Supreme Court, the Supreme Court issued a decision in a case involving the interpretation of right of way deeds given to the railroad. Prior to that case, the North Dakota Supreme Court had been silent on how to determine if a right of way deed conveyed a fee simple interest or an easement. In their decision on our case, the Supreme Court concluded the language in the deeds from 1917 and 1918 conveyed only an easement (and not fee simple ownership). The Supreme Court based its decision on the case decided over the summer regarding how to interpret right of way deeds. We are disappointed in the Supreme Court’s decision to overturn the District Court decision.

The Supreme Court did not remand the matter to the District Court, which means the decision of the Supreme Court is final.

As a result of the Supreme Court’s decision, the Board has only an easement over this property for purposes of operating and maintaining the Drain. The Board will need to determine what the plans are to use the easement area. In addition, the County will be notified of this decision so they can bill the Mathews family for real estate taxes on these acres.

**NRCS NATIONAL WATERSHED PROGRAM:** Several forms were presented to the Board by Pat Downs for approval including 1)Application for Federal Assistance SF-424; 2) Form SF-424A-Budget Information; 3)Form SF-424B-Assurances; 4) Form AD-3031-Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants; 5) Certification Regarding Lobbying and 6) Cost share request to the Red River Joint WRD for 65% of the non-federal/non-state costs for the Shortfoot Creek Watershed Planning Process in the total amount of \$185,900. These forms authorize a request from this Board to NRCS for \$500,000 to the Sargent County WRD for the watershed planning on the Short Foot Creek. Total project cost is estimated at \$940,000 and overall percentages as follows: NRCS-70%; ND State Water Commission-10.5%; Red River Joint Water Resource District-12.7% and Sargent County Water Resource District-6.8%. Motion to authorize the Chairman to sign all NRCS/RCCP funding documents as presented. (Bosse/Engst, unanimous)

**DICKEY-SARGENT DRAIN:** Approve request from new secretary-treasurer Nannette Severson, Milnor, ND to open a post office box at the Milnor Post Office for receipt of mail for said drain. (Bosse/Engst, unanimous)

The meeting adjourned at 12:45 p.m.

---

LUCAS SIEMIENIEWSKI – CHAIRMAN

ATTEST:

---

SHERRY HOSFORD – SECRETARY-TREASURER