

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, DECEMBER 19, 2019 AT 8:00 A.M. IN THE COMMISSIONERS ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA.

Managers present: Todd Stein, Michael Wyum, Lucas Siemieniewski, Bruce Speich and Roger Zetocha. Absent: None. Also present: Sherry Hosford, Secretary-Treasurer, Robert Banderet, Paul Mathews and Sargent County Commissioner Richard Ruch. Sean Fredricks, the Board’s attorney and Chris Gross, the Board’s engineer were present via conference call.

Manager Wyum moved to approve the Board’s November 21, 2019 minutes and the November 2019 financial statement. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Speich moved to approve payment of the following bills:

79815	Cogswell Community Ass’n Hall Rent – Dr#11	50.00
79816	Comstock Construction Inc. Brummond-Lubke Dam final payment	17,633.10
79817	Jerry’s Backhoe Service Dr#11 straighten pilings	225.00
79818	Moore Eng. Inc. General meetings-\$187.55; Permits and complaints - \$265.00; Silver Lake Feasibility Study - \$442.55; Shortfoot Creek-\$8,950.00; Dr#7-SWC reconciling-\$187.55; Dr#11 Imp.-\$1797.50; Dr#11-Design Engineering-\$16,750.00; Dr#16 & Brampton Project-\$805.00; Dr#12-SWC cost share-\$4035.10; Tewaukon Watershed BL Grazing plan - \$337.50 TOTAL	33,757.75
79819	Ohnstad Twichell General-\$919.00-meetings; Jason Bosse permit 2019-15-\$448.85; J Bosse/G Bosse permit-\$104.00	TOTAL 1,471.85
79820	Richland Co. WRD Admin. Fees for RS#1-July-Dec.-2019	568.81
79821	The Teller Pump Restriction Notice	65.00
79822	Lucas Siemieniewski Travel	32.48
79823	Bruce Speich Travel	23.20
79824	Todd Stein Travel	19.72
79825	Tru North Steel Dr#9 culvert	1,503.60
79826	Michael Wyum Travel, registration and lodging	759.12
79827	Roger Zetocha Travel	29.00
17227	Sherry Hosford Salary less taxes	560.48 1,639.52
17228	Roger Zetocha 1 PD less 9.18 taxes	110.82
17229	Todd Stein 2 PD less 18.36 taxes	221.64
17230	Michael Wyum 2 PD less 18.36 taxes	221.64
DD	Sargent County Bank Withholding taxes	815.32

Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

**NOTICE OF APPEAL BY KELLEY-MATHEWS-HEMMINGER, THOMPSON, RUST, BOSSE AND**

**BOSSE:** Manager Stein reported that the corn has been harvested but there is a foot of snow on the ground and it is very wet. Snow conditions will not permit a meaningful review of the remedial work. The Board agreed to wait until spring for further inspection.

**H2 OVERVIEWERS-DRAIN NO. 11:** Sherry reported that she had a message from the H2 Over viewers and Bryan informed her that they are working on developing and putting together a plan/proposal for Sargent County on setting up an assessment district for Drain 11. They plan to have a proposal and a plan by mid-January and wondered what dates the board meets in January and February. Sherry informed them of the dates and they would like to present an outline for moving forward during one of those meetings.

**DRAIN 16:** The Board briefly discussed some options which Cogswell City could complete in emergency situations. Also could discuss open ditches and tile options both of which would be very expensive.

**DRAIN NO. 11:** Chris reminded board members that the public information meeting will be held tonight in Cogswell at 6:00 p.m. for the Drain No. 11 Channel Improvement Project. This is not a legally-mandated “hearing”; instead, this is an informational meeting intended to provide project information, especially to landowners from whom the Board will have to acquire right of way.

Before proceeding with any further discussion of the Drain 11 project and right of way values, Sean Fredricks indicated the Board should conduct conflict analysis for any managers who have any type of personal interest in real estate within the Drain 11 maintenance district or regarding any right of way the Board will have to acquire to accommodate the project. Manager Stein rents land from his father-in-law, some of which the Board will have to acquire to accommodate the project. Manager Zetocha may have a small portion of property within the

Drain 11 district, and his brothers have property within the district. Sean Fredricks explained the conflict analysis the Board should conduct regarding the potential conflicts.

Sean explained the law in North Dakota regarding conflicts, Section 44-04-22 of the North Dakota Century Code, provides the relevant standard. That statute provides:

A person acting in a legislative or quasilegislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

The North Dakota Supreme Court and the Attorney General's Office have taken narrow views of situations where a public official can abstain from participating in a matter. A public official must have a "direct and substantial personal or pecuniary interest" in the matter. The mere appearance of a conflict is not enough to allow the public official to refrain from participating, and a public official cannot unilaterally decide not to participate or to abstain from voting. The North Dakota Supreme Court adopted a "rule of necessity" that requires public officials to participate in matters before their respective boards. The public policy rationale is that public officials have a duty to vote on issues before them, and cannot avoid participation simply to avoid the appearance of impropriety.

The Section 44-04-22 test requires a multi-step analysis. With regard to Manager Stein's potential conflict, the question is whether or not his rental from his father-in-law creates a conflict. Sean indicated that, under Section 44-04-22, the question is if the situation creates a "direct and substantial personal ... interest" conflict under Section 44-04-22. Because the pricing of any acquisition from his father-in-law, and the acquisition negotiations themselves could create a "direct and substantial personal ... interest" for Manager Stein, Sean concluded Manager Stein does have a conflict, but only related to right of way values and any acquisitions from Manager Stein's father-in-law. Manager Wyum moved to conclude that Manager Stein does have a "direct and substantial personal ... interest" conflict regarding right of way values for the project, and for direct negotiations with Manager Stein's father-in-law; to preclude Manager Stein's participation or voting in matters related to Drain 11 project right of way values or issues related to negotiations with Manager Stein's father-in-law; and to otherwise require Manager Stein to participate in discussions and votes regarding all other Drain 11 matters. Manager Speich seconded the motion. Upon roll call vote, Chairman Siemieniewski and Managers Zetocha, Speich, and Wyum all voted in favor of the motion. Manager Stein abstained. The motion carried unanimously.

With regard to Manager Zetocha's potential conflict, the question is whether or not his property within the Drain 11 district or his brothers' property within the Drain 11 district creates a conflict regarding acquisitions or any other project issues. The Board will not have to acquire any property from Manager Zetocha or his brothers. Parcels within the Drain 11 maintenance district are subject to annual maintenance levies, so that could reach a conflict regarding Manager Zetocha's property but not his brothers' property. Manager Stein moved to conclude that Manager Zetocha does not have a "direct and substantial personal ... interest" conflict regarding the project or right of way values for the project, and to otherwise require Manager Zetocha to participate in discussions and votes regarding all Drain 11 matters. Manager Wyum seconded the motion. Upon roll call vote, Chairman Siemieniewski and Managers Stein, Speich, and Wyum all voted in favor of the motion. Manager Zetocha abstained. The motion carried unanimously.

With the conflict issues concluded, the Board proceeded with discussion regarding the Drain 11 project.

The Board next discussed right of way acquisition. Farmers National conducted a Consultation Report in 2016 regarding right of way values for the project; earlier this year, Farmers National updated that report. Farmers National provided values as follows: 1) Cropland A: \$4,250/acre; Cropland B: \$3,250/acre; Pasture/CRP: \$1,500/acre; and Non-Cropland: \$350/acre. There will be three types of right of way for this project which will include 1) fee simple acres for the channel; 2) berm easement acres; and 3) temporary construction easement acres. After much discussion Manager Wyum moved to approve the following right of way values as just compensation for the Drain No. 11 Improvement Project:

<u>Fee Simple</u>	<u>Berm Easement Acres</u>	<u>Temporary Easements</u>
Cropland/CRP - \$4,500/acre	Cropland/CRP - \$2,250/acre	Cropland/CRP-\$750/acre
Pasture - \$1,800/acre	Pasture - \$ 900/acre	Pasture - \$300/acre
Non-Cropland - \$400/acre	Non-Cropland - \$200/acre	Non-Cropland -\$75/acre

Manager Speich seconded the motion. On roll call vote Managers Siemieniewski, Speich, Wyum and Zetocha all voted in favor of the motion. Manager Stein abstained. Motion carried unanimously.

Manager Stein moved to designate Pat Downs, Moore Engineering, Inc., as the Land Agent for right of way acquisition. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously.

**2019 BUDGET AMENDMENT:** Manager Stein moved to amend the 2019 Tewauckon Watershed budget from \$46,500 to \$332,323.63. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

**BRUMMOND-LUBKE DAM IMPROVEMENT PROJECT:** Chris presented Change Orders 1 and 2 for the improvement project which entailed straw mulching without placement of seed mix due to disturbance of a

farmed area which would not require seeding for a net change in contract price of 4,375.00 and a final balancing change order for additional rip rap and filter blanket for additional erosion protection at the spillway on the embankment; the Contractor was able to contain the work area to a small area than was allowed and resulted in less seeding and livestock path repair quantities and there was less embankment repair than was expected – the areas that needed repair were repaired with riprap for erosion protection which resulted in a net change of (\$-11,433.30). The final payment request was \$17,633.10. Manager Speich moved to approve the Change Orders and the final payment. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously. A Notice of Termination (NOT) for the NDPDES Storm Water Permit was also presented by the Contractor for signature by the Chairman. Manager Zetocha moved to authorize the chairman to sign the NOT. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously.

**RICHLAND-SARGENT NO. 1:** Monica Zentgraf, Secretary-Treasurer RS #1 provided the following RS #1 bill for consideration and approval as follows:

1. Interstate Eng., Inc. \$535.70 (Const. Eng. through 11-30-19)

Manager Speich moved to approve the Richland-Sargent No. 1 bills. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

**DICKEY-SARGENT JOINT WATER RESOURCE DISTRICT:** Sherry Hosford, Secretary-Treasurer for DSJWRD provided DSJWRD bills for consideration and approval as follows:

1. DVEC \$130.00 (Electricity)
2. Moore Eng. Inc. \$352.55 (Meetings)
3. Ohnstad Twichell \$827.60 (Bond fund and Terracon)

Manager Zetocha moved to approve the DSJWRD bills. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

**RED RIVER JOINT BOARD:** Michael Wyum reported on the 2019 Annual Water Resource convention in Bismarck December 4-6. Dan Jacobson, a former Sargent County Water Manager, now living in Fargo, was elected as the president of the North Dakota Water Resource Districts Association. Mike also attended a portion of the Red River Joint Water Board meeting. Chairman Siemieniewski currently has that portfolio for Sargent County and indicated that he is unable to attend the meetings of the RRJTB. Mike is willing to take that appointment. Manager Zetocha moved to appoint Michael Wyum, effective immediately, to serve on the Red River Joint Water Board, as the representative for Sargent County Water Resource Board. Manager Stein seconded the motion. Managers Siemieniewski, Stein, Zetocha and Speich all voted in favor of the motion. Manager Wyum abstained. Motion carried unanimously.

**WORKER'S COMPENSATION/COUNTY EMPLOYERS GROUP:** All board members must attend a 45 minute session for Worker's Compensation/County Employer's Group (CEG) and complete paper work with Alison Toepke, Risk Manager. The Board agreed that following the January meeting they will attend this course as a board in the meeting room on second floor. Sherry will get the meeting set up.

With no further business to discuss, the Board adjourned the meeting at 10:40 a.m.

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LUCAS SIEMIENIEWSKI - CHAIRMAN

ATTEST:

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SHERRY HOSFORD, SECRETARY-TREASURER