

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, FEBRUARY 17TH, 2022 AT 8:19 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN NORTH DAKOTA

Managers present: Chairman Luke Siemieniewski, Roger Zetocha, Todd Stein and Michael Wyum. Also in attendance were Nathan Trosen and Josh Hassell, Moore Engineering; Attorney Charles Carvell, Pearce Durik Law Firm; Wendy Willprecht, Secretary/Treasurer, and Sargent County Commissioner Richard Ruch;. Others present via video conference were Sean Fredricks of Ohnstad Twichell, P.C., the Board’s Attorney; Bob Banderet; Leon Mallberg; Tiffany Bladow and Justin Johnson of Richland County; Mary Engst (Sargent County Teller); and Paul Ellefson

The meeting was called to order by Water Board Chairman Luke Siemieniewski.

The Sargent County Water Resource District Election of Officers:

Sean Fredricks conducted nominations and elections for Chair. Chairman Siemieniewski then conducted the remaining nominations and elections.

1. There was a single nomination for chairman-Lucas Siemieniewski. Upon roll call, all were in favor.
2. There was a single nomination for vice-chairman-Michael Wyum. Upon roll call, all were in favor.
3. There was a single nomination for secretary/treasurer-Wendy Willprecht. Upon roll call, all were in favor.
4. A motion was made by Manager Zetocha and seconded by Manager Wyum to appoint Ohnstad Twichell as counsel for SCWRD and to approve a \$5.00 increase in hourly rates for 2022. Upon roll call, all were in favor.

Manager Wyum moved to approve the January 20th, 2022 regular meeting minutes, the January 27th, 2022 special meeting minutes and the January 28th, 2022 special meeting minutes. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously. Due to an update to the accounting program, the auditor’s office was unable to provide the numbers to complete the January 2022 financial statement.

Manager Stein moved to approve the following bills:

Ohnstad Twichell- Board Mtg. \$182.00; Drain No. 7-Correspondence with attorney/appraiser \$960.50; Drain No. 11 Fees \$8219/\$30,157.00; Drain No. 11 Expenses \$188.10/\$465.63

Total: \$40,172.23

Farmers National Company- Market Value Testimony-Drain No. 11 Trial **Total: \$ 2300.00**

Moore Engineering:

Total: \$80,336.70

Deborah M. Bosse Revocable Living Trust- Warranty Deed \$6,120; Permanent Easement \$18,855; Temporary Easement \$2,610

Total: \$27,585.00

Pearce Durik PLLC- Drain No. 11 Reassessment

Total: \$4702.50

083156 Lucas Siemieniewski	Travel	
083158 Todd Stein	Travel	
083159 Michael Wyum	Travel	
08160 Roger Zetocha	Travel	
083157 Bruce Speich	Travel	
DD Lucas Siemieniewski	PD	
DD Todd Stein	PD	
DD Michael Wyum	PD	
DD Roger Zetocha	PD	
DD Bruce Speich	PD	
DD Wendy Willprecht	Sec-Treas -Salary less taxes \$457.17	\$2042.83
DD Stock Grower’s Bank	Withholding Taxes	\$626.42
DD ND State Tax Commission	State Tax	\$22.00
DD Job Service ND	Unemployment Comp.	\$2.50

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

DRAIN NO. 7:

An appraisal report has been requested but not yet received. Once received, the Board can review and set right of way values for the project.

Engineer Trosen said that the legal descriptions for right of way acquisitions are complete.

SHORT FOOT CREEK:

Engineer Hassell said that Moore Engineering is still working on updates to this plan. Cost share has been received.

DRAIN NO. 9:

The Board discussed a recent inquiry regarding maintenance levies for Drain 9. There have been a number of maintenance projects recently that have been completed for this Drain: drain clean out that included tearing out a crossing, replacement of a culvert in Taylor Township, replacement of a culvert along the state line near the Bosses', to name a few. The Drain 9 fund was depleted as a result of all of these maintenance needs; the fund was down to just over \$20,000, so the Board felt an annual levy increase to \$4.00/acre was necessary.

Landowner Leon Mallberg said that he would like the SCWRD to define "maintenance." Attorney Fredricks indicated the parties in the Drain 11 lawsuit, and other project opponents, have made the definition of "maintenance" and use of annual drain levies issues in that litigation and, with that in mind, Attorney Fredricks advised the Board not to debate those terms at this time.

SILVER LAKE DAM:

An extension agreement has been sent into the state regarding the ND Industrial Commission cost-share, to extend the cost-share term under the original cost-share agreement with the state.

CROOKED CREEK WATERSHED PLAN:

Engineer Trosen reported that he will bring a Task Order for the Crooked Creek Watershed Plan, Task Order 13, to the Board's March meeting. Task Orders are under the Board's Master Services Agreement (MSA) with Moore, the Board issues task orders for each project for Moore to work on outside of general service activities. The task order details what exactly Moore will do on the project. The Task Orders do not change any of the costs or estimates that have already been approved for the projects; rather, they are required under the MSA to direct Moore to work on each project.

Mahrer/Ellefson Complaint:

This complaint first came into the Board in 2013. At the time, the tile permitting threshold was similar to the surface permitting threshold: if the drainage improvements drained a watershed of 80 acres or more, the project required a permit. The project included underground perforated pipe with surface inlets, two pumps, and some surface ditches. At that time, projects with surface inlets were permitted and governed under the surface permitting statute. At the time, Chad Engels and Chris Gross reviewed the watershed area drained by the project and concluded the project did, in fact, drain over 80 acres of watershed. The Board found the project required a permit; however, the Board did not order Mr. Ellefson to close or fill the project at that time. Rather, the Board wanted to afford the parties the opportunity to reach a mutually acceptable resolution to the matter so the Board directed Mr. Ellefson not to operate the pumps while the parties attempted to work towards a solution. Mr. Ellefson has not operated the project pumps. The Board later approved a surface permit for Mr. Ellefson for the project; however, Mr. Ellefson was not able to meet all of the permit conditions and the Board later had to order Mr. Ellefson to plug the pipes installed for the project. Mr. Ellefson successfully plugged one of the pipes but, due to high water, was unable to install the second plug. The high water persisted for years and the Board has periodically re-visited the complaint.

Since then, the Legislature has amended the law regarding tile permitting. In 2017, the Legislature amended the tile permitting statute and one of the changes was the permitting threshold; the 2017 legislation modified the permitting threshold from the 80-acre watershed determination to 80 acres of physical tile (the tile footprint). The new legislation in 2021 retained that footprint threshold for permitting, and went further by including all surface inlets. More specifically, the new law from the 2021 session, NDCC 61-32-03.1, provides:

“...Installation of a subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit ... Subsurface water management systems that use surface intakes or lift stations must be permitted exclusively under this section....”

Under the new tile law, the "tile" portion of this project, including the surface inlets and pumps, fall under the tile permitting statute, and if the physical footprint is under 80 acres, the project does not require a permit under 61-32-03.1. This project only includes a 16-acre footprint. Last week, Mr. Ellefson submitted an Under-80 Tile Notification.

Nathan Trosen also investigated the surface drain improvements that were part of Mr. Ellefson's project. Nathan found the watershed area drained by those surface improvements was 30 acres or less, far below the 80-acre watershed surface permitting threshold. With this issue in mind, the project no longer requires a permit and the Board no longer has

jurisdiction over the project under the complaint statute. The Board directed Sean Fredricks to send out a notice to the parties in the complaint, to notify them of these recent developments and to inform them that the Board will likely dismiss the drainage complaint at the Board's March meeting.

WATER DEVELOPMENT PLAN:

A letter was received from the Department of Water Resources stating they have started their process of developing a Water Development Plan for the 2023-2025 biennium and beyond. The Department was asking for help to identify ND's potential water development projects, the timing of implementation, and the estimated costs. Engineer Trosen said the importance of including projects in this request is that if they aren't listed, and later are presented for state cost-share, the projects will get a lower priority. Trosen added that if projects are listed initially, the Board may be able to modify the specific projects later if necessary.

The SCWRD plans to include the following projects on their list to the Department of Water Resources: Cogswell Drain #16, Drain #2 Extension, Drain #7 Milnor City Phase, Drain #7 Outlet Phase, Drain #8 Improvement, Drain #9 Improvement, Drain #9 Extension, Drain #11 Improvements (Additional Phases), Drain #13, Shortfoot Creek Retention Project, Crooked Creek Study. The Water Development Plans are due by April 30th, the Board will approve the final list at their March or April meetings.

MOORE ENGINEERING:

The rates at Moore Engineering will be going up \$10.00 across the board. The increase is due, in part, to inflation and also as a result of competition for talented staff in the region. The Board may review and increase rates under the MSA. In addition, Nathan explained additional liability language in an exhibit to the MSA. A motion was made by Manager Wyum and seconded by Manager Stein to approve the amendment to the MSA with Moore Engineering and to approve the new rates for Moore. Upon roll call, the motion carried unanimously.

JEFF BREKER (CRP):

The SCWRD received a letter from the USDA regarding the expiration of a CRP contract. The expiration is September 30th, 2022. The Board asked Administrator Willprecht to reach out to Jeff Breker and let him know they are good with him either farming the area or putting it into CRP. Willprecht will reach out to Breker and forward him the letter received.

EXECUTIVE SESSION RE DRAIN No. 11 REASSESSMENT

Sean Fredricks read the requisite Executive Session script required under North Dakota law to permit the Board to go into Executive Session, though Fredricks did not participate in the Executive Session. A motion was made by Manager Wyum and seconded by Manager Stein to enter into executive session. Upon roll call, the motion carried unanimously.

Those in attendance during the executive session were: Chairman Siemieniewski, Vice Chairman Wyum, Manager Zetocha, Manager Stein, Moore Engineers Nathan Trosen and Josh Hassell, Attorney Charles Carvell and SCWRD Administrator Wendy Willprecht.

The executive session began at approximately 9:18 a.m. and ended at approximately 10:15 a.m.

Back in open session, Attorney Carvell noted that in the executive session the Board discussed issues regarding: (1) the overlap of the proposed Drain No. 11 assessment district with the assessment districts for other drains and the Board's desire to discuss the issue with affected landowners; (2) the Cogswell tile and whether it should be included as a re-assessment factor; and (3) the proposed non-assessment of certain easements, such as utility easements and pipeline easements.

DRAIN NO. 11 PROJECT:

Josh Hassell of Moore Engineering said that the final design of the project is on hold until the land acquisition is finalized.

DRAIN NO. 11 CULVERT:

Discussion was had regarding the culvert replacement in the Southwest Township at the crossing of 98th St. SE. There is currently a 60 in CSP out there that is 36 feet long (approx. 20 sq. ft. opening). Engineer Trosen presented a quote from TrueNorth Steel.

60" CSP-\$8362.00

42"x29'CSPA-\$9172.16

Manager Stein made a motion that was seconded by Manager Zetocha to order the (2) 42"x29' culverts. Upon roll call, the motion carried unanimously.

DRAIN NO. 11 REASSESSMENT:

Moore Engineering reviewed and the Board discussed comments received regarding the proposed reassessment:

1. Railroad: In review of the railroad adjustment (non-agricultural assessment) there were approximately 20 railroad properties affected that have a taxable value and will be updated to be assessed based on non-agricultural. The remaining parcels will be assessed as agricultural based on area and the current matrix. –Moore to update these properties to be assessed per taxable value.

2. Overlapping assessment boundaries: The Board requested the persons owning land in overlapping assessment districts be invited to the Board's next meeting to discuss the issue.
3. Non-contributing: This is not currently a factor in the weighted scale. Engineer Hassell asked if the Board wanted to look into this and add as factors? These are low lying areas that do not drain well. The effort it will take to factor these areas will be significant and can vary greatly. Non-contributing areas can change from day to day based on precipitation. The land use type somewhat addresses these non-contributing areas.
4. Temporary and Non-public easements/agreements (CRP/WRP/Wildlife Easements, etc.): The CRP and WRP are generally not public information. Engineer Hassell asked if the Board wanted to evaluate these properties? The Board moved that CRP not be further reduced as that is cropland being used as a different purpose. WRP are recorded easements. If the WRP were included they would fall under the wetland easement parameter in the matrix. Board directed Moore to treat WRP as wetland easements and to try to get any information that may be publicly available. The Board indicated that during the future informational landowner meeting, a final request be made to landowners to identify their WRP(s) and we can provide everyone an opportunity to provide proper documentation.
5. Cogswell Tile: It does not appear the Cogswell Tile was factored in the assessment. Engineer Hassell asked the Board if they would like to change the proximity? Hassell said he can apply proximity to this area to see how it would affect properties in the Cogswell Tile area. Board directed Moore to draft a change in how the proximity to the properties in the vicinity of the Cogswell Tile are accounted for.
6. Weight change considerations: The Board has reduced the weight of the proximity and increased the weight of the hydrologic soil group. Additionally, the Board directed Moore to round to the nearest 10% up or down, with exception to the 0%-5% benefitted parcels which will still be rounded up to 10%. At this point the board wants to leave this parameter as is.
7. Indirect benefits: No changes.
8. Watershed Boundary considerations: Moore identified two comments regarding the watershed boundary that they recommend change or further analysis. The first, Section 15 of Jackson Township, Moore recommended to remove the 16 acres in the NW ¼ from the proposed assessment as LiDAR shows this area may flow west, not east to Drain 11. Board directed Moore to remove that parcel from the assessment. Moore recommended to obtain field data to verify the watershed boundary of the second comment, Section 22 of Divide Township. The Board directed Moore to obtain the field data.
9. Proximity: The Board discussed a few areas that have significantly longer flowpaths that are not properly depicted by the current proximity. Moore presented a map to illustrate these areas. The Board directed Moore to further define the proximity of these areas and present at the next meeting.

The Board asked Moore Engineering to evaluate 25 to 100 year events for non-contributing areas for Drain No. 11. Manager Stein made a motion to approve this evaluation and Manager Zetocha seconded it. Upon roll call, the motion carried unanimously.

RS #1:

Balance as of **January 31st**, 2021 \$353,591.60

Revenue :	Richland Taxes	\$6,135.93
	Sargent Taxes	\$36,915.61
	Total :	\$43,051.54
Expenditures :	Ohnstad Twichell/Engineering Selection	\$ 2,006.00
	RS #1 Maintenance Checking Acct. Balance	\$ 4.28
	RS #1 Maintenance Savings Acct. Balance	\$353,587.32

DICKEY-SARGENT JOINT BOARD: The following Dickey-Sargent Joint WRD bills were presented for approval by Wendy Willprecht, Secretary-Treasurer:

DVEC – electricity – \$131.00

OHNSTAD TWICHELL- Attorney Fees related to assessments- \$170.92

The motion approving these bills was handled during the Dickey-Sargent Joint Board meeting.

Meeting adjourned at 11:43 a.m.

LUCAS SIEMIENIEWSKI, CHAIRMAN

ATTEST:

WENDY WILLPRECHT SECRETARY-TREASURER