

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, FEBRUARY 18<sup>TH</sup>, 2021 AT 8:13 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA.

Managers present: Lucas Siemieniewski, Todd Stein, Michael Wyum, Bruce Speich and Roger Zetocha. Also present at the Sargent County Court House: Justin Gemar, Dickey-Sargent Joint Board Manager; Chris Gross, Moore Engineering the board's engineer; Sargent County Water Resource Administrator Wendy Willprecht, Tyler Mahrer and Scott Mahrer. Others present via conference call: the board's attorney, Sean Fredricks, Ohnstad Twichell; Pat Downs, Gerry Bosse, Brian Vculek, John Quandt, Leon Mallberg, Bob Banderet and Paul Mathews.

A motion was made by Manager Wyum to approve the following meeting minutes: January 21<sup>st</sup>, 2021 (Regular Board Meeting); January 28<sup>th</sup>, 2021 (Special Meeting); February 11<sup>th</sup>, 2021 (Special Meeting-Correction to minutes was to add Bruce Speich as present during this meeting). Manager Zetocha seconded the motion. Upon roll call, the motion carried unanimously.

A motion was made by Manager Wyum to approve the following bills:

**Ohnstad Twichell-** General Meetings/Mathias Utility Permit-\$648.00; Hansen App. \$124.00; Nelson App. \$117.80; Review minutes- \$52.00; Drain No. 11 (chain of title/easement template/teleconferencing) \$6,648.50 = \$7590.30

**Ohnstad Twichell-**Drain No. 11- ROW Mathews/Delahoyde-\$815.50

**Moore Engineering-Drain No. 11** (Design Services)-\$1675.00; (Reassessment) \$6075.00; (ROW/Legal Descript.) \$2100.00; (SWC Coordination) \$1097.50; **Shortfoot Creek** (NRCS Steps 5-7) \$597.50; (Scoping/Coordination) \$15,062.75; **General** (WRD Mtg./Legislative Issues) \$1915.00; **Silver Lake Dam** (Constr. Serv.) \$1240.00; **Drain No. 12** (Improvements) \$6175.00; **Drain No. 7** (Eng. Services) \$80.00 = \$36,017.75

The motion was seconded by Manager Zetocha. Upon roll call, the motion carried unanimously.

The bill submitted by the Zirnhelts regarding the trapping of beavers was tabled due to the need to investigate where the beavers were caught. Manager Stein will follow up with the Zirnhelts.

**Athan Zirnhelt-5 Beavers**  
**Karah Zirnhelt-2 Beavers**

SCWRD Administrator Willprecht also presented a tax statement that had been presented by the Sargent County Treasurer's Department for \$131.91. Per his request, this information was forwarded to Attorney Fredricks for additional handling and consideration.

**Mahrer Subsurface Permit:**

Attorney Fredricks made the comment that the permit being requested affects less than 80 acres so a permit is not legally required; however, the Mahrers' may want to protect their project from complaints in the future, and the Board has an obligation to process an application once submitted. The Mahrers' submitted *Application to Install a Subsurface Water Management System No. 2021-02*, dated February 10, 2021, and filed February 16, 2021. Under the application, Applicant seeks to install a 41-acre drain tile system in the Northwest Quarter of Section 24, in Dunbar Township, Sargent County, North Dakota. The project will include four gravity outlets that will all discharge directly into sloughs and a natural watercourse in the Northwest Quarter of Section 24; the sloughs and natural watercourse flow and discharge to the northeast, into the Northeast Quarter of Section 24.

Because the project will discharge directly into sloughs and a natural watercourse, no THIRTY-DAY NOTICES were necessary to landowners downstream under N.D. Cent. Code § 613203.1, and the Board cannot require Applicant to obtain consent from downstream landowners as a condition to the permit.

According to records submitted by Applicant, Scott Mahrer and Marcus Mahrer own the Northwest Quarter of Section 24 of Dunbar Township.

Manager Zetocha moved, and Manager Wyum seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-02*, dated February 10, 2021, and filed February 16, 2021, regarding a proposed tile project for Marcus Mahrer in the Northwest Quarter of Section 24 in Dunbar Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-02, subject to the following condition:

that Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the Board will recommend that Applicant comply with the following:

- 1) 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;
- 2) that Applicant install and maintain erosion protection at the outlets into the sloughs and natural watercourse in the Northwest Quarter of Section 24 of Dunbar Township; and
- 3) 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.

### **DRAIN NO. 11:**

#### **Project Update:**

The State Water Commission approved the cost-share extension for the Drain No. 11 project. Governor Burgum indicated he would like to see the Board and the primary project opponents resolve their differences. Attorney Fredricks discussed the possibility of engaging a third party to help the parties resolve their issues. He has also reached out to Ag Services Mediation to assist.

Attorney Fredricks asked Leon Mallberg, Bob Banderet and Paul Mathews, who were attending this meeting via video conference, if they would agree to working with a third party, and if they would otherwise share their opinions/ideas on how to resolve their objections to the Drain No. 11 project.

Bob Banderet indicated his primary concern is the six-year levy. Banderet said unless there is a reassessment, taxes will not go down. Attorney Fredricks noted that the parties have disagreed over this issue for over four years. The Supreme Court dismissed the lawsuit on that issue, and the Attorney General opinion issued in 2020 was clear that water resource districts can utilize their annual levy for "deepening and widening" an existing legal drain as long as the water resource district does not obligate the assessment district beyond the six-year maximum levy. Fredricks indicated the Board respects Mr. Banderet's opinions, but noted the Board is confident the project financing is legal.

Manager Stein spoke and said that the preliminary project specs show water leaving Meszaros Slough 10-14 days quicker. Stein added that if the drain was kept clean, the water on Mr. Banderet's land would drain quicker so he would receive a benefit. Mr. Banderet expressed a concern about a possible back up to the south drain.

Chris Gross of Moore Engineering stated the hydrology report for the project shows the project will not result in adverse impacts, and the State Engineer used that report to support its decision regarding the permit for the project. Further, Gross noted this project would allow more adequate outlets which would help alleviate the stress of flooding downstream.

Fredricks asked Leon Mallberg for his opinion on how to move forward with this project. Mr. Mallberg said that he doesn't feel he is receiving the benefit for what he is being assessed, and expressed his concerns about impacts to his property. Mr. Mallberg is frustrated that Ransom County property benefits from Drain 11 and should have to pay a portion of the project costs. Mr. Mallberg continued that he was frustrated with the amount of time it has taken to move forward with the Drain No. 11 reassessment that was requested by him. Engineer Gross explained that the Board's ability to proceed with a reassessment was frozen when the SCWRD was sued by the opponents of the Drain No. 11 project. Gross added that Section 8, belonging to Mallberg, is not part of the Drain No. 11 assessment district.

Mallberg expressed that there needs to be a solution to cut down the water flow so that his property is not flooded. Manager Siemieniewski asked Mallberg what his thoughts were on Drain No. 9 which could possibly work in conjunction with the Drain No. 11 project? Mr. Mallberg suggested he would be unjustly assessed for that project but would not comment on the merits. Engineer Gross added that the project would allow less water issues for Mallberg's Section 8.

Attorney Fredricks stated that the benefits need to be looked at during the Drain No. 11 reassessment. Manager Speich said that he has engaged with Ransom County many times to participate in the assessment of Drain No. 11, but they refuse. The Ransom County Water Board disagrees that Drain 11 benefits property in Ransom County due to wildlife easements, and even passed a motion declaring that Drain 11 does not benefit property in

Ransom County. With that in mind, if the Board attempted to assess Ransom properties, Ransom County would likely object, and that would likely result in some type of lawsuit. Manager Wyum noted the Board asked for an Attorney General opinion to seek guidance on how to deal with these challenges, but the Attorney General's Office rejected the opinion request. Manager Siemieniewski said that it would not be cost effective to pursue a lawsuit against Ransom County regarding the assessment as it would in turn cost taxpayers money. Manager Speich added that we would spend more in lawsuits and legal fees than we would ever collect from Ransom County.

Paul Mathews was asked to give his opinion on the Drain No. 11 project, but did not provide any comments. He texted Manager Stein and suggested he had technical issues and was busy with tax business, but that he would call-in if he had comments.

Manager Speich said that 75% of the landowners have signed right of way documents for the Drain No. 11 Project, and that suggests there is support for the project, in addition to the vocal support from many landowners in the watershed. Fredricks again asked if the parties had any interest in a third party mediator but Mr. Mallberg, Mr. Banderet, and Mr. Mathews had no comment.

#### **Purchase Agreements:**

Pat Downs continues to negotiate with landowners regarding remaining outstanding purchase agreements.

#### **Reassessment:**

Engineer Gross said that during the assessment process there are several different benefit types and it is necessary to determine the weight that each benefit type is given. The Board was asked to review these potential benefit types and provide feedback. All the information provided by each manager will be compiled into a master spreadsheet and a new assessment list with associated map will be produced for review. At the SCWRD meeting in March, we need to collect the information from all the Managers with a goal of rolling out a map to the landowners.

#### **Nathan Quandt Drain Application:**

The Board next reviewed *Application to Install a Subsurface Water Management System NO. 2021-01*, dated and filed February 9, 2021, filed by Nathan Quandt. Under the application, Applicant seeks to install a 130-acre drain tile system in the Southwest Quarter of Section 19 in Verner Township, Sargent County, North Dakota. The project will be a joint project, connected to Stephen Quandt's tile system in the East Half of Section 24 in Bear Creek Township in Dickey County. Stephen Quandt's system will include a pump outlet that will discharge via an underground pipeline that will run to the east, under 114th Avenue SE; the pipeline will then run across a portion of the Northwest Quarter of Section 19 of Verner Township; the pipeline will then run south and will connect to Applicant Nathan Quandt's system in the Southwest Quarter of 19; the joint project will discharge along the south boundary of the Southwest Quarter of Section 19, directly into the County Road 3 road ditch improved by the Dickey County Highway Department as permitted under SURFACE DRAIN PERMIT No. 5503. The tile discharge will flow east through the 5503 ditch, and will ultimately discharge into the Jackson Township Improvement District No. 1 project.

The Application would normally have required THIRTY-DAY NOTICES to downstream landowners under N.D. Cent. Code § 6132-03.1. However, Applicant obtained written easements from landowners along the course of the 5503 drain. With that in mind, no THIRTY-DAY NOTICES were necessary.

According to records supplied by Applicant, Nathan and Emma Quandt own the Southwest Quarter of Section 19 in Verner Township, Sargent County, North Dakota. Michael Harty owns the Northwest Quarter of Section 19 of Verner Township.

Manager Zetocha moved, and Manager Speich seconded the motion, to approve APPLICATION TO INSTALL A SUBSURFACE WATER MANAGEMENT SYSTEM NO. 2021-01, dated and filed February 9, 2021, for Nathan Quandt in the Southwest Quarter of Section 19 in Verner Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-01, subject to the following conditions:

- 1) that Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets; and
- 2) that Applicant must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Sargent County Water Resource District, and as dictated by the operating requirements of the Jackson Township Improvement District No. 1 project.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District will recommend that Applicant comply with the following:

- 1) 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;
- 2) that Applicant obtain written permission from Dickey County and Sargent County to construct, operate, and maintain a surface drain in any County right of way;
- 3) that Applicant obtain written permission from Verner Township and Bear Creek Township to construct, operate, install, and maintain any buried pipeline in any of their Township right of way; and
- 4) that Applicant obtain all other necessary and requisite licenses, permit, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

**DRAIN NO. 7:** Engineer Chris Gross said that he has been working with Dr. Pool, State Economist. Work is being done on the economic model update. Gross said that Pool advised that, due to State Water Commission direction on cost-share, Sargent County should hold off on the Drain 7 improvement project cost share submittal until the cost-share policy issues are resolved. Attorney Fredricks commented that the issue of cost-share will not be resolved until the end of the legislative session, which would be a couple months down the road. Gross added that we have our necessary drain permit, and everything is otherwise ready to submit on the application for cost-share. Gross said our biggest struggle will be putting the box culvert through the county road, due to the benefit cost analysis. Manager Siemieniewski suggested waiting until the legislative session ended before deciding on how to move forward with this project. Engineer Gross suggested submitting the project cost-share request in June, 2021. Manager Zetocha suggested tabling any further discussion until the meeting in March at which time we may be able to better reevaluate the situation. Gross said he will continue with the economic analysis. The total cost of the project will be around \$1 million. The addition of the box culvert and contingencies increased the project cost by \$200K. Gross said that if the state doesn't change its policy, the SCWRD may just have to work with the county on replacing the box culvert because it needs to be done.

**DRAIN NO. 12 IMPROVEMENT PROJECT:** Engineer Gross said this project will be discussed closer to spring.

**SILVER LAKE DAM IMPROVEMENTS:** Engineer Gross said there was no update on this project at this time.

The Office of the State Engineer requested the WRD to provide an operations update **on any dams that have the capability of retaining 1000 acre-ft or more in storage capacity.** Chris and Engineer Hassell will work on providing these operations updates to the OSE.

**SILVER LAKE DAM FENCE:** Manager Siemieniewski presented a quote for the fence from Twisted M Fencing for \$1108.00. A motion was made by Manager Speich to except the quote and move forward with the project when the weather allows. Manager Wyum seconded the motion. Upon roll call, the motion carried unanimously.

**SHORT FOOT CREEK:** The 4 -Year progress report was reviewed and the SWC approved the cost-share agreement extension for the project until 2022. Engineer Gross said the NRCS is continuing to work on their environmental impacts and benefits report. Once that is received, we will need to complete the economic analysis. Once the final report is approved by the NRCS, the WRD would have the ability to pursue final design and construction of the project alternatives studied in the RCPP. Projects through the RCPP Planning Program are eligible for 100% federal cost-share at this time. The window to apply will likely be August 2021. Gross said that next month we should have what we need from the NRCS and find out if they have completed the environmental component still needed.

**DRAIN NO. 9 EXTENSION:** Engineer Gross provided a map of what the Drain No. 9 Extension Project could look like. Gross said that we need to hear back from the petitioners about their decision on the project. If it is the intent for the project to move forward, the petition would need to be signed by 6 parties and then forwarded to Attorney Fredricks. Gross added that the SCWRD needs to submit a cost-share application by the end of February. This is just for preliminary engineering. The SWC is currently still approving these. Gross

said that it will take Commissioner Richard Ruch time to get the approval that is needed. Once Ruch has the approval, it will need to circle back to Moore Engineering. Engineer Gross foresees waiting to submit the cost-share request until June, 2021. Gross said that he needs to know if what he put together is the approximate project that has been requested by the landowners. Several Managers chimed in and said that we need to pursue the project that the landowners are requesting. Gross will put together a proposal and will bring it to the March 2021 meeting.

**CROOKED CREEK WATERSHED PLAN:** Engineer Gross stated that this project has been partially approved. Engineers from Moore met with the NRCS over the last couple weeks regarding the project and a revised scoping estimate will be provided to the NRCS that incorporates the NRCS comments. Gross assumes the federal side of this project will be approved for the additional funding being requested. Gross is hoping to have a contract from NRCS by the next meeting to allow the SCWRD to review and approve.

**ENGINEERING SERVICES INTERVIEWS:** A motion was made by Manager Wyum, and seconded by Manager Speich, to select Moore Engineering as the SCWRD engineering firm, and to approve the Final Report prepared by Fredricks as required under the Water Commission's cost-share policies. Upon roll call, the motion passed unanimously.

SCWRD Administrator Willprecht approached the board saying that she is in the office most days each week and is willing to not have one set day for "Water Board". Instead, Willprecht has offered to be available at any time to take care of water board related tasks.

**RICHLAND-SARGENT NO. 1:** We received correspondence via email on February 1<sup>st</sup>, 2021, from Monica Zentgraf of the Richland-Sargent Water Resource District. Zentgraf stated that for the JAV's payment she used the \$30,663.85 in the construction account and took the balance of this payment (\$5,072.33) out of the maintenance account as well as using the maintenance funds for Interstate Engineering's payment. A cost-share reimbursement request was sent to the SWC. Zentgraf also asked them for cost share assistance for the design engineering over-run. Zentgraf was doubtful that the joint board would get it, but thought it was worth a try. Zentgraf also sent a bill to the SD Department of Transportation for the balance they owe the joint board for the retainage we were holding. It is expected to receive \$7,067.85 from them.

Balances:

Drain RS #1 Maintenance:	\$184,154.56
Bond RS #1 Construction:	\$30,663.85
Bond RS #1 Sinking	\$0.00

Our general fund is sitting at approximately \$130K. Engineer Gross commented that with the Silver Lake Project nearly complete and most expenses paid, he felt comfortable with reinvesting these funds into a CD based on the projects at hand. A suggestion was made to increase the CD amount past \$100K. Administrator Willprecht advised to keep the amount at \$100K since we will start having some bills come through for the Crooked Creek project. We also have CD #14417 that is coming due on 3/21. A motion was made by Manager Speich and seconded by Manager Zetocha to reinvest \$100K into a CD out of the general fund and to renew CD #14417 for another year. Upon roll call, the motion carried unanimously.

Manager Wyum had asked Administrator Willprecht after the January meeting if there was a way to make our meetings more audible to those attending via teleconference. Willprecht was granted permission by the Auditor's Department to use their polycom speaker system for the SCWRD monthly meetings. When trying to hook the polycom up, it was found that the water board conference room does not have conference line capability. A motion was made by Manager Stein and seconded by Manager Speich to have Minn-Kota install a conference phone line in the water board conference room. The fee for this will vary between \$275-\$350. Upon roll call, the motion carried unanimously.

With no further business to discuss, the Board adjourned the meeting at 10:37 a.m.

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LUCAS SIEMIENIEWSKI – CHAIRMAN

ATTEST:

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WENDY WILLPRECHT - SECRETARY-TREASURER