

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, FEBRUARY 21, 2008 AT 9:00 A.M. IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, ND

Managers present: Mark Breker, Dan Jacobson, Roger White, Richard Engst and Jim Bosse. Absent none. Other present: Tom Mund, Sean Fredricks, Dick Kuehn, Wade Kuehn and Gary Thornberg.

The meeting was called to order by Sherry Hosford, Secretary and the Board proceeded to organize for 2008.

Oath of Office signed by Mark Breker and Roger White for a three-year term.

Nominations for Chairman. Motion for Jim Bosse. (Breker/White). Second and cast a unanimous ballot. (White/Engst. Motion carried)

Nominations for Vice-Chairman. Motion for Dan Jacobson. (White/Engst). Second and cast a unanimous ballot. (Breker/Engst. Motion carried)

Re-appoint Sherry Hosford as Secretary. (Engst/White). Cast a unanimous ballot. (Breker/Jacobson, unanimous)

Approve 2008 meeting dates on the third Thursday of each month. All dates and times will be on file in the County Auditor's Office. (Jacobson/Engst, unanimous)

Approve January 17, 2008 minutes and January financial report. (White/Breker, unanimous)

Approve payment of the following bills: (Jacobson/Breker, unanimous)

58690 Jim Bosse	Travel	382.54
58691 Mark Breker	Travel	318.38
58692 Crandall Construction	Gravel, rock-Dr#11-18,096; Dr#12-\$4785; Tewaukon Watershed-\$1446.60 and Dam repair-\$2818.50	27146.10
58693 Richard Engst	Travel	51.30
58694 Dan Jacobson	Travel	40.40
58695 Kingston Township	Culvert cost share	51.73
58696 Ohnstad, Twichell Law Offices	- \$720-2007 General; \$45.40-Mund/Kuehn; \$45-Kuehn/Mund; \$90-Bogart/Mund; \$121.60-Lee/Heley; \$45-Craig Speich; \$896.80-2008 General; \$90-Drain # 4	2053.80
58697 Ransom County WRD	Culvert replacement on county line	6594.98
58698 Red River Basin Comm.	White, Breker & Bosse registration	525.00
58699 Roger White	Travel	529.92
1683 Sherry Hosford	Sec salary less 20.40	246.27
DD Sargent County Bank	Withholding taxes	42.93

UNFINISHED BUSINESS:

The State Water Commission was contacted regarding the Silver Lake Dam and informed Sargent County that they are checking with their investigation department to see when the work is scheduled. Dan Jacobson and Jim Bosse agreed to meet with Chad Engels, Moore Engineering, Inc. to work on the reassessment of Drain No. 4. The exposed cables in Drain No. 11 and Drain No. 3 and the Milt McLaen culvert concern will be inspected during the annual dam inspection.

Board members met with the county commission on February 5 concerning a culvert located between Section 25 & 36 in Weber Township (known as Bergh-McLaen Waterway) and located on County #7. There is a galvanized culvert under the roadway and the culvert needs to be replaced. The original project did not include installation of a new culvert and it is cemented in on the south end. The cement was poured around the pipe to eliminate eroding and Sparky Engquist, SC road supervisor recommended that the county save the concrete abutment and that the old culvert be removed and replace with a new pipe, pull it together, insert inside the abutment and seal it up. There is water running through this culvert all the time. Jim Bosse talked with a culvert representative and suggested that a ph testing be done to see if the culvert be aluminized on the inside and the outside, which will keep this culvert from deteriorating from the salt and ph in the soil. The size and length of the culvert was not determined but it should be possible to remove and replace the existing culvert. County Commissioners agreed to authorize Sparky to do the work and the cost will be shared with the Water Board.

The Board acknowledged receipt of an Obstruction to Drain Complaint filed by William Gaukler, Scott and Terry Gutzmer, Hankinson, Loren David, Lidgerwood and Dale Wohlwend, Fortuna, CA, against Mary Jo Wohlwend concerning a dike installed on the north side of NE1/4-1-129-53 (Kingston Township) that will adversely affect the natural course of the water. The Richland County Water Board received the same complaint and a joint meeting has been scheduled for Monday, February 25, 2008 at 10:30 a.m. in Wahpeton

Tom Mund presented information from the NRCS to the Board as per their request earlier regarding the Kuehn/Mund Drainage Complaint. The letter contained elevations and a post minimal effects agreement that states there are trees in the wetland and dirt in the wetland that have to be removed. Mr. Mund has agreed to

remove these items. Board members reviewed the Post Minimal Effect Agreement which states that nothing violates the Food Security Act except the fill in the northwest corner. Mark Breker noted that the elevations for the cleaning are OK from the Food Security Act standpoint and Dave Breker; NRCS could not see anything wrong with the project. There are no violations that he could enforce. A phone call was placed to Mr. Dave Breker and he reiterated that NRCS has no jurisdiction over the depths of the township road ditches and indicated that he would have an issue if there were any wetland violations prior to 1986. Sean Fredricks asked Dave Breker if Tom Mund deepened or widened the ditch. Dave Breker can't say if it was or wasn't because he was not out there prior to the work - it was all cleaned out when he was out there. Dave Breker indicated that during the investigation all he did was check to see if the wetland was protected and he could not determine that there was any impact. Mark Breker commented on wetland #8 notes that it was "too deep". Dave Breker commented that he was unable to get out there because the water was too deep even with hip boots. Dave Breker felt there will not be a violation even when he gets out to the wetland. The NRCS determination is separate from what the Board must consider on the complaint. The Water Resource Board must decide if Mr. Mund deepened and/or widened the ditch. Richard Engst talked with Mr. Mund's contractor and received excavation numbers. Sean Fredricks said the Board must weigh the evidence obtained and received and make a determination. If there is substantial evidence to show Mr. Mund deepened or widened the ditch, the Board must order the improvements closed or filled. Mr. Mund was upset that Richard Engst spoke to his contractor and asked if this is a normal practice for the Board. Mark Breker stated that the Board does talk to other contractors to get information on projects. The contractor for Tom Mund stated that the first 200-300 feet from north to south had very little material removed. The total project was approximately 1600 feet in length and set up for a slope of 1 inch of drop per 100 feet of run. A spot ½ way down about 200' feet long the contractor noted that he took out up to 14 inches of materials from the bottom of the ditch and the last 300' to the north going to the wetland he took out virtually nothing mostly weeds. On May 17, 2007 Board members concluded that the drain tile outlet will cause excess water to flow across the Southeast Quarter of Section 30 in Hall Township, land currently owned by Dick Kuehn. The flow from the outlet will exceed the natural flow over that property, which may result in more water for longer periods of time, and will otherwise adversely affect that property. Richard Engst noted that at a Tile Drainage workshop attended by Board members on February 14, 2008, certain presenters contended that the effects of tile drainage are less severe than surface drainage. Sean Fredricks stated that adverse effects, while noteworthy, are not a determining factor on this complaint. It is noteworthy but it is not necessary to make a finding on this. Rather, the Board must consider whether or not Mr. Mund created new drainage by deepening or widening the ditch, and whether or not the drainage area affected is 80 acres or more. Richard Engst summarized there are two options to decide: 1) whether to dismiss the complaint or 2) order drainage improvements closed or filled. Richard Engst would like the Board to consider a third option and leave it up to Tom Mund and Dick Kuehn to negotiate a settlement. Richard Engst said that prior conditions have a tremendous amount of water and suggested that the Board or Dick Kuehn put in a ditch block or approach with a culvert to hold back water and safely and slowly release the water to go to the natural drain. Dick Kuehn said if dirt isn't packed in there it will wash out. Richard Engst said that Tom Mund will pay for cleaning out natural drain through Mr. Kuehn's pasture so when water gets to pasture it will flow through without causing any adverse affects - a simple cleanout with no downstream easements needed. Dick and Wade Kuehn wondered why this approach would stay and not wash out. If it is rip rapped properly and made wide and high enough, the approach should stay in place. There was a question of whether there should be a culvert in this area. Richard Engst stated that with the removal of 14" of dirt a culvert in this area should help the problem. Also, if it were regulated it would be better than before and the tile would run all the time. The Board discussed whether or not the contractor should come to a Board meeting. Tom Mund contended that in pre-laser days the fill will silt in at the beginning of the ditch. There is 3 feet of drop across Dick Kuehn's and the water does not cross the road but backs up in section 32 to the east and takes 8-9 days to drain. Tom Mund asked for dismissal of this complaint. Richard Engst commented that the east west township roadway at north end of data sheet shows quite a bit of sediment. Sean Fredricks indicated a landowner does not need a permit to conduct maintenance of an existing drain or ditch, which includes removal of silt or sediment. Jim Bosse commented that with the number of inches of dirt that was taken out does the Board have proof that it was virgin ground or silt. Dick Kuehn said that with the dirt taken out other years, chances are slim that there is not much silt left. Tom Mund said he hasn't touched that spot in 10 years. Jim Bosse asked - does the Board have proof that it was deepened and widened. Jim Bosse asked if there was any objection from either party to installing an approach with a culvert high enough for Tom Mund to get to his field. Mark Breker asked - is there a violation - once we determine this the Board can make a decision. Mr. Kuehn did not offer any evidence to show this was more than maintenance of an existing drain. A motion to dismiss complaint based on lack of evidence. (Breker/White. Discussion - Dan Jacobson talked about depth but we have not talked about width no proof there is a violation no original elevation and hearsay what was removed from the ditch. Sean Fredricks - the Board must have substantial evidence that it was deepened or widened and how the Board arrives at this determination is up to the Board. The question was called to dismiss the complaint based on lack of evidence. Roll call

vote: Aye: White, Jacobson, Breker and Bosse. Nay: Engst. Motion carried. Tom Mund conceded that he should have talked to the township, even though he feels the outcome would have been the same.

Gary Thornberg met with the board to discuss Application to Drain No. 3215. The ND State Water Commission responded on September 17, 2007 that this application requests a permit to install a drain tile in the South half of the Northeast quarter and the North half of the Southeast quarter of Section 23-129-55 (Weber Township). Mr. Thornberg has received an easement from Charles M. and Mary Beth Anderson, permission from Weber Township to use the road ditch and the state has reviewed and returned the application stating that it has been determined to not be of either statewide or interdistrict significance. The Board asked Mr. Thornberg to complete the eight factors considered for the application, sign the Affidavit of Applicant in Support of Drain Application and get approval on any wetland issues. When these items are completed the Board will review this application for approval.

Board members reported on the tile drainage seminar they attended. The State Water Commission is recommending that easements be obtained from downstream landowners 1 mile from the end of the project site. A MN County adopted a policy that restricts how much water can flow in the 24 hour time to ¼ inch. More restrictions are being placed on tile draining because of the increase in installation of tile. ND will be reviewing state laws and changes made during the next legislative session. Ground water may be an issue with tile systems.

The Board recently received a check from the state for DR1713, PW 126 Package #34. This payment is for SCWC# 1 in Section 8-132-54 to excavate sediment, clay embankment and rip rap. On September 20, 2007 the Board withdrew this PW and non-concurred with the project costs. FEMA processed the PW and approved payment of \$12,212.64. The Board agreed to accept this project and authorize repairs to the eight sites that are described in the project worksheet.

Board members received and read a letter from NRCS, Bismarck stating that in the future, NRCS will provide additional oversight and follow up on operation and maintenance (O&M) agreement activities to ensure counties are meeting their responsibilities involving the safety of NRCS assisted project dams. Three dams in Sargent County are listed, Brummond-Lubke, Frenier and Nelson and all are considered low hazard classification. Only Brummond-Lubke and Frenier have a requirement for Emergency Action Plans (EAP). Sherry will contact NRCS to find out what is required for EAP's.

A motion to adjourn at 12:45 p.m. (Jacobson/Engst, unanimous)

JAMES BOSSE - CHAIRMAN

ATTEST:

SHERRY HOSFORD - SECRETARY