

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, OCTOBER 15, 2020 AT 8:00 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 Absent: None. Present via video conference: Sean Fredricks, the Board’s attorney; Paul Mathews, Leon Mallberg and Sargent County Commissioner Richard Ruch. Others present at the courthouse: Chris Gross, the Board’s engineer; Sherry Hosford, Secretary-Treasurer.

Manager Wyum moved to approve the Board’s September 17 and October 2, 2020 minutes and September financial statement. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Speich moved to approve payment of the following bills:

80958	JBX, LLC	Dr#11-Harlem 21/28 and Sargent 31/Brampton/6	28,279.00
80959	William E Kurschat Trust	Dr# 11 Purchase Agreement	37,927.50
80960	Moore Eng. Inc.	General meetings-\$1,326.00; Permits and Complaints-\$187.50; Silver Lake Design Eng. - \$5,277.50; Shortfoot Creek-\$7,447.50; Dr#7-Project Development-\$1,240.00;Dr#9 Extension-GF-\$904.65; Dr#9 Extension-Bond monies - \$5,000.00; Dr#11 – Culvert Replacements - \$2,409.02	
		Dr#11-ROW-\$3,912.50; Dr#11-Legal Descriptions-\$790.00; Dr#11-Permitting-\$270.00; Dr#12-Const. Engineering-\$6,325.60; =	
		TOTAL	35,090.27
80961	Ohnstad Twichell	General meetings-\$754.60; Kelley-Mathews-\$164.00; Neil Planteen permit-\$621.60; Bruce Bosse permit - \$414.90; Jason Bosse Permit-\$445.10; Dave and John Zetocha permit - \$432.80; John Quandt permit-\$533.00; Silver Lake Dam - \$205.00; Dr#11 Imp. Project –Easements, Purchase Agreements and Abstract review-\$11,996.83; Dr#12 Imp Bond Issue-\$2,500.00 =	TOTAL 18,067.83
80962	The Sargent County Teller	Secretary-Treasurer ad	34.60
80963	Lucas Siemieniewski	Travel	105.80
80964	Bruce Speich	Travel	51.75
80965	Starion Bond Services	Dr#7 Interest and Fees	2,102.50
80966	Todd Stein	Travel	31.63
80967	True North Steel	Dr# 11 Culverts	26,709.80
80968	Michael Wyum	Travel	23.00
80969	Roger Zetocha	Travel	28.75
18392	Sherry Hosford	Salary less taxes	557.65 1,642.35
18393	Roger Zetocha	2 PD less 18.36 taxes	221.64
18394	Lucas Siemieniewski	5 PD less 45.90 taxes	554.10
18395	Todd Stein	4 PD less 36.72 taxes	443.28
18396	Bruce Speich	2 PD less 18.36 taxes	221.64
18397	Sherry Hosford	Dickey-Sargent Admin less 94.44 taxes	996.81
18398	Michael Wyum	4 PD less 36.72 taxes	443.28
DD	Sargent County Bank	Withholding taxes	
			1,217.31

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

DRAIN NO. 11: Chris reported that purchase agreements are being signed and returned. The Jacqueline Lamb Trust and Carol Scheer PA’s have been signed and returned. Manager Stein moved to authorize the Chair and Secretary to sign both agreements. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

DRAIN NO. 11 PERMIT NO. 4857: On November 17, 2016, the Board approved APPLICATION FOR SURFACE DRAIN NO. 4857 regarding DRAIN 11 IMPROVEMENT PROJECT NO. 2016-01, and the Board provided a NOTICE OF DECISION to the North Dakota State Engineer’s Office (“OSE”) regarding the approval. Under N.D. Admin. Code § 89-02-01-09.11, construction on any permitted project must be completed within two years. However, the Drain 11 project was the subject of litigation and OSE previously indicated the two-year window regarding project construction did not commence until any appeal period in the litigation concluded. The North Dakota Supreme Court ruled in the Board’s favor, and issued a decision in the matter on February 26, 2019. Therefore, the two-year permitting period would expire February 26, 2021. However, the Board has authority under N.D. Admin. Code § 89-02-01-09.12 to approve up to two one-year extensions. Manager Zetocha moved, and Manager Speich seconded the motion, to approve a one-year extension regarding APPLICATION FOR SURFACE DRAIN NO. 4857 for the Sargent County Water Resource District, subject to the conditions previously attached by the State Engineer. Upon roll call vote, the motion carried unanimously. Sean Fredricks will notify the State Engineer’s Office of the extension, through February 26, 2022.

DRAIN NO. 11 REASSESSMENT: Chris provided more information on progress of Drain No. 11 reassessment. Chris presented an engineering proposal for the work to include 1) Utilization of Available GIS files; 2) Create/Obtain New GIS files; 3)Site Investigations/Ground Truthing/Field Data Collection; 4) Public meetings/hearings; 5)Assessment List development and 6) Coordination with Sargent County for a total not to exceed \$71,000 unless Sargent, Dickey and Ransom Counties do not have GIS data – which would then have

to be created by Moore Eng. Inc. The timeline for completion of the reassessment is October, 2021 with the condition that Sidwell is on time providing the Sargent County data. Manager Speich moved to authorize Moore Eng. Inc. to proceed with the reassessment as per the Scope of Work outlined and the Engineering Proposal presented. Manager Stein seconded the motion. On roll call vote the following Voting Yes: Stein, Zetocha, Wyum and Speich. Voting No: Siemieniewski. Motion carried.

DRAIN NO. 11 CROSSING BETWEEN SECTIONS 21 AND 28 IN HARLEM TOWNSHIP (PTACEK'S) AND EMERGENCY WORK BETWEEN SECTION 31 IN SARGENT TOWNSHIP AND SECTION 6 IN BRAMPTON TOWNSHIP: JBX, LLC has completed the work at both locations. The location between Section 31/Section 6 was creating hazardous conditions as the culverts were rusted out from the bottom and caving in causing unsafe travel conditions. Total cost of both projects was \$28,279.00 for contractor work and \$17,395.54 for culverts.

DRAIN NO. 11 CULVERT ISSUE IN SECTIONS 22-23-26-27 - JACKSON TOWNSHIP: The culverts are included in the bills today but the work has not commenced. Additional culverts were ordered and will be used in other locations.

TEXAS CROSSING ¼ MILE SOUTH OF SPRAGUE LAKE WITHIN THE TEWAUKON WATERSHED DISTRICT: Manager Stein will contact Jerry Bohnenkamp regarding placing two tandem loads of rock in this crossing as per a request from Rick Hoistad after the crop has been removed.

DRAIN NO. 7: No information from the state on the project. Chris Gross will visit with Damon DeVillers, County Engineer for Sargent County regarding the culvert crossing on County Road # 12, which is part of this project.

DAVE AND JOHN ZETOCHA APPLICATION FOR SUBSURFACE DRAINAGE PERMIT: Present Dave and John Zetocha, Katie Vculek and Ben Longlet, Agland Solutions. The Board reviewed an *Application to Install a Subsurface Water Management System NO.2020-09*, dated August 12, 2020, and filed August 24, 2020, for Dave Zetocha and John Zetocha. Under the application, Applicants seek to install a 71-acre drain tile system in the Northeast Quarter of Section 14, in Denver Township, Sargent County, North Dakota. The project will discharge via a pump outlet located in the southwest corner of the Northeast Quarter of Section 14; the discharge will flow to the southwest, over a portion of the Southwest Quarter of Section 14, until ultimately discharging into Sargent County Drain No. 11.

According to records submitted by Applicants, Dave Zetocha and John Zetocha own the Northeast Quarter of Section 14. With regard to downstream property, Brian Vculek is purchasing the Southwest Quarter of Section 14 from Dianne F. Witkowski, as Trustee of the Dianne Witkowski Revocable Family Trust, under a contract for deed.

Technically, the project proposed by Applicants does not require a permit since the project will include less than 80 acres of tile; however, Applicants indicated their preference to proceed with a permit to protect their project from legal challenges. The Board previously provided THIRTY-DAY NOTICES to the downstream landowners in the Southwest Quarter of Section 14.

In response to the THIRTY-DAY NOTICE provided by the Board, Mr. Brian Vculek, as an owner of downstream property, previously submitted a "technical evidence" report to object to the proposed tile project. Katie Vculek echoed a statement in the report that, because the project does not discharge directly into a legal assessment drain, the application does not comply with North Dakota law. Sean Fredricks clarified that the tile statute does not require a project to discharge directly into a legal assessment drain; rather, if a project does not discharge directly into a legal assessment drain, natural watercourse, pond, slough, or lake, the tile application requires downstream notices under Section 61-32-03.1. Further, downstream landowners have the opportunity to submit "technical evidence" to object to the project, as Mr. Vculek did in this case.

Sean Fredricks noted that, before a Board can require any tile applicant to obtain written consent from a downstream landowner as a condition to a permit, the downstream landowner has the burden to submit a "technical evidence" report that demonstrates how the tile project will "flood or unreasonably harm" the downstream landowner's property. The Board's engineer, Chris Gross, reviewed the "technical evidence" report, and provided a synopsis of the report to the Board. Chris noted the report submitted by Mr. Vculek's engineer did not provide any evidence or data that the project will result in downstream damages. For example, the report quantified how much water the project would discharge, but did not identify what acreage or how many acres would be impacted, or how the project would impact those acres. Rather, the report simply opined that the project would impact Mr. Vculek's property.

Mr. Fredricks explained the issue for the Board to determine is whether or not the "technical evidence" report submitted by Mr. Vculek establishes enough evidence for the Board to conclude that the project will flood or unreasonably harm Mr. Vculek's property. If so, the Board can require Applicants to obtain a "Notarized Letter of Approval" from Mr. Vculek as a condition to the permit. More specifically, Sean indicated the tile permitting statute, Section 61-32-03.1, provides, in relevant part:

If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system.

However, if the Board finds the “technical evidence” does not prove the project will adversely impact Mr. Vculek’s property, the Board cannot require Applicants to obtain any consent from Mr. Vculek as a condition to the permit. Sean and Chris both noted the 2017 legislation that created Section 61-32-03.1 really shifted the burden of proving damages to the downstream landowner. Prior to 2017, water resource districts had more authority to make determinations regarding downstream impacts, and to attach conditions to tile permits to mitigate potential impacts. As a result of the 2017 legislation, that burden shifted to the downstream landowners to prove a project will harm their property.

The Board noted they definitely empathize with Mr. Vculek, and downstream property owners like him in these situations. However, the consensus among the Board was that, based on Chris’ review of the “technical evidence” report, and his professional opinion that the report does not actually prove the project will damage Mr. Vculek’s property, the Board would have difficulty concluding the report proves the project will result in adverse impacts to Mr. Vculek’s property.

Manager Wyum moved, and Manager Speich seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2020-09*, dated August 12, 2020, and filed August 24, 2020, for Dave Zetocha and John Zetocha in the Northeast Quarter of Section 14 in Denver Township, without any condition to require downstream consent, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-09, subject to the following conditions:

- 1) that Applicants notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets; and
- 2) that Applicants must turn off any pump outlets and otherwise close all outlets during “critical flood periods,” as determined by the Sargent County Water Resource District.

Upon roll call vote, Managers Wyum, Speich, and Stein vote in favor of the motion. Chairman Siemieniowski voted in opposition to the motion. Based on previous conflict analysis conducted by the Board related to this Application, Manager Zetocha abstained. The motion carried.

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

- 1) that Applicants 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; and
- 2) that Applicants 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. 12 IMPROVEMENT PROJECT: The crane for the project was mobilized on 10/14/20. Work should commence on 10/19/20 with a two-week time frame for culvert placement and ditch work.

SILVER LAKE DAM IMPROVEMENTS: Chris gave a progress report on the project, which is near completion and the contractor would like to do a final walk through with two board members next week Monday. Luke and Michael will meet the contractor.

SHORTFOOT CREEK RCCP PROJECT UPDATE: NRCS has determined that there is not enough environmental benefit from Sites 10 and 12 and suggests eliminating both and keeping Site 7. Moore Eng., Inc. will continue to look at downstream areas and a possible new legal drain to help contain the water. A final report is proposed to be in the hands of NRCS by 12/31/2020.

DRAIN NO. 9 EXTENSION: MEI’s survey crew has completed profiles on the existing drain, completed a Hydrology and Hydraulic Study and determined that the channel has capacity for a 5-10-year event. The current drain assessment district was reviewed and Chris will meet with Richard Ruch to go over the findings.

CROOKED CREEK WATERSHED PLAN PROPOSAL DAM SITE: No reply from NRCS.

AGENCY SELECTION COMMITTEE – INITIAL REPORT: Sean presented an INITIAL REPORT regarding the engineering selection process required under the State Water Commission’s cost-share policy. Sean explained the Board must conduct a Request for Qualifications (RFQ) at least every three years to qualify for cost-share regarding engineering expenses. Manager Stein moved to approve the INITIAL REPORT. Manager

Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously. Sean's office will arrange for publication of the RFQ.

AG'S OPINION ON RECENT LETTER SENT TO THE AG BY THIS BOARD: Board members and Sean were disappointed in the response that was received by an Executive Assistant to the Attorney General. Sean suggested getting a legislator to submit the request to the AG and Bruce agreed to talk with Senator Jim Dotzenrod from District 26. Sean briefly addressed the legal right to finance and fund projects, including the Attorney General's indication that, under North Dakota law, water resource districts may assess properties in a drain assessment district beyond the equivalent of six years of maximum levies. Sean noted that, even though the Board has no intention of indebteding the Drain 11 and Drain 12 maintenance districts beyond the equivalent of six years of levies, the Attorney General's opinion supports the Board's methodology regarding the financing and funding of both projects. Sean also briefly noted his email exchanges with Sargent County State's Attorney Jayne Pfau. Sean plans to engage the State's Attorney more frequently to keep her apprised of the Board's projects.

RICHLAND-SARGENT NO. 1: The Richland-Sargent Joint Board Secretary provided the following RS #1 bill for consideration and approval as follows:

1. JBX LLC Level Ditch Spoil - \$2,100.00

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

Luke mentioned to the board the need to do another 1.5 miles of cleaning from the center of Section 35 to the southwest edge of Section 2 in Kingston Township. Manager Zetocha moved to authorize JBX, LLC to clean this area not to exceed \$15,000. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously. Luke will contact the RS#1 Secretary with this information.

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

1. DVEC – Electricity \$1,644.00
2. Starion Bond Services – Series A Interest & Fees \$40,553.75

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

SECRETARY-TREASURER REPLACEMENT: Michael Wyum reported that on October 8th two interviews were given for the Secretary-Treasurer replacement. Sherry Hosford has announced that since she has held this position since June 15, 1980, it is time to retire and her retirement will be effective December 31, 2020. Manager Wyum moved to hire Wendy Willprecht as the new Secretary-Treasurer with her position starting November 1, 2020 and working 15 hours per week at a wage of \$25.00/hour. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously. Wendy currently serves as the Emergency Manager/911 coordinator for Sargent County and works 4 days/week from 7:30-3:30 in the courthouse. She will spend the fifth day in the water board office allowing other hours for replying to emails, phone calls and other duties that are necessary for this position. Sherry also agreed to train Wendy and be available for assistance as needed.

With no further business to discuss, the Board adjourned the meeting at 11:20 a.m.

LUCAS SIEMIENIEWSKI – CHAIRMAN

ATTEST:

SHERRY HOSFORD, SECRETARY-TREASURER