

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, NOVEMBER 19TH, 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; Todd Satler, Brian Vculek's attorney; David Zetocha and Bob Banderet. Others present at the courthouse: Chris Gross, the Board's engineer; Wendy Willprecht, Secretary-Treasurer; Sargent County Commissioner Richard Ruch; Brian Vculek; and John Quandt.

Brian Vculek spoke to the board. Mr. Vculek stated he felt there were details that were missing in the October 15th meeting minutes that persuaded the board to vote the way they did. He requested a complete copy of the minutes. Vculek stated that the new tile law comes with technology that takes time to learn. He suggested that the permit granted to Dave and John Zetocha needed another look by the Water Board. Vculek suggested that a transcript of the recorded meeting from October 15th, be added to the Board's minutes. This recording was done, unbeknownst to the Board, by Leon Mallberg or Paul Mathews. Sean Fredricks stated the Water Board does not have an obligation under North Dakota law to prepare a verbatim transcript of a meeting to serve as meeting minutes, and that the board should adopt the minutes as they see fit. Fredricks added that the Board could submit the transcript on appeal which would preserve the record and should be sufficient. The attorney for Mr. Vculek indicated they would pay to prepare a transcript of the recording made by Mr. Mallberg or Mr. Mathews, and would submit the transcript and recording to the Board for review and consideration.

Manager Wyum moved to approve the Board's minutes from October 15th, with the modification that any reference to Julie Vculek should be changed to Katie Vculek. Manager Speich seconded the motion. Upon roll call vote, manager Zetocha abstained due to previous conflict analysis related to the Zetocha tile permit, and Managers Siemieniewski, Wyum, Stein, and Speich all voted in favor of the motion. The motion carried. The Board agreed that, if the transcript was accurate, the Board would attach a copy to the Board's minutes.

Manager Zetocha moved to approve the Board's October 26th, minutes. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Speich moved to approve the November 5th, minutes. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Stein moved to approve payment of the following bills:

81185	D.L. Barkie Construction, Inc.	Silver Lake Dam Improvement	\$144,765.50
81186	Helwig Excavating	DR#11-Sect. 23/26 Jackson Cleaning	28,420.00
81187	Ryan Hogness	DR#7-Beaver Control	100.00
81188	Ohnstad Twichell	General meetings-\$907.69; Engineering Services-\$290.10; Zetocha Permit -\$781.60; Neil Planteen Permit-\$69.20 ; Drain 11 Improvement Project -\$7653.60; Drain 11 ROW -Mathews/Delahoyde-\$1312.00 =	TOTAL \$11,014.19
81189	SC Abstract & Title Co.	DR#11 Abstract Scheer/Locken	601.10
81190	Lucas Siemieniewski	Travel	43.70
81191	Bruce Speich	Travel	23.00
81192	Todd Stein	Travel	39.10
81193	Michael Wyum	Travel	11.50
81194	Roger Zetocha	Travel	28.75
18520	Sherry Hosford	Salary less taxes 557.65	1,642.35
18521	Roger Zetocha	4 PD less 53.05 taxes	426.95
18522	Lucas Siemieniewski	4 PD less 36.72 taxes	443.28
18523	Todd Stein	5 PD less 45.90 taxes	554.10
18524	Bruce Speich	4 PD less 36.72 taxes	443.28
18525	Michael Wyum	3 PD less 27.54 taxes	332.46
81206	Wendy Willprecht	Salary less taxes 276.85	1,348.15
DD	Sargent County Bank	Withholding taxes	1,513.03
81207	ND Dept. of Trust Lands	DR#11 Project PA & Easement	1,393.75

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

DRAIN NO. 11: Discussion was had regarding the State Trust request for payment in the amount of \$1393.75. Engineer Gross suggested approving the payment and to send the check to Moore Engineering and he will include it with the requested application.

Motion to approve \$1393.75 to the ND Department of Trust Lands was made by Manager Wyum and seconded by Manager Zetocha. Upon roll call vote, the motion carried unanimously.

Chris reported that purchase agreements are being signed and returned. The Deborah M Bosse Revocable Living Trust, Geoffrey Bosse et al, Locken Family Land Trust, Rust Family LP PA's and the Jason Bosse Living Trust have all been signed and returned. Manager Wyum moved to authorize the Chair and Secretary to sign all agreements. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously. Chris stated the design is on hold until the Board secures the requisite right of way. Chris stated that 9 have signed and returned purchase agreements. There are 6 that remain outstanding and 4 remain on-hold pending regulatory review. Chris submitted the 404 permit application but cannot move forward until we hear back from the Corps. Chris had nothing new to present but there is activity. Chris did not anticipate any mitigation requirements.

SURFACE DRAINAGE PERMIT APPLICATION NO. 5503: John Quandt addressed the Board regarding the State's solicitation of views regarding the State's "statewide or interdistrict significance" review for this application. Under the application, Dickey County is seeking a permanent permit for its drain east of Oakes; the State previously issued an emergency permit for the project. Comments for statewide significance can be submitted to the state. Mr. Quandt stated that this project will not be a benefit for Sargent County, but it won't be a detriment either. Quandt said that Chairman Seyer of Verner Township is in favor of the project as is Chairman Roney from Bear Creek Township. Dickey County is in favor of the project and Quandt provided a list of landowners that have stated they have no complaints or concerns regarding the project. Quandt reported the project is approximately 99% complete. The culvert has been put through the RR bed. The north branch still has 6 inches of water, but it should soon be to the normal surface. The project has been in full contact with the NRCS. Quandt was looking for a favorable comment from Sargent County. A motion was made by Manager Stein to direct Sean Fredricks to submit comments to the State Engineer's Office in support of the project, and in support of conversion of the emergency permit into a permanent surface drainage permit. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

TEXAS CROSSING ¼ MILE SOUTH OF SPRAGUE LAKE WITHIN THE TEWAUKON WATERSHED DISTRICT: Manager Stein stated Jerry Bohnenkamp has not had time to work on this project so there has been no new progress.

DRAIN NO. 7: Chris Gross has not been able to visit with Damon DeVillers, County Engineer for Sargent County regarding the culvert crossing on County Road # 12, which is part of this project. Chris did say, though, that there is a cost-share opportunity for this project. However, the State Water Commission has been tabling recent cost-share requests for drainage projects; the State is evaluating a recent Attorney General Opinion. It was suggested that the Board submit a larger project for cost-share to the Water Commission in case the opportunity/funding becomes available.

The Board next reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN NO. 5477, previously submitted by the Sargent County Water Resource District regarding SARGENT COUNTY DRAIN NO. 7 IMPROVEMENT PROJECT NO. 2020-01. The Board previously approved a RESOLUTION AUTHORIZING SARGENT COUNTY DRAIN NO. 7 IMPROVEMENT PROJECT NO. 2020-01, dated June 18, 2020. The Board published the RESOLUTION in the *Sargent County Teller*. In the RESOLUTION, the Board defined the project as follows:

The Project will consist of reconstruction of the downstream two miles of Drain 7 (aka Water Channel No. 1) east of Milnor, North Dakota, in Sections 13 and 14 of Milnor Township and Section 18 of Hall Township. The Project will include the replacement of two culvert crossings. The Project will begin on the south side of State Highway 13, approximately 1.5 miles east of Milnor, and will continue southeast approximately one-half mile, where the Project will cross 143rd Avenue SE. The project will continue southeast for approximately 1 mile, where the Project will cross County Road 12. The Project will continue approximately 1,000 feet of channel, where Drain 7 outlets into the existing natural waterway in Section 19 of Hall Township. The Project will include topographic surveys, hydrologic and hydraulic analysis, culvert crossing and channel design, installation of intercept drainage culverts with flap gates for adjacent field drainage, installation of riprap erosion control, roadway crossing improvements to township and county roads, purchasing of permanent and temporary rights-of-way, utility relocations, and other miscellaneous items as necessary.

The State Engineer reviewed the application and concluded the project is not "of statewide or interdistrict significance." The Board reviewed Moore Engineering's proposed responses to the eight elements under 890201-09.2 of the North Dakota Administrative Code. The Board determined no hearing was necessary under 89-02-01-09.1(2) of the North Dakota Administrative Code; the Board will obtain any right of way necessary to

accommodate the project and landowners in the area support the project. The Project will actually reduce damages to properties in the area.

Manager Wyum moved to adopt Moore Engineering's responses to the 8-point questionnaire under Section 89-02-01-09.2 of the North Dakota Administrative Code; to approve APPLICATION FOR SURFACE DRAIN NO. 5477; and to authorize the Chair to sign PERMIT FOR SURFACE DRAIN NO. 5477. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously. Sean Fredricks will provide notice of the Board's decision to the State Engineer's Office.

Sean Fredricks encouraged Water Board Managers to attend the virtual Water Commission Meeting to be held on December 11th since the Board's Drain 11 cost-share update is on the agenda. Chris stated he would send out the information for this meeting.

DRAIN NO. 12 IMPROVEMENT PROJECT: Construction started this week. Comstock provided a schedule for the project. The project was to start on Monday November 16th, with an expected completion date of December 22nd.

1. The single culvert will go in first next week.
2. Then the double culvert will go in which should take about 8 days.
3. Then the back fill will be done to bring the road back to grade.

The road will need to be closed through December 23rd.

A discussion was had regarding the delay in this project started by Comstock. The completion of this project was initially scheduled for Friday, November 20th. Some explanations regarding the delay were crops needing to be taken off and box culverts taking longer to get. The topic of assessing liquidated damages was discussed due to delays; under the contract, if the Board wishes to preserve its rights to assess liquidated damages (LD's), Sean will have to serve a "claim" letter on Comstock. Engineer Gross said that a letter should be sent upon completion that lays out addressing LD's. The project is 5 weeks delayed. Chris isn't disputing the timeframe that it will take for Comstock to complete this project, just the start date. The weather conditions are said to be favorable moving forward, so there is optimism that there will be time to complete the project under manageable weather conditions. Sean Fredricks will send a claim letter to Comstock stating the Water Board is reserving the right to assess LD's at a later date.

Discussion was had about breaking the project up into 2 parts, thus leaving the ditch portion of the project until next spring/summer and to focus on the box culvert this fall. Manager Zetocha stated that the Board should move forward with the project as a whole. This idea was shared by the other 4 Water Board Managers.

SILVER LAKE DAM IMPROVEMENTS: Chris presented a pay application from D.L. Barkie. Work completed to date is around \$154,000. Testing will be around \$14,000 lower than estimated. Project as a whole is about \$15,000 under budget. A motion was made by Manager Stein to pay \$144,765.50 to D.L. Barkie for work completed. Motion was seconded by Manager Speich. Upon roll call, motion passed unanimously.

Manager Siemieniewski said that workmanship down at the dam looks great. The area was seeded last week. The seeding was not reflected in the pay application.

SILVER LAKE DAM FENCE:

The suggestion was to work more on this project this winter. Manager Siemieniewski said that the purpose of the fence would be so that no one falls unnecessarily from the spill way. Siemieniewski will contact contractor (s) to get a bid for the chain link fence.

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.

Engineer Gross said that Sites 10 and 12 would need to become a private project undertaken by the landowners.

DRAIN NO. 9 EXTENSION: Moore survey crew has completed the topographic survey on the existing drain, completed a Hydrology and Hydraulic Study and determined that the channel has capacity for a 5-10-year event.

The existing drain culvert crossings can handle a 2-5-year event. If petitioners want a 10-year event, mitigation downstream would be necessary. The existing berm could handle a 10-year event with the water shed upstream maintaining. There would be a need to channelize and direct water into the drain.

The Board suggested getting the land owners, affected by this drain project, together to discuss. Gross addressed Brampton Township Board Member Richard Ruch, who was in attendance, and said that the petitioners would need to make a formal petition of what they want to do. Manager Siemieniewski suggested a special meeting. Details were discussed and the following was decided upon:

Cogswell Community Center
Wednesday, December 9th, 2020
Time: 6:00 p.m.

Topics will include:

1. Survey of drain
2. Proposed crossing
3. Downstream capacity
4. Suggested paths to take and decisions to get there.

Chris will assist with getting the invitee list together as well as the invitations themselves.

CROOKED CREEK WATERSHED PLAN PROPOSAL DAM SITE: We are awaiting the cost share approval or denial. If we are denied, the next submittal date will be in April 2021.

AGENCY SELECTION COMMITTEE – INITIAL REPORT: Sean Fredricks explained the Board must conduct a Request for Qualifications (RFQ) at least every three years to qualify for cost-share regarding engineering expenses. To date the only submittal, we have received is from Moore Engineering. Despite there being no other submissions, we need to send a formal invitation for Chris Gross to interview. This can take place at the regularly scheduled December Water Board meeting. A motion was made by Manager Wyum to send a formal invitation and request an interview from Chris Gross of Moore Engineering to take place at the regularly scheduled December, 2020, Water Board meeting. Manager Zetocha seconded the motion. Upon roll call the motion passed unanimously.

AG'S OPINION ON RECENT LETTER SENT TO THE AG BY THIS BOARD: Manager Speich said he has not yet talked to Jim Dotzenrod. He still plans to meet with him even though he did not win reelection. It was said that Jim will be in office until the 1st of the year.

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

- | | |
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| 1. DVEC – Electricity | \$1,548.00 |
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Manager Stein made a motion to accept the bill for consideration. Manager Zetocha seconded the motion. Upon roll call the motion passed unanimously.

A signature was being requested for the Dickey-Sargent Joint Water Resource District audit of financial statements. Manager Wyum made a motion to approve Manager Siemieniewski's signature of the statement. Manager Speich seconded it. Upon roll call, the motion passed unanimously.

DAVE RASMUSSEN APPLICATION TO INSTALL SUBSURFACE WATER MANAGEMENT SYSTEM NO. 2020-10: The Board reviewed an *Application to Install a Subsurface Water Management System No. 2020-10*, dated and filed October 29, 2020, for Dave Rasmussen. Under the application, Applicant seeks to install a 373-acre drain tile system in Section 35, in Taylor Township, Sargent County, North Dakota. The project will discharge via three gravity outlets, all located in the Northwest Quarter of Section 35; all three outlets will discharge directly into a natural watercourse.

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

According to records submitted by Applicant, the Kim and Sandy Rasmussen Land Partnership, LLP, owns all of Section 35 of Taylor Township.

Manager Zetocha moved, and Manager Stein seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2020-10*, dated and filed October 29, 2020, regarding a proposed tile project for Dave Rasmussen in Section 35 in Taylor Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-10, subject to the following condition:

- 1) 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 all outlets into the natural watercourse in Section 35; 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.

GREG NELSON APPLICATION TO INSTALL A SUBSURFACE WATER MANAGEMENT SYSTEM:

Discussion was had regarding this application. It was noted that Mr. Nelson has not provided a detailed flow map. Upon receipt of the map, the board will further discuss the application.

DAVID WEHLANDER APPLICATION TO INSTALL A SUBSURFACE WATER MANAGEMENT SYSTEM NO. 2020-12:

The District reviewed an *Application to Install a Subsurface Water Management System No. 2020-12*, dated September 16, 2020, and filed November 12, 2020, for David Wehlander. Under the application, Applicant seeks to install a 146-acre drain tile system in the Northeast Quarter of Section 12, in Hall Township, Sargent County, North Dakota. The project will include a single pump outlet located in the southeast corner of the Northeast Quarter of Section 12; the pump will discharge into the west road ditch along 150th Avenue SE; the discharge will flow north in the road ditch, along the east boundary of the Northeast Quarter of Section 12; the discharge will flow through an existing culvert under 79th Street SE, into the Tri-County Drain, a legal assessment drain owned and operated by the Tri-County Joint Water Resource District.

The Application ordinarily would have required a THIRTY-DAY NOTICE to the landowners downstream of the tile outlet under N.D. Cent. Code § 613203.1; however, in this case, Applicant owns the property downstream. Further, once tile discharge outlets into a legal assessment drain, the Board no longer has jurisdiction and no notices are required under § 613203.1.

According to records submitted by Applicant, David Wehlander owns the Northeast Quarter of Section 12 of Hall Township.

Manager Speich moved, and Manager Stein seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2020-12*, dated September 16, 2020, and filed November 12, 2020, regarding a proposed tile project for David Wehlander in the Northeast Quarter of Section 12 in Hall Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-12, 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;
- 2) that Applicant install and maintain erosion protection at the outlet into Hall Township's road right of way; and
- 3) 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.

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 obtain written consent from Hall Township to discharge into or otherwise utilize any of its road right of way; 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.

HEAD OF THE MOUNTAIN NATURE PRESERVE: Discussion was had regarding installing a gate as has been previously suggested. The Board felt it was best to table editing the wording regarding fires and who is allowed to combat them until our regularly scheduled December 2020 meeting.

Manager Wyum and Manager Speich have completed their defensive driver's course. Manager's Siemieniewski, Stein and Zetocha asked to have the on-line course information forwarded to them. Secretary-Treasurer Willprecht will reach out the Treasurer Toepke to forward the on-line class information.

It was asked that the letter from one Leon Mallberg be saved as part of the Drain 11 file.

With no further business to discuss, the Board adjourned the meeting at 10:41 a.m.

LUCAS SIEMIENIEWSKI – CHAIRMAN

ATTEST:

WENDY WILLPRECHT - SECRETARY-TREASURER