

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, SEPTEMBER 17, 2020 AT 8:00 A.M. IN THE COMMISSION ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA.

Managers present: Lucas Siemieniewski, Todd Stein, Michael Wyum and Roger Zetocha Absent: Bruce Speich. Present via video conference: Sean Fredricks, the Board’s attorney; Paul Mathews and Leon Mallberg. Others present at the courthouse: Chris Gross, the Board’s engineer; Sherry Hosford, Secretary-Treasurer, and Sargent County Commissioner Richard Ruch and Wendy Willprecht.

Manager Wyum moved to approve the Board’s August 20 and 31, 2020 minutes and August financial statement. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Stein moved to approve payment of the following bills:

80887	Michael Anderson	Tewaukon Watershed Dr1 Excavator work	3,000.00
80888	Farmers National Co.	Dr#11-Mathews/Delahoyde appraisal	2,000.00
80889	Larson Helicopters	Spraying-Dr#4-\$420.00; Dr#8-\$455.00; Dr#11-\$2,222.50	3,097.50
80890	Moore Eng. Inc.	General meetings-\$832.50; Roger Bopp Permit-\$37.50; Silver Lake Design Eng. - \$3,222.50; Shortfoot Creek-\$12,147.00; Dr#7-Project Development-\$3,185.00; Dr#11-ROW-\$6,730.00; Dr#11-Legal Descriptions-\$5,562.50; Dr#11-Permitting-\$450.00; Dr#12-Const. Engineering-\$1,000.30; =	TOTAL
			33,167.30
80891	Ohnstad Twichell	General meetings-\$585.00; Kelley-Mathews-\$504.20; Russ Martinson permit-\$495.40; Roger Bopp permit - \$578.60; Silver Lake Dam - \$205.00; Dr#11 Imp. Project –Easements, Purchase Agreements and Abstract review-\$13,736.85; Dr#12 Imp. Project-\$307.50 =	TOTAL 16,412.55
80892	Lucas Siemieniewski	Travel	75.90
80893	Todd Stein	Travel	20.70
80894	Twin Pines Products	Dr#9 tree removal and disposal	7,500.00
80895	Wild Rice Soil Cons. Serv.	Summer Youth work -Dr#2-\$1,563.66; Dr#8-\$236.96; Dr#9-\$628.25; Dr#7-\$568.16 plus extra Tordon-\$378.63 =	TOTAL 3,375.66
80896	Michael Wyum	Travel	11.50
80897	Roger Zetocha	Travel	57.50
18268	Sherry Hosford	Salary less taxes	557.65 1,642.35
18269	Roger Zetocha	3 PD less 31.87 taxes	328.13
18270	Lucas Siemieniewski	5 PD less 45.90 taxes	554.10
18271	Todd Stein	3 PD less 27.54 taxes	332.46
18272	Michael Wyum	2 PD less 18.36 taxes	221.64
DD	Sargent County Bank	Withholding taxes	968.10

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

Leon Mallberg questioned the appraisal for the Mathews/Delahoyde land and Sean explained that in 2016 the Board approved a resolution to authorize the Drain 11 project; in the resolution, the Board authorized Moore Eng., Inc., and Ohnstad Twichell, P.C. to procure appraisers to conduct real estate appraisals and to identify just compensation for land needed to accommodate the Drain #11 project. Ohnstad Twichell later requested an appraisal specific to the Mathews/Delahoyde property in anticipation of potential issues in negotiations, in light of Mr. Mathews’ opposition to the project for a number of years. Mr. Mallberg was objecting to the amount charged for the appraisal. Mr. Fredricks indicated Ohnstad Twichell and Moore obtain appraisals on virtually all drain projects, including several other projects this year for other water resource districts, and the price charged for the Mathews/Delahoyde appraisal is what Ohnstad and Moore have seen appraisers charge for other appraisals this year. The Board did not agree with the final number offered regarding channel acres for the Mathews/Delahoyde property in the appraisal, and noted that the Board ultimately offered more than the appraised amount for the Mathews/Delahoyde property; the Board’s offer was consistent with what the Board offered all other property owners on this project. The Board has been adamant that they want to be fair regarding prices paid for right of way and the Board has been consistent and more than fair in terms of their offers for right of way for Drain 11. Sean noted that, in most cases, the property-specific appraisals come back at the same values as those identified in the “desktop appraisals”; that was not the case in this situation. Sean explained that ordering project-specific appraisals has been helpful for other drain projects in anticipation of potential holdouts; in those cases, WRDs have not had to put their projects on hold for months to await specific appraisals for negotiations with holdout landowners. Even though the Board disagreed with the project-specific appraisal in this situation, the appraisal could still be necessary in the negotiations. Sean noted that Pat Downs has been negotiating with Mr. Mathews and is hopeful the parties can arrive at a mutually-acceptable

agreement. Mr. Mallberg asked that the Board include in the minutes his objection to the Board's payment for the Mathews/Delahoyde appraisal.

DRAIN NO. 11: Chris reported that the design is on hold as right of way acquisitions continue and is the priority of the project at this time. The Diane Dahl PA has been signed and returned. Manager Zetocha moved to approve the Diane Dahl Purchase Agreement. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

DRAIN NO. 11 REASSESSMENT: Chris provided board members with copies of maps showing examples of GIS information that is readily available for the board's use in determining benefits of a legal drain. He also provided a summary sheet explaining each of these examples for the board to consider in conducting a reassessment. After reviewing each map and options to choose from, the Board asked Chris to provide an engineering fee estimate to go through the reassessment process that would utilize all the of the information shown on the preliminary scope but to not consider the National Wetland Inventory option. It was also discussed that Moore would utilize the GIS parcel data the Sargent County is currently having Sidwell create. This will greatly assist in the creation of the final assessment list spreadsheet.

EDWIN ERICKSON JR. AND TERRY ERICKSON: The Erickson's would like to proceed with a drainage project in Section 7 and Section 17 of Shuman township. They described two options that they might consider, which also involves going under County Rd#10. The Erickson's were told that this project exceeds the 80-acre permitting threshold, and they will need to apply to the State Engineer for a Surface Drainage Permit. Once the state has reviewed the project, conducted its 'statewide/interdistrict significance' review, and added any conditions required by the State, the State Engineer's Office will forward the application to this board for the board's consideration. The Surface Drain Application forms were given to them .

DRAIN NO. 11 CROSSING BETWEEN SECTIONS 21 AND 28 IN HARLEM TOWNSHIP: The culverts will be delivered on September 21st and the contractor will proceed with the work. MEI will coordinate the placement of the culverts.

DRAIN NO. 7: It is still uncertain if the State will provide any cost-share dollars for this project; cost share dollars have been cut substantially due to shortfalls in oil excise tax revenues. The State Water Commission will meet on October 9th to consider the requests from various entities that have filed for cost share. This board and the county commission are concerned about the crossing on County Rd#12 and the need to at least do the crossing. Tabled until October meeting.

DRAIN NO. 12 IMPROVEMENT PROJECT: The cost share agreement signed on March 9, 2020 will be submitted to the State Water Commission which will provide \$267,512 for actual eligible costs incurred on the project. Chris will provide Sherry with a breakdown of dollars spent to date and which can be submitted to the state for cost share. There is a Pre-Construction Conference scheduled for next week at MEI's office.

SILVER LAKE DAM IMPROVEMENTS: D. L. Barkie Construction, Inc., contractor for the project will begin with the dam improvements on September 28.

SHORTFOOT CREEK RCCP PROJECT UPDATE: A Wetland Analysis and Review is almost complete by NRCS and upon completion, it will be presented to the board.

DRAIN NO. 9 EXTENSION: MEI's survey crew has made a visit to the area of the potential proposed project and is obtaining more information on the existing watershed.

CROOKED CREEK WATERSHED PLAN PROPOSAL DAM SITE: Cost share application has been submitted to the NRCS and awaiting approval.

CULVERT ISSUE IN SECTIONS 22-23-26-27 - JACKSON TOWNSHIP: Manager Stein reported that there are two sites that need culvert replacement and also cleaning of about 2 miles of ditch and leveling spoil piles. Helwig Excavating Inc. submitted an estimate to do the cleaning and remove and replace a 24" culvert between Sections 26 and 27 in Jackson Township and also remove and replace a 60" culvert, compacting the culvert, removing cement, removing rip rap and replacing the rip rap for an estimate of \$36,000. Chris reviewed the Upper Wild Rice River Study culvert sizing chart, which meets Stream Crossing Standards, and recommended 2-24" x 40-foot culverts be placed on 118th Ave SE (between Sections 26 & 27) and 2-30" pipes, with a length to be determined as per county off-system guidelines, be placed on 94th St SE (at the intersection of Sections 22-23-26-27 in Jackson Township). Motion by Manager Stein to hire Helwig Excavating Inc. as the contractor not to exceed \$36,000.00 to complete the above work and that ½ mile of cleaning along the County Rd#2 will be paid from the Water Board General Fund and the balance from Dr#11 funds and authorize MEI to order the culverts. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously.

Jason and Jessica Quandt, Michael and Pamela Quandt, Jeffrey and Jeanette Quandt, and James Quandt - Amendment to Subsurface Water Management System Permit - Section 17 in Jackson Township:

The Board next reviewed a request from John Quandt to amend a *Subsurface Water Management System Permit* originally approved by the Board on August 17, 2017, for Applicants Jason and Jessica Quandt, Michael and Pamela Quandt, Jeffrey and Jeanette Quandt, and James Quandt.

The Board approved the permit for Applicants' drain tile system in the Northwest Quarter of Section 17 and the North Half of the North Half of the Southwest Quarter of Section 17 in Jackson Township, Sargent County, North Dakota. The permit is for a project that includes four gravity outlets, all of which discharge into the South Lateral Extension Project to the Jackson Township Improvement District No. 1 Project. Three of the outlets are located along the west boundary of the Northwest Quarter of Section 17; the three outlets discharge into the 115th Avenue township road ditch along the west boundary, and the discharge flows north to the northwest corner of the Northwest Quarter of Section 17, until flowing through a culvert installed diagonally to the northwest and into the South Lateral Extension Project. The fourth outlet is located along the north boundary of the Northwest Quarter, near the northwest corner, and similarly discharges through an existing culvert diagonally to the northwest and into the South Lateral Extension Project.

The amendment request is to modify the project to incorporate a pump outlet. More specifically, Applicants will replace the northernmost gravity outlet on the west boundary of the Northwest Quarter of Section 17 with a pump outlet. The other three gravity outlets will ultimately connect to the pump via 10" and 12" dual wall mains. The pump will discharge into the 115th Avenue road ditch and the discharge will still flow north to the northwest corner of Section 17, and will still flow through a diagonal culvert, into the South Lateral Extension project. No Thirty-Day Notices are necessary; Applicants previously obtained a Flowage Easement from John Quandt, the owner of the South Half of Section 7.

Manager Zetocha moved, and Manager Wyum seconded the motion, to amend the *Subsurface Water Management System* dated July 19, 2017, and originally approved August 17, 2017, for Jason and Jessica Quandt, Michael and Pamela Quandt, Jeffrey and Jeanette Quandt, and James Quandt, to allow a pump outlet, regarding Applicants' tile system in the Northwest Quarter of Section 17 and the North Half of the North Half of the Southwest Quarter of Section 17 in Jackson Township, and to authorize the Secretary-Treasurer to sign an amended SUBSURFACE WATER MANAGEMENT PERMIT, 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, the motion carried unanimously. Sean Fredricks will prepare a NOTICE OF DECISION regarding the amendment, and will include the recommendations included in the original NOTICE OF DECISION.

OFFICE RELOCATION AND ADVERTISING FOR SECRETARY-TREASURER POSITION: Sherry provided board members with a Job Description, Advertisement for the Secretary-Treasurer position and that her working time averages 13.25 hours per week. This includes one 7-hour day in the office and other time spent on receiving and answering emails, phone calls and other requests. Manager Wyum moved to authorize for the advertisement of a part time Secretary-Treasurer position to work up to 15 hours per week for both the Sargent County and the Dickey-Sargent Joint Water Board. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously. Deadline for application submission will be October 1st. The Board also agreed to relocate the water board office to 2nd floor of the courthouse, formerly utilized by Sargent County Social Services, as per the request of the county commission.

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

1. Interstate Engineering, Inc. Services through August 22, 2020 - \$1,476.78
2. JBX LLC Ditch Cleaning - \$11,400.00

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

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

1. DVEC – Electricity \$1,682.00

2. Wallock-Johnson Insurance – 2020-2021 Premium \$1,383.00

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

CONFLICT RESOLUTION FOR ROGER ZETOCHA: Before the Board could proceed with the substantive considerations regarding the application, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Zetocha’s likely conflict in the matter. Section 44-04-22 of the North Dakota Century Code provides the relevant standard. That statute provides:

A person acting in a legislative or quasilegislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

The Section 44-04-22 test requires a multi-step analysis. A public official must have a “direct and substantial personal or pecuniary interest” in the matter. The mere appearance of a conflict is not enough to allow the public official to refrain from participating.

In this case, Applicants Dave Zetocha and John Zetocha are Manager Zetocha’s brothers. Mr. Fredricks indicated Manager Zetocha has a substantial personal interest in the outcome of the Board’s decision regarding the permit, and further indicated this clearly creates a conflict situation that warrants Manager Zetocha’s abstention. More specifically, by statute, Mr. Fredricks indicated the benefits to the land Manager Zetocha’s brothers farm would raise a “direct and substantial personal or pecuniary interest” conflict for Manager Zetocha under Section 44-04-22. Manager Wyum moved to declare Manager Zetocha has a statutory conflict regarding APPLICATION NO. 2020-09, and to prohibit Manager Zetocha from participating in the discussion or voting regarding APPLICATION NO. 2020-09. Manager Stein seconded the motion. Upon roll call vote, Chairman Siemieniewski and Managers Stein and Wyum voted in favor of the motion. Manager Zetocha abstained. The motion carried. With the conflict issues concluded, the Board proceeded with consideration of the Application.

Sean explained he received the final documents for the application on August 24, and he sent out THIRTY-DAY NOTICES as required by law. The Board cannot approve this application until October.

With no further business to discuss, the Board adjourned the meeting at 10:40 a.m.

LUCAS SIEMIENIEWSKI – CHAIRMAN

ATTEST:

SHERRY HOSFORD, SECRETARY-TREASURER