

Meeting Minutes Sargent County Water Resource District Thursday, March 15, 2012, at 9:00 a.m., Commissioners Room, Sargent County Courthouse, Forman, North Dakota

Managers present: Jim Bosse, Mark Breker, Chris McFarland, Richard Engst, and Roger White. Absent: None. Also present: Chad Engels, Moore Engineering, Inc., Sean M. Fredricks, Ohnstad Twichell, P.C.; and Tom Jones, Sargent County NRCS.

The meeting was called to order by Chairman McFarland. Motion to approve February 16, 2012, meeting minutes and February financial statement. (Bosse/Engst, unanimous).

Approved payment of the following bills: (Engst/White, unanimous).

65676	James Bosse	Travel	21.42
65677	Mark Breker	Travel	18.36
65678	Richard Engst	Travel	25.50
65679	Ohnstad Twichell Law Office	\$1949.30-General-\$408.50-Dr # 4	2357.80
65680	Jerry Olson	SCWC# 1 Beaver control	150.00
65681	Roger White	Travel	70.98
65682	Brian Wipf	SCWC# 1 Beaver control	100.00
6882	Mark Breker	1 PD less 6.78 taxes	113.22
6883	Sherry Hosford	Sec. Salary less 17.89 taxes	298.78
6884	Richard Engst	1 PD less 6.78 taxes	113.22
6885	Roger White	3 PD less 20.34 taxes	339.66
6886	Jim Bosse	2 PD less 13.56 taxes	226.44
6887	Chris McFarland	1 PD less 6.78 taxes	113.22
DD	Sargent County Bank	Withholding taxes	171.06

1Obstruction Complaint Filed by Bert Enervold Against Tory Kempel

The Board next considered Bert Enervold's Obstruction Complaint against Tory Kempel. Chad Engels and Sean Fredricks previously conducted a site visit to inspect the alleged obstruction. In addition, Chairman McFarland met with the Kempel's prior to the Board's March meeting. Under the Complaint, Mr. Enervold alleges Tory Kempel constructed an obstruction to a drain in violation of N.D. Cent. Code § 61-16.1-51 in the Northeast Quarter of Section 24 of Vivian Township.

In accordance with N.D. Cent. Code § 61-16.1-51, the Sargent County Water Resource District investigated the matter, in addition to the site visits conducted by Mr. Engels, Mr. Fredricks, and Chairman McFarland. NRCS provided aerial photos to indicate the alleged "obstruction" was present in 1984. Mr. Kempel alleges an approach on the south side of a township road acts as an illegal obstruction. Mr. Engels indicated that this approach does not lie within a defined ditch, and that any drainage through this ditch is minimal at best. The Kempel's indicated to Chairman McFarland that the approach was on the property when they purchased the property, and they have not raised the approach. Chairman McFarland indicated Mr. Enervold Complaint is with regard to an alleged raise of this approach, but both Mr. Engels and Chairman McFarland agree there is no evidence the Kempel's raised this approach.

The Board conducted the requisite analysis under Section 61-16.1-51. Specifically, they concluded this approach does not act as a "barrier" to any watercourse or drain. With that in mind, Manager Engst moved to dismiss Mr. Enervold Complaint against Mr. Kempel. Manager Bosse seconded the motion. Upon roll call vote, the motion carried unanimously. Sean Fredricks will prepare a Notice of Decision and will serve all parties accordingly.

APPLICATION TO DRAIN NUMBER 3960 for Miles Johnson in the Southeast Quarter of Section 1 of Bowen Township

The Board reviewed information from the State Engineer regarding APPLICATION TO DRAIN No. 3960 for Applicant Miles Johnson. Under the application, Applicant seeks to construct and install a pipeline to drain a portion of a wetland in the Southeast Quarter of Section 1 of Bowen Township. Applicant's objective is to drain a portion of the slough to provide relief for Applicant's sanitary sewer system; Applicant would install a pipe from one slough into another slough also in the Southeast Quarter of Section 1. The project would flow north through a 15 inch pipe. The North Dakota State Engineer's office previously granted Applicant an emergency license to drain in 2011 as an open channel to provide applicant some temporary relief. Section 1 of Bowen Township is subject to a wetland easement in favor of the United States Fish and Wildlife Service. U.S. Fish and Wildlife, the North Dakota State Engineer's office, and NRCS will set and must ultimately approve the elevations of the sloughs impacted. Mr. Roger Asche previously provided a "written consent" dated August 11, 2011, under which Mr. Asche indicated his approval of Applicant's proposed project.

According to records on file with the Sargent County Recorder's Office, Applicant owns the Southeast Quarter of Bowen Township, where Applicant seeks to install the project. Incidentally, Applicant also owns the Northeast Quarter of Section 1.

The Board adopted Chad Engels' proposed responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary and that the project will not result in adverse impacts under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the U.S. Fish and Wildlife Service, the State Engineer's office, and NRCS will set proper elevations for the sloughs and those elevations will protect any downstream interests.

Manager Bosse, seconded by Manager Engst, moved to approve APPLICATION TO DRAIN No. 3960 dated January 3, 2012, for Miles Johnson, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the drain system;
- 2) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations or improvements to the project, or any proposed increase in the drainage area impacted and, if necessary, submitting an additional permit application; 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.

Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to all parties of record, including NRCS and the U.S. Fish and Wildlife Service.

APPLICATIONS TO DRAIN NOS. 3973 AND 3974 for Quandt Brothers in Southwest Township

The Board reviewed information from the State Engineer regarding APPLICATION TO DRAIN No. 3973 for the Quandt Brothers. John Quandt was present to discuss his proposed surface and related tile projects with the Board. Mr. Quandt explained the projects as the "East Project" and the "West Project." The West Project includes Surface Application No. 3973 and the Subsurface Drainage Permit for portions of Sections 8, 9, and 17 in Southwest Township. For purposes of the West Project, the Quandt's plan to construct a surface drain in the West Half of Section 8 and the West Half of the Northwest Quarter of Section 17 to accommodate the tile system for the West Project. The tile will be in the West Half of the Southwest Quarter of Section 9; all of Section 8; and the North Half of Section 17. The tile project will outlet to a "pump site" in the south portion of Section 8. Applicant will then pump the tile discharge through an irrigation pipeline owned by Applicant that runs to the west. That runs west along the north boundary of Section 18. The irrigation pipeline turns southwest across the Northwest Quarter of Section 18 until it nearly reaches the township and county line. The project would require Applicant to obtain a pipeline easement from the owners of the Northwest Quarter of Section 18 for the small portion of property where Applicants do not already have an irrigation pipeline installed and do not possess easement rights for installation and maintenance of the irrigation pipeline. From there, Applicant must obtain a new easement for the Northwest Quarter of Section 18. The additional pipeline will run west to where Applicant owns property in Dickey County known as a "mitigation/recharge" site. Applicant owns the "mitigation/recharge" site.

Mr. Quandt originally requested that the Quandt's be permitted to take any excess tile discharge water and pump it east toward Drain 11. However, after further discussion with the Board, Mr. Quandt agreed that any excess water not pumped to the mitigation site will simply remain on the "pump site." (Section 8).

According to records on file with the Sargent County Recorder's office, the Quandt's own the North Half of Section 8 of Southwest Township. Records on file with the Sargent County Recorder's office show that Howard and Linda Shelton own the Northwest Quarter of Section 17, one of the parcels where Applicant seeks to construct a surface drain to convey tile discharge; Stella Shelton owns the Southwest Quarter of Section 8, one of the parcels where Applicant seeks to construct a surface drain to convey tile discharge; and Houghton Grazing Association owns the Northwest Quarter of Section 18, where Applicant seeks to install additional pipeline to convey tile discharge water to Applicant's mitigation site.

The Board adopted Chad Engels' proposed responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board will require Applicant to obtain easements from the owners of the property where Applicant seeks to construct the surface drains; and the Board concluded that, in light of these measures, there will be no further adverse impacts.

Manager Breker, seconded by Manager Engst, moved to approve APPLICATION TO DRAIN No. 3973 dated February 22, 2012, for the Quandt Brothers, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant obtain and record (with the Sargent County Recorder's office) easements (and not just written consents) to construct and maintain surface drains from the owners of the following real property in Southwest Township, Sargent County, North Dakota:
 - a. Northwest Quarter of Section 17; and
 - b. Southwest Quarter of Section 8.
- 2) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the drain system.
- 3) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations or improvements to the project, or any proposed increase in the drainage area impacted and, if necessary, submitting an additional permit application.
- 4) 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.

Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to all parties of record, including Southwest Township, Beth Wentworth, Houghton Grazing Association, and the Shelton's.

With regard to Permit No. 3974, the "East Project," the Board will discuss that Project with Mr. Quandt at their April meeting. Mr. Quandt is in the process of contacting property owners along the course of the East Project to discuss easement issues and operation of a proposed gate on the surface drainage. Mr. Quandt will report back to the Board regarding the gate operation and the easement issues in April.

Application to Install a Subsurface Drain for the Quandt Brothers in Sections 8, 9, and 17 of Southwest Township

The Board reviewed an *Application to Install a Subsurface Drain* dated February 22, 2012, for the Quandt Brothers. John Quandt was present to discuss the project, which is related to the Surface Permit No. 3973; the purpose of the Surface Permit was to construct drainage ditches to accommodate tile discharge for this tile permit. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicant seeks to install a drain tile system in the West Half of the Southwest Quarter of Section 9, all of Section 8, and the North Half of Section 17 in Southwest Township, Sargent County, North Dakota. The project will include a pump outlet that will discharge into an existing irrigation pipeline; the "pump site" is in the southern portion of Section 8. Applicant owns an irrigation pipeline that runs to the west along the north boundary of Sections 17 and 18. Applicant owns a "mitigation/recharge" site across the township/county line just west of Section 18. Applicant's plan is to outlet tile discharge into the surface drains constructed in the Southwest Quarter of Section 8 and the Northwest Quarter of Section

17. The surface drains will convey tile discharge to the “pump site” in the southern portion of Section 8. Applicant will then pump the tile discharge through the irrigation pipeline to the west, to the “mitigation/recharge” site. Applicant currently possesses an easement for its irrigation pipeline, though a small portion in the Northwest Quarter of Section 18 does not include existing pipeline or any easement rights. Any excess tile discharge Applicant does not pump to its “mitigation/recharge” site will remain on the “pump site” in Section 8.

The Board reviewed the application with its engineer and indicated the project will discharge through an existing irrigation pipeline onto property owned by Applicant. Therefore, the application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicant to obtain any flowage easements from downstream landowners, though the Board can require Applicant to obtain a pipeline easement from the owner of the Northwest Quarter of Section 18.

It was moved by Manager Breker and seconded by Manager Engst to approve *Application to Install a Subsurface Drain* dated February 22, 2012, for the Quandt Brothers in Sections 8, 9, and 17 in Southwest Township, subject to the following conditions:

-) That Applicant obtain and record (with the Sargent County Recorder’s office) an easement (and not just written consent) to install a tile discharge pipeline from the owners of the Northwest Quarter of Section 18 of Southwest Township, Sargent County, North Dakota.
-) That Applicant obtain and record (with the Sargent County Recorder’s office) easements (and not just written consents) to install and maintain a subsurface tile drainage project owners of the following real property in Southwest Township, Sargent County, North Dakota:
 - a. Northwest Quarter of Section 17; and
 - b. Southeast Quarter of Section 8.
-) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the drain system.
-) That Applicant obtain written permission from the Southwest Township Board of Township Supervisors to bore through its township road for purposes of installing and maintaining an irrigation/tile discharge water pipeline.
-) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations or improvements to the project, or any proposed increase in the drainage area impacted and, if necessary, submitting an additional permit application.
-) 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.

Upon roll call vote, the motion carried unanimously.

Silver Lake Dam Study

The Board has not heard anything from the State Water Commission on this matter.

Paul Mathews Right of Way Dispute

Sean Fredricks explained that, previously, he forwarded a copy of Sargent County Abstract Company’s title search that revealed that Sargent County owns the 8.83 acres at issue. Mr. Mathews is not willing to concede ownership. This issue does not only entail land ownership issues, but the Board has expended dollars hauling out spoil and taking other measures to avoid disputes with Mr. Mathews regarding the drain right of way. The consensus amongst the Board was that further action is necessary, and a lawsuit may be the only way to finally resolve the ownership issue. Manager White moved to authorize Ohnstad Twichell to commence an appropriate legal action against Mr. Mathews to determine ownership of the property. Manager Breker seconded the motion. Upon roll call vote, the motion carried unanimously.

Drain 8 South of Rutland

The Board will discuss this matter at its April meeting.

Drain 12

Donnie Kiefer, Denny Pherson, and Robert Lee discussed concerns they have regarding pumping by Dana Banish in Section 7 of Marboe Township into Drain 12. Apparently, Mr. Banish is pumping water from his slough in the Northwest Quarter of Section 7, over a dike and into Drain 12. Mike Paczkowski owns the Northwest Quarter of Section 7, but Dana Banish farms this quarter. Mr. Kiefer suggested Drain 12 cannot handle this additional water, and that as a result of the pumping, water exceeds the drain and floods adjacent properties. The “dike” is a manmade berm constructed by Mr. Banish to prevent Drain 12 from backing onto the Northwest Quarter of Section 12. Mr. Kiefer, Mr. Pherson, and Mr. Lee plan to contact the State Engineer’s office to determine if Mr. Banish has a permit for the “dike.”

Drain 4

Chad Engels previously sent out drafts of the Operation and Maintenance Plan regarding the gates for Drain 4. The Board will review the draft plan and will consider the Joint Powers Agreement amendment at that time.

Chad Engels reported that the State Water Commission is still reviewing the cost-share application for the drain reconstruction. The Board will discuss potential right of way needs at their next meeting.

Jeff Breker CRP Contract

Mr. Jeff Breker arrived at the meeting and inquired as to whether or not he should put a portion of the property he leases from the Board back into CRP; the property is currently in CRP but is up for renewal. The Board had no problem with putting it back into CRP. Motion to permit Jeff Breker to submit an application to renew a CRP contract on property leased from the Sargent County Water Resource District. (Bosse/Engst, unanimous).

Water Development Report for 2013 to 2015

Chad Engels is currently preparing a list of anticipated projects that may qualify for State cost-share during the next biennium. Chad will bring a list to the April meeting.

Drain 9 Extension and Reassessment

Richard Ruch arrived to discuss this potential project with the Board. Rich will meet with Tom Jones to discuss what wetland issues there may be on any extension project.

Used Tile on Forman Project

The Board will discuss this matter at its April meeting.

CD 14417

Motion to renew CD 14417 that will mature on March 31, 2012. (Breker/Engst, unanimous).

Emeric Erickson/Erickson Farms Dike/Dam Permit

The Board reviewed information from the State Engineer’s office regarding a dike/dam permit for Erickson Farms. Sean Fredricks and Chad Engels explained that the State Engineer’s office ultimately approves or denies these permit forms, but that the Sargent County Board could certainly submit comments for the State Engineer’s consideration if they were inclined. The Board had no comments on this permit.

Head of the Mountain Nature Preserve 2011 Site Visit

The Board had no action on this matter.

Richland-Sargent Drain No. 1

Manager Breker reported on the easement progress regarding this project. The Richland-Sargent Board will likely meet in the near future.

Meeting adjourned.

Approved:

Chris McFarland, Chair

Attest:

Sean M. Fredricks, Acting Secretary