

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, MARCH 16, 2017 AT 8:00 A.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Roger Zetocha, Korey Martinson, Lucas Siemieniewski and Todd Stein. Absent: None. Also present: Sean Fredricks, Board Attorney; Paul Mathews, Cogswell; and Bob Banderet, Cogswell.

Approve February 16, 2017 minutes and February financial statement. Manager Martinson moved to approve. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Zetocha moved to approve payment of the following bills. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

74606	Richard and Mary Engst	Dr#7 permanent easement	4162.00
74607	Milton & Tracie Odegard	Dr#7 permanent easement	712.50
74608	Allen & Joan Peterson	Dr#7 permanent easement	1441.00
74609	Sundale Hutterian Assn	Dr#7 permanent easement	32565.00
74610	Gary & Diane Wallin	Dr#7 permanent easement	17288.50
74611	Korey Martinson	Travel	26.75
74612	Moore Eng. Inc.	General-\$185.60; Shortfoot Creek Study-\$18,155.17; Dr#11-\$1,995.00; Dr#11-Reassessment-\$5110.20; Dr#7I&S-842.80; Gwinner Dam - \$759.90; Dr#7-Culvert sizing - \$185.60; Mahrer/Ellefson Complaint-\$92.80; Heimbuch permit-\$325.00; Rust permit-\$672.80; Dr#4-Hoistad-\$92.80 =	
	TOTAL		28,417.67
74614	Ohnstad Twichell	General-\$1,204.00; Dr#11 project-\$185.00; Gwinner Dam-\$259.00; Storm Lake-\$110.50; Dr# 7 project-\$6073.45 =TOTAL	7,831.95
74615	Luke Siemieniewski	Travel	64.20
74616	Starion Bond Services	Dr#4-\$61,569.00; Dr#7 of 2016-\$110,657.84; Dr#7 of 2014-\$88,299.25 =	
	TOTAL		260,526.09
74617	Todd Stein	Travel	290.51
74618	Roger Zetocha	Travel	53.50
13317	Sherry Hosford	Salary less taxes 493.92	1506.08
13318	Roger Zetocha	2 PD less 23.19 taxes	216.81
13319	Luke Siemieniewski	3 PD less 27.54 taxes	332.46
13320	Korey Martinson	3 PD less 44.37 taxes	315.63
13321	Todd Stein	6 PD less 55.08 taxes	664.92
	DD Sargent County Bank	Withholding Taxes	957.62

LETTER OF RECOMMENDATION: Board members approved sending a letter of recommendation for Moore Engineering, Inc. services on future projects and authorized Chairman Siemieniewski to sign the letter.

DRAIN NO. 11/RANSOM COUNTY: Following a meeting with Ransom County on February 16th, Roger, Korey and Chris reported that Ransom County Water Resource Board has no interest in further investment in Drain No. 11. They are, however, interested in further study of retention of the Gwinner Dam Relocation.

SHORTFOOT CREEK WATERSHED PLANNING PROJECT/NRCS: Lucas informed board members that a planning committee meeting is scheduled for March 23, 2017 in Geneseo at 1:00 p.m. to make further cuts to proposed locations of projects.

BRIDGE WITH FEDERAL FUNDS AND DRAIN NO. 12: Lucas reported that he has visited with Kent Sundseth, Manager, Tewaukon National Wildlife Refuge and there is a bridge on the east side of Lake Tewaukon that is eligible for replacement with federal funding. This also ties in to the Short Foot Creek study which is ongoing. Mr. Sundseth was unable to attend this meeting today but is available on April 4th to meet with the county commissioners to discuss this bridge replacement. The commissioners are looking for cost share funding from the water board. Motion by Manager Zetocha to authorize Chairman Siemieniewski to attend the April 4th meeting on behalf of the water board to obtain information on this bridge. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

JOINT ORDER OF THE DICKEY COUNTY WATER RESOURCE DISTRICT AND THE SARGENT COUNTY WATER RESOURCE DISTRICT APPROVING APPLICATION TO DRAIN NO. 4757 REGARDING THE PROPOSED LOVELL IMPROVEMENT PROJECT: Sean Fredricks reviewed the joint order and recommended that said order be approved. The Dickey County Water Resource Board met Wednesday night and also approved said order. Manager Stein moved to approve the order. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously. A copy of the order is attached to these minutes.

LEGISLATIVE UPDATE: Sean Fredricks provided an update of bills concerning water resource districts and are being watched and testified on by water board members and others. Some of the bills include HB1390,

SB2263, HB1374, HB1244, SB2047 as well as the appropriations bills for the State Water Commission. According to Mr. Fredricks and board members there have been many trips to Bismarck this session which is unusual for water districts.

Kathy Marquette, Rutland arrived at 8:50 a.m.

TERRY EUSCHER REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY: Terry Euscher arrived at the meeting and asked for board approval on a Drainage on Highway Right of Way for a drain tile in the SE1/4-21-132-56 with a sump and pump installed on the south side of the quarter on the north side of the highway right of way. No part of the pump or pipe will lay in the Highway 13 right of way. Water will drain south/southeast. Motion by Manager Stein to approve the request. The motion was seconded by Manager Zetocha. Upon roll call vote, the motion carried unanimously.

Chris Gross, Board Engineer arrived at 8:55 a.m.

DAN DELAHOYDE, JACKSON TOWNSHIP COMPLAINT: Dan met with the board to inquire about the status of a complaint filed with this board in October, 2015. After reviewing a letter prepared by Attorney Fredricks, it appears that the complaint has been held in abeyance until Mr. Quandt complies with the proposed plan as detailed in a letter dated April 1, 2016. According to Dan the township right-of-way has not been re-seeded and a surface permit for the relocated drain has not been approved. Both Chris Gross and Sean Fredricks informed Dan that the Jackson-Sargent Joint Board will be meeting next week to discuss the surface permit. Once the surface permit is approved, the board suggested that Dan come back to this board to compare the permit conditions to see if the township approves. If not, this board will have to act on the complaint.

GWINNER DAM: Notice has been received from the ND State Water Commission (SWC) that an Agreement for Cost-Share Reimbursement for the Gwinner Dam Breach in the amount of \$31,875.00 was approved by the SWC. Manager Martinson made a motion to authorize the Chairman to sign the cost-share agreement. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously. Motion by Manager Zetocha to authorize Moore Engineering, Inc. to prepare final plans and specifications to breach the dam. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

APPLICATION TO INSTALL A SUBSURFACE DRAIN FOR CHAD HEIMBUCH AND TOM HEIMBUCH IN THE SOUTHWEST QUARTER OF SECTION 8 AND THE NORTHEAST QUARTER OF SECTION 18 OF BRAMPTON TOWNSHIP

The Board reviewed an *Application to Install a Subsurface Drain* dated February 11, 2017, for Chad Heimbuch and Tom Heimbuch; Chad Heimbuch was present to discuss the application with the Board, also present was Tom and Josh Heimbuch. Chad Heimbuch presented evidence that Applicants are working with NRCS to mitigate any impacts to wetlands as a result of the project. With that in mind, the Board reviewed the criteria in Section 89-02-01-09 of the North Dakota Administrative Code and concluded the project does not meet any of the "statewide" elements, and the Board concluded therefore 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, Applicants seek to install a drain tile system in the Southwest Quarter of Section 8 and the Northeast Quarter of Section 18 in Brampton Township, Sargent County, North Dakota. The project will include a pump outlet along the north boundary of the Northeast Quarter of Section 18, just south of the south road ditch of County Road 5. The lift station will pump the tile discharge into the south road ditch; the tile discharge will then flow west along the south boundary of County Road 5 until flowing north under County Road 5 through two existing culverts approximately one-third of a mile from the half section line; the tile discharge will flow into the north road ditch along County Road 5 and will continue to flow west until reaching the west boundary of the Southeast Quarter of Section 7, then will flow north along the west boundary of the Southwest Quarter of Section 7. The tile discharge from the Southwest Quarter of Section 8 will flow southwest via an underground pipeline installed diagonally under County Road 5 until discharging on the north boundary of the Northeast Quarter of Section 18, where the lift station will pump the tile discharge in the same manner as the tile discharge from the Northeast Quarter of Section 18.

The Applicants provided a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1 to the owner of the Southeast Quarter of Section 7. Applicants have already obtained permission from the owner of the Southeast Quarter of Section 7 regarding tile discharge through the County Road 5 road ditch along the south boundary of the Southeast Quarter of Section 7. The Board will require Applicants to obtain permission from Sargent County, along with a more formal easement from the owners of the Southeast Quarter of Section 7.

According to records on file with the Sargent County Recorder's Office, Thomas and Kathleen Heimbuch own the Southwest Quarter of Section 8 and the Northeast Quarter of Section 18. Further, Donald L. Rust owns the Southeast Quarter of Section 7 of Brampton Township.

It was moved by Manager Stein and seconded by Manager Zetocha to approve *Application to Install a Subsurface Drain* dated February 11, 2017, for Chad Heimbuch and Tom Heimbuch in the Southwest Quarter of Section 8 and the Northeast Quarter of Section 18 in Brampton Township, subject to the following conditions:

- 1) That Applicants obtain and record (with the Sargent County Recorder's office) flowage easements (and not just written consents), including language that permits saline water, from the owner of the Southeast Quarter of Section 7 in Brampton Township, Sargent County, North Dakota;
- 2) That Applicants obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;
- 3) That Applicants must operate the pump in the following manner:

Applicants cannot operate the pump from December 1 of each year until at least ten days after the spring runoff flood crest at the USGS flood gage near Rutland, Gage 05051600;
- 4) That Applicants obtain written permission from Sargent County to discharge into, or otherwise utilize, any of its County Road 5 highway right of way, or to bore through its highway;
- 5) That Applicants notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 6) 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;
- 7) That Applicants must close all outlets during flood occurrences or under conditions that may cause adverse impacts to downstream landowners, as determined by the Board;
- 8) 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.

Upon roll call vote, the motion carried unanimously.

DRAIN NO. 11: Chris reported on the Drain No. 11 project that MEI is working with Army Corps of Engineers to determine if a 404 Permit is required for this project. There are some revisions to the project and the information must go to the COE for their determination on whether a permit is required or if this project can operate under nationwide permits. Approximately 65% of the landowners have returned their forms that were distributed a couple months ago. The board next discussed the amount of remuneration for the various types of land for right-of-way which will be required to proceed with this project. An Appraisal report was prepared and has been reviewed by board members. Extensive discussion has already taken place and the board reviewed each of the types of land. Manager Zetocha made a motion to offer the following monetary amounts for right-of-way – Cropland A - \$4500/acre; Cropland B - \$3500/acre; Pasture land - \$1600/acre; Non-cropland - \$500/acre; Permanent spoil easements - \$225-cropland and \$60-pasture. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously. A copy of the Consultation Report has been filed at the Office of the Sargent County WRD.

DRAIN NO. 7 CLEANOUT: Arriving at the meeting to discuss the Drain No. 7 outlet were: Steve and Orvin Hogness, James Martinson, Mark Gainor and Emeric Erickson. Board members had invited area landowners to this meeting and Chris explained that there are approximately 7 miles of channel improvement required to clean from the outlet to the Wild Rice River. He further stated that in order to create an assessment district to pay for any proposed improvements, a vote must be held. This would be a special assessment project and maps, plans, profile of the drain and cost estimate would be prepared to determine benefactors. Moore Engineering Inc. would assist the board to prepare the benefit percentage amounts, a public meeting would be held to explain the project and then a vote would take place on developing this assessment district. Discussion followed on whether Milnor City would receive any benefits and it was explained that the city already pays an annual assessment on the drain and would have a vote on the project. Comments included that more and more sediment is building up each year and will plug up and eventually have to be cleaned out. Chairman Siemieniewski asked those in attendance if they would like to proceed with such a project. Sean explained that it would be necessary for the group to circulate a petition to affected landowners and collect some seed money and then the engineer could be hired to prepare the plans and conduct the hearing with this money collected. If the vote is in favor of the district, those putting money in would get their share back from the newly formed district. If it does not pass, only the unspent amount of the seed money would be refunded. Chris explained there is 35%-45% cost-share from the ND State Water Commission. Some in attendance were in favor of proceeding and others thought it would be hard to sell. Chris recommended that if a project description could be written in the next couple weeks, then the board would know what it wanted and the project could be submitted to the state to know if cost-share dollars are available. Emeric Erickson will be the lead person and he will contact the landowners from this area and see if there is any interest and return to the April water board meeting with further information or a petition and pledge dollars to see this project proceed.

GWINNER DAM: Board members discussed with Steve Hogness the proposed relocation of Gwinner Dam that has been ongoing. Steve had expressed interest at a prior board meeting about being willing to discuss building a dam near some land that he owns. When members met with Ransom County regarding a dam

located in their county, there was still interest. Steve agreed to contact Todd Larson, another landowner in Ransom County and possibly come to the April water board meeting to continue further discussion on locating this dam in Ransom County on land that is owned by both Hogness and Larson.

DRAIN NO. 11 REASSESSMENT: The Board continued their discussion and reviewed of maps of data prepared by Moore Engineering Inc., as per the board request, to set up assessment percentages. Chris had a Fish and Wildlife easement map and not many parcels are affected. The lines for the new district should be straightened out and use existing lines for Drain No. 4, 7, 9 and Dickey/Sargent Drain. Dickey County is in favor of pulling in some of their land that benefits from Drain No. 11. Chris would like the board to decide on what factors to use to determine the percentages. Chris handed out a chart using 1) Proximity; 2) Land type; 3) Production Index and 4) Easement property. The board could use any combination of these four areas. There was a suggestion to use soils type and Chris agreed to check and see if this is a viable alternative. The board has tentatively set May 18th as the public hearing on the percentage assessments and in order to meet that date with publications, etc., Chris asked for a decision today or at a special meeting in one week. The board agreed to call a special meeting for March 23 at 10:00 a.m. Chris informed the board that if a decision cannot be made to accept the list at the April meeting, it would delay the reassessment.

Sean Fredricks explained the Board should conduct conflict analysis if any of the Managers owned, farmed, or leased any property within the Drain 11 assessment district or the proposed reassessed assessment district, or if any of the Managers otherwise had any personal interest in the outcome of the impending assessment district vote. Managers Stein and Zetocha indicated they own and farm land within the existing Drain 11 assessment district.

Sean explained the conflict analysis the Board should conduct regarding Manager Stein's and Manager Zetocha's potential conflicts. Section 44-04-22 of the North Dakota Century Code provides the relevant standard. That statute provides:

A person acting in a legislative or quasi-legislative 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.

Sean indicated the North Dakota Supreme Court and the Attorney General's Office have taken a narrow view of situations where a public official can abstain from participating in a matter. 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. The North Dakota Supreme Court adopted a rule of necessity that requires public officials to participate in matters before their respective boards. The public policy rationale is that public officials have a duty to vote on issues before them, and cannot avoid participation simply to avoid the appearance of impropriety.

The Section 44-04-22 test requires a multi-step analysis. First, a public official concerned about a conflict of interest should confer with the Board's attorney to determine if a direct and substantial personal or pecuniary interest conflict exists under Section 44-04-22. If the public official's review with the governing entity's attorney is not dispositive, the remainder of the governing entity's Board should vote to determine if a conflict exists by a majority vote. If the remaining members conclude a conflict does exist or if the member and the Board's attorney concludes a conflict exists), the remainder of the Board should next vote on whether or not the public official should participate in or vote on that particular matter In other words, even if a conflict does exist even if the official does have a direct and substantial personal or pecuniary interest in the matter, if the governing entity concludes the public official should still participate despite the conflict, the official must participate.

In this instance, Sean indicated Manager Stein's and Manager Zetocha's interests in property within the Drain 11 assessment district could be impacted by the proposed reassessment of Drain 11. With that in mind, Sean indicated both Managers' property interest do rise to "direct and substantial personal or pecuniary interests" for both Manager Stein and Manager Zetocha, under the Klindt and Larson Supreme Court cases in North Dakota, and under N.D.A.G. 2004-L-10. However, identification of the conflicts does not conclude the analysis. The remaining members of the Board have to determine if a Manager should continue to participate despite the conflict. In this case, Managers Siemieniowski and Martinson agreed that Manager Stein's and Manager Zetocha's familiarity with the area and with Drain 11 would be important for purposes of reassessment decisions, and they did not believe their personal interests in land within the Drain 11 assessment district would impact their judgment.

Chairman Siemieniowski, Manager Zetocha, and Manager Martinson voted unanimously to require Manager Stein to continue to participate in and vote on all decisions regarding any reassessment of Drain 11. Similarly, Chairman Siemieniowski, Manager Stein, and Manager Martinson voted unanimously to require Manager Zetocha to continue to participate in and vote on all decisions regarding any reassessment of Drain 11.

OTHER BUSINESS: Manager Martinson inquired about an area in the north part of Milnor City where a large ditch has been dug. Chris remembered a Utility Permit which was prepared and approved for the city some time ago. Sherry agreed to locate the permit and send it to Corey so he can check to see if this ditch is where the Utility Permit was approved.

Meeting adjourned at 12:30 p.m.

LUCAS SIEMIENIEWSKI - CHAIRMAN

ATTEST:

SHERRY HOSFORD – SECRETARY-TREASURER