

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, APRIL 15TH, 2021 AT 8:44 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN NORTH DAKOTA

Managers present: Lucas Siemieniewski, Todd Stein, Roger Zetocha, Bruce Speich and Michael Wyum. Commissioners Richard Ruch, Mark Breker; Charlie Faber of the Sargent County Soil Conservation; Chris Gross, the Board's Engineer and Wendy Willprecht, Secretary/Treasurer were also present at the courthouse. Others present via video conference were Sean Fredricks, the Board's Attorney; Chris McShane, OT; Pat Downs, MEI, Gerry Bosse, Bob Banderet, Paul Mathews and Mary Engst of the Sargent County Teller.

The meeting was called to order by Water Board Chairman Lucas Siemieniewski.

Charlie Faber of the Sargent County Soil Conservation approached the board regarding drain cleaning. Manager Zetocha said that it has been working out the last couple of years to have the Soil Conservation assist in maintaining the drains. Faber said his crew is available to assist again this year, they just wanted to know which drains need work and how many hours they will be allotted from the SCWRD. Faber noted that in the past they have been given 200 hours. Manager Zetocha reminded the Soil Conservation that power tools cannot be used. Faber said that his crew will be ready mid-June. Manager Zetocha said that the SCWRD has their annual dam inspections around that time so it should work out well to give a report of where the cleaning/maintenance of the drains is needed.

Manager Speich moved, and Manager Zetocha seconded the motion, to give the SC Soil Conservation 200 hours to assist in cleaning and maintaining the drains. The consensus was to stay in contact with each other. Upon roll call vote, the motion carried unanimously.

Manager Wyum moved to approve the March 18th, 2021 meeting minutes, March 31st, 2021 special meeting minutes, and the March Financial report. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Speich moved to approve the following bills:

81860	Carol Scheer	Scheer Warranty Deed/Permanent and Temporary Easement	\$17,947.50
81853	Farmers National Company	Carol Beck Appraisal Fee	\$ 1,100.00
81857	Quill	Office chairs (\$85.99/\$99.99)	\$ 185.98
81854	Locken Family Land Trust	Locken Family Trust Warranty Deed/Temporary Easement	\$67,567.50
81859	SC Treasurer's Dept.	Kurschat Property Tax	\$ 138.85
81858	SC Abstract & Title Co.	Drain No.11 (Bosse Abstract \$3284.25/Carpenter Abstract \$233.25/James Hayen Abstract \$1503.25); James Hayen Abstract update \$608.25=	\$ 5,593.00
		Jason Bosse Abstract Update-\$278.05	\$ 278.05
81856	Ohnstad Twichell	ROW Acquisition/Mathew Delahoyde; \$252.00; Dave Rasmussen Permit \$290.50; Ryan Bosse Permit \$483.00; Marcus Mahrer Tile App. \$390.75; Nathan Quandt Tile App. \$761.20; Drain No. 9: Review statuses \$546.00; Drain No. 11 Review affidavit/examine title abstracts; Review appraisals \$8936.10=	\$11,659.55
81863	Starion Bond Services	1)2020B: \$1793.22 Interest/\$50,000.00 Principle/\$530 Fees = \$52,323.22 2)2020A: \$2271.65 Interest/\$65,000.00 Principle/\$530 Fees = \$67,801.65 TOTAL:	\$120,124.87
81855	Moore Engineering	Silver Lake Dam SWC O & M-\$80; Eng. Fees-\$3571.00; Short Foot Creek Design/Construct.-\$3462.50; Drain No. 9 Potential Dr. Improv.-\$185.00; Drain No. 11 Drain Reass-\$2420.00; ROW-\$7480.00; Legal Descript.-\$1192.50; Wetland Mitigation-\$370.00; Permitting-\$2611.25; SWC Coord.-\$740.00 TOTAL:	\$ 27,702.25
2358	Lucas Siemieniewski	Travel	\$31.36
2015	Todd Stein	Travel	\$117.60
2655	Michael Wyum	Travel	\$69.44
2290	Roger Zetocha	Travel	\$56.00
1074	Bruce Speich	Travel	\$44.80
DD	Lucas Siemieniewski	PD Salary less taxes \$18.36	\$221.64
DD	Todd Stein	PD Salary less taxes \$45.90	\$554.10
DD	Michael Wyum	PD Salary less taxes \$45.90	\$554.1
DD	Roger Zetocha	PD Salary less taxes \$18.36	\$221.64
DD	Bruce Speich	PD Salary less taxes \$27.54	\$332.46
DD	Wendy Willprecht	Sec-Treas -Salary less taxes \$275.23	\$1349.77
DD	Stock Grower's Bank	Withholding Taxes	\$699.66

DD	ND State Tax Commission	State Tax	\$12.00
DD	Job Service ND	Unemployment Comp.	\$1.63

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

DRAIN NO. 11: SC Commissioner Richard Ruch had questions regarding the acquisition of properties, timeline of the project, and asked if the Commission was going to be asked to take any action regarding acquisitions. Commissioner Breker said that Manager Stein had taken him around to see what the Drain No. 11 project would look like.

Commissioner Breker asked about acquisitions in fee simple. Engineer Gross and Attorney Fredricks explained water resource districts have acquired “right of way deeds” for decades and believed they owned those acres. The Supreme Court ruled in a railroad case and in a Sargent County WRD case with Paul Mathews’ family that those “right of way deeds” do not convey fee simple ownership but, rather, convey a “right of way” that is more like an easement. For decades and, in some cases, for a century, counties all around the state removed those “right of way” acres from their tax rolls under the impression they were purchasing fee title to those acres. The Supreme Court decisions over the last five years indicate boards do not own those acres in fee and, technically, they should go back on the tax rolls. On this project, the Board is offering to purchase channel acres in fee, but with the option to purchase easements where landowners want to maintain ownership for whatever reason. In some cases, landowners want to retain hunting rights so would prefer easements. In any case, if the Board only acquires an easement, the landowner is responsible for real estate taxes.

After Engineer Gross explained the process of purchasing land for the Drain No. 11 project Commissioner Ruch asked if the negotiations with the three remaining landowners fail, what role the Commission would have. Attorney Fredricks replied that the only time County Commissions have to be involved in right of way acquisition is when a water resource district is requesting permission to utilize “quick take.” For this project, the Board is not using quick take and, with that in mind, the Sargent County Commission would not have to play a role in the right of way acquisition process. Instead, if the Board cannot reach mutually acceptable deals with the remaining landowners, the Board will use the regular eminent domain process and not quick take. Manager Wyum added that the Board’s use of eminent domain is a last resort, and that the Board still hoped to reach deals with the outstanding landowners.

USACE is summarizing comments received on the 404 permit for the project to determine if a public hearing will be required on the permit application.

Purchase Agreements: A motion was made by Manager Stein and seconded by Manager Zetocha to approve the signing of the Purchase Agreement received from James Hayden. Upon roll call, the motion carried unanimously.

DRAIN NO. 11 REASSESSMENT: Engineer Gross spoke about the weights the Managers placed on the benefit items as related to the reassessment of Drain No. 11. Moore Engineering updated the reassessment list and has overlaid the results onto the map for discussion.

There were 2 areas that were not included on the map that Engineer Gross provided to the WR Managers:

1. The areas that are highlighted in yellow are tile quartered sections of land. The map does not clearly define what areas are permanently tiled.
2. Dickey County is colored in grey as Gross is working with the auditor on collecting the necessary parcel data. The same situation applies to Ransom County along with needing easement definitions.

With the proposed benefits that were explained for just Sargent County properties, it is anticipated that around \$400K would be brought in by the assessment district. Currently the assessment collected annually is around \$284K. This would be an increase of around \$126K.

Engineer Gross will continue gathering the tile information and parcel data for Ransom and Dickey and will report back at the May meeting.

DRAIN NO. 7: Engineer Gross said that this project is on hold until cost-share legislation is resolved. Manager Wyum asked attorney Fredricks where the legislation stands, currently, on the cost share issue. Fredricks said that the cost share verbiage is still being debated under the tile bill. The outstanding issues appear to be related to tile and not to cost-share. The permitting threshold for tile projects is 80 acres; there is debate regarding a possible notification requirement for tile projects under 80 acres. The legislative session will wrap up within the next couple of weeks and hopefully the cost-share issue will be resolved. If the legislature approves the tile bill with the cost-share language, Engineer Gross indicated the Board can submit its cost-share request to the Water Commission.

DRAIN NO. 12: Engineer Gross indicated the only outstanding issue on this project is acceptance of the grass seeding.

SILVER LAKE DAM: Water Board Administrator Willprecht signed an updated OHF contract for this project and sent it to the ND Industrial Commission. This update just moves the contract end date from this winter to the end of May to allow time to get the project wrapped up this spring.

SHORT FOOT CREEK: The NRCS will be sending their comments back. Engineer Gross anticipates that by 6/30/21, we will receive the complete/final report that will show the impacts/benefits.

DRAIN NO. 9 EXTENSION: The Board next discussed the proposed Drain 9/Drain 11 outlet project. There are concerns that are being raised about the downstream impacts of this project. Engineer Gross said that in order to move the project forward the Board will have to develop an H & H model that would show the downstream impacts.

The Preliminary Engineering Proposal provided by Moore Engineering laid out the following 5 steps/items:

1. Preliminary Data Collection

2. Hydrologic and Hydraulic Modeling
3. Preliminary Design and Cost Estimate
4. Preliminary Benefit Analysis, Assessment District Maps, and Assessment List
5. Final Benefit Analysis, Assessment Maps, and Assessment List

Engineer Gross said that if SWC funding is received, landowners within Drain No. 9 and Drain No. 11 would have to contribute approximately \$44K to complete the preliminary engineering task. Commissioner Ruch thought this would be doable. Manager Wyum spoke and said that he feels the Board should provide dollars for the study to help the landowners that are part of this project. The SCWRD believes that this project would also have benefits that would improve the Drain No. 11 project, and would otherwise benefit Drain 11. The Board discussed the potential benefits and concluded the benefits of the project to Drain 11 would be higher than the benefits to Drain 9.

Manager Stein moved to contribute \$20K towards the Drain No. 9/11 Outlet Project, with \$15K in funds coming from the Drain No. 11 fund and \$5K in funds coming from the Drain No. 9 fund. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

If the Board proceeds with the project, the assessment vote is successful, and the Board issues bonds for the project, the Board can refund these deposit amounts into the Drain No. 9 and Drain No. 11 funds, just as the Board would refund the deposit amounts submitted by landowners/petitioners.

Attorney Fredricks will create a new petition/bond document and will provide it to Commissioner Ruch.

CROOKED CREEK WATERSHED PLAN: The Statement of Work has been provided by the NRCS.

1. Initiate Planning Effort (Estimated timeframe of 5/24/21-4/1/22 with an estimated cost of \$38,770.00)
2. Inventory and Analyze Resource Data (Estimated timeframe of 9/1/21-4/1/23 with an estimated cost of \$199,145.00)
3. Detailed Development and Evaluation of Final Alternatives (Estimated timeframe 2/1/23-5/1/24 with an estimated cost of \$342,075.00)
4. Solicit Input on Final Alternatives (Estimated timeframe 11/1/23-12/1/23 with an estimated cost of \$39,240.00)
5. Assemble Draft Plan/EA (Estimated timeframe 5/1/23-5/1/24 with an estimated cost of \$68,780.00)
6. Finalize Plan/EA (Estimated timeframe 5/1/24-12/31/24 with an estimated cost of \$84,020.00)

The official start date of this project is 5/24/21. This will start the 3-year clock. There is no action necessary at this time.

DAVE RASMUSSEN – TILE PERMIT #2021-04: The Board next reviewed *Application to Install a Subsurface Water Management System No. 2021-04*, dated March 2, 2021, and filed March 5, 2021, for David Rasmussen. Under the application, Applicant seeks to install a 146-acre drain tile system in the Northwest Quarter of Section 32, in Taylor Township, Sargent County, North Dakota. The project will include a single pump outlet in the northeast corner of the Northwest Quarter of Section 32. The pump will outlet into the south road ditch along 101st Street SE; the discharge will flow west, along the north boundary of the Northwest Quarter of Section 32, and the north boundary of the Northeast Quarter of Section 31.

According to records submitted by Applicant, Kim and Sandy Rasmussen Land Partnership, LLLP, owns the Northwest Quarter of Section 32 of Taylor Township. With regard to downstream properties, Diane Dahl owns the Northeast Quarter of Section 31.

The Board provided a THIRTYDAY NOTICE to Diane Dahl as the downstream landowner in the Northeast Quarter of Section 31, as required under N.D. Cent. Code § 613203.1. The Board also provided a copy of the NOTICE to Taylor Township. None of the downstream parties submitted any “technical evidence” to object to the project. Therefore, under Section 61-32-03.1, the Board cannot require Applicant to obtain consent from downstream landowners as a condition to the permit. The Board can, however, require Applicant to install erosion protection to protect the Township’s road ditch.

Manager Wyum moved, and Manager Zetocha seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-04*, dated March 2, 2021, and filed March 5, 2021, regarding a proposed tile project for David Rasmussen in the Northwest Quarter of Section 32 in Taylor Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-04, 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 provide, install, and maintain riprap or other ditch stabilization materials at any and all outlets into the 101st Street SE 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 Taylor 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.

PERMIT #6610: Water Board Administrator Willprecht filled out a questionnaire (under the direction of Moore Engineering) regarding the beneficial use date for this Conditional Water Permit. The questionnaire was completed and forwarded to Michaela Halvorson, Hydrologist for the State Engineers Office.

BRIAN VCULEK SURFACE DRAIN: The State Engineer's Office sent the Board a Solicitation of regarding Brian Vculek's surface drain application. Under the State's statewide/interdistrict significance process, the State allows various entities the opportunity to submit comments regarding the State's decisions related to the statewide/interdistrict determination. The board did not have any comments.

Manager Stein moved to approve the payment of \$507.00 made by RS-1's Monica Zentgraf for the NDIRF general liability renewal. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Speich moved to amend the 3/31/21 special meeting minutes to read "final offer of \$44,670.00". Manager Zetocha seconded the motion. Manager Wyum was absent during the discussion and abstained the vote. Upon roll call vote, the remaining members voted in favor of the motion and the motion passed.

Sargent County Auditor, Pam Maloney, was asked to come up to the meeting. Manager Wyum asked Auditor Maloney about the procedure for other entities' requests to assess property in Sargent County. Auditor Maloney said that as an auditor, she would be looking at the assessment area first before sending out any billing. She added that if an assessment list came from a board or county other than the SCWRD board, she would first review the proposed assessment with the board. She said that an auditor should get approval from the county's WRD board before charging out any assessments requested from another county or another entity.

Manager Wyum said that he had met with Paul Mathews and the Gerry Bosse family. They talked about issues relating to Drain No. 11 and right of way for the project. Manager Wyum said he is checking into the issues that were raised during the meeting especially regarding the Mathews Estate. Manager Wyum noted the parties had a good discussion and he hopes they can continue their dialogue.

Attorney Fredricks commented on the Senate SB 2208 Bill. He said it looks like the bill is going towards an interim study. The proponents of the bill referred to the Board's Drain 11 project frequently. The WRD Association will appoint two Water Managers to sit on the committee. It appears there is one Manager from the Bottineau area and it was suggested to have one Manager from the SCWRD. After a short discussion, the Board agreed Chairman Siemieniowski should serve on the committee. The WRD Association will likely appoint Chairman Siemieniowski.

The Board will likely hold a special meeting on 5/5/21 to review the responses for ROW for Drain 11 (which are due 5/3/21). The meeting will be at the Sargent County Courthouse at 8:00 a.m. The Board will also discuss what has transpired regarding the rest of the Drain No. 11 project.

DICKEY-SARGENT JOINT BOARD: The following Dickey-Sargent Joint WRD bills were presented for approval by Wendy Willprecht, Secretary-Treasurer:

DVEC	Electricity	764.00
General Irrigation	(Service Cleaning/Grass/Weeds)	504.45

Bills were previously discussed/approved during the Dickey-Sargent Joint Water Resource District meeting.

Meeting adjourned at 11:03 a.m.

LUCAS SIEMIENIEWSKI, CHAIRMAN

ATTEST:

WENDY WILLPRECHT SECRETARY-TREASURER