

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, MAY 20TH, 2021 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, Roger Zetocha, Bruce Speich and Michael Wyum. Commissioner Richard Ruch; 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; Norm Haak Dickey-Sargent Joint Board; Paul Mathews; Bob Banderet; and Leon Mallberg.

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

Manager Speich moved to approve the April 15th, 2021 meeting minutes, the May 5th, 2021 special meeting minutes, and the April Financial report. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Wyum moved to approve the following bills:

81981	Quill-	Office chairs:	\$314.96	
81982	Sargent County Treasurer's Dept.-	Kurschat Property Tax:	\$2.08	
81979	Ohnstad Twichell-	Dave Rassmussen Tile App. \$345.60/Ryan Bosse Tile App. \$114.60/ Board Meetings \$810.00/ Drain No. 9 (Revised petition) \$126.00/ Drain No. 11 (Review Abstracts/Title Opinions/Review Surveys/Special Mtg./Review files and docs.) \$12,158.90=\$13,555.10 ROW Mathews/Delahoyde Drain No. 11 =\$441.00		TOTAL=\$13,996.10
81980	Andy Peterson-	2 Beavers Section 2 Brampton Twp.=\$100.00		
81978	Moore Engineering-	Meetings & Legislative Issues \$1771.40; SFC Watershed Plan \$630.00; Drain No. 11 Reassessment \$3570.00/ROW Negotiations \$2118.02/ Legal Description \$225/ Permitting \$1380.00=\$7293.02		TOTAL: \$9694.42
81990	Brent Ptacek-	Hauled rock for culvert install Drain No. 11:	\$200	
81983	Lucas Siemieniewski	Travel		\$31.36
81985	Todd Stein	Travel		\$17.92
81986	Michael Wyum	Travel		\$22.40
81987	Roger Zetocha	Travel		\$28.00
81984	Bruce Speich	Travel		\$79.52
DD	Lucas Siemieniewski	PD Salary less taxes	\$9.18	\$110.82
DD	Todd Stein	PD Salary less taxes	\$18.36	\$221.64
DD	Michael Wyum	PD Salary less taxes	\$18.36	\$221.64
DD	Roger Zetocha	PD Salary less taxes	\$9.18	\$110.82
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		\$552.78
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: The focus of this project right now is ROW. Pat Downs stated the Board still does not have signed agreements back from three groups of landowners: Mathews/Delahoyde, Gerry Bosse Family and Carol Beck. There has been no further communication from these parties since the special SCWRD meeting on May 5th, 2021. We currently have no purchase agreements to approve. Attorney Fredricks said that if the Board wishes to proceed with eminent domain to acquire outstanding right of way, the Board would have to begin that process soon. Manager Wyum asked how long the eminent domain process takes. Chris McShane explained the Board could request an expedited trial. He added the trial could be a jury trial. He recommended that the Board proceed with a single action to acquire all of the parcels. After the trial, the verdict would be paid and the Board would then have access.

Chris Gross explained that there will be no changes to the Carol Beck purchase agreement. The Bosse Family will be offered the same purchase amount as the original offer, but the purchase agreement needs to reflect the new ownership of the land. Gross suggested that we need to set a hard date of when negotiations will cease or we will lose the 2021

construction season. It was suggested that within the next 2-2 ½ weeks that a clear direction would be needed for the Drain No. 11 project.

The offer presented to the Mathews/Delahoyde family at the May 5th WRD meeting is the most current.

Manager Wyum stated that he was hoping this project would not come to the point where eminent domain would be necessary. Manager Siemieniowski asked Mr. Mathews if he had anything to add since the May 5th, 2021 meeting. Mr. Mathews did not offer a response.

Manager Wyum then stated that the WRD will need to proceed with the eminent domain process.

Attorney Fredricks said that the original offer to the Mathews/Delahoyde was \$21,780. At the May 5th, 2021 meeting, it was discussed that after review of the SCWRD meeting minutes from 1917-1918, the Sargent County Drain Board believed it acquired acres in fee simple, and evidently neglected to pay the owners at that time for some of the acres. In the interest of acting in good faith, the Board decided to pay the Mathews/Delahoyde family for those acres as part of its offer for this project. That decision increases their offer to \$39,202.50. Further, the board would release the property rights outside the footprint of the Drain No. 11 project.

Attorney Fredricks next went through a summary of the property needed from each landowner, the previous offers, and the appraisal amounts.

The property rights the Board must acquire from Carol Beck and Gregory Beck are necessary for the completion of the drainage improvements to Drain 11 identified as the "Drain 11 Project" by the Resolution of Necessity approved by the Board on October 20, 2016. The Drain 11 Project is a use authorized by the North Dakota Century Code. The Board's original offer to acquire the necessary property rights from the Becks was \$41,880.00, based on the original compensation formula the Board initially utilized for acquisition offers for property owners impacted by the Project. The Board later obtained an appraisal specific to the necessary property rights the Board must acquire from the Becks; the appraiser concluded the fair market value of the necessary property rights as of March 12, 2021, was \$40,595.00. Following the appraisal, the District restated its offer to acquire the necessary property rights from the Becks for the amount of the initial (higher) offer, despite the lower appraised fair market value amount.

The property rights the Board must acquire from Mathew J. Bosse, with a life estate in Gerald P. Bosse and Diana Bosse, are necessary for the completion of the drainage improvements to Drain 11 identified as the "Drain 11 Project" by the Resolution of Necessity approved by the Board on October 20, 2016. The Drain 11 Project is a use authorized by the North Dakota Century Code. The offer to acquire the necessary property rights as of February 5, 2021, was \$27,060.00, based on the original compensation formula the Board initially utilized for acquisition offers for property owners impacted by the Project.

The property rights the Board must acquire from Brent P. Bosse, with a life estate in Gerald P. Bosse and Diana Bosse, are necessary for the completion of the drainage improvements to Drain 11 identified as the "Drain 11 Project" by the Resolution of Necessity approved by the Board October 20, 2016. The Drain 11 Project is a use authorized by the North Dakota Century Code. The offer to acquire the necessary property rights as of February 5, 2021, was \$9,135.00, based on the original compensation formula the Board initially utilized for acquisition offers for property owners impacted by the Project.

The property rights the Board must acquire from Paul H. Matthews, as Personal Representative of the Estate of Nancy I. Mathews, Phyllis Delahoyde, and Daniel Delahoyde, are necessary for the completion of the drainage improvements to Drain 11 identified as the "Drain 11 Project" by the Resolution of Necessity approved by the Board on October 20, 2016. The Drain 11 Project is a use authorized by the North Dakota Century Code. The Board's original offer to acquire the necessary property rights from Paul H. Matthews, as Personal Representative of the Estate of Nancy I. Mathews, Phyllis Delahoyde, and Daniel Delahoyde, was \$21,780.00, based on the original compensation formula the Board initially utilized for acquisition offers for property owners impacted by the Project. The Board later obtained an appraisal specific to the necessary property rights the Board must acquire from Paul H. Matthews, as Personal Representative of the Estate of Nancy I. Mathews, Phyllis Delahoyde, and Daniel Delahoyde, and the appraiser concluded the fair market value of the necessary property rights as of July 24, 2020, was \$18,600.50. Following the appraisal, the District restated its offer to acquire the necessary property rights from the Estate of Nancy I. Mathews, Phyllis Delahoyde, and Daniel Delahoyde for the amount of the first offer, despite the fact that the total amount of the fair market value was lower. The District subsequently authorized a settlement offer to the Mathews/Delahoyde landowners of \$39,202.50, based on the Sargent County Drain Board's apparent failure to pay the predecessors of the Mathews/Delahoyde family in 1917 and 1918, again despite the appraised fair market value being lower.

The property rights the Board must acquire from Gerald P. Bosse and Diana Bosse, as Co-trustees of the Gerald and Diana Bosse Irrevocable Land Trust dated the 13th day of January, 2021, are necessary for the completion of the drainage improvements to Drain 11 identified as the "Drain 11 Project" by the Resolution of Necessity approved by the Board October 20, 2016. The Drain 11 Project is a use authorized by the North Dakota Century Code. The Board's original offer to acquire the necessary property rights from Gerald P. Bosse and Diana Bosse, as Co-trustees of the Gerald and Diana Bosse Irrevocable Land Trust dated the 13th day of January, 2021, was \$945.25. The Board later obtained an appraisal specific to the necessary property rights the Board must acquire from the Bosses, and the appraiser concluded the fair market value of the necessary property rights as of March 8, 2021, was \$707.00. Following the appraisal, the District restated its offer to acquire the necessary property rights from Gerald P. Bosse and Diana Bosse, as Co-trustees of the Gerald and Diana Bosse Irrevocable Land Trust dated the 13th day of January, 2021, for the amount of the initial (higher) offer, despite the lower appraised fair market value amount.

Manager Wyum moved to formally make a settlement offer of \$39,202.50 to Mathews/Delahoyde to acquire the right of way necessary for the Project and, if accepted, to release any property rights in and to the Mathews/Delahoyde land currently held by the Board outside of the proposed permanent Channel and Berm easements necessary for the Project, such release taking place after the Project is completed. Manager Speich seconded the motion. Upon roll call vote the motion carried unanimously.

Manager Zetocha moved to approve the two appraisals completed on Auditors Lot 1 and Auditors Lot 2 of the Southeast Quarter of Section 35 in Township 130 North Range 57 West, and to utilize the appraisals as the basis for just compensation; to direct Moore Engineering, Inc., to submit a formal offer to the owners of Auditor Lot 1 in the amount of \$33,742.50 to acquire the necessary right of way for the Project based on the original compensation formula the Board initially utilized for acquisition offers for property owners along the route of the Project; and to direct Moore Engineering, Inc., to submit a formal offer to the owners of Auditor Lot 2 of \$11,670 to acquire the necessary right of way for the Project based on the original compensation formula the Board initially utilized for acquisition offers for property owners along the route of the Project. Manager Speich seconded the motion. Upon roll call vote the motion carried unanimously.

Manager Wyum moved to direct Ohnstad Twichell, P.C., to acquire the necessary property rights as soon as possible through an eminent domain action to be conducted under Chapter 32-15 of the North Dakota Century Code from the Beck, Bosse, and Mathews/Delahoyde landowners if any or all of the parties do not accept the Board's final offers by 9:00 a.m., on June 7, 2021; to seek a judicial determination of just compensation for the necessary property rights, and such just compensation shall be in the amount of the fair market value as determined by the appraisal for each property; and to acquire updated appraisals of the property rights necessary before trial on the matters. Manager Zetocha seconded the motion. Upon roll call vote the motion carried unanimously.

Manager Wyum moved to authorize the Chair to sign a Notice of Offer for recording with the Sargent County Recorder's Office. Manager Speich seconded the motion. Upon roll call vote the motion carried unanimously.

DRAIN NO. 11 REASSESSMENT: Engineer Gross said that Moore Engineering has continued their updates to the assessment list and map of Drain 11. Some of the major updates since the last WRD meeting include adding Ransom and Dickey County parcels and refining the tiled parcels in Sargent County. The grey areas shown on the map indicate missing parcel data. Moore anticipates that Sidwell will be finished with their parcel data development soon so that data can be incorporated into the preliminary assessment map. The map still needs to incorporate the most current FWS areas.

The breakdown of the assessment amounts at this time are: Ransom County would contribute about 20%, Dickey County 3 % and Sargent County 76%. When the FWS easement areas are included, Ransom County's percentage will likely decline.

Discussion on the proximity benefit being applied to the Drain 16 alignment area was held. Engineer Gross said that the SCWRD has ownership and maintenance responsibility for the Drain. We need to determine the condition of the Drain, then decide on how to proceed in making it function to its intended potential. Manager Siemieniewski suggested getting a bid to find out what it would cost to make the necessary improvements to Drain No. 16. Manager Stein suggested using a power roofer in the pipe. Gross said that the roofer would have limited distance that it could track. When looking at the Drain, and it being over a mile long, the roofer would not be feasible. Manager Stein said that if/when the SCWRD got Drain No. 16 functioning again, a new assessment should be completed. Manager Wyum said that Drain No. 16 has never really worked and that it has taken a back seat to the main channel portion of the Drain. Gross said that Drain No. 16 may be the next Drain piece for us to proceed with. The SCWRD said to not apply the proximity benefit to the Drain No. 16 alignment to Gross.

Engineer Gross asked if the SCWRD would want to have a public informational meeting, before the public hearing, to get public input. Manager Siemieniewski said that would be a great idea. It was decided that every land owner on the map provided by Moore would be notified of the meeting. Manager Siemieniewski suggested inviting a local representative from the SWC.

Engineer Gross said he would get the items put together that need to be incorporated and would also update the map and set a meeting date. The "rough" parcel breakdown is as follows: Sargent County 1100, Ransom County 300-400 and Dickey County 50. There will be approximately 800 landowners involved. A facility that could hold around 150-200 people was suggested. All SCWRD Board Members agreed that the meeting should be held. This meeting will be June 14th, 2021 at 6:00 p.m. at the Cogswell Community Center.

Through further discussion it was decided to reach out to the Commissioners and the WRD's from both Ransom and Dickey Counties regarding a public meeting. The topic of the meeting would be, Drain No. 11 Reassessment. A meeting date was set for June 3rd at 8:00 a.m. Administrator Willprecht will reach out to the other counties to give them the meeting information.

DRAIN NO. 7: Engineer Gross said that the OSE economic analysis model has just been updated. We needed the update in order to file the cost-share application. Gross said the EA model was updated to capture higher agricultural benefits that legal drains provide. If the benefit cost ratio comes back at 1.0 or greater, the cost-share should be granted.

DRAIN NO. 12: Engineer Gross said that rain is huge for kick starting seeding. On another note, during the inspection completed by the Federal Highway Administration, it was noted that the bridge was missing. The Administration reached out to Engineer Damon Devillers of Interstate Engineering regarding this concern. Apparently, a communication log got misplaced due to employee change over. The question/issue has since been resolved.

SILVER LAKE DAM: Engineer Gross said that we need to wait for seeding.

SHORT FOOT CREEK: At the April 2021 meeting, Engineer Gross anticipated that by 6/30/21, we would receive the complete/final report that will show the impacts/benefits. He commented that this is now complete.

DRAIN NO. 9 EXTENSION: Commissioner Richard Ruch said that the spring farming season has taken over and he plans to get more activity going on the project once all the farmers are done planting.

CROOKED CREEK WATERSHED PLAN: Engineer Gross said that we do not have an official contract yet but hopes to see one yet in May.

TEXAS CROSSING: Manager Stein said that this area could be checked out during the dam tour.

CHAD HEIMBUCH AND JOSH HEIMBUCH SUBSURFACE WATER MANAGEMENT SYSTEM NO. 2021-05 - SOUTHWEST QUARTER OF SECTION 17 IN BRAMPTON TOWNSHIP: The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2021-05* dated May 14, 2021, filed with the Board by Applicants Chad Heimbuch and Josh Heimbuch. The Board's staff confirmed the Application was complete on May 17, 2021. By law, Applicants were required to submit the Board's permit fee before the Board may approve the Application; in this case, the Board had not yet implemented its new tile application fee policy so the Board will require Applicants to submit the \$150 application fee in place at the time of submission. Since Applicants submitted all required items, the Board could consider and approve the Application.

Under the Application, Applicants seek to install a 149-acre drain tile system in the Southwest Quarter of Section 17 in Brampton Township, Sargent County, North Dakota. The project will include a pump outlet near the Northwest Corner of the Southwest Quarter of Section 17; the pump will discharge via a buried pipeline that will run to the northwest, diagonally under 121st Avenue SE; the line will then run from the southeast corner of the Northeast Quarter of Section 18 to the north, along the east boundary of the Northeast Quarter of Section 18, in the west road ditch along 121st Avenue; at the northeast corner of Section 18, the line will outlet, and the discharge will then flow to the west in the south road ditch along County Highway 5, along the north boundary of the Northeast Quarter of Section 18; at the Thomas Heimbuch homestead near the northwest corner of the Northeast Quarter, the discharge will flow north under County Highway 5 through an existing culvert; the tile discharge will daylight in the north road ditch along County Highway 5, along the Southwest Quarter of the Southeast Quarter of Section 7; the discharge will then flow west through the north road ditch along County Highway 5 along the south boundary of the Southwest Quarter of Section 7; near the southwest corner of the Southwest Quarter of Section 7, the discharge will turn north and will flow north in the east road ditch along 120th Avenue SE, along the west boundary of the Southwest Quarter of Section 7.

According to the County tax roll information supplied by Applicants, Chad Heimbuch and Josh Heimbuch own the Southwest Quarter of Section 17 in Brampton Township. With regard to downstream properties, Thomas and Kathleen Heimbuch own the Northeast Quarter of Section 18, and the South Half of Section 7. The tax rolls do not indicate if the County owns its highway right of way or if the County relies on the statutory 33-foot easement for County Highway 5.

Manager Zetocha moved, and Manager Stein seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-05* dated May 14, 2021, for Chad Heimbuch and Josh Heimbuch in the Southwest Quarter of Section 17 in Brampton Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-05, subject to the following conditions:

- 1) that Applicants install and maintain erosion protection or other ditch stabilization materials at any and all outlets into Brampton Township's road right of way;
- 2) that Applicants install and maintain erosion protection or other ditch stabilization materials at any and all outlets into Brampton Township's road right of way;
- 3) that Applicants re-establish any highway right of way disturbed installing or maintaining Applicants' tile system, including re-seeding any highway right of way;
- 4) that Applicants will not install Applicants' tile system within 20 feet, on either side, of any rural water lines Southeast Water Users District has in the Southwest Quarter of Section 17 in Brampton Township under any blanket easements, or otherwise beyond the Water District's existing easement;
- 5) 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;
- 6) that Applicants must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-05 in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system; and
- 7) that Applicants remove silt or vegetation, or repair erosion or scour damages *directly* caused by Applicants' tile system, but only up to one mile downstream from the project outlet.

Upon roll call vote, the motion carried unanimously.

With regard to condition #7, Applicants' obligations to remove silt or vegetation, or to repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicants' tile system *directly* caused accumulation of silt or vegetation, erosion, or scouring.

Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicants' permit. However, for Applicants' protection, and to ensure protection of Applicants' tile system, the District will recommend that Applicants consider complying with the following:

- 1) that Applicants obtain written permission from the Brampton Township Board of Township Supervisors to install, operate, and maintain buried pipe in any of its township road right of way; to bore through its township road right of way; or to discharge into, or otherwise utilize, any of its township road right of way;
- 2) that Applicants obtain written permission from the Sargent County Highway Department to discharge into, or otherwise utilize, any of its County Highway 5 right of way; and
- 3) 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.

The Board will provide copies of the Board's NOTICE OF DECISION, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-05, and Applicants' downstream flow map to the State Engineer's Office, Tom and Kathleen Heimbuch, Southeast Water Users District, and the Sargent County Highway Department; the Board will send the parties copies by first-class mail, attested by an affidavit of mailing, all as required under Section 61-32-03.1(6). Applicants' detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

BRIAN VCULEK SURFACE DRAIN: With the new Drain process in place at the State Engineer's Office, the Board received the Solicitation of Views from the State Engineer's Office regarding the Brian Vculek Surface Drain Application; the Board has the opportunity to comment regarding the State's "statewide or interdistrict significance" review. The Board, as a whole, had no comments regarding the Vculek application.

Attorney Fredricks commented on the amendment to the House Bill No.1437. The new tile bill is now in effect. The new law still has a threshold of 80 acres. The 30-day notice process went away. It was found to be inefficient. Instead, under the new law, WRDs have authority to attach conditions to applications to address damages downstream. The damages must be proven by the downstream party. It is no longer necessary to look at deeds as part of the application process; the County's tax parcel information is now sufficient. This was an expensive and tedious step. Erosion protection can be required at all outlets, including in naturals. There was also assessment language added. The new law also increased permissible tile application fees from \$150 to \$500. Any remaining funds after processing the application will be returned to the applicant.

Manager Stein made a motion to approve the resolution of the policy application fee to increase from \$150 to \$500 with any remaining funds to be returned to the applicant. Manager Speich seconded the motion. Upon roll call, the motion carried unanimously.

Discussion was had regarding Chad Heimbuch's Drain Application.

A motion was made by Manger Zetocha and seconded by Manager Stein to require the \$150 permit fee from Heimbuch rather than the \$500 permit fee that recently came into effect. Upon roll call, the motion passed unanimously.

RS #1: Monica Zentgraf had forwarded a bill for spoil leveling from JBX from the clean out last fall. The bill was for \$3850.00. Manager Stein made a motion that was seconded by Manager Wyum to authorize payment to JBX. Upon roll call, the motion carried unanimously.

Manager Stein said that Brent Ptacek hauled 3 to 4 loads of rock for the rip rap during a culvert installation on Drain No. 11. The cost for rock is about \$55-66/yard. Manager Zetocha made a motion that was seconded by Manager Stein to reimburse Ptacek \$200 for his trucking expense. Upon roll call, the motion carried unanimously.

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

	DVEC	Electricity	1785.00
81989	Ohnstad Twichell	Review mtg. notes/Correspondence/ Review resolutions/ Board Meeting/Review Bond Refunding	1071.00
81988	Moore Engineering	Bond refund mtg.	185.00

Manager Wyum made a motion that was seconded by Manager Stein to approve and pay the listed Dickey-Sargent Joint Board bills. Upon roll call, the motion carried unanimously.

Meeting adjourned at 10:16 a.m.

LUCAS SIEMIENIEWSKI, CHAIRMAN

ATTEST:

WENDY WILLPRECHT SECRETARY-TREASURER