

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, MAY 21, 2015 AT 7:00 P.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Luke Siemieniewski, Jim Bosse, Roger Zetocha, Korey Martinson and Richard Engst. Absent: None. Also present: Board Attorney Sean Fredricks; Chris Gross, Engineer; Mike Opat, Engineer, Moore Engineering, Inc.; Emeric Erickson, Milnor; Frank Walker, Milnor; Edwin Erickson, Jr., Milnor; Scott Mahrer, Forman; Al Carton, Forman; and Tom Jones, NRCS.

Approve the April 16, 2015 minutes and April financial statement. (Engst/Bosse, unanimous)

Motion to approve payment of the following bills: (Bosse/Engst, unanimous)

71386	James Bosse	Travel	130.53
71387	Richard Engst	Travel	148.35
71388	Hardware Hank	Surge Protector	6.99
71389	Hewlett Packard Co.	HP Probook Laptop/Docking station, 24" Monitor	1355.00
71390	Sherry Hosford	McFarland Party supplies	29.85
	71391 Korey Martinson	Travel	71.30
71392	Chris McFarland	Travel	37.62
71393	Moore Engineering Inc.	Tewaukon Dam-\$145.00; Permit fees, wetland issues and General-\$899.25 and Brian Vculek and Emeric Erickson Permits-\$430.00; Dr#2-\$800.00; Dr#4-Hoistad-\$507.50; and Dr#11-Ransom County meetings-\$652.50	TOTAL 3434.25
71394	NDACO Resources Group	Postage to send computer	47.63
71395	Ohnstad Twichell	General - \$828.00; Mark Breker-\$119 and Dr#4-Hoistad litigation - \$232.00	TOTAL 1179.00
71396	Quill Corp.	Wireless Mouse	9.99
71397	Reardon Office Equipment	Desk Credenza and Office Chair	1228.00
71398	Lucas Siemieniewski	Travel	157.55
71399	Wayne Trophies	McFarland Plaque	30.50
10858	Sherry Hosford	Salary less 123.72 taxes	966.28
DD	Sargent County Bank	Withholding taxes	213.65

**ED ERICKSON, JR.:** Mr. Erickson met with the board to discuss a project in the N1/2 and SE1/4 7-131-54 that he is proposing and would like to separate it from the initial project (Application No. 4506) with Loren and Paul Ellefson. The initial project has been determined by the Office of the State Engineer to be of statewide significance. He is proposing to separate his project from the Ellefson project and to reduce the watershed area he proposes to drain to 30 acres; according to Mr. Erickson the water would flow to Buffalo Lake. He would put in a pump and pump the water down the county road ditch. Chris Gross reviewed the proposed plan and, in his opinion, the watershed area the project would drain is more than 80 acres; according to Attorney Fredricks that would require completion of a new Surface Drain Application; the State would have to modify Permit No. 4506 to eliminate this portion of the project. Mr. Erickson received the Surface Drain forms to complete and send to the Office of the State Engineer. Frank Walker suggested Mr. Erickson conduct surveys of sloughs to set elevations; the Board agreed that would set a baseline for the State Engineer’s review, if Mr. Erickson wants to avoid an “interdistrict or statewide significance” finding.

**HARLAN KLEFSTAD/CITY OF COGSWELL:** Emeric Erickson and Frank Walker, as well as David Even and Todd Stein, Cogswell and Lee Ann Even, Attorney for Cogswell City met with the Board and Mr. Erickson provided maps and information on land located in NW1/4-1 and SE1/4-2-130-57 owned by Harlan Klefstad. The proposed project is to drain water using surface inlets from Section 1 into 2 into the tile drain owned by this board in Sections 2, 11, 14 and 23, where it flows into the open ditch of Drain No. 11. According to Mr. Erickson the current staging area for the water is the City of Cogswell and this would allow the water to flow from the city into the new staging area in Section 2. There is concern from board members in using the present tile system to drain this water into. Attorney Even stated that the water sits in the northeast corner of Cogswell City and backs up to the west. If this system would be beneficial to the city, the city would be in favor of this project. The main concern is ensuring the drain continues to operate properly. Mr. Erickson and Mr. Walker were asked to obtain more information for the board and the city to consider at a future meeting.

**CHRIS MCFARLAND RECOGNITION:** Chris McFarland, former Sargent County Water Resource Board member arrived at the meeting. The board presented Chris with a plaque in recognition and appreciation of five years of service to Sargent County. Cake and coffee were served in his honor.

**DRAINAGE COMPLAINT – BEVERLY KELLEY (OWNER OF THE N1/2 AND SW1/4 OF N1/2 AND SE1/4-12-130-58 AND N1/2SW1/4 AND SE1/4-11-130-58):** The Board is in receipt of a drainage complaint

against tenants Don Rust and James Bosse; Owners-Randy Hemminger and Phyllis Thompson allege construction of a drain caused substantial flooding in the SW1/4-12-130-58. Don Rust and Leo Rust were present at the meeting.

Attorney Fredricks identified this as a technical conflict under Section 44-04-22 since Manager Bosse is named in the complaint. However, Mr. Fredricks noted that the conflict in and of itself is not the end of the consideration. Rather, under North Dakota law, a Board member must participate in a vote despite the conflict unless the remainder of the Board concludes the Board member should not participate. With that in mind, Mr. Fredricks conducted a vote of the remaining members to determine if Manager Bosse should participate in any votes regarding the drainage complaint. Upon roll call vote, Manager Engst, Manager Siemieniewski, Manager Zetocha and Manager Martinson all voted “no,” and unanimously agreed that Manager Bosse should not participate in any vote regarding the Kelley complaint.

Discussion continued on the Beverly Kelley drainage complaint. Managers Zetocha, Siemieniewski and Martinson have all inspected the area as well as Engineer Gross. Don Rust reported that after the Keystone Pipeline project and power line work, he went in to restore the ditch and also that the Homer Moffett culvert in Section 13 had washed out earlier this spring and was a safety hazard. Board members who inspected the site felt the work was just a cleanout, no deepening or widening and was approved by the Jackson Township Board of Supervisors. However, Chris Gross provided maps and photos of the area and determined that a permit was necessary to do the work. Chris inspected the alleged drainage and concluded the watershed area was in excess of 80 acres of water shed area, and Chris found clear evidence there were slope modifications, including deepening and widening. The Board inquired into the meaning of “cleaning” that does not require a permit. Sean Fredricks indicated that if a project is merely sediment removal, the project does not require a permit (and qualifies as a “cleanout”); however, any project that includes any slope modifications, deepening, or widening requires a permit. Mr. Rust volunteered to simply fill-in the improvements they constructed. After further discussion it was agreed to review at the next meeting and to determine whether the complaint should be dismissed based on Mr. Rust’s work to fill-in the improvements. If Mr. Rust is still interested in pursuing the project later, he could then file a Surface Drainage permit.

**FORMAN GOLF COURSE PERMIT:** Steve McLaen, Forman met with the Board to question the amount due to this Board for services in preparing the golf course permit. The board explained to Mr. McLaen that this was a time intensive permit due to multiple property owners and record searches. The project also entailed a revised plan and route, and an amended Notice of Decision. In light of the substantial effort the Board and their consultants had to put forth to consider and process the application, the Board believed the Golf Course should have to pay the excess costs incurred, in accordance with the Board’s policy. No action was taken on this matter.

**GWINNER DAM:** Motion to authorize the Chairman to sign an Agreement for Cost-Share Reimbursement for the Gwinner Dam Improvement Feasibility Study Project with the State Water Commission. The study is estimated to cost \$122,410 with the SWC reimbursing 35% of actual eligible costs not to exceed \$42,844 and a request to the Red River Joint Water Board for 65% of the non-state cost (\$51,718.23). The amount of local participation would be \$27,848. (Bosse/Martinson, unanimous)

**DRAIN NO. 8:** Motion to authorize the Chairman to sign an Agreement for Cost-Share Reimbursement for the Drain No. 8 Channel Improvement Preliminary Engineering Project with the State Water Commission. The study is estimated to cost \$19,000 with the SWC reimbursing 35% of actual eligible costs not to exceed \$6,650. Local share would be \$12,350. (Zetocha/Engst, unanimous)

**DRAIN NO. 11:** Manager Zetocha and Manager Bosse along with Engineer Gross met with the Ransom County Water Resource Board to discuss extending Drain No. 11 assessment area and felt the meeting had some positive comments. Chris Gross prepared a map of the current Sargent County assessment area for Drain No. 11 and reported that most of the benefit percentages in the north portion of the county are 5 to 30%. If the board decides to reassess the area to include Ransom County, a Joint Powers Agreement would be prepared and the entire drain reassessed. Motion to Authorize Moore Engineering, Inc. to develop a proposed assessment district for Drain No. 11 within Ransom County with proposed benefit percentages. (Engst/Bosse, unanimous)

**DRAIN NO. 2:** Chris Gross provided information to the Board regarding Drain No. 2 with existing drain profile elevations as well as the invert elevations of the two in-line crossings along the drain in Section 4 and 10 of Herman Township. According to Engineer Gross:

- 1 The channel in Section 4 is relatively flat with a 1.5 foot drop through the mile while the channel in Section 10 is rather steep with a 5 foot drop through the mile.
  - a Richard indicated that the farmer in Section 4 claims his water is slow moving but once it hits Section 10, it moves a lot faster. The survey supports this statement.
- 2 The culvert at the end of Section 10 is inverted (i.e. Installed going “uphill”). I would recommend the new culvert be installed properly.

- 3 The culvert between Section 4 and Section 10 could definitely be lowered to provide a little more fall in Section 4, however, this would require a drainage permit to be filed by the WRD since any work would include “deepening, widening, improving, .....
- a If the WRD feels this is the option to go with, it’s possible that SWC cost-share dollars could be requested.
- 4 If the WRD doesn’t want to improve the ditch but rather just clean it out, I would recommend the two culvert crossings be installed after the cleanout work to ensure the new crossings match the “clean” drain bottom as opposed to the one that we shot last week that likely contains sediment material.

According to Tom Jones, NRCS, there are other issues that involve partially converted wetlands. Landowner Darryl Foertsch will have to visit with NRCS to check on these wetlands. Culvert installation will be placed on hold until further information is received.

**UNPAID BALANCES FOR DRAINAGE PERMITS:** Motion to instruct the Secretary to send out billing reminders to all unpaid applicants. (Zetocha/Martinson, unanimous)

**SARGENT COUNTY WATER RESOURCE DISTRICT RESOLUTION OF POLICY REGARDING DRAINAGE PERMIT FEES:** Motion to adopt the following resolution of policy and further note that this board will not process anyone’s new permit application unless the applicant is current with other permit application fees.

1 **SARGENT COUNTY WATER RESOURCE DISTRICT  
RESOLUTION OF POLICY  
REGARDING DRAINAGE PERMIT FEES**

WHEREAS, the Sargent County Water Resource District (the “District”) is a North Dakota water resource district and political subdivision under N.D. Cent. Code Chapter 61-16.1.

WHEREAS, in accordance with Chapter 61-32 of the North Dakota Century Code, the District must consider, investigate, process, and approve or deny surface and subsurface (tile) drainage permits.

WHEREAS, all permit applications, both surface and subsurface applications, require the District to conduct certain investigations and reviews before the District can make final decisions regarding approval or denial, including investigation of land ownership, impacts to downstream landowners, impacts to roads and highways, and other items, all in accordance with N.D. Cent. Code §§ 61-32-03 and 61-32-03.1, and Chapter 89-02-01 of the North Dakota Administrative Code.

WHEREAS, the surface and subsurface application review criteria are technical and legal in nature, and require compliance with specific legal procedures that typically require the District to confer with engineering and legal consultants to ensure proper review and consideration.

WHEREAS, the District’s general fund budget is comprised of those dollars generated by a maximum four mill levy, as limited by applicable North Dakota law, and the District must utilize its general fund to finance and fund all of its operations, with the exception of assessment projects.

WHEREAS, the District must pay for the costs required to properly consider, investigate, and process all surface and subsurface drainage permit applications with the District’s limited general fund dollars, and utilizing general fund dollars for processing permits severely limits the District’s ability to construct, operate, maintain, and improve other projects and water infrastructure that could benefit all residents of Sargent County.

WHEREAS, in light of the financial burden on the District’s general fund as a result of the District’s obligation to consider, investigate, and process all surface and subsurface drainage permit applications in Sargent County in accordance with North Dakota law, the District previously adopted a formal policy regarding the expenses associated with all drainage applications.

WHEREAS, under the District’s previous permit fee policy, the District required surface and subsurface applicants to deposit \$500 permit fees as a condition to any application; however, in light of enhanced administrative and regulatory requirements, increasingly complex drainage projects, and other factors that have increased the costs of properly processing permit applications as required under North Dakota law, the District has concluded an increase of permit fees is necessary to protect the District’s general fund.

NOW THEREFORE, BE IT RESOLVED that this RESOLUTION OF POLICY represents the District’s official policy regarding permit application fees for purposes of considering, investigating, and processing all surface and subsurface drain applications.

BE IT FURTHER RESOLVED that the District will comply with its obligations to properly consider, investigate, and process all surface and subsurface drainage permit applications in accordance with Sections 61-32-03 and 61-32-03.1 of the North Dakota Century Code and Chapter 89-02-01 of the North Dakota Administrative Code to ensure orderly and legal drainage in Sargent County.

BE IT FURTHER RESOLVED that, to ensure the District maintains sufficient dollars in its general fund to construct, operate, maintain, and improve other projects and water infrastructure for the benefit of all residents of Sargent County, implementation and administration of a permit fee policy is necessary.

BE IT FURTHER RESOLVED that, from the date of the District's approval of this RESOLUTION, the District's permit fee for each *Application for Surface Drain* and each *Application to Install a Subsurface Drain* is \$1,500 per application, due at the time the District receives the application.

BE IT FURTHER RESOLVED that if the District incurs costs above the original \$1,500 permit fee in the course of considering, investigating, and processing any application, the applicant must pay all additional costs, above and beyond the initial \$1,500 fee.

BE IT FURTHER RESOLVED that if the District's costs incurred in the course of considering, investigating, and processing any application are less than the \$1,500 permit fee, the District will refund the remaining funds to the applicant.

BE IT FURTHER RESOLVED that this RESOLUTION OF POLICY supersedes any of the District's previous policies or practices regarding permit fees.

Date Approved: May 21, 2015

SARGENT COUNTY WATER  
RESOURCE DISTRICT  
Luke Siemieniewski, Chair

ATTEST:  
Sherry Hosford  
Secretary-Treasurer

**RICK HOISTAD LITIGATION ON DRAIN NO. 4:** Attorney Fredricks reported to the board that Chris McShane with Ohnstad Twichell has been preparing for depositions on the Hoistad litigation and that Moore Engineering, Inc. has also been involved. NDIRF will not pay expenses for the Board's attorney time or Board's engineer time incurred so the responsibility will be of this board to pay these expenses. The depositions have been delayed until late June or early July for board members who receive deposition subpoenas. According to Sean, the City is responsible for these costs under the parties' Joint Powers Agreement. Mike Opat, Engineer, Moore Engineering, Inc. (MEI) also stated that a Task Order No. 3 has been prepared authorizing MEI to provide expert witness services, compliance with records requests, legal support services and subpoena responses. Motion to approve Task Order 3. (Zetocha/Bosse, unanimous) Board members also asked if costs can be recovered from the contractor and there has been money withheld on the original project from the contractor. The City of Forman will review its property to determine if the City might be willing to trade a parcel to Mr. Hoistad (Mr. Hoistad has indicated an interest in trading for a parcel from the City to resolve the lawsuit). The City's engineer will review the property.

**TRI-COUNTY BOARD MEMBER FROM SARGENT COUNTY:** Richard Engst has served on the Tri-County Water Board for many years and Jim Bosse asked Korey Martinson if he would be interested in serving on that board. Korey agreed to take the appointment. Motion to appoint Korey Martinson to the Tri-County Board effective immediately. (Bosse/Siemieniewski. Motion carried) Richard asked if he could be a non-voting member on the Tri-County Board. Motion to approve said request. (Bosse/Siemieniewski. Motion carried)

**ANNUAL DAM INSPECTION:** The date of the 2015 annual dam inspection was scheduled for June 10 at 8 a.m.

**ASCHE GRASSED WATERWAY AND DIVERSION:** Tom Jones, NRCS provided the Board with updated information on a crossing by the Sparky Engquist residence (between Section 7 and 8 of Dunbar Township). NRCS is doing a Water Quality Project and will resize the culverts, which will be much larger. There was no comment from this board on the project on the diversion permit. The Corps of Engineers had no concerns nor are there any issues with NRCS. The road will be raised 1.5 feet. In September 2014 Dunbar Township requested cost share on a 36 inch culvert at this location and this board denied the request because of the larger culverts (3 48 inch installed by NRCS to allow for maximum flow into the grassed waterway) and 2 48 inch culverts plus an additional 24 inch culvert installed by the landowner. According to NRCS by placing a 24 inch culvert instead of a 48 inch for the third culvert, there is a potential that the road could be overtopped.

The meeting adjourned at 11:35 p.m.

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LUCAS SIEMIENIEWSKI – CHAIRMAN

ATTEST:

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SHERRY HOSFORD – SECRETARY-TREASURER