

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON WEDNESDAY MAY 5TH, 2021 AT 8:02 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN NORTH DAKOTA

Managers present: Todd Stein, Bruce Speich and Michael Wyum. Managers absent: Roger Zetocha and Lucas Siemieniewski. Also in attendance were Wendy Willprecht, Secretary/ Treasurer, Landowners Gerry and Diana Bosse, Dan and Phyllis Delahoyde. Others present via video conference were Chris Gross, the Board's Engineer, Sean Fredricks, the Board's Attorney; Chris McShane, OT; Pat Downs, MEI; Bob Banderet, Paul Mathews, Tammy Mathews, J. Feder, Carol Beck, Derrick Braaten, Braaten Law Office, Terry Mathews and Dale Mallberg.

The meeting was called to order by Manager Michael Wyum.

The meeting of today was called to discuss Drain No. 11 Right of Way issues.

Manager Wyum started the discussion by saying he had recently put a lot of time into reviewing past Sargent County Commission/Drain Board minutes as related to Drain No. 11 from the early 1900s. In doing the research he found notation of 2 deeds that were from two different dates:

1. December 1917 (3.73 acres)
2. February 1918 (5.1 acres)

The deed from 1918 did not say it superseded the deed of 1917. Manager Wyum said he found some inconsistencies in the early Drain Board books, and they were not in chronological order. In book #4 Wyum found reference to the Board changing the first easement because it needed more acres, but there was a canceled payment on the last parcel. Manager Wyum said the Water Board believed that all 8.83 acres had been compensated for, but instead it now appeared that only 5.1 acres had been, based on meeting minutes from 1917 recently provided by Mr. Mathews through his attorney. Manager Wyum suggested that the Board offer to increase the number of acres the Board would compensate the Mathews family by 3.73 acres.

Diana Bosse and Gerry Bosse both suggested that Paul Mathews had given this information regarding additional acres before. However, nobody on the Water Board or their representatives had seen the minutes recently provided by Paul Mathews, and the Board believed the matter was resolved in the litigation. Chris McShane said Sherry Hosford had looked through minutes from the early 1900s in preparation for that litigation, and nobody on behalf of Mr. Mathews presented those minutes in that litigation. Chris McShane and Derrick Braaten, attorney for Mr. Mathews, discussed the previous litigation. The subject of the litigation was if the Board owned those 8.83 acres under the "Right of Way Deed." The Supreme Court decided the "Right of Way Deed" was more like an easement than a deed that conveyed fee ownership. Before that decision and another similar decision on a railroad case, the Board believed the "Right of Way Deed" meant the Board owned those acres. The County also showed the Board owned those acres in the tax rolls.

Manager Wyum said that when he met with the Bosse family prior to today's meeting, they mentioned the concern they have over the fact that Ransom County is not being assessed for the Drain No. 11 project. Wyum said the Water Board shares this concern and that we have asked our Sargent County Auditor what she would do should a request for assessment be presented in Sargent County from another County's Water Board, and she said she would first run it through the Sargent County Commission. Wyum said we expect objections from Ransom County. Wyum said we cannot promise that a certain assessment will be set for Ransom County, but added that further discussion will ensue with Ransom and the Board is trying to work through this.

Manager Speich said that Ransom County continues to claim that they receive no value from Drain No. 11 because of the large number of acres that are under easement through the U.S. Fish and Wildlife Service. Speich added that Ransom County has been resistant in engaging in further assessment conversation.

Gerry Bosse said that, in his opinion, 40% of the water in Drain 11 is from Ransom County. He added that Ransom County is getting rid of water for nothing, at no expense.

Manager Wyum commented on the Board's efforts to address potential downstream impacts of Drain No. 11. He spoke briefly about the petition that is being circulated regarding a Drain No. 9 and Drain No. 11 Outlet Improvement Project. This project would help alleviate downstream impacts, but noted the studies done thus far regarding Drain No. 11, itself, show the downstream impact of the project will be minimal.

Manager Wyum said the Water Board would pay the Mathews family \$4500/acre for the additional 3.73 acres that the Sargent County Drain Board did not pay for back in 1917. Gerry Bosse voiced frustration and believed that things should not have gone as far as they have. Manager Stein expressed understanding towards Mr. Bosse's frustration and asked how we can amicably move forward.

Attorney Fredricks again noted that the issue litigated was the effect of the "Right of Way Deed" and if the Board owned those acres in fee simple or if the Board just had an easement. The amount of acres was not the subject of the litigation, the Water Board had not seen the minutes Paul Mathews recently brought to light, and neither had Sherry. He again noted that nobody presented those minutes during the litigation.

Attorney Derrick Braaten stated that Paul Mathews had seen the minutes and there were dozens of times that he had asked the Water Board to review them. Braaten said that in both 2001 and 2003, Paul Mathews implored the Board to look at the minutes. In 2003, Mathews asked the Attorney General to render an opinion. Attorney Braaten said that because of this Drain issue, there has been damage to many friendships and relationships.

Attorney Fredricks expressed, again, that no one knew about the minutes that showed that in 1917 the Sargent County Drain Board did not pay for those additional acres. He said that the Board understands Mr. Mathews is frustrated and that now the Board is trying to fix the issue, and is willing to pay Mr. Mathews for those acres. Fredricks also said that the

allegation being made that someone from the Sargent County Water Board knew of the acreage discrepancy is false. Chris McShane again noted the information being provided at this time was not presented in litigation. Rather than continuing with accusations, Fredricks noted the Board would like to pay Mr. Mathews for those acres from 1917 and move forward.

Attorney Braaten said that he feels the Water Board is trying to brush this issue under the rug. He reiterated the personal issues that have come because of this matter aside from the legal issues.

Pat Downs of MEI spoke and said that the acres in question total 9.3. The Water Board had previously agreed to the 5.1 acres that exist in the Drain. The difference owed would be 4.2 acres. He added that .53 acres prove to be unnecessary for the Drain No. 11 project and that those acres could be deeded back to the landowners. Manager Wyum suggested that the family should choose if they want the .53 acres returned or paid for.

Manager Speich suggested giving the Mathews family time to get together and discuss the proposal of the compensation for the additional acres being acknowledged by the Water Board.

Attorney Fredricks said that the Bosse parcels may have been separated, so the Water Board may need to do updated appraisals to account for that separation.

A motion was made by Manager Stein to authorize appraisals of the split Bosse parcels located on the SE part of Section 35. Manager Speich seconded this motion. Upon roll call, the motion carried unanimously.

Engineer Gross asked Manager Wyum to ask Carol Beck if she had anything to add to today's discussion. Carol said that she had no comment.

Attorney Braaten closed the meeting by saying he appreciated the Sargent County Water Board and acknowledged we are not trying to sweep this issue under the rug.

Meeting was adjourned at 8:54 a.m.

MICHAEL WYUM, VICE-CHAIRMAN

ATTEST:

WENDY WILLPRECHT SECRETARY-TREASURER