

1MINUTES OF SARGENT COUNTY WATER RESOURCE DISTRICT MEETING
SARGENT COUNTY COURTHOUSE,
FORMAN, NORTH DAKOTA
JUNE 18, 2009

The Sargent County Water Resource District met at a regularly scheduled meeting on Thursday, June 18, 2009, at 7:00 p.m., at the Sargent County Courthouse, Forman, North Dakota.

Present were James Bosse, Chairman; Dan Jacobson, Mark Breker, Roger White, and Richard Engst, Managers; Chad Engels, engineer for the Board; Sean M. Fredricks, attorney for the Board, participated by conference call; and various members of the public as noted below.

Minutes

The Board reviewed the minutes of its May 21, 2009, meeting. Approved as presented. (Jacobson/White, unanimous).

Financial Report

The Board reviewed its May 2009 financial statement, and approved the financial statement as presented. (White/Breker, unanimous).

Bills

The Board moved to approve payment of the following bills: (Breker/Jacobson, unanimous):

60818	James Bosse	Travel	33.75
60819	Mark Breker	Travel	97.20
60820	Britton Lumber	Fence Repairs at Frenier Dam	2062.76
60821	Richard Engst	Travel	45.00
60822	Dan Jacobson	Travel	7.20
60823	Ohnstad Twichell	Attorney fees	615.00
60824	Roger White	Travel	43.20
3414	Mark Breker	12 PD less 77.44	882.56
3415	Danny Jacobson	5 PD less 30.60	369.40
3416	Sherry Hosford	Sec. salary less 20.40	246.27
3417	Richard Engst	7 PD less 42.84	517.16
3418	Roger White	10 PD less 62.20	737.80
3419	James Bosse	13 PD less 85.56	954.44
DD	Sargent County Bank	Withholding taxes	628.15

The Board discussed the \$600.75 Bohnenkamp Construction bill for the Flannery driveway, and agreed the Board is not responsible for the private drive or the crossing, and therefore should not pay this bill. The bill is for repairs to a crossing/culvert that is not on a legal drain, but rather is on a private drive. This culvert is outside the Board's jurisdiction, and the Board is not responsible for any repairs.

The Board indicated the Secretary should send a letter to Ms. Flannery to explain these repairs are not a legal drain, and the Board is not responsible; the Secretary might suggest that Ms. Flannery contact FEMA for assistance.

Head of the Mountain Preserve

Manager Breker received specs for the proposed fence project from Jesse Hanson, and the Board approved payment of its portion of cost share for the fence (as discussed above).

Roger Nelson Farm Lease

The Board discussed a possible farm lease with Mr. Roger Nelson, and moved to authorize the Chairman to sign a new lease. (Engst/Jacobson, unanimous).

Milnor Drain Hydrology Study

Mr. Engels presented a draft report to examine the four crossings of the drain through Milnor. A copy of the report is available in the Secretary/Treasurer's office. In the report, Mr. Engels examines the four crossings, the various options, and the existing conditions. Mr. Engels explained the drain currently functions well as a legal drain for summer events and typical spring events. To the extent members of the assessment district are seeking flood control or flood protection benefits, or the extent the City of Milnor seeks flood protection, the Board would have to examine crossing improvements, and that would be the purpose of any improvements. For purposes of the report, Mr. Engels utilized LiDAR data and compared that data to the original drain plans. Mr. Engels explained the draft cost estimates associated with each option.

Manager Jacobson pointed out that if the Board constructs larger crossings, there may be FEMA implications. Mr. Engels indicated the Board would have to confer with FEMA to see if they would approve an "improved project" under FEMA's rules regarding cost-share. In Mr. Engels' experience, FEMA takes a substantial amount of time to approve any "improved project." For an "improved project," FEMA pays the value of the repair and applies it to a project improvement, and the local sponsor pays the difference. In this instance, if mitigation is required, the typical "improved project" process could take even longer. Mr. Engels suggested that if the Board is interested in seeking an "improved project," the Board should present Mr. Engels' report to FEMA when they meet.

Manager Engst asked what the Board could do if, assuming everything went perfectly with FEMA, the Board could construct an "improved project" this year. Mr. Engels explained the Board would have to utilize its maintenance fund to see how far ahead the Board could borrow to finance the local share. Mr. Fredricks explained the Board can levy up to \$2 per acre and can borrow up to a maximum of six years ahead on its maintenance levy. Manager Engst explained that at a \$1.50 per acre maintenance levy, the Board currently raises \$47,000 annually on this drain. At \$2 an acre, the Board could raise \$62,500 annually. Chairman Bosse suggested the Board simply take the report to FEMA, as the Board will not have any idea of what FEMA will allow until they have an opportunity to meet.

Mr. Tom Mund, Mr. Russ Martinson, and Mr. John Lien arrived at the meeting to discuss possible improvements. Mr. Engels explained, for clarification purposes, that the original name for this drain was "SCWC #1," previously constructed by the SCS (most likely). When the Sargent County Drain Board, a predecessor to the Sargent County Water Resource District, took over operations of the drain, the drain became Sargent County Drain #1 (or "Milnor Drain"). At any rate, Mr. Engels explained how the assessment process works and went over the map of the current assessment district.

Mr. Engels explained the Board invited landowners in to see what, if anything, they might want regarding the drain. One option might be sediment removal under a snagging and clearing project. Another option might be extending the drain, which would require some additional legal procedures. Mr. Engels further explained how snagging and clearing projects work, and the maximum project costs under North Dakota law for those projects.

The Board briefly discussed Mr. Engels' draft report and indicated attendees or anybody else interested could have a copy of the report. Chairman Bosse opened up the meeting for comments from attendees. Mr. Mund suggested the Board extend the drain and assess everyone evenly. Chairman Bosse explained he had received a phone call from a landowner in the assessment district who expressed opposition to any proposals to improve the drain. Mr. Martinson asked what benefits he would receive under any of the proposals. Mr. Lien suggested there is already more water there than the drain can handle. He would like to hear more about the proposals once the Board has a draft design prepared. Manager Engst suggested Mr. Lien review a copy of Mr. Engels' draft report.

Chairman Bosse explained it is tough for the Board to move forward with any proposed improvements or even spraying or a snagging and clearing project, when so few of the members of the assessment district came forward to express their opinions.

Mr. Fredricks explained the access agreement process for purposes of a snagging and clearing project. These types of projects do not require permanent access, but the Board would expect adjacent landowners to sign access agreements for temporary access to conduct the snagging and clearing operations. Mr. Fredricks explained landowners in other snagging and clearing projects have signed these agreements without any compensation and without any condemnation actions. Chairman Bosse explained he would want to know more about landowner willingness to proceed with the snagging and clearing project, and willingness to voluntarily sign access agreements, before the Board can decide whether or not it would proceed with anything.

Drain 4 Alignments

Mr. Engels examined possible alignments for Drain 4 with the use of LiDAR. He explained there is a lot of high ground through town, and there are wetlands to consider. He explained one option might be to replace the existing tile with a new one. Regardless of what option the Board favors, there will be substantial difficulties in constructing improvements to this drain. The wetland issues could present potential wetland mitigation requirements from NRCS.

Mr. Fredricks explained the Board could extend this particular drain and acquire additional right of way without a vote because the extension would be inside the existing assessment district. Chairman Bosse asked if there is existing right of way for the tile. That would obviously be a consideration.

Mr. Engels suggested the Board approach the City of Forman to determine how interested the City is in improving this drain, and to determine if the City would be willing to contribute.

The Board tabled further discussion, and Mr. Engels will research the proposals further, and will sketch possible routes for tile replacements.

Application to Drain with Drain Tile #3370 for Duane Bergh

The Board reviewed information from the State Engineer regarding Application to Drain with Drain Tile #3370 for Duane Bergh in the Southwest Quarter of Section 22 of Weber Township. Mr. Fredricks noted the State Engineer suggested permission from the owner of the Northeast Quarter of Section 22, and pointed out Maynard and Betty Anderson own that parcel. Chairman Bosse spoke with Todd Bergh, who indicated the landowner already granted verbal permission. However, the Board and Mr. Fredricks agreed they should still require written permission.

The Board adopted Mr. Engels' proposed responses to the eight elements under Section 89-02-01-09.2. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because there are no adverse impacts to downstream landowners, and because the Board will require a flowage easement from the owners of the Northeast Quarter of Section 22.

Manager Breker, seconded by Manager Jacobson, moved to approve Application to Drain with Drain Tile #3370 for Duane Bergh, subject to the following conditions:

1. That applicant obtains and records a flowage easement from the owners of the Northeast Quarter of Section 22 of Weber Township.
2. That the applicant obtains written permission from the owner of any land, besides lands owned by applicant, on which the applicant will construct the tile system or any open ditch, including in the Northeast Quarter of Section 22.
3. That the applicant constructs erosion protection at the outlet of the drain.
4. That the 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 government entities.

Mr. Todd Bergh previously submitted \$1,000 to the Board to pay the \$500 deposits for Mr. Duane Bergh's permit application (3370) and Mr. Todd Bergh's permit application (3367). Upon roll call vote, the motion carried unanimously.

Application to Drain with Drain Tile #3367 for Todd Bergh

The Board reviewed information from the State Engineer regarding Application to Drain with Drain Tile #3367 for Todd Bergh in the Northeast Quarter of Section 27 of Weber Township. Mr. Fredricks noted the applicant provided a "flowage easement" on a form signed by Joe Breker regarding Section 22, but indicated the easement does not specify the quarter and it does not include all of the owners of the Southeast Quarter of Section 22. Specifically, the County Recorder's Office shows Joseph and Patricia Breker are purchasing that quarter from Elvin Johnson by Contract for Deed. The Board reviewed the project and concluded a flowage easement is not necessary in that quarter anyway; rather, the applicant should obtain written permission from Mr. Breker to tie-in to his permitted tile project (Permit 3278).

Further, Todd Bergh does not own the Northeast Quarter of Section 27; rather, Todd and Monica Bergh are purchasing that quarter from Ms. Gweneth Bergh by Contract for Deed. Further, the project would cross a township road, so the road authority should provide consent.

The Board adopted Mr. Engels' proposed responses to the eight elements under Section 89-02-01-09.2. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because there are no adverse impacts to downstream landowners; because the Board will require written permission Joseph Breker to tie-in to his tile project; and because the Board will require written permission from Ms. Gweneth Bergh.

Manager Engst, seconded by Manager White, moved to approve Application to Drain with Drain Tile #3367 for Todd Bergh, subject to the following conditions:

1. That applicant obtains written permission from Weber Township to utilize any of its township road ditches.
2. That the applicant obtains written permission from the owner of any land, besides lands owned by applicant, on which the applicant will construct the tile system, including the record owner of the Northeast Quarter of Section 27.
3. That the applicant obtain written permission from the holder of Tile Drain Permit #3278 to tie-into the tile system in the Southeast Quarter of Section 22.
4. That the 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 government entities.

Mr. Todd Bergh previously submitted \$1,000 to pay the \$500 deposits for Mr. Duane Bergh's permit application and Mr. Todd Bergh's permit application. Upon roll call vote, the motion carried unanimously.

Application to Drain with Drain Tile #3369 for Barry Vculek

The Board reviewed information from the State Engineer regarding Application to Drain with Drain Tile #3369 for Barry Vculek in the South Half of Section 14 of Denver Township. The proposed tile system would flow into a natural watercourse. Mr. Fredricks noted Wayne and Diane Witkowski are the record owners of the South Half of Section 14. Mr. Vculek rents from the Witkowski's and the Witkowski's have already provided written permission for Mr. Vculek's proposed project.

The Board adopted Mr. Engels' proposed responses to the eight elements under Section 89-02-01-09.2. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because there are no adverse impacts to downstream landowners, and because the Board will require a flowage easement from the owners of the Northeast Quarter of Section 22.

Manager White, seconded by Manager Breker, moved to approve Application to Drain with Drain Tile #3369 for Barry Vculek, subject to the following conditions:

1. That applicant obtains and records a flowage easement from the owners of the Southwest Quarter of Section 14 of Denver Township.
2. That the applicant obtains written permission from the owner of any land, besides lands owned by applicant, on which the applicant will construct the tile system.
3. That the applicant constructs erosion protection at the outlet of the drain.
4. That the applicant submits \$500 in accordance with the Board's tile permit fee policy to cover the Board's engineering, legal, and administrative expenses incurred in investigating the application.
5. That the 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 government entities.

Upon roll call vote, the motion carried unanimously.

Adjournment

There being no further business for the Board to consider, the Board adjourned.

APPROVED:

James Bosse
Chairman

ATTEST:

Sean M. Fredricks
Acting Secretary