

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD
HELD ON THURSDAY, JULY 18, 2013 AT 7:00 P.M., IN THE COMMISSIONERS ROOM,
SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Jim Bosse, Chris McFarland, Mark Breker, Richard Engst and Roger Zetocha.
Absent: None. Also present: Chris Gross and Chad Engels, Moore Engineering, Inc. and Sean
Fredricks, Ohnstad Twichell.

Approve June 20, 2013 minutes. (Bosse/Zetocha, unanimous)

Approve the June 2013 financial statement and payment of the following bills: (Breker/Bosse,
unanimous)

68050 James Bosse	Travel	887.19
68051 Mark Breker	Travel	981.41
68052 Richard Engst	Travel	874.98
68053 JAV Construction, Inc.	Dr # 4 payment	6,394.80
68054 Johnson Excavation	WCI# 1 (Drain No. 7)	55,528.50
68055 ND Water Resource District A'ssn	Mark Breker Registration	140.00
68056 Ohnstad Twichell	Roger Zetocha Permit - \$511.58; Dr No. 4-Channel Reconstruction - \$629.25; Milnor HM Project - \$80.00; John and Dave Zetocha Permit - \$49.24; Frenier Dam CI - \$3,000.00; General - \$313.50; David Hassebroek Permit-\$25.92 =	4,609.69
68057 Starion Bond Services	Frenier Dam Bond	900.00
68058 Roger Zetocha	Travel	1,142.25
8542 Mark Breker	13 PD less 217.17 taxes	1,342.83
8543 Sherry Hosford	Salary less 24.22 taxes	292.45
8544 Richard Engst	10 PD less 148.63 taxes	1,051.37
8545 Jim Bosse	7 PD less 79.09 taxes	760.91
8546 Chris McFarland	2 PD less 18.36 taxes	221.64
8547 Roger Zetocha	12 PD less 278.47 taxes	1,161.53
DD Sargent County Bank	Withholding taxes	1,194.71

PAUL MATHEWS DRAIN RIGHT OF WAY: Sean Fredricks provided the Board with an update
of the latest activity on this litigation. Sean reported the discovery phase continues, with an
expectation for a December trial date.

DRAIN NO. 8: Mark Breker has talked to people in the Rutland area and has a map with the drain
outlined within the city. Mark agreed to present the map to the City Council and ask them to meet
with the Water Board to discuss future work on this drain.

Richard Engst arrived at this time.

FRENIER DAM: Chris Gross reported that the contractor is progressing on the repairs to the dam
and should have it completed by the end of this month.

AMENDMENT OF APPLICATION TO DRAIN NO. 3974 for Quandt Brothers in Southwest Township

John Quandt provided written information regarding his plan for purposes of 1APPLICATION TO DRAIN
No. 3974, previously approved by the Sargent County Water Resource District on June 21, 2012.
Under the original permit, Mr. Quandt sought to construct a surface drain to act as an outlet for a tile
system, also permitted by the Sargent County Water Resource District. Mr. Quandt sought to construct
a surface ditch commencing on the south boundary of the Southwest Quarter of Section 10 of
Southwest Township, on the north side of the 10/15 unimproved section line. From there, Applicant
will construct the surface drain to the east along the south boundary of Section 10 and along the north
side of the unimproved 10/15 section line until it reaches the east boundary of Section 10. From there,
Applicant will run the ditch diagonally to the north boundary of the Northwest Quarter of Section 14,
along the south side of the unimproved 11/14 section line; from there, the ditch will run to the east
along the north boundary of the Northwest Quarter of Section 14 until the project discharges into
Sargent County Drain No. 11.

As a condition to the Board's approval of Permit No. 3974, the Board required Mr. Quandt to obtain
easements for purposes of constructing and maintaining a surface drain from the owners of the
following real property in Southwest Township:

- a. East one-third of Southwest Quarter of Section 10;
- b. Southeast Quarter of Section 10; and
- c. Northwest Quarter of Section 14.

Mr. Quandt indicated he was not able to secure an easement from the owner of the Northwest Quarter of Section 14. With that in mind, Mr. Quandt seeks to modify his proposed surface drain under Permit No. 3974. More specifically, Mr. Quandt seeks to construct the surface ditch all on property owned by the Quandt's so as to avoid the requirement to obtain easements from other landowners. The new plan proposed by Mr. Quandt contemplates installation of horizontal wells on Sections 9, 10, 15, and 16, all on property owned by the Quandt's, for purposes of converting tile discharge and pumping water back through an irrigation system for use. The Quandt's will tile these properties, in accordance with subsurface drain permits previously approved by the Board in 2012.

The surface ditch will run north to south, between 3 and 8 feet deep, along the east boundary of Section 10, on property owned by the Quandt's. The Quandt's will discharge their tile system in Section 10 into this surface ditch. The ditch will carry the tile discharge south to the southeast corner of Section 10, into a horizontal well that will pump water back into the Quandt's' irrigation system. In addition, the Quandt's will construct a surface ditch along the south boundary of Section 9, running west to east to carry tile discharge to the horizontal well in the southeast corner of Section 10.

In addition, Applicant seeks to construct a surface ditch from west to east along the south boundary of the North Half of Section 16 and into the south boundary of the West Half of the Northwest Quarter of Section 15; Applicant will then run the surface ditch south to north along the east boundary of the West Half of the Northwest Quarter of Section 15 until the ditch discharges into a horizontal well in the southeast corner of Section 10.

The revised surface drain plan will not require construction or maintenance of a surface drain on property owned by any other landowners and will not require any easements.

According to records on file with the Sargent County Recorder's office, the Quandt's own the West Half of Section 10, the West Half of the Northwest Quarter of Section 15, the North Half of Section 16, and all of Section 9 in Southwest Township, where Applicant seeks to construct and maintain the surface drain.

As a result of these proposed changes, the project will not include any additional discharges into Sargent County Drain No. 11 that would not normally flow east toward Drain 11. In the Board's original decision regarding Application No. 3974, the Board required Applicant to install a control structure in the Southwest Quarter of Section 10 with the idea that Applicant would close the control structure when the downstream culvert contained at least 2 feet of water. Under this new proposal, no additional discharge will flow toward Drain 11; and, therefore, the control structure will not be necessary.

The Board adopted Chris Gross' proposed responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) because Applicant owns the property where Applicant seeks to construct the surface drain.

Manager Breker, seconded by Manager Engst, moved to amend the Board's approval of APPLICATION TO DRAIN No. 3974 dated February 21, 2012, for the Quandt Brothers, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the drain system.
- 2) That Applicant obtain written permission from the Southwest Township Board of Township Supervisors for purposes of constructing and maintaining a surface drain along any portions of the unimproved 9/16 and 10/15 section line.
- 3) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations or improvements to the project, or any proposed increase in the drainage area impacted and, if necessary, submitting an additional permit application.
- 4) 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.

Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite NOTICE OF AMENDED DECISION and to provide the NOTICE to all parties of record, including the parties from whom Applicant was required to obtain easements under the original permit.

Tom Jones, NRCS arrived at this time.

Johnson Drainage Complaint Against Gordon Paul Anderson

The Board next considered Roger Johnson and Jerome Johnson's Drainage Complaint against Gordon Paul Anderson. The Johnsons submitted the Drainage Complaint dated June 17, 2013. In it, the Johnsons allege the tile system constructed by Gordon Paul Anderson in the South Half of Section 2 of White Stone Hill Township is illegal or unpermitted drainage in violation of N.D. Cent. Code §§ 61-32-03.1 and 61-32-07. The Board previously considered a tile application filed by Mr. Anderson regarding this project, but Mr. Anderson withdrew the Application following 2011 legislation that created new tile permitting requirements. Mr. Anderson indicated at the time that his project footprint would not be 80 acres or more, and he indicated that, with that in mind, his project would not require a permit.

Chris Gross investigated the previous permit application by Mr. Anderson, and the tile ultimately installed by Mr. Anderson. Chris reviewed a report prepared by Dr. Larry Woodbury and reviewed Ellingson Drainage's tile plan for the project. Chris found the physical footprint of the project is 60 acres.

Sean Fredricks indicated that, under Section 61-32-03.1, a landowner need only obtain a tile permit if the project footprint will be 80 acres or more. With that in mind, the Board has no choice but to dismiss the Complaint. Sean did indicate that to the extent the Johnsons have experienced damages as a result of the project, the Johnsons could certainly pursue civil remedies against Mr. Anderson, but the Board would not be involved in any private civil matter between the parties.

In light of the lack of jurisdiction over this project since the physical footprint is less than 80 acres, the Board determined dismissal is the only option available for the Board. Manager Breker, seconded by Manager Engst, moved to dismiss the Drainage Complaint due to lack of jurisdiction under Sections 61-32-03.1 and 61-32-07. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite Notice of Decision and to send to the decision to the parties of record.

JAMES MAHRER COMPLAINT VS. LOREN ELLEFSON: The following were present at the meeting to discuss the above complaint: James, Scott, Corey and Marcus Mahrer and Loren Ellefson. Chris McFarland reported that Chris Gross and Chad Engels, Moore Engineering, Inc. had inspected the area and determined that more than 80 acres had been drained and that Mr. Ellefson needs a permit for surface drainage. The complaint alleges Mr. Ellefson installed tile and tile with a surface inlet. Mr. Ellefson informed the Board that he has applied for a permit with the State Engineer's Office. Discussion followed on a workable plan for the pump that Mr. Ellefson is using and preparing an Operation and Maintenance Plan. Mr. Ellefson agreed not to operate the pump until his permit has been received and reviewed by this Board. The engineers will look at the area where there are problems and provide more information about the elevation, and will offer recommendations regarding a reasonable and acceptable operation and maintenance plan; when the Board considers the application, the Board would most likely attach O&M conditions to the approved permit.

WILLEY TOWNSHIP CULVERT COST SHARE: LaVerne Colby, Milnor, Township Supervisor for Willey Township met with the Board to discuss cost share on replacing a 60 inch culvert located between Section 6 and 7-132-55 with a 72 inch culvert. Interstate Engineering, Inc. had conducted a Hydraulic Study and Mr. Colby provided copies to the Board. Estimated cost of the culvert is \$6781. Motion to cost share one third of the culvert cost. (Bosse/Engst, unanimous)

DUAYNE BALDWIN: Mr. Baldwin met with the Board to inquire about Richland-Sargent # 1 maintenance funds and plans for work on said drain. Mark Breker informed Mr. Baldwin that the RS#1 Board has met to discuss voting on an excess levy to obtain additional funds. The Board Engineer is working on the issue. Also discussed the Texas Crossing on Drain # 12 and any anticipated repairs.

DRAINAGE COMPLAINT FILED BY ROBERT LEE, DENNIS PHERSON, AND DON KIEFER AGAINST DANA BANISH

The Board next considered the Drainage Complaint filed by Robert Lee, Dennis Pherson, and Don Kiefer against Dana Banish dated July 10, 2013. In the Complaint, the parties allege Mr. Banish operated his pump in violation of the conditions of his Drainage Permit regarding APPLICATION FOR SURFACE DRAIN NO. 4171. Under the permit issued to Mr. Banish, by NOTICE OF DECISION dated May 10, 2013, the Sargent County Water Resource District included various conditions, including a condition that Mr. Banish could not operate the pump below elevation 1,167 when water in the Drain 12 lateral is outside of its channel; when water is above elevation 1,167, Mr. Banish may operate the pump regardless of conditions downstream. Chad Engels and Sean Fredricks explained the purpose of that condition was to allow Mr. Banish to operate the pump to reflect normal conditions if Mr. Banish

had not constructed the dike. In other words, if the dike in the Northwest Quarter of Section 7 were not present, water would flow naturally downstream above elevation 1,167 anyway so that activity would not require a permit.

Chad Engels indicated the Board would need some kind of evidence Mr. Banish operated the pump when water was below elevation 1,167 to prove he violated the conditions of his permit. The complaining parties had pictures that showed Mr. Banish was operating the pump when water was nowhere near touching the county road on the west side of Section 7. Chad indicated that when at elevation 1,167, the water would be high enough to touch the county road. With that in mind, Chad indicated the Board likely had enough evidence to conclude Mr. Banish was operating the pump below elevation 1,167 even though water in the Drain 12 lateral was outside of its banks downstream.

The Board discussed the possibility of requiring Mr. Banish to conduct a survey and to install an elevation marker to clearly reveal the 1,167 elevation, both for his benefit and for the benefit of other parties. That way, all parties could easily determine when water is above or below 1,167; if below 1,167, Mr. Banish cannot operate the pump if water downstream in the Drain 12 lateral is outside of its banks. Mr. Banish should install the marker and conduct the survey at his own expense. But with regard to the current Complaint, although there might be enough evidence to prove Mr. Banish had operated his pump in violation of his permit, the Board agreed there clearly was not a clear indicator of the elevation for all of the parties' benefit.

With that in mind, Manager Engst, seconded by Manager Bosse, moved to amend APPLICATION FOR SURFACE DRAIN NO. 4171, previously approved by the Board on March 18, 2013, to include a condition that Mr. Banish install an elevation marker clearly visible from County Road 12 to show the 1,167 elevation. Upon roll call vote, the motion carried unanimously. The Board will hold the Drainage Complaint in abeyance to ensure Mr. Banish complies with this additional condition.

Bohnenstingl-Kaler Drainage Complaint

The Board next considered Gary Bohnenstingl's Drainage Complaint against Joel Kaler. Mr. Bohnenstingl submitted the Drainage Complaint dated March 25, 2013. In it, Mr. Bohnenstingl alleged Joel Kaler constructed illegal or unpermitted drainage in the Southeast Quarter of Section 25 of Herman Township, Sargent County, North Dakota. The Board conducted an investigation, including a site visit, and did not find any evidence of any newly constructed drains or of any deepening or widening of existing drains in the Southeast Quarter of Section 25.

Sean Fredricks explained the Board only has jurisdiction over drainage to the extent the drainage requires a permit. Under Section 61-32-03 of the North Dakota Century Code and under Section 89-02-01-05 of the North Dakota Administrative Code, maintenance of an existing drain does not require a drainage permit. Section 89-02-01-01(7) defines "maintenance" as "removal of silt and vegetation from a drain." Maintenance does not include "deepening or widening a drain." In other words, if a party deepens or widens an existing ditch or drain, that activity may require a drainage permit if the watershed area is 80 acres or more. However, if the activity was mere removal of silt and vegetation from an existing drain or watercourse, that activity does not require a permit regardless of the watershed area. In this case, because the Board did not find any evidence of construction of new drainage and did not find evidence of any deepening or widening of existing drains, Mr. Fredricks explained the Board does not have any jurisdiction since Mr. Kaler's activity did not require a permit.

Manager Zetocha, seconded by Manager Bosse, moved to dismiss the Drainage Complaint due to lack of jurisdiction since Mr. Kaler's activities did not require a drainage permit. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite Notice of Decision and to send the decision to the parties of record.

2009 FEMA AUDIT: Secretary Hosford reported that FEMA will be in Sargent County July 29th to audit the files for the 2009 FEMA projects that were approved for this Board.

CHAD ENGELS: Chad announced to the Board that he will be turning over the reins to Chris Gross for Sargent County work. Mr. Gross has been doing many of the projects now and as Chad has assumed more clients and a larger workload he feels that Chris can continue serving as the engineer for this Board.

Meeting adjourned at 10:30 p.m.

CHRIS MCFARLAND – CHAIRMAN

ATTEST:

SHERRY HOSFORD - SECRETARY