

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, JULY 18, 2019, AT 8:00 A.M. IN THE COMMISSIONERS ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA.

Managers present: Lucas Siemieniewski, Todd Stein, Michael Wyum, Roger Zetocha and Bruce Speich. Absent: None. Also present: Chris Gross, the Board's engineer; Sean Fredricks, the Board's attorney and Sherry Hosford, Secretary-Treasurer. Others present were: Paul Mathews, Robert Banderet, Senator Jim Dotzenrod, Richard Ruch, Sargent County Commissioner and Rep. Sebastian Ertelt.

Manager Wyum moved to approve the Board's June 17, 2019. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Stein moved to approve payment of the following bills:

78049	Harvey Bergstrom	Tile permit Refund	296.50
79050	Farmers National Company	Dr#11 Appraisal Update	250.00
79051	Moore Engineering, Inc.	General Services - \$958.50; Shortfoot Creek Study-\$13,042.50; Brummond-Lubke Const. Eng.-\$7,295.00; Silver Lake Dam Feasibility Study - \$18,227.25; Drain No. 11 – Dr#16 Hydraulic Analysis-\$565.00; Dr#11 Design-\$5,775.00; Dr#11- Permitting, Wetland Mitigation and R-O-W- \$2,315.00; Dr#7- Cost share overrun-\$85.00 =	TOTAL
			48,263.25
79052	Ohnstad Twichell	General-\$578.74 meetings; Brummond-Lubke Dam Project-\$97.50; Bruce Speich Permit-\$638.60; Kelley-Mathews-Hemminger complaint-\$97.50; Dr#11 Imp. Project-Right-of-way and appraisals-\$446.50 =	TOTAL
			1,858.84
79053	Red River Basin Comm.	2019 allocation	1,512.00
79054	Richland County WTB	RS#1 Admin. Fees	462.59
79055	Will Rust	Dr#11 Beaver removal	50.00
79056	Sargent County Auditor	1/3 cost share culvert-Dunbar Township	691.84
79057	Lucas Siemieniewski	Travel	64.96
78058	Bruce Speich	Travel	281.88
79059	Todd Stein	Travel	18.56
78060	Michael Wyum	Travel	23.20
78061	Roger Zetocha	Travel	58.00
16643	Sherry Hosford	Salary less taxes 560.48	1,639.52
16644	Roger Zetocha	2 PD less 18.36 taxes	221.64
16645	Lucas Siemieniewski	2 PD less 18.36 taxes	221.64
16646	Todd Stein	2 PD less 18.36 taxes	221.64
16647	Bruce Speich	3 PD less 27.54 taxes	332.46
16648	Michael Wyum	2 PD less 18.36 taxes	221.64
DD	Sargent County Bank	Withholding taxes	925.48

Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

KELLEY-MATHEWS-HEMMINGER COMPLAINT: Sean Fredricks reported to the Board that he had been in contact with the State Engineer and nothing has been completed on the appeal at this time. Board members agreed to wait until this fall after the corn is off the field and they will go out with all parties involved and inspect at that time.

ANNUAL DAM/DRAIN INSPECTION: The annual inspection date was rescheduled to July 24th. The secretary was directed to contact Larson Helicopters and request that they fly all drains that were sprayed in the past and also to get in touch with the SC Weed Board to see if they can do some ground spraying of trees in Drain No. 2, Drain No. 7 and Drain No. 8. Luke and Bruce will coordinate the work with the weed board.

HEAD OF THE MOUNTAIN NATURE PRESERVE: Kathy Duttonhefner, ND Parks and Recreation (NDPR), met with the Board via conference call for the annual overview of Head of the Mountain Nature Preserve at Frenier Dam. Ms. Duttonhefner provided a brief summary for 2018 and informed the board that her department conducted a site inspection on June 13, 2019 and will spray noxious weeds with Milestone herbicide to treat thistle and Perspective or Plateau will be used to treat leafy spurge. Grasslands are in fair condition and smooth brome are found dominating the uplands and slopes of the preserve. The fence was cut on the north side of the preserve and NDPR will inspect and make repairs. The kiosk has a small crack in it as well as some No Hunting Signs in place. The Fort Ransom Park Manager will replace these signs with updated language. If there are any violations, those should be addressed to the Fort Ransom Park Manager for enforcement. The lease will expire this year.

DRAIN NO. 11: In response to recent claims, Sean Fredricks explained that Robert's Rules of Order are not law, as indicated by the North Dakota Attorney General's Office. In 2017, following the commencement of a lawsuit against the Board regarding the Drain 11 project, the Board tabled the project. Following the Supreme

Court decision this spring, the Board did not take the matter off the table. Sean indicated the Board should take formal action to take the matter from the table. However, Sean also noted that any recent activities by the Board were not “illegal” simply by virtue of the lack of a motion to remove the matter from the table. and suggested that the Board make a motion to take from the table the motion on May 18, 2017 regarding tabling the reassessment of Drain No. 11 and the Project and Design of Drain No. 11. Manager Zetocha moved to take from the table the motion on May 18, 2017, to table the Drain 11 Project and the reassessment of Drain No. 11. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously.

Chris Gross reported Moore is working on final tweaks of the channel alignment and working through permitting. Chris feels these issues need to be resolved before a public meeting can be scheduled. No update on the reassessment as Mr. Mallberg was unable to attend today’s meeting due to a family emergency. A lengthy discussion followed regarding assessing properties in other counties. Sean indicated he cannot represent the Board, the Ransom County WRD, or the Dickey County WRD on matters related to the reassessment. Sean will try to find conflict counsel for all three boards. Sean advised the Board previously that the ND Attorney General’s office has issued two opinions that suggest WRDs can assess across county lines, one in 1984 and one in 2003. However, Sean pointed out there are several statutory issues with those opinions. For example, the WRD statutes do not grant WRDs specific authority to assess over county lines, whereas the WRD statutes do specifically grant WRDs the ability to acquire property, and even utilize eminent domain, in other counties. If the legislature had intended to grant WRDs the ability to assess in other counties, the legislature could have easily provided that specific authority. Further, the assessment certification statutes do not support the notion that WRDs can order auditors in other counties to assess in their counties. In light of these and other legal and practical challenges to WRDs’ abilities to assess in other counties, and the Ransom County WRD’s findings that wetland easements reduce or eliminate any benefits of Drain 11 to Ransom County properties, the Board may face difficulty attempting to assess in Ransom County.

Discussion following regarding ND WRDs operating along county lines as opposed to watershed districts in Minnesota. The watershed concept has its advantages, but the political differences between counties create substantial obstacles. The county system in North Dakota is more advantageous in light of the ability of WRDs to form joint boards along watershed boundaries; in other words, North Dakota WRDs really get the best of both worlds. Sean indicated one positive change in the Century Code would be to force unwilling WRDs to form joint boards along watershed boundaries to ensure WRDs have the ability to address basin-wide issues. The ND Water Users have considered this issue in the past and Sean will request that they consider this approach once again. Senator Dotzenrod has worked on water issues for several sessions and he understands how water resource districts operate, both as a legislator and as a landowner. He explained that he has seen these watershed/county debates for several years. With regard to Drain 11, Senator Dotzenrod indicated WRDs have an obligation to ensure these legal drain facilities function for the benefit of landowners in the drain watersheds. Following the discussion the Sargent County Board members agreed to meet with both Dickey County and Ransom County Water Board for feedback on their ideas of reassessing across county lines.

John Quandt and Steve Hansen arrived at the meeting to present Subsurface Applications for approval.

APPLICATION TO INSTALL A SUBSURFACE WATER MANAGEMENT SYSTEM No. 2019-05 IN THE WEST HALF OF 20-130-58 for JUSTIN AND NATHAN QUANDT: The Board reviewed an *Application to Install a Subsurface Water Management System No. 2019-05* dated June 18, 2019, for Justin and Nathan Quandt; John Quandt was present to discuss the application and the project with the Board. Under the application, Applicants seek to install a 300-acre drain tile system in the West Half of Section 20 in Jackson Township, Sargent County, North Dakota. The project will include a pump outlet located along the west boundary of the Northwest Quarter of Section 20; the pump will discharge into the South Lateral of the Jackson Township Improvement District No. 1 Project. The Dickey-Sargent Joint Water Resource District owns and operates the Jackson Project.

Because the project will discharge directly into a legal assessment drain, and because Applicants supplied flowage easements from landowners downstream, no THIRTY-DAY NOTICE was necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1. The Board can require Applicants to provide erosion protection in the South Lateral Extension and will do so to protect the drain.

According to records supplied by Applicants, Justin Quandt owns the Southwest Quarter of Section 20 of Jackson Township, and Nathan Quandt owns the Northwest Quarter of Section 20 of Jackson Township.

Manager Wyum moved, and Manager Speich seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2019-05* dated June 18, 2019, for Justin and Nathan Quandt in the West Half of Section 20 in Jackson Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2019-05, subject to the following conditions:

- 1) That Applicants provide, install, and maintain adequate erosion protection at any and all outlets into South Lateral Extension of Jackson Township Improvement District No. 1 Project;

- 2) That Applicants notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 3) That Applicants must reseed any of the Dickey-Sargent Joint Water Resource District's right of way disturbed by Applicants' activities, and must maintain any reseeded areas for a period of one year from the date of completion to ensure the seeding adequately repairs any disturbed areas; and
- 4) That Applicants must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the District.

Upon roll call vote, the motion carried unanimously.

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 notify the Sargent County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; and
- 2) 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.

APPLICATION TO INSTALL A SUBSURFACE WATER MANAGEMENT SYSTEM No. 2019-08 IN THE EAST HALF ON 7-129-58 for JOHN SCHROEDER:

The Board reviewed an *Application to Install a Subsurface Water Management System No. 2019-08* dated July 16, 2019, for John Schroeder; John Quandt was present to discuss the project and the application with the Board on behalf of Mr. Schroeder. Under the application, Applicant seeks to install a 310-acre drain tile system in the East Half of Section 7 in Southwest Township, Sargent County, North Dakota. The project will include a pump outlet located in the southeast corner of the Northeast Quarter of Section 7; the pump will discharge directly into the Lovell Improvement Project, a project permitted under SURFACE DRAIN PERMIT NO. 4757.

Applicant supplied flowage easements from landowners one mile downstream of the project outlet, and, as a result, no THIRTY-DAY NOTICE was necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1.

According to records supplied by Applicant, John and Darlene Schroeder own the East Half of Section 7 of Southwest Township. With regard to downstream properties, QB-1 LLLP owns the Northwest Quarter of Section 8 of Southwest Township; and Michael, Jeffrey, James, and Jason Quandt all own the Southeast Quarter of Section 6 of Southwest Township. The downstream property owners all provided flowage easements to Applicant regarding the project.

Manager Stein moved, and Manager Zetocha seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2019-08* dated July 16, 2019, for John Schroeder in the East Half of Section 7 in Southwest Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2019-08, subject to the following conditions:

- 1) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets; and
- 2) That Applicant must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the District.

Upon roll call vote, the motion carried unanimously.

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

- 1) That Applicant notify the Sargent County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; and

2) 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.

STEVE HANSEN AND PHIL HANSEN SUBSURFACE WATER MANAGEMENT SYSTEMS: Sean Fredricks sent out 30-day Notices on both of these applications, as required under North Dakota law. The Board can approve both of these permits in August.

LOVELL IMPROVEMENT PROJECT – 110 AVENUE NORTH AMENDMENT: The Board and the Dickey County WRD previously approved Surface Drain Permit No. 4757 for the Lovell Improvement Project. Permit No. 4757 was a ‘statewide significance’ permit and the two WRDs conducted the process jointly. Lovell Improvement Project, LLC, recently submitted an application to amend Permit No. 4757, referred to by the State Engineer’s Office as the “110th Avenue North Amendment.” The amendment would include improvements along Sections 4, 8, and 9 in Lovell Township, and Sections 33 and 34 of Riverdale Township. The objective of the amendment and improvements is to accommodate tile drainage for members of Lovell Improvement Project, LLC. The State Engineer’s Office reviewed the application and concluded the project would not require a separate permit since the project will essentially be a component of the Lovell Project, and indicated the conditions attached to Permit No. 4757 will apply to the amendment and project. The State Engineer’s Office indicated both the Sargent County WRD and the Dickey County WRD should review the project and, if neither has an issue with the amendment and additional improvements, the WRDs should both approve the amendment. Manager Wyum moved to approve the 110th Avenue North Amendment to Surface Drain Permit No. 4757. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously. Sean Fredricks will obtain the Dickey County WRD’s approval documents, and will forward the originals to the State Engineer’s Office.

RUSSELL WURST COMPLAINT: Mr. Wurst explained a problem with culverts in the SW1/4-33-129-55 and upon further review, the Board informed Mr. Wurst that this is a road authority issue and the water board does not have jurisdiction over this complaint.

MAHRER-ELLEFSON COMPLAINT: Board members asked that this complaint be put back on the agenda and tabled. Motion by Manager Zetocha. Seconded by Manager Speich. Upon roll call vote, the motion carried unanimously.

DRAIN NO. 11: Manager Zetocha moved to authorize Moore Engineering, Inc. to order the required extensions to be placed on culverts in Drain No. 11 between Sections 21/28 in Harlem Township. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously. Discussion on the Brampton project and rerouting water. NRCS has no funding but would go out and shoot some lines for how much water should be left in the drain. MEI will provide some elevations of this area from south of Brampton up to Drain No. 11.

BRUMMOND-LUBKE DAM IMPROVEMENT PROJECT: The contractor is scheduled to begin work on July 22. The archeological survey has been completed. The State Engineer reviewed the construction permit application and has approved and signed Construction Permit No. 2562 subject to conditions listed on the permit. An Application (Notice of Intent) to Obtain Coverage under NDPDES General Permit for Storm water Discharges Association with Construction Activity has also been completed and submitted to the ND Dept. of Environmental Quality.

DRAIN NO. 7: Bruce Speich attended the State Water commission on June 19th. On the agenda was the request for Drain No. 7 cost overrun of \$110,468.00. Bruce reported that this amount was approved and will be transmitted to the board from the SWC.

DRAIN NO. 12: A RESOLUTION AUTHORIZING SARGENT COUNTY DRAIN NO. 12 IMPROVEMENT PROJECT NO. 2019-01 was presented for approval. Manager Zetocha moved to approve the Resolution and to authorize the Chairman and Secretary to sign. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously. Said resolution is attached to the official minutes and will be published in the official newspaper of Sargent County. The Board next discussed the surface permit required for the project.

1APPLICATION FOR SURFACE DRAIN NO. 5284 - SARGENT COUNTY DRAIN NO. 12 IMPROVEMENT PROJECT NO. 2019-01

The Board reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN NO. 5284, previously submitted by the Sargent County Water Resource District regarding SARGENT COUNTY DRAIN NO. 12 IMPROVEMENT PROJECT NO. 2019-01. The Sargent County Water Resource District owns, operates, and maintains SARGENT COUNTY DRAIN #12 as a legal assessment drain under Chapter 61-16.1 of the North Dakota Century Code.

The Board plans to proceed with SARGENT COUNTY DRAIN NO. 12 IMPROVEMENT PROJECT NO. 2019-01. The project will include channel improvements along approximately 0.75 miles of the Drain 12 channel in the Southeast Quarter of Section 6 of Marboe Township, south of Cayuga, North Dakota. The project will include deepening and widening the channel to improve bank stability and to reduce erosion. The Project will commence where Drain 12 flows to the north through County Road 5. The Project will continue north, then will turn east to cross under 145th Avenue SE, where the Project will conclude. The Project will include improvements to the existing road crossings; the crossing improvements will meet the North Dakota Stream Crossing Standards.

The Board has concluded the project is necessary to Drain 12 to repair, stabilize, and improve the channel to reduce future maintenance needs and costs; to reduce overtopping of County Road 5 during high water events; to provide enhanced control over the Drain 12 watershed; and to provide more effective and efficient drainage for the benefit of the properties within the Drain 12 watershed.

The State Engineer concluded the project is not “of statewide or interdistrict significance.” The Board adopted Moore Engineering’s proposed responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under 89-02-01-09.1(2) of the North Dakota Administrative Code; the Board is in the process of obtaining all of the right of way necessary to accommodate the project and the landowners in the area support the project. The right of way acquisition will eliminate adverse impacts to private landowners.

Manager Wyum moved to approve APPLICATION FOR SURFACE DRAIN NO. 5284 regarding SARGENT COUNTY DRAIN NO. 12 IMPROVEMENT PROJECT NO. 2019-01, subject to any conditions attached by the State Engineer, and to authorize the Secretary-Treasurer to sign PERMIT FOR SURFACE DRAIN NO. 5284. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously. Sean Fredricks will send the permit materials to the State Engineer’s Office.

RICHLAND-SARGENT NO. 1: Monica Zentgraf, Secretary-Treasurer RS #1 provided RS #1 bills for consideration and approval as follows:

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| 1. Interstate Eng., Inc. | \$3,035.90 (Eng. services thru 7-6-19) |
| 2. True North Steel | \$13,467.35 (96” 16 Ga 2 pc Arch) |

Manager Stein moved to approve the Richland-Sargent No. 1 bills. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously.

DICKEY-SARGENT JOINT WATER RESOURCE DISTRICT: Sherry Hosford, Secretary-Treasurer for DSJWRD provided DSJWRD bills for consideration and approval as follows:

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| 1. DVEC | \$833.00 (Electricity) |
| 2. Ohnstad Twichell | \$853.51 (Wilcox-Locken action and recording fees) |
| 3. Moore Engineering, Inc. | \$247.50 (Meetings) |

Manager Wyum moved to approve the DSJWRD bills. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

WINDOWS 10 UPGRADE: Manager Zetocha moved to approve an upgrade for the office computer to Windows 10 at a cost of \$120.90. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

CONSERVATION RESERVE PROGRAM CONTRACT: A new Farm Number has been assigned to the CRP contract which the board has with Jeff Breker. Manager Zetocha moved to authorize the Secretary to sign said form. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously.

SHORT FOOT CREEK STUDY: Chris reported that the design on three sites are complete, plans are being prepared and will be sent to Barr Engineering for an environmental impact study. Chris is projecting a project team meeting the end of August to discuss the designs and plans.

RON GREENMYER REQUEST TO IRRIGATE FROM DRAIN NO. 11: Ron was in contact with the board to ask if approval had been granted for him to irrigate from Drain No. 11. He is still working with the State Engineer and will come to a water board meeting for approval of a Utility Permit once he has state approval.

With no further business to discuss, the Board adjourned the meeting at 11:07 a.m.

LUCAS SIEMIENIEWSKI, CHAIR

ATTEST:

SHERRY HOSFORD, SECRETARY-TREASURER