

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, AUGUST 17, 2017, AT 8:00 A.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Roger Zetocha, Korey Martinson, Bruce Speich and Todd Stein. Absent: Lucas Siemieniewski. Also present: Sean Fredricks, Board Attorney; Chris Gross, Board Engineer; Bob Banderet, Cogswell; Paul Mathews, Cogswell; John Quandt, Oakes; Steve Kasowski; Oakes, Paul Roney, Oakes.

Approve July 20, 2017, minutes and July 2017 financial report. Manager Martinson moved to approve. Manager Speich seconded the motion. Absent and not voting: Manager Siemieniewski. Upon roll call vote, the motion carried unanimously.

Manager Stein moved to approve payment of the following bills:

75719	Matt Bogart	Beaver removal-Dr#7	300.00
75720	James Bosse	Beaver removal-Dr#11	100.00
75721	Chad Heimbuch	Drain permit refund	485.90
75722	Landmark Drainage LLC	Dr# 7 Channel Imp. Project	100,000.00
75723	Korey Martinson	Travel	85.60
75724	Moore Eng. Inc.	General-\$745.00; Dr#7 I&S-\$3,905.90; Dr#7 Contractor Delay-\$10,831.05; Dr#7-Extension-\$186.25; Gwinner Dam - \$1,391.15; Shortfoot Creek-\$2,700.00=	\$19,759.35
75725	Ronald G & Linda F Motl	Dr# 7 permanent easement	14,763.00
75726	Ohnstad Twichell	General-\$825.00; Dr#7 project-\$968.66; Gwinner Dam-\$354.50	=TOTAL 2,148.16
75727	Red River Basin Comm.	2017 pledge	1,197.50
75728	Donald L Rust	Drain permit refund	25.15
75729	Sargent County	Hall Township Bridge cost-share	138,684.45
75730	Bruce Speich	Travel	53.50
75731	Todd Stein	Travel	25.68
75732	Roger Zetocha	Travel	53.50
13900	Bruce Speich	2 PD less 18.36 taxes	221.64
13901	Sherry Hosford	Salary less taxes 493.92	1506.08
13902	Roger Zetocha	2 PD less 23.19 taxes	216.81
13903	Korey Martinson	3 PD less 44.37 taxes	315.63
13904	Todd Stein	3 PD less 27.54 taxes	332.46
	DD Sargent County Bank	Withholding Taxes	884.18

Manager Martinson seconded the motion. Absent and not voting: Manager Siemieniewski. Upon roll call vote, the motion carried unanimously.

**JOHN QUANDT TILE APPLICATIONS:** John Quandt and Steve Kasowski were both present at the meeting to discuss three new tile applications. Paul Roney also was in attendance. John reviewed each application with the board. Mr. Quandt informed the board that he had not obtained the flowage easement for the project in the North Half of Section 19; the Board would have to provide a 30-day Notice on that application without an easement, but John indicated a notice will not be necessary. The Board will approve the application for that project at their September meeting.

**Application to Install a Subsurface Water Management System for Jason and Jessica Quandt, Michael and Pamela Quandt, Jeffrey and Jeanette Quandt, and James Quandt in the Northwest Quarter of Section 17 and the North Half of the North Half of the Southwest Quarter of Section 17 in Jackson Township**

The Board reviewed *Application to Install a Subsurface Water Management System* dated July 19, 2017, for Applicants Jason and Jessica Quandt, Michael and Pamela Quandt, Jeffrey and Jeanette Quandt, and James Quandt. Under the application, Applicants seek to install a drain tile system in the Northwest Quarter of Section 17 and the North Half of the North Half of the Southwest Quarter of Section 17 in Jackson Township, Sargent County, North Dakota. The project will include four total outlets, all of which will ultimately discharge via the South Lateral Extension Project to the Jackson Township Improvement District No. 1 Project. Three of the outlets will be located along the west boundary of the Northwest Quarter of Section 17, all of them outside of township road ditch right of way; however, the tile discharge will ultimately flow through the township road ditch along the west boundary to the north until ultimately discharging in the northwest corner of the Northwest Quarter of Section 17, diagonally to the northwest and into the South Lateral Extension Project. The fourth outlet will be located along the north boundary of the Northwest Quarter, near the northwest corner; the outlet will similarly discharge through an existing culvert diagonally to the northwest and into the South Lateral Extension Project.

John Quandt owns the South Half of Section 7 of Jackson Township, and Mr. Quandt previously executed a flowage easement in favor of the Applicants and for purposes of the South Lateral Extension Project. With that in mind, the project did not require a downstream landowner notice under N.D. Cent. Code § 61-32-03.1. Further, the South Lateral Extension Project includes right of way and easements along the course of the entire project. The District will require Applicants to install and maintain outlet control structures on all of the outlets to prevent flooding during “critical flood periods.”

According to records on file with the Sargent County Recorder’s Office, Jason and Jessica Quandt, Michael and Pamela Quandt, Jeffrey and Jeanette Quandt, and James Quandt own the Northwest Quarter of Section 17 and the North Half of the North Half of the Southwest Quarter of Section 17.

It was moved by Manager Stein and seconded by Manager Speich to approve *Application to Install a Subsurface Water Management System* dated July 19, 2017, for Jason and Jessica Quandt, Michael and Pamela Quandt, Jeffrey and Jeanette Quandt, and James Quandt in the Northwest Quarter of Section 17 and the North Half of the North Half of the Southwest Quarter of Section 17 in Jackson Township, subject to the following conditions:

- 1) That Applicants must install and maintain a control structure at any and all outlets, and must 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 obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;
- 2) That Applicants obtain written permission from the Jackson Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches;
- 3) 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
- 4) 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 for John Quandt in the South Half of Section 7 in Jackson Township**

The Board next reviewed *Application to Install a Subsurface Water Management System* dated July 19, 2017, for John Quandt. Under the application, Applicant seeks to install a drain tile system in the South Half of Section 7 in Jackson Township, Sargent County, North Dakota. The project will include a single pump outlet that will discharge into a mitigation site in the Southwest Quarter of Section 7, and the discharge will flow into the South Lateral Extension Project, a lateral of the Jackson Township Improvement District No. 1 Project.

Applicant is one of the holders of the surface drainage permit regarding the South Lateral Extension Project, and the owners of that project previously obtained right of way along the course of the entire project, including in the Northwest Quarter of Section 7 of Jackson Township, and the Southeast Quarter of Section 1 of Riverdale Township in Dickey County. With that in mind, no THIRTY-DAY NOTICE was necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1. The Board will require Applicant to turn off his pump outlet during “critical flood periods” to reduce any downstream flooding.

According to records on file with the Sargent County Recorder’s Office, John Quandt owns the South Half of Section 7 of Jackson Township.

It was moved by Manager Speich and seconded by Manager Martinson to approve *Application to Install a Subsurface Water Management System* dated July 19, 2017, for John Quandt in the South Half of Section 7 in Jackson Township, subject to the following conditions:

- 1) 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 obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 2) 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
- 3) 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.

**JOHN QUANDT CULVERT COST SHARE:** The Board's policy is to provide one-third of the cost of the purchase of 36- inch culverts, or enhancement of existing culverts to 36 inches, at the Board's discretion, if the requesting township provides a hydrology study as evidence the culvert complies with the North Dakota Stream Crossing Standards. Mr. Quandt requested cost share for culverts placed within Jackson Township and on Sargent County Road # 3 for the above projects: 42"x 29"x 80' 14 gauge culvert on the NW corner of Section 7-130-58; 42"x 29"x 60' 14 gauge culvert between NW corner section of Section 18-130-58 and SW corner of Section 7-130-58; 42"x 29"x 60' 14 gauge culvert on the west quarter line of Section 18-130-58 and on Sargent County Road #3 – 42"x 29"x 90' 10 gauge culvert between Section 18 and 19-130-58 and 42"x 29" x 66' 10 gauge culvert for 115<sup>th</sup> Ave SE and SC Road # 3. The amount for the first three culverts above was \$8,549.24, which was paid by Mr. Quandt to Riverdale Township in Dickey County and 1/3 of that amount is \$2,849.75. The billing has not been received for the culverts replaced on SC Road # 3. The Board's policy is to provide cost-share for the cost of purchasing the culvert, not for installation costs. Manager Speich moved to approve 1/3 cost share of all of the above culverts upon receipt of evidence of the costs of each culvert. Manager Martinson seconded the motion. Absent and not voting: Manager Siemieniewski. Upon roll call vote, the motion carried unanimously.

**DELAHOYDE-QUANDT DRAINAGE COMPLAINT ABEYANCE:** Moore Engineering is conducting watershed analysis of one portion of the area that is the subject of Mr. Delahoyde's complaint (an area that was not included on a surface permit previously approved by the Board). The delineation information for this area was not available and Chris Gross will provide it for the Board to review at the September meeting.

**DRAIN NO. 7 CHANNEL IMPROVEMENT PROJECT:** Brent and Blake with Landmark Drainage LLC and Richard Engst, Milnor arrived at the meeting. Chris Gross reported that all quantities are established and finalized except for the storm water management and seeding, which he expects will all be complete by the September board meeting. Payment No. 7 request today is for \$134,222.16, 1an amount that includes the \$126,550.14 previously withheld by the Board. Sean reminded the Board of its previous liquidated damages claim letter to reserve the right to assess liquidated damages for Landmark's failure to meet the completion date of November 23, 2016. Further, at the Board's June and July meeting, in accordance with the Board's set-off rights under its construction contract with Landmark, the Board withheld 2 \$57,429.98 from Application for Payment No. 5 and made no payment on Pay Application No. 6 request of \$126,550.14. Discussion followed on how much should be approved today and reasons why money should or should not be withheld from Pay App No. 7. There were several problems with this project but the work was ultimately satisfactory once completed; however, Landmark did not meet project deadlines and the Board has incurred substantial excess costs as a result of Landmark's failure to meet its contractual deadlines. After further discussion, Manager Speich moved to approve payment of \$100,000.00 to Landmark Drainage LLC for Application for Payment No. 7, and to withhold the remaining \$34,222.16 for future consideration regarding liquidated damages. Manager Martinson seconded the motion. Upon roll call vote, the following voted yes – Zetocha, Speich and Martinson. Voting No – Stein. Absent and not voting – Siemieniewski. Motion carried. Sean will provide a Notice of Set-Off to Landmark. 3The Board is still holding approximately \$29,000 in retainage and \$9,000 for the other remaining items. Ron Motl has completed his paper work for the permanent easement for the Drain No. 7 Improvement project and requires a signature by the board. Manager Stein made a motion to authorize the Vice-Chairman and Secretary to sign the Permanent Easement for Ron and Linda Motl and approve payment of \$14,763.00 for said easement. Manager Speich seconded the motion. Absent and not voting: Manager Siemieniewski. Upon roll call vote, the motion carried unanimously.

**GWINNER DAM BREACH:** Chris Gross informed the board all landowner access agreements have been signed and the contractor is finishing up some work at another location and should be in Sargent County next week.

**DRAIN NO. 7 EXTENSION:** Chris Gross reported that the drone owned by Moore Engineering, Inc. broke down and was not available to fly over the areas of Drain No. 7. The fly-over should be completed by the September meeting.

**DRAIN NO. 11:** Manager Stein reported that no work was needed on the southwest branch as authorized at the July meeting.

**MAHRER/ELLEFSON COMPLAINT:** The Ellefsons previously installed one plug, but the location of the second plug required by the Board remains under water. The Board will keep this matter on its agenda to ensure placement of the second plug once conditions permit.

**DRAIN NO. 7 CULVERT REQUESTS:** The Board will keep this matter on its agenda, though the Board has not received any extension requests at this time. Korey reported that the county weed board sprayed the drain through Milnor and also the summer interns through the Soil Conservation Service had cut down and removed the trees within the drain right of way.

**HELICOPTER SPRAYING OF DRAINS:** Larson Helicopter Spraying of Perham, MN contacted the secretary that all costs and chemicals used on the drains and dams would be the same as 2016. Manager Speich moved to authorize Larson Helicopter Spraying to fly the drains and dams and spray where necessary for 2017. Manager Stein seconded the motion. Absent and not voting: Manager Siemieniewski. Upon roll call vote, the motion carried unanimously.

**RS #1:** Board members reviewed the 2017 maintenance assessment for RS#1. Manager Stein moved to approve \$4.00 per acre on the weighted method of assessment. Manager Martinson seconded the motion. Absent and not voting: Siemieniewski. Upon roll call vote, the motion carried unanimously.

**SWC CONDITIONAL WATER PERMIT 6610:** Said permit was issued for the work conducted on Frenier Dam in 2013. The permit lists the storage and annual use amounts as well as data used to make their decision. The decision date was July 11, 2017 and the beneficial use date is August 1, 2020. A copy of the decision is on file in the Frenier Dam file.

**SHORTFOOT CREEK STUDY:** Chris updated the board on the project. They are moving forward with Alternate#7 and the landowner meeting went exceptionally well. The next step is Geotech and Environmental review of proposed site. Chris stated that three landowners have been contacted and asked to sign access agreements to bore holes to identify borrow area. Landowners affected have asked for compensation to allow the boring. Manager Speich moved to approve \$250 per hole on these three parcels of land. Manager Martinson seconded the motion. Absent and not voting: Siemieniewski. Upon roll call vote, the motion carried unanimously. Chris estimated about 17 holes would be bored. Chris suggested to the board that there should be some kind of notification to a South Dakota board to let them know what is going on with this project. There has not been any active participation from anyone in SD government. The board directed Sean Fredricks to prepare a letter to the Marshall County Commission to update them on the Shortfoot Creek Study project.

Attorney Fredricks and Engineer Gross left the meeting at this time.

**2018 BUDGET:** The Board reviewed the 2018 budget and moved to approve \$239,320 for the General Fund. Manager Speich made a motion to increase the secretary's salary by 10% due to increased meetings and work days and additional time responding to emails, phone calls and text messages. Manager Martinson seconded the motion. Absent and not voting: Siemieniewski. Upon roll call vote, the motion carried unanimously. The following amounts were approved for the individual drains: #2-\$10,000; #4-\$100,000; #8-\$45,350; #9-\$47,168; #11-\$826,509; #12-\$66,764; Water Channel # 1 aka Drain # 7-\$15,000; Water Channel Sinking and Interest Fund-\$200,000; Tewaukon Watershed-\$30,000; Shortfoot Creek Watershed Study - \$400,000. Manager Martinson moved to approve the 2018 preliminary budget for the General Fund, individual drain budgets and set the following assessment levies for 2017 taxes. Manager Stein seconded the motion. Absent and not voting: Siemieniewski. Upon roll call vote, the motion carried unanimously.

**2017 MAINTENANCE LEVIES:** Approved by motion above the following maintenance assessment amounts for each drain for 2017 taxes: Drain No. 2 - \$4.00; Drain No. 4 - \$2.00; Drain No. 8 - \$4.00; Drain No. 9 - \$2.00; Drain No. 11 - \$4.00; Drain No. 12 - \$4.00; SC Water Channel Imp. District No. 1 - \$4.00; Tewaukon Watershed - \$2.00.

**OTHER BUSINESS:** Manager Zetocha asked board members about placing penalties on landowners who are spraying the drain right of way and killing the grass. Roger noticed that crop dusting has taken out a lot of grass on the drain right of way. Chris Gross gave some examples of other water districts and their lack of success in doing so. Chris suggested putting up right of way signs along the drains to remind landowners to stay back when spraying as the landowners does not own to the middle of the drain. No action. Robert Banderet commented that the board hired helicopter spraying that has also killed off some of the grass along the right of way. Paul Mathews provided board members with a copy of a Supreme Court order regarding costs dated

December 28, 2015; as the prevailing party in his appeal against the Board, the Supreme Court awarded Mr. and Mrs. Mathews their costs regarding the appeal (filing and transcript costs).

Meeting adjourned at 11:21 a.m.

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ROGER ZETOCHA, VICE-CHAIR

ATTEST:

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SHERRY HOSFORD  
SECRETARY-TREASURER