

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, SEPTEMBER 15, 2016 AT 8:00 A.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Luke Siemieniewski, Roger Zetocha, Korey Martinson, and Todd Stein. Absent: Richard Engst. Also present: Sean Fredricks, Board Attorney; Chris Gross, Board Engineer; and Scott Mahrer.

Approve the August 18, 2016 minutes and August financial statement. Manager Zetocha moved to approve. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Stein moved to approve payment of the following bills. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

73679	Comstock Construction Inc.	Dr 2 clean out	3282.50
73680	Daily News	Dr 7 bid ad	298.80
73681	The Forum	Dr 7 bid ad	255.15
73682	Jacobson Plumbing & Htg	Dr 8 clean out	1690.00
73683	Korey Martinson	Travel	27.00
73684	Moore Eng. Inc.	Brummond-Lubke EAP-\$310.00; Nelson Dam EAP-\$80.00; Gwinner Dam-\$304.00; Shortfoot Creek-\$10380.15; General Eng. Fees-\$800.00; Dr#8-\$1101.50; Theresa Erickson permit-\$173.00; Julie Vculek permit-\$285.00; Bernie Vculek permit-\$172.50; Dr 7 Channel Improvements-\$30357.50; Dr 7 Engineering services-\$36000.00 – TOTAL	79963.65
73685	Ohnstad Twichell	General - \$1333.00; Storm Lake Dam-\$633.24; Dr 11-\$54.00; Dr 7 - \$965.00 = TOTAL	2985.24
73686	The Teller	Dr 7 bid ad	239.14
73687	Lucas Siemieniewski	Travel	174.96
73688	Todd Stein	Travel	141.48
73689	Tom Wipf	Beaver removal – Dr 7	100.00
73690	Roger Zetocha	Travel	54.00
12613	Sherry Hosford	Salary less taxes	494.75
12614	Roger Zetocha	3 PD less	44.79 taxes
12615	Lucas Siemieniewski	8 PD less	99.19 taxes
12616	Korey Martinson	2 PD less	23.61 taxes
12617	Todd Stein	5 PD less	45.90 taxes
DD	Sargent County Bank	Withholding Taxes	
1044.48			

GWINNER DAM: Chris Gross received information from Matt Lindsay, Engineer, Regulatory Division of the ND State Engineer regarding transferring a permit of an old federally constructed dam. Section 61-16.1-40 of the North Dakota Century Code provides that water resource districts are responsible for dams and other water projects constructed by federal agencies if the agencies do not operate and maintain them. Matt indicated that, in his opinion, even if the State Engineer’s Office were willing to grant a permit transfer regarding a federally-constructed dam under the Sargent County Water Resource District’s jurisdiction, the water resource district’s liability risk would likely not change. Sean indicated that, even if that is true, any conveyance document to a private party would contain a transfer of liability provision as well as indemnity and insurance requirements to protect the Board. Even in those situations, Sean warned the indemnity would only protect the Board to the extent the private party had the ability to indemnify the Board. The board agreed to invite the Johnson Brothers (landowners of the location of the Gwinner Dam) to the November meeting as well as the Melroe Brothers to discuss other options, up to, and including breaching the dam.

Brian Vculek arrived at 8:20 a.m.

JOHN QUANDT: Mr. Quandt was present to request permission to lower a culvert located in the township roadway between Sections 13/24 of Verner Township. His request was to lower the culvert 14 inches to get the culvert in line with the downstream culvert located about 60 feet away and clean the ditch approximately 200 feet. There was question whether Mr. Quandt should apply for a Surface Drain Permit; Sean and Chris indicated that if John is conducting any work in the road right of way beyond mere sediment or cattail removal, John should apply for a surface permit. John indicated the project will not include any deepening or widening of road right of way. The Board indicated that, if that is truly the case, and John’s project will not include any deepening or widening of the township ditch that would require a surface permit, Mr. Quandt should work with Verner Township. The township should review and approve the work, which according to Mr. Quandt would protect their roadway, and document their action in the township minutes.

DRAIN NO. 8: Manager Siemieniewski met with an engineer from MEI and the hubs were set on the pipe installation for the crossing on Drain No. 8 on the west edge of Rutland. Chris Gross recommended that a 24 inch HDPE pipe with end sections be installed and estimated the cost of the pipe and installation between \$40 and \$60 per foot. Motion by Manager Zetocha to authorize the Manager Siemieniewski and Manager Stein to

obtain bids from two contractors and approve up to \$6,000 to complete the work. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

DRAIN NO. 4: Luke Anderson, council member, Forman City Council arrived at the meeting. Manager Siemieniewski and Manager Stein met with the City council on September 6th to discuss the city's request to move the lagoon access road and requested that the water board pay for the culverts. Mr. Anderson inspected the site located in the SEofNE1/4-6-130-55 and reported that 2 - 54" CSP culverts with a length of 20' each would be required to move said road. The city will pay for engineering services and installation of the culverts. Motion by Manager Stein to authorize the secretary to order 2 - 54" x 20' 12 gauge CSP spiral culverts, which the water board will pay for. In return for the water board paying for these pipe extension, Forman city will install the culverts and forfeit the \$2,400 check for property rights for the Drain No. 4 Outlet Project constructed in 2011. Additionally, the city will convey ownership of the property to the water board and the water board will grant the City an easement over the property for purposes of operating and maintaining the City's access road. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

DRAIN NO. 7: Chris Gross reported that four bids were received on the Drain No. 7 Channel Improvement project. The low bid from Landmark Drainage, LLC, Moorhead, MN was \$570,461.17 and was considerably higher than the engineer's estimate. Mr. Gross discussed the possibility of eliminating some bid items. Two items that could be reduced or eliminated include the controlled density fill and the topsoil stripping and spreading items. These two items would save approximately \$92,000 from the total project. Mr. Gross will further investigate these options. Chris informed the board that Randy Gibbon is asking for the farmland price per acre plus the cost of removing and installing the new fence on his 2.1 acres of pastureland. Estimates on fencing were much higher from Mr. Gibbon than the estimate that Chris had reported to the board. The board concluded that either Mr. Gibbon accept the pastureland price with fencing or farm land price with no fence. Chris next reported on the purchase agreement progress. At the August meeting the board agreed to offer \$4,000 per acre for farmland and \$1,750 per acre for pastureland. When Chris contacted the landowners, they were in disagreement with the price per acre and requested \$4,750 per acre for farmland (based on some recent sales) and \$1,750 for pastureland. After considerable discussion Manager Martinson made a motion to increase the offer on the price of farmland from \$4,000 per acre to \$4,750 per acre fee title for farm land and offer Randy Gibbon either the farmland price or the pastureland land and fence costs on his acreage. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously. Chris reported that he has not received any confirmation from Dakota Valley Electric Co-Op (DVEC) on the utility relocation agreement. Manager Zetocha made a motion that upon receipt of the utility agreement from DVEC and review and approval by Attorney Fredricks to authorize the Chairman and Secretary to sign the agreement up to \$25,000 for utility relocation. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

SURFACE DRAIN PERMIT APPLICATION CO. 4828 (DRAIN NO. 7 RECONSTRUCTION)

The Board reviewed information from the State Engineer regarding Application to Drain No. 4828, previously submitted by the Sargent County Water Resource District regarding DRAIN 7 IMPROVEMENT PROJECT NO. 2016-01. The Sargent County Water Resource District owns, operates, and maintains Sargent County Drain No. 7, a legal assessment drain.

The District concluded certain drainage improvements are necessary to Drain 7 to provide increased drainage depth and capacity, enhanced control over the Drain 7 watershed, and more effective and efficient drainage for the benefit of the properties within the Drain 7 watershed. The District is proceeding with DRAIN 7 IMPROVEMENT PROJECT NO. 2016-01, a project that will include improvements to Drain 7 in Sections 5, 6, 8, and 9 of Milnor Township. The project will include the preliminary analysis, design, and construction of additional channel bottom depth, capacity, and side slope improvements; relocation, installation, and improvements of intercept drainage culverts; design, redesign, construction, and reconstruction of various crossings; purchasing and acquiring additional right of way to accommodate the drainage improvements; and other work necessary and incident to the reconstruction and improvement of Drain 7. The District submitted this permit application regarding the drain improvements. 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 because the Board will acquire the requisite right of way to accommodate the project, and the right of way acquisition will eliminate adverse impacts to private landowners.

Manager Stein moved to approve Application to Drain No. 4828 regarding DRAIN 7 IMPROVEMENT PROJECT NO. 2016-01, subject to any conditions attached by the State Engineer. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

Paul Mathews arrived at 9:25 a.m.

SHORTFOOT CREEK WATERSHED PLANNING PROJECT/NRCS: Chris Gross reported that a team meeting was held in Geneseo on August 30th. The engineers have started the modeling effort and information is being reviewed and prioritized to rank areas presented for potential projects.

DRAIN NO. 2: An additional bill was received from Comstock Construction, Inc. for Drain No. 2 to include work completed by that contractor in November and December of 2015 and additional work in July of 2016. The two bills were for \$3970.00 and \$4017.50 and included mobilization on each billing. Board members did not feel that the mobilization charge two times was necessary as the work could have been completed in 2015. Manager Zetocha made a motion to deduct \$687.50 from the billing for 5.5 hours of mobilization in 2016. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

DRAIN NO. 11: Chris Gross reported to the board on the culvert crossing on County Road # 1 located between Section 4 & 9 in Harlem Township. Moore Engineering, Inc. has measured the culvert length and will take responsibility for salvage and reinstalling the existing 112' x 75' CSPA and installing an additional 32' center section. H&S Contracting, Moorhead, MN provided a price quote of \$21,325 and Comstock Construction, Inc. a quote of \$21,400. Manager Zetocha made a motion to hire H&S Contracting, Inc. to complete the work and Roger will coordinate with Chris to get the work completed. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously. Another culvert located between Section 21/28 in Harlem Township (South and east of Lloyd Ptacek's) was discussed and because of the length of the culvert a safety issue is a concern of the township board. Roger Zetocha reported that he had acquired several reflective stakes from the county highway department and put them in place but he feels that there should also be delineators and metal grates installed at the end of the culvert. Manager Zetocha made a motion to hire H&S Contracting, Inc. to install the bars and delineators with Moore Engineering, Inc. paying for the metal grates and the water board paying for the reflectors. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

STORM LAKE OUTLET PROJECT: Sherry Hosford, county commissioner, reported that the Sargent County Commission had tabled their vote on creating a federal maintenance district for Storm Lake Outlet. The county commission has requested the States Attorney to obtain in writing from USDA/US F&W who is responsible for the operation and maintenance of the dam. The vote is scheduled for October 18th. In the meantime, Sean will forward information to State's Attorney Lyle Bopp regarding the Board's responsibility for the project under N.D. Cent. Code § 61-16.1-40.

ANNUAL DAM INSPECTION SUGGESTED WORK: Board members looked over the report filed by NRCS from the annual dam inspection and requested Todd Stein to look at a couple areas that need trees removed and report back at the October meeting his findings and suggestion of who could do the required work.

Application to Install a Subsurface Drain for Bernard Vculek and Julie Vculek in the East Half of Section 13 in Denver Township

The Board reviewed an *Application to Install a Subsurface Drain* dated August 18, 2016, for Bernard Vculek and Julie Vculek. The Board reviewed the criteria in Section 89-02-01-09 of the North Dakota Administrative Code and concluded the project does not meet any of the "statewide" elements, and the Board concluded therefore the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicants seek to install a drain tile system in 250 acres in the East Half of Section 13 in Denver Township, Sargent County, North Dakota. The project will include a gravity outlet that will discharge via an underground pipeline Applicant Bernard Vculek previously installed in the South Half of Section 13 in accordance with Surface Permit No. 4720, previously approved by the Sargent County Water Resource District on July 16, 2015. The pipeline will run approximately a mile and a quarter to the west until ultimately discharging into Sargent County Drain 11, again in accordance with the terms and conditions of Surface Permit No. 4720.

Because the project will discharge directly into Drain 11 via an underground pipeline, the application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicants to obtain any flowage easements from downstream landowners. The Board would typically require Applicants to install and maintain erosion protection to protect Drain 11; however, in this case, the Board already required Applicants to install and maintain erosion protection as a condition to Surface Permit No. 4720.

According to records on file with the Sargent County Recorder's Office, Bernard Vculek, as Trustee of the Bernard L. Vculek Revocable Trust, and Marlene Vculek, as Trustee of the Marlene Vculek Revocable Trust, own the East Half of Section 13 of Denver Township. Further, Wayne and Dianne Witkowski own the Southwest Quarter of Section 13, subject to a Contract for Deed in favor of Julie Vculek; Julie Vculek previously granted Bernard Vculek, as Trustee of the Bernard L. Vculek Revocable Trust, and Marlene Vculek, as Trustee of the Marlene Vculek Revocable Trust, a Flowage Easement over the Southwest Quarter of Section 13 regarding the pipeline Bernard Vculek installed regarding Surface Permit No. 4720.

Manager Martinson, seconded by Manager Zetocha, moved to approve *Application to Install a Subsurface Drain* dated August 18, 2016, for Bernard Vculek and Julie Vculek in the East Half of Section 13 in Denver Township, subject to the following conditions:

- 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 notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 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;
- 4) That Applicants must close all outlets during flood occurrences or under conditions that may cause adverse impacts to downstream landowners, as determined by the Board;
- 5) That Applicants comply with the conditions regarding Surface Permit No. 4720 with regard to the underground pipeline approved under Surface Permit No. 4720; and
- 6) 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.

Upon roll call vote, the motion carried unanimously.

SILVER LAKE DAM AND WILLOW REMOVAL: Sherry talked to Raina Ruch about the willow removal by the dam. Raina explained that Tom Jones told the interns to remove the willows up to where the embankment ended. No willows were removed to the east of the big tree where the seepage was reported. Raina will be meeting with the board in October to review all the work completed by the summer interns and the willow removal can also be discussed. In the meantime, Sherry will contact the Sargent County Weed Board commissioner to see if the weed board can go out this fall and spray the willows that are still in place enabling a better view of the embankment next spring.

RS # 1: Luke reported that Phase I of said project has been closed out with the contractor. There is some seeding that may need to be completed in the spring and RS#1 will pay for the grass seed. Interstate Engineering, Inc. is hiring a biologist to begin looking at Phase II and the engineer has requested cost share from the ND State Water Commission for the next portion of the project. The following bills were presented and no objection to authorize payment: Estimate 5(Final) to M&M Contractors, LLC - \$50,476.51 and Engineering services from August 15-September 10, 2016 to Interstate Engineering, Inc. - \$740.00.

MAHRER/ELLEFSON COMPLAINT: Scott Mahrer had some questions of the board on said complaint. Both Manager Zetocha and Manager Stein had inspected the location and feel that something needs to be done on this complaint. Attorney Fredricks noted that this board must act on the complaint. The Edwin Erickson Jr. project is not happening, Shuman Township plans to pump and drain into a non-approved drainage system and this complaint has been on the table since June 2013. Mr. Fredricks explained Mr. Ellefson had not satisfied the conditions of surface permit No. 4237. Following the complaint, the Board issued a Notice of Decision in which the Board declared the project is an illegal and unpermitted drain; no one appealed that decision. In the Board's Notice of Decision, the Board indicated its willingness to allow the parties to arrive at a mutually-acceptable resolution to the matter as opposed to procuring a contractor and closing the project immediately. The Board's Notice further indicated that if the parties could not resolve the matter within a reasonable amount of time, and if Mr. Ellefson did not close or fill the drainage, the Board would have no choice but to procure a contractor to close or fill the unpermitted drainage. At this point, the parties are clearly not going to arrive at a mutually-acceptable resolution. Therefore, the Board concluded the drainage system either has to be filled in or removed. Mr. Fredricks suggested that a letter be sent to Mr. Ellefson to direct him (after harvest and before December 1, 2016) to permanently close or fill the project by December 1; alternatively, if Mr. Ellefson does not close or fill the illegal and unpermitted drainage, the Board will procure a contractor to close or fill the project, and will assess the Ellefsons' property for its costs. Manager Zetocha made this a motion and Manager Stein seconded the motion. Roll Call. Aye: Zetocha, Stein and Martinson. Nay: Siemieniowski. Absent and not voting. Engst. Motion carried.

Chris Gross expressed some concerns over accusations and attacks on Moore Engineering, Inc. regarding the Jackson Township Project in Dickey/Sargent County. Mr. Gross asked that board members continue to contact him in the future if there are any other issues.

Meeting adjourned at 11:25 a.m.

LUCAS SIEMIENIEWSKI – CHAIRMAN

ATTEST:

SHERRY HOSFORD – SECRETARY-TREASURER