

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, SEPTEMBER 18, 2014 AT 9:00 A.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Chris McFarland, Luke Siemieniewski, Jim Bosse, Roger Zetocha and Richard Engst. Absent: None. Also present: Attorney Sean Fredricks, and Chris Gross, Engineer.

Approve the August 21 and September 10, 2014 minutes and August financial statement. (Engst/Siemieniewski, unanimous)

Motion to approve payment of the following bills: (Engst/Bosse unanimous)

70143	James Bosse	Travel	103.60
70144	Carton Excavating	Drain No. 11 dike repair by Kent Carpenter's	6490.00
70145	Dakota Improvement	Drain No. 11 cleaning from Mezarous to outlet	17922.50
70146	Richard Engst	Travel	102.48
70147	Larson Helicopters	Spraying drains - #2-\$233.62; #4-\$778.74; #8-\$778.74; #9-\$2063.66; #11-\$2336.18; #12-\$584.06	Total = 6775.00
70148	Ohnstad Twichell	General-\$1088.42; Loren Ellefson - \$130.00; Loren David App-\$161.36; Forman Golf Course App - \$376.00; Marc O'Brien Application-\$224.92 Dr # 7-\$388.65=	Total 2369.35
70149	Lucas Siemieniewski	Travel	78.40
70150	Starion Bond Services	Drain No. 4 Bond interest and fees	2053.00
70151	True North Steel	Dr No 11 Culverts for dike repair	2083.20
70152	Roger Zetocha	Travel	156.80
9998	Sherry Hosford	Salary less 24.22 taxes	292.45
9999	Richard Engst	9 PD less 125.05 taxes plus 10.50 meal	965.45
10000	James Bosse	14 PD less 236.10 taxes	1443.90
10001	Chris McFarland	3 PD less 27.54 taxes	332.46
10002	Roger Zetocha	14 PD less 330.58 taxes	1349.42
10003	Lucas Siemieniewski	7 PD less 79.07 taxes plus 7.00 meal	767.93
DD	Sargent County Bank	Withholding taxes	1281.15

MARBOE TOWNSHIP TEXAS CROSSING: Robert Lee, Phillip Freeman and Duayne Baldwin, all members of the Marboe Township Board met with the Water Board to discuss the Texas Crossing between Section 8 and 17 of said Township. Several options were discussed at the August meeting and Chris Gross reported that Comstock Construction, Inc. quoted a price for time and materials (removing the culverts and cutting down the sheet piling) not to exceed \$10,000 to do the work. Sean Fredricks prepared an agreement for the parties' review; under the Agreement, as partial consideration for the Township's willingness to accept all ownership, operation and maintenance obligations regarding the Crossing, upon the parties' execution of the Agreement, the Water Board will pay the Township \$7,500. The payment by the Water Board under the Agreement is a one-time payment, and will not create any ownership, operation, or maintenance obligation for the Water Board in the future. The Township Board members are willing to sign this agreement. Motion to approve said Agreement and authorize the Chairman and Secretary to sign. (Zetocha/Siemieniewski, unanimous)

UNFINISHED BUSINESS: Chris Gross plans to proceed with the metes and bounds description for the Paul Mathews dispute. The Board authorized Jim Bosse to order seed and reseed the areas.

GWINNER DAM: The Board discussed possible options to repair the dam. Chris Gross will discuss some options with personnel in his office and present alternative solutions at the next meeting.

DRAIN NO. 11: Jim Bosse reported the trees that have been removed are currently on the drain right of way. Jim said he could use his tractor to remove the trees and pile them up and ask Carton Excavating to haul away. Sean Fredricks indicated that having Jim Bosse, a Board member do this work would qualify as a conflict of interest since Jim would receive a direct pecuniary interest as a result. Sean explained the requisite conflict analysis under North Dakota law. Conflict analysis requires a specific analysis under N.D. Cent. Code § 44-04-22. Section 44-04-22 provides the relevant standard for determining whether or not a conflict exists, and how a public entity should address a conflict once identified. Section 44-04-22 provides:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

The Section 44-04-22 test requires a multi-step analysis. First, a public official concerned about a conflict of interest should confer with the Board's attorney to determine if a "direct and substantial personal or pecuniary

interest” conflict exists under Section 44-04-22. If the public official’s review with the governing entity’s attorney is not dispositive, the remainder of the governing entity’s Board should vote to determine if a conflict exists by a majority vote. If the remaining members conclude a conflict does exist (or if the member and the Board’s attorney conclude a conflict exists), the remainder of the Board should next vote on whether or not the public official should “participate in or vote on that particular matter” So even if a conflict does exist (even if the official does have a “direct and substantial personal or pecuniary interest” in the matter), if the governing entity concludes the public official should still participate despite the conflict, the official must participate.

In this case, Sean indicated the situation would very clearly be a conflict since Jim would have a direct pecuniary interest. Sean indicated that, in light of the conflict, the next step is for the remainder of the Board to vote on whether or not Jim should participate in a vote regarding his offer of services to remove trees. The Board voted on whether Jim should participate; Manager Zetocha moved to recommend that Jim Bosse not vote on this issue. Manager Engst seconded the motion. Upon roll call vote, the motion carried unanimously; Manager Bosse did not participate in the vote.

Motion to hire Jim Bosse to remove the trees from Drain No. 11 right of way for the one mile, pile the trees up and request a quote from Carton Excavating to remove the piles. (Zetocha/Engst. Roll Call: Aye: Zetocha, Engst, Siemieniewski, and McFarland. Nay: None. Jim Bosse did not participate in the vote.)

Chris Gross asked Board members “What is the culvert design standard that the WRD would like to see on Drain No. 11 in the future”? Moore Engineering has been working on the analysis of the drain and is questioning the capacity of the existing channel as it appears after review of the recent survey and hydrologic data that parts of the channel and many of the existing crossings are severely undersized and would require very large crossing structures to meet typical design standards generally used in legal drain design. The Board agreed that Moore Engineering, Inc. should proceed with developing a master plan for a future channel improvement of the entire drain when sizing future crossings. The WRD and Chris will discuss cost share options from the ND SWC at a future meeting.

DRAIN NO. 7: The crossing work is nearly completed and the asphalt will be placed this week. A new fund entitled “Drain No. 7 Sinking Fund” will be established for proceeds of the bond and payment to the contractor and engineering. Motion to authorize payment of all submitted bills for Drain No. 7 upon receipt of the bond monies around October 1, 2014. (Engst/Bosse, unanimous)

70186 Comstock Construction, Inc.	Drain No. 7 crossing Improvements	259055.10
70187 Moore Eng., Inc.	Drain No. 7 Engineering	62530.20

DRAIN NO. 8: Chris Gross is recommending to the Board that Option A – Realignment of the Channel as the option to pursue for Drain No. 8. The lift station option with no storage is not feasible due to the high cost and the small assessment district. Discussed the time frame and procedure for public hearings, comments, benefits, boundary, voting and bond issue. The Water Board asked Chris Gross if he would make this presentation to the entire Sargent County Commission at their October 7th meeting to get their feedback on funding available from the county. Chris will check his schedule and set up a meeting with the county commissioners.

Application to Install a Subsurface Drain for Marc D. O’Brien in the Northeast Quarter and the Northwest Quarter of the Southeast Quarter of Section 22 in Tewaukon Township

The Board reviewed an *Application to Install a Subsurface Drain* dated July 31, 2014, for Marc D. O’Brien. 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, Applicant seeks to install a drain tile system in the Northeast Quarter of Section 22 and the Northwest Quarter of the Southeast Quarter of Section 22 in Tewaukon Township, Sargent County, North Dakota. The project will include four trunk lines; three of the trunk lines will discharge via gravity outlet into a natural watercourse on the property Applicant intends to tile. The fourth trunk line will outlet via a pump in the northeast corner of the Northeast Quarter of Section 22; the pump outlet will discharge into an existing township road ditch along the north boundary of Section 22; the tile discharge will flow east through an existing township road culvert, along the north boundary of the Northwest Quarter of Section 23 for approximately a quarter mile until the tile discharge outlets into a natural watercourse.

The Board previously provided a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, to the owners of the Northwest Quarter of Section 23 of Tewaukon Township.

According to records on file with the Sargent County Recorder’s Office, Marc and Patrick O’Brien own the Northeast Quarter and the Northwest Quarter of the Southeast Quarter of Section 22 in Tewaukon Township. Further, Shane and Karla Breker own the Northwest Quarter of Section 23 of Tewaukon Township.

The Board discussed potential adverse impacts to the downstream property; the Board concluded the project will result in prolonged wetness, increased cattail growth, and access limitations along the north boundary of the Northwest Quarter of Section 23.

It was moved by Manager Zetocha and seconded by Manager Bosse to approve *Application to Install a Subsurface Drain* dated July 31, 2014, for Marc D. O'Brien in the Northeast Quarter and the Northwest Quarter of the Southeast Quarter of Section 22 in Tewaukon Township, subject to the following conditions:

- 1) That Applicant obtain and record (with the Sargent County Recorder's office) flowage easements (and not just written consents), including language that permits saline water, from the owners of the North Half of the Northwest Quarter of Section 23 of Tewaukon Township, Sargent County, North Dakota;
- 2) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 3) That Applicant provide and maintain adequate erosion protection at all three outlets into the natural watercourse, and at the single outlet into the township road ditch;
- 4) That Applicant must operate the pump in the following manner:

Applicant cannot operate the pump from December 1 of each year until at least ten days after the spring runoff flood crest at the USGS flood gage in Mantador;
- 5) That Applicant obtain written permission from the Tewaukon Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches;
- 6) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 7) 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;
- 8) That Applicant must close all outlets during flood occurrences or under conditions that may cause adverse impacts to downstream landowners, as determined by the Board; and
- 9) 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.

Application to Install a Subsurface Drain for Donald Dathe in the Northeast Quarter of Section 20 in Marboe Township

The Board reviewed an *Application to Install a Subsurface Drain* dated July 26, 2014, for Donald Dathe. 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); the Board previously considered the possibility that this project may drain sloughs with recognized fish and wildlife values and may drain previously noncontributing wetlands into contributing wetlands. However, Mr. Dathe provided information from the NRCS that reveals that there are currently no wetlands on this property. Under the application, Applicant seeks to install a drain tile system in the West Half of the Northeast Quarter and the East Half of the Northeast Quarter of Section 20 in Marboe Township, Sargent County, North Dakota. The project will include a single gravity outlet in the northwest corner of the Northeast Quarter of Section 20 that will discharge directly into an existing natural watercourse.

Because the project will discharge directly into a natural watercourse, the application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicant to obtain any flowage easements from downstream landowners. Chris Gross recommended that the Board require Applicant to install and maintain erosion protection to protect the natural watercourse and to protect downstream landowners from erosion.

According to records on file with the Sargent County Recorder's Office, James and Paulette Gustafson, Trustees of the James and Paulette Gustafson Revocable Living Trust, own the Southwest Quarter of the Northeast Quarter of Section 20 in Marboe Township; Kenneth and Mabel Evenson own the North Half and the Southeast Quarter of the Northeast Quarter of Section 20.

It was moved by Manager Zetocha and seconded by Manager Engst to approve *Application to Install a Subsurface Drain* dated July 26, 2014, for Donald Dathe in the Northeast Quarter of Section 20 of Marboe Township, subject to the following conditions:

- 1) That Applicant obtain and record (with the Sargent County Recorder's office) permanent easements (and not just written consents), to install, construct, and maintain a subsurface tile system from the owners of the following parcels in Marboe Township, Sargent County, North Dakota:
 - a. The Southwest Quarter of the Northeast Quarter of Section 20; and
 - b. The North Half and the Southeast Quarter of the Northeast Quarter of Section 20;
- 2) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 3) That Applicant provide and maintain adequate erosion protection at the single gravity outlet into the natural watercourse that will serve as the project outlet;
- 4) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 5) 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;
- 6) That applicant must close all outlets during flood occurrences or under conditions that may cause adverse impacts to downstream landowners, as determined by the Board; and
- 7) 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.

CULVERT POLICY: Reviewed briefly the Board policy for culvert cost share with no updates or changes noted.

DUNBAR TOWNSHIP CULVERT COST SHARE REQUEST: The Board read the NRCS study at the location that Dunbar Township is requesting cost share for a 36 inch culvert. According to the study, NRCS recommends placement of three (3) 48 inch culverts to allow for maximum flow into the grassed waterway. The study further states that the landowner plans on placing two (2) 48 inch culverts with an additional 24 inch culvert. According to NRCS, by placing a 24 inch instead of the 48 inch for the third culvert, there is a potential that the road could be overtopped. With this information from the study, the Board is questioning the Dunbar Township request for a 36 inch culvert and did not approve based on the findings by NRCS. The Secretary was instructed to send a letter to Dunbar Township with the Board's decision.

HEAD OF THE MOUNTAIN NATURE PRESERVE: At the June 19, 2014 meeting with ND Parks and Recreation (NDPR) regarding the lease for the Head of the Mountain Nature Preserve, Kathy Duttonhefner, representing the NDPR felt the minutes were taken out of context and asked if the Board would clarify the following. Instructed the Secretary to insert the discussion into today's minutes as follows: Your minutes read "It was asked if horseback riding is allowed in the preserve and Kathy responded that it is mainly for foot traffic but would be possible to obtain a permit for horseback riding on an individual basis". Kathy states that the scenarios brought forward during the meeting was if there was a handicapped individual who was unable to access the preserve by foot would they be able to access the preserve by horse. Kathy's response was that if a handicapped individual wanted to access the preserve, NDPR could do so by issuing a permit.

NEW BUSINESS: Sargent County Park Board/Silver Lake is asking this Board for their continued support of recreational improvement projects at the lake. Motion to submit a letter to Sargent County Park Board stating that the Sargent County Water Resource Board has partnered with Sargent County Park Board on several projects to improve and maintain the park used by thousands of visitors each year and fully supports any additional improvements and feel it is extremely important and worthwhile for not only Sargent County, but also for the surrounding area for the present and the future. (Siemieniowski/Engst, unanimous)

DRAIN NO. 11: Roger Zetocha visited with Bernie Vculek, Crete and his concern of water flowing from Ransom County into Drain No. 11 and whether it is possible to bring in the Ransom County land into the Drain No. 11 assessment area. Sean indicated that it is possible to form a joint board with Ransom County for Drain

No. 11. Authorize Chris Gross to prepare a watershed delineation map of Ransom County to consider whether to proceed with increasing the Drain No. 11 drainage area. (Siemieniewski/Zetocha, unanimous)

Roger Zetocha also informed the Board of a cemetery located in Harlem Township (SE1/4-21-131-57) that is not accessible from the west unless a culvert is placed in Drain No. 11. It is a privately owned cemetery according to the assessment records. No decision made on this request.

Meeting adjourned at 12:20 p.m.

CHRIS MCFARLAND – CHAIRMAN

ATTEST:

SHERRY HOS FORD - SECRETARY