

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, SEPTEMBER 20, 2012 AT 7:00 P.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Jim Bosse, Mark Breker, Richard Engst, Chris McFarland and Roger White. Absent: None. Also present: Chad Engels, Moore Engineering, Inc.; Tom Jones, NRCS, Mark Bopp, Mayor, Forman City; and Al Carton, Forman.

Approve August 16, 2012 minutes and August financial statement. (White/Engst, unanimous).

Approve payment of the following bills: (Bosse/Breker/, unanimous)

66622 James Bosse	Travel	52.17
66623 Mark Breker	Travel	19.98
66624 Richard Engst	Travel	62.16
66625 Moore Engineering, Inc.	Shortfoot Creek Study-\$9,482.60; Dr # 4-\$57,610.15; Dr # 7 - \$31,967.15; Dr # 11-\$477.50 =	90,537.40
66626 Ohnstad Twichell	Attorney fees-General-\$1,272.30; Quandt's-\$169.90; Paul Mathews-\$352.00; Dr # 4-\$5,524.20; Dr # 7-\$360.00 =	7,678.40
66627 Sargent County Teller	Dr # 7 bid notice	211.24
66628 Starion Bond Services	Dr # 4 bond fees	750.00
66629 Vivian Township	Dr #11 culvert replacement	1,278.40
66630 Roger White	Travel	184.68
7480 Mark Breker	2 PD less 13.56 taxes	226.44
7481 Sherry Hosford	Salary less 17.89 taxes	298.78
7482 Richard Engst	5 PD less 33.90 taxes	566.10
7483 Roger White	4 PD less 27.12 taxes	452.88
7484 Jim Bosse	6 PD less 45.18 taxes	674.82
DD Sargent County Bank	Withholding taxes	319.20

A litigator in the office of Ohnstad, Twichell plans to serve a Declaratory Judgment action next week on the Paul Mathews drain right of way issue.

Chad Engels will have watershed maps prepared and Sean Fredricks will have requisite resolutions to set a hearing and to otherwise proceed with Drain No. 9 Reassessment at the October meeting.

1 Robert Lee, Denny Pherson, Don Kiefer Drainage Complaint Against Dana Banish

The Board next considered the Lee/Pherson/Kiefer Complaint against Dana Banish. The Lee/Pherson/Kiefer parties previously submitted the Drainage Complaint dated March 21, 2012. In it, the parties contended Dana Banish constructed illegal drainage in the Northwest Quarter of the Northwest Quarter of Section 7 of Marboe Township in Sargent County, North Dakota. According to records on file with the Sargent County Recorder's office, Michael Paczkowski and Geraldine Paczkowski own the Northwest Quarter of Section 7 of Marboe Township. The Board has investigated the matter over the course of the past several months. According to the Board's engineer, Mr. Chad Engels, there is a dike in the Northwest Quarter of Section 7 to protect the Northwest Quarter of Section 7 from water that backs up from the adjacent natural watercourse in Section 7. Further, Mr. Paczkowski, at a previous meeting, indicated he installed a pump on his property in approximately 1962. The objective of the pump is to drain a natural watershed in the Northwest Quarter of Section 7, over the dike constructed on Mr. Paczkowski's property. Neither Mr. Paczkowski nor Mr. Banish has constructed any ditching in the Northwest Quarter of Section 7; rather, the subject of the Drainage Complaint is the pumping from inside the dike in the Northwest Quarter of Section 7. The Board has not received any diking complaint regarding this dike. The State Engineer's office previously indicated no dike permit is on file.

Sean Fredricks previously indicated the drainage permitting requirements first went into effect in 1957, and the applicable law in 1962 required a drainage permit for drainage of 80 acres or more. Chad Engels indicated the drainage in this matter would impact a watershed area of 80 acres or more. The more significant issue is whether or not the pump is "drainage" that requires a permit.

Chad Engels indicated the natural watershed in the Northwest Quarter of Section 7, inside the dike, will naturally overflow the dike and drain onto adjacent properties and into the natural watercourse in Section 7 when the water surface elevation is 1167 or higher. So, operation of the pump when the water elevation is 1167 or higher would not require a permit since it is not "drainage"; in other words, the natural watershed inside the dike would naturally overtop the dike at an elevation of 1167 or higher; and, therefore, operation of the pump would not constitute "drainage." Conversely, operation of the pump when the water surface elevation is below 1167 is a manipulation of the natural drainage patterns and would constitute "drainage" that would require a permit, since the pump would drain a pond, slough, lake, sheetwater, or any combination thereof, of a watershed of 80 acres or more.

The Board could not determine with any degree of certainty whether or not Mr. Banish has operated the pump when the water surface elevation has been below 1167. However, the Board will set the 1167 benchmark for permitting requirements and as a benchmark for future drainage complaints. If Mr. Banish, or if Mr. Paczkowski or any of his future tenants, operate the pump when the water surface elevation in the Northwest Quarter of Section 7 is below 1167, that activity would require a permit; if no permit is obtained, the Sargent County Water Resource District would entertain a drainage complaint and would take appropriate action to close, fill, or otherwise remedy the illegal drainage. For any operation of the pump when the water surface elevation is 1167 or higher, the parties in the Northwest Quarter of Section 7 may do so without a drainage permit.

Manager Engst, seconded by Manager Bosse, moved to dismiss the Complaint filed by Robert Lee, Denny Pherson, and Don Kiefer against Dana Banish and against Mike and Geraldine Paczkowski; and to further set 1167 as the water surface elevation benchmark regarding future operation of the pump; operation of the pump when the water surface elevation is 1167 or higher will not require a drainage permit, but operation when the water surface elevation is below 1167 will require a permit. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite Notice of Decision and to provide the decision to the parties of record.

Gary Thornberg, Havana met with the Board regarding a proposed tile project in the NW1/4-26-129-55. Said project drains into an existing project and is less than 80 acres. After reviewing the maps and the existing system it was determined that no permit is necessary at this time.

Chad Engels updated the Board on the Drain No. 4 Reconstruction project. The crossings are installed in the roadway and the railroad and channel work is progressing.

Chad Engels also gave an update on the Drain No. 7 project. The contractor is at the site and the pipe is scheduled to arrive next week.

APPLICATION FOR SURFACE DRAIN NO. 4078 for Steven McLaen in the Northwest Quarter of Section 11 and the East Half of Section 3 of Rutland Township

The Board reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN No. 4078 for Applicant Steven McLaen. Under the application, Applicant seeks to install and construct an 18-inch diameter underground pipe with a surface inlet in township road right of way to reduce flooding of the north-south township road along the Section 10/11 and 3/2 township road in Rutland Township. The project will commence with an inlet in the southwest corner of the Northwest Quarter of Section 11. Applicant will bury the pipe along the west boundary of the Northwest Quarter of Section 11, running north in the township road right of way; at the northwest corner of the Northwest Quarter of Section 11, the pipe will run diagonally through and under the township road to the northwest into the east ditch of the township road in the southeast corner of Section 3, still in the township road right of way; from there, the pipe will run north along the eastern boundary of Section 3 in the township road right of way until it outlets in the northeast corner of Section 3 into the east/west road ditch along the north boundary of Section 3.

According to records on file with the Sargent County Recorder's office, Applicant owns the Northwest Quarter of Section 11, and the Lela M. Olson Living Trust owns all of Section 3.

The Board adopted Chad Engels' 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) of the North Dakota Administrative Code because the Board will require Applicant to obtain an easement from the owner of the East Half of the East Half of Section 3, where Applicant intends to install the project; the Board will further require Applicant to obtain permission from Rutland Township to install, construct, operate, and maintain a buried pipe in the township's road right of way; the Board concluded that, in light of these measures, no hearing is necessary regarding the project, and there will be no further adverse impacts. Further, the Board will require Applicant to install a gate on the 18-inch culvert at the outlet of the project, and the Board will require Applicant to operate the gate and to close the gate when the Buffalo Coulee, downstream of the project, is flooding or is outside its banks, as determined by the Sargent County Water Resource District.

Manager Engst, seconded by Manager White, moved to approve APPLICATION FOR SURFACE DRAIN No. 4078 for Steven McLaen, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant obtain and record (with the Sargent County Recorder's office) easements (and not just written consents) from the owners of the following parcels in Rutland Township, Sargent County, North Dakota, for purposes of installing, constructing, operating, and maintaining an 18-inch underground pipe:

- a. The East Half of the Southeast Quarter of Section 3; and
- b. The East Half of the Northeast Quarter of Section 3;

2) That Applicant will not install, construct, or improve the buried underground pipe in any manner that exceeds the dimensions indicated in the application, including a drain length of 3,161 feet, and an 18-inch diameter underground pipe;

3) That Applicant obtain an easement from the owner of any land, besides land owned by Applicant, on which Applicant will construct the drain; and

4) That Applicant install a gate or control structure as a component of the project at the outlet end on the 18-inch culvert that discharges at the northeast corner of Section 3; Applicant will close the gate or control structure when the downstream Buffalo Coulee is flooding outside its banks, or as determined by the Sargent County Water Resource District;

5) That Applicant obtain written permission from the Rutland Township Board of Township Supervisors to install, construct, operate, and maintain an 18-inch buried pipe in its township road right of way; to bore through or under its township road to accommodate the buried pipe; or to otherwise utilize its township road right of way;

6) That Applicant notify the Sargent County Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, submit an additional permit application; 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, Manager Breker voted no, and Managers White, Engst, Bosse, and McFarland voted aye. The motion carried.

The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to all parties of record.

Jim Bosse reported that the Cogswell tile is all enclosed and Dakota Improvement installed the uprights and 2 inspection holes. The water is down considerably. There is also a beaver dam by Ptacek's and Jerry Bohnenkamp is removing the dam.

Jim also indicated that there is buildup in the road ditch along the County Road #4 right of way between Section 35 and 36-131-57 and it is necessary to clean out in front of the culvert. Motion to hire Al Carton to complete this work. (Engst/Breker, unanimous) There was also talk about placing a gate on this culvert to control the water from flowing into Cogswell. No action.

David Hassebroek Subsurface Drain Application was reviewed and it was determined that he must file a Surface Application for the project he is proposing. Forms will be given to Mr. Hassebroek.

The Jackson Township Improvement District No. 1 Project has scheduled a hearing for October 30, 2012 at 10:00 a.m. in the Oakes Armory. Chad encouraged Board members to plan to attend.

1 **Roger Even Drainage Complaint Against the Galloping Goose Bar**

The Board next considered Roger Even's Drainage Complaint against the Galloping Goose Bar. Mr. Even submitted the Drainage Complaint dated August 23, 2012. In it, Mr. Even contends the Galloping Goose Bar, or some other parties or entities, constructed unpermitted drainage in Section 27 of Vivian Township in Sargent County, North Dakota. According to records on file with the Sargent County Recorder's office, Eileen Vaudt and Annette and Barry McNeal own various interests in the Northwest Quarter of Section 27; Dale and Carol Zetocha own the Northeast Quarter of Section 27; and Robert Orn owns the South Half of Section 27.

The Board reviewed the Complaint and the watershed area impacted by the alleged drainage in Section 27 to determine if a permit was necessary under Section 61-32-03. Mr. Chad Engels reviewed LiDAR maps, and the Board also reviewed topographic maps with Mr. Engels. Mr. Engels and the Board agreed the watershed area impacted by the alleged drainage is less than 80 acres.

The Sargent County Water Resource District only has jurisdiction over drainage issues to the extent the drainage affects a "pond, slough, lake, or sheetwater, or any series thereof," with a watershed area of 80 acres or more. Under Section Section 61-32-03, the Board only has jurisdiction over alleged drainage to the extent the drainage affects a watershed of 80 acres or more; in the absence of the 80-

acre threshold, the Board does not have jurisdiction since the alleged construction would not require a permit. With that in mind, the Board has no choice but to dismiss the Drainage Complaint.

Manager Bosse, seconded by Manager Breker, moved to dismiss Mr. Even's Drainage Complaint against the Galloping Goose Bar, and effectively against Eileen Vaudt, Annette and Barry McNeal, Dale and Carol Zetocha, and Robert Orn as landowners in Section 27. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the notice to the parties of record.

Mark Breker informed the Board that he has talked to Bohnenkamp Construction about leveling the dirt on Brummond-Lubke Dam and other areas south of Rutland. Chad Engels reported that he is working on information for repairs to Frenier Dam as per the annual inspection report.

Meeting adjourned at 9:15 p.m.

CHRIS MCFARLAND – CHAIRMAN

ATTEST:

SHERRY HOSFORD - SECRETARY