

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, SEPTEMBER 21, 2017, AT 8:00 A.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Lucas Siemieniewski, Roger Zetocha, Korey Martinson, Bruce Speich and Todd Stein. Absent: None. Also present: Sean Fredricks, Board Attorney; Chris Gross, Board Engineer; Bob Banderet, Cogswell; Paul Mathews, Cogswell; John Quandt, Oakes; Gerry Bosse, Cogswell.

DRAIN NO. 7 CHANNEL IMPROVEMENT PROJECT: Brent and Blake with Landmark Drainage, LLC, arrived at the meeting. Chris Gross presented a CERTIFICATE OF SUBSTANTIAL COMPLETION for the Board's consideration. The Certificate indicates Landmark substantially completed the project on July 14, 2017; a punch list of items completed was attached to the Certificate. Chris also presented APPLICATION FOR PAYMENT NO. 8 in the amount of \$72,982.26. This final payment request is for all work completed by the contractor. APPLICATION FOR PAYMENT NO. 8 includes all retainage remaining, all work completed, and all amounts previously withheld by the Board as set-offs in accordance with the Board's outstanding liquidated damages claim. 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. Technically, the Board is entitled to withhold \$2,000 per day for each day since November 23, 2016. The Board withheld \$34,222.16 from APPLICATION FOR PAYMENT NO. 7. After a lengthy discussion it was the general consensus of the Board to retain the entire \$72,982.26 requested under APPLICATION FOR PAYMENT NO. 8 as liquidated damages. Manager Speich moved to approve and sign the CERTIFICATE OF SUBSTANTIAL COMPLETION, and to withhold the total amount of \$72,982.26 requested under APPLICATION FOR PAYMENT NO. 8 as the Board's final claim for liquidated damages. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

Approve August 17, 2017, minutes and August 2017 financial report. Manager Zetocha moved to approve. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Stein moved to approve payment of the following bills:

75879	Matt Bogart	Beaver removal-Dr#7	50.00
75880	Jerry's Backhoe Service	Dr#11-Removal of beaver dams-\$512.50 and Tewaukon Watershed-Removal of beaver dams-\$225.00	737.50
75881	Korey Martinson	Travel	26.75
75882	Paul Mathews and Nancy Mathews	Filing and Transcript fees-Dr#11	743.22
75883	Moore Eng. Inc.	General-\$954.45; Dr#7 project-\$16,551.90; Dr#7 Contractor Delay-\$2,226.53; Dr#7-Extension-\$720.20; Gwinner Dam - \$6,817.70; Shortfoot Creek-\$15,461.70; Tewaukon Watershed - Frenier Dam water permit-\$94.75	= \$42,827.23
75884	Ohnstad Twichell	General-\$427.96; Dr#7 project-\$541.51; Gwinner Dam-\$425.50; Shortfoot Creek-\$888.00	= \$2,282.97
75885	Lucas Siemieniewski	Travel	75.97
75886	Bruce Speich	Travel	26.75
75887	Starion Bond Service	Fee payment for Dr#7 bonds-\$6529.75 and Dr#4 bonds- fees-\$982.00	=\$7,511.75
75888	Todd Stein	Travel	17.12
75889	Roger Zetocha	Travel	26.75
14010	Sherry Hosford	Salary less taxes 493.92	1506.08
DD	Sargent County Bank	Withholding Taxes	678.92

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

GWINNER DAM BREACH: Chris Gross informed the board that the project is completed and Luke also commented that he had inspected the project and the contractor, D.L. Barkie Construction, Inc. did a great job. Chris is waiting on the pay application to be submitted by the Contractor.

HUNTING ON LAND OWNED BY THE WATER BOARD: Sherry reported that an email request had been received from a gentleman in Minnesota wondering if the land owned by the water board is open to hunting. After review of the Farm Lease with Jeff Breker and the Lease Agreement for the Head of the Mountain Nature Preserve, which surrounds Frenier Dam, it was agreed that as the farm lease specifically states that the land is open for hunting and cannot be posted by the tenant, it is open for hunting. Jeff Breker was also contacted about this request. The Nature Preserve states that it is closed for hunting, however, following inspection by Chairman Siemieniewski, there is a sign that states that the preserve is open to deer gun hunting for walking access only for deer hunting by bow and arrow or muzzleloader rifle only. A response will be sent to the MN hunter.

APPLICATION TO INSTALL A SUBSURFACE WATER MANAGEMENT SYSTEM FOR JUSTIN QUANDT IN THE NORTH HALF OF SECTION 19 IN JACKSON TOWNSHIP: The Board reviewed an Application to Install a Subsurface Water Management System dated July 19, 2017, for Justin Quandt. Under

the application, Applicant seeks to install a drain tile system in the North Half of Section 19 in Jackson Township, Sargent County, North Dakota. The project will include a single pump outlet that will discharge along the north boundary of the North Half of Section 19, just south of 93rd Street SE right of way. The tile discharge will ultimately discharge into the South Lateral Extension Project, a component of the Jackson Township Improvement District No. 1 Project. Applicant and John Quandt previously obtained flowage easements from the owners of the West Half of Section 18 of Jackson Township, and previously obtained right of way along the course of the entire South Lateral Extension Project. 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, Justin Quandt owns the North Half of Section 19 of Jackson Township.

It was moved by Manager Speich and seconded by Manager Zetocha to approve *Application to Install a Subsurface Water Management System* dated July 19, 2017, for Justin Quandt in the North Half of Section 19 in Jackson Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2017-01, subject to the following condition:

- 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.

DRAINAGE COMPLAINT FILED BY JACKSON TOWNSHIP/DAN DELAHOYDE AGAINST QUANDT BROTHERS: Dan Delahoyde was present as well as Paul Roney for this portion of the meeting. The Board held this complaint in abeyance for a considerable period of time while Mr. Quandt and other parties involved with the project submitted their surface drainage permit application; they have now obtained Surface Permit No. 4926, a permit that covers most of the improvements constructed. However, improvements in the Southeast Quarter of Section 18, just outside of Sargent County Highway right of way, are not permitted. John previously suggested the possibility that that stretch of ditch improvements do not drain an 80 acre watershed, the permitting threshold under N.D. Cent. Code § 61-32-03. Chris Gross presented the results of Moore Engineering’s watershed analysis. Moore utilized LiDAR and John’s topo maps and ultimately concluded this stretch of ditching in the Southeast Quarter of Section 18 drains an 87.9-acre watershed. Paul Roney owns the Southeast Quarter of Section 18 and he indicated he does not want this stretch of ditching closed or filled. Further, Paul and John contended this ditch benefits the County Road; the Board agreed, but could not simply dismiss the complaint due to benefits to the County. John indicated he would consider the possibility of applying for an after-the-fact permit for this portion of ditching. Alternatively, John said the parties could fill the ditch with 8-inches of dirt if the parties cannot reach an agreement with the Township to withdraw the complaint, though John felt adding dirt would adversely impact the County Road. The Board discussed the possibility of the County taking ownership of the property; because the ditch is outside of County right of way, Mr. Roney would have to grant the County an easement for the ditch. Mr. Roney indicated he would be willing to grant an easement for the County. The Board agreed to hold the matter in abeyance an additional month to allow the parties the opportunity to discuss possible resolutions. Mr. Roney will likely withdraw his complaint, and the Township will similarly consider withdrawing their complaint.

GERALD MCGREGOR DRAINAGE COMPLAINT AGAINST JOHN QUANDT: The Board next considered Gerald McGregor’s Drainage Complaint against John Quandt in which Mr. McGregor alleges John Quandt constructed illegal or unpermitted drainage in Section 10 of Southwest Township, Sargent County, North Dakota. In Mr. McGregor’s COMPLAINT FOR WATER-RELATED ISSUES dated September 14, 2017, Mr. McGregor alleges John Quandt constructed drainage, including installation of tile, in Section 10 approximately three to four years ago, and that the drainage is flooding Mr. McGregor’s property in the Northeast Quarter of Section 10. According to records on file with the Sargent County Recorder’s Office, Gerald J. McGregor, Arletta F. McGregor, and Gerald E. McGregor all own interests in the Northeast Quarter of Section 10 in Southwest Township.

John Quandt was present at the Board’s meeting to discuss other items and pointed out that the projects that are the subject of Mr. McGregor’s Complaint are permitted projects. Mr. Quandt provided maps of this area from

2006-2016 and explained there are shallow ditches on the 2016 map that were dug in 2014 that take the water from the tile outlet to the pump sites, back through the irrigators as allowed under Surface Drainage Permit No. 3974. More specifically, Mr. Quandt noted the Board previously approved a tile drainage project for Mr. Quandt regarding the West Half of Section 10, and a surface drain project also in the West Half of Section 10. More specifically, the Board approved Mr. Quandt's APPLICATION TO INSTALL A SUBSURFACE DRAIN for a tile project in the West Half of Section 10 at the Board's meeting on June 21, 2012. The Board subsequently approved an amendment to the approved tile permit at the Board's meeting on November 21, 2013. Further, the Board approved Application to Drain No. 3974 for Mr. Quandt regarding his surface project in the West Half of Section 10 at its meeting on June 21, 2012, then approved an amendment to the approved surface drainage permit at its meeting on July 18, 2013. The Board reviewed the approved permits and agreed the projects previously permitted by the Board are the subject of Mr. McGregor's Complaint.

Under North Dakota law, the District only has jurisdiction over surface drainage to the extent the project required a surface drainage permit under Section 61-32-03 of the North Dakota Century Code at the time of its construction. Similarly, the District only has jurisdiction over tile drainage to the extent the tile project required a permit under Section 61-32-03.1 of the North Dakota Century Code at the time of its installation. In this case, Section 61-32-03 required any party seeking to construct surface drainage improvements with a watershed area of 80 acres or more to obtain a surface drainage permit. Section 61-32-03.1 required any party who intended to install a tile project with a footprint of 80 acres or more to obtain a tile drainage permit. In this case, Mr. Quandt did, in fact, obtain both a surface drainage permit and a tile drainage permit. With that in mind, the District does not have any jurisdiction to order closure of the surface project or the tile project; further, the Board had no choice but to dismiss the Complaint.

Manager Speich moved to dismiss the COMPLAINT FOR WATER-RELATED ISSUES dated September 14, 2017, filed by Gerald McGregor against John Quandt regarding allegations of illegal or unpermitted construction of a drainage improvement in the West Half of Section 10 of Southwest Township. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

Sean Fredricks will prepare the requisite NOTICE OF DECISION and will provide the notice to the parties of record.

RED RIVER BASIN COMMISSION (RRBC): Ms. Leah Tvedt, RRBC Conference Coordinator and Outreach Specialist, at the request of the board, met to review the Mission Statement and benefits for Sargent County as a member of the RRBC. As their handout says: Sharing a River; three states, one province, two countries....One Red River Basin. Ms. Tvedt explained that the mission is to create a comprehensive integrated basin-wide vision, to build consensus and commitment to the vision, and to speak with a unified voice for the Red River Basin. The Basin assists MN, ND, SD and Manitoba agencies in working together on issues across their political boundaries and offer mechanism not only to plan, but to act and work toward goals that are consistent across jurisdictions and benefit everyone in the basin. The RRBC approach helps to facilitate MN, ND, SD and Manitoba to work together on things between two countries without the additional steps and efforts of navigating the US State Dept. and Foreign Affairs. Leah recommended the managers attend the upcoming RRBC Conference in Winnipeg in January as an opportunity to learn more about the RRBC.

JACKSON TOWNSHIP/DAN DELAHOYDE CONCERN ON ROADWAY ALONG THE NORTHWEST SIDE OF SECTION 13-130-58: Dan informed the board that this township roadway is eroding and caving in and requested that the Board remove and raise the culvert. The road in question intersects with the county road, an area that was the subject of an earlier drainage complaint filed by Beverly Kelley against Randy Hemminger and Phyllis Thompson and their tenants, Don Rust and Jim Bosse. The Board investigated and concluded the parties had constructed unpermitted drainage; the Board ordered the parties to fill-in the unpermitted improvements. Don Rust then filled-in the ditching the parties constructed, and the Board then dismissed the complaint. Beverly Kelley appealed the Board's dismissal to the State Engineer's Office. The State investigated and did not find anything to justify overruling the Board's decision, and returned the complaint to the Board. Sean indicated that, because the parties filled-in the ditch and the Board dismissed the Complaint, the Board lacks any authority to force the landowner or tenants to do anything further at this site.

STORM LAKE EXPENSES: Sherry provided board members with a recap of total expenses incurred during Storm Lake Outlet Improvement and discussion to form a Federal Maintenance District. There was a suggestion at one time that the expenses should be split equally between the water board General Fund and Drain No. 7. Total engineering fees paid out of Drain#7 were \$35,603.90; total attorney fees paid = \$3,830.99 of this amount \$2,333.75 was paid from Drain#7 and \$1,497.24 from the water board General Fund. There was also cost share for this project from the Red River Joint Water Board of \$22,915.75. This calculates to a local share of \$16,519.14 divided by two equals a share of \$8,259.57 from each of the water board general fund and Drain No. 7. Due to some of the expenses paid from the General Fund (\$8,259.57-\$1,497.24=\$6,762.33), motion by Manager Stein to transfer \$6,762.33 from the water board General Fund to the Drain#7 fund. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

SHORT FOOT CREEK ACCESS AGREEMENTS: Access agreements for the Shortfoot Creek Watershed Plan to allow access for consultants, including engineering and environmental consultants to enter upon certain parcels of real property to determine which parcels are suited for the construction of various project features and components have been received by the board. Manager Speich moved to authorize the chairman and secretary to sign these agreements as they arrive. Manager Martinson seconded the motion. Upon roll call vote, the motion carried unanimously.

DRAIN NO. 7 CHANNEL IMPROVEMENT REQUEST FOR ADDITIONAL COSTSHARE FROM THE ND STATE WATER COMMISSION (SWC): A letter was received and read from the SWC that the board's request for an additional \$110,468 of cost share for cost overrun cannot be obligated at this time due to revenues currently falling behind projection. Manager Stein moved to authorize Chris Gross, MEI, on behalf of the board, to send a letter to the SWC requesting the additional cost share, which falls within the parameters of funds for the current biennium. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

RS#1: Mike Bassingthwaite, Interstate Engineering, Inc. arrived at the meeting and updated the board on Phase 2 of the RS#1 project. He would like permission to resubmit the Army Corps of Engineers (COE) application as it had been rejected due to changes in nationwide permits. There are options to consider with moving forward with this project – 1) Do nothing; 2) Reconstruct the channel using the existing channel and 3) Construct as a new legal drain. Board members were unhappy that nothing has transpired since the original permit was submitted in January 2017 and nine months later still no further along. There appears to be lack of communication between the board and engineer. Nothing has been completed with the SD Railroad as it continues to be a work in progress but Mike feels they will cooperate when the project goes to bid. Manager Zetocha moved to authorize resubmission of the permit to the COE to proceed. Manager Speich seconded the motion. Voting yes: Zetocha, Speich, Martinson and Stein. Voting no: Siemieniewski. Motion carried.

FORMAN CITY EXPENDITURES PAID BY THE WATER BOARD FOR LITIGATION FILED BY RICK HOISTAD AGAINST THE FORMAN CITY OUTLET PROJECT: Mark Bopp, Forman City Mayor and Jayne Pfau, City Attorney arrived at the meeting to discuss a billing they received from the Board for expenses incurred regarding the Rick Hoistad litigation. According to calculations provided by Sherry Hosford, Sec.-Treas. to Forman City, the amount due to Drain No. 4 from Forman City for this litigation is \$33,660.49. In addition, the city owes the drain fund for 2016 and 2017 maintenance assessments of \$5,376.00 each year. The parties discussed the language in the signed exchange agreement between the City and the Board, as well as the language in a settlement agreement entered into by the Board, Rick Hoistad, the City, the contractor, and other parties. Sean indicated the parties are still attempting to close on the real estate transactions, but Mr. Hoistad has suggested he owns property that the City and the Board believe the City owns. Sean's office and the City will attempt to resolve the outstanding right of way transactions, then the parties can discuss the billing issues.

Chris Gross left the meeting at this time.

AGENCY SELECTION COMMITTEE – INITIAL REPORT: Sean presented an INITIAL REPORT regarding the engineering selection process required under the State Water Commission's cost-share policy. Sean explained the Board must conduct this process at least every three years to qualify for cost-share regarding engineering expenses. Manager Stein moved to approve the INITIAL REPORT. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously. Sean's office will arrange for publication of the RFQ.

CHRIS MATHIAS CULVERT COST SHARE REQUEST: A letter from Mr. Mathias to the Board stated that he had been working with the county commission on widening an approach and driveway in the NW1/4-9-131-57 (Harlem Township) for better access. A hydraulic study was completed by Interstate Engineering, Inc. with two options. Mr. Mathias would like to use Option 1 – with the flat bottom culvert, which he feels would be the most effective option as low flow situations are most common. He is requesting cost share on a 42"x29"x54' culvert in each of two driveways. The county commission approved the Application for Drainage Work within the county road right of way which included installing riprap at the inlet and outlet to each culvert and also approved 1/3 cost share of the culverts. Manager Martinson made a motion to approve 1/3 cost share on the requested culverts. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

DRAIN NO. 11: Sean Fredricks informed the board that he was made aware of a Notice of Appeal filed by Robert Banderet, Paul Mathews, and Valera Hayen regarding the Board's August 17, 2017, motion to levy a \$4.00 maintenance assessment for Drain No. 11. NDIRF has agreed to defend the Board in the action.

Application to Install a Subsurface Water Management System for Chad and Tom Heimbuch in the East Half of Section 7 in Brampton Township

The Board reviewed an *Application to Install a Subsurface Water Management System* dated September 15, 2017, for Chad and Tom Heimbuch. Under the application, Applicants seek to install a drain tile system in the East Half of Section 7 in Brampton Township, Sargent County, North Dakota. The project will include a pump outlet that will discharge in the northeast corner of the Southeast Quarter of Section 7; from there, the tile discharge will flow west along the North Half of the Southwest Quarter of Section 7 along the quarter section line; the discharge will flow through existing culverts in County Road 5, and onto the East Half of Section 12; the tile discharge will continue to flow west along the north boundary of the Southeast Quarter of Section 12 until ultimately discharging into Sargent County Drain No. 11.

The application ordinarily would have required a THIRTY-DAY NOTICE to downstream landowners under N.D. Cent. Code § 61-32-03.1; however, Applicants obtained a notarized LETTER OF APPROVAL from John Wentworth, the downstream landowner in the East Half of Section 12; and, therefore, no THIRTY-DAY NOTICE was required under Section 61-32-03.1.

According to records on file with the Sargent County Recorder's Office, Tom and Kathleen Heimbuch own the East Half of Section 7, and John and Beth Wentworth own the East Half of Section 12.

It was moved by Manager Zetocha and seconded by Manager Speich to approve *Application to Install a Subsurface Water Management System* dated September 15, 2017, for Chad and Tom Heimbuch in the East Half of Section 7 in Brampton Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2017-02, subject to the following condition:

- 1) 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 obtain written permission from the Brampton Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches;
- 2) That Applicants obtain written permission from Sargent County to discharge into, or otherwise utilize, any of its County highway 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.

Sean Fredricks left the meeting at this time.

DRAIN NO. 7: Brady Woodard, MEI presented to the board a video of a drone that he had flown over portions of Drain No. 7 including from Highway 13 south 1.5 miles and from Highway 13 north to the airport. Beaver dams were noted, spoil bank that was not leveled and field inlets that were eroding. Manager Speich was asked to inspect this area and report back to the board in October any suggestions he has for making improvements to this area of Drain No. 7. Also discussed was funding to do this work.

DRAIN NO. 12: Chairman Siemieniewski asked for permission to proceed with cleaning out a portion of Drain No. 12 in Section 7 of Marboe Township. The project would include removing sedimentation and leveling spoil bank. Any rock debris within the project boundaries would be the landowner's responsibility. Motion by Manager Stein to authorize Chairman Siemieniewski to hire a contractor to clean Drain No. 12 and level spoil bank in Section 7 of Marboe Township not to exceed \$10,000. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously.

Meeting adjourned at 11:50 a.m.

LUCAS SIEMIENIEWSKI, CHAIRMAN

ATTEST:

SHERRY HOSFORD
SECRETARY-TREASURER

