

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, DECEMBER 17TH, 2020 AT 8:20 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA.

Managers present: Lucas Siemieniewski, Todd Stein, Michael Wyum and Roger Zetocha Absent: Manager Speich. Present via video conference: Sean Fredricks, the Board's attorney; Michael Anderson, State Water Commission; Paul Mathews, Leon Mallberg, and Bob Banderet; Managers Don Zimbleman, and Norm Haak both of the Dickey-Sargent Water Resource Board. Others present at the courthouse: Chris Gross, the Board's engineer; Wendy Willprecht, Secretary-Treasurer; Sherry Hosford, Secretary-Treasurer; Manager Steve Hanson, Dickey-Sargent Water Resource Board; Sargent County Commissioner Richard Ruch; Will and Don Rust; Kevin Throener; and Chris Mathias.

DRAIN NO. 11:

Michael Anderson, Commissioner on the State Water Commission attended this meeting via videoconference. On December 11 there was a State Water Commission meeting to review the Four-Year Progress Reports regarding cost-share. At the meeting the State Water Commission tabled the cost-share extension for Drain No. 11. Attorney Fredricks stressed his concerns regarding the Drain No.11 project not being able to move along due to the delays caused by the Water Commission's decision to table. The reason the project was subject to a Four-Year review was the litigation initiated by project opponents. The Supreme Court ruled on the legal issues, including the procedural issues and the plaintiffs' failure to timely initiate the suit, but the Supreme Court also noted the Board had the right to utilize its annual levy funds to fund and finance the Drain 11 project. Similarly, the Attorney General issued an opinion earlier this year that also indicated a water resource district may utilize its annual levy funds to fund and finance projects, but also noted water resource districts have the additional authority to levy beyond the annual levy if necessary. The legal issues have been resolved, so the Board was frustrated that the Water Commission is now seemingly putting itself in a position where the Commission will render legal opinions regarding the methods the Board will utilize to fund its local share of the project costs. Fredricks stated that if the Board loses the 2021 construction season, the project permit will be at risk. Commissioner Anderson assured the Board that, regardless of what conditions the Commission places on the Board's cost-share, he will ensure the permit is held in abeyance while the Board addresses any conditions. Commissioner Anderson said he does not want the project to be killed, but said he wants to explore ways the Board can address mitigation of impacts from the project. The cost-share extension was moved to the February Water Commission agenda. The hold put on the project, Mr. Anderson said, has more to do with just landowner concerns. Commissioner Anderson added that he does not believe all the parties involved in this process are very far apart.

Commissioner Anderson reiterated that the Ransom County issue of refusal to accept assessments for Drain 11 needs to be reviewed and resolved, and he agreed the law is not sufficiently clear regarding a water resource district's authority to assess in a neighboring county without cooperation from that county. Talk amongst the Managers, including discussion from Dickey-Sargent Manager Steve Hansen, asserted that the other surrounding counties are in favor of the Drain No. 11 project. The key takeaway from the discussion was that the focus needs to be on mitigation efforts. Attorney Fredricks asked Anderson if he had a sense of what mitigation efforts would satisfy the Commission. SWC Anderson said that he would investigate further and would contact Fredricks to discuss.

Manager Wyum addressed the group and said the Board has met with the Ransom County Water Resource District many times over the years regarding assessments in Ransom County and they objected. Within the last 2-3 months, the Board submitted an opinion request to the Attorney General regarding this issue but the Attorney General's Office promptly responded and rejected the opinion request. Commissioner Anderson indicated he has contacted the Attorney General's Office and has requested some type of additional guidance on this issue. Manager Wyum added that the Board has pursued several different types of remedies to address the Ransom County assessment issue. Ransom County water comes through Sargent County so we would expect payment and cooperation as a result.

The Board encouraged the Drain No. 11 project opponents to speak up about what mitigation would resolve their concerns. Leon Mallberg raised concerns regarding benefits in Ransom County but did not have any comments regarding mitigation. Bob Banderet questioned the Board's ability to fund the project with its annual maintenance levy but did not have any comments regarding mitigation.

Manager Zetocha said that he sees three huge benefits from Drain No. 11: 1) unplugging the overflow upstream would alleviate several flooding issues; 2) there are a lot of sloughs around the Drain area, and if water can flow more freely, the downstream flow won't end up flushing; and 3) the Drain's biggest benefit would be to lessen the flooding that has caused huge stress and destruction to the county and township roads. There is water running across roads, sometimes for weeks. Sargent County has an obligation to make sure that we are doing all we can to keep the roads safe and passable.

Manager Stein said that there is a need for this project. He added that the Board has worked on this project for the last 3 to 4 years and he said he feels the SWC has been dragging things out.

Sargent County resident Kevin Throener addressed the Board and Commissioner Anderson. Throener is a land owner and farmer along Drain No. 11. His land is constantly being affected by flooding that Drain No. 11 would help dissipate. He stated that he is paying full taxes but not receiving the full benefit that he would be if the project were built. There is also a concern of the excess flooding on the county roads and around the City of Cogswell. He added that the project needs to be constructed to move the water out quicker and safer for this generation and the next.

Sargent County resident Will Rust addressed the Board and Commissioner Anderson. He said after 100 years of no drain improvement, it was time to improve. The county infrastructure is calling for this improvement by the stresses the excess flooding is causing. Rust said that the drain needs to be upgraded, county roads are underwater year long, and the project needs to move forward.

Dickey-Sargent Manager Steve Hansen spoke and said that he feels the Drain No. 11 project needs to move forward. It is a good project that will benefit many. The project is important for landowners and producers who need the drainage, and it will be important for safety purposes as well.

Discussion was had amongst the Managers regarding the continued issue of water staying in Cogswell and not flowing southerly. It was mentioned that the drain could be full of silt as it appears to only be working at around 20%. Manager Siemieniewski suggested scoping the drain. The pipe is perforated and it could be plugged. The drain may need to be jetted or parts of it may need to be replaced.

Manager Siemieniewski thanked Commissioner Michael Anderson for attending the meeting.

ENGINEERING SERVICES INTERVIEWS: Mike Bassingthwaite and Tyler Birchem, both engineers for Interstate Engineering appeared to interview regarding the engineering selection process mandated by the State Water Commission’s cost-share policies. Engineer Bassingthwaite provided a booklet explaining what they would bring to the table, should they be hired by SCWRD. During the interview Bassingthwaite acknowledged that even though Sargent County has other projects with Moore Engineering currently, the state does allow Water Boards to work with more than one engineering company at a time. The SCWRD thanked both Bassingthwaite and Birchem for their time and said the Board would be in touch.

Engineer Chris Gross of Moore Engineering also provided a booklet explaining his company’s credentials. Moore Engineering is currently assisting the SCWRD on several different projects.

The SCWRD decided to rank the two interviewees at next month’s meeting.

Manager Wyum moved to approve the November 19th and December 9th, 2020 minutes and November financial statement. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

SILVER LAKE DAM IMPROVEMENTS: Chris Gross of Moore Engineering presented a Final Balancing Change Order for a decrease of -\$13,154.50 due to a reduction in testing allowances and a pay request to D.L. Barkie for \$8,419.47. A retainage of \$9,075.53 will be held until the spring of 2021 when the project will be completed. Manager Zetocha moved to authorize Chairman Siemieniewski to sign the Change Order and approve payment of the bill. Manager Stein seconded the motion. Upon roll call the motion carried unanimously.

Manager Stein moved to approve payment of the following bills:

81345	Cogswell	Community	Center	Hall	Rental-Dr#	9
						\$50.00
81346	D.L. Barkie Construction, Inc.	Silver Lake Dam Improvement				\$8,419.47
81347	Sherry Hosford	Travel				\$40.32
81348	Moore Engineering	Silver Lake Improv.	\$17,199.15; Dave Wehlander Permit \$37.50; Board meetings-\$1850.00; SFC \$6,187.50; Drain No. 11 Culvert Replace-\$5,604.90 and Dr#11 Right-of-Way \$4,485.00; DrainNo.7Project-\$417.50;			TOTAL=\$35,781.55
	Moore Engineering	Silver Lake Improv.	\$1,804.15; Mtg. \$1,848.50, Dave Wehlander Permit \$92.50; SFC Eval Alternatives \$1,662.50; Drain No. 11- Right-of-Way/Permitting \$2,782.50; Drain No. 12- Design/Construct. \$15,875.60; Drain No. 7-Project Dev. \$185.00			TOTAL=\$24,250.75
81349	Ohnstad Twichell	Engineer Solicit.	\$445.14; Zetocha App. \$635.50; Dickey County Highway Permit \$82.00; Meetings \$575.00; Drain No. 11-PA, title exam and title opinions-\$4,415.00;			TOTAL=\$35,781.55
81350	Richland Co.	WRD				Admin./RS#1 \$220.05
81351	Luke Siemieniewski	Travel				\$77.63
81352	Todd Stein	Travel				\$10.93

81353	Michael Wyum	Travel				\$45.43
18632	Sherry Hosford	Salary less taxes	489.01			\$1,642.35
18633	Wendy Willprecht	Salary		less	taxes	276.85
						\$1,348.15
DD	Sargent County Bank				Withholding taxes	\$1,129.50

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

Secretary-Treasurer Hosford asked Attorney Fredricks about a bill for an amendment for Rick Hoistad Permit 2020-05. Upon review Fredricks said that it was an error and to disregard this bill submission.

Chris Mathias-Drain Tile Discharge: The project is located in the SE1/4-5-131-57. Mathias’s tile project is less than 80 acres. The Board voiced that they would need a Utility Permit. Attorney Sean Fredricks will prepare the utility permit. A motion to authorize the chairman to sign the Utility Permit for Chris Mathias was made by Manager Zetocha and seconded by Manager Stein. Upon roll call, the motion carried unanimously.

Application to Install a Subsurface Water Management System No. 2020-10 for Greg Nelson in the South Half of Section 8, the South Half of Section 9, and the East Half of Section 17 in Willey Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 2020-10*, dated November 5, 2020, and filed November 20, 2020, for Greg Nelson. Under the application, Applicant seeks to install a drain tile system in the South Half of Section 8, the South Half of Section 9, and the East Half of Section 17, in Willey Township, Sargent County, North Dakota. The project will include a single gravity outlet located in the northeast corner of the Southeast Quarter of Section 9; the outlet will discharge directly into a natural watercourse that flows northeast across Section 10.

Because the project will discharge directly into a natural watercourse, no THIRTY-DAY NOTICES were necessary to landowners downstream under N.D. Cent. Code § 61-32-03.1, and the Board cannot require Applicant to obtain consent from downstream landowners as a condition to the permit.

According to records submitted by Applicant, Greg and Janet Nelson own the Southeast Quarter of Section 8, and the Southwest Quarter of Section 9 of Willey Township. David R. Nelson, Trustee of the David R. Nelson Revocable Trust, and LaVonne C. Nelson, Trustee of the LaVonne C. Nelson Revocable Trust, own the Southwest Quarter of Section 8, the Southeast Quarter of Section 9, and the East Half of Section 17 of Willey Township.

Manager Wyum moved, and Manager Zetocha seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2020-10*, dated November 5, 2020, and filed November 20, 2020, regarding a proposed tile project for Greg Nelson in the South Half of Section 8, the South Half of Section 9, and the East Half of Section 17 in Willey Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-10, subject to the following condition:

- 1) that Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicant’s permit. However, for Applicant’s protection, and to ensure protection of Applicant’s tile system, the Board will recommend that Applicant comply with the following:

- 1) 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;
- 2) that Applicant install and maintain erosion protection at the outlet into the natural watercourse in the northeast corner of the Southeast Quarter of Section 9;
- 3) that Applicant obtain written consent from Willey Township to install any pipelines in or through any of its road right of way; and
- 4) 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.

DRAIN NO. 11: The Purchase Agreement from Michael Hayen has been signed and returned to the board for their approval. Manager Wyum moved to authorize the Chair and Secretary to sign said agreement. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

DRAIN NO. 7: The Board received a letter of support for this improvement project from the Sargent County Commission. Chris has met with the Damon DeVillers, SC Engineer, to discuss the culvert crossing on County Road No. 12 and is waiting to hear back from Damon on what the Commission would like to do with the culvert crossing if the Board proceeds with a drain improvement project.

DRAIN NO. 12 IMPROVEMENT PROJECT: Manager Stein moved to authorize Chairman Siemieniewski to sign Amendment I to the SWC Cost Share Agreement for an additional \$38,904. Manager Zetocha seconded the motion. Upon roll call the motion carried unanimously. The road was closed just 2 weeks during construction. Luke reported that they did a wonderful job, all the equipment has been removed and only items remaining is to seed the grass and install one 30" flared end section to the culvert that will be installed in the spring. It is Gross' recommendation to not pursue liquidated damages due to the efficiency of Comstock when they got to the project.

SILVER LAKE DAM FENCE: Manager Siemieniewski reported that he continues to pursue bids for this project.

SHORT FOOT CREEK: Still in the hands of the NRCS in Bismarck.

DRAIN NO. 9 EXTENSION: A public informational meeting was held on December 9th in Cogswell to discuss a proposed Drain No. 9 improvement and extension project. Engineer Gross indicated that the decision moving forward is in the hands of the landowners and that a petition would need to be submitted. Sargent County Commissioner Richard Ruch and Chris Gross shared a dialogue that sparked a possible new path in pursuing implementation of the Drain project which would include extending the legal extents of Drain No. 9 approximately 4 miles to the Wild Rice River. A brief discussion occurred on the benefits an extension would provide to Drain No. 11 with no action taken. Commissioner Ruch will reach out to downstream landowners to gauge interest in pursuing a larger project.

CROOKED CREEK WATERSHED PLAN: Engineer Gross stated that the NRCS has provided approximately \$270,000 in funding for the Crooked Creek Watershed Plan. There was an error in the cost share application from the State NRCS Office to National NRCS which led to the partial funding approval. Moore Engineering will work with the State NRCS Office to re-submit for the remaining cost share as well as work on lowering the estimated costs of the study.

Application to Install a Subsurface Water Management System No. 2020-13 for Steve Hansen in the North Half of Section 18 in Jackson Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 2020-13*, dated and filed November 30, 2020, for Steve Hansen. Under the application, Applicant seeks to install a 200-acre drain tile system in the North Half of Section 18, in Jackson Township, Sargent County, North Dakota. The project will include a single pump outlet located on the north boundary of Section 18, at approximately the quarter-quarter line; the pump will discharge into the south road ditch along 92nd Street SE; the discharge will flow west in the south road ditch; at the northwest corner of Section 18, the discharge will turn north and will flow in the west road ditch along 114th Avenue SE, under 92nd Street, and north along the west boundary of Section 7.

According to records submitted by Applicant, Hansen Real Estate Limited Partnership owns the North Half of Section 18. With regard to downstream properties, John and Jan Quandt, LLLP, owns the Southwest Quarter of Section 7.

The Application would normally have required a THIRTY-DAY NOTICE to the owners of the Southwest Quarter of Section 7 under N.D. Cent. Code § 61-32-03.1. However, John Quandt signed and submitted a "Notarized Letter of Approval" to consent to the project on behalf of John and Jan Quandt, LLLP. With that in mind, no THIRTY-DAY NOTICE was necessary.

Manager Wyum moved, and Manager Zetocha seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2020-13*, dated and filed November 30, 2020, regarding a proposed tile project for Steve Hansen in the North Half of Section 18 in Jackson Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-13, subject to the following condition:

- 1) that Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 2) that Applicant install and maintain erosion protection at the outlet into Jackson Township's road right of way; and
- 3) that Applicant must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Sargent County Water Resource District.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the Board will recommend that Applicant comply with the following:

1) 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

2) 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.

HEAD OF THE MOUNTAIN NATURE PRESERVE: All Managers had received the documentation of what was suggested to be changed at the Preserve by ND Parks and Rec. Those recommended changes included 1) Annually the Parks Department will work with the ND Game and Fish Department to determine the most effective tool to regulate wildlife populations within the Preserve boundaries and 2) Any and all wildfires shall be brought under control as quickly as possible by the Rutland-Cayuga Fire District. After review of the Preserve's suggested changes, a motion was made by Manager Stein and seconded by Wyum to accept and adopt the changes as presented and contact NDPR to find out what is up next for these changes. Upon roll call, the vote carried unanimously.

RICHLAND-SARGENT NO. 1: The Richland-Sargent Joint Board Secretary provided the following RS #1 bills for consideration and approval as follows:

\$14,800.00	JBX LLC	Clean out 1.5 miles
200.00	Alan Murack	4 Beavers
50.00	Allen Lawrence	1 Beaver

Manager Stein made a motion to approve the RS #1 bills. Manager Zetocha seconded it. Upon roll call, motion carried unanimously.

Defensive Driving Course- Manager Wyum and Speich have completed the course. Managers Stein, Zetocha and Siemieniowski still need to complete the course.

Secretary-Treasurer Hosford said that the SCWRD has a negative balance in the General Fund due to expenditures from the Silver Lake Dam Improvement project. It was suggested that we cash the CD #13893 that is coming due on December 28, 2020 to bring this account to a positive balance. Manager Wyum made the motion to cash the CD. Manager Zetocha seconded it. Upon roll call, the motion carried unanimously.

DRAIN NO 8: Manager Wyum brought up to the board that he had received complaints about Drain No. 8 and asked about placing tile in the ditch and sloping the ditch. The board informed Wyum that this has been explored and that it was cost prohibitive but Chris Gross will provide Wyum with some information from past research.

It was with great regret that Sherry Hosford submitted her official letter of resignation. Manager Zetocha made the motion to accept Hosford's resignation. Manager Siemieniowski seconded the motion. Upon roll call Managers Zetocha, Siemieniowski and Wyum were in favor with Stein voting no. Motion passed.

With no further business to discuss, the Board adjourned the meeting at 11:40 a.m.

LUCAS SIEMIENIEWSKI – CHAIRMAN

ATTEST:

WENDY WILLPRECHT - SECRETARY-TREASURER