

Barnes County Water Resource District
PO Box 306
Valley City ND, 58072
#845-8508

Meeting Minutes
May 13, 2024 - 9:00 AM

MEMBERS PRESENT: Chairman – Jerry Hieb, Managers – Scott Legge, Bret Fehr, Bruce Anderson, Mike Opat, Houston Engineering; and Sean Fredricks, Ohnstad Twichell. Also present by Microsoft Teams were Katie Schmidt, Ohnstad Twichell; Kale Van Bruggen, attorney for Les Hansen; Cassie Tostenson, attorney for Pat Hurley; Jordan Prazak, engineer for Mr. Hurley; and John Lundby from Colliers.

Chairman Hieb called the meeting to order at 9:00 a.m.

Manager Anderson moved to approve the minutes from the April 8, 2024 meeting. Manager Legge seconded the motion. Upon voice vote, the motion carried unanimously.

Surface Drain Permit Appl. No.6221 – Pat Hurley

Mr. Hurley's counsel, Ross Nilson, previously submitted a letter to the Board that included a formal request to withdraw Surface Drain Permit Application No.6221. Manager Legge moved to formally accept withdrawal of the application. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously.

Hansen/Hurley Complaint

With the permit application withdrawn, the Board now has to address the drainage complaint submitted by Mr. Hansen. Mike discussed the relevant dates for the Board's consideration regarding permitting requirements. July 1, 1957 was the date drainage permit requirements first went into effect in North Dakota. Under the law at that time, N.D. Cent. Code § 61-01-22, permits were required as follows:

Any person, public or private corporation, proposing to drain waters from a pond, slough or lake, which impounds waters gathered therein and drained from an area comprising eighty acres or more into a natural water course ... before constructing a ditch or facility for the purpose of such drainage" shall secure a permit.

The law at that time included permit exemptions for drains constructed by County Commissions or Townships; drains constructed in counties with an established Board of Drain Commissioners; and drains constructed under the supervision of a state or federal agency. The Drain Board exemption was effective until January 1, 1975. There is evidence of existence of a Drain Board in Barnes County at least as early as 1920. The Board will have to determine if the Hurleys' activities would have required permits at the time or if the activities were maintenance that would not have required a permit anyway.

Mike investigated several sources to identify conditions in the complaint area and to attempt to identify what activities the Hurleys conducted. Mike presented slides with the following data:

1. Government Land Office map from 1876 that showed a wetland basin to the north of the current Hurley Crossing and a stream in the Southwest Quarter of Section 19 leading to a wetland basin extending from the southern portion of Section 19 into adjoining Section 30;
2. USGS topographic map from 1897 (re-printed in 1931) that shows a large wetland basin all the way through the complaint area;
3. 1953 USGS map that shows an intermittent stream through Mr. Hurley's property, Mr. Hansen's property, etc., similar to current conditions, while also showing an intermittent stream connecting that stream to a wetland basin on the north line of Section 19;
4. 1956 USGS map that is virtually the same as the 1953 USGS map;
5. 1970 USGS map that still shows an intermittent stream extending through the Hurley property in Section 19 and continuing downstream, similar to current conditions; however, the map no longer shows an intermittent stream extending to the wetland basin on the north line of Section 19;
6. 1986 USGS map that is very similar to the 1970 USGS map;
7. 2011 USGS map that is very similar to the 1986 USGS map;
8. 2014 USGS map that is very similar to the 2011 USGS map;
9. 2018 USGS map that is very similar to the 2014 USGS map, but the map includes more marshy or wetland areas in the subject area;
10. 2020 USGS map that is very similar to the 2018 USGS map;

Mike also reviewed the aerial photographs that were included in the Barr Engineering technical memo dated April 24, 2024, that was submitted to the Board by Mr. Hansen's legal counsel, Kale Van Bruggen, as an attachment to a letter dated April 24, 2024. The technical memorandum includes aerial photos from various years between 1941 through 2023. While the photos represent conditions at one point in time, and the image qualities can present challenges, Mike explained that the photos may provide some indication as to when drainage or maintenance activities may have taken place. Mike noted that the 1959 photo does not seem to show an obvious crossing at the location of the current Hurley Crossing, while also noting that a portion of the waterway in question was being actively farmed. The next available photo was from 1969, and that photo appears to show a crossing at the location of the current Hurley Crossing, and the wetter conditions depicted in the photo indicate more defined waterways and wetland basins. This photo also shows that portions of the subject waterway that were actively farmed in 1959 were no longer being farmed.

Mike noted that, based on the statements submitted by the Hurleys and his discussions with Pat Hurley, the work done in the 1950s was conducted with a Model G John Deere with a two-bottom plow. The Hurleys used another John Deere to scoop up the spoil and build up the "Hurley Crossing." The Hurleys indicate they went approximately 300 feet downstream of the Hurley Crossing.

Mike also discussed the culvert elevations that may be relevant to the analysis of the drainage complaint. Mike noted that Mr. Hurley's engineer has contended that a channel bottom profile with positive drainage either was (or should be) established along an alignment extending from 51st Street southwesterly, through the Hurley Crossing and then southerly to 52nd Street/County Road 38. Mike explained that claim is not supported by the topographic data and Mr. Hurley's own statements that water flowing into Section 19 from the west naturally flowed northeasterly, and once the depression on the north side of Section 19 and the south side of Section 18 filled up, water would then flow south. That was the reason the Hurleys conducted their work in the 1950s and subsequently secured a permit to construct a dike (the Hurley Crossing) to divert the water directly to the south. Mike surmised that prior to any manmade alterations, there was likely a high point at approximately the location of the Hurley Crossing, while also noting that

Mr. Hurley has submitted documentation indicating that the invert of the existing east culvert at the Hurley Crossing is set at or above the invert elevation of the 12-inch culvert that was installed when work was originally done in the 1950s.

The culverts on the south line of Section 19 pass through County Road 38 and are under the jurisdiction of the Barnes County Highway Department. To the extent that culvert invert elevations at this road crossing become relevant to the resolution of the drainage complaint, Mr. Hansen's legal counsel and engineer have claimed that the culverts that were placed at the time the Hurleys completed their original work were substantially higher than the current culvert inverts. Mike informed the Board that he contacted the Barnes County Highway Department and they do not have records on this crossing beyond the last 10 years, and they do not have any records on the installation of the existing 48-inch culvert. They did inform Mike that the Department's policy is to install culverts on the bottom of the channel, unless it is intentionally being installed as an overflow. Mike also informed the Board that Mr. Hurley has provided his personal recollection that the existing 48-inch culvert replaced a previous culvert that was installed in 1968 that was in disrepair. Mr. Hurley stated that he was present, along with representatives from the Barnes County Highway Department, NRCS, and Star Enterprises, at the time the 48-inch culvert was installed and that the 48-inch culvert was installed at the same location and elevation as the previous culvert. Additionally, Mr. Hurley stated that the culvert installed in 1968 was shorter than the existing culverts, and that sediment in the waterway downstream of the crossing prevented water from effectively passing through the culvert for many years. In approximately 2012, the channel downstream of the crossing was cleaned out and drainage through the County Road 38 crossing, which potentially included the existing 48-inch culvert by that point, was significantly improved.

Mike noted that the claims made by Mr. Hansen are contrary to Mr. Hurley's recollection and, more importantly, cannot be substantiated by the aerial photographs given the limited clarity of the images and the impact that poor maintenance of the channel could have on visible flow paths. Furthermore, Mike noted that the USGS topographic maps have identified an intermittent stream flowing through this crossing since at least the 1950s. If the culverts present at this crossing in the 1950s and 1960s were at the higher elevations alleged by Mr. Hansen, those culverts would have been higher than culverts at the Hurley Crossing, and water would drain north and eventually pool up against County Road 38. If this was the case, it would almost certainly have been reflected on the USGS maps as a large wetland complex extending upstream to at least the Hurley Crossing, or possibly as a pond over that area, neither of which appear on any of the USGS maps since that time.

The question before the Board is if Pat Hurley's more recent work was simply "maintenance." Mike noted the historical data shows this whole area was a wetland. That may suggest all of this work was just sediment removal that did not require a permit.

Manager Legge asked if there is more engineering work the Board could do to answer more of these questions but Mike did not believe so. Mr. Hurley's engineer commissioned soil analysis that suggests that the most recent activity was generally maintenance of the drain originally constructed by the Hurleys. The report notes that the width of the current channel could be slightly wider than what Mr. Hurley estimated the top width of the original ditch to be, but there was no evidence that the channel was deepened. Mike noted that this analysis was signed by a Registered Soil Classifier, whereas the information submitted by Mr. Hansen was not.

Kale Van Bruggen asked that the Board review the reply he submitted in response to Mr. Hurley's submissions. He acknowledged that Barr did not conduct a soil study but he contended that even Mr. Hurley's study shows Mr. Hurley went below the baseline.

Cassie Tostenson indicated Mr. Hurley's position is that the original work was done before the codification of any permitting requirements and that the soils report submitted by Mr. Hurley's engineer proves the work conducted by Mr. Hurley was just maintenance.

Sean asked both parties if they have submitted everything they want the Board to consider. Both Mr. Van Bruggen and Ms. Tostenson indicated they have submitted everything they want the Board to consider and they do not have any additional information to submit for the Board's consideration.

Mike and Sean will further investigate and review the information submitted by the parties and will present a recommendation for the Board's consideration at the June meeting.

VC Little Dam:

Mike reported the Contractor may not start until late July or August. The late start does not impact the contractor's contractual completion schedule. The project pre-construction meeting will likely be on-site in early July.

Sean Fredricks previously sent out a Resolution Authorizing the bond issue prepared by Katie Schmidt, the Board's bond counsel. John Lundby was present to discuss the bond sale and noted that, despite relative market instability, Colliers generated a great deal of interest in the bond issue. The final interest rate is 4.75% over the two-year term of the bond issue; the Board can repay without penalty beginning in May of 2025. Approval of the Resolution would allow Colliers to close on Wednesday, May 29. Katie explained bond issue includes capitalized interest.

Manager Fehr moved to approve the Resolution Authorizing the Issuance of \$1,070,00 Tax Anticipation Bonds of 2024. Manager Legge seconded the motion. Upon roll call vote, the motion carried unanimously.

Pat Hurley Waterway/Watercourse Request

Mr. Hurley requested that the Board submit a waterway/watercourse request to DWR regarding Section 31 of Rosebud Township. Mr. Hurley indicated this is not relevant to the Hansen/Hurley complaint; rather, Mr. Hurley would like to resolve the cattail issue downstream of the complaint area. Sean noted the Board has legal authority to submit a waterway/watercourse request under N.D. Cent. Code § 61-01-06, in the Board's discretion, but noted DWR may not have the opportunity to respond for several months or longer. The Board was not inclined to submit the request; instead, the Board would prefer proceeding with creation of a joint snagging and clearing district with Lamoure County.

NRCS-RCPP - Ten Mile Lake

NRCS asked the Board to propose new alignments for NRCS' consideration. Mike and Houston are working on NRCS' request. NRCS does not necessarily need a final design for a final alignment, just enough to modify cost estimates.

Thordenskjold Drain

The Board and the Ransom County WRD both previously approved the final reassessment list, as required under the parties' Joint Powers Agreement. The reassessment is concluded. Houston is working on the master plan and their survey crew will be on-site likely this week.

Clausen Springs Dam

Conditions still have not allowed TradeMark to install the trash rack. DWR completed their inspection in October of 2022 but only recently issued the report. The Board has addressed most of the items addressed in the State's inspection. Mike discussed DWR's findings regarding seepage through the concrete pipe; the seepage does not seem to be getting worse but the Board will continue to monitor.

Manager Anderson moved to authorize Mike and Heather to prepare and submit cost-share requests to the Red River Joint Water Resource District and the State Water Commission for a hydrology, hydraulics, and geotechnical study of Clausen Springs Dam. Manager Legge seconded the motion. Upon roll call vote, the motion carried unanimously.

If the final costs of the Little Dam project are less than anticipated, the Board could ask the County to appropriate remaining funds to this project.

Sheyenne Riverbank Stabilization Study

The stakeholder public meeting was in March. Mike met with the Richland County WRD, Southeast Cass WRD, and the Ransom County WRD. The Ransom County WRD passed a motion in support of continued study of bank stabilization along the Sheyenne. The Southeast Cass WRD seems supportive. The Richland County WRD is awaiting public response. Mike will reach out to Richland....

Hobart Lake

The State opened the west end of Devils Lake last week and will open east end this week. Bruce noted he is curious to see how the Devils Lake releases will impact the Hobart Lake water quality testing.

NEW BUSINESS

Application to Install a Subsurface Water Management System No. 2024-05 for Aaron Larson in the Southeast Quarter of Section 18 in Weimer Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-05*, filed by Applicant Aaron Larson on April 18, 2024. Under the Application, Applicant seeks to install a 133-acre drain tile system in the Southeast Quarter of Section 18 in Weimer Township, Barnes County, North Dakota. The project will tap-in to an existing tile line with a gravity outlet that runs from the Northeast Quarter of Section 18 across a portion of the Southeast Quarter and discharges into a USGS blue line waterway. In addition to the existing gravity outlet, the project will include three additional gravity outlets that will all discharge into the same USGS blue line waterway in the Southeast Quarter of Section 18.

According to County tax roll information supplied by Applicant, Aaron and Stacie Larson own the Southeast Quarter of Section 18 in Weimer Township. Because the project will discharge into a USGS blue line waterway, no downstream notices are required under N.D. Cent. Code § 61-32-03.1.

Manager Fehr moved, and Manager Legge seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-05*, filed April 18, 2024, for Aaron Larson in the Southeast Quarter of Section 18 in Weimer Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-05, subject to the following conditions:

1. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
2. Applicant will install and maintain erosion protection at any and all project outlets into the USGS blue line waterway in the Southeast Quarter of Section 18 in Weimer Township.
3. Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines Barnes Rural Water District has in the Southeast Quarter of Section 18 in Weimer Township under any blanket easements, or otherwise beyond Barnes Rural Water District's existing easement.
4. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-05 in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system.

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 Board recommends 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.

Sean Fredricks will provide copies of the Board's NOTICE OF DECISION, SUBSURFACE WATER MANAGEMENT PERMIT No. 2024-05, Applicant's downstream flow map, and the Barnes County Permit Form to the Department of Water Resources, Barnes Rural Water District, and Jessica Jenrich. Under North Dakota law, Applicant's detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Secretary-Treasurer

Bruce spoke with the County. They started advertising last week for a joint, full-time position with the County, with 20-25 hours per week attributed to the WRD and the remaining hours working for the County in various departments. No word yet on applications.

Engineer Report

Mike submitted the Board's items to DWR regarding the Water Development Plan.

Legal Report

Sean had nothing more to add.

Bills

Manager Legge moved to pay bills as presented. Manager Anderson seconded the motion. Upon roll call vote, the motion carried unanimously.

With nothing further to discuss the meeting adjourned at 11:05 a.m.

APPROVE:



Jerry Hieb, Chair

ATTEST:



Heather Manson
Secretary-Treasurer

Barnes County Water Resource District
PO Box 306
Valley City, ND 58072

May 13th, 2024

PLEASE SIGN IN BELOW

Les Man

Anne Winbler