

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

Meeting Minutes

September 9, 2024 – 9:00 A.M.

MEMBERS PRESENT: Chairman - Jery Hieb, Managers – Scott Legge, Bruce Anderson, Perry Schlagel, Bret Fehr; Mike Opat – Houston Engineering; Sean Fredricks – Ohnstad Twichell. Also present by Microsoft Teams were Jordan Prazak, engineer for Pat Hurley; Kale VanBruggen, attorney for Les Hansen; and Joel Toso, engineer for Les Hansen.

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

Manager Legge moved to approve the minutes from the August 12, 2024, meeting. Manager Fehr seconded the motion. The motion carried unanimously.

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

OLD BUSINESS

VC Little Dam

Mike discussed that construction has been delayed.

NRCS-RCPP: Ten Mile Lake

Christi Fisher and John from the NRCS presented a detailed analysis on the feasibility. With the facts presented it is not a feasible project at this time. Mike Opat briefly discussed if the landowners around the area would like to pursue any improvements to Ten Mile in the future that there are options for them and more information available.

Thordenskjold Drain

Mike noted the informational meeting is today in Nome at 1:00 p.m.

Clausen Springs Dam

No word on the trash rack to be installed. The Board received a cost-share agreement from the North Dakota State Water Commission. Manager Legge moved to approve the state cost-share agreement. Manager Fehr seconded the motion. Upon rollcall vote the motion carried unanimously.

Sheyenne River Bank Stabilization Study

Mike is working with Kieth Weston and Melissa Hinkemeyer to arrange a Sheyenne Joint Board meeting in the next few weeks that Manager Anderson and Mike plan to attend.

Hansen/Hurley Complaint

Mike was on-site on the Hurley property in the West Half of Section 19 in Rosebud Township on September 5, 2024, along with Joel Toso, engineer for Mr. Hansen; Jordan Prazak, engineer for Mr. Hurley; and Mr. Hurley. Mike noted the Board's Order specifically requires Mr. Hurley to restore the Original Drain, defined as the first 300 feet downstream of the Hurley Crossing, to a channel with a 14-inch bottom and a 7-foot top, with a bottom profile matching the grade extending from the upstream invert of the easterly 36-inch culvert at the Hurley Crossing to the upstream invert of the 48-inch culvert at County Road 38. Mr. Hansen's engineer, Mr. Joel Toso, observed the channel restoration Mr. Hurley conducted and agreed Mr. Hurley had restored the Original Drain to the required dimensions, and further agreed that Mr. Hurley restored an addition 700 feet downstream of the Original Drain. Following Mr. Hurley's remedial work, there are approximately 600 feet of drainage improvements still downstream of the 1,000 feet of remedial work conducted by Mr. Hurley that Mr. Hurley will have to address. This 600-foot stretch is located immediately upstream of County Road 38. The parties disagreed regarding the requirements for that 600-foot stretch.

In the FINDINGS OF FACT AND CONCLUSIONS OF LAW, the Board held Mr. Hurley constructed drainage improvements downstream of the Original Drain **and** deepened and widened the Original Drain:

25. Hurley constructed improvements beyond the original 300-foot long drainage ditch, wider than the original 14-inch bottom, and wider than the original seven-foot top width constructed by Raphael Hurley and James Hurley.

However, beyond the 300-foot stretch of the Original Drain, there was no credible evidence in the record to establish definitive dimensions like there was regarding the dimensions of the Original Drain (14-inch bottom, 7-foot top). Therefore, in the Order, the Board concluded Mr. Hurley did construct improvements downstream of the Original Drain but did not include specific width dimensions:

- Beyond the point approximately 300 feet south of the Hurley Crossing, the waterway would have dimensions **no narrower** than a 14 inch bottom and a seven foot top width. (Emphasis added.)

In the Order, the Board ordered Mr. Hurley to close or fill the unpermitted improvements, including the 14-inch/7-foot dimensions for the Original Drain, but in the absence of credible evidence regarding the dimensions along that stretch downstream of the Original Drain, the Order did not contain specific dimensions regarding that stretch. Rather, Mike noted, and the Board agreed, that the bottom profile for the area downstream of the Original Drain

should at least match the grade extending from the upstream invert of the easterly 36-inch culvert at the Hurley Crossing to the upstream invert of the 48-inch culvert at County Road 38. With that in mind, Mr. Hurley would simply have to install a couple of inches of fill in portions of that 600 feet of channel.

Mike indicated that, as an alternative, Mr. Hurley could install a rock grade control structure at the downstream end of this reach instead of placing any additional fill material along this 600-foot stretch. The parties discussed this option on-site on September 5 and agreed this was a viable option. Mike noted the following regarding this option:

- Either option would essentially produce the same result in terms of the associated impact to downstream properties.
- The rock grade control structure would be installed to the full width of the existing channel with the top of the rock at the same elevation as the invert of the 48-inch culvert at County Road 38.
 - The top would be flat all the way across, as the Order does not require Mr. Hurley to maintain this portion of the channel to a specified dimension.
 - The County Highway Department has already indicated they will not allow installation of the rock grade control structure in the County's right of way. With that in mind, Mr. Hurley could install the control structure on the north side of the County's right of way fence.
 - Over time, the grade control structure should promote sedimentation upstream of the structure and the channel will naturally bring itself up to the grade specified in the Order.
 - The rock grade control structure should be advantageous to Mr. Hansen as it will provide some added protection from natural channel erosion that would not occur without installation of the rock grade control structure and addition of fill to the channel bottom.
 - The advantage to Mr. Hurley is that his contractor will not have to construct remedial work in a longer reach of the channel, and Pat can hopefully avoid future disputes with Mr. Hansen because Mr. Hansen will be able to observe the condition of the rock grade structure instead of wondering if the channel has been deepened.

Mr. Hurley indicated his preference to install the rock structure to avoid future disputes if fill were to wash out and the Board acknowledged that they will consider the rock grade control structure to be sufficient in terms of meeting the closure requirements in the Order. Mike will conduct a site visit after the remedial work is constructed by Mr. Hurley and report back to the Board.

Svea Drain

Sheila Cypers was present and informed the Board that the landowners in that area have not met to decide on how to move forward.

Fall Cattail Spraying

Mike from Larson Helicopter will be spraying legal drains and Clausen Springs only.

Cornell 80 Project

No action to be taken at this time.

NEW BUSINESS

Richman/ Killoran Complaint

David Richman Drainage Complaint Against Joe Killoran - Complaint for Water- Related Issues

The Board next considered David Richman's Complaint for Water-Related Issues, dated August 28, 2024, against Joe Killoran. Under the Complaint, Mr. Richman objects to a tile system Mr. Killoran plans to install in Section 25 in Springvale Township. Mr. Richman and Mr. Killoran were both present to discuss the matter with the Board. Mr. Richman voiced concern regarding Mr. Killoran's apparent plan to install a pump that will discharge to the north and, according to Mr. Richman, could impact Mr. Richman's property in the Northwest Quarter of Section 24.

Mr. Richman acknowledged that, as of today, Mr. Killoran has not installed or constructed any tile on his property. Mr. Killoran noted that, this morning, he submitted a Notification to Install Subsurface Water Management System to the Board's Secretary-Treasurer, Cara Didier, as required under North Dakota law.

Sean Fredricks explained that, under the drainage complaint statute, N.D. Cent. Code § 61-32-07, the Board only has jurisdiction to order a landowner to "close or fill" an unpermitted "drain, lateral drain, or ditch ... opened or established by a landowner or tenant contrary to this title [Title 61 of the North Dakota Century Code]." In other words, if a landowner constructs or installs a drain without a permit, and the drain required a permit under Title 61 of the Century Code, a water resource district can order that party to close or fill the unpermitted drainage. In this instance, Mr. Richman concedes that Mr. Killoran has not constructed or installed any tile. Rather, Mr. Richman suggests he submitted his complaint in hopes the Board could take some preemptive action to prohibit Mr. Killoran from installing his tile system or his pump. However, Mr. Fredricks noted that, under Section 61-32-07, the Board lacks any jurisdiction to take any action to preclude Mr. Killoran from installing a legal tile system and otherwise lacks any jurisdiction to take any other preemptive action.

Mr. Fredricks further pointed out that, if a party obtains a tile permit for a project of 80 acres or more, in compliance with N.D. Cent. Code § 61-32-03.1, or submits a Notification to Install Subsurface Water Management System for a project under 80 acres, in compliance with N.D. Cent. Code § 61-32-03.3, the tile system is not "contrary to" Title 61 of the Century Code. In this case, Mr. Killoran submitted a Notification to Install Subsurface Water Management System to the notify the District of a project that he plans to install that will be less than 80

acres. With that in mind, Mr. Killoran has complied with Section 61-32-03.3; therefore, assuming Mr. Killoran installs a tile project that is less than 80 acres, as indicated in his Notification to Install Subsurface Water Management System, Mr. Killoran's tile system in Section 25 in Springvale Township will be in compliance with applicable North Dakota law, and the Board will lack any jurisdiction to order or force Mr. Killoran to close or fill his tile system. The Board further lacks any jurisdiction to "deny" Mr. Killoran the right to install his tile system under Section 61-32-03.3; the "under-80" process under Section 61-32-03.3 is a notification process and not a process that affords the Board the ability to approve or deny Mr. Killoran's project.

Under the drainage complaint statute, Section 61-32-07, the Board only has jurisdiction to order a landowner to "close or fill" any unpermitted "drain, lateral drain, or ditch ... opened or established by a landowner or tenant contrary to this title [Title 61 of the North Dakota Century Code]." In this case, because Mr. Killoran has not installed any tile project, he has not performed any activity that is "contrary to" Title 61 of the Century Code. Further, Mr. Killoran submitted a Notification to Install Subsurface Water Management System to notify the Board of his intent to install a system less than 80 acres. With that in mind, the Board lacks any jurisdiction to preclude Mr. Killoran from proceeding with his tile project and lacks any jurisdiction to order or force Mr. Killoran to close or fill his tile system, once installed. With all of this in mind, Chairman Hieb noted the Board had no choice but to dismiss Mr. Richman's Complaint for Water-Related Issues.

Manager Legge moved to dismiss David Richman's Complaint for Water-Related Issues, dated August 28, 2024, regarding Mr. Killoran's proposed tile system in Section 25 in Springvale Township due to lack of jurisdiction under Sections 61-32-03.3 and 61-32-07. Manager Schlagel seconded the motion. Upon roll call vote, the motion carried unanimously.

Drain Tile Application/Aaron Larson

Application to Install a Subsurface Water Management System No. 2024-09 for Aaron Larson in the North Half of the South Half of Section 29 in Oriska Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-09*, filed by Applicant Aaron Larson on September 3, 2024. Under the Application, Applicant seeks to install a 113-acre drain tile system in the North Half of the South Half of Section 29 in Oriska Township, Barnes County, North Dakota. At the Board's August meeting, the Board approved Subsurface Water Management System Permit No. 2024-06 for Stephen Somsen regarding his 130-acre drain tile system in the North Half of Section 29 in Oriska Township. Under *Application to Install a Subsurface Water Management System No. 2024-09*, Applicant Aaron Larson proposes to connect his proposed tile system to Mr. Somsen's gravity outlet. Mr. Larson's project will include a line that will run from the northeast corner of the Southeast Quarter of Section 29 and will run along the east boundary of the Northeast Quarter of Section 29; the line will connect Mr. Larson's system to Mr.

Somsen's gravity outlet along the east boundary of the Northeast Quarter of Section 29; Mr. Somsen's outlet discharges directly into a USGS blue line waterway.

According to Barnes County tax roll information, Aaron and Stacie Larson own the North Half of the South Half of Section 29 in Oriska Township, and Stephen Somsen and Pennell Somsen own the Northeast Quarter of Section 29 in Oriska 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 Legge moved, and Manager Fehr seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-09*, filed September 3, 2024, for Aaron Larson in the North Half of the South Half of Section 29 in Oriska Township, and to authorize the Secretary-Treasurer to sign Subsurface Water Management Permit No. 2024-09, 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 Northeast Quarter of Section 29 in Oriska 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 North Half of the South Half of Section 29 and the Northeast Quarter of Section 29 in Oriska 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. 2024-09 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 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 recommends that Applicant comply with the following:

1. The Board recommends that Applicant obtain and record an easement from Stephen Somsen and Pennell Somsen to install a line across the Northeast Quarter of Section 29 in Oriska Township and to connect to their tile outlet.

2. 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. 2024-09, and the Barnes County Permit Form to the Department of Water Resources, Barnes Rural Water District, Stephen Somsen, 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.

Drain Tile Application/Darren Bjornson

Application to Install a Subsurface Water Management System No. 2024-10 for Darren Bjornson in the North Half and the Southeast Quarter of Section 9 in Rogers Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-10*, filed by Applicant Darren Bjornson on September 5, 2024. Under the Application, Applicant seeks to install a 109-acre drain tile system in the North Half and the Southeast Quarter of Section 9 in Rogers Township, Barnes County, North Dakota. The project will include a single pump outlet in the Northeast Quarter of Section 9; the pump outlet will discharge directly into a natural watercourse, as that term is defined under N.D. Cent. Code § 61-01-06.

According to Barnes County tax roll information, Darren Bjornson owns the North Half and the Southeast Quarter of Section 9 in Rogers Township. Because the project will discharge into a natural watercourse, no downstream notices are required under N.D. Cent. Code § 61-32-03.1.

Manager Anderson moved, and Manager Legge seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-10*, filed September 5, 2024, for Darren Bjornson in the North Half and the Southeast Quarter of Section 9 in Rogers Township, and to authorize the Secretary-Treasurer to sign Subsurface Water Management Permit No. 2024-10, 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 natural watercourse in the Northeast Quarter of Section 9 in Rogers Township.
3. Applicant will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Barnes County Water Resource District.

4. 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 North Half and the Southeast Quarter of Section 9 in Rogers Township under any blanket easements, or otherwise beyond Barnes Rural Water District's existing easement.
5. Applicant must apply for an amendment to Subsurface Water Management Permit No. 2024-10 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 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 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.

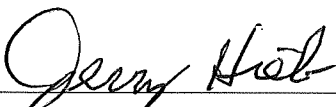
Sean Fredricks will provide copies of the Board's Notice of Decision, Subsurface Water Management Permit No. 2024-10, and the Barnes County Permit Form to the Department of Water Resources, Barnes Rural Water District, and Jessica Jenrich. Under North Dakota law, Applicant's detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Engineer Report and Legal Report

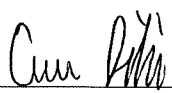
Mike and Sean briefly explained some new cost-share policies and changes to the State Water Commission's cost-share agreements.

With nothing more to be discussed the meeting was adjourned at 11:10 a.m.

APPROVED:

By: 
Jerry Heb, Chair

ATTEST:



Cara Didier
Secretary-Treasurer

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

September 9th, 2024

PLEASE SIGN IN BELOW

CHAUSTI FISHER USDA - NRCS

Rocky Hansen

Lee Mann

Shirley Cuyper

Joe Feller
David Peterson