

MINUTES

STUTSMAN COUNTY WATER RESOURCE BOARD

January 29, 2020

The regular meeting of the Stutsman County Water Resource Board was called to order by Vice-Chairman Arlyn Schmidt on January 29, 2020, at 9:20 a.m. in the Commissioner's Room in the Stutsman County Courthouse. Members present were Arlyn Schmidt, Anthony Roorda, John Schock, Dennis Clark, and Joel Lees appeared by phone. Additionally present was Abigail Geroux, Secretary for the Board. The following members of the public were also present: Jim Collins Jr. of the North Dakota Department of Environmental Quality, Peter McElroy, Susan Backer, Ruby DeLair, Ken Frey, Dave Schwartz Stutsman County Commissioner, David Steele, Keven Szarkowski, Jerome McClean, Mark Oberlander, Dustin Krueger of Stutsman County Soil Conservation District, BJ Kratz of the North Dakota Game and Fish, Dennis Lovy, Michael Schlecht of City of Spiritwood Lake, Donald Frey, Ron Thom, Ken Frey, and Nicole Meland the Stutsman County Auditor. Additionally, there were a number of individuals who appeared by phone. In particular, Christopher Korkowski and Laura Ackerman, Engineers with the State Water Commission, Matt Lindsey of the Regulatory Division of the State Water Commission, and Marshall Johnson of the Audubon Society.

The first order of business was to review the minutes of the December 23, 2019 regular meeting. Upon review, Anthony Roorda moved and John Schock seconded a motion to approve the minutes. Motion passed.

**REQUEST FOR HYDROLOGY STUDY TO THE STATE ENGINEER TO DETERMINE APPROPRIATE CULVERT CAPACITY PERTAINING TO THE TOWNSHIP ROAD ON THE NW1/4 OF SECTION 29/137/63 & THE SW1/4 OF SECTION 20/137/63**

The second item on the agenda was a request from Stutsman County to conduct a Hydrology Study on property owned by Ruby DeLair to determine an appropriate culvert size on a Montpelier Township Road. Dave Swartz, Commissioner of Stutsman County, explained to the Board that Ruby DeLair made payment of taxes under protest. Mr. Swartz indicated that it his understanding that the taxes were made under protest because of the ongoing issues that the landowner had with Montpelier Township.

Upon reviewing the outstanding issue with Montpelier Township, Commissioner Swartz requested that the Stutsman County

Water Resource Board issue a request to the State Water Commission for a Hydrology Study. Ultimately, the Hydrology Study would enable Montpelier Township to determine an appropriate culvert size and placement for the amount of water flowing through the area.

Ms. Geroux indicated that the Hydrology Study would be at no cost to the Water Resource Board. Ms. Geroux also explained that once the request for a Hydrology Study was made, there would be no further actions that the Board could take. Next, there was a discussion about the ability to enforce the results of the Hydrology Study to create a culvert acceptable to the landowners. It was noted that the statutory code, which allows for this Hydrology Study does not include an enforcement mechanism but would provide additional proof in the event that there was damage to the property.

At this point, Anthony Roorda moved and John Schock seconded a motion to approve the request for a Hydrology Study from the State Water Commission. Motion passed.

#### **DISCUSSION OF DRAINAGE PROJECT AT SPIRITWOOD LAKE THROUGH ALKALI LAKE**

The next order of business was to discuss a presentation from the State Water Commission regarding a feasibility study presented by Chris Korkowski. Mr. Korkowski presented a PowerPoint presentation to the Water Resource Board and members of the public which discussed identifying the scope of work for the feasibility project.

Mr. Korkowski identified that there were two unique features to this area that would need to be accounted for. The first was the containment of Zander fish within the Spiritwood Lake system. The is not impacting the City of Spiritwood Lake's current water quality project that it was working on with the State Water Commission.

Mr. Korkowski indicated that he anticipated doing a field survey and determine water effects that would be extended 1 to 2 miles through Seven Mile Coulee. He explained that the further you go the less impact to the land any additional water would have and therefore, that is why he felt 1 to 2 miles would be sufficient.

There were some concerns by landowners downstream that this may not be sufficient size for the field survey. Joel Lees also indicated that previously there was an attempt to do similar projects but the projects were unable to move forward because of the concerns of the downstream landowners. Mr. Korkowski explained that there was previously no study done on any

downstream landowners and that if they did an evaluation of the first 1 to 2 miles downstream that this would provide a good idea of the rest of the impacts of any drainage.

Mr. Korkowski explained that he would ideally like to conduct his field survey to encompass the first two road crossings downstream of Alkali Lake. Mr. Korkowski indicated that the goal for the project would be a release structure that allows for an even amount of flow from Spiritwood Lake to Alkali Lake. In order to allow for an even amount of flow there would be two main options that the stakeholders would look at. One option would be an open channel which would be a very expensive option. The second option would be to lower Spiritwood Lake to a desired elevation level and then put in place a drop structure and then lower Alkali Lake by installing a drop structure. He explained that these are likely expensive options. However, less expensive options would not appear to be desirable amongst the parties to meet all of the desired goals of Spiritwood Lake. Mr. Korkowski explained that the Water Resource Board or other stakeholders would end up paying for fifty percent of the costs of the field study which is projected to be \$1,770.00.

At this point, Mr. Korkowski did question why the elevation was set at 1,442 feet. Jim Collins of the Department of Environmental Quality explained that this number was the result of a consensus with natural resource & conservation service, the City of Spiritwood Lake and numerous studies. The exact amount of 1,442 was chosen because it would maintain roads without flooding homeowners. Mr. Collins also indicated that at this point he anticipated pulling back the permit request on the water quality project.

Members of the audience made additional comments regarding the location of the field survey. They asked Mr. Korkowski if he had done a site visit on this specific spot he intended to end the scope of the study. Mr. Korkowski indicated that because the Stutsman County Water Resource Board had not yet agreed to the project, that he had not done his field survey and right now he is relying on high resolution electronic data in identifying the areas he would look at doing. Ms. Laura Ackerman explained that once they start the field work, the scope of the project can be adjusted slightly to accommodate the contours of the land. Joel Lees indicated that if there was any spring to get a good evaluation of the Hydrology System in the Seven Mile Coulee, that this coming spring would probably be the best to do it.

Marshall Johnson of the Audubon Society, at this point, indicated that he was pleased to be participating in the meeting and that he would request that if anybody had any questions or concerns of him or the Audubon Society, that they reach him by phone as he must leave for another meeting.

John Schock requested if there was the ability to include any other types of projects within the feasibility study. For example, issues related to water quality. Mr. Korkowski explained that the State Water Commission only does water quantity feasibility studies. Matt Lindsey for the State Water Commission explained that a water quality project, although not within the purview of the State Water Commission is still reviewed by the Commission because components of it encompasses water quantity. It is for this purpose that the State Water Commission would have the ability to require approval prior to any project taking place.

Next, there was further discussion regarding how far the landowners in the area think would be helpful for the Hydrology Study. With the discussion of the landowners it was noted that there could be an impact from water flowing down all the way through to the Burlington Northern Railroad which is 4 to 5 miles before the water drops into the James River. It was expressed by the landowners that the water was not flowing well from the beginning of Alkali Lake to the railroad but once it hit the railroad it was easily moving towards the river. Mr. Korkowski also explained that the feasibility study would only encompass the water added to the Seven Mile Coulee system from Spiritwood and Alkali Lakes. He would not be doing a study on the other ways in which water comes into Seven Mile Coulee. Therefore, the purpose of the study would only look at the impact of the potential water project would be on Seven Mile Coulee. He explained that doing an entire Hydrology Study on all the sources of water in Seven Mile Coulee would drastically change the scope of the work for the project.

Discussion by landowners indicated that every crossing north of Highway 10 is currently under water and it has been that way since there was a Section line cut for a road 3 to 4 years ago.

At this point in time, Joel Lees moved and Anthony Roorda seconded a motion to approve a feasibility study with the State Water Commission to conduct a field survey of Spiritwood Lake, Alkali Lake, up to the railroad bridge. Motion passed.

At this point and time Ms. Geroux addressed the Board and explained to them the next steps in the process. She indicated that she had not yet received a contract for the work and therefore, she would need to review and potentially revise any contract presented to her. They would need to identify and agree on a price for the cost of the field work. Ms. Ackerman explained that her office could provide an agreement with a modified scope to include a much larger downstream area and that she would work with Ms. Geroux's office to have a completed feasibility study to be able to presented at the Board's March

meeting. John Schock moved and Dennis Clark seconded a motion to authorize Abby Geroux to work with Laura Ackerman or others as necessary of the State Water Commission to prepare a feasibility study agreement.

Mr. Korkowski explained that the study will start in late April to early May and anticipate that the study will last for a period of about a year from the beginning date. He explained the shortest amount would be from six months for completion with longest expected to be one year.

Next, the Board inquired whether the timeline of preparing the agreement would give the State Water Commission sufficient time to begin working on the project. Ms. Ackerman explained that it would be a sufficient amount of time and she looked forward to working with Ms. Geroux in completing the agreement.

One of the landowners then requested Mr. Korkowski to contact the landowners prior to doing their field survey so that they could assist Mr. Korkowski in identifying the areas of concern. Mr. Korkowski was open to that idea and Ms. Geroux collected contact information of landowners of the area that were present at the meeting.

Mr. Collins then addressed the Board to explain that the reason that the water quality was no longer feasible was because it would cost too much money to install outlets. He explained that this is not a new project being proposed and that a project back in the 1960s similar to this was proposed but was rejected because the cost of the outlets at that time was \$65,000.00. He indicated that in the 2010s an earlier project was proposed again to include installation of outlets which was going to cost approximately half a million dollars and at that point he cautioned the Water Resource Board that doing any work to alleviate downstream issues could prove to be too expensive to continue with the project.

#### **W-613 - PETER MCELROY-COMPLAINT OF UNAUTHORIZED DIKE OR DAM**

Next, the Board moved onto the Complaint of Unauthorized Dike or Dam submitted by Peter M. McElroy on the SE Quarter of Section 13, Township 138N, Range 65W, Stutsman County, North Dakota. It was noted that the Complaint indicates it was the SE Quarter, but it should read the NE Quarter. Peter McElroy, the complainant, addressed the Board. He explained that Jerome put in a rock crossing over a drainage way. He explained that water from 3-4 sections of land flow towards this drainage way. He explained that this crossing was not found on a section line and that it was holding back water. Mr. McElroy also explained he was seeking approval from another entity to open up another area

and if did so it would exacerbate the problem.

Mark Oberlander, the owner of the property, addressed the Board. He explained he inherited the property from his mother last March and Jerome, his renter, has made improvements. He explained that he has full trust in Jerome on the improvements he made. He stated that there was an extraordinary water event that occurred in October and because of that he believes that a culvert that is located on Mr. McElory's land which moves water onto Mr. Oberlander's land may likely be the cause of the water backing up as the culvert is half filled with silt.

Jerome explained that on Mr. Oberlander's property he put in an 18" culvert and added rock to what was already there. He explained that the water flows from West to East and that the purpose of this culvert was so that if water was lower, it would flow through the culvert and if it was higher, it would flow over top of the rock crossing. He did not believe that he was creating an inappropriate obstruction. Rather, he felt that the culvert sitting on the township road between the properties was full of silt and if that silt was removed then there would be no water issues. Jerome did acknowledge he put the rock pile in Exhibit E. He explained that there was a rock pile but that it is not part of the crossing and it is not impacting the water. He also acknowledged putting in the additional rocks in the culvert. Mr. Oberlander also provided a document to the Board showing a google earth image of the property. Jerome also presented a map to the Board to further explain the area and location of this rock crossing. Jerome explained that the purpose of the crossing is a field access road and the crossing is located approximately an 1/8 of a mile from Mr. McElroy's property.

While the Board was making additional inquires of the parties, it was noted that the complainant and respondent were having discussions regarding issues outside of the scope of the complaint. They also appeared to be having discussions regarding how to resolve this complaint.

The Board members indicated that because of the time of year they would be unable to do a site visit on the property to make any further determination and felt that because the parties are speaking, it would be best to allow them to resolve this issue internally before presenting it to the Board again. There was initial discussion that this perhaps would not be an appropriate complaint because there is a culvert placed within that rock crossing. John Schock moved and Dennis Clark seconded a motion to dismiss the complaint but allow Mr. McElroy the ability to resubmit the complaint if he is unable to come to terms with Mr. Oberlander. Motion passed.

## **MISC.**

Next, Ms. Geroux addressed the Board regarding the ongoing issue of the ability to obtain telephone conference lines. In order to have efficient telephone conference systems available, she requested that she be allowed to do research to determine if there is an affordable alternative to do telephone conferencing through a computer or other device that she could bring with her. John Schock moved and Joel Lees seconded a motion to allow Ms. Geroux to conduct research on an independent telephone conference system. Motion passed.

Joel Lees then addressed the Board asking whether Ms. Geroux or any Board member was aware of any drain out of Deer Lake. At that point in time, no one indicated that they had heard of it. Mr. Lees indicated that this may be something raised to the Board at a later date.

John Schock then provided an update to the Board regarding the Griggs, Barnes, and Stutsman County Joint Board. He explained that there was going to be an upcoming landowner meeting and that the Joint Board recently got a new attorney. Mr. Schock explained that the landowners would be required to put up approximately \$60,000.00 for the cost of hiring an engineer and \$20,000.00 for legal fees. If these funds could not be obtained based off of that landowner meeting, the project for which the Joint Board was created would likely not move forward.

At this point in time, Ms. Geroux asked John Schock whether he was aware if the feasibility study costs could impact the Water Resource Board. He explained that at the time of the meeting he requested clarification on this issue but no one seemed to know the answer. He requested Ms. Geroux put together a letter of concern he may present at the next Joint Board meeting to ensure that those questions get answered.

## **BILLS AND FINANCIALS**

John Schock moved and Dennis Clark seconded a motion to approve the bills and financials. Motion passed.

**CHECK NUMBERS**

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|---|-------|
| 1. Joel Lees - \$303.50                             | #2722 |
| 2. Arlyn Schmidt - \$378.73                         | #2723 |
| 3. John Schock - \$496.18                           | #2724 |
| 4. Anthony Roorda - \$329.13                        | #2725 |
| 5. Forum Communication Company - \$143.44           | #2726 |
| 6. Dalsted & Ryan, P.C. - \$1,125.00                | #2727 |
| 7. Barnes County Water Resource District - \$764.52 | #2728 |

Ms. Geroux also indicated her office noted an accounting discrepancy occurring in 2019. The discrepancy was rectified and she would be in contact with the State Auditor to determine if any other actions were necessary.

There being no further business before the Board, Anthony Roorda moved and John Schock seconded a motion to adjourn. Motion passed.

RESPECTFULLY SUBMITTED:

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ABBAGAIL GEROUX  
Secretary

**BOARD APPROVAL OF MINUTES**

The board approved the minutes this \_\_\_\_ day of \_\_\_\_\_, 2020.

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JOEL LEES, Chairman, or  
ARLYN SCHMIDT, Vice-Chairman