

MINUTES

STUTSMAN COUNTY WATER RESOURCE BOARD

**SPECIAL MEETING**

June 10, 2020

A special meeting of the Stutsman County Water Resource Board was called to order by Chairman Joel Lees on June 10, 2020, at 9:00 a.m. via telephone conference. Members present by telephone were Joel Lees, Arlyn Schmidt, John Schock, Dennis Clark, and Anthony Roorda. Also present by phone was Abby Geroux, Secretary of the Board. Additionally present were Patricia Hofmann, Gene Heinrich, Jim Odenbach, Matt Lindsay of the State Water Commission, Joe Heupel, Tom Ruele, Jason Odenbach, Keith Hofmann, Melvin Wolf, Addison Hofmann, and Tim Brenner.

The purpose of this meeting was to conduct a hearing at the request of Gene Heinrich and Paris Township for two separate Emergency Applications for Surface Drainage. The first application by Gene Heinrich is on the East half in the Southeast Quarter of Section 6, Township 140, Range 68, Stutsman County, North Dakota. The second application by Paris Township is on the Southwest Quarter and the Northwest Quarter of Section 2, Township 142, Range 67, Stutsman County, North Dakota.

**W-618 HEINRICH, Gene- Emergency Application for Surface Drainage**

The Board addressed the surface drainage application for Gene Heinrich. Gene Heinrich explained that the area of issue is on his property, which is adjacent to County Road 68. Currently water is six (6) inches off of the shoulder of County Road 68. Previously the water had been on the shoulder. Currently, he is concerned that the water running through his property will reach his homestead and into his cattle corrals. He presented the application in hopes of determining what he could do to limit the water onto these areas. Initially he indicated that he was looking at doing either a partial drain, a dike, or potentially a dam. Mr. Heinrich indicated that he had the areas surveyed and that the water is currently three (3) feet higher than the natural drainage area. There is currently a three (3) feet difference between where the water is and his homestead. Joel Lees then explained that the hearings for these Emergency Applications to Drain are ran by Matt Lindsay of the State Water

Commission and he invited Mr. Lindsay to make his opening statement.

Mr. Lindsay made his opening statement regarding the regulations and permit process for an application to drain. First, Mr. Lindsay inquired who the individuals present were for this particular application. The following individuals along with all of the board members indicated they were present for this hearing: Gene Heinrich, Patricia Hofmann, Tom Ruele, Keith Hofmann, Addison Hofmann, and Joel Heupel. It was again explained that the project was for considering the placement of a drain to keep water away from Gene Heinrich's homestead and out of his corral system. He indicated that he is also considering using a gate to assist in the regulation of flow and the other potential ideas would be to do diking and pumping. He explained he is not sure if the sloughs to the South of the property could handle the amount of water. Dennis Clark then inquired if the proposed project would also assist Dusty Hofmann, who is a land owner in the area. Gene Heinrich indicated that it could as there is no other location for the water to go. He explained that currently the amount of water that would be impacted is approximately 200-acre feet. This would be taking to draining both Gene Heinrich's property and Dusty Hofmann's property.

Gene Heinrich explained he would ideally like to place a pipe in the ditch and then control it with a gate. In speaking with Travis Guthmiller of Guthmiller Construction, he was looking at placing between a 12- and 18-inch pipe in the area. Gene Heinrich also acknowledged that he visited with some of the landowners that would be impacted downstream from the project. Patricia Hofmann and Joel Heupel both indicated objections to the project. Gene explained that the water would travel from the end of the pipeline through pot-holes then on to a ditch alongside County Road 68. It would then cross over to Joel Heupel's property. There is an existing ditch along the tree line where the water would run, then it would cross back over to Patty Hofmann's property and it would end up West onto Mike Moser's property. Matt Lindsay indicated that he had a telephone conference with Mike Moser who had expressed concerns regarding the water that would end up on his farm. However, Mr. Moser was unable to appear at the hearing. Mr. Lindsay then inquired with Gene Heinrich on which entities that he had visited with to determine if any additional permits or permissions were required. Gene Heinrich indicated that there were no wildlife easements on his property but he is not sure about Dusty Hofmann's property. He explained that he mentioned the proposed

project to Nicole Meland of the County Auditors Office. He explained that he did not hear back but acknowledges that the county is very busy right now with other road projects. Gene Heinrich indicated that he had not spoken with NRCS or the Army Corp of Engineers. He also explained that if the work was approved, he would likely get the work completed as soon as possible with Travis Guthmiller of Guthmiller Construction. However, Mr. Guthmiller has the contract work on I-94 and therefore it would be unclear when exactly the work would be completed. Mr. Lindsay inquired whether the downstream crossings were adequate, and Gene Heinrich indicated that yes, they had recently been replaced but he was unsure of the size. Mr. Lindsay inquired whether there would be further impact on any other roads. Mr. Heinrich indicated that there would likely not be an additional impact, as the roads in question were already compromised.

Matt Lindsay then opened up the hearing to other members of the audience; Joel Heupel indicated that if the application was approved, access to his farmstead would be impacted. He explained that in the spring his road is soft but hardens in the summer. He is concerned with the additional water that the road would never harden and he would therefore not have access to his farmyard. He is also concerned about the property where his cattle are located and that the cattle handling facility could be severely impacted if this project was approved. He indicated that his farm is located in the West half of Section 8. Patty Hofmann explained her land is already saturated with water and she doesn't feel comfortable with sending any more water downstream to others. She stated her property is located on Section 18, which is South of proposed drainage. This water would impact her well, which is a source of water for her farm and her home. Tom Ruele explained that he felt that this potential drainage could have much larger implications as a number of sloughs are already under water. This would dump additional water into those sloughs that are already at capacity or above. He explained that there is road already under water downstream, Burlington Road and Santa Fe are affected, and the interstate is also being impacted. He explained he understood Gene Heinrich's issues, but the system cannot handle any additional water. He noted that for thirty (30) years they have been dealing with water issues in the area. He noted that his farmstead is located on the Southeast corner of Section 32, and he has additional land in the South half of Section 33. Keith Hofmann then addressed the board. He indicated that the water, after moving from Patty Hofmann's property, would move onto his property. He explained that he has already lost cattle and

farmland, and is afraid that he would not be able to access his land from County Road 68. He indicated that his property is located in Section 13 and Section 19 in Flint Township. Addison Hofmann indicated that he is the owner of the Southwest Quarter of Section 24. He explained that last year he had approximately 80 acres of farmland, but this year he has 40. He indicated that his family also owns the Northeast Quarter of Section 19 and he anticipated that if this was allowed, he would lose additional acreage there as well. Tom Ruele additionally responded that his land borders on Peterson and Flint Township. Melvin Wolf indicated that he is the owner of Section 33 in Peterson Township, and he noted that he has been losing more land to water every spring to the water coming through. Tim Brenner, who is the manager of Crystal Camp, explained that all of this water is flowing to Crystal Camp, and that the whole area is functionally a bowl, and there is no other location for this water to move. Any additional water flowing their way would cause potential impact. He indicated that right now they are building up their property, their private roads, and so is I-94, but the whole area is still filling with water and if there is more water coming their way, they are at risk of having to move their camp again.

Next, the Water Board addressed the applicant. Arlyn Schmidt indicated that he understood that the amount of water is devastating to Gene Heinrich and to everyone. It does not appear to be a good solution on handling this in the area. There was some discussion regarding creating a ditch through this property through Apple Creek, and then directly to the Missouri River. He was not sure if this could be a potential in the future. Arlyn Schmidt indicated that one potential alternative would be for Gene Heinrich to place a dike and then to pump water from the dike in order to save his farmstead. Arlyn Schmidt indicated that it appeared that this would be the only way out of the inundation of water happening in the area. Tom Ruele responded saying that he was all for moving water through a ditch on his land, if that would be a possibility in the future. Gene Heinrich responded that he agreed that the Western half of Stutsman County is sitting in a bowl and that there really is no other place for this water to move. Tom Brenner then indicated that the Crystal Camp land was purchased in 1954, and at the time that the purchase included upwards of 200 acres. Currently half the property is under water. This spring, Stink Lake is up three feet and currently there are cabin owners who have property around Stink Lake that are losing their garages to water. There is concern about the impact on those landowners as the water moves through the system. Gene Heinrich then explained

that his concern with the various options to alleviate the water issues on his property was that he did not want to close off any natural drain and putting in a dike would not alleviate any potential highway concerns or Dusty Hofmann's land. Putting in a dam could otherwise eliminate the natural flow of the water. He was willing to consider placing a dike and pumping the water over the dike. Anthony Roorda then motioned to deny the permit for emergency drainage. John Schock seconded the motion. At this point in time John Shock inquired if any of the other landowners in the area had an issue with Gene Heinrich putting a dike on his property. Joel Heupel indicated that if Gene Heinrich put a dike on his property, he was concerned that water would back up onto his land. Mr. Heupel explained that Gene Heinrich has been more than a good neighbor dealing with these water issues and that he understands the difficulty Mr. Heinrich is in in trying to alleviate water on his property. At this point in time Joel Lees called for a Roll Call vote. All members voted in favor, therefore the motion passed.

Next, John Schock inquired what the process would be if Gene Heinrich desired to put in an application for a dike. Matt Lindsay explained that there are two (2) procedures for the approval of a dike. One is an emergency dike. This emergency dike application would be similar to an emergency application to drain and would last for the same period of time. There is also a permanent application for a dike, which would also follow a similar process. Matt Lindsay explained that not all dikes require approval of the state water commission, and that he would need to further visit with Gene Heinrich regarding what he needs were to determine if an application of the state was required. Ms. Geroux then requested that Matt Lindsay let her office know if the state determines it is not necessary to require a state permit because the local water resource board would either require a permit and she would like to make sure that if there was any permit desired that the water resource board would be able to handle that expeditiously.

**W-619 PARIS TOWNSHIP/JASON ODENBACH- Emergency Application for Surface Drainage**

Next, the Board addressed the emergency application to drain for Paris Township. Individuals present to discuss this request for Jim Odenbach and Jason Odenbach. Jim Odenbach explained that they were applying for the permit to drain Section 2 to remove water from 56<sup>th</sup> Avenue Southeast. Currently the road is inundated with water. They are looking at cutting a ditch approximately three (3) feet wide and 150 feet long to

connect the South slough to the North slough. They are also looking at cutting another ditch that would be from the North slough over to the West end. This would be approximately three (3) feet long and nine (9) feet deep at its deepest. They anticipate this would drain between two (2) and three (3) feet off of the water in the South slough. They estimate that the acreage of the water area in question is about 178 acres. They also noted that previously in doing some prior work in this area that they anticipate that the amount of work done would get the water off of the roadway by two (2) to three (3) feet. There was some discussion regarding easements on the North slough, and they indicated that there were some discussions with Jeff at Chase Lake. They acknowledge that there were easements but they were not sure if the easements were for a full a year or a partial year, and this may impact their ability to do any ditching in those areas. They did not anticipate ditching to the point where it would remove all of the water in those sloughs but that they would have to be in further contact with Chase Lake. They also acknowledged that there is a DOT roadway within the area. Matt Lindsay inquired whether they had any potential concerns with the water reaching the DOT roadway. Jim Odenbach indicated that there is a large culvert next to that roadway and so they didn't anticipate any problems. The applicants also indicated that they had not made contact with the NRCS or the Army Corp of Engineers but did acknowledge that they had been in contact with the U.S. Fish and Wildlife Service, which would be Chase Lake in the area. It was also discussed that there was a railroad crossing the area, the Red River Valley Railroad. It was noted that this railroad appeared to have been abandoned for the past five to seven years. It does currently does have a culvert for water to flow through. They also acknowledged that they had not talked to any further downstream landowners in the area. They anticipated starting the work as soon as possible.

Discussion by the Water Board at this point indicated that there did not appear to be any opposition to the motion, therefore Dennis Clark moved and Arlyn Schmidt seconded a motion to approve of the emergency application to drain. Roll call vote was taken and motion passed. Matt Lindsay then indicated that the application and hearing will be reviewed and that they would provide a recommendation, which would be presented to the State Engineer for a signature. Seeing no further questions or any further business before the Board, John Schock moved and Arlyn Schmidt 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