

MINUTES

STUTSMAN COUNTY WATER RESOURCE BOARD

July 28, 2021

The regular July meeting of the Stutsman County Water Resource Board was called to order by Chairman Joel Lees on July 28, 2021 at approximately 9:00 a.m. in the Commissioner's Room of the Stutsman County Courthouse. Members present were Joel Lees, John Schock, Arlyn Schmidt, Dennis Clark, and Greg Spenningsby. Abbagail Geroux, Secretary of the Board, was also present. Members of the public present were Larry Loose, Conrad Schultz, Cindy Schultes, and Ruben Schultes. Dennis Clark participated as a member of the public for the two complaints presented to the Board. Additionally, present by phone was Barry Hazer and Jerome Koenig.

MINUTES

The first order of business was to review and approve the minutes of the July 1, 2021 regular meeting. Upon review, a motion was made by John Schock and seconded by Arlyn Schmidt to approve the minutes as read. Motion passed.

W-635 - JEROME KOENIG - & W-636 - CINDY SCHULTES - COMPLAINTS OF UNAUTHORIZED DRAINAGE IN THE NE QUARTER OF SECTION 33, TOWNSHIP 143N, RANGE 68W, STUTSMAN COUNTY, NORTH DAKOTA

Next, the Board discussed the two agenda items regarding complaints of unauthorized drainage. It was noted that Dennis Clark currently rents land from one of the complainants, and therefore, felt that he should not participate in the decision making of the Board. Greg Spenningsby, the Board's designated alternate, was present and willing to participate on this particular complaint. John Schock moved and Arlyn Schmidt seconded a motion to allow Dennis to abstain from taking action as a Board member, and to allow Greg Spenningsby to act as an alternate for both of these complaints. Motion passed.

The Board then addressed the complaints. It was noted at this time that Jerome Koenig did not appear at the meeting. Board member Arlyn Schmidt contacted Mr. Koenig regarding if he intended to appear. Mr. Koenig had the wrong date, and so he appeared by phone. Since both of these complaints pertained to the same property, they were discussed at the same time. Jerome Koenig first indicated that he had concerns that he has some low land on his property that he cannot get across to hay, and that

with the installation of the pump on Larry Loose's land, he would never be able to get across it. He then deferred to Cindy Schultes to explain the situation further. Cindy Schultes handed out additional photographs of both her property and Larry Loose's property, regarding various changes that took place during the time that the tiling and pump were installed on the property. Cindy Schultes indicated that she was representing her mother, Erika Schultz, and that her land is the quarter directly north of Larry Loose's quarter. It was noted that Larry Loose obtained approval for some tiling, which at the time showed 43 acres of tiling. Ms. Schultes indicated that the watershed area, however, is 100 acres or more, even if the tiling itself is only 43 acres. She also noted that the approved application indicated that there would be no pump, and that currently there is a pump that Larry Loose is using on his property. Water is now sitting on Schultz's quarter that was not there before. It was noted that a fuel supply tank was added earlier this month. It was also noted that the work that was done for the tiling occurred in June 2021. Cindy Schultes indicated that she was concerned that the amount of water getting pumped out would sit on their quarter since there is no easy way for it to move out of their property. Although it is a dry year, the fact that the water is sitting on the property now is of concern, because this would indicate that a significant amount of water would then be sitting on her property in wet years. She indicated that her biggest concern with this project was the pump that was added and not part of the original application. Jerome Koenig indicated that he agreed with Cindy Schultes comments.

Larry Loose responded, indicating the pump was always there and part of the plan. He indicated that he did not know if there was a channel on Cindy's land, and he indicated that the day that the photos were taken showing the amount of water was a time right after it had just rained. Larry Loose further indicated that Jamie asked Larry two years ago if it was okay if he cleaned out and put a ditch on the property, which he agreed to, and so that is where the water is flowing. Larry Loose indicated that it is all the same water, and the plan was originally to tile this fall, but Ellingson's ended up being able to tile for him early. Greg Spenningsby asked who filled out the application, and Mr. Loose said he was not sure, and he believed that the pump was included in the information, but upon review of the exhibits, it did appear that there was no box checked for a pump. It was further noted that when a pump was put in, Ellingson's also created a little dam to allow him to go across the area. Dennis Clark asked if Larry Loose dug the hole where the water was pumping into, and he indicated that he was not sure if that was done by Ellingson's. Cindy Schultes

indicated she observed water pouring onto Larry Loose's property on the section line, but she is not exactly sure if that pump is on the section line or not, however, it is really close to Larry Loose's property line. John Schock asked if on July 5th when the photos were taken if there was significant heavy rain. Cindy Schultes indicated, no, it was just a normal amount of rain. Larry Loose noted that before Ellingson put in a generator, the water backed up into the dam until the pump was put in, and that he put the pump in because of issues with elevation. John Schock asked if the water was not being pumped, if Cindy Schultes had any concerns with the tiling. She indicated no. Dennis Clark explained that on the Schultes property, a ditch was put in back in the 1970's to put the water into a slough. That slough has now turned into a pond.

Ms. Geroux noted that House Bill 1437 modified when an individual is required to obtain a subsurface permit. It changed that language which indicates the watershed area is to be used to determine whether the tiling must be permitted. It was again asked by the Board what it was that Cindy Schultes was looking for. She explained that she would like to see the pump and the fuel tank removed. She indicated some concern that if the Board ordered that those items be shut off, she would have to continue to monitor it daily to ensure that the pump was not being used.

Joel Lees explained the purpose in tiling, in that typically when land is tiled, the area will act like a sponge once it hits the water table, and will typically be a benefit to all of the neighboring property, because the tiled property will be able to absorb more water and release it more slowly. Dennis Clark indicated that the topography of the land is unique in the sense that it would hold the water onto the Schultes' land. Greg Spenningsby also indicated that based on review of the documents, it appears that the Schulte's land would be affected differently than under normal tiling circumstances. Arlyn Schmidt inquired with Larry Loose if he had ever operated the tiling without the pump, and Larry Loose indicated no, that the pump was put in the first Sunday in June. Joel Lees asked if there was no tiling and a two-inch rain, what would happen to Cindy Schultes land. Dennis Clark indicated that there would be some spots where the water would pool.

There were additional questions with the pump, particularly if the pump was creating a trench. Dennis Clark indicated that there was already a trench occurring naturally from spring runoff, not caused by Larry Loose's pump. Conrad Schultes indicated that the tiling and pump will allow the water to pool on Schultes land, and make it worse on heavy rains. Cindy

Schultes indicated that pumping water from Larry Loose's property will make the ponding on their land worse. Arlyn Schmidt indicated that it appears that the real issue between the parties is the pump, and he would like to see the property. Arlyn inquired if Larry Loose would be willing to shut off the pump until the next meeting. Larry Loose indicated that he would be willing to do so, unless water started pooling on his land again. There was some discussion about scheduling a site visit the week of August 9th through the 13th, and to allow Ms. Geroux to conduct additional research to determine some outstanding issues with the new law.

BILLS AND FINANCIALS

The Board then turned to regular business before the Board. Ms. Geroux indicated that according to their last meeting, she was able to get confirmation regarding the amount of money that Upper Sheyenne Board was seeking from the Board. She indicated that the yearly amount would be \$1,505.99. John Schock moved and Arlyn Schmidt seconded a motion to approve the new dues amount. The Board then reviewed the bills and financials. Dennis Clark moved and John Schock seconded a motion to approve the bills and financials. Ms. Geroux also noted for the bills and financials that she received a bill from Interstate Engineering. The Board and the City of Spiritwood Lake previously agreed to split the costs of the bill, that is why the amount of the check is only for half of the amount requested by Interstate Engineering. She also received what appeared to be the final bill for the Silver Creek Joint Board. Ms. Geroux then also presented some additional documents received, including a notification of tiling for approximately 14 acres by Andrew Fraase. It was also noted in the bills was payment for the Post Office Box for an additional one-year period. When it was discussed, John Schock moved and Arlyn Schmidt seconded a motion to authorized Abbagail Geroux to complete and sign the application for the Post Office Box. Motion passed.

CHECK NUMBERS

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|--|-------|
| 1. Joel Lees - \$624.15 | #2812 |
| 2. John Schock - \$538.63 | #2813 |
| 3. VOID | #2814 |
| 4. Anthony Roorda - \$482.02 | #2815 |
| 5. IRS - \$195.84 | #2816 |
| 6. Arlyn Schmidt - \$618.24 | #2817 |
| 7. Forum Communication Company - \$232.00 | #2818 |
| 8. U.S. Postal Service - \$146.00` | #2819 |
| 9. Griggs Co. Water Resource District - \$2,433.79 | #2820 |

10. Interstate Engineering, Inc. - \$1,385.20 #2821
11. Dalsted & Ryan, P.C. - \$1,591.65 #2822

Seeing no further business before the Board, John Schock moved and Arlyn Schmidt seconded a motion to adjourn the meeting. Motion passed. Meeting adjourned at 11:10 a.m.

RESPECTFULLY SUBMITTED:

ABBAGAIL GEROUX
Secretary

BOARD APPROVAL OF MINUTES

The board approved the minutes this ____ day of _____,
2021.

JOEL LEES, Chairman, or
ANTHONY ROORDA, Vice-Chairman