

## **LaMoure County Water Resource District Meeting Monday, January 11, 2021**

At approximately 9:30 a.m. Chairman Kerry Ketterling called the meeting to order with the following board members present in person: Nathan Nitschke, Bobby Frauenberg, County Road Superintendent Josh Loegering, Co-Secretary/Treasurer Jan Hamlin and Shanel Bohnenstingl. Board members attending via conference call were: Glenn Haugen, Jason Gross, and Water Resource District Attorney Kim Radermacher. Also attending via conference call were Debbie Thoreson, Rex Bierley, Calvin Bierley, attorney William Black representing the Bierley brothers, Donny Schrader, attorney Kale Van Bruggen representing the Schraders, Abram Valenta, Shane Kjellberg with K2S Engineering, Mike Opat and Paul LeClaire with Houston Engineering.

There being no additions to the agenda, Mr. Nitschke made a motion to approve the agenda, seconded by Mr. Frauenberg. Motion carried.

Due to time constraints, the board discussed a water related complaint made by Debbie Thoreson. The complaint regarding removal of an existing culvert due to the road stopping water. Mr. Haugen stated the complaint should have been brought to the attention of Litchville township first. It is believed the individual who replaced the culvert did it on their own because the township did not have money for the project. Ms. Thoreson stated there was trenching done on her property which she believes all the draining would go onto her property and stated she is worried about liability. Mr. Nitschke made a motion to dismiss the complaint and turn it over to Litchville township. The water board will send the township a letter, seconded by Mr. Frauenberg. Motion carried.

There was an addition to the September 21<sup>st</sup> meeting minutes, adding the legal description to the sections stated. There being no further additions or corrections Mr. Gross made a motion to approve the minutes from 9/21/20, 10/8/20, 11/13/20 and 11/24/20, seconded by Mr. Nitschke. Motion carried.

The complaint regarding an illegal drain made by Abram Valenta was discussed. Mr. Valenta is objecting to the drain tile application being installed by Schraders. Water Resource District Attorney, Kim Radermacher pointed out that at this time there is no drain, making the complaint premature and has suggested the board dismiss the complaint at this time. Mr. Frauenberg made a motion to dismiss the complaint, seconded by Mr. Nitschke. Motion carried.

A letter from Wano township requesting to put a culvert in between section 31 and 30-134-63 was discussed. County Road Superintendent, Josh Loegering, has recommended a 24-inch culvert, taking it down to the normal grade which is 12 inches below the culvert. A motion to approve the installation the culvert was made by Mr. Frauenberg, seconded by Mr. Nitschke. Motion carried.

Henrietta township has notified the board of an installation of a new culvert. No action is required by the water board.

Scott Schrader's application to install a subsurface water management system permit 2020-4 was discussed. The opinion from the report submitted by Schrader's engineer is that the waterway in question is in fact a natural watercourse. County Road Superintendent, Josh Loegering agreed.

Chairman Ketterling allowed each attorney ten minutes to discuss their findings. Mr. Van Bruggen, attorney for the Schraders, began by stating the board's decision today is governed by statute 61-32-03.13 which states that only written technical evidence provided by landowners notified of the permit application, which includes Allen and Gary Bierley is to be considered. The statute states that the board will decide whether downstream landowners will be flooded or unreasonably harmed. The report states that if the outlet drains into a natural watercourse then a notarized approval from those landowners is not required, if it is not a natural watercourse then then consideration of the reasonable use test. This test examines four factors: 1.) Is the tile permit outliving into the natural watercourse 2.) Is there a reasonable necessity for such drainage 3.) Is reasonable care being taken to avoid unnecessary injury 4.) Is the benefit to Mr. Schrader outweighed by any anticipated burden on the Bierley property. Project manager/professional engineer with Houston Engineering, Mike Opat, presented some high points from his report. Mr. Opat explained that his analysis is heavily based from published documentation from regionally recognized experts in subsurface drainage. Those experts have pointed out that on numerous occasions subsurface drainage typically results in a reduction in peak flows coming off a field following an average rainfall event. That is attributed to that sponged effect that occurs when the subsurface system drains out the soil and allows for more infiltration to occur following a rainfall event. On the other hand, one might expect that there would be potentially more volume that comes out, that subsurface system takes more water out of the ground and conveys its downstream. In their analysis from scratch was that the peak flows were basically identical due to wetland areas that will more frequently converted to cropland so in dry years most of those areas are actually cropped but with a tile system in place, it's going to promote more frequent cropping. Then they analyzed what that means in terms of impacts to the slew in the NW ¼ of section 17-136-63, they found any impacts there to be very minimal and the impacts far outweighed the benefits that are provided which is relevant in terms of North Dakota statutes. Their report accounts for additional volume/excess water that potentially comes out of the tile system so the tile system wouldn't completely drain the soil dry. The tile system just drains out the excess water. Based on a 3-inch rainfall there would be slightly more than half an inch of excess water that drains through the tile system. Based on that, their findings were that when the pump turns on there is still water from the surface runoff that is flowing off of section 18-136-63 into section 17-136-63, but the pumps will have that soil surface or the excess water mostly drained even before the tail end of that surface water drains. Findings show that even with pumping water that is occurring, the water is confined to the natural watercourse that flows through the SW ¼ of section 8-136-63. Mr. Opat stated that in the K2S report the peak flows were significantly inflated, nearly doubling, this goes against the published literature and what he has found. Mr. Van Bruggen asked if the board had any questions, there were none.

Mr. Black, attorney for the Bierleys, pointed out that two experts have different conclusions. He stated that the report from Houston Engineering is a rebuttal to the report put forth by K2S Engineering and an opportunity to respond to that report was not given.

Mr. Kjellberg with K2S Engineering asked to know what other benefits to the project besides the agronomic benefit to Mr. Schrader. He gave a similar example from 2017 which had severe adverse effects and this system the Schrader's want to install is 4-times larger than the example he stated that he struggles with believing this project will have no adverse effect to downstream landowners. He also asked the water board if the request was made to the State Water Commission on deciding on the natural watercourse. Chairman Ketterling explained that it will take some time for the State Water Commission to be able to review and make that determination. Mr. Kjellberg added that the report from Houston Engineering does not show an increase in peak discharge but there was an 18-inch culvert added to a 36-inch culvert and the adjacent crossing there was a 36-inch culvert added to (3) 24-inch culverts. He pointed out there was not an assessment or hydraulic study included in their report. Therefore, he asked why those culverts were put into place when the roads have no history of overtopping. Chairman Ketterling replied stating that to his knowledge there has not been a culvert study. Mr. Kjellberg believes the project will adversely impact the Bierley's land and cause both crop loss and possibly erosion. It was stated in the report from Houston Engineering that there was mechanical manipulation, Mr. Kjellberg stated that is not true, nothing outside of standard practice was done. The board was asked if there were any questions, there were none. Mr. Black reiterated the request from the board to get determination on the watercourse from the State Water Commission.

Ms. Radermacher summarized statute 61-32-03.13 that was referred to earlier by Mr. Opat. She recommends that the board decide, based on the technical evidence provided, on whether the board believes if any harm exists and if they do not believe that harm exists then the permits must be approved. Ms. Radermacher asked Mr. Loegering if he believes there would be unreasonable harm. Mr. Loegering did not prepare a report, he stated based on his visual opinion of the reports, he had concerns with both reports. He does not plan to write a technical memorandum of his views of both reports. He stated he reviewed the reports as a county employee assisting the waterboard, and not as their hired engineer.

Mr. Frauenberg pointed out that the Schrader's have signed permission from the Wieland and another landowner further downstream, and they do not have a problem with the project. Ms. Radermacher reiterated that the determination that the board needs to make is based off the statute, whether the board believes reasonable harm will be done. There was further exchange of opinions from both parties. Based on the technical evidence Mr. Frauenberg made a motion to approve permit 2020-4, Scott Schrader's application to install a subsurface water management system, seconded by Mr. Nitschke. Motion carried, permit passes.

Jan Hamlin reported the financials. As of 12/31/20 the checking account balance was \$32,123.09 combined with the savings account the balance is \$48,134.92. The bills consist of payroll for the five board members, 2021 dues for ND Water Resource Districts Association for \$675.00 and 2021 membership for the ND Water Users Association is \$300.00. The board decided to purchase 7 new handbooks, the cost is \$210.00. Mr. Frauenberg made a motion to pay the bills, seconded by Mr. Nitschke. Motion carried.

Ms. Radermacher advised the board to provide notification with a written explanation for the outcome of today's proceedings as the Bierley's have the right to appeal. Ms. Radermacher will follow up with Chairman Ketterling in regards to providing the notification.

There was no other business. The meeting adjourned at approximately 10:47 a.m.

**Approved this th day of April, 2021**

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**Kerry Ketterling, Chairman**

**ATTEST:**

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**Shanel Bohnenstingl, Co-Secretary**