

MINUTES OF MEETING
RUSH RIVER WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
DECEMBER 12, 2011

The Rush River Water Resource District met on December 12, 2011, at 10:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Raymond Wolfer, Chairman; William A. Hejl, Manager; Keith Monson, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Diane Pochardt, Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Chad Engels and Kurt Lysne, Engineers for the Board; Jason Benson, Cass County Engineer; Tom Soucy, Engineer with the Cass County Highway Department; Curt Marshall, Peak Wind Development; and Mark Mauersberger, Renewable Energy Systems Americas Inc.; and those listed on the attached roster.

Placement of transmission lines to the Buffalo Substation in Section 11 of Harmony Township

Curt Marshall and Mark Mauersberger met with the Board to discuss the installation of a transmission line for the Glacier Ridge Wind Project to the Bison substation in Section 11 of Harmony Township. They asked the Board about the possibility of placing a transmission line along Water Resource District facilities. The Board asked Moore Engineering, Inc. to look at the plans of the project to see where it falls in relation to the facilities. Mr. Mauersberger suggested they may be willing to help pay for costs associated with the reconstruction needed on the Rush River in return for allowing placement of the transmission lines there. Moore Engineering, Inc. will continue working with Mr. Marshall and Mr. Mauersberger on the matter and will report back at a future meeting.

Berlin Township Improvement District No. 70

The Board reviewed the proposed alignment, assessment district, right-of-way and costs for Berlin Township Improvement District No. 70. Mr. Engels informed those present that the drain is currently at a 2-year standard and will be improved to handle a 10-year event.

The Board asked the property owners present if they prefer voting on each channel separately or as one project. It was the consensus of the property owners to vote on it as one project with two channels.

Additional minutes relating to the matter are attached hereto.

Berlin-Harwood Township Improvement District No. 72

Jason Benson and Tom Soucy reviewed alignment options for the project. It was moved by Manager Hejl and seconded by Manager Monson to proceed with the south alignment option for Berlin-Harwood Township Improvement District No. 72. Upon roll call vote, Managers Hejl and Monson voted in favor and Manager Wolfer abstained. Motion carried.

Amenia Township Drainage Improvement District No. 69

The Secretary-Treasurer reminded those present that votes need to be in the Water Resource District office by 5:00 p.m., December 14, 2011.

Dike Complaint from Dirk and Mary Horak against Ernie Krabbenhoft between the NE 1/4 and SE 1/4 of Section 5 in Rush River Township

The Board next considered the Horaks' *Dike Complaint* against Ernie Krabbenhoft. The Board discussed this matter at its November meeting and directed Mr. Engels to inspect the alleged dike, which Mr. Engels did following the November meeting. The Horaks contend Mr. Krabbenhoft constructed an illegal dam or dike that required a permit under N.D. Cent. Code § 61-16.1-38, on the E 1/2 of Section 5 in Rush River Township.

In accordance with N.D. Cent. Code § 61-16.1-53, the Rush River Water Resource District, via the Board's engineer, conducted an investigation of the alleged dam or dike. In addition, Mr. Engels reviewed aerial photographs of the alleged dike and reviewed elevation data. Mr. Engels indicated the alleged dike is on the south side of the quarter line between the NE 1/4 and the SE 1/4 in Section 5. Ms. Horak was present at both the November meeting and the December meeting, and she indicated that Mr. Krabbenhoft constructed the alleged dike on approximately October 26, 2011. Mr. Engels indicated the alleged dike runs east and west along the quarter line.

Mr. Engels offered the following conclusions and findings:

1. This alleged dike is, in fact, a "dike" as defined under North Dakota law;
2. Mr. Krabbenhoft constructed this alleged dike in October of 2011, and therefore, the dike permitting statutes and standards in effect at the time apply;
3. This dike qualifies as a "low-hazard" dike as defined under North Dakota law;
4. The low-hazard dike does not retain, obstruct, or divert 50 acre-feet of water.

The Board agreed with and adopted Mr. Engels' findings regarding the dike. With that in mind, the Board had no choice but to dismiss the *Complaint* since the dike does not retain, obstruct, or divert 50 acre-feet of water, the requisite standard under Sections 61-16.1-38 and 61-16.1-53.

It was moved by Manager Hejl and seconded by Manager Monson to dismiss the *Complaint* filed by Dirk and Mary Horak against Ernie Krabbenhoft dated October 31, 2011, regarding allegations of an unpermitted dike in the E 1/2 of Section 5 in Rush River Township. Upon roll call vote, the motion carried unanimously.

Rodney Nelson / George A. Loegering / John Grommesh matter in the NW 1/4 of Section 29 in Harmony Township

It was moved by Manager Hejl and seconded by Manager Monson to accept the recommendation of the Water Resource District engineer that the Order issued by the Rush River Water Resource District on October 10, 2011, regarding the obstruction to drain complaint filed by Rodney Nelson and George Loegering against John Grommesh in the NW 1/4 of Section 29 in Harmony Township, has been fulfilled because the obstructed area no longer materially affects the free flow of water, and therefore, is no longer an obstruction as defined by North Dakota Century Code 61-16.1-51. Upon roll call vote, the motion carried unanimously.

Minutes

It was moved by Manager Monson and seconded by Manager Hejl to approve the minutes of the November 14, 15 and 22, 2011, meetings, as presented. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Monson and seconded by Manager Hejl to approve payment of Checks #3567 through #3576 and the electronic funds transfers, as presented. Upon roll call vote, the following Managers voted in favor: Wolfer, Hejl and Monson. The Chairman declared the motion passed.

Fargo-Moorhead Area Diversion Project

The Board reviewed and discussed the Maple River outlet alignment related to the Fargo-Moorhead Area Diversion Project. The Board directed the Secretary-Treasurer to schedule a meeting with representatives from the Corps of Engineers to discuss the matter.

Adjournment

There being no further business to be considered by the Board, the meeting adjourned without objection.

APPROVED:

Raymond Wolfer
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer