

MINUTES OF MEETING  
RUSH RIVER WATER RESOURCE DISTRICT  
CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
AUGUST 19, 2014

The Rush River Water Resource District met on August 19, 2014, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Raymond Wolfer, Chairman; William A. Hejl, Manager; Dick Sundberg, Manager; Carol Harbeke Lewis, Secretary-Treasury; Julie Zaeske Norman, Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Chad Engels, Mike Opat, and Alexa Ducimoame, Engineers for the Board; Brady Woodard, Moore Engineering, Inc., Kevin Heiden, Heiden Family LLLP; Rodney Nelson, Steve Fraught, Lloyd Knight, Vernon Knight, Arnold Knight, David Strand, and David Baumler, Amenia Township property owners; Renee Fowler, Charles King, Lisa Farquhar, David Farquhar, Pat Bresnahan, Joe Morken, Harvey Morken, and Duane McIntyre, Rush River Township property owners.

**Minutes**

It was moved by Manager Hejl, seconded by Manager Sundberg and unanimously carried to approve the minutes of the July 15, 2014, meeting.

**Drain #30 Channel Improvements**

Mr. Opat reported that a total of six bids were received for the Drain #30 Channel Improvement Project. Right-of-way is required from four property owners. At this time, two property owner approvals are outstanding. The Board urged Mr. Opat to obtain right-of-way approval from the two remaining property owners as soon as possible, at which time a special meeting will be held so the project can proceed.

Kevin Heiden voiced support of the drain project, but also expressed concern regarding the permanent easement requested. Mr. Fredricks stated that the Board has discontinued the use of temporary easements, instead electing to pursue permanent easements to avoid disputes in the future regarding the rights and responsibilities of the Board and landowners.

Messrs. Opat and Engels stated that the drain is being designed to a 10-year event which incorporates a flatter slope to preserve as much tillable land as possible, as well as creating a system approach to achieve a coordinated breakout during flood events.

Manager Hejl recommended that a temporary easement be used in this instance and the excess dirt sold to the landowners. Following further discussion, Mr. Fredricks was asked

to draft agreement language to implement Manager Hejl's recommendation, including a stipulation that the Board will not be responsible for field washouts, and submit the language to Mr. Heiden's attorney for review and consideration.

Continuing his report, Mr. Opat stated that Magellan has finished lowering its pipeline and the Corps of Engineers has completed 98% of the project design at the outlet of Drain #30 for the proposed Metro Flood Diversion Project. Mr. Opat has reviewed the Corps' design and following discussion of the review findings, Mr. Opat was asked to submit feedback to the Corps.

#### **Amenia Township Improvement District No. 74**

Mr. Opat reported that little progress has been made on Amenia Township Improvement District No. 74 since the last Board meeting and the project remains incomplete. The claim filed by the Water Resource District Attorney is in place reserving the Board's rights to a claim for liquidated damages, if needed.

#### **Drain #29A – Section 1 in Rush River Township**

Mr. Woodard is waiting to hear from Mark Lako regarding improvements to Drain #29A in Section 1 of Rush River Township.

#### **Drain #29A – Section 35 in Rush River Township**

Mr. Woodard stated Mr. Olson would like to be able to establish a crossover on the Drain #29A channel in Section 35 of Gunkel Township. Chairman Wolfer advised Mr. Olson that adding a crossover was not an acceptable solution.

#### **Lower Rush River – culvert between Sections 10 and 11 in Raymond Township**

Mr. Woodard reported that a culvert is failing on a low water asphalt crossing and needs replacement. He estimated the cost at approximately \$30,000 and recommended the replacement be constructed with concrete rather than replacing the current asphalt configuration.

It was moved by Manager Hejl and seconded by Manager Sundberg to replace the culvert between Sections 10 and 11 of Raymond Township on the lower Rush River at a cost of up to \$30,000. Upon roll call vote, the motion carried unanimously.

#### **Lower Rush River – culvert in the NW 1/4 of Section 9 in Harmony Township**

As directed by the Board, Mr. Woodard investigated a report of a blocked culvert in the NW 1/4 of Section 9 in Harmony Township. The culvert has a drop structure that is obstructed with dirt and silt.

It was moved by Manager Hejl and seconded by Manager Sundberg to clear the culvert in the NW 1/4 of Section 9 in Harmony Township as soon as reasonably possible. Upon roll call vote, the motion carried unanimously.

#### **Drain #52 - Reassessment Hearing**

Chairman Wolfer called the Drain #52 Reassessment Hearing to order.

Mr. Opat stated that the new boundary proposal removes significant portions of several sections, adds portions of 3 others, and sets assessment percentages at 100% for all landowners.

Mr. Opat reviewed the assessment district boundaries and asked for comment.

- Section 27 – Manager Hejl requested that Mr. Opat meet with Jim Guy regarding the placement of the boundary line.
- Section 29 – David Baumler proposed that only 40 acres be included in the drain benefit area.
- Section 35 – It was observed that this section also drains to Swan Creek and an adjustment to the assessment percentage may be indicated.
- Section 36 – The current assessment percentage is 50% for this section, due to a culvert draining directly into Swan Creek. Mr. Opat will review this section further.
- Section 2 – The new boundary removes most of this section from the drain benefit area. It was questioned whether this was appropriate. Mr. Opat will review.
- Section 26 - It was confirmed that Section 26 drains north to Amenia and should not be included in the drain benefit area.

Manager Hejl stated that the purpose of the review of the boundaries and assessment percentages is to ensure the proper allocation of expense for maintenance of the drain. It was noted by Mr. Opat that the overall acreage of the drain benefit area has not changed significantly, but is slightly smaller than the acreage included in the previous boundaries.

There being no further input, the hearing was closed.

### **Drain design/right-of-way**

Chairman Wolfer presented a proposal outlining criteria for the design of legal drains. His criteria included:

- Change how drains are identified
  - Flood Control be used to identify the drain along with the drain #
  - Example: Rush River Drain #xx – Flood Control
- Side slope
  - Recommend 4:1 side slope with bottom width of 8 feet or 10 feet
  - Water Resource Board would purchase the entire area 10 feet beyond the slope stake on each side unless one side is along a road
- Percentage grade of drain
  - Recommend .1% or less, using pipe to take up additional grade if necessary

- Berms
  - At intersections, berms should be half of a foot lower than section line road or other structures
  - Berms are farmer owned with the right to farm (with no restrictions from the Water District Board) entire berm within 10' of the slope of the drain

Chairman Wolfer stated that adoption of the proposal would prevent erosion of the side slope of drains. He also stated that he had consulted the State Engineer and Water Commission prior to submitting the proposal.

Chairman Wolfer moved that the above proposal outlining criteria for the design of legal drains be adopted. The motion died for lack of a second.

**Application to Install a Subsurface Drain #20149 for Roger G. Nelson LLLP in the W 1/2 of Section 13 in Amenia Township**

The Board reviewed *Application to Install a Subsurface Drain No. 20149* dated June 18, 2014, for the Roger G. Nelson LLLP. The Board reviewed the criteria in Section 89-02-01-09 of the North Dakota Administrative Code and concluded the project does not meet any of the “statewide” elements; therefore, application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer’s Office to consider and approve). Under Application, Applicant seeks to install a drain tile system in the W 1/2 of Section 13 in Amenia Township, Cass County, North Dakota. The project will include a single pump outlet that will discharge into the Highway 18 road ditch and will flow south along Highway 18, in NDDOT’s right of way, until the tile discharge reaches a waterway in the NW 1/4 of Section 24. From there, the tile discharge will flow east through the existing waterway.

The Board previously provided *Thirty Day Notices* under N.D. Cent. Code Section 61 32-03.1 to the NDDOT regarding Applicant’s proposed use of Highway 18 right of way and to landowners in the E 1/2 NW 1/4 of Section 24. In this case, with regard to the E 1/2 NW 1/4 of Section 24, while the waterway on that parcel is not a “blue line” watercourse on a USGS map, the waterway does meet the definition of a “watercourse” under N.D. Cent. Code § 61-01-06.

According to records on file with the Cass County Recorder’s Office, the Roger G. Nelson LLLP owns the W 1/2 of Section 13 where Applicant intends to install the tile project. Dallas and Jacqueline Nesemeier and Joseph House own interests in various portions of the E 1/2 NW 1/4 of Section 24.

It was moved by Manager Sundberg and seconded by Manager Hejl to approve *Application to Install a Subsurface Drain No. 20149* dated June 18, 2014, for the Roger G. Nelson LLLP in the W 1/2 of Section 13 in Amenia Township, subject to the following conditions:

- 1) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;

- 2) That Applicant obtain written permission from the North Dakota Department of Transportation to discharge into, or otherwise utilize, any of its Highway 18 right of way;
- 3) That Applicant notify the Rush River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 4) That Applicant notify the Rush River Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application;
- 5) That Applicant must close all outlets during flood occurrences or under conditions that may cause adverse impacts to downstream landowners, as determined by the Board; and
- 6) That Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

While the Board will not require Applicant to obtain flowage easements from the owners of the E 1/2 NW 1/4 of Section 24, in light of the existing waterway on that parcel, the Board strongly recommended to Mr. Rodney Nelson, the general partner of the Roger G. Nelson LLLP, that he obtain flowage easements from those downstream landowners.

Upon roll call vote, the motion carried unanimously.

#### **Utility Permit for Cass County Electric Cooperative to install underground power line**

It was moved by Manager Hejl and seconded by Manager Sundberg to approve the following *Utility Permits* for Cass County Electric Cooperative:

- Under Drain #13 diagonally between the SW 1/4 of Section 13 and the NE 1/4 of Section 24 in Berlin Township; and
- Under Drain #70 between the NW 1/4 and SW 1/4 of Section 13 in Berlin Township.

Upon roll call vote, the motion carried unanimously.

#### **Bills**

It was moved by Manager Hejl and seconded by Manager Sundberg to approve payment of Checks #3952–3960 and the electronic funds transfer, as presented. Upon roll call vote, the motion carried unanimously.

**Raymond and Harwood Township Volunteer Tree Growth on the Rush River**

Clarence Krogh had contacted Manager Sundberg concerning volunteer tree growth. It was moved by Manager Sundberg and seconded by Manager Hejl to spray Sections 2, 10 and 11 in Raymond Township on the lower branch of the Rush River and Sections 31 and 32 in Harwood Township on the upper Rush River to avert volunteer tree growth. Upon roll call vote, the motion carried unanimously. Mr. Woodard will work with Stan Wolf, Cass County Weed Control, on the matter.

**Culverts on the lower branch of the Rush River between Sections 4 and 9 in Harmony Township**

Mr. Woodard stated that two culverts between Sections 4 and 9 of Harmony Township were inspected as requested by the Board. Repairs and clean out of the culverts running between the sections is required.

It was moved by Manager Hejl and seconded by Manager Sundberg to clean and repair the culvert structure in the northwest corner of Section 9 on the lower branch of the Rush River and to clean the channel. Upon roll call vote, the motion carried unanimously.

**Adjournment**

There being no further business to be considered by the Board, it was moved by Manager Hejl, seconded by Manager Sundberg, and unanimously carried to adjourn the meeting.

APPROVED:

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Raymond Wolfer  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer