

MINUTES OF MEETING  
SOUTHEAST CASS WATER RESOURCE DISTRICT  
CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
MARCH 11, 2011

The Southeast Cass Water Resource District met on March 11, 2011, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Mark Brodshaug, Manager; Dan Jacobson, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Kimberly Bomstad, Accounting Tech/Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Jeff Volk, Lee Beauvais, Chad Engels and Kyle Volk, Engineers for the Board; Brady Woodard and Brett Bailey, Moore Engineering, Inc.; Darrell Vanyo, Cass County Commissioner; Jacob Gust, Sheyenne-Maple Flood Control District #1 Superintendent; George Grossman, City of West Fargo; Mike Staber, American Enterprises, Inc.; Dennis Nipstad, property owner in Normanna Township and Wanda Rothell, Round Hill resident; Manager Thomas L. Fischer was absent.

**Minutes**

It was moved by Manager Jacobson and seconded by Manager Brodshaug to approve the minutes of the February 14, February 25 and March 4, 2011, meetings. Upon roll call vote, the motion carried unanimously.

**Approval of agenda order**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to approve the order of the agenda, as amended. Upon roll call vote, the motion carried unanimously.

**Sheyenne-Maple Flood Control Projects – letter from FEMA regarding Provisionally Accredited Levee (PAL) process**

The Board requested that Moore Engineering, Inc. develop a cost proposal and scope of work for the PAL process regarding the Sheyenne-Maple Flood Control Projects.

**Round Hill Sewer Improvement District No. 2010-1**

The Board conducted the assessment hearing regarding the district. One landowner was present. Sean Fredricks explained that, following the hearing, the Board could legally award a contract to construct the project. However, the Board has indicated to the Round Hill Association the Board will not proceed until the Association returns a signed Sewer Agreement.

Additional minutes relating to Round Hill Sewer Improvement District No. 2010-1 are attached hereto.

**Sheyenne-Maple Flood Control Projects – sharing of costs between Project #1 and #2 / reassessment**

Chad Engels outlined the frequency of operation of the Sheyenne-Maple Flood Control Projects. Jeff Volk reviewed the history of assessments. Manager Brodshaug asked about combining the two districts for assessment purposes.

Darrell Vanyo pointed out that homes south of I-94, that were annexed into the City of West Fargo, pay considerably more than homes within the city north of I-94, which are protected to a higher level. Some property owners south of I-94 also purchase flood insurance. Manager Brodshaug suggested the Board proceed with the assessment as proposed and look into combining the assessment districts this summer, prior to setting the 2012 budget.

**Sheyenne-Maple Flood Control Projects - *Utility Permit* for Minnkota Power Cooperative, Inc. to relocate Minnkota Power Structure No. 55 up to 75' east in the SE 1/4 SE 1/4 of Section 36 in Mapleton Township, west of Sheyenne-Maple Flood Control Project #2**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to approve the *Utility Permit* for Minnkota Power Cooperative, Inc. to relocate Minnkota Power Structure No. 55 up to 75' east in the SE 1/4 SE 1/4 of Section 36 in Mapleton Township, west of Sheyenne-Maple Flood Control Project #2, subject to the conditions set out by the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

**Dike complaints from Dennis Nipstad against Kelly Perhus and Mark Ottis in the NE 1/4 and the NW 1/4 of Section 34 in Normanna Township**

The Board reviewed the dike complaints from Dennis Nipstad against Kelly Perhus and Mark Ottis in the NE 1/4 and the NW 1/4 of Section 34 in Normanna Township. When the Board initially considered the complaints, Chad Engels conducted an investigation and provided a report to the Board. In it, he confirmed the dike constructed is capable of retaining, obstructing, or diverting 12.5 acre-feet of water (the standard in place at the time the dike was constructed). He further concluded the dike is capable of retaining, obstructing, or diverting 50 acre-feet of water (the current standard). The Board issued a Notice of Decision in the matter dated July 12, 2010, to order Mr. Ottis to remove the dike. However, Mr. Nipstad subsequently contacted the Board and requested that the Board hold the matter in abeyance while he and Mr. Ottis negotiated a resolution, potentially including a sale of a portion of Mr. Nipstad's property. The Board has not taken any further action.

Mr. Nipstad explained the parties are at an impasse, and that a mutually acceptable resolution is unlikely. The same conditions exist (the dike still retains the requisite acre-feet to trigger the permitting requirement under NDCC 61-16.1-38, and Mr. Ottis does not have a permit for the dike). It was moved by Manager Brodshaug and seconded by Manager Jacobson to issue a Notice of Decision to Kelly Perhus and Mark Ottis ordering removal of the dike in the NE 1/4 and the NW 1/4 of Section 34 in Normanna Township before 5:00 p.m. on April 18, 2011, and that the letter set out their right to request a hearing, to appeal the Board's decision to Cass County District Court and to appeal the Board's decision to the North Dakota State Engineer. Upon roll call vote, the motion carried unanimously.

#### **2011 Spring Flood – emergency declaration**

Minutes relating to emergency declaration for the 2011 Spring Flood are attached hereto.

#### **2011 Spring Flood – requests for information from the public**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to authorize Moore Engineering, Inc. to respond to requests for information from the public in preparation of the 2011 Spring Flood. Upon roll call vote, the motion carried unanimously.

#### **2011 Spring Flood – engineering RFQ**

It was moved by Manager Jacobson and seconded by Manager Brodshaug to accept the proposal of Moore Engineering, Inc. for engineering services for the 2011 Spring Flood and to authorize Manager Brodshaug to sign the agreement for the same. Upon roll call vote, the motion carried unanimously.

#### **2011 Spring Flood – contractor solicitations**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to authorize Moore Engineering, Inc. to solicit contractors for anticipated 2011 Spring Flood work. Upon roll call vote, the motion carried unanimously.

#### **CRP contracts within flood easements**

Mr. Engels will discuss CRP contracts within flood easements with the Natural Resources Conservation Service.

**Application to Drain #3694 for the City of Fargo to realign the existing Drain #53 channel bottom to allow construction of a flood control levee on the east side of the existing channel to protect the housing development in the SE 1/4 of Section 35 in Barnes Township**

The Board reviewed information from the State Engineer regarding *Application to Drain #3694*, submitted by the City of Fargo regarding the Drain #53 Drainage and Flood Control Improvements Project. The Board previously entered into a Joint Powers Agreement with the City regarding the Drain #27 and Drain #53 Drainage and Flood Control Improvements Projects, both of which include drainage and flood control components. The City submitted this permit application regarding the necessity to construct a levee on the east side of the drain. The State Engineering concluded the project is not “of either statewide or interdistrict significance.”

The Board reviewed and adopted Moore Engineering, Inc.’s proposed responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board and the City are jointly acquiring the requisite right-of-way to accommodate the project, and the right-of-way acquisition will eliminate adverse impacts to private landowners.

It was moved by Manager Jacobson and seconded by Manager Brodshaug to approve *Application to Drain #3694* for the City of Fargo to realign the existing Drain #53 channel bottom to allow construction of a flood control levee on the east side of the existing channel to protect the housing development in the SE 1/4 of Section 35 in Barnes Township, subject to any conditions attached by the State Engineer. Upon roll call vote, the motion carried unanimously.

**Correspondence from West Fargo Planning regarding the applications for Shadow Wood 5th and The Wilds Addition**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to send a letter to West Fargo Planning stating the Board has no comment on the applications for *Shadow Wood 5th* and *The Wilds Addition*. Upon roll call vote, the motion carried unanimously.

**Letter from Houston Engineering, Inc. soliciting views and comments on the Storm Sewer Improvements for Flood Protection in Harwood**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to send a letter to Houston Engineering, Inc. stating the Board has no comment on the Storm Sewer Improvements for Flood Protection in Harwood. Upon roll call vote, the motion carried unanimously.

**Hydraulic Analysis from the Cass County Engineer regarding improvements to Cass County Highway 16, from Cass County Highway 15 to Cass County Highway 17**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to authorize Moore Engineering, Inc. to review and respond to the hydraulic analysis from the Cass County Engineer regarding improvements to Cass County Highway 16, from Cass County Highway 15 to Cass County Highway 17. Upon roll call vote, the motion carried unanimously.

**Bills**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to approve payment of Checks #9784 through #9797 and the electronic funds transfer, as presented. Upon roll call vote, the following Managers voted in favor: Brodshaug and Jacobson. Manager Fischer was absent. Motion carried.

**Joint Funding Agreement with the USGS**

It was moved by Manager Jacobson and seconded by Manager Brodshaug to approve the *Joint Funding Agreement* with the USGS for six water level gages in Richland County. Upon roll call vote, the motion carried unanimously.

**Drain #60 – snow / ice removal**

Brady Woodard reviewed the snow / ice removal bids regarding Drain #60. Mr. Engels suggested that the Board proceed with the work, provided the City of Kindred assures the Board they will cover any costs not reimbursed by FEMA.

**State Water Commission cost share agreement for the 2010-2011 Sheyenne River Snagging and Clearing Project**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to approve the cost share agreement for the 2010-2011 Sheyenne River Snagging and Clearing Project. Upon roll call vote, the motion carried unanimously.

**Adjournment**

There being no further business for the Board to consider, the meeting adjourned without objection.

APPROVED:

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Mark Brodshaug  
Vice Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer