

RICHLAND-SARGENT JOINT WATER RESOURCE DISTRICT  
Richland County Courthouse, Wahpeton, ND  
June 27, 2016

The Richland-Sargent Joint Water Resource Board (RSJWRB) met June 27, 2016 at 10:35 AM at the Richland County Courthouse, Wahpeton, North Dakota.

THOSE PRESENT: Managers Lucas Siemieniewski, Todd Stein, Arv Burpee, Robert Rostad, Don Moffet, Gary Friskop, James Haugen, Engineering Technician Justin Johnson, Secretary-Treasurer Monica Zentgraf, Attorney Sean Fredricks (Ohnstad Twichell, PC), Engineer Mike Bassingthwaite (Interstate Engineering, Inc), and guests Matt Miranowski & Shawn Nelson (M & M Contractors, LLC), Cari Wefel, Mike Banish, and Rick Banish.

The meeting was called to order by Chr. Haugen.

**Minutes**

A motion was made by Mgr. Siemieniewski and seconded by Mgr. Rostad to approve the minutes of the May 24, 2016 meeting as presented. Upon roll call vote, Mgrs. Burpee, Rostad, Moffet, Friskop, Haugen, Siemieniewski, and Stein voted in favor of said motion; Mgrs. Engst, Martinson, and Zetocha were absent and not voting. The motion carried.

**Financial Matters**

A motion was made by Mgr. Burpee and seconded by Mgr. Moffet to accept the May 2016 financial report as presented. Upon roll call vote, Mgrs. Burpee, Rostad, Moffet, Friskop, Haugen, Siemieniewski, and Stein voted in favor of said motion; Mgrs. Engst, Martinson, and Zetocha were absent and not voting. The motion carried.

**RSJWRB Reorganization**

Chr. Haugen turned the meeting over to Mr. Fredricks for the Board's reorganization. It was noted that the reorganization was being held at this time as the Board's first meeting in 2016 was May 24, 2016 and the reorganization was inadvertently missed.

At this time Mr. Fredricks called for nominations for Chairman of the RSJWRB. A motion was made by Mgr. Siemieniewski nominating James Haugen to serve as Chairman of the RSJWRB for the remainder of calendar year 2016. A motion was made by Mgr. Haugen nominating Lucas Siemieniewski to serve as Chairman of the RSJWRB for the remainder of calendar year 2016. A motion was made by Mgr. Stein and seconded by Mgr. Moffet that nominations cease. A vote was conducted and all Managers except Mgr. Haugen voted in favor of Mgr. Haugen serving as Chairman of the RSJWRB for the remainder of calendar year 2016; Mgr. Haugen voted in favor of Mgr. Siemieniewski serving as Chairman of the RSJWRB for the remainder of calendar year 2016. Mgr. Haugen was declared Chairman of the RSJWRB for the remainder of calendar year 2016.

Mr. Fredricks turned the meeting over to Chr. Haugen for the remainder of the Board's reorganization.

Chr. Haugen called for nominations for Vice Chairman of the RSJWRB. A motion was made by Mgr. Burvee nominating Lucas Siemieniewski to serve as Vice Chairman of the RSJWRB for the remainder of calendar year 2016. A motion was made by Mgr. Rostad and seconded by Mgr. Friskop that nominations cease and a unanimous ballot be cast for Lucas Siemieniewski to serve as Vice Chairman of the RSJWRB for the remainder of calendar year 2016. The motion carried.

Chr. Haugen called for nominations for Secretary-Treasurer of the RSJWRB. A motion was made by Mgr. Burvee and seconded by Mgr. Moffet nominating Monica Zentgraf to serve as Secretary-Treasurer of the RSJWRB for the remainder of calendar year 2016. The motion carried.

### **Mail**

- 1.) M & M Contractors, LLC- Copy of June 6, 2016 letter to Mr. Bassingthwaite addressing Phase 1 reconstruction issues, including Moore Engineer, Inc, (MEI) report on their investigation of the disputed quantities at the borrow site and M & M Contractors, LLC bills for wetland mitigation, rock pile buried and removal, and culvert installation for Andy Fettig.
- 2.) Interstate Engineering- Copy of June 20, 2016 letter to Mr. Miranowski in response to the June 6, 2016 letter.

### **Landowners Address to Board**

Mike Banish informed the Board that he hired Gavin Steffens to clean up the debris on his land in the NE1/4 Section 6, Kingston Township, as recommended by the Board at the May 24, 2016 meeting. Mr. Banish presented photographs of some of the debris and told the Board Members 67 loads of debris were hauled out by Mr. Steffens. Mr. Steffens requested the landowner pay the bill; it was subsequently paid by Richard Banish. A copy of Steffens bill, in the amount of \$7,200 was presented to the Board.

Discussion followed relative to where the debris was removed and whether or not all of the debris was from the reconstruction/extension project. Mr. Bassingthwaite told the Managers it is hard to define what debris was moved out as part of the project vs what was there before the project began. The following excerpt was read from the minutes of the May 24, 2016 meeting: "*A motion was made by Mgr. Friskop and seconded by Mgr. Rostad to hire Gavin Steffens to clean up the Banish CRP ground at an amount not to exceed \$2,000. The motion carried unanimously.*" Steffens bill was not for the CRP ground, which is located in the SE1/4 Section 31, Herman Township. Mr. Banish stated that he misunderstood where the \$2,000 was for; he thought it was for the land in Kingston Township. When asked about the amount of Mr. Steffens bill, Mr. Banish said he did not know what the actual cost was until the work was done. Mr. Banish also told the Board there were approximately 27 hours additional time for himself and Richard to hand pick debris on both sides of the channel (in the SE1/4 Section 31, Herman Township and NE1/4 Section 6, Kingston Township.) Discussion followed regarding the hourly rate for Banish's time. Bills previously submitted by landowners were reviewed with a rate of \$15/hour established, for a total of \$405 for the 27 hours.

A motion was made by Mgr. Siemieniewski and seconded by Mgr. Burvee to approve reimbursement of \$7,200 for debris removal. Brief discussion followed regarding payment for the additional 27 hours of labor. A motion was made by Mgr. Siemieniewski and seconded by Mgr. Burvee to amend the motion to \$7,605. Upon roll call vote, Mgrs. Stein, Haugen, Friskop, Moffet, Rostad, Burvee, and Siemieniewski voted in favor of said motion; Mgrs. Engst, Martinson, and Zetocha were absent and not voting. The motion carried.

(\$7,200 payable to Richard Banish; \$405 payable to Banish Brothers.)

Mr. Bassingthwaite reported there will be bills from Murack and Banish for crop damage in 2015; he also expects Wayne Kratcha will have concerns with hay grass that will need to be resolved.

### **Phase 1 Contractor/Contract Issues**

Mr. Bassingthwaite reported that he met with Matt Miranowski and Shawn Nelson on June 22, 2016. Board action is needed on the following four items:

- Rock Piles- Mr. Miranowski explained the bill, in the amount of \$4,860, was essentially for removing several old Texas crossings, not picking rock from the fields that might have been deposited by excavation. Mr. Bassingthwaite recommended the Board pay this item. A motion was made by Mgr. Rostad and seconded by Mgr. Friskop to pay M & M Contractors, LLC \$4,860 for removal of the old Texas crossings. Upon roll call vote, Mgrs. Siemieniewski, Stein, Burvee, Rostad, Moffet, Friskop, and Haugen voted in favor of said motion; Mgrs. Engst, Martinson, and Zetocha were absent and not voting. The motion carried.

- Andy Fettig Culvert Installation- Mr. Bassingthwaite reported M & M Contractors, LLC requested \$1,640 for installation of the culvert. Mr. Bassingthwaite estimated the cost at \$834 based on contract bid prices. Mr. Bassingthwaite felt M & M's number of hours for trucking material for a small culvert were excessive. Mr. Miranowski stated he would be willing to accept \$1,100 for this item. A motion was made by Mgr. Burvee and seconded by Mgr. Friskop to pay M & M Contractors, LLC \$1,100 for installation of the Fettig culvert. Upon roll call vote, Mgrs. Haugen, Stein, Burvee, Rostad, and Friskop voted in favor of said motion; Mgrs. Siemieniewski and Moffet voted against said motion; and Mgrs. Engst, Martinson, and Zetocha were absent and not voting. The motion carried.

- Wetland Mitigation- M & M Contractors, LLC initially requested \$11/CY; Mgr. Bassingthwaite felt this was an excessive price. Mr. Bassingthwaite and Mr. Miranowski were at an impasse on this item. Mr. Bassingthwaite requested payroll and other information with the intent of basing payment on force accounting per the contract. To date, Mr. Bassingthwaite has not received any payroll or other information from Mr. Miranowski. Mr. Miranowski told the Board the wetland mitigation was more time consuming than originally expected, but since there was no rain during the time the work was done he would be willing to reduce his rate to \$6/CY. Mr. Bassingthwaite stated that he felt \$4/CY was reasonable. Mgr. Burvee asked Mr. Miranowski if he would accept \$10,000 (\$5/CY); Mr. Miranowski indicated he would accept that offer. A motion was made by Mgr. Stein and seconded by Mgr. Siemieniewski to pay M & M Contractors, LLC \$10,000 for the wetland mitigation. Upon roll call vote, Mgrs. Friskop, Moffet, Rostad,

Burpee, Stein, Siemieniewski, and Haugen voted in favor of said motion; Mgrs. Engst, Martinson, and Zetocha were absent and not voting. The motion carried.

- Borrow Site- Mr. Bassingthwaite reported a difference of approximately 28% between Interstate Engineering's quantities and MEI's quantities for the borrow site. (4,635 CYs vs 6,418 CYs for a difference of 1,783 CYs) Mr. Bassingthwaite explained that he does not agree with MEI's analysis as LIDAR is not accurate enough to calculate earthwork quantities. However, he stated that he understands using LIDAR information in this case as nothing else existed for the pre-condition survey of the site. Mr. Bassingthwaite stated he is not fully confident in his survey of the borrow site as the contractors operation and lack of notification made it difficult to track. Mr. Miranowski stated his truck counts were in line with MEI's estimate of 6,418 CYs. Mr. Bassingthwaite disputed Mr. Miranowski's statement as he felt truck counts were not an accurate tool to use due to variation in load sizes.

The additional cost for the 1,783 CYs at \$7/CY would be \$12,481. Mr. Bassingthwaite suggested a payment of \$5,000 for additional borrow quantities; Mr. Miranowski countered with \$8,500; Mgr. Burpee countered with an offer of \$8,000. A motion was made by Mgr. Burpee and seconded by Mgr. Siemieniewski to pay M & M Contractors, LLC \$8,000 for additional borrow. Upon roll call vote, Mgr. Stein, Haugen, Friskop, Moffet, Rostad, Burpee, and Siemieniewski voted in favor of said motion; Mgrs. Engst, Martinson, and Zetocha were absent and not voting. The motion carried.

Mr. Bassingthwaite reported final payment to M & M Contractors, LLC is pending the following:

- Box Culverts- The box culverts have not yet been repaired. Mr. Miranowski stated they are done; Mr. Bassingthwaite will inspect them.
- Grass- The grass is not growing and there are a lot of weeds. There has been very little rain. The matter was tabled.
- Liquidated Damages- Mr. Bassingthwaite reported \$29,000 in liquidated damages from October 4, 2015 through November 30, 2015 (58 days @ \$500/day). Liquidated damages were suspended on December 1<sup>st</sup> due to snow closing the construction season. Mr. Bassingthwaite recommended also charging liquidated damages from May 1, 2016 through May 14, 2016 when the project was considered substantially complete; however, the Managers felt liquidated damages should be charged starting earlier due to the dry spring where work could have been done. Liquidated damages from April 16, 2016 through May 14, 2016 total \$14,500 (29 days @ \$500/day). Total liquidated damages are \$43,500.

On behalf of subcontractor Tightline Drainage, Mr. Miranowski requested liquidated damages be eliminated. Mr. Miranowski said Mr. Tschakert, owner of Tightline Drainage, disputes the plan quantities for the channel work, but he would be satisfied (and not expect payment for the additional cubic yards of spoil removed from the channel) if liquidated damages are not charged. Mr. Tschakert claims his scraper load counts show that excavation of the channel exceeded the plan quantity; he has provided no data to support his claim other than scraper counts. Mr. Bassingthwaite reported the contract specs provide that either plan quantity would be paid or the channel would be recrossed if it was believed more than plan quantity was moved due to relaxed NRCS restrictions.

One cross section per  $\frac{1}{2}$  mile of channel has been taken and all show the material removed was less than the plan channel section due to the plan profile being raised by the NRCS restrictions.

Comments were made about liquidated damages being used for additional engineering costs which exceeded \$50,000, landowner expenses, and seeding not done last fall.

**Phase 2 Channel Improvement Project**

Mr. Bassingthwaite is waiting for a cost estimate from the biologist for the wetland evaluation. He is not able to finalize the cost estimate until that information is available.

**Cleanout**

Mgr. Siemieniewski said the  $2 \frac{1}{2}$  mile cleanout at the south end of the drain should be tabled due to unresolved issues on Phase 1. The Managers all agreed.

**Adjournment**

There being no further business to come before the Board, Chr. Haugen adjourned the meeting at 12:25 PM.

Respectfully submitted,

Monica Zentgraf  
Secretary

James Haugen  
Chairman of the Board