

RICHLAND COUNTY WATER RESOURCE DISTRICT
Richland County Courthouse, Wahpeton, ND
September 20, 2016

The Richland County Water Resource Board (RCWRB) met September 20, 2016 at 8:00 AM at the Richland County Courthouse, Wahpeton, North Dakota.

THOSE PRESENT: Managers Arv Burvee, Gary Friskop, James Haugen, Don Moffet, Robert Rostad, Engineering Technician Justin Johnson, and Secretary-Treasurer Monica Zentgraf.

Minutes

A motion was made by Mgr. Haugen and seconded by Mgr. Friskop to approve the minutes of the September 13, 2016 meeting as corrected. The motion carried unanimously.

Mail

- 1.) Senator Larry Luick- Notification of Water Topics Overview Committee meeting scheduled for September 22 and 23, 2016. Fargo Mayor, Tim Mahoney, is scheduled to make a Fargo-Moorhead Flood Diversion presentation to the Overview Committee. Senator Luick recommended the RCWRD and Richland County Commission also make presentations. A conference call was held with Senator Luick. Consensus of the Managers was to request David Bliss to present for the RCWRD; Mgrs. Rostad and Haugen will attend the meeting.
- 2.) Office of State Engineer- Temporary Water Permit #ND2016-17713 for the N1/2SE1/4 Sec 27, Brightwood Township, issued to Mayo Construction for road construction.
- 3.) Interstate Engineering- Minimum required culvert size for replacement of the 24 inch cmp in the NWCR NW1/4 Section 22, Devillo Township, is a 24 inch pipe. The inlet pipe in the SE1/4 Section 7, Lamars Township, needs to be reset and extended and a new flap gate installed. A motion was made by Mgr. Burvee and seconded by Mgr. Rostad authorizing Comstock Construction to make the repairs in Section 22, Devillo Township and Section 7, Lamars Township. Work completion date was set for December 1, 2016. Work at Proj #31 expense. The motion carried unanimously. (RCWRD #16-059)

Proj #65 Beaver Dam

Beaver have been trapped in the SE1/4 Section 26, Waldo Township, (on the "Wirtz Lateral") and the dam can now be removed. A motion was made by Mgr. Rostad and seconded by Mgr. Friskop authorizing Comstock Construction to remove the dam at Proj #65 expense. Work completion date was set for November 15, 2016. The motion carried unanimously.

2017 Budget

The budget was reviewed at this time. A motion was made by Mgr. Friskop and seconded by Mgr. Rostad to approve the 2017 budget as presented. The motion carried unanimously.

Manager Moffet Conflict

Before the Board proceeded with the 9:30 meeting with Steve Mauch, the Secretary reported on her discussion with Sean Fredricks, the District's legal counsel, about Manager Moffet owning land downstream of Mr. Mauch, in the N1/2NE1/4 Section 32, Antelope Township. Information from Mr. Fredricks was reviewed with the Managers about the conflict analysis the Board should conduct in regard to Manager Moffet's potential conflicts. Section 44-04-22 of the North Dakota Century Code provides the relevant standard. That statute provides:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of

which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

Mr. Fredricks advised that the North Dakota Supreme Court and the Attorney General's Office have taken a narrow view of situations where a public official can abstain from participating in a matter. A public official must have a "direct and substantial personal or pecuniary interest" in the matter. The mere appearance of a conflict is not enough to allow the public official to refrain from participating. The North Dakota Supreme Court adopted a "rule of necessity" that requires public officials to participate in matters before their respective boards. The public policy rationale is that public officials have a duty to vote on issues before them, and cannot avoid participation simply to avoid the appearance of impropriety.

The Section 44-04-22 test requires a multi-step analysis. First, a public official concerned about a conflict of interest should confer with the Board's attorney to determine if a "direct and substantial personal or pecuniary interest" conflict exists under Section 44-04-22. If the public official's review with the governing entity's attorney is not dispositive, the remainder of the governing entity's Board should vote to determine if a conflict exists by a majority vote. If the remaining members conclude a conflict does exist (or if the member and Board's attorney concludes a conflict exists), the remainder of the Board should next vote on whether or not the public official should "participate in or vote on that particular matter....". In other words, even if a conflict does exist (even if the official does have a "direct and substantial personal or pecuniary interest" in the matter), if the governing entity concludes the public official should still participate despite the conflict, the official must participate.

During the Secretary's conversation with Mr. Fredricks prior to the meeting, Mr. Fredricks indicated Manager Moffet's interest in the property downstream of Mr. Mauch's proposed project does rise to a "direct and substantial personal or pecuniary interest" for Manager Moffet.

Mike Bassingthwaite, of Interstate Engineering, joined the meeting.

Senator Larry Luick

Senator Larry Luick met briefly with the Board to discuss the Water Topics Committee meeting later in the week. Senator Luick is working with the Water Topics Committee Chairman, Jim Schmitt, to schedule a time for the RCWRD and Richland County Commission to make a presentation to the Committee regarding their opposition to the Fargo-Moorhead Flood Diversion Project.

Brief discussion was also held with Senator Luick about the eminent domain quick take issue that is also on the Water Topic Committee's agenda.

Manager Moffet Conflict (cont'd)

At this time, the remaining four members of the Board voted unanimously to require Manager Moffet to not participate in Steve Mauch's project-related matters pertaining to the SW1/4 Section 30, Antelope Township.

The meeting was turned over to Vice Chairman Rostad at this time.

John Nagel Complaint

The Managers asked Steve Mauch to meet with them to discuss the need for downstream flowage easements for the work he wants to do to resolve John Nagel's complaint per Obj #15-194 and to drain his land in the SW1/4 Section 30, Antelope Township. Through the permitting process for Mr. Mauch's state surface drain permit it came to light that flowage easements would be required, if the Board approves the application. Vice Chr. Rostad explained to Mr. Mauch that the Board feels he should visit with the downstream landowners to see if they would be agreeable to his project and if they would be willing to sign easements before additional costs are incurred processing the application.

Mr. Mauch explained that he is trying to get the water from Point A to Point B as quickly as possible by affecting the least number of people. Lidar data was viewed and

considerable discussion was held relative to the natural flow of the water off of Mr. Mauch's property. It appears the slope on the south side of Mr. Mauch's property is east to the SECR of the section. From the SECR, the slope is to the north. In order to get the water to move north, the 18 inch culvert in the approach between the SE1/4 and SW1/4, which is currently plugged, would need to be replaced, the township road ditch across the SE1/4 cleaned, and some cleaning may also be needed in the north-south county road ditch. Easements may be required for work in the county road ditch. Discussion was held relative to the 18 inch culvert in the field approach, the north-south culvert Mr. Mauch wants to install in the SECR of the section, and what size that culvert should be if the water is run to the east. Mr. Bassingthwaite was asked if a culvert larger than an 18" would be required to meet the stream crossing standards for the township road. Mr. Bassingthwaite responded that he did not believe it would be if the overflow water was still allowed to go north; the culvert to the south would meet the stream crossing standards via the overflow. Mr. Mauch noted that he intends to use the spoil from the ditch excavation along the south side of the SE ¼ to build a berm along the township road ditch. It was felt this was new information. Mr. Mauch, when asked, responded that the berm would not extend into the county road ditch, thus it would not block flow to the north. Vice Chr. Rostad concluded the meeting by asking Mr. Mauch to talk to the downstream landowners going both north and east to see which alternative would work. The matter was tabled pending Mr. Mauch reporting back to the District.

Upon conclusion of the meeting with Mr. Mauch, the meeting was turned over to Chairman Moffet.

The following projects were discussed with Mr. Bassingthwaite:

Proj #31 Reconstruction- Mr. Bassingthwaite reported the wrong gage steel was used for the 72 inch culverts that replaced the bridge in the NWCR NE1/4 Section 9, Devillo Township. Mr. Bassingthwaite explained the mistake happened because of a misunderstanding with TrueNorth Steel's bid sheet. Cost of the original (14 gage) culverts was \$11,354.16; cost for the correct (12 gage) culverts is \$15,237.06. Mr. Bassingthwaite proposed the District pay the cost of \$15,237.06 for the 12 gage culverts. He further proposed the \$11,354.16 (for the original culverts) be split between TrueNorth Steel, Interstate Engineering, and Comstock Construction. Mr. Bassingthwaite felt that since Comstock Construction damaged some of the original culverts they should be responsible for what they damaged. TrueNorth has shown that the lesser gage steel will work, but Mr. Bassingthwaite felt since half of the culvert installation had to be replaced due to damage, the whole installation should be replaced at this time to make things right. Consensus of the Managers was to pay for the 12 gage pipes (\$15,237.05). Responsibility for the cost of the 14 gage culverts was Mr. Bassingthwaite's responsibility to settle; no payment to be made by the RCWRD for the 14 gage culverts. Mr. Bassingthwaite also advised the Board that he and Mr. Johnson reviewed the files for other culverts ordered this year and no other problems getting the correct gage pipe from TrueNorth were found.

Mr. Bassingthwaite reported that Comstock Construction should wrap up the project this next week, weather permitting. (RCWRD #13-054)

Proj #2 Reconstruction- Mr. Bassingthwaite reported Riley Bros new target date to begin the reconstruction of Proj #2 is September 26, 2016. Mr. Bassingthwaite reviewed the timeline of events, which were as follows:

December 28, 2015	Applied for US Army Corps of Engineers (USACE) permit
March 25, 2016	Bid opening
March 29, 2016	Awarded project
April 7, 2016	Contractor accepted award
April 8, 2016	Issued contract
June 14, 2016	Signed USACE permit
June 14, 2016	Issued Notice to Proceed
July 12, 2016	Preconstruction conference (Contractor start date 9-12-16)
October 1, 2016	Project completion date

Due to the lateness of the season and no chance to establish vegetation, the Engineer and Managers concluded the west end of the project should not be done until next spring. Mr. Bassingthwaite recommended the Board agree to reduce liquidated damages if the contractor completes Phases 1 and 2 (1.5 miles of reconstruction on both the east and west sides of Interstate 29) this fall and completes the final phase (west end) in the Spring of 2017 at the bid price. If the contractor agrees to these terms, Mr. Bassingthwaite recommended extending the completion date to July 1, 2017. The Managers agreed with Mr. Bassingthwaite's recommendations. Mr. Bassingthwaite will forward a letter accordingly to Riley Bros. (RCWRD #10-079)

Proj #5(27) Reconstruction- Mr. Bassingthwaite reported the project is moving very slowly and expressed concern that the project will not be completed this year. The completion date for the project is October 21, 2016. At the preconstruction conference the contractor indicated the concrete structures would take 7-8 weeks; no concrete has been placed yet. The contractor also indicated the excavation work would start on September 12, 2016 and this has not started. Mr. Bassingthwaite will send the contractor a letter expressing the concerns and reminding them of the required completion date. (RCWRD #14-124)

Regional Conservation Partnership Program (RCPP)- Due to fall harvest, the public input meeting for the RCPP project will be scheduled for the second week of November 2016. The meeting will be held at the Mooreton Community Center.

Adjournment

There being no further business to come before the Board, Chr. Moffet adjourned the meeting at 11:50 AM.

Respectfully submitted,

Monica Zentgraf
Secretary

Don Moffet
Chairman of the Board