

**TRAILL COUNTY WATER RESOURCE DISTRICT
RECURRENT MEETING
MARCH 5, 2019 ~ HILLSBORO, ND**

The District Board convened on this date and came to order at 8:00am at the office of the Traill County Water Resource District in Hillsboro, ND. Managers present were: Joel Halvorson, Gary Thompson, Andy Neset, and Jason Lovas with Jason Siegert presiding as Chairman. Also present were: Sean Fredricks, Attorney for the Board, and Chris Gross, Moore Engineering, Inc.

AGENDA

Manager Lovas moved to approve the order of the agenda. Manager Thompson seconded the motion. Upon roll call vote, the motion carried unanimously.

MINUTES

Manager Thompson moved to approve the February 19, 2018 meeting minutes as presented. Manager Halvorson seconded the motion. Upon roll call vote, the motion carried unanimously.

FINANCIAL

It was moved by Manager Neset and seconded by Manager Halvorson to approve payment of the February 20 ~ March 5, 2019 bills and the electronic funds transfers, as presented. Upon roll call vote, the motion carried unanimously.

DRAIN BUSINESS

Updates were given on the following drains:

Snagging & Clearing:

American Enterprises has completed the remaining work on the Elm River for this biennium per the agreement between and TCWRD and the State Water Commission.

Gary Thompson provided updates on the status of the Snagging and Clearing bill (SB 2139) being re-introduced at the legislative session in Bismarck this year. There have been several hearings held in regard to reinstating funding for snagging and clearing projects. Below is a summary of the issues addressed by SB 2139:

1. In 2017, HB 1374 passed with several provisions relevant to water development; some were positive, but one of the provisions in that bill prohibits the State Water Commission from providing cost-share for snagging and clearing.
2. Snagging & clearing is a process for WRDs and others to manage rivers and natural channels (not legal drains), to clean up fallen trees, debris, etc.
3. If WRDs do not conduct snagging and clearing operations, these fallen trees and debris block the natural flow of water, and debris ultimately damages bridges and culverts. Further, the altered flow often results in bank erosion, to the detriment of adjacent properties and communities. Additionally, flow backs up and the flooded channels no longer accept drainage from adjacent fields. As a result, adjacent ag fields flood.
4. The State Water Commission cost-share prohibition included in HB 1374 in 2017 has effectively eliminated the ability of most WRDs and Cities to effectively manage their

rivers and watercourses, resulting in unnecessary flooding and bank erosion, and impeding the ability of ag producers to effectively drain their fields.

5. The lack of S&C operations in recent years has flooded ag fields, threatened county roads and bridges, and has damaged culverts.
6. Without state cost-share to defray the expenses of snagging and clearing, water resource districts' only option is to approach landowners to see if they are willing to accept assessments to fund snagging and clearing. The ag economy is struggling in many areas and farmers lack the funds to pay for these operations.
7. The state funded S&C for several years without any problems or incidents.
8. The provision in HB 1374 that prohibits the State Water Commission from providing cost-share for S&C operations was a mistake. SB 2139 would simply clean-up that mistake; it would simply make snagging and clearing eligible for SWC cost-share once again, and would make these projects possible again.

Mayville Airport Authority (S. Mayville Drain No. 9)

Sean Fredricks told the Board that more land trades will be transpiring in the near future and will keep us updated to the status of this venture.

Grand Forks WRD/Traill County Proposed Legal Drain:

Jason Siegert updated the Board on the development of the proposed legal drain along the county line of County Road 25. Jason feels optimistic that this project will be moving forward. He will keep us posted for any further development.

Blanchard-Norman Drain No. 74:

A public hearing for this proposed project is scheduled for April 16, 2019 at 10:00am.

Economic analysis matters were discussed including impact statement issues.

Sean Fredricks stated that the County Commission has a substantial cost-share obligation regarding the crossing improvements to accommodate the Blanchard-Norman 74 project, if the vote passes. In most situations, we would simply notify the County of their obligation and request reimbursement. In this case, however, the amount is over \$200K and the County cannot likely cash-flow that amount. With that in mind, we could include the County's share in our bond issue and the County could repay over time, just like a landowner in the assessment district. Of course, that type of arrangement would require a Joint Powers Agreement between the Board and the County Commission.

Kelso Floodway 70 and McCoy-McCradie Drain 4-14:

Reassessment hearings for the Kelso Floodway No. 70 and the McCoy-McCradie Drain 4-14 have been set for April 16th at 9:00am and 9:30am. Manager Lovas moved to approve the Resolutions to set the Reassessment Hearings for both drains. Manager Neset seconded the motion. Upon roll call vote the motion carried unanimously. Sean's office will prepare the necessary notifications, etc.

Thompson Drain No. 72:

Gary Thompson told the managers that this proposed project is still in the planning stages, but moving forward in a positive manner. He added that the path of the drain has been altered slightly.

Hillsboro Drain No. 26:

Closing documents for Goodfellow and Fossum were sent out on February 14th. Once signed, payment can be issued. Corey Martin and engineers from KLJ Engineering, Inc. asked for a recommendation for a box culvert for the Hillsboro Drain No. 26 project. Chris Gross said that he will provide that information to them either today or tomorrow.

Camrud Drain No. 79:

Chris Gross described the dollars that remain in the SWC flood control bucket for new improvement projects. He said the Camrud Drain is on an abeyance list at this time and is hopeful this project will be eligible for funding. He added that he has spoken to Chris Hong who implied that they are still very interested in having this drain built.

Corey Martin, Traill County Highway Superintendent, met with the Board to go over county road and bridge issues with the Board.

PERMITS AND COMPLAINTS:**APPLICATION TO INSTALL A SUBSURFACE WATER MANAGEMENT SYSTEM NO. 2019-01 – ERIC KNUDSVIG**

The Board next discussed Eric Knudsvig's tile application. Sean Fredricks sent out supplemental thirty-day notices, as required under state law, on February 5, the same day the County provided information regarding its ownership of its road right of way downstream from the project (and the County's indication it does not rely on the statutory easement). Mr. Knudsvig did not submit ownership information for the County. The Board had an obligation to send a supplemental notice to downstream owners, including the County.

Manager Joel Halvorson alerted the Board and Sean Fredricks that his first cousin is married to Mr. Knudsvig. Before the Board proceeded with any further discussions regarding Mr. Knudsvig's application, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Halvorson's potential conflict in the matter.

Sean explained the law in North Dakota regarding 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.

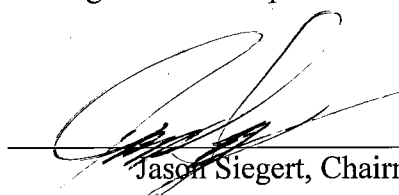
Sean indicated the North Dakota Supreme Court and the Attorney General's Office have taken narrow views of situations where a public official can abstain from participating in a matter.

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, and a public official cannot unilaterally decide not to participate or to abstain from voting. 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.

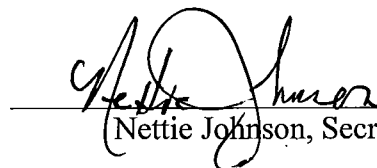
The Section 44-04-22 test requires a multi-step analysis. In this case, Manager Halvorson's cousin's husband is the applicant; Manager Halvorson does not farm with the Knudsvigs and does not have property that would be impacted or benefitted by this tile project. However, Sean indicated direct financial impacts to a water manager are not the only consideration. Under Section 44-04-22, this situation could create a "direct and substantial personal ... interest" conflict under Section 44-04-22. Sean indicated that, with that in mind, the remainder of the Board should next vote on whether or not a conflict exists and, if the Board concludes a conflict exists, whether or not Manager Halvorson should "participate in or vote on" issues related to this application. The remainder of the Board voted unanimously to conclude no conflict exists, and to require Manager Halvorson to participate in discussions regarding the project and application, and should vote on any matters before the Board regarding the project and application. More specifically, Chairman Siegert and Managers Lovas, Thompson, and Neset all voted to conclude Manager Halvorson does not have a direct and substantial personal interest regarding this application, and that Manager Halvorson should participate in and vote on issues relevant to the tile project and application.

With the conflict issues concluded, the Board proceeded with discussion of the application. Because the thirty-day period had not expired, the Board would have to consider the application, and the "technical evidence" submitted from one of the downstream landowners, at its next meeting. The Board directed engineer Chris Gross to examine the project and to consider potential adverse impacts.

Having no further topics to discuss, the meeting adjourned at 10:50am without objection.



Jason Siegert, Chairman



Nettie Johnson, Secretary