

**BOIS DE SIOUX WATERSHED DISTRICT
BOARD MEETING MINUTES
September 16, 2021**

CALL TO ORDER The meeting was called to order by President Vavra at 8:00 a.m. Present in the District Office: Linda Vavra, Benjamin Brutlag, Doug Dahlen, Jerome Deal, Scott Gillespie, John Kapphahn, Steven Schmidt, Allen Wold. Absent: Jason Beyer. Also present in the District Office: District Engineer Chad Engels, Engineer Technician Troy Fridgen, Attorney Lukas Croaker, and Administrator Jamie Beyer. Joined remotely: Engineer James Guler.

AGENDA Dahlen motioned, seconded by Schmidt and carried unanimously, to approve the agenda with the following changes: additions: Replace JD #11 Pay Application with Change Order No. 9, JD #6 Change Order No. 2, Rae Hamner Culvert Cost Share, LTWQIP Grant Shift Update, Stevens CSAH 20 Restrictor Plate, JCWMJP WBIF #1 Grant Extension Request, and Spoil Bank Discussion.

CONFLICTS OF INTEREST No conflicts of interest were declared.

CONSENT AGENDA Upon motion by Dahlen, seconded by Brutlag and carried unanimously, the Consent Agenda was approved.

**PERMIT APP. #21-088
T. BATES
D. BLUME
PETITIONS
TCD #23** Dahlen motioned, seconded by Deal and carried unanimously, to open the hearing to consider the petitions from Timothy Bates and Dominic Blume to use Traverse County Ditch #23 as an outlet for the following parcels in Section 32, Gorton Township, Traverse County: Parcel #05-0121-000, SE1/4; Parcel #05-0120-000, S1/2 NE1/4; Parcel #05-0119-000, NE1/4 NE1/4; Parcel #05-0119-500, NW1/4 NE1/4. President Vavra opened the hearing. Attorney Croaker read Minn. Stat. § 103E.401, subd. 4. Engineer Engels provided an oral presentation of the existing condition of the ditch system along with a map showing the current assessment district.

Landowners Timothy Bates and Dominic Blume presented information about their joint project, and stated that the parcels identified have a split flow, with 4' of fall heading north to TCD #35 and 6' of fall heading west to TCD #23. District Engineer Chad Engels relayed that TCD #35 is currently under going a redetermination, and that the parcels will be evaluated by the viewers. The landowners stated that the flow is blocked heading west from their parcel to TCD #23. Board managers encouraged the landowners to coordinate a cleanout, as the ditch is not under the District's jurisdiction.

Engineer James Guler described the process to calculate both the entrance fee and the proposed parcels' benefitted amounts. The District's policy to calculate entrance fees adds together all of the documented historical ditch expenses to date and divides this figure by the existing benefitted acres to determine an average cost per acre. This price per acre is then multiplied by the number of acres petitioning into the ditch: Parcel #05-0121-000: \$5,803.20; Parcel #05-0120-000: \$2,901.60; Parcel #05-0119-000: \$1,450.80; Parcel #05-0119-500: \$1,450.80. The proposed parcels' benefitted amounts are based on the amount of the nearest existing benefitting property per acre: Parcel #05-0121-000: 1.231%; Parcel #05-0120-000: 0.616%; Parcel #05-0119-000: 0.308%; Parcel #05-0119-500: 0.308%.

The landowners stated that the entrance fee calculation does not take into account the split flow for this property. In recognition of the split flow, Gillespie motioned to base entrance fees for the parcels based on the parcels' benefits multiplied by the documented historical expenses (Parcel #05-0121-000: \$1,730.40; Parcel #05-0120-000: \$865.20; Parcel #05-0119-000: \$432.60; Parcel #05-0119-500: \$432.60). Roll Call Vote: Brutlag – aye; Gillespie – aye; Wold – no; Deal – aye; Vavra – aye; Dahlen – aye; Schmidt – aye; Kapphahn – aye. Motion carried. No public comment was received. Attorney Lukas Croaker read the order. Kapphahn motioned, seconded by Dahlen, to approve the Order Authorizing the Use of Traverse County Ditch #23 by Parcel #05-0121-000, SE1/4 of Section 32, Gorton Township, Traverse County. Motion carried. Attorney Lukas Croaker read the order. Dahlen motioned, seconded by Deal and carried unanimously to approve the Order Authorizing the Use of Traverse County Ditch #23 in Section 32, Gorton Township, Traverse County by Parcel #05-0120-000, S1/2 NE1/4; Parcel #05-0119-000, NE1/4 NE1/4; Parcel #05-0119-500, NW1/4 NE1/4. Dahlen motioned, seconded by Brutlag and carried unanimously, to close the hearing.

**PERMIT APP.
#21-106
G. MURPHY
TCD #52
PETITION**

Gillespie motioned, seconded by Dahlen and carried unanimously, to open the hearing to consider the petition from Gerald Murphy to use TCD #52 as an outlet for Parcel #09-0085000, SE1/4 of the NE1/4, Section 19, Parnell Township, Traverse County. Attorney Croaker read Minn. Stat. § 103E.401, subd. 4. Engineer Engels provided an oral presentation of the existing condition of the ditch system along with a map showing the current assessment district. Gene Mensen of Litzau Farm Drainage presented project details. District Engineer Chad Engels stated that the project meets the District's 1/4" drainage coefficient. Board Manager Gillespie confirmed with engineering staff that the parcel does not have split flow. No public comment was received. Attorney Lukas Croaker read the order. Gillespie motioned, seconded by Dahlen and carried unanimously, to approve the Order Authorizing the Use of Traverse County Ditch #52 by Parcel #09-0085000, SE1/4 of the NE1/4 of Section 19, Parnell Township, Traverse County with the entrance fee recommended by engineering staff. Gillespie motioned, seconded by Dahlen and carried unanimously, to close the hearing.

**PERMIT APP.
#21-108
M. SEVERANCE**

Landowner Mark Severance described the project, stating that the natural flow cuts southwest, across a neighbor's field to Fivemile Creek. The project would redirect flow to the north, across a subwatershed boundary, eventually flowing to Grant County Ditch #8. Dahlen motioned, seconded by Kaphahn, to approve the project contingent upon permission from the ditch authority, Grant County.

**ARMY CORPS
PRESENTATION
MUD LAKE &
LAKE TRAVERSE**

Jill Bathke (Army Corps Water Planner), Mitch Weier (Army Corps Water Levels Engineer), and LeeAnn Blomski (Army Corps Biologist) gave a remote presentation on a proposal to utilize the Corps' Sustainable Rivers Program to initiate a full drawdown of Mud Lake. Army Corps staff described Mud Lake as very shallow, windswept, and nearly devoid of vegetation and find that these conditions provide low quality habitat. They stated that a past growing season drawdown resulted in a high number of shorebird visits, and that a short-lived increase in vegetation was subsequently killed when Mud Lake subsequently was used to store floodwater. Army Corps staff asked board managers if they had any concerns about a summer drawdown of Mud Lake, and if there would be any concerns if they are unable to refill Mud Lake in the fall due to drought conditions. District Engineer Chad Engels stated that overall, the District supports recent management of spring operations for Mud Lake and Lake Traverse, and supports the use of the Moist Soil Management Program for Mud Lake. District Engineer Chad Engels recommended that, as a component of the Corps' future initiative to update the 1994 Lake Traverse Water Control Manual, that a statistical analysis be conducted for the historical use of Lake Traverse to store spring floodwater and an exceedance probability study evaluating what impact to summer flood operations would occur if the summer conservation pool elevation was increased one foot. The basis for the study would be the changes to hydrology in the region since 1994. Corps staff stated that implementation of moist soils management would be considered a deviation from the 1994 Manual, and that Sustainable Rivers funding and an EAW would be needed. If both were approved, moist soil management could begin in Summer 2022. The funding to update the 1994 Manual requires approval from Congress.

**WCD #9
103E.555 PUBLIC
HEARING**

**75% GRANT
EQUALIZATION**

Upon motion by Dahlen, seconded by Schmidt and carried unanimously, the 103E.555 Public Hearing on the Engineer's Report for WCD #9 was opened. Engineer James Guler presented the amounts of Minnesota Legacy Act Clean Water BWSR Grant Funds that have been applied to the District's recent multipurpose drainage management projects (for grant eligible features such as side inlet culverts, berms, and seeding), and the percent of total cost that grants have provided to-date. Up to 75% of costs are eligible for grant funding from BWSR, but due to the competitive nature of the grant, project applications have sought varying levels of funding in order to secure an award. In addition, grant requests are based on project estimates, which inevitably vary from the actual amount of grant eligible costs at the close of a project. It is proposed that BdSWD Construction, Buffer, and Watershed Based Implementation Funds could be used to equalize the percentage of grant funding to cover 75% of eligible items across each project. This would require a transfer of funds for: WCD #8 in the amount of \$47,362.75; WCD #9 in the amount of \$197,244.42*; JD #11 in the amount of \$114,640.88*. *These grants have not been closed yet, so final amounts may vary. Upon motion by Dahlen, seconded by Schmidt and carried unanimously, 75% equalization was approved for WCD #8, WCD #9, and JD #11 and to implement a goal to fund future projects at 75%, dependent upon funding levels and availability.

**WCD #9 CHANGE
ORDER & PAY
APPLICATION**

Engineer Jim Guler presented the Final Balancing Change Order in the amount of \$56,410.18 and Pay Application No. 3 (Final) in the amount of \$79,811.42, which includes the Final Balancing Change Order cost. Board managers next reviewed a calculation of actual damages incurred by the Contractor Riley Bros.' inability to meet the substantial and final completion dates. The project is currently 333 days past the final completion date. The contractor was notified of the closeout, did not sign the Final

**MEETING WITH
RILEY BROS.**

Balancing Order, and did not sign Pay Application No. 3. Engineering staff have not received the contractor's lien waivers. District Engineer Chad Engels recommended two options: to recess and reconvene the hearing to October 21 and in the meantime refer the matter to a subcommittee and coordinate a meeting with the Contractor to facilitate and complete a joint project close-out; or 2) utilize the procedures described in the signed construction contract to initiate and complete a one-sided project close-out. Board Manager Gillespie stated his preference for Option #1, but stated that Option #2 may later be necessary; he recommended that President Linda Vavra and Board Manager Beyer be appointed to the subcommittee. Gillespie motioned, seconded by Dahlen and carried unanimously, to pursue Option #1.

**PERMIT APP.
#21-113
DUPREE PORK,
LLP**

Board Manager Allen Wold requested that the permit be brought to the board for consideration. Valley Pork Representative Tyler Scott and ISG Engineer Matt Hudson were present to answer questions. The project utilizes pattern tile to direct stormwater runoff from buildings and graveled areas to storage retention ponds for 48 hours and then to drain tile that discharges into a roadside ditch. The outlet has a pump, and the retention ponds have 12" or more of sand to filter runoff. Hudson described the requirements of the facility to institute a Stormwater Pollution Prevention Plan. Attorney Lukas Croaker confirmed that the applicant received a permit from the MPCA and confirmed that the BdSWD permit application was found by District engineering staff to meet District rules and policies. Gillespie motioned, seconded by Schmidt, to approve the permit. Motion carried.

**LTWQIP NO. 1
PHASE #1
103E.555 PUBLIC
HEARING**

Gillespie motioned, seconded by Dahlen and carried unanimously, to open the 103E.555 Public Hearing on the Engineer's Report for Lake Traverse Water Quality Improvement Project No. 1 Phase No. 1. Punchlist items are done, and engineering staff have declared construction complete. Engineer James Guler presented Change Order No. 2 (Final Balancing Change Order) in the amount of \$15,035.98 to compensate the contractor for increased excavation, riprap and chinking rock less the unused boulder

**CHANGE ORDER &
PAY APPLICATION**

budget. This amount is included in Pay Application No. 4 (Final) in the amount of \$44,866.73. Wold motioned, seconded by Dahlen and carried unanimously, to approve Change Order No. 2, Pay Application No. 4, and the order accepting the contract as complete, release retainage, and authorize District and County staff to establish and utilize the Lake Traverse Water Management District. Engineer James Guler presented the estimated and final costs. He described the use of Legacy Amendment Clean Water BWSR Project and Practices grant funds for all phases of the Lake Traverse Water Quality Project No. 1, and the ability to supplement these funds with Legacy Amendment Clean Water BWSR Watershed Based Implementation Grant Funds. Engineer James Guler recommends the District request a transfer from Phase 2 grant funds to be used against costs paid under the Phase 1 construction contract in the amount of \$220,000.

**JD #11
CHANGE ORDER**

Engineer James Guler presented JD #11 Change Order No. 9, extending the substantial completion date to November 1, 2021. The contractor has requested the change as soil conditions at the outlet repair are tighter and harder than expected. Engineer Technician Fridgen reported that this is a common problem in the region. Dahlen motioned, seconded by Brutlag and carried unanimously, to approve Change Order No. 9.

**PERMIT AP.
#21-066
D. HOLTE &
WESTERN 32
DRAINAGE
ISSUES**

Board managers discussed an after-the-fact permit application for a dike built to protect land from the widening of a stream managed on DNR land. An extremely thick cattail root mass is blocking the bottom 3' of both the north and south culverts on the DNR-owned property, forcing water flows to overtop adjacent roads. In addition, the natural stream corridor through the DNR property is no longer identifiable as it has been overtaken by cattails. Julie Aadland, DNR Area Hydrologist, and Michael Oehler, DNR Area Wildlife Specialist, were prohibited from attending in-person, but attend the meeting remotely. Otter Tail Commissioner Kurt Mortenson attended remotely, and Western Township Official Joel Borowski was in attendance. DNR Area Hydrologist Julie Aadland stated that there has been no change to the stream path since at least 1993, when a DNR survey was conducted. She stated that this is a natural watercourse, and that the DNR maintains no responsibility to maintain any grade line.

District Engineer Chad Engels asked, if the landowners are correct in their assertion that in previous years the stream channel was defined and the District could put together modeling demonstrating how the cattail mat affects area floodplain capacity, whether it would be sufficient to compel the DNR to conduct a clean-out and restore the function of existing culverts. DNR Hydrologist Julie Aadland responded that it would not, and that the District would instead be asked to evaluate what benefit would be achieved and what other alternatives are available.

Board Manager Scott Gillespie returned to the permit application, and stated that absent DNR maintenance of its own land, the proposed project may be the only method available to control flooding erosion and maintain the integrity of the subwatershed delineation, all at a private landowner's expense. Gillespie motioned to approve the permit with the condition that the District Engineer will provide the final elevation. Dahlen seconded the motion and it was carried unanimously.

**JD #6
CHANGE ORDER,
UTILITY RE-
LOCATION, PAY
APPLICATION &
BOND EXPENSES**

Engineer James Guler gave an update on JD #6 construction progress and presented a number of project documents. Dahlen motioned, seconded by Schmidt and carried unanimously to approve: JD #6 Change Order No. 2 in the amount of \$7,275.00 for work that the railroad intended to complete with their own contractor but requested that the District finish and invoice them; a utility relocation contract with Century Link in the amount of \$2,217.93; Pay Application No. 2 in the amount of \$455,853.48; and application of expenses to the JD #6 bond in the amount of \$291,733.91.

**LINED
WATERWAYS**

Schmidt motioned, seconded by Dahlen and carried unanimously to approve cost share of \$20,250 for the joint Traverse SWCD Lined Waterway Program for 2021 and \$20,000 for 2022.

**WCD #35
SIDE INLET
ESTIMATE**

Kapphahn motioned, seconded by Dahlen and carried unanimously, staff are authorized to provide a preliminary estimate of cost for the WCD #35 Side Inlet Culvert Project.

**WCD #25
SURFACE PROFILE**

District Engineer Chad Engels relayed information from Board Manager Jason Beyer that there is landowner interest for a retrofit of WCD #25. Dahlen motioned, seconded by Deal and carried unanimously, to authorize staff to complete a water surface profile to determine if a repair or an improvement is needed.

**WEBMAP TOOL
BENEFITS**

Kapphahn motioned, seconded by Schmidt and carried unanimously, to authorize staff to create 103E benefit and watershed layers for the District's Webmap tool.

**CULVERT COST
SHARE
R. HAMNER**

Engineer Technician Troy Fridgen stated that the District received a request for culvert cost-share. Landowner Rae Hamner would like to replace a 60" concrete pipe with a metal pipe of a longer length. The District's policy would result in a cost of approximately \$1,600 to the landowner and up to \$8,000 for the District. The replacement of this culvert would be outside of the current District policy, because this is currently a functional approach. Engineer Technician Fridgen stated that the concrete pipe could be utilized on JD #12. Schmidt motioned, seconded by Dahlen and carried unanimously, the cost-share was approved and Fridgen is authorized to determine a value for JD #12 to compensate TCD #52 for the used pipe.

**LTWQIP NO. 1
PHASE #2
NOTICES &
CONTRACT**

Engineer James Guler provided an update of Lake Traverse Water Quality Project No. 1 - Phase II. Construction bids were recently opened. Wagner Company submitted the low-bid with \$399,400. Dahlen motioned, seconded by Schmidt and carried unanimously, to authorize President Linda Vavra to sign the project's Notice of Award, Notice to Proceed, and Contract contingent upon Wagner's submission of required pre-project documentation.

**LTWQIP NO. 1
GRANTS**

Dahlen motioned, seconded by Wold and carried unanimously, to authorize staff to work with BWSR staff to determine how best to distribute Legacy Amendment Clean Water BWSR Project and Practices grant funds between Phases 1, 2, and 3.

**LTWQIP NO. 1
PHASE #3**

Engineering staff will have a meeting on October 3rd to discuss design details on Phase 3 stabilization.

**640TH AVE,
PERMIT APP.
#21-114
DOLLYMOUNT &
ELDORADO
TOWNSHIPS**

A joint meeting was held between Eldorado and Dollymount Townships to discuss the 640th Road Raise Project and Permit Application #21-114. One requirement finalized is the placement of a restrictor plate on a culvert located 0.6 miles east of the Stevens-Traverse County line on CSAH 20. A permit application has been submitted by the District to Stevens County. A petition for a new ditch has been given to Eldorado landowners. Kapphahn motioned, seconded by Schmidt, to authorize staff to draft a Memorandum of Understanding with Dollymount Township, to detail how the project will proceed and specify that Dollymount Township, as the road authority, will coordinate the project and the District will fund the project under its road raise program. It is anticipated that plans could be available for bid in February/March 2022 and construction could take place in 2022.

**CLIFTON
TOWNSHIP**

Engineering staff and a couple of board managers continue to meet with Clifton Township officials and landowners to determine a solution to frequent local flooding.

- NORTH OTTAWA O & M AGREEMENT & COVER CROPS** Attorney Lukas Croaker has contacted the DNR's legal representative regarding the North Ottawa Operations and Maintenance Agreement, but the DNR has not yet provided a response. Board Manager Kapphahn reported that cover crops were planted in cells A3 and B3, and that large numbers of wildlife have been spotted in the emerging rye.
- POLLINATOR LEASE DRAFT** Administrator Jamie Beyer reported that Beekeeper Steve Kellen has been placing hives in the Impoundment without permission from the District, and has set hives in locations that were intended for birdwatcher parking. Gillespie motioned, seconded by Schmidt and carried unanimously, to authorize staff to draft a pollinator lease agreement.
- REDPATH LESSARD SAMS EXTENSION & CONFLICT OF INTEREST AND FHM RESOLUTION** Dahlen motioned, seconded by Gillespie and carried unanimously, to approve the amendment to the Lessard Sams Agreement extending the term through June 30, 2024. Kapphahn motioned, seconded by Gillespie and carried unanimously, the Resolution Budgeting Annual Redpath Impoundment Project Funds for 2022 was approved. Upon motion by Gillespie, seconded by Deal and carried unanimously, President Linda Vavra is authorized to sign the ENRTF/OHF Pass-Through Grant Agreement Attachment C: Conflict of Interest Disclosure.
- BIG LAKE** A landowner meeting will be held on September 24th to collect landowner signatures in support of the Big Lake Flood Risk Reduction Project.
- ECOSYSTEM INVESTMENT PARTNERS** Board managers reviewed information from Ecosystem Investment Partners regarding wetland mitigation bank opportunities. Board Manager Steven Schmidt and District Engineer Chad Engels will meet with representatives to gather more information.
- WBIF EXTENSION REQUEST** Representatives from the soil and water conservation districts have requested that the District, serving as the fiscal agent for Legacy Amendment Clean Water BWSR Watershed Based Implementation Grant No. 1, request an ending term extension from 12/31/2023 to 12/31/2024. In order to be eligible for funding, cover crops are required by BWSR for a 3-year term, and representatives from soil and water conservation districts would like additional time to line up contracts; the extension would allow them to implement contracts for cover crop planted in 2022, 2023, and 2024.
- BANK OF THE WEST CLOSURE** Administrator Jamie Beyer stated that the Wheaton branch of Bank of the West has announced its closure. Bank of the West houses the District's primary checking account, and it will be difficult to manage deposits without an in-town depository. Deal motioned, seconded by Kapphahn, to authorize staff, board president and treasurer to transfer the account to Star Bank or State Bank of Wheaton.
- SPOIL BANKS** Board Manager Allen Wold stated that, following a ditch clean-out by the District, that landowners should have the opportunity to form a negative bank with ditch spoils on their own load. Engineer Technician Troy Fridgen stated that he would work with interested, consenting landowners, where feasible, to make a negative slope and install side inlet culverts.

The meeting was adjourned.