

**BOTTINEAU COUNTY WATER RESOURCE DISTRICT
MINUTES OF THE MEETING HELD ON OCTOBER 21, 2024
BOTTINEAU COUNTY COURTHOUSE**

1. ATTENDANCES

PRESENT: Clifford Issendorf, Chair
Wayne Drangsholt, Treasurer (via video conference)
Mitch Opdahl, Manager (via tele-conference)

IN ATTENDANCE: Jennifer Malloy, Administrator/Engineer
Kale Van Bruggen, Secretary/Counsel (via video conference)
Stacy Lorenz, Chad Strand Agency, P.C. – left at 9:10 a.m.
Paul Klokstad – arrived at 9:25 a.m.; left at 9:52 a.m.
Dan Marquardt – arrived at 9:35 a.m.; left at 10:36 a.m.
Tim Penfield, Senior GIS Coordinator at Apex Engineering (via video conference)
– arrived at 10:39 a.m.; left at 11:16 a.m.

APOLOGIES: Mark Glinz, Manager
Wally Brandjord, Vice Chair

2. COMMENCEMENT The meeting was called to order at 9:07 a.m.

3. SETTING OF THE AGENDA Chair Issendorf called for corrections or additions to the agenda. Hearing no corrections or additions, the Chair declared the agenda approved as presented.

4. APPROVAL OF FINANCIAL REPORT/APPROPRIATIONS

4.1 Financial Report & Proposed Appropriations Stacy Lorenz (Chad Strand, P.C.) presented the financial report for October 2024 and proposed appropriations. The report and proposed appropriations were reviewed and discussed by the Board.

Moved Manager Drangsholt/Seconded Manager Opdahl

That the financial reports be taken and confirmed as presented and that the monthly bills due be paid as presented.

Carried.

Stacy Lorenz (Chad Strand, P.C.) left the meeting at 9:10 a.m.

5. CONFIRMATION OF MINUTES

Moved Manager Drangsholt/Seconded Manager Opdahl

That the minutes of the regular Board meeting held on September 16, 2024, be approved as presented.

Carried.

6. ASSESSMENT DRAINS Discussion was held on the status of all the District's existing assessment drains and proposed assessment drain projects. Special discussion was held on the following items:

6.1 Tacoma Bitz Drain Chair Issendorf noted that maintenance work to remove sediment is needed this fall in the Tacoma Bitz Drain due to a tenant farming land adjacent to the Tacoma Bitz Drain

in the NW¼ Section 16-160-79 that is allowing spray to be applied to the inside slopes of the assessment drain, which is killing the grass and causing sedimentation and erosion into the drain. The erosion and sedimentation are obstructing and impeding the free flow of water. Contractors are not available to do the work this fall. Chair Issendorf will talk to the landowner and the tenant.

Paul Klokstad arrived at the meeting.

- 6.2 LaPorte Coulee Drain** Prior to discussion of the proposed LaPorte Coulee Assessment Drain, Chair Clifford Issendorf disclosed a potential conflict of interest regarding the proposed project. The proposed assessment drain benefits property owned by Chair Issendorf.

Attorney Kale Van Bruggen (Rinke Noonan, Ltd.) advised on the conflict analysis the Board should conduct regarding Chair Issendorf's potential conflict of interest. Van Bruggen reviewed ND Century Code § 44-04-22 which states that "[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 the board . . . 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." Van Bruggen advised that first threshold question is determining whether a conflict of interest exists. Opinions from the ND Attorney General's Office states that the existence of a conflict is highly fact specific and should be reviewed closely with the board's attorney. If that review is not dispositive, then the question of whether a member may participate should be decided by a majority vote of the remainder of members of the board's governing body. Opinions from the ND Attorney General's Office note that the conflict must be direct and of substantial personal or pecuniary interest. For example, those opinions note that the fact that a board member's relatives may own land or reside in the area, while relevant, without more, does not rise to the level of a direct, immediate, and substantial personal interest on the part of the board member.

Van Bruggen advised that owning land in the benefited area of the assessment drain is likely a direct and pecuniary interest in the matter. Although the proceedings were initiated by petitioners and no petitioners are members of the water resource board, and although there is no indication that any managers involvement is motivated by personal financial gain, to the extent that assessment drain increases the value of property within the assessment area, the ownership of land increased in value is a direct and pecuniary interest. Van Bruggen noted however that the increase in the value of property does not come without cost as all land benefited by the assessment drain, if established, will be assessed costs for construction of the project. ND Century Code § 44-04-22 states that a person with a direct and substantial personal or pecuniary interest in a matter before the board must disclose the fact and may not participate in or vote on that matter without consent of a majority of the rest of the body. The statute does not force or mandate recusal unless mandated by a majority of the rest of the body, after disclosure.

Moved Manager Drangsholt/Seconded Manager Opdahl

That Chair Issendorf has a direct and substantial pecuniary interest in the proposed LaPorte Coulee Assessment Drain and should not participate in any Board votes regarding the proposed Drain.

Chair Issendorf abstained from the vote. Carried.

Van Bruggen noted that ND Century Code § 61-16-08.1 vests the county commissioners with authority to appoint a person to serve as an alternate to a disqualified board member. The statute states the commissioners “may” appoint a person to serve as an alternate. Discretion to do so is afforded to the county commissioners. Van Bruggen advised that ND Century Code § 44-04-22 is mandatory for conflict situations and was adopted after the more vague and discretionary statute in ND Century Code Title 61 was adopted.

Van Bruggen asked if any managers lease land within the proposed assessment district. No managers currently rent land within the proposed assessment district.

Jennifer Malloy (Apex Engineering) presented the Engineer’s Report (profiles, plans, and specifications), Cost Estimate, and Proposed Assessment List filed by Apex Engineering with the District for the proposed LaPorte Coulee Assessment Drain Project. The Board reviewed and discussed the Engineer’s Report, Cost Estimate, and Proposed Assessment List. In determining the benefits of the proposed Project and determining that the proportion of the total cost of acquiring right-of-way and constructing and maintaining the proposed Project is in accordance with, but does not exceed, the benefits received, the Board considered, among other factors, property values, degree of improvement of properties, and productivity.

Dan Marquardt arrived at the meeting.

The Board discussed setting a date, time, and location for the public hearing on the proposed LaPorte Coulee Assessment Drain project. It was mutually agreed to conduct the public hearing at the Board’s next regularly scheduled meeting on November 18, 2024, at 9:00 a.m., in the Commissioners Room of the Bottineau County Courthouse.

Kale Van Bruggen (Rinke Noonan, Ltd.) presented a draft certificate of the proposed assessment list and cost estimate which the Board reviewed.

Moved Manager Drangsholt/Seconded Manager Opdahl

That the Certificate of the Proposed Assessment List for the Proposed LaPorte Coulee Assessment Drain, and attached Cost Estimate, be approved and that each Board Manager, excluding Chair Issendorf, upon review and agreement with the Certificate, be authorized to sign the Certificate on behalf of the Bottineau County Water Resource District.

Chair Issendorf abstained from the vote. Carried.

Van Bruggen presented for the Board’s review a draft Resolution Approving Engineer’s Report, Determining Benefited Lots & Parcels, & Setting Date & Place for Public Hearing on Proposed LaPorte Coulee Assessment Drain Project. The Board discussed that mail sometimes takes more than one week to arrive at the District’s P.O. Box. To provide opportunities for landowners to cast ballots, the Board requested adding paragraph 7.d. to the draft Resolution authorizing ballots to be hand-delivered to Stacy Lorenz at Chad Strand Agency, P.C. office. The Board also requested that the ballot voting instructions include a note about mail taking more than one week to arrive and allowing landowners to cast ballots in person at Chad Strand Agency, P.C. office.

Moved Manager Drangsholt/Seconded Manager Opdahl

That the Resolution Approving Engineer's Report, Determining Benefited Lots & Parcels, & Setting Date & Place for Public Hearing on Proposed LaPorte Coulee Assessment Drain Project shall be approved, and that Chair Clifford Issendorf shall be authorized to sign the Resolution on behalf of the District.

A roll call vote was taken by Attorney Van Bruggen: Manager Brandjord – absent; Vice Chair Drangsholt – aye; Manager Glinz – absent; Chair Issendorf – abstain; Manager Opdahl – aye. Van Bruggen noted that the vote carried with 2 ayes, 0 nays, 2 absent, and 1 abstention.

- 6.3 Scandia Scotia Drain** Paul Klokstad appeared and reported on concerns of erosion in Section 28-164-79, Bottineau County at the spillway of a dam on his property. Klokstad stated that the dam was constructed by the CCC in the 1930s, and that water from the Scandia Scotia Assessment Drain and two consecutive years of heavy snow fall led to erosion of the spillway on the dam. Jennifer Malloy, P.E. (Apex Engineering), reported that the Bottineau County Water Resource Board already approved Farden Construction to work on the spillway, and is waiting on the contractor to get to the project. Malloy will also review the survey work from the Scandia Scotia Assessment Drain project and report back to the Board on whether the spillway elevation was surveyed.

Paul Klokstad left the meeting.

- 6.4 Stone Creek Drain Lateral (Elysian)** Dan Marquardt appeared and discussed a survey of culverts in the area of Stone Creek Drain Lateral completed by Wold Engineering and discussed concern over conveyance across the private driveway in the NW¼ of Section 1-160-77. Jennifer Malloy, P.E. (Apex Engineering) shared the results of the more recent survey completed by Apex Engineering. Additional survey work will take place in N½ of Section 2-160-77 this week. Apex Engineering will report back on the surveying at a future meeting.

- 6.4.1 Gardena Lateral** Dan Marquardt discussed information regarding the proposed Gardena Lateral (lateral to Stone Creek Drain Lateral). Marquardt noted there is a fence-line of accumulated sediment obstructing flow in the northwest corner of the SE¼ of Section 9-160-76, which would be in the watershed draining to the proposed Gardena Lateral being discussed locally with the Oak Creek Water Resource District.

Marquardt also noted support for adjusting the boundaries of the Bottineau County Water Resource District and Oak Creek Water Resource District to reflect which District is managing the water via assessment drains.

Dan Marquardt left the meeting.

Tim Penfield (Apex Engineering) joined the meeting via video conference.

- 6.5 North Landa Drain** Jennifer Malloy, P.E. (Apex Engineering) reported she plans to meet with local landowners and petitioners in December or January to address the need for additional cash bond and provide an overview of where the engineering plans are so far.

7. ITEMS FOR DISCUSSION & INFORMATION

- 7.1 Engineer/Administrator Report** Jennifer Malloy, P.E. (Apex Engineering) introduced Tim Penfield, Senior GIS Coordinator at Apex Engineering. Penfield and Malloy provided a presentation of services offered by Apex Engineering to create a GIS database for the water

resource district. The database creation includes a one-time set up fee and then a subscription for hosting and subscriptions for mobile workers, contributors, and viewers.

Tim Penfield left the meeting.

6. ASSESSMENT DRAINS (CONT.)

- 6.6 South Landa Drain** Jennifer Malloy (Apex Engineering) reported that the warrant for South Landa Drain ends with Starion at the end of this year and the District needs to apply for the loan with the Bank of North Dakota for permanent financing.

Moved Manager Drangsholt/Seconded Manager Opdahl

That Apex Engineering be directed to apply to the State Water Commission for a loan from the Bank of North Dakota for permanent financing of the South Landa Drain construction project.

Carried.

Malloy reported that some of the parcels that were previously provided by Bottineau County for creating the assessment district are not taxed by the County because the parcels are for Bottineau County highway right-of-way only. The total amount of the proposed assessment for those parcels is \$449.27.

Moved Manager Drangsholt/Seconded Manager Opdahl

That the South Landa Assessment District assessment list shall be corrected to remove parcels identified by the County of Bottineau as non-taxed, right-of-way parcels, and that any deficiency in special assessments levied against said parcels shall be paid by the Bottineau County Water Resource District.

Carried.

- 6.7 Willow Drain #5** Chair Issendorf reported that there is a beaver problem creating dams in Willow Drain #5.

8. OLD BUSINESS

- 8.1 Oak Creek Water Resource District Boundary** Jennifer Malloy (Apex Engineering) reported that there appears to be an agreement between the Oak Creek Water Resource District Board of Managers and the Bottineau County Water Resource District Board of Managers on the proposed boundary change between the two districts. The Board directed its Attorney, Kale Van Bruggen, to prepare the necessary resolutions and petitions for the Bottineau County Water Resource District's November agenda and to share with the Oak Creek Water Resource District for its December agenda.

9. NEW BUSINESS

- 9.1 Kenneth Sivertson** Chair Issendorf is going to meet with the new manager of the Winter Park to discuss accessing the property to investigate Mr. Sivertson's concerns.

7. ITEMS FOR DISCUSSION & INFORMATION (CONT.)

- 7.2 Engineer/Administrator Report** Jennifer Malloy, P.E. (Apex Engineering) reported on the Joint North Dakota Water Convention. Chair Issendorf will attend.
- 7.3 Managers' Updates**

DRAFT/UNOFFICIAL MEETING MINUTES

7.3.1 Souris River Joint Board Chair Issendorf reported that the construction season in Minot has been going well, but that the Joint Board is putting special effort into getting contractors to bid on work in the outlying areas.

7.3.2 Assiniboine River Basin Chair Issendorf reported that new political leadership in the Province of Manitoba is raising some questions about the future of the ARBI.

10. CLOSE OF MEETING Having completed all business on the noticed agenda, the Chair declared the meeting adjourned at 11:42 a.m.

Minutes approved by the Board on November 18, 2024.

Clifford Issendorf, Chair

Kale R. Van Bruggen, Secretary

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