

**Barnes County Water Resource District
PO Box 306
Valley City, ND 58072
#845-8508**

**Meeting Minutes
December 8th, 2025 – 9:00 AM**

MEMBERS PRESENT: Chairman – Jerry Hieb; Managers – Bruce Anderson, Perry Schlagel, Bret Fehr, Scott Legge.

OTHERS PRESENT: Sean Fredricks – Ohnstad Twichell; Mike Opat – Houston Engineering; Pete Paulson – Barnes County Commissioner; Kim Radermacher – Attorney for LaMoure County WRD; Members for LaMoure County WRD – Kerry Ketterling, Glen Haugen, Nathan Nitschke, Derick Klug, Karin Boom and Jan Hamlin; Kale VanBruggen; Kimberly Robbins; Nathan Torsen; Mike Vogel; see attached list.

Chairman Hieb called the meeting to order at 9:00 a.m.

Public Comment Period: No one submitted speaker cards to request permission to speak.

Manager Anderson moved to approve the minutes from the November 10th, 2025, meeting. Manager Legge seconded the motion. Upon voice vote, the motion carried unanimously.

Manager Fehr moved to approve the bills as presented. Manager Schlagel seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Fehr moved to approve the 2026 meeting schedule as presented. Manager Schlagel seconded the motion. The motion carried unanimously.

OLD BUSSINESS

Thordenskjold Drain

New benefit methodology to be discussed at the Water Users conference in Bismarck this week. The Board will utilize that methodology when conducting an assessment vote for this project. The Board decided to hold a meeting with landowners on January 12, 2026, and directed Secretary Didier to send invitations and make appropriate arrangements.

Clausen Springs Dam

Mike reported that Houston Engineering received bids for the trash rack to be made and installed. Fredricks prepared an agreement with the low bidder, Freedom Machinery. Manager Fehr moved to approve the agreement with Freedom Machinery. Manager Legge seconded the motion.

Sheyenne River Bank Stabilization Study

Sheyenne Joint Board meeting to be held later this week.

Hobart Lake

Manager Anderson reported that the Barnes County Highway Department completed the cleanout work on the West side. No change to the water levels from last month. Discussion on cleanout of the East side was had. No motion taken.

Sanborn Lake Outlet

No change to the water level from last month.

Dam Inventory

Mike reported Houston completed draft reports for five dams so far inspected. Reports indicated there was nothing that needed immediate action. Recommend addressing woody debris and continuing to work with the landowners and the State Water Commission. Final report at later date.

Brown Dam

More information to be provided at the convention in Bismarck this week. Chairman Hieb and Mike to talk with landowner Dennis Brown after the convention.

LaMoure County WRD – Proposed Joint Project

Members from the LaMoure County WRD were present via Microsoft Teams to discuss the draft Joint Water Resource District Agreement. Discussion on the process of forming a joint board was held. Manager Fehr moved to approve the Joint Board agreement with LaMoure County WRD. Manager Legge seconded the motion. Upon roll call vote, the motion carried.

Spring Creek – Rodney Latt

Dave Azure with the Game and Fish was present to discuss what possible next steps could be as he learns more history of the Spring Creek waterway.

Sheyenne River Snagging & Clearing

Manager Fehr moved to approve the agreement with IBI for the Snagging and Clearing of the Sheyenne River. Manager Legge seconded the motion. Upon roll call vote, the motion carried.

Rod and Theresa Haugtvedt Drainage Complaint Against Dustin and Jessica Theurer - Complaint for Water- Related Issues

The Board next considered Rod and Theresa Haugtvedt's Complaint for Water-Related Issues filed against Dustin and Jessica Theurer, dated November 3, 2025. Under the Complaint, the Haugtvedts oppose the tile system that Dustin and Jessica Theurer constructed in the Northeast Quarter of Section 30 in Springvale Township. The Theurers' tile project is a permitted project under a tile permit approved by the Barnes County Water Resource District on August 11, 2025, Subsurface Water Management System Permit No. 2025-17. The Board approved the Theurers' project under Permit No. 2025-17, with the following project description:

Under *Application No. 2025-17*, Applicant seeks to install a 72-acre drain tile system in the Northeast Quarter of Section 30 in Springvale Township, Barnes County, North Dakota. The project will include a single pump outlet located along the east boundary of the Northeast Quarter of Section 30; the pump will discharge into the west road ditch along North Dakota Highway 32; the discharge will flow south in the west road ditch for a short distance; the discharge will then flow east, through an existing

culvert under Highway 32; the discharge will daylight in the east road ditch along Highway 32 and will continue east, across a portion of the Northwest Quarter of Section 29 and a small portion of the Southwest Quarter of Section 20, until flowing into a USGS blue line natural watercourse.

The Board's approval of Permit No. 2025-17 included the following conditions:

1. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
2. Applicant will install and maintain erosion protection at any and all outlets into the North Dakota Department of Transportation's Highway 32 right of way.
3. Applicant will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Barnes County Water Resource District.
4. Applicant will remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to the discharge into the USGS blue line natural watercourse in the Southwest Quarter of Section 20 in Springvale Township, in accordance with N.D. Cent. Code § 61-32-03.1.
5. Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines Barnes Rural Water District has in the Northeast Quarter of Section 30 in Springvale Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
6. Applicant will apply for an amendment to Subsurface Water Management Permit No. 2025-17 in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system.

The Board approved Permit No. 2025-17 at the Board's meeting on August 11, 2025, and the Board's attorney, Sean Fredricks, provided notice regarding the Board's approval of Permit No. 2025-17 in a Notice of Decision dated August 13, 2025, addressed to Mr. Dustin Theurer. In addition, as required under N.D. Cent. Code § 61-32-03.1, Fredricks also provided the Notice of Decision to the Department of Water Resources, NDDOT, Springvale Township, Neal Dimmer, Harriet Dimmer, Rodney and Theresa Haugtvedt, the Ronald & Sharon Weber Family Trust, and Barnes Rural Water District.

The Board provided all downstream notices required by law, including notice to the Haugtvedts as downstream landowners, as required under Section 61-32-03.1. The appeal period regarding the Board's approval of Permit No. 2025-17, under N.D. Cent. Code §§ 61-16.1-54 and 28-34-01, have long since expired. With that in mind, the Board's approval of Permit No. 2025-17 is no longer subject to any appeal or legal challenge.

The Haugtvedts are concerned that Mr. Theurer's tile project does not include an adequate outlet. Water resource districts are limited in terms of what conditions they can attach to tile permits; Section 61-32-03.1, the tile permitting statute, specifically identifies those conditions water resource districts can attach to tile permits. Further, under Section 61-32-03.1, once tile discharge reaches a natural watercourse, the permitting water resource district loses jurisdiction over that discharge.

In the case of Mr. Theurer's tile application, the Barnes County Water Resource District attached the only conditions to Permit No. 2025-17 that were permissible under Section 61-32-03.1. The Board's

attachment of the following three conditions was significant, and were as far as the Board could go to mitigate downstream impacts:

1. Applicant will install and maintain erosion protection at any and all outlets into the North Dakota Department of Transportation's Highway 32 right of way.
2. Applicant will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Barnes County Water Resource District.
3. Applicant will remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to the discharge into the USGS blue line natural watercourse in the Southwest Quarter of Section 20 in Springvale Township, in accordance with N.D. Cent. Code § 61-32-03.1.

By including those three conditions, the Board took the only steps available to mitigate impacts. Further, under Section 61-32-03.1, the Board lacked any legal authority to deny Mr. Theurer's tile application; under Section 61-32-03.1, the Board had no choice but to approve *Application No. 2025-17* within 30 days of its submission by Mr. Theurer or the permit would have been deemed automatically approved, **without any conditions**. With that in mind, the Board legally had no choice but to approve Permit No. 2025-17 at the Board's meeting on August 11, 2025, and the Board included those conditions permissible under the tile statute to mitigate downstream impacts. Again, no parties timely appealed the Board's approval of Permit No. 2025-17 and all appeal periods have now expired.

The Board noted that if the Haugtvedts are concerned about impacts as a result of Mr. Theurer's tile discharge, the tile statute specifically indicates the Board's approval of Permit No. 2025-17 does not preclude a private action by the Haugtvedts. Section 61-32-03.1(9) provides:

Approval of a [tile] permit under this section does not prohibit a downstream party unreasonably damaged by the discharge of water from a subsurface water management system from seeking damages in a civil action.

With that provision in mind, the Haugtvedts could commence a civil action against the Theurers in District Court if they wish, but the Barnes County Water Resource District lacked any legal authority to deny Mr. Theurer's permit and the Board lacked any legal authority to attach any additional conditions to Mr. Theurer's tile permit.

Under the drainage complaint statute, Section 61-32-07, the Board only has jurisdiction to order a landowner to "close or fill" any unpermitted "drain, lateral drain, or ditch ... opened or established by a landowner or tenant contrary to this title [Title 61 of the North Dakota Century Code]." In other words, if a landowner constructs or installs a drain without a permit, as required under Title 61 of the Century Code, a water resource district can order that party to close or fill the unpermitted drainage. However, if a party obtains a permit for any drain, the drain is not "contrary to" Title 61 of the Century Code. In this case, the tile statute, approved by the North Dakota Legislature in 2021, well after the passage of the drainage complaint statute, required the Board to approve Mr. Theurer's tile application. Mr. Theurer submitted *Application No. 2025-17*, and the Board either had to approve that application with conditions or the application would have otherwise been deemed automatically approved without any conditions. The Board approved the application with all

conditions available under the statute to mitigate any downstream impacts. With that in mind, Mr. Theurer's project is a permitted and legal project, included within a valid tile permit, and the Board lacks any jurisdiction to order or force Mr. Theurer to close or fill his tile system.

Because the tile system in the Northeast Quarter of Section 30 in Springvale Township is a permitted system, under Sections 61-32-03.1 and 61-32-07, the Board lacks any jurisdiction to order Mr. Theurer to "close or fill" the system, and, therefore, the Board concluded dismissal of the Haugtvedts' Complaint for Water-Related Issues was the Board's only option.

Manager Anderson moved to dismiss Rod and Theresa Haugtvedt's Complaint for Water-Related Issues filed against Dustin and Jessica Theurer, dated November 3, 2025, regarding Dustin and Jessica Theurer's tile system in the Northeast Quarter of Section 30 in Springvale Township due to lack of jurisdiction under Sections 61-32-03.1 and 61-32-07. Manager Legge seconded the motion. Upon roll call vote, the motion carried unanimously.

The Board directed Sean Fredricks to prepare the requisite Notice of Decision and to provide the Notice to the parties of record, and to include language regarding the Haugtvedts' ability to commence a civil action in their own discretion, as permitted under the tile statute.

NEW BUSINESS

Engineer Report

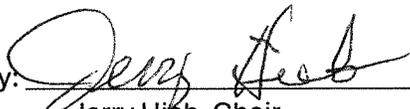
Nothing more to be added.

Legal Report

Nothing more to be added.

With nothing more to be discussed the meeting was adjourned at 11:02 a.m.

APPROVED:

By: 
Jerry Heeb, Chair

ATTEST:



Cara Didier
Secretary-Treasurer

Barnes County Water Resource District
PO Box 306
Valley City, ND 58072

December 8th, 2025

PLEASE SIGN IN BELOW

Les Men

Rodney Lett

Pete Penton

Dan Acorn