

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

**DRAFT MINUTES**

**Meeting Minutes**

January 12<sup>th</sup>, 2026 – 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; Shawn Olauson – Barnes County Commissioner.

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 December 8<sup>th</sup>, 2025, meeting. Manager Legge seconded the motion. Upon voice vote, the motion carried unanimously.

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

Manager Legge moved to reappoint officers Jerry Hieb as Chair, Bruce Anderson as Vice Chair, Cara Didier as Secretary-Treasurer, and to keep portfolios and joint board members in place. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously.

The Board discussed the appointment of legal and engineer, Sean proposed a \$10 per hour across the board rate increase. Manager Anderson moved to appoint Sean Fredricks as legal counsel and to approve the \$10 increase. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously. Mike presented Houston Engineering's 2026 fee schedule for the Board's consideration. Mike informed the Board that the schedule generally represented a 3% increase from 2025, but rates did go down or stay the same. Manager Legge moved to appoint Mike Opat as engineer for the District and to approve Houston Engineering's 2026 fee schedule as presented. Manager Fehr seconded the motion. Upon roll call vote, the motion carried unanimously.

**OLD BUSSINESS**

**Thordenskjold Drain**

Mike provided a brief review of information ahead of the Landowner information meeting to be held today.

### **Clausen Springs Dam**

Mike reported the geotechnical engineers have encountered delays with the laboratory testing, which will likely delay the final dam safety evaluation report until at least March. Mike informed the Board that Freedom Machinery has gone out of business and is no longer able to complete the trash rack repair. Chairman Hieb and Mike talked with Scott Cole, owner of RC Welding & Machine Shop, regarding the trash rack manufacturing and installation. Manager Fehr moved to approve an agreement with RC Welding & Machine Shop to install the trash rack, not to exceed \$15,000, contingent upon receipt of evidence of RC Welding & Machine Shop's contractor license and evidence RC Welding has secured the insurance coverage required under the contract. Manager Legge seconded the motion. Upon roll call vote the motion carried unanimously.

### **Sheyenne River Bank Stabilization Study**

Mike reported that the Sheyenne River Joint Board (SRJB) is still waiting to hear back from the U.S. Army Corps of Engineers on the SRJB's request for a study. Discussion of reorganization has been had by the Sheyenne Joint Board. More to come at a later date.

### **Hobart Lake**

No changes from last month.

### **Sanborn Lake Outlet**

No changes from last month.

### **Dam Inventory**

Discussion regarding dam ownership transfer. The Board will ask the Red River Joint Water Resource District to request an opinion from the North Dakota Attorney General's Office on the ability for water resource districts to transfer ownership of dams to private parties. Mike reported the Dam Inventory report will be available at a later date.

### **Brown Dam**

Chairman Hieb to further discuss the removal of Brown Dam with the landowner Dennis Brown.

### **LaMoure County WRD – Proposed Joint Project**

No update.

### **Spring Creek – Rodney Latt**

No update.

### **Sheyenne River Snagging & Clearing**

Mike informed the board IBI plans to start work next week.

## **NEW BUSINESS**

### **Surface Drain Application – Pat Hurley**

#### **Pat Hurley -- Surface Drain Application No. 6842**

The Department of Water Resources ("DWR") recently provided a RECORD OF DECISION regarding a surface drain application submitted to DWR by Pat Hurley, SURFACE DRAIN APPLICATION NO. 6842. Under APPLICATION NO. 6842, Mr. Hurley plans to remove sediment and vegetation from a natural

channel in the Northwest Quarter of Section 19 in Rosebud Township. Mr. Hurley's engineering consultant provided the following project description along with Mr. Hurley's permit application:

This application pertains to the maintenance of an existing natural channel that extends from a culvert crossing through 102nd Ave SE on the western edge of Section 19 in Rosebud Township (S19-T137N-R60W) and drains eastward to the junction of two natural channels, as shown on the Vicinity Map in Appendix B.

The project involves the removal of sediment and vegetation within a reach of the existing channel, which is an unnamed tributary of Bear Creek. Over time, the channel has accumulated significant sediment and vegetation, reducing its capacity and overall function. These conditions were confirmed through a 2024 survey, detailed in the plan and profile sheets in Appendix C.

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At the west end of Section 19, beginning at the east side of 102nd Ave SE, the original channel width is estimated to be approximately 25 feet, gradually narrowing to 8–10 feet toward the junction with the existing south-flowing channel. Some areas are narrower due to sediment buildup. The sediment removal will maintain a consistent width of approximately 8 feet along the channel bottom, with additional sediment left in place on the sides where the natural width exceeds this range.

The proposed cleanout will establish a straight grade from the north culvert invert at 102nd Ave SE to the west at approximately 0.20% until it daylights into the side slope of the channel flowing south, about 60 feet south of the private crossing known as the "Hurley Crossing."

DWR further provided the following additional description of the project in the RECORD OF DECISION:

The Applicant clarified in discussions after submitting the Application that the reach proposed to be excavated begins downstream of a stream crossing at the east side of the east ditch along 102nd Ave SE and continues southeast approximately 865 feet to the west bank of the downstream waterway it enters (**Figure 1**). Sediment and vegetation are proposed to be removed to maintain a channel width of approximately eight feet with 3:1 side slopes and a straight channel alignment grade of 0.20%. The existing channel width is stated as spanning approximately 25 feet near 102nd Ave SE and narrowing to eight to 10 feet near its junction with the south flowing channel it enters.

DWR's RECORD OF DECISION indicates that, in accordance with N.D. Admin. Code §§ 89-02-01-08 and 89-02-01-09, DWR conducted a "statewide or interdistrict significance" review of the proposed project, and DWR ultimately concluded the application does not propose drainage of "statewide or interdistrict significance." In light of DWR's findings, DWR forwarded APPLICATION No. 6842 to the Board for processing in accordance with Section 89-02-01-09.1(2) of the North Dakota Administrative Code, via DWR's RECORD OF DECISION.

Under Section 89-02-01-09.1(2)(a), once the Board receives the RECORD OF DECISION, the Board's first step is to determine if "public and private interests would be better served by a specific public meeting to consider the project." Under APPLICATION NO. 6842, Mr. Hurley proposes to clean out a natural channel that is adjacent to, and discharges into, a channel in the West Half of Section 19 that was the subject of a COMPLAINT FOR WATER-RELATED ISSUES filed by Leslie Hansen against Pat Hurley, dated November 7, 2022 (the "Complaint"). The Complaint was a contentious matter, and Mr. Hansen and Mr. Hurley remain engaged in an appeal before DWR regarding a related drainage application submitted by Mr. Hurley in 2025. The Board briefly discussed the history of the Complaint and related matters.

Under the 2022 Complaint, Mr. Hansen contended Mr. Hurley, and Mr. Hurley's family, had constructed unpermitted drainage in the West Half of Section 19 in Rosebud Township, in violation of N.D. Cent. Code §§ 61-32-03 and 61-32-07. Mr. Hurley later submitted SURFACE DRAIN APPLICATION NO. 6221, an after-the-fact permit application. However, Mr. Hurley later withdrew APPLICATION NO. 6221; he contended the drainage activities constructed by him and his family were "maintenance" that did not require a permit under North Dakota law.

Following the withdrawal of APPLICATION NO. 6221, to properly address the Complaint, the Board had to determine if the Hurleys' activities in the West Half of Section 19 required a permit. The Board separated the improvements into two categories: 1) the original ditch improvements constructed by the Hurleys in the 1950s, improvements that commenced at the location of a dike on the Hurley property (the "Hurley Crossing") and extended downstream 300 feet (the "Original Drain"); and 2) a 1,300-foot stretch of improvements constructed by Pat Hurley in 2021, downstream of the Original Drain, upstream of County Road 38.

The Board ultimately concluded the Original Drain constructed by the Hurley family in the 1950s did not require a permit under North Dakota law, and dismissed that portion of the Complaint. However, the Board concluded that all of Mr. Hurley's activities in 2021 required a permit, including deepening and widening of the Original Drain and the drainage improvements constructed for the 600-foot stretch of natural channel improvements downstream of the Original Drain; the Board ordered Mr. Hurley to "close or fill" the 2021 improvements. The manner of "closing or filling" the remaining 600 feet of drainage improvements downstream of the Original Drain, immediately upstream of County Road 38, became a point of contention between the parties. The following excerpt from the Board's meeting minutes on October 14, 2024, accurately summarizes the issues:

At the Board's September meeting, Mike Opat explained that he had conducted a site visit with the parties on September 5. At that visit, the parties confirmed that Mr. Hurley had adequately "closed or filled" the deepening and widening improvements he constructed to the 300-foot "Original Drain." In addition, the parties confirmed Mr. Hurley adequately "closed or filled" an additional 700 feet of the improvements downstream of the "Original Drain" that Mr. Hurley constructed in 2021. The parties reportedly agreed that, for the remaining 600 feet of drainage improvements downstream of the Original Drain, immediately upstream of County Road 38, installation of a rock grade control structure at the downstream end would be a viable option. The parties agreed the control structure would better secure that area and would prevent future washouts, as opposed to simply adding fill. At the Board's meeting on September 9, the Board concluded that the bottom profile for the area downstream of the Original Drain should at least match the grade extending from the upstream invert of the easterly 36-inch culvert at the crossing on Mr. Hurley's property to the

upstream invert of the 48-inch culvert at County Road 38. The Board further concluded installation of a rock grade control structure would adequately “close or fill” that 600-foot stretch of additional improvements.

Mr. Hurley contacted Mike Opat and reported that he completed installation of the structure. Mike conducted a site visit on September 29, 2024; he measured the 48-inch culvert at County Road 38 and the top of the rock structure installed by Mr. Hurley and confirmed that the elevation of the top of the rock structure was at or above the invert of the culvert through County Road 38. Mike concluded the rock structure meets the dimensions discussed and determined at the District’s meeting on September 9.

Sean Fredricks presented a draft Order for the Board’s consideration. The Order provided a brief procedural history and noted that the Board issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER on June 10, 2024, regarding the merits of Mr. Hansen’s Complaint. Fredricks served the parties with the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER and none of the parties appealed. Fredricks explained that the Order he presented today, entitled “ORDER -- REMEDIAL WORK,” addressed the sufficiency of the remedial work Mr. Hurley has conducted since the Board’s June 10 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER.

The proposed Order offered the following final conclusion and order:

Pat Hurley properly and adequately “closed or filled” the deepening and widening he constructed regarding the Original Drain by installing fill, as required under the District’s FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER dated June 10, 2024. In addition, Hurley properly and adequately “closed or filled” an additional 700 feet of drainage improvements Hurley constructed downstream of the Original Drain, also by installing fill as required under the District’s Order. Finally, with regard to the remaining 600 feet of drainage improvements Hurley constructed downstream of the Original Drain, the rock grade structure installed by Hurley meets the bottom profile approved by the District at its meeting on September 9, 2024, and otherwise adequately and sufficiently “closed or filled” the unpermitted drainage constructed by Hurley.

Manager Legge made a motion to conclude that Pat Hurley has now adequately and sufficiently “closed or filled” the unpermitted and illegal drainage he constructed and to approve the “ORDER -- REMEDIAL WORK” presented by Fredricks. Manager Schlagel seconded the motion. Upon roll call vote the motion was carried unanimously.

Fredricks served the Order, and the Complaint matter was finally resolved.

However, in December of 2024, Mr. Hurley submitted SURFACE DRAIN APPLICATION NO. 6642 to DWR. Under APPLICATION NO. 6642, Mr. Hurley sought a permit to remove sediment and vegetation from a portion of the Original Drain, the channel that was the subject of the 2022 Complaint. However, DWR issued a notice dated January 22, 2025, in which DWR notified parties of record of DWR’s decision that Mr. Hurley’s proposed project did not require a surface drainage permit. Mr. Hansen appealed DWR’s decision and that matter is still pending.

Under APPLICATION NO. 6842, Mr. Hurley proposes to conduct sediment and vegetation removal from a natural channel to the west of the channel that was the subject of the 2022 Complaint. However, while the natural channel Mr. Hurley proposes to clean under APPLICATION NO. 6842 was not at issue in the 2022 Complaint, and is not at issue regarding the Hansen/DWR appeal related to SURFACE DRAIN APPLICATION NO. 6642, the channel is in the same quarter (the Northwest Quarter of Section 19 in Rosebud Township) and discharges into the natural channel that was the subject of the 2022 Complaint. With that in mind, the Board concluded a public hearing is warranted under Section 89-02-01-09.1(2)(a) of the Administrative Code.

Fredricks previously circulated a draft "NOTICE OF HEARING" for the Board's review. If the Board elects to proceed with a public hearing, Fredricks will arrange for publication of the NOTICE OF HEARING in the *Times Record*, and will mail the NOTICE OF HEARING and DWR'S RECORD OF DECISION materials to the agencies and parties of record, including all parties that were involved in the 2022 Complaint. After more discussion, Manager Fehr moved to set a public hearing regarding SURFACE DRAIN APPLICATION NO. 6842 for 9:30 a.m. on February 9, 2026. Manager Legge seconded the motion. Upon roll call vote, the motion carried unanimously.

#### **Engineer Report**

Mike gave a brief review of discussions that were held last month at the ND Water Users Convention.

#### **Legal Report**

Sean informed the board of legislative interim studies that are ongoing. No action required by the Board at this time.

With nothing more to be discussed the meeting was adjourned at 10:33 a.m.

APPROVED:

By: \_\_\_\_\_  
Jerry Hieb, Chair

ATTEST:

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Cara Didier  
Secretary-Treasurer