

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

Meeting Minutes

August 10th, 2026 – 9:00 a.m.

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

OTHERS PRESENT: Mike Opat – Houston Engineering; Sean Fredricks; Shawn Olauson – Barnes County Commissioner.

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

Public Comment Period: Donald Jorissen was present with questions regarding Matt Legges drain tile application in regard to Legal Drain 2.

Manager Anderson moved to approve the minutes from the July 13th, 2026, meeting. Manager Schlagel seconded the motion. Upon voice vote, the motion carried unanimously.

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

OLD BUSINESS

Thordenskjold Drain

Mike with Houston Engineering was previously directed by the board to look into options of reconstructing the lower end of the drain. Mike developed conceptual drawings and Manager Schlagel visited with landowners regarding the possible improvements. After receiving feedback Mike will look into other improvement options and present them at the September meeting.

Clausen Springs Dam

Chairman Hieb to reach out to Scott Cole regarding the installation of the trash rack.

Sheyenne River Bank Stabilization Study

No update.

Hobart Lake

Manager Anderson reported the gate remains open with no water flowing. Water level reading 1415.50.

Sanborn Lake Outlet

Manager Anderson reported water level reading 1425.80.

Dam Inventory

Mike informed the board the Red River Joint Board is working on an inventory and prioritization list of high hazard dams to help with projections and funding. Sean provided a brief update regarding the options for dam ownership and possible conveyances.

Brown Dam

Mike is looking into funding options for the removal of Brown Dam.

Pat Hurley Surface Drain Application Number 6842

The Board previously approved Mr. Hurley's surface drain permit; one of the conditions the Board attached to the permit is a requirement for Mr. Hurley to submit an as-built survey following completion of the project. Mr. Hurley contacted Mike Opat and indicated he is not certain if he will ultimately proceed with the project. The Board will keep this matter on its agendas to ensure Mr. Hurley's compliance with his permit requirements.

Spring Spraying

Larson Helicopters has completed weed spraying.

John Jorissen – ND Department of Transportation Application for Ditch Cleaning or Drain Tile and Pumping

This North Dakota Department of Transportation (NDDOT) permit submitted by John Jorissen is related to *Subsurface Water Management System Number 2026-06*, approved by the Board for Mr. Jorissen on June 8, 2026. When the Board approved the permit, the Board included a recommendation that Mr. Jorissen obtain written consent from the NDDOT to discharge into or otherwise utilize any of NDDOT's Highway 9 right of way. Following the Board's approval of the permit, Mr. Fredricks provided notice of the permit approval to landowners within one mile of the project outlet, including Canadian Pacific Railway (CP Rail). CP Rail later filed an appeal of the Board's approval of the permit with the District Court. Mr. Fredricks requested defense from the North Dakota Insurance Reserve Fund (NDIRF) and NDIRF appointed Dan Gaustad to defend the matter. Mr. Gaustad has worked with Secretary-Treasurer Didier and Ohnstad Twichell to compile the record on appeal and Mr. Gaustad is otherwise actively engaged in the Board's defense in the matter.

In light of the appeal by CP Rail, the Board did not take any action regarding Mr. Jorissen's NDDOT permit application. Secretary-Treasurer Didier will continue to include this matter on the Board's agendas until the appeal concludes.

NEW BUSINESS

Drain Tile Application – Devin Weber

Application to Install a Subsurface Water Management System Number 2026-07 for Devin Weber in the Southwest Quarter of Section 6 and the North Half of the Northwest Quarter of Section 7 in Marsh Township

The Board next reviewed *Application to Install a Subsurface Water Management System Number 2026-07* filed July 31, 2026, by Devin Weber. Under *Application Number 2026-07*, Mr. Weber seeks to install a 48-acre drain tile system in the Southwest Quarter of Section 6 and the North Half of the Northwest Quarter of Section 7 in Marsh Township, Barnes County, North Dakota. The system

in the Northwest Quarter of Section 7 will connect to the system in the Southwest Quarter of Section 6 via a pipeline under 37th Street SE. The project will include a single pump outlet that will discharge into a slough or lake in the Southwest Quarter of Section 6.

According to Barnes County tax records, Jeffrey and Loren Dolliver own 130.01 acres in the Southwest Quarter of Section 6 in Marsh Township and Bruce Anderson owns the North Half of the Northwest Quarter of Section 7 in Marsh Township, less 44.23 acres, where Mr. Weber intends to install the tile system. Mr. Weber's application indicates he rents the property he intends to tile. Because the project will discharge into a slough or lake, no downstream notices are required under North Dakota Century Code § 61-32-03.1. However, in light of the discharge into a slough or lake that may extend onto adjacent properties, namely the Northwest Quarter of Section 6, the Board will provide notice to those landowners. Bruce and Kathy Anderson own 109.33 acres in the Northwest Quarter of Section 6, and Sherman and Jackie Sylling own 22.44 acres in the Northwest Quarter of Section 6, the properties in the Northwest Quarter of Section 6 adjacent to this particular slough or lake.

Before proceeding with any substantive discussion regarding Manager Weber's tile project, the Board discussed the likely conflict for Manager Anderson; Manager Anderson owns one of the parcels Mr. Weber intends to tile. 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.

In this case, Mr. Fredricks indicated Manager Anderson clearly has a "direct and substantial personal and pecuniary interest" in the matter that creates a conflict. Manager Legge moved to conclude Manager Anderson has a conflict in the matter and should not vote on or discuss matters related to Mr. Weber's tile project proposed under Application to Install a Subsurface Water Management System Number 2026-07. Manager Fehr seconded the motion. Upon roll call vote, Chairman Hieb and Managers Fehr, Legge, and Schlagel voted in favor of the motion. Manager Anderson abstained. The motion carried.

There is an additional conflict statute specific to water resource districts, Section 61-16-08.1 of the Century Code, that provides the County Commission with discretionary authority to appoint alternate water managers if a full-time member has a conflict. However, that statute was effectively superseded by Section 44-04-22 when the Legislature adopted Section 44-04-22 in 1995 (Section 61-16-08.1 went into effect in 1985). Section 61-16-08.1 does not provide a definition for what qualifies as a "conflict of interest" and does not provide a mandatory process; rather, the legislative history of Section 61-16-08.1 indicates the Legislature approved that statute to provide a process for water managers to avoid situations where they are not comfortable voting on a matter and is not a mandatory process. Conversely, the process under Section 44-04-22 is mandatory for conflict situations, provides a detailed test for determining if a conflict exists, and provides a detailed process for a Board to proceed even if a conflict does exist. The Legislature enacted Section 44-04-22 after passing the vague and optional Section 61-16-08.1 and, therefore, the process under Section 44-04-22 controls all conflict matters.

With the conflict issue concluded, the Board proceeded with discussion regarding *Application to Install a Subsurface Water Management System Number 2026-07*.

Fredricks noted that these situations where a project discharges into a slough or lake that straddles property lines or otherwise extends onto adjacent properties can create acrimony among neighboring property owners. However, under the tile statute, Section 61-32-03.1, the Board lacks any authority to order Mr. Weber to obtain consent from those adjacent landowners. The Board will provide notice of this permit to those landowners in the Northwest Quarter of Section 6 but the Board lacks any statutory authority to take any other steps to mitigate any potential damages to those properties.

Manager Legge moved, and Manager Fehr seconded the motion, to approve *Application to Install a Subsurface Water Management System Number 2026-07* filed July 31, 2026, for Devin Weber in the Southwest Quarter of Section 6 and the North Half of the Northwest Quarter of Section 7 in Marsh Township, and to authorize the Secretary-Treasurer to sign Subsurface Water Management Permit Number 2026-07, subject to the following conditions:

1. Permittee will re-establish any areas disturbed installing or maintaining Permittee's tile system.
2. Permittee will install and maintain erosion protection at the project outlet into the slough or lake in the Southwest Quarter of Section 6 in Marsh Township.
3. Permittee 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. Permittee will not install Permittee's tile system within 20 feet, on either side, of any rural water lines Barnes Rural Water District has in the Southwest Quarter of Section 6 and the North Half of the Northwest Quarter of Section 7 in Marsh Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
5. Permittee will apply for an amendment to Subsurface Water Management Permit Number 2026-07 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.

Upon roll call vote, Chairman Hieb and Managers Fehr, Legge, and Schlagel voted in favor of the motion. Manager Anderson abstained. The motion carried.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Permittee's permit. However, for Permittee's protection, and to ensure protection of Permittee's tile system, the Board recommends that Permittee comply with the following:

1. The Board recommends that Permittee obtain written consent from the Marsh Township Board of Township Supervisors to install a pipeline or any project components through or in the Township's road right of way.
2. The Board recommends that Permittee obtain all other necessary and requisite licenses, permits, registrations, and approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Sean Fredricks will provide copies of the Board's Notice of Decision, Subsurface Water Management Permit Number 2026-07, and the Barnes County Drainage/Ditch Cleaning Permit Application to the Department of Water Resources, the Marsh Township Board of Township Supervisors, Jeffrey and Loren Dolliver, Bruce and Kathy Anderson, Sherman and Jackie Sylling, and Barnes Rural Water District. Permittee's detailed project design map is an exempt record and the Board will not provide copies to any third parties.

Engineer Report

Nothing more to be added.

Legal Report

Sean reviewed the Barnes-LaMoure Joint Board agreement with the board.

With nothing more to be discussed the meeting was adjourned at 10:34 a.m.

APPROVED:

By: /s/ Jerry Hieb
Jerry Hieb, Chair

ATTEST:

/s/ Cara Didier
Cara Didier
Secretary-Treasurer