

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

**Meeting Minutes**

September 14<sup>th</sup>, 2026 – 9:00 a.m.

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

OTHERS PRESENT: Mike Opat – Houston Engineering; Sean Fredricks – Ohnstad Twichell; 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 Legge moved to approve the minutes from the August 10<sup>th</sup>, 2026, meeting. Manager Anderson 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.

**OLD BUSINESS**

**Thordenskjold Drain**

Manager Schlagel has been in contact with landowners with information from Mike with Houston Engineering. Mike and Manager Schlagel to get more feedback from landowners before October meeting.

**Clausen Springs Dam**

Chairman Hieb spoke with Scott Cole regarding the trash rack installation. Mr. Cole told Chairman Hieb he planned to begin work this past Friday. Study still on hold. Chairman Hieb and Manager Legge plan to attend the County Commission meeting on September 15<sup>th</sup> to discuss the Commission's funding of the study.

**Sheyenne River Bank Stabilization Study**

Manager Anderson informed that the Corp of Engineers have looked at the project but indicated there is no funding available at this time.

**Hobart Lake**

Manager Anderson reported the gate remains open with water puddling as it rains. Water level reading 1414.98.

**Sanborn Lake Outlet**

Manager Anderson reported water level reading 1425.38.

### **Dam Inventory**

Engineering aspect on hold to reevaluate in the Spring.

### **Brown Dam**

Mike discussed Operation Safe Flow being done by the Department of Water Resources. Clarity regarding funding from the state to come at a later date.

### **Pat Hurley Surface Drain Application Number 6842**

No update. The board will keep this matter on its agendas to ensure Mr. Hurley's compliance with his permit requirements.

### **John Jorissen -- NDDOT Application for Ditch Cleaning or Drain Tile and Pumping**

The board will keep this matter on its agendas until the appeal by the Canadian Pacific Railway concludes. No action taken at this time.

### **NEW BUSINESS**

#### **Snagging and Clearing**

Chairman Hieb and Manager Legge to discuss with the commission on September 15<sup>th</sup> regarding funding. Manager Anderson moved to direct Mike and Houston Engineering to work with Secretary Cara to apply for cost-share funding from the North Dakota State Water Commission. Manager Schlagel seconded the motion. Upon roll call vote, the motion carried unanimously.

#### **Surface Permitting**

Mike and Sean discussed the changes to Administrative Code regarding surface drain permitting requirements.

#### **Fall Cattail Spraying**

Manager Anderson to reach out to Mike with Larson Helicopters to find out if he is able to do fall cattail spraying.

#### **Drain Tile Application – Legge**

#### **Application to Install a Subsurface Water Management System Number 2026-08 for Scott Legge and Dwight Legge in Section 24 in Brimer Township**

The Board next reviewed *Application to Install a Subsurface Water Management System Number 2026-08* filed September 3, 2026, by Scott Legge and Dwight Legge. Before proceeding with any substantive discussion regarding the application, the Board discussed the likely conflict for Manager Legge, as one of the Applicants under *Application Number 2026-08*.

Section 44-04-22 of the North Dakota Century Code provides the relevant standard regarding conflicts. 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, Sean Fredricks indicated Manager Legge likely has a “direct and substantial personal or pecuniary interest” in the matter that creates a conflict. Manager Anderson moved to conclude Manager Legge has a conflict in the matter and should not vote on or discuss matters related to Scott Legge and Dwight Legge’s tile application, *Application Number 2026-08*. Manager Fehr seconded the motion. Upon roll call vote, Chairman Hieb and Managers Anderson, Fehr, and Schlagel voted in favor of the motion. Manager Legge 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 Number 2026-08*.

The Board next reviewed *Application to Install a Subsurface Water Management System Number 2026-08* filed September 3, 2026, by Scott Legge and Dwight Legge. Under *Application Number 2026-08*, Scott Legge and Dwight Legge seek to install a 362-acre drain tile system in the West Half of Section 24 and the West Half of the East Half of Section 24 in Brimer Township, Barnes County, North Dakota. The project will discharge via a pipeline commencing in the Northwest Quarter of the Northwest Quarter of Section 24; the pipeline will run to the west, under 101st Avenue Southeast; the pipeline will continue to the west for a short distance, along the north boundary of the Northeast Quarter of Section 23 in Brimer Township, near or in the south road ditch along 27th Street Southeast; the pipeline will then discharge via a pump outlet. The pump will discharge to the North, into the South road ditch along 27th Street Southeast; the discharge will continue North through a culvert under 27th Street; the discharge will daylight in the North road ditch along 27th Street, along the South boundary of the Southeast Quarter of Section 14 in Brimer Township; the discharge will continue North for a short distance until flowing into a slough or lake in the Southeast Quarter of Section 14. The project will include one surface inlet.

According to Barnes County records supplied by Scott Legge and Dwight Legge, Scott Legge owns the West Half of Section 24 in Brimer Township, and Dwight Legge owns the West Half of the East Half of Section 24, the property where Scott Legge and Dwight Legge intend to install the tile system. Further, Scott Legge owns the Northeast Quarter of Section 23 in Brimer Township, where Scott Legge and Dwight Legge intend to install their pipeline and pump outlet. With regard to notices to downstream landowners as required under North Dakota Century Code § 61-32-03.1, no notices are required because Scott Legge owns the downstream property in the Southeast Quarter of Section 14; further, no additional notices are required under Section 61-32-03.1 once the discharge flows into the slough or lake in the Southeast Quarter of Section 14.

Manager Fehr moved, and Manager Anderson seconded the motion, to approve *Application to Install a Subsurface Water Management System Number 2026-08* filed September 3, 2026, for Scott Legge and Dwight Legge in the West Half of Section 24 and the West Half of the East Half of Section 24 in Brimer Township, and to authorize the Secretary-Treasurer to sign Subsurface Water Management Permit Number 2026-08, subject to the following conditions:

1. Permittees will re-establish any areas disturbed installing or maintaining Permittees' tile system.
2. Permittees will install and maintain erosion protection at the project outlet into Brimer Township's road right of way.
3. Permittees 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. Permittees will remove silt or vegetation or repair erosion or scour damages **directly** caused by Permittees' tile system, but only up to the point where the discharge flows into the slough or lake in the Southeast Quarter of Section 14 in Brimer Township, in accordance with North Dakota Century Code § 61-32-03.1.
5. Permittees will not install Permittees' tile system within 20 feet, on either side, of any rural water lines Barnes Rural Water District has in the West Half of Section 24 and the West Half of the East Half of Section 24 in Brimer Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
6. Permittees will apply for an amendment to Subsurface Water Management Permit Number 2026-08 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 Anderson, Fehr, and Schlagel voted in favor of the motion. Manager Legge abstained. The motion carried.

With regard to condition #4, Permittees' obligations to remove silt or vegetation or to repair erosion or scour damages will only arise upon submission of substantial evidence to the Board by downstream landowners or road authorities that Permittees' tile system **directly** caused accumulation of silt or vegetation, erosion, or scouring, all in accordance with Section 61-32-03.1.

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

1. The Board recommends that Permittees obtain written consent from the Brimer Township Board of Township Supervisors to install a pipeline, the project outlet, or any other project components in the Township's road right of way.
2. The Board recommends that Permittees 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 2026-08, downstream flow map, and the Barnes County Drainage/Ditch Cleaning Permit Application to the Department of Water Resources, Barnes County Planning and Zoning, the Brimer Township Board of Township Supervisors, and Barnes Rural Water

District. Permittees' detailed project design map is an exempt record and the Board will not provide copies to any third parties.

#### **Under 80 Drain Tile Application - Legge**

No action to be taken. Mike noted the Under 80 drain tile application is within the Legal Drain 2 assessment district with the property already included in the assessment.

#### **North Dakota Department of Transportation Application for Ditch Cleaning or Drain Tile and Pumping – Bruce Anderson**

The Board next reviewed an Application for Ditch Cleaning or Drain Tile and Pumping filed by Manager Bruce Anderson regarding a ditch cleanout project Manager Anderson plans to conduct in I-94 right of way. This is an North Dakota Department Of Transportation form required for any party seeking to conduct any cleanout activities in North Dakota Department Of Transportation right of way. Manager Anderson intends to cleanout cattails in the south road ditch along I-94 in Section 25 in Hobart Township.

Before proceeding with any substantive discussion regarding the application, the Board discussed the likely conflict for Manager Anderson as the Applicant. Sean Fredricks explained the requisite conflict analysis. Section 44-04-22 of the North Dakota Century Code provides the relevant standard regarding conflicts. 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, Sean Fredricks indicated Manager Anderson clearly has a “direct and substantial personal or 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 his Application for Ditch Cleaning or Drain Tile and Pumping. 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 Manager Anderson's North Dakota Department Of Transportation Application for Ditch Cleaning or Drain Tile and Pumping.

Fredricks advised the Board that water resource districts only have jurisdiction over work conducted in highway right of way to the extent the work proposed by the Applicant involves drainage improvements that require a state drainage permit under North Dakota Century Code § 61-32-03. Fredricks has met with North Dakota Department Of Transportation regarding this issue in past years and North Dakota Department Of Transportation has indicated that North Dakota Department Of Transportation must obtain approvals from water resource districts prior to North Dakota Department Of Transportation approval of highway right of way activities, cleanouts, or improvements by private parties to comply with federal highway rules. With that in mind, North Dakota Department Of Transportation has requested that water resource districts "approve" their Application for Ditch Cleaning or Drain Tile and Pumping forms. To address the concerns of water resource districts regarding their jurisdictional limitations, North Dakota Department Of Transportation indicated to Fredricks that water resource districts could submit the approved forms along with a cover letter that outlines water resource districts' jurisdiction related to drainage.

Fredricks prepared a draft cover letter to North Dakota Department Of Transportation for the Board's consideration. The letter indicates that if Manager Anderson's cleanout project will include any activity that requires a surface drainage permit under Section 61-32-03 of the North Dakota Century Code, including any deepening or widening of the road ditch, Manager Anderson should submit a surface drain permit application to the North Dakota Department of Water Resources.

Manager Fehr moved, and Manager Legge seconded the motion, to approve the Application for Ditch Cleaning or Drain Tile and Pumping submitted by Manager Bruce Anderson, to authorize Secretary-Treasurer Didier to sign the approved Application for Ditch Cleaning or Drain Tile and Pumping, and to direct Fredricks to submit the approved permit along with his draft cover letter to North Dakota Department Of Transportation, with a copy to Manager Bruce Anderson. Upon roll call vote, Chairman Hieb and Managers Fehr, Legge, and Schlagel voted in favor of the motion. Manager Anderson abstained. The motion carried.

#### **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 10:42 a.m.

APPROVED:

By: /s/ Jerry Hieb  
Jerry Hieb, Chair

ATTEST:

/s/ Cara Didier

Cara Didier  
Secretary-Treasurer