

**BOTTINEAU COUNTY WATER RESOURCE DISTRICT
MINUTES OF THE MEETING HELD ON NOVEMBER 18, 2024
BOTTINEAU COUNTY COURTHOUSE**

1. ATTENDANCES

PRESENT: Clifford Issendorf, Chair
Wayne Drangsholt, Treasurer
Mitch Opdahl, Manager
Jared Abernathey, Manager
Paxton Engelhard, Manager

IN ATTENDANCE: Jennifer Malloy, Administrator/Engineer
Kale Van Bruggen, Secretary/Counsel (via video conference)
Stacy Lorenz, Chad Strand Agency, P.C. – left at 9:07 a.m.
See attached attendance sheet.

2. COMMENCEMENT The meeting was called to order at 9:00 a.m. Chair Issendorf requested guests in attendance sign the attendance sheet. Separate attendance sheets were available for the LaPorte Coulee Assessment District hearing and the general meeting. Chair Issendorf introduced the members of the Bottineau County Water Resource District Board of Managers, Jennifer Malloy, P.E. of Apex Engineering as the District’s Engineer, and Attorney Kale Van Bruggen of Rinke Noonan Law Firm as the District’s Attorney.

3. SETTING OF THE AGENDA Chair Issendorf called for corrections or additions to the agenda. Chair Issendorf requested that “New Manager Appointments” be added as an item of New Business and that it be addressed after the Approval of the Financial Report/Appropriations. Hearing no objections, and no other corrections or additions, the Chair declared the agenda approved as amended.

4. APPROVAL OF FINANCIAL REPORT/APPROPRIATIONS

4.1 Financial Report & Proposed Appropriations Stacy Lorenz (Chad Strand, P.C.) presented the financial report for November 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 9:07 a.m.

5. NEW BUSINESS

5.1 New Manager Appointment Chair Issendorf reported that the Bottineau County Board of Commissioners appointed Jared Abernathey and Paxton Engelhard to replace the retirements of Wally Brandjord and Mark Glinz from the Water Resource Board. Abernathey and Engelhard took the oath of office prescribed for civil officers. Attorney Van Bruggen (Rinke Noonan Law Firm) will file the signed oaths of office with the State Water Commission.

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 **LaPorte Coulee Drain** The public hearing on the proposed LaPorte Coulee Assessment Drain Project was called to order and opened by Chair Clifford Issendorf at 9:09 a.m.

Kale Van Bruggen (Rinke Noonan Law Firm) introduced himself as the attorney representing the Bottineau County Water Resource District and welcomed those in attendance at the public hearing. Van Bruggen explained that the purpose of the public hearing was to review the proposed LaPorte Coulee Assessment Drain Project, to hear from the public on the proposed Project, and to answer questions.

Van Bruggen reviewed the Petition submitted by landowners for establishment of the proposed Project, including Jerry Kersten, Kelly Thorenson, Dale Thorenson, Todd Hunsdor, Harlan Balda, and Thomas Issendorf. Copies of the Petition were made available for public inspection at the Bottineau County Auditor's Office and mailed to landowners affected by the proposed Project. The Petition designates the starting point, terminus, and general course of the proposed Project by description and by a map attached to the Petition. The Petition was signed by at least two owners of property that will be drained if the proposed Project is constructed. The Board required the Petitioners to file a cash bond with the Petition as security for the District's expenses should the Petition be denied.

Van Bruggen noted that the Board examined the line of the proposed Project. Van Bruggen reported that the Board adopted a Resolution Declaration of Necessity for Proceedings to Construct and Maintain the Proposed LaPorte Coulee Assessment Drain Project. The Resolution appointed Apex Engineering and Professional Engineer Jennifer Malloy to assist the Board with the proposed Project by preparing profiles, plans, and specifications of the proposed Project, estimates of the total cost in sufficient detail to allow the Board to determine the probable share of the total costs that will be assessed against each of the affected landowners, and a map or plan of the lands to be drained, showing the regular subdivision thereof.

Van Bruggen reported that Apex Engineering completed its Engineer's Report and estimated cost of the proposed Project and filed both with the District.

Van Bruggen explained that the Board, with the assistance of the Petitioners, local landowners, the engineer, legal counsel, and records provided by the Bottineau County Tax Assessor and Auditor's Office, prepared a roster of affected landowners showing the percentage assessment against each parcel of land benefited by the proposed Project and the approximate assessment in terms of money apportioned to each. Benefits were determined in accordance with ND Century Code § 61-16.1-21 against any lot, piece, parcel, or interest in land which is either directly or indirectly benefited by the proposed Project and with the directive that no land already included in and being assessed by an existing drainage district shall be included and assessed unless it is shown that such land will be benefited by the construction of the new drain. Van Bruggen noted that if the proposed Project is approved by the voting landowners, there will be a second hearing where affected landowners will have an opportunity to submit comments and evidence pertaining to the benefits or lack of benefits provided to their property and the Board, based on the record evidence, may correct or confirm the proposed roster of affected landowners.

Van Bruggen noted that the Board adopted a Resolution Approving the Engineer's Report, Determining Benefitted Lots & Parcels, & Setting a Date & Place for the Public Hearing on the Proposed LaPorte Coulee Assessment Drain Project.

A Notice of Public Hearing was published in the Bottineau Courant on November 5 and November 12, 2024. The published notice is evidenced by an Affidavit of Publication on file with the District. A notice of Public Hearing was mailed on October 29, 2024 to all landowners proposed to be assessed for construction of the proposed Project to the address shown on the Bottineau County Tax Assessor's records. The Notice of Public Hearing included a project voting ballot and instructions, the proposed roster of affected landowners, preliminary construction plans for the proposed Project, and the Board's Resolution Approving the Engineer's Report, Determining Benefitted Lots & Parcels, & Setting a Date & Place for the Public Hearing on the Proposed LaPorte Coulee Assessment Drain Project. The mailed notice is evidenced by an Affidavit of Mailing on file with the District.

Van Bruggen reported that on November 1, 2024, a letter was sent to all landowners who were mailed notice of the public hearing, notifying those landowners that the room for the public hearing was changed from the Commissioners Room on second floor of the Bottineau County Courthouse to the Community Room on the first floor of the Bottineau County Courthouse. Notices were also posted at the meeting room doors and at the Bottineau County Courthouse.

Van Bruggen noted that pursuant to ND Century Code § 61-16.1-20, the allocation of voting rights among affected landowners on the question of establishing the proposed project must provide a fair relationship between the amount of liability for assessments and the power of objecting to the establishment of the proposed project. Affected landowners have one vote for each dollar of assessment to which land is subject or one vote for each dollar of the assessed valuation of land condemned for the project. There may be only one vote for each dollar of assessment, regardless of the number of owners of a tract of land. If there is more than one owner of the land, the votes must be prorated among the owners in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest the proposed project on behalf of the affected landowner that executed the power of attorney.

Van Bruggen reported that the Petition; the Engineer's Report with preliminary plans, profiles, & specifications of the proposed Project; the Engineer's map of the lands to be drained by the proposed Project; the Engineer's cost estimate of the proposed Project; the Board's Certification of Proposed Assessment List; and the Resolution Approving the Engineer's Report, Determining Benefitted Property, and Setting the Hearing were filed with the Bottineau County Auditor and made available for public inspection.

Van Bruggen reported that the District will work with landowners or their tenants who wish to have USDA-NRCS wetland conservation compliance concerns addressed. Van Bruggen noted that addressing wetland conservation compliance concerns with NRCS requires the landowner or their tenant to cooperate with the District because USDA data is protected by the Federal Privacy Act. Van Bruggen noted that no participant should become ineligible due to wetlands converted by the assessment drain, if any. However, planting an agricultural commodity on converted wetlands constitutes a planting violation that may result in ineligibility for the crop year in which the agricultural commodity was planted. Van Bruggen noted that guidance

received by the District from the FSA states that alfalfa can be planted to converted wetland acres and can be grazed. However, alfalfa cannot be harvested by mechanical means. Van Bruggen noted that the District will work with cooperating USDA participants to determine if wetlands will be impacted and if so, to consider mitigation or compensation options.

Professional Engineer Jennifer Malloy (Apex Engineering) reported that some landowners have been contacting her directly after receiving the notice of hearing. Malloy encouraged landowners to feel free to continue to reach out to her directly with those questions.

Malloy presented the Engineer's Report. Malloy's presentation highlighted the map of the proposed assessment district, showing the lands to be drained by the proposed Project, and the location of the proposed assessment district in relation to the Kane-Tacoma Assessment Drain assessment district, Overgaard Lateral Assessment Drain assessment district, Gessner Assessment Drain assessment district, Moen Assessment Drain assessment district, and Tacoma-Bitz Assessment Drain assessment district.

Malloy noted that the dam upstream of the proposed Project alignment is not part of the proposed Project or assessment district.

Malloy highlighted the starting point, general course, and terminus of the proposed LaPorte Coulee Assessment Drain. Malloy noted that the bottom of the channel is proposed to be 20-foot wide, with 4:1 side-slopes. The outlet will be tied into the refuge, but no work will be done in the refuge.

Chair Issendorf then opened the floor for public comments and questions. The following public comments and questions were made:

- (1) Kelly Thorenson, 8892 County Road 20, Newburg, ND 58762: What do you plan to do to maintain these areas that are cleaned out as part of the project and prevent future washouts?
Malloy: If the project is approved by vote, Apex Engineering will look at velocities and investigation into velocities may lead to incorporating some erosion control measures, like rip rap. The Board will inspect and maintain the site.
Issendorf: A bridge was recently replaced with three culverts outletting into this proposed Project. Needs to be investigated to address erosion concerns.
Malloy: NDDOT did their yearly inspections of all the bridges in Bottineau County and noted several bridges slated to be closed. Richie Gamble and his crew have been installing culverts at locations where bridges are going to be closed by NDDOT. One of those locations is on the south side of Section 3, just southwest of the dam. Because the capacity was a bridge and is now culverts, the flow rate is less and the District is concerned that there might be impacts to that roadway since the capacity has been lessened.
- (2) Mac Kersten, 709 88th St. NW, Newburg, ND 58762: Are you suggesting that the crossing be added to the project?
Issendorf: Merely making the comment at the public hearing for consideration by the engineer.
Malloy: Ultimately the crossing is owned by the road authority unless there becomes demand from the landowners to make it part of an assessment project.

Issendorf: If that road was closed, the land to the east was not accessible. The county made the decision to install the culverts to maintain access considering the bridge being closed.

- (3) Mac Kersten, 709 88th St. NW, Newburg, ND 58762: You are calling it a side channel. It is basically the spillway for that dam that carries all the water. Why is it set to 330 feet? Why isn't it extending all the way up to the reservoir? Can that be changed, and can the boundaries be changed?

Malloy: Absolutely. The proposal is not set in stone. If there are requests for more and more, the cost estimate and dollar value per acre goes up more. 330 linear feet was picked due to the topography of the land and the boundary of the assessment district. Malloy noted that some design adjustments are possible after the landowner vote if the project provides the same hydrologic benefit and the final design adjustments are not cost prohibitive. Malloy encouraged affected landowners to contact her early in the process to address questions regarding final project design.

Issendorf: Landowners locally have done what they can for erosion protection.

- (4) Mac Kersten, 709 88th St. NW, Newburg, ND 58762: If you clean the main channel, you are asking for more erosion, and you will never get that vegetation in there.
- (5) Jay Kersten, 2521 Skyline Drive, Minot, ND 58703: What is the average proposed depth? How deep is the black soil? Do you have a study of how much water on an average of 10 years?

Malloy: The average proposed depth is 2 feet. The goal was to get the channel wider, clean out the wash out areas, and remove the cattails. A study has not been done on the water volume, but if it passes the landowner vote, the study would be complete before final design.

Issendorf: Petitioners and other landowners have filed a cash bond with the District to cover preliminary expenses. This covers the basics of the engineering but doesn't have it to the fine details unless the project is voted yes. If voted no, those landowners who put up the initial cash bond lose that. We can't do a full engineering report and study before the landowner vote.

Malloy: Malloy reported the total project costs estimates and noted that the proposed assessment costs to the local assessment district considers the cost-share funding available from the North Dakota State Water Commission. Any design and construction costs incurred after an affirmative vote on the assessment drain are eligible for forty-five percent cost-share funding.

- (6) Mac Kersten, 709 88th St. NW, Newburg, ND 58762: Do we get to review the final engineer's plan down the road.

Malloy: Absolutely. All the plan sets go onto the Board's agenda at 90-percent completion. Landowners can attend the Board meeting and comment on the plans before they are finalized. Also, any landowners who provide their contact information and request a copy will be sent one by Apex Engineering.

Chair Issendorf asked those in attendance that if they are aware of any SRT lines or pipelines that are in the proposed alignment, to note those for Jennifer Malloy.

- (7) Kelly Thorensen, 8892 County Road 20, Newburg, ND 58762: What are the legal advantages of having an assessment district?

Van Bruggen: If the project passes the landowner vote, the District will acquire easements along the alignment of the proposed assessment drain which will be

recorded and will protect the outlet for the watershed for future drainage of the watershed.

- (8) Jay Kersten, 2521 Skyline Drive, Minot, ND 58703: If there are issues with the channel in the future, who is responsible?

Malloy: The District is responsible for inspection and maintenance.

Issendorf: Inspection and maintenance is funded through the operation and maintenance assessments levied each year.

- (9) Mac Kersten, 709 88th St. NW, Newburg, ND 58762: If the owners of the private dam wanted to raise it 2 feet, how would that be done?

Malloy: The owners would need to work with the Department of Water Resources to get a construction permit and ensure the construction meets current standards and get property flowage easements if necessary.

- (10) Katie Kersten-Tyler, 2530 87th Street NW, Lansford, ND 58750: If the District makes changes after today, do we have to redo the entire vote all over again?

Malloy: It depends on the scope of the changes. If it is within the vicinity of the project, doesn't extend too far beyond the estimated costs, and doesn't deprive hydrologic benefit of what is proposed.

- (11) Katie Kersten-Tyler, 2530 87th Street NW, Lansford, ND 58750: What if landowners do not sign the easement?

Van Bruggen: The Century Code lays out the process in detail as to how the District needs to acquire easements.

- (12) Katie Kersten-Tyler, 2530 87th Street NW, Lansford, ND 58750: Petition has been signed, money has been put forward, we are all neighbors, and this causes conflict. Already, Clifford said \$20,000 has been put out there. People put money out there and so the pressure is on. If you say one thing, you have one neighbor that might be mad but if you say another, another neighbor might be mad. So many times, there are fights among people. I want to do what's best for everybody.

Issendorf: Agree with you 100 percent, and we got to work it out. We have excellent working relationships with landowners who agree and disagree with projects. The most recent projects have come in with more than 80 percent yes vote. Jennifer Malloy provides exceptional engineering response. Many projects across the state are lucky to get 60 percent.

Chair Issendorf noted that the estimated cost per acres is about \$23/acre. Lateral B to Stone Creek assessment drain was recently completed. For comparison, the assessment per acre is \$200/acre.

When all comments from the public in attendance had ceased, the Chair declared the public comment portion of the public hearing closed.

Van Bruggen reminded the landowners that all ballots, to be counted, must be submitted and received by the District no later than the close of business, 5:00 p.m., on December 18, 2024. Van Bruggen noted that ballots can be filed by personally filing them with the District at today's public hearing; by mailing the ballot to the District's P.O. Box 268, Bottineau, ND 58318; by emailing the ballot as a PDF attachment to bcwrd@outlook.com; or by personally filing the vote with the District Treasurer, Stacy Lorenz, at Chad R Strand, P.C. 521 Main Street, #3, Bottineau, ND 58318.

Van Bruggen noted that after the deadline for filing votes has passed, the District will immediately determine whether the project is approved. Upon making an order establishing the proposed project or determining the vote bars establishing the proposed project, the District will publish notice of the order or determination in the Bottineau Courant. The notice will advise affected landowners of their right to appeal and any right to appeal begins to run on the date of publication of the notice.

Guests present for public hearing left the meeting at 10:20 a.m.

7. OLD BUSINESS

7.1 Oak Creek Water Resource District Boundary Jennifer Malloy (Apex Engineering) provided an overview of the history of the efforts between the Bottineau County Water Resource District Board and the Oak Creek Water Resource District Board to coordinate on adjusting the boundaries of the District to reflect the watershed boundaries based on what is actually contributing to Oak Creek and what is contributing to the Gardena Lateral and Stone Creek.

Dan Bullinger and Jay Bullinger noted support for adjusting the boundaries. Bullinger noted that the Oak Creek Water Resource District Board wants to ensure that the current obstructions to flow within Sections 5, 8, 7, and 6 of Township 160 North, Range 76 West (Oak Creek Township) are removed as efficiently as possible. Van Bruggen (Rinke Noonan Law Firm) highlighted the administrative process for obstructions to drains in ND Century Code § 61-16.1-51. Since this land is currently in the Oak Creek Water Resource District, this land is in their jurisdiction. Van Bruggen also highlighted the petition for the assessment drain process which would establish an assessment drain project on that alignment if approved by the landowner vote. If a petition were filed now, a joint powers agreement would be needed between Bottineau County Water Resource District and Oak Creek Water Resource District.

Malloy reported that based on the survey work on Stone Creek Lateral (Elysian), an additional culvert being requested by Dan Marquardt on the assessment drain is not necessary.

Dan Bullinger and Jay Bullinger left the meeting at 10:52 a.m.

8. CONFIRMATION OF MINUTES

Moved Manager Drangsholt/Seconded Manager Opdahl

That the minutes of the regular Board meeting held on October 21, 2024, be approved as presented.

Carried.

6. ASSESSMENT DRAINS (CONT.)

6.2 Stone Creek Lateral B Jennifer Malloy (Apex Engineering) reported that Apex Engineering needs to do an as-built survey of the assessment drain. Farden Construction and Malloy believe that one of the culverts installed by the County is high, and Malloy is working with Richie Gimbel to address.

7. OLD BUSINESS (CONT.)

7.2 Kenneth Sivertson Chair Issendorf reported that he has shared Kenneth Sivertson's concerns with the Bottineau Winter Park Manager and is still going to meet with the Manager to discuss the concerns.

9. NEW BUSINESS

9.1 **Beaver Dams on Willow Creek** Jennifer Malloy (Apex Engineering) reported that she was contacted by David Larson regarding beaver dams that are obstructing flow on Willow Creek. Mr. Larson wanted to know if the Bottineau County Water Resource District would assist with their removal. The location is unknown and no permission has been obtained from the landowner where the obstruction is located. Malloy and Kale Van Bruggen (Rinke Noonan Law Firm) will coordinate for additional information needed to address this on the December agenda.

10. ITEMS FOR DISCUSSION & INFORMATION

10.1 **Attorney/Secretary** Kale Van Bruggen (Rinke Noonan Law Firm) reported on a bill proposed by the Department of Water Resources amending Century Code § 24-03-08 and the timing of requesting stream crossing studies. Van Bruggen also reviewed the 2024 Policies and Positions of the ND Water Resource District Association on stream crossing studies.

Moved Manager Opdahl/Seconded Manager Abernathey

That the following proposed policy resolution to amend paragraph 40 of the ND Water Resource District Association 2024 Resolutions and Positions and authorize counsel to send the proposal to the ND Water Resource District Association on behalf of the District:

We support the use of an objective standard, such as the North Dakota stream crossing standards, to determine reasonable culvert sizes that avoid waters which flow into and accumulate in roadway ditches from overflowing onto adjacent and adjoining lands. We support allowing an engineering standard to be used in determining culvert sizes depending on topographic conditions. We support the ability of water resource boards to compel a determination by the Department of Water Resources of the required design discharge of an existing or proposed crossing according to stream crossing standards before or after a determination has been made by the applicable road authority. Further, we support efforts to improve the ability of townships and counties to obtain quick approval for emergency procedures for roadway drainage. We request that affected water resource districts and local road authorities can simultaneously meet with federal regulatory agencies at regularly scheduled interagency meetings in order to resolve regulatory issues on all projects.

Carried.

11. **CLOSE OF MEETING** Having completed all business on the noticed agenda, the Chair declared the meeting adjourned at 12:10 p.m.

Minutes approved by the Board on December 16, 2024.

Clifford Issendorf, Chair

Kale R. Van Bruggen, Secretary

Draft

Sign In Sheet

LaPorte Coulee Drain Public Hearing Bottineau County Water Resource District

Monday, November 18, 2024 | 9:00 a.m. | Commissioners Room, Bottineau County Courthouse

Apex Project No. 24.137.0070

Name	Representing	Phone	Email
Byrnell Cushing		701-641-1102	bwcush@yahoo.com
Ellen Cushing		701-228-3366	
Jay Kersten		701-263-1073	
Diane Kersten		701-263-1185	diane.kersten335@gmail.com
Katie Kersten-Tyler		701-263-1231	
Pam Kersten		701-263-7854	pkkersten@gmail.com
Kelly Thoreson		701-263-1707	kcd.farms@srt.com
RONALD TUFOT		701-721-3473	rtwofst@srt.com
Linda Kersten		701-263-1589	kersteng@srt.com
Gene Kersten		701-263-1729	" "
Mac Kersten		701-720-8463	macdk@minot.com
Jay Bullinger		701-871-0303	jay.bullinger@gmail.com
DAN Bullinger	OAK Creek Creek Water Board	701-228-8344	dbullinger@hotmail.com