

BOTTINEAU COUNTY WATER RESOURCE DISTRICT
MINUTES OF THE MEETING HELD ON FEBRUARY 17, 2025
BOTTINEAU COUNTY COURTHOUSE

1. ATTENDANCES

PRESENT: Clifford Issendorf, Chair
Mitch Opdahl, Vice Chair
Wayne Drangsholt, Treasurer – via video conference
Jared Abernathey, Manager

IN ATTENDANCE: Jennifer Malloy, Administrator/Engineer
Kale Van Bruggen, Secretary/Counsel (via video conference)
Stacy Lorenz, Chad Strand Agency, P.C. – left at 9:10 a.m.
See attached sign-in sheet.

APOLOGIES: Paxton Engelhard, Manager

2. COMMENCEMENT The meeting was called to order at 9:05 a.m.

3. SETTING OF THE AGENDA Chair Issendorf called for corrections or additions to the agenda. Hearing no corrections or additions, the Chair declared the agenda approved as presented.

4. APPROVAL OF FINANCIAL REPORT/APPROPRIATIONS

4.1 **Financial Report & Proposed Appropriations** Stacy Lorenz (Chad Strand, P.C.) presented the financial report for February 2025 and proposed appropriations. The report and proposed appropriations were reviewed and discussed by the Board.

Moved Manager Opdahl/Seconded Manager Abernathey

That the financial reports be taken and confirmed as presented and that the monthly bills due be paid as presented.

Carried.

Lorenz reported that Managers Abernathey and Engelhard will need to be approved as signatories on the District's bank accounts.

Moved Manager Drangsholt/Seconded Manager Opdahl

That Managers Jared Abernathey and Paxton Engelhard be approved as signatories on the Bottineau County Water Resource District's bank accounts.

Carried.

Stacy Lorenz (Chad Strand, P.C.) left the meeting at 9:10 a.m.

5. 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:

5.1 **LaPorte Coulee Drain** At 9:10 a.m., Chair Issendorf opened the public hearing on the proposed percentage assessments for the LaPorte Coulee Assessment Drain.

PROCEDURE OVERVIEW & RECORD OF NOTICE REQUIREMENTS: Attorney Van Bruggen (Rinke Noonan, Ltd.) welcomed those in attendance to the public hearing and introduced himself as the attorney for the Bottineau County Water Resource District.

Van Bruggen reported that after the deadline for filing votes on the proposed project had passed on December 18, 2024, the Board determined whether project was approved by opening and tabulating the ballots filed. The Board found that out of the 100,100.95 votes received, 99,233.08 votes (99.13%) were filed in favor of the proposed Project, and 867.87 votes (0.87%) were filed against the proposed Project. At its January 20, 2025, meeting, the Board issued an order establishing the proposed Project. Notice of the order was published in the Bottineau Courant and advised landowners of their right to appeal.

The Board also directed its Secretary and legal counsel to file with the Bottineau County Auditor a list 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 parcel as approved by the Board. Before filing with the Bottineau County Auditor, the most current records according to the tax assessor's office were requested from Bottineau County and any property transfers or parcel splits were corrected on the proposed percentage assessment list.

As directed by the Board, notice of the assessment hearing was mailed by the District's legal counsel to each affected landowner at the landowner's address as shown by the tax rolls of Bottineau County. Notice was mailed by regular mail, attested by an affidavit of mailing signed by the staff under the direct control and supervision of the District's attorney and secretary. Notice of the assessment hearing was also published once a week for two consecutive weeks in the Bottineau Courant as evidenced by the affidavit of publication on file with the District.

Van Bruggen explained that the purpose of the public hearing was for the BCWRD Board of Managers to hear all complaints relative to the percentage assessments proposed for the LaPorte Coulee Assessment Drain Project. Van Bruggen noted that the Board may alter the assessments as the Board deems just and necessary to correct any error in the assessment but shall make the aggregate of all assessments equal to either the total amount required to pay the entire cost of the work for which the assessments are made, or the part of the cost to be paid by special assessment.

Van Bruggen noted that after the public comment portion of the hearing is closed, the Board will deliberate on the information received, and then shall confirm the assessment list.

Van Bruggen noted that the final assessment list may be appealed pursuant to N.D. Century Code, section 61-16.1-23 or section 61-16.1-54. Under section 61-16.1-23, there are two types of appeals: First, affected landowners having not less than 23-percent of the possible votes which believe the assessment was not made fairly or equitably or the project is not located or designed properly, may appeal to the ND Department of Water Resources (DWR) by petition to review the assessments and examine the location and design of the proposed project. If the DWR believes the project was located or designed improperly, the DWR may order a relocation and redesign that must be followed in the construction of the proposed project. Second, a landowner claiming the landowner will receive no benefit from the construction of the project may appeal that issue to the DWR upon filing a bond of \$250. The DWR will determine if there is any benefit to the landowner but not the specific amount of benefit. Appellants meeting the

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threshold for filing an appeal may, before filing an appeal, request assistance from the ND mediation service to resolve grievances arising from the final assessment list. Under section 61-16.1-54, an aggrieved person may appeal an order or decision of a water resource board to the Bottineau County District Court governed by the procedure provided in ND Century Code section 28-34-01.

Van Bruggen noted that the final assessment list confirmed by the Board will determine the pro rata share of costs each landowner will be responsible for construction costs of the assessment drain.

PUBLIC COMMENTS & QUESTIONS: Following Van Bruggen’s presentation, Chair Issendorf called for comments from the public on the proposed percentage assessments. The following comments or questions were made at the public hearing:

1. **Eugene Kersten:** What is the life expectancy of the proposed project?

Engineer Jennifer Malloy (Apex Engineering) provided a recap of the site visit she conducted with Kersten’s in the field after the December 2024 Board meeting, and the proposed scope of construction for the assessment drain. Malloy reported on the erosion and scouring coming out of the spillway of the Kersten Dam.

Malloy recommended the Board come back to address general questions about the project after all comments and questions on the proposed assessment are addressed.

2. **Jennifer Malloy, Apex Engineering:** Engineer Jennifer Malloy (Apex Engineering) reported to the Board that after the proposed assessment list was approved, her team discovered that there were four parcels which were provided by the Bottineau County Tax Assessor’s Office that are right-of-way parcels which have a Bottineau County Tax Parcel Identification Number, but for which the County does not levy or collect an ad valorem tax. Malloy reported that because the County does not tax these parcels, and because the parcels are insignificant in terms of size and benefit, that the cost of collecting a special assessment against these parcels far outweighs the value of the benefit or assessment to the District. Malloy recommended the Board remove these four parcels from the proposed assessment list:

36000012497000	KERSTEN ETAL, MAC D. C/O GENE N & LINDA L LE	.50A OF LOT 4 FOR R/W	2	160	79
36000012508000	KERSTEN, JAY B & DIANE F	.50 A OF LOT 1 FOR R/W	3	160	79
36000012542000	KERSTEN ETAL, MAC D. C/O GENE N & LINDA L LE	2.34 A OF E1/2SE1/4 FOR R/W	7	160	79
36000012548000	THORENSEN, KELLY & AMBER	2.34 A OF W1/2NW1/4 FOR R/W	8	160	79

3. **Jennifer Malloy, Apex Engineering:** Engineer Jennifer Malloy (Apex Engineering) reported on two City of Newburg parcels with a proposed assessment have an estimated assessment of \$92.02 and \$180.59. Malloy reported that the process of taxing the city parcels is different from the rest of the parcels in the proposed assessment district, and that the cost of preparing and assessing these two parcels is exceeded by the proposed assessment,

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potentially resulting in a net loss to the District. Malloy recommended the Board remove these two parcels from the proposed assessment.

36000012518000	CITY OF NEWBURG	8.4 A IN S1/2NW1/4	5	160	79
36000012523000	CITY OF NEWBURG	PT W OF RR & BEING SW COR OF SE1/4	5	160	79

Chair Issendorf called for any further comments or questions from the public. Hearing none, the Chair called for a motion to close the public comment portion of the assessment hearing.

Moved Manager Opdahl/Seconded Manager Abernathey

That the public comment portion of the Assessment Hearing be closed.

Carried. Chair Issendorf abstained from the motion due to the previously disclosed conflict of interest in the assessment drain project.

Engineer Jennifer Malloy (Apex Engineering) offered to respond to any other general comments or questions about the project. In response to the comment by Eugene Kersten, Malloy reported that it is anticipated the life expectancy of the assessment drain would be 25-50 years. Malloy reported that she knows Kerstens would prefer the District not disturb the soils on the downstream end of the proposed project. Malloy reported that not completing the assessment drain on that alignment may be too far of a deviation from the proposed project approved by the owners within the assessment drain.

Questions were asked about other design modifications, including a plunge pool downstream of the dam to slow the velocity of waters in the assessment drain. Attorney Van Bruggen (Rinke Noonan Law Firm) noted that design modifications at this stage, that add to the cost of the project beyond the engineer’s estimate approved, would require another vote of the landowners. Malloy noted that that the dam is owned by private parties, and not the Bottineau County Water Resource District, which is why modifications to benefit and improve the dam are not part of the proposed project.

Guests in attendance on the sign-in sheet for the LaPorte Coulee Assessment Drain Assessment Hearing left at 10:35 a.m. Kelly Thorensen remained at the meeting.

6. CONFIRMATION OF MINUTES

Moved Manager Opdahl/Seconded Manager Abernathey

That the minutes of the regular Board meeting held on January 20, 2025, be approved as presented.

Carried.

5. 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:

5.2 North Landa Drain Attorney Van Bruggen (Rinke Noonan Law Firm) reported he spoke with Manager Engelhard on Friday, and Manager Engelhard is going to contact the Petitioners about the outstanding \$23,000 cash bond on the project. The Board directed Apex Engineering to wait on the landowner informational meeting until the cash bond is deposited in full.

Kelly Thorensen left the meeting at 10:51 a.m.

5.3 LaPorte Coulee Drain The Board deliberated the comments made during the public comment portion of the hearing. The Board's response to each comment and question is as follows:

1. **In response to the comment by Eugene Kersten:** *The Board finds that the question is not related to the percentage assessments proposed for the project and that Engineer Malloy adequately responded to this question following the public comment portion of the assessment hearing.*
2. **In response to the comment by Engineer Jennifer Malloy regarding Right-of-Way Parcels:** *The Board finds that given the fact that Bottineau County does not levy and collect ad valorem taxes against these four parcels for roadway right-of-way, the District is left without an efficient and typical method of levying and collecting special assessment against these parcels. The cost of collecting special assessment against these four parcels far outweighs the benefit to the District. Therefore, the Board agrees with the recommendation to remove these four parcels from the confirmed assessment list.*
3. **In response to the comment by Engineer Jennifer Malloy regarding City of Newburg Parcels:** *The Board finds that given the fact that the assessment district may potentially create a deficit in assessing these two City of Newburg parcels, the cost of collecting special assessment against these two parcels far outweighs the benefit to the District. Therefore, the Board agrees with the recommendation to remove these two parcels from the confirmed assessment list.*

Following the Board's deliberation, the revised version of the proposed assessment list was reviewed by the Board. Van Bruggen reviewed with the Board a draft Resolution Confirming Assessments for the LaPorte Coulee Assessment Drain Project based upon the revised assessment list. The consensus of the Board was to spread the final assessment over a term of 10 years with 10 equal installments.

Moved Manager Opdahl/Seconded Manager Abernathey

That the Resolution Confirming Assessments for the LaPorte Coulee Assessment Drain Project be approved with the revised assessment list as Exhibit C, and that Chair Issendorf be authorized to sign the Resolution.

Carried. Chair Issendorf abstained from the motion due to the previously disclosed conflict of interest in the assessment drain project.

5.4 Russell Drain Engineer Jennifer Malloy (Apex Engineering) reported that she provided an explanation to the ND Department of Water Resources with an explanation of what the need is for an extension on the cost-share request.

5.5 South Landa Drain Attorney Van Bruggen (Rinke Noonan Law Firm) provided an update on the acquisition of easements for the right-of-way of the assessment drain. Eminent domain proceedings were initiated to acquire Easement 19 (Tennysons) and Easement 26 (Martinsons).

On February 10, Leonard Tennyson emailed Attorney Delaney (Rinke Noonan Law Firm) indicating that the Leonard Tennyson, his wife, and Derek Tennyson would sign the revised Easement 19 (Tennysons) with the Texas crossing revisions in consideration of constructing the Texas crossing, the appraised value shared between Deborah Fiala, Leonard Tennyson, and

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Derek Tennyson, and the cash consideration recommended by the Board to Leonard Tennyson and Derek Tennyson at the December meeting. Van Bruggen recommended the Board approve the revised Easement 19 (Tennyson) with this consideration.

Moved Manager Opdahl/Seconded Manager Drangsholt

That the revised Easement 19 (Tennyson) be approved, and that upon receipt of the revised Easement 19 (Tennyson) signed by Leonard Tennyson, Deborah Tennyson, and Derek Tennyson, that Stacy Lorenz (Chad Strand, P.C.) and Clifford Issendorf be authorized to pay grantors the appraised value of Easement 19 and cash consideration to Leonard Tennyson and Derek Tennyson.

Carried.

The encumbrances report for those parcels identified a utility easement held by All Seasons Water Users Association, Inc. Attorney Delaney (Rinke Noonan Law Firm) and Engineer Malloy (Apex Engineering) worked with counsel representing the All Seasons Water Users Association to investigate and confirm that the Association's utility easement will not be impacted by the assessment drain construction. Delaney prepared a draft settlement agreement to settle the District's claims in the eminent domain litigation. Attorney Van Bruggen reviewed the proposed settlement agreement with the Board and recommended its approval.

Moved Manager Opdahl/Seconded Manager Abernathey

That the Settlement Agreement between the Bottineau County Water Resource District and All Seasons Water Users Association, Inc. regarding the Eminent Domain Civil Actions #05-2024-CV-00156 and 05-2024-CV-00158 shall be approved and Chair Issendorf shall be authorized to sign the Settlement Agreement on behalf of the District.

Carried.

7. OLD BUSINESS

- 7.1 Oak Creek Water Resource District Boundary** Attorney Kale Van Bruggen (Rinke Noonan, Ltd.) reported that the Petition for Boundary change between the Bottineau County Water Resource District and the Oak Creek Water Resource District was on the ND State Water Commission's agenda for its February 13, 2025 meeting. Pat Fridgen, the Commission's Planning & Education Division Director, presented to the Commission on the Petition, reporting that the Joint Petition had satisfied all processes up to this point and because of the Department of Water Resources investigation, the Department recommended moving forward with a public hearing in Bottineau. Fridgen recommended the hearing be held before the Commission's next meeting in April so that the Joint Petition could be on the April agenda. After the presentation, the Commission unanimously approved a motion directing staff to proceed with the public hearing.

If the Department requests recommendations for a meeting location by the Board, the Board would suggest either the Community Room or Commissioner's Room.

8. NEW BUSINESS None.

9. OPEN MIC None.

10. ITEMS FOR DISCUSSION & INFORMATION

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10.1 Attorney/Secretary Kale Van Bruggen (Rinke Noonan Law Firm) offered to report on Senate and House bills of interest and impact to Bottineau County being tracked for the District. The Board discussed the proposed amendment to S.B. 1218 (Economic Analysis) decreasing the threshold from \$5 million to \$750,000.

10.2 Assiniboine River Basin The Province of Manitoba did not match the cost-sharing made available by the State of North Dakota, which may lead to dissolving the Joint River Basin.

11. CLOSE OF MEETING Having completed all business on the noticed agenda, the Chair declared the meeting adjourned at 11:35 a.m.

Minutes approved by the Board on March 17, 2025.

Clifford Issendorf, Chair

Kale R. Van Bruggen, Secretary

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**STATE OF NORTH DAKOTA
BOTTINEAU COUNTY WATER RESOURCE DISTRICT
BOARD OF MANAGERS**

LAPORTE COULEE ASSESSMENT DRAIN ASSESSMENT HEARING
February 17, 2025 at 9:00 a.m. – Community Room, Bottineau County Courthouse
314 5th Street W, Bottineau, North Dakota

MEMBERS OF PUBLIC IN ATTENDANCE

NAME (Please Print)	ADDRESS OR ENTITY REPRESENTED
GENE HERSTEN	709-88 th NW Newburg ND 58762
Kelly, Thompson	8892 Co Rd 20 Newburg ND
Jay Kestis	2136 14 th NW Minot ND