

**Minutes of Meeting
Souris River Joint Water Resource Board
Thursday, April 7, 2022**

A meeting of the board of directors of the Souris River Joint Water Resource District was called to order by Chairman David Ashley at 4:00 p.m. on Thursday, April 7, 2022, in Room 203 of the Minot Auditorium in Minot, North Dakota. Joint Board members in attendance were Clif Issendorf, Dan Jonasson, Tom Klein, and Dan Steinberger. A roster of those attending is attached as **Attachment A**. Chairman David Ashley called the meeting to order and announced that a quorum was present.

The Joint Board discussed the proposed Agenda for the meeting. Agenda Item 19 – Other Business was amended to include Outlaw Creek, Utility Relocation Agreement and Dave Kohlman correspondence.

Tom Klein made a motion to approve the Agenda. Dan Steinberger seconded the motion. The motion passed without opposition.

The draft minutes of the March 3, 2022 regular meeting of the SRJB were discussed. Clif Issendorf requested that the portion of the Minutes regarding Outlaw Creek be shortened to mention that it was a topic of discussion at the March meeting, so that the topic could be discussed in greater detail and portrayed more accurately at the April meeting.

Dan Steinberger made a motion to approve the Minutes from the SRJB regular meeting of March 3, 2022 with the amendment suggested by Clif Issendorf. Tom Klein seconded the motion. The motion passed without opposition.

The revised minutes from the February 3, 2022 special meeting were discussed.

Dan Jonasson made a motion to approve the Minutes from the SRJB special meeting of February 3, 2022. Clif Issendorf seconded the motion. The motion passed without opposition.

The Joint Board discussed the Budget Report included in the April Board Packet. Ryan Ackerman explained the Balance Sheet and Budget Report.

Dan Jonasson moved to approve the Budget Report. Dan Steinberger seconded the motion. The motion passed without opposition.

The Joint Board next discussed the bills set forth in the April Board Packet totaling \$874,604.97. Chairman Ashley opened it up for questions from the Board on each bill being approved.

Tom Klein moved to approve the payment of bills totaling \$874,604.97. Dan Jonasson seconded the motion. A roll call vote was cast. The motion passed without opposition.

Engineering contract amendments were discussed. HDR is proposing a contract amendment (Task Order No. 15) that would allow for the Independent External Review of Phase MI5. The objective of this work is to assess, analyze, interpret, and evaluate design/engineering and construction criteria through a process known as Type II Independent External Peer Review (IEPR) Safety Assurance Review (SAR) for the MREFPP.

Dan Jonasson moved to approve Task Order No. 15 with HDR in an amount not to exceed \$96,907.80 and authorize the chairman to sign the agreement. Clif Issendorf seconded the motion. Dan Steinberger inquired about note number 6 on page 201 of the board packet about whether overtime would be billed at a higher rate. It was explained that it is standard to set forth contingencies but overtime is not expected on the project. A roll call vote was cast. The motion passed without opposition.

The SRJB discussed franchise utility easements with respect to SRT and Xcel Energy. First, with respect to SRT, the SRJB reviewed the Right of Way Easement form from SRT that requires signature from the SRJB. This easement between SRT and the SRJB will allow for the planned relocation of communication lines around the proposed Phase MI-5 Project area. Second, with respect to Xcel Energy, the SRJB reviewed the Right of Way Easement from Xcel Energy that requires signature from the SRJB. This easement between Xcel Energy and the SRJB will allow for the planned relocation of electrical lines around the proposed MI-5 Project area.

Dan Jonasson moved to approve the Franchise Utility Easements with SRT and Xcel Energy and authorize the chairman to sign the agreements. Clif Issendorf seconded the motion. Dan Steinberger inquired whether there is potential for excavation or dirt work in the impacted areas. Ryan Ackerman showed a visual of the utility easement areas and indicated very likely not. A roll call vote was cast. The motion passed without opposition.

Jerry Bents from Houston Engineering provided the Joint Board with an update on Phase MI-1. A Project Status Report from Houston Engineering is contained in the April Board Packet. Work remaining consists of punch list work. A ribbon cutting is scheduled for May 6, 2022.

Jerry Bents updated on Phase MI-4A and Phase MI-4B. A Project Status Report from Houston Engineering is contained in the April Board Packet.

Jerry Bents updated on Phase MI-5. A Project Status Report from Houston Engineering is contained in the April Board Packet. The MI-5 project included the acquisition of a 60' x 200' building for which a contract has been awarded to relocate the building from Railway Avenue to the Public Works Facility. The building will be used to store flood control closures and flood control related equipment. This project phase, identified as MI-5B.2 project will add electrical service, additional overhead doors, a concrete floor, and code-required structural improvements. The summary sheet for the project and engineer's opinion of probable cost (estimated at \$300,000) are included in the Board Packet. They are mostly code-related requirements to bring to current building codes since it was built years ago as an agricultural grade facility.

Tom Klein moved to authorize advertising of the MI-5B building improvements. Dan Jonasson seconded the motion. A roll call vote was cast. The motion passed without opposition.

Jerry Bents updated on Phase MI-6. A Project Status Report from Houston Engineering is contained in the April Board Packet. Jerry Bents showed the drawings of the phase and indicated working through preliminary design. It is expected that the 30% design will be delivered at the end of next week. A public meeting will be held for the residents to see details of the plan. Dan Steinberger questioned whether the design will be a levy instead of a wall. Jerry Bents indicated that in the 30% design there will be a segment of floodwall west of the Anne Street Bridge, then levee up to Third Street (where cross under Third Street will have some floodwall), again levee toward Seventh Street crossing until it no longer fits, then more floodwall which will carry into Roosevelt Park. Levee will be used when there is space.

Ryan Ackerman updated on Phase MI-2C. A Project Status Report from Houston Engineering is contained in the April Board Packet. A bid opening was conducted on March 23, 2022, for Phase MI-2C. Four bids were received. Detailed bid tabulations follow this sheet. The engineer's estimate for the construction of this phase of the project was \$1,942,792. The lowest bid was received from Wagner Construction in the amount of \$2,138,031.75 (approximately 10% higher than the engineer's estimate).

Dan Jonasson moved to accept the low bid of Wagner Construction for Phase MI-2C in the amount of \$2,138,031.75 and authorize the chairman to sign the appropriate agreements on behalf of the SRJB. Clif Issendorf seconded the motion. Dan Jonasson indicated the city council was presented this information and they decided to approve with the recommendation of the SRJB. A roll call vote was cast. The motion passed without opposition.

Jason Westbrook of Barr Engineering provided an update to the Joint Board regarding Phase MI-7. A Project Status Report is contained in the April Board Packet. The 30% design submittal is complete. There are plans for public meetings on Wednesday, May 4, 2022.

Ryan Ackerman provided an update to the Joint Board regarding Phase WC-1. A Project Status Report is contained in the April Board Packet. The SRJB discussed WC-1 Change Order No. 1. The proposed levee alignment in Tierrecita Vallejo affects the property and home of William and Karen Crocker. Through negotiations, it was agreed that their home would be relocated to an acquired vacant lot within Tierrecita Vallejo. A site plan was developed and agreed to with the Crocker's and a relocation bid package was sent out to five contractors. None of the five contractors responded with a quote and subsequently Wagner Construction was asked to provide a cost to complete the relocation. Wagner Construction provided a cost of \$234,273.01 to complete the relocation and a time extension (33 days) to WC-1A to align with the completion dates of WC-1B. Ryan Ackerman advised this is the most cost-effective way to move forward.

Dan Jonasson moved to approve Change Order No. 1 including a contract time extension of 33 days and a contract total increase of \$234,273.01 and upon approval authorize the chairman to sign the agreement. Tom Klein inquired whether this was within 33 feet of the sanitary line. Dan Jonasson confirmed that lift and forcemain is not active anymore. The Board discussed proximity of the house to the CP railway. Tom Klein seconded the motion. A roll call vote was cast. The motion passed without opposition.

Ryan Ackerman discussed the Phase BU-1. Phase BU-1E Burlington of the Mouse Enhanced Flood Protection Project has been designed and is ready for bidding (house relocation on the Steve Brunelle property). Cost estimate is approximately \$200,000 for this project.

Tom Klein moved to approve plans and specifications for Phase BU-1E Burlington of the Mouse River Enhanced Flood Protection Project and authorize advertisement for bids. Dan Steinberger seconded the motion. Dan Steinberger asked whether there will be a levee in place in their back yard. Ryan Ackerman indicated levee is co-located with the road in front of their house. They will be elevated well above the 100-year flood zone. A roll call vote was cast. The motion passed without opposition.

Ryan Ackerman indicated there is no business to discuss with respect to the StARR program.

Troy Borchard from HDR Engineering provided an update regarding Rural Bridges. A Project Status Report from HDR Engineering is contained in the April Board Packet. For the Sawyer location, construction is anticipated to start on Monday on the Anne Street Bridge. On the Velva site, design of the bridge is continuing. Dan Steinberger commented that any changes should be incorporated now rather than later. The Joint Board discussed cost associated with redesign. On Mouse River, SRT cable will be arranged to get into Mouse River Park. Have State Engineer approval on hydraulics. The Joint Board discussed 404 permit requirements and additional time (three months) associated with that.

The Joint Board discussed correspondence regarding Bottineau County replacing two bridges, those being on Willow Creek and on Mouse River. Ryan Ackerman indicated there are concerns due to the hydraulic sensitivity on that part of the river (and other impacts), so those concerns were set forth in the letter contained in the Board Packet.

The Joint Board took note of future meetings and events as set forth in the April Board Packet, including a ribbon cutting on May 6, 2022.

Other Business was discussed by the Joint Board, including a discussion on Outlaw Creek. Clif Issendorf shared his recollection and requested clarification from the engineering team. Ryan Ackerman indicated a public presentation was given back in March of 2019 to the surrounding landowners and directed the SRJB to this slide show presentation that was provided at the time. At that meeting, a couple alternatives were discussed to improve drainage and reduce flood damages immediately upstream of the J. Clark Salyer Refuge. One alternative was to construct a ditch to convey water, but Frank Durbian indicated that US Fish and Wildlife Service and National Wildlife Refuge would not likely support digging a drainage ditch within the refuge. Landowners also expressed concern about this alternative. However, another alternative that was presented was more modest improvements by eliminating high spots of sediment and also selectively constructing improvements in the refuge. Frank Durbian indicated that he would support these modest improvements.

Following the landowner meeting, Jason Westbrook and Ryan Ackerman met with Frank Durbian and Gary Williamson, both of FWS, regarding this proposal that involved modest improvements, and Jason Westbrook and Ryan Ackerman left the meeting with the belief that these improvements would be acceptable. After this time, additional engineering was performed to further this request to FWS. Frank Durbian then moved on to his next post in Wyoming, and the step prior to compatibility determination came back saying that the FWS did not support the modest improvements within the refuge. In addition, the landowners were concerned about maintenance of the ditch. Ultimately, the incompatibility determination from the FWS and the concern expressed by landowners led to the issue being tabled. It was discussed that expenses of approximately \$150,000 have been incurred to pursue benefits in Outlaw Creek to date. Clif Issendorf commented that a decision should be made by the Joint Board since it has now been tabled for three years. Ryan Ackerman indicated that the documentation provided by FWS very clearly communicated that the FWS did not support even these modest improvements. Jason Westbrook commented that every option evaluated required work within the refuge to create benefit upstream; and without support of the refuge, there would be no benefit doing anything upstream or to the South. Jason Westbrook indicated that the total task order was \$200,000, so the remaining \$50,000 was recently reauthorized by the Joint Board to work on Des Lacs. Tom Klein indicated that previous investments have been made by the Ward County Water Resource District into engineering, but Ryan Ackerman indicated that additional work was needed to move that phase forward.

Dan Steinberger inquired about inverse condemnation rights regarding FWS failing to remove this built-up sedimentation and high points, which was backing up water onto upstream private property. Jack Dwyer indicated there is no requirement for the federal government or private landowners to clean out sedimentation in any waterway, and that water resource districts do not have authority to enter lands of others to clean out sedimentation without consent, therefore no such action could be maintained. So regarding failure to clean out, there would be no action.

The SRJB discussed the Utility Relocation Agreement with Otter Tail Power Company. Ryan Ackerman indicated that Otter Tail Power has signed an agreement agreeing to relocate their utility. The terms are that SRJB will pay 50% of the cost of relocating utilities for the Project (whether there is a private easement or not). The terms are nearly identical to Utility Relocation Agreements entered into by SRJB in the past.

Tom Klein moved to approve the Utility Relocation Agreement. Dan Steinberger seconded the motion. A roll call vote was cast. The motion passed without opposition.

The Dave Kohlman correspondence was discussed by the Joint Board. Tom Klein indicated Dave Kohlman had called him and voiced that he does not think actions of the Joint Board have been fair. David Ashley indicated the SRJB received correspondence from Mr. Kohlman as well but due diligence has been done. Ryan Ackerman further indicated conversations have been ongoing with the Minot Park District about this land. Ward County and the Park District have both expressed interest. The Joint Board indicated all future communications should go through Dwyer Law Office.

There being no further business to discuss, the meeting was adjourned.

The next regular meeting of the Joint Board is scheduled for Thursday, May 5, 2022 at 4:00 p.m. in Room 203 of the Minot Auditorium.

A handwritten signature in black ink, appearing to read 'Jack Dwyer', written over a horizontal line.

Jack Dwyer
Legal Counsel