



East Dakota Water Development District
132B Airport Drive
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MINUTES
December 21, 2017

The Board of Directors of the East Dakota Water Development District (District) held a regular meeting on December 21, 2017, at the EDWDD Office, 132B Airport Drive, Brookings. Chairman Jarrett called the meeting to order at 1:05 p.m. The following persons attended:

Directors Present

Mark Anderson
Lois Brown
Gary Duffy
Martin Jarrett
Kay Kassube
Dana Loseke
John Moes
Janelle Weatherly

Others Present

Gregg Greenfield, Greenfield Rotert Law

Staff Present

Kevin Christenson
Jay Gilbertson
Jeremy Hinke

Directors Absent

Mary Ellen Connelly

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Administrative Items

Approval of Agenda - Chairman Jarrett asked to have a discussion of the Director Fees and Expenses policy added to the agenda.

Motion by Weatherly, seconded by Loseke to approve the agenda as so amended. Motion carried unanimously.

Minutes - The Board reviewed the Minutes of the November 16th, 2017, meeting.

Motion by Duffy, seconded by Brown to approve the Minutes as presented. Motion carried unanimously.

Financial Reports - The Board reviewed the November 2017 Financial Report.

Motion by Moes, seconded by Kassube to accept the November 2017 Financial Report. Motion carried unanimously. Chairman Jarrett then asked that the report be placed in the District files.

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Report of Meetings and Conferences - Directors Brown and Moes attended the Ag United for South Dakota Annual Luncheon on December 13th in Sioux Falls.

Directors Brown and Weatherly attended the Big Sioux River Watershed Project Steering Committee meeting in Sioux Falls on December 14th.

Director Loseke attend the Nutrient Research and Education Council meeting in Brookings on December 11th, and the Non-Point Source Task Force in Pierre on December 12th.

Chairman Jarrett attended a meeting of the City of Brandon Water Committee on December 19th.

The Manager commented briefly on the following meetings he attended:

1. November 20 - Brookings. Big Sioux Water Festival Steering Committee.
2. November 21 - Brookings. Brookings County Commission.
3. December 1 - Brookings. Brookings Wildlife Federation.
4. December 12 - Pierre. South Dakota Non-Point Source Task Force.
5. December 14 - Sioux Falls. Big Sioux Watershed Project Steering Committee.
6. December 14 - Flandreau. Moody County Conservation District Board of Supervisors.
7. December 19 - Brandon. City of Brandon Water Committee.

Upcoming Meetings -

1. **January 4th, 2018 - 1:00 p.m.** - various Dakota Digital Network sites. South Dakota Board of Water and Natural Resources.
2. **January 9th - 11th** - Ramkota Convention Centre, Pierre. South Dakota Association of Rural Water Systems (SDARWS) Annual Technical Conference.
3. **January 9th - 12 noon** - State Capitol Building, Pierre. Opening of the 93rd Session of the South Dakota Legislature.
4. **January 10th - 7:00 a.m.** - Speaker' Lobby & President's Lobby, State Capitol, Pierre. Breakfast with the Water Development Districts.
5. **January 10th - 10:00 a.m.** - American Legion Cabin, 520 South Pierre Street, Pierre. January East Dakota WDD Board of Directors meeting.
6. **January 10th - 12:30 p.m.** - American Legion Cabin, 520 South Pierre Street, Pierre. January James River WDD Board of Directors meeting.

Payment Requests - The Manager presented the Board with three (3) payment requests from District-sponsored activities that required Board action. He noted that the requests were in order and consistent with the conditions established by the Board at the time of the awards.

<u>Grant Recipient/Activity</u>	<u>Requested Amount</u>
City of Volga/Waste water system facility plan development	\$ 6,500.00
SDSU/ <i>E. coli</i> & antibiotic resistance in tile water (McDaniel)	\$ 1,243.24
SDSU/Storm Water Runoff Treatment (Hua)	\$ 1,241.87
Total	\$ 8,985.11

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Motion by Kassube, seconded by Duffy to authorize payments totaling \$ 8,985.11 as requested. Motion carried unanimously.

Project Assistance Review - The Manager reviewed the status of several projects that had previously received District cost-share assistance. Each project has been completed and will not be requesting further funds. The Manager asked that the Board rescind the balance of District funds (\$14,554 in total) previously committed to the following projects:

<u>Award Date</u>	<u>Project</u>	<u>Award Amount</u>	<u>Unused Balance</u>
Oct 2015	SDSU CEE In-Lake Phosphorus Study (II)	\$ 6,000	\$ 1,746
Feb 2016	City of Lake Norden WW Facility Plan	\$ 15,550	\$ 50
Mar 2016	City of Lake Preston WW Facility Plan	\$ 15,750	\$ 12,150
Oct 2016	City of Baltic Dam Removal Engineering	\$ 25,000	\$ 608
			\$ 14,554

Motion by Loseke, seconded by Weatherly to rescind the unused balances of the District cost-share assistance grants (\$14,554) as requested. Motion carried unanimously.

2018 Board of Directors Meeting Schedule - The Manager presented the Board with a DRAFT meeting schedule for calendar year 2018. He noted that it was consistent with District By-Laws, which call for the default monthly meeting to be held on the third Thursday. The lone exception is the January meeting, which will be held in Pierre in conjunction with the SDARWS Annual Technical Conference and the opening of the 93rd Session of the South Dakota Legislature.

<u>Date</u>	<u>Location</u>	<u>Start</u>	<u>Meeting Site</u>
January 10	Pierre	10:00 a.m.	American Legion Cabin
February 15	Brookings	9:00 a.m.	EDWDD Office
March 15	Brookings	9:00 a.m.	EDWDD Office
April 19	Egan	9:30 a.m.	Big Sioux CWS Office
May 17	Brookings	9:00 a.m.	EDWDD Office
June 21	Brookings	9:00 a.m.	EDWDD Office
July 19	Brookings	9:00 a.m.	EDWDD Office
August 16	Brookings	9:00 a.m.	EDWDD Office
September 20	Brookings	9:00 a.m.	EDWDD Office
October 18	Milbank	9:30 a.m.	Community Center
November 15	Sioux Falls	9:30 a.m.	Water Treatment Plant
December 20	Brookings	1:00 p.m.	EDWDD Office

Motion by Moes, seconded by Brown to adopt the proposed meeting schedule for 2018. Motion carried unanimously.

2018 Director Vacancies & Elections - The manager noted that at the conclusion of calendar year 2018, the terms of office for Directors Moes (District 1), Weatherly (3), Anderson (5), Loseke (7) and Brown (9) will expire. Vacancies will be filled as part of the 2018 General Election cycle. Nominating

petitions may be circulated starting on January 1st, 2018, with the petitions to be turned in the South Dakota Secretary of State's Office no later than 5:00 p.m. on March 28th, 2018. If three or more valid petitions are submitted, a runoff election will be held on June 5th as part of the Primary Election, with the top two vote recipients going on to the General Election. If just two valid petitions are filed, the candidates will be placed on the General Election ballot for the election to be held on November 6th, 2018. If only one valid petition is filed, then that person will become the director for the given area starting on January 1, 2019.

Nominating petitions are available from the District Office, the relevant County Auditor's Office and the Secretary of State's Office. The Manager will prepare petition packets and distribute them to the County Auditors Office's after January 1st, 2018. He will also send copies to the Directors whose terms will expire, and to any person requesting the material.

Water Quality Data Liability Discussion

The Manager noted that a recurring issue of general concern of the Board has been the potential liability that the District might be subject to resulting from water quality sampling that the District has been conducting for many years. The basic scenario would involve someone who has been 'harmed' in some fashion through contact with a water body (river, lake or stream) for which the District possessed information indicating a potential health threat existed. In response to Board direction, the Manager contacted District legal counsel, Gregg Greenfield (Greenfield Rotert Law of Sioux Falls), in late September and asked that he review the matter and provide an opinion. A written response was received earlier in December.

Mr. Greenfield was present to discuss the issue. He noted that his opinion is premised on the following question, as presented in the Manager's letter of September 26, 2017: *When a Water Development District obtains a test result showing that a public water body exceeds acceptable levels for an assigned beneficial use, what is the Board's liability if the test results are not actively announced and someone gets sick from the water?* He stated that it is his opinion that while the District may have a duty to warn, liability exposure is limited. It is likely that the Board falls within the public duty doctrine, can disclaim such liability in its contracts, and is otherwise immune from suit. Liability is further limited because there is a liability insurance policy covering the District, its board members, and its employees. Individual liability is not limited by South Dakota's Good Samaritan statute.

Mr. Greenfield discussed his findings at length with the Board. In conclusion, he recommended that the District amend its existing testing contracts and include in all new testing contracts language stating that the duty to report exceedances is disclaimed by the District, that the duty to report remains with the contracting authority, and that the contracting authority shall indemnify the District for any and all liability, claims, actions, costs, and expenses arising out of, or resulting from, water contamination and the failure to report or disclose the same.

The Manager noted that the District currently has multiple contracts for the collection of water quality samples with the South Dakota Department of Environment and Natural Resources, including one for which there is a pending amendment. It was the consensus of the Board that the Manager should pursue the recommendations presented by Mr. Greenfield with regard to all active and future contracts.

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Future Use Water Permit No. 3574-3

On February 8th, 1977, the East Dakota Conservancy Sub-District (predecessor to the East Dakota Water Development District) was granted a Future Use Water Permit (Number 3574-3) for up to 400,000 acre-feet per year from the Missouri River. The water was reserved for use by any and all public water systems within the Sub-District and could be diverted from anywhere on the east side of the river or its impoundments in South Dakota. In 2003, the District relinquished 255,000 acre-feet of the reserved water and transferred 1,000 acre-feet to the Clay Rural Water System. It retained 144,000 acre-feet of water. This amount represents roughly twice the total projected annual use by all District public water supplies, in addition to what the Lewis and Clark Regional Water System would use at full capacity. In 2011, the District requested that the permit be continued, which was approved by the South Dakota Water Management Board in March 2011.

The Manager reported that the permit is once again up for review by the Water Management Board, and the SD DENR Water Rights Program has asked that the Board consider what it would like to do with Future Use Water Permit Number 3574-3. Options could include 1) retain the full amount, 2) retain a portion of the amount, 3) relinquish the permit, or 4) transfer a portion or portions of the reserved water to other entities that might wish to obtain such rights. The cost of the permit would be \$12,055, which is for a 7-year period. A hearing on any proposed changes to the District's permit would likely be held by the Water Management Board in March 2018.

Motion by Duffy, seconded by Moes to notify the Water Rights Program that the District is interested in retaining Future Use Water Permit Number 3574-3 for 144,000 acre-feet per year of Missouri River water, and to direct the Manager to complete any necessary paperwork and other requirements for the seven-year review of the permit by the State Water Management Board. Motion carried unanimously. The Manager indicated that he would notify Water Rights of the Board decision and find out when the request would be presented to the Water Management Board

Director Fees and Expenses Policy

Chairman Jarrett led a discussion of the current payment structure for Directors that attend meetings or events on behalf of the District beyond the regular monthly Board meeting. It was noted that many directors attend meetings from time-to-time at which information and knowledge of both general and specific District interest is presented. It was the consensus of the Directors that attending such meetings was of particular benefit to the individual Directors, and to the Board and District as a whole. However, it was noted that under the existing compensation rates found in the Policy & Procedures manual, a Director attending such a meeting was likely to incur a financial penalty.

The Manager reviewed the existing policy on Director Fees and Expenses, noting that the policy had not been adjusted for many years. The Board concluded that while the compensation rates were not intended to provide a substantial income, they should at least reflect the fact that lost income as the result of meeting attendance might impact willingness to participate. The Directors discussed several amendments to the existing policy language.

Motion by Flemming, seconded by Johnson to adopt the proposed changes to the DIRECTOR FEES AND EXPENSES section (below in *italics*) of the District Policies and Procedures Manual. Changes to existing policy shown below, with changes highlighted in **bold text**. Deletions are shown as ~~struck out~~, with additions underlined. Motion carried unanimously.

DIRECTORS FEES AND EXPENSES

*It is the responsibility of members of the District Board of Directors to attend all regular and special board meetings. Each director attending the regular Board of Directors meetings, or special meetings as called by the Chair, shall receive a director's fee of \$150.00. The Board Chair shall receive \$175 for all such meetings. Directors attending standing committees to which they have been appointed shall receive director's fees at the rate of \$150.00 for meetings lasting over ~~6~~ **three (3)** hours (including travel time), and \$100.00 for meetings ~~under 6~~ **up to three (3)** hours in duration (including travel time).*

*~~The Board of~~ Directors may ~~elect delegates and alternates to~~ represent the District at meetings of other organizations that the District may belong to as a member or have interest in. Any director ~~so authorized to attend the above described~~ **attending such a** meetings shall receive director's fees at the rate of ~~\$100.00~~ **\$150.00** for meetings lasting over ~~6~~ **three (3)** hours (including travel time), and ~~\$75.00~~ **100.00** for meetings ~~under 6~~ **up to three (3)** hours in duration (including travel time).*

Directors travel vouchers shall be completed monthly and turned in to the manager at the regular meeting.

In case of apparent inconsistencies with this board operating policy, the manager shall first seek clarifications from the individual director involved. The manager shall report to the board chairman any unresolved inconsistencies within the provision of this policy.

Adjournment

There being no further District business, Chairman Jarrett declared the meeting adjourned at 3:20 p.m.

John Moes, Secretary