



**East Dakota Water Development District**  
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**MINUTES**  
**July 19<sup>th</sup>, 2019**

The Board of Directors of the East Dakota Water Development District (EDWDD) held a regular meeting on July 18<sup>th</sup>, 2019, at the District Office in Brookings. Chairman Jarrett called the meeting to order at 9:05 a.m. The following persons attended:

**Directors Present**

Mark Anderson  
Jeff Barth  
Mary Ellen Connelly  
Gary Duffy  
Spencer Hawley  
Martin Jarrett  
Kay Kassube  
John Moes

**Directors Absent**

Dana Loseke

**Others Present**

- none -

**Staff Present**

Kevin Christenson  
Jay Gilbertson  
Jeremy Hinke  
Deb Springman

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**Administrative Items**

Approval of Agenda - The Manager asked to have a discussion of Expert Testimony by District Staff added to the Agenda. Chairman Jarrett asked to have a discussion of the Agropur cheese plant discharge permit violation and a chemical spill in the Big Sioux River near Estelline added as well.

**Motion** by Barth, seconded by Kassube to approve the agenda with the proposed additions added. Motion carried unanimously.

Minutes - The Board reviewed the Minutes of the June 20<sup>th</sup>, 2019, meeting. A typographical error was noted near the bottom of the fourth page of the DRAFT Minutes (Manger, which should be Manager).

**Motion** by Duffy, seconded by Anderson to approve the Minutes of the June 20<sup>th</sup>, 2019, meeting as so amended. Motion carried unanimously.

Financial Reports - The Board reviewed the June 2019 Financial Reports.

**Motion** by Moes, seconded by Kassube to accept the June 2019 Financial Reports. Motion carried unanimously. Chairman Jarrett asked that the report be placed in the District files.

The Manager requested Board approval for a change in the method by which the annual fiscal audit was conducted. He noted that during the report on the 2017 District fiscal audit, it had been suggested that conducting the audit on a cash basis, instead of an accrual basis, would reduce the time, effort and costs involved. The change is acceptable to the South Dakota Department of Legislative Audit.

**Motion** by Kassube, seconded by Hawley to change the basis of accounting for the 2018, and subsequent, government-wide audit from the accrual basis to the cash basis, and for the 2019 (and subsequent) fund audit from a modified accrual basis to a cash basis. Motion carried unanimously.

Report of Meetings and Conferences - Director Connelly reported on the Friends of the Big Sioux River meeting on July 1<sup>st</sup> in Sioux Falls.

Director Moes reported on the July 17<sup>th</sup> meeting of the Lake Pelican Water Project District in Watertown.

The Manager briefly commented on the following meetings and activities:

- June 24<sup>th</sup> - Hamlin County Board of Adjustment, Hayti. Reconsideration of the Riverview/Oxford dairy conditional use permit.
- June 25<sup>th</sup> - Big Sioux River Watershed Project (BSRWP) Steering Committee, Sioux Falls, and Lincoln County Master Drainage Plan Steering Committee, Harrisburg.
- June 27<sup>th</sup> - Vermillion Basin WDD expansion legislation discussions, Pierre (Met with Jason Simmins, Policy Advisor to Governor Noem); SD Board of Water & Natural Resources, Pierre.
- July 8<sup>th</sup> - South Dakota Association of Rural Water Systems (SDARWS) Quality On Tap magazine editorial board, Madison.
- July 9<sup>th</sup> - USEPA Region 8 Administrator tour (July 29<sup>th</sup> - August 1<sup>st</sup>) preview, Minnehaha County.
- July 10<sup>th</sup> - Aquatic invasive species discussions with SD GF&P staff, Brookings; Governor's Agricultural Summit, Sioux Falls.
- July 11<sup>th</sup> - James River WDD Board of Directors, Yankton; Moody Conservation District Board of Supervisors, Flandreau.
- July 16<sup>th</sup> - City of Brandon Water Development Committee.

Upcoming Meetings -

1. **July 29<sup>th</sup> thru August 1<sup>st</sup>** - various locations within the Big Sioux River basin. Tour and discussions with the USEPA Regional Administrator.
2. **August 6<sup>th</sup> - 2:00 p.m.** - Location TBD. EDWDD Personnel Committee meeting.
3. **August 7<sup>th</sup> - 9:00 a.m.** - Big Sioux Community Water System Office, Egan. EDWDD Finance Committee meeting.
4. **August 15<sup>th</sup> - 9:00 a.m.** - EDWDD Office, Brookings. August EDWDD Board of Directors meeting.

Payment Requests - The Manager presented one (1) payment request on behalf of a District-sponsored activity that required Board action. He noted that the request was in order and consistent with provisions set by the Board at the time of award. He requested authority to make payment on behalf of the following:

<u>Grant Recipient/Activity</u>	<u>Requested Amount</u>
SDSU/Alternate Agricultural Residue in Bioreactors (Hua)	\$ 104.20
<b>Total</b>	<b>\$ 104.20</b>

**Motion** by Duffy, seconded by Moes to authorize payment of \$104.20 as requested. Motion carried unanimously.

Schedule Meetings of Personnel and Finance Committees - The Manager noted that meetings of the Personnel and Finance Committees needed to be scheduled in advance of the August Board meeting. The Personnel Committee, made up of Directors Anderson (Chair), Barth, Loseke & Moes, tentatively agreed to meet on August 6<sup>th</sup> at 2:00 p.m. at a to-be-determined location in Sioux Falls. They will conduct the Manager's annual performance review, and develop recommendations for any adjustments to District staff compensation. The Finance Committee, made up of Connelly, Duffy, Hawley & Kassube (Chair), tentatively agreed to meet On August 7<sup>th</sup> at 9:00 a.m. at the offices of the Big Sioux Community Water System at Egan, to work on a DRAFT 2020 budget. The recommendations of both committees will be formally presented to the full Board at the August Board meeting. He noted that the formal budget adoption will not be considered until the September Board meeting, following a public hearing.

Expert Testimony by District Staff - The Manager reported that he had been approached by a private attorney about serving as a consultant and/or witness on topics on which he has recognized expertise. He discussed the matter with Chairman Jarrett, and they concluded that seeking guidance from the District's legal counsel, Gregg Greenfield, would be appropriate. The Manager distributed a response from Mr. Greenfield.

Mr. Greenfield counseled the Board to move cautiously on such an issue. He noted that a representative of the District, any positions supported by the Manager would need to be consistent with the overall mission and policies of the entity. Further, in contested cases, full disclosure of all relevant facts necessary to make a sound interpretation may not always take place, and as such the Manager might offer comments that would later be contradicted by information he did not have access to. A method of compensation would need to be resolved. Does the effort fall under normal job duties and responsibilities, or would it require additional effort? Would the Manager be paid directly, or would the District charge for services provided? Finally, the District should likely consider obtaining or expanding its existing liability coverage for services provided.

The Manager noted that he had several of the same concerns as those expressed by Mr. Greenfield, and he was hesitant to engage in such activities. He noted that part of his value to the District was certainly the experience and expertise, but also the appearance of impartiality. Should he become involved in a contested case on behalf of one party over another, that perception would be lost, particularly if compensation were involved.

It was the consensus of the Board that it would be inappropriate for the District in general, and the Manager in particular, to provide consultant and/or expert witness services for parties in a contested legal case. The District should remain separate as a source of information and counsel to all parties, without any appearance of bias or favoritism. If requested, the Manager can respond to any and all inquiries from persons or parties seeking information, and if so compelled, respond to legal summons.

### **Project Assistance Request(s)**

EDWDD Riparian Buffer Support - The Manager reported on a request from the Hamlin Conservation District with regard to a parcel of ground along the Lake Poinsett outlet channel that had received a combination of USDA Conservation Reserve Program (CRP) and Riparian Area Management (RAM) support in 2008. The RAM support was provided through the North-Central Big Sioux River Watershed Project, sponsored by East Dakota. The agreements expired late in 2018, and the landowner is interested in re-enrolling in both CRP and RAM. However, the watershed project is no longer active, and therefore RAM support is missing. The Manager noted that there have from time-to-time been other, similar situations arise where a prior funding source was absent, or when a particular high-value parcel of land was available for riparian buffer establishment, but for which funds were unavailable under existing programs.

The Manager proposed establishing a pool of funds to be used to support riparian buffer protection agreements. The funds would be used in limited circumstances for properties that were of high value, but which did not otherwise qualify for existing programs. Further, they would only be considered after all other possible sources of support had been explored. He suggested setting aside \$25,000 in District project assistance funds for the effort. Finally, he proposed that the pool of funds be considered a unique and one-time occurrence, and that continuation of the support beyond the exhaustion of the original funds should not be inferred.

**Motion** by Barth, seconded by Moes to allocate up to \$25,000 of District project assistance funds to create a Riparian Buffer Support pool of funds as requested, subject to the limitations articulated by the Manager. Motion carried unanimously.

### **District Program Update(s)**

Agropur Surface Water Discharge Permit - The Manager reported that the Agropur cheese plant in Lake Norden was under investigation by the Surface Water Quality Program of the South Dakota Department of Environment and Natural Resources (DENR) for violations of their surface water discharge permit. Discharge from the facility exceeded permit limitations for nitrate, ammonia, conductivity and alkalinity. The facility began discharge into the Big Sioux River earlier this year. Chairman Jarrett noted that in its original DRAFT permit, DENR had not placed any limitations on the amount of nitrate allowable in the facilities discharge. In response to concerns raised by the District and other stakeholders along the river, a nitrate standard (30-day average - 18 milligrams per liter (mg/L); daily limit - 31.5 mg/L) was included in the final permit. The Manager noted that the permit limits were considered easily attainable by the operators, but that the violations suggest that the concerns expressed about potential impairments to the river were justified. Given that the river has been at or above flood stage during the time(s) of the discharge, the actual impact to the river would have been minimal. However, it was the consensus of the Board that adherence to permit limitations was ultimately the best way to protect water quality.

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Ag Chemical Spill Adjacent to the Big Sioux River - On June 26<sup>th</sup>, a truck carrying agricultural chemicals turned over adjacent to the Big Sioux River a few miles south of Estelline. Approximately 900 gallons were discharged, although local, state and federal responders managed to contain some of the discharged material. According to the US Environmental Protection Agency, tests were run both upriver and downriver from the accident site, and it is believed that high water flows in the river allowed the chemicals to fully dissipate in the water. No humans, animals or fish were known to have been hurt by the chemical release. Downstream testing was also conducted by the City of Sioux Falls, and no impacts of the spill were detected.

### **Adjournment**

There being no additional District business, Chairman Jarrett declared the meeting adjourned at 12:15 p.m.

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John Moes, Secretary

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