

RICHLAND COUNTY WATER RESOURCE DISTRICT
Richland County Courthouse, Wahpeton, ND
December 8, 2015

The Richland County Water Resource Board (RCWRB) met December 8, 2015 at 8:00 AM at the Richland County Courthouse, Wahpeton, North Dakota.

THOSE PRESENT: Managers Arv Burvee, Gary Friskop, James Haugen, Don Moffet, Robert Rostad, Engineering Technician Justin Johnson, and Secretary-Treasurer Monica Zentgraf.

Minutes

It was moved by Mgr. Rostad and seconded by Mgr. Friskop to approve the minutes of the November 24, 2015 meeting as presented. The motion carried unanimously.

Financial Matters

A motion was made by Mgr. Haugen and seconded by Mgr. Friskop to accept the November 2015 financial reports as presented. The motion carried unanimously.

Mail

1. Bank of New York Mellon- \$3,609,224.61 pledged securities.
2. Red River Retention Authority- Minutes of the June 17, 2015 meeting.
3. Interstate Engineering- Report relative to John Nagel's complaint against Steve Mauch for work he did in Sections 30 and 31, Antelope Township. (Nagel Obj #15-194/Mauch Appl #15-169).

Attorney Sean Fredricks and Engineer Mike Bassingthwaite met with the Board at this time. The following matters were brought forward:

John Nagel Drainage Complaint Filed Against Steve Mauch

The Board next considered John Nagel's DRAINAGE COMPLAINT against Steve Mauch, dated November 16, 2015. Under the Complaint, Mr. Nagel alleges Mr. Mauch constructed illegal drainage in the Southwest Quarter of Section 30 in Antelope Township. More specifically, Mr. Nagel alleges Mr. Mauch constructed a ditch or ditch improvements on the Mauch property on the Southwest Quarter of Section 30; Mr. Nagel further alleges Mr. Mauch deepened or widened the township road ditches along the township road on Section 30/31 section line. In addition, Mr. Mauch allegedly installed a culvert through the township road between the Southwest Quarter of Section 30 and the Northwest Quarter of Section 31. Finally, Mr. Nagel alleges Mr. Mauch made a cut through the bank of abandoned "Homestead Drain" on the Northwest Quarter of Section 31 to permit drainage from the Southwest Quarter of Section 30 to enter into the abandoned Homestead Drain.

According to records on file with the Richland County Recorder's office, MC LLLP, a North Dakota limited liability partnership, owns the Southwest Quarter of Section 30 of Antelope Township. According to records on file with the North Dakota Secretary of State's office, Steve Mauch is one of the managing partners of MC LLLP. Further, John Nagel is the record owner of the North Half of the Northwest Quarter of Section 31 of Antelope Township.

The Board previously directed Mike Bassingthwaite, the Board's engineer, to investigate the Complaint, including a calculation of the watershed area impacted. Mr. Bassingthwaite prepared a report dated November 17, 2015; a copy of Mr. Bassingthwaite's report is on file with the Board. Under his report, Mr. Bassingthwaite noted his findings that the drainage area of the Southwest Quarter of Section 30 impacted by the alleged drainage exceeds 80 acres, the permitting threshold under N.D. Cent. Code § 61-32-03. In fact, Mr. Bassingthwaite found that over half of the Southwest Quarter drains to the culvert on the south boundary of the Southwest Quarter of Section 30. As a result of the new outlet, drainage from the Southwest Quarter of Section 30 now flows south instead of flowing east the way it normally would flow under normal circumstances, prior to the construction of the ditching improvements and installation of the culvert.

In addition, Mr. Bassingthwaite found the field ditches in the Southwest Quarter of Section 30 may have been in existence prior to any new work constructed by Mr. Mauch; however,

Mr. Bassingthwaite found visual evidence of widening and possibly deepening of these ditches, including the north-to-south field drain along the east side of the Southwest Quarter of Section 30. Further, Mr. Bassingthwaite found evidence of additional grading within the township road ditches on the north and south sides of the township road between the Southwest Quarter of Section 30 and the Northwest Quarter of Section 31. This additional grading evidently accommodates the new culvert installed through the township road. Further, Mr. Bassingthwaite found evidence of a cut through a ridge between the township road ditch along the north boundary of the Northwest Quarter of Section 31 and the old Homestead Drain; the purpose of this cut through the ridge is evidently to allow drainage to flow from the Southwest Quarter of Section 30 through the new culvert and ultimately into the Homestead Drain. Ultimately, Mr. Bassingthwaite concluded the field ditch improvements in the Southwest Quarter of Section 30, the township road ditch improvements on both sides of the section line road between the Southwest Quarter of Section 30 and the Northwest Quarter of Section 31, and the cut into the ridge to allow drainage to enter the Homestead Drain were all beyond maintenance of existing ditches, and were activities that required a permit under Section 61-32-03. Mr. Bassingthwaite indicated these improvements were likely constructed in 2015 based on his observations, including the fresh cuts.

Under North Dakota law, “[a] permit is required before any person may construct a drain for the purpose of draining waters from a pond, slough, lake, or sheetwater . . . having a watershed of 80 acres [32.37 hectares] or more.” Under Sections 89-02-01-05 and 89-02-01-02(7) of the North Dakota Administrative Code, “maintenance” of existing drains or ditches does *not* require a permit; “maintenance” means removal of silt and vegetation from a drain, and does not include deepening or widening a ditch or drain. Mr. Mauch’s improvements went beyond the definition of “maintenance.”

The North Dakota Supreme Court has held on multiple occasions that Water Resource Districts do not have jurisdiction regarding culverts installed through township roads, in the absence of a legal assessment drain. In this instance, the Board does not have any jurisdiction regarding the culvert the Township allowed Mr. Mauch to install through its township road. However, to the extent any ditching or drainage activities impact a watershed of 80 acres or more and include construction of new drainage or improvements to existing drains, and not mere maintenance, that type of activity does require a permit under North Dakota law. In this instance, Mr. Mauch appears to have constructed ditch and drain improvements beyond mere maintenance, activities that required a permit under Section 61-32-03. These drains and ditch improvements drain “sheetwater,” as that term is defined under Section 61-32-03. More specifically, the drain improvements drain shallow water that floods land not normally subject to standing water. With that in mind, the Board does have jurisdiction over the drainage constructed by Mr. Mauch as a result of the Complaint filed in accordance with N.D. Cent. Code § 61-32-07 by Mr. Nagel.

The Board concluded Mr. Mauch did, in fact, construct unpermitted drain and ditch improvements regarding his field ditch improvements in the Southwest Quarter of Section 30; township road ditch improvements along the south boundary of the Southwest Quarter of Section 30 and the north boundary of the Northwest Quarter of Section 31; and the cut in the ridge between the township road right of way and the Homestead Drain on the Northwest Quarter of Section 31. The Board further concluded these drain and ditch improvements drain “sheetwater” from a drainage area and watershed more than 80 acres. Mr. Mauch did not first obtain a drainage permit to construct these drainage improvements; therefore, the Board had no choice but to order the drain and ditch improvements closed or filled, as required under Section 61-32-07. The Board noted the closure or filling should ultimately return the ditches to their previous condition prior to the work recently constructed.

The Board discussed the possibility of allowing Mr. Mauch the option to pursue a State surface drainage permit under Section 61-32-03, after the fact. In the event Mr. Mauch does pursue a permit, the Board would consider allowing Mr. Mauch to install temporary ditch blocks or other temporary measures while he pursues a permit. However, Mr. Mauch would have to file an application for a permit quickly.

The Board discussed the timing of Mr. Mauch’s closure or filling of the illegal or unpermitted drainage. With regard to the cut in the berm into the Homestead Drain, the Board noted Mr. Mauch could repair the bank and that weather conditions would not prevent the remedial work to the bank. With regard to the ditch and drain improvements, however, the

Board noted weather conditions may inhibit Mr. Mauch's ability to close or fill those improvements. Ultimately, the Board concluded a May 1, 2016 deadline would afford Mr. Mauch sufficient opportunity to return the ditches and drains to their previous condition. With regard to the culvert through the township road, although the Board does not have jurisdiction over that culvert, the Board will recommend to the Antelope Township Board that they install, or require Mr. Mauch to install, a cap on the culvert.

Manager Haugen, seconded by Manager Friskop, moved to declare the drainage and ditch improvements constructed by Mr. Mauch as unpermitted and illegal and to order Mr. Mauch to close or fill the drain and ditch improvements by May 1, 2016, as required under North Dakota law, and to repair the cut in the bank regarding the Homestead Drain by 5:00 p.m. on Monday, January 11, 2016. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to send the decision to the parties of record, with a copy to the Township. The Board indicated the notice should clarify that "closing or filling" the ditch and drain improvements should specify Mr. Mauch has to return all drains and ditches to their previous condition, prior to the improvements he recently constructed. (Nagel Obj #15-194/Mauch Appl #15-169)

80 Acre Watershed Determinations

Mr. Fredricks was asked to clarify whether or not drain tile is to be taken into consideration when determining if a drainage project meets the 80 acre watershed threshold for a State permit. Mr. Fredricks advised that drain tile is included.

Statewide Significant Subsurface Drainage Applications

Mr. Fredricks explained the North Dakota state law pertaining to Water Resource Districts need to determine if drain tile projects are of statewide significance. Mr. Fredricks advised that any application determined to be of statewide significance must be referred to the State Engineer for consideration and approval. Mr. Fredricks also discussed the process with the Managers and Office Staff.

Adjournment

The time being 10:30 AM, Chr. Moffet adjourned the meeting for the scheduled Richland-Sargent Joint Water Resource Board meeting.

Respectfully submitted,

Monica Zentgraf
Secretary

Don Moffet
Chairman of the Board