RICHLAND COUNTY WATER RESOURCE DISTRICT Richland County Courthouse, Wahpeton, ND February 24, 2015

The Richland County Water Resource Board (RCWRB) met February 24, 2015 at 9:00 AM at the Richland County Courthouse, Wahpeton, North Dakota.

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

Minutes

It was moved by Mgr. Burvee and seconded by Mgr. Haugen to approve the minutes of the February 10, 2015 meeting as presented. The motion carried unanimously.

Vouchers

A motion was made by Mgr. Haugen and seconded by Mgr. Burvee to approve Vouchers #16769 through #16786 and the electronic funds transfer for the IRS payment. The motion carried unanimously.

Mail

- 1. North Dakota Water Users- Legislative Reports #7 and #8.
- 2. Richland County Commission- January 5, 2015 meeting minutes.
- 3. Red River Retention Authority- January 13, 2015 meeting minutes.
- 4. NRCS- Information for February 26, 2015 meeting.
- 5. Interstate Engineering- \$25,000 cost estimate to study and model Proj #4(#32 and #33). A meeting will be scheduled with Engineer Bassingthwaite to discuss the matter further. (Kielb Appl #11-232)

Proj #2 Improvement Project and Excess Levy

Manager Burvee introduced the following resolution and moved its adoption:

RESOLUTION DETERMINING THAT INSUFFICIENT VOTES FILED AGAINST THE RICHLAND COUNTY DRAIN NO. 2 IMPROVEMENT PROJECT AND EXCESS LEVY

WHEREAS, the Board of Managers of the Richland County Water Resource District, after proper publication of the Notice of Hearing, and proper mailing of the Notice of Hearing, as required by law, conducted a hearing regarding the Richland County Drain No. 2 Improvement Project and Excess Levy Vote.

WHEREAS, 30 days have elapsed since the hearing, which the Board held on January 19, 2015, in Colfax, North Dakota.

WHEREAS, the Secretary-Treasurer of the Richland County Water Resource District filed an Affidavit establishing that insufficient votes were filed against the RICHLAND COUNTY DRAIN NO. 2 IMPROVEMENT PROJECT AND EXCESS LEVY, as determined and required by North Dakota law; that the Secretary-Treasurer's tabulation of votes included all votes filed within 30 days of the date of the hearing; and that the majority of the votes filed were in favor of the project.

NOW THEREFORE, BE IT RESOLVED that the Richland County Water Resource District concludes that insufficient votes against the RICHLAND COUNTY DRAIN NO. 2 IMPROVEMENT PROJECT AND EXCESS LEVY were filed within the time and manner provided and required by North Dakota law against the RICHLAND COUNTY DRAIN NO. 2 IMPROVEMENT PROJECT AND EXCESS LEVY; and that the Richland County Water Resource District is authorized to proceed with the RICHLAND COUNTY DRAIN NO. 2 IMPROVEMENT PROJECT AND EXCESS LEVY in accordance with North Dakota law.

	APPROVED:
	Robert L. Rostad, Vice Chairman
ATTEST:	
Monica Zentgraf	

The motion for the adoption of the foregoing Resolution was duly seconded by Manager Haugen. On roll call vote the following Managers voted aye: Haugen, Burvee, and Rostad. The following Managers voted nay: None. The following Managers were absent: Friskop and Moffet. Upon roll call vote, the motion carried unanimously, and the Resolution was duly adopted.

Date Approved: February 24, 2015

Secretary-Treasurer

Manager Haugen introduced the following resolution and moved its adoption:

RESOLUTION AUTHORIZING ENTERING OF ORDER TO EXTEND RICHLAND COUNTY DRAIN NO. 2

WHEREAS, the Richland County Water Resource District, in accordance with North Dakota law, conducted a hearing regarding the RICHLAND COUNTY DRAIN NO. 2

IMPROVEMENT PROJECT AND EXCESS LEVY VOTE, and determined that insufficient votes were filed against the project and excess levy under North Dakota law.

WHEREAS, the majority of votes filed under North Dakota law were filed in favor of the Richland County Drain No. 2 Improvement Project and Excess Levy.

WHEREAS, in accordance with North Dakota law, if the Board finds that the number of votes filed against a project and excess levy is less than 50 percent of the votes filed, the Board may issue an Order establishing the proposed project.

WHEREAS, after entering an Order establishing the project and excess levy, the water resource district may proceed with a contract to construct the project and may levy assessments against the benefitting properties for the costs.

NOW THEREFORE, BE IT RESOLVED that the Board of Managers of the Richland County Water Resource District is authorized to execute the Order to Extend Richland County Drain No. 2 attached to this Resolution, and the District will publish notice of the Order in *The Daily News*, the official county newspaper of Richland County.

	APPROVED:
	Robert L. Rostad, Vice Chairman
ATTEST:	
Monica Zentgraf Secretary-Treasurer	

The motion for the adoption of the foregoing Resolution was duly seconded by Manager Burvee. On roll call vote the following Managers voted aye: Burvee, Rostad, and Haugen. The following Managers voted nay: None. The following Managers were absent: Friskop and Moffet. Upon roll call vote, the motion carried unanimously, and the Resolution was duly adopted.

Date Approved: February 24, 2015

EXHIBIT A

ORDER TO EXTEND RICHLAND COUNTY DRAIN NO. 2

WHEREAS, the Richland County Water Resource District (the "District") is a North Dakota water resource district and political subdivision under N.D. Cent. Code Chapter 61-16.1.

WHEREAS, the District owns, operates, manages, and maintains Richland County Drain No. 2 in certain portions of Richland County, North Dakota ("Drain 2"), as a legal assessment drain and "project" in accordance with Chapter 61-16.1 of the North Dakota Century Code.

WHEREAS, the District administers an assessment district comprised of the properties within the Drain 2 watershed that benefit from Drain 2 (the "Drain 2 Assessment District"); the District levies an annual "maintenance levy" against all property in the Drain 2 Assessment District for purposes of funding and financing the operation and maintenance of Drain 2 (the "Drain 2 Assessment District").

WHEREAS, the District previously concluded improvements to the existing Drain 2 channel are necessary to address erosion and slope stability issues; in addition, the District concluded an extension of Drain 2 is necessary to address flooding issues north and east of the Drain 2 channel where flood waters currently breakout of the watershed.

WHEREAS, the District examined a proposed project to reconstruct, extend, and improve Drain 2, a project the District refers to as the RICHLAND COUNTY DRAIN NO. 2 IMPROVEMENT PROJECT (the "Project"); the Project will include the following improvements:

The Project will consist of the reconstruction of the existing Drain 2 channel in Section 26, South Eagle Township and Sections 27, 28, and the west half of Section 30 of East Colfax Township, as well as the extension of Drain 2 along the east side of the Southeast Quarter of Section 24 of West Colfax Township. The Project will include surveys; culvert and channel analyses and design; reconstruction of the existing Drain 2 channel with wider channel bottoms (maximum bottom width of 18 feet); side slope improvements (flattening side slopes to 4:1); deepening of the existing channel in some areas to accommodate drainage from the western portion of the Drain 2 watershed; shifting the centerline of Drain 2 away from existing roadways to accommodate side slope improvements; installation of riprap for erosion control; replacement of two bridge structures to improve drain capacity, both in the vicinity of Interstate-29; township road crossing improvements, including replacement of two road crossings with concrete box culverts; installation of inlet culverts with flap gates to accommodate adjacent field drainage; the purchase of permanent and temporary right of way to accommodate the construction, operation, maintenance, and ownership of Drain 2 and the Project; utility relocations; and other items as necessary to accommodate the construction, operation, maintenance, and ownership of Drain 2 and the Project.

WHEREAS, the District concluded the Project would provide more effective and efficient drainage through Drain 2; more capacity through Drain 2; more control over the Drain 2 watershed; enhanced breakout protection for properties in the Drain 2 watershed; and enhanced drainage benefits and other benefits for the landowners and properties within the Drain 2 watershed.

WHEREAS, under North Dakota law, if the costs of any drain operation, maintenance, or improvements will exceed the total amount the District may levy over a six-year period, the District must obtain the approval of the assessment district before obligating the properties within the assessment district for the costs; this process is known as an "excess levy" vote.

WHEREAS, the estimate of the total costs of the Project exceeded the maximum levy for Drain 2 over a six-year period and, therefore, the District could not obligate the Drain 2 Assessment District for the excess costs of the Project without first conducting a successful excess levy vote of the Drain 2 Assessment District.

WHEREAS, in light of the District's conclusion the Project would, in fact, provide enhanced drainage benefits for the landowners and properties within the Drain 2 watershed and the Drain 2 Assessment District, and would permit the District to more effectively and efficiently manage and operate Drain 2, the District believed further proceedings were warranted and necessary to conduct an excess levy vote of the property owners within the Drain 2 Assessment District to determine if the property owners were willing to obligate the Drain 2 Assessment District for the costs of the Project (the "Drain 2 Excess Levy Vote").

WHEREAS, the District recently conducted the Drain 2 Excess Levy Vote to determine if the landowners within the Drain 2 Assessment District supported additional assessments to finance and fund the Project, included the requisite hearing preceded by notices, in accordance with North Dakota law.

WHEREAS, the majority of the votes filed were in favor of the RICHLAND COUNTY DRAIN NO. 2 IMPROVEMENT PROJECT AND EXCESS LEVY; the Project will not cost more than the amount of benefits the landowners will derive from the Project; therefore, the District may officially order the legal establishment of the Project and may levy assessments against the properties within the Drain 2 Assessment District to finance and fund the Project.

NOW THEREFORE, the District orders the legal establishment of the RICHLAND COUNTY DRAIN NO. 2 IMPROVEMENT PROJECT, including the legal extension of Drain 2.

IT IS FURTHER ORDERED, that the District will manage, own, operate, and maintain the Project and Drain 2 as a "project" under Chapter 61-16.1 of the North Dakota Century Code.

Dated this 24th day of February, 2015.	
	APPROVED:
ATTEST:	Robert L. Rostad, Vice Chairman
Monica Zentgraf Secretary-Treasurer	

Proj #95- 2010 FEMA Closeout

The Proj #95 FEMA closeout for 2010 was completed October 1, 2014. To date, the closeout has not been processed. Through follow up with the North Dakota Division of Emergency Services (ND DES), the RCWRD was advised that it could take two years for FEMA to finalize the closeout and disperse the remaining money due, which is approximately \$100,000. A new policy was implemented by FEMA, enabling qualifying jurisdictions to receive advance receipt of the entire federal and state cost share for FEMA approved large projects. Funds will be dispersed if the jurisdiction agrees to pay back, within 45 days, all funds deemed or determined ineligible by FEMA as a result of the final FEMA closeout audit. Upon review of the ND DES Agreement, a motion was made by Mgr. Burvee and seconded by Mgr. Haugen authorizing Vice Chairman Rostad to execute the Agreement. The motion carried unanimously. (RCWRD #10-021)

<u>Drainage Complaint filed by Charles Haus and David Muehler Against James</u> <u>Berg</u>

The Board next considered Charles Haus' and David Muehler's Drainage Complaint against James Berg. Haus and Muehler submitted the Drainage Complaint dated November 7, 2014. In it, they contend Berg constructed illegal and unpermitted drainage

in the Southeast Quarter of Section 30 of Brightwood Township in Richland County. Haus and Muehler allege one of the objectives of Mr. Berg was to drain wetlands and other low-lying areas into Horseshoe Lake.

According to records on file with the Richland County Recorder's office, James and Kathi Berg own the Southeast Quarter of Section 30 of Brightwood Township.

According to the North Dakota State Engineer's office, there are no drainage permits regarding the Southeast Quarter of Section 30 of Brightwood Township. With that in mind, the Board directed its engineer, Mr. Mike Bassingthwaite, to review the alleged drainage and to calculate the watershed area drained. Mr. Bassingthwaite conducted a field review, as well as a review of LiDAR maps, as well as other topographic maps and aerial images. Mr. Bassingthwaite prepared a formal written report for the Richland County Water Resource District regarding his investigation, dated February 4, 2015, on file in the office of the Secretary-Treasurer.

In his report, Mr. Bassingthwaite concluded Mr. Berg constructed field ditching in the Southeast Quarter of Section 30 of Brightwood Township that act as outlets for two ponds on the property, ponds referred to in Mr. Bassingthwaite's report as "Pond A" (on the southern portion of the property) and "Pond B" (on the northern portion of the property, upstream of Pond A). The ditches act as an outlet from Pond A to Pond B and ultimately from Pond B into Horseshoe Lake.

Mr. Bassingthwaite concluded the field ditching was new drainage, and not maintenance of existing drains. Under Section 89-02-01-05 and Section 89-02-01-02(7) of the North Dakota Administrative Code, no permit is required under Section 61-32-03 "for maintenance of a drain," where "maintenance means removal of silt and vegetation from a drain... [but] does not include deepening or widening a drain." In this case, Mr. Berg indicated verbally to Mr. Bassingthwaite that the new ditches replace buried outlet pipes along the exact same routes. However, Mr. Bassingthwaite noted the ditching is likely deeper than the original pipes. Further, any modification of an existing drain that exceeds mere maintenance requires a permit under North Dakota law, under Section 61-32-03 and Section 89-02-01-03 of the Administrative Code. The construction of the ditching is an activity that required a permit, if the watershed area was 80 acres or more.

Under Section 61-32-03, if the activity would require a permit, the next consideration for the Board to determine regarding whether or not the project required a permit is if the watershed area is 80 acres or more. In this instance, Mr. Bassingthwaite reviewed LiDAR and other data and concluded the watershed area drained by the new ditching is approximately 400 acres, well beyond the 80-acre permitting threshold.

The Board concurred with Mr. Bassingthwaite's findings in his report. The Board further concluded the surface drainage does drain "sheetwater" as that term is defined under Section 61-32-03. More specifically, the ditching drains shallow water that floods land not normally subject to standing water.

Attorney Sean Fredricks indicated the Board has jurisdiction to order the drain closed in accordance with Chapter 61-32 of the North Dakota Century Code. The Board can issue a decision to the Bergs to direct them to close or fill the drainage ditches. If the Bergs do not comply with the Order, and the Bergs do not otherwise appeal the Board's decision, the Board can ultimately hire a contractor to close or fill the drainage and assess the costs against the Southeast Quarter of Section 30.

The Board would like the Bergs to remedy the illegal drainage prior to planting this spring, though the Board recognized the Bergs would not likely have an opportunity to adequately remedy the illegal drainage prior to the spring thaw. With that in mind, the Board agreed June 1, 2015, would be a reasonable date to expect the Bergs to close or fill the illegal drainage.

Manager Burvee, seconded by Manager Haugen, moved to declare the drains and ditches constructed in the Southeast Quarter of Section 30 in Brightwood Township as illegal and unpermitted drainage, and to order the Bergs to close or fill the unpermitted and illegal drainage no later than 5:00 p.m. on June 1, 2015. Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the decision to the parties of record. (Obj #14-295)

Office Equipment

Engineering Technician Johnson informed the Managers of equipment items needed and presented cost estimates to the Board. A motion was made by Mgr. Burvee and seconded by Mgr. Haugen to approve purchase of the following items:

Office Chair	\$	389.00
Computer Upgrades	\$	305.00
Monitor	\$	180.00
ArcGIS Software	\$3	,325.00
Spectra Precision Laser	\$3	,800.00

The motion carried unanimously.

Applications

A motion was made by Mgr. Burvee and seconded by Mgr. Haugen to approve Appls #15-005 and #15-006 with 60% RCWRD (drain) cost share. The motion carried unanimously.

Appl #15-005	Richland Co Hwy Dept	SE1/4 Sec 24, Walcott W
Appl #15-006	Richland Co Hwy Dept	SW1/4 Sec 20, Fairmount S

The RCWRB acknowledged receipt of drain tile applications #15-007 and #15-008. No action was required, as the projects are less than 80 acres.

Appl #15-007	Wanda Muehler	SW1/4 Sec 18, Brightwood
Appl #15-008	William Dotzenrod	SW1/4 Sec 11, Freeman

Appl #15-009, Wanda Muehler: SW1/4 Sec 18, Brightwood Twp A motion was made by Mgr. Burvee and seconded by Mgr. Haugen to approve the application conditioned upon the signature of Herb Prochnow. Work at no cost to the RCWRD. The motion carried unanimously.

Appl #14-296, Gary Osborn: SW1/4 Sec 34, Lamars Twp A motion was made by Mgr. Burvee and seconded by Mgr. Haugen to approve the application at no cost to the drain. The motion carried unanimously.

Appl #15-010, Kathryn Luick Trust: NE1/4 Sec 10, Brandenburg Twp A motion was made by Mgr. Burvee and seconded by Mgr. Haugen to approve installation of drain tile at no cost to the drain. The motion carried unanimously.

Appl #15-011, Jeanette Miller: NE1/4 Sec 22, Summit West A motion was made by Mgr. Burvee and seconded by Mgr. Haugen to approve installation of drain tile and refer the outlet to the Richland County Highway Department. Work at no cost to the drain. The motion carried unanimously.

Appl #15-012, Tim Viland, etal: Secs 3 & 4, Abercrombie West and Sec 34, Colfax East A motion was made by Mgr. Haugen and seconded by Mgr. Burvee to approve installation of drain tile and refer the outlet to the ND Department of Transportation. Work at no cost to the drain. The motion carried unanimously.

<u>Adjournment</u>

There being no further business to come before the Board, Vice Chr. Rostad adjourned the meeting at 11:40 AM.

Respectfully submitted,

Monica Zentgraf Secretary Robert Rostad Vice Chairman of the Board