

RICHLAND COUNTY WATER RESOURCE DISTRICT
Richland County Courthouse, Wahpeton, ND
April 27, 2021

The Richland County Water Resource Board ("RCWRB") met April 27, 2021 at 9:00 AM at the Richland County Courthouse.

THOSE PRESENT: Managers Clint Arndt, Arv Burvee, Mark Fahsholz, Gary Friskop, Don Moffet, Engineering Technician Justin Johnson, and Secretary-Treasurer Monica Zentgraf.

THOSE ABSENT: None

Approval of Agenda

A motion was made by Mgr. Moffet, seconded by Mgr. Friskop, and unanimously carried to approve the agenda as presented.

Minutes

The April 9 and April 13, 2021 minutes were presented. A motion was made by Mgr. Fahsholz and seconded by Mgr. Arndt to approve the April 9 and April 13, 2021 minutes as presented. Upon roll call vote, the motion carried unanimously.

Financial Matters

●**April 2021 Vouchers**- Vouchers for the month of April 2021 were presented for the Board's review and approval. A motion was made by Mgr. Arndt and seconded by Mgr. Moffet to approve Vouchers #18589 through #18605 and the electronic funds transfer for the IRS payment. Upon roll call vote, the motion carried unanimously.

●**Sinking Funds Transfer**- The Secretary-Treasurer requested approval to transfer the funds remaining in the Bond #5 and Bond #14 sinking accounts to their respective maintenance accounts since all bonds have been paid off. Sinking account balances are:

Bond #5	\$2,091.23
Bond #14	\$1,377.46

A motion was made by Mgr. Friskop and seconded by Mgr. Fahsholz to approve the transfer of all Bond #5 and Bond #14 sinking funds to Drain #5 and Drain #14 maintenance accounts as reported herein. Upon roll call vote, the motion carried unanimously.

Mail

- 1) Richland County Commission- Minutes of the March 2021 meetings.
- 2) TrueNorth Steel- 2021 County Price List. Culvert prices increased 30%, end sections increased 24%, and bands increased 96%.

Applications

Application to Install a Subsurface Water Management System #21-012 for 5K Farms LLLP in the SE1/4 and E1/2E1/2SW1/4 Section 13, Nansen Township

The District previously reviewed *Application to Install a Subsurface Water Management System #21-012*, dated March 3, 2021, and filed March 4, 2021, for 5K Farms LLLP. Under the application, Applicants seek to install a 185-acre drain tile system in the SE1/4 and E1/2E1/2SW1/4 Section 13, Nansen Township, Richland County, North Dakota. Due to concerns expressed by a downstream landowner, the Applicant submitted an email to the District withdrawing the application; they intend to pursue an alternate route.

No action was required by the Board due to withdrawal of Appl No. 21-012.

Application to Install a Subsurface Water Management System #21-016 for Loren and Patricia Ellefson in the N1/2 Section 15, Wyndmere Township

The District next reviewed *Application to Install a Subsurface Water Management System #21-016*, dated March 10, 2021, and filed March 22, 2021, for Loren and Patricia Ellefson. Under the application, Applicants seek to install a 136-acre drain tile system in the N1/2 Section 15, Wyndmere Township, Richland County, North Dakota. The project will include a single pump outlet located in the northwest corner of the NW1/4 Section 15, at the intersection of County Road 17 and ND State Highway 13; the pump will outlet into the south road ditch of ND State Highway 13 and the discharge will flow east in the south road ditch, along the north boundary of Section 15; the discharge will flow under 154th Avenue SE and will continue east.

According to records supplied by Applicants, Loren and Patricia Ellefson own that portion of the N1/2 Section 15, Wyndmere Township, where Applicants intend to install the tile system. With regard to downstream property, NDDOT owns its highway right of way, and John and Diane Poppen own the homestead parcel near the northeast corner of the NE1/4 Section 15. Richland County owns easement rights regarding its County Road 17 right of way. Further, Southeast Water Users District has a blanket easement in the NE1/4 Section 15, Wyndmere Township.

The Board provided THIRTY-DAY NOTICES to NDDOT and John and Diane Poppen as downstream landowners, as required under N.D. Cent. Code § 61-32-03.1. In addition, the Board provided Notices to the Richland County Highway Department, Wyndmere Township, and Southeast Water Users District. Applicants entered into a letter agreement with Southeast Water Users in which Applicants agreed not to install any tile lines within 20 feet of Southeast Water Users' water line. None of the other parties submitted any "technical evidence" to object to the project; therefore, the Board does not have any legal authority to require Applicants to obtain consent from any downstream landowners. The Board will require Applicants to install and maintain erosion protection at the outlet into NDDOT's highway right of way.

Mgr. Fahsholz moved, and Mgr. Arndt seconded the motion, to approve *Application to Install a Subsurface Water Management System #21-016*, dated March 10, 2021, and filed March 22, 2021, for Loren and Patricia Ellefson regarding a proposed tile system in the N1/2 Section 15, Wyndmere Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 21-016, subject to the following conditions:

- 1) that Applicants notify the Richland County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 2) that Applicants install and maintain erosion protection at the outlet into NDDOT's Highway 13 right of way;
- 3) that Applicants will not install Applicants' tile system within 20 feet, on either side, of Southeast Water Users District's rural water line on the NE1/4 Section 15, Wyndmere Township; and
- 4) that Applicants must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Richland County Water Resource District.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicants' permit. However, for Applicants' protection, and to ensure protection of Applicants' tile system, the Board will recommend that Applicants comply with the following:

- 1) that Applicants notify the Richland County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application;
- 2) that Applicants obtain written consent from the North Dakota Department of Transportation to discharge into or otherwise utilize any of NDDOT's Highway 13 right of way; and
- 3) that Applicants obtain written consent from Wyndmere Township to utilize any of the Township's road right of way;
- 4) that Applicants obtain written consent from the Richland County Highway Department to discharge into or otherwise utilize any of the County's highway right of way; and
- 5) that Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Application to Install a Subsurface Water Management System #21-023 for Mark and Penny Gylland in the NW1/4 Section 11, Abercrombie West Township

The District reviewed *Application to Install a Subsurface Water Management System #21-023*, dated March 31, 2021, and filed April 15, 2021, for Mark and Penny Gylland. Under the application, Applicants seek to install an 84-acre drain tile system in the NW1/4 Section 11, Abercrombie West Township, Richland County, North Dakota. The project will include a single gravity outlet located in the NE1/4 SW1/4 Section 11; the outlet will discharge directly into Richland County Drain #72. The Richland County Water Resource District owns and operates Drain #72.

Southeast Water Users District indicated they do not have any water lines in the NW1/4 Section 11.

According to records supplied by Applicants, Mark and Penny Gylland own the NW1/4 Section 11, and Penny Gylland owns the N1/2 SW1/4 of Section 11 lying north of Pitcairn Creek.

Because the project will discharge directly into a legal assessment drain, from Applicants' property, no THIRTY-DAY NOTICES were necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1, and, therefore, the Board does not have any legal authority to require Applicants to obtain consent from any downstream landowners. The Board will require Applicants to install and maintain erosion protection at the outlet into Drain #72.

Mgr. Arndt moved, and Mgr. Friskop seconded the motion, to approve *Application to Install a Subsurface Water Management System #21-023*, dated March 31, 2021, and filed April 15, 2021, for Mark and Penny Gylland regarding a proposed tile system in the NW1/4 Section 11, Abercrombie West Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #21-023, subject to the following conditions:

- 1) that Applicants notify the Richland County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets; and
- 2) that Applicants install and maintain erosion protection at the outlet into Richland County Drain #72.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicants' permit. However, for Applicants' protection, and to ensure protection of Applicants' tile system, the Board will recommend that Applicants comply with the following:

- 1) that Applicants notify the Richland County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; and
- 2) that Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Appl #21-024, Howard Frisk Revocable Trust: W1/2 Section 4, Freeman Township A motion was made by Mgr. Moffet and seconded by Mgr. Fahsholz to defer Subsurface Water Management System Appl #21-024 pending the *30 Day Notice to Downstream Landowners*. Upon roll call vote, the motion carried unanimously.

Appl #21-025, Paul Hendrickson: Section 13, Nansen Township Mr. Hendrickson previously submitted a letter with several photographs regarding concerns with 5K Farms Subsurface Water Management System Appl #21-012. No action was required by the Board relative to Appl #21-012 concerns, as 5K Farms LLLP application was withdrawn.

Mr. Hendrickson's letter also addressed concern regarding a culvert through a township road, located in the NECR Section 13. Further, Mr. Hendrickson addressed concern regarding the county road ditch, located on the north side of the NW1/4 Section 18, Abercrombie West Township. No action was taken by the Managers, as the culvert is the jurisdiction of the Township Boards and the county road ditch is jurisdiction of the Richland County Highway Department.

Mr. Hendrickson's letter also contained comments regarding Legal Drain #72. No action was required by the Board, as no action was requested.

Appl #21-026, 5K Farms LLLP: SE1/4 and E1/2E1/2SW1/4 Section 13, Nansen Township It was noted that this Subsurface Water Management System application was filed in lieu of Appl #21-012. A motion was made by Mgr. Moffet and seconded by Mgr. Arndt to defer Subsurface Water Management System Appl #21-026 pending the *30 Day Notice to Downstream Landowners*. Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program ("RCPP Project")

Email correspondence provided by Christi Fischer, of the NRCS, between her and Mike Bassingthwaite, of Interstate Engineering, was reviewed with the Managers. The emails provided updates on the current status of the RCPP project. Mr. Bassingthwaite was contacted to meet with the Board to discuss completion of the project; however, Mr. Bassingthwaite was not available today. The Managers requested a meeting be scheduled with Mr. Bassingthwaite and Ms. Fischer. (RCWRD #16-017)

Proj #31 Reconstruction

Chr. Burvee informed the Managers he has not had any success meeting with Jay Miller. Purpose for the meeting was to discuss the Proj #31 proposed reconstruction project and the need for temporary right of way adjacent to the Miller property. Discussion was held regarding the need to institute eminent domain proceedings if work is to be done on the Miller property. Office Staff

will confer with Legal Counsel regarding the eminent domain process and report back to the Board at the next meeting. (RCWRD #18-022)

Kube Drain/Proj #66A

The Managers reviewed Interstate Engineering's survey report on the Kube Drain in Sections 22, 27, and 28, Mooreton Township. The information will be utilized by the landowners who will be responsible for cleaning the drain, if they choose to proceed. (RCWRD #20-040)

State Surface Drain Permit #4390- Extension- Helendale Private Drain LLC-

Before considering State Surface Drain Permit #4390, for Helendale Private Drain LLC, a Consent/Waiver letter regarding the District's desire for Ohnstad Twichell Law Firm to represent the District in matters relating to Helendale Private Drain, LLC was presented to the Board. Ohnstad Twichell Law Firm also represents Cass Rural Water Users District. In order for Ohnstad Twichell Law Firm to represent both entities, both entities must agree in writing. A motion was made by Mgr. Fahsholz and seconded by Mgr. Arndt to agree to Ohnstad Twichell's representation of the RCWRD and Cass Rural Water Users District and to authorize Chr. Burvee to execute the Consent/Waiver letter. Upon roll call vote, the motion carried unanimously.

The Board next considered the matter of State Surface Drain Permit No. 4390- Extension for Helendale Private Drain LLC.

In 2012, the RCWRB processed a drainage complaint regarding a surface drain constructed in Sections 17, 18, 21, and 22, Helendale Township. The Board investigated the matter and ultimately concluded the project did require a surface drainage permit under N.D. Cent. Code § 61-32-03, and the Board ordered the drain closed, as required under Section 61-32-07. The parties responsible for construction of the drain formed Helendale Private Drain, LLC, and ultimately submitted a drainage application to the State Engineer's Office; the Board agreed to hold the matter in abeyance while the permit application was pending.

The State Engineer's Office concluded the project was a "statewide or interdistrict significance" project, a more substantial permitting process that requires a more detailed impacts analysis, a public hearing, and additional regulatory steps. Because the Board is a member of the Red River Joint Water Resource District, the Red River Joint Board processed the application and administered the "statewide or interdistrict significance" permit process, including the hearing. Following the process, the Red River Joint Board submitted recommendations to the Richland County Water Resource District regarding the Board's obligations to submit a recommendation to the State Engineer's Office. The Board ultimately submitted a recommendation to the State, and the State ultimately approved SURFACE DRAIN PERMIT #4390, with several conditions, on May 7, 2019. One of the conditions of PERMIT #4390 attached by the State Engineer's Office was that Helendale Private Drain, LLC, complete construction within two years of the permit issuance.

The project is not complete and, with that in mind, Helendale Private Drain, LLC, recently submitted a request to the State Engineer's Office to extend PERMIT #4390. In accordance with N.D. Admin. Code § 89-02-01-09.12, the State Engineer's Office approved an extension of PERMIT NO. 4390 for two years, with a new expiration date of May 7, 2023, contingent upon approval of the extension by the Richland County Water Resource District.

The decision from the State Engineer's Office noted that Helendale Private Drain, LLC, has not yet obtained all other requisite approvals for the project, including approval of a mitigation plan from the U.S. Army Corps of Engineers. In addition, the Richland County Highway Department has not yet approved use of the County's highway right of way to accommodate the

project, and neither have other road authorities. Finally, the State Engineer's Office noted Helendale Private Drain, LLC, has not yet submitted a Gate Operation Plan.

In addition to these outstanding items identified by the State Engineer's Office, Cass Rural Water Users District has indicated Helendale Private Drain, LLC, must obtain Cass Rural Water approval since the Helendale project will require Cass Rural Water to lower its lines and cross its right of way to accommodate the project.

The Board's approval of an extension of the permit will not in any way impact or limit Helendale Private Drain, LLC's obligations to obtain all other outstanding approvals and to otherwise comply with the permit conditions. Rather, approval of an extension will simply afford Helendale Private Drain, LLC, an additional two years to obtain all requisite approvals, comply with all conditions to PERMIT #4390, and to ultimately complete construction of the project.

Mgr. Fahsholz moved, and Mgr. Moffet seconded the motion, to approve a two-year extension regarding PERMIT #4390 for Helendale Private Drain, LLC, subject to the conditions previously attached by the State Engineer. Upon roll call vote, the motion carried unanimously. (Appl #13-088)

Technician's Report

- Proj #3- Jesse Sedler, Richland County Engineer, notified Mr. Johnson Bridge #128-43.2, located in the NWCR SW1/4 Section 3, Lamars Township, is currently being considered for possible closure by the North Dakota Department of Transportation. If the bridge is closed, the Board and County will need to engage in conversation about replacing one of the bridges in Sections 2, 3, 4, or 9, Lamars Township.

- Proj #12-

- Site #506, SE1/4 Section 5, Garborg Township: Replace 18 inch cmp and flap gate with same size.
- Site #507, SE1/4 Section 5, Garborg Township: Remove sediment in front of inlet culvert.

Appl #21-027 was completed and a motion was made by Mgr. Arndt and seconded by Mgr. Fahsholz to assign Sites #506 and #507 to JBX, LLC. Upon roll call vote, the motion carried unanimously.

- Proj #63/#72- Mgr. Fahsholz recently contacted Mr. Johnson about a berm that was cut and on-going ditch work which appears will move water from Proj #63 to #72. The location of the work is in and between the SE1/4 Section 32, Colfax West Township and the NE1/4 Section 5, Nansen Township. The berm referred to is a township road that has not been maintained; however, the road has not been officially abandoned. Board consensus was for Mgr. Fahsholz to get input from the Township Boards and report back to the RCWRB.

Legislative Update

The Conference Committee approved amended HB 1437 and the bill received a unanimous 91-0-3 approval on the House Floor on April 26th. A unanimous 47-0 approval on the Senate Floor this morning. With the emergency clause included in the bill, the new law will go into effect immediately upon Governor Burgum's signature. RCWRD Staff is working on revised application and permit forms with ND SWC Staff and Attorney Sean Fredricks.

Adjournment

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

Respectfully submitted,
Monica Zentgraf
Monica Zentgraf
Secretary

Arv Burvee
Arv Burvee
Chairman of the Board