

RICHLAND COUNTY WATER RESOURCE DISTRICT
Richland County Courthouse, Wahpeton, ND
August 24, 2021

The Richland County Water Resource Board ("RCWRB") met August 24, 2021 at 8:00 AM at the Richland County Courthouse.

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

THOSE ABSENT: None

Approval of Agenda

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

Minutes

The August 10, 2021 minutes were presented. A motion was made by Mgr. Fahsholz, and seconded by Mgr. Arndt to approve the August 10, 2021 minutes as presented. Upon roll call vote, the motion carried unanimously.

Financial Matters

•**August 2021 Vouchers**- Vouchers for the month of August 2021 were presented for the Board's review and approval. A motion was made by Mgr. Fahsholz and seconded by Mgr. Arndt to approve Vouchers #18670 through #18693 and the electronic funds transfer for the IRS payment. Upon roll call vote, the motion carried unanimously.

Mail

- 1) Christi Fisher, NRCS- Update on PL-566 easement cost share.
- 2) Murack Construction- Submission of contractor license and applicable documentation to be considered for RCWRD work.

Applications

Drain Tile Notification Appl #21-071 was reviewed at this time. No action was required by the RCWRB as the project involves less than 80 acres of drain tile. No disclosure of information is allowed per NDCC § 61-32-03.1.

Application to Install a Subsurface Water Management System #21-008 for Jerry Wirtz in the SW1/4 Section 33, Waldo Township

The Board reviewed *Application to Install a Subsurface Water Management System #21-008*. This application was originally submitted to the Richland County Water Resource District for notification purposes as a 74 acre tile project in the E1/2SW1/4 Section 33, Waldo Township, which did not require a state permit. The Applicant, Jerry Wirtz, is now seeking to install drain tile on the adjacent 58 acres in the W1/2 SW1/4 and tie it into the existing system. The project now involves a total of 132 acres and exceeds the threshold where it requires a state permit for the entire project. The project will include a single gravity outlet located on the north boundary of the SW1/4. The Board reviewed the application, design plan, water flow map, and all accompanying data submitted as part of the application.

Mgr. Fahsholz moved, and Mgr. Friskop seconded the motion, to approve Appl #21-008 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #21-008, subject to the following conditions:

- that Applicant install and maintain proper erosion protection at all outlets;
- that Applicant re-establish all disturbed areas to previous conditions, including re-seeding;

that Applicant will not install Applicant's tile system within 20 feet, on either side of any rural water lines under any blanket easements, or otherwise beyond any existing easements the Rural Water District has for Applicant's property being tiled;

that Applicant must apply for an amendment to this SUBSURFACE WATER MANAGEMENT PERMIT in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system;

that Applicant remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to one mile downstream from a project outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile downstream of the proposed outlet, in which case the Applicant remove silt or vegetation, or repair erosion or scour damage only between the outlet and the discharge into the nearest assessment drain, natural watercourse, slough, or lake.

With regard to this condition, Applicant's obligations to remove silt or vegetation, or repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicant's tile system **directly** caused accumulation of silt or vegetation, erosion, or scouring.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District recommends Applicant consider complying with the following :

that Applicant 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 #21-072 for Matt Thompson in the NE1/4 Section 23, Homestead Township

The Board reviewed *Application to Install a Subsurface Water Management System #21-072*. Under the application, Matt Thompson seeks to install a 121-acre drain tile system in the NE1/4 Section 23, Homestead Township. The project will include a single pump outlet located in the northeast corner of the NE1/4. The Board reviewed the application, design plan, water flow map, and all accompanying data submitted as part of the application.

Mgr. Arndt moved, and Mgr. Friskop seconded the motion, to approve Appl #21-072 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #21-072, subject to the following conditions:

that Applicant install and maintain proper erosion protection at all outlets;

that Applicant re-establish all disturbed areas to previous conditions, including re-seeding;

that Applicant will not install Applicant's tile system within 20 feet, on either side of any rural water lines under any blanket

easements, or otherwise beyond any existing easements the Rural Water District has for Applicant's property being tiled;

that Applicant must turn off any pump outlets and control structures during "critical flood periods," as determined by the Richland County Water Resource District;

that Applicant must apply for an amendment to this SUBSURFACE WATER MANAGEMENT PERMIT in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system;

that Applicant remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to one mile downstream from a project outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile downstream of the proposed outlet, in which case the Applicant remove silt or vegetation, or repair erosion or scour damage only between the outlet and the discharge into the nearest assessment drain, natural watercourse, slough, or lake.

With regard to this condition, Applicant's obligations to remove silt or vegetation, or repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicant's tile system **directly** caused accumulation of silt or vegetation, erosion, or scouring.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District recommends Applicant consider complying with the following .

that Applicant obtain easements from the owners of any property not owned by the Applicant but on which the Applicant will install, construct, and maintain Applicant's tile system;

that Applicant obtain written permission from all applicable road authorities to discharge into, or otherwise utilize, any township, county, or state road ditches; to install, operate, and maintain buried pipe in any township, county, or state road ditches; or to bore or cut through any township, county, or state roads and road ditches; and

that Applicant 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.

Drain Tile Appl #21-056, Jeff Erbes: Application withdrawn due to incorrect water flow submitted to the District. Notification was submitted for the revised project under two separate systems as the project consists of two separate outlets and each outlet involved less than 80 acres of tile.

Drain Tile Notification Appl #21-073 was reviewed at this time. No action was required by the RCWRB as the project involves less than 80 acres of drain tile. No disclosure of information is allowed per NDCC § 61-32-03.1.

Drain Tile Notification Appl #21-074 was reviewed at this time. No action was required by the RCWRB as the project involves less than 80 acres of drain tile. No disclosure of information is allowed per NDCC § 61-32-03.1.

Application to Install a Subsurface Water Management System #20-042 for Brandon Ward in the SE1/4 Section 20, Mooreton Township

The Board reviewed *Application to Install a Subsurface Water Management System #20-042*. This application was originally submitted to the Richland County Water Resource District in 2020 by Allen Ward for notification purposes as a 79.183 acre tile project in the E1/2SE1/4 Section 20, Mooreton Township. The project did not require a state permit. This Spring Mr. Ward tiled 73.817 acres in the W1/2SE1/4 with a temporary single pump outlet; no notification application was submitted for the W1/2SE1/4. (Notification was not required under North Dakota Century Code at the time of installation.) Brandon Ward, tenant of the SE1/4, is now seeking to permanently tie the W1/2SE1/4 into the E1/2SE1/4. By tying the two projects together the project now exceeds the threshold where it requires a state permit for the entire 153 acre project. The project will include a single pump outlet located in the southeast corner of the SE1/4.

The Board reviewed the application, design plan, water flow map, and all accompanying data submitted as part of the application.

Mgr. Arndt moved, and Mgr. Fahsholz seconded the motion, to approve Appl #20-042 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #20-042, subject to the following conditions:

- that Applicant install and maintain proper erosion protection at all outlets;
- that Applicant re-establish all disturbed areas to previous conditions, including re-seeding;
- that Applicant will not install Applicant's tile system within 20 feet, on either side of any rural water lines under any blanket easements, or otherwise beyond any existing easements the Rural Water District has for Applicant's property being tiled;
- that Applicant must turn off any pump outlets and control structures during "critical flood periods," as determined by the Richland County Water Resource District;
- that Applicant must apply for an amendment to this SUBSURFACE WATER MANAGEMENT PERMIT in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system;
- that Applicant remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to one mile downstream from a project outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile downstream of the proposed outlet, in which case the Applicant remove silt or vegetation, or repair erosion or scour damage only between the outlet and the discharge into the nearest assessment drain, natural watercourse, slough, or lake.

With regard to this condition, Applicant's obligations to remove silt or vegetation, or repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicant's tile system **directly** caused accumulation of silt or vegetation, erosion, or scouring.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District recommends Applicant consider complying with the following :

that Applicant obtain easements from the owners of any property not owned by the Applicant but on which the Applicant will install, construct, and maintain Applicant's tile system;

that Applicant obtain written permission from all applicable road authorities to discharge into, or otherwise utilize, any township, county, or state road ditches; to install, operate, and maintain buried pipe in any township, county, or state road ditches; or to bore or cut through any township, county, or state roads and road ditches; and

that Applicant 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.

A video conference was held with the Sean Fredricks, the District's legal counsel, at this time.

COMPLAINT FOR WATER-RELATED ISSUES filed by Todd Woodbury against Loren Hegseth – Unauthorized Dam, Dike, or Other Device and Obstruction to a Drain/Watercourse

The Board next discussed the Woodbury-Hegseth complaint. Todd Woodbury and his attorney, Katie Vculek, were present. The Board, through their attorney, Sean Fredricks, previously provided a Notice of Decision to the parties dated July 19, 2021; in the Notice of Decision, Mr. Fredricks notified the parties of the Board's decision in the matter, including the Board's decisions that the structure was an "obstruction" and a "dike" under North Dakota law, and the Board's directive to Mr. Hegseth to remove the structure by 5:00 p.m., on August 18, 2021.

Mr. Fredricks explained that he exchanged emails with the attorney for Mr. Hegseth, and Mr. Hegseth's attorney suggested the dike/obstruction had been removed, and further suggested they were not certain who removed the structure. Mr. Woodbury indicated he was on-site this morning and the dike/obstruction had not been removed. The Board agreed Houston Engineering should conduct a follow-up inspection to determine if Mr. Hegseth, or anyone else for that matter, had removed the structure, in compliance with the Board's order.

Mgr. Arndt moved to direct Houston Engineering to conduct an inspection and, if the dike/obstruction has not been removed in accordance with the Board's Notice of Decision, to direct the District's office staff to hire a contractor to remove the dike/obstruction. Mgr. Fahsholz seconded the motion. Upon roll call vote, the motion carried unanimously.

Mr. Fredricks will contact Mr. Hegseth's attorney to apprise him of the Board's decision, and to remind him that Mr. Hegseth will have to pay the expenses in the matter. If Mr. Hegseth removes the dike/obstruction on his own, before

the Board's contractor arrives on-site, the Board may want to have Houston Engineering conduct another inspection to determine if Mr. Hegseth has properly removed the structure; the Board will consider that possibility if Mr. Hegseth does, in fact, voluntarily remove the structure.

Mr. Fredricks suggested the Board contact the Sheriff's Office to accompany the Board's contractor; the Sheriff's Office will not likely intervene at this point, without a court order, but a deputy's presence could reduce tensions on-site.

Mr. Woodbury inquired into the timing of the removal. The Board explained that they will proceed as quickly as possible, but could not offer a firm date; if Mr. Hegseth refuses access, the Board will have to seek a court order the Sheriff's Office could enforce.

Office staff will contact Houston Engineering to direct Gabe Bladow, Houston Engineering, to conduct a follow-up inspection, and he will contact the Sheriff's Office. (Woodbury #21-033)

Helendale Private Drain, LLC

The Board was informed that Matt Lindsay, North Dakota Department of Water Resources ("ND DWR"), requested the Board take action on the Gate Operation Plan for the Helendale Private Drain, LLC.

The Board visited with Mr. Fredricks and Mike Bassingthwaite, Interstate Engineering, who took part in the discussion via speakerphone. Mr. Bassingthwaite informed the Board that he reviewed the Gate Operation Plan and found it to be satisfactory. A motion was made by Mgr. Fahsholz to approve the Gate Operation Plan as submitted, Mgr. Friskop seconded the motion, and upon roll call vote, the motion carried unanimously.

Mr. Fredricks then addressed the condition in the State Surface Drain Permit regarding the requirement for all other permits to be secured prior to commencement of any construction. (Helendale Private Drain #13-088)

The conference with Mr. Fredricks and Mr. Bassingthwaite concluded at this time.

Technician's Report

●Proj #63: Site #89- SWCR Section 27, Nansen Township: Mr. Johnson reported the existing 64 inch x 43 inch cmpa is heaving. Richland County Engineer Jesse Sedler recommended replacing the 16 foot section at the inlet end and repairing the erosion. Appl #21-075 was completed, a motion was made by Mgr. Arndt and seconded by Mgr. Fahsholz to assign the repairs as recommended to JBX, LLC. Upon roll call vote, the motion carried unanimously.

●Proj #95: S1/2 Section 31, Ibsen Township
Discussion was held regarding the cleanout of Proj #95. The Board discussed permanent and temporary right of way acquisition and subsequently directed right of way documents be drafted in preparation for the project to move forward next year. (RCWRD #20-030)

Adjournment

There being no further business to come before the Board, Chr. Burvee adjourned the meeting at 10:40 AM.

Respectfully submitted,
Monica Zentgraf
Monica Zentgraf
Secretary

Arv Burvee
Arv Burvee
Chairman of the Board