

RICHLAND COUNTY WATER RESOURCE DISTRICT  
Richland County Courthouse, Wahpeton, ND  
August 25, 2020

The Richland County Water Resource Board ("RCWRB") met August 25, 2020 at 8:00 AM at the Richland County Courthouse.

THOSE PRESENT: Managers Arv Burvee, Mark Fahsholz, Gary Friskop, James Haugen, 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. Fahsholz, and unanimously carried to amend the order of the agenda to include Proj #2 and the drain tile permit process.

### **Minutes**

The August 18, 2020 minutes were presented. A motion was made by Mgr. Fahsholz, seconded by Mgr. Burvee, and unanimously carried to approve the August 18, 2020 minutes as presented.

### **Financial Matters**

•Vouchers- Vouchers for the month of August 2020 were presented for the Board's review and approval. A motion was made by Mgr. Burvee and seconded by Mgr. Haugen to approve Vouchers #18415 through #18440 and the electronic funds transfer for the IRS payment. Upon roll call vote, the motion carried unanimously.

### **Mail**

- 1) Bolten & Menk- Solicitation of views for a water supply project in the City of Hankinson. The Managers had no comments.

### **Applications**

Drain Appl #20-044, Cynthia Schreiber-Beck and Northwest Land Limited Partnership: W1/2 and SE1/4 Section 20, Center East Township- A motion was made by Mgr. Burvee and seconded by Mgr. Moffet to defer Drain Tile Appl #20-044 pending the 30 day notice to downstream landowners. Upon roll call vote, the motion carried unanimously.

### **Application to Install a Subsurface Water Management System No. 20-045 for Chris A. Johnson, C & S Farms, in the E1/2 Section 15, Mooreton Township**

The District reviewed an *Application to Install a Subsurface Water Management System No. 20-045*, dated August 19, 2020, and filed August 21, 2020, for Chris A. Johnson, C & S Farms. Under the application, Applicant seeks to install a 101-acre drain tile system in the E1/2 Section 15, Mooreton Township, Richland County, North Dakota. The project will include two gravity outlets, both located in the S1/2NE1/4 Section 15; both outlets will discharge directly into Antelope Creek.

Because the project will discharge directly into a natural watercourse, no THIRTY-DAY NOTICES were necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1. Under the tile law passed during the 2017 Legislative session, the Board cannot require Applicant to install erosion protection at the outlets into Antelope Creek, but the Board will recommend that Applicant install and maintain erosion protection, to protect Antelope Creek as well as downstream landowners.

Southeast Water Users District has a blanket easement in the E1/2 Section 15; Applicant entered into a letter agreement with Southeast Water Users in

which Applicant agreed not to install any tile lines within 20 feet of Southeast Water Users' water line.

According to records supplied by Applicant, Suzanne M. Johnson owns the E1/2 Section 15, Mooreton Township.

Mgr. Fahsholz moved, and Mgr. Burvee seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20-045*, dated August 19, 2020, and filed August 21, 2020, for Chris A. Johnson, C & S Farms, regarding a proposed tile system in the E1/2 Section 15, Mooreton Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 20-045, subject to the following conditions:

- 1) that Applicant notify the Richland County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 2) that Applicant will not install Applicant's tile system within 20 feet, on either side, of Southeast Water Users District's rural water line on the E1/2 Section 15; and

Upon roll call vote, the motion carried unanimously.

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

- 1) that Applicant 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 Applicant install and maintain adequate erosion protection at both outlets into Antelope Creek; and
- 3) 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 No. 20-046 for Arv Burvee in the North Half of Section 31 in Devillo Township**

The District next reviewed *Application to Install a Subsurface Water Management System No. 20-046*, dated August 12, 2020, and filed August 24, 2020, for Arv Burvee. Under the application, Applicant seeks to install a 200-acre drain tile system in the N1/2 Section 31, Devillo Township, Richland County, North Dakota. More specifically, Applicant intends to install tile in the W1/2E1/2NE1/4, the W1/2NE1/4, and E1/2NW1/4 Section 31; Applicant previously tiled the E1/2E1/2NE1/4, the E1/2SE1/4 and the north 58 acres of the W1/2SE1/4 Section 31 under previous tile permits. The project will include a single pump outlet located in the SECR NE1/4 Section 31; the pump outlet will discharge into the west road ditch along County Road 81; the discharge will flow through an existing culvert under County Road 81 and will discharge directly into Richland County Drain #31 on the east side of County Road 81. Richland County Drain #31 is a legal assessment drain owned by the Richland County Water Resource District.

Before the Board could proceed with the substantive considerations regarding the application, the Board conducted a conflict analysis regarding Mgr. Burvee's potential conflict. Sean Fredricks, the Board's attorney, previously explained the conflict analysis the Board should conduct regarding these types of potential conflict situations. The law in North Dakota regarding

conflicts, Section 44-04-22 of the North Dakota Century Code, provides the relevant standard. That statute provides:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

The Section 44-04-22 test requires a multi-step analysis. A public official must have a “direct and substantial personal or pecuniary interest” in the matter. The mere appearance of a conflict is not enough to allow the public official to refrain from participating.

In this case, Mgr. Burvee is the applicant and owns property that will benefit from the tile project under APPLICATION NO. 20-046; in addition, Mgr. Burvee’s son and daughter have interests in property that will benefit from the project. These interests in the matter create a clear conflict situation that warrants an abstention. More specifically, by statute, Mgr. Burvee’s direct and substantial interest in the tile application raise a direct and substantial personal or pecuniary interest conflict under Section 44-04-22. Mgr. Fahsholz moved to declare Mgr. Burvee has a statutory conflict regarding APPLICATION NO. 20-046, and to prohibit Mgr. Burvee from participating in the discussion or any voting regarding APPLICATION NO. 20-046. Mgr. Haugen seconded the motion. Upon roll call vote, Mgrs. Friskop, Haugen, Moffet, and Fahsholz voted in favor of the motion. Mgr. Burvee abstained. The motion carried. With the conflict issues concluded, the Board proceeded with consideration of the Application.

Because the project will discharge directly into Drain 31 from Applicant’s property, no THIRTY-DAY NOTICES were necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1; the County does not own its County Road 81 right of way along the NE1/4 Section 31, so no notices were necessary to the County. However, the District can require Applicant to install and maintain erosion protection at the outlet into the County’s Highway 81 road ditch, to protect the ditch. Further, Applicant and Southeast Water Users executed a letter agreement under which Applicant agreed not to install tile within 20 feet of Southeast Water Users’ water lines in the NE1/4 Section 31.

According to records supplied by Applicant, Elizabeth Lasch owns the E1/2NE1/4 and the E1/2W1/2NE1/4 Section 31, subject to a life estate in Arv Burvee; Charles Burvee owns the W1/2W1/2NE1/4 Section 31, subject to a life estate in Arv Burvee; and Charles Burvee owns the E1/2NW1/4 Section 31.

Mgr. Fahsholz moved, and Mgr. Haugen seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20-046*, dated August 12, 2020, and filed August 24, 2020, for Arv Burvee, regarding a proposed tile system in the N1/2 Section 31, Devillo Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 20-046, subject to the following conditions:

- 1) that Applicant notify the Richland County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 2) that Applicants will not install Applicant’s tile system within 20 feet, on either side, of Southeast Water Users’ rural water lines in the NE1/4 Section 31;
- 3) that Applicant provide, install, and maintain riprap or other ditch stabilization materials satisfactory to the Richland County Highway Department at any and all outlets into the County’s County Road 81 right of way; and

4) that Applicant 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, Mgrs. Friskop, Haugen, Moffet, and Fahsholz voted in favor. Mgr. Burvee abstained. The motion carried.

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

- 1) that Applicant 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 Applicant obtain permission from the Richland County Highway Department to discharge into, or otherwise utilize, any of the County’s highway right of way; and
- 3) 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.

#### **Technician’s Report**

●Proj #2- Mgr. Fahsholz reported that a Colfax Township Supervisor contacted him about the loss of gravel from a portion of the township road in the N1/2 Section 30, Colfax East Township, as a result of the District’s contractor travelling the road to a job site. Considerable discussion was held regarding the condition of the road prior to the contractor’s travel on the road and about requests the District has received for gravel in the past.

Consensus was to pay for one load of gravel; Mr. Johnson will monitor the roads in this area in the future when drain repairs are made. A motion was made by Mgr. Haugen and seconded by Mgr. Fahsholz to authorize TJM Trucking to haul in one semi-load of gravel at Proj #2 expense. Upon roll call vote, the motion carried unanimously. (RCWRD #20-020)

●Proj #5(64)- Mr. Johnson reported the two 54 inch culverts, located in the NW1/4 Section 26, Walcott West Township, failed this past week and the County Highway Department had to close the road. Houston Engineering determined the minimum size culverts required in order to meet North Dakota Stream Crossing Standards, are two 66 inch culverts. The County will have a 40% responsibility for all costs associated with this project.

A motion was made by Mgr. Fahsholz and seconded by Mgr. Moffet to approve two 66 inch culverts as required to meet North Dakota Stream Crossing Standards. Work assigned to JBX, LLC. Upon roll call vote, the motion carried unanimously. (RCWRD #20-041)

●Contractor Updates- Mr. Johnson provided a brief update on projects contractors have completed and are currently working on.

#### **North Dakota Drain Tile Law**

Secretary-Treasurer Zentgraf reported Representative Schreiber-Beck would like to enter into discussion regarding the current drain tile law for the purpose of trying to streamline the permitting process. The Managers were in favor of Staff working with Representative Schreiber-Beck.

**Adjournment**

There being no further business to come before the Board, Chr. Friskop adjourned the meeting at 11:15 AM.

Respectfully submitted,

*Monica Zentgraf*  
Monica Zentgraf  
Secretary

*Gary Friskop*  
Gary Friskop  
Chairman of the Board