

RICHLAND COUNTY WATER RESOURCE DISTRICT  
Richland County Courthouse, Wahpeton, ND  
July 13, 2021

The Richland County Water Resource Board ("RCWRB") met July 13, 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, and Secretary-Treasurer Monica Zentgraf.

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 June 29, 2021 minutes were presented. A motion was made by Mgr. Arndt and seconded by Mgr. Fahsholz to approve the June 29, 2021 minutes as presented. Upon roll call vote, the motion carried unanimously.

### **Financial Matters**

●**June 2021 Financial Reports**- A motion was made by Mgr. Fahsholz and seconded by Mgr. Moffet to accept the June 2021 financial reports as presented. Upon roll call vote, the motion carried unanimously.

●**Bremer Bank Collateral Report**- 110% of the District's securities totaled \$7,782,470.28. Bremer Bank's Collateral Report in the amount of \$9,254,977 adequately covers the District's funds.

### **Mail**

- 1) North Dakota Office of the State Auditor- Audit report for the year ended December 31, 2020.
- 2) Richland County Commission- Minutes of the June meetings.
- 3) Ulteig Engineers, Inc- Solicitation of views for the North Dakota Department of Transportation roadway improvement project along ND Highway 127, located between Sections 5/6, Fairmount South Township. This project involves the bridge which crosses Proj #3. The Managers requested a copy of the preliminary Hydraulic Study and Structural Selection Report be forwarded to the District when it is completed.
- 4) Helendale Private Drain, LLC- Email correspondence with Cam Leedah, of Helendale Private Drain, Matt Lindsay, of the North Dakota State Water Commission, Megan Kummer, Richland County States Attorney, Jesse Sedler, Richland County Engineer, Sean Fredricks, the District's Legal Counsel, and Tami Norgard, Legal Counsel for Helendale Private Drain.

### **Proj #3 County Bridge #128-43.2**

Richland County Engineer Jesse Sedler met briefly with the Board regarding replacement of a bridge in Lamars Township due to the recent closure of two bridges in the township. Mr. Sedler suggested replacing the bridge between Sections 3/4, Lamars Township or the one between Sections 1, Lamars Township/6, Fairmount South Township. A third bridge, located between Sections 9/16, Lamars Township, was also part of the discussion, based on the Lamars Township Board of Supervisors preference for that bridge to be replaced. Mr. Sedler outlined several reasons for replacing the bridge between Sections 3/4 including its proximity to Highway 127 and being more centrally located for more of the residences in the area. The consensus of the Board was to replace the bridge between Sections 3/4. Mr. Sedler will discuss this with his Advisory Committee later today to see if they desire additional input from the Township Supervisors.

**Applications**

**Application to Install a Subsurface Water Management System #21-058 for Stuart Gunness in the N1/2NE1/4 Section 19 , the NW1/4 and N1/2NE1/4 Section 20, Eagle South Township**

The Board reviewed *Application to Install a Subsurface Water Management System #21-058*. Under the application, Stuart Gunness seeks to install a 216 acre drain tile system in the NE1/2NE1/4 Section 19, the NW1/4 and N1/2NE1/4 Section 20, Eagle South Township. The project will include a single pump outlet located on the east boundary of the NE1/4 Section 19 and a single gravity outlet located on the east boundary of the NE1/4NE1/4 Section 20. 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 #21-058 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #21-058, 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.

### **Technician's Report**

●Proj #4(32): Site #531- SE1/4 Section 9, Ibsen Township: Replace eroded and rusted out 24 inch x 31 foot cmp. Appl #21-059 was completed and a motion was made by Mgr. Arndt and seconded by Mgr. Friskop to assign repairs to Comstock Construction. Upon roll call vote, the motion carried unanimously.

●Proj #34:

Interstate Engineering's hydraulic study for Site #524 was reviewed with the Board. The project involves replacement of a 30 inch cmp in the SW1/4 Section 29, Fairmount North Township. Interstate Engineering recommended a 30 inch culvert for this crossing. A motion was made by Mgr. Friskop and seconded by Mgr. Arndt to approve installation of a new 30 inch cmp and to assign the project to Comstock Construction. Upon roll call vote, the motion carried unanimously. (RCWRD #21-038)

●Proj #41:

Interstate Engineering's hydraulic study for Site #122 was reviewed with the Board. The project involves replacement of two 42 inch cmps in the NE1/4 Section 24, Mooreton Township. Interstate Engineering recommended two 42 inch culverts for this crossing. A motion was made by Mgr. Fahsholz and seconded by Mgr. Arndt to approve installation of two 42 inch cmps and to assign the project to JBX, LLC. Upon roll call vote, the motion carried unanimously. (RCWRD #21-039)

●Proj #55: Site #532- SW1/4 Section 19, Summit East Township: Replace rusted out 24 inch cmp. Appl #21-060 was completed and a motion was made by Mgr. Arndt and seconded by Mgr. Moffet to order a hydraulic study from Interstate Engineering. Upon roll call vote, the motion carried unanimously.

●Proj #95- Mr. Johnson reported that he finished the inventory of inlet culverts on Proj #95, as requested by the Managers. There are 3-15 inch culverts, 112- 18 inch culverts, and 7- 24 inch culverts showing on the original construction plans.

Discussion was held regarding what can be done to slow the water down coming from the west. It does not appear the benefits of reducing the 18 inch culverts would justify the cost. More discussion will be needed on this matter.

The Managers were informed that Korey Skovholt contacted the Office about moving the Board forward with excavating the Proj #95 channel back to original design in the S1/2 Section 31, Ibsen Township. (The SW1/4 is owned by the Hektner Family and farmed by Mr. Skovholt; the SE1/4 is owned by the Althoff Family.) Mr. Skovholt received verbal agreement from the Hektner Family to sell the land needed for this project to the District. The Althoff Family previously indicated they do not desire to have any work done on their

property. Discussion followed about ramifications to the property in the SE1/4 if repairs are only made in the SW1/4. A telephone conversation was held with Mike Bassingthwaite, of Interstate Engineering, to gain insight as to why some of the original construction work in the SE1/4 was done differently than what was planned. Mr. Bassingthwaite indicated the changes were made at the request of the Althoffs during construction. The Board directed to Mr. Johnson to determine if the US Army Corps of Engineers permit for the original construction was an individual permit or a nationwide permit and if the permit is still valid or if it has expired. (RCWRD #20-030)

●Southwood Drain #2 (“SW #2”)

A copy of the draft Joint Powers Agreement between the WRD and City of Wahpeton was reviewed by the Managers. The City has been provided with a copy of the document; the District will await the City’s input. (RCWRD #21-053)

**Secretary-Treasurer Position**

The Managers were informed that Jenna Anderson accepted the Board’s offer for the Secretary-Treasurer position. She will begin employment August 2<sup>nd</sup>.

**2022 Budget**

Discussion was held regarding the 2022 budget. Further discussion to be held at the conclusion of the Todd Woodbury matter.

**COMPLAINT FOR WATER-RELATED ISSUES filed by Todd Woodbury against Loren Hegseth - Unauthorized Dam, Dike, or Other Device and Obstruction to a Drain/Watercourse (#21-033)**

The Board next considered Todd Woodbury’s COMPLAINT FOR WATER-RELATED ISSUES filed against Loren Hegseth. Mr. Woodbury and his attorney, Katie Vculek, were present. Sean Fredricks, the District’s attorney, and Gabe Bladow, the District’s engineer in this matter, attended via video conference. In the Complaint, Mr. Woodbury alleges Mr. Hegseth installed a roadway along the quarter line between the SE1/4 Section 16, Garborg Township, property owned by Loren and Tammy Hegseth, and the SW1/4 Section 16, property owned by Todd Woodbury, with a life estate in Arnold Woodbury. The Complaint alleges the structure acts as an unpermitted “dam, dike, or other device,” in violation of N.D. Cent Code §§ 61-16.1-38 and 61-16.1-53. The Complaint further alleges the same structure acts as an obstruction to a drain or natural watercourse in violation of N.D. Cent Code § 61-16.1-51. The Board previously directed Houston Engineering to investigate the matter. Gabe Bladow submitted a written report with the Board dated June 29, 2021; Mr. Bladow’s report describes his investigation and his findings.

Mr. Bladow explained his report to the Board, and explained he conducted his inspection with the use of USDA and FSA imagery, as well as LiDAR elevation data. In addition, with Mr. Hegseth’s permission, Mr. Bladow gathered field survey data on-site.

Mr. Bladow consulted with the Board’s attorney, Sean Fredricks, regarding the statutory elements regarding obstruction complaints under Section 61-16.1-51. The standard is whether or not the alleged obstruction acts as a “barrier . . . which materially affects the free flow of waters” in a natural watercourse or drain. Further, N.D. Cent. Code § 61-01-06 provides the following definition of a “watercourse”:

A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. The supply of water is not required to be continuous or from a perennial living source. The criteria for constituting a watercourse are satisfied if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character....

Mr. Bladow's report identifies aerial imagery and LiDAR data that predate construction of this structure, and that data indicates a "watercourse," as defined under Section 61-01-06, existed prior to Mr. Hegseth's construction of the structure on his property. Even if the watercourse did not meet the statutory definition of a "watercourse," the historical aerial imagery and LiDAR data confirm at least an artificial drain existed prior to construction of this structure. With that in mind, the structure qualifies as an "obstruction" under Section 61-16.1-51 if the structure "materially affects the free flow of water" in that watercourse or drain.

Mr. Bladow explained that, although the North Dakota Stream Crossing Standards do not apply to private roads or private crossings, the Stream Crossing Standards do provide guidance in terms of determining if a structure "materially affects the free flow of water." In this case, Mr. Bladow used the 10 year design flood frequency to analyze Mr. Hegseth's structure, the lowest frequency for crossings under North Dakota law, and the frequency used for township roads. Further, NDDOT utilizes the 10 year standard for private roads and field crossings. With that in mind, application of the 10 year standard provided a helpful standard in this case to determine if Mr. Hegseth's structure "materially affects the free flow of water."

Mr. Bladow's report analyzed the allowable headwater for the 12 inch culvert through the structure and he ultimately provided the following conclusion:

Since the computed upstream water surface elevation exceeds the allowable headwater defined in N.D.A.C. § 84-14, and the culvert diameter is less than the minimum required by the NDDOT for centerline culverts, it is determined that the free flow of waters in the watercourse or drain is affected.

The embankments meets the stated criteria of an "obstruction to a drain/watercourse."

The Board concurred with Mr. Bladow's findings, and concluded Mr. Hegseth's structure is an obstruction to a natural watercourse or artificial drain that "materially affects the free flow of waters."

Mr. Bladow's report next analyzed the dam/dike allegations in Mr. Woodbury's complaint, in accordance with the statutory elements under Sections 61-16.1-38 and 61-16.1-53, and the applicable Administrative Code provisions. Section 89-08-01-01(3) of the North Dakota Administrative Code, provides the following definition of a "dam":

"Dam" means any barrier, including any appurtenant works, constructed across a watercourse or an area that drains naturally to impound or attenuate the flow of water. All structures necessary to impound a single body of water are considered a single dam.

Again, as noted, Mr. Bladow's report indicates aerial imagery and LiDAR data indicate a watercourse, or at least an artificial drain, existed prior to Mr. Hegseth's construction of the structure on his property. This structure across that natural watercourse or drain "attenuate[s] the flow of water" and, with that in mind, this structure qualifies as a "dam."

This particular "dam" would qualify as a "low-hazard dam" under 89-08-01-01(12):

"Low-hazard dam" means a dam located in a rural or agricultural area where there is little possibility of future development. Failure of low-hazard dams may result in damage to agricultural land, township and county roads, and farm buildings other than residences. No loss of life is expected if the dam fails.

The structure is in a rural, agricultural area, with little possibility of future development in the vicinity. As a low-hazard dam, the permitting standard for this particular structure under Section 61-16.1-38 is whether or not the dam is “capable of retaining, obstructing, or diverting more than fifty acre-feet” of water. Under Section 89-08-02-01 of the Administrative Code, “the impounding capacity of a dam is calculated based upon the elevation at the top of dam.”

In this case, based on the elevation of the top of the structure and the available storage upstream of the structure, Mr. Bladow determined the structure is capable of retaining 135.5 acre-feet of water, well beyond the 50 acre permitting threshold. The statutory and administrative provisions do not allow a water resource district to consider culvert capacities in “dams”; the State’s rationale is culverts can be easily plugged and the State Engineer’s Office does not include any consideration for culverts in the Administrative Code regarding acre-feet calculations. With that in mind, the 12 inch culvert through the structure in this case is not relevant for purposes of calculating the retention capacity of this structure.

Finally, the State’s records indicate Mr. Hegseth did not obtain a permit for this structure.

The Board concurred with Mr. Bladow’s findings in his report that this structure is, in fact, a “dam” capable of retaining more than 50 acre-feet of water, that required a permit under North Dakota law.

In light of the fact that the dam violates Sections 61-16.1-38 and 61-16.1-53, and also acts as an “obstruction” under Section 61-16.1-51, Mr. Fredricks indicated the Board has no choice but to order removal of the structure.

The Board discussed the timing of the removal of the dam/obstruction and agreed an August 18 deadline would be appropriate. Mgr. Fahsholz moved, and Mgr. Arndt seconded the motion, to order Loren Hegseth to remove the dam/obstruction installed in the SE1/4 Section 16, Garborg Township, Richland County, North Dakota, by 5:00 p.m. on August 18, 2021. Upon roll call vote, the motion carried unanimously.

The video conference concluded at this time; Ms. Vculek and Mr. Woodbury left the meeting.

### **2022 Budget**

Discussion resumed regarding the 2022 budget. The final draft will be prepared for the Board’s review at their next meeting.

### **Adjournment**

There being no further business to come before the Board, Chr. Burvee adjourned the meeting at 12:30 PM.

Respectfully submitted,

*Monica Zentgraf*  
Monica Zentgraf  
Secretary

*Arv Burvee*  
Arv Burvee  
Chairman of the Board