

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

The Richland County Water Resource Board ("RCWRB") met July 27, 2021 at 8:00 AM at the Richland County Courthouse.

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

THOSE ABSENT: Clint Arndt

Approval of Agenda

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

Minutes

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

Financial Matters

● **July 2021 Vouchers**- Vouchers for the month of July 2021 were presented for the Board's review and approval. A motion was made by Mgr. Friskop and seconded by Mgr. Fahsholz to approve Vouchers #18644 through #18669 and the electronic funds transfer for the IRS payment. Upon roll call vote, the motion carried unanimously.

● **2022 Budget**- The Managers reviewed the final draft of the 2022 budget. Considerable discussion followed regarding the County Commission's proposal to allocate only 1 mill (approximate \$105,000) to the District rather than 4 mills allowed under N.D.C.C. A motion was made by Mgr. Fahsholz and seconded by Mgr. Friskop to approve the District's 2022 budget as presented and authorize Chr. Burvee to sign the final letter to Richland County requesting \$420,000 for 2022. Upon roll call vote, the motion carried unanimously.

Richland County Commissioners- 2022 Budget

Cmrs. Nathan Berseth (via conference call) and Perry Miller met with the Board for the purpose of discussing the Commissioners proposal to reduce the RCWRD's mill levy from 4 mills to 1 mill for budget year 2022. Sandy Fossum, Richland County Auditor/Administrator, was also present. Concern was expressed regarding the effects to the District if the levy is cut to 1 mill. Several questions from Cmr. Berseth were fielded by the Managers and Staff. Chr. Burvee impressed upon the Commissioners that the WRD and management of the legal drains is vital to Richland County's agricultural community and that the Office cannot function properly with only 1 mill. Discussion was also held about the need for Commission/WRB meetings in the future. Several options were brought forward including meeting as a whole, one or two WRB Members meeting with the Commission (or vice versa), or a specified Commissioner holding the WRD portfolio. Monthly or quarterly meetings were discussed; no decisions were made. The District's levy will be discussed at the August 3rd Commission meeting.

The meeting/conference call concluded at this time; Cmr. Miller and Mrs. Fossum left the meeting.

Mail

- 1) Interstate Engineering- Solicitation of views for Colfax watermain looping project. The Managers had no comments.
- 2) Regional Conservation Partnership Program ("RCP")- Email correspondence with Mike Bassingthwaite, of Interstate

Engineering, and Christi Fischer, of NRCS, regarding the work which still needs to be completed for the draft report. (RCWRD #16-017)

- 3) Helendale Private Drain, LLC- Email correspondence with Sean Fredricks, the District's legal counsel, Tami Norgard, legal counsel for Helendale Private Drain, LLC, and Mike Bassingthwaite, the District's engineer for this matter. (Helendale Private Drain, LLC #13-088)

Sean Fredricks- Video Conference

A video conference was held with Sean Fredricks, the District's legal counsel; Mike Bassingthwaite, of Interstate Engineering, was present for the meeting. The following matters were discussed:

- Helendale Private Drain, LLC- The Board and Mr. Fredricks discussed options to ensure the Helendale project proponents comply with their O&M obligations and the other conditions of the surface permit, in the event the LLC were to dissolve or were to otherwise default on its obligations under the permit. Mr. Fredricks advised that he has discussed options with the attorney for the Helendale LLC. The LLC is offering to require some of the landowners involved in the LLC to execute agreements the Board could record against their properties that would identify their O&M cost obligations. However, these scenarios would assume the Board would administer the O&M, cost obligations, etc. The Board does not want any obligation regarding this project.

Mr. Fredricks offered a simpler alternative; the Board could simply offer permit recommendations to the State Engineer, but not require any agreements or other arrangements with the LLC or landowners along the course of the drain. Instead, like in most permitting situations, if the LLC dissolves and fails to meet the conditions under the permit, the Board will simply rely on the drainage complaint statute, N.D. Cent. Code §61-32-07. In other words, if the LLC dissolves and/or does not otherwise comply with the terms of the permit, the Board could entertain a drainage complaint (filed by any party, including the Highway Department) and could order the "landowners responsible" for the drain (e.g., the members of the LLC) to close or fill the project; if they do not comply, the Board could procure a contractor and close the project, then assess the responsible parties' properties, all in accordance with the complaint statute.

Reliance upon the complaint statute is how the Board typically handles permits and any failure to comply with the terms of a particular permit; in this case, the project is significantly larger than most private drain permits, and the up-front costs to the Board could present risk if the LLC does not comply with its permit, but the Board would at least legally have the ability to assess the landowners involved in the LLC.

The Board preferred the second option, reliance upon the complaint statute as opposed to requiring O&M agreements up-front by landowners. The Board directed Mr. Fredricks to communicate the Board's decision to the attorney for the LLC, and to copy the County.

Mgr. Fahsholz moved to direct engineer Mike Bassingthwaite to communicate the Board's concerns and proposed permit recommendations to the State Engineer's Office for the State's consideration when approving the modified project plan submitted by the LLC. Mgr. Moffet seconded the motion. Upon roll call vote, the motion carried unanimously. (Helendale Drain LLC #13-088)

- Proj #95- The Board constructed Proj #95 in 1997. Proj #95 outlets into Antelope Creek in the SE1/4 Section 31, Ibsen Township. Portions of the drain channel have moved over the years and, as a result, the channel in the S1/2 Section 31 is essentially a winding channel and is causing damages to

adjacent farmland. The Hektner family owns the SW1/4 Section 31, and Korey Skovholt farms that quarter. The Harold Althoff family owns the SE1/4, Norbert Althoff farms that quarter. Several months ago, Mr. Skovholt and Mr. Althoff met with the Board to discuss the situation. Mr. Skovholt supports a project to return the drain to its original design in the S1/2 Section 31, but the Althoff family opposes that type of project.

Mr. Bassingthwaite will review what permit, if any, the Board previously acquired for the original construction of Proj #95, especially in the S1/2 Section 31. Mr. Fredricks strongly recommended the Board obtain a new permit for a project, regardless of what the original permit contains or allows, even if the project proposed would simply return the channel to its original design in the S1/2 Section 31. The permitting process will also afford the Board the opportunity to determine what additional right of way the Board may need to accommodate the work, if any, and to more closely consider and study what impacts the project could have downstream (since the 8-point questionnaire the Board must answer, with Mr. Bassingthwaite's assistance, under the permitting process will require the Board to determine if the project will result in adverse impacts downstream). Mr. Bassingthwaite will prepare a permit application for the Board's consideration.

In the meantime, the Board will invite Mr. Althoff to a meeting to discuss any concerns he might have regarding the proposed project, and to determine if there are any mitigating measures the Board might take to assuage any of his concerns. (RCWRD #20-030)

- Lance Meyer Complaint- Mr. Meyer and Joe Sauter have entered into an agreement (and submitted the agreement to the District) to resolve the issues under Complaint #21-035 filed by Mr. Meyer against Mr. Sauter. The Board and Mr. Fredricks reviewed the agreement. Mr. Fredricks recommended the Board hold the complaint in abeyance pending approval of a state surface drain permit and completion of the work outlined in the agreement. At this time a motion was made by Mgr. Friskop and seconded by Mgr. Moffet to hold Lance Meyer Complaint #21-035 in abeyance pending approval of a state surface drain permit and completion of all work as outlined per the July 20, 2021 written agreement between Mr. Meyer and Mr. Sauter.

The video conference with Mr. Fredricks concluded at this time.

Regional Conservation Partnership Program ("RCPP")

Mr. Bassingthwaite visited with the Board about tabling the public meeting initially planned for July. Because the alternatives for the environmental enhancements, i.e. wetlands and biomass harvesting, are being changed, the public meeting should be tabled until results are available. The work should be completed late this fall. The Board agreed the public meeting should be tabled until early 2022.

The Board directed Mr. Bassingthwaite to notify the individuals previously involved in the small group meetings that the public meeting has been tabled pending completion of the environmental work. (RCWRD #16-017)

Mr. Bassingthwaite left the meeting.

Applications

APPLICATION FOR SURFACE DRAIN No. 5571 for HJA Family Limited Partnership in the NW1/4 Section 19 and the N1/2 Section 24, Eagle South Township

The Board reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN No. 5571 for Applicant HJA Family Limited Partnership. Under the application, Applicant seeks to construct ditch improvements to the south road ditch along County Road No. 28. The ditch

will commence in the northeast corner of the NW1/4 Section 19, Eagle South Township; the ditch will drain to the west, and will continue along the north boundary of the NE1/4 Section 24 and the NW1/4 Section 24 east of the Wild Rice River. The project will discharge into the Wild Rice River. The project will include modifications to a culvert through a field approach along the north boundary of Section 24; more specifically, Applicant intends to lower the culvert two feet. In addition, the project will include lowering the culvert through 174th Avenue SE by 0.5 feet. The ditch improvements will include approximately 6,200 feet of ditch improvements, a maximum cut of two feet, a maximum bottom width of eight feet, and 3:1 side slopes.

According to records on file with the Richland County Recorder's office, HJA Family Limited Partnership owns the NW1/4 Section 19 of Eagle South Township; and Jan and Sandra Rieger own the NE1/4 Section 24. Jean Johnson, Michael Hulne, David Hulne, Jack Hulne, Dorothy Stapleton, and Gregory Hulne own the NW1/4 Section 24, less 22.91 acres in the S1/2 NW1/4 Section 24, subject to a life estate in Betty Jean Hulne.

The Board reviewed Gabe Bladow's draft responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. Mr. Bladow concluded the project will not result in adverse impacts, assuming the project will include erosion protection at the outlet into the Wild Rice River. Mr. Bladow noted the Richland County Water Resource District does not have jurisdiction over the township crossing at 174th Avenue, but noted Applicant should ensure any road crossing modifications should comply with the North Dakota Stream Crossing Standards.

The Board will require Applicant to obtain easements along the course of the project, and to obtain permission from the Richland County Highway Department to utilize and modify its road ditch, and from Eagle Township regarding the crossing through 174th Avenue. In light of these requirements, the Board concluded no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code.

Mgr. Moffet moved, and Mgr. Friskop seconded the motion, to conclude no hearing was necessary, to adopt Houston Engineering's responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code, and to approve APPLICATION FOR SURFACE DRAIN No. 5571 for HJA Family Limited Partnership, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) that Applicant will not construct or improve the drain in any manner that exceeds the dimensions indicated in the application, including 6,200 feet of ditch improvements, a maximum cut of two feet, a maximum bottom width of eight feet, and 3:1 side slopes;
- 2) that Applicant obtain written permission from the Richland County Highway Department to construct, operate, and maintain any ditch improvements in County Highway 28 right of way, or to otherwise utilize any of its highway right of way;
- 3) that Applicant obtain written permission from the Eagle Township Board of Township Supervisors to construct, operate, and maintain any ditch improvements in its road right of way, to modify any of the Township's culverts or crossings, or to otherwise utilize any of its right of way;

4) that Applicant obtain and record easements from landowners along the course of the project to construct, operate, and maintain drainage improvements, including the owners in the NE1/4 Section 24, and the owners in the NW1/4 Section 24 east of the Wild Rice River;

5) that Applicant install and maintain adequate erosion protection at the outlet into the Wild Rice River; and

6) that Applicant notify the Richland County Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, submit an additional permit application.

Upon roll call vote, the motion carried unanimously.

In addition to those conditions, the Board will also recommend 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 #21-062 for Kelly Klosterman, Tri-K Farms, in the NW1/4 Section 36, Barney Township

The Board reviewed *Application to Install a Subsurface Water Management System #21-062*. Under the application, Kelly Klosterman, Tri-K Farms, seeks to install an 87-acre drain tile system in the NW1/4 Section 36, Barney Township. The project will include two gravity flow outlets located in the NW1/4 which will outlet directly into Antelope Creek. The Board reviewed the application, design plan, water flow map, and all accompanying data submitted as part of the application.

Mgr. Fasholz moved, and Mgr. Friskop seconded the motion, to approve Appl #21-062 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #21-062, 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 #21-063 for Kelly Klosterman, Tri-K Farms, in the N1/2 Section 6, Mooreton Township

The Board reviewed *Application to Install a Subsurface Water Management System #21-063*. Under the application, Kelly Klosterman, Tri-K Farms, seeks to install a 143-acre drain tile system in the N1/2 Section 6, Mooreton Township. The project will include one gravity flow outlet located on the west side of County Road #1 in the NW1/4 which will outlet directly into Antelope Creek and one gravity flow outlet located on the east boundary of the NE1/4SE1/4 which will outlet directly into Antelope Creek. The Board reviewed the application, design plan, water flow map, and all accompanying data submitted as part of the application.

Mgr. Friskop moved, and Mgr. Fahsholz seconded the motion, to approve Appl #21-063 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #21-063 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 a pipeline easement from the owners of property not owned by the Applicant but on which the Applicant will install, construct, and maintain a buried pipeline;

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.

Appl #21-064, Dave Link: SE1/4 Section 9, Mooreton Township No action required; work is within ND Department of Transportation right-of-way.

Snagging and Clearing

Based on the Board's previous budget discussions, American Enterprises was asked to provide the District with bids for snagging and clearing on the Wild Rice and Sheyenne rivers. Bids have been received and are as follows:

Wild Rice River- Reach 1	\$ 70,000
Wild Rice River- Reach 2	\$100,000
Sheyenne River	\$100,000

Work on the Sheyenne River is only at bridge sites because of lack of access to the river.

Due to the Commission's proposal to reduce the District's mill levy for 2022 no action was taken on the snagging and clearing projects. The matter was tabled pending the Commission's decision on the levy.

Proj #95

Water hemp is growing in Proj #95 in Section 26, Homestead Township. The Managers directed Mr. Johnson to contact Mike Larson, of Larson Helicopters, to inquire about spraying the channel. Board consensus was to hire Larson Helicopters to spray the channel in Section 26 if they are set up to do it.

2021 Drain Maintenance and Excess Levies

The Managers reviewed the financial status of all drain maintenance accounts. Discussion was held relative to fund balances, work pending, and

work anticipated. A motion was made by Mgr. Fahsholz and seconded by Mgr. Friskop to approve the 2021 drain maintenance levies for the purpose of paying for work done in 2021, anticipated expenses in 2022 and beyond, sinking funds for Drain #7, and the excess levy for Bond #2.

<u>Drain #</u>	<u>Levy Amount</u>	<u>Drain #</u>	<u>Levy Amount</u>
Dr. #1	\$4.00 Weighted	Dr. #2	\$2.00 Weighted
Dr. #3	\$4.00 Weighted	Dr. #4	\$4.00 Weighted
Dr. #5	\$4.00 Weighted	Dr. #6	\$4.00 Weighted
Dr. #7	\$4.00 Weighted	Dr. #10	\$4.00 Weighted
Dr. #12	\$3.00 Weighted	Dr. #14	\$4.00 Weighted
Dr. #15	\$1.00 Weighted	Dr. #17	\$4.00 Weighted
Dr. #18	\$4.00 Weighted	Dr. #19	\$2.00 Weighted
Dr. #26	\$4.00 Weighted	Dr. #31	\$4.00 Weighted
Dr. #34	\$3.00 Weighted	Dr. #35	\$2.00 Weighted
Dr. #39	\$2.00 Across Board	Dr. #41	\$4.00 Weighted
Dr. #48	\$4.00 Weighed	Dr. #55	\$4.00 Weighted
Dr. #58	\$2.00 Weighted	Dr. #62	\$3.00 Weighted
Dr. #63	\$4.00 Weighted	Dr. #65	\$4.00 Weighted
Dr. #66	\$4.00 Weighted	Dr. #72	\$4.00 Weighted
Dr. #95	\$1.00 Across Board	Dr. #97	\$1.00 Across Board
CR #1	\$0.25 Weighted	RS #1	\$4.00 Weighted

Upon roll call vote, the motion carried unanimously.

Adjournment

There being no further business to come before the Board, Chr. Burvee adjourned the meeting at 11:50 AM.

Respectfully submitted,

Monica Zentgraf
Monica Zentgraf
Secretary

Arv Burvee
Arv Burvee
Chairman of the Board