

RICHLAND COUNTY WATER RESOURCE DISTRICT
Richland County Courthouse, Wahpeton, ND
June 18, 2019

The Richland County Water Resource Board ("RCWRB") met June 18, 2019 at 8:00 AM at the Richland County Courthouse, Wahpeton, North Dakota.

THOSE PRESENT: Managers Arv Burvee, Gary Friskop, James Haugen, Don Moffet, Robert Rostad, Engineering Technician Justin Johnson, and Secretary-Treasurer Monica Zentgraf.

THOSE ABSENT: None

Minutes

The June 11, 2019 minutes were presented. A motion was made by Mgr. Burvee and seconded by Mgr. Haugen to approve the June 18, 2019 minutes as presented. The motion carried unanimously.

Mail:

- 1.) Richland County Commission- May 2019 meeting minutes.
- 2.) Mike Bassingthwaite- Request for someone to attend and take part in the North Branch Antelope Creek Regional Conservation Partnership Program ("RCPP") tour, which is a part of the Minnesota Association of Watershed Districts and Red River Retention Authority summer tour. The Managers directed Mr. Johnson to assist Mr. Bassingthwaite, of Interstate Engineering, with the tour.

Proj #1 Reconstruction

Secretary/Treasurer Zentgraf reported on advice received relative to funding options for the partial reconstruction of Proj #1. The Board has very limited resources for funding, which includes a vote for an excess levy or loan from the District's bank for no more than the amount equal to 6 years of maintenance levy assessments. Kelly Miller will meet with the Board later in the day regarding the funding issue. (RCWRD #17-017)

Richland County Commission

The Managers met with the Richland County Commission. Those present, in addition to the RCWRD Members and staff were Commissioners Thompson, Berseth, Ehlert, Berg, Campbell, Assistant States Attorney Moen, Richland County staff personnel Hage and DeVal, Richland County Engineer Jesse Sedler, and *Daily News* Reporter Frank Stanko.

RCWRB Chr. Friskop reported on the Districts projects and field various questions from the Commissioners.

- Proj #7 Reconstruction- The RCWRD is reconstructing a three mile stretch of Proj #7, in Garborg Township. The project is going very well.

- 2019 FEMA Damages- Damages from the spring flood event are limited. Mr. Johnson is inspecting the drains and making sure they are in good repair.

- Snagging and Clearing Projects- The District is working on securing bids for snagging and clearing projects on the Wild Rice and Sheyenne rivers. They anticipate work being done during the upcoming winter months. Mr. Sedler expressed concern about debris up against numerous County bridges; he was in full support of projects on both river systems.

- Brandenburg Township Drainage Issue- Cmr. Berseth reported that he has received calls about this issue. The RCWRB held a meeting with the landowners several years ago, but the landowners were not in support of a legal drain and assessment district.

- Walcott West- Cmr. Berseth asked if the (legal) drain had been deepened. Mr. Johnson confirmed a private landowner lowered the ditch approximately 1.5 to 2 feet; vegetation and riprap was also removed. The RCWRB is working on this

matter. (This pertains to Proj #5(64); location of damage is the NE1/4 Section 27, Walcott West. RCWRD #19-024)

- Proj #14- Cmr. Thompson reported that he has heard from Bob Helbling regarding the crossing (in Section 23, Barrie Township.) The RCWRD has not been contacted by Mr. Helbling for several years.

- Helendale Private Drain- The Commissioners inquired about the status of the Helendale Private Drain project. The North Dakota State Water Commission ("ND SWC") approved the application with conditions, including a condition that a permit be secured from the County.

- Engineering Selection Process- A question was asked about the District's engineering selection process, in which it was explained that the District goes through the Request For Qualifications ("RFQ") process every 3 years as required by law. Engineers for the District's work are chosen from those firms; Interstate Engineering is the District's main firm.

- Legal Drain Assessment Districts- Cmr. Thompson inquired about assessments to legal drains/the process if someone feels they do not benefit from the drain and should not be assessed. It was recommended that someone in this situation make a written request to the RCWRD.

The joint meeting concluded at this time.

Proj #1 Reconstruction

Kelly Miller met with the Board for the purpose of discussing funding options for the partial reconstruction of Proj #1. Mike Bassingthwaite, of Interstate Engineering, also attended this meeting. During previous discussions with Mr. Miller, the group came to the consensus that an excess levy would not pass. Mr. Miller was informed that the only option available, other than the Board's previous commitment to the project, was for the District to attempt to secure a loan through their local bank. The District would need to secure the services of their legal counsel to work with the bank; however, before expending funds for legal counsel, the Managers need to know if Mr. Miller will commit to the project. It was estimated that the District could commit approximately \$30,000 more to the project, by securing a loan, to be repaid over 6 years. Mr. Miller's share of the project would then be approximately \$120,000. Time is of the essence, as the deadline to award the project is July 16, 2019; the District would need loan approval before awarding the project. Mr. Miller will consider the matter and provide the Board with an answer shortly. (RCWRD #17-017)

North Branch Antelope Creek RCPP Project

Mr. Bassingthwaite met with the Board to update them on the project deadline and to review the funding process. The District has until September 30, 2019 to submit the final report to NRCS, not July 31, 2019 as the Board was previously told. Mr. Bassingthwaite would like to have the report to the Board by the end of August, but could not commit to that at the present time. He further explained changes may need to be made to the report after NRCS reviews the entire document.

The contract for the study is \$824,000 with cost share assistance as follows: NRCS = \$500,000; ND SWC = \$113,400; Red River Joint Water Resource District = \$136,890. This leaves the District with a net out-of-pocket cost of \$73,710.

Mr. Bassingthwaite briefly spoke on the benefits of the study, i.e. complete watershed culvert study, identification of a potential retention project, and providing an invaluable resource for future hydraulic studies for culvert replacement projects, which will save time and engineering costs.

A public meeting will be held in the upcoming months, but one additional Planning Team meeting is needed first and will be held later this month.

The meeting with Mr. Bassingthwaite concluded.

Proj #48

At the June 11, 2019 meeting, the Board reviewed Jeff Bolme Applications #19-021 and #19-022, for work on Proj #48. No action was taken at that time as the Board also needed to consider a prior verbal request from Ron Strand for some cleaning in the legal drain, in the S1/2 Section 30, Eagle South. Mr. Strand's concern was about water standing in the ditch.

The amount of maintenance money available was considered by the Managers. A motion was made by Mgr. Rostad, seconded by Mgr. Burvee, and unanimously carried authorizing Ehlert Excavating to clean the S1/2 Section 30, Eagle South (Site #338), as needed. Work at Proj #48 expense. (RCWRD #18-013)

The Board proceeded to consider the Bolme requests with the following motions being made:

A motion was made on Appl #19-021 by Mgr. Burvee and seconded by Mgr. Haugen to assign the culvert lowering to Ehlert Excavation (Site #400). Work at Proj #48 expense. The motion carried unanimously.

A motion was made on Appl #19-022 by Mgr. Burvee and seconded by Mgr. Rostad to assign installation of a culvert extension and culvert lowering to Ehlert Excavation (Site #401). Installation of extension and culvert lowering at Proj #48 expense; Applicant responsible for culvert materials. The motion carried unanimously.

Wild Rice and Sheyenne Rivers Snagging and Clearing Projects

Consensus of the Board was to proceed with soliciting a bid from American Enterprises for snagging and clearing on the Sheyenne River. (This is in addition to the Board directive on June 11, 2019 to solicit a bid for snagging and clearing on the Wild Rice River.)

Cattail Spraying

The opinion of the Managers was that spraying cattails earlier in the season last year proved successful and they wished to continue with this practice. A motion was made by Mgr. Moffet and seconded by Mgr. Haugen authorizing Larson Helicopters to spray cattails in the legal drains as needed before they go to seed but not to spray Projs #1, 17, 19, #41 (N1/2SE1/4 Section 1, Mooreton Township and W1/2SW1/4 Section 6, Center East, not to be sprayed), and 48. The motion carried unanimously.

Applications

Application to Install a Subsurface Water Management System No. 19-008 for Carson and Haley Klosterman and Jerome Halvorson in the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 29 of Garborg Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 19-008* dated May 9, 2019, submitted in final form on May 16, 2019. Under the application, Applicants seek to install a 201-acre drain tile system in the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 29 in Garborg Township, Richland County, North Dakota. The project will include a single pump outlet that will discharge into the north road ditch of County Road No. 8 near the southeast corner of the Southwest Quarter of Section 29. The tile discharge will flow east in the north road ditch of County Road No. 8 along the south boundaries of the Southeast Quarter of Section 29, the South Half of Section 28, and the South Half of Section 27. At the intersection of County Road 8 and County Road 29, the tile discharge will turn north and will flow through the west road ditch of County Road 29, along the east boundary of Section 27; the tile discharge will flow through an existing culvert under 70th Street SE and will discharge into Richland County Drain No. 7 in the southeast corner of Section 22.

The District provided THIRTY-DAY NOTICES to downstream landowners in the Southeast Quarter of the Southeast Quarter of Section 29, and the Southwest Quarter of Section 28, as well as the Richland County Highway Department. None of the downstream landowners submitted “technical evidence,” as that phrase is defined under Section 61-32-03.1, to demonstrate how Applicants’ project could result in adverse impacts to their properties. As a result, under Section 61-32-03.1, the District cannot require Applicants to obtain any written consent or flowage easements from any of the downstream landowners. However, the District can require Applicants to install erosion protection at the outlet into the County Road No. 8 road ditch to protect the highway right of way from any erosion.

According to records submitted by Applicants, Carson and Haley Klosterman own the Southwest Quarter of Section 29, and Jerome Halvorson owns the Southwest Quarter of the Southeast Quarter of Section 29 of Garborg Township, where Applicants intend to install the tile project. Those parcels are both subject to easements to the Richland County Highway Department regarding County Road No. 8 right of way. With regard to downstream properties, there are a number of parties with interests in those parcels within one mile of the outlet, as follows:

- 1) Southeast Quarter of Southeast Quarter of Section 29: Ronald Spelhaug; Kami J. Strege; Charles and Kami J. Strege, as Custodians for Megan S. Strege and Parker C. Strege; Cody E. Strege; and Kimberly A. Hagel.
- 2) Southwest Quarter of Section 28: Amanda Breden, Kenneth Breden, Marie Simons, and Annette Rognlie.

Manager Rostad moved, and Manager Moffet seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 19-008*, dated May 9, 2019, filed May 16, 2019, for Carson and Haley Klosterman and Jerome Halvorson in the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 29 of Garborg Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 19-008, 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 provide, install, and maintain riprap or other ditch stabilization materials satisfactory to Richland County at any and all outlets into Richland County’s road right of way; and
- 3) That Applicants must turn off any pump outlets and otherwise close all outlets during “critical flood periods,” as determined by the District.

Upon roll call vote, the motion carried unanimously.

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

- 1) That Applicants obtain written permission from Richland County to discharge into, or otherwise utilize, any of its County highway ditches;
- 2) 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
- 3) 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 No. 19-019 for Agrinomics Limited Partnership in the Southwest Quarter West of the Railroad Tracks, the Southwest Corner of the Northwest Quarter, and the Southwest Corner of the Southeast Quarter of Section 15 of West End Township

The Board next discussed APPLICATION TO INSTALL A SUBSURFACE WATER MANAGEMENT SYSTEM NO. 19-019, A TILE PERMIT APPLICATION FROM Agrinomics Limited Partnership regarding portions of the West Half of Section 15 of West End Township, south and west of the railroad right of way. On May 20, Ohnstad Twichell sent THIRTY-DAY NOTICES to downstream landowners in the Southeast Quarter of Section 16 and the East Half of Section 21 of West End Township, as required under N.D. Cent. Code § 61-32-03.1. None of the downstream landowners have submitted “technical evidence” to demonstrate how the tile project could adversely impact their properties; under Section 61-32-03.1, the downstream landowners only had until June 16 to submit any “technical evidence.”

Under the timeframes under Section 61-32-03.1, the Board is now in a position to approve the permit. Because none of the landowners submitted “technical evidence,” the Board cannot require Agrinomics to obtain any consent from any of the downstream landowners as a condition to the permit.

However, the Board recently learned Agrinomics has already installed the tile system. The Board was already concerned about this project in light of the Board’s inability to require Agrinomics to consent to an assessment for Tri-County Drain No. 6; currently, the Agrinomics property in Section 15 is not within the Drain No. 6 assessment district. Further, landowners in the Southeast Quarter of Section 16 and the East Half of Section 21 are reporting damages as a result of the tile discharge over their properties.

Under Section 61-32-03.1, if the Board does not approve the permit within 60 days of its May 17 submission, the permit is automatically deemed “approved,” without any conditions. However, in light of Agrinomics’ failure to await approval of the permit by the Board, and the damages downstream landowners are experiencing, the Board elected not to approve the permit. The Board will consult with Sean Fredricks at the Board’s June 25 meeting to consider options, potentially including allowing the 60-day window to elapse, even if the permit is automatically approved. This type of behavior by a tile applicant is precisely the type of situation the Legislature should consider the next time the Legislature reviews options to amend tile permitting requirements.

ND SWC Construction Permit Process

The Managers reviewed an email from Randy Gjestvang, of the ND SWC, requesting input on the State’s construction permit process. Board consensus was to notify Mr. Gjestvang the RCWRB is satisfied with the current process.

Adjournment

There being no further business to come before the Board, Chr. Friskop adjourned the meeting at 11:25 AM.

Respectfully submitted,

Monica Zentgraf
Monica Zentgraf
Secretary

Gary Friskop
Gary Friskop
Chairman of the Board