

RICHLAND COUNTY WATER RESOURCE DISTRICT  
Richland County Courthouse, Wahpeton, ND  
June 25, 2019

The Richland County Water Resource Board ("RCWRB") met June 25, 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 18, 2019 minutes were presented. A motion was made by Mgr. Haugen and seconded by Mgr. Moffet to approve the June 18, 2019 minutes as presented. The motion carried unanimously.

### **Financial Matters**

#### ●Pay Estimates-

●Proj #7 Reconstruction- Pay Estimate #1 to JAV Construction in the amount of \$95,920.60

●RS #1 Reconstruction- Pay Estimate #5 to JAV Construction in the amount of \$3,287.00

A motion was made by Mgr. Burvee and seconded by Mgr. Rostad to approve the pay estimates as presented. The motion carried unanimously.

●Vouchers- Vouchers for the month of June 2019 were presented for the Board's review and approval. A motion was made by Mgr. Burvee and seconded by Mgr. Moffet to approve Vouchers #18095 through #18119 and the electronic funds transfers for the IRS and Job Service payments. The motion carried unanimously.

### **Mail:**

- 1.) State Engineer's Office- Temporary Water Permit #ND2019-19609, issued to Bois de Sioux Golf Course. Source: Red River; Point of Diversion: NE1/4 Section 5, Center East; Nature of Use: Irrigation; Total Quantity of Water: 10.1 Acre-Feet.
- 2.) Interstate Engineering- Hydraulic Study for replacement of an approach culvert on Proj #26, located in the NE1/4 Section 21, Fairmount North. Upon review of the report, a motion was made by Mgr. Burvee and seconded by Mgr. Rostad to replace the two 54 inch culverts with the same size pipe. Work assigned to Comstock Construction. The motion carried unanimously. (RCWRD #19-026)

### **Technician's Report**

●Proj #5(27)- Site #402, located in the NE1/4 Section 20, Walcott East- Repair erosion

●Proj #5(37)- Site #404, located in the SW1/4 Section 8, Walcott East- Damaged 96 inch cmps

●Proj #5(57)- Site #405, located in the NECR Section 11, Walcott West- Remove debris

Appl #19-028 was completed and a motion was made by Mgr. Burvee, seconded by Mgr. Haugen, and unanimously carried to order a hydraulic study from Interstate Engineering for Site #404.

●Proj #95- Site #406, located in the NW1/4 Section 27, Antelope Township- Remove sediment

Site #407, located in the SW1/4 Section 36, Homestead Township- Remove debris

Site #408, located in the SW1/4 Section 32, Antelope Township- Repair erosion

Site #409, located in the SW1/4 Section 34, Antelope Township- Repair erosion

Site #410, located in the SE1/4 Section 34, Antelope Township- Repair erosion

Site #411, located in the SE1/4 Section 36, Antelope Township- Repair erosion

Appl #19-029 was completed for the reported damages. Mr. Johnson was directed to solicit bids from Comstock Construction, JAV Construction, Ehler Excavating, and JBX LLC, as required for coverage through FEMA.

Sean Fredricks, Legal Counsel for the District, met with the Board to discuss the following matters:

### **Proj #1 Reconstruction**

This past week Kelly Miller informed the Office that he does not wish to invest the amount of money necessary for the Board to proceed with the Proj #1 reconstruction (base project only). He asked the Board to consider submitting the entire project (Base + Alternate) to the North Dakota State Water Commission ("ND SWC") to see if cost share assistance can be secured so the project can be done in 2020. A sediment analysis will need to be completed before the request can be submitted to the State. Mike Bassingthwaite, of Interstate Engineering, provided the Office with a "not-to-exceed" price of \$2,000 for the sediment analysis and preparation of the cost share request. Mr. Bassingthwaite will need to be contacted to see if his price is for the base project or base + alternate. Mr. Miller would like the Board to consider purchasing the right-of-way from Jeff Christopherson at this time. Mr. Miller is willing to donate the right-of-way needed along his property.

Discussion was held with Mr. Fredricks about funding options; Mr. Fredricks advised that state statutes limit Water Resource Districts' options to bonding or issuance of warrants.

Board consensus was to proceed with the sediment analysis for the base + alternate project and to move forward with securing the rights-of-way from both parties.

A motion was made by Mgr. Moffet and seconded by Mgr. Rostad to reject all bids for the reconstruction of Proj #1 due to insufficient funds. The motion carried unanimously. If/when the project moves forward, it will have to be rebid. (RCWRD #17-017)

### **Proj #3 Reconstruction**

The Managers previously discussed the need for reconstruction on Proj #3 in the SW1/4 Section 4 and W1/2 Sections 9 and 16, Lamars Township. Several months ago the Managers visited with some of the landowners about purchasing land for the project; the landowners were not willing to sell the District any land at that time. Mr. Fredricks reviewed the eminent domain process with the Managers, in the event the District is not able to come to an agreement with the landowners and they choose to proceed with the project. Another meeting will be held with the landowners later this year to see if an agreement can be reached. (RCWRD #19-004)

### **Proj #5(64)**

Mr. Johnson previously reported damage to Proj #5(64) in the NE1/4 Section 27, Walcott West. Mr. Johnson found that the channel bottom had been lowered approximately 2 feet; vegetation and riprap were also removed. The work was done to accommodate a drain tile outlet coming from the SE1/4 Section 22, Walcott West, and was done without RCWRB approval. Discussion followed regarding how to restore the drain and the landowners responsibility for the costs associated with the repair. The Managers agreed Mr. Fredricks should send a letter to the landowners, Stephen and Renee Anderson, directing them to restore

the legal drain and relocate the tile outlet. When the drain bottom is restored, the outlet will not be useable. (RCWRD #19-024)

#### **Proj #12- Rudy Dotzenrod & Group Appl #18-031**

Discussion was held about the possibility of adopting the private ditch on the east side of Section 10, Freeman Township, as part of Proj #12. Mr. Fredricks advised that the right-of-way for this ditch and a ND SWC permit would have to be secured before it can be made a part of the legal drain.

The Managers will consider this matter in a future meeting. (Dotzenrod & Group Appl #18-031)

#### **Proj #31- Myron Holthusen Driveway**

The Managers and Mr. Fredricks visited about the liability issues associated with Mr. Holthusen's existing driveway (located in the NW1/4 Section 20, Summit West) and options for alternate access to the farmstead. No action was taken; the District is waiting for a report from Interstate Engineering. (RCWRD #19-011)

#### **Unnamed Creek in Brandenburg Township**

An unnamed creek running through Brightwood, Waldo, and Brandenburg Townships has caused issues for several years and this spring caused a road to wash out and field erosion in Brandenburg Township. Mgr. Burvee explained the problem is the watercourse flows uncontrolled. Mr. Fredricks indicated the District's only option to resolve the multiple issues is with construction of a legal drain and establishment of an assessment district. The Managers presented this option to the affected landowners in the past but they did not support it.

#### **Agrinomics LP Subsurface Water Management Permit #19-019**

Office Staff reported Jim Peterson, Agrinomics LP General Partner, contacted the Office this past week to inquire about the status of his subsurface water management system permit (#19-019) involving portions of the West Half of Section 15, West End Township, south and west of the railroad right-of-way. Mr. Peterson was informed of the Board's decision not to approve the permit and the rationale behind the decision.

At this time, the Managers and Mr. Fredricks proceeded to discuss the issues associated with this project, which include the system being installed prior to Water Resource Board approval, damages, and unassessed water entering a legal assessment drain. Mr. Fredricks was informed that a representative of Ellingson Drain Tile, the company installing the system, called the RCWRD around June 4<sup>th</sup> to inquire about the status of the permit. The Ellingson representative was told the Board could not consider the permit application until June 18<sup>th</sup> due to the legal requirement for 30 day notice to downstream landowners (N.D. Cent. Code § 61-32-03.1). Despite knowing the application was not approved and could not be considered until June 18<sup>th</sup>, Ellingson Drain Tile ignored the law and proceeded with installation of the system.

Mr. Fredricks reminded the Managers that if they do not approve the permit within 60 days of its May 17<sup>th</sup> submission, the permit is automatically deemed "approved," without any conditions.

The discussion regarding Agrinomics LP Subsurface Water Management Permit #19-019 concluded with the Managers upholding their earlier decision not to take action to approve the permit.

#### **Abandoned Homestead Drain**

Office staff is currently working with a landowner on a drain tile application involving water which will flow from the tile outlet one mile downstream in the abandoned Homestead Drain. A question was directed to Mr. Fredricks regarding the requirement for notice to be sent to the landowner adjacent to the Homestead Drain, since the RCWRD owns a warranty deed for the drain. The warranty deed was reviewed by Mr. Fredricks. (The Homestead Drain file was also reviewed and

it was found that the drain was officially abandoned on March 26, 1946. The rights-of-way, however, were retained by the RCWRD.) Mr. Fredricks indicated notice must be given to the adjacent landowner.

**Current Subsurface Drainage Law**

General discussion of the current subsurface drainage law was held with concern being expressed by all parties about the multiple pitfalls in the law, i.e. unassessed water entering a legal assessment drain, tile being installed prior to water board approval. This law should be addressed with the Interim Water Topics Committee in preparation for the 2021 legislative session.

**Adjournment**

There being no further business to come before the Board, Chr. Friskop adjourned the meeting at 11:40 AM.

Respectfully submitted,

*Monica Zentgraf*  
Monica Zentgraf  
Secretary

*Gary Friskop*  
Gary Friskop  
Chairman of the Board