

RICHLAND COUNTY WATER RESOURCE DISTRICT
Richland County Courthouse, Wahpeton, ND
June 9, 2020

The Richland County Water Resource Board ("RCWRB") met June 9, 2020 at 8:00 AM via teleconference.

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

THOSE ABSENT: Arv Burvee

Minutes

The May 26, 2020 minutes were presented. A motion was made by Mgr. Moffet and seconded by Mgr. Fahsholz to approve the May 26, 2020 minutes as presented. The motion carried unanimously.

Financial Matters

● **May 2020 Financial Reports**- A motion was made by Mgr. Fahsholz and seconded by Mgr. Haugen to accept the May 2020 financial reports as presented. The motion carried unanimously.

● **Bremer Bank Letter of Credit**- 110% of the District's securities totaled \$7,535,540.77. Bremer Bank's Letter of Credit, in the amount of \$8,000,000 adequately covers the District's funds.

Mail

- 1) North Dakota Water Users Association- July meeting of the North Dakota Water Users Association and North Dakota Water Resource Districts Association have been postponed due to the coronavirus pandemic.
- 2) Interstate Engineering- Hydraulic study for four crossings on Proj #66A. Discussion was held regarding the recommendation to downsize the culverts at Sites #442 and #444. The Managers felt the crossings should be maintained with the same size pipe rather than downsizing them. A question was raised about why there are three 48 inch culverts at Site #444; Mr. Johnson suggested possibly replacing them with two 54 inch pipe. Mr. Bassingthwaite, of Interstate Engineering, was contacted and asked to join the teleconference meeting to discuss the report, most specifically Site #444. Mr. Bassingthwaite offered two 64 inch x 43 inch cmpas as an additional alternative. After much discussion, Board consensus was to replace the culverts at Sites #441, 442, and 256 with pipe the same size as existing and replace the culverts at Site #444 with two 54 inch cmps. Bids to be solicited from JBX and Ehlert Excavating. The work completion deadline was set for September 15, 2020. (RCWRD #20-014)

Mr. Bassingthwaite left the meeting.

Applications

Application to Install a Subsurface Water Management System No. 20-015 for Jay and Cara Myers, in the South Half of Section 19 in Abercrombie West Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 20-015*, dated May 4, 2020, and filed May 6, 2020, for Jay and Cara Myers. Under the application, Applicants seek to install a 138-acre drain tile system in the East Half of the Southwest Quarter of Section 19, and the South Half of the Southeast Quarter of Section 19 in Abercrombie West Township, Richland County, North Dakota. The project will include a single pump outlet located in the southeast corner of the Southeast Quarter of Section 19; the outlet will discharge directly into the west road ditch along County Road 1; the tile discharge will flow north, along the east boundary of Section 19 of Abercrombie West Township; just

north of the Half Section line, in the South Half of the Northeast Quarter of Section 19, the tile discharge will flow east under County Road 1, through an existing culvert; the tile discharge will daylight in the South Half of the Northwest Quarter of Section 20, in the east road ditch along County Road 1; the tile discharge will then flow north in the east road ditch until reaching the northwest corner of the Section 20; from there, the discharge will flow east in the south road ditch of 69th Street SE, along the north boundary of the Northwest Quarter of Section 20.

The Board previously provided THIRTY-DAY NOTICES to all landowners within one mile of the outlet of the proposed project, including Richland County Highway Department, as required under N.D. Cent. Code § 61-32-03.1. The Board also provided THIRTY-DAY NOTICES to Abercrombie Township and Southeast Water Users. None of the downstream landowners submitted “technical evidence,” as that phrase is defined under Section 61-32-03.1, to demonstrate Applicants’ project will result in adverse impacts to their properties. As a result, under the tile law passed during the 2017 Legislative session, the Board cannot require Applicants to obtain any consent from downstream landowners. However, the Board can require Applicants to install and maintain erosion protection in the County’s road ditch. Further, Applicants and Southeast Water Users executed an agreement that will require Applicants’ tile to be at least 20 feet from Southeast Water Users’ water lines.

According to records supplied by Applicants, Jay and Cara Myers own the East Half of the Southwest Quarter of Section 19, and the South Half of the Southeast Quarter of Section 19 in Abercrombie West Township. With regard to downstream properties, 5K Farms LLLP owns the South Half of the Northeast Quarter, and the North Half of the Southeast Quarter, all in Section 19. Lynn Mickelson owns the Northwest Quarter of Section 20.

Manager Fahsholz moved, and Manager Haugen seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20-015*, dated May 4, 2020, and filed May 6, 2020, for Jay and Cara Myers, regarding their proposed tile system in the East Half of the Southwest Quarter of Section 19, and the South Half of the Southeast Quarter of Section 19 in Abercrombie West Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 20-015, subject to the following condition:

- 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 the Richland County Highway Department’s road right of way;
- 3) That Applicants will not install Applicants’ tile system within 20 feet, on either side, of Southeast Water Users’ rural water lines in Section 19; and
- 4) That Applicants 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, 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 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 Applicants obtain written permission from Richland County to discharge into, or otherwise utilize, any of its highway right of way; 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. 20-016 for Jay and Cara Myers, in the Northwest Quarter of Section 32 in Nansen Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 20-016*, dated May 4, 2020, and filed May 7, 2020, for Jay and Cara Myers. Under the application, Applicants seek to install a 150-acre drain tile system in the Northwest Quarter of Section 32 in Nansen Township, Richland County, North Dakota. The project will include a single pump outlet located in the northeast corner of the Northwest Quarter of Section 32; the outlet will discharge directly into the south road ditch along County Road 8; the tile discharge will flow east, along the north boundary of the Northeast Quarter of Section 32 and the Northwest Quarter of Section 33 of Nansen Township. The Richland County Water Resource District does not have jurisdiction over Applicants' tile discharge beyond one mile of the outlet.

The Board previously provided THIRTY-DAY NOTICES to all landowners within one mile of the outlet of the proposed project as required under N.D. Cent. Code § 61-32-03.1. The Board also provided THIRTY-DAY NOTICES to the Richland County Highway Department and Southeast Water Users; the Highway Department has an easement for its highway right of way, and Southeast Water Users has a blanket easement in the Northwest Quarter of Section 32 regarding its water lines. None of the downstream landowners submitted "technical evidence," as that phrase is defined under Section 61-32-03.1, to demonstrate Applicants' project will result in adverse impacts to their properties. As a result, under the tile law passed during the 2017 Legislative session, the Board cannot require Applicants to obtain any consent from downstream landowners. However, the Board can require Applicants to install and maintain erosion protection in the County's road ditch. Further, Applicants and Southeast Water Users executed an agreement that will require Applicants' tile to be at least 20 feet from Southeast Water Users' water lines in the Northwest Quarter of Section 32.

According to records supplied by Applicants, Jay and Cara Myers own the Northwest Quarter of Section 32 in Nansen Township. With regard to downstream properties, Kevin Hudson and Cynthia Erbes own the Northeast Quarter of Section 32 along County Road 8, with the exception of a parcel owned by Adam and Anna Marohl for purposes of a driveway. William Mauch Real Estate LLLP owns the Northwest Quarter of Section 33.

Manager Moffet moved, and Manager Fahsholz seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20-016*, dated May 4, 2020, and filed May 7, 2020, for Jay and Cara Myers, regarding their proposed tile system in the Northwest Quarter of Section 32 in Nansen Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 20-016, subject to the following condition:

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 the Richland County Highway Department's road right of way;

3) That Applicants will not install Applicants' tile system within 20 feet, on either side, of Southeast Water Users' rural water lines in the Northwest Quarter of Section 32; and

4) That Applicants 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, the motion carried unanimously.

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

1) 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;

2) That Applicants obtain written permission from Richland County to discharge into, or otherwise utilize, any of its highway right of way; 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. 20-021 for BDR Farms, in the Northwest Quarter of Section 1 in Danton Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 20021*, dated June 3, 2020, and filed June 4, 2020, for BDR Farms. Under the application, Applicant seeks to install a 134-acre drain tile system in the Northwest Quarter of Section 1 in Danton Township, Richland County, North Dakota. The project will include a single pump outlet located in the northeast corner of the Northwest Quarter of Section 1; the outlet will discharge into the south road ditch along 78th Street SE; the tile discharge will then flow west in the south road ditch for approximately 50 feet before flowing through an existing culvert through 78th Street; the discharge will daylight on the north side of 78th Street and will discharge into Richland County Drain No. 95, a legal assessment drain owned by the Richland County Water Resource District.

Because Applicant owns the property on which the project will originally discharge, and because the tile discharge will then outlet into a legal assessment drain, no THIRTY-DAY NOTICE was 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 obtain any consent from downstream landowners since the project ultimately discharges on Applicant's property, then into a legal assessment drain. However, by law, the Board can require Applicant to install and maintain erosion protection at the outlet into Danton Township's road ditch, to protect the ditch.

According to records supplied by Applicant, Craig David owns the Northwest Quarter of Section 1 of Danton Township. Mr. David signed the Application to provide consent to the project.

Manager Haugen moved, and Manager Fahsholz seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20-021*, dated

June 3, 2020, and filed June 4, 2020, for BDR Farms, regarding a proposed tile system in the Northwest Quarter of Section 1 in Danton Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 20-021, 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 install and maintain adequate erosion protection to protect Danson Township's road ditch; and
- 3) 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, 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 consider complying 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 Danton Township and from Homestead Township to discharge into, or otherwise utilize, any of their road 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.

Application to Install a Subsurface Water Management System No. 20-022 for Brian Herding, in the North Half of Section 3 in Homestead Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 20-022*, dated and filed June 4, 2020, for Brian Herding. Under the application, Applicant seeks to install a 306-acre drain tile system in the North Half of Section 3 in Homestead Township, Richland County, North Dakota. The project will include a single pump outlet located along the east boundary of the Northeast Quarter of Section 3; the outlet will discharge directly into Richland County Drain No. 15, a legal assessment drain owned by the Richland County Water Resource District.

Because the project will discharge directly into a legal assessment drain, no THIRTY-DAY NOTICE was necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1. Because the project will discharge directly into a legal assessment drain, under the tile law passed during the 2017 Legislative session, the Board cannot require Applicant to obtain any consent from downstream landowners as a condition to the permit. However, by law, the Board can require Applicant to install and maintain erosion protection at the outlet into Drain 15 to protect the drain. Further, the Board can attach a condition regarding the location of the outlet in relation to Drain 15.

According to records supplied by Applicant, Brian Herding owns the North Half of Section 3 of Homestead Township.

Manager Fahsholz moved, and Manager Haugen seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20-022*, dated

and filed June 4, 2020, for Brian Herding, regarding a proposed tile system in the North Half of Section 3 in Homestead Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 20-022, 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 set and install any drain tile pumps at least 25 feet from the top of the back slope of Drain 15, with a pipe buried from the drain tile pump to Drain 15;
- 3) That Applicant install and maintain adequate erosion protection at the point of discharge into Drain 15, to protect Drain 15, including riprap and fabric;
- 4) That Applicant must reseed any of the District's right of way disturbed by Applicant's activities, and must maintain any reseeded areas for a period of one year from the date of completion to ensure the seeding adequately repairs any disturbed areas; and
- 5) 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, 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 consider complying 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; and
- 2) 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

Mr. Johnson provided the following reports:

- **Proj #4(33)**

Site #456: SW1/4 Section 12, Ibsen Township- Two 60 inch x 50 foot cmps- East cmp rusted through.

Site #457- SW1/4 Section 13, Ibsen Township- Two 48 inch x 48 foot cmps- East cmp rusted through.

Appl #20-023 was completed and a motion was made by Mgr. Moffet, seconded by Mgr. Fahsholz, and unanimously carried authorizing Interstate Engineering to complete hydraulic studies on the reported sites.

- **Proj #5**

Site #446: SE1/4 Section 36, Walcott West Township- One 18 inch x 80 foot cmp rusted out.

Appl #20-024 was completed and a motion was made by Mgr. Fahsholz, seconded by Mgr. Moffet, and unanimously carried authorizing JBX to replace the culvert and flap gate.

- Proj #12

Site #455: SE1/4 Section 6, Nansen Township- Erosion by 18 inch x 40 foot cmp; problem most likely with cmp.

Appl #20-025 was completed and a motion was made by Mgr. Fahsholz, seconded by Mgr. Haugen, and unanimously carried authorizing Ehlert Excavating to replace the culvert and repair erosion.

- Proj #62- Access Agreement for Boat Dock in the NE1/4 Section 21, Abercrombie West Township

As directed by the Managers at the May 26, 2020 meeting, Legal Counsel prepared an access agreement between the RCWRD and landowners Rick and Jacquelyn Bladow for the boat dock Bladows' tenant placed across Proj #62 in the NE1/4 Section 21, Abercrombie West Township. The agreement was forwarded to the Managers for their review.

Discussion was held regarding changing the language pertaining to the timelines for the annual removal and installation of the dock and also regarding setting a deadline for the landowners to sign the agreement or to permanently remove the dock. A motion was made by Mgr. Fahsholz, seconded by Mgr. Moffet, and unanimously carried to revise the access agreement to reflect removal of the dock before the first snowfall of the season and reinstallation only after the snow has melted in the spring. Access agreement to be signed and returned to the RCWRD or permanent removal of the dock by July 15, 2020. (RCWRD #20-013)

- Proj #62 Hydraulic Study for the SE1/4 Section 21, Abercrombie West Township

Houston Engineering provided the Office with a hydraulic study for replacing the two rusted out 36 inch x 61 foot cmps, located in the NE1/4 Section 21, Abercrombie West Township (Site #440). The hydraulic study was forwarded to the Managers for their review. Discussion was held relative to the need to upsize the culverts due to North Dakota Stream Crossing Standards and the two options provided in the study. Mr. Johnson felt the culverts in the field approach, located approximately 0.25 miles north of Site #440, may also need to be replaced. There are two lines of 36 inch pipe in the field approach. Because of upsizing the culverts at Site #440, Mr. Johnson suggested he confer with the Engineer about proper sizing for the field approach culverts. Action was tabled pending input from the Engineer. (RCWRD #20-013)

- Proj #72

Site #458: NE1/4 Section 7, Abercrombie West Township- Rusted out 70 inch x 48 inch x 88 foot culvert causing erosion damage to township road.

Appl #20-026 was completed and a motion was made by Mgr. Moffet, seconded by Mgr. Fahsholz, and unanimously carried authorizing Interstate Engineering to complete a hydraulic study and Mr. Johnson to assign the first available contractor to make temporary repairs to the township road.

- Drain Inspections

Mr. Johnson provided a brief update of drains he inspected that do not have damage.

- Contractor Update

As directed by the Board at the May 26, 2020 meeting, Mr. Johnson contacted Jim Viele, of JAV Construction, regarding completion of assigned culvert work on Projs #5 and #55. Mr. Viele indicated he would complete the projects by the end of July. It was noted that Proj #7 warranty work/spring damages and Proj #5 (Stephen Anderson repairs) are also outstanding. The Managers also want these projects completed by July 31st and directed Mr. Johnson to notify Mr. Viele accordingly.

2021 Budget

The Secretary-Treasurer reported that she is beginning to work on the 2021 budget.

North Dakota Water Topics Committee Meeting

A brief discussion was held relative to information received from Houston Engineering Staff Members regarding the June 4th North Dakota Water Topics Committee meeting. Of particular importance to the Managers are the economic analysis and North Dakota State Water Commission cost-share assistance.

Adjournment

There being no further business to come before the Board, Chr. Friskop adjourned the meeting at 10:00 AM.

Respectfully submitted,

Monica Zentgraf
Monica Zentgraf
Secretary

Gary Friskop
Gary Friskop
Chairman of the Board