

RICHLAND COUNTY WATER RESOURCE DISTRICT
Richland County Courthouse, Wahpeton, ND
May 5, 2020

The Richland County Water Resource Board ("RCWRB") met May 5, 2020 at 8:00 AM via teleconference.

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

THOSE ABSENT: None

Minutes

The April 28, 2020 minutes were presented. A motion was made by Mgr. Burvee and seconded by Mgr. Moffet to approve the April 28, 2020 minutes as presented. The motion carried unanimously.

Mail

- 1) None

Proj #4- 2008 Reconstruction

The Secretary-Treasurer informed the Managers that before Legal Counsel can prepare the documents for the District's right-of-way from the 2008 reconstruction of Proj #4, a decision must be made regarding purchasing permanent berm easements from the landowners. Consensus was not to purchase berm easements given the fact the project was done 12 years ago. The goal at this time is to finalize the paperwork for the 2008 project; permanent berm easements should be considered the next time the drain is reconstructed. (RCWRD #20-001)

Proj #7- 2010 Reconstruction

The Secretary-Treasurer reported Robin Thompson Gordon contacted the Office on behalf of her Mother, Karen Thompson. Ms. Gordon requested the District "correct" the title for the 5.67 acres of land the District purchased from her parents in 2010 for right-of-way needed for the reconstruction of Proj #7. The land is located in the SE1/4 Section 19, Nansen Township. It was transferred to the District via a permanent deed and the acres were removed from the tax rolls. Ms. Gordon requested the title be changed to an easement. Ms. Gordon was notified that if the change is made, the acres removed from the tax rolls would be added back onto the tax rolls. Ms. Gordon withdrew her request as her Mother does not wish to pursue the matter at this time. (RCWRD #09-102)

Proj #95

Mgr. Moffet reported dirt was recently removed from the berm along Proj #95, in the SW1/4 Section 33, Antelope Township, and hauled approximately one-quarter mile north to be used to cover an approach culvert that is being installed. The Managers directed Mr. Johnson inspect the site and talk to the landowner about the matter. Mr. Johnson will report his findings at the next meeting.

North Branch Antelope Creek Watershed Study- Regional Conservation Partnership Program ("RCPP")

The Secretary-Treasurer reported the State Engineer approved the District's request for cost-share participation for the \$50,000 engineering over-run for the RCPP project. The District has received the cost-share agreement, which requires the Chairman's signature. With North Dakota State Water Commission ("ND SWC") and Red River Joint Water Resource District cost-share participation, the District's local share is estimated at \$13,000. A motion was made by Mgr. Moffet, seconded by Mgr. Burvee, and unanimously carried authorizing Chr. Friskop to sign the ND SWC cost-share agreement. Interstate Engineering will be notified to resume work and complete the study. (RCWRD #16-017)

Broadleaf Weed and Tree Spraying

Discussion was held regarding spraying the RCWRD legal drains and Richland-Sargent Joint Drain #1 for broadleaf weeds and trees. A motion was made by Mgr. Fahsholz and seconded by Mgr. Moffet authorizing Larson Helicopters to spray all drains for broadleaf weeds and trees with the exception of Projs #1, #7 (Sections 21, 22, 23, Garborg Township), #17, #19, and #41 (N1/2SE1/4 Section 1, Mooreton Township and W1/2 SW1/4 Section 6, Center West) and authorizing Chr. Friskop to sign the agreement between the District and Larson Helicopters. The motion carried unanimously.

Gabe Bladow, of Houston Engineering, joined the meeting via teleconference. The following matters were discussed:

•Proj #7- 2019 Reconstruction Warranty Work and 2020 Spring Damages

Mr. Bladow reported on the May 1st meeting held on site with Jim Viele, of JAV Construction. Those attending the on-site meeting, in addition to Mr. Bladow and Mr. Viele, were Mgr. Haugen, Mgr. Fahsholz, and Mr. Johnson. Mr. Bladow gave Mr. Viele notice of the warranty work, including seeding, and both minor and moderate erosion. (See April 28, 2020 minutes- Items #1, 2, and 3.) Mr. Viele agreed to reseed as determined by the Engineer and to repair the erosion.

Mr. Viele was asked to provide a cost estimate for the following non-warranty items: installation of additional riprap at the end of the rock aprons, additional riprap at the inlet and outlet ends of the road crossing culverts, and repairing the erosion and installing a rock drop where the new channel transitions to the old channel. Mr. Viele’s estimate for the non-warranty work is \$12,142. A motion was made by Mgr. Fahsholz and seconded by Mgr. Haugen to assign the non-warranty work to JAV Construction. The motion carried unanimously. Mr. Bladow will over-see all of the work. (RCWRD #20-010)

Mr. Johnson reported that he completed the spring inspection of Proj #7. Site #443, located in the SE1/4 Section 20, Garborg Township, was identified as a damaged culvert. Mr. Johnson recommended cutting off the rusted end of the 15 inch culvert, adding riprap, and installing a new flap gate. A motion was made by Mgr. Haugen, seconded Mgr. Moffet, and unanimously carried authorizing JAV Construction to make the repairs as recommended by Mr. Johnson. (RCWRD #19-025)

•Proj #31 Reconstruction

As directed at the April 28, 2020 meeting, Mr. Bladow recalculated the acreage needed if the backslopes are pulled back to 4:1 rather than tapering to 20:1 as originally planned. Total right-of-way needed would be:

SE1/4 Section 28, Devillo Township	1.0 Acre
NE1/4 Section 28, Devillo Township	2.0 Acres
SE1/4 Section 21, Devillo Township	4.0 Acres

The Managers are contemplating purchasing permanent right-of-way to the toe of the (4:1) backslope rather than including the (20:1 tapered) backslope in the temporary construction easements. The Mangers asked Mr. Bladow to calculate the additional cost; he reported the net additional cost for the right-of-way to be approximately \$10,000. Some of the additional costs would be offset due to the reduction in topsoil stripping costs by eliminating the 20:1 backslope. The Managers felt this modified plan should be presented to the affected landowners.

Board consensus was to offer the landowners \$5,000 per acre for permanent right-of-way and \$150 per acre, for two years, for temporary right-of-way. (The \$5,000 price was based on comp sales provided by the Richland County Tax Director in February 2019.)

Houston Engineering will continue working on the economic analysis and datasheet for the ND SWC Water Development Plan based on the modified plan. (RCWRD #18-022)

● **Proj #72 Erosion Damage**

Mr. Johnson contacted the tenants for the NW1/4 Section 12 and SW1/4 Section 1, both in Abercrombie West, regarding the District's desire to repair the erosion damage in Pitcairn Creek, which serves as the outlet for Proj #72. Neither tenant could speak for their landlord about land they may need to give up, but both parties were interested in seeing repairs made.

The FFA Foundation owns the NW1/4 Section 12; the tenant was going to contact the Foundation Representative and ask him to contact Mr. Johnson. Mr. Johnson has not yet heard from the Representative. (RCWRD #20-009)

Mr. Bladow left the meeting.

Technician's Report

Mr. Johnson provided the following spring drain inspection reports:

● **Proj #15-**

Site #438: NE1/4 Section 3, Homestead Township- Erosion/sediment in channel.

Appl #20-012 was completed and a motion was made by Mgr. Burvee, seconded by Mgr. Fahsholz, and unanimously carried to assign repairs to JBX, LLC and to authorize installation of an 18 inch inlet culvert and flap gate if needed.

● **Proj #62-**

Site #439: NE1/4 Section 21, Abercrombie West- Temporary crossing (boat dock) placed across drain.

Site #440- SE1/4 Section 21, Abercrombie West- Two 36 inch x 61 foot culverts rusted out.

Appl #20-013 was completed and the following action taken:

Site #439- Mr. Johnson to contact the landowner about removing the dock. (Letter to be sent to the landowner to follow up the personal contact.)

Site #440- A motion was made by Mgr. Burvee, seconded by Mgr. Moffet, and unanimously carried authorizing Houston Engineering to complete a hydraulic study for proper culvert sizing.

● **Proj #66A-**

Site #441- SECR SE1/4 Section 15, Mooreton Township- Two 54 inch x 54 foot culverts with bottoms rusting through.

Site #442- SECR SE1/4 Section 27, Mooreton Township- Two 54 inch x 54 foot culverts with bottoms rusting through.

Site #444- SECR NE1/4 Section 34, Mooreton Township- Three 48 inch x 58 foot culverts with bottoms rusting through.

Site #256- SECR SE1/4 Section 34, Mooreton Township- Two 48 inch x 50 foot culverts with bottoms rusted through.

Appl #20-014 was completed and a motion was made by Mgr. Burvee, seconded by Mgr. Fahsholz, and unanimously carried authorizing Interstate Engineering to complete hydraulic studies for proper culvert sizing for all sites.

Video Conference Equipment

Sean Fredricks, the District's legal counsel, visited with the Secretary-Treasurer about installing video conference equipment in the District's office. This will allow the District to confer with Mr. Fredricks more often and without incurring travel costs. Ohnstad Twichell Law Firm will pay for the equipment and installation. The Managers directed the Secretary-Treasurer to contact the Richland County Administrator for permission to install the equipment, and if permission is granted,

to work with Mr. Fredricks to determine if it is possible to install the equipment based on the office layout.

Applications

Application to Install a Subsurface Water Management System No. 20-005 for David Fixen in the Southeast Quarter of Section 27 in Ibsen Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 20-005* dated March 26, 2020, and filed April 1, 2020, for David Fixen. Under the application, Applicant seeks to install a 139-acre drain tile system in the Southeast Quarter of Section 27 in Ibsen Township, Richland County, North Dakota. The project will include a single pump outlet located near the southwest corner of the Southeast Quarter of Section 27; the outlet will discharge directly into the north road ditch along 77th Street SE; the tile discharge will flow west, through the road ditch and along the south boundary of the Southwest Quarter of Section 27 of Ibsen Township, until ultimately discharging into NDDOT's Interstate 29 right of way; the tile discharge will then flow south along I-29, along the west boundary of the East Half of Section 34 of Ibsen Township.

The Board previously provided THIRTY-DAY NOTICES to NDDOT and J&K Skovholt Limited Partnership as downstream landowners within one mile of the outlet of the proposed project, as well as to Ibsen Township, as required under N.D. Cent. Code § 61-32-03.1. None of the downstream landowners submitted "technical evidence," as that phrase is defined under Section 61-32-03.1, to demonstrate Applicant's project will result in adverse impacts to their properties. As a result, under the tile law passed during the 2017 Legislative session, the District cannot require Applicant to obtain any consent from downstream landowners. However, the District can require Applicant to install and maintain erosion protection in the township road ditch. In addition, NDDOT may require Applicant to submit a signed REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY, NDDOT's permit form regarding any drainage in its highway right of way; NDDOT also requires water resource districts to approve and sign their REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY forms, to comply with federal highway rules.

According to records supplied by Applicant, David Fixen owns the Southeast Quarter of Section 27 of Ibsen Township where Applicant intends to install the tile system. With regard to downstream properties, NDDOT owns its right of way, and J&K Skovholt Limited Partnership owns the East Half of Section 34 of Ibsen Township.

Manager Moffet moved, and Manager Fahsholz seconded the motion, to approve an NDDOT REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY for David Fixen regarding his tile project, and to approve *Application to Install a Subsurface Water Management System No. 20-005* dated March 26, 2020, and filed April 1, 2020, for David Fixen, regarding a tile system in in the Southeast Quarter of Section 27 in Ibsen Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT No. 20-005, subject to the following condition:

- 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 provide, install, and maintain riprap or other ditch stabilization materials satisfactory to Ibsen Township at any and all outlets into Ibsen Township's road right of way; 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 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 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 written permission from the Ibsen Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches;
- 3) That Applicant obtain written permission from the North Dakota Department of Transportation to discharge into, or otherwise utilize, any of its highway right of way; and
- 4) 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. 20-011 for Donald and Diana Klosterman in the Southwest Quarter of Section 11 and the Northwest Quarter of Section 14 in Garborg Township

The District reviewed an *Application to Install a Subsurface Water Management System No. 20-011* dated April 21, 2020, and filed April 23, 2020, for Donald and Diana Klosterman. Under the application, Applicants seek to install a 314-acre drain tile system in the Southwest Quarter of Section 11 and the Northwest Quarter of Section 14 in Garborg Township, Richland County, North Dakota. The project will include a single pump outlet located in the southwest corner of the Southwest Quarter of Section 11; the outlet will discharge directly into the east road ditch along County Road 29; the tile discharge will flow north, through the County Road 29 road ditch and along the west boundary of the Southwest Quarter of Section 11 of Garborg Township; the tile discharge will flow under 68th Street SE via a boring under 68th Street; the tile discharge will continue to flow north along the west boundary of the Northwest Quarter of Section 11 until ultimately discharging into Richland County Drain #12.

The Board previously provided THIRTY-DAY NOTICES to Gerald and Mary Jo Lothspeich as downstream 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 Garborg Township, as a courtesy to those road authorities in light of their public road facilities downstream of the project; the County has an easement for its County Road 29 right of way and the Township relies upon its statutory easement rights regarding its right of way and, therefore, neither road authority is a downstream "landowner" under Section 61-32-03.1. The Lothspeichs did not submit "technical evidence," as that phrase is defined under Section 61-32-03.1, to demonstrate Applicants' project will result in adverse impacts to their property; in fact, the Lothspeichs executed a NOTARIZED LETTER OF APPROVAL to indicate their consent to the project, and Applicants submitted the NOTARIZED LETTER OF APPROVAL to the Board at the Board's meeting. As a result, the Board was in a position to approve the permit and did not have to wait for the 30-day notice period to expire. Further, under the tile law passed during the 2017 Legislative session, the Board cannot require Applicants to obtain permission from the road authorities as a condition to the permit. Further, in light of the Lothspeichs' NOTARIZED LETTER OF APPROVAL, the Board cannot require Applicants to obtain any further consent or easement from the Lothspeichs as a condition to the permit. However, the District can require Applicants to install and maintain erosion protection in the County's Highway 29 road ditch, and can recommend that Applicants obtain Garborg Township's permission to bore through its township road.

According to records supplied by Applicants, Diana Klosterman owns the Southwest Quarter of Section 11 of Garborg Township, and Donald Klosterman owns the Northwest Quarter of Section 14, where Applicants intend to install the tile system. With regard to downstream properties, Diana Klosterman owns the Northwest Quarter of Section 11 of Garborg Township, with the exception of a 7-acre farmstead along the west boundary of the Northwest Quarter of Section 11, owned by Gerald and Mary Jo Lothspeich.

Manager Haugen moved, and Manager Fahsholz seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20-011* dated April 21, 2020, and filed April 23, 2020, for Donald and Diana Klosterman, regarding a tile system in in the Southwest Quarter of Section 11 and the Northwest Quarter of Section 14 in Garborg Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 20-011, 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 Highway 29 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 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 the Garborg Township Board of Township Supervisors to discharge into, to bore through or under, or otherwise utilize any of its township road right of way;
- 3) That Applicants obtain written permission from Richland County to discharge into, or otherwise utilize, any of its County Road 29 right of way; and
- 4) 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.

Proj #65 Wirtz Lateral

Mgr. Burvee reported that he spoke with Jerry Wirtz about the District's April 28th decision that the fence in the S1/2 Section 26, Waldo Township, be maintained by Mr. Wirtz. Mr. Wirtz pushed for the fence to be removed. Discussion was held regarding various issues, including responsibility for removing the fence and liability for cattle damage in the legal drain. Mgr. Burvee will visit with Mr. Wirtz again and report back to the Board.

Adjournment

There being no further business to come before the Board, Chr. Friskop adjourned the meeting at 11:15 AM.

Respectfully submitted,

Monica Zentgraf
Monica Zentgraf
Secretary

Gary Friskop
Gary Friskop
Chairman of the Board