

RICHLAND COUNTY WATER RESOURCE DISTRICT
Richland County Courthouse, Wahpeton, ND
November 17, 2020

The Richland County Water Resource Board ("RCWRB") met November 17, 2020 at 9:00 AM at the Richland County Courthouse.

THOSE PRESENT: Managers Arv Burvee, Gary Friskop, James Haugen, Don Moffet (via conference call), Engineering Technician Justin Johnson, and Secretary-Treasurer Monica Zentgraf.

THOSE ABSENT: Mark Fahsholz

Approval of Agenda

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

Minutes

The October 27, 2020 minutes were presented. A motion was made by Mgr. Haugen and seconded by Mgr. Burvee to approve the October 27, 2020 minutes as presented. Upon roll call vote, the motion carried unanimously.

Financial Matters

●**October 2020 Financial Reports**- A motion was made by Mgr. Burvee and seconded by Mgr. Moffet to accept the October 2020 financial reports as presented. Upon roll call vote, the motion carried unanimously.

●**Bremer Bank Letter of Credit**- 110% of the District's securities totaled \$7,007,005.47. Bremer Bank's Letter of Credit in the amount of \$7,800,000 adequately covers the District's funds.

Mail

- 1) Richland County Board of Commissioners- Minutes of the October 2020 meetings.
- 2) North Dakota Water Users Association- Agenda for the December convention, which will be an online event due to the on-going Covid-19 pandemic.

Applications

Application to Install a Subsurface Water Management System No. 20-063 for the Howard Frisk Revocable Trust in the N1/2 and the SE1/4 Section 3, Freeman Township

The District reviewed *Application to Install a Subsurface Water Management System No. 20-063*, dated October 21, 2020, and filed November 2, 2020, for Howard Frisk Revocable Trust. Under the application, Applicant seeks to install a 96-acre drain tile system in the N1/2 and the SE1/4 Section 3, Freeman Township, Richland County, North Dakota. The project will include a single pump outlet located in the southwest corner of the SE1/4 Section 3; the outlet will discharge into the north road ditch along State Highway 27; the discharge will flow east in the Highway 27 ditch, along the south boundary of the SE1/4 Section 3 until discharging into Richland County Drain #12 in the southeast corner of Section 3. The Richland County Water Resource District owns and operates Drain #12.

The Application would ordinarily require a THIRTY-DAY NOTICE to the North Dakota Department of Transportation as a downstream landowner under N.D. Cent. Code § 61-32-03.1. However, NDDOT already executed and provided Applicant NDDOT's "Request for Drainage on Highway Right of Way," so no NOTICE was necessary. However, the Board will require Applicant to install and maintain erosion protection at the outlet into NDDOT's right of way.

Applicant contacted Southeast Water Users District, and Southeast indicated they do not have any easements in the N1/2 or the SE1/4 Section 3, Freeman Township.

According to records supplied by Applicant, Howard Frisk, as Trustee of the Howard Frisk Revocable Trust, owns the N1/2 and the SE1/4 Section 3, Freeman Township. With regard to downstream property, NDDOT owns its Highway 27 right of way.

Mgr. Burvee moved, and Mgr. Haugen seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20-063*, dated October 21, 2020, and filed November 2, 2020, for Howard Frisk Revocable Trust regarding a proposed tile system in the N1/2 and the SE1/4 Section 3, Freeman Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 20-063, 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 erosion protection at the outlet into NDDOT's State Highway 27 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 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 comply 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.

Application to Install a Subsurface Water Management System No. 20-064 for the Howard Frisk Revocable Trust in the NE1/4 Section 4, Freeman Township

The District reviewed *Application to Install a Subsurface Water Management System No. 20-064*, dated October 21, 2020, and filed November 2, 2020, for Howard Frisk Revocable Trust. Under the application, Applicant seeks to install a 76-acre drain tile system in the NE1/4 Section 4, Freeman Township, Richland County, North Dakota. The project will include a single pump outlet located near the southeast corner of the NE1/4 Section 4; the outlet will discharge into the west road ditch along County Road 4 and will flow east through an existing culvert under County Road 4; from there, the discharge will flow south in the east road ditch along County Road 4 for a half-mile until reaching the southwest corner of Section 3; from there, the discharge will flow east in the north road ditch along State Highway 27, along the south boundary of Section 3 until discharging into Richland County Drain #12 in the southeast corner of Section 3. The Richland County Water Resource District owns and operates Drain #12.

The Application would ordinarily require a THIRTY-DAY NOTICE to the North Dakota Department of Transportation as a downstream landowner under N.D. Cent. Code § 61-32-03.1. However, NDDOT already executed and provided Applicant NDDOT's "Request for Drainage on Highway Right of Way" regarding this project, so no NOTICE was necessary. Further, no NOTICE was necessary to the Richland County Highway Department regarding the discharge into County Road 4 right of way; the County has easements for its right of way in Sections 3 and 4, and does not own its right of way in fee in this area. However, the Board will require Applicant to install and maintain erosion protection at the outlet into the County's highway right of way.

Southeast Water Users District has a blanket easement across all of the S1/2 Section 12; Applicant entered into a letter agreement with Southeast Water Users in which Applicant agreed not to install any tile lines within 20 feet of Southeast Water Users' water line.

According to records supplied by Applicant, Howard Frisk, as Trustee of the Howard Frisk Revocable Trust, owns the NE1/4 Section 4, Freeman Township. With regard to downstream property, NDDOT owns its Highway 27 right of way, and Applicant owns all of Section 3.

Mgr. Moffet moved, and Mgr. Haugen seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20-064*, dated October 21, 2020, and filed November 2, 2020, for Howard Frisk Revocable Trust regarding a proposed tile system in the NE1/4 Section 4, Freeman Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 20-064, 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 erosion protection at the outlet into the Richland County Highway Department's County Road 4 right of way;
- 3) that Applicant will not install Applicant's tile system within 20 feet, on either side, of Southeast Water Users District's rural water line on the NE1/4 Section 4; and
- 4) 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 comply 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 consent from the Richland County Highway Department to discharge into or otherwise utilize its County Road 4 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.

Appl #20-065, Jeff Erbes: NW1/4 Section 23, Nansen Township Mr. Johnson provided information to the Board relative to Mr. Erbes' request for lowering the driveway culvert and cleaning Proj #72 for a distance of 888 feet in the NW1/4 Section 23, Nansen Township, to accommodate his drain tile project in the N1/2NW1/4 and W1/2N1/2NE1/4 of the section. The tile project would include a single gravity flow outlet, directly into Proj #72, in the NECR of the property.

Along with the application, Mr. Erbes submitted survey data from Agassiz Drainage showing the outlet end of the culvert would need to be lowered approximately 0.50 feet and 2.5 feet to 3.0 feet would need to be "cleaned" out of the channel. Mr. Johnson explained this would involve reconstruction, not simply a cleanout, of the drain. Mr. Johnson further explained Mr. Erbes has an alternate plan, if the District denies the aforementioned request. The alternate plan would be to run a tile main to the east, across Jay Myers property, where the water would then outlet into the legal drain.

While the District is currently in the process of replacing the culvert Mr. Erbes requested be lowered (Appl #20-026), and the additional cost to lower the culvert would be very minimal, the cost for reconstructing the drain is substantial and would only accommodate Mr. Erbes' drain tile project. At this time a motion was made by Mgr. Burvee to deny Appl #20-065. The motion was seconded by Mgr. Haugen and upon roll call vote, the motion carried unanimously.

Technician's Report

Mr. Johnson provided an update on projects completed and those currently being worked on by the contractors.

Legislation Updates

Office Staff provided an update on the drain tile legislation they are continuing to work on with Representative Schreiber-Beck, Ellingson Companies management, and Sean Fredricks, legal counsel for the Red River Joint Water Resource Board. The group hopes to come to a consensus so the draft document can be circulated to Water Resource Boards and ag coalition groups and sent to Legislative Council for the upcoming legislative session.

Office Staff also reported Mr. Fredricks is working with the North Dakota Water Users Association and Red River Joint Board to write a bill to combine the two existing surface drain statutes into one.

Office Staff reported that discussion was held during the recent North Dakota State Water Commission Subcommittee meeting regarding the Attorney General's opinion of legal drain reconstruction projects. The AG's opinion is legal drain reconstructions are maintenance projects and therefore should not be afforded cost share funding through the North Dakota State Water Commission. This matter will likely be addressed during the upcoming legislative session.

Adjournment

There being no further business to come before the Board, Chr. Friskop adjourned the meeting at 11:00 AM.

Respectfully submitted,
Monica Zentgraf
Monica Zentgraf
Secretary

Gary Friskop
Gary Friskop
Chairman of the Board