

RICHLAND COUNTY WATER RESOURCE DISTRICT
Richland County Courthouse, Wahpeton, ND
November 20, 2018

The Richland County Water Resource Board (RCWRB) met November 20, 2018 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, and Secretary-Treasurer Monica Zentgraf.

THOSE ABSENT: Justin Johnson

Minutes

The October 23, 2018 minutes were presented. A motion was made by Mgr. Burvee and seconded by Mgr. Moffet to approve the October 23, 2018 minutes as presented. The motion carried unanimously.

Financial Matters

- October 2018 Financial Reports- A motion was made by Mgr. Haugen and seconded by Mgr. Rostad to accept the October 2018 financial reports as presented. The motion carried unanimously.

- Bremer Bank Letter of Credit- 110% of the District's securities totaled \$6,494,351.02 on October 31, 2018; the existing Letter of Credit, in the amount of \$7,900,000, adequately covers the District's funds.

Mail

- 1.) Richland County Commission- Minutes of the October 2018 meetings.
- 2.) North Dakota State Engineer- *Notice of Application On Petition For Appropriation Of Water From A Ground Water Source* (for irrigation purposes) submitted to the North Dakota State Engineer. Point of diversion is located in the SW1/4 Section 11, Brightwood Township.
- 3.) Minnesota Department of Natural Resources- Notification of ten day comment period for the Final Supplemental Environmental Impact Statement for the Fargo-Moorhead Flood Risk Management Project. Comment period closes November 29, 2018. No action taken pending input from Nathan Berseth, of the Richland-Wilkin Joint Powers Authority.
- 4.) Interstate Engineering- Report on potential repair/reconstruction of Proj #3, in the NW1/4 Section 16, Lamars Township. A meeting with Mike Bassingthwaite, of Interstate Engineering, will be scheduled to discuss the report. (RCWRD #18-004)

2019 Legislative Bills

The Managers met with Representatives Mitskog and Skroch for the purpose for discussing two bill drafts and seeking the Legislators support prior to start of the 2019 Legislative Session. Representatives Schreiber-Beck and Ertelt, and Senators Luick and Dotzenrod were also invited to the meeting but did not attend. The two bills discussed were:

- Economic Analysis Requirement- The North Dakota Water Resource Districts are seeking to eliminate the requirement for an economic analysis for projects receiving North Dakota State Water Commission cost-share assistance, as the requirement only adds an additional layer of bureaucracy, cost, and delays for Water Resource Districts seeking cost-share assistance for water management projects.

- Snagging and Clearing Projects- The snagging and clearing cost-share prohibition in the 2017 Session eliminated the ability of most Water Resource Districts and Cities to effectively manage rivers and watercourses, resulting in unnecessary flooding and bank erosion, and impeding the ability of ag producers to effectively drain their fields. North Dakota Water Resource Districts are seeking reinstatement of cost-share assistance for these projects.

Both Representatives were supportive of the bills. Representative Mitskog indicated a drain tile bill may also be drafted for Legislative consideration to fix issues with the law passed in the 2017 Session.

Other matters briefly discussed were the Fargo-Moorhead Flood Diversion Project and the Legacy Fund.

Applications

Application to Install a Subsurface Water Management System No. 18-029 for Mooreton Enterprises, Inc., in the West Half of Section 29 in Viking Township

The Board reviewed an *Application to Install a Subsurface Water Management System No. 18-029* dated September 24, 2018, for Mooreton Enterprises, Inc., Paul Langseth, President. Under the application, Applicant seeks to install a 247-acre tile system in the West Half of Section 29 of Viking Township, Richland County, North Dakota. The project will include a single pump outlet located in the northwest corner of the Southwest Quarter of Section 29; the pump will discharge along the west boundary of Section 29 into the east road ditch of State Highway 18; the tile discharge will then flow south in the Highway 18 road ditch for a half mile and will outlet into Richland County Drain No. 14. The Richland County Water Resource District owns and operates Drain 14.

The District previously provided a THIRTY-DAY NOTICE to the North Dakota Department of Transportation as a downstream landowner, as required under N.D. Cent. Code § 61-32-03.1. Applicant Mooreton Enterprises previously submitted a REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY, a consent form required by NDDOT when discharging into their highway right of way. NDDOT did not submit “technical evidence” that the project will result in adverse hydraulic effects to its highway right of way; the Board anticipates NDDOT will address any concerns through its own consent process. Under the tile law passed during the 2017 legislative session, the Board cannot require Applicant to obtain any easements or other consent from downstream landowners, but the Board can require Applicant to install erosion protection within NDDOT’s right of way.

According to records on file with the Richland County Recorder’s Office, Applicant Mooreton Enterprises, Inc., owns the West Half of Section 29.

Manager Moffet moved, and Manager Rostad seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 18-029* dated September 24, 2018, for Mooreton Enterprises, Inc., in the West Half of Section 29 in Viking Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 18-029, 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 provide, install, and maintain riprap or other ditch stabilization materials satisfactory to North Dakota Department of Transportation at any and all outlets into NDDOT’s highway 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 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 obtain written permission from the North Dakota Department of Transportation to discharge into, or otherwise utilize, any NDDOT right of way;
- 2) 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
- 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. 18-033 for 5K Farms LLLP in Section 19 of Abercrombie (West) Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 18-033* for 5K Farms LLLP, Vanessa Kummer, Paul Kummer, and Blaine Kummer, principals, dated October 19, 2018. Under the application, Applicant seeks to install a 158-acre drain tile system in the South Half of the Northeast Quarter of Section 19 and the North Half of the Southeast Quarter of Section 19 of Abercrombie (West) Township, Richland County, North Dakota. The project will include a pump outlet located near the northeast corner of the South Half of the Northeast Quarter of Section 19; the pump will discharge to the east through an existing culvert in County Road 1, and the tile discharge will daylight in the east road ditch along County Road 1; the tile discharge will then flow north through the road ditch along the west boundary of the Northwest Quarter of Section 20; at the northwest corner of the Northwest Quarter of Section 20, the tile discharge will turn to the east in the south road ditch along 69th Street SE for approximately one-sixth of a mile; the tile discharge will then flow north through an existing culvert under 69th Street SE and will daylight and discharge into the north township road ditch; from there, the tile discharge will flow east in the north road ditch, along the south boundary of Section 17; at the southeast corner of Section 17, the tile discharge will then turn north in the west township road ditch along 170th Avenue SE and will continue north until ultimately discharging into Richland County Drain No. 72.

The District previously provided THIRTY-DAY NOTICES to Richland County, Abercrombie Township, Southeast Water Users District, and the owners of the Northwest Quarter of Section 20, the Southwest Quarter of Section 17, and the Southeast Quarter of Section 17, all as required under N.D. Cent. Code § 61-32-03.1. None of the downstream landowners provided "technical evidence," as that term is defined in Section 61-32-03.1, to demonstrate potential adverse impacts of the project to their properties. With that in mind, under the tile law passed during the 2017 Legislative session, the Board cannot require Applicant to obtain flowage easements from downstream landowners, and cannot otherwise require Applicant to obtain consent from any of the downstream landowners or road authorities. However, the Board can require Applicant to install erosion protection in the county highway road ditch where the tile discharge initially outlets, to protect the highway ditch.

According to records on file with the Richland County Recorder's Office, 5K Farms LLLP owns the South Half of the Northeast Quarter and the North Half of the Southeast Quarter of Section 19 of Abercrombie (West) Township. Further, Richland County owns its County Road 1 right of way; Southeast Water Users District owns a blanket easement for water lines in the South Half of the Northeast Quarter and the North Half of the Southeast Quarter of Section 19 of Abercrombie

(West) Township; Lynn Mickelson owns the Northwest Quarter of Section 20; David and Marsha Hendrickson own the West Half of the Southwest Quarter of Section 17; Lynn Mickelson owns the East Half of the Southwest Quarter of Section 17; and Dallas Loff owns the Southeast Quarter of Section 17.

Manager Burvee moved, and Manager Haugen seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 18-033* dated October 19, 2018, for 5K Farms LLLP in the South Half of the Northeast Quarter and the North 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. 18-033, 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 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 Applicant 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 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 obtain written permission from Richland County to discharge into, or otherwise utilize, any of its County highway ditches;
- 2) 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
- 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.

Projects Pending Completion

Due to Mr. Johnson being out of the office for personal leave, Mike Bassingthwaite, of Interstate Engineering, was asked to oversee projects pending completion. Mr. Bassingthwaite met with the Board at this time to discuss those projects:

●Proj #17 Low Water Crossing

Mr. Bassingthwaite recommended suspending the removal of the low water crossing and installation of a Texas crossing until spring due to the onset of winter conditions. The Managers asked Mr. Bassingthwaite to inform the landowner accordingly. (RCWRD #18-006)

●Proj #26 Crossings

Mr. Bassingthwaite recommended suspending installation of the culverts until spring due to the onset of winter conditions. The Managers agreed with Mr. Bassingthwaite; TrueNorth will be directed to deliver the culverts to Comstock Construction's yard. (RCWRD #18-012)

●Project #41 Cleanout

Chr. Friskop expressed concern with the Board's decision to approve Paul Berndt Application #18-027, for cleaning Proj #41, in the E1/2 Section 36, Mooreton Township. Chr. Friskop indicated water sits in the drain now and he feels cleaning on the upstream end will exacerbate the problem. A motion was made by Mgr. Burvee and seconded by Mgr. Haugen to place Appl #18-027 on hold pending Interstate Engineering's investigation of conditions on Proj #41. The motion carried unanimously.

Project #72

Mr. Bassingthwaite reported on concern brought forward over the past few weeks by Tom Thayer regarding culverts located in the SE1/4 Section 13, Nansen Township. Mr. Thayer indicated the two culverts at this location are under water, causing him extreme concern about the possibility of his farmyard flooding in the spring if the culverts do not open up before runoff. The lower culvert and the 45 degree bend on the top culvert are under water and in ice. Due to onset of freezing conditions, it was determined the best temporary solution would be to remove the 45 degree bend and flap gate from the top culvert, which will take it out of the water. Further review and work will be needed in the spring, when conditions allow. Mr. Bassingthwaite recommended looking at long term solutions in the spring as well. Appl #18-034 was completed and a motion was made by Mgr. Rostad and seconded by Mgr. Burvee authorizing JBX to remove the 45 degree bend and flap gate on the top culvert and defer further action until spring. Work at Proj #72 expense. The motion carried unanimously.

North Branch Antelope Creek Watershed Study (RCPP Project)

Mr. Bassingthwaite requested a meeting with the Board to update them on the North Branch Antelope Creek Watershed Study. A meeting will be held December 11, 2018. (RCWRD #16-017)

Mr. Bassingthwaite left the meeting.

Project #41 Cleanout- Continued Discussion

Further discussion was held by the Managers regarding work needed by Interstate Engineering, as an investigation of this drain was done several years ago. A conference call was held with Mr. Bassingthwaite and the decision was made to meet with him to review the previous report before any further investigation is done. A meeting will be scheduled with Mr. Bassingthwaite. (Berndt #18-027)

Adjournment

There being no further business to come before the Board, Chr. Friskop adjourned the meeting at 11:45 A.M.

Respectfully submitted,

Monica Zentgraf
Monica Zentgraf
Secretary

Gary Friskop
Gary Friskop
Chairman of the Board