

RICHLAND COUNTY WATER RESOURCE DISTRICT  
Richland County Courthouse, Wahpeton, ND  
August 1, 2023

The Richland County Water Resource District ("RCWRD") met August 1, 2023, at 8:00 A.M. at the Richland County Courthouse.

THOSE PRESENT: Managers Arv Burvee, Tom Kubela, Gary Friskop, Clint Arndt, Brandon Ward, Engineering Technician Justin Johnson, Secretary-Treasurer Tiffany Bladow.

THOSE ABSENT:

### **Approval of Agenda**

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

### **Minutes**

The July 18, 2023, minutes were presented. A motion was made by Mgr. Arndt and seconded by Mgr. Burvee to approve the July 18, 2023; minutes as presented. Upon roll call vote, the motion carried unanimously.

### **2024 Budget**

A motion was made by Mgr. Arndt and seconded by Mgr. Ward to approve a pay increase in Tiffany Bladow and Justin Johnson's wages for 2024. Upon roll call vote, the motion carried unanimously.

The 2024 Budget was presented to the board.

A motion was made by Mgr. Arndt and seconded by Mgr. Kubela to approve the 2024 Budget. Upon roll call vote, the motion carried unanimously.

### **Mail**

- Dr.#14 Department of Water Resources Cost Share Request

A motion was made by Mgr. Kubela and seconded by Mgr. Burvee to approve the signing of the Dr. #14 cost share agreement. Upon roll call vote, the motion carried unanimously.

### **Applications**

#### **Application to Install a Subsurface Water Management System #23-051 for Terry Spelhaug/BTM Family Partnership LLLP, in the SE1/4 and S1/2 of NE1/4 Section 9, Barrie Township**

The Board reviewed *Application to Install a Subsurface Water Management System #23-051*. Under the application, Terry Spelhaug/BTM Family Partnership LLLP seeks to install a 187-acre drain tile system in the SE1/4 and S1/2 of NE1/4 Section 9, Barrie Township. The project will include a gravity outlet located within the NE1/4 of the Northeast Quarter. The Board reviewed the application, design plan, water flow map, and all accompanying data submitted as part of the application.

Mgr. Ward moved, and Mgr. Burvee seconded the motion, to approve Appl #23-051 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #23-051, subject to the following  conditions:

- that Applicant install and maintain proper erosion protection at all outlets;

that Applicant re-establish all disturbed areas to previous conditions, including re-seeding;

that Applicant will not install Applicant's tile system within 20 feet, on either side of any rural water lines under any blanket easements, or otherwise beyond any existing easements the Rural Water District has for Applicant's property being tiled;

that Applicant must turn off any pump outlets and control structures during "critical flood periods," as determined by the Richland County Water Resource District;

that Applicant must apply for an amendment to this SUBSURFACE WATER MANAGEMENT PERMIT in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system;

that Applicant remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to one mile downstream from a project outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile downstream of the proposed outlet, in which case the Applicant remove silt or vegetation, or repair erosion or scour damage only between the outlet and the discharge into the nearest assessment drain, natural watercourse, slough, or lake.

With regard to this condition, Applicant's obligations to remove silt or vegetation, or repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicant's tile system **directly** caused accumulation of silt or vegetation, erosion, or scouring.

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 recommends Applicant consider complying with the following :

that Applicant obtain easements from the owners of any property not owned by the Applicant but on which the Applicant will install, construct, and maintain Applicant's tile system;

that Applicant obtain a pipeline easement from the owners of property not owned by the Applicant but on which the Applicant will install, construct, and maintain a buried pipeline;

that Applicant obtain written permission from all applicable road authorities to discharge into, or otherwise utilize, any township, county, or state road ditches; to install, operate, and maintain buried pipe in any township, county, or state road ditches; or to bore or cut through any township, county, or state roads and road ditches; and

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 #23-053 for Allen Meyer in the SE1/4 Section 30, Fairmount S Township**

The Board reviewed *Application to Install a Subsurface Water Management System #23-053*. Under the application, Allen Meyer seeks to install a 153-acre drain tile system in the SE1/4 Section 30, Fairmount S Township. The project will include a single pump outlet located on the west boundary of the Southeast Quarter. The Board reviewed the application, design plan, water flow map, and all accompanying data submitted as part of the application.

Mgr. Arndt moved, and Mgr. Ward seconded the motion, to approve Appl #23-053 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #23-053, subject to the following  conditions:

- that Applicant set and install any drain tile pump at least 25 feet from the top of the back slope of Richland County Drain #39, with a pipe buried from the pump to Drain #39;
- that Applicant install and maintain proper erosion protection at all outlets;
- that Applicant re-establish all disturbed areas to previous conditions, including re-seeding;
- that Applicant will not install Applicant's tile system within 20 feet, on either side of any rural water lines under any blanket easements, or otherwise beyond any existing easements the Rural Water District has for Applicant's property being tiled;
- that Applicant must turn off any pump outlets and control structures during "critical flood periods," as determined by the Richland County Water Resource District;
- that Applicant must apply for an amendment to this SUBSURFACE WATER MANAGEMENT PERMIT in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system;
- that Applicant remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to one mile downstream from a project outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile downstream of the proposed outlet, in which case the Applicant remove silt or vegetation, or repair erosion or scour damage only between the outlet and the discharge into the nearest assessment drain, natural watercourse, slough, or lake.

With regard to this condition, Applicant's obligations to remove silt or vegetation, or repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicant's tile system **directly** caused accumulation of silt or vegetation, erosion, or scouring.

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 recommends Applicant consider complying with the following :

- that Applicant obtain easements from the owners of any property not owned by the Applicant but on which the Applicant will install, construct, and maintain Applicant's tile system;
- that Applicant obtain a pipeline easement from the owners of property not owned by the Applicant but on which the Applicant will install, construct, and maintain a buried pipeline;
- that Applicant obtain written permission from all applicable road authorities to discharge into, or otherwise utilize, any township, county, or state road ditches; to install, operate, and maintain buried pipe in any township, county, or state road ditches; or to bore or cut through any township, county, or state roads and road ditches; and
- 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 #23-054 for Dan Braaten in the SE1/4 Section 15, Viking Township**

The Board reviewed *Application to Install a Subsurface Water Management System #23-054*. Under the application, Dan Braaten seeks to install a 149-acre drain tile system in the SE1/4 Section 15, Viking Township. The project will include a single pump outlet located on the SE corner of the SE1/4. The Board reviewed the application, design plan, water flow map, and all accompanying data submitted as part of the application.

Mgr. Arndt moved, and Mgr. Burvee seconded the motion, to approve Appl #23-054 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #23-054, subject to the following  conditions:

- that Applicant set and install any drain tile pump at least 25 feet from the top of the back slope of Richland County Drain #14, with a pipe buried from the pump to Drain #14;
- that Applicant install and maintain proper erosion protection at all outlets;
- that Applicant re-establish all disturbed areas to previous conditions, including re-seeding;
- that Applicant will not install Applicant's tile system within 20 feet, on either side of any rural water lines under any blanket easements, or otherwise beyond any existing easements the Rural Water District has for Applicant's property being tiled;
- that Applicant must turn off any pump outlets and control structures during "critical flood periods," as determined by the Richland County Water Resource District;
- that Applicant must apply for an amendment to this SUBSURFACE WATER MANAGEMENT PERMIT in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system;
- that Applicant remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to one mile downstream from a project outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile downstream of the proposed outlet, in which case the Applicant remove silt or vegetation, or repair erosion or scour damage only between the

outlet and the discharge into the nearest assessment drain, natural watercourse, slough, or lake.

With regard to this condition, Applicant's obligations to remove silt or vegetation, or repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicant's tile system **directly** caused accumulation of silt or vegetation, erosion, or scouring.

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 recommends Applicant consider complying with the following :

- that Applicant obtain easements from the owners of any property not owned by the Applicant but on which the Applicant will install, construct, and maintain Applicant's tile system;
- that Applicant obtain a pipeline easement from the owners of property not owned by the Applicant but on which the Applicant will install, construct, and maintain a buried pipeline;
- that Applicant obtain written permission from all applicable road authorities to discharge into, or otherwise utilize, any township, county, or state road ditches; to install, operate, and maintain buried pipe in any township, county, or state road ditches; or to bore or cut through any township, county, or state roads and road ditches; and
- 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 #23-055 for Cody Miller in the N1/2 Section 31, Summit E. Township**

The Board reviewed *Application to Install a Subsurface Water Management System #23-055*. Under the application, Cody Miller seeks to install a 290-acre drain tile system in the N1/2 Section 31, Summit E. Township. The project will include a single pump outlet located on the north boundary of the Northwest Quarter. The Board reviewed the application, design plan, water flow map, and all accompanying data submitted as part of the application.

Mgr. Burvee moved, and Mgr. Kubela seconded the motion, to approve Appl #23-055 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #23-055, subject to the following  conditions:

- that Applicant set and install any drain tile pump at least 25 feet from the top of the back slope of Richland County Drain #55, with a pipe buried from the pump to Drain #55;
- that Applicant install and maintain proper erosion protection at all outlets;
- that Applicant re-establish all disturbed areas to previous conditions, including re-seeding;
- that Applicant will not install Applicant's tile system within 20 feet, on either side of any rural water lines under any blanket easements, or otherwise beyond any existing easements the Rural Water District has for Applicant's property being tiled;

that Applicant must turn off any pump outlets and control structures during “critical flood periods,” as determined by the Richland County Water Resource District;

that Applicant must apply for an amendment to this SUBSURFACE WATER MANAGEMENT PERMIT in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system;

that Applicant remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant’s tile system, but only up to one mile downstream from a project outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile downstream of the proposed outlet, in which case the Applicant remove silt or vegetation, or repair erosion or scour damage only between the outlet and the discharge into the nearest assessment drain, natural watercourse, slough, or lake.

With regard to this condition, Applicant’s obligations to remove silt or vegetation, or repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicant’s tile system **directly** caused accumulation of silt or vegetation, erosion, or scouring.

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 recommends Applicant consider complying with the following :

that Applicant obtain easements from the owners of any property not owned by the Applicant but on which the Applicant will install, construct, and maintain Applicant’s tile system;

that Applicant obtain a pipeline easement from the owners of property not owned by the Applicant but on which the Applicant will install, construct, and maintain a buried pipeline;

that Applicant obtain written permission from all applicable road authorities to discharge into, or otherwise utilize, any township, county, or state road ditches; to install, operate, and maintain buried pipe in any township, county, or state road ditches; or to bore or cut through any township, county, or state roads and road ditches; and

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 #23-056 for Dan &/or Rae Dell Braaten in the S1/2 Section 7, Colfax West Township and East 80 of SE1/4 Section 12, Viking Township.**

The Board reviewed *Application to Install a Subsurface Water Management System #23-056*. Under the application, Dan &/or Rae Dell Braaten seeks to install a 378-acre drain tile system in the S1/2 Section 7, Colfax W Township and East 80 of SE1/4 Section 12, Viking Township. The project will include a single pump outlet located on the NE corner of S1/2 Section 7, Colfax W

Township. The Board reviewed the application, design plan, water flow map, and all accompanying data submitted as part of the application.

Mgr. Arndt moved, and Mgr. Burvee seconded the motion, to approve Appl #23-056 and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT #23-056, subject to the following  conditions:

- that Applicant install and maintain proper erosion protection at all outlets;
- that Applicant re-establish all disturbed areas to previous conditions, including re-seeding;
- that Applicant will not install Applicant's tile system within 20 feet, on either side of any rural water lines under any blanket easements, or otherwise beyond any existing easements the Rural Water District has for Applicant's property being tiled;
- that Applicant must turn off any pump outlets and control structures during "critical flood periods," as determined by the Richland County Water Resource District;
- that Applicant must apply for an amendment to this SUBSURFACE WATER MANAGEMENT PERMIT in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system;
- that Applicant remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to one mile downstream from a project outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile downstream of the proposed outlet, in which case the Applicant remove silt or vegetation, or repair erosion or scour damage only between the outlet and the discharge into the nearest assessment drain, natural watercourse, slough, or lake.

With regard to this condition, Applicant's obligations to remove silt or vegetation, or repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicant's tile system **directly** caused accumulation of silt or vegetation, erosion, or scouring.

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 recommends Applicant consider complying with the following .

- that Applicant obtain easements from the owners of any property not owned by the Applicant but on which the Applicant will install, construct, and maintain Applicant's tile system;
- that Applicant obtain a pipeline easement from the owners of property not owned by the Applicant but on which the Applicant will install, construct, and maintain a buried pipeline;
- that Applicant obtain written permission from all applicable road authorities to discharge into, or otherwise utilize, any township, county, or state road ditches; to install, operate, and maintain buried pipe in any township, county, or state road

ditches; or to bore or cut through any township, county, or state roads and road ditches; and

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 Report**

#### **Application 23-013, Site 643 Jay Miller NE1/4 S33 Summit West Township**

A motion was made by Mgr. Arndt and seconded by Mgr. Kubela to hire Houston engineering to perform a hydraulic study for an additional approach to provide access to the field for Jay miller.

### **Miscellaneous**

**RCPP-** The RCWRD board called Damon DeVillers at Interstate Engineering, Inc. as Mike Bassingthwaite was not available. They discussed the RCPP report that was supposed to be completed by July 1, 2023, and we have not received it. Damon is going to discuss the situation with Mike Bassingthwaite.

Mike Bassingthwaite called into the RCWRD board meeting and explained that he overestimated the timeline to have the report completed. Mike told the board that he should have the report completed by the end of 2023.

### **Bremer Checking Account**

A motion was made by Mgr. Burvee and seconded by Mgr. Arndt to approve closing our Bremer Checking Account. Upon roll call vote, the motion carried unanimously.

Russ Mauch joined the meeting.

Sean Fredricks and Mike Opat Joined the meeting.

### **COMPLAINT FOR WATER-RELATED ISSUES filed by Tom Brosowske against Russell Mauch - Obstruction to a Drain/Watercourse**

Mr. Russell Mauch was at the Board meeting to discuss the status of Tom Brosowske's COMPLAINT FOR WATER-RELATED ISSUES. Mr. Mauch recently completed remedial work and wanted to ensure his efforts would resolve the Complaint. Manager Arndt and Justin Johnson conducted a site visit on July 25, 2023, and indicated the remedial work appears satisfactory but the Board wanted to consult with Sean Fredricks and Mike Opat, both of whom participated in the meeting virtually.

Mr. Fredricks reviewed the procedural history on this matter. In November, the Board dismissed the dam/dike portion of Mr. Brosowske's Complaint. The Board issued a decision and Mr. Fredricks provided a NOTICE OF DECISION dated November 30, 2022, to the parties, as required by law. None of the parties appealed and the dam/dike portion of the Complaint is resolved.

Also in November, the Board concluded the crossing constructed by Mr. Mauch in the Northwest Quarter of Section 17 of Danton Township qualified as an "obstruction" under N.D. Cent. Code § 61-16.1-51. More specifically, the Board concluded Mr. Mauch constructed or installed a crossing or embankment through a natural watercourse in the Northwest Quarter of Section 17, and that the structure acted as an obstruction to a natural watercourse that "materially affects the free flow of waters" in violation of Section 61-16.1-51. In the Board's November 30 NOTICE OF DECISION, Mr. Fredricks notified the parties of the Board's decision regarding the "obstruction" portion of the Complaint; ordered Mr. Mauch to remove the rock portion of the structure by 5:00 p.m. on January 1, 2023; and ordered Mr. Mauch to remove the remaining portions of the obstruction by 5:00 p.m. on March 1, 2023. None of the parties appealed.



The language under Section 61-16.1-51 does not provide a concrete engineering standard for determining if a structure is an “obstruction.” With this in mind, Mr. Opat, Mr. Fredricks, and the Board all agreed that, even though the North Dakota Stream Crossing Standards do not apply to private crossings, the Stream Crossing Standards provide a reasonable and more concrete standard for determining if a crossing “materially affects the free flow of waters.” That standard would provide the parties to the Complaint and the Board a foundation for how to resolve the Complaint.

Mr. Mauch and Mr. Brosowske attended the Board’s meeting on December 20, 2022, and the parties discussed options to resolve the obstruction matter. The parties agreed Mike Bassingthwaite would conduct a hydraulic study on Mr. Mauch’s behalf, but the parties all recognized winter conditions would dictate timing. In the meantime, Mr. Mauch removed the rock portion, as required.

Mr. Bassingthwaite circulated his hydraulic report on March 6, 2023, and Mr. Opat reviewed the report to ensure Mr. Mauch’s proposal complied with the North Dakota Stream Crossing Standards. Mr. Mauch and Mr. Bassingthwaite then attended the Board’s meeting on March 21, 2023. At the meeting, Mr. Mauch indicated he planned to proceed with the installation of a low water crossing with two new culverts with 1.5 feet of cover. Based on the parties’ discussions and agreement, and based on communications between Mr. Bassingthwaite and Mr. Opat, the Board agreed Mr. Mauch could resolve the obstruction complaint by installing a low water crossing with two new culverts, provided they met the following criteria:

- Mr. Mauch’s culverts will include 1.5 feet of cover, or a top-of-crossing elevation at or below 1043.1;
- Mr. Mauch will install the culverts at the channel bottom, at an elevation of 1039.6;
- the culverts will each be 30’ long; and
- the crossing will include a top width of 16’ and 2:1 side slopes.

Mr. Mauch later installed crossing improvements purportedly in compliance with Mr. Bassingthwaite’s report. The Board then directed Houston Engineering to inspect Mr. Mauch’s crossing to ensure he met the conditions set by the Board. Houston Engineering conducted an as-built survey on June 8, 2023. Based on the survey results, Mr. Opat notified the Board that the top of the new crossing was higher than the maximum elevation of 1043.1 in some areas, and that Mr. Mauch’s culverts were at invert elevations higher than 1039.6.

Following Mr. Opat’s review, Manager Arndt worked with Mr. Mauch in an effort to resolve the Complaint. Manager Arndt contacted Mr. Opat and indicated Mr. Mauch intended to re-grade the top of the crossing to an elevation of 1043.1 or below. Further, Manager Arndt asked Mr. Opat if installation of an additional culvert, 18” or larger, at the invert elevation of 1039.6 or lower, would satisfy the invert elevation issue and would ultimately resolve the issue.

Mr. Opat evaluated the proposal and concluded that installation of an additional culvert with an invert at elevation 1039.6 or lower, coupled with re-grading the top of the crossing so the entire length (from the natural slope on the east side to the natural grade on the west side) is at or below an elevation of 1043.1 or lower, the proposal would meet the Stream Crossing Standards, and would ultimately resolve the Complaint.

On July 25, 2023, Manager Arndt and Justin Johnson conducted a site inspection. Mr. Johnson conducted a survey and confirmed Mr. Mauch installed the additional culvert at 1039.6 and re-graded the top of the crossing at or below 1043.1. In light of these modifications, the Board agreed the crossing now complies with the North Dakota Stream Crossing Standards and that, therefore, the crossing no longer “materially affects the free flow of waters.” With that in mind, the Board had no choice but to dismiss the remaining portions of the Complaint, related to allegations of an “obstruction” under Section 61-16.1-51.

Manager Arndt moved, and Manager Kubela seconded the motion, to conclude the crossing constructed by Mr. Mauch in the Northwest Quarter of Section 17 of Danton Township is no longer an “obstruction” that “materially affects the free flow of waters,” and

to dismiss the remainder of Mr. Brosowske's COMPLAINT FOR WATER-RELATED ISSUES, dated August 22, 2022. Upon roll call vote, the motion carried unanimously.

**Adjournment**

There being no further business to come before the Board, Chr. Friskop adjourned the meeting at 11:20 A.M.

Respectfully submitted,

*Tiffany Bladow*  
Tiffany Bladow  
Secretary/Treasurer

*Gary Friskop*  
Gary Friskop  
Chr of the Board