

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, DECEMBER 21<sup>ST</sup>, 2023 AT 8:00 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN NORTH DAKOTA

Managers present: Chairman Luke Siemieniewski, Managers Todd Stein, Michael Wyum and Roger Zetocha. Also in attendance was Wendy Willprecht Secretary/Treasurer, Nathan Trosen, engineer for Moore Engineering and Sargent County Road Supervisor Tim Faber. Present via video conference was Attorney Sean Fredricks of Ohnstad Twichell, Manager Bruce Speich, Josh Hassell, engineer for Moore Engineering, and landowners Bob Banderet, Dale and Leon Mallberg.

Manager Wyum moved to approve the November 16th, 2023 regular meeting minutes and the November 2023 Financial Statement. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Zetocha moved to approve the bills.

**086321 Ohnstad Twichell-** Kelley/Mathews/Hemminger Complaint \$1787.10/Bruce Bosse Tile App. \$556.96/Correspondence \$300/Arlen Hanson Tile App. \$556.97/Michael Hayen Tile App. \$682.83/Garrett Hayen Tile App. \$637.83

**Total: \$4,825.63**

**086319 Moore Engineering-** Flow path estimation \$97.50/Mtgs. \$2510.58; Short Foot Creek-Task 6 \$3120.00; Drain No. 11-Construction \$11,289.52; Drain No. 12-Research \$645.00; Drain No. 7-Topographic Survey \$2816.25/Correspondence \$97.50

**Total: \$20,576.35**

**086316 Industrial Builders-** repair crossing at 127<sup>th</sup> Ave. SE  
\$33,386.79

**Total:**

**Robert Lee-** 18" culvert flap gate

**Total: \$628.24**

**086320 ND Water Users Association-** dues

**Total: \$300.00**

**086317 Jerry's Backhoe Service-** Removal of beaver dams/cattails Drain No. 11

**Total: \$280.00**

**086322 Sargent County Treasurer-** Drain No. 4 \$651.80; Drain No. 8 \$.30; Drain No. 7 \$73.27

**Total: \$725.37**

Manager Stein seconded the motion. Upon roll call the motion carried unanimously.

086323 Lucas Siemieniewski	Travel	\$116.59
086324 Todd Stein	Travel	\$44.54
086328 Michael Wyum	Travel	\$880.39
086325 Roger Zetocha	Travel	\$32.75
Bruce Speich	Travel	
DD Lucas Siemieniewski	PD	
DD Todd Stein	PD	
DD Michael Wyum	PD	
DD Roger Zetocha	PD	
DD Bruce Speich	PD	
DD Wendy Willprecht	Sec-Treas -Salary less taxes	
DD Stock Grower's Bank	Withholding Taxes	
DD ND State Tax Commission	State Tax	
DD Job Service ND	Unemployment Comp.	

**Drain No. 11:**

**Project:** Attorney Fredricks provided the Supreme Court's decision to the Board regarding the eminent domain case; the Supreme Court remanded the matter to the District Court. The Board discussed some options for how to proceed with any repairs or improvements necessary along Drain 11 in light of the decision.

Chairman Siemieniewski said that he has been talking to landowners along Drain No. 11 and there is interest in taking the remainder of the entire Drain to a vote to construct what the Board completed on this four-mile stretch. Chairman Siemieniewski suggested having the landowners start a petition to demonstrate public support for a project of that magnitude. Attorney Fredricks suggested the Board hold off on any forward progress until we hear back about the remand. Manager Wyum said, in his opinion, regardless of the remand decision, the district is obligated to bring this to the landowners. Trosen suggested a landowner meeting to update the landowners on where the project is at and what it would take to move forward.

**Glen Thompson Utility Permit:** No update.

**Assessment:** Administrator Willprecht emailed Nicole Gentzkow, Auditor of Ransom County, on November 20<sup>th</sup>, 2023, asking for Ransom County's position on assessments for Drain No. 11. To date, Ms. Gentzkow has not responded. The updated assessments determined by the district were applied to the 2023 tax roll in Sargent County.

**Drain No. 4:** No report.

**Drain No. 7:**

**Project:** At the last meeting, the Board directed Moore Engineering to develop a plan to remove the bridge at the outlet that is waging concern and to build up the berm for field access. Trosen said an engineering crew surveyed the existing berms as well as the current roadbed. He added that a plan for the project will be presented at the January 2024 meeting.

**404 Permit:** No update.

**Assessment:** Administrator Willprecht emailed Nicole Gentzkow, Auditor of Ransom County, on November 20<sup>th</sup>, 2023, asking for Ransom County's position on assessments for Drain No. 7. To date, Ms. Gentzkow has not responded. The updated assessments determined by the district were applied to the 2023 tax roll in Sargent County.

Steve Nicoli and Emeric Erickson reached out to Manager Speich as they felt they were incorrectly assessed for this drain. The landowners said their water drains into Crooked Creek instead of Drain No. 7. Trosen said that this comment was reviewed during the reassessment process and the Board had Moore Engineering verify the watershed in this area with topographic survey. The survey verified the watershed. Trosen said he would follow up with the landowners to further discuss the Board's reassessment decision.

**Executive Session:** The Board next went into Executive Session for purposes of attorney consultation regarding reasonably predictable litigation related to the Sargent County Drain No. 7 reassessment and the Sargent County Drain No. 11 reassessment, in accordance with N.D. Cent. Code §§ 44-04-19.1(2), (5), and (9). The Board recorded the Executive Session proceedings, as required by law.

Sean Fredricks read the requisite Executive Session script required under North Dakota law to permit the Board to go into Executive Session, though Fredricks did not participate in the Executive Session. A motion was made by Manager Stein and seconded by Manager Zetocha to enter into executive session. Upon roll call, the motion carried unanimously.

Those in attendance during the executive session were: Chairman Siemieniewski, Vice Chairman Wyum, Manager Zetocha, Manager Stein, Moore Engineers Nathan Trosen and SCWRD Administrator Wendy Willprecht. Those attending via video conference were: Attorney Charles Carvell and Manager Speich.

The executive session began at approximately 9:00 a.m. and ended at approximately 9:48 a.m.

**Drain No. 9 Extension:** Trosen has not connected with landowner Brad Hoistad to date.

**Drain No. 8:** No report.

**Cogswell Tile:** No report.

**Drain No. 2:** Chairman Siemieniewski attended the Sargent County Commissioner meeting on December 5<sup>th</sup>, 2023, to discuss the bill received from the county for spoil removed from this drain, as well as rebuilding the berms along Drain No. 12 that had been removed by Sargent County Road Supervisor, Sparky Enquist. The county planned to charge the SCWRD for the removal of spoil along Drain No. 2, but the County would still owe the SCWRD for replacing the berm that was incorrectly taken from Drain No. 12. With that in mind, the County and the SCWRD decided to simply pay the costs they incurred for their own activities; the County will absorb the Drain No. 2 spoil removal expense and the SCWRD will hire a contractor to replace the berm along Drain No. 12 at the SCWRD's expense. Chairman Siemieniewski said he had a contractor coming in the next couple of days to do the berm work along Drain No. 12. Just the berm will be replaced and not the culvert. Siemieniewski added that there is one landowner along this drain claiming crop damages due to the County's removal of the berm.

**Drain No. 12:** Chairman Siemieniewski commented that the banks along this drain have been sloughing in areas. It was suggested to have Moore Engineering look at using the removed material during the drain clean out to build up the banks.

**Short Foot Creek:** Trosen said an exemption letter has been sent to the local NRCS staff for their review. The letter was sent back with comments. Once updated the letter will be sent to the NRCS headquarters for approval.

**City of Stirum:** No report.

**NEW BUSINESS:**

**Interstate Engineering-Bridge Removal letter of solicitation-** No comment from the SCWRD.

**County Ordinance/Adopting Permit System:**

The SCWRD discussed how to incorporate language into the Board's current tile permit approval documents to notify applicants/permittees of the Sargent County Highway Department's APPLICATION FOR DRAINAGE WORK WITHIN COUNTY ROAD RIGHT OF WAY.

Attorney Fredricks suggested the following verbiage be used:

**Enclosed for your convenience is the Sargent County Highway Department's APPLICATION FOR DRAINAGE WORK WITHIN COUNTY ROAD RIGHT OF WAY. Because the project will discharge into County right of way, the Sargent County Highway Department will require Applicant to complete and submit this Application. The Highway Department's permitting**

**requirements are separate from the Sargent County Water Resource District's approval of SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-01.**

Fredricks noted the conditions included for permits that would discharge into the county right of way:

1. Applicant will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Sargent County Water Resource District.
2. Applicant must 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 the project outlet.

Under the tile permitting statute, NDCC 61-32-03.1, the SCWRD cannot require applicants to obtain County permission, or to submit the Highway Department's APPLICATION FOR DRAINAGE WORK WITHIN COUNTY ROAD RIGHT OF WAY, as a condition to their permit, but the SCWRD can at least notify applicants/permittees of the County's permitting requirements. Fredricks will provide this proposed language to the County for review.

**Brian Anderson SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-01**

Several landowners have contacted Board members over the last several months regarding the tile discharge from Mr. Brian Anderson's project in the South Half of the North Half of Section 15 in Hall Township. The Board approved SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-01 at the Board's meeting on January 19, 2023, and Mr. Anderson installed the project in early 2023. The project includes a pump outlet located in the northwest corner of the South Half of the Northwest Quarter of Section 15; the pump discharges into the east road ditch along County Highway 14; the discharge flows north in the Highway 14 ditch to the northwest corner of the Northwest Quarter of Section 15, then turns east in the south road ditch along North Dakota State Highway 13. In addition to concerns expressed by downstream landowners, the County Highway Department recently indicated the project is causing significant silt build-up in the County's Highway 14 ditch. Tim Faber was present to discuss the matter with the Board.

At the January meeting, the Board expressed concerns about the potential for Mr. Anderson's tile discharge to contribute to potential inundation of the Wehlanders' property. The Board noted at the time that the tile permitting statute does not allow the Board to require Mr. Anderson to obtain any type of consent or easement from the Wehlanders, but the law does allow (and require) the Board to provide notice of the project and the permit to the Wehlanders as downstream landowners. In addition, the tile statute does allow water resource districts to include a condition to a tile permit that requires the applicant/permittee to remove silt or vegetation or repair erosion or scour damages directly caused by their tile system up to one mile downstream from the project outlet. In this case, the Board did include and attach that particular condition to Mr. Anderson's tile permit. More specifically, at the Board's meeting on January 19, the Board approved SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-01, subject to the following conditions:

1. Applicant will install and maintain erosion protection at the outlet into the County Highway 14 road right of way.
2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
3. Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines Southeast Water Users District has in the South Half of the North Half of Section 15 in Hall Township under any blanket easements, or otherwise beyond the Water District's existing easement.
4. Applicant will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Sargent County Water Resource District.
5. Applicant must 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 the project outlet.
6. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-01 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.

Mr. Fredricks provided the Board's NOTICE OF DECISION regarding the permit to Mr. Anderson in a letter dated January 19, 2023, and provided copies to Southeast Water Users District, and to the following downstream landowners, as required by N.D. Cent. Code § 61-32-03.1: Tim Faber, Sargent County Highway Superintendent; Troy Gilbertson at NDDOT; and Alice Wehlander, Terry Wehlander, Donald Wehlander, owners of the North Half of the North Half of Section 15 of Hall Township.

By statute, a downstream party must provide "substantial evidence" the tile system **directly** caused silt accumulation, erosion, or scouring. In this case, in response to contacts from downstream landowners, several Board members have separately conducted site visits and have witnessed substantial silt build-up. The consensus among the Board was that Mr. Anderson's pump has caused that silt accumulation. More significantly, Mr. Faber indicated the pump has caused silt accumulation in the County's Highway 14 ditch, a condition that could lead to additional damages.

The Board agreed that the County's inspection and confirmation that Mr. Anderson's pump is causing silt accumulation in the County's Highway 14 ditch, coupled with the site inspections by Board members, provide the requisite "substantial evidence" Mr. Anderson's tile system has directly caused silt accumulation.

Manager Stein moved, and Manager Wyum seconded the motion, to conclude that the Sargent County Highway Department has presented substantial evidence that Brian Anderson’s tile system approved under SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-01 has directly caused silt accumulation in Sargent County’s Highway 14 ditch and to direct Mr. Anderson to remove the silt accumulation. Upon roll call vote, the motion carried unanimously.

Mr. Fredricks noted the statute requires the Sargent County Highway Department to approve the timing and methodology of Mr. Anderson’s silt removal, in accordance with any “construction site protection requirements” of the County. Further, Mr. Anderson “may not spread silt, vegetation, or debris along adjoining land without the permission of all parties having a legal interest in the land.” The Board directed Mr. Fredricks to provide a notice to Mr. Anderson of the Board’s decision and to include the statutory requirements and limitations in the notice. In terms of timing, Mr. Anderson will have to work with Tim Faber; the Board will re-visit the matter at our January meeting.

**SCWRD Meeting dates for 2023:** Manager Wyum made a motion to accept the SCWRD meeting dates as presented by Administrator Willprecht. Manager Stein seconded the motion. Upon roll call, the motion carried unanimously.

**DSJTB bills for approval –**

**DSJTB bills for approval**

**086214 DVEC – electricity – \$494.00**

A motion was made by Manager Zetocha and seconded by Manager Speich to approve the bills. Upon roll call, the motion carried unanimously.

Balances as of November 30<sup>th</sup>, 2023

Maintenance Account Balance: \$ 23,221.21  
Improvement Account Balance: \$ 182,521.61

A joint board meeting will be held during the regular SCWRD meeting on January 18<sup>th</sup>, 2024 at 8:00 a.m.

**Richland-Sargent Drain #1  
Maintenance Fund Financial Statement**

No October/November financials were provided by Richland County.

Trosen said the cost estimate for the RS1 project going through Section 35 will cost the local assessment district \$1.3-1.4 million, to complete in its entirety. Approximately \$130,000 is brought in from assessments each year. The plan was to utilize \$780,000 in current funds to help pay for the project. But, with the most recent decision handed down by the Supreme Court regarding a new law that states water resource districts will have to count funds on-hand against their borrowing capacity and to determine whether or not a project requires a vote, this project may only be able to extend up to Section 34 to the bridge. Chairman Siemieniewski suggested taking the project to a vote and all the way to the county road.

The managers suggested holding an RS1 meeting at 9:00 during the SCWRD January 18<sup>th</sup>, 2024 meeting.

The meeting adjourned at 10:05 a.m.

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Lucas Siemieniewski, Chairman

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Wendy Willprecht, Secretary/Treasurer