

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, NOVEMBER 21<sup>ST</sup>, 2024 AT 8:10 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN NORTH DAKOTA

In attendance: Chairman Luke Siemieniewski, Managers Michael Wyum, Bruce Speich, Todd Stein and Roger Zetocha. Also in attendance was Wendy Willprecht Secretary/Treasurer, Tim Faber, County Road Supervisor and Mikkell Pates of Ag Week. Present via video conference was Attorney Sean Fredricks and Katie Schmidt of Ohnstad Twichell, Nathan Trosen, engineer for Moore Engineering, Attorney David Bliss of the Bliss Law Firm, County Commission Chairman, Scott Johnson, and Leon and Dale Mallberg. Also present via video conference were EM and RU “unverified” on Teams.

Manager Wyum moved to approve the October 17<sup>th</sup>, 2024 regular meeting minutes and the September 2024 financial statement. The October financial statement was not available. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Zetocha moved to approve payment of the following bills;

**Ohnstad Twichell**- Attorney fees \$1,648.53; Drain No. 7-open records request \$47.00  
**Total: \$1,695.53**

**Moore Engineering**-SFC-NRCS Step 7 \$830.00; Silver Lake Dam-on site inspection \$1,652.35; Meetings/correspondence \$3,403.28; Drain No. 9 Channel Ext.-model/pre-lim design; Wild Rice River Feasibility Study-pre-lim design \$1,772.50  
**Total: \$15,133.13**

**Garrett Hayen**-3 beavers along Drain No. 11  
**Total: \$150.00**

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

	Lucas Siemieniewski	Travel	\$ 37.52
	Todd Stein	Travel	\$ 10.72
	Michael Wyum	Travel	\$ 13.40
	Roger Zetocha	Travel	\$ 33.50
	Bruce Speich	Travel	\$ 26.80
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	\$

**Drain No. 11:**

**Project:** No update.

**Cost-share reimbursement request to the Sargent County Commission:** There has been no update on this matter.

**Beaver Dams:** Manager Stein said the beavers have now plugged a culvert. General Irrigation will try to blow out the culvert yet this year. Manager Zetocha said that the beaver dams in the culverts under Highway 11 have been cleaned out by the DOT.

**Jerry Meide & Miles Thompson South Lateral:**

Nathan from Moore Engineering said that he has not heard from Meide or Thompson since our last meeting. The board will wait to hear back from the landowners.

**Bond Repayment Options:**

Attorney Fredricks, Katie Schmidt, and Trosen discussed some possible scenarios, ran some numbers, and Katie engaged Colliers regarding some options regarding Series B bond payments. Calling the 2027 & 2028 Series B maturities early could save approximately \$35,600 in interest.

- **Scenario 1:** The Board does nothing, i.e., makes payments as required under the original debt repayment schedule. This scenario assumes the Board does not receive any County Commission cost-share. This scenario shows an \$8,709.58 shortfall at the end of the repayment schedule. Under North Dakota law, the Board can utilize general fund dollars to make bond payments and to cover the \$8,709.58 shortfall.
- **Scenario 2:** The Board calls the 2027 & 2028 Series B bond maturities early; this Scenario assumes the Board does not receive any County Commission cost-share for the crossing improvements. The Drain 11 account would be \$26,902.92 in-the-black at the end of the repayment schedule, however, there will be a \$20,149.58 shortfall just in 2026, until the Board receives the next year of levies. The Board could borrow from the general fund to cover that shortfall (until the Board receives the next year of levies).
- **Scenario 3:** The Board calls the 2027 & 2028 Series B bond maturities early; this Scenario assumes the Board does receive the County Commission cost-share under the Board's Joint Powers Agreement with the County. The Drain 11 fund would remain positive throughout the remainder of the repayment schedule and would ultimately be \$196,125.04 in-the-black at the end of the repayment schedule.

Under Scenario 3, if Drain 11 requires some type of significant maintenance or repair, the Board could likely cover the costs of those repairs with funds on-hand. Under the other two Scenarios, where there may not be sufficient funds to cover significant repair costs, the Board could consider issuing additional bonds to finance necessary repairs since the Board will have additional borrowing capacity available.

Manager Stein moved to call the 2027 and 2028 maturities of the Maintenance Levy Improvement Bonds, Series 2022B, including payment of outstanding principal and interest due, and to authorize Wendy and Ohnstad Twichell to prepare the requisite notice of bond redemption. Manager Wyum seconded the motion and, upon roll call vote, the motion carried unanimously.

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

**Drain No. 2:** Manager Speich noted that there has been a lot of sloughing along this drain. Speich said the ditch is steep and the soil is very sandy. It was noted that the sloughing is impacting the entire drain length. It was suggested to continue to monitor the drain and discuss at a future meeting.

County Road Supervisor Tim Faber said that the county is hoping to do repair work on the next 4 miles of County Rd. 12 and could use the sloughing material from Drain No. 2 when the road repair begins.

Manager Speich suggested starting with Baker's and then moving west. Chairman Siemieniewski said there will be a tree guy in the area that will look at cutting the cotton wood trees down and he would not charge us if the load was big enough.

**Drain No. 7:** Manager Speich asked if Moore Engineering had heard back from Marshall Braaten regarding the rip rap that needs to be done at an erosion site close to Milnor. Trosen said he has not heard from Braaten. Trosen said he will follow up with Braaten and other contractors to see if anyone has availability to get this done this year still.

**Hall Township (Maintenance District Petition)-** No update.

**Drain No. 9 Extension:**

Trosen from Moore Engineering reviewed proposed grades for improvements to the existing drain and the upstream extension. Trosen stated the existing drain is very flat and therefore the proposed grade is 0.02%. The upstream extension is very steep so Trosen is proposing grades between 0.04% - 0.08% with multiple 2' rock drops. He is working on sizing channels to achieve a 10-year design which may include widening the ditch bottoms of the existing drain.

Once the preliminary design is completed Trosen will meet with necessary agencies to review the proposed project.

**Wild Rice Maintenance District:**

Trosen said Moore has drawn up the existing conditions of channel and a proposed grade. Work is currently on hold as Moore is waiting for the preliminary design of the improvements to Drain 9 to be completed.

**Tewaukon Watershed**

No update.

**Drain No. 8:** Trosen said we have not received an update on this project from the Department of Emergency Services.

**Cogswell Tile:** Trosen said we have not received an update on this project from the Department of Emergency Services.

**Drain No. 2:** No update.

**Drain No. 12:** No update.

**Short Foot Creek:** Trosen of Moore Engineering said that there is one more public agency meeting that needs to take place, then the Board can submit the final plan for this project to the NRCS. Trosen said he hopes to hold the public agency meeting in January.

**City of Stirum:** No report.

**NEW BUSINESS:**

**Application to Install a Subsurface Water Management System No. 2024-25 for John Quandt in the South Half of Section 7 in Jackson Hall Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-25*, filed November 12, 2024, by Applicant John Quandt. The Board approved a Subsurface Water Management System Permit for John Quandt at the Board's meeting on August 17, 2017; under the 2017 Permit, the Board approved Mr. Quandt's 201-acre system in the South Half of Section 7 in Jackson Township. Under *Application to Install a Subsurface Water Management System No. 2024-25*, Mr. Quandt seeks to add an additional 110 acres of drain tile in the Southwest Quarter of Section 7 in Jackson Township to Applicant's existing 201-acre drain tile system approved under the 2017 Permit. Subsurface Water Management System Permit No. 2024-25 will amend and replace the Subsurface Water Management System Permit approved by the Board for John Quandt on August 17, 2017. The 311-acre project includes a single pump outlet that discharges into a mitigation site in the Southwest Quarter of Section 7; the discharge flows into the South Lateral Extension Project, a lateral of the Jackson Township Improvement District No. 1 Project.

According to records on file with the Sargent County Recorder's Office, John Quandt owns the South Half of Section 7 of Jackson Township. Applicant is President of Lovell Improvement Project LLC, the owner of the South Lateral Extension Project. Lovell Improvement Project LLC obtained right of way along the course of the South Lateral Extension Project, including in the Northwest Quarter of Section 7 of Jackson Township, and the Southeast Quarter of Section 1 of Riverdale Township in Dickey County. With that in mind, no downstream notices are required under N.D. Cent. Code § 61-32-03.1.

Lovell Improvement Project LLC operates the South Lateral Extension Project in accordance with an Operating plan approved by the Department of Water Resources.

Manager Speich moved, and Manager Stein seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-25*, filed November 12, 2024, for John Quandt in the South Half of Section 7 in Jackson Township, and to authorize the Secretary-Treasurer to sign Subsurface Water Management Permit No. 2024-25, subject to the following conditions:

1. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
2. Applicant will install and maintain erosion protection at any and all outlets.
3. 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.
4. 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 of Applicant's project outlet.
5. 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 Section 7 in Jackson Township under any blanket easements, or otherwise beyond the Water District's existing easement.
6. Applicant must apply for an amendment to Subsurface Water Management Permit No. 2024-25 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.

Upon roll call vote, the motion carried unanimously.

With regard to condition #4, Applicant's obligations to remove silt or vegetation, or to 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.

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 recommends 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.

Sean Fredricks will provide copies of the Board's Notice of Decision, Subsurface Water Management Permit No. 2024-25, the Subsurface Water Management Permit approved by the Board on August 17, 2017, to the Department of Water Resources and Southeast Water Users District.

**Application to Install a Subsurface Water Management System No. 2024-26 for Ryan Hanson in the Southeast Quarter of Section 21, the Northeast Quarter of Section 27, and all of Section 22 in Dunbar Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-26*, filed November 20, 2024, by Applicant Ryan Hanson. Before discussing the merits of the application, Sean Fredricks explained the conflict analysis the Board should conduct regarding Chairman Siemieniewski's conflict in the matter; Applicant Ryan Hanson is Chairman Siemieniewski's brother-in-law. Fredricks explained Section 44-04-22 of the North Dakota Century Code provides the relevant standard regarding conflicts. That statute provides:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

In this case, Fredricks advised that Chairman Siemieniewski has a “direct and substantial” personal interest in the matter that creates a conflict. Manager Speich moved to conclude Chairman Siemieniewski has a conflict in the matter and should not vote. Manager Zetocha seconded the motion. Upon roll call vote, Managers Stein, Zetocha, Speich, and Wyum all voted in favor of the motion. Chairman Siemieniewski abstained. The motion carried.

There is an additional conflict statute specific to water resource districts, Section 61-16-08.1 of the Century Code, that provides the County Commission with discretionary authority to appoint alternate water managers if a full-time member has a conflict. However, that statute was effectively superseded by Section 44-04-22 when the Legislature adopted Section 44-04-22 in 1995 (Section 61-16-08.1 went into effect in 1985). Section 61-16-08.1 does not provide a definition for what qualifies as a “conflict of interest” and does not provide a mandatory process; rather, the legislative history of Section 61-16-08.1 indicates the Legislature approved that statute to provide a process for water managers to avoid situations where they are not comfortable voting on a matter and is not a mandatory process. Conversely, the process under Section 44-04-22 is mandatory for conflict situations, provides a detailed test for determining if a conflict exists, and provides a detailed process for a Board to proceed even if a conflict does exist. The Legislature enacted Section 44-04-22 after passing the vague and optional Section 61-16-08.1 process and, therefore, the process under Section 44-04-22 controls all conflict matters.

With the conflict issue concluded, the Board proceeded with discussion regarding the application.

Under the Application, Applicant seeks to install a 930-acre drain tile system in the Southeast Quarter of Section 21, the Northeast Quarter of Section 27, and all of Section 22 in Dunbar Township, Sargent County, North Dakota. The project will include two pump outlets; the first will be located along the east boundary of the Northeast Quarter of Section 22, and the second will be located along the east boundary of the Southeast Quarter of Section 22. Both pump outlets will discharge directly into natural watercourses, as that term is defined under N.D. Cent. Code § 61-01-06; the natural watercourses both flow to the east and ultimately flow to Buffalo Lake two to three miles downstream. The tile components in the Southeast Quarter of Section 21 connect to the project in Section 22, and ultimately to the tile pumps, via lines under 135th Avenue SE. The tile components in the Northeast Quarter of Section 27 connect to the project in Section 22, and ultimately to the tile pumps, via lines under 88th Street SE.

According to Sargent County tax data, Reed Hanson and Ryan Hanson own the Southeast Quarter of Section 21 in Dunbar Township; Ryan Hanson owns the Northeast Quarter of Section 27 in Dunbar Township; Ryan Hanson owns the North Half of Section 22 in Dunbar Township; Linda Hanson owns the Southeast Quarter of Section 22 in Dunbar Township; and Reed Hanson owns the Southwest Quarter of Section 22 in Dunbar Township. Because the project will discharge into natural watercourses, no downstream notices are required under N.D. Cent. Code § 61-32-03.1.

Manager Stein moved, and Manager Wyum seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-26*, filed November 20, 2024, for Ryan Hanson in the Southeast Quarter of Section 21, the Northeast Quarter of Section 27, and all of Section 22 in Dunbar Township, and to authorize the Secretary-Treasurer to sign Subsurface Water Management Permit No. 2024-26, subject to the following conditions:

1. Applicant will re-establish any areas disturbed installing or maintaining Applicant’s tile system.
2. Applicant will install and maintain erosion protection at any and all outlets into the natural watercourses in the East Half of Section 22 in Dunbar Township.
3. 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.
4. 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 Southeast Quarter of Section 21, the Northeast Quarter of Section 27, and all of Section 22 in Dunbar Township under any blanket easements, or otherwise beyond the Water District’s existing easement.
5. Applicant must apply for an amendment to Subsurface Water Management Permit No. 2024-26 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.

Upon roll call vote, Managers Stein, Zetocha, Speich, and Wyum all voted in favor of the motion. Chairman Siemieniewski abstained. The motion carried.

**OLD BUSINESS:**

**Silver Lake Dam:** Trosen reported that Moore surveyed the erosion occurring along the dam. Most likely the erosion is occurring from wave action. Trosen explained that the embankment can be re-built to the original dam design but the erosion most likely continue to occur. To fix the eroded areas and prevent future erosion from occurring Trosen stated that

riprap can be installed along the face of the dam. Initial construction estimates to install riprap would be \$100k - \$200k depending on how much of the dam embankment was completed.

Trosen explained that a construction permit from the state will be required either way, however, if a riprap project is pursued the state may require the dam to come into compliance with the new dam safety standards to do so or a deviation will need to be requested from the state. Trosen said Moore Engineering will meet with DWR staff to discuss our options. He added that the SWC could cost-share up to 40% for a recreation dam or 60% for dam safety projects.

The SCWRD asked Attorney Fredricks if they could transfer this property back to the state. Fredricks said that the state won't recognize a transfer of ownership because it is a statute issue. The Board cannot convey ownership back to the state.

Chairman Siemieniewski made the comment that Silver Lake Dam doesn't bring in enough money to support itself. Manager Speich recommended doing the entire repair of the dam once we have the contractors there working. He said we should fix it right the first time.

**Ransom County Assessment:** Attorney David Bliss of the Bliss Law Firm, LLC, spoke to the board regarding the assessment issue with Ransom County for Drains 7 and 11. Ransom has not levied requested assessments for either of the Drains against Ransom County properties to date.

A motion was made by Manager Speich and seconded by Manager Wyum to retain David Bliss of the Bliss Law Firm. No payment is required to retain Attorney Bliss. Bliss is being retained to help handle our assessment issues with Ransom County. Upon roll call, the motion carried unanimously.

Chairman Siemieniewski suggested tabling this topic to see if anything changes during the next legislative session. Manager Zetocha agreed with this suggestion.

**DICKEY-SARGENT JOINT BOARD**

**DSJTB bills for approval:**

**DVEC - electricity - \$ 141.00**

**Agtegra-drip oil- \$ 46.00**

Manager Wyum made a motion to pay the Dickey-Sargent Joint Board bills. Manager Zetocha seconded the motion. Upon roll call, the motion carried unanimously.

**September 2024 balances:**

Maintenance Account Balance: \$ 3,5941.77  
Improvement Account Balance: \$ 265,743.12  
Special Assessment-Drain No. 11 \$ 251.82

The next Dickey-Sargent Joint Board meeting will be held in February 20<sup>th</sup>, 2025.

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

**Sargent County-24"x40' culvert \$1,231.20**  
**Marshall Braaten-ditch dozing \$4,250.00**

Manager Speich made a motion to approve the bills. Manager Stein seconded the motion. Upon roll call, the motion carried unanimously.

**The September 2024 financials: \$383,374.63**

The meeting adjourned at 9:25 a.m.

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Lucas Siemieniewski, Chairman

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Wendy Willprecht, Secretary/Treasurer