

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, JUNE 20TH 2024 AT 8:00 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN NORTH DAKOTA

In attendance: Chairman Luke Siemieniewski, Managers Michael Wyum, and Roger Zetocha. Also in attendance was Wendy Willprecht Secretary/Treasurer, Nathan Trosen, engineer for Moore Engineering, Sargent County Commissioner Wade Anderson, landowners Richard Ruch, Jerry Meide, Myles Thompson, James Martinson, Ray Martinson, Paul Martinson, Scott Mund, Terry Wehlender, and Paul Mund. Present via video conference were Manager Todd Stein, Attorneys Sean Fredricks, Stephen Hilfer of Ohnstad Twichell, Sargent County Commissioner Scott Johnson, Kathleen Duttenhefner (Head of the Mountain), Tyler Mahrer, Elijah Mathews and Leon Mallberg.

Manager Zetocha moved to approve the May 16<sup>th</sup>, 2024 regular meeting minutes and the May 2024 financial statement. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Stein moved to approve the bills.

**Ohnstad Twichell-** Meetings/correspondence \$1502.50; Widmer/Zetocha Complaint \$164.50; Vculek App. \$94; Martinson App. \$1264.83; Ellefson App. \$587.12; Bosse App. \$755.24; Kroeger App. \$688.42; Zetocha App. \$2299.75; Drain No. 9-petition/bond \$376.00; Drain No. 11-Eminent Domain \$1597.19/JPA \$845.00; Drain No. 12-JPA \$164.50; Drain No. 7-Crossings/bond \$329.00

**Total: \$10,668.05**

**Moore Engineering-**Zetocha flow path/Vculek Utility Permit \$307.50; Mtgs./correspondence \$2,275.78;SFC-Task 6 \$1,672.50;Drain No. 4-Drone video \$1,293.25;Drain No. 8-Drone video \$593.25;Drain No. 9-Drone video/cost-share \$2,608.25;Drain No. 11-Drone video/bond mtg./south lateral Jerry Meide \$787.00;Drain No. 12-cost-share/bond mtg. \$665.25;Drain No. 7-Drone video \$922.50;Tewaukon Watershed-Drone mapping \$1,044.00

**Total: \$12,169.28**

**Innovative Office Solutions-office supplies**  
**\$124.16**

**Total:**

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

|    |                         |                              |         |
|----|-------------------------|------------------------------|---------|
|    | Lucas Siemieniewski     | Travel                       | \$64.32 |
|    | Todd Stein              | Travel                       |         |
|    | Michael Wyum            | Travel                       | \$13.40 |
|    | Roger Zetocha           | Travel                       | \$33.50 |
|    | 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:** Judge Schmitz is conducting a hearing regarding the motion filed by Paul Mathews regarding the defendants’ attorneys’ fees. Mr. Mathews contends the SCWRD should pay the fees in question out of the general fund, not the Drain No. 11 fund. The hearing is on June 24.

**Glen Thompson Utility Permit:** Manager Stein said that Glen’s son Todd will be meeting with him to get the utility permit signed.

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

**Jerry Meide & Miles Thompson South Lateral:** Trosen of Moore Engineering met with Jerry Meide. Mr. Meide desires to realign a portion of the south lateral to go around his property. Meide requested a timeline of what it would take to realign a portion of the south lateral of Drain No. 11 to provide to the ND Game and Fish.

Trosen explained that Meide and Thompson would first need a petition and bond from the landowners and then the District could initiate the landowner voting process. Trosen offered to provide Meide and Thompson a list of what it would take to pursue this project.

Trosen stated that, under the Petition/Bond, there would be no direct costs to the SCWRD for development of the proposed project. Attorney Fredricks stated that this would be a separate project from the existing drain. Trosen will provide Meide and Thompson an email with a timeline.

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

**Drain No. 7:** Trosen said that Moore will be doing a final inspection of the project, but to date, it has been too wet.

Trosen provided a culvert analysis of the Hall Township crossings downstream of Drain 7. A survey and drone inspection were completed for each crossing. Trosen said the analysis compared the existing culvert sizes to what would be needed to meet stream crossing standards. If the goal would be to avoid overtopping the culverts in a 10-year event, the current culverts would need to be doubled in size. It was also noted that the culverts at County Road 14 are higher than the others upstream which creates a flow issue. Landowners also want to pursue a clean out into section 27 all the way to the county road, with the culvert heights needing adjustment.

Trosen said that to pursue a cleanout project, beyond a snagging and clearing project, the landowners would likely want the Board to conduct an assessment vote to set up a maintenance district to cleanout the natural channel. The project would need to be voted on by all those that benefit from the project. Chairman Siemieniewski estimated the initial clean out would cost around \$11,000/mile. Trosen added that it would be best to identify all potential jurisdictional wetlands prior to performing any cleanouts to deal with any Corps permitting issues.

Attorney Fredricks said we would need to create a separate assessment area for this project and pursue an assessment vote. Chairman Siemieniewski said Hall Township cannot afford to pay for the crossing improvements and suggested that perhaps the SCWRD and the Sargent County Commission could cost-share on those crossing improvements.

The landowners who would support a cleanout project would have to drive the petition/bond process. The Board suggested that those landowners who support a cleanout should come in and discuss with the Board.

**404 Permit:** No update.

**Erosion site west of Milnor:** We are waiting to have contractor DLX go out and evaluate this area.

#### **Head of the Mountain-Kathleen Duttenhefner:**

Ms. Duttenhefner went over the Head of the Mountain lease as well as discussed the resource management activities for 2024. Duttenhefner said they are working on assessing the fence with landowner Jeff Breker. Breker said he would put the fence in if the HOM bought the materials. Kathleen said that the ND Game and Fish proclamation will allow white tail and muzzleloader only. Manager Wyum made a motion to accept the lease as presented by the HOM. Manager Zetocha seconded the motion. Upon roll call the motion carried unanimously. Administrator Willprecht will forward the lease agreement signed by Chairman Siemieniewski at the conclusion of today's meeting. The new lease will be in affect starting July 1<sup>st</sup>, 2024.

#### **Drain No. 9 Extension:**

Trosen communicated with the Department of Water Resources regarding the cost share application for the study. Due to changes in the scope of the study since the original cost-share request in 2021 it was determined that the best course forward would be to have the District request that the Water Commission de-obligate the funds from the approved 2021 cost-share approval and apply for two new cost-share requests, one for the Drain 9 study and another for the Wild Rice River study.

A motion was made by Manager Wyum and seconded by Manager Zetocha to request that the State Water Commission de-obligate the previous cost-share approval and resubmit two separate cost-share requests.

**Drain No. 8:** No update.

**Cogswell Tile:** No update.

**Drain No. 2:** Chairman Siemieniewski said that with all the rain we have been receiving, the Foertch ground is able to be farmed based on the clean out project that was done to this drain.

**Drain No. 12:** Chairman Siemieniewski said that the drain and crossing improvements are definitely working. There was a recent 4-inch rain and the county roads did not overtop due to the improvement of the crossings.

**Short Foot Creek:** Trosen said we are still waiting on the exemption request.

**City of Stirum:** No report.

#### **NEW BUSINESS:**

**Paul Ellefson-Request for Drainage on Highway ROW:**

A motion was made by Manager Wyum and second by Manager Zetocha to approve the drainage request submitted by Mr. Ellefson and to direct Administrator Willprecht to send an approval letter to the NDDOT that includes the caveat that Mr. Ellefson may have to apply for a separate surface drainage permit if his project meets permitting criteria. Upon roll call, the motion carried unanimously.

**Application to Install a Subsurface Water Management System No. 2024-16 for Tyler Mahrer in the West Half of Section 13 in Dunbar Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-16*, filed June 11, 2024, by Applicant Tyler Mahrer. Under the Application, Applicant seeks to install a 226-acre drain tile system in the West Half of Section 13 in Dunbar Township, Sargent County, North Dakota. The project will include two gravity outlets that will discharge directly into a pond, slough, or lake along the east boundary of the West Half of Section 13. The project will include an additional three gravity outlets in the East Half of the Northwest Quarter of Section 13; two of those gravity outlets will discharge into a natural watercourse and the third will discharge directly into a pond, slough, or lake near the northeast corner of the Northwest Quarter of Section 13.

According to County tax roll information, Scott Mahrer and Tyler Mahrer own the West Half of Section 13 in Dunbar Township. Because the project will discharge directly into ponds, sloughs, or lakes and a natural watercourse in the West Half of Section 13 in Dunbar Township, no downstream notices are necessary under N.D. Cent. Code § 61-32-03.1.

Manager Wyum moved, and Manager Zetocha seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-16*, filed June 11, 2024, for Tyler Mahrer in the West Half of Section 13 in Dunbar Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-16, 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 ponds, sloughs, or lakes and the natural watercourse in the West Half of Section 13 in Dunbar Township.
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 West Half of Section 13 in Dunbar Township under any blanket easements, or otherwise beyond the Water District's existing easement.
4. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-16 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.

Under N.D. Cent. Code § 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. 2024-16, and downstream flow map to the Department of Water Resources and Southeast Water Users District.

**Application to Install a Subsurface Water Management System No. 2024-17 for Jason Asche and Marcus Mahrer in the South Half of Section 11 and the North Half of Section 14 in Dunbar Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-10* filed June 11, 2024, by Applicants Jason Asche and Marcus Mahrer. Under the Application, Applicants seek to install a 484-acre drain tile system in the Southwest Quarter of Section 11, the South Half of the Southeast Quarter of Section 11, and the North Half of Section 14 in Dunbar Township, Sargent County, North Dakota. The project will include a single pump outlet located near the northeast corner of the South Half of the Southeast Quarter of Section 11; the pump will discharge directly into a natural watercourse, as defined under N.D. Cent. Code § 61-01-06.

According to Sargent County tax parcel data, Scott Mahrer and Marcus Mahrer own the Northwest Quarter of Section 14 and the South Half of the Southeast Quarter of Section 11 in Dunbar Township; James and Margie Asche own the Northeast Quarter of Section 14; and the Harold E. Asche Limited Partnership and the Ruth L. Asche Limited Partnership jointly own the Southwest Quarter of Section 11. Because the project will discharge into a natural watercourse, no downstream notices are necessary under N.D. Cent. Code § 61-32-03.1.

Manager Zetocha moved, and Manager Wyum seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-17*, filed June 11, 2024, for Jason Asche and Marcus Mahrer, regarding a tile project in the Southwest Quarter of Section 11, the South Half of the Southeast Quarter of Section 11, and the North Half of Section 14 in Dunbar Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-17, subject to the following conditions:

1. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.

2. Applicants will install erosion protection at the outlet into the natural watercourse in the South Half of the Southeast Quarter of Section 11.
3. Applicants 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. Applicants will not install Applicants’ tile system within 20 feet, on either side, of any rural water lines Southeast Water Users District has in the Southwest Quarter of Section 11, the South Half of the Southeast Quarter of Section 11, and the North Half of Section 14 in Dunbar Township under any blanket easements, or otherwise beyond the Water District’s existing easement(s).
5. Applicants must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-17 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.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicants’ permit. However, for Applicants’ protection, and to ensure protection of Applicants’ tile system, the Board recommends that Applicants 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. 2024-17, and the downstream flow map to the Department of Water Resources and Southeast Water Users District. Applicants’ detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

**Application to Install a Subsurface Water Management System No. 2024-18 for Chris Mathias in the Southeast Quarter of Section 4 in Harlem Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-18*, filed June 18, 2024, by Applicant Chris Mathias. Under the Application, Applicant seeks to install a 95-acre drain tile system in the Southeast Quarter of Section 4 in Harlem Township, Sargent County, North Dakota. The project will include a single pump outlet located along the south boundary of the Southeast Quarter of Section 4; the pump will discharge into the north road ditch along County Highway #1; the discharge will flow west in the north road ditch, along the south boundary of the Southwest Quarter of Section 4 and will ultimately flow into Sargent County Drain No. 11 near the southeast corner of Section 5.

According to Sargent County tax data, Chris Mathias owns the Southeast Quarter of Section 4 in Harlem Township where Applicant intends to install the tile system. With regard to downstream landowners, William & Thomas Shorma, as Co-Trustees of the Shorma Family Trust, own the Southwest Quarter of Section 4 in Harlem Township. Once the project discharges into Sargent County Drain No. 11, a legal assessment drain, no further downstream notices are necessary under N.D. Cent. Code § 61-32-03.1.

Mr. Mathias has already submitted the Sargent County Highway Department’s APPLICATION FOR DRAINAGE WORK WITHIN COUNTY ROAD RIGHT OF WAY.

Manager Zetocha moved, and Manager Wyum seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-18*, filed June 18, 2024, for Chris Mathias in the Southeast Quarter of Section 4 in Harlem Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-18, 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 Sargent County Highway Department’s highway right of way.
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 pump 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 Southeast Quarter of Section 4 in Harlem 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. 2024-18 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 the Sargent County Highway Department 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. 2024-18, and downstream flow map to the Department of Water Resources, the Shormas, the Sargent County Highway Department, and Southeast Water Users District.

**Application to Install a Subsurface Water Management System No. 2024-19 for Chris Pearson in the Northwest Quarter of Section 11 in Shuman Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-19*, filed June 19, 2024, by Applicant Chris Pearson. Under the Application, Applicant seeks to install a 155-acre drain tile system in the Northwest Quarter of Section 11 in Shuman Township, Sargent County, North Dakota. The project will include a single pump outlet located along the east boundary of the Northwest Quarter of Section 11; the pump will discharge directly into a natural watercourse, as that term is defined under N.D. Cent. Code § 61-01-06; the natural watercourse flows to the east.

According to Sargent County tax data provided by Applicant, Chris Pearson owns the Northwest Quarter of Section 11 in Shuman Township where Applicant intends to install the tile system. Because the project will discharge into a natural watercourse, no downstream notices are required under N.D. Cent. Code § 61-32-03.1.

Manager Zetocha moved, and Manager Wyum seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-19*, filed June 19, 2024, for Chris Pearson in the Northwest Quarter of Section 11 in Shuman Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-19, 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 watercourse in the Northwest Quarter of Section 11 in Shuman 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 Northwest Quarter of Section 11 in Shuman 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. 2024-19 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.

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. 2024-19, and downstream flow map to the Department of Water Resources and Southeast Water Users District.

**OLD BUSINESS:**

**Virginia Widmer Drainage Complaint Against Dave Zetocha and John Zetocha - COMPLAINT FOR WATER-RELATED ISSUES**

The Board next considered Virginia Widmer's COMPLAINT FOR WATER-RELATED ISSUES, dated May 9, 2024, against Dave Zetocha and John Zetocha.

Sean Fredricks reminded the Board that, at the Board's May meeting, the Board conducted a conflict analysis regarding Manager Roger Zetocha; the Board passed a motion to declare that Manager Zetocha had a conflict and should not participate in any votes regarding *Application to Install a Subsurface Water Management System No. 2024-15* filed by Dave Zetocha and John Zetocha and regarding Ms. Widmer's COMPLAINT FOR WATER-RELATED ISSUES. With that in mind, Manager Zetocha will not participate in any votes regarding the Complaint.

Also at the Board's May meeting, Manager Wyum indicated Dave Zetocha is his banker and he questioned whether or not that relationship created a conflict for him. The Board agreed that type of relationship did not and would not impact a

manager's voting in a matter; in smaller communities, those types of relationships are common and if they qualified as "conflicts," boards and public entities in smaller communities would not be able to function. The Board ultimately passed a motion to declare that Manager Wyum did not have a direct and substantial personal interest, that he did not have a conflict, and that he was required to vote regarding both *Application to Install a Subsurface Water Management System No. 2024-15* filed by Dave Zetocha and John Zetocha and regarding Ms. Widmer's COMPLAINT FOR WATER-RELATED ISSUES. With that in mind, Manager Zetocha is required to participate in any votes regarding the Complaint.

Under the Complaint, Ms. Widmer objects to a tile system installed by the Zetochas in the Northeast Quarter of Section 14 in Denver Township. The Board approved a tile permit for Dave Zetocha and John Zetocha in 2013 for a 130-acre tile system in the Northeast Quarter of Section 14 in Denver Township. The 2013 permit included a condition that the Zetochas obtain a flowage easement from Ms. Widmer as the downstream owner in the Northwest Quarter of Section 14. However, the Zetochas did not ultimately construct that particular project. In 2020, the Board approved a new permit for Dave Zetocha and John Zetocha, SUBSURFACE WATER MANAGEMENT SYSTEM PERMIT NO. 2020-09, for a different project proposed in the Northeast Quarter of Section 14 in Denver Township. The Board's approval of PERMIT NO. 2020-09 did not include any easement requirement (the North Dakota Legislature eliminated WRDs' abilities to attach easement conditions to tile permits in 2017).

Under the Complaint, Ms. Widmer suggests tile discharge from the Zetochas' system in the Northeast Quarter of Section 14 must be flowing onto her property in the Northwest Quarter of Section 14: "Widmer ... has noticed that her land has begun to show the telltale signs of water intrusion (ie. Cattails, soggy/saturated soil, etc.) from the [Zetocha] property." Ms. Widmer further suggests that, whichever project the Zetochas constructed (the project contemplated under the 2013 permit or the project contemplated under the 2020 permit), the Board should "open an investigation into these drainage activities" by the Zetochas.

In May of 2024, Dave Zetocha and John Zetocha submitted *Application to Install a Subsurface Water Management System No. 2024-15*; the purpose of the 2024 application was to replace both of the previous permits. Under *Application No. 2024-15*, the project proposed by the Zetochas in the Northeast Quarter of Section 14 in Denver Township is "less than 72 acres." The Zetochas plan to recycle their tile discharge and irrigating their property in the Northeast Quarter of Section 14. The project will include a pump along the south boundary of the Northeast Quarter of Section 14; the pump will distribute the tile discharge to a transfer sump and tank and, ultimately, to irrigation lines that will irrigate the quarter. As a result of the Zetochas' tile plan, the project will not include downstream discharge over Ms. Widmer's property in the Northwest Quarter of Section 14. The Board noted that, technically, the project does not require a permit under North Dakota's tile statute, N.D. Cent. Code § 61-32-03.1, since the project is less than 80 acres of tile; however, in light of Ms. Widmer's complaint, the Zetochas indicated their preference to proceed with a permit to protect their project from legal challenges.

Under Section 61-32-03.1, the Board had no choice but to approve SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-15, with appropriate and legal conditions, or the application would have been deemed automatically approved **without any conditions**, within 30 days of the Zetochas' submission of *Application No. 2024-15*. With that in mind, at the Board's meeting on May 16, 2024, the Board approved SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-15 with the following conditions:

1. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
2. Applicants will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Sargent County Water Resource District.
3. Applicants will not install Applicants' tile system within 20 feet, on either side, of any rural water lines Southeast Water Users District has in the Northeast Quarter of Section 14 in Denver Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
4. Applicants must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-15 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.

Section 61-32-03.1 specifically identifies those conditions water resource districts may attach to tile permits; water resource districts lack any legal authority to attach any additional conditions not specifically provided under Section 61-32-03.1. With regard to PERMIT NO. 2024-15, condition No. 2 above affords the Board the ability to direct the Zetochas to turn off their tile pump in the event of flooding conditions. Under Section 61-32-03.1, the Board lacked any authority to attach any additional conditions to PERMIT NO. 2024-15.

Further, under Sections 61-32-03.1 and 61-32-07 of the Century Code, the Board lacked any legal authority to deny the Zetochas' tile application simply by virtue of Ms. Widmer's Complaint; under Section 61-32-03.1, the Board had no choice but to approve *Application No. 2024-15* or the permit would have been deemed automatically approved, **without any conditions**. With that in mind, the Board legally had no choice but to approve SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-15 at the Board's meeting on May 16, 2024, and the Board included the only conditions permissible under the tile statute to mitigate possible impacts.

The Board approved PERMIT NO. 2024-15 at the Board's meeting on May 16, 2024. Fredricks provided notice regarding the Board's approval of PERMIT NO. 2024-15 in a NOTICE OF DECISION dated May 17, 2024. Fredricks provided the NOTICE OF DECISION and SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-15 to the Department of Water Resources and parties of record, including Ms. Widmer. The appeal period regarding the Board's approval of PERMIT NO.

2024-15, under N.D. Cent. Code §§ 61-16.1-54 and 28-34-01, has expired. With that in mind, the Board’s approval of PERMIT NO. 2024-15 is no longer subject to any appeal or legal challenge.

In the NOTICE OF DECISION regarding PERMIT NO. 2024-15, as directed by the Board, Fredricks noted that, if Ms. Widmer is concerned about impacts from the Zetochas’ tile system, Ms. Widmer can pursue civil remedies against the Zetochas. Section 61-32-03.1(9) provides:

Approval of a [tile] permit under this section does not prohibit a downstream party unreasonably damaged by the discharge of water from a subsurface water management system from seeking damages in a civil action.

With that provision in mind, Ms. Widmer could commence a civil action against the Zetochas in District Court if she wishes, but the Sargent County Water Resource District lacked any legal authority to deny PERMIT NO. 2024-15 and lacked any authority to attach any additional conditions to PERMIT NO. 2024-15.

Under the drainage complaint statute, Section 61-32-07, the Board only has jurisdiction to order a landowner to “close or fill” any unpermitted “drain, lateral drain, or ditch ... opened or established by a landowner or tenant contrary to this title [Title 61 of the North Dakota Century Code].” In other words, if a landowner constructs or installs a drain without a permit, and the drain required a permit under Title 61 of the Century Code, a water resource district can order that party to close or fill the unpermitted drainage. However, if a party obtains a permit for a drain, the drain is not “contrary to” Title 61 of the Century Code. In this case, the tile statute, approved by the North Dakota Legislature in 2021, well after the passage of the drainage complaint statute, required the Board to approve the Zetochas’ tile application. The Zetochas submitted *Application No. 2024-15*, and the Board either had to approve that application with conditions or the application would have otherwise been deemed automatically approved without any conditions. The Board opted to approve the application to ensure the Board’s ability to attach conditions. With that in mind, the Zetochas’ tile system in the Northeast Quarter of Section 14 in Denver Township is an approved and permitted tile project, included within a valid tile permit, and the Board lacks any jurisdiction to order or force the Zetochas to close or fill their tile system.

In addition, and more significantly, the Zetochas’ tile project is under 80 acres and, therefore, their project did not require a permit under Section 61-32-03.1. With that in mind, even if the Zetochas had not obtained a tile permit, their project is not “contrary to” Title 61 of the Century Code and, under Section 61-32-07, the Board lacks jurisdiction to order the Zetochas to “close or fill” their tile system.

Because the tile system in the Northeast Quarter of Section 14 in Denver Township is a permitted system, and because the system did not require a permit, the Board lacks any jurisdiction under Sections 61-32-03.1 and 61-32-07 to order the Zetochas to “close or fill” the system. Therefore, the Board concluded dismissal of Ms. Widmer’s COMPLAINT FOR WATER-RELATED ISSUES was the Board’s only option.

Manager Wyum moved to dismiss Virginia Widmer’s COMPLAINT FOR WATER-RELATED ISSUES, dated May 9, 2024, regarding the Zetochas’ tile system in the Northeast Quarter of Section 14 in Denver Township due to lack of jurisdiction under Sections 61-32-03.1 and 61-32-07. Manager Stein seconded the motion. Upon roll call vote, Chairman Siemieniowski and Managers Stein and Wyum voted in favor of the motion. Manager Zetocha abstained. The motion carried.

The Board directed Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to the parties of record.

**Emeric Erickson**-It was noted that Mr. Erickson has withdrawn his complaint against Tanner Martinsen

## **DICKEY-SARGENT JOINT BOARD**

### **DSJTB bills for approval:**

|  |                  |
|--|------------------|
| <b>DVEC – electricity –</b>                                      | <b>\$ 630.00</b> |
| <b>Ohnstad Twichell-Correspondence/Quandt<br/>Utility Permit</b> | <b>\$ 442.00</b> |

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

Balances as of May 31<sup>st</sup>, 2024:

|                                 |                      |
|---------------------------------|----------------------|
| Maintenance Account Balance:    | <b>\$ 40,713.40</b>  |
| Improvement Account Balance:    | <b>\$ 279,768.53</b> |
| Special Assessment-Drain No. 11 | <b>\$ 12.03</b>      |

The next Dickey-Sargent Joint Board meeting will be held in July 18<sup>th</sup>, 2024.

## **Richland-Sargent Drain #1**

## Maintenance Fund Financial Statement

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

|  |                     |
|--|---------------------|
| <b>Ohnstad Twichell-</b> Correspondence/emails                     | <b>\$1,173.50</b>   |
| <b>Moore Engineering-</b> Drone video/cost-share/public info. mtg. | <b>\$ 5,554.75</b>  |
| May 31 <sup>st</sup> , 2024 Account Balance:                       | <b>\$381,888.30</b> |

A public information meeting will be held on Wednesday, June 26<sup>th</sup>, 2024 at 1:00 p.m. at the Cayuga Hall.  
The next RS1 meeting is scheduled for July 18<sup>th</sup>, 2024.

The meeting adjourned at 9:53 a.m.

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Lucas Siemieniewski, Chairman

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Wendy Willprecht, Secretary/Treasurer