

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, AUGUST 15<sup>TH</sup>, 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, Bruce Speich, Todd Stein and Roger Zetocha. Also in attendance was Wendy Willprecht Secretary/Treasurer, Nathan Trosen, engineer for Moore Engineering, Sargent County Commissioner Wade Anderson, landowners Darren Hoistad and Richard Ruch. Present via video conference were Attorneys Sean Fredricks, Stephen Hilfer of Ohnstad Twichell, and Leon Mallberg.

Manager Speich moved to approve the March 28<sup>th</sup>, 2024 information meeting minutes, the July 1<sup>st</sup>, 2024 executive session meeting minutes, the July 18<sup>th</sup>, 2024 regular meeting minutes, the August 1<sup>st</sup>, 2024 Drain Tour meeting minutes and the June 2024 financial statement. The July 2024 financial statement was not available. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Speich moved to approve the bills.

**Ohnstad Twichell**- Emails/calls/mtgs. \$1552.00; Pearson Tile App. \$113.49; Thompson Tile App. \$1819.20; Drain No. 11-Improv. Proj. \$1165.00/Eminent Domain \$1348.96; Drain No. 9 Ext.-review SWC cost-share \$70.50; Wild Rice River Maintenance-petition bond/cost-share \$446.50

**Total: \$6,515.65**

**Dickey County**-Plat book

**Total: \$49.00**

**Ransom County**-Plat book

**Total: \$35.00**

**Moore Engineering**-Mtgs/correspondence/publc info. mtg./Permit \$4,930.78; Permit(s)/6311/8 pt. questionnaire/DRN utility permit \$615.00; Drain No. 7-Drain tour prep/field survey \$3,220.50; Drain No. 8-Drain tour prep \$315.00; Drain No. 11-Drain tour prep/mtg. with Meide & Thompson (south latera) \$512.50; SFC-quarterly reports/cost-share \$365.00; Drain No. 9-study tasks \$5,402.50

**Total: \$15,361.28**

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

	Lucas Siemieniewski	Travel	\$
	Todd Stein	Travel	\$
	Michael Wyum	Travel	\$
	Roger Zetocha	Travel	\$
	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:** No update.

**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:** This matter is on hold.

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

**Drain No. 7:** Trosen of Moore Engineering said that Comstock drafted a notice of termination to cancel the general wastewater permit now that construction is complete. A motion was made by Manager Wyum and seconded by Manager Speich to direct Chairman Siemieniewski to sign the notice and return it to Comstock. Upon roll call, the motion carried unanimously.

The board received a check from Moore Engineering for \$9,179.29. The drain project came in under budget, therefore Moore refunded the board for unused dollars.

**404 Permit:** No update.

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

**Drain No. 9 Extension:**

Trosen from Moore Engineering said that survey trucks will be out to the project area soon. A survey will be completed that includes the culvert crossings and surveyed cross sections. A preliminary wetland review has been completed. All agreements for the project have been signed. The board directed administrator Willprecht to cash the landowner petition checks received.

**Wild Rice Maintenance District:**

Trosen from Moore Engineering said that survey trucks will be out to the project area soon. A survey will be completed that includes the culvert crossings and lidar in between. The survey will go just past Silver Lake. All agreements for the project have been signed. The board directed administrator Willprecht to cash the landowner petition checks received.

**Drain No. 8:** Drain 8 improvement study was selected for further review for potential funding through the BRIC program. This selection status is an indication the project will get awarded in the coming months.

**Cogswell Tile:** Cogswell scoping project was selected for further review for potential funding through the BRIC program. This selection status is an indication the project will get awarded in the coming months.

**Drain No. 2:** Daryl Foertch has been paid \$5000 for his crop damage that occurred during the clean out project. Once an invoice is received for the Lyons damages, a check will be issued to them as well.

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

**Short Foot Creek:** Trosen said that the exemption request for this project was approved by the NRCS. This project will be funded under their flood damage reduction classification meaning 100% funding for construction of the embankment. We will receive 75% funding for the environmental additions (bio-mass, etc.). This is the highest level of cost-share available. The next step will be to submit a notice of intent to the NRCS and the project will then be put on the federal registry. There will then be a 30 day comment period. After that, a public meeting will be held where we can receive additional comments. After all comments are received, a final plan will be drafted and will ultimately be sent to the NRCS headquarters. Trosen said his goal is to have the plan submitted by the end of the year.

Trosen suggested holding the public meeting in December. This meeting will consist mainly of agencies, but landowners will also be invited.

**City of Stirum:** No report.

**NEW BUSINESS:**

**Sargent County Highway 10 Hydraulic Study:** Trosen of Moore said that in review of the hydraulic study, completed by Interstate Engineering, a 60-inch culvert will be replaced with a new 60-inch culvert. The replacement will be kitty corner of Sargent County Highway 10, south of Rutland.

**Darren Hoistad Clean Out County Rd. 5:** Hoistad approached the board about the natural drain that flows from the Brummond/Lubke Dam to Sprague Lake. Darren owns land along the W1/2 2-11-129-54. In review of minutes dating back to August 20<sup>th</sup>, 1998, the water board approved a clean out of this same area, and covered the expense. The natural drain has not been cleaned out since 1998.

Hoistad said the Army Corp of Engineers built both dams and rerouted the creek that went straight north, instead of east by Gary Thornbergs. The Corp did this in the 1950s, but they turned it over to the waterboard because they had no way of funding it/maintaining it. So, in 1998 the waterboard levied the mill levy on the property from Kim Rassmussen's to Frenier Dam to support the waterway coming out of Frenier Dam, Nelson Dam, Brummond/Lubke Dam and the creek that goes by Rassmussen's out of the White Lake Dam. At that time, they found that there was no easement going through section 11. Darren Hoistad sold an easement for \$1.00 to the Board, all the way to Sprague Lake.

Hoistad said there is a large amount of silt and cattails in the drain but no trees. It is a shallow ditch.

Chairman Siemieniewski and Manager Stein said they will meet with Hoistad, the refuge and Helwigs at the drain site to discuss options. A motion was made by Manager Zetocha and seconded by Manager Stein to approve and authorize up to a maximum of \$25,000 for the clean out. Upon roll call, the motion carried unanimously.

The Board next considered two tile applications, one filed by Manager Michael Wyum and one filed by Manager Wyum's wife, Phyllis Wyum. Before discussing the merits of the applications, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Wyum's conflict in the matter. Mr. Fredricks explained the law in North Dakota regarding conflicts; Section 44-04-22 of the North Dakota Century Code, provides the relevant standard. 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, Manager Wyum has a direct and substantial personal interest regarding both applications that creates a clear conflict. Manager Stein moved to declare that Manager Wyum has a conflict and should not participate in any votes regarding *Application to Install a Subsurface Water Management System No. 2024-22* filed by Phyllis Wyum and regarding *Application to Install a Subsurface Water Management System No. 2024-23* filed by Michael Wyum. Manager Zetocha seconded the motion. Upon roll call vote, Chairman Siemieniowski and Managers Stein, Zetocha, and Speich voted in favor of the motion. Manager Wyum 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 and, therefore, the process under Section 44-04-22 controls all conflict matters.

With the conflict issues concluded, the Board proceeded with discussion regarding the two tile applications.

**Application to Install a Subsurface Water Management System No. 2024-22 for Phyllis Wyum in the Southwest Quarter of Section 20 in Weber Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-22*, filed August 13, 2024, by Applicant Phyllis Wyum. Under the Application, Applicant seeks to install a 112-acre drain tile system in the Southwest Quarter of Section 20 in Weber Township, Sargent County, North Dakota. The project will include a single pump outlet located in the southeast corner of the Southwest Quarter of Section 20; the pump will discharge in the north road ditch along 100th Street SE; the discharge will then flow east, in the north road ditch along 100th Street SE and on the south boundary of the Southeast Quarter of Section 20 until flowing into the west boundary of DMVW's railroad right of way; the discharge will then flow northeast, along the west boundary of DMVW's tracks, across the Southeast Quarter of Section 20, the Southwest Quarter of Section 21, and the Northwest Quarter of Section 21.

According to County tax roll information, with regard to the property Applicant intends to tile, Phyllis Wyum owns the Southwest Quarter of Section 20 in Weber Township. With regard to downstream properties within one mile of Applicant's pump outlet, Geneva Gehrke, Amanda Gehrke, Alisha Gehrke, Benjamin Gehrke, and Kristine Malheim own the Southeast Quarter of Section 20; DMVW Railroad owns its right of way; Dennis and Linda Goltz and the Goltz Family Land Trust own the Southwest Quarter of Section 21; and Chris Parrow and Gail Likness and Virgil Likness, as Trustees of the Gail & Virgil Likness Trust, own the Northwest Quarter of Section 21.

Manager Speich moved, and Manager Zetocha seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-22*, filed August 13, 2024, for Phyllis Wyum in the Southwest Quarter of Section 20 in Weber Township, and to authorize the Secretary-Treasurer to sign Subsurface Water Management Permit No. 2024-22, 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 Weber Township's road 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 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 Southwest Quarter of Section 20 in Weber 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. 2024-22 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 comply with the following:

1. The Board recommends that Applicant obtain written consent from Weber Township to discharge into or otherwise utilize any of its road right of way.
2. The Board recommends that Applicant obtain written consent from DMVW Railroad to discharge into or otherwise utilize any of its railroad right of way.
3. 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 and Subsurface Water Management Permit No. 2024-22 to the Department of Water Resources, Weber Township, DMVW Railroad, Geneva Gehrke, Amanda Gehrke, Alisha Gehrke, Benjamin Gehrke, Kristine Malheim, Dennis and Linda Goltz, the Goltz Family Land Trust, Chris Parrow, Gail and Virgil Likness, and Southeast Water Users District.

**Application to Install a Subsurface Water Management System No. 2024-23 for Michael Wyum in the North Half of Section 17 in Bowen Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-23*, filed August 13, 2024, by Applicant Michael Wyum. Under the Application, Applicant seeks to install a 139-acre drain tile system in the North Half of Section 17 in Bowen Township, Sargent County, North Dakota. The project will include a gravity outlet that will discharge into a pond or slough in the Northwest Quarter of Section 17 and a pump outlet located along the north boundary of the Northeast Quarter of Section 17 that will discharge into a natural watercourse, as that term is defined under N.D. Cent. Code § 61-01-06.

According to County tax roll information, with regard to the property Applicant intends to tile, Michael Wyum owns the Northwest Quarter of Section 17 in Bowen Township and Michael and Phyllis Wyum own the Northeast Quarter of Section 17. Because the project will discharge into a pond or slough and into a natural watercourse, no downstream notices are required under N.D. Cent. Code § 61-32-03.1.

Manager Zetocha moved, and Manager Stein seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-23*, filed August 13, 2024, for Michael Wyum in the North Half of Section 17 in Bowen Township, and to authorize the Secretary-Treasurer to sign Subsurface Water Management Permit No. 2024-23, 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 pond or slough in the Northeast Quarter of Section 17 in Bowen Township.
3. Applicant will install and maintain erosion protection at any and all outlets into the natural watercourse in the Northwest Quarter of Section 17 in Bowen Township.
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 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 North Half of Section 17 in Bowen 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. 2024-23 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, Chairman Siemieniewski and Managers Stein, Zetocha, and Speich voted in favor of the motion. Manager Wyum abstained. The motion carried.

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 and Subsurface Water Management Permit No. 2024-23 to the Department of Water Resources and Southeast Water Users District.

**Application to Install a Subsurface Water Management System No. 2024-20 for Brian Vculek and Charlene Meehl in the North Half and the Southeast Quarter of Section 5 in Denver Township in Sargent County and the Southeast Quarter of Section 33 and the Southwest Quarter of Section 34 in Isley Township in Ransom County**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-20*, filed August 8, 2024, by Applicants Brian Vculek and Charlene Meehl. Under the Application, Applicants seek to install a 336-acre drain tile system in the North Half and the Southeast Quarter of Section 5 in Denver Township in Sargent County and the Southeast Quarter of Section 33 and the Southwest Quarter of Section 34 in Isley Township in Ransom County. The majority of the acreage Applicants intend to tile are in Sargent County and, with that in mind, under N.D. Cent. Code § 61-32-03.1(3)(a), the Sargent County Water Resource District is required to consider and approve *Application No. 2024-20*. The tile components in Isley Township will connect to the project components in Denver Township via lines under 78th Street SE. The project will include a single gravity outlet that will discharge via an underground, non-perforated pipeline that will commence along the east boundary of the Northeast Quarter of Section 5 in Denver Township; the line will run to the east, under 116th Avenue, and across a portion of the Northwest Quarter of Section 4; the pipeline will daylight and discharge into a pond, lake, or slough in the Northwest Quarter of Section 4.

With regard to the property Applicants intend to tile, according to Sargent County and Ransom County tax data provided by Applicants, Wagner Land LLLP owns the Southeast Quarter of Section 33 in Isley Township; Bernard and Marlene Vculek, Trustees of the Bernard Vculek Revocable Living Trust and the Marlene Vculek Revocable Living Trust, own the Southwest Quarter of Section 34 in Isley Township; Brian Vculek owns the North Half of Section 5 in Denver Township; and Charlene Meehl owns the Southeast Quarter of Section 5 in Denver Township. With regard to the property where Applicants intend to install the pipeline outlet, Jordan and Amanda Geffre own the Northwest Quarter of Section 4 in Denver Township. Because the project will discharge into a pond, lake, or slough, 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. 2024-20*, filed August 8, 2024, for Brian Vculek and Charlene Meehl in the North Half and the Southeast Quarter of Section 5 in Denver Township in Sargent County and the Southeast Quarter of Section 33 and the Southwest Quarter of Section 34 in Isley Township in Ransom County, and to authorize the Secretary-Treasurer to sign Subsurface Water Management Permit No. 2024-20, subject to the following conditions:

1. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
2. Applicants will install and maintain erosion protection at any and all outlets into the pond, lake, or slough in the Northwest Quarter of Section 4 in Denver Township in Sargent County.
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 North Half and the Southeast Quarter of Section 5 in Denver Township in Sargent County and the Southeast Quarter of Section 33 and the Southwest Quarter of Section 34 in Isley Township in Ransom County, under any blanket easements, or otherwise beyond the Water District's existing easement, without permission from Southeast Water Users District.
4. Applicants must apply for an amendment to Subsurface Water Management Permit No. 2024-20 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 comply with the following:

1. The Board recommends that Applicants obtain written consent from the Denver Township Board of Township Supervisors and the Isley Township Board of Township Supervisors to install any project components within their respective road right of way.
2. The Board recommends that Applicants obtain and record easements from the owners of any land not owned by Applicants where Applicants intend to install tile components.
3. The Board recommends that Applicants obtain and record a pipeline easement from the owners of the Northwest Quarter of Section 4 in Denver Township.
4. 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. 2024-20, and downstream flow map to the Department of Water Resources, the Ransom County Water Resource District, Wagner Land LLLP, Bernard and Marlene Vculek, Jordan and Amanda Geffre, and Southeast Water Users District.

**OLD BUSINESS:**

**Travis Thompson Surface Permit Fee:** Attorney Fredricks said that by statute, a water resource district can recover fees the board incurs for the processing of a surface permit application. The Board directed Administrator Willprecht to calculate the fees incurred by both Ohnstad and Moore Engineering, and to submit a bill directly to Mr. Thompson.

**Virginia Widmer Complaint:** The Board previously dismissed Ms. Widmer's complaint and Fredricks provided a NOTICE OF DECISION to the parties. Ms. Widmer filed an appeal to the Department of Water Resources. It is under review by the DWR.

## **DICKEY-SARGENT JOINT BOARD**

**DSJTB bills for approval:**

<b>DVEC - electricity -</b>	<b>\$ 336.00</b>
<b>Ohnstad Twichell-review correspondence</b>	<b>\$ 128.00</b>
<b>Sweeney Controls-sensor</b>	<b>\$1,074.31</b>
<b>Moore Engineering-July Mtg.</b>	<b>\$ 102.50</b>

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.

**June 2024 balances:**

Maintenance Account Balance:	\$ 39,641.40
Improvement Account Balance:	\$ 280,124.69
Special Assessment-Drain No. 11	\$

The Dickey-Sargent Joint Board would like to be able to approve tile applications that cross county lines. The Department of Water Resources suggested talking to the Attorney General. Attorney Fredricks said that the Attorney General would approve this action, but it must be reflected in the joint powers agreement between Dickey and Sargent. Discussion of modifying the current joint power agreement will be discussed at the joint meeting in October.

The next Dickey-Sargent Joint Board meeting will be held in October 17<sup>th</sup>, 2024.

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

These bills were approved during the joint RS1 meeting.

<b><u>Ohnstad Twichell</u></b> -info mtg./emails/correspondence	<b>\$1,165.89</b>
<b><u>Moore Engineering</u></b> - Continued correspondence with landowners after June informational meeting. Reviewed petition, created proposed project map for petition, and attended RSJWRD July meeting.	<b>\$1,742.50</b>
<b><u>Richland County</u></b> -postage for plat book	<b>\$8.00</b>

**The June 30<sup>th</sup>, 2024 financials:** **\$396,523.24**

Chairman Siemieniewski said that he spoke to Larson Spraying expressing his concern that the spraying was done right after the area received 4 inches of rain. The applicator assured Siemieniewski that no flooded areas were sprayed and provided a map of where the chemical was put down.

The meeting adjourned at 9:05 a.m.

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Lucas Siemieniewski, Chairman

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Wendy Willprecht, Secretary/Treasurer