

DRAFT

These are DRAFT minutes, subject to amendment before final approval by the Sargent County Water Resource District.

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, JULY 18TH, 2024 AT 8:20 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 and Brady Woodard, engineers for Moore Engineering, Noah Hazard of the U.S. Fish and Wildlife Service, landowners Richard Ruch, Jerry Meide, Myles Thompson, Scott and Paul Mund. Present via video conference were Attorneys Sean Fredricks, Stephen Hilfer of Ohnstad Twichell, Sargent County Commissioner Scott Johnson, RS1 Managers Arv Burvee and Clint Arndt and Leon Mallberg.

Manager Stein moved to approve the June 20th, 2024 regular meeting minutes and the July 1st, 2024 special meeting minutes. The June 2024 financial statement was not available. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Wyum moved to approve the bills.

Ohnstad Twichell- Mts./correspondence/easements \$4376.50;2023 Acquisition \$71.07;Widmer/Zetocha complaint \$1530.80;Zetocha tile app. \$90.87;Tyler Mahrer tile app. \$625.60;Asche/Mahrer tile app. \$716.00;Mathias tile app. \$645.50;Pearson tile app. \$470.00;Drain No. 11-Improv. Proj. \$4,006.70;Drain No. 7-bond/correspondence \$940.00;
Total: \$13,473.04

Moore Engineering-Regular WRD meeting attendance, correspondence, & other general WRD items including continued assistance with State Auditor requests \$2,993.28;Drain 4 Researched right-of-way agreements per State Auditor’s request \$620;Drain 7 Researched right-of-way agreements per State Auditor’s request. Reviewed outstanding bond balance & future payment \$1,611.50;Drain 9 Correspondence with DWR regarding how to proceed with cost share request \$205;Drain 11 Phone calls & meeting with Jerry Meide & Miles Thompson regarding Drain 11 south lateral \$410
Total: \$5,839.78

Comstock Construction, Inc.- Pay application #3-final **Total: \$66,987.63**

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

	Lucas Siemieniewski	Travel	\$93.13
	Todd Stein	Travel	\$51.59
	Michael Wyum	Travel	\$48.24
	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 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: Mr. Meide said that the proposal that he and Thompson presented to the U.S. Game and Fish Department has been approved. Trosen reminded Meide that in order to realign the south lateral, Meide will need to submit a petition and bond. Attorney Fredricks added that this project will need to be treated like a brand new drain in terms of the assessment process. Trosen indicated that, for comparison purposes, the Traill County WRD recently required \$50K as the bond amount. The bond dollars would pay for project development and assessment district proceedings. The project could potentially qualify for 45% cost-share available through the state. Meide said he had talked to a private excavating company out of Wyndmere who told him his project would take about 3 weeks to complete. Chairman Siemieniewski responded that a private contractor could not construct improvements to a public facility and that, further, constructing improvements to a legal assessment drain requires a detailed project design and the Board would have to apply for various permits and approvals. Siemieniewski noted that the Board would want assurance that a majority of the landowners in the benefitted area, who would have to pay for the project, support the proposal. Trosen added that the plans show a new culvert crossing being added that does not exist today. Attorney Fredricks noted that any road crossing improvements requires a new legal process that would increase proposed project costs and could take months.

Trosen noted Drain 11 is still the subject of an ongoing lawsuit and the Board agreed that the Board could not proceed with any Drain 11 while a lawsuit is still pending.

Chairman Siemieniewski noted this project would result in more maintenance for the board in the future and could become a financial burden for the other members of the Drain 11 assessment district.

Trosen said the board would need a 404 permit and that environmental permitting can get costly.

Attorney Fredricks said that the board would need to set a bond amount if the board wants to allow the landowners to pursue this project. Before proceeding to any motions, Sean Fredricks recommended the Board conduct conflict analysis regarding Manager Stein. Manager Stein and his son, Trent, farm together, and they rent land from Mr. Meide and they farm property next to Mr. Meide's property that would be impacted by a re-alignment.

The conflict statute in North Dakota, Section 44-04-22 of the North Dakota Century Code, provides the relevant standard:

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 indicated that, in his opinion, Manager Stein has a direct and substantial personal or pecuniary interest in the matter that creates a conflict. Manager Wyum moved to declare that Manager Stein has a conflict and should not participate in any votes regarding Mr. Meide's proposed re-alignment of a portion of Drain 11. Manager Zetocha seconded the motion. Upon roll call vote, Chairman Siemieniewski and Managers Zetocha, Speich, and Wyum voted in favor of the motion. Manager Stein 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 issue concluded, the Board proceeded with discussion regarding Mr. Meide's proposal.

Fredricks told the board that the regulatory issues for this project need to be handled first, before the Board proceeds with anything. Zetocha suggested Meide and Thompson work with the proper agencies and get the appropriate approvals, otherwise the board cannot move forward.

Manager Speich suggested that Meide ask the U.S. Game and Fish and Ducks Unlimited organizations to fund this project and be responsible for the maintenance. Speich added that Meide needs to check with the downstream landowners that will be affected. Trosen suggested that Meide and Thompson hire their own engineering firm to do the analysis and regulatory outreach, and the board agreed.

Drain No. 4: No report.

Drain No. 7: Brady Woodward, engineer for Moore Engineering, went with Manager Speich to inspect the drain now that the project is complete. It was noted that the vegetation level looked satisfactory and that overall, the quality of the completed project was satisfactory. Speich added that the grass seeding looked good.

Trosen said that the final balancing change order needed to be approved to update the contract price. Trosen added that the Board did not have to use the contingencies and the cost of the project construction was \$52,000 less than anticipated.

Manager Stein made a motion to approve the final balance change order to Comstock Construction. Manager Zetocha seconded the motion. Upon roll call, the motion carried unanimously.

Manager Wyum made a motion to approve the final pay application to Comstock Construction in the amount of \$66,987.63. Manager Speich seconded the motion. Upon roll call, the motion carried unanimously.

Secretary-Treasurer Willprecht will provide notice to the Sargent County Commission that the Drain 7 crossing improvements are complete and to request reimbursement.

The Board discussed a proposed project with Scott Mund from Hall Township. With the culvert analysis complete, the board felt the next step would be to hold a public information meeting to get a feel for what the landowners would like to see the Board pursue. The board directed Willprecht to work with Moore Engineering on sending out invitations and an ad in the paper, for the August 15th, 2024 public information meeting to be held at the courthouse at 10:00 a.m.

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:

A motion was made by Manager Wyum and seconded by Manager Zetocha to authorize Chairman Siemieniewski to sign the State Water Commission cost-share agreement regarding the Drain No. 9 feasibility study and Moore Engineering's task order for this project. Upon roll call, the motion carried unanimously.

Wild Rice Maintenance District:

A motion was made by Manager Stein and seconded by Manager Zetocha to authorize Chairman Siemieniewski to sign the State Water Commission cost-share agreement regarding the Wild Rice River feasibility study and Moore Engineering's task order for this project. Upon roll call, the motion carried unanimously.

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: Manager Speich spoke to landowner Daryl Foertch and it was agreed upon that there was \$5000 in crop damage. Chairman Siemieniewski said he spoke to landowners Aaron and Warren Lyons and they suffered \$4000 in crop damage. This damage was incurred during the clean out project that was done to this drain. A motion was made by Manager Wyum and seconded by Manager Zetocha to issue checks for crop damage to Daryl Foertsch for \$5000 and to Aaron and Warren Lyons for \$4000. Upon roll call, the motion carried unanimously.

Drain No. 12: No update.

Short Foot Creek: No update.

City of Stirum: No report.

NEW BUSINESS:

Tewaukon Refuge: Noah Hazard of the U.S. Fish and Wildlife Department stated he had spoke to Manager Speich about the cattle issue. Hazard said the refuge will put up a single hot wire fence that will go on top of the drain. There will be enough room left to get trucks in and out, and the fence will be kept as far away from the berm as possible. This should keep the cattle corralled to the south side. Manager Speich asked where the property line is. Trosen of Moore Engineering said that there is a total of 75 ft. with 37 ½ ft. on either side. The past decision was to keep the ROW and the board had then applied for a special easement to handle other areas along the drain. Hazard said that the next grazing lease agreement they draft will include these fencing requirements.

APPLICATION FOR SURFACE DRAIN NO. 6311 for Travis Thompson in Sections 13 and 24 of Lovell Township

The Board reviewed the RECORD OF DECISION issued by the Department of Water Resources ("DWR") regarding APPLICATION FOR SURFACE DRAIN NO. 6311 for Applicant Travis Thompson. DWR referred this Application to the Sargent County Water Resource District because DWR concluded that, even though the physical improvements for the project will be in Dickey County, the majority of the watershed impacted by the project is in Sargent County.

Under APPLICATION NO. 6311, Applicant seeks to construct a lateral to the Lovell Improvement Project in Section 24 and the West Half of Section 13 in Lovell Township, Dickey County, North Dakota. Lovell Improvement Project is permitted under SURFACE DRAIN PERMIT NO. 4757. The channel improvements will commence near the northeast corner of the Southeast Quarter of Section 24; the channel will run to the south, along the east boundary of the Southeast Quarter of Section 24 until reaching the southeast corner of the Southeast Quarter; the channel will then run to the west along the south boundary of the Southeast Quarter; the channel will then run to the north along the west boundary of Section 24 and the west boundary of Section 13. The project will outlet into the Lovell Improvement Project channel at the northwest corner of the Northwest Quarter of Section 13.

The project will include a control structure a half-mile south of the outlet into the Lovell Improvement Project channel; Applicant will close the control structure when the water surface elevation of the Lovell Improvement Project reaches an elevation of 1,303.3 feet at the east riser 1,200 feet west of the section line between Sections 10 and 11 in Lovell Township. The current O&M Plan for the Lovell Improvement Project at the same east riser requires closure of the main channel and lateral culverts at a water surface elevation of 1303.8 feet (six inches higher than the project proposed under APPLICATION NO. 6311) and requires that all subsurface drainage pumps be shut off at water surface elevation of 1303.6 feet (3.6 inches higher than the project proposed under APPLICATION NO. 6311).

The permitted drain improvements under APPLICATION NO. 6311 will include 17,350 feet of channel improvements; a maximum bottom width of 5 feet; a maximum cut of 7 feet; and side slopes between 2:1 and 3:1.

According to Dickey County tax and property records, *Travis Thompson owns all of Section 24 in Lovell Township*; the Michael and Pamela Quandt Irrevocable Land Trust owns the Southwest Quarter of Section 13; and John and Jan Quandt own the Northwest Quarter of Section 13.

DWR's RECORD OF DECISION indicates that, in accordance with N.D. Admin. Code §§ 89-02-01-08 and 89-02-01-09, DWR conducted a "statewide or interdistrict significance" review of the proposed ditch improvements and concluded the application does not propose drainage of "statewide or interdistrict significance." In light of DWR's finding, DWR forwarded APPLICATION NO. 6311 to the Board for processing in accordance with Section 89-02-01-09.1(2) of the North Dakota Administrative Code, via DWR's RECORD OF DECISION.

Under Section 89-02-01-09.1(2), once the Board receives the RECORD OF DECISION, the Board's first step is to determine if "public and private interests would be better served by a specific public meeting to consider the project." In this case, landowner comments submitted in response to DWR's "Solicitation of Views" were supportive of the proposed project; landowners noted the project will reduce inundation of local roads will, therefore, provide safety benefits in the area. Lovell Improvement Project LLC, also submitted comments to DWR in favor of the project as well. In addition, the Board will require Applicant to obtain right of way along the course of the project. Finally, Mr. Nathan Trosen, the Board's engineer, noted the proposed O&M Plan for this project will limit downstream impacts due to water volumes. With that in mind, the Board concluded a formal hearing was not necessary.

Under Section 89-02-01-09.2 of the Administrative Code and Section 61-32-03 of the North Dakota Century Code, the Board must ultimately determine if the project will result in downstream impacts. If a project will result in adverse impacts downstream, the Board must require Applicant to obtain downstream flowage easements from impacted downstream parties as a condition to any approval of APPLICATION NO. 6311.

Mr. Trosen reviewed potential impacts in his consideration of the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. In his responses to the eight elements under Section 89-02-01-09.2, Mr. Trosen noted the following regarding impacts:

The proposed project outlets into the Lovell Project which then runs west before ultimately discharging into the James River. During larger events flow from the proposed project will be retained via the proposed control structure, as described previously, and will no longer contribute to the main channel of the Lovell Project. The duration of flow through the Lovell Project may be increased due to the closure structure. However, it is not anticipated that there will be any downstream impacts due to the extended duration of flow. Therefore, the proposed project is not expected to have adverse flooding or erosion related effects to downstream landowners due to the operations of the proposed structure.

The Board concurred with Mr. Trosen's findings and concluded the project will not result in adverse impacts.

Manager Zetocha moved, and Manager Wyum seconded the motion, to adopt Moore Engineering's responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code; to conclude no hearing is necessary regarding APPLICATION FOR SURFACE DRAIN NO. 6311; to conclude the project will not result in adverse downstream impacts; and to approve APPLICATION FOR SURFACE DRAIN NO. 6311 for Applicant Travis Thompson, subject to the conditions attached by the Department of Water Resources, and subject to the following conditions:

1. Applicant will not construct or improve the drain in any manner that exceeds the dimensions indicated in the application.
2. Applicant will obtain and record easements from the owners of the South Half and the Northwest Quarter of Section 24 and the West Half of Section 13 in Lovell Township to install, construct, operate, and maintain project components and improvements.
3. Applicant will obtain written permission from the Lovell Township Board of Township Supervisors in the event Applicant intends to construct, operate, and maintain any portions of the surface drain within any of Township's road right of way.
4. Applicant will operate the drain in accordance with O&M Plan for the LOVELL IMPROVEMENT PROJECT under SURFACE DRAIN PERMIT NO. 4757, with the following addition:

Applicant will install a control structure a half-mile south of the outlet into the Lovell Improvement Project channel and Applicant will close the control structure when the water surface elevation of the Lovell Improvement Project reaches an elevation of 1,303.3 feet at the east riser 1,200 feet west of the section line between Sections 10 and 11 in Lovell Township.

5. Applicant will obtain written permission from Lovell Improvement Project LLC to discharge into Lovell Improvement Project.
6. Applicant will notify the Sargent County Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, submit an additional permit application.

Upon roll call vote, the motion carried unanimously.

In addition to those conditions, the Board will also recommend 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.

The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to all parties of record, as required by law.

Application to Install a Subsurface Water Management System No. 2024-20 for Gabe Quandt, Hollis Treeby, Chad Heimbuch, and Mike Atkinson in Section 31 in Southwest Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-20*, filed June 28, 2024, by Applicants Gabe Quandt, Hollis Treeby, Chad Heimbuch, and Mike Atkinson. Under the Application, Applicants seek to install a 640-acre drain tile system in Section 31 in Southwest Township, Sargent County, North Dakota. The project will include a single pump outlet located near the northwest corner of the Northwest Quarter of Section 31; the pump will discharge into the east road ditch along 114th Avenue SE and will flow to the west, under 114th Avenue; the discharge will daylight in the west road ditch along 114th Avenue, near the southeast corner of Section 25 in Lovell Township; the discharge will then flow to the north in the west road ditch along 114th Avenue for one mile, along the east boundary of Section 25 in Lovell Township; at the southeast corner of Section 24, the discharge will flow into the Lovell Improvement Project lateral Travis Thompson intends to construct under SURFACE DRAIN PERMIT NO. 6311.

According to deeds submitted by Applicants, Chad Heimbuch owns the Southeast Quarter of Section 31; Hollis and Karen Treeby own the Southwest Quarter of Section 31; Gabriel Quandt owns the Northwest Quarter of Section 31; and Atkinson Land, LLC, owns the Northeast Quarter of Section 31 in Southwest Township, Sargent County, North Dakota. With regard to downstream landowners within one mile of the project outlet, Hei H. Mitchell and Pamela A. Miller, Trustees of the Mitchell-Miller Family Trust of 2019, own the East Half of Section 25 in Lovell Township, Dickey County, North Dakota.

Manager Wyum moved, and Manager Speich seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-20*, filed June 28, 2024, for Gabe Quandt, Hollis Treeby, Chad Heimbuch, and Mike Atkinson in Section 31 in Southwest Township, 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 Southwest Township's road right of way.
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 remove silt or vegetation, or repair erosion or scour damages *directly* caused by Applicants' tile system, but only up to one mile downstream of Applicants' project outlet.
5. Applicants will not install Applicants' tile system within 20 feet, on either side, of any rural water lines Southeast Water Users District has in Section 31 in Southwest Township under any blanket easements, or otherwise beyond the Water District's existing easement.
6. 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.

With regard to condition #4, Applicants' 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 Applicants' 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 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 Southwest Township Board of Township Supervisors to discharge into or otherwise utilize any of the Township's right of way.

2. The Board recommends that Applicants obtain written consent from the Lovell Township Board of Township Supervisors to utilize any of the Township’s right of way.
3. 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; Southwest Township; Lovell Township; the Mitchell-Miller Family Trust; Travis Thompson; John Quandt as President of Lovell Improvement Project LLC; and Southeast Water Users District.

DRN Utility Permit: DRN is proposing a project that will include burying fiber optics near Drain No. 7. Fredricks prepared a Utility Permit and DRN signed and submitted the Utility Permit for the Board’s approval. A motion was made by Manager Speich and seconded by Manager Zetocha to approve the utility permit that DRN is requesting. Upon roll call, the motion carried unanimously.

A drain tour will take place in Sargent County on August 1st, 2024 at 8:00 a.m.

DICKEY-SARGENT JOINT BOARD

DSJTB bills for approval:

DVEC – electricity –	\$ 379.00
Dakota Pump & Control-install float	\$ 1,116.00

The bills were approved during the joint Dickey-Sargent meeting.

Financials were not available for June 30th, 2024:

Maintenance Account Balance:	\$
Improvement Account Balance:	\$
Special Assessment-Drain No. 11	\$

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

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

These bills were approved during the joint RS1 meeting.

Ohnstad Twichell- Correspondence/emails	\$1,313.51
Moore Engineering- Preparation and attendance of RS-1 information landowner meeting in Cayuga. Follow up emails/phone calls with landowners and managers. Created map for petition.	\$5,146.22
Cayuga Community Club- hall rental/public info. mtg.	\$ 50.00
Larson Helicopter- spraying	\$ 2,827.95
The June 30 th , 2024 financials were not available:	\$

The meeting adjourned at 10:32 a.m.

Lucas Siemieniewski, Chairman

Wendy Willprecht, Secretary/Treasurer