

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, APRIL 18<sup>TH</sup>, 2024 AT 8:12 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN NORTH DAKOTA

In attendance: Chairman Luke Siemieniewski, Managers Todd Stein, Michael Wyum, and Roger Zetocha. Also in attendance was Wendy Willprecht Secretary/Treasurer, Nathan Trosen, engineer for Moore Engineering, Sargent County Commissioners Wade Anderson and Lyle Bopp, Sargent County State’s Attorney Jayne Pfau, Tim Faber, County Highway Supervisor, Richard Ruch, Representative Mike Brandenburg, landowner Tanner Martinson. Present via video conference were Attorneys Sean Fredricks, Chris McShane and Stephen Hilfer of Ohnstad Twichell, Josh Hassell and Levi Hanson of Moore Engineering, Kathy Duttonhefner (Head of the Mountain), RS1 Vice-Chairman Tom Kubela and Managers Arv Burvee, Gary Friskop, Richland County Water Resource District Administrator Alison Zajac, Richland County Water Resource District Office Manager, Justin Johnson, landowners Paul Mathews, Leon Mallberg, Emeric Erickson, Terry Wehlander, Scott Mund and Paul Mund.

Manager Wyum moved to approve the March 21<sup>st</sup>, 2024 regular meeting minutes and the March 31<sup>st</sup>, 2024 financial statement. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Zetocha moved to approve the bills.

**Ohnstad Twichell-** Tyler Speich App. \$235.00; Correspondence/meetings \$624.00; Drain No. 11 Eminent Domain \$2355.00/Improv. Proj. \$365.50

**Total: \$3,579.50**

**Moore Engineering-** Drain No. 11 ROW \$52.50/NDDWR Water Devel. Submittal \$812.50; SFC Correspondence with NRCS. Plan and emission info updates & ongoing Project management tasks; Permit No. 6316 \$205; Meetings/Correspondence \$2,652.12; Drain No. 2-NDDWR Water Devel. Submittal \$95.00; Drain No. 4-NDDWR Water Devel. Submittal \$95.00; Drain No. 7-NDDWR Water Devel. Submittal \$95.00/Access Road \$306.25; Drain No. 8-NDDWR Devel. Submittal \$197.50; Drain No. 9-Public Info. Mtg./NDDWR Water Devel. Submittal \$3,960.00; Tewaukon District-NDDWR Water Devel. Submittal \$687.50; Hall Township Improv. District Study \$1,870.00

**Total: \$12,590.87**

**Cogswell Community Club-**Drain No. 9 public meeting rental

**Total: \$100.00**

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

Lucas Siemieniewski	Travel	\$56.28
Todd Stein	Travel	\$13.40
Michael Wyum	Travel	\$36.18
Roger Zetocha	Travel	\$56.95
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.	

**Application to Install a Subsurface Water Management System No. 2024-11 for Tanner Martinson in the Southwest Quarter of Section 9 in Hall Township**

The Board next reviewed *Application to Install a Subsurface Water Management System NO. 2024-11*, filed April 5, 2024, by Applicant Tanner Martinson. Under the Application, Applicant seeks to install a 140-acre drain tile system in the Southwest Quarter of Section 9 in Hall Township, Sargent County, North Dakota. The project will include a single pump outlet located in the northwest corner of the Southwest Quarter of Section 9; the pump will discharge into the east road ditch along 146th Avenue SE; the discharge will then flow north in the east road ditch, along the west boundary of the Northwest Quarter of Section 9; the discharge will flow through and across Red River Valley and Western Railroad right of way; at the northwest corner of the Northwest Quarter of Section 9, the discharge will turn east and will continue to flow in RRV&W right of way, along the south boundary of 79th Street SE and the north boundary of the Northwest Quarter of Section 9.

According to County tax roll information supplied by Applicant, James and Tammy Martinson own that portion of the Southwest Quarter of Section 9 in Hall Township where Applicant intends to install the tile system. With regard to downstream properties, according to County tax roll information supplied by Applicant, Mary Jane and Arlin Dean, Scott Selveit, and Brandi Anne Wynne own 104.40 acres in the Northwest Quarter of Section 9; Doyle Pieschke owns 16.5

acres in the Northwest Quarter of Section 9; and Red River Valley and Western Railroad owns its right of way in the Northwest Quarter of Section 9.

Sean Fredricks noted that Mr. Martinson's proposed project is the subject of a recent drainage complaint filed by Emeric Erickson. Mr. Erickson leases property in the Northwest Quarter of Section 9 from the Selveits. In addition, Scott Selveit called Mr. Fredricks to express concerns about the project as well. The Selveits and Mr. Erickson also submitted objection letters for the Board's review and consideration as they consider Mr. Martinson's tile application. The Selveits and Mr. Erickson voiced concerns regarding potential pooling on the Northwest Quarter of Section 9. Mr. Fredricks explained to the Selveits and Mr. Erickson the limitations on the Board's ability to attach any conditions outside of permissible conditions in the tile permitting statute, N.D. Cent. Code § 61-32-03.1. However, the Board can attach conditions to require erosion protection at the project outlet into Hall Township's road right of way; to require Mr. Martinson to turn off the project pump when there are flood conditions downstream; and to require Mr. Martinson to remove silt or vegetation or repair erosion or scour damages downstream if the downstream party can prove the tile system was the direct cause of the damages.

Mr. Martinson explained that he spoke with representatives from Hall Township and offered to clean out the road ditch if necessary. Chairman Siemieniewski also spoke with Ellingson Drainage and Ellingson indicated the project should flow through the road ditch just fine, and should not result in pooling, as long as the township road ditch is clean.

Manager Wyum moved, and Manager Stein seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-11*, filed April 5, 2024, for Tanner Martinson in the Southwest Quarter of Section 9 in Hall Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-11, 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 Hall 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 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 Southwest Quarter of Section 9 in Hall 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. 2024-11 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 Hall Township that Applicant's tile system *directly* caused accumulation of silt or vegetation, erosion, or scouring.

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 comply with the following:

1. The Board recommends that Applicant obtain written consent from the Hall Township Board of Township Supervisors to discharge into or otherwise utilize any of Hall Township's road right of way.
2. 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. 2024-11, and downstream flow map to the Department of Water Resources; Hall Township; Red River Valley & Western Railroad; James and Tammy Martinson; downstream landowners in the Northwest Quarter of Section 9 in Hall Township, including the Selveit family; Emeric Erickson; and Southeast Water Users District.

**Kathleen Duttenhefner (Head of the Mountain):** Duttenhefner, Natural Resources Division Chief for the Parks & Recreation Department at the State, said they will not be approving 2024 deer gun. Only muzzleloader and bow will be allowed based on the local deer populations, which appears stable at this point based on licenses issued in the 2023 season. Duttenhefner also mentioned that she will be doing an assessment of the south fence and will work directly with landowner Jeff Breker with the concerns he has with the fence. She added that we will have an updated HOM lease by June.

**Drain No. 11:**

**Project:** Attorney Fredricks said there is a motion pending relating to payment of the defendants' attorneys' fees, with a hearing scheduled in May. Ohnstad Twichell will keep the Board posted.

**Glen Thompson Utility Permit:** Mr. Thompson has been in communication with Moore Engineering and relayed to Pat Downs that he hopes to have the utility permit signed by the end of March.

**Cost-share reimbursement request to the Sargent County Commission:** Secretary-Treasurer Willprecht previously emailed the County regarding the Board's reimbursement request for the road crossing improvements, under the Joint Powers Agreement between the Commission and the Sargent County Water Resource District approved and signed in 2020. The Sargent County Commission voted to deny the reimbursement request at the Commission's meeting on April 16, 2024. State's Attorney Pfau recommended denial to the SC Commission based on her opinion that the Joint Powers Agreement is void and that the project is unlawful in light of the recent Supreme Court ruling. Attorney Fredricks noted the County Commission is required to pay 40% of county and township road crossings along legal assessment drains by statute. He further noted the point of the Joint Powers Agreement was to allow the County to spread out the expense of the County's 40% reimbursement obligation over the six-year life of the bond, as opposed to having to reimburse the SCWRD in a single, lump-sum payment. Fredricks noted the crossings are complete and the Commission has a clear statutory obligation to reimburse the SCWRD for 40% of those costs; he disagreed that the Joint Powers Agreement is void but, even if it was void, the Commission would still have a statutory obligation to reimburse the SCWRD its 40% share. The Agreement simply allowed the Commission to spread that cost over six years; if State's Attorney Pfau feels the Agreement is void, the Commission could reimburse the SCWRD in a single lump-sum payment. Sargent County Commissioner Lyle Bopp said he would like to see the project come to a vote. Manager Wyum said that the project is done and the Supreme Court ruling came after the completion of this project.

Fredricks noted that the SCWRD's bond issue was partially reliant upon the parties' Joint Powers Agreement. The SCWRD's bond agent presented the Joint Powers Agreement to market the bonds to potential investors as proof that the SCWRD would be in a position to make bond payments. If the Commission does not reimburse the SCWRD for the Commission's 40% cost obligations for the road crossings, the SCWRD will be at risk of defaulting on the bonds. A default would significantly impact the bond ratings for both the Commission and the SCWRD and would likely damage either entity's ability to borrow in the future. In addition, by statute, if the SCWRD is going to default on its bond repayment obligations due to the County's decision not to reimburse the SCWRD, the SCWRD must notify the Commission and the Commission has a statutory obligation to levy a "deficiency levy" county-wide (and not just against the Drain 11 assessment district).

Commissioner Bopp and State's Attorney Pfau suggested suing Ohnstad Twichell to cover the shortfall caused by the Commission's non-payment. Fredricks responded that water resource districts have funded drain improvement projects in this exact same way for decades. Fredricks indicated the Supreme Court decision will impact the way WRDs fund drain projects moving forward but that the Supreme Court's decision overturned decades of practice by WRDs. The SCWRD's funding and process for the Drain 11 project was not unique.

Representative Mike Bradenberg noted that the Supreme Court ruling has affected all WRDs across the state and the Legislature may have to take action to address the situation. Chairman Siemieniewski asked that the Commission reconsider this matter.

**Jerry Meide & Miles Thompson South Lateral:** We plan to further discuss this matter at the May 16, 2024 SCWRD meeting. Trosen reported that he has reached out to USFWS & ND G&F staff and has determined no work has been done by either agency in regards to researching the right-of-way of the south lateral in Sections 29 & 30 of Sargent Township. Therefore, a registered land surveyor will research the right-of-way extents which is expected to be completed by the May meeting.

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

**Drain No. 7:**

**81<sup>st</sup> St SE Access Road Discussion:** Comstock previously presented their estimate and it was approximately \$70,000. Moore reached out to three local contractors for quotes per the direction of the SCWRD, and this is what they were told:

JBX: \$46,830 (Including \$13,000 to remove the bridge)

DLX: \$45,375 (Including \$13,750 to remove the bridge)

Endersons: No quote received

Chairman Siemieniewski said that we need to take the bid information to the SC Commission and also talk with Hall Township to see if all parties are in agreement to use one of these contractors for the project. The county share would be \$13,000 (bridge removal). It was noted during the discussion that if nothing was done to this area, there would be no section line crossing. Trosen of Moore Engineering said that he is working on a preliminary downstream culvert analysis.

**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:** Attorney Fredricks previously sent out an updated petition. Trosen said that he felt there was strong landowner support for this project at the public information meeting in Cogswell. The study is expected to cost around \$103,000 and should qualify for State Water Commission cost-share at 45%. The landowner portion of the project will be \$32,000, and Richard Ruch has been circulating around to landowners to collect this amount. If the petition dollars are received, the SCWRD would proceed with a drain analysis which would cost around \$28,000.

Landowners seem interested in creating a maintenance district downstream of Drains 9 and 11 for the purposes of cleaning out the Wild Rice River and potential road crossing improvements.

Moore Engineering will separate project costs into the following categories to aide in allocating funds correctly:

1. Upstream Extension of Drain 9
2. Drain 9 reconstruction
3. Downstream of Drains 9 & 11 Maintenance District

The SCWRD will not move forward with this project until all the landowner dollars are received. Ruch said he too feels the support for this project is strong and plans to have everything collected in the next 2-3 weeks. Trosen said that we need to update our agreement with the State Water Commission.

A motion was made by Manager Wyum and seconded by Manager Stein to authorize Trosen to submit to the State Water Commission to amend the cost-share agreement based on the 2024 project proposal. Upon roll call, the motion carried unanimously.

Fredricks and Trosen will update the petition document, including a modified project description, to reflect the Board's discussion.

A motion was made by Manager Zetocha and seconded by Manager Stein to request a \$32,000 landowner contribution to this project. Upon roll call, the motion carried unanimously.

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

**Cogswell Tile:** No update.

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

**Drain No. 12:** JBX will be spreading the spoil when the weather cooperates.

**Short Foot Creek:** No update.

**City of Stirum:** No report.

#### **NEW BUSINESS:**

**Emeric Erickson Drainage Complaint:** Mr. Erickson has concerns with the tiling project that Tanner Martinson is pursuing. Erickson said he questions Martinson using the township ROW as a flow path for his project. Chairman Siemieniewski said that the SCWRD only has authority to attach those conditions to Mr. Martinson's tile project that are specifically permissible under the tile permitting statute.

#### **Application to Install a Subsurface Water Management System No. 2024-10 for Elliott Hayen in the Southwest Quarter of Section 2 in Sargent Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-10*, filed April 5, 2024, by Applicant Elliott Hayen. Under the Application, Applicant seeks to install a 142-acre drain tile system in the Southwest Quarter of Section 2 in Sargent Township, Sargent County, North Dakota. The project will include a single pump outlet located along the west boundary of the Southwest Quarter of Section 2; the pump will discharge into pond, lake, or slough in the Southwest Quarter of Section 2.

According to tax parcel data supplied by Applicant, Elliott Hayen owns the Southwest Quarter of Section 2 in Sargent Township where Applicant intends to install the tile system. Because the project will discharge into a pond, lake, or slough in the Southwest Quarter of Section 2, no downstream notices are necessary under N.D. Cent. Code § 61-32-03.1. The Application does not indicate if the pump will be located in Township right of way so the Board will provide notice to Sargent Township.

Manager Zetocha moved, and Manager Wyum seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-10*, filed April 5, 2024, for Elliott Hayen in the Southwest Quarter of Section 2 in Sargent Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-10, 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, lake, or slough in the Southwest Quarter of Section 2 in Sargent 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 Southwest Quarter of Section 2 in Sargent 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. 2024-10 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 comply with the following:

1. The Board recommends that Applicant obtain consent from Sargent Township if the project pump will be located in Township road right of way.
2. 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. 2024-03 to the Department of Water Resources, Sargent Township, and Southeast Water Users District.

**Application to Install a Subsurface Water Management System No. 2024-12 for Loren Ellefson in the Southwest Quarter of Section 14 in Willey Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-12*, filed April 10, 2024, by Applicant Loren Ellefson. Under the Application, Applicant seeks to install a 139-acre drain tile system in the Southwest Quarter of Section 14 in Willey Township, Sargent County, North Dakota. The project will include a single pump outlet located along the eastern boundary of the Southwest Quarter of Section 14; the pump will discharge directly into a natural watercourse that flows to the east.

According to County tax roll information supplied by Applicant, Loren and Patricia Ellefson own the West Half of the Southwest Quarter of Section 14 in Willey Township, and Paul Ellefson owns the East Half of the Southwest Quarter of Section 14 where Applicant intends to install the tile system. Because the project will discharge into a natural watercourse, no downstream notices are necessary 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. 2024-12*, filed April 10, 2024, for Loren Ellefson in the Southwest Quarter of Section 14 in Willey Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-12, 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 Southwest Quarter of Section 14 in Willey 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 Southwest Quarter of Section 14 in Willey 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. 2024-12 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. 2024-12, and downstream flow map to the Department of Water Resources and Southeast Water Users District.

**Application to Install a Subsurface Water Management System No. 2024-13 for Mathew Bosse in the East Half and the Southwest Quarter of Section 1 and the East Half of Section 2 in Jackson Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-13*, filed April 17, 2024, by Applicant Mathew Bosse. Under the Application, Applicant seeks to install a 360-acre drain tile system in the East Half and the Southwest Quarter of Section 1 and the East Half of Section 2 in Jackson Township, Sargent County, North Dakota. The system in the East Half of Section 2 will connect to the system in the Southwest Quarter of Section 1 via a line under 119th Avenue SE. The project will include a single pump outlet located in the Northeast Quarter of Section 1; the pump will discharge into the south ditch along North Dakota Highway 11; the discharge will flow to the east in the south road ditch for approximately 3,600 feet, into the Northwest Quarter of Section 6 in Sargent Township; the discharge will then flow north, under Highway 11, into a natural watercourse.

According to County tax roll information supplied by Applicant, Paul Mathews owns the Northeast Quarter and the Southwest Quarter of Section 1 in Jackson Township; Nancy Mathews and Daniel and Phyllis Delahoyde own the Southeast Quarter of Section 1 and the East Half of Section 2 in Jackson Township. With regard to downstream landowners, the North Dakota Department of Transportation owns its Highway 11 right of way. Once the discharge flows

into a natural watercourse in the Northwest Quarter of Section 6 in Sargent 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. 2024-13*, filed April 17, 2024, for Mathew Bosse in the East Half and the Southwest Quarter of Section 1 and the East Half of Section 2 in Jackson Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-13, 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 North Dakota Department of Transportation'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 East Half of Section 1, the Southwest Quarter of Section 1, and the East Half of Section 2 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. 2024-13 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 Zetocha and Wyum voted in favor of the motion. Manager Stein voted against the motion. Motion carried.

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 Jackson Township that Applicant's tile system *directly* caused accumulation of silt or vegetation, erosion, or scouring.

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 comply with the following:

1. The Board recommends that Applicant obtain written consent from the Jackson Township Board of Township Supervisors to install any project components in any of the Township's road right of way.
2. The Board recommends that Applicant obtain written consent from the North Dakota Department of Transportation to install any project components in any of NDDOT's Highway 11 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, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-13, and downstream flow map to the Department of Water Resources, Jackson Township, the North Dakota Department of Transportation, and Southeast Water Users District.

#### **OLD BUSINESS:**

#### **APPLICATION FOR SURFACE DRAIN NO. 6316 for Brian Vculek in the Section 20 of Verner Township**

The Board reviewed the RECORD OF DECISION issued by the Department of Water Resources ("DWR") regarding APPLICATION FOR SURFACE DRAIN NO. 6316 for Applicant Brian Vculek. Under APPLICATION NO. 6316, Applicant seeks to amend SURFACE DRAIN PERMIT NO. 5556, approved by the Sargent County Water Resource District on September 16, 2021, also for Applicant Brian Vculek. Under SURFACE PERMIT NO. 5556, the Board approved Applicant's project to construct a number of ditch improvements in the North Half and the Southeast Quarter of Section 20 in Verner Township, Sargent County, North Dakota. Under APPLICATION NO. 6316, Applicant seeks to enhance and extend the ditch improvements constructed under SURFACE PERMIT NO. 5556. The permitted drain improvements under APPLICATION NO. 6316 will include 24,100 feet of channel improvements; a maximum bottom width of 12.5 feet; a maximum cut of 2.5 feet; and 4:1 side slopes. With the drain improvements, Applicant intends to completely drain a series of sloughs. The project will ultimately discharge into the "North Lateral" of the JACKSON TOWNSHIP IMPROVEMENT DISTRICT NO. 1 PROJECT, a lateral project permitted under SURFACE DRAIN PERMIT NO. 4030. The Dickey-Sargent Joint Water Resource District owns and operates the JACKSON TOWNSHIP IMPROVEMENT DISTRICT NO. 1 PROJECT.

According to records on file with the Sargent County Recorder's Office, Bernard L. Vculek, as Trustee of the Bernard L. Vculek Revocable Trust, and Marlene Vculek, as Trustee of the Marlene Vculek Revocable Trust, own the North Half and the Southeast Quarter of Section 20 in Verner Township.

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. 6316 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, the project is merely the expansion of existing ditching; no parties objected to the project permitted under SURFACE DRAIN PERMIT NO. 5556. Further, the Board does not anticipate any downstream impacts from these minor ditch expansions. 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 and, if so, the Board must require Applicant to obtain downstream flowage easements from impacted downstream parties as a condition to any approval of APPLICATION NO. 6316, under Section 61-32-03.

Nathan Trosen reviewed potential impacts as an aspect of 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 Applicant noted the project area is already included in the Jackson Project watershed. He further noted downstream impacts will be minimal due to the size of the drainage area of the proposed project and he ultimately concluded the project will not likely result in any adverse flooding or erosion conditions downstream. Again, no downstream parties have objected to the ditching constructed under SURFACE DRAIN PERMIT NO. 5556 and, therefore, the Board does not anticipate any objection downstream as a result of these drainage ditch expansions. With this in mind, the Board concluded the project will not result in adverse impacts.

Manager Wyum moved, and Manager Zetocha 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 the project will not result in adverse downstream impacts; and to approve APPLICATION FOR SURFACE DRAIN NO. 6316 for Applicant Brian Vculek, 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 written permission from the Verner Township Board of Township Supervisors and/or the Sargent County Highway Department in the event Applicant intends to construct, operate, and maintain any portions of the surface drain within any of their respective road ditches, to install any culverts through any of their roads, or to otherwise utilize any of their road ditches.
3. Applicant will operate the drain in accordance with the operating conditions applicable to the JACKSON TOWNSHIP IMPROVEMENT DISTRICT NO. 1 PROJECT and to the operating conditions applicable to the drain constructed under SURFACE DRAIN PERMIT NO. 4030.
4. Applicant will obtain permission from the Dickey-Sargent Joint Water Resource District to discharge into the JACKSON TOWNSHIP IMPROVEMENT DISTRICT NO. 1 PROJECT, via the drain constructed under SURFACE DRAIN PERMIT NO. 4030.
5. 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.

**2025 Water Development Plan**-Trosen said that all paperwork has been submitted for the SCWRD.

## **DICKEY-SARGENT JOINT BOARD**

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

**DVEC – electricity – \$ 376.00**

### **Moore Engineering**

Looked up pump schematics & record drawings \$ 51.25

**The approval of bills was carried out during the Dickey-Sargent Joint Board meeting.**

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

Maintenance Account Balance: \$ 42,236.00  
Improvement Account Balance: \$ 273,154.14

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**

A separate Richland-Sargent Joint Board meeting was also held on this date.

**Ohnstad Twichell**- Correspondence/letters to landowners Total: \$ **504.00**

**Moore Engineering**- General Maintenance \$285; Phase III Project Final Design \$1,011.25; Econ  
Analysis \$2,618.75; ROW \$816.54 Total: \$ **4,731.54**

February 29<sup>th</sup>, 2024 Account Balance: **\$ 67,334.04**

The next RS1 meeting is scheduled for July 18<sup>th</sup>, 2024.

The meeting adjourned at 10:23 a.m.

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Lucas Siemieniewski, Chairman

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Wendy Willprecht, Secretary/Treasurer