

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, MAY 16<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 Todd Stein, Michael Wyum, and Bruce Speich. Also in attendance was Wendy Willprecht Secretary/Treasurer, Nathan Trosen, engineer for Moore Engineering, landowners Richard Ruch, Tammy and James Martinson, Jerry Meide and Miles Thompson. Present via video conference were Attorneys Sean Fredricks, Stephen Hilfer of Ohnstad Twichell, Josh Hassell of Moore Engineering, Commissioner Scott Johnson and Leon Mallberg.

Manager Wyum moved to approve the April 18<sup>th</sup>, 2024 regular meeting minutes and the April 2024 financial statement. Manager Speich seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Stein moved to approve the bills.

**Ohnstad Twichell-** Meetings/Tile Apps./Complaints \$7,061.25; Drain No. 11-JPA \$235.00/Improv. Proj. \$1788.99/Eminent Domain \$2015.00

**Total: \$11,100.24**

**Moore Engineering-** Permits \$102.50/Meetings \$2584.62; Shortfoot-Drone video \$682.50; Drain No. 2-Drone video \$717.26; Drain No. 4-Drone video \$1718.75; Drain No. 8-Drone video \$1841.25; Drain No. 9-Drone video \$2037.66; Drain No. 11-Drone video/audit/survey \$7766.67; Drain No. 7-Drone video \$2052.26/601 81<sup>st</sup> St. Access Rd. \$615; survey \$8948.36; Tewaukon-Drone video \$1752.26

**Total: \$30,819.09**

**JBX LLC-**Drain No. 12-dozer/level ditch spoil/mobilization

**Total: \$ 5,060.00**

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

	Lucas Siemieniewski	Travel	\$47.57
	Todd Stein	Travel	\$21.44
	Michael Wyum	Travel	\$13.40
	Roger Zetocha	Travel	
	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.	

**Request to Amend SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-11 for Tanner Martinson in the Southwest Quarter of Section 9 in Hall Township**

The Board previously approved a tile permit for Tanner Martinson at the Board's meeting on April 18, 2024, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-11. The Seltveit family and Emeric Erickson previously submitted written objections to the project as downstream parties in the Northwest Quarter of Section 9 in Hall Township, and Mr. Erickson filed a formal drainage complaint with the Board in opposition to Mr. Martinson's project. As the Board noted at the April meeting, the Board had a statutory obligation to approve Mr. Martinson's permit and lacked any statutory authority to require Mr. Martinson to obtain consent from downstream parties. With that in mind, the Board approved SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-11 for Mr. Martinson and provided a NOTICE OF DECISION to parties of record.

Following the Board's April meeting, in an attempt to address the concerns of the Seltveits and Mr. Erickson, Mr. Martinson developed a modified project plan that would not discharge over the Seltveit property in the Northwest Quarter of Section 9. On April 25, 2024, Mr. Martinson and Ellingson Drainage submitted a new downstream flow plan.

Under the new plan, Mr. Martinson's pump outlet would still be located in the northwest corner of the Southwest Quarter of Section 9. However, instead of discharging to the north, in the east road ditch along 146th Avenue SE, across the west boundary of the Northwest Quarter of Section 9, the new downstream flow plan proposes discharge to the west. More specifically, Mr. Martinson now proposes installation of a new culvert at the northwest corner of the Southwest Quarter of Section 9, to the west, through and under 146th Avenue SE; the pump would be located near the northwest corner of the

Southwest Quarter of Section 9, and the tile discharge would flow to the west, through the new culvert; the discharge would daylight in the west road ditch along 146th Avenue SE, at the northeast corner of the Southeast Quarter of Section 8; the discharge would flow north in the west road ditch, along the east boundary of the Northeast Quarter of Section 8 in Hall Township; at the northeast corner of the Northeast Quarter of Section 8, the discharge would flow to the east, through an existing culvert under 146th Avenue SE; the discharge will daylight in the northwest corner of the Northwest Quarter of Section 9, in the east road ditch along 146th Avenue SE; 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.

In addition to the modified downstream flow plan, Mr. Martinson also plans to add a 4" surface inlet near the southwest corner of the Southwest 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, Brent W. Halmrast owns the north 73.33 acres of the Southeast Quarter of Section 8; Pamela L. Mangel and Merle Mangel own the Northeast Quarter of Section 8, less Red River Valley and Western Railroad's right of way; and Red River Valley and Western Railroad owns its right of way in the Northwest Quarter of Section 9.

Mr. Martinson submitted a written consent letter from Hall Township in which the Township consented to installation of a culvert through 146th Avenue, as well as Mr. Martinson's other proposed activities. Mr. Martinson also indicated he is working with the landowners in Section 8 to obtain written consent regarding downstream discharge.

The Board approved SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-11 at its meeting on April 18, 2024, with 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.

Manager Speich moved, and Manager Stein seconded the motion, to approve an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-11 for Tanner Martinson in the Southwest Quarter of Section 9 in Hall Township, to allow and permit Applicant to include an open inlet and to approve his modified downstream flow plan, and to authorize the Secretary-Treasurer to sign an amended SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-11, with the same conditions. 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 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; Brent W. Halmrast; Pamela L. Mangel and Merle Mangel; Marlene Snellman; Hall Township; Red River Valley & Western Railroad; James and Tammy Martinson; the Seltveit family; Emeric Erickson; and Southeast Water Users District.

Attorney Fredricks said that Emeric Erickson has filed an official complaint against this project, but he seems to respect the amendment to the application. Discussion of the complaint will be left on the June agenda in hopes that Mr. Erickson withdraws it.

**Drain No. 11:**

**Project:** A hearing on the motion of payment of attorney fees, filed by Paul Mathews, was held on 5/1/24. Mr. Mathews believes the SCWRD should pay the fees in question out of the general fund, not the Drain No. 11 fund. Judge Schmitz has taken this motion under advisement.

**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 soon.

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

**Jerry Meide & Miles Thompson South Lateral:** The SCWRD authorized Moore Engineering to perform a legal survey of the South Lateral in Sections 29 & 30 of Sargent Township to identify the right-of-way (ROW) extents of the Lateral. While researching the ROW Moore did not find any metes and bounds legal descriptions of the right-of-way. Trosen said Moore did find the original deeds which noted that the ROW width was 50 ft. Therefore, Moore's registered land surveyor concluded the ROW follows the alignment of the existing channel as no documents were found detailing differing descriptions of the ROW extents. This information was supported by an old plat map that appears to go along with the original drain construction plans.

Jerry Meide said he believes the easement shows a straight line, not a jagged line. Meide also suggested the ROW allows construction and maintenance of a "ditch" and he did not believe a legal assessment drain is a ditch. He further suggested the drain through his property should include berms. Chairman Siemieniewski said that any berm added to this area would simply silt into the drain.

Meide said that he had contacted the ND Game and Fish and was told that the ditch was in the wrong place. Trosen indicated Moore contacted the ND Game and Fish and they knew nothing about a conversation stating an incorrect placement of a ditch. Manager Speich said that Moore has done a thorough survey of this area so it will now be up to the ND Game and Fish to prove that the current findings are incorrect.

Meide brought up a \$20,000 payment that the SCWRD made to the ND Game and Fish. Josh Hassell of Moore Engineering explained that the SCWRD paid ND Game and Fish approximately \$14,000 (\$800/ac) to correct the existing easement and to purchase new easements in Section 20 of Sargent Township. The original width of the easement was not wide enough. Hassell added that the SCWRD had property rights when this project was built but there was a discrepancy in the legal description; the description was off by ¼ of a mile. As a result, the SCWRD acquired easements where the drain exists currently as well as easements for future projects.

The SCWRD suggested that Meide and Thompson take the information Moore Engineering collected and the survey to the ND Game and Fish and allow Game and Fish to do their own research. Trosen will send the information to Meide.

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

**Drain No. 7:** Manager Speich said there is erosion at the waterline of the reconstruction area. Trosen said that he is waiting for grass to grow and then Moore will conduct a final inspection of the project. Speich and Siemieniewski also commented that much of the berm is very unlevel. Trosen said that Brady Woodard of Moore Engineering will do an inspection of the area next week.

Hall Township – Moore completed the culvert analysis, the results of which did not change from the preliminary results presented at the April meeting. The District will invite the SC Commission and Hall Township representatives to the June meeting to discuss.

**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:** Landowner Richard Ruch provided 26 signatures and \$31,500.00 in landowner contribution for this project. The estimated total costs of the two petitions is \$32k. Ruch indicated he expects to receive the final \$500 soon.

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

1. Upstream Extension of Drain 9
2. Drain 9 reconstruction
3. Wild Rice River Maintenance District

Trosen said he expects an amendment to the cost-share with the State Water Commission to be considered soon.

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

**Cogswell Tile:** No update.

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

**Drain No. 12:** JBX has been spreading spoil. Landowners along the drain want 4 to 1 back slopes Siemieniewski said. The landowners would also like to see more of this project completed.

**Short Foot Creek:** No report.

**City of Stirum:** No report.

**NEW BUSINESS:**

**Application to Install a Subsurface Water Management System No. 2024-14 for Scott Kroeger in Section 24 in Ransom Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-14*, filed April 23, 2024, by Applicant Scott Kroeger. Under the Application, Applicant seeks to install an 80-acre drain tile system that will include tile components in all four quarter sections in Section 24 in Ransom Township, Sargent County, North Dakota. The project will include a single gravity outlet that will discharge via an underground pipeline that will run from the east boundary of the West Half of the Northeast Quarter of Section 24 to the east across a portion of the East Half of the Northeast Quarter of Section 24 until daylighting and discharging directly into the Wild Rice River.

According to County tax roll information, Joel and Scott Kroeger own the West Half of the West Half of Section 24, the East Half of the Northwest Quarter of Section 24, and the East Half of the Southwest Quarter of Section 24; and Scott Kroeger owns the West Half of the East Half of Section 24, where Applicant intends to install the tile system. With regard to the East Half of the Northeast Quarter of Section 24, the parcel where Applicant intends to install the underground pipeline that will discharge into the Wild Rice River, Holly, Shannon, and Kevin Crandall and Kimberly Artinger own the parcel, subject to a life estate in Darwayne and Ardith Crandall. Because the project will discharge directly into the Wild Rice River in the East Half of the Northeast Quarter of Section 24 in Ransom Township, no downstream notices are necessary under N.D. Cent. Code § 61-32-03.1.

Manager Wyum moved, and Manager Stein seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-14*, filed April 23, 2024, for Scott Kroeger in Section 24 in Ransom Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-14, 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 Wild Rice River.
3. Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines Southeast Water Users District has in Section 24 in Ransom Township under any blanket easements, or otherwise beyond the Water District's existing easement.
4. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-14 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 comply with the following:

1. The Board recommends that Applicant obtain and record a pipeline easement from the owners of the East Half of the Northeast Quarter of Section 24 in Ransom Township.
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. 2024-14, and downstream flow map to the Department of Water Resources, the owners of the East Half of the Northeast Quarter of Section 24 in Ransom Township, and Southeast Water Users District.

**Cole Vculek Utility Permit:**

Brian Vculek contacted Wendy Willprecht regarding a request for a Utility Permit for Cole Vculek, specifically to install seven 15" corrugated intercept culverts through the Drain 11 berm in the Northwest Quarter of Section 16 in Harlem Township. Sean Fredricks prepared a Utility Permit for Mr. Vculek to execute and Nathan Trosen prepared draft "Special Conditions" to attach as Exhibit B to the Utility Permit, as follows:

1. Applicant will allow passage of storm water through the construction area during runoff events.
2. Applicant will re-establish vegetation following construction within the District's right of way.
3. Applicant will install erosion protection and otherwise adequate erosion control practices.

Manager Stein moved to approve the Utility Permit for Cole Vculek, with the special conditions proposed by Nathan Trosen. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously.

**Application to Install a Subsurface Water Management System No. 2024-15 for Dave Zetocha and John Zetocha in the Northeast Quarter of Section 14 in Denver Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2024-15* filed May 13, 2024, by Applicants Dave Zetocha and John Zetocha. The Board also reviewed the COMPLAINT FOR WATER-RELATED ISSUES filed by Virginia Widmer against Dave Zetocha and John Zetocha.

Before discussing the application and the complaint, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Zetocha's conflict in the matter; Dave Zetocha and John Zetocha are Manager Zetocha's brothers. 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 quasilegislative 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 Zetocha has a direct and substantial personal interest in the matter that creates a clear conflict. Manager Wyum moved to declare that Manager Zetocha has a conflict and should not participate in any votes regarding *Application to Install a Subsurface Water Management System No. 2024-15* filed by Dave Zetocha and John Zetocha and regarding Virginia Widmer's drainage complaint against Dave Zetocha and John Zetocha. Manager Speich seconded the motion. Upon roll call vote, Chairman Siemieniowski and Managers Stein, Speich, and Wyum voted in favor of the motion. Manager Zetocha was absent. 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 the application.

Under *Application to Install a Subsurface Water Management System No. 2024-15*, Applicants seek to amend and replace SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-09. The Board approved SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-09 for Dave Zetocha and John Zetocha on October 15, 2020. The project approved under PERMIT NO. 2020-09 was for a 71-acre drain tile system in the Northeast Quarter of Section 14 in Denver Township. The project presented by the Zetochas in 2020, and approved by the Board under PERMIT NO. 2020-09, included a pump outlet located in the southwest corner of the Northeast Quarter of Section 14; the Zetochas proposed to discharge to the southwest, over a portion of the Southwest Quarter of Section 14, until ultimately discharging into Sargent County Drain No. 11.

Under *Application No. 2024-15*, Applicants similarly seek approval for a project "less than 72 acres" in the Northeast Quarter of Section 14 in Denver Township. However, under *Application No. 2024-15*, Applicants plan to recycle their tile discharge by irrigating their property in the Northeast Quarter of Section 14. The project will still include a pump along the south boundary of the Northeast Quarter of Section 14; however, the pump will distribute the tile discharge to a transfer sump and tank and, ultimately, to irrigation lines that will irrigate the quarter.

Technically, the project does not require a permit since the project is less than 80 acres of tile; however, in light of Ms. Widmer's complaint, Applicants indicated their preference to proceed with a permit to protect their project from legal challenges.

Ms. Widmer previously contacted the Board and raised objections to tile installed by Dave Zetocha and John Zetocha in reference to a tile permit approved by the Sargent County Water Resource District in 2013 for a 130-acre tile system in the Northeast Quarter of Section 14 in Denver Township. The 2013 permit included a condition that the Zetochas obtain a flowage easement from Ms. Widmer as the downstream owner in the Northwest Quarter of Section 14. However, the Zetochas did not ultimately construct that particular project.

The project approved under PERMIT NO. 2020-09 was a different project and did not include any easement requirement (the legislature eliminated WRDs' abilities to attach easement conditions to tile permits in 2017). In any case, the Zetochas seek to replace both of those previous permits, and to amend PERMIT NO. 2020-09, with *Application to Install a Subsurface Water Management System No. 2024-15*. In this case, the project proposed under *Application No. 2024-15* would not include downstream discharge over Ms. Widmer's property in the Northwest Quarter of Section 14.

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

Ms. Widmer has also suggested the Zetochas entered upon her property to construct project improvements without her permission. If the Zetochas entered upon Ms. Widmer's property, that would be a separate trespass matter. Mr. Fredricks previously explained to Ms. Widmer's attorney that the Sargent County Water Resource District does not have any jurisdiction over trespass claims.

A few days after Ms. Widmer submitted her Complaint, on May 13, 2024, Dave Zetocha and John Zetocha submitted *Application No. 2024-15* to amend SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-09.

Mr. Fredricks reminded the Board that, under current law, N.D. Cent. Code § 6132-03.1 as amended in 2021, the Board has no choice but to approve *Application No. 2024-15* or the permit will be deemed automatically approved, without any conditions, within 30 days of the Zetochas' submission of *Application No. 2024-15*. If Ms. Widmer is concerned about additional water intrusion as a result of the Zetochas' tile system, the tile statute specifically preserves the right for Ms. Widmer to pursue civil remedies against the Zetochas. Section 613203.1(9) provides:

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

With that provision in mind, Ms. Widmer could commence a civil action against the Zetochas in District Court if she wishes, but the Sargent County Water Resource District cannot deny the Zetochas' tile application. The Zetochas do not plan to discharge over Ms. Widmer's property; rather, they plan to recycle and re-use their tile discharge for irrigation of their own property. With that in mind, under the tile statute, Section 6132-03.1, and the drainage complaint statute, N.D. Cent. Code § 61-32-03, the Sargent County Water Resource District cannot deny the Zetochas' tile application and cannot force the Zetochas to close their system in response to Ms. Widmer's Complaint.

More specifically, under the drainage complaint statute, Section 61-32-07, the Board has jurisdiction to order the Zetochas to "close or fill" unpermitted drainage. However, the Zetochas submitted *Application No. 2024-15* to amend PERMIT NO. 2020-09 and to seek approval of the Zetochas' proposed tile system in the Northeast Quarter of Section 14. Even if the system the Zetochas installed varies from the project approved under PERMIT NO. 2020-09, because the Zetochas submitted a new application, under Section 6132-03.1, the Board has no choice but to approve *Application No. 2024-15* or the permit will be deemed automatically approved, without any conditions. Therefore, the Board has no choice but to approve *Application No. 2024-15*, if the Board wants to ensure the tile permit includes conditions.

If the Board approves *Application No. 2024-15*, the Board will not have any jurisdiction to order the Zetochas to "close or fill" their tile system in the Northeast Quarter of Section 14 in Denver Township. Under the drainage complaint statute, Section 61-32-07, the Board only has jurisdiction to order a landowner to "close or fill" any unpermitted "drain, lateral drain, or ditch ... opened or established by a landowner or tenant contrary to this title [Title 61 of the North Dakota Century Code]." In other words, if a landowner constructs or installs a drain without a permit, as required under Title 61, a water resource district can order that party to close or fill the unpermitted drainage. However, if a party obtains a permit for any drain, the drain is no longer "contrary to" Title 61 of the Century Code. In this case, even if the Zetochas installed a system that varies from the project approved under PERMIT NO. 2020-09, the tile statute, approved by the North Dakota Legislature in 2021, well after the passage of the drainage complaint statute, requires the Board to approve the new tile application submitted by the Zetochas. Once the Zetochas' system is approved and included within a valid tile permit, the Board will no longer have any jurisdiction to order or force the Zetochas to close or fill the tile system.

In addition, the Board lacks any jurisdiction over the project under the drainage complaint statute, Section 61-32-07; if a project does not require a permit, a water resource district cannot order a landowner to "close or fill" the alleged drainage. In this case, since the project is less than 80 acres of tile and does not require a permit, the Board could not order the Zetochas to "close or fill" the system.

In terms of the process for the Board, Mr. Fredricks recommended that the Board approve *Application No. 2024-15*; if the Board does not approve the application today, *Application No. 2024-15* will be deemed automatically approved without any conditions 30 days after the Zetochas' submission of the application. If the Board approves the application with conditions, Mr. Fredricks can prepare and provide a NOTICE OF DECISION and related permit approval documents and can serve the documents as required by law.

Manager Wyum next indicated Dave Zetocha is his banker and he questioned whether or not that relationship created a conflict for him regarding *Application to Install a Subsurface Water Management System No. 2024-15* filed by Dave Zetocha and John Zetocha and/or regarding Virginia Widmer's drainage complaint against Dave Zetocha and John Zetocha. Mr. Fredricks and the Board discussed whether or not Manager Wyum's banking relationship created "a direct and substantial personal or pecuniary interest" that created a conflict for Manager Wyum. The Board agreed that type of relationship did not and would not impact a manager's voting in a matter; in smaller communities, those types of relationships are common and if they qualified as "conflicts," boards and public entities in smaller communities would not be able to function.

Manager Stein moved to declare that Manager Wyum does not have a direct and substantial personal interest in the matter, that he does not have a conflict, and that he is required to vote regarding *Application to Install a Subsurface Water Management System No. 2024-15* filed by Dave Zetocha and John Zetocha and regarding Virginia Widmer's drainage complaint against Dave Zetocha and John Zetocha. Manager Speich seconded the motion. Upon roll call vote, Chairman Siemieniowski and Managers Stein and Speich voted in favor of the motion. Manager Wyum abstained. The motion carried.

The Board next discussed what could occur if the Zetochas' holding system (tank or pond) overflowed during high water events. Nathan Trosen prepared a map of the estimated flow path of any overflow. Based on elevations, Mr. Trosen's map indicates any overflow will flow to the southwest, across a portion of the Northwest Quarter of the Southeast Quarter of Section 14 and across a portion of the Northeast Quarter of the Southwest Quarter of Section 14 before discharging into a natural watercourse; the watercourse flows to the south, into Sargent County Drain No. 11.

According to Sargent County tax records, Dave Zetocha and John Zetocha own the Northeast Quarter of Section 14 in Denver Township. With regard to downstream properties, in the event of any overflow event, Brian Vculek is purchasing the East Half of the Southwest Quarter and the Southeast Quarter of Section 14 from the Wayne V. Witkowski Revocable Family Trust and the Dianne F. Witkowski Revocable Family Trust by contract for deed. Because the project will not include any downstream discharge, and the project will discharge onto Applicants' property via irrigation, no downstream notices are necessary under N.D. Cent. Code § 61-32-03.1; however, the Board directed Mr. Fredricks to provide downstream notices to the Witkowskis and Mr. Vculek in light of the potential for overflow events. Further, the Board directed Mr. Fredricks to provide copies to Ms. Widmer in light of her pending complaint.

Manager Speich moved, and Manager Wyum seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2024-15* filed May 13, 2024, for Dave Zetocha and John Zetocha, regarding a tile project in the Northeast Quarter of Section 14 in Denver Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-15, subject to the following conditions:

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

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

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicants' permit. However, for Applicants' protection, and to ensure protection of Applicants' tile system, the Board recommends that Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Sean Fredricks will provide copies of the Board's NOTICE OF DECISION, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-15, and the downstream overflow map created by Nathan Trosen to the Department of Water Resources and Southeast Water Users District. Applicants' detailed project design map is an exempt record, and the Board will not provide copies to any third parties. In this case, although Section 6132-03.1 would not require service of the approval documents on Ms. Widmer, Mr. Fredricks will provide copies of the approval documents to Ms. Widmer and her attorney since the matter is the subject of Ms. Widmer's Complaint. Further, as directed by the Board, Mr. Fredricks will provide notice to the Witkowskis and Mr. Vculek in light of the potential for overflow events.

Mr. Fredricks advised the Board to hold Ms. Widmer's Complaint for a month, to allow Mr. Fredricks to prepare and serve the tile permit approval documents. The Board can discuss the Complaint at the Board's June meeting.

Because the project is only 71 acres, the project does not technically require a permit under N.D. Cent. Code § 61-32-03.1.

#### **OLD BUSINESS:**

**Tyler Speich Request for Drainage on Highway ROW:** The board has already given approval for this request.

**Virginia Widmer Complaint:** The Board will consider the complaint at the June 2024 meeting.

## **DICKEY-SARGENT JOINT BOARD**

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

DVEC – electricity –

**\$ 773.00**

<b>Moore Engineering-Drone video</b>	<b>\$ 767.93</b>
<b>Ohnstad Twichell-Bd Mtg.</b>	<b>\$ 80.00</b>
<b>Sweeney Controls Company-Pump Maintenance</b>	<b>\$ 207.46</b>
<b>Agtegra-Drip Oil</b>	<b>\$ 46.00</b>

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

Balances as of April 30<sup>th</sup>, 2024:

Maintenance Account Balance:	<b>\$ 41,974.88</b>
Improvement Account Balance:	<b>\$ 274,852.70</b>

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

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

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

<b><u>Ohnstad Twichell-</u></b> Bd Mtgs. \$97.50/Phase III \$701.18	<b>\$ 798.68</b>
<b><u>Moore Engineering-</u></b> ROW	<b>\$ 133.75</b>
<b><u>Alan Murack-</u></b> (2) Beavers	<b>\$ 100.00</b>
<b><u>John Manikowski-</u></b> (3) Beavers	<b>\$ 150.00</b>
<b><u>Dylan Anderson-</u></b> (1) Beaver	<b>\$ 50.00</b>
April 30 <sup>th</sup> , 2024 Account Balance:	<b>\$ 64,192.39</b>

A cost share request has been sent to the SWC.

A public information meeting will be held on Wednesday, June 26<sup>th</sup>, 2024 at 1:00 p.m. at the Cayuga Hall.

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

After the Board concluded discussion of the other items on the agenda, the SCWRD discussed the 2025 budget. The Board discussed the needs for each drain in relation to their respective maintenance levies for 2025. The maximum levy for any given drain is \$4 per acre for agricultural properties. For projects with outstanding bond issues, the Board legally has to leave the levies at \$4 per acre. The Board approved the final budget and directed Secretary-Treasurer Willprecht to submit the budget to the County. The final budget is on file with the Secretary-Treasurer.

The meeting adjourned at 9:46 a.m.

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Lucas Siemieniewski, Chairman

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Wendy Willprecht, Secretary/Treasurer