

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, SEPTEMBER 19, 2013 AT 7:00 P.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Jim Bosse, Mark Breker, Richard Engst and Roger Zetocha. Absent: Chris McFarland. Also present: Tom Jones, NRCS and Chad Engels, Moore Engineering, Inc. and Al Carton, Forman.

Vice-Chairman Breker called the meeting to order.

Approve the August 15, 2013 minutes August 2013 financial statement and payment of the following bills: (Bosse/Engst, unanimous)

68369 James Bosse	Travel	41.25
68370 Mark Breker	Travel	42.94
68371 Carton Excavation	Dr # 11/SW Township tree removal	312.50
68372 Crandall Construction	Dr # 7/Rip rap	487.20
68373 Richard Engst	Travel	222.61
68374 Johnson Excavation	Dr # 7/Final/HZM	16,322.47
68375 Clint R McLaughlin	Dr # 4 Permanent Easement	6,420.00
68376 Ohnstad Twichell	Johnson/Anderson-\$378.75; Mahrer/Ellefson-\$46.00;	
Loren Ellefson #4237-\$151.00; Ray Zajac #4239-\$144.00; Dana Banish # 4171-\$631.22; Quandt Bros-\$719.76; Bohnenstingel/Kaler/Tesch-\$289.15; Dr # 4-\$80.00; Dr # 11-\$144 =		2,583.88
68377 Starion Bond Services	Interest/Dr 4 Bond	2,270.00
68378 Roger Zetocha	Travel-\$84.75; Airplane charge for flying Dr # 11 \$100 =	184.75
8734 Mark Breker	3 PD less 27.54 taxes	332.46
8735 Sherry Hosford	Salary less 24.22 taxes	292.45
8736 Richard Engst	7 PD less 79.09 taxes	760.91
8737 Jim Bosse	3 PD less 27.54 taxes	332.46
8738 Roger Zetocha	4 PD less 68.39 taxes	411.61
DD Sargent County Bank	Withholding taxes	407.69

MATT AND DAN THOMPSON APPLICATION FOR SURFACE DRAIN # 4247: Matt Thompson was present at the meeting. The Board reviewed the application and agreed more information is required. Chad Engels will review the application and make recommendations to the Board at the October meeting.

EMERIC ERICKSON AND COLE BOGART DRAIN NO. 7: Emeric Erickson and Cole Bogart were present at the meeting. Emeric reviewed the concern that both he and Mr. Bogart are facing in Section 11-132-54 and under ND Highway 13. The proposal is to build up a dike along Drain No. 7 to hold the water, which has flooded many acres of land. Chad Engels explained that the issue is that drains are not flood control they are there for drainage. According to information received from Sean Fredricks, Attorney for the Board, "Drains are not flood protection projects; we do not currently (and even decades ago, our precursors did not) design drains to act as flood protection projects, with flood protection features. The channels themselves provide storage (i.e., flood protection) beyond what would be there without the drain. In any event, we do not have obligations to construct berms to act as flood protection components along our drains. The drains provide flood protection by virtue of the storage in the channels, but we do not have a legal obligation to design them to act as flood protection projects.

Further, if we took the voluntary action of building up the berms on one property, that could have some impact downstream which could cause problems for downstream landowner (to the extent the higher berms would prevent any natural overflow that would normally occur, and would push that water further downstream, only to result in larger breakouts downstream).

To the extent Mr. Bogart wants to construct a ring dike, or some other dike, to protect his property, he can certainly do so. In fact, the ND State Water Commission has cost-share money available for ring dike projects. If he wants to add to our berm on his own and at his own expense, we would want him to sign a hold harmless/indemnity agreement to make sure he would hold the Board harmless for any damages or liabilities that might result."

Other options were discussed on drain relocation, levies and flood protection projects and the Board agreed that there are two options 1) Reconstruct the drain or 2) Need community request and petition to study a flood storage project. Can a project be done privately...depends on the impacts to other landowners. If a complaint is received by this Board, they would have to investigate.

Motion to send a letter to NDDOT requesting a hydraulic report or if the state has established the Stream Crossing Standards at Section 11-132-54. (Engst/Bosse, unanimous)

MILNOR DRAIN NO. 7 HAZARD MITIGATION PROJECT: Randy Edison, Terry Dusek and Duayne Ellenberger, Milnor City representatives and Mike Walstead, Sargent County Commissioner and Sparky Engquist, SC Road Supt. met with the Board. Mr. Edison asked the Board whether they were satisfied with the Drain No. 7 project (Hazard Mitigation) and discussion followed on what happened with the original estimate and added Change Orders and increased costs. All in all the project was a good one with \$165,537.50 received for Hazard Mitigation funds and the local costs of \$53,349.05 from Milnor City and \$47,236.05 cost shared by both Sargent County Commissioners and Sargent County Water Resource Board. Total project cost was \$310,545.72. All monies have been received from each entity. Project completed.

MILNOR CITY CULVERT REPLACEMENT: Duane Ellenberger then explained a problem with a culvert in the County Road No. 10 also Milnor City Main Street. The existing culvert was placed in the street in 1981 when the bridge was replaced (along with 4 others) and now has separated, been patched several times and needs replacing. As this is a county road and legal drain the county commissioners will participate at 40% and Water Board at 60% on the Main Street culvert. The other site on 7th Avenue would be Water Board expense unless the county commissioners agree to participate. It won't be feasible to do the work this year and the Water Board agreed to discuss this project in detail, visit with the engineer to get cost estimates for these two sites.

Sparky Engquist discussed a couple projects – one located on Drain No. 2 at the intersection of 3-4-9-10 of Herman Township and another under County Road 4 between Section 11 of Brampton Township and Section 12 of Taylor Township. The Board gave Mr. Engquist permission to install a 36 inch/100 foot culvert under County Road 12 on a diagonal at the intersection of Sections 3-4-9-10 of Herman Township.

DRAINAGE COMPLAINT FILED BY ROBERT LEE, DENNIS PHERSON, AND DON KIEFER AGAINST DANA BANISH:

Dana Banish and Mike Paczkowski, Cayuga arrived at the meeting. Mr. Dana Banish recently retained Carlson McCain, a professional soil classifier from Bismarck, to conduct soils analysis of his property, specifically including the depressional area on his property that is the subject of his Application, and that is the subject of the previous Complaints against Mr. Banish. The Board recently amended its original approval of Mr. Banish's surface drain permit to require Mr. Banish to install an elevation marker along County Road 12. The Board's rationale was that the 1,167 elevation was difficult to identify without an accurate elevation marker, and the lack of specificity created confusion for Mr. Banish and for the other interested parties who have previously filed Complaints against Mr. Banish. The Board previously indicated their willingness to reconsider the elevation if Mr. Banish could provide more accurate or detailed soils analysis.

Chad Engels explained the Board utilized LiDAR data to set the 1,167 trigger elevation regarding permissible pumping by Mr. Banish. More specifically, the Board previously indicated Mr. Banish could not operate his pump below elevation 1,167 when water in the Drain 12 lateral was outside of its channel. Carlson McCain conducted soils analysis that revealed the area was filled with silt, and that therefore the overflow elevation was actually lower than the current surface elevation. Chad Engels reviewed Carlson McCain's soils study. The report shows the natural overflow elevation filled with 23 inches of silt. Based on that report, Chad Engels provided his opinion that the current surface elevation of 1,166.72 includes 1.92 feet of silt; Chad recommended reducing the trigger elevation from 1,167 to 1,164.80. The 1,164.80 elevation would more accurately reflect the original overflow elevation.

Manager Bosse, seconded by Manager Zetocha, moved to amend APPLICATION FOR SURFACE DRAIN NO. 4171 to reduce the trigger elevation regarding permissible operation of Applicant's pump when water in Drain 12 is outside of its channel from 1,167 to 1,164.80. Upon roll call vote, the motion carried unanimously.

Mr. Banish informed the Board that he plans to replace his existing pump in this area with an electric pump with the same capacity. He also informed the Board that he plans to install a subsurface tile with 2 pumps which is less than 80 acres. The Board told Mr. Banish that they have no jurisdiction over this subsurface tile as long as it is less than 80 acres.

Mr. Banish also discussed a natural drain by Ray Brickzin's which has sediment blockage and he would like to clean the township road ditch but the Marboe Township Board has informed Mr. Banish that he must get permission from the Water Board. The Water Board has no jurisdiction over the township road.

FRENIER DAM: Chad Engels presented the final request for payment from Comstock Construction for the repairs to Frenier Dam. Mark Breker asked if the payment can be delayed as the fence has not been repaired and requested compensation for Jeff Breker for damage to equipment from a rock that was in the corn field adjacent to the project. Chad will contact Comstock Construction to request a site visit and discuss these items.

Motion to request a hydraulic study between Section 23 and 26 in Denver Township where Drain No.11 intersects with ND Highway 13. (Zetocha/Bosse, unanimous)

Tom Jones, DC, NRCS presented a report on Dam T-1A – Brummond-Lubke in the Tewaukon watershed. The concrete headwall has a hole in it but the pipe is no longer attached to the headwall. The block underneath the cage is settling and needs to be repaired when repairing the drawdowns. NRCS would do the engineering and Chad also indicated that there would be cost share with the ND State Water Commission and Red River Joint Water Board.

The meeting recessed at 10:30 p.m. to September 23 at 9:00 a.m.

The Board reconvened at 9:00 a.m. on Monday September 23 with the following present: Chris McFarland, Mark Breker, Jim Bosse, Richard Engst and Roger Zetocha. Absent: None. Also present: Sean Fredricks, Attorney, Ohnstad, Twichell; Chad Engels and Chris Gross, Moore Engineering., Inc.

Chairman McFarland called the recessed meeting to order.

APPLICATION FOR SURFACE DRAIN NO. 4237 for Loren Ellefson in the North Half of Section 7 of Shuman Township

The Board reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN No. 4237 for Applicant Loren Ellefson. The State Engineer's office had originally concluded this application was of "statewide significance" under Section 89-02-01-09.5 of the North Dakota Administrative Code; their office originally believed this project would convert noncontributing areas into permanent contributing areas based on a 25-year, 24-hour rainfall event. However, the State Engineer's office subsequently notified Sherry Hosford they had ultimately concluded the project was not of statewide significance. With that in mind, the Board will make the final decision regarding this permit. The project is the subject of a Drainage Complaint filed by James Mahrer against Mr. Ellefson.

Under the application, Applicant seeks to permit a previously-constructed project in the North Half of Section 7 of Shuman Township, Sargent County, North Dakota. The Sargent County Highway Department previously constructed culvert improvements in the East Half of Section 18, on Mr. James Mahrer's property, to provide relief to the county highway between Sections 7 and 18 in Shuman Township. Mr. Ellefson subsequently constructed a drain on the north boundary of Section 7. The drain includes both open ditch and underground pipeline to lower the water elevation in certain sloughs in the North Half of Section 7; the project connects all drainage basins in the North Half of Section 7. The project runs along the north boundary of Section 7 on township road right of way; the project runs to the east and drains everything to the northeast corner to a pump station; from there, water is pumped via underground pipeline for approximately one-third of a mile, south along the east boundary of Section 7, along the unimproved section line between Sections 7 and 8 to the next wetland to the south; the water then flows south via a buried pipe running south to the next wetland; the discharge then flows via open ditch to the next wetland located in the southeast corner of Section 7 adjacent to the county highway. The water then continues south through the culverts under the county highway and through Section 18, via the culvert improvements constructed by the county, until the discharge ultimately outlets into Buffalo Lake in the North Half of Section 19.

The project drains wetlands in the West Half of Section 8; the Southeast Quarter of Section 7; the East Half of Section 18; and the Northeast Quarter of Section 19. Mr. Chad Engels, engineer for the Board, indicated the project will result in adverse impacts along all of those quarters since the project will introduce increased volume all the way to Buffalo Lake. The Board will require Applicant to obtain certain easement rights from all of those landowners. In addition, Chad suggested the project will result in adverse impacts to Buffalo Lake itself, and he suggested the Board require Applicant to comply with an operation plan to avoid adverse impacts to the lake and to other downstream landowners.

According to records on file with the Sargent County Recorder's office, Loren and Patricia Ellefson own the North Half of Section 7; Edwin and Marlys Erickson own the Southeast Quarter of Section 7; James and Llonah Mahrer own all of Section 18, with the exception of portions of the East Half of the East Half of Section 18, owned by Michael Kulzer and William and Mary Woytassek. With regard to the North Half of Section 19, Laverne and Carolyn Colby, William and Mary Woytassek, and James and Llonah Mahrer own certain portions of the North Half of Section 19. Michael and Diane Kulzer

own the Northwest Quarter of Section 8, and Edwin and Marlys Erickson own the Southwest Quarter of Section 8.

The Board discussed the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code; the Board directed Chad Engels to prepare responses to the eight elements, including requirements for easements for construction, operation, and maintenance of an open ditch and a buried pipeline on property not owned by Applicant; easements from parcels where the project will drain wetlands; and an operation and maintenance plan that requires Applicant to refrain from pumping in the spring until ten days after the spring runoff flood crest at the USGS stream gage at Mantador. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board will require Applicant to obtain easements from the owners of the property where Applicant intends to construct the project; the Board will require Applicant to obtain easements from parcels where Applicant will drain wetlands; the Board will require Applicant to obtain permission from Shuman Township to construct, operate, and maintain an improved channel and buried pipeline in the township's road ditch and along the unimproved section line between Sections 7 and 8; and the Board will require Applicant to comply with an O&M plan regarding pumping in the spring. The Board concluded that, in light of these measures, as long as Applicant meets the conditions, the project will not result in further adverse impacts. In addition, the Board concluded that if Applicant complies with the conditions, the compliance will eliminate adverse impacts to Mr. James Mahrer; the Board will require Applicant to satisfy all of the conditions by December 18, 2013, at 10:00 a.m. (the date of the Sargent County Water Resource District's December meeting), or the Board will have no choice but to act on Mr. Mahrer's Complaint.

Manager Breker, seconded by Manager Engst, moved to approve APPLICATION FOR SURFACE DRAIN No. 4237 for Loren Ellefson, subject to the conditions attached by the State Engineer, and subject to the following conditions:

1) That Applicant obtain and record (with the Sargent County Recorder's office) an easement (and not just written consent) from the owners of the Southeast Quarter of Section 7, Shuman Township, Sargent County, North Dakota, for purposes of constructing, operating, and maintaining a surface drain and a pump station:

2) That Applicant obtain and record (with the Sargent County Recorder's office) easements (and not just written consents) from the owners of the following parcels in Shuman Township, Sargent County, North Dakota, for purposes of draining or otherwise impacting the following properties as a result of Applicant's project:

- a. The Northwest Quarter of Section 8;
- b. The Southwest Quarter of Section 8;
- c. The East Half of Section 18; and
- d. The Northeast Quarter of Section 19;

3) That Applicant will not construct or improve the drain in any manner that exceeds the dimensions indicated in the application, including a 12-inch maximum diameter for Applicant's buried pipe;

4) That Applicant obtain an easement from the owner of any land, besides land owned by Applicant, on which Applicant will construct the drain; and

5) That Applicant must operate the pump in the following manner:

- a. Applicant cannot operate the pump from December 1 of each year until at least ten days after the spring runoff flood crest at the USGS stream gage in Mantador;

6) That Applicant obtain written permission from the Shuman Township Board of Township Supervisors to install, construct, operate, and maintain surface drain components and underground pipeline components in its township road ditch along the north boundary of Section 7, and along the unimproved section line between Sections 7 and 8;

7) That Applicant obtain written permission from Sargent County to install, construct, operate, and maintain any of its surface drain, buried pipeline, or pump components in any of Sargent County's highway right of way;

8) That Applicant notify the Sargent County Water Resource District in advance of any proposed improvements to any drain components, including any relocation of surface drain, underground pipeline, or pump components; and including any increase in the capacity or drainage area affected, and, if necessary, to submit an additional permit application; and

9) 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.

Upon roll call vote, the motion carried unanimously. Chad Engels indicated that if Applicant complies with the conditions attached by the Board, Applicant will have addressed summer flooding issues (via easements required by the Board) and spring flooding issues (via the O&M condition).

The Board directed Sean Fredricks to prepare the requisite Notice of Decision.

Emeric Erickson, Milnor arrived at this time.

Application to Install a Subsurface Drain for Katie Vculek and Farrar Farm Family Irrevocable Trust in the South Half of Section 36 in Denver Township

The Board reviewed an *Application to Install a Subsurface Drain* dated September 19, 2013, for Katie Vculek and Farrar Farm Family Irrevocable Trust. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicants seek to install a drain tile system in the South Half of Section 36 of Denver Township, Sargent County, North Dakota. The project will discharge on the northwest corner of the Southwest Quarter of Section 36 via a pump system into a buried pipeline; the tile from both the Southwest Quarter and the Southeast Quarter of Section 36 will discharge through the pump station in the northwest corner of the Southwest Quarter, into the buried pipeline which will run north into the southwest corner of the Northwest Quarter of Section 36 and will discharge directly into Sargent County Drain No. 11.

Because the project will discharge directly into Drain 11 via an underground pipeline, the project did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicants to obtain any flowage easements from downstream landowners. However, because the project will include a buried pipeline on property not owned by Applicants, and because the project will include tiling property not owned by the Applicants, the Board will require a pipeline easement and easements to install and maintain the tile system.

According to records on file with the Sargent County Recorder's Office, Applicant Farrar Farm Family Irrevocable Trust owns the Southwest Quarter of Section 36, and Cole Vculek owns the Southeast Quarter of Section 36. Further, Steven and Cynthia Zetocha own the South Half of the Northwest Quarter of Section 36.

It was moved by Manager Breker and seconded by Manager Engst to approve a *Utility Permit* to utilize Sargent County Drain No. 11, and to approve *Application to Install a Subsurface Drain* dated September 19, 2013, for Farrar Farm Family Irrevocable Trust and Katie Vculek in the South Half of Section 36 in Denver Township, subject to the following conditions:

- 1) That Applicants obtain and record (with the Sargent County Recorder's office) an easement (and not just a written consent), from the owner of the Southeast Quarter of Section 36 of Denver Township, Sargent County, North Dakota, for purposes of installing, constructing, operating, and maintaining a tile system;
- 2) That Applicants obtain and record (with the Sargent County Recorder's office) an easement (and not just a written consent), for purposes of installing, constructing, operating, and maintaining a buried pipeline in the South Half of the Northwest Quarter of Section 36 of Denver Township, Sargent County, North Dakota;
- 3) That Applicants obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;
- 4) That Applicants provide and maintain adequate erosion protection at any and all outlets into Sargent County Drain No. 11 (Applicants are solely responsible for any damages to Sargent County Drain No. 11 as a result of the tile project);
- 5) 1That Applicants notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 6) 1That Applicants will not operate the pump from December 1 of any given year until at least ten days following the spring runoff flood crest at the USGS stream gage in Rutland;
- 7) 1That Applicants notify the Sargent County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity

or drainage area of the tile system and, if necessary, submitting an additional permit application;

18) That Applicants obtain an approved *Utility Permit* from the Sargent County Water Resource District regarding any and all outlets into Sargent County Drain No. 11; and

19) 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 prepare the Notice of Decision and other documents. However, the Applicant has not submitted the original signed application and Mr. Fredricks cannot process the permit until the Board has the original; Mr. Emeric Erickson indicated he would submit the original.

Application to Install a Subsurface Drain for Emeric Erickson in the West Half of Section 11 of Milnor Township; Application for Surface Drain No. 4244 for EB Farms Inc./Emeric Erickson in the West Half of Section 11 of Milnor Township

The Board reviewed an *Application to Install a Subsurface Drain* dated August 6, 2013, for Emeric Erickson. The Board also reviewed information from the State Engineer regarding Application for Surface Drain No. 4244 for Applicant EB Farms Inc./Emeric Erickson; the projects are related. The Board concluded the *Application to Install a Subsurface Drain* does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the subsurface application, Applicant seeks to install a drain tile system in the West Half of Section 11 of Milnor Township, Sargent County, North Dakota. The project will include ten surface inlets that are the subject of Surface Application No. 4244; the surface inlets will drain into the tile system. The tile system will include two pump outlets; the first will be in the southeast corner of the Southwest Quarter and will discharge directly into Sargent County Drain No. 7. The second outlet will be in the southeast corner of the Northwest Quarter of Section 11 and will similarly discharge directly into Sargent County Drain No. 7.

Because the proposed tile system will discharge directly into Drain 7, the subsurface application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicant to obtain any flowage easements from downstream landowners.

According to records on file with the Sargent County Recorder's Office, Emeric Erickson and Calvin Erickson own the West Half of Section 11 of Milnor Township.

It was moved by Manager Engst and seconded by Manager Bosse to approve a *Utility Permit* to permit Applicant to discharge into Sargent County Drain No. 7; and to approve *Application to Install a Subsurface Drain* dated August 6, 2013, for Emeric Erickson in the West Half of Section 11 in Milnor Township, subject to the following conditions:

- 1) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 2) That Applicant provide and maintain adequate erosion protection at any and all outlets into Sargent County Drain No. 7 (Applicant is solely responsible for any damages to Sargent County Drain No. 7 as a result of the tile project);
- 3) That Applicant notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 4) That Applicant notify the Sargent County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application;
- 5) That Applicant obtain an approved *Utility Permit* from the Sargent County Water Resource District regarding any and all outlets into Sargent County Drain No. 7;
- 6) That Applicant will not operate the pump from December 1 of any given year until at least ten days following the spring runoff flood crest at the USGS stream gage in Mantador; and
- 7) 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.

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Engst and seconded by Manager Bosse to approve *Application for Surface Drain No. 4244* for EB Farms Inc./Emeric Erickson in the West Half of Section 11 in Milnor Township, subject to the conditions attached by the State Engineer's office, and subject to the following conditions:

- 1) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will install the surface inlets;
- 2) That Applicant may not operate any surface inlets into the tile system in the West Half of Section 11 unless Applicant's permit regarding the subsurface tile system in the West Half of Section 11 is effective, and Applicant complies with all conditions regarding the Sargent County Water Resource District's approval of *Application to Install a Subsurface Drain* dated August 16, 2013, for Emeric Erickson in the West Half of Section 11 in Milnor Township;
- 3) That Applicant may not include any more than ten inlet structures into the subsurface tile system in the West Half of Section 11 without previous approval from the Sargent County Water Resource District, potentially including an additional surface drain application; and
- 4) 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.

Upon roll call vote, the motion carried unanimously.

APPLICATION FOR SURFACE DRAIN NO. 4239 for H&R Land Company, Inc., in the West Half of Section 12 and the Southeast Quarter of Section 11 of Hall Township

The Board reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN No. 4239 for Applicant H&R Land Company, Inc.; Ray Zajac is the President of H&R. Under the application, Applicant seeks to tile the West Half of Section 12 and the Southeast Quarter of Section 11. Applicant plans to construct a ditch around the perimeter of the West Half of Section 12 and the Southeast Quarter of Section 11 that will act as the outlet for the tile discharge; Applicant will use the spoil from the ditch to construct a berm around the perimeter; the tile system will gravity discharge into the ditch around the perimeter, with multiple gravity outlets planned; the ditch will convey the tile discharge to the north boundary of the Northwest Quarter of Section 12; Applicant plans to install a lift system along the north boundary of the Northwest Quarter of Section 12, with two pumps that will discharge to the north through existing culverts through Red River Valley & Western's railway and right of way; the discharge will then outlet into the Tri-County Drain on the north side of RRV&W's tracks. A portion of the ditching and diking will be within township road right of way along the Section 11/Section 12 township right of way. The project will require a separate subsurface/tile permit from the Sargent County Water Resource District, and a dike/dam permit from the North Dakota State Engineer's office. Applicant has indicated the southern boundary of the dike and ditch portion of the project will be north of and outside of NDDOT right of way regarding Highway 13.

According to records on file with the Sargent County Recorder's office, H&R Land Company, Inc. owns the West Half of Section 12 and the Southeast Quarter of Section 11 of Hall Township. Kevin Peterson owns the Northeast Quarter of Section 11 of Hall Township.

The Board discussed the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code; the Board directed Chris Gross to prepare responses to the eight elements based on their discussion. The Board determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board will require Applicant to obtain permission from RRV&W if the project will include construction of any components in RRV&W right of way, though Applicant has indicated the plan does not include construction in any of RRV&W's right of way. In addition, the Board will require Applicant to comply with an operation plan regarding the lift stations on the north boundary of the project to address and eliminate adverse impacts downstream during spring flooding conditions. The Board concluded that, in light of these measures, the project will not result in adverse impacts as long as the Applicant complies with the conditions. Applicant specifically indicated the project will not result in any drainage of wetland areas in the Northeast Quarter of Section 11.

Manager Engst, seconded by Manager Bosse, moved to approve APPLICATION FOR SURFACE DRAIN No. 4239 for H&R Land Company, Inc., subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant will not construct or improve the drain in any manner that exceeds the dimensions indicated in the application;
- 2) That Applicant obtain an easement from the owner of any land, besides land owned by Applicant, on which Applicant will construct the drain; and
- 3) That Applicant will not operate the two pumps from December 1 of any given year until at least ten days following the spring runoff flood event peaks at the USGS stream gage in Mantador;
- 4) That Applicant obtain written permission from the Hall Township Board of Township Supervisors to construct, operate, and maintain a surface drain in its township road ditch, or to otherwise utilize its township road ditch;
- 5) That Applicant obtain written permission from the North Dakota Department of Transportation to construct, operate, and maintain any project components in NDDOT right of way, if applicable;
- 6) That Applicant 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;
- 7) That Applicant obtain a subsurface/tile drain permit from the Sargent County Water Resource District;
- 8) That Applicant obtain a dam/dike permit from the North Dakota State Engineer's office; and
- 9) 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.

Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to all parties of record.

APPLICATION FOR SURFACE DRAIN NO. 4247 for Matt Thompson and Dan Thompson in the South Half of Section 24 and the Northwest Quarter of Section 25 of Hall Township

The Board reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN No. 4247 for Applicants Matt Thompson and Dan Thompson. Under the application, Applicants seek to construct channel improvements to the north township road ditch along the south boundary of Section 24 of Hall Township. The surface drain will include a 2,600 foot long drainage channel improvement along the township road ditch; the surface drainage will discharge south through an 18-inch underground pipeline under and through the Section 24/25 township road, along the east side of the Northwest Quarter of Section 25 for approximately half a mile; the underground pipeline will daylight in the Southwest Quarter of Section 25 and the discharge will travel overland until discharging into the Wild Rice River in the Southwest Quarter of Section 25.

According to records on file with the Sargent County Recorder's office, Matt Thompson owns the Southwest Quarter of Section 24; Dan Thompson owns the East Half of the Southeast Quarter of Section 24; Darla Peterson owns the West Half of the Southeast Quarter of Section 24; and Brian Quam owns the Northwest Quarter of Section 25. In addition, Brian Quam owns the East Half of the Southwest Quarter of Section 25.

To address adverse impacts as a result of the project, the Board will require Applicants to obtain a Pipeline Easement from the owner of the Northwest Quarter of Section 25 for purposes of installing, constructing, operating, and maintaining a pipeline on that parcel. In addition, the Board will require Applicants to obtain a Flowage Easement over that portion of the Southwest Quarter of Section 25 where the discharge will travel overland until reaching the Wild Rice River. Further, the Board will require Applicants to install a gate on the north end of the culvert through the township road, which Applicants must close from December 1 of any given year until at least ten days after the spring runoff flood crest at the USGS flood gage in Mantador.

The Board directed Chris Gross to prepare responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board will require Applicants to obtain easements, and the Board will require Applicants to comply with an operation plan regarding a gate on the north end of the culvert or pipeline through the township road to mitigate any impacts caused by additional drainage as a result of the project. The Board concluded

that, in light of these measures, the project will not cause adverse impacts as long as Applicants comply with the permit conditions.

Manager Engst, seconded by Manager Breker, moved to approve APPLICATION FOR SURFACE DRAIN No. 4247 for Matt Thompson and Dan Thompson, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicants obtain and record (with the Sargent County Recorder's office) an easement (and not just a written consent) from the owner of the West Half of the Southeast Quarter of Section 24 of Hall Township, Sargent County, North Dakota, for purposes of constructing, operating, and maintaining a surface drain;
- 2) That Applicants obtain and record (with the Sargent County Recorder's office) an easement (and not just a written consent) from the owner of the Northwest Quarter of Section 25 of Hall Township, Sargent County, North Dakota, for purposes of installing, constructing, operating, and maintaining an underground pipeline;
- 3) That Applicants obtain and record (with the Sargent County Recorder's office) a flowage easement (and not just a written consent) from the owner of the Southwest Quarter of Section 25 of Hall Township, Sargent County, North Dakota, for purposes of discharging surface drainage until discharging into the Wild Rice River;
- 4) That Applicants will not construct or improve the drain in any manner that exceeds the dimensions indicated in the application, including a surface drain length of 2,600 feet along the south boundary of Section 24; a 3 foot bottom width, 2:1 side slopes; a maximum cut of 4 feet; and a maximum pipeline length of 2,000 feet with an 18-inch diameter pipe;
- 5) That Applicants obtain an easement from the owner of any land, besides land owned by Applicants, on which Applicants will construct the drain;
- 6) That Applicants will install a gate or other control structure on the north end of the pipeline, on the north side of the 24/25 township road; Applicants will close the gate or control structure on or before December 1 of any given year and will not open it until at least ten days following the spring runoff flood crest at the USGS flood gage in Mantador;
- 7) That Applicants obtain written permission from the Hall Township Board of Township Supervisors to construct, operate, and maintain a surface drain in its township road ditch, or to otherwise utilize its township road ditch;
- 8) That Applicants obtain written permission from the Hall Township Board of Township Supervisors to bore through its township road and to install, construct, operate, and maintain a buried pipeline in its township road right of way;
- 9) That Applicants 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; and
- 10) 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.

Upon roll call vote, the motion carried unanimously. The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to all parties of record.

DOUGLES HARRIS APPLICATION TO INSTALL A SUBSURFACE DRAIN: Mr. Harris plans to tile the West Half of Section 29 of Denver Township. The project will require 30-day Notices under North Dakota law. However, the path of the tile discharge is not clear. Mr. Harris will have to provide additional information before the Board can provide notices.

Other business discussed included FEMA projects from 2011, letters mailed to NDDOT for hydraulic studies and incomplete work on Frenier Dam.

Meeting adjourned at 12:35 p.m.

CHRIS MCFARLAND – CHAIRMAN

ATTEST:

SHERRY HOSFORD - SECRETARY