

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, SEPTEMBER 21ST, 2023 AT 8:00 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN NORTH DAKOTA

Managers present: Chairman Lucas Siemieniewski, Vice-Chairman Michael Wyum, Managers Roger Zetocha and Todd Stein. Also in attendance was Wendy Willprecht Secretary/Treasurer, Nathan Trosen, engineer for Moore Engineering, Scott O’Konek of Summit Carbon Pipeline, and landowner Tyler Speich. Present via video conference was Attorney Sean Fredricks of Ohnstad Twichell, Manager Bruce Speich and Leon Mallberg.

Manager Wyum moved to approve the August 17th, 2023 regular meeting minutes and the August 2023 Financial Statement. Manager Zetocha seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Wyum moved to approve the bills with the exception of the True North bill as Trosen of Moore Engineering is looking into this charge to assure it is correct:

Ohnstad Twichell- Meetings \$359/Gibbon Tile Application \$567.14/Leon Mallberg Condemnation \$495/Bosse-Hoistad Tile Application \$1538; Drain No. 11- Improv. Proj. \$180/Eminent Domain \$79.50; Drain No. 7- Title Opinion, Change Proposal \$1567.50
Total: \$4,786.14

Moore Engineering-Board Meetings \$2950.52/Permits \$195; Drain No. 11- Research \$390; Drain No. 7- Construction Service \$22,680.00
Total: \$26,215.52

Wild Rice Soil Conservation- Drain No. 12- Cleaning and spraying \$978.96; Drain No. 7- Cleaning and spraying \$782.16
Total: \$1,761.12

Larson Helicopter, LLC- (spraying) Drain No. 4 \$355.20/Drain No. 8 \$451.40/Drain No. 11 \$1335.70/ Drain No. 12 \$588.30
Total: \$4255.00

Starion Bond Services- Drain 7 2022C \$12,265/2022D \$5,490; Drain No. 11 2022A \$18,792.50/2022B \$14,011.25; Drain No. 12 2020A \$1435/\$2020B \$1232.50
Total: \$53,226.25

True North Steel- Drain No. 11 culvert
Total: \$3,852.84

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

085912	Lucas Siemieniewski	Travel	\$89.08
085915	Todd Stein	Travel	\$44.54
085917	Michael Wyum	Travel	\$13.10
085918	Roger Zetocha	Travel	\$32.75
	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 \$457.17	\$2,475.05
DD	Stock Grower’s Bank	Withholding Taxes	
DD	ND State Tax Commission	State Tax	
DD	Job Service ND	Unemployment Comp.	

Drain No. 11:

Project: Nathan Trosen of Moore Engineering provided an update of the 127th Ave SE culvert that is in need of repair. True North previously delivered the wrong culvert. True North has since provided the correct culvert, but before it can be installed, the water needs to recede.

DRAFT

Glen Thompson Utility Permit: Manager Stein said he spoke to both Glen and Todd Thompson regarding this proposed utility permit. Mr. Thompson previously indicated he would not sign any closing documents until the Board grants him permission to install and maintain a tile line on the property. The Board will continue to work on this with the Thompsons on this permit and to ensure the Board can close on the necessary property acquisition.

Summit Carbon Pipeline: Scott O’Konek, Summit Carbon Pipeline, was present to discuss the two utility permits requested by Summit to cross Drain No. 2 and Drain No. 11. O’Konek said there would be bores under each drain and Summit would dig an additional 5 feet below each channel. Summit’s pipes will be 12-inch carbon pipe that is ¾-inch thick with industrial coating. All pipes will be pressure tested. O’Konek indicated Summit applied for reconsideration in response to the State’s denial of Summit’s PSC permit application; the State granted the reconsideration last week, but O’Konek was unsure when the next hearing date would be set. Fredricks previously drafted Utility Permits for these proposed crossings and Trosen prepared draft Special Conditions for those Permits. A motion was made by Manager Wyum and seconded by Manager Stein to approve the Utility Permit for Drain No. 2 and the Utility Permit for Drain No. 11, both with the Special Conditions prepared by Trosen. Upon roll call, the motion carried unanimously.

Assessment: Trosen said that he will be forwarding the approved reassessment list to the auditors in Sargent, Ransom, and Dickey County.

Drain No. 4: SCWRD Administrator Willprecht received a call from Forman City Superintendent, Donovan Hajek, saying he had concerns with areas of Drain No. 4 that he believed needed to be cleaned out. Manger Stein went on a drain tour with Hajek. There were big trees noted by Hoistads that have never been taken out. The beginning of the drain on the west side of town has a lot of cattails. The City will spray out the cattails on the westside and the board agreed to reimburse the City of Forman for their chemical expenses as well as any labor costs incurred. Manager Stein reached out to Helwig’s to see if they would have time to help clean out the larger vegetation in the drain and they said the do. The District may need to request use of the City’s truck to remove the debris. A motion was made by Manager Stein and seconded by Manager Zetocha to hire Helwig’s to do a Drain No. 4 clean out, not to exceed \$12,000. Upon roll call, the motion carried unanimously.

Assessment: Trosen said that he will be forwarding the approved reassessment list to the Sargent County auditor.

Drain No. 7:

Project: Trosen of Moore Engineering said that this project is ahead of the updated 2023 schedule the contractor previously provided. The in-line culverts are installed and the excavation is nearly complete. The contractor continues to work on the intercept culverts, fine grading, and seeding.

#404 Permit: No update.

Claim Letter: Attorney Fredricks sent a claim letter to Comstock on 8/22/23 reserving the Board’s rights to assess liquidated damages. The Board does not have to take action or make any decisions regarding LDs at this point.

Beaver dam: Richard Engst had messaged Ms. Willprecht about a beaver dam a little north of Highway 13. Manager Speich is working on getting the dam removed.

Cattle Grazing: It has been brought to the SCWRD attention that there may be damaged areas along Drain No. 7 due to cattle grazing. Roger Gibbons has some 200 head of cattle that have been grazing CRP and drinking water on or around Drain No. 7. Mr. Gibbons told Manager Speich he would have the cattle out of the area by Friday. Chairman Siemieniowski suggested the board direct Moore Engineering to do an inspection of the drain to assess the damages that have been incurred to the Drain and the Board’s right of way.

Manager Wyum moved to direct Moore Engineering to inspect Drain No. 7 for damages related to cattle grazing. Manager Speich seconded the motion. Upon roll call, the motion carried unanimously. Once Moore completes the inspection, the Board will direct Fredricks to send Mr. Gibbons a letter to seek reimbursement for the inspection costs and to direct Mr. Gibbons to repair any damages.

Clean out: Manager Speich said there is an area north of Highway 13, where the drain needs some clean out work. Manager Speich said he will look into what needs to be done and will see if there is a contractor that is able to do the clean out. He will report back to the board.

Drain extension: There has been discussion amongst landowners along Drain No. 7, about an extension downstream. A project such as this would need to be initiated by the landowners. We would need a vote for a new assessment district that would include the extension. Chairman Siemieniowski said that the City of Milnor would definitely benefit from the extension as would Ransom County. The board agreed that an extension would be a beneficial project.

Trosen said that Moore Engineering would need to do a survey, develop drawings, do a grade profile and put together cost estimates. A new assessment list would be compiled and there would need to be a hearing. Trosen estimated that all of these tasks would amount to around \$25,000. This project would also benefit the county road in this area.

The extension project would be approximately 3.5-4.5 miles. Manager Speich will talk to the landowners in this area to get their feel on the project before Moore Engineering looks into this any further.

Reassessment: Trosen said he will be forwarding the approved reassessment list to Ransom and Sargent County.

Drain No. 9 Extension: Trosen said the original cost share request was filed with the SWC in August, 2021. The Water Commission needs a report within 4 years of the cost share request in order for the SCWRD to utilize cost share dollars. The SCWRD said they will wait until after harvest to talk with landowners along the drain to see what the interest is for this project.

Drain No. 8: No report.

Cogswell Tile: No report.

Drain No. 2: A utility permit was approved involving this drain on behalf of Summit Carbon Pipeline Solutions. Please refer to the motion under Drain No. 11.

Cattle Grazing: The Board noted Mr. Ryan Nelson is allowing his cattle to graze along Drain 2 and on the Board's Drain right of way. The Board directed Fredricks to send Mr. Nelson a letter to direct him to keep his cattle away from the Drain and to put him on notice that he will be responsible for any damages to the Drain as a result of his cattle.

Drain No. 12: No report.

Short Foot Creek: Trosen said that he is working with the NRCS and that the economics are almost done. Once complete, updates will be made to the plan and then agency meetings will take place.

Frenier Dam: Chairman Siemieniowski spoke to landowner Jeff Breker and said that Breker would like the managers to come down and do an inspection of this area before freeze up. Breker has a few ideas of how to improve this area and one idea is to take the culvert out and put a cement Texas Crossing in. A comment was made that this could be dangerous when the water level is high. The managers will try and coordinate a time to meet with Breker to talk about options of what can be done.

City of Sturim: Landowner Bob Orn reached out to Administrator Willprecht to request a letter to provide to Red River Valley & Western. The Railroad indicated they need confirmation from the SCWRD that the board supported the proposed project. The board agreed to send a letter that read that the Board is not opposed to the project, but to clarify that this would be a county project and not a SCWRD project. Administrator Willprecht will send a letter to Orn stating the above.

NEW BUSINESS:

Tyler Speich Application to Install a Subsurface Water Management System:

Application to Install a Subsurface Water Management System No. 2023-12 for Tyler Speich in the Northeast Quarter of Section 17 in Hall Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2023-12*, filed September 12, 2023, by Applicant Tyler Speich. Under the Application, Applicant seeks to install a 140-acre drain tile system in the Northeast Quarter of Section 17 in Hall Township, Sargent County, North Dakota. The project will include a single pump outlet located along the north boundary of the Northeast Quarter of Section 17; the pump will discharge into the south road ditch along North Dakota Highway 13; the discharge will then flow east in the south road ditch, along the north boundary of the farmstead in the northeast corner of the Northeast Quarter of Section 17; the discharge will continue east under 146th Avenue SE through an existing culvert and will continue in the south road ditch along Highway 13, along the north boundary of the Northwest Quarter of Section 16 and a portion of the Northeast Quarter of Section 16; the discharge will then turn north, under Highway 13, into the north road ditch along Highway 13, along the south boundary of the Southeast Quarter of Section 9, and will continue east in the north road ditch along Highway 13 and along the south boundary of the Southeast Quarter of Section 9.

According to County tax roll information, Craig and Wanda Speich own the Northeast Quarter of Section 17 where Applicant intends to install the tile system. With regard to downstream properties, Tyler and Betsy Speich own the farmstead in the northeast corner of the Northeast Quarter of Section 17; Albert R. Johnson and Frances Sundstrom, Trustees of the Albert R. and Frances Johnson Trust, own the Northwest Quarter of Section 16; Paula Nygaard owns the Northeast Quarter of Section 16; Tyler and Kyle Speich own the West Half of the East Half of the Southeast Quarter of Section 9, subject to a life estate in Bruce and Dayna Speich; Tyler and Betsy Speich own the West Half of the East Half of the Southeast Quarter of Section 9; and Kyle Speich owns the East Half of the East Half of the Southeast Quarter of Section 9. NDDOT owns its highway right of way.

Before discussing the merits of the application, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Speich's potential conflict in the matter. The Applicant is Manager Speich's son and, more significantly for purposes of the Board's conflict consideration, Manager Speich owns property downstream of Applicant's project. 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.

The Section 44-04-22 test requires a multi-step analysis. In this case, because Manager Speich owns property that could be impacted by this project, Manager Speich has a direct and substantial personal interest in the matter that creates a clear conflict. Manager Wyum moved to conclude that Manager Speich has a conflict and should not participate in any votes regarding Tyler Speich's drain tile application. Manager Zetocha seconded the motion. Upon roll call vote, Chairman Siemieniowski and Managers Stein, Zetocha, and Wyum voted in favor of the motion. Manager Speich abstained. The motion passed.

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 6116-08.1 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.

Manager Wyum moved, and Manager Zetocha seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-12*, filed September 12, 2023, for Tyler Speich in the Northeast Quarter of Section 17 in Hall Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-12, 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 NDDOT's Highway 13 right of way.
3. Applicant will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Sargent County Water Resource District.
4. Applicant must remove silt or vegetation, or repair erosion or scour damages *directly* caused by Applicant's tile system, but only up to one mile downstream of Applicant's project outlet.
5. Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines Southeast Water Users District has in the Northeast Quarter of Section 17 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. 2023-12 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, Chairman Siemieniewski and Managers Stein, Zetocha, and Wyum voted in favor of the motion. Manager Speich abstained. The motion passed.

With regard to condition #4, Applicant's obligations to remove silt or vegetation, or to repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicant's tile system *directly* caused accumulation of silt or vegetation, erosion, or scouring.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the Board will recommend that Applicant comply with the following:

1. The Board recommends that Applicant obtain written consent from the North Dakota Department of Transportation to discharge into or otherwise utilize any of its Highway 13 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. 2023-12, and Applicant's downstream flow map to the Department of Water Resources, the North Dakota Department of Transportation, Hall Township; downstream landowners, and Southeast Water Users District.

Attorney Fredricks provided NDDOT's right of way permit form to Mr. Speich that he can complete and submit to NDDOT. The SCWRD cannot demand Mr. Speich get permission from the NDDOT, but the board did make this recommendation.

Notice of Application to Add Points of Diversion-Quandt Brothers: No action.

Temporary Water Permit-Chad Heimbuch: No action.

DRAFT

Hall Township Culvert Replacement:

Chairman Siemieniewski said that Hall Township is looking for cost-share for a couple of culverts on the county line along the Wild Rice River. Sargent County road supervisor, Tim Faber, had talked with Siemieniewski and said the crossing was going to be closed due to FEMA denying eligibility for the site. Siemieniewski said that the project estimate is around \$150,000, which was quoted 6 months ago. The culverts needing to be replaced are not along a legal drain. The water that runs through the culverts eventually enters into Richland County. Richland does not appear to be interested in providing cost-share for this project. Manager Speich said that due to the federal dollars that were spent to build up 149th Ave. SE, some bridges were abandoned. He added that Wehlanders would have the biggest affect if this crossing is closed, but most other farmers in that area could navigate around the closure.

Chairman Siemieniewski said that the culverts requested to be replaced are not along a legal drain; therefore the Board does not have any legal obligation to provide cost-share for this project. This was affirmed by attorney Fredricks. The SCWRD collectively decided to not contribute to this project as a result.

Tang Culvert Replacement: Kevin and Lea Tang, residents of Whitestone Hill Township, reached out regarding a culvert that needs to be replaced underneath the private drive into their residence. The current culvert is failing due to age and condition that has worsened over the years. The culvert is a 60”x40’. This culvert is not along a legal assessment drain and, in fact, is for a private crossing. The Board cannot legally provide cost-share for this project. Administrator Willprecht will reach out to the Tang’s to let them know the board’s decision.

DSJTB bills for approval –

Tile application for Terry Anderson- This is an application for the Dickey County Water Resource District to consider and, therefore, there was no action taken by the SCWRD.

DSJTB bills for approval

85808 DVEC – electricity –	\$ 831.00
085914 Starion Bond Services	\$17,707.50

Manager Zetocha made a motion to pay the DSJTB bills. Manager Stein seconded the motion. Upon roll call, the motion carried unanimously.

Balances as of August 31st, 2023

Maintenance Account Balance:	\$ 25,616.64
Improvement Account Balance:	\$ 189,458.57

Richland-Sargent Drain #1 Maintenance Fund Financial Statement

August 31, 2023

BEGINNING BALANCE August 1, 2023 **\$403,823.36**

REVENUE:

Rt. #23-117 Savings Interest \$1,263.19

TOTAL REVENUE RECEIVED: **\$1,263.19**

EXPENDITURES:

Ck. #21053 Moore Engineering, Inc \$11,830.00

Ck. #21054 Ohnstad Twichell, PC \$1,045.00

TOTAL EXPENDITURES: **\$12,875.00**

TOTAL BALANCE August 31, 2023 **\$392,211.55**

RS #1 MAINTENANCE SAVINGS ACCOUNT BALANCE **\$392,211.55**

RS #1 MAINTENANCE CHECKING ACCOUNT BALANCE

TOTAL MAINTENANCE FUND BALANCE August 31, 2023 **\$392,211.55**

The meeting adjourned at 9:25 a.m.

APPROVED:

LUCAS SIEMIENIEWSKI, CHAIRMAN

ATTEST:

WENDY WILLPRECHT SECRETARY-TREASURER