

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, DECEMBER 15TH, 2022 AT 8:00 A.M. IN THE WATER BOARD CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN NORTH DAKOTA

Managers present: Chairman Luke Siemieniewski, Michael Wyum, Roger Zetocha, Todd Stein, and Bruce Speich. Also, in attendance was Wendy Willprecht Secretary/Treasurer. Present via video conference was Moore Engineering's Nathan Trosen, Josh Hassel and Brady Woodard, Attorney Sean Fredricks of Ohnstad Twichell, Paul Mathews, John Mund and Pat from the Sargent County Teller.

New Business:

Application to Install a Subsurface Water Management System No. 2022-16 for Edwin Erickson and Terry Erickson in the Southwest Quarter of Section 1 in Hall Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2022-16*, filed December 9, 2022, by Applicants Edwin Erickson and Terry Erickson. Under the Application, Applicants seeks to install a 160-acre drain tile system in the Southwest Quarter of Section 1 in Hall Township, Sargent County, North Dakota. The project will include a single pump outlet located along the south boundary of the Southwest Quarter of Section 1; the pump will discharge directly into the Tri-County Drain, a legal assessment drain owned and operated by the Tri-County Joint Water Resource District.

According to County tax roll information supplied by Applicants, Terrance and Edwin Erickson own the west two-thirds of the Southwest Quarter of Section 1 of Hall Township; and Richard and Eileen Moore, as Co-Trustees of the Moore Revocable Trust, own the east one-third of the Southwest Quarter of Section 1.

Manager Wyum moved, and Manager Stein seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-16*, filed December 9, 2022, for Edwin Erickson and Terry Erickson regarding a proposed tile system in the Southwest Quarter of Section 1 in Hall Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-16, subject to the following conditions:

1. Applicants will install and maintain erosion protection at the outlet into the Tri-County Drain.
2. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
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 Southeast Quarter of Section 1 in Hall Township under any blanket easements, or otherwise beyond the Water District's existing easement.
4. 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.
5. Applicants must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-16 in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system.

Upon roll call vote, the motion carried unanimously.

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

1. The Board recommends that Applicants obtain and record easements regarding any property not owned by Applicants where Applicants intend to install and maintain tile project components.
2. 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 and SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-16 to the Department of Water Resources, the Tri-County Joint Water Resource District, Hall Township, Richard and Eileen Moore, and Southeast Water Users District.

Administrator Willprecht provided a schedule of the 12 meeting dates set for 2023. Manager Speich made a motion to accept the meeting dates. Manager Zetocha seconded the motion. Upon roll call, the motion passed unanimously.

Manager Speich moved to approve the November 17th, 2022 regular meeting minutes, the November 23rd, 2022 special meeting minutes, the November 30th, 2022 special meeting minutes and the October 31st, 2022 Financial Statement. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Zetocha moved to approve the following bills:

084689 Ohnstad Twichell- B. Vculek App.-\$633.50/G. Bosse App.-\$190.24; Drain No. 4- Reassessment \$1457.57; Drain No. 11 Improv. Proj. \$460.50/Eminent Domain \$2002.23; Drain No. 7-Bogart deed/template for temp. easement/conference with Piper \$681.50; Drain No. 7-bond counsel \$5000.00

Total: \$10,425.54

084688 Moore Engineering- Permits/Mtgs./Complaints \$2065; Drain No. 2 Construct. Cost \$988.13; Drain No. 4 Reassess. \$4625; Drain No. 11 Util. Reloc. \$185/ROW \$42.50/ Reassess. \$185/ Construct. \$20,875/ Credit \$7460.87; Drain No. 7 Design \$15,390/ Reassess \$7550

Total: \$44,444.76

Sargent County Abstract & Tile Guarantee Co.- Jackie Krieger

Total: \$820.20

084686 Buskohl Construction Inc.- Drain No. 7 clean drainage ditch

Total: \$600.00

084692 Richland County Water Resource District-Admin costs

Total: \$836.43

084693 Rutland Township- culvert replacement (pay 1/3)

Total: \$2,174.25

084698 Jerry Woytassek- Permit refund

Total: \$500.00

084690 Pearce Durick, PLLC- Drain No. 7 Reassessment

Total: \$808.75

084687 Comstock Construction, Inc.- Drain No. 7 pay application #1

Total: \$72,393.07

084691 R.J. Zavoral and Sons, Inc.- Drain No. 11 pay application #2

Total: \$568,467.13

Manager Wyum seconded the motion. Upon roll call, the motion carried unanimously.

Drain No. 11:

Project:

RJ Zavoral submitted Pay Application No. 2 for the Drain 11 project. Moore Engineering worked with the contractor on the final quantities for the project and the total for the construction ended up slightly higher than the original contract price of \$1,952,291.85. The final construction total is \$2,063,753.02, an increase of approximately 5%. This is primarily due to additional riprap used on the project, added intercept culverts requested by adjacent landowners, additional flap gates for existing culverts on the road side of the Drain, and more asphalt replacement than originally assumed.

Even though the final construction came in higher than the bid, the Board is still within budget for the Project since we assumed 10-15% in contingencies in the original budget. Moore is working on updating the preliminary statement of cost for the project which they will provide once updated.

Trosen discussed a change order for the Project in the amount of \$7,460.87. This is for the added expense of having to relay the CR-4 box culvert back in October. This was a staking mistake by Moore Engineering so they have discounted their invoice for the Project by the same amount to account for the mistake. Therefore, this will not change the cost of the Project.

Pay Application No. 2 totaled \$568,467.13 and includes holding back \$51,593.83 in retainage until the project is complete.

Manager Stein moved to approve Change Order #1 in the amount of \$7,460.87. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Wyum moved to issue Pay Application No. 2 for RJ Zavoral in the amount of \$568,467.13. Manager Speich seconded the motion. Upon roll call, the motion carried unanimously.

Reassessment: Nothing new to report.

Glen Thompson Utility Permit: Mr. Thompson previously signed his purchase agreement for the right of way for the project but later submitted a request for a Utility Permit on the property the Board is purchasing from him to accommodate his tile project. Sean Fredricks prepared a Utility Permit for his consideration and Pat Downs provided the Utility Permit to Mr. Thompson but has not yet signed it.

Administrator Willprecht said she submitted a cost share reimbursement request to the SWC for \$724,928.38.

Drain No. 4:

Reassessment: Trosen of Moore Engineering summarized the comments received at the November 30th, 2022 public information meeting held in Forman, ND. Attorney Fredricks told the board that if they agree to the benefit methodology, the Board could proceed with the public hearing process. Fredricks said that we will need to publish the hearing notice three times and we must provide at least 30 days' notice of the hearing by mail. Attorney Fredricks said he will bring a Resolution to the January 2023 SCWRD to formally commence the reassessment process.

Drain No. 7:

Project: Trosen presented a change order and pay application for this project. The change order included additional labor required to take out the part of the old bridge abutments that were not initially visible. The County also asked for “Bump Ahead” signs to be installed along the road due to the uneven road surface. In total, the additional costs are \$2,974.48. Also, Comstock requested the milestone date be moved back two days from the original contract date because of the additional work required for the abutment removals. Manager Wyum moved to approve the change order in the amount of \$2,974.48 and to change the milestone date to November 18th, 2022. Manager Zetocha seconded the motion. Upon roll call the motion carried unanimously.

A pay application of \$72,393.07 was submitted by Comstock for the board’s review. There was an existing third culvert that was not included on the project’s plans. Despite the removal of this added culvert the project is still on budget and the contractor will complete the project in the spring. The board will retain 10% of the work completed to date until it is completed.

Manager Wyum moved to approve the pay application in the amount of \$72,393.07, and to authorize retainage of 10% until the project is completed. Manager Speich seconded the motion. Upon roll call vote the motion carried unanimously.

The contractor requested a Certificate of Substantial Completion for Milestone No. 1 regarding work related to the CR-12 crossing. Manager Speich moved to authorize a Certificate of Substantial Completion for Milestone No. 1 to Comstock. Manager Zetocha seconded the motion. Upon roll call vote, Managers Wyum, Stein, Speich, and Zetocha voted in favor of the motion. Chairman Siemieniewski voted against the motion. Motion carried.

Reassessment: Trosen of Moore Engineering summarized the comments received at the November 30th, 2022 public information meeting held in Milnor, ND. There were a handful of landowners that said it is confusing when Drain No. 7 is also listed as Water Channel District #1 on tax statements. Administrator Willprecht will work with the auditor’s department to see if the 2023 tax statements can read “Drain No. 7”. Trosen said he will reach out to Attorney Carvell to put a resolution together for a public hearing. The board would like to hold a public hearing for the reassessment on the same day as the Drain No. 4 public hearing.

Drain No. 9 Extension: No report.

Drain No. 8: No report.

Cogswell Tile: No report

Drain No. 2:

APPLICATION FOR SURFACE DRAIN NO. 6145 - SARGENT COUNTY DRAIN NO. 2

The Board reviewed information from the Department of Water Resources regarding APPLICATION FOR SURFACE DRAIN NO. 6145, a drainage application previously submitted by the Sargent County Water Resource District regarding the Board’s SARGENT COUNTY DRAIN NO. 2 project. The project will include a clean out of the Drain 2 channel through Sections 4, 10, and 11 in Herman Township, as well as replacement of the culvert through County Road 14. Drain 2 discharges into the Wild Rice River.

The Department of Water Resources reviewed the application and concluded the project is not “of statewide or interdistrict significance.” The Board reviewed Nathan Trosen’s draft responses to the eight elements under 890201-09.2 of the North Dakota Administrative Code. The Board determined no hearing was necessary under 89-02-01-09.1(2) of the North Dakota Administrative Code; the project will not require any additional right of way to accommodate the project and landowners in the area generally support the project. The project will provide more efficient and effective drainage for properties in the Drain 2 watershed, and the project will not result in adverse impacts downstream.

Manager Speich moved to adopt Moore Engineering’s responses to the 8-point questionnaire under Section 89-02-01-09.2 of the North Dakota Administrative Code; to approve APPLICATION FOR SURFACE DRAIN NO. 6145; and to authorize the Secretary-Treasurer to sign PERMIT FOR SURFACE DRAIN NO. 6145. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously. Sean Fredricks will provide notice of the Board’s decision to the Department of Water Resources.

Drain No. 12: No update.

Shortfoot Creek: Administrator Willprecht said she submitted a cost-share request for the Shortfoot Creek Project to the Red River Joint WRD in the amount of \$4,468.75, and a cost-share request to the SWC in the amount of \$2,406.25.

CROOKED CREEK WATERSHED PLAN: Administrator Willprecht said she submitted a cost-share request to the NRCS for \$12,404.69.

Unfinished Business:

Ogdahl/Toyne Complaint: The Board previously directed Secretary-Treasurer Willprecht to send Mr. Toyne a bill for the Board’s expenses incurred investigating this complaint. Attorney Don Eppler, representing James Toyne, submitted a letter denying cost responsibility for this complaint. Mr. Toyne contends he did not construct the dam and should not, therefore, be responsible for the costs of the complaint. While most of the parties involved believe Mr. Toyne constructed the dam, there is no direct evidence, and the dam was not on Mr. Toyne’s property. As opposed to spending additional dollars litigating cost responsibilities, the Board decided to not pursue expenses from Mr. Toyne or Mr. Francis (the landowner) any further.

084697	Todd Stein	Travel	\$102.50
084699	Michael Wyum	Travel	\$108.50
084700	Roger Zetocha	Travel	\$93.75
084696	Bruce Speich	Travel	\$106.25
DD	Lucas Siemieniewski	PD	\$178.23
DD	Todd Stein	PD	\$712.95
DD	Michael Wyum	PD	\$712.95
DD	Roger Zetocha	PD	\$712.95
DD	Bruce Speich	PD	\$1069.41
DD	Wendy Willprecht	Sec-Treas -Salary less taxes \$457.17	\$2042.83
DD	Stock Grower's Bank	Withholding Taxes	
DD	ND State Tax Commission	State Tax	
DD	Job Service ND	Unemployment Comp.	

DICKEY-SARGENT JOINT BOARD:

Andy Seyer Utility Permit Application (Dickey-Sargent):

Attorney Sean Fredricks and Trosen of Moore Engineering prepared a proposed Utility Permit in response to Mr. Seyer's water appropriation permit application. Seyer wants to draw water from the Jackson Improvement Project to use for irrigation. His proposed project will require installation of project components on the Dickey-Sargent Joint WRD's project right of way. The Utility Permit contains indemnity and repair obligations for Mr. Seyer and, with that in mind, Mr. Seyer would have to repair any damages to the Drain and would have to indemnify the Board for any liability. The Dickey County WRD will also approve the Utility Permit. Manager Stein moved to approve the Utility Permit. Manager Wyum seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Stein made a motion to approve the Dickey-Sargent bills. Manager Zetocha seconded the motion. Upon roll call, the motion carried unanimously.

DSJTB bills for approval –

DVEC – electricity –	\$ 280.00
084688 Moore Engineering- Board meeting	\$ 420.00
**Special Assessments received:	
Paul and Catherin Schmitz	\$1,494.39

- 1) Maintenance Account: \$ 14,128.23
- 2) Improvement Account: \$109,533.19

The above balances are as of October 31st, 2022

Richland-Sargent Drain #1 Maintenance Fund Financial Statement

BEGINNING BALANCE November 1, 2022 \$402,490.58

REVENUE:

TOTAL REVENUE RECEIVED: \$0.00

EXPENDITURES:

Ck # 19021 Ohnstad Twichell, PC \$805.00

