

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, AUGUST 17TH, 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 Bruce Speich, Roger Zetocha and Todd Stein. Also in attendance was Wendy Willprecht Secretary/Treasurer, Nathan Trosen, engineer for Moore Engineering, Sargent County Commissioner Wade Anderson, Brian Fuder and Keith Westin of the Red River Retention Authority, Landon Evenson of the Wildrice Soil Conservation and landowner Jason Bosse. Present via video conference was Attorney Sean Fredricks of Ohnstad Twichell and Leon Mallberg and Bob Banderet.

Manager Wyum moved to approve the July 20th, 2023 regular meeting minutes and the July 2023 Financial Statement. Manager Stein seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Zetocha moved to approve the following bills:

085766 Ohnstad Twichell- meetings \$390.00; Drain No. 11 proj. \$635.45/Eminent Domain \$6198.44; Drain No. 7 review proj./construct contract \$475

Total: \$7,698.89

085765 Moore Engineering-Board Meetings \$2483.02;SFC task 6 \$232.50; Drain No. 4 reassessment \$2171.25;Drain No. 11 ROW \$45/correspondence \$685;Drain No. 7 ROW \$45/construction \$2400/Reassessment \$2415

Total: \$10,476.77

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

085767	Lucas Siemieniewski	Travel	\$55.02
085769	Todd Stein	Travel	\$ 10.48
085770	Michael Wyum	Travel	\$13.10
085771	Roger Zetocha	Travel	\$32.75
085768	Bruce Speich	Travel	\$26.20
DD	Lucas Siemieniewski	PD	\$662.05
DD	Todd Stein	PD	\$441.37
DD	Michael Wyum	PD	\$220.68
DD	Roger Zetocha	PD	\$441.37
DD	Bruce Speich	PD	\$220.68
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 reported that the punch list items are completed. The culvert needed to repair the 127th Ave crossing was ordered and should be ready within the next two weeks.

Glen Thompson Utility Permit: The Board is waiting for a response from Mr. Thompson regarding the utility permit he requested to accommodate his proposed tile project. Mr. Thompson has indicated he would like to resolve his tile access before closing on the Drain 11 right of way acquisition for his property.

Lloyd Ptacek: During the September 17th, 2015 SCWRD meeting, Mr. Ptacek approached the board seeking permission to place a crossing in Drain No. 11 to gain access to a family abandoned cemetery. Ptacek said that he would pay for the culvert and the SCWRD agreed to pay for the installation of the culvert. The crossing washed out recently. This culvert still remains in good condition today, but it is not long enough. It also needs additional rip rap installed. Based upon the 2015 minutes, there was no contract as to who would maintain this crossing moving forward. The SCWRD said that it would be best to table this discussion and talk to land tenants before making a decision on the crossing repair. Trosen of Moore Engineering said that materials for this project could be around \$10,000 or less if the culvert was to remain 30' long. Trosen said that if a longer pipe was ordered, the total project could be up to \$30,000.

Inverse Condemnation: The Board reviewed a letter from the attorney for Mr. Leon Mallberg in which Mr. Mallberg offered inverse condemnation allegations. Attorney Sean Fredricks asked landowner Leon Mallberg if he would like to comment on the letter and Mr. Mallberg indicated he had no comment.

Landon Evanson Wildrice Soil Conservation: Evanson said that he did some cleaning in Drain No. 12 and Drain No. 7. He noted there were lots of saplings in the drains. Evanson said that his crew took out some larger vegetation, in patches, on the southwest side of Drain No. 12. He added that the west side ditch needs an excavator with a brush cutter to get the

area cleaned out. Tordon was sprayed throughout the drains. Evanson said that they cleaned up as much leafy spurge in and around Drain No. 7 that they could.

Drain No. 4: No Report

Drain No. 7:

Project: Comstock provided supplemental information for the change proposal requesting a time extension on the project. Comstock was planning on starting on May 1st, 2023, with a planned 9-week schedule of construction, less seeding, but they said the water in the drain was higher than anticipated. This resulted in Comstock projecting a new start date of August 11th, 2023. It was noted during the discussion in this meeting that Comstock made no effort to dewater the area. SCWRD provided a Claim letter in July in which the Board reserved its right to assess liquidated damages due to Comstock's failure to meet the original Substantial Completion deadline.

The supplemental information provided in the extension request from Comstock included average historical precipitation data, and actual precipitation data from the contract construction dates. Moore Engineering reviewed the letter sent by Comstock and responded in accordance with the General Conditions (GC) Section 11.09 of the contract. Trosen indicated that, based off the precipitation data Comstock submitted and stream gage data Moore Engineering found during their review, Moore recommends approving an extension regarding the substantial completion and final completion dates by 29 days each. The suggested construction schedule submitted by Comstock shows them working until October.

A motion was made by Manager Zetocha and seconded by Manager Speich to approve Change Order No. 4, contingent on Comstock's approval and execution of the Change Order. Upon roll call, the motion carried unanimously.

Attorney Sean Fredricks will send a new claim letter to Comstock which will include the new dates discussed, and will once again reserve the Board's right to apply LDs if necessary.

Trosen said that the project should wrap up the week of October 13th. Comstock will work on getting the paving done right away and will then start the earth work.

Beaver dam: Richard Engst had messaged Ms. Willprecht about a beaver dam a little north of Highway 13. Manager Speich said he would reach out to the state trapper to see what could be done with the dam.

US Fish and Wildlife: Trosen said that the special use permit through the US Fish and Wildlife Service expired last year. He worked with Erik Wilson from the USFWS and presented a new special use permit for the Board's consideration to extend the permit to the end of this year.

Manager Speich made a motion to approve a new special permit that will continue through the end of 2023, and to authorize the Chairman and Secretary-Treasurer to sign the new permit. Manager Stein seconded this motion. Upon roll call, the motion carried unanimously.

#404 Permit-Commissioner Wade Anderson said that the county has not yet received the approval of the #404 permit. Trosen said that he had heard from Interstate Engineering that they were still waiting to hear back on the permit's approval.

Drain No. 9 Extension: Trosen asked if the SCWRD wanted to hold another landowner meeting since the landowner originally spearheading this project has stepped down. Trosen noted that the board did receive cost share funding for the preliminary investigation of this project and added that the agreement could be extended out two years. The Managers will reach out to landowners to get their feelings on whether or not this project should be pursued.

Drain No. 8: Trosen stated that the NDDDES has distributed funding with much of the funding going towards larger projects. However, the state is still waiting for money from FEMA that could possibly be used for this drain project. We should have an update on funding by the end of the month.

Cogswell Tile: No report.

Drain No. 2: We will wait to move reimbursement funds into the general fund until we start receiving assessment taxes.

Drain No. 12: Chairman Siemieniewski said that contractors have been on site for six weeks, but the boxes are not yet built. He is hoping this project can still get done yet this fall.

Short Foot Creek: No report.

Randy Gibbon:

Chairman Siemieniewski asked Mr. Gibbon to reapply for his tiling project based on the fact that his initial application did not have a correct representation or depiction of the downstream flow, and did not include downstream ownership information, the fact that the pipe would go under a township road, etc. Attorney Fredricks processed Gibbon's application based on what was submitted.

Administrator Willprecht also had a phone call with Mr. Gibbon explaining to him that if he proceeds with this project and it differs from the original tiling application, Mr. Gibbon's project could be at risk if someone files a drainage complaint. Gibbon told Willprecht he does not plan to refile a new application.

Frenier Dam: Tabled to next month.

City of Stirum: Damon Devillers of Interstate Engineering provided the SCWRD three hydrology studies that they completed, showing the downstream impacts for this project. Trosen of Moore Engineering reviewed these studies and found they were compiled using 1992 regression equations. He further noted that in 2015, new regression equations were released which show higher peak flows. When discussing safety and stream crossing standards, flow accuracy is essential. Using the 1992 data instead of the 2015 data for these studies would change the results of the proposed culvert sizes.

Chairman Siemieniewski said that someone should reach out to landowner Chris Mathias to discuss these studies as he is one of the main landowners spearheading this project.

Trosen said that he agrees that larger culverts are needed in this area, but the complete system must be in line and accurately investigated. The SCWRD does not have any legal obligation for these culverts. By law, the SCWRD only has a 60/40 cost responsibility for in-line Drain 11 culverts.

NEW BUSINESS:

Red River Retention Authority:

Brian Fuder and Keith Westin of the Red River Retention Authority attended today's meeting for the group to get to know Fuder who would be taking over for Westin. Fuder started this new position in July and has been visiting districts to introduce himself. A few projects Fuder is currently working on are:

- 1) Flood impacts survey of the Red River Basin, border to border from ND to MN.
- 2) He testified on the conservation portion of the farm bill.
- 3) On October 11th, Fuder and Westin will be going to Manitoba, Canada, to learn about cattail harvesting for biomass and bedding. This process is relative to the Short Foot Creek project the SCWRD is currently working on. Fuder said it would be great to have at least one member from the SCWRD to attend this trip on October 11th.

Application to Install a Subsurface Water Management System No. 2023-11 for Bruce Bosse, Jason Bosse, and Brad Hoistad in the Northwest Quarter of Section 5 and the Northeast Quarter of Section 6 in Brampton Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2023-11*, filed August 10, 2023, by Applicants Bruce Bosse, Jason Bosse, and Brad Hoistad. Under the Application, Applicants seek to install a 308-acre drain tile system in the Northwest Quarter of Section 5 and the Northeast Quarter of Section 6 in Brampton Township, Sargent County, North Dakota. The project in the Northwest Quarter of Section 5 will connect to the system in the Northeast Quarter of Section 6 via a pipeline under 121st Avenue SE. The project will include a single pump outlet located near the west boundary of the Northeast Quarter of Section 6; the pump will discharge onto the Northeast Quarter of Section 6 and will flow to the northwest; at the northwest corner of the Northeast Quarter of Section 6, the discharge will flow into the south road ditch along 96th Street SE; the discharge will flow to the west in the south road ditch, along the north boundary of the Northwest Quarter of Section 6; the tile discharge will then flow through a new 24" culvert that will discharge into Sargent County Drain No. 11, a legal assessment drain owned and operated by the Sargent County Water Resource District.

According to County records, Bruce Bosse, Jason Bosse, and Brad Hoistad own the Northwest Quarter of Section 5 and the Northeast Quarter of Section 6 in Brampton Township. With regard to downstream properties, Kent Carpenter owns the Northwest Quarter of Section 6 in Brampton Township.

Manager Zetocha moved, and Manager Wyum seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-11*, filed August 10, 2023, for Bruce Bosse, Jason Bosse, and Brad Hoistad in the Northwest Quarter of Section 5 and the Northeast Quarter of Section 6 in Brampton Township, and to authorize the Secretary/Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-11, subject to the following conditions:

1. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
2. 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 Northwest Quarter of Section 5 or the Northeast Quarter of Section 6 in Brampton Township under any blanket easements, or otherwise beyond the Water District's existing easement.
3. Applicants will install and maintain erosion protection at any and all outlets into Brampton Township's road right of way.
4. Applicants will install and maintain erosion protection at any and all outlets into Sargent County Drain No. 11.
5. 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.

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6. Applicants will remove silt or vegetation, or repair erosion or scour damages *directly* caused by Applicants' tile system, but only up to the discharge into Drain 11.
7. Applicants must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-11 in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system.

Upon roll call vote, the motion carried unanimously.

With regard to condition #6, Applicants' 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 Applicants' 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 Applicants' permit. However, for Applicants' protection, and to ensure protection of Applicants' tile system, the Board recommends that Applicants comply with the following:

1. The Board recommends that Applicants obtain written consent from Brampton Township to discharge into or utilize any of the Township's road right of way or to install any project components in the Township's right of way.
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, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-11, and Applicants' downstream flow map to the Department of Water Resources, Brampton Township, Kent Carpenter, and Southeast Water Users District.

Larson Helicopter: Chairman Siemieniewski has been in contact with Lason Helicopter and let them know what drain areas need spraying.

DSJTB bills for approval –

DSJTB bills for approval

85673	DVEC – electricity –	\$ 994.00
85764	Dakota Helicopter-spraying	\$ 2421.52

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 July 31st, 2023

Maintenance Account Balance:	\$ 29,032.16
Improvement Account Balance:	\$ 189,458.57

Richland-Sargent Drain #1 Maintenance Fund Financial Statement

BEGINNING BALANCE July 1, 2023 **\$418,220.81**

REVENUE:

Rt. #23-086	Richland Co. Tax & Business	\$16.98	
Rt. #23-095	Savings Interest	\$1,328.88	
Rt. #23-090	Sargent Co. Tax & Business	\$5.69	
TOTAL REVENUE RECEIVED:			\$1,351.55

EXPENDITURES:

Ck. #21036	Moore Engineering, Inc	\$10,720.00	
Ck. #21037	Ohnstad Twichell, PC	\$5,029.00	
TOTAL EXPENDITURES:			\$15,749.00

TOTAL BALANCE July 31, 2023 **\$403,823.36**

RS #1 MAINTENANCE SAVINGS ACCOUNT BALANCE	\$407,160.81
RS #1 MAINTENANCE CHECKING ACCOUNT BALANCE	-\$3,337.45
TOTAL MAINTENANCE FUND BALANCE July 31, 2023	\$403,823.36

The meeting adjourned at 9:28 a.m.

APPROVED:

LUCAS SIEMIENIEWSKI, CHAIRMAN

ATTEST:

WENDY WILLPRECHT SECRETARY-TREASURER