

Dickey County Water Resource District Meeting

MEETING MINUTES

September 15, 2021

8:00 a.m.

The Dickey County Water Resource District met at the Dickey County Court House in Ellendale, ND at 8:00 a.m. on Wednesday, September 15, 2021. Managers Steve Hansen, Justin Gemar, Keith Hauck and Don Zimbleman were all present at the Court House. Manager Norm Haak, along with Chris Gross, the board's engineer and Sean Fredricks, the board's attorney joined via video conference. Eric Larson was also present.

Chairman Hansen called the meeting to order.

***Chad Ulmer tile permit proposal 2021-18***

**Application to Install a Subsurface Water Management System No. 2021-18 for Chad Ulmer in the North Half and the Southwest Quarter of Section 25 in Porter Township**

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2021-18* filed August 29, 2021, filed with the Board by Applicant Chad Ulmer. Under the Application, Applicant seeks to install a 220-acre drain tile system in the North Half and the Southwest Quarter of Section 25 in Porter Township, Dickey County, North Dakota. The project will include two gravity outlets with control structures, both located in the Southwest Quarter of Section 25; both outlets will discharge into a natural that flows to the southwest, under 83rd Street SE. The project will include four surface inlets with 3/8-inch coefficient.

According to Dickey County tax records, Chad and Tenille Ulmer own the Northwest Quarter of Section 25; and Chad Ulmer owns the Southwest Quarter of Section 25 and the Northeast Quarter of Section 25, both subject to a life estate in Lawerence and Deann Ulmer.

Manager Hauck moved, and Manager Zimbleman seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-18* filed August 29, 2021, for Chad Ulmer regarding a proposed tile project in the North Half and the Southwest Quarter of Section 25 in Porter Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-18, subject to the following conditions:

- 1) that Applicant install and maintain erosion protection at any and all outlets into the natural watercourse in the Southwest Quarter of Section 25 in Porter Township;

2) that Applicant must close the control structures on all during “critical flood periods,” as determined by the Dickey County Water Resource District;

3) that Applicant re-establish any areas disturbed installing or maintaining Applicant’s tile system;

4) that 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 North Half or the Southwest Quarter of Section 25 in Porter Township under any blanket easements, or otherwise beyond the Water District’s existing easement(s); and

5) that Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT No. 2021-18 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 District cannot attach any additional conditions to Applicant’s permit. However, for Applicant’s protection, and to ensure protection of Applicant’s tile system, the District will recommend 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, downstream flow map, and SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-18 to the State Engineer’s Office, Porter Township, and Southeast Water Users District. Applicant’s detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

***Brian Vculek tile amendment proposal 2017-17***

**Application to Install a Subsurface Water Management System No. 2021-17 – Amendment of Permit Previously Issued to or Brian Vculek in the Southeast Quarter of Section 35 in Bear Creek Township, the Northeast Quarter of Section 2 in Riverdale Township, and the Northwest Quarter of Section 1 in Riverdale Township**

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2021-17* filed August 18, 2021, by Applicant Brian Vculek. Under the Application, Applicant seeks an amendment to a SUBSURFACE WATER MANAGEMENT PERMIT issued by the Board to Brian Vculek on November 18, 2015 (the “Original Permit”). Under the Original Permit, the Board approved a project for Applicant in the Southeast Quarter of Section 35 in Bear Creek Township, the Northeast Quarter of Section 2 in Riverdale Township, and the Northwest Quarter of Section 1 in Riverdale Township. Under the new Application, Applicant seeks to add additional tile acreage in the South Half of the Northeast Quarter of Section 2 and the South Half of the Northwest Quarter of Section 1 in Riverdale Township. The enhanced project will ultimately be a 366-acre drain tile system. The tile in the Southeast Quarter of Section 35 in Bear Creek Township will discharge via a pump outlet near the southeast corner of the Southeast Quarter; the discharge will flow under Highway 11 via an existing culvert and into the JACKSON TOWNSHIP IMPROVEMENT DISTRICT No. 1 PROJECT on the south side of Highway 11. The tile in the Northwest Quarter of Section 1 and the Northeast Quarter of Section 2 in Riverdale Township will discharge via a pump outlet near the northwest corner of the Northwest Quarter of Section 1; the pump will discharge directly into the JACKSON TOWNSHIP IMPROVEMENT DISTRICT No. 1 PROJECT. The Dickey-Sargent Joint Water Resource District owns and operates the JACKSON TOWNSHIP IMPROVEMENT DISTRICT No. 1 PROJECT. The project will include three surface inlets with 1/2-inch coefficient.

According to records provided by Applicant, Brian Vculek owns the Northwest Quarter of Section 1 and the Northeast Quarter of Section 2 in Riverdale Township, and that portion of the Southeast Quarter of Section 35 in Bear Creek Township where Applicant intends to install his tile system.

Manager Haak moved, and Manager Zimbleman seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-17* filed August 18, 2021, for Brian Vculek regarding a proposed tile project in the Southeast Quarter of Section 35 in Bear Creek Township, the Northeast Quarter of Section 2 in Riverdale Township, and the Northwest Quarter of Section 1 in Riverdale Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT No. 2021-17, subject to the following conditions:

- 1) that Applicant install and maintain erosion protection at any and all outlets into the JACKSON TOWNSHIP IMPROVEMENT DISTRICT No. 1 PROJECT;
- 2) that Applicant install and maintain erosion protection at any and all outlets into NDDOT’s right of way;
- 3) that Applicant re-establish any areas disturbed installing or maintaining Applicant’s tile system;
- 4) that Applicant must turn off any pump outlets and otherwise close all outlets during “critical flood periods,” as determined by the Dickey County Water Resource District;

5) that 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 Southeast Quarter of Section 35 in Bear Creek Township, the Northeast Quarter of Section 2 in Riverdale Township, or the Northwest Quarter of Section 1 in Riverdale Township, under any blanket easements, or otherwise beyond the Water District's existing easement(s); and

6) that Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT No. 2021-17 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 District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District will recommend that Applicant comply with the following:

1) that Applicant obtain written permission from the Dickey-Sargent Joint Water Resource District to discharge into the JACKSON TOWNSHIP IMPROVEMENT DISTRICT NO. 1 PROJECT;

2) that Applicant obtain written permission from the North Dakota Department of Transportation to discharge into or otherwise utilize any of its highway right of way; and

3) 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 and SUBSURFACE WATER MANAGEMENT PERMIT No. 2021-17 to the State Engineer's Office, NDDOT, the Dickey-Sargent Joint Water Resource District, and Southeast Water Users District. Applicant's detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

***Brian Vculek surface app #5556-joint board (Sargent/Dickey)***

Brian Vculek has a surface permit proposal to the board which also needs to be approved by the Sargent County water district board as it is joint board (Sargent/Dickey) business. Chris will draft the 8-point

questionnaire for this project. Manager Gemar moved to approve the application. Manager Hauck seconded the motion. Upon Roll call, the motion passed unanimously.

***Gary Krapu correspondence***

Mr. Krapu has reached out to Sean Fredricks about concerns on Eric Larson's tile projects. He has not filed a formal complaint and Sean mentioned to Mr. Krapu that the board has handled the permits legally.

***Hudson surface drain***

**APPLICATION FOR SURFACE DRAIN No. 5908 for Hudson Township Board of Township Supervisors - Drainage Project in Sections 28, 33, 34, and 35 in Hudson Township, and Sections 2 and 3 in Port Emma Township**

The Board reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN No. 5908 for Applicant Hudson Township Board of Township Supervisors. Under the application, Applicant is seeking a surface permit for an existing drainage project. The drain commences in the Northeast Quarter of the Southeast Quarter of Section 28 and runs east to the east boundary of the Southeast Quarter of Section 28; from there, the ditch project turns south along the east boundary of the Southeast Quarter of Section 28 and the North Half of the Northeast Quarter of Section 33, in the west road ditch along 105th Avenue SE; the project includes a sluice gate at the intersection of 105th Avenue and 95th Street SE. The project crosses under 105th Avenue in the Northeast Quarter of Section 33 and daylights in the east road ditch along 105th Avenue, then continues south along the west boundary of the Northwest Quarter of Section 34 and the Southwest Quarter of Section 34; at the southwest corner of Section 34, the project turns east in the north road ditch along 96th Street SE; near the quarter-quarter line in the Southwest Quarter of Section 34, the project crosses south under 96th Street and daylights in the south road ditch along 96th Street; the project includes a sluice gate at the crossing under 96th Street. The ditch improvements continue east in the south road ditch along 96th Street, along the north boundary of Section 3 and the Northwest Quarter of Section 2 in Port Emma Township; the project then crosses north once again, under 96th Street, and daylights in the north road ditch along 96th Street; the project continues east along the south boundary of Section 35; the ditch improvements discharge into a new pipe along the south boundary of the Southeast Quarter of Section 35 for approximately 1,400 feet before discharging once again into ditch improvements; at the intersection of 96th Street and County Road 14 at the southeast corner of Section 35, the ditch improvements turn south, under 96th Street and continue south in the west road ditch along County Road 14, along the east boundary of the Northeast Quarter of Section 2. The project ultimately discharges into the James River. The intent of the project is to provide ag surface drainage, to relieve flooding along roads in the area, and to provide an outlet for drain tile in the area. The permitted drain will include 21,920 feet of drainage improvements; a maximum bottom width of 5 feet; a maximum cut of 13 feet; 3:1 side slopes; 24" to 36" pipe diameter; and 0.22% average pipe slope.

According to records on file with the Dickey County Recorder's office, the following landowners own parcels along the project in Hudson Township:

James and Connie Quandt own the East Half of the Southeast Quarter of Section 28; Rodney and Rose Sell own the East Half of the Northeast Quarter of Section 33; Kyle Courtney owns the West Half of the Northwest Quarter of Section 34 and the East Half of the Southeast Quarter of Section 33; Steve Hansen owns the Southwest Quarter of Section 34; Geraldine Courtney and Robert and Brenda Courtney own the Southeast Quarter of Section 34; Ross Thorpe owns the South Half of the Southwest Quarter of Section 35; and Gerald and Clair German, Craig German, Curt German, Bryan German, Linette Helgerson, Lori Nelson, and Lana Norton all own interests in the North Half of the Southeast Quarter of Section 35.

Further, the following landowners own parcels along the project in Port Emma Township:

Gerald and Clair German, Craig German, Curt German, Bryan German, Linette Helgerson, Lori Nelson, and Lana Norton all own interests in the Northeast Quarter of Section 2; Erica Thorpe owns the North 83 Rods of the Northwest Quarter of Section 2; Harold and Madella Scheffert own the Northwest Quarter of Section 3; and Robert and Brenda Courtney own the Northeast Quarter of Section 3.

Before the Board proceeded with any votes regarding the application, Sean Fredricks explained the conflict analysis the Board should conduct regarding Chairman Hansen's likely conflict in the matter in light of his ownership interest along the course of the project. Section 44-04-22 of the North Dakota Century Code provides the relevant standard, and provides that any manager who "has a direct and substantial personal or pecuniary interest in a matter before that board" has a legal conflict. In this case, Chairman Hansen owns property along the course of the project; the Board may have to require Applicant to obtain an easement from Chairman Hansen; and the project may benefit Chairman Hansen's property. In light of these interests, Mr. Fredricks indicated Chairman Hansen has a "direct and substantial personal or pecuniary interest" in the outcome of the Board's decision regarding the permit under Section 44-04-22.

Manager Haak moved to declare that Chairman Hansen has a conflict regarding APPLICATION FOR SURFACE DRAIN No. 5908, and to preclude Chairman Hansen from voting on any matters related to the permit. Manager Zimbleman seconded the motion. Upon roll call vote, Managers Hauck, Zimbleman, Haak, and Gemar voted in favor of the motion. Chairman Hansen abstained. The motion carried. With the conflict issues concluded, the Board proceeded with consideration of the Application.

Chris Gross prepared responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. The Board will require Applicant to obtain easements from landowners along the

course of the project to construct, operate, and maintain any portion of the project on their property. Further, the Board will require Applicant to obtain consent from the Dickey County Highway Department and Port Emma Township to construct, operate, and maintain any portion of the project on any of their respective road right of way. With these measures in place, the project will not result in adverse impacts to landowners or road authorities so no hearing is necessary regarding the Application.

Manager Zimbleman moved, and Manager Gemar seconded the motion, to conclude no hearing is necessary in accordance with Section 89-02-01-09.1(2) of the North Dakota Administrative Code; to adopt Moore Engineering's responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code; and to approve APPLICATION FOR SURFACE DRAIN No. 5908 for Hudson Township Board of Township Supervisors, 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 and record easements from the owners of any land along the course of the project on which Applicant will construct, operate, and maintain any portion of the project;
- 3) that Applicant obtain written consent from the Dickey County Highway Department and Port Emma Township to construct, operate, and maintain any portion of the project in any of their respective road right of way; and
- 4) that Applicant notify the Dickey 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.

Upon roll call vote, Managers Hauck, Zimbleman, Haak, and Gemar voted in favor of the motion. Chairman Hansen abstained. The motion carried.

In addition to those conditions, the Board will also recommend 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.

The Board directed Sean Fredricks to prepare the requisite NOTICE OF DECISION and to provide the NOTICE to all parties of record, as required by law.

***Tyler Hokana tile permit proposal***

Tyler Hokana emailed board secretary Judy Hansen with a proposal for tiling but hadn't filled out an application or proper paperwork at the time, so the permit was tabled until that paperwork is filed.

***Drain 11 Matrix update***

Chris Gross, the board's engineer, gave a small update on the project. There were no new details to give and the Sargent County Water District will hold a reassessment hearing in the near future.

***Billing***

There was much discussion on the billing of surface permits and subsurface permits. Subsurface permits go through a process with our engineer and attorney so that they are filed legally and complete. The legislature passed a law that water boards can charge \$500 per subsurface permit to offset the costs of the engineers and attorney's legal expenses. A surface permits also go through a process with our attorney and engineer but there is more legal and professional time spent on these permits. The board decided to charge the applicant the total cost of those permit expenses. Manager Hauck moved to charge the subsurface permit applicants \$500 per permit and the full expenses incurred for the surface permits. Manager Zimbleman seconded the motion. Upon roll call, the motion passed unanimously.

***Minutes Approval***

Manager Hauck moved to approve the minutes to the August 18, 2021 meeting. Manager Gemar seconded the motion. The motion carried unanimously.

***Financial Report***

Secretary Hansen provided the following financial reports:

Water Resource Board: Cash in Bank \$173,058.84

Savings \$100,000

Oakes Pilot Drain: \$36,112.37

Dickey County Drain #1: \$37,191.34

Yorktown Maple Bond: \$645,662.22

The board considered bills from Ohnstad Twichell of \$5136.10, Moore Engineering of \$225.00 and \$810.00 and lastly Dakota Helicopters, Inc. of \$642.60.

Manager Gemar moved to approve the bills and financial report. Manager Zimbleman seconded the motion. The motion carried unanimously.

There was some discussion on the Yorktown Maple Drain and Dickey County Drain #1 as to which drain should have precedence during a time of major flooding in the future. The board will discuss at the next meeting if a decision should be made on this matter.

There being no further business to discuss, the meeting was adjourned.

APPROVED:

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Steve Hansen, Chair

Attest:

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Judy Hansen, Secretary

