

Dickey County Water Resource District
MEETING MINUTES
July 20, 2022
8:00 am

The Dickey County Water Resource District met at the Dickey County Courthouse on Wednesday, July 20, 2022 at 8:00 a.m. Managers Steve Hansen, Keith Hauck, Justin Gemar and John Quandt were all present at the meeting. Sean Fredricks, the boards attorney and Nathan Trosen, Moore Engineering representative joined via video conference. Manager Don Zimbleman was not present. Joey Gemar and Darrin Wagner were also present.

Chairman Hansen called the meeting to order.

Wright Township discussion

Joey Gemar and Darrin Wagner were at the water board meeting representing Wright Township and gave discussion on the proposal of replacing culverts. Mr. Gemar made mention that the cost of the project would be a burden to the township and asked if the Dickey County Water Resource District had any desire to help cost share the project. They presented this to the board as it has the potential to affect the Yorktown Maple Drain water levels that lie down stream of the proposed project. Moore Engineering was hired by the Township to perform a study on culvert sizing of four crossings to be replaced. Mr. Gemar was looking for guidance on how to move forward with their project and the next steps to take. After much discussion, the board directed Mr. Gemar and Wagner to present their proposal to the County Commissioners for their insight. The board did agree to work alongside Wright Township and possibly help cost share the project if gates were added to the proposed culverts and operated in conjunction with the Yorktown Maple Project.

Application to Install a Subsurface Water Management System No. 2022-05 for Steve Hansen in the North Half of Section 36 in Ada Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2022-05* filed July 6, 2022, by Applicant Steve Hansen. Under the Application, Applicant seeks to install a 168-acre drain tile system in the North Half of Section 36 in Ada Township, Dickey County, North Dakota. The project will include a single gravity outlet that will discharge directly into Dry Run.

According to tax data supplied by Applicant, Stephen A. Hansen, as Trustee of the Stephen A. Hansen Revocable Living Trust, and Judy L. Hansen, as Trustee of the Judy L. Hansen Revocable Living Trust, own the North Half of Section 36 of Ada Township.

Before discussing the merits of both *Application No. 2022-05* and *Application No. 2022-06*, both submitted by Chairman Hansen, Sean Fredricks explained the conflict analysis the Board should conduct regarding Chairman Hansen's conflict in the matter. Sean 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 quasi-legislative 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, Chairman Hansen clearly has a direct and substantial personal interest in the matter that creates a clear conflict. On a roll call vote, the Board concluded Chairman Hansen has a conflict and should not participate in any votes regarding *Application No. 2022-05* or *Application No. 2022-06*. More specifically, Managers Hauck, Gemar, and Quandt all voted to conclude Chairman Hansen has a conflict and should abstain from any votes regarding *Application No. 2022-05* or *Application No. 2022-06*.

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 61-16-08.1 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 Gemar moved, and Manager Quandt seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-05* filed July 6, 2022, for Steve Hansen, regarding a proposed tile project in the North Half of Section 36 in Ada Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT No. 2022-05, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into Dry Run.

2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
3. 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 of Section 36 in Ada Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
4. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT No. 2022-05 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, Managers Hauck, Gemar, and Quandt all voted in favor of the motion. Chairman Hansen abstained. The motion carried.

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 permission from the Dickey County Highway Department to discharge into or otherwise utilize any of its highway right of way; by law the Board cannot require Applicant to obtain Highway Department permission.
2. The Board recommends that Applicant obtain all other necessary and requisite licenses, permit, 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. 2022-05, and Applicant's downstream flow map to the Department of Water Resources, the Dickey County Highway Department, 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.

Application to Install a Subsurface Water Management System No. 2022-06 for Steve Hansen in the Southeast Quarter of Section 12 in Lovell Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2022-06* filed July 6, 2022, by Applicant Steve Hansen. Under the Application, Applicant seeks to install a 150-acre drain tile system in the Southeast Quarter of Section 12 in Lovell Township, Dickey County, North Dakota. The project will include two pump outlets, one on the east boundary of the Southeast Quarter and one on the south boundary; both pumps will discharge

directly into the Lovell Improvement Project, a private surface drain permitted under SURFACE PERMIT NO. 4757 for Lovell Improvement Project, LLC.

According to Dickey County tax data and deeds on file with the Dickey County Recorder's Office, Stephen A. Hansen, as Trustee of the Stephen A. Hansen Revocable Living Trust, and Judy L. Hansen, as Trustee of the Judy L. Hansen Revocable Living Trust, own the Southeast Quarter of Section 12 of Lovell Township. With regard to downstream parcels, Lovell Improvement Project, LLC, owns the property downstream one mile from each of the project outlets.

Manager Gemar moved, and Manager Quandt seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-06* filed July 6, 2022, for Steve Hansen, regarding a proposed tile project in the Southeast Quarter of Section 12 in Lovell Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-06, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any outlet into any township road right of way.
2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
3. 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 12 in Lovell Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
4. 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. Applicant will remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to one mile downstream from each pump outlet.
6. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT No. 2022-06 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, Managers Hauck, Gemar, and Quandt all voted in favor of the motion. Chairman Hansen abstained. The motion carried.

With regard to condition #5, 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 Lovell Township to discharge into or otherwise utilize any of the Township's road right of way.
2. The Board recommends that Applicant obtain all other necessary and requisite licenses, permit, 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. 2022-06, and Applicant's downstream flow map to the Department of Water Resources, Lovell Township, the Lovell Improvement Project, 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.

EDF Renewables wind project

The Dickey County Water Resource District received a packet in the mail from EDF Renewables about potentially incorporating a wind farm on the land that the water district owns. The packet was just informational and no proposals were made to the board.

Oakes Pilot Drain

Managers Hansen and Quandt informed the board that they had directed Dakota Improvement to clean out the Oakes Pilot Drain, as there was debris and weeds that were keeping the drain from functioning efficiently. The Board agreed to hire Dakota Improvement. Manager Quandt stated that the drain water levels fell significantly after the clean out. They also have hired Dakota Helicopter to spray the ditch for weeds and other brush that hold up water and keep the drain from running correctly.

Dickey County Drain #1

Manager Gemar gave an overview of Dickey County Drain #1 and the issues of it being at full capacity. Some of the culverts aren't draining correctly with silt and debris holding up water. There are also weeds and algae contributing to the issues. Manager Gemar inquired about the chemical used to clean out the Oakes Pilot Drain and if that would be useful for the DC Drain #1. There was much discussion on weed management. Manager Gemar visited with Dakota Improvement to clean out the 42" culverts to help with water flow and they will do that when

time allows. Sean Fredricks, the Board's attorney, suggested the Board execute a written contract with Dakota Helicopters to protect the Board from any damages that may incur with the spraying application, to include indemnity and hold harmless protection for the Board, and to require Dakota Helicopters to secure insurance. Mr. Fredricks presented a draft contract to the board for signature of all parties. Manager Gemar moved to hire Dakota Helicopter to perform the spraying of the drains and to authorize the Chair and Secretary to sign the draft agreement with Dakota Helicopter. Manager Hauck seconded the motion. Upon roll call, the motion carried unanimously.

Manager Per Diem Increase

Manager Hansen approached the board with the proposal of a per diem increase. The State Legislature has raised legislative per diem for meetings and Sean Fredricks advised the board that they could raise their per diem rates as well to match legislative compensation. Upon discussion, the board decided to raise their per diem from \$189.00 to \$193.00 for monthly meetings. Sean Fredricks presented to the board a draft motion that allows the Dickey County Water Resource District to raise their monthly meeting per diem automatically when the legislature increases their compensation, that way they don't have to make a motion every time there is a per diem increase.

During the 2021 Legislative Session, the Legislature approved HB 1216, a bill that increased the maximum compensation for water managers to match compensation for legislators. In accordance with N.D. Cent. Code § 54-03-20, commencing on July 1, 2022, legislative compensation increased to \$193 per day. The Board agreed to set compensation at the amount permissible for legislators under North Dakota law, currently and as modified in the future by the Legislature, as opposed to requiring approvals each time the legislature modifies or increases legislative compensation.

Manager Hauck moved to match legislative compensation in accordance with HB 1216 and applicable North Dakota law. Manager Gemar seconded the motion. Upon roll call vote, the motion carried unanimously.

June Minutes

Manager Quandt moved to approve the June 15, 2022 meeting minutes. Manager Hauck seconded the motion. Upon roll call, the motion passed unanimously.

Financial Statement and bills

The Board considered bills from Ohnstad Twichell of \$1513.38 and Moore Engineering of \$1110.00. Secretary Hansen gave the financial report. Manager Hauck moved to approve the financial statement and bills. Manager Gemar seconded the motion. Upon roll call, the motion carried unanimously.

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

APPROVED:

Steve Hansen, Chairman

ATTEST:

Judy Hansen, Secretary