

Dickey County Water Resource District  
MEETING MINUTES  
June 15, 2022  
8:00 am

The Dickey County Water Resource District met at the Dickey County Courthouse in Ellendale, ND at 8:00 am on Wednesday, June 15, 2022. Managers Steve Hansen, Keith Hauck, Justin Gemar and John Quandt were all present at the meeting. Sean Fredricks, the board's attorney and Nathan Trosen, Moore Engineering representative joined via video conference. Erik Larson and Jay Volk were also present.

Chairman Hansen called the meeting to order.

***Cole Vculek tile permit***

***Application to Install a Subsurface Water Management System No. 2022-02 for Cole Vculek in the East Half of Section 20 in Riverdale Township***

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2022-02* filed June 3, 2022, by Applicant Cole Vculek. Under the Application, Applicant seeks to install a 285-acre drain tile system in the East Half of Section 20 in Riverdale Township, Dickey County, North Dakota. The project will include a single gravity outlet located near the Southeast Quarter of Section 12; the outlet will discharge directly into one of the Oakes Test Area drains owned and operated by the Dickey-Sargent Irrigation District; the ditch flows west and ultimately discharges into the James River. The project will include four surface inlets. The Dickey-Sargent Irrigation District approved the proposed tile project, and the discharge into its facility, at the District's meeting on May 12, 2022.

According to a recent deed supplied by Applicant, Cole Vculek owns the East Half of Section 20 of Riverdale Township where Applicant intends to install the tile system.

Manager Quandt moved, and Manager Hauck seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-02* filed June 3, 2022, for Cole Vculek, regarding a proposed tile project in the East Half of Section 20 in Riverdale Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-02, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the Dickey-Sargent Irrigation District's Oakes Test Area drain.
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 East Half of Section 20 in Riverdale 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. 2022-02 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 Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the Board 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, SUBSURFACE WATER MANAGEMENT PERMIT No. 2022-02, and Applicant's downstream flow map to the Department of Water Resources, the Dickey-Sargent Irrigation 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.

#### ***Summit Carbon presentation***

Jay Volk, Summit Carbon representative, approached the board with a brief introduction of his role in the company and his intentions in the near future of needing to acquire permits and approval from the board for the Summit Carbon pipeline. The Board explained Summit will need a Utility Permit from the Board for every Drain crossing.

#### ***Stephen Quandt tile permit***

#### ***Application to Install a Subsurface Water Management System No. 2022-03 for Stephen Quandt in the East Half of Section 24 in Bear Creek Township***

In February of 2021, the Board approved *Application to Install a Subsurface Water Management System No. 2021-02* for Stephen Quandt. The North Dakota Legislature subsequently implemented a new tile permitting system under North Dakota law, including a requirement that "[a]n amendment of a previously approved subsurface water management system permit must be made according to the provisions for approving a permit under [the new tile permitting statute]." Mr. Quandt recently approached the Board and indicated he plans to add an additional pump outlet to the system approved under PERMIT NO. 2021-02, and, as required under the new tile permitting statute, Mr. Quandt submitted *Application to Install a Subsurface Water Management System No. 2022-03* to amend his permit to allow an additional pump outlet. PERMIT NO. 2022-03 will amend and supersede PERMIT NO. 2021-02.

Under *Application to Install a Subsurface Water Management System No. 2022-03*, Applicant seeks a permit for a 250-acre drain tile system in the East Half of Section 24 in Bear Creek Township, Dickey County, North Dakota. Applicant's system will include two outlets; the first will be the outlet permitted under PERMIT NO. 2021-02, a pump outlet that will discharge via two underground pipelines that will run to the east, under 114th Avenue SE; the pipelines will both run across a portion of the Northwest Quarter of Section 19 of Verner Township; the pipelines will then run south and will converge and connect to Nathan Quandt's tile system in the Southwest Quarter of 19; the joint project will discharge along the south boundary of the Southwest Quarter of Section 19, directly into the surface drain constructed by the Dickey County Highway Department under SURFACE DRAIN PERMIT No. 5503. The second outlet will be a pump outlet located near the south boundary of the Southeast Quarter of Section 24; the pump will also discharge directly into the surface drain constructed by the Dickey County Highway Department under SURFACE DRAIN PERMIT No. 5503. The tile discharge from both outlets will flow east through the 5503 ditch, and will ultimately discharge into the Jackson Township Improvement District No. 1 project.

According to records previously supplied by Applicant, Stephen Quandt owns the East Half of Section 24 in Bear Creek Township. Michael Harty owns the Northwest Quarter of Section 19 of Verner Township in Sargent County.

Before discussing the merits of the application, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Quandt'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, Manager Quandt has a direct and substantial personal interest in the matter that creates a clear conflict. On a roll call vote, the Board concluded Manager Quandt has a conflict and should not participate in any votes regarding Stephen's drain tile application. More specifically, Chairman Hansen and Managers Hauck and Gemar all voted to conclude Manager Quandt has a conflict and should abstain from any votes regarding Stephen's application.

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 Hauck seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-03* filed June 13, 2022, for Stephen Quandt, regarding a proposed tile project in the East Half of Section 24 in Bear Creek Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-03, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the Dickey County Highway Department's highway 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 East Half of Section 24 in Bear Creek 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 project outlet.
6. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-03 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 Hansen and Managers Hauck and Gemar all voted in favor of the motion. Manager Quandt 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 permission from Dickey County and Sargent County to discharge into their respective highway right of way.
2. The Board recommends that Applicant obtain and record an easement from Nathan Quandt regarding connection to the tile system in the Southwest Quarter of Section 19 in Verner Township.
3. The Board recommends that Applicant obtain written permission from Verner Township and Bear Creek Township to construct, operate, install, and maintain any buried pipeline in any of their Township right of way.
4. 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 and SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-03 to the Department of Water Resources, the Dickey County Highway Department, the Sargent County Highway Department, Southeast Water Users District, Bear Creek Township, Verner

Township, and downstream landowners. Applicant's detailed project design maps are exempt records, and the Board will not provide copies to any third parties.

***Erik Larson tile permit***

***Application to Install a Subsurface Water Management System No. 2022-04 for Eric Larson in the South Half of Section 11 in Kentner Township***

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2022-04* filed June 14, 2022, by Applicant Eric Larson. Under the Application, Applicant seeks to install a 304-acre drain tile system in the South Half of Section 11 in Kentner Township, Dickey County, North Dakota. The project will include a single pump outlet located in the southwest corner of the Southwest Quarter of Section 11; the outlet will discharge into the east road ditch along County Road 8; the discharge will then flow south, under 92nd Street SE; the discharge will continue south in the east road ditch, along the west boundary of Section 14 of Kentner Township.

According to a deed supplied by Applicant, C&E Larson LP, a North Dakota limited partnership, owns the South Half of Section 11 where Applicant intends to install the tile system. Further, according to the Dickey County Recorder, the Dickey County Highway Department owns its County Road 8 highway right of way in Sections 11 and 14 of Kentner Township.

Manager Gemar moved, and Manager Quandt seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-04* filed June 14, 2022, for Eric Larson, regarding a proposed tile project in the South Half of Section 11 in Kentner Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-04, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the Dickey County Highway Department's highway right of way.
2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
3. 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.
4. 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 South Half of Section 11 in Kentner Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
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 the project outlet.
6. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-04 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 #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 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. 2022-04, 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.

#### ***Dickey County Drain #1 discussion***

Manager Hansen started discussion regarding complaints that come to the managers and how best to handle them regarding pumps discharging into Drain #1 during flood conditions. With the recent flooding and high water around Dickey County drain #1, a few residents and landowners have reached out to several managers with complaints about tile pumps operating during floods. In accordance with the new tile law passed during the 2021 legislative session, the Board attaches a condition to tile permits that indicates applicants/permittees must turn off their pumps during "critical flood periods," as designated by the Board. The managers have explained that there is a drainage complaint form for parties who feel aggrieved by tile systems but no one has submitted any complaints. Manager Gemar has been doing most of the legwork on the complaints and overseeing the area to make sure everyone is following their conditions. He feels, as well as the rest of the managers, that the conditions are being met and that landowners are cooperating. The Board can hold a special meeting in the future if there is a complicated or complex pump or flooding situation. In most cases, Manager Gemar and Chairman Hansen have simply contacted permittees to request that they refrain from operating their pumps, without the necessity for a special meeting or Board action; the permittees have complied with those requests.

Manager Gemar also followed up from last month's meeting on the Andy Lacina pasture land that is being flooded due to bad culverts at the crossing of 85<sup>th</sup> ST. This culvert is difficult to get to with the flooding conditions but the board did agree that a new culvert should be added when its viable to get equipment to this area. Manager Gemar moved to add a 36" culvert to this crossing and Manager Quandt seconded the motion. Upon roll call, the motion passed unanimously.

Nathan Trosen gave an update of the Wright County drainage proposal he is working on with them and they are proceeding with their plans and Nathan will give the board an update at the next meeting with more information as to how it will affect Dickey County and the Yorktown Maple drain.

***Budget***

The board managers put together their budget for 2023. Chairman Hansen will present the budget to the county commissioners in July. John Quandt moved to approve the new budget and Manager Hauck seconded the motion. Upon roll call, the motion passed unanimously.

***May Minutes***

Manager Gemar moved to approve the May 18, 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 \$ 252.00 and Moore Engineering of \$ 465.00. 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 passed unanimously. There being no further business to discuss, the meeting was adjourned.

**APPROVED:**

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Steve Hansen, Chairman

ATTEST:

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Judy Hansen, Secretary