

DRAFT: These are DRAFT minutes, subject to amendment before final approval by the Dickey County Water Resource District

Dickey County Water Resource District

MEETING MINUTES

August 16, 2023

The Dickey County Water Resource District met at the Dickey County Courthouse in Ellendale ND at 8:00 am on Wednesday, August 16, 2023. Managers Steve Hansen, Keith Hauck and Justin Gemar were all present at the courthouse. Sean Fredricks, the board's attorney and Nathan Trosen, Moore Engineering representative joined via video conference. Erik Larson was also present at the courthouse. Managers John Quandt and Don Zimbleman were absent.

Chairman Hansen called the meeting to order.

Justin Quandt/Charnell Haak tile permit

Application to Install a Subsurface Water Management System No. 2023-15 for Justin Quandt and Charnell Haak in the Southeast Quarter of Section 17 in Riverdale Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2023-15* filed August 11, 2023, by Applicants Justin Quandt and Charnell Haak. Under the Application, Applicants seek to install a 100-acre drain tile system in the Southeast Quarter of Section 17 in Riverdale Township, Dickey County, North Dakota. The project will include a gravity outlet in the southwest corner of the Southeast Quarter of Section 17; the outlet will discharge into the north road ditch along County Road 5; the discharge will flow west in the north road ditch along County Road 5 until intersecting with Red River Valley & Western Railroad's right of way along the south boundary of the Southeast Quarter of Section 18; the discharge will turn and flow south along the west boundary of RRV&W's right of way until discharging into a drain in Section 19 owned and operated by the Dickey-Sargent Irrigation District; the drain flows to the south and west.

According to information supplied by Applicants, Justin and Abbey Quandt own the Southeast Quarter of Section 17 in Riverdale Township, less the East 125 feet, and less the 13.61-acre and 23.36-acre tracts Charnell Haak is purchasing from the Robert Titus Estate via contract for deed. Further according to information supplied by Applicants, Dickey County owns its County Road 5 right of way, Red River Valley & Western Railroad, and the Dickey-Sargent Irrigation District owns its right of way.

Before discussing the merits of the application, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Quandt's potential conflict in the matter. Applicant Justin Quandt is Manager Quandt's son. Mr. Fredricks 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 may have a “direct and substantial personal interest” in the matter that creates a conflict. Manager Hauck moved to conclude that Manager Quandt has a conflict in the matter and should not vote on the matter. Manager Gemar seconded the motion. Upon a roll call vote, Chairman Hansen and Managers Hauck, and Gemar all voted to conclude Manager Quandt has a conflict and should abstain from any votes regarding Justin’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. 2023-15* filed August 11, 2023, for Justin Quandt and Charnell Haak, regarding a proposed tile project in the Southeast Quarter of Section 17 in Riverdale Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-15, subject to the following conditions:

1. Applicants will install and maintain erosion protection at any and all outlets into the Dickey County Highway Department’s County Road 5 right of way.
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 17 in Riverdale Township under any blanket easements, or otherwise beyond the Water District’s existing easement(s).
4. Applicants will remove silt or vegetation, or repair erosion or scour damages *directly* caused by Applicants’ tile system, but only up to one mile downstream of Applicants’ tile outlet.
5. Applicants must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-15 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. The motion passed.

With regard to condition #4, 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 will recommend that Applicants comply with the following:

1. The Board recommends that Applicants obtain written consent from the Dickey County Highway Department to discharge into or otherwise utilize any of the County's highway 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 and SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-15 to the Department of Water Resources, the Dickey County Highway Department, Red River Valley & Western Railroad, Dickey-Sargent Irrigation District, and Southeast Water Users District. Applicants' detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Richard Gramlow tile permit app

Application to Install a Subsurface Water Management System No. 2023-16 for Richard Gramlow in the Southeast Quarter and the South Half of the Northeast Quarter of Section 33 in Maple Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2023-16* filed August 15, 2023, by Applicant Richard Gramlow. Under the Application, Applicant seeks to install a 170-acre drain tile system in the Southeast Quarter and the South Half of the Northeast Quarter of Section 33 in Maple Township, Dickey County, North Dakota. The project will include a single pump outlet along the west boundary of the Southeast Quarter of Section 33; the pump will discharge directly into a pond or slough; the slough is part of a system of wetlands that flow to the Lee Waterfowl Production Area in Section 32 of Maple Township.

According to tax information supplied by Applicant, R. Alan and Ruby A. Gramlow own the Southeast Quarter and the South Half of the Northeast Quarter of Section 33 in Maple Township. Further, the US Fish and Wildlife Service owns and operates the Lee Waterfowl Production Area in Section 32.

Manager Hauck moved, and Manager Gemar seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-16* filed August 15, 2023, for Richard Gramlow, regarding a proposed tile project in the Southeast Quarter and the South Half of the Northeast Quarter of Section 33 in Maple Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-16, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the pond or slough along the west boundary of the Southeast Quarter of Section 33 in Maple Township.
2. Applicant will turn off any pump outlets and otherwise close all outlets during “critical flood periods,” as determined by the Dickey County Water Resource District.
3. Applicant will re-establish any areas disturbed installing or maintaining Applicant’s tile system.
4. Applicant will not install Applicant’s tile system within 20 feet, on either side, of any rural water lines Southeast Water Users District in the Southeast Quarter and the South Half of the Northeast Quarter of Section 33 in Maple Township under any blanket easements, or otherwise beyond the Water District’s existing easement(s).
5. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-16 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 Applicant’s permit. However, for Applicant’s protection, and to ensure protection of Applicant’s tile system, the Board recommends 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. 2023-16 to the Department of Water Resources, Maple Township, US Fish and Wildlife Service, 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.

Kyle Courtney tile permit app

Application to Install a Subsurface Water Management System No. 2023-14 for Kyle Courtney in the Southeast Quarter of Section 30 and the North Half of Section 31 in Hudson Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2023-14* filed July 27, 2023, by Applicant Kyle Courtney. Under the Application, Applicant seeks to install a 75-acre drain tile system in the Southwest Quarter of the Southeast Quarter of Section 30 and the North Half of Section 31 in Hudson Township, Dickey County, North Dakota. The system in the Southwest Quarter of the Southeast Quarter of Section 30 will connect to the system in the Northeast Quarter of Section 30 via a line under 95th Street SE. The project will include a single gravity outlet that will discharge via an underground line that will run to the west, across the Northwest Quarter of Section 30 until daylighting and discharging into a pond or slough that discharges to the south, into Dry Run.

According to tax information supplied by Applicant, Rodney and Rose Sell own the Northwest Quarter of Section 31 in Hudson Township; Kyle Courtney is purchasing the Northeast Quarter of Section 31 from Geraldine Courtney under a contract for deed; and Geraldine Courtney is purchasing the West Half of the Southeast Quarter of Section 30 from Anna Courtney.

Manager Gemar moved, and Manager Hauck seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-14* filed July 27, 2023, for Kyle Courtney, regarding a proposed tile project in the Southeast Quarter of Section 30 and the North Half of Section 31 in Hudson Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-14, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the pond or slough in the Northwest Quarter of Section 31 in Hudson Township.
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 30 or in the North Half of Section 31 in Hudson 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. 2023-14 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 comply with the following:

1. The Board recommends that Applicant obtain written consent from the Hudson Township Board of Township Supervisors to install any pipeline or other project components in the Township's right of way.
2. The Board recommends 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. 2023-14 to the Department of Water Resources, Hudson 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.

Yorktown Maple Bond

Manager Hansen informed the board, after receiving information from Nathan Trosen, Moore Engineering representative, and Ohnstad Twichell, that they could start a paydown on the Yorktown Maple Bond as soon as May 1, 2024. The board would have to start the paydown from the furthest date of the bond and so on which is listed to be paid off in 2032 and payments in like manner 2031 and such. Mr. Trosen stated that from 2032 to 2028 a payment of approx. \$500,000 could be made and the year 2027 would be approx. \$95,000. Ohnstad Twichell will be in touch with the board about the paydown

process and if there are any notice requirements before those payments are made. Manager Hansen requested that any more discussion to be made, should happen at the September meeting allowing for a full board to be present.

O & M-14A Project

Manager Hansen was present at the Dickey County Commissioner meeting yesterday for any questions that might arise on the project and its O & M plan. The commissioners voted to accept the changes that were made in the special meeting, August 2, 2023 by the Dickey County Water Resource District and then approved the Joint Powers Agreement and the amended O & M plan. That joint agreement is now in effect and construction of the project can proceed. The commissioners did accept the Dakota Improvement bid on the project and is scheduled to begin sometime in September. Two representatives from the Dickey County Water Resource District will be listed as operators of the O & M plan. Manager Hauck moved to appoint Manger Quandt and Manager Hansen as the operators representing the board. Manager Gemar seconded the motion. Upon roll call, the motion passed unanimously.

Per Diem Increase

Sean Fredricks, the board's attorney, gave discussion on the new per diem increases passed by the legislature in July of 2023. He made mention that the Dickey County Water Resource District could and should also increase their per diems to match the new legislation. After some discussion, Manager Gemar moved to increase the per diem to \$205 per meeting. Manager Hauck seconded the motion. Upon roll call, the motion passed unanimously. Discussion was then held on Secretary Hansen's wages, and after much insight from Mr. Fredricks and Mr. Trosen, it was felt the secretary wage should increase as well but will be tabled until September's meeting with a full board.

DC Drain #1 bid

Manger Gemar presented the board with a bid from Dakota Improvement for maintenance to be done at the temporary pumping site. After much discussion, it was decided to wait on any maintenance until the permanent permit is received for this pumping site.

Meeting Minutes

Manager Gemar moved to approve the July 19, 2023 meeting minutes. Manager Hauck seconded the motion. Upon roll call, the motion passed unanimously.

Manager Hauck moved to approve the August 2, 2023 special meeting minutes. Manager Gemar seconded the motion. Upon roll call, the motion passed unanimously.

Bills/financial report

The board considered bills from Ohnstad Twichell of \$2715.35, Moore Engineering of \$682.50, Dakota Helicopter inc. of \$744.85 and Dakota Improvement of \$7.64(finance charge). After much discussion on how to avoid finance charges in the future, Manager Hansen agreed to reach out the commissioners as to a better process of expediting payments to businesses to avoid finance charges. Secretary Hansen gave the financial report. Manager Gemar moved to accept the bills and financial report. Manager Hauck seconded the motion. Upon roll call, the motion passed unanimously.

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

APPROVED:

Steve Hansen, Chairman

ATTEST:

Judy Hansen, Secretary