

**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

October 18, 2023

The Dickey County Water Resource District met at the Dickey County Courthouse in Ellendale ND at 8:00 am on Wednesday, October 18, 2023. Managers Steve Hansen, Don Zimbleman, Keith Hauck, Justin Gemar and John Quandt were all present at the courthouse. Sean Fredricks, the board's attorney and Nathan Trosen, Moore Engineering representative joined via video conference. Eric Larson was also present at the courthouse.

Chairman Hansen called the meeting to order.

Jeff Forward App for Water Appropriation

The Board received a Notice of Appropriation on behalf of Jeff Forward for the intention of applying for water from the Department of Water Resource. The notice was just informational and no action needed to be taken on the matter.

Krapu/Larson Drainage complaint and appeal

Sean Fredricks, the board's attorney, explained the formal drainage complaints filed by Gary Krapu against Carl Larson in 2017 with the Board. The Board dismissed all of the complaints in 2017 for various reasons. Krapu appealed one of the complaints to the Department of Water Resources (formerly known as the State Engineer's Office), regarding the complaint in the East Half of Section 11 in Porter Township. Mr. Fredricks explained that DWR upheld the dismissal regarding the allegations of drainage in the Southeast Quarter of Section 11 but returned the complaint regarding the Northeast Quarter of Section 11. More specifically, DWR concluded Mr. Larson's tile project in that quarter did not reduce the surface area watershed and that, therefore, the surface drainage improvements drained a watershed over 80 acres, the surface permitting threshold. Eric Larson was present and explained that he is working on a plan to further reduce the surface area watershed below 80 acres. Mr. Fredricks explained that if Mr. Larson takes measures to further reduce the watershed below 80 acres in the near future, the Board can dismiss the remainder of the complaint regarding the Northeast Quarter of Section 11; however, if Mr. Larson cannot complete remedial work within a reasonable amount of time, based on DWR's findings, the Board will have no choice but to order the drainage closed or filled.

New Substation-Applied Digital

Sean Fredricks, the board's attorney, and Nathan Trosen, Moore Engineering Representative, met with the representatives of Applied Digital to discuss the project Applied Digital is preparing to construct in Dickey County. Mr. Fredricks and Mr. Trosen gave the Applied Digital engineer a few permit requirements that may need to be obtained for anything they plan to drain or pump for the construction, including their recommendation that Applied Digital apply for a surface drainage permit. Mr. Fredricks and Mr. Trosen will work with Applied Digital to answer any permitting questions that might arise. No action was needed at this time.

Mike Quandt/Ron Hankel Tile App

Application to Install a Subsurface Water Management System No. 2023-18 for Mike Quandt and Ron Hankel in the Northeast Quarter of Section 22 and the East Half of the Northwest Quarter of Section 22 in Riverdale Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2023-18* filed October 11, 2023, by Applicants Mike Quandt and Ron Hankel. Under the Application, Applicants seek to install a 140-acre drain tile system in the Northeast Quarter and the East Half of the Northwest Quarter of Section 22 in Riverdale Township, Dickey County, North Dakota. The project will include a single pump outlet in the northeast corner of the Northeast Quarter of Section 22; the outlet will discharge into the west road ditch along 112th Avenue SE and the south road ditch along County Road 5; the discharge will flow north, under County Road 5, and will daylight in the southeast corner of Section 15 and will flow into a private drain permitted as SURFACE DRAIN PERMIT NO. 5552, previously approved by the Dickey County Water Resource District for Applicant Steve Hansen. The private drain permitted under SURFACE DRAIN PERMIT NO. 5552 runs north, along the east boundary of Section 15 and into the South Half of Section 11; the discharge will flow north and will ultimately flow into Jackson Township Improvement District No. 1, a legal assessment drain owned and operated by the Dickey-Sargent Joint Water Resource District.

According to tax parcel data supplied by Applicants, Mike Quandt owns the Northwest Quarter of Section 22, and Kevin Hankel, Rhonda Deutsch, and Valerie Clawson own the Northeast Quarter of Section 22. With regard to downstream properties one mile downstream from the project pump, Dickey County owns its County Road 5 right of way; Kasowski Russet, LLP, owns the South Half of Section 15; and James Quandt and Connie Boe-Quandt own the Northeast Quarter of Section 15.

Before discussing the merits of the application, Sean Fredricks explained the conflict analysis the Board should conduct regarding potential conflicts for both Manager Quandt and Chairman Hansen. Applicant Mike Quandt is Manager Quandt's brother and the project will discharge into Chairman Hansen's surface drain permitted under SURFACE DRAIN PERMIT NO. 5552. 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, both Manager Quandt and Chairman Hansen may have “direct and substantial personal interests” in the matter that creates conflicts for both. Manager Hauck moved to conclude that both Manager Quandt and Chairman Hansen have conflicts in the matter and that neither should vote on the matter. Manager Gemar seconded the motion. Upon a roll call vote, Managers Hauck, Zimbleman, and Gemar all voted in favor of the motion. Chairman Hansen and Manager Quandt abstained. The motion passed.

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.

The Board discussed how the project will impact benefits and assessments for Jackson Township Improvement District No. 1. The Northeast Quarter and the East Half of the Northwest Quarter of Section 22 in Riverdale Township are not currently within the Jackson Township Project assessment district, but the property will benefit from the Jackson Township Project as a result of the tile project. The Board recognized this project will ultimately discharge into the Jackson Township Project and ultimately concluded the Northeast Quarter of Section 22 and the East Half of the Northwest Quarter of Section 22 should be included within the Jackson Township Project assessment district at 25% benefit.

Manager Zimbleman moved, and Manager Hauck seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-18* filed October 11, 2023, for Mike Quandt and Ron Hankel, regarding a proposed tile project in the Northeast Quarter and the East Half of the Northwest Quarter of Section 22 in Riverdale Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-18, 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 install and maintain erosion protection at any and all outlets into Riverdale Township’s road right of way.
3. The Dickey-Sargent Joint Water Resource District will include the Northeast Quarter of Section 22 and the East Half of the Northwest Quarter of Section 22 in Riverdale Township in the Jackson Township Improvement District No. 1 assessment district at 25% benefit.

4. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
5. 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.
6. 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 Northeast Quarter of Section 22 or in the East Half of the Northwest Quarter of Section 22 in Riverdale Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
7. 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.
8. Applicants must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-18 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, Managers Hauck, Zimbleman, and Gemar all voted in favor of the motion. Chairman Hansen and Manager Quandt abstained. The motion passed.

With regard to condition #7, 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 Steve Hansen to discharge into or otherwise utilize the private drain permitted under SURFACE DRAIN PERMIT NO. 5552.
2. 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.
3. The Board recommends that Applicants obtain written consent from the Riverdale Township Board of Township Supervisors to discharge into or otherwise utilize any of the Township's road right of way.
4. 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. 2023-18 to the Department of Water Resources, the Dickey County Highway Department, Riverdale Township, the Dickey-Sargent Joint Water Resource District, downstream landowners, 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

Mike Quandt/James Quandt Tile App

Application to Install a Subsurface Water Management System No. 2023-19 for Mike Quandt, James Quandt, and QF-1 LLLP in the North Half of Section 21 and the West Half of the Northwest Quarter of Section 22 in Riverdale Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2023-19* filed October 11, 2023, by Applicants Mike Quandt, James Quandt, and QF-1 LLLP, a North Dakota limited liability limited partnership. Under the Application, Applicants seek to install a 220-acre drain tile system in the North Half of Section 21 and the West Half of the Northwest Quarter of Section 22 in Riverdale Township, Dickey County, North Dakota. The project will include a single pump outlet in the Northeast Quarter of the Northeast Quarter of Section 21; the outlet will discharge via a line under 111th Avenue SE, into a pipeline in the West Half of the Northwest Quarter of Section 22, owned and operated by the Dickey-Sargent Irrigation District; Dickey-Sargent Irrigation District's line discharges directly into the James River.

According to tax parcel data supplied by Applicants, Mike Quandt owns the West Half of the Northwest Quarter of Section 22; James Quandt and Connie Boe-Quandt own the Northwest Quarter of Section 21; and Thomas Daniels, as Trustee of the Daniels Family Trust, owns the Northeast Quarter of Section 21. QF-1 LLLP is purchasing the Northeast Quarter of Section 21 under a Contract for Deed.

Before discussing the merits of the application, the Board considered the likely potential conflict for Manager Quandt. Applicants Mike and James Quandt are both Manager Quandt's brothers and Manager Quandt's sons own QF-1 LLLP. Manager Quandt likely has a "direct and substantial personal interest" in the matter that creates a conflict. Manager Zimbleman moved to conclude that Manager Quandt has a conflict and should not vote on the matter. Manager Gemar seconded the motion. Upon a roll call vote, Chairman Hansen and Managers Hauck, Zimbleman, and Gemar all voted in favor of the motion. Manager Quandt abstained. The motion passed. Sean Fredricks again noted the Board's analysis under Section 44-04-22 is a mandatory process that controls this conflict situation; the Board need not seek appointment of an alternate water manager by the County Commission under Section 61-16-08.1 of the Century Code just for this matter.

With the conflict issue concluded, the Board proceeded with discussion regarding the application.

Manager Hauck moved, and Manager Gemar seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-19* filed October 11, 2023, for Mike Quandt, James Quandt, and QF-1 LLLP, regarding a proposed tile project in the North Half of Section 21 and the West Half of the Northwest Quarter of Section 22 in Riverdale Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-19, subject to the following conditions:

1. Applicants will install and maintain erosion protection at any and all outlets into the James River.
2. Applicants will install and maintain erosion protection at any and all outlets into the James River.

3. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
4. 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.
5. 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 North Half of Section 21 or in the West Half of the Northwest Quarter of Section 22 in Riverdale Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
6. Applicants must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-19 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, Zimbleman, and Gemar all voted in favor of the motion. Manager Quandt abstained. The motion passed.

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-Sargent Irrigation District to discharge into or otherwise utilize its pipeline.
2. The Board recommends that Applicants obtain written consent from the Riverdale Township Board of Township Supervisors to install any project components in any of the Township's road right of way.
3. 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. 2023-19 to the Department of Water Resources, Riverdale Township, the Dickey-Sargent Irrigation District, Thomas Daniels, 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.

Chad Ulmer Tile App

Application to Install a Subsurface Water Management System No. 2023-20 for Chad Ulmer in the North Half of Section 36 in Porter Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2023-20* filed October 16, 2023, by Applicant Chad Ulmer. Under the Application, Applicant seeks to install a 144-acre drain tile system in the North Half of Section 36 in Porter Township, Dickey County, North Dakota. The project will include a single pump outlet that will discharge directly into Dickey

County Drain No. 1 along the south boundary of the Northwest Quarter of Section 36. The Dickey County Water Resource District owns and operates Dickey County Drain No. 1, a legal assessment drain.

According to tax information supplied by Applicant, Lawrence and Deann Ulmer are purchasing the Northwest Quarter of Section 36 in Porter Township from Jerome and Ramona Kelsh under a Contract for Deed, and Chad Ulmer owns the Northeast Quarter of Section 36.

Manager Gemar moved, and Manager Hauck seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-20* filed October 16, 2023, for Chad Ulmer, regarding a proposed tile project in the North Half of Section 36 in Porter Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-20, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into Dickey County Drain No. 1.
2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
3. 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.
4. Applicant will set and install any drain tile pump at least 25 feet from the top of the back slope of Dickey County Drain No. 1, with a pipe buried from the pump to Dickey County Drain No. 1.
5. 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 North Half of Section 36 in Porter Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
6. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-20 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 comply with the following:

1. The Board recommends that Applicant obtain written consent from the record owners of the Northwest Quarter of Section 36 in Porter Township to install tile components.
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. 2023-20 to the Department of Water Resources, Porter Township, Lawrence

and Deann Ulmer, Jerome and Ramona Kelsh, 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 14A Project Update

Manager Quandt updated the board on the progress of the County 14A project. There was a setback with moving dirt that Dakota Improvement wasn't equipped for so a drain tile company was hired to handle the minor issues and Dakota Improvement will proceed after those issues are handled. The project price did go up because of these issues but Manager Quandt discussed this with the county commissioners and it will be and covered accordingly. There was also some paperwork that the ND DOT required from the commissioners and the chairman that was also completed. Manager Quandt feels the project is progressing in a positive manner with no major concerns.

Dickey County/Yorktown Maple Discussion

Manager Gemar addressed the board about some cattail/weed issues at the Yorktown Maple Inlet. The helicopter has missed this specific area during spraying for a couple years and the weeds are beginning to hold up water. He has contacted Dakota Improvement to clean this inlet out for proper drainage. Manager Quandt moved to hire Dakota Improvement to clean the inlet. Manager Zimbleman seconded the motion. Upon roll call, the motion passed unanimously. Manager Gemar then addressed the beaver dam issues in Dickey County Drain #1 and they continue to be a nuisance and will need constant cleaning.

Meeting Minutes

Manager Zimbleman moved to approve the September 20, 2023 minutes. Manager Gemar seconded the motion. Upon roll call, the motion passed unanimously.

Financial Statement/Bills

The board considered bills from Ohnstad Twichell of \$779.06, Moore Engineering of \$48.75, Dakota Improvement of \$500.00, Andy Lacina of \$500.00 and Starion Bond Services of \$11785. Secretary Hansen gave the financial report. Manager Gemar moved to approve the bills and financial report. Manager Zimbleman 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

