

Dickey County Water Resource District

MEETING MINUTES

May 17, 2023

8:00 am

The Dickey County Water Resource District met at the Dickey County Courthouse in Ellendale ND at 8:00 am on Wednesday, May 17, 2023. Managers Steve Hansen, 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 as well as Manager Keith Hauck. Manager Don Zimbleman was not present.

Chairman Hansen called the meeting to order.

Jeremiah Udem tile application

Application to Install a Subsurface Water Management System No. 2023-05 for Jeremiah Udem in the South Half of Section 11 in Clement Township

The Board next reviewed an *Application to Install a Subsurface Water Management System NO. 2023-05* filed May 16, 2023, by Applicant Jeremiah Udem. Under the Application, Applicant seeks to install a 164-acre drain tile system in the South Half of Section 11 in Clement Township, Dickey County, North Dakota. The project will include a single gravity outlet that will discharge via a pipeline commencing near the northeast corner of the Southeast Quarter of Section 11; the pipe will run to the east, under 107th Avenue SE, and will continue east for a short distance across the Southwest Quarter of Section 12; the pipe will daylight and discharge directly into a natural watercourse in the Southwest Quarter of Section 12 that runs to the east across the South Half of Section 12.

According to tax information supplied by Applicant, Jeremiah and Rebecca Udem own the Southwest Quarter of Section 11 in Clement Township; the Beverly J. Pederson Living Trust owns the South Half of the Southeast Quarter of Section 11; and Bruce and Margo Skjefte own the North Half of the Southeast Quarter of Section 11. In addition, Bruce and Margo Skjefte own the North Half of the Southwest Quarter of Section 12 where Applicant will install the pipeline and outlet. Once the discharge flows into the natural watercourse in the Southwest Quarter of Section 12, the Dickey County Water Resource District loses jurisdiction.

Manager Quandt moved, and Manager Gemar seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-05* filed May 16, 2023, for Jeremiah Udem, regarding a proposed tile project in the South Half of Section 11 in Clement Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-05, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the natural watercourse in the Southwest Quarter of Section 12.

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 South Half of Section 11 in Clement 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. 2023-05 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, 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 Clement Township to install any project components on any of the Township's road right of way.
2. The Board recommends that Applicant obtain and record a pipeline easement from the owners of the Southwest Quarter of Section 12 of Clement Township to install any project components.
3. 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, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-05, and downstream flow map to the Department of Water Resources, Clement Township, the Beverly J. Pederson Living Trust, Bruce and Margo Skjefte, 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.

Dennis Roney tile application

Application to Install a Subsurface Water Management System No. 2023-02 for Dennis Roney in the Southeast Quarter of Section 10, the West Half of Section 11, and the Northwest Quarter of Section 14 in Riverdale Township

The Board next reviewed an *Application to Install a Subsurface Water Management System NO. 2023-02* filed April 18, 2023, by Applicant Dennis Roney. The Board discussed the Application at the Board's April meeting but did not make a decision in light of potential Jackson Township Project assessment issues regarding the Southeast Quarter of Section 10.

Under the Application, Applicant seeks to install a 400-acre drain tile system in the Southeast Quarter of Section 10, the West Half of Section 11, and the Northwest Quarter of Section 14 in Riverdale Township,

Dickey County, North Dakota. More specifically, the project will include 80 acres in the Southeast Quarter of Section 10, 100 acres in the Southwest Quarter of Section 11, 80 acres in the Northwest Quarter of Section 11, and 140 acres in the Northwest Quarter of Section 14. The project will include two pump outlets; the first pump will be near the southwest corner of the Southwest Quarter of Section 11; the pump will discharge into the north road ditch along 92nd Street SE; the discharge will flow west in the north road ditch to the half-mile line and, from there, the discharge will flow north along the east boundary of the West Half of Section 11, towards the Jackson Township Improvement District No. 1 Project. The second pump will be along the east boundary of the Northwest Quarter of Section 11; the discharge will flow north along the east boundary of the Northwest Quarter of Section 11 and the West Half of Section 2, towards the Jackson Township Improvement District No. 1 Project. The project will include lines under and through Riverdale Township's right of way along and under 112th Avenue SE (to connect the Southeast Quarter of Section 10 to the Southwest Quarter of Section 11); and along and under 92nd Street SE (to connect the Northwest Quarter of Section 14 to the Southwest Quarter of Section 11).

According to tax information supplied by Applicant, Janel M. Haring owns the Southeast Quarter of Section 10 in Riverdale Township, subject to a life estate in Dennis Roney; Patrick Roney owns the Northwest Quarter of Section 11, subject to a life estate in Dennis Roney; Amber Schempp owns the Southwest Quarter of Section 11, subject to a life estate in Dennis Roney; and Deborah K. Huseby owns the Northwest Quarter of Section 14, subject to a life estate in Dennis Roney. With regard to downstream landowners for one mile, Larry and Linda Roney own the Southwest Quarter of Section 2, and Deborah K. Huseby owns the Northwest Quarter of Section 2, subject to a life estate in Dennis Roney.

At the Board's April meeting, the Board discussed the benefits these parcels will receive from the Jackson Township Improvement District No. 1 Project. Nathan Trosen indicated the Southeast Quarter of Section 10 is not currently in the Jackson assessment district. Sean Fredricks noted that, under NDCC Section 61-32-03.1, the Board can include that parcel in the Jackson assessment district as a condition to the tile permit, without conducting a full reassessment of the Jackson project, because the parcel will benefit from the legal drain. The Board discussed the appropriate benefit percentage for the parcel. Chairman Hansen spoke with Mr. Roney about the likely assessment for this parcel and Dennis indicated he recognizes the Southeast Quarter of Section 10 will benefit from the Jackson project as a result of his tile project; Dennis further indicated he would like the Board to approve the Application and that he will accept inclusion of the Southeast Quarter of Section 10 in the Jackson project assessment district. The Board agreed those acres in the Southeast Quarter of Section 10 will certainly benefit from the Jackson Township Improvement District No. 1 Project since this tile discharge will ultimately flow into the Jackson project. The Board agreed an assessment at 75% is warranted.

Manager Gemar moved, and Manager Hauck seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-02* filed April 18, 2023, for Dennis Roney, regarding a proposed tile project in the Southeast Quarter of Section 10, the West Half of Section 11, and the Northwest Quarter of Section 14 in Riverdale Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-02, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any outlet into Riverdale Township's road right of way.
2. The Board will include the Southeast Quarter of Section 10 in Riverdale Township in the Jackson Township Improvement District No. 1 Project assessment district, at 75% benefit.

3. Applicant will re-establish any areas disturbed installing or maintaining Applicant's 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. 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 10, the Southwest Quarter of Section 11, the Northwest Quarter of Section 11, and the Northwest Quarter of Section 14 in Riverdale Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
6. 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 of Applicant's project outlet.
7. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-02 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.

With regard to condition #6, 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 Riverdale Township to discharge into or otherwise utilize any of the Township's road right of way.
2. The Board recommends that Applicant obtain written consent from Riverdale Township to install any project components in any of the Township's road right of way.
3. 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, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-02, and Applicant's downstream flow map to the Department of Water Resources, Riverdale Township, downstream landowners, 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.

The Board will discuss the Jackson project assessment with the Sargent County Water Resource District. Nathan Trosen will modify the Jackson assessment list to include the Southeast Quarter of Section 10; that assessment will reduce principal payments for the other properties in the assessment district.

Larry Jay Knutson tile application

Application to Install a Subsurface Water Management System No. 2023-04 for Larry Jay Knutson in the Southwest Quarter of Section 33 in Riverdale Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2023-04* filed May 10, 2023, by Applicant Larry Jay Knutson. Under the Application, Applicant seeks to install a 130-acre drain tile system in the Southwest Quarter of Section 33 in Riverdale Township, Dickey County, North Dakota. The project will include a single pump outlet located along the south boundary of the Southwest Quarter of Section 33; the pump 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 tax information supplied by Applicant, Larry and Jennifer Knutson own the Southwest Quarter of Section 33 in Riverdale Township. Further, according to Applicant and according to Lovell Improvement Project, LLC, with regard to downstream property, Lovell Improvement Project, LLC, owns its project right of way within one mile of Applicant's pump outlet.

Before discussing the merits of *Application to Install a Subsurface Water Management System No. 2023-04*, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Quandt's potential conflict in the matter. Manager Quandt is the managing partner of Lovell Improvement Project, LLC, the downstream property owner; the LLC supports the project proposed under the application, but the Lovell project could certainly be impacted. 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 may have a direct and substantial personal interest in the matter that creates a technical conflict. Manager Hauck moved to conclude that Manager Quandt has a conflict and should not participate in any votes regarding *Application No. 2022-13* and should abstain from any votes regarding *Application No. 2022-13*. Manager Gemar seconded the motion. Upon roll call vote, Chairman Hansen and Managers Hauck, and Gemar all voted in favor of the motion. Manager Quandt abstained. The motion carried.

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 matter concluded, the Board proceeded with discussion of the project and the Application.

Manager Hauck moved, and Manager Gemar seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-04* filed May 10, 2023, for Larry Jay Knutson, regarding a proposed tile project in the Southwest Quarter of Section 33 in Riverdale Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-04, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the Lovell Improvement Project.
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 Southwest Quarter of Section 33 in Riverdale 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. 2023-04 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, 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 consent from Riverdale 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, 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. 2023-04, and downstream flow map to the Department of Water Resources; Riverdale Township; Lovell Improvement Project, LLC; 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 update

Manager Gemar gave the board an update of the flooding progress being made after instituting the emergency drain permit, they approved at last month's meeting. Manager Gemar told the board that they started emergency draining in early May with a local pump and tractor and after 3 days of doing so, the water levels had improved. After significant rainfall on May 11, 2023, they went back to drain that excessive water and he feels that the drain is flowing and moving down stream as it should. Manager Gemar also reached out to JC Predators to take care of some beaver issues they are experiencing in the drain and the problem would be handled next week. Manager Gemar has 131 hours of pumping and will submit a bill to the board for compensation. Manager Gemar also mentioned that the ditch, at the site of pumping, was excessively steep and inquired about sloping that to make a better fit for tractors and pumps to be more effective. There was discussion whether if sloping that area, the drain would then be out of the right-of-way as designated in the original permit. Moore to investigate the right-of-way extents of the Drain at the outlet. The board feels a sloped ramp would be easier better for equipment to work properly. Manager Gemar will reach out to Dakota Improvement and see if they can get a slope to the drain in that pumping site and a cost to do it. They feel that rock or riprap would help with land erosion in the future. The board had discussion to apply for a permanent pumping permit and it was agreed that it would be a good solution. Manager Quandt moved to have Nathan Trosen, Moore Engineering Representative file for a permanent permit with the state and he also explained the process and an estimate of what he felt it could cost the board for applying. He mentioned that the process could potentially take 5 months for this permit to become available and that they will complete a field survey and a downstream impact analysis needed to satisfy the ND Department of Water Resources' requirements in order for them to approve the permit.

Meeting Minutes

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

Special Meeting Minutes

Manager Quandt moved to approve the April 24, 2023 meeting minutes that was needed to approve an emergency drain permit on Dickey County Drain #1. Manager Gemar seconded the motion. Upon roll call, the motion passed unanimously.

Financials/Bills and vouchers

The board considered bills from Ohnstad Twichell of \$1425.50 and Moore Engineering of \$2967.50. Secretary Hansen gave the financial report. Manager Quandt moved to approve the bills and financial statement. Manager Gemar 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