

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

Dickey County Water Resource District

SPECIAL MEETING MINUTES

August 2, 2023

The Dickey County Water Resource District held a special meeting at the Dickey County Courthouse in Ellendale, ND at 8:00 am on Wednesday, August 2, 2023. Managers Steve Hansen, Keith Hauck, Justin Gemar, Don Zimbleman 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. Guests present at the meeting were County Commissioners Brandon Carlson and Jerry Walsh, Justin Domine, Megan Domine, Mike Brademeyer, and Mark Lindseth.

Chairman Hansen called the meeting to order.

Dickey County Highway 14A Project

Chairman Hansen opened the meeting and asked if anyone wished to offer comments or questions about the proposed project. Justin Domine addressed the board and voiced his support for the project. He noted he is aware of the benefits the project will have for his land and the county line road being opened up as the project is completed. In his view, the benefits of the project would outweigh any negative impacts and he would like to see the project approved. He would like to see the parties do what they can to avoid any negative impacts to downstream landowner issues.

Manager Hansen addressed the board's attorney, Sean Fredricks, with a couple questions that he had.

Chairman Hansen asked Mr. Fredricks how the parties could modify the O&M Plan in the future. Mr. Fredricks indicated the O&M Plan is an exhibit to, and incorporated by, the Board's JOINT POWERS AGREEMENT with the County. With that in mind, to amend or modify the O&M Plan in the future, the Board and the County Commission would have to amend the JOINT POWERS AGREEMENT to agree to O&M amendments.

With regard to concerns about drainage from upstream properties, Mr. Fredricks indicated the Dickey County Water Resource District can attach conditions to tile permits in Dickey County regarding pump operation but does not have jurisdiction over drainage projects in Lamoure County. The Dickey County Water Resource District cannot force Lamoure County or the Lamoure County Water Resource District to attach conditions to tile permits or to otherwise

comply with the O&M Plan for this project. Surface drainage permitting first goes through the North Dakota Department of Water Resources (“DWR”), and if DWR concludes a surface drainage project could have impacts in Dickey County, DWR may mandate that the Lamoure County Water Resource District process the application as a “statewide or interdistrict significance” application, a more arduous permitting process that requires engagement with Dickey County, the Dickey County Water Resource District, downstream road authorities, and other downstream parties.

Mark Lindseth approached the board with a few questions in regards to controlling the amount of future tiling projects that could impact any downstream landowners. Mr. Fredricks explained that the Dickey County Water Resource District cannot control what happens in Lamoure County the Dickey County WRD can attach conditions on any future tiling projects in Dickey County, but only as permitted by the tile statutes, to protect downstream landowners. For example on applications that propose tile projects with pumps, the Dickey County WRD can include a condition to any approved permit that requires the applicant or permittee to turn off tile pumps when there are “flood conditions” downstream.

Manager Quandt next noted that the Board should consider and analyze his role and potential conflict in this matter. Mr. Fredricks noted Manager Quandt does not own or farm any of the property involved in this proposed project and has no personal stake in the outcome of this project; rather, Manager Quandt is simply assisting the County with project development; he has experience developing projects and has been willing to work on this project. 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.

Mr. Fredricks again noted Manager Quandt does not have a direct or substantial personal interest in the matter. Manager Gemar moved to conclude that Manager Quandt does not have a conflict and should participate in votes regarding this project, the proposed O&M Plan, the Board’s proposed JOINT POWERS AGREEMENT with the Dickey County Commission, and regarding *Application to Install a Subsurface Water Management System NO. 2023-13*. Manager Zimbleman seconded the motion. Upon roll call vote, Chairman Hansen and Managers Hauck, Zimbleman, and Gemar all voted in favor of the motion. Manager Quandt abstained. The motion carried.

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

The Board next reviewed the County Commission's *Application to Install a Subsurface Water Management System NO. 2023-13* filed July 28, 2023. Under the Application, the Dickey County Commission proposes installation of a 150-acre drain tile system in the Northeast Quarter of Section 6 in Divide Township, Dickey County, North Dakota. The tile project will include a single gravity outlet that will discharge via a pipeline that will run to the south across the Southeast Quarter of Section 6; at the southeast corner of Section 6, the pipeline will run south, under 79th Street SE to the northeast corner of Section 7; the pipeline will then run east, under 109th Avenue SE, to the northwest corner of Section 8; from there, the pipeline will run to the southeast across the Northwest Quarter of Section 8, a portion of the Northeast Quarter of Section 8, and a portion of the Southeast Quarter of Section 8; the pipeline will daylight in the Southeast Quarter of Section 8 and will discharge directly into a natural watercourse.

According to tax information, Joel Schuman owns the Northeast Quarter of Section 6 in Divide Township, subject to a life estate in Harvey Schuman. With regard to downstream properties where Applicant intends to install the pipeline, Bruce and Margo Skjefte own the Southeast Quarter of Section 6; Harvey Schuman and Nancy Cooney, fka Nancy Schuman, own the Northeast Quarter of Section 7; and Travis and Laura Thompson own the North Half and the Southeast Quarter of Section 8.

Manager Gemar moved, and Manager Hauck seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2023-13* filed July 28, 2023, for Harvey Schuman and Dickey County, regarding a proposed tile project in the Northeast Quarter of Section 6 in Divide Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-13, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the natural watercourse in the Southeast Quarter of Section 8 in Divide 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 Northeast Quarter of Section 6 in Divide 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. 2023-13 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 Divide Township to install any pipeline or other project components in any of the Township's road right of way.
2. The Board recommends that Applicant obtain and record easements from downstream landowners where Applicant intends to install the project pipeline.
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, the project flow map, and SUBSURFACE WATER MANAGEMENT PERMIT NO. 2023-13, to the Department of Water Resources, Divide Township, Harvey Schuman, Nancy Cooney, Bruce and Margo Skjefte, Travis and Laura Thompson, 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 next discussed the proposed JOINT POWERS AGREEMENT with the Dickey County Commission and the O&M Plan. Manager Quandt moved to approve the JOINT POWERS AGREEMENT and the O&M Plan. Manager Zimbleman seconded the motion. Chairman Hansen opened the floor for discussion. After questions and proposals from interested parties, the Board agreed amendments to the O&M Plan would be reasonable, including modification of the gate closing conditions; increasing the freeboard requirement for the 83rd Street crossing from 1 foot to 2 feet; and increasing the freeboard requirement for the slough along County Road 14A in Section 6 from 2 feet to 3 feet.

Manager Hauck moved to approve the amendments to the O&M Plan and to amend Manager Quandt's main motion to approve the amended O&M Plan. Manager Zimbleman seconded the motion. Upon roll call vote, Manager Hauck's motion carried unanimously. Nathan Trosen will modify the language of the O&M Plan accordingly.

Chairman Hansen asked if the Board or members of the public had any further comments on the amended main motion to approve the JOINT POWERS AGREEMENT and to approve the amended O&M Plan. With no further discussion, Chairman Hansen asked for a roll call vote on the main motion. Upon roll call vote, the motion carried unanimously.

Mr. Fredricks noted the County Commission will have to approve the JOINT POWERS AGREEMENT again, along with the amended O&M Plan, at their next meeting.

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

APPROVED:

Steve Hansen, Chairman

ATTEST:

Judy Hansen, Secretary