

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

May 15, 2024

The Dickey County Water Resource District met at the Dickey County Courthouse in Ellendale ND at 8:00 am on Wednesday, May 15, 2024. Managers Steve Hansen, Justin Gemar and John Quandt were all present at the courthouse. Sean Fredricks, the board's attorney and Nathan Trosen, Moore Representative, as well as Manager Keith Hauck joined via video conference. Mike and Kim Brademeyer, Charlie Russell, James Cresswell, Jerry Rekow, Vincent Carruth, Joel Hamar, Steve Foley, Nate Sand, Jerry Bartsh and Bruce Baillargeon were also present at the courthouse as well as Nick Philips and Chad Allman joined via video conference.

Chairman Hansen called the meeting to order.

Applied Digital

Representatives for the new business being constructed in the Ellendale district, Applied Digital, were at the meeting and joined via video conference. Nick Philips, representing the new project, was seeking some guidance on whether they needed a drainage permit from the Dickey County Water Resource District and then gave information on the drainage plan they are presenting. Chad Allman provided a hydrology report to the Board via email. Applied Digital plans to construct holding ponds on the site; to construct those ponds, they will have to dry out the property. Nick Phillips indicated Applied Digital is committed to ensuring their activities do not result in any damages to anyone downstream and are willing to work with landowners to ensure their satisfaction. Manager Hansen previously contacted Jennifer Martin with the Department of Water Resources to inquire if Applied Digital's de-watering plan would require a surface drainage permit. Ms. Martin conferred with Matt Lindsay at DWR and they indicated no drainage permit is required. Nathan Trosen, the Board's engineer, also noted that DWR's drainage policy indicates temporary de-watering does not require a surface permit. Sean Fredricks, the board's attorney, recommended that Applied Digital seek some type of written confirmation from DWR that no drainage permit is required. Nathan Trosen indicated that, even if a drainage permit is not required, de-watering may require a permit from the Department of Environmental Quality. Trosen sent an email during the meeting to Applied Digital representatives with links to DEQ's permitting requirements.

Vincent Carruth addressed the board, as a landowner in that area, and indicated the de-watering would result in negative impacts to his property. Nate Sand also addressed the board with the same concerns. Steve Foley, representing McLaughlin Construction, approached the board with the hydrology map of the proposed drain. He mentioned a couple culverts that could be negatively affected by the water and assured everyone that they are hoping to work with everyone, that could be affected downstream, to ensure that the drainage process is done correctly and satisfactorily. Sean Fredricks noted that if Applied

Digital is seeking any modifications or operating plans regarding road culverts, they would have to approach the road authorities (townships and the County).

Ultimately, based on DWR's determination that no surface drainage permit is required for Applied Digital's de-watering plan, the Dickey County Water Resource District has no jurisdiction over Applied Digital's activities.

Solicitation of Views-Travis Thompson

The Board next discussed the "Solicitation of Views" provided by the Department of Water Resources regarding Travis Thompson's surface drain project proposed under Surface Drain Application No. 6311. The Board does not have to take any action at this point on the application but does have the option to submit comments regarding DWR's "statewide or interdistrict significance" review. This proposed project will outlet through the Lovell Improvement Project. Manager Quandt is the president of Lovell Improvement Project LLC.

Before discussing the Board's possible response, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Quandt's possible conflict in the matter. The Lovell Project benefits the property of the members of Lovell Improvement Project LLC. 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.

In this case, Manager Quandt has a direct and substantial personal or pecuniary interest in the matter that creates a conflict. Manager Gemar moved to declare that Manager Quandt has a conflict and should not participate in any votes regarding Surface Drain Application No. 6311. Manager Hauck seconded the motion. Upon roll call vote, Chairman Hansen and Managers Hauck and Gemar 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 issue concluded, the Board proceeded with discussion regarding the application.

The Board discussed the project proposed under Surface Drain Application No. 6311. The Board agreed the project will reduce overland flooding and will protect roads in the area.

Manager Gemar moved to direct Sean Fredricks to correspond with DWR in response to DWR's "Solicitation of Views," to voice the Board's support for the project proposed under Surface Drain Application No. 6311. Manager Hauck seconded the motion. Upon roll call vote, Chairman Hansen and Managers Hauck and Gemar voted in favor of the motion. Manager Quandt abstained. The motion carried.

Brokaw Land Rent

Manager Hansen informed the board that the land rent has been received from the Brokaw Family.

Mike and Kim Brademeyer

Mike Brademeyer approached the board and apologized to Manager Quandt for his negative dialogue during a conversation they had together the day prior. He then addressed the board out of concerns of the Brian Vculek tile application that was approved by the board at the April 17, 2024 meeting. He is concerned that Mr. Vculek is tiling into the new county 14A road project already with the project being almost completed and feels it's potentially too early to be draining into the project. Mr. Brademeyer stated that the new water being added to the drain will flood his pasture downstream in Section 10 and eventually the city of Oakes. Mr. Brademeyer noted that the Board's minutes from April 17, 2024, indicate Mr. Vculek's pipeline will extend to the southeast via a buried pipeline that will run under the intersection of North Dakota Highway 13 and 79th Street SE; Mr. Brademeyer noted the reference to Highway 13 should be Highway 1. Sean Fredricks noted that was his mistake and suggested the board amend those minutes to reflect the correction. Manager Quandt moved to amend the April 17, 2024 minutes with the correction of Highway 13 to Highway 1. Manager Gemar seconded the motion. Upon roll call, the motion passed unanimously. Sean Fredricks will send out an amended Notice regarding Mr. Vculek's tile permit with that correction.

Kim Brademeyer then addressed the board with questions on the gates that are in the project plan of County 14A and Mr. Vculek's tile application and asked who will operate the gates during flooding. Mike Brademeyer stated that he would have liked to have know about the tile application from Mr. Vculek but recognized tile applicants are not legally required to contact downstream landowners; Mr. Brademeyer expressed his hope that State Legislators would revise the tile and drainage laws that have potential to negatively affect downstream landowners.

Meeting Minutes

Manger Quandt moved to accept the amended April 17, 2024 meeting minutes. Manger Gemar seconded the motion. Upon roll call, the motion passed unanimously.

Financial Statement/Bills

The board considered one bill being from Ohnstad Twichell of \$2860.03. Secretary Hansen gave the financial report. After some discussion on the financials, Manger Gemar moved to approve the financial statement and bills. Manger Quandt seconded the motion. Upon roll call, the motion passed unanimously.

Budget

Manger Hansen addressed the board that during next months meeting, they would need to create their new budget for 2025.

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

APPROVED:

Steve Hansen, Chairman

Attest:

Judy Hansen, Secretary