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Dickey County Water Resource District

MEETING MINUTES

February 19, 2025

The Dickey County Water Resource District met at the Dickey County Courthouse in Ellendale ND at 8:00 am on Wednesday, February 19, 2025. Managers Steve Hansen, Keith Hauck, Justin Gemar and John Quandt were all present at the meeting. Sean Fredricks, the board's attorney and Nathan Trosen, Moore Engineering representative, joined via video conference. Manager Don Zimbleman also joined the meeting via video conference.

Chairman Hansen called the meeting to order.

Surface Permit-Larry Anderson(6193)

Application For Surface Drain No. 6193 for Larry Andersen - Drainage Project in the North Half of Section 7 in Ada Township

The Board reviewed the Record of Decision issued by the Department of Water Resources ("DWR") regarding Application for Surface Drain No. 6193 for Applicant Larry Andersen. Under Application No. 6193, Applicant plans to reduce flooding in a slough in the North Half of Section 7 in Ada Township. Applicant plans to utilize a pump with a capacity of 400 gallons per minute, near the north boundary of the North Half of Section 7; the pump will discharge via a 10" to 12" pipe, located in the south road ditch along North Dakota Highway 11; the pipe will run to the west in the Highway 11 ditch before routing to the south to avoid the farmstead in the northwest corner of Section 7; the pipe will then turn back to the northwest and will run under 96th Avenue SE; the pipe will ultimately daylight near the northeast corner of Section 12 in Van Meter Township and will discharge into the south road ditch of Highway 11; the discharge will continue to the west until flowing into the Maple River. Applicant intends to reduce the elevation of the slough in the North Half of Section 7 to an elevation of 1,402 feet. The slough is subject to a U.S. Fish and Wildlife wetland easement. Applicant is coordinating with the USF&W Kulm Wetland Management District.

According to records on file with the Dickey County Recorder's Office, Larry and Jane Andersen own the North Half of Section 7 in Ada Township and the Northeast Quarter of Section 12 in Van Meter Township. Further, the North Dakota Department of Transportation owns its Highway 11 right of way.

DWR's Record of Decision indicates that, in accordance with N.D. Admin. Code §§ 89-02-01-08 and 89-02-01-09, DWR conducted a "statewide or interdistrict significance" review of the proposed ditch improvements and concluded the application does not propose drainage of "statewide or interdistrict significance." In light of DWR's findings, DWR forwarded Application No. 6193 to the Board for processing in accordance with Section 89-02-01-09.1(2) of the North Dakota Administrative Code, via DWR's Record of Decision.

Under Section 89-02-01-09.1(2), once the Board receives the Record of Decision, the Board's first step is to determine if "public and private interests would be better served by a specific public meeting to consider the project." In this case, no parties objected to the project or raised any significant concerns in response to DWR's "Solicitation of Views." Applicant owns the property where he plans to construct the project, with the exception of NDDOT's highway right of way. Applicant is working with USF&W regarding the wetland easement. The Board will require Applicant to obtain permission from NDDOT regarding installation of the pipeline in NDDOT's Highway 11 right of way. With that in mind, the Board concluded no hearing is necessary.

Under Section 89-02-01-09.2 of the Administrative Code and Section 61-32-03 of the North Dakota Century Code, the Board must ultimately determine if the project will result in downstream impacts and, if so, the Board must require Applicant to obtain downstream flowage easements from impacted downstream parties as a condition to any approval of Application No. 6193, under Section 61-32-03.

Nathan Trosen reviewed potential impacts of the project as an aspect of his consideration of the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. In his responses to the eight elements under Section 89-02-01-09.2, Mr. Trosen noted the project area Applicant intends to drain is already within the watershed of the Maple River so the project will not introduce new drainage into the watershed. Mr. Trosen further concluded any downstream impacts will be negligible due to the small size of the project drainage area. Ultimately, Mr. Trosen concluded the project will not likely result in adverse flooding or erosion-related effects to downstream landowners. The Board concurred with Mr. Trosen's findings and concluded the project will not result in adverse impacts.

Manager Gemar moved, and Manager Quandt seconded the motion, to adopt Moore Engineering's responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code; to conclude no public hearing is necessary under Section 89-02-01-09.1(2) of the Administrative Code; to conclude the project will not result in adverse downstream impacts; and to approve Application for Surface Drain No. 6193 for Applicant Larry Andersen, subject to the conditions attached by the Department of Water Resources, and subject to the following conditions:

1. Applicant will not construct or improve the drain in any manner that exceeds the dimensions indicated in the application.
2. Applicant will obtain written consent from the North Dakota Department of Transportation to construct, operate, and maintain any portions of the project pipeline within NDDOT's Highway 11 right of way.
3. Applicant will obtain written consent from either Ada Township or Van Meter Township, whichever Township has jurisdiction and authority over 96th Avenue SE, to install the project pipeline in and through Township right of way.
4. Applicant will notify the Dickey County Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, Applicant will submit an additional permit application.

Upon roll call vote, the motion carried unanimously.

In addition to those conditions, the Board also 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.

The Board directed Sean Fredricks to prepare the requisite Notice of Decision and to provide the Notice to all parties of record, as required by law.

Ed Melroe complaint

Ed Melroe had sent a formal complaint to the Dickey County Water Resource District in regards to a drainage system adjacent to his property, which was looked at by the Water Resource District and ultimately formally dismissed. Mr Melroe sent the Water Districts attorney a letter asking for more clarification. Instead of spending a lot of money following up with the same conclusions, the Dickey County Water Resource District gave Mr. Fredricks the instructions of not responding. Mr. Melroe has reached out again to Mr. Fredricks asking for clarification on the dismissed complaint. Upon discussion, Manager Hansen has agreed to call Mr. Melroe on the matter instead of paying Mr. Fredricks to do so and in turn would save the district an unnecessary expense.

Bond Payment (payoff)

Manager Hansen informed the Water Resource Board the next payment for the Yorktown Maple Bond is due in May. The Board has sufficient funds in the account to pay-off that bond early. Sean Fredricks will have Katie Schmidt, bond counsel, work on the notice of redemption to pay-off the bonds. Mr. Fredricks indicated the Board can put the excess funds into the Drain maintenance fund. Manager Gemar gave some insight into the Yorktown Maple Drain and some options, as well as Manager Zimbleman, as they have land in that area and know the area well.

Steve Hansen tile permit

Application to Install a Subsurface Water Management System No. 2025-01 for Steve Hansen in the Northwest Quarter of Section 29 in Port Emma Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2025-01* filed February 11, 2025, by Applicant Steve Hansen.

Before discussing the application, the Board conducted conflict analysis regarding Chairman Hansen's likely conflict in the matter. Sean Fredricks explained North Dakota law 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, Chairman Hansen is the applicant under *Application to Install a Subsurface Water Management System No. 2025-01* and, therefore, Chairman Hansen clearly has a "direct and substantial personal and pecuniary interest" in the matter that creates a conflict. Manager Quandt moved to conclude Chairman Hansen has a conflict in the matter and should not vote. Manager Gemar seconded the motion. Upon a roll call vote, Managers Hauck, Zimbleman, Gemar, and Quandt all voted in favor of the motion. Chairman Hansen 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 *Application to Install a Subsurface Water Management System No. 2025-01*.

Under the Application, Applicant seeks to install a 124-acre drain tile system in the Northwest Quarter of Section 29 in Port Emma Township, Dickey County, North Dakota. The project will include a single pump outlet located near the north boundary of the Northwest Quarter of Section 29; the pump will discharge directly into the south road ditch along 100th Street SE; the discharge will flow west in the road ditch, across the north boundary of the Northeast Quarter of Section 30 and a small portion of the Northwest Quarter of Section 30 in Port Emma Township until flowing into Dry Run.

According to Dickey County tax parcel data, the Stephen A. Hansen Revocable Living Trust and the Judy L. Hansen Revocable Living Trust jointly own the Northwest Quarter of Section 29 in Port Emma Township where Applicant intends to install the tile system. With regard to downstream landowners, Rodney and Rose Sell own the Northeast Quarter of Section 30 in Port Emma Township; and Michael and Jennifer Brady and Brenda Podolak own interests in the Northwest Quarter of Section 30 in Port Emma Township. Once the discharge flows into Dry Run, no further notices are required under N.D. Cent. Code § 61-32-03.1.

Manager Quandt moved, and Manager Hauck seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2025-01* filed February 11, 2025, for Steve Hansen in the Northwest Quarter of Section 29 in Port Emma Township, and to authorize the Secretary-Treasurer to sign Subsurface Water Management Permit No. 2025-01, subject to the following conditions:

1. Applicant will re-establish any areas disturbed installing or maintaining Applicant’s tile system.
2. Applicant will install and maintain erosion protection at any and all outlets into Port Emma Township’s road right of way.
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 remove silt or vegetation, or repair erosion or scour damages *directly* caused by Applicant’s tile system, but only up to the point where the tile discharge flows into Dry Run.
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 Northwest Quarter of Section 29 in Port Emma Township under any blanket easements, or otherwise beyond the Water District’s existing easement(s).
6. Applicant will apply for an amendment to Subsurface Water Management Permit No. 2025-01 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 #4, 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 recommends that Applicant comply with the following:

1. The Board recommends that Applicant obtain written consent from from the Port Emma Township Board 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.

The Board will provide copies of the Board's Notice of Decision, Subsurface Water Management Permit No. 2025-01, and Applicant's downstream flow map to the Department of Water Resources, Port Emma Township, Michael and Jennifer Brady, Brenda Podolak, 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.

Other Business

Manager Quandt presented the board maps of a potential mitigation site that will lie on property owned by his son, Nathan Quandt and brother, Jason Quandt. The project may require a Utility Permit. Manager Quandt will keep the Board posted.

Sean Fredricks, the board's attorney, gave a brief legislative update. Manager Hansen also had some insight into the matter. Mr. Hansen stated that the local legislators representing our district are working hard and it would go a long way to reach out to those legislators, to thank them for serving our area.

Meeting Minutes

Manager Gemar moved to approve the January 15, 2025, meeting minutes. Manager Hauck seconded the motion. Upon roll call, the motion passed unanimously.

Financial Statement/Bills

The board considered one bill to Wendy Willprecht for \$650. Secretary Hansen gave the financial report. Manager Hauck moved to accept the financial report and bills. Manager Gemar seconded the motion. Upon roll call, the motion passed unanimously.

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

APPROVED:

Steve Hansen, Chairman

Attest:

Judy Hansen, Secretary