

Dickey County Water Resource District Meeting

MEETING MINUTES

August 18, 2021

8:00 a.m.

The Dickey County Water Resource District met at the Dickey County Court House in Ellendale, ND at 8:00 a.m. on Wednesday, August 18, 2021. Managers Steve Hansen, Justin Gemar, Don Zimbleman, Keith Hauck and Norman Haak were all present at the court house. Chris Gross, the Board's engineer and Sean Fredricks, the Board's attorney joined via video conference. Eric Larson was also present.

Chairman Hansen called the meeting to order.

Eric Larson tile permit proposal

Application to Install a Subsurface Water Management System No. 2021-14 for Eric Larson in the West Half of Section 12 and the Southeast Quarter of Section 11 in Porter Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2021-14* filed August 2, 2021, filed with the Board by Applicant Eric Larson. Under the Application, Applicant seeks to install a 265-acre drain tile system in the West Half of Section 12 and the Southeast Quarter of Section 11 in Porter Township, Dickey County, North Dakota. The project will include a lift station located along the south boundary of the Southwest Quarter of Section 12; the pump will discharge into the north road ditch along 80th Street SE; the discharge will then flow through a culvert under 80th Street and will flow southwest over a portion of the Northwest Quarter of Section 13; the discharge will continue west and will flow under 95th Avenue SE, then across the East Half of Section 14. The discharge will ultimately flow into Dickey County Drain #1. The project will include two surface inlets, each with 3/8-inch coefficient.

Under the new tile law passed by the 2021 Legislature, if a tile project will introduce water into a legal assessment drain from a parcel that is not included within the drain's assessment district, the water resource district may include the property in the assessment district without conducting the statutory reassessment procedures. In this case, this project will drain approximately 35 acres that are not currently included in the Dickey County Drain #1 assessment district into the Drain #1 watershed. The assessments for the remainder of Section 12 are at 10%.

According to deeds supplied by Applicant, Carl and Wendi Larson own the West Half of Section 12 in Porter Township; and C & E Larson LP, a North Dakota limited partnership, owns the Southeast Quarter of Section 11. With regard to downstream properties, Rose Hill Farm, LLLP, owns the Northwest Quarter of Section 13; David John Hay, Trustee of the David John Hay Revocable Living Trust, owns most of the Northeast Quarter of Section 14; Patrick and Kathleen Hay are selling the Northwest Quarter of the Northwest Quarter of the Northeast Quarter of Section 14 to Jeff and Anne Jordahl under a Contract for Deed; and Jade Ulmer, et al, owns the Southeast Quarter of Section 14.

Manager Gemar moved, and Manager Haak seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-14* filed August 2, 2021, for Eric Larson regarding a proposed tile project in the West Half of Section 12 and the Southeast Quarter of Section 11 in Porter Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT No. 2021-14, subject to the following conditions:

- 1) that Applicant install and maintain erosion protection or other ditch stabilization materials at any and all outlets into Porter Township's road right of way;
- 2) that Applicant re-establish any areas disturbed installing or maintaining Applicant's tile system;
- 3) that 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 West Half of Section 12 or the Southeast Quarter of Section 11 in Porter Township under any blanket easements, or otherwise beyond the Water District's existing easement(s);
- 4) that Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT No. 2021-14 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;
- 5) that 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;
- 6) that the Dickey County Water Resource District will include any acres in the northeast corner of the Northwest Quarter of Section 12 of Porter Township not currently included in the Drain #1 assessment district in the district at 10% benefit; and
- 7) that Applicant 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.

Upon roll call vote, the motion carried unanimously.

With regard to condition #7, 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 District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District will recommend that Applicant comply with the following:

- 1) that Applicant obtain written permission from the Porter Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road right of way;

2) that Applicant obtain written permission from downstream landowners to discharge over their parcels; and

3) 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. 2021-14, and Applicant's downstream flow map to the State Engineer's Office, Porter Township, Southeast Water Users District, and downstream landowners. Applicant's detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Scott Hansen surface drain #5884

The Board has three permit applications to consider for Mr. Scott Hansen: 1) Surface Application No. 5884; 2) Tile Application No. 2021-12; and 3) Tile Application No. 2021-16. Before the Board could proceed with the substantive considerations regarding these applications, Sean Fredricks indicated the Board should conduct a conflict analysis regarding Chairman Hansen's likely conflict in the matters, as required under North Dakota law. Under Section 44-04-22 of the North Dakota Century Code, a water manager can only abstain in a matter if the manager has a direct and substantial personal or pecuniary interest in the matter. The mere appearance of a conflict is not enough to allow the public official to refrain from participating. If the water manager does have a conflict, then the remainder of the Board must still vote to determine if the manager should participate in votes regarding the matter.

In this case, Applicant Scott Hansen is Chairman Hansen's cousin. Mr. Fredricks indicated Chairman Hansen has a substantial personal interest in the outcome of the Board's decision regarding the permit under Section 44-04-22, and further indicated this is likely a conflict situation; however, Chairman Hansen does not have a personal stake in the outcome of these matters. Further, he understands the areas and the projects contemplated under these applications. Manager Haak moved to declare Chairman Hansen may have a statutory conflict regarding these three applications, but to require that Chairman Hansen participate in the discussions and voting regarding Surface Application No. 5884, Tile Application No. 2021-12, and Tile Application No. 2021-16. Manager Hauck seconded the motion. Upon roll call vote, Managers Hauck, Haak, Zimbleman, and Gemar voted in favor of the motion. Chairman Hansen abstained. The motion carried. With the conflict issues concluded, the Board proceeded with consideration of the Applications.

APPLICATION FOR SURFACE DRAIN NO. 5884 for Scott Hansen - Drainage Project in the Southeast Quarter of Section 34 in Port Emma Township

The Board reviewed information from the State Engineer regarding APPLICATION FOR SURFACE DRAIN No. 5884 for Applicant Scott Hansen. Under the application, Applicant proposes to construct a new drainage ditch in the Southeast Quarter of Section 34 in Port Emma Township, Dickey County, North Dakota. The intent of the project is to drain a slough in the Southeast Quarter of Section 34, and to provide an outlet for tile and surface drainage projects. The ditch will commence near the west boundary of the Southeast Quarter of Section 34 and will run to the east; the ditch will discharge directly into the James River near the east boundary of the Southeast

Quarter of Section 34. The permitted drain will include 2,200 feet of new channel improvements; a maximum bottom width of 3 feet; a maximum cut of 2.5 feet; and 4:1 side slopes.

According to records on file with the Dickey County Recorder's office, Scott D. Hansen, as Trustee of the Scott D. Hansen Revocable Living Trust; and Monica R. Hansen, as Trustee of the Monica R. Hansen Revocable Living Trust, collectively own Government Lots 3 and 4 and the West Half of the Southeast Quarter of Section 34, less the South 40 acres or the Southwest Quarter of the Southeast Quarter of Section 34, owned by Gary L. Loberg, as Trustee of the of the Loberg Family Trust.

Chris Gross prepared responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. In the event any of the project will be located on Loberg property, the Board will require Applicant to obtain an easement from the Loberg Family Trust to construct, operate, and maintain any improved channel on their property. Otherwise, the project will not result in adverse impacts; as a result, no flowage easements will be necessary from any downstream landowners.

Manager Hauck moved, and Manager Gemar seconded the motion, to conclude no hearing is necessary in accordance with Section 89-02-01-09.1(2) of the North Dakota Administrative Code; to adopt Moore Engineering's responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code; and to approve APPLICATION FOR SURFACE DRAIN No. 5884 for Scott Hansen, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) that Applicant will not construct or improve the drain in any manner that exceeds the dimensions indicated in the application;
- 2) that Applicant obtain and record easements from the owners of any land, besides land owned by Applicant, on which Applicant will construct any portion of the drain; and
- 3) that Applicant 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, submit an additional permit application.

Upon roll call vote, the motion carried unanimously.

In addition to those conditions, the Board will also recommend 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.

Scott Hansen tile permit applications (first one to approve)

Application to Install a Subsurface Water Management System No. 2021-12 for Scott Hansen in the Southwest Quarter of Section 15, the West Half of Section 22, and the West Half of Section 27 in Port Emma Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2021-12* filed July 23, 2021, filed with the Board by Applicant Scott Hansen. Under the Application, Applicant seeks

to install a 200-acre drain tile system in the Southwest Quarter of Section 15, the West Half of Section 22, and the West Half of Section 27 in Port Emma Township, Dickey County, North Dakota. The projects on the various parcels will be connected via a pipeline along the east boundary of the Southwest Quarter of Section 15, the east boundary of the West Half of Section 22, and the east boundary of the West Half of Section 27; the pipeline will then run diagonally to the southeast, under 101st Street SE, and will daylight in the northwest corner of the Northeast Quarter of Section 34; the discharge will ultimately flow into the James River. The project will include five surface inlets, each with 3/8-inch coefficient.

According to Dickey County tax records, Paul Hansen owns the Southwest Quarter of Section 15, the Southwest Quarter of Section 22, the West Half of Section 27, and the Northeast Quarter of Section 34. Raymond and Susan Hansen, as Trustees of the Raymond R. Hansen and Susan M. Hansen Trust, own the Northwest Quarter of Section 22.

Manager Haak moved, and Manager Gemar seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-12* filed July 23, 2021, for Scott Hansen regarding a proposed tile project in the Southwest Quarter of Section 15, the West Half of Section 22, and the West Half of Section 27 in Port Emma Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-12, subject to the following conditions:

- 1) that Applicant re-establish any areas disturbed installing or maintaining Applicant's tile system;
- 2) that Applicant install and maintain erosion protection at any and all outlets;
- 3) that 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 15, the West Half of Section 22, or the West Half of Section 27 in Port Emma Township under any blanket easements, or otherwise beyond the Water District's existing easement(s);
- 4) that Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-12 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; and
- 5) that Applicant 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.

Upon roll call vote, the motion carried unanimously.

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 District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District will recommend that Applicant comply with the following:

- 1) that Applicant obtain written permission from the Port Emma Township Board of Township Supervisors to install any pipeline through any of its road right of way; and
- 2) 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. 2021-12 to the State Engineer's Office, Port Emma Township, 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.

Scott Hansen tile permit proposal (2nd one to approve)

Application to Install a Subsurface Water Management System No. 2021-16 for Scott Hansen in the South Half of Section 28 in Port Emma Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2021-16* filed July 23, 2021, filed with the Board by Applicant Scott Hansen. Under the Application, Applicant seeks to install a 110-acre drain tile system in the South Half of Section 28 in Port Emma Township, Dickey County, North Dakota. The project will include a gravity outlet along the east boundary of the Southeast Quarter of Section 28 that will discharge directly into a natural watercourse that flows east. The project will include a second outlet located in the southeast corner of the Southeast Quarter of Section 28; the outlet will discharge into the north road ditch along 101st Street SE; the discharge will flow east through the north road ditch, along the south boundary of Section 27, until discharging into the James River. The project will include four surface inlets, each with 3/8-inch coefficient.

According to Dickey County tax records, Paul Hansen owns the Southwest Quarter of Section 28, and the Scott Hansen Revocable Living Trust and Monica Hansen Revocable Living Trust jointly own the Southeast Quarter of Section 28. With regard to downstream properties, Paul Hansen owns the Southwest Quarter of Section 27, and Jane C. McCabe, as Trustee of the Jane C. McCabe Revocable Trust, owns the Southeast Quarter of Section 27.

Manager Hauck moved, and Manager Gemar seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-16* filed July 23, 2021, for Scott Hansen regarding a proposed tile project in the South Half of Section 28 in Port Emma Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-16, subject to the following conditions:

- 1) that Applicant install and maintain erosion protection at any and all outlets into Port Emma's Township right of way;

- 2) that Applicant install and maintain erosion protection at any and all outlets into the natural watercourse in the Southeast Quarter of Section 28 in Port Emma Township;
- 3) that Applicant re-establish any areas disturbed installing or maintaining Applicant's tile system;
- 4) that 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 28 in Port Emma Township under any blanket easements, or otherwise beyond the Water District's existing easement(s);
- 5) that Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT No. 2021-16 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; and
- 6) that Applicant 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 in the southeast corner of the Southeast Quarter of Section 28.

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 District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District will recommend that Applicant comply with the following:

- 1) that Applicant obtain written permission from the Port Emma Township Board of Township Supervisors to discharge into or otherwise utilize any of its road right of way; and
- 2) 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. 2021-16 to the State Engineer's Office, Port Emma Township, 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.

Discussion was held on the costs of surface drain permit applications and subsurface drain permit applications. It was noted that under new legislation the subsurface drain permit application fees was moved to \$500 per permit; however, the surface application statute does not contain a cap. The board also agreed that a \$500 surface drain permit fee was sufficient at the permit application submission but if the total cost of the application process, the board would or could bill the permit applicant any outstanding costs.

Hudson surface permit 5908 (SOV)

A solicitation of comments was requested by the state to determine whether this proposed project and application should be deemed “of statewide or interdistrict significance.” The board determined the State should not conclude this project is “of statewide or interdistrict significance,” and the Board concluded this was a good project and no comments were warranted. The surface drain is already constructed and has been working properly. The drain was constructed as an emergency drain and is looking to be permanently permitted. Manager Gemar moved to recommend Sean submit a letter on the board’s behalf to deem this project good and not in the need of statewide significance. Manager Zimbleman seconded the motion. Upon roll call, the motion passed unanimously.

Kyle Courtney tile permit application

Application to Install a Subsurface Water Management System No. 2021-07 for Kyle Courtney in Section 5 in Port Emma Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2021-07* filed August 9, 2021, filed with the Board by Applicant Kyle Courtney. Under the Application, Applicant seeks to install a 130-acre drain tile system in Section 5 in Port Emma Township, Dickey County, North Dakota. The project will include a single pump outlet that will discharge via a pipeline extending from the northeast corner of Section 5 across the north boundary of Section 4; at approximately the quarter-quarter line in the Northeast Quarter of Section 4, the pipe will daylight and discharge into the south road ditch along 96th Street SE; the discharge will flow east in the south road ditch along the remainder of the Northeast Quarter of Section 4, and along the north boundary of Section 3. The project will include four surface inlets, each with 3/8-inch coefficient.

According to deeds and tax records supplied by Applicant, Kyle and Megan Courtney own portions of the Northeast Quarter of Section 5 in Port Emma Township, and Geraldine Courtney owns the remainder of the Northeast Quarter of Section 5. Robert and Brenda Courtney own the remainder of Section 5. Madella Scheffert owns the North Half of Section 4 where Applicant intends to install the pipeline (Applicant has already obtained an easement from Ms. Scheffert). With regard to additional downstream properties, Kyle Courtney and Robert Courtney own the North Half of Section 3.

Manager Haak moved, and Manager Hauck seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-07* filed August 9, 2021, for Kyle Courtney regarding a proposed tile project in Section 5 in Port Emma Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-07, subject to the following conditions:

- 1) that Applicant install and maintain erosion protection at any and all outlets into Port Emma’s Township right of way;

- 2) that Applicant re-establish any areas disturbed installing or maintaining Applicant's tile system;
- 3) that 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 Section 5 in Port Emma Township under any blanket easements, or otherwise beyond the Water District's existing easement(s);
- 4) that 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;
- 5) that Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT No. 2021-07 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; and
- 6) that Applicant 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.

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 District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District will recommend that Applicant comply with the following:

- 1) that Applicant obtain written permission from the Port Emma Township Board of Township Supervisors to discharge into or otherwise utilize any of its road right of way; and
- 2) 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. 2021-07, and Applicant's downstream flow map to the State Engineer's Office, Port Emma 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.

Drain 11 Matrix update

The board's engineer, Chris Gross, gave an update to Drain 11 reassessment proposal created by Sargent County's water district to create a three county (Ransom, Dickey and Sargent) joint powers agreement to

reassess Drain 11. Sargent county would like to include Ransom and Dickey counties in this because of their benefit they receive from their water entering Drain 11. Managers Hansen and Gemar drafted letters to Chris that stated their opinions on the reassessment matrix for him to relay to the Sargent County board. Chris made mention that the board is waiting for Ransom County to cooperate with some of their requests and no other business has happened with the proposal. No decisions were made at this time by the Dickey County Water District.

Minutes Approved

Manager Zimbleman moved to approve the July meeting minutes. Manager Gemar seconded the motion. The motion carried unanimously.

Financial Report

Secretary Hansen provided the following financial reports:

Water Resource Board: Cash in Bank \$ 176,578.73

Savings \$ 100,000

Oakes Pilot Drain: \$ 36,102.90

Dickey County Drain #1: \$ 37,191.34

Yorktown Maple Bond: \$645,662.22

The Board considered bills from Ohnstad Twichell of \$ 1359.63 and Moore Engineering of \$ 425.00

Manager Haak moved to approve the bills and financial report. Manager Zimbleman seconded the motion. The motion carried unanimously.

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

APPROVED:

Steve Hansen, Chair

Attest:

Judy Hansen, Secretary

