

**TRAILL COUNTY WATER RESOURCE DISTRICT
RECURRENT MEETING
AUGUST 7, 2018 ~ HILLSBORO, ND**

The District Board convened on this date and came to order at 7:00am at the office of the Traill County Water Resource District in Hillsboro, ND. Managers present were: Gary Thompson, Jason Lovas and Andy Neset, with Chairman Jason Siegert presiding. Those absent were: Joel Halvorson. Also present were: Sean Fredricks, Attorney for the Board and Chris Gross, Engineer for the Board.

AGENDA

Manager Lovas moved to accept the agenda as amended. Manager Neset seconded the motion. Upon roll call vote, the motion carried unanimously.

MINUTES

Manager Thompson moved to approve the July 17th and July 24th, 2018 meeting minutes as presented. Manager Lovas seconded the motion. Upon roll call vote, the motion carried unanimously.

FINANCIAL

It was moved by Manager Neset and seconded by Manager Lovas to approve payment of the July 18 – August 7, 2018 bills and the electronic funds transfers, as presented. Upon roll call vote, the motion carried unanimously.

DRAIN BUSINESS

Updates were given on the following drains:

Thoreson Drain No. 64:

Manager Thompson mentioned that **rock is needed** at 3 inlet culverts at the last half mile of the drain.

Stavanger-Belmont Drain No. 52:

Chris Gross presented a proposal from JAV Construction for two options to **repair the headwall** between Sections 5 and 8. Option #1 is to install a galvanized steel headwall which would include (2) 30' lines of CMPA, labor and materials in the amount of \$58,413.00. Option #2 is to install a concrete headwall which would include labor and materials in the amount of \$67,884.00. After further discussion, Manager Neset moved to select Option #2. Manager Thompson seconded the motion. Upon roll call vote, the motion carried unanimously.

Morgan Drain No. 36:

Chris Gross presented **Application for Payment No. 1** in the amount of \$36,766.50 payable to Comstock Construction, Inc. and the Application of Substantial Completion document for the channel cleanout project. Manager Neset moved to approve both applications. Manager Lovas seconded the motion. Upon roll call vote, the motion carried unanimously. The seeding application for payment will come at a later date when the seeding has been established.

Norway Drain No. 38:

Chris Gross presented **Application for Payment No. 1** in the amount of \$122,534.85 which includes 75% seeding costs. The remaining 25% will be paid upon the establishment of the seeding along with a final balance, change order, and the Application for Substantial Completion document. Manager Neset moved and Manager Lovas seconded the motion to approve Application for Payment No. 1 as presented. Upon roll call vote, the motion carried unanimously.

Murray Drain No. 17:

Chris Gross told the Board that he had spoken to contractor Chad Hanson who gave him a list of the intercept culverts that have been installed. Jason Siegert said that a **204' x 18" culvert will not be installed at this time**, but that Chad has offered to keep it along with 3 flap gates and 3 end sections at his shop until they can be used in the Murray Drain at a later date. After further discussion, Manager Lovas moved to purchase this culvert and parts from Chad Hanson in the amount of \$3,457.20. Manager Neset seconded the motion. Upon roll call vote, the motion carried unanimously. Andy Neset mentioned that the drain looks like it is favorable for the seeding to be performed.

Mickelson Drain No. 13:

Discussion was revisited on a request by **Jon Berg** to **lower an intercept culvert** in the NW ¼ of Section 4. Manager Lovas moved to approve the request and if the pipe is bad the water board will replace it with a plastic pipe. Manager Neset seconded the motion. Upon roll call vote, the motion carried unanimously.

Hillsboro Drain No. 26:

Chris Gross informed the Board that he had met with the **Paul Fossum** family, etal, and had a good meeting regarding the potential **cleanout** of the drain. He provided them with maps, pictures, etc. and described the schedule to them. Chris told them that the Water Board would like to commence with right of way procedures in the next few weeks. They appeared receptive and will discuss the options among themselves to determine if a 4:1 or 20:1 slope will benefit them the most. The possibility of installing intercept pipes in a parallel ditch was talked about.

Holmen Drain No. 43:

Gary Thompson told the Board that contractor Rod Flaten has surveyed **2 drop structures** in the SE ¼ of Section 27 and found that the cement on both of them are too high. After further discussion, Manager Thompson moved to direct Moore Engineering, Inc. to survey structure to structure and report back to the Board with their findings. Manager Lovas seconded the motion. Upon roll call vote, the motion carried unanimously.

Blanchard-Norman Drain 23-40:

Chris Gross said he has met with Dalrymple and that the additional half mile has been surveyed. They are sizing culverts now. Preliminary engineering plans, etc. will be available by our next meeting. The Board reviewed the Consultation Report provided by Ohnstad Twichell Law Firm and Farmer's National Appraisal Service.

Kelso Floodway:

Survey has been completed in Section 21. Cattails are negatively affecting drainage in Sections 16 and 21. Chris Gross stated that he will have a profile prepared and will present it to us in the near future. The possible reassessment of the Kelso Floodway was discussed and a meeting will be scheduled sometime this winter.

Greenfield-Bohnsack Drain 57A Extension:

The Board next discussed the possible extension of Drain 57A. The potential extension will require donation of right of way from Joel and Bonnie Halvorson in the Northeast Quarter of Section 19 of Greenfield Township.

Before the Board could proceed with the substantive considerations regarding the extension and acquisition from the Halvorsons, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Halvorson's conflict in the matter. 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.

Sean indicated the North Dakota Supreme Court and the Attorney General's Office have taken a narrow view of situations where a public official can abstain from participating in a matter. A public official must have 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. The North Dakota Supreme Court adopted a "rule of necessity" that requires public officials to participate in matters before their respective boards. The public policy rationale is that public officials have a duty to vote on issues before them, and cannot avoid participation simply to avoid the appearance of impropriety.

The Section 44-04-22 test requires a multi-step analysis. In this case, to accomplish the extension, the Board will have to acquire drain right of way from Manager Halvorson. As a result, Manager Halvorson has a personal interest in the matter. Sean indicated this presents a clear conflict situation; Manager Halvorson has a "direct and substantial personal or pecuniary interest" conflict under Section 44-04-22 that warrants abstention. Sean indicated that, with that in mind, the remainder of the Board should next vote on whether or not Manager Halvorson should "participate in or vote on" issues related to the Board's acquisition from Manager Halvorson and the Drain 57A extension. The remainder of the Board voted unanimously to prohibit Manager Halvorson from participating in any voting regarding the Board's acquisition from the Halvorsons or regarding the extension of Drain 57A. More specifically, Chairman Siegert and Managers Lovas, Thompson, and Neset all voted to prohibit Manager Halvorson from participating in or voting on any issues regarding the Board's acquisition from the Halvorsons or regarding the extension of Drain 57A.

Sean next explained the draft landowner agreement for the Halvorsons. Under the agreement, Joel and Bonnie Halvorson would donate the deeded right of way and berm easement right of way necessary to accommodate the extension of Drain 57A. Manager Thompson moved to

approve the agreement with the Halvorsens. Manager Lovas seconded the motion. Upon roll call vote, the motion carried unanimously. Manager Halvorson was absent.

Sean next explained the draft RESOLUTION OF NECESSITY TO EXTEND GREENFIELD-BOHNSACK DRAIN 57A. Under the Resolution, the Board would declare the extension of Drain 57A would benefit the Drain 57A watershed and would allow the Board to more efficiently manage and operate the drain. Further, the Board would direct Moore Engineering and Ohnstad Twichell to complete various tasks as necessary to complete the extension, including the acquisition of the Halvorsens' right of way. Manager Lovas moved to approve the RESOLUTION OF NECESSITY TO EXTEND GREENFIELD-BOHNSACK DRAIN 57A. Manager Neset seconded the motion. Upon roll call vote, the motion carried unanimously. Manager Halvorson was absent.

Sean will forward the agreement to the Halvorsens for their signature. Once Ohnstad Twichell has the requisite abstract and completes title review, they can proceed with a closing to acquire the right of way. Following the right of way acquisition, the Board will approve an Order to officially extend the drain, and Sean's office will publish the Order.

PERMITS AND COMPLAINTS

Application to Install a Subsurface Water Management System No. 2017-8 for Christopher Hong in the North Half of Section 36 in Stavanger Township

The Board reviewed an *Application to Install a Subsurface Water Management System No. 2017-8* dated August 9, 2017, for Christopher Hong; Applicant did not submit a completed application until July 19, 2018. Under the application, Applicant seeks to install a drain tile system in the North Half of Section 36 in Stavanger Township, Traill County, North Dakota. The project will include a gravity outlet located in the northeast corner of the Northeast Quarter of Section 36; the gravity outlet will discharge directly into Carson Drain No. 10, a legal assessment drain owned and operated by the Traill County Water Resource District.

Because the project will discharge directly into a legal assessment drain, no THIRTY-DAY NOTICE was necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1. Under the tile law passed during the 2017 Legislative session, the Board can attach conditions to protect its drain from erosion, but cannot require Applicant to obtain downstream flowage easements or consent from downstream landowners.

According to records provided by Applicant, Christopher Hong owns the Northeast Quarter of Section 36, and Curtis Hong owns the Northwest Quarter of Section 36.

Manager Lovas moved, and Manager Neset seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2017-8* dated August 9, 2017, filed July 19, 2018, for Christopher Hong in the North Half of Section 36 in Stavanger Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2017-8, subject to the following conditions:

- 1) That Applicant provide, install, and maintain adequate erosion protection at any and all outlets into Carson Drain No. 10;

- 2) That the Applicant notify the Traill County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 3) That Applicant must reseed any of the District's right of way disturbed by Applicant's activities, and must maintain any reseeded areas for a period of one year from the date of completion to ensure the seeding adequately repairs any disturbed areas; and
- 4) That Applicant must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the District.

Upon roll call vote, the motion carried unanimously.

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 consider complying with the following:

- 1) That Applicant notify the Traill County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; 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.

Application to Install a Subsurface Water Management System No. 2017-9 for Christopher Hong in the Northeast Quarter of Section 24 in Ervin Township

The Board reviewed an *Application to Install a Subsurface Water Management System No. 2017-9* dated August 8, 2017, for Christopher Hong; Applicant did not submit a completed application until July 19, 2018. Under the application, Applicant seeks to install a drain tile system in the Northeast Quarter of Section 24 in Ervin Township, Traill County, North Dakota. The project will include a pump outlet located in the southeast corner of the Northeast Quarter of Section 24; the outlet will discharge directly into Moen Drain No. 27, a legal assessment drain owned and operated by the Traill County Water Resource District.

Because the project will discharge directly into a legal assessment drain, no THIRTY-DAY NOTICE was necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1. Under the tile law passed during the 2017 Legislative session, the Board can attach conditions to protect its drain from erosion, but cannot require Applicant to obtain downstream flowage easements or consent from downstream landowners.

According to records provided by Applicant, Christopher Hong owns the Northeast Quarter of Section 24.

Manager Lovas moved, and Manager Neset seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2017-9* dated August 8, 2017, filed July 19, 2018, for Christopher Hong in the Northeast Quarter of Section 24 in Ervin Township, and to

authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2017-9, subject to the following conditions:

- 1) That the Applicant provide, install, and maintain adequate erosion protection at any and all outlets into Moen Drain No. 27;
- 2) That the Applicant notify the Traill County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 3) That the Applicant must reseed any of the District's right of way disturbed by Applicant's activities, and must maintain any reseeded areas for a period of one year from the date of completion to ensure the seeding adequately repairs any disturbed areas; and
- 4) That Applicant must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the District.

Upon roll call vote, the motion carried unanimously.

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 consider complying with the following:

- 1) That Applicant notify the Traill County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; 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.

Application to Install a Subsurface Water Management System No. 2018-05 for Curtis Hong, Steve Thoreson, and Barb Endrud

The Board reviewed an *Application to Install a Subsurface Water Management System No. 2018-05* dated July 15, 2018, for Curtis Hong, Steve Thoreson, and Barb Endrud. Under the application, Applicants seek to install a drain tile system in the South Half of Section 12 in Lindaas Township, Traill County, North Dakota. The project will include a gravity outlet that will discharge via an underground pipeline that will commence in the southeast corner of Section 12 and will run east along the south boundary of the Southwest Quarter of Section 7 until daylighting and discharging directly into Morgan Drain No. 36, a legal assessment drain owned and operated by the Traill County Water Resource District.

Because the project will discharge directly into a legal assessment drain, no THIRTY-DAY NOTICE was necessary to downstream landowners under N.D. Cent. Code § 61-32-03.1. Under the tile law passed during the 2017 Legislative session, the Board cannot require Applicants to obtain permission or easements from downstream landowners, but can require Applicants to install erosion protection to protect its legal assessment drain.

According to records supplied by Applicants, Barbara Endrud owns the Southwest Quarter of the Southwest Quarter of Section 7 of Wold Township where Applicants will install the underground pipeline and the project outlet. Further, Steve and Janice Thoreson own the South Half of the Southeast Quarter of Section 12 of Lindaas Township, and Curtis Hong owns the South Half of the Southwest Quarter of Section 12 where Applicants intend to install the tile project.

Manager Lovas moved, and Manager Neset seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2018-05* dated July 15, 2018, for Curtis Hong, Steve Thoreson, and Barb Endrud, in the South Half of Section 12 in Lindaas Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2018-05, subject to the following conditions:

- 1) That Applicants provide, install, and maintain adequate erosion protection at any and all outlets into Morgan Drain No. 36;
- 2) That Applicants notify the Traill County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets; and
- 3) That Applicants must reseed any of the District's right of way disturbed by Applicants' activities, and must maintain any reseeded areas for a period of one year from the date of completion to ensure the seeding adequately repairs any disturbed areas.

Upon roll call vote, the motion carried unanimously. Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicants' permit. However, for Applicants' protection, and to ensure protection of Applicants' tile system, the District will recommend that Applicants consider complying with the following:

- 1) That Applicants notify the Traill County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; and
- 2) That Applicants 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.

A **Request for Drainage on Highway Right of Way** in Section 18 of Stavanger Township submitted by **Chris Hong** (see drain tile application 2014-8) was reviewed by the Board. After consideration, Manager Lovas moved to approve the application. Manager Thompson seconded the motion. Upon roll call vote, the motion carried unanimously.

Discussion was held regarding a **surface permit Neil Breidenbach** is trying to obtain to construct drainage in a township road ditch, but the township is objecting. The Board suggests that he get a delineation of the acres of the outlet. The Board cannot act on this as it is not their jurisdiction.

OTHER BUSINESS

Roger Anderson met with the Board this morning to talk about his concerns with some **culverts** that are **causing flooding in Section 3 of Hillsboro Township**. Several options to improve drainage there were considered.

Corey Martin, Traill County Highway Superintendent, met with the Board to go over county road and bridge issues with the Board.

Having no further topics to discuss, the meeting adjourned at 10:15am without objection.



Jason Siegert, Chairman



Nettie Johnson, Secretary