

Application to Install a Subsurface Water Management System No. 2026-01 for John T. Farmer in the Northwest Quarter of Section 33 in Tillable Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2026-01* filed June 1, 2026, by Applicant John T. Farmer. Under the Application, Applicant seeks to install a 160-acre drain tile system in the Northwest Quarter of Section 33 in Tillable Township, Corn County, North Dakota. The project will include a single pump outlet located on the west boundary of the Northwest Quarter; the pump will discharge into the east road ditch along 10th Avenue SE; the discharge will travel south in the east road ditch, along the west boundary of the Southwest Quarter of the Northwest Quarter of Section 33; at the southwest corner of the Northwest Quarter of Section 33, the discharge will flow east and south, under 10th Avenue, to the northeast corner of the Southeast Quarter of Section 32; from there, the discharge will flow south in the west road ditch along 10th Avenue, along the east boundary of the Southeast Quarter of Section 32; at the southeast corner of the Southeast Quarter, the discharge will flow into the north road ditch along the County Line Road/2nd Street SE and will flow west along the south boundary of the Southeast Quarter of Section 32. **[SMF Note: Detailed flow descriptions, in addition to accurate downstream flow maps from Applicants, are important for WRDs to protect themselves, as well as Applicants and their projects; if another party were to sue the WRD or file a drainage complaint against a project years later, a detailed flow description in the minutes and NOTICE OF DECISION will allow a WRD to easily determine if the Applicant installed the system approved by the WRD, in which case the WRD could easily prevail in a case commenced against the WRD and could easily dismiss a drainage complaint.]**

According to the County tax roll information supplied by Applicant, John and Elaine Farmer own the Northwest Quarter of Section 33 in Tillable Township. With regard to downstream notices required under N.D. Cent. Code § 61-32-03.1, Ted and Linda Neighbor own the Southeast Quarter of Section 32, and the Corn County Highway Department owns its County Line Road right of way.

-OR-

With regard to the two gravity outlets in Section 33, because the outlets will discharge directly into a natural watercourse/legal assessment drain, no downstream notices are required under N.D. Cent. Code § 61-32-03.1.

[If the project will introduce new acres into an assessment drain:] The Board discussed the benefit this property will receive from Corn County Drain No. 1 as a result of this project. Chris Consultant noted the Northwest Quarter of Section 33 is not currently in the Corn County Drain No. 1 assessment district. As a result of this tile project, drainage from the Northwest Quarter of Section 33 will now discharge Corn County Drain No. 1. Under N.D. Cent. Code § 61-32-03.1(4)(g), as a condition to the Board's approval of Application No. 2026-01, the Board can legally include the Northwest Quarter of Section 33 in the Corn County Drain No. 1 assessment district if the parcel will benefit from the drain. Chris Consultant reviewed LiDAR and the Corn County Drain No. 1 assessment district map. The Board reviewed and considered the benefits of the drain to the property. There are no outstanding bond obligations regarding Corn County Drain No. 1; inclusion of the Northwest Quarter of Section 33 will be for purposes of annual maintenance levies for the drain. Upon review and consideration, the Board

ultimately concluded that the Northwest Quarter of Section 33 will benefit at the 50% level. The Secretary-Treasurer will update the Corn County Drain No. 1 assessment district list to include this parcel on the Corn County Drain No. 1 maintenance levy list next year.

Manager Johnson moved, and Manager Smith seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2026-01* filed June 1, 2026, for John T. Farmer in the Northwest Quarter of Section 33 in Tillable Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2026-01, subject to the following conditions:

[SMF Note: The following conditions are the ONLY conditions WRDs can attach to permits under Section 61-32-03.1(4).]

1. Applicant will set and install any drain tile pump at least 25 feet from the top of the back slope of Corn County Drain #1, with a pipe buried from the pump to Drain #1.
2. Applicant will install and maintain erosion protection at any and all outlets into Corn County Drain #1.
3. Applicant will install and maintain erosion protection or other ditch stabilization materials at any and all outlets into Tillable Township's road right of way/Corn County's highway right of way/NDDOT's highway right of way.
4. Applicant will install and maintain erosion protection at any and all outlets into Soybean Lake/Soybean Slough/Soybean River/the natural watercourse in the Northwest Quarter of Section 33.
5. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system, including re-seeding any Corn County Drain #1 right of way disturbed.
6. Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines Corn Rural Water District has in the Northwest Quarter of Section 33 in Tillable Township under any blanket easements, or otherwise beyond the Water District's existing easement.
7. Applicant will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Corn County Water Resource District.
8. Applicant will install and maintain a control structure at the gravity outlet and will close the outlet during "critical flood periods," as determined by the Corn County Water Resource District.
9. Applicant will apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2026-01 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.

10. **[SMF Note: If the project will introduce new drainage into the watershed area of an assessment drain, and only if the tiled property is not already in the assessment district for that particular drain, this condition allows a WRD to add the parcel to the assessment district without conducting a lengthy and expensive reassessment process]** The Board will include the Northwest Quarter of Section 33 of Tillable Township in the Corn County Drain #1 assessment district at 50% benefit **[SMF Note: WRDs must conduct detailed analyses of the benefits tiled property will receive from a legal assessment drain, and include all relevant analysis and materials in and attached to your minutes].**
11. Applicant will 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 **[describe specific outlet, if more than one]** the project outlet - **OR** - but only up to the discharge into Corn County Drain #1 - **OR** - but only up to the discharge into Soybean Lake/Soybean Slough/Soybean River/the natural watercourse in the Northwest Quarter of Section 33.

Upon roll call vote, the motion carried unanimously.

With regard to condition #11, 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. **[SMF Note: HB 1437 is clear that condition #11 above places the burden of proof on the complaining party, and that party must submit "substantial evidence" that the tile system "directly" caused the silt or cattail growth, erosion, or scouring; a downstream party simply submitting a complaint is not "substantial evidence." If a downstream party or road authority submits "substantial evidence" the project "directly" caused damages, the WRD may consider conducting some type of hearing, or at least inviting all parties to a meeting to discuss the matter, before enforcing this condition. The Board should then issue a written notice to all parties regarding the Board's final decision.]**

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. The Board recommends that Applicant obtain easements from the owners of the Northwest Quarter of Section 33 **[if not owned by Applicant]** to install, construct, and maintain Applicant's tile system.
2. The Board recommends that Applicant obtain a pipeline easement from the owners the Southwest Quarter of Section 33 to install, construct, and maintain a buried pipeline.

3. The Board recommends that Applicant obtain written permission from the Tillable Township Board of Township Supervisors/Corn County Highway Department/NDDOT to discharge into, or otherwise utilize, any of its township road/highway ditches; to install, operate, and maintain buried pipe in any of its township road/highway ditches, or to bore through its township road/highway.
4. 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. 2026-01, and Applicant's downstream flow map to the State Engineer's Office, Ted and Linda Neighbor, NDDOT, Corn Rural Water District, and the Corn County Highway Department. Applicant's detailed project design map is an exempt record, and the Board will not provide copies to any third parties.