

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
JUNE 2, 2022

A virtual / conference call meeting of the Maple River Water Resource District was held on June 2, 2022, at 8:00 a.m.

Present were Rodger Olson, Chairman; Gerald Melvin, Manager; Chad Miller, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Nina Stone, Accountant; Melissa Maertens, Administrative Assistant; Sean Fredricks, Ohnstad Twichell, P.C.; Kurt Lysne, Alexa Ducioame and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; North Dakota Senator Mark Weber, Casselton; Duane Breitling, Cass County Commissioner; Tom Soucy, Cass County Highway Department; Kyle Nelson, Farmers National Company; Doug VanMeter, North Dakota Soybean Processors, LLC; Michele Caron, MJC Engineering LLC; and Sam Wagner, Fargo.

Agenda

It was moved by Manager Melvin, seconded by Chairman Olson and unanimously carried to approve the order of the agenda, as amended.

Minutes

It was moved by Manager Melvin and seconded by Chairman Olson to approve the minutes of the May 5, 2022, meeting. Upon roll call vote, the motion carried unanimously.

Drain #62 – Utility Permit for North Dakota Soybean Processors, LLC in Section 33 of Casselton Township

Discussion was held on a *Utility Permit* for North Dakota Soybean Processors, LLC to remove one culvert, replace three culverts and install two additional culverts in Section 33 of Casselton Township regarding Drain #62. Doug VanMeter indicated improvements to 36th Street SE are needed from Cass County Highway 23 to 154th Avenue SE to accommodate construction of the Soybean Crushing Plant. The new culverts will match the life expectancy of the concrete roadway. Sam Wagner inquired if there would be any drainage impacts as a result of the culvert replacements. Mr. Lysne noted drainage patterns would not be impacted as there are culverts through 36th Street SE now. Stormwater discharge from the Plant into Drain #62 will be evaluated in the future.

A motion was made by Manager Melvin and seconded by Manager Miller to approve the *Utility Permit* for North Dakota Soybean Processors, LLC to remove one culvert, replace three culverts and install two additional drain intercept culverts on Drain #62 in Section

33 of Casselton Township, with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

Mr. Lysne reported Otter Tail Power Company needs to cross Drain #62 right of way in two locations to provide power to the Plant.

A motion was made by Manager Melvin and seconded by Manager Miller to approve the *Utility Permit* for Otter Tail Power Company to install an underground electric line under and on Drain #62 right of way in the SE 1/4 of Section 33 and the SW 1/4 of Section 34 in Casselton Township, with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

Lynchburg-Buffalo Project No. 2016-01

Sean Fredricks briefly updated the Board on the status of right of way acquisition for Phase III of Lynchburg-Buffalo Project No. 2016-01.

A motion was made by Manager Miller and seconded by Manager Melvin to approve the *Purchase Agreement* with Darlene Miller regarding Lynchburg-Buffalo Project No. 2016-01. Upon roll call vote, the motion carried unanimously.

Upper Swan Creek Channel Improvement Project No. 2020-01

Mr. Lysne reported the contractor for Upper Swan Creek Channel Improvement Project No. 2020-01 has completed the necessary paperwork and anticipates beginning the project very soon. Mr. Lysne also noted the bonding for the project has been completed and the necessary utility relocations are ready for construction. The construction limits for the project were staked before spring planting occurred.

Utility Permit for Lumen/CenturyLink to install copper cables under Swan Creek in Sections 20 and 28 of Casselton Township

It was moved by Manager Melvin and seconded by Manager Miller to approve the *Utility Permit* for Lumen/CenturyLink to install copper cables under Swan Creek in Sections 20 and 28 of Casselton Township, with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

Drain #34 Improvement Project

Alexa Ducioame discussed preliminary plans for the Drain #34 Improvement Project, including the timing of crossing replacements with input from the Cass County Highway Department. Ms. Ducioame suggested completing the project in two or more phases, with Phase I starting in the SW 1/4 of Section 31 and continuing north through Sections 30, 19 and 18 of Normanna Township. Phase I would include channel work, three crossing replacements and potentially bidding a fourth crossing replacement as an alternate. She presented a cost estimate for Phase I and reviewed funding for the project.

Mr. Lysne indicated the next step for the project is to submit a cost-share application for final design of Phase I to the North Dakota Department of Water Resources (NDDWR).

A motion was made by Manager Melvin and seconded by Manager Miller to request cost-share from the NDDWR for final design of Phase I of the Drain #34 Improvement Project. Upon roll call vote, the motion carried unanimously.

Drain #37 Improvement Project

Ms. Ducioame discussed preliminary plans for the Drain #37 Improvement Project in Sections 28, 21 and 16 of Davenport Township. Utility work will likely be costly. Mr. Lysne reported on meetings held with adjacent property owners to discuss the proposed project. The property owners were supportive of the project and open to the removal of trees to accommodate flattening the side slopes of Drain #37. An *Application for Surface Drain* will be submitted to the NDDWR for the project.

2022 facility inspections

Brady Woodard updated the Board on the damaged culvert on Drain #15 in the NE 1/4 of Section 15 in Leonard Township. The contractor will replace the damaged culvert and reset both culverts at that location when the water goes down, likely next week.

Ms. Ducioame briefly discussed the slide approximately 100 feet in length that is situated in between two slides that were previously repaired on Drain #39 in Section 24 of Maple River Township. The slide is approaching the adjacent road shoulder but has not impacted the road at this time. Moore Engineering, Inc. determined there is channel bottom erosion in addition to the slide and will bring a recommended repair to a future meeting for discussion.

Mr. Woodard stated a culvert and flap gate needs to be replaced on Drain #37 in Section 33 of Addison Township. The contractor replacing the culvert on Drain #15 in the NE 1/4 of Section 15 in Leonard Township will also complete the work at this site.

Davenport Flood Risk Reduction Project

Ms. Ducioame updated the Board on the Davenport Flood Risk Reduction Project. The geotechnical report for the project has been received and is being reviewed to determine if there are updates needed to the project design. Moore Engineering, Inc. has completed ground surveys along the proposed levee alignment on properties where access was granted. Mr. Lysne indicated he will be attending the next Davenport City Council meeting to further discuss the project, including a potential shift in levee alignment on the east side of the City per the property owner's request. Work continues on project design and the items needed to submit a Conditional Letter of Map Revision to FEMA for the project. Mr. Fredricks briefly reported on the status of right of way acquisition for the project.

Application to Install a Subsurface Water Management System No. 20226 for Karen and Audrey Roach in the S 1/2 of Section 29 in Wheatland Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 20226*, filed May 13, 2022, by Applicants Karen Roach and Audrey Roach. Under the Application, Applicants seek to install a 254-acre drain tile system in the S 1/2 of Section 29 in Wheatland Township, Cass County, North Dakota, south of railroad right of way. The project will include a single gravity outlet located in the southeast corner of the

SE 1/4 of Section 29; the outlet will discharge in the north road ditch along 35th Street SE; the discharge will flow east in the north road ditch, along the south boundary of Section 28.

According to County tax roll information, Karen Roach owns the S 1/2 of Section 29 in Wheatland Township south of railroad right of way. With regard to downstream property, Harvey Wheeler, Jr., owns the SW 1/4 of Section 28 south of railroad right of way, and Thomas Sullivan owns the SE 1/4 of Section 28 south of railroad right of way.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20226* filed May 13, 2022, for Karen Roach and Audrey Roach regarding a proposed tile system in the S 1/2 of Section 29 in Wheatland Township, and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20226*, subject to the following conditions:

1. Applicants will install and maintain erosion protection or other ditch stabilization materials at any and all outlets into Wheatland Township's road right of way.
2. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
3. Applicants will remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicants' tile system, but only up to one mile downstream from the project outlet.
4. Applicants will not install Applicants' tile system within 20 feet, on either side, of any rural water lines Cass Rural Water Users District has in the S 1/2 of Section 29 in Wheatland Township, under any blanket easements, or otherwise beyond the Water District's existing easement(s).
5. Applicants must apply for an amendment to *Subsurface Water Management Permit No. 20226* 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 #3, Applicants' 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 Applicants' 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 Applicants' permit. However, for Applicants' protection, and to ensure protection of Applicants' tile system, the Board will recommend that Applicants comply with the following:

1. The Board recommends that Applicants obtain written consent from the Wheatland Township Board of Township Supervisors to discharge into, or otherwise utilize, any of the Township's ditches or road right of way.
2. The Board recommends 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.

The Board will provide copies of the Board's *Notice of Decision, Subsurface Water Management Permit No. 20226*, and Applicants' downstream flow map to the North Dakota Department of Water Resources, Wheatland Township, downstream landowners, and Cass Rural Water Users District. Applicants' detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Application to Install a Subsurface Water Management System No. 20227 for Tim Berntson in the N 1/2 and SE 1/4 of Section 29 and the NW 1/4 of Section 28 in Buffalo Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 20227*, filed May 27, 2022, by Applicant Tim Berntson. Under the Application, Applicant seeks to install a 226-acre drain tile system in the N 1/2 and SE 1/4 of Section 29 and the NW 1/4 of Section 28, south of railroad right of way, in Buffalo Township, Cass County, North Dakota. The project in the NW 1/4 of Section 28 will connect to the system in Section 29 via a line under 141st Avenue SE. The project will include a single pump outlet located along the east boundary of the SE 1/4 of Section 29; the pump will discharge directly into Buffalo Creek.

According to County tax roll information, Timothy and SueAnn Berntson own the N 1/2 and SE 1/4 of Section 29 and the NW 1/4 of Section 28, south of railroad right of way, in Buffalo Township.

The Board discussed how the project will impact benefits and assessments for *Garsteig-Embden Maintenance District*, a federal project assessment district created by the Board under North Dakota law to operate and maintain the Buffalo Channel. Kurt Lysne indicated the NW 1/4 of the NW 1/4 in Section 29 is currently not within the *Garsteig-Embden Maintenance District* and that those acres will benefit from the Buffalo Channel as a result of this tile project. The Board agreed this project, that will utilize Buffalo Creek as an outlet, will provide significant benefits to the NW 1/4 of the NW 1/4 in Section 29. The Board concluded that property should be included within the *Garsteig-Embden Maintenance District* at 100% benefit.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20227* filed May 27, 2022, for Tim Berntson regarding a proposed tile system in the N 1/2 and SE 1/4 of Section 29 and the NW 1/4 of Section 28 in Buffalo Township, and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20227*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into Buffalo Creek.
2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
3. The Board will include the NW 1/4 of the NW 1/4 of Section 29 in Buffalo Township in the *Garsteig-Embden Maintenance District*, a federal project maintenance district created under North Dakota law to operate and maintain the Buffalo Channel, at 100% benefit.
4. Applicant will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Maple River Water Resource District.
5. Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines Cass Rural Water Users District has in the N 1/2 of Section 29, the SE 1/4 of Section 29, or the NW 1/4 of Section 28 in Buffalo Township, under any blanket easements, or otherwise beyond Cass Rural's existing easement(s).
6. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 20227* 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.

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 will recommend that Applicant comply with the following:

1. The Board recommends that Applicant obtain written consent from Buffalo Township to install any line through 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. 20227*, and Applicant's downstream flow map to the North Dakota Department of Water Resources, Buffalo Township, and Cass Rural Water Users District. Applicant's detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Cass County Planning

A motion was made by Manager Melvin, seconded by Manager Miller and unanimously carried to authorize the Secretary-Treasurer to submit comment on the following subdivision applications to Cass County Planning with input from the Water Resource District Engineer:

- TEPI Third Subdivision
- TEPI Fourth Subdivision

2023 budget and 2022 maintenance levy assessments

The Board tabled discussion on the 2023 budget and 2022 maintenance levy assessments until the next meeting as the Maple River Water Resource District Master Plan is currently being updated.

Bills

It was moved by Manager Melvin and seconded by Manager Miller to approve payment of Check #6121, the wire transfers and electronic funds transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Melvin and Miller. The Chairman declared the motion passed.

Wheatland Channel Repair and Sediment Removal Project 2021

Brief discussion was held on an intercept culvert on the Wheatland Channel in the NE 1/4 of Section 8 in Everest Township that was damaged during construction of the Wheatland Channel Repair and Sediment Removal Project 2021. Mr. Woodard reported the contractor will be on-site today to resolve the matter.

Drain #14 – debris near culvert in Section 25 of Raymond Township

Mr. Woodard stated a property owner reported debris near a Drain #14 culvert in Section 25 of Raymond Township that may be obstructing drainage. Moore Engineering, Inc. inspected the culvert and found the debris is not obstructing drainage at this time. The culvert will be reinspected when water recedes to ensure there is proper low-flow drainage through the culvert.

Legislative updates

Senator Mark Weber and Mr. Fredricks reported on legislative updates that impact water resource districts. The Board thanked Senator Weber for his diligent legislative efforts regarding water resource districts.

North Dakota Water Resource Districts Association 2022 Joint Summer Meeting and Executive Briefing

Brief discussion was held on the North Dakota Water Resource Districts Association 2022 Joint Summer Meeting and Executive Briefing in Fargo from July 11-13, 2022.

Adjournment

There being no further business for the Board to consider, it was moved by Manager Melvin, seconded by Manager Miller and unanimously carried to adjourn the meeting.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer