

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
RUSH RIVER WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
AUGUST 16, 2022

A virtual / conference call meeting of the Rush River Water Resource District was held on August 16, 2022, at 8:00 a.m.

Present were William A. Hejl, Chairman; Richard Sundberg, Manager; Jacob Gust, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Nina Stone, Accountant; Melissa Hinkemeyer, Administrative Assistant; Sean M. Fredricks, Ohnstad Twichell, P.C.; Kurt Lysne and Alexa Ducioame, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Mary Scherling, Cass County Commissioner; Tom Soucy, Cass County Highway Department; Mark Sorvaag, Berlin Township Supervisor; and Mike Anderson, Rich Township property owner.

**Approval of Agenda**

It was moved by Manager Gust, seconded by Manager Sundberg and unanimously carried to approve the order of the agenda, as presented.

**Drain #12 – low water crossing between Sections 34 and 35 in Berlin Township**

Mark Sorvaag discussed a damaged low water crossing between Sections 34 and 35 in Berlin Township regarding Drain #12. Mr. Sorvaag said Berlin Township is concerned about the safety of the crossing and is inquiring if the crossing can be improved. Kurt Lysne suggested replacing the cable concrete crossing with crushed concrete or a concrete slab. The Board directed Moore Engineering, Inc. to hire a contractor to place crushed concrete over the top of the Drain #12 low water crossing between Sections 34 and 35 in Berlin Township.

**Minutes**

It was moved by Manager Sundberg, seconded by Manager Gust and unanimously carried to approve the minutes of the July 19 and 25, 2022, meetings.

**Drain No. 2 Improvement Project No. 2020-01**

Mr. Lysne reported the contractor has almost completed Drain No. 2 Improvement Project No. 2020-01. The contractor will be spreading another load of gravel on the roadway and has coordinated with the adjacent property owner regarding weed control needed related to the project.

**Drain #12 – riverbank erosion in the NW 1/4 of Section 32 in Rush River Township**

Mr. Lysne reviewed the riverbank erosion on Dale Larsen’s property in the NW 1/4 of Section 32 in Rush River Township along Drain #12. Mr. Larsen provided a quote from a contractor for the proposed repair of the erosion. Detailed project plans will be needed to submit to the Corps of Engineers to determine if a Section 408 Permit is needed for the project.

**Drain #12 – bridge replacement on Cass County Highway 22 in Section 6 of Raymond Township**

Tom Soucy updated the Board on the bridge across Drain #12 on Cass County Highway 22 in Section 6 of Raymond Township. The North Dakota Department of Transportation lowered the load rating of the bridge to 19 ton. Mr. Soucy stated repairs to the bridge would be difficult with the existing wood pilings. The Cass County Highway Department is moving forward with plans to replace the bridge next year as the crossing at the current load rating is affecting traffic patterns in the area, including impacts to local agricultural traffic. Mr. Soucy said the Cass County Highway Department is assisting Raymond Township in the maintenance of the township roads in the area as traffic has been detouring on the township roads rather than the designated detour route. Manager Sundberg suggested installing detour signs in the area to help direct traffic to the designated detour route.

**Upper Rush Improvement District No. 78**

Mr. Lysne reported the petitioners of the Upper Rush Improvement District No. 78 are currently discussing the proposed project.

**Regional Conservation Partnership Program (RCPP) – Rush River Watershed**

Mr. Lysne updated the Board on the RCPP – Rush River Watershed Plan. Discussions continue with property owners and Burlington Northern Santa Fe Railway Company personnel regarding the levee alignment and railway crossings for the project. The Natural Resources Conservation Service has granted a time extension for the completion of the final project design to provide adequate time for these discussions to occur.

Discussion was held regarding a request from a property owner to exclude his property from the project. The property owner indicated concern about the dike blocking the view of his property from State Highway 18. The Board discussed potential levee alignment options if the property were to be excluded from the project. The Board then discussed requiring the property owner to sign a waiver if the property is excluded from the project. Doing so would waive government assistance related to potential risk and damage from flood events since the property would not be protected by the project.

Potential improvements to the ditch on the north side of Cass County Highway 32, east of State Highway 18, next to American Crystal Sugar Company property were discussed. This would help keep water in the ditch and prevent it from breaking out on adjacent properties. Chairman Hejl said American Crystal Sugar Company had no problem with making the improvements. They acknowledge the improvements may require relocation of electrical service to their property.

The information discussed today will be presented at the next Cass County Joint Water Resource District meeting for consideration.

**Cass County Joint Water Resource District (CCJWRD) report**

Manager Gust reported the groundbreaking ceremony for construction of the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project was held last week. Commissioner Scherling noted the P3 developer for the Diversion Channel and Associated Infrastructure is currently developing a streamlined design review process for the project.

**Red River Joint Water Resource District (RRJWRD) report**

The next meeting of the RRJWRD will be held on September 21, 2022.

**Application to Install a Subsurface Water Management System No. 202214 for Dirk Pilgrim, George Pilgrim and Evan Pilgrim in the W 1/2 of Section 33 in Rich Township and the N 1/2 NW 1/4 of Section 4 in Ayr Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202214*, filed July 26, 2022, by Applicants Dirk Pilgrim, George Pilgrim, and Evan Pilgrim. Under the Application, Applicants seek to install a 209-acre drain tile system in the W 1/2 of Section 33 in Rich Township and the N 1/2 of the NW 1/4 of Section 4 in Ayr Township, Cass County, North Dakota. The project will include a single gravity outlet along the west boundary of the NW 1/4 of Section 33 in Rich Township; the outlet will discharge to the west, through an existing culvert under 140th Avenue SE; the discharge will flow into a swale along the east boundary of the SE 1/4 of Section 32 in Rich Township; the swale discharges into a natural watercourse in the SE 1/4 of Section 33 that ultimately discharges into Cass County Drain No. 56, a legal assessment drain owned and operated by the Maple River Water Resource District. The swale in the SE 1/4 of Section 33 qualifies as a “watercourse” under N.D. Cent. Code § 61-01-06; the swale “arises periodically from natural causes and reaches a plainly defined channel of a permanent character.”

Mike Anderson farms in the vicinity and he noted that they added irrigation in Section 32 of Rich Township, and they plan to install a tile system soon. Mr. Anderson inquired into whether or not the Board could require the Pilgrims to refrain from operating their system until the parties can come to agreement regarding operating plans for their respective systems. The tile permitting statute limits water resource districts’ ability to specific conditions for tile permits and the statute does not allow the Board to dictate the timing of installation or operation in these circumstances. The Board encouraged Mr. Anderson to work with the Pilgrims.

According to County tax roll information supplied by Applicants, George Pilgrim owns the N 1/2 of the NW 1/4 of Section 4 in Ayr Township; Evan Pilgrim owns the SW 1/4 of Section 33 in Rich Township; and Dirk and Cynthia Pilgrim own the NW 1/4 of Section 33 in Rich Township. With regard to downstream landowners, Wayne and Lorraine Anderson own the SE 1/4 of Section 32 in Rich Township.

The Board discussed how the project will impact benefits and assessments for Cass County Drain No. 56, a legal assessment drain and corresponding assessment district.

Kurt Lysne indicated 50.1 acres within Applicants' project footprint, in the SW 1/4 of Section 33 in Rich Township and in the N 1/2 of the NW 1/4 of Section 4 in Ayr Township, are not currently in the Drain 56 assessment district, and that those acres will benefit from Drain 56 as a result of this tile project. The Board agreed this project, that will utilize Drain 56 as an outlet, will provide significant benefits to the SW 1/4 of Section 33 in Rich Township and in the N 1/2 of the NW 1/4 of Section 4 in Ayr Township. The Board concluded those 50.1 acres should be included within the Drain 56 Assessment District at 100% benefit.

Manager Gust moved, and Manager Sundberg seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202214*, filed July 26, 2022, for Dirk Pilgrim, George Pilgrim, and Evan Pilgrim regarding a proposed tile system in the W 1/2 of Section 33 in Rich Township and the N 1/2 of the NW 1/4 of Section 4 in Ayr Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202214*, subject to the following conditions:

1. Applicants will install and maintain erosion protection at any and all outlets into the township road ditch along 140th Avenue SE.
2. The SW 1/4 of Section 33 in Rich Township and the N 1/2 of the NW 1/4 of Section 4 in Ayr Township will be in the Drain 56 assessment district at 100% benefit.
3. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
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 W 1/2 of Section 33 in Rich Township or in the N 1/2 of the NW 1/4 of Section 4 in Ayr Township under any blanket easements, or otherwise beyond the Water Users District's existing easement(s).
5. Applicants must apply for an amendment to *Subsurface Water Management Permit No. 202214* 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 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 Rich Township Board of Township Supervisors to discharge into or otherwise utilize any township right of way along 140th Avenue SE.

2. The Board recommends that Applicants obtain written consent from the Rich Township Board of Township Supervisors and the Ayr Township Board of Township Supervisors to install any project components within either of the Townships' respective road right of way under or through 24th Street SE.
3. 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. 202214*, and Applicants' downstream flow map to the Department of Water Resources, Rich Township, Ayr Township, Wayne and Lorraine Anderson, 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. 202217 for Jim Wieland in the NW 1/4 of Section 30 in Hunter Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202217*, filed August 15, 2022, by Applicant Jim Wieland. Under the Application, Applicant seeks to install a 150-acre drain tile system in the NW 1/4 of Section 30 in Hunter Township, Cass County, North Dakota. The project will include a single pump outlet that will discharge via a pipeline that will run from the west boundary of the NW 1/4 of Section 30 to the west, along the south boundary of the homestead in the northeast corner of the NE 1/4 of Section 25 in Dows Township; the pipeline will turn north and will daylight in the south road ditch along 16th Street SE, on the north boundary of the NE 1/4 of Section 25; the discharge will flow west in the south road ditch, along the north boundary of the N 1/2 of Section 25 until discharging into the Rush River.

According to County tax roll information, Wieland Investments LLLP owns the NW 1/4 of Section 30 in Hunter Township. With regard to downstream properties, David and Rebecca Burchill own the NE 1/4 of Section 25 in Dows Township, and Leach Girls Partnership LLP owns the NW 1/4 of Section 25 in Dows Township.

Manager Sundberg moved, and Manager Gust seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202217*, filed August 15, 2022, for Jim Wieland regarding a proposed tile system in the NW 1/4 of Section 30 in Hunter Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202217*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into Hunter Township's road right of way.
2. Applicant will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Rush River Water Resource District.

3. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
4. 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 NW 1/4 of Section 30 in Hunter Township under any blanket easements, or otherwise beyond the Water Users District's existing easement(s).
5. 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 the project outlet.
6. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 202217* 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 #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 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 the Hunter Township Board of Township Supervisors and the Dows Township Board of Township Supervisors to discharge into and otherwise utilize any of their respective 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. 202217*, and Applicant's downstream flow map to the Department of Water Resources, Dows Township, Hunter Township, downstream landowners, 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 Gust and seconded by Manager Sundberg to authorize the Secretary-Treasurer to submit comment on the Rust Subdivision application to Cass County Planning with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Sundberg and seconded by Manager Gust to authorize the Secretary-Treasurer to submit comment on the Bush Subdivision application to Cass County Planning with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

**Bills**

It was moved by Manager Sundberg and seconded by Manager Gust to approve the wire transfers and the electronic funds transfers, as presented. Upon roll call vote, the following Managers voted in favor: Hejl, Sundberg and Gust. The Chairman declared the motion passed.

**Adjournment**

There being no further business to be considered by the Board, the meeting adjourned without objection.

APPROVED:

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William A. Hejl  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer