

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
MAPLE RIVER WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
APRIL 6, 2023

A virtual / conference call meeting of the Maple River Water Resource District was held on April 6, 2023, 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 Hinkemeyer, Administrative Assistant; Sean M. Fredricks, Chris McShane and Joshua J. Wolfe, Ohnstad Twichell, P.C.; Kurt Lysne, Alexa Ducioame, Jim Guler and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling, Cass County Commissioner; Tom Soucy, Cass County Highway Department; and Doug VanMeter, North Dakota Soybean Processors, LLC.

**Agenda**

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

**Minutes**

It was moved by Manager Melvin and seconded by Manager Miller to approve the minutes of the March 2, 2023, meeting. Upon roll call vote, the motion carried unanimously.

**Wheatland Channel - Grand Farm crossings in the NE 1/4 of Section 8 in Everest Township**

Kurt Lysne reported Grand Farm anticipates starting construction on their property in the NE 1/4 of Section 8 in Everest Township this spring. To accommodate construction, Grand Farm requested Moore Engineering, Inc. provide sizing of a temporary crossing on the Wheatland Channel as the box culverts for the permanent crossing have a long lead time. Moore Engineering, Inc. provided the sizing for a temporary crossing that could be installed to facilitate construction.

A motion was made by Manager Melvin and seconded by Manager Miller to approve and authorize the Chairman to sign the *Temporary Access Agreement* with Grand Farm regarding a temporary crossing on the Wheatland Channel in the NE 1/4 of Section 8 in Everest Township. Upon roll call vote, the motion carried unanimously.

**Drain #34 Channel Improvement Project No. 2022-01**

Mr. Lysne updated the Board on Drain #34 Channel Improvement Project No. 2022-01 in Sections 18, 19, 30 and 31 of Normanna Township. Moore Engineering, Inc. is nearly

complete with the final design and is identifying right of way needed for the project, as well as working on the economic analysis required by the North Dakota Department of Water Resources (NDDWR).

The Board reviewed information from the NDDWR regarding *Application for Surface Drain No. 6188*, previously submitted by the Maple River Water Resource District regarding Cass County Drain No. 34 Improvement Project No. 2022-01. The project will include reconstruction and improvements to approximately four miles of Drain #34 in Sections 18, 19, 30, and 31 of Normanna Township. The Project will include channel improvements, sideslope improvements, culvert replacements, and road crossing improvements. The Project will begin at the northwest corner of Section 18 in Normanna Township, on the east side of 163rd Avenue SE, and will continue south for four miles, and will include crossing improvements at the intersections of 50th Street SE, Cass County Highway 36, 52nd Street SE, and 53rd Street SE. The Board submitted an *Application for Surface Drain* to the NDDWR. The NDDWR recently completed its review of the project and application and concluded the project is not “of statewide or interdistrict significance.” The NDDWR forwarded a Record of Decision to the Board and the Board must consider and process the application.

The Board considered Mr. Lysne’s proposed responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under 89-02-01-09.1(2) of the North Dakota Administrative Code; the Board will acquire the requisite right of way to accommodate the project, and the Board does not anticipate adverse impacts to any landowners as a result of the project. Further, Mr. Lysne noted the road crossing improvements will not include significant increases to the crossing sizes; therefore, the project will not result in a significant increase in volume conveyance capacity. Drain #34 discharges into the upstream reach of Cass County Drain #14; the Board constructed improvements to Drain #14 in 2019, a project that included installation of riprap stabilization at the confluence with Drain #34. With that in mind, the project will not adversely impact Drain #14 and will not result in downstream impacts. In fact, the project will improve drainage in the area and will alleviate summer rainfall flooding issues in the project watershed.

Manager Miller moved to adopt Kurt Lysne’s responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code, and to approve *Application for Surface Drain No. 6188* regarding Cass County Drain No. 34 Improvement Project No. 2022-01, subject to any conditions attached by the NDDWR, and to authorize the Secretary-Treasurer to sign *Surface Drain Permit No. 6188*. Manager Melvin seconded the motion. Upon roll call vote, the motion carried unanimously.

### **Drain #37 Improvement Project No. 2022-01**

Mr. Lysne updated the Board on Drain #37 Improvement Project No. 2022-01. A request for additional cost-share for project design was submitted to the NDDWR and has been approved. A motion was made by Manager Melvin and seconded by Manager Miller to approve and authorize the Chairman to sign *Amendment I to Agreement for Cost-Share*

*Reimbursement* with the State Water Commission for Drain #37 Improvement Project No. 2022-01 preconstruction costs. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Miller, seconded by Manager Melvin and unanimously carried to authorize Moore Engineering, Inc. to complete the final design regarding the Drain #37 Improvement Project No. 2022-01. Upon roll call vote, the motion carried unanimously.

### **Drain #39 Improvements - Sections 24 and 25 of Maple River Township**

Alexa Ducioame discussed the cost estimate for the Drain #39 slide repair in Sections 24 and 25 of Maple River Township and noted utilities will need to be relocated for the project. The next steps are to submit an application for cost-share for project preconstruction and an *Application for Surface Drain* regarding the project to the NDDWR. Brief discussion was held on financing the project.

It was moved by Manager Melvin and seconded by Manager Miller to do the following regarding the Drain #39 Improvements Project in Sections 24 and 25 of Maple River Township:

- Authorize the Secretary-Treasurer to submit an application for cost-share to the NDDWR for project preconstruction.
- Authorize Moore Engineering, Inc. to proceed with final design and drafting legal descriptions for right of way needed, contingent upon approval of the cost-share request by the NDDWR.
- Authorize the Secretary-Treasurer to submit an *Application for Surface Drain* to the NDDWR.

Upon roll call vote, the motion carried unanimously.

### **Drain #62 – North Dakota Soybean Processors, LLC**

Sean Fredricks reported the *Agreement* with Cass County and North Dakota Soybean Processors, LLC regarding the Drain #62 relocation in Section 33 of Casselton Township has been signed by all parties. Mr. Lysne noted an *Application for Surface Drain* for the project will be submitted to the NDDWR soon. Tom Soucy stated Cass County recently bid the project.

### **Executive Session for purposes of discussing contract negotiation strategies, litigation strategies, and attorney consultation regarding ongoing litigation and ongoing contract negotiations related to right of way and property acquisitions necessary to accommodate Lynchburg-Buffalo Project No. 2016-01, in accordance with N.D. Cent. Code §§ 44-04-19.1(2), (5), and (9)**

It was moved by Manager Melvin and seconded by Manager Miller to close the meeting at 8:28 a.m. for the purposes of discussing contract negotiation strategies, litigation strategies, and attorney consultation regarding ongoing litigation and ongoing contract negotiations related to right of way and property acquisitions necessary to accommodate Lynchburg-Buffalo Project No. 2016-01, in accordance with N.D. Cent. Code §§ 44-04-19.1(2), (5), and (9), regarding the following matter and parties:

1. Maple River Water Resource District v. Carole G. Meyers as Trustee of the Ruth E. Buchholtz Testamentary Trust created the 22nd day of August, 2003, et al., Civ. No. 09-2021-CV-02321

Upon roll call vote, the following Managers voted in favor: Olson, Melvin and Miller. The motion passed.

The executive session was attended by Managers Olson, Melvin and Miller, Carol Harbeke Lewis, Melissa Hinkemeyer, Sean M. Fredricks, Chris McShane, Joshua J. Wolfe, Kurt Lysne, Alexa Ducioame, Jim Guler, Brady Woodard and Duane Breitling.

The executive session adjourned at 8:58 a.m. and the regular meeting was reconvened and opened to the public.

#### **Lynchburg-Buffalo Project No. 2016-01**

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

It was moved by Manager Miller and seconded by Manager Melvin to approve and authorize the Chairman to sign the *Stipulation and Settlement Agreement* and the *Purchase Agreement* with Carole G. Meyers, as Trustee of the Ruth E. Buchholtz Testamentary Trust created the 22nd day of August, 2003, regarding Lynchburg-Buffalo Project No. 2016-01. Upon roll call vote, the motion carried unanimously.

Mr. Lysne reported a cost-share request for preliminary engineering for the remaining phases of Lynchburg-Buffalo Project No. 2016-01 has been submitted to the NDDWR.

#### **Cornell Township Drainage Improvement District No. 80**

Mr. Lysne reported a meeting was held with petitioners for Cornell Township Drainage Improvement District No. 80. Discussion was held on project alignment, project cost and the percentage of benefit.

#### **Davenport Flood Risk Reduction Project**

Mr. Lysne updated the Board on the Davenport Flood Risk Reduction Project. Mr. Lysne said he has been in discussions with the City of Davenport regarding the updated cost estimate for the project. In conjunction with the updated cost estimate, Moore Engineering, Inc. has updated the Task Order with Moore Engineering, Inc. related to the project.

It was moved by Manager Miller and seconded by Manager Melvin to approve and authorize the Chairman to sign *Task Order No. 16 – Amendment 1* with Moore Engineering, Inc. regarding the Davenport Flood Risk Reduction Project. Upon roll call vote, the motion carried unanimously.

Discussion was held on comments received by the Corps of Engineers regarding the pending Section 404 Permit application for the project. Mr. Lysne indicated Moore Engineering, Inc. designed the levee to impact as little property as possible while maintaining a safe and certifiable project.

A motion was made by Manager Miller and seconded by Manager Melvin to authorize the Secretary-Treasurer to submit a response to the Corps of Engineers stating the Maple River Water Resource District will obtain the necessary permits and include the conditions recommended by the North Dakota Department of Environmental Quality regarding the Davenport Flood Risk Reduction Project. Upon roll call vote, the motion carried unanimously.

Ms. Ducioame stated the Conditional Letter of Map Revision (CLOMR) is ready to submit to FEMA pending signatures from local township and city officials. Moore Engineering, Inc. is arranging a meeting with the officials to discuss and answer questions regarding the project and the associated CLOMR.

It was moved by Manager Melvin and seconded by Manager Miller to authorize the Secretary-Treasurer to submit an *Application to Construct* to the NDDWR regarding the Davenport Flood Risk Reduction Project. Upon roll call vote, the motion carried unanimously.

Mr. Fredricks briefly updated the Board on right of way acquisition regarding the Davenport Flood Risk Reduction Project. Mr. Fredricks noted an Agreement will be needed with Burlington Northern Santa Fe Railway Company and Red River Valley & Western Railroad Company regarding the project. Discussion was held on the anticipated project timeline. Mr. Lysne stated the current anticipated schedule is to bid the project next year, upon receipt of the permits and acquisition of right of way needed for the project.

### **Regional Conservation Partnership Program – Upper Maple River Watershed**

Mr. Lysne briefly updated the Board on the RCPP – Upper Maple River Watershed Plan. The Natural Resources Conservation Service is coordinating a public scoping / plan update meeting regarding the Plan.

### **Upper Maple River Dam – maintenance**

Brady Woodard discussed the quote from the Steele County Soil Conservation District to replant the shelterbelt on Water Resource District owned property in Section 35 of Carpenter Township. The quote includes labor and materials for the project. Mr. Woodard noted the deposit for tree planting this spring is due April 15, 2023.

A motion was made by Manager Melvin and seconded by Manager Miller to approve the quote from Steele County Soil Conservation District and to proceed with replanting the shelterbelt on Water Resource District owned property for the Upper Maple River Dam in Section 35 of Carpenter Township. Upon roll call vote, the motion carried unanimously.

**Application to Install a Subsurface Water Management System No. 20238 for Kyle Faught in the E 1/2 of Section 20 in Empire Township**

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 20238*, filed March 28, 2023, by Applicant Kyle Faught. Under the Application, Applicant seeks to install a 135-acre drain tile system in the E 1/2 of Section 20 in Empire Township, Cass County, North Dakota. The project will include a single gravity outlet in the SE 1/4 of Section 20; the outlet will discharge directly into a Swan Creek tributary that flows to the southeast.

According to records submitted by Applicant, David and Ardell Strand own the E 1/2 of Section 20 in Empire Township. Once the project discharges into the Swan Creek tributary, the District no longer has jurisdiction over the tile discharge.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20238*, filed March 28, 2023, for Kyle Faught regarding a proposed tile system in the E 1/2 of Section 20 in Empire Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20238*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the Swan Creek tributary in the SE 1/4 of Section 20.
2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
3. 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 E 1/2 of Section 20 in Empire Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
4. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 20238* 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 or an easement from the owners of the E 1/2 of Section 20 to install and maintain tile components.

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. 20238*, and Applicant's downstream flow map to the North Dakota Department of Water Resources, David and Ardell Strand, 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.

**Application to Install a Subsurface Water Management System No. 202310 for Tim Berntson in Section 29 of Buffalo Township (amending Permit No. 20227)**

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 202310*, filed March 28, 2023, by Applicant Tim Berntson, regarding a proposed tile system in Section 29 and the NW 1/4 of Section 28 in Buffalo Township. Under the Application, Applicant seeks to amend *Subsurface Water Management Permit No. 20227*, approved by the District on June 2, 2022. Under *Application No. 202310*, Applicant intends to reduce the amount of acreage of tile installed from the 226 acres approved under *Subsurface Water Management Permit No. 20227* down to 179 acres, though *Application No. 202310* proposes the addition of tile in the Southwest Quarter of Section 29 (*Subsurface Water Management Permit No. 20227* did not include tile components in the Southwest Quarter of Section 29). 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 supplied by Applicant, Timothy and SueAnn Berntson own the N 1/2 of Section 29, south of railroad right of way; the SE 1/4 of Section 29; 145 acres in the SW 1/4 of Section 29; and the NW 1/4 of Section 28, south of railroad right of way, in Buffalo Township. Once the project discharges into Buffalo Creek, the District no longer has jurisdiction over the tile discharge.

When considering *Application No. 20227*, the Board considered the benefits and assessments regarding Garsteig-Embden Maintenance District, a federal project assessment district created by the Board under North Dakota law to operate and maintain the Buffalo Channel. At the time, the NW 1/4 of the NW 1/4 of Section 29 was not within the Garsteig-Embden Maintenance District; as a condition to the Board's approval of *Subsurface Water Management Permit No. 20227*, the Board required that the NW 1/4 of the NW 1/4 of Section 29 be included within the Garsteig-Embden Maintenance District at 100% benefit. Under this amended application and modified project plan, the acres in the NW 1/4 of the NW 1/4 of Section 29 will certainly benefit from the Buffalo Channel since this project will utilize the Buffalo Channel as an outlet.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202310* filed March 28, 2023, for

Tim Berntson regarding a proposed tile system in 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. 202310*, 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-Emden 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 Section 29 or the NW 1/4 of Section 28 in Buffalo Township, under any blanket easements, or otherwise beyond Cass Rural Water Users District's existing easement(s).
6. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 202310* 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. 202310*, 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.

#### **Weed, cattail, tree and brush control**

A motion was made by Manager Miller and seconded by Manager Melvin to approve and authorize the Chairman to sign the *Agreement* with Dakota Helicopter, Inc. to provide aerial and ground spraying services for weed, cattail, tree and brush control on Maple River Water Resource District facilities for 2023. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Miller and seconded by Manager Melvin to approve the Cass County Weed Control Work Order regarding weed, cattail, tree and brush control on Maple River Water Resource District facilities for 2023. Upon roll call vote, the motion carried unanimously.

#### **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:

- Kirk Johnson Subdivision
- Buhr Erickson Farms Subdivision

#### **Letter from KLJ soliciting views and comments regarding the proposed Cass County Highway 6 improvement project approximately 2.5 miles west of Alice**

A motion was made by Manager Miller, seconded by Manager Melvin and unanimously carried to authorize the Secretary-Treasurer to submit comment on the letter from KLJ soliciting views and comments regarding the proposed Cass County Highway 6 improvement project approximately 2.5 miles west of Alice, with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

#### **North Dakota Insurance Reserve Fund – proxy for annual meeting**

A motion was made by Manager Melvin, seconded by Manager Miller and unanimously carried to authorize the Secretary-Treasurer to sign and return the North Dakota Insurance Reserve Fund proxy for Maple River Water Resource District.

#### **Bills**

It was moved by Manager Melvin and seconded by Manager Miller to approve payment of Checks #6136 through #6139, 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.

**2023 spring melt**

Mr. Lysne updated the Board on the 2023 spring melt. Moore Engineering, Inc. is monitoring Water Resource District facilities as the melt occurs.

**Pontiac Township Improvement District No. 73**

Mr. Fredricks briefly reported on an open records request regarding Pontiac Township Improvement District No. 73.

**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