

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
NOVEMBER 2, 2023

A virtual / conference call meeting of the Maple River Water Resource District was held on November 2, 2023, at 9:00 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, Ohnstad Twichell, P.C.; Kurt Lysne, Alexa Ducioame, Brady Woodard and Levi Hanson, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling, Cass County Commissioner; Ronald Geerdes, Gina Stanford and Sidney Steinweg, Davenport Township property owners; Charlie Adams and Scott O’Konek, SCS Carbon Transport, LLC.

Agenda

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

Minutes

It was moved by Manager Melvin and seconded by Chairman Olson to approve the minutes of the October 5, 2023, meeting. Upon roll call vote, the motion carried unanimously.

Drain #14 – First Amendment to District Memorandum of Understanding with the Metro Flood Diversion Authority regarding the Drain #14B inlet transition

Sean Fredricks discussed a *First Amendment to District Memorandum of Understanding* with the Metro Flood Diversion Authority regarding the Drain #14B inlet transition. Kurt Lysne then reviewed the design of the transition.

A motion was made by Manager Melvin and seconded by Manager Miller to approve and authorize the Chairman to sign the *First Amendment to District Memorandum of Understanding* with the Metro Flood Diversion Authority regarding the transition between the Metro Flood Diversion Project and Drain #14B. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Melvin and seconded by Manager Miller to authorize Moore Engineering, Inc. to complete survey and final design regarding the transition between the Metro Flood Diversion Project and Drain #14B. Upon roll call vote, the motion carried unanimously.

Drain #34 Channel Improvement Project No. 2022-01

Levi Hanson updated the Board on right of way acquisition regarding Drain #34 Channel Improvement Project No. 2022-01. Mr. Hanson discussed a request from a property owner where right of way is needed to strip topsoil. The Board agreed to negotiate any future requests from property owners to strip topsoil from right of way needed for the project on a case-by-case basis.

Drain #37 Improvement Project No. 2022-01

Mr. Hanson updated the Board on the right of way acquisition regarding Drain #37 Improvement Project No. 2022-01.

It was moved by Manager Melvin and seconded by Manager Miller to approve the *Purchase Agreement* with Christopher A. Jacob and Toni R. Jacob regarding Drain #37 Improvement Project No. 2022-01. Upon roll call vote, the motion carried unanimously.

Drain #39 Improvement Project No. 2023-01

Mr. Lysne stated Moore Engineering, Inc. is nearly finished with the final design and cost estimate for Drain #39 Improvement Project No. 2023-01. Alexa Ducioame noted a cost-share request will be submitted to the NDDWR in the future for the project. The *Approved Jurisdictional Determination* request was submitted regarding a Corps of Engineers Section 404 Permit for Drain #39 Improvement Project No. 2023-01.

Drain #46 – crossing in Section 28 of Rochester Township

Brady Woodard reported the contractor plans to start on the Drain #46 crossing stabilization project in Section 28 of Rochester Township this week.

Drain #62 – North Dakota Soybean Processors, LLC - extension of Cass County Highway 23 box culvert

A motion was made by Manager Melvin and seconded by Manager Miller to approve and authorize the Chairman to sign the *Access Easement* with North Dakota Soybean Processors, LLC regarding the relocation of Drain #62 in Section 33 of Casselton Township. Upon roll call vote, the motion carried unanimously.

Drain #62 – channel cleanout in Section 32 of Casselton Township

Mr. Lysne reported the Drain #62 channel cleanout project in Section 32 of Casselton Township is complete.

Cornell Township Drainage Improvement District No. 80

A motion was made by Manager Melvin and seconded by Manager Miller to approve and authorize the Chairman to sign the *Agreement for Cost-Share Reimbursement* with the State Water Commission regarding Cornell Township Improvement District No. 80. Upon roll call vote, the motion carried unanimously.

Davenport Flood Risk Reduction Project

Mr. Hanson updated the Board on the right of way acquisition regarding the Davenport Flood Risk Reduction Project.

It was moved by Manager Melvin and seconded by Manager Miller to approve *Purchase Agreements* with the following regarding the Davenport Flood Risk Reduction Project:

- FHG II, LLC
- Otter Tail Power Company
- Sonja Ann Johnson

Upon roll call vote, the motion carried unanimously.

Mr. Hanson next discussed ongoing formal negotiations with Ron Geerdes regarding right of way needed for the Davenport Flood Risk Reduction Project. Mr. Geerdes asked the Board to increase their offer to purchase right of way for the project in consideration of a recent sale that he believes is the most comparable. The Board thanked Mr. Geerdes for his comments and stated negotiations will continue.

Discussion was next held on right of way needed from Darla Jelen and Juli Dyre regarding the project. Sidney Steinweg indicated he is in the process of acquiring the property where right of way is needed for the project from Ms. Jelen and Ms. Dyre and hopes to finalize acquisition of the property by the end of the year. Mr. Steinweg indicated he agrees with Mr. Geerdes on his opinion of the value of right of way for the project. The Board thanked Mr. Steinweg for his comments and indicated negotiations will continue.

A motion was made by Manager Melvin and seconded by Manager Miller to approve the appraisal / just compensation amount presented for property owned by Bruce C. Glasow and Mara R. Glasow regarding right of way for the Davenport Flood Risk Reduction Project. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Melvin and seconded by Manager Miller to authorize the Water Resource District Attorney, Engineer and staff to proceed with formal negotiations with Bruce C. Glasow and Mara R. Glasow regarding right of way needed for the Davenport Flood Risk Reduction Project. Upon roll call vote, the motion carried unanimously.

Mr. Lysne indicated he will attend the upcoming Cass County Flood Sales Tax Committee meeting to provide an update on the Davenport Flood Risk Reduction Project cost estimate and inform them an updated cost-share request will be sent in the future. The NDDWR has been updated recently regarding cost-share for the project.

Mr. Fredricks briefly updated the Board on an Agreement needed with Burlington Northern Santa Fe Railway Company (BNSF) and Red River Valley and Western Railroad Company regarding the project. A meeting was held recently with all parties and discussions will continue between parties on the draft Agreement.

Ms. Ducioame reported FEMA has provided comments regarding the Conditional Letter of Map Revision (CLOMR) submitted for the project. Moore Engineering, Inc. recently responded to the comments and will continue to work with FEMA on the CLOMR needed for the project. Ms. Ducioame also noted the NDDWR is reviewing the *Application to Construct* that was submitted for the project.

Pontiac Township Improvement District No. 73 – maintenance update

Mr. Woodard said the Pontiac Township Improvement District No. 73 structures will be serviced and the gates closed this fall as access to the facility is often challenging in the spring.

Maple River Dam T-180 - maintenance update

Mr. Woodard reported the inlet pipe at Maple River Dam T-180 was plugged due to beaver activities. The animal damage control contractor has been working in the area and along State Highway 46 to resolve the issue.

Upper Maple River Dam – maintenance update

Mr. Woodard reported the inlet pipe at the Upper Maple River Dam was also plugged from beaver activities. The animal damage control contractor has been working in the area and a contractor will be hired to remove the obstruction to the inlet pipe.

Application to Install a Subsurface Water Management System No. 202326 for Steve Johnson in the NW 1/4 and the N 1/2 SW 1/4 in Section 21 of Tower Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202326*, filed October 24, 2023, by Applicant Steve Johnson. At the Board’s meeting on July 6, 2023, the Board approved *Subsurface Water Management Permit No. 202317* for Mr. Johnson, for a 184-acre system in the NW 1/4 of Section 21 and the N 1/2 of the SW 1/4 in Section 21 of Tower Township, Cass County, North Dakota. Under *Application to Install a Subsurface Water Management System No. 202326*, Applicant seeks to enhance his proposed system from 184 acres to 227 acres and seeks to add two surface inlets. The outlet for the project will remain the same: the project will include a pump outlet near the northeast corner of the NW 1/4 of Section 21; the pump will discharge directly into a “watercourse,” as that term is defined under N.D. Cent. Code § 61-01-06. That watercourse flows to the northeast.

According to records submitted by Applicant, Steve Johnson owns the NW 1/4 of Section 21 and the N 1/2 of the SW 1/4 in Section 21 of Tower Township.

At the Board’s July 6 meeting, while considering *Application to Install a Subsurface Water Management System No. 202317*, the Board noted this area was the subject of a drainage complaint in Section 17 and an obstruction complaint in Section 21. Mr. Lysne once again noted that these acres will discharge to the northeast as a result of Mr. Johnson’s tile project, a significant modification to the drainage for a large portion of the acreage in this area. The Board reiterated that tile pumps in this area could impact Cass County Highway 10 and indicated that if the Cass County Highway Department concludes upstream drainage is contributing to inundation of Highway 10, the Board would likely conclude the inundation is a “critical flood period” that would require upstream tile permittees to turn off their pumps, including Mr. Johnson.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202326*, filed October 24, 2023, for Steve Johnson regarding a proposed tile system in the NW 1/4 of Section 21 and the

N 1/2 of the SW 1/4 in Section 21 of Tower Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202326*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the natural watercourse in the NW 1/4 of Section 21 in Tower Township.
2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
3. 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.
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 21 or in the N 1/2 of the SW 1/4 in Section 21 of Tower Township under any blanket easements, or otherwise beyond the Water Users District's existing easement(s).
5. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 202326* 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 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. 202326*, and Applicant's downstream flow map to the North Dakota Department of Water Resources and Cass Rural Water Users District. Because the project discharges into a "watercourse" as defined under North Dakota law, the permit does not require notice to any downstream parties, in accordance with N.D. Cent. Code § 61-32-03.1. 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 Miller and seconded by Manager Melvin 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:

- Arthur Punton Subdivision
- Pfaff Subdivision

Upon roll call vote, the motion carried unanimously.

Utility Permits for SCS Carbon Transport, LLC - Drain #39 and Drain #62

Mr. Fredricks and Charlie Adams discussed *Utility Permits* for SCS Carbon Transport, LLC regarding Drain #39 in the E 1/2 of Section 12 of Leonard Township and Drain #62 in the SW 1/4 of Section 33 of Casselton Township. Mr. Adams said SCS Carbon Transport, LLC is currently in the process of obtaining all necessary permits for their project.

A motion was made by Manager Melvin and seconded by Manager Miller to approve the following *Utility Permits*, with input from the Water Resource District Engineer:

- For SCS Carbon Transport, LLC to install an 8" nominal diameter uncased steel underground carbon dioxide pipeline, on, through, and under Drain #39 in the E 1/2 of Section 12 of Leonard Township
- For SCS Carbon Transport, LLC to install an 8" nominal diameter uncased steel underground carbon dioxide pipeline, on, through, and under Drain #62 in the SW 1/4 of Section 33 of Casselton Township

Upon roll call vote, the motion carried unanimously.

Burlington Northern Santa Fe Railway Company Subsurface Water Management Permit appeals

Sean Fredricks briefly discussed two *Subsurface Water Management Permit* appeals in the Maple River Water Resource District.

Bills

It was moved by Manager Melvin and seconded by Manager Miller to approve payment of 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.

Drain #14 – request from property owner to lower three intercept culverts in Section 25 Addison Township

Mr. Lysne reported that a property owner in Section 25 of Addison Township has improved drainage on their property and has requested the Water Resource District lower three intercept culverts to accommodate the improved drainage. The Board inquired if the property owner has obtained all permits they may need related to the improved drainage. The Board indicated the property owner should submit a formal request, including plans, for the Board's consideration at a future meeting.

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