

MINUTES OF VIRTUAL / CONFERENCE CALL SPECIAL MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
DECEMBER 4, 2023

A virtual / conference call special meeting of the Maple River Water Resource District was held on December 4, 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, Josh Hassell, Brady Woodard and Levi Hanson, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; April Walker, North Dakota State Water Commissioner; Duane Breitling, Cass County Commissioner; Tom Soucy, Cass County Highway Department; Bruce Hagen, Ayr Township Chair; Carl Piper, Maple River Township property owner; Sidney Steinweg, Davenport Township property owner; and Steve Johnson, Fargo.

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 November 2, 2023, meeting. Upon roll call vote, the motion carried unanimously.

Drain #34 Channel Improvement Project No. 2022-01

Levi Hanson reported negotiations are ongoing regarding right of way acquisition for the Drain #34 Channel Improvement Project No. 2022-01.

Kurt Lysne stated the cost-share request for the project is on the State Water Commission agenda for their December 8, 2023, meeting. The Board discussed the cost estimate and financing the project with estimated State Water Commission cost-share funding.

April Walker thanked Moore Engineering, Inc. for meeting with her and others regarding challenges regarding cost-share for legal assessment drain projects.

Drain #37 Improvement Project No. 2022-01

Mr. Hanson reported negotiations are ongoing regarding right of way acquisition for the Drain #37 Improvement Project No. 2022-01.

Mr. Lysne stated the project is also on the State Water Commission meeting for their December 8, 2023, meeting. The Board discussed the cost estimate and financing the project with estimated cost-share funding. The project will not be feasible without full cost-share funding from the State Water Commission.

Drain #39 Improvement Project No. 2023-01

Mr. Lysne stated Moore Engineering, Inc. is nearly finished with the final design for the Drain #39 Improvement Project No. 2023-01. Alexa Ducioame is coordinating with the North Dakota Department of Water Resources (NDDWR) on the *Application for Surface Drain* submitted for the project.

Carl Piper shared his concerns regarding the slide on Drain #39 in the project area. Mr. Lysne discussed the project in more detail and noted the project includes flattening the Drain #39 side slopes to help prevent future slides in the area. Once the NDDWR grants a surface drain permit for the project, the Water Resource District can apply for cost-share funding and acquire right of way for the project. The slide has been marked with coordination from Maple River Township for traffic safety purposes. Mr. Piper also discussed concerns regarding weed control applications on Drain #39. The Board discussed weed control in water resource district facilities in more detail. Mr. Piper inquired if Chairman Olson and Brady Woodard would be willing to meet with him on-site at Drain #39 to discuss weed control applications regarding water resource district facilities in more detail. The Board agreed and directed Mr. Woodard to coordinate the meeting.

Discussion was held on right of way valuations regarding Drain #39 Improvement Project No. 2023-01. Manager Miller moved to offer property owners \$9,000 per acre for tillable agricultural land for permanent channel right of way, \$1,500 per acre for berm easements and \$500 per acre for temporary construction easements regarding Drain #39 Improvement Project No. 2023-01. Manager Melvin seconded the motion. Upon roll call vote, the motion carried unanimously.

Drain #46 – crossing in Section 28 of Rochester Township

Mr. Woodard reported the contractor recently completed the Drain #46 crossing stabilization project in Section 28 of Rochester Township.

Upper Swan Creek Channel Improvement Project No. 2020-01

Mr. Woodard reported the contractor completed the repair of the damaged crossing between Sections 21 and 28 in Casselton Township regarding Upper Swan Creek Channel Improvement Project No. 2020-01. The contractor will protect the crossing next spring should the area experience flooding conditions.

It was moved by Manager Melvin and seconded by Manager Miller to approve *Contractor's Application for Payment No. 3* for R.J. Zavoral and Sons, Inc. in the amount of \$288,788.19 regarding Upper Swan Creek Channel Improvement Project No. 2020-01. Upon roll call vote, the motion carried unanimously.

Lynchburg-Buffalo Project No. 2023-01

Mr. Lysne said Moore Engineering, Inc. is nearly finished with the design of Lynchburg-Buffalo Project No. 2023-01. Moore Engineering, Inc. will bring plans and a cost estimate for the project for discussion at a future meeting.

Cornell Township Drainage Improvement District No. 80

Mr. Lysne updated the Board on Cornell Township Drainage Improvement District No. 80. Moore Engineering, Inc. continues to work with the petitioners on finalizing the petitioner's preferred design alternative. Once the petitioners have finalized the preferred design alternative, work can begin on forming the assessment district for the project.

Davenport Flood Risk Reduction Project

Ms. Ducioame updated the Board on the Davenport Flood Risk Reduction Project. Ms. Ducioame said Moore Engineering, Inc. has completed responses to FEMA regarding the Conditional Letter of Map Revision (CLOMR) submitted for the project. It is expected FEMA will have additional comments regarding the CLOMR submission.

Sean Fredricks and Mr. Hanson briefly updated the Board on right of way acquisition regarding the project. Sidney Steinweg updated the Board on the status of his acquisition of property where right of way is needed for the project.

Mr. Lysne noted an *Application to Construct* for the project was submitted to the NDDWR this summer. Mr. Lysne hopes to get an update from the NDDWR on the status of the permit soon.

Complaint for Water-Related Issues from Harold Miller against Dobler Trust for unpermitted drainage in the NE 1/4 of Section 8 in Cornell Township

Mr. Lysne stated the *Complaint for Water-Related Issues* from Harold Miller against Dobler Trust for unpermitted drainage in the NE 1/4 of Section 8 in Cornell Township was resubmitted. Moore Engineering, Inc. will resume investigating the matter and bring a report on their findings to a future meeting.

Application to Install a Subsurface Water Management System No. 202328 for Mark Weber in the NW 1/4 of Section 18 in Gill Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202328*, filed November 29, 2023, by Applicant Mark Weber. Under the Application, Applicant seeks to install a 126-acre drain tile system in the NW 1/4 of Section 18 in Gill Township, Cass County, North Dakota. The project will include two gravity outlets, both near the southeast corner of the NW 1/4 of Section 18; both will discharge directly into a tributary of Buffalo Creek.

According to records submitted by Applicant, the Mark F. Weber Revocable Living Trust owns the NW 1/4 of Section 18 in Gill Township where Applicant intends to install the tile system. Because the project will discharge directly into a natural watercourse, no downstream notices are necessary under N.D. Cent. Code § 61-32-03.1.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202328*, filed November 29, 2023, for Mark Weber regarding a proposed tile system in the NW 1/4 of Section 18 in Gill Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202328*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the tributary of Buffalo Creek in the NW 1/4 of Section 18 in Gill Township.
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 NW 1/4 of Section 18 in Gill 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. 202328* 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. 202328*, and Applicant's downstream flow map to the North Dakota Department of Water Resources 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. 202329 for Colleen Buhr in the SW 1/4 of Section 21 in Ayr Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202329*, filed November 27, 2023, by Applicant Colleen Buhr. Under the Application, Applicant seeks to install a 159-acre drain tile system in the SW 1/4 of Section 21 in Ayr Township, Cass County, North Dakota. The project will include a single pump outlet located in the southeast corner of the SW 1/4 of Section 21; the pump will discharge into the north ditch along 28th Street SE; the discharge will flow east in the north road ditch, along the south boundary of the SE 1/4 of Section 21; at approximately the quarter-quarter

line, the discharge flows into an existing drain that flows northeast across a portion of the SE 1/4 of Section 21, into the SW 1/4 of Section 22, then south under 28th Street SE and across the N 1/2 of Section 27 before discharging into a natural watercourse in the NE 1/4 of Section 27.

According to records submitted by Applicant, Colleen Buhr owns the SW 1/4 of Section 21 of Ayr Township where Applicant intends to install the tile system. With regard to downstream properties, Doris Vollmer owns the SE 1/4 of Section 21; Roger Rand owns the SW 1/4 of Section 22; and the Rand Family LLLP owns the NW 1/4 of Section 27.

The Board noted the application suggests Applicant may conduct some surface improvements to accommodate the tile discharge, possibly including deepening of the township road ditch. The Board agreed the Notice of Decision in the matter should include a reminder to Applicant that the Board's approval of *Application to Install a Subsurface Water Management System No. 202329* does not include approval of surface modifications or improvements, and that Applicant may have to apply for a surface drainage permit for those modifications. Sean Fredricks indicated he will include appropriate language in the *Notice of Decision*.

Manager Miller moved, and Manager Melvin seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202329*, filed November 27, 2023, for Colleen Buhr regarding a proposed tile system in the SW 1/4 of Section 21 in Ayr Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202329*, subject to the following conditions:

5. Applicant will install and maintain erosion protection at any and all outlets into Ayr Township's road right of way.
6. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
7. 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.
8. 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 SW 1/4 of Section 21 in Ayr Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
9. 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 of the project outlet.
10. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 202329* 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 Ayr Township Board to discharge into or otherwise utilize any of 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. 202329*, and Applicant's downstream flow map to the North Dakota Department of Water Resources, Ayr Township, Doris Vollmer, Roger Rand, Rand Family LLLP, 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. 202330 for Steve Johnson in the NW 1/4 and part of the SW 1/4 in Section 22 of Tower Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202330*, filed December 1, 2023, by Applicant Steven D. Johnson. Under the Application, Applicant seeks to install a 248-acre drain tile system in the NW 1/4 of Section 22 and the N 2/3 of the SW 1/4 of Section 22 in Tower Township, Cass County, North Dakota. The project will include two gravity outlets, one along the east boundary of the NW 1/4 of Section 22 and the other along the east boundary of the N 2/3 of the SW 1/4 of Section 22; both outlets will discharge directly into the Maple River.

According to records submitted by Applicant, Steven D. Johnson, Kevin L. Johnson, Marcene L. Hoffman, Mark A. Johnson, and Craig E. Johnson all own interests in the NW 1/4 of Section 22 and the N 2/3 of the SW 1/4 of Section 22, north of BNSF's right of way, in Tower Township, subject to a life estate in Howard E. Johnson and Lone A. Johnson. Because the project discharges into the Maple River, the permit does not require notice to any downstream parties, in accordance with N.D. Cent. Code § 61-32-03.1.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202330*, filed December 1, 2023, for Steven D. Johnson regarding a proposed tile system in the NW 1/4 of Section 22 and the N 2/3 of the SW 1/4 of Section 22 in Tower Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202330*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the Maple River.
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 NW 1/4 of Section 22 and the N 2/3 of the SW 1/4 of Section 22 in Tower 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. 202330* 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.

Notifications to Install Subsurface Water Management System provided by Aim Ag Drainage

The Board received and filed *Notifications to Install Subsurface Water Management System* provided by Aim Ag Drainage in the following locations:

- S 1/2 of Section 7 in Gill Township
- NW 1/4 of Section 25 in Buffalo Township
- Section 25 in Buffalo Township

Utility Permit for WBI Energy Transmission to install a natural gas pipeline under Drain #14 in the NE 1/4 of Section 8 in Mapleton Township on the west side of Cass County Highway 15

Mr. Lysne discussed a *Utility Permit* for WBI Energy Transmission to install a natural gas pipeline under Drain #14 in the NE 1/4 of Section 8 in Mapleton Township on the west side of Cass County Highway 15. Mr. Lysne said he would like to see more-detailed plans submitted by the Applicant.

The Board tabled the *Utility Permit* for WBI Energy Transmission to install a natural gas pipeline under Drain #14 in the NE 1/4 of Section 8 in Mapleton Township on the west side of Cass County Highway 15 until more-detailed plans are supplied by the Applicant.

Cass County Planning

A motion was made by Manager Melvin and seconded by Manager Miller 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:

- Davis Trust Subdivision
- Rich Satrom Subdivision

Upon roll call vote, the motion carried unanimously.

Burlington Northern Santa Fe Railway Company *Subsurface Water Management Permit* appeals

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

Year-end issues

A motion was made by Manager Melvin and seconded by Manager Miller to do the following:

- Authorize the Secretary-Treasurer to make any minor year-end transfers to balance the Maple River Water Resource District 2023 budget;
- Authorize the Secretary-Treasurer to make transfers to/from obligated funds, if necessary; and
- Amend the Maple River Water Resource District 2023 budget.

Upon roll call vote, the motion carried unanimously.

Set regular meeting dates for 2024

The Board discussed its regular meeting dates for the year 2024. It was moved by Manager Melvin, seconded by Manager Miller, and unanimously carried to adopt the following Resolution:

RESOLUTION

BE IT RESOLVED, that the Maple River Water Resource District does hereby set the first Thursday of January through March at 9:00 a.m., the first Thursday of April through June at 8:00 a.m., July 1st at 8:00 a.m., the first Thursday of August through October at 8:00 a.m., November 7th and December 2nd at 9:00 a.m., at the Cass County Highway Department, 1201 Main Avenue West, West Fargo, North Dakota, as its regular meeting dates, times and place for the year 2024.

BE IT FURTHER RESOLVED, that the Secretary be and she hereby is directed to forward a copy of said schedule of meetings to the Cass County Auditor and to post said schedule at the Water Resource District's principal office and the location of the scheduled meetings, all in accordance with the provisions of Section 44-04-20 as amended.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary

Bills

It was moved by Manager Melvin and seconded by Manager Miller to approve payment of Check #6157 through #6161, 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.

Office staff recognition

The Board thanked Carol Harbeke Lewis and Nina Stone for their work and dedication to the Maple River Water Resource District and wished them the best in their future endeavors.

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:

Melissa Hinkemeyer
Secretary