

MINUTES OF VIRTUAL / CONFERENCE CALL SPECIAL MEETING  
MAPLE RIVER WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
FEBRUARY 2, 2024

A virtual / conference call special meeting of the Maple River Water Resource District was held on February 2, 2024, at 8:00 a.m.

Present were Rodger Olson, Chairman; Gerald Melvin, Manager; Chad Miller, Manager; Melissa Hinkemeyer, Secretary-Treasurer; Leilei Bao, Accountant; Carolyn Fiechtner, Administrative Assistant; Sean M. Fredricks and Christie Rust, 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; Ron Geerdes and Sidney Steinweg, Davenport Township property owners.

**Approval of agenda**

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

**Minutes**

It was moved by Manager Miller, seconded by Manager Melvin, and unanimously carried to approve the minutes of the January 4, 2024, meeting.

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

Kurt Lysne stated the cost share application for the Drain #34 Channel Improvement Project No. 2022-01 was approved at the December 8, 2023, State Water Commission meeting. Mr. Lysne recommended approving the *Agreement for Cost-Share Reimbursement* with the State Water Commission and tabling the bidding of the project until the project funding is finalized.

Following discussion, it was moved 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 the Drain #34 Channel Improvement Project No. 2022-01. Upon roll call vote, the motion carried unanimously.

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

Mr. Lysne reported the State Water Commission tabled the cost-share request for the Drain #37 Improvement Project No. 2022-01 at their December 8, 2023, meeting at the request of the Water Resource District as it was anticipated the cost-share request for the project would not be fully funded by the State Water Commission.

Mr. Lysne discussed options to move forward with funding the project, including potentially taking the project to a vote of the assessment district or phasing the project.

After discussion, Manager Melvin moved and Manager Miller seconded to authorize Moore Engineering, Inc. to evaluate the Drain #37 assessment district and coordinate with the Water Resource District Attorney to prepare documents for a potential vote regarding the Drain #37 Improvement Project No. 2022-01, for consideration by the Board at a future meeting. Upon roll call vote, the motion carried unanimously.

### **Drain #39 Improvement Project No. 2023-01**

Alexa Ducioame updated the Board on the Drain #39 Improvement Project No. 2023-01. The Section 404 Permit for the project will be submitted to the Corps of Engineers today. The North Dakota Department of Water Resources (NDDWR) is currently processing the *Application for Surface Drain* submitted for the project. Once the *Application for Surface Drain* is approved, the Water Resource District can apply for State Water Commission cost-share funding for the project. Mr. Lysne briefly discussed funding for the project.

### **Lynchburg-Buffalo Project No. 2023-01**

Ms. Ducioame presented the Engineer's Opinion of Probable Cost for the remaining three reaches of Lynchburg-Buffalo Project No. 2023-01. Ms. Ducioame noted reach three has right of way in place and Moore Engineering, Inc. is working on the remaining right of way needed for reaches four and five of the project.

It was moved by Manager Miller and seconded by Manager Melvin to authorize the following regarding the remaining three phases of Lynchburg-Buffalo Project No. 2023-01:

- The Secretary-Treasurer to submit a cost-share application to the NDDWR for engineering and final design
- Moore Engineering, Inc. to conduct surveying and work with Ohnstad Twichell, P.C. to draft legal descriptions and documents for right of way needed
- The Secretary-Treasurer to sign and submit an *Application for Surface Drain* to the NDDWR

Upon roll call vote, the motion carried unanimously.

### **Davenport Flood Risk Reduction Project – Executive Session for purposes of discussing contract negotiation strategies, litigation strategies, and attorney consultation ongoing contract negotiations and reasonably predictable litigation related to right of way and property acquisitions necessary to accommodate the Davenport Flood Risk Reduction Project, 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 8:43 a.m. for the purposes of discussing contract negotiation strategies, litigation strategies, and attorney consultation ongoing contract negotiations and reasonably predictable litigation related to right of way and property acquisitions necessary to accommodate the Davenport Flood Risk Reduction Project, in accordance with N.D. Cent. Code §§ 44-04-19.1(2), (5), and (9) regarding the following parties and matters:

1. Ronald and Patricia Geerdes and Gina Stanford (Cass County Parcel Nos. 21-0000-00167-000 and 21-0000-00170-010);
2. Bruce C. Glasow and Mara R. Glasow (Cass County Parcel Nos. 12-0100-01245-000 and 12-0100-01246-000); and

3. Sidney Steinweg, Darla M. Jelen, and Juli L. Dyre (Cass County Parcel No. 32-0000-03006-030).

The executive session was attended by Managers Olson, Melvin, and Miller, Melissa Hinkemeyer, Leilei Bao, Carolyn Fiechtner, Sean Fredricks, Christie Rust, Kurt Lysne, Alexa Ducioame, and Levi Hanson.

The executive session adjourned at 9:26 a.m. and the regular meeting was reconvened and opened to the public.

**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**

The Board next considered Harold Miller's *Complaint for Water-Related Issues* against the Dobler Family Trust and Don Dobler, dated November 30, 2023. Mr. Miller previously submitted a similar complaint dated May 30, 2023, but later withdrew that complaint. Under the new Complaint, Mr. Miller alleges that Mr. Don Dobler constructed unpermitted drainage in the NE 1/4 of Section 8 in Cornell Township, in violation of N.D. Cent. Code §§ 61-32-03 and 61-32-07. According to Cass County tax records and records on file with the Cass County Recorder's Office, Sandra Dobler, as Trustee of the Dobler Family Trust, owns the NE 1/4 of Section 8 in Cornell Township.

Sean Fredricks reminded the Board that, at the Board's meeting on June 1, 2023, the Board conducted conflict analysis regarding Harold Miller's May 2023 *Complaint for Water-Related Issues*. At that meeting, the Board concluded Manager Miller had a conflict and voted to preclude him from voting on that matter. The same conflict analysis applies to this matter since the new Complaint is identical. With that in mind, Manager Miller will not participate in any votes regarding Harold Miller's *Complaint for Water-Related Issues* against the Dobler Family Trust and Don Dobler, dated November 30, 2023.

The Board previously directed Moore Engineering, Inc. to investigate the matter, and Moore prepared and submitted a written report dated January 31, 2024. Kurt Lysne explained Moore's report.

Mr. Miller alleges the Doblars constructed improvements to an existing natural drain in the NE 1/4 of Section 8 in Cornell Township without a surface drainage permit. The natural drain runs northeasterly from the middle of the NE 1/4 of Section 8 to 134th Avenue SE; the natural drain conveys natural runoff from the contributing watershed and also drains high water from the Maple River when the river elevation is high enough.

Under North Dakota law, specifically Section 61-32-03 of the North Dakota Century Code, "[a] permit is required before any person may construct a drain for the purpose of draining waters from a pond, slough, lake, or sheetwater . . . having a watershed of 80 acres . . . or more." Under Section 89-02-01-05 of the North Dakota Administrative Code, "maintenance" of existing drains or ditches does not require a permit; Section 89-02-01-02(10) of the North Dakota Administrative Code defines "maintenance" as follows:

"Maintenance" means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.

Mr. Lysne explained that Moore's investigation included a drone inspection, a field investigation, and a ground survey. Moore then compared the survey data collected with LiDAR data. As a result of their investigation, Moore found evidence of deepening of the natural drain that runs northeasterly from the middle of the NE 1/4 of Section 8 to 134th Avenue SE. More specifically, comparison of Moore's ground survey with LiDAR indicated deepening over six inches for a significant stretch of the drain, and up to one foot of deepening on the upstream reach. Moore concluded there is clear evidence of deepening of the natural drain in the NE 1/4 of Section 8, beyond mere maintenance.

The next element for the Board to consider is the drainage area impacted by the Doblere's deepening of the natural drain. Even if the Doblere's deepened the natural drain, their activity only required a surface drainage permit if the watershed area impacted or drained is at least 80 acres. Moore's report provides the following analysis of the watershed:

The watershed contributing to the drainage path at the subject of this drainage complaint, excluding any high water breaking out from the Maple River, was delineated to the outlet point of the alleged drainage improvements. The watershed contributing to the drainage path in the NE 1/4 of Section 8 is greater than 80 acres, as show in Exhibit 1.

The watershed map attached as Exhibit 1 to Moore's report indicates there is a 144.41-acre sub-watershed and another 32.94-acre sub-watershed drained and impacted by the Doblere's deepening of the natural drain. As Moore's report notes, the contributing watershed impacted by the Doblere's drainage activities exceeds the 80-acre surface permitting threshold.

Ultimately Moore concluded the Doblere's deepened the natural drain in the NE 1/4 of Section 8; those activities drain both "sheetwater" from the NE 1/4 of Section 8 and high water from the Maple River; and the contributing watershed area drained is greater than 80 acres. The Doblere's improvements included more than mere silt and vegetation removal and were, therefore, beyond "maintenance." With that in mind, according to Section 61-32-03 of the North Dakota Century Code and Section 89-02-01-03 of the North Dakota Administrative Code, the Doblere's improvements required a surface drainage permit, and the Doblere's did not obtain a permit.

The Board reviewed and concurred with Moore's report and conclusions. By law, the Board had no choice but to order the Doblere's to close or fill those drainage improvements in accordance with Section 61-32-07.

The Board discussed the timing of the requirement for Doblere's to close or fill the drainage. The Board felt two months would afford them sufficient time to fill in their ditch improvements.

Manager Melvin moved to declare the drainage improvements constructed by the Doblere's in the NE 1/4 of Section 8 in Cornell Township as unpermitted and illegal drainage improvements, as alleged in the *Complaint for Water-Related Issues* filed by Harold Miller; and to order the Doblere Family Trust and Don Doblere to close or fill the unpermitted and illegal improvements by 5:00 p.m. on April 1, 2024. Chairman Olson seconded the

motion. Upon roll call vote, Chairman Olson and Manager Melvin vote in favor of the motion. Manager Miller abstained in accordance with the Board's previous conflict analysis. The motion carried.

The Board directed Mr. Fredricks to prepare the requisite *Notice of Decision* and to provide the *Notice* to the parties of record.

**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**

It was moved by Manager Melvin and seconded by Manager Miller to approve 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, with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

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

Mr. Fredricks updated the Board on two *Subsurface Water Management Permit* appeals in the Maple River Water Resource District.

Manager Miller moved to approve and authorize a settlement with BNSF as follows:

- For all future tile permits that require permits under N.D. Cent. Code 61-32-03.1 and that include a discharge within one mile upstream of BNSF's right of way, the Maple River Water Resource District (the "District") will include recommendations in the District's *Notice of Decision* that the applicants obtain written consent from BNSF, and the District will include BNSF's contact information.
- The District authorizes counsel and the District's Chair and Secretary to negotiate and execute stipulations and settlement agreements as necessary to dismiss the following pending appeals:
  - BNSF Railway Company v. Maple River Water Resource District, Civ. No. 09-2023-CV-03518 (Nick Pyle Subsurface Permit No. 202314); and
  - BNSF Railway Company v. Maple River Water Resource District, Civ. No. 09-2023-CV-03756 (Steven Johnson Subsurface Permit No. 202322).
- The stipulations and settlement agreements will include mutual releases and waivers of claims and causes of action in the pending appeals.
- The District will notify the tile applicants/permittees regarding Subsurface Permit Nos. 202314 and 202322 of the parties' settlement; the District will recommend that the tile applicants/permittees complete and submit BNSF's Right of Way Discharge Permit before discharging any water into BNSF's right of way; and the District will recommend that the tile applicants/permittees contact BNSF before entering or allowing their agents and contractors to enter BNSF's right of way.

Manager Melvin seconded the motion. Upon roll call vote, the motion carried unanimously.

**NDDWR 2025-2027 Water Development Plan**

Mr. Lysne briefly discussed a letter from the NDDWR regarding the identification of potential water development projects, the timing of their implementation and estimated costs for inclusion in the 2025-2027 Water Development Plan. A list of potential Maple River Water Resource District projects to submit to the NDDWR for the 2025-2027 Water Development Plan will be brought to a future meeting for consideration.

**North Dakota Red Tape Reduction initiative**

The Secretary reported that the State sent a notice soliciting input to reduce red tape regulation in North Dakota. The Red Tape Reduction initiative aims to eliminate unnecessary and outdated regulation, rules, policies and procedures to make government more efficient and effective. The Board directed the Secretary to work with the Water Resource District Attorney and Engineer and submit comments to the State regarding the Red Tape Reduction initiative, as discussed.

**Bills**

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

**Adjournment**

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

APPROVED:

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Rodger Olson  
Chairman

ATTEST:

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Melissa Hinkemeyer  
Secretary-Treasurer