

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
MAPLE RIVER WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
JANUARY 6, 2022

A virtual / conference call meeting of the Maple River Water Resource District was held on January 6, 2022, 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 Maertens, Administrative Assistant; Sean Fredricks, Ohnstad Twichell, P.C.; Kurt Lysne and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; and Kyle Nelson, Farmers National Company.

**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 December 2, 2021, meeting. Upon roll call vote, the motion carried unanimously.

**Reorganization of the Board for 2022**

It was moved by Manager Melvin and seconded by Manager Miller to appoint the following individuals to serve in the designated capacities for calendar year 2022:

Rodger Olson	Chairman
Gerald Melvin	Vice Chairman
Carol Harbeke Lewis	Secretary-Treasurer
Rodger Olson	Cass County Joint Water Resource District Representative
Gerald Melvin	Cass County Joint Water Resource District Alternate Representative 1
Chad Miller	Cass County Joint Water Resource District Alternate Representative 2

Rodger Olson                      Red River Joint Water Resource District  
Representative

Gerald Melvin                      Red River Joint Water Resource District Alternate  
Representative

Upon roll call vote, the motion carried unanimously.

**Designate depositories of Maple River Water Resource District public funds**

It was moved by Manager Melvin and seconded by Manager Miller to designate the following as depositories of Maple River Water Resource District public funds:

- Alerus Financial
- Bell Bank
- Bank North (Casselton)

Upon roll call vote, the motion carried unanimously.

**Approve the Pledge of Assets**

It was moved by Manager Miller and seconded by Manager Melvin to approve the following *Pledge of Assets*:

- Alerus Financial (as per agreement of March 7, 1996)

Upon roll call vote, the motion carried unanimously.

**Review of contract for legal services**

It was moved by Manager Melvin and seconded by Manager Miller to reaffirm the agreement with Ohnstad Twichell, P.C. for legal services and approve the 2022 billing rates presented for Maple River Water Resource District. Upon roll call vote, the motion carried unanimously.

**Review of contracts for engineering services**

It was moved by Manager Melvin and seconded by Manager Miller to reaffirm the agreement with Moore Engineering, Inc. for engineering services and approve the 2022 billing rates presented for Maple River Water Resource District. Upon roll call vote, the motion carried unanimously.

Mike Opat indicated he will discuss the 2022 billing rates for Houston Engineering, Inc. when the next Task Order is put together with the Water Resource District.

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

Kurt Lysne and Sean Fredricks briefly updated the Board on the status of right of way acquisition for Phase III of Lynchburg-Buffalo Project No. 2016-01.

It was moved by Manager Miller and seconded by Manager Melvin to approve payment to Gabriel and Kayce Halley for right of way regarding Lynchburg-Buffalo Project No. 2016-01, as presented. Upon roll call vote, the motion carried unanimously.

### **Upper Swan Creek Channel Improvements 2020**

Mr. Lysne briefly updated the Board on the Upper Swan Creek Channel Improvements 2020 Project. Moore Engineering, Inc. is fine-tuning the project design to optimize right of way needed for the project. Mr. Lysne anticipates the Upper Swan Creek Channel Improvements 2020 Project will be ready to bid in Spring 2022.

### **Drain #34 Improvement Project**

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 Improvement Project Planning Study. Upon roll call vote, the motion carried unanimously.

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

Mr. Lysne reported the State Water Commission recently approved the cost-share request for preliminary engineering for Cornell Township Drainage Improvement District No. 80. Moore Engineering, Inc. will contact the petitioners and begin preliminary design and hydrologic work this winter with surveying planned for the spring. A cost estimate for the project will be developed following completion of the preliminary engineering work. Mr. Lysne hopes to bid the project by late spring.

### **Wheatland Channel Repair and Sediment Removal Project 2021**

Brady Woodard reported the contractor for Wheatland Channel Repair and Sediment Removal Project 2021 is making progress on the project. The area may need some leveling work in the spring.

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

Moore Engineering, Inc. continues to work on the final design of the Davenport Flood Risk Reduction Project. Mr. Lysne stated he continues to discuss the project with FEMA. Appraisals are currently in progress regarding right of way needed for the project. Mr. Lysne indicated once the final alignment of the levee is determined, the project models can be updated and sent to FEMA for review. It is hopeful project construction can occur in 2023.

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

Mr. Lysne updated the Board on the work that continues on the RCPP – Upper Maple River Watershed Plan. The Natural Resources Conservation Service (NRCS) is currently completing calculations regarding the additional environmental benefits that have been incorporated into the Plan. Moore Engineering, Inc. will finalize the Plan with the data from the NRCS.

### **Application to Install a Subsurface Water Management System No. 202125 for Colleen Buhr in the NW 1/4 of Section 16 in Cornell Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202125*, filed December 31, 2021, by Applicant Colleen Buhr. Under the Application,

Applicant seeks to install a 150.55-acre tile project in the NW 1/4 of Section 16 in Cornell Township, Cass County, North Dakota. The project includes a pump outlet near the northwest corner of the NW 1/4 in Section 16 that will discharge directly into a tributary of the Maple River.

According to Cass County tax roll information supplied by Applicant, Colleen Buhr owns the NW 1/4 of Section 16, less a small tract in the northwest corner owned by the County.

Manager Miller moved, and Manager Melvin seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202125*, filed December 31, 2021, for Colleen Buhr regarding a proposed tile system in the NW 1/4 of Section 16 in Cornell Township, and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202125*, subject to the following conditions:

- 1) That Applicant install and maintain erosion protection at any and all outlets into the tributary of the Maple River;
- 2) That Applicant re-establish any areas disturbed installing or maintaining Applicant's tile system;
- 3) That 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 16 in Cornell Township under any blanket easements, or otherwise beyond the Water District's existing easement(s);
- 4) That Applicant must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Maple River Water Resource District; and
- 5) That Applicant must apply for an amendment to *Subsurface Water Management Permit No. 202125* 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) In the event the project will cross any Township road right of way, that Applicant obtain written consent from Cornell Township to install and maintain any project components on the Township's road right of way; and

2) 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* and *Subsurface Water Management Permit No. 202125* to the Office of the State Engineer, Cass Rural Water Users District, Cornell Township, and the Cass County Highway Department. 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. 202126 for Zane and Cami Erickson in the W 1/2 of NW 1/4 of Section 10 in Tower Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202126*, filed December 31, 2021, by Applicants Zane and Cami Erickson. Under the Application, Applicants seek to install a 43-acre tile project in the NW 1/4 of Section 10 in Tower Township, Cass County, North Dakota. The project will connect to an existing system in the N 1/2 of Section 10, previously permitted as *Subsurface Water Management Permit No. 202041* for Colleen Buhr, approved by the Board on September 3, 2020. The project permitted under *Permit No. 202041* includes an 84-acre project in the W 1/2 of the NE 1/4 and the E 1/2 of the NW 1/4 in Section 10, with a single gravity outlet that discharges via a pipeline that runs across a portion of the NW 1/4 of Section 11 before daylighting and discharging directly into the Maple River. The project proposed under *Application No. 202126* will utilize the same outlet.

According to Cass County tax records, Zane and Cami Erickson own the W 1/2 of the NW 1/4 of Section 10 in Tower Township; Colleen Buhr owns the E 1/2 of the NW 1/4 in Section 10 and the W 1/2 of the NE 1/4 in Section 10; Todd Peterson owns the E 1/2 of the NE 1/4 in Section 10; and the Melvin Family Real Estate LLLP and Randal and Kristi Melvin own the NW 1/4 of Section 11. The Melvins previously executed a "Notarized Letter of Permission" regarding permission for Colleen Buhr to install a portion of the project pipeline on the Melvins' property regarding *Permit No. 202041*.

Before the Board could proceed with the substantive considerations regarding the application, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Melvin's likely conflict in the matter. A portion of the project pipeline regarding the project permitted under *Permit No. 202041* runs across a portion of property owned by the Melvin Family Real Estate LLLP and Randal and Kristi Melvin. When Colleen Buhr applied for *Permit No. 202041*, the Melvins executed a "Notarized Letter of Permission" to grant Ms. Buhr permission to install a portion of the pipeline on the NW 1/4 of Section 11.

Section 44-04-22 of the North Dakota Century Code provides the relevant standard. That statute provides:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and

substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

In this case, Manager Melvin has an interest in the Melvin Family Real Estate LLLP. Mr. Fredricks indicated Manager Melvin has a substantial personal and pecuniary interest in the outcome of the Board's decision regarding the permit, and further indicated this clearly is a conflict situation that warrants Manager Melvin's abstention. More specifically, by statute, Mr. Fredricks indicated the potential impacts to the land Manager Melvin's family owns and farms would raise a "direct and substantial personal or pecuniary interest" conflict under Section 44-04-22. Chairman Olson moved to declare Manager Melvin has a statutory conflict regarding *Application No. 202126*, and to prohibit Manager Melvin from participating in the discussion or voting regarding *Application No. 202126*. Manager Miller seconded the motion. Upon roll call vote, Chairman Olson and Manager Miller voted in favor of the motion. Manager Melvin abstained. With the conflict issues concluded, the Board proceeded with consideration of the Application.

Manager Miller moved, and Chairman Olson seconded the motion, to approve *Application No. 202126*, filed December 31, 2021, for Zane and Cami Erickson regarding a proposed tile system in the NW 1/4 of Section 10 in Tower Township, and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202126*, subject to the following conditions:

- 1) That Applicants install and maintain erosion protection at any and all outlets into the Maple River;
- 2) That Applicants re-establish any areas disturbed installing or maintaining Applicants' tile system;
- 3) That 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 NW 1/4 of Section 10 in Tower Township under any blanket easements, or otherwise beyond the Water District's existing easement(s); and
- 4) That Applicants must apply for an amendment to *Subsurface Water Management Permit No. 202126* 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, Chairman Olson and Manager Miller voted in favor of the motion; Manager Melvin abstained. The motion passed.

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) That Applicants obtain and record pipeline easements from the owners of the E 1/2 of the NE 1/4 of Section 10 and the NW 1/4 of Section 11;
- 2) That Applicants obtain, execute, and record an agreement or easement with Colleen Buhr regarding connection to the tile system permitted under *Permit No. 202041*; and
- 3) 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* and *Subsurface Water Management Permit No. 202126* to the Office of the State Engineer, Cass Rural Water Users District, Tower Township, Colleen Buhr, Todd Peterson, and the Melvins. 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. 202127 for Eric and Tammy Erickson in the SW 1/4 of Section 19 in Empire Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202127*, filed December 31, 2021, by Applicants Eric and Tammy Erickson. Under the Application, Applicants seek to install an 85-acre tile project in the SW 1/4 of Section 19 in Empire Township, Cass County, North Dakota. The project will include two gravity outlets, both along the south boundary of the SW 1/4 in Section 19; both will discharge via underground pipelines that will run south, under 28th Street SE, and both will run south across a portion of the NW 1/4 of Section 30, and both will daylight and discharge into a natural watercourse in the NW 1/4 of Section 30.

According to County tax roll information supplied by Applicants, Eric and Tammy Erickson own the SW 1/4 of Section 19, and Timothy McPherson owns the NW 1/4 of Section 30 in Empire Township.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202127*, filed December 31, 2021, for Eric and Tammy Erickson regarding a proposed tile system in the SW 1/4 of Section 19 in Empire Township, and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202127*, subject to the following conditions:

- 1) That Applicants install and maintain erosion protection at any and all outlets into the natural watercourse in the NW 1/4 of Section 30;

2) That Applicants re-establish any areas disturbed installing or maintaining Applicants' tile system;

3) That 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 SW 1/4 of Section 19 in Empire Township under any blanket easements, or otherwise beyond the Water District's existing easement(s); and

4) That Applicants must apply for an amendment to *Subsurface Water Management Permit No. 202127* 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) That Applicants obtain written consent from Empire Township to install and maintain any buried pipeline on, across, through, or under any of the Township's road right of way;

2) That Applicants obtain and record a pipeline easement from the owner of the NW 1/4 in Section 30; and

3) 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* and *Subsurface Water Management Permit No. 202127* to the Office of the State Engineer, Cass Rural Water Users District, Empire Township, and the owner of the NW 1/4 of Section 30. Applicants' detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

### **Bills**

It was moved by Manager Melvin and seconded by Manager Miller to approve payment of Checks #6117-6118, 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 for the Board to consider, it was moved by Manager Melvin, seconded by Manager Miller and unanimously carried to adjourn the meeting.

APPROVED:

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Rodger Olson  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer