

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
JULY 7, 2022

A virtual / conference call meeting of the Maple River Water Resource District was held on July 7, 2022, at 8:00 a.m.

Present were Gerald Melvin, Manager; Chad Miller, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Nina Stone, Accountant; Melissa Hinkemeyer, Administrative Assistant; Sean Fredricks, Ohnstad Twichell, P.C.; Kurt Lysne, Alexa Ducioame, Jim Guler and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Mary Scherling and Duane Breitling, Cass County Commissioners; Tom Soucy, Cass County Highway Department; Doug VanMeter and Collin Maki, North Dakota Soybean Processors, LLC; Benjamin Mauch, KFI Engineers; and Ryan Ottis, property owner in Addison and Normanna Townships. Chairman Rodger Olson was absent.

Agenda

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

Minutes

It was moved by Manager Miller and seconded by Manager Melvin to approve the minutes of the June 2, 2022, meeting. Upon roll call vote, the motion carried unanimously.

Lynchburg-Buffalo Project No. 2016-01

Jim Guler updated the Board on the construction status on Phase II of Lynchburg-Buffalo Project No. 2016-01. The grass is growing nicely except in areas within the channel where there was high water this spring. Mr. Guler indicated the grass should fill in with time; however, the contractor will re-seed any areas that do not grow.

It was moved by Manager Miller and seconded by Manager Melvin to approve and authorize the Chairman to sign the *Final Balancing Change Order* for JAV Construction, Inc. to decrease the total contract price in the amount of \$119,866 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 *Contractor's Application for Payment No. 12 – Final* for JAV Construction, Inc. in the amount of \$38,536.15, contingent upon receipt of final paperwork from JAV Construction, Inc. regarding Lynchburg-Buffalo Project No. 2016-01. Upon roll call vote, the motion carried unanimously.

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

Upper Swan Creek Channel Improvement Project No. 2020-01

Mr. Fredricks updated the Board on the status of right of way acquisition for Upper Swan Creek Channel Improvement Project No. 2020-01. There was a title issue found regarding approximately three acres in the NE 1/4 of Section 28 in Casselton Township that will need to be resolved.

It was moved by Manager Miller and seconded by Manager Melvin to authorize Ohnstad Twichell, P.C. to reopen the probate for the Vivian Nesemeier Estate to facilitate the acquisition of 0.17 channel (fee) acres and 0.27 berm easement acres in the NE 1/4 of Section 28 in Casselton Township from the Vivian Nesemeier Estate regarding Upper Swan Creek Channel Improvement Project No. 2020-01. Upon roll call vote, the motion carried unanimously.

Drain #34 Improvement Project

Alexa Ducioame informed the Board that a cost-share application for final design of Phase I of the Drain #34 Improvement Project has been submitted and will be considered at the August 11, 2022, State Water Commission meeting.

Drain #37 Improvement Project

Ms. Ducioame noted an *Application for Surface Drain* is being submitted to the North Dakota Department of Water Resources regarding the Drain #37 Improvement Project in Sections 28, 21 and 16 of Davenport Township.

Drain #62 – Utility Permit for North Dakota Soybean Processors, LLC for stormwater discharge in Section 33 of Casselton Township

Doug VanMeter and Kurt Lysne discussed the stormwater discharge plans for the soybean processing facility in Section 33 of Casselton Township. There will be two stormwater ponds on the property with one stormwater discharge form each pond into Drain #62. Mr. Lysne noted North Dakota Soybean Processors, LLC has provided a stormwater report for the project.

It was moved by Manager Miller and seconded by Manager Melvin to approve the *Utility Permit* for North Dakota Soybean Processors, LLC for stormwater discharge into Drain #62 in Section 33 of Casselton Township, with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

2022 facility inspections

Ms. Ducioame briefly discussed the slide approximately 100 feet in length that is situated in between two slides that were previously repaired on Drain #39 in Section 24 of Maple River Township. The slide is approaching the adjacent road shoulder but has not impacted the road at this time. Ms. Ducioame stated the slide area has been surveyed and the survey results will be brought to a future meeting for discussion on the matter.

Mr. Woodard reported the contractor for the Wheatland Channel Repair and Sediment Removal Project 2021 recently cleaned out a blocked culvert in the project area.

Mr. Woodard stated the debris at the Drain #14 outlet in Section 25 of Raymond Township has been removed and water is flowing as normal.

Cornell Township Improvement District No. 80

Mr. Lysne indicated Moore Engineering, Inc. will meet with the petitioners of the Cornell Township Improvement District No. 80 project to discuss and gather feedback on the preliminary project design. If there are no changes to the design, Moore Engineering, Inc. will prepare a cost estimate for the project and bring the information to a future meeting for review.

Davenport Flood Risk Reduction Project

Ms. Ducioame updated the Board on the Davenport Flood Risk Reduction Project. The levee alignment has been modified slightly based on feedback from property owners and the City of Davenport. A meeting will be scheduled with Red River Valley and Western Railway Company to discuss crossings regarding the project. Once the levee alignment is finalized, the Conditional Letter of Map Revision will be submitted to FEMA. Mr. Lysne noted the levee alignment will also be discussed with the Cass County Highway Department regarding Cass County Highway 16. Mr. Fredricks briefly reported on the status of right of way acquisition for the project.

Application to Install a Subsurface Water Management System No. 20228 for Ryan Ottis, Jill Kalsow, and Ron Geerdes in the NE 1/4 and the W 1/2 of Section 34 in Addison Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 20228*, filed June 7, 2022, by Applicants Ryan Ottis, Jill Kalsow, and Ron Geerdes. Under the Application, Applicants seek to install a 441-acre drain tile system in the NE 1/4 and the W 1/2 of Section 34 in Addison Township, Cass County, North Dakota. The project will include a single pump outlet located along the north boundary of the NE 1/4 of Section 34; the pump will discharge into the south road ditch along 47th Street SE; the discharge will flow east in the south road ditch to the northeast corner of Section 34; from there, the discharge will flow north, under 47th Street, and will continue north in the west road ditch along 161st Avenue SE, on the east boundary of the SE 1/4 of Section 27; in the NE 1/4 of the SE 1/4 of Section 27, the discharge will flow east under 161st Avenue and will flow northeast in an existing drain across the SW 1/4 of Section 26, under the Red River Valley & Western Railroad Company tracks.

According to County tax roll information supplied by Applicants, Jill Kalsow owns that portion of the NE 1/4 of Section 34 and the SW 1/4 of Section 34 where Applicants intend to install the tile system, and Ronald K. Geerdes owns the NW 1/4 of Section 34. With regard to downstream parcels, Michael and Martha Schmit own the property in the NE 1/4 of Section 34 downstream of the project outlet; Heuer Brothers LLP owns the SE 1/4 of Section 27; and US Farmland Fund LP owns the SW 1/4 of Section 26.

Manager Miller moved, and Manager Melvin seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20228* filed June 7, 2022, for Ryan Ottis, Jill Kalsow, and Ron Geerdes regarding a proposed tile system in the NE 1/4 and the W 1/2 of Section 34 in Addison Township, and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20228*, subject to the following conditions:

1. Applicants will install and maintain erosion protection or other ditch stabilization materials at any and all outlets into Addison Township's road right of way.
2. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
3. Applicants must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Maple River Water Resource District.
4. Applicants will remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicants' tile system, but only up to one mile downstream from the project outlet.
5. 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 NE 1/4 or the W 1/2 of Section 34 in Addison Township, under any blanket easements, or otherwise beyond the Water District's existing easement(s).
6. Applicants must apply for an amendment to *Subsurface Water Management Permit No. 20228* 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 #4, Applicants' 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 Applicants' 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 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. The Board recommends that Applicants obtain written consent from the Addison Township Board of Township Supervisors to discharge into, or otherwise utilize, any of the Township's ditches or road right of way.
2. The Board recommends that Applicants obtain written consent from Red River Valley & Western Railroad Company to discharge through or under any of its railroad right of way.
3. The Board recommends 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, Subsurface Water Management Permit No. 20228*, and Applicants' downstream flow map to the Department of Water Resources, Addison Township, Red River Valley & Western Railroad Company, downstream landowners, and Cass Rural Water Users District. 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. 20229 for Richard Horne and Ryan Ottis in the N 1/2 of Section 31 in Normanna Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 20229*, filed June 7, 2022, by Applicants Richard Horne and Ryan Ottis. Under the Application, Applicants seek to install a 291-acre drain tile system in the N 1/2 of Section 31 in Normanna Township, Cass County, North Dakota. The project will include a single pump outlet located near the northeast corner of the NW 1/4 of Section 31; the pump will discharge into the south road ditch along 53rd Street SE; the tile will flow west in the south road ditch, under 54th Street SE, and will discharge into Cass County Drain No. 34, a legal assessment drain owned and operated by the Maple River Water Resource District.

According to County tax roll information supplied by Applicants, Horne Family Limited Partnership owns the N 1/2 of Section 31.

Manager Miller moved, and Manager Melvin seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20229* filed June 7, 2022, for Richard Horne and Ryan Ottis regarding a proposed tile system in the N 1/2 of Section 31 in Normanna Township, and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20229*, subject to the following conditions:

1. Applicants will install and maintain erosion protection or other ditch stabilization materials at any and all outlets into Normanna Township's road right of way.
2. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
3. Applicants must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Maple River Water Resource District.
4. Applicants will remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicants' tile system, but only up to one mile downstream from the project outlet.
5. 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 N 1/2 of Section 31 in Normanna Township, under any blanket easements, or otherwise beyond the Water Users District's existing easement(s).
6. Applicants must apply for an amendment to *Subsurface Water Management Permit No. 20229* 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 #4, Applicants' 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 Applicants' 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 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. The Board recommends that Applicants obtain written consent from the Normanna Township Board of Township Supervisors to discharge into, or otherwise utilize, any of the Township's ditches or road right of way.
2. The Board recommends 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, Subsurface Water Management Permit No. 20229*, and Applicants' downstream flow map to the Department of Water Resources, Normanna Township, and Cass Rural Water Users District. 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. 202210 for Bruce Brand in the SW 1/4 of Section 33 in Raymond Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202210*, filed June 29, 2022, by Applicant Bruce Brand. Under the Application, Applicant seeks to install a 137-acre drain tile system in the SW 1/4 of Section 33 in Raymond Township, Cass County, North Dakota. The project will include a single pump outlet near the southeast corner of the SW 1/4 of Section 33; the pump will discharge into the north road ditch along Cass County Highway 10; the discharge will flow east in the north road ditch, along the south boundary of the SE 1/4 of Section 33 in Raymond Township; at the southeast corner of Section 33, the discharge will flow south, under Cass County Highway 10, in the west road ditch along 166th Avenue SE; the discharge will continue south in the west road ditch, along the east boundary of the NE 1/4 of Section 4 in Mapleton Township until intersecting Burlington Northern Santa Fe Railway Company's (BNSF) right of way; the discharge will then flow east, under 166th Avenue, and will continue a short distance along BNSF's right of way, across a portion of the NW 1/4 of Section 3 in Mapleton Township, until finally flowing into Cass County Drain No. 14, a legal assessment drain owned and operated by the Maple River Water Resource District.

According to County tax roll information supplied by Applicant, Bruce Brand owns the SW 1/4 of Section 33 in Raymond Township. With regard to downstream properties, Rosalind Vigen Nelson owns the SE 1/4 of Section 33; Marilyn Libbrecht owns the NE 1/4 of Section 4 in Mapleton Township north of BNSF's right of way; BNSF owns its railroad right of way; and Glenn Libbrecht owns the NW 1/4 of Section 3 in Mapleton Township north of BNSF's right of way.

Manager Miller moved, and Manager Melvin seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202210*, filed June 29, 2022, for Bruce Brand regarding a proposed tile system in the SW 1/4 of Section 33 in Raymond Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202210*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the Cass County Highway Department's highway right of way.
2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.

3. 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.
4. 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 from the project outlet.
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 the SW 1/4 of Section 33 in Raymond Township under any blanket easements, or otherwise beyond the Water Users District’s existing easement(s).
6. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 202210* 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 #4, 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 Cass County Highway Department to discharge into or otherwise utilize any of its Highway 10 right of way.
2. The Board recommends that Applicant obtain written consent from the Raymond Township Board of Township Supervisors or the Mapleton Township Board of Township Supervisors to discharge into or otherwise utilize any of their respective road right of way.
3. The Board recommends that Applicant obtain written consent from BNSF Railway Company to discharge into or otherwise utilize any of its railroad right of way.

4. 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. 202210*, and Applicant's downstream flow map to the Department of Water Resources, the Cass County Engineer, Mapleton Township, Raymond Township, BNSF Railway Company, downstream landowners, 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.

Utility Permits for MLGC, LLC to install fiber optic cable under various Maple River Water Resource District facilities

A motion was made by Manager Miller and seconded by Manager Melvin to approve *Utility Permits* for MLGC, LLC to install fiber optic cable under the facilities at the locations set out below, with input from the Water Resource District Engineer:

- Drain #14 – Section 17 of Mapleton Township on the south side of 38th Street SE
- Drain #14 – Section 29 of Mapleton Township on the north side of 41st Street SE
- Branch of Drain #14 – Section 29 of Mapleton Township on the north side of 41st Street SE
- Drain #14 – Section 32 of Mapleton Township on the north side of 42nd Street SE
- Branch of Drain #14 – Section 32 of Mapleton Township on the north side of 42nd Street SE
- Sheyenne River Tributary – Section 4 of Warren Township on the south side of 42nd Street SE

Upon roll call vote, the motion carried unanimously.

Cass County Planning

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

- TEPI Fourth Subdivision
- Cottonwood Acres Subdivision
- Nudell Subdivision

2021 Audit

It was moved by Manager Miller and seconded by Manager Melvin to approve the Maple River Water Resource District 2021 Audit. Upon roll call vote, the motion carried unanimously.

Approve Pledge of Assets – Alerus Financial (as per agreement of March 7, 1996)

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.

2023 budget and 2022 maintenance levy assessments

The Board tabled discussion on the 2023 budget and 2022 maintenance levy assessments until all Maple River Water Resource District Managers can be present.

Bills

It was moved by Manager Miller and seconded by Manager Melvin to approve payment of Check #6122, the wire transfers and electronic funds transfers, as presented. Upon roll call vote, the following Managers voted in favor: Melvin and Miller. Chairman Olson was absent. The motion carried.

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