

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

A virtual / conference call meeting of the Maple River Water Resource District was held on March 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 and Chris McShane, Ohnstad Twichell, P.C.; Kurt Lysne, Chad Engels, Alexa Ducioame, Jim Guler, Greg Meyer, Brady Woodard and Pat Downs, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling, Cass County Commissioner; and Michael Faught, Casselton.

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

Wheatland Channel - Grand Farm crossings in the NE 1/4 of Section 8 in Everest Township

Kurt Lysne reported Grand Farm is anticipating constructing the permanent and temporary crossings on the Wheatland Channel in the NE 1/4 of Section 8 in Everest Township this spring. Sean Fredricks noted communications are ongoing with Grand Farm regarding the information needed to draft the Access Agreement needed for the crossings.

Drain #34 Channel Improvements

Mr. Lysne updated the Board on the Drain #34 Channel Improvements Project in Sections 18, 19, 30 and 31 of Normanna Township. Moore Engineering, Inc. is nearly complete with the final design for the project. The North Dakota Department of Water Resources (NDDWR) is currently considering *Application for Surface Drain No. 6188* regarding the project. Upon receipt of the approved permit, an application for cost-share will be submitted to the NDDWR.

Mr. Fredricks discussed the *Consultation Report* regarding right of way for the Drain #34 Channel Improvements Project. It was moved by Manager Miller and seconded by

Manager Melvin to approve the *Consultation Report* from Farmers National Company and 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 the Drain #34 Channel Improvements Project. Upon roll call vote, the motion carried unanimously.

Mr. Lysne stated the cost estimate for the project has been updated to reflect the approved right of way valuations which changes the economic analysis for the project. Moore Engineering, Inc. will be meeting with the NDDWR economist to update the economic analysis for the project that is needed to apply for NDDWR cost-share.

Drain #37 Improvement Project

Mr. Fredricks discussed the *Consultation Report* regarding right of way for the Drain #37 Improvement Project. It was moved by Manager Melvin and seconded by Manager Miller to approve the *Consultation Report* from Farmers National Company and offer property owners \$9,000 per acre for tillable agricultural land for permanent channel right of way, \$15,000 per acre for rural residential property for permanent channel right of way, \$1,500 per acre for berm easements and \$500 per acre for temporary construction easements regarding the Drain #37 Improvement Project. Upon roll call vote, the motion carried unanimously.

2022 facility inspections – Drain #39 slide in Section 24 of Maple River Township

Brady Woodard indicated he has been in discussions with Maple River Township regarding the preliminary plans to repair the slide on Drain #39 in Section 24 of Maple River Township. Maple River Township has reviewed the preliminary plans and does not have any concerns at this time regarding the project. Mr. Lysne stated Moore Engineering, Inc. will bring a cost estimate for final design and permitting regarding the project to a future meeting for the Board's consideration.

Drain #62 – North Dakota Soybean Processors, LLC

Mr. Fredricks and Mr. Lysne discussed the *Agreement* with Cass County and North Dakota Soybean Processors, LLC regarding the Drain #62 relocation in Section 33 of Casselton Township.

It was moved by Manager Miller and seconded by Manager Melvin to approve and authorize the Chair to sign the *Agreement* with Cass County and North Dakota Soybean Processors, LLC regarding the Drain #62 relocation in Section 33 of Casselton Township. Upon roll call vote, the motion carried unanimously.

Executive Session for purposes of discussing contract negotiation strategies, litigation strategies, and attorney consultation regarding ongoing litigation and ongoing contract negotiations related to right of way and property acquisitions necessary to accommodate Lynchburg-Buffalo Project No. 2016-01, 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 9:27 a.m. for the purposes of discussing contract negotiation strategies, litigation

strategies, and attorney consultation regarding ongoing litigation and ongoing contract negotiations related to right of way and property acquisitions necessary to accommodate Lynchburg-Buffalo Project No. 2016-01, in accordance with N.D. Cent. Code §§ 44-04-19.1(2), (5), and (9), regarding the following matter and parties:

1. Maple River Water Resource District v. Carole G. Meyers as Trustee of the Ruth E. Buchholtz Testamentary Trust created the 22nd day of August, 2003, et al., Civ. No. 09-2021-CV-02321

Upon roll call vote, the following Managers voted in favor: Olson, Melvin and Miller. The motion passed.

The executive session was attended by Managers Olson, Melvin and Miller, Carol Harbeke Lewis, Melissa Hinkemeyer, Sean M. Fredricks, Chris McShane, Kurt Lysne, Alexa Ducioame, Jim Guler, Brady Woodard and Duane Breitling.

The executive session adjourned at 10:13 a.m. and the regular meeting was reconvened and opened to the public.

Cornell Township Drainage Improvement District No. 80

Mr. Lysne reported the petitioners for Cornell Township Drainage Improvement District No. 80 hope to select a project alignment by the end of the month.

Davenport Flood Risk Reduction Project

The Board discussed options and costs for wetland mitigation regarding the Davenport Flood Risk Reduction Project with Greg Meyer, Moore Engineering, Inc. wetlands specialist. The Board inquired about potentially constructing a wetland bank to be utilized by Cass County Water Resource Districts and local political subdivisions for projects. Mr. Meyer discussed the process, permits, construction, operation and maintenance costs related to construction of a wetland bank. Mr. Meyer noted wetland mitigation must occur in the same watershed as the project and constructing a wetland bank is generally not cost-effective for small wetland mitigation needs such as the 1 acre of wetlands that needs to be mitigated for the Davenport Flood Risk Reduction Project.

Mr. Fredricks briefly updated the Board on right of way acquisition regarding the Davenport Flood Risk Reduction Project. Alexa Ducioame reported the Section 404 Permit application was submitted to the Corps of Engineers in February and Moore Engineering, Inc. is currently working on the Conditional Letter of Map Revision submission to FEMA. Mr. Lysne stated final project design is nearing completion and he discussed the updated cost estimate for the project which has increased from the 2018 estimate. Once the project has been bid, the Water Resource District could apply for additional cost-share for the project.

It was moved by Manager Melvin and seconded by Manager Miller to authorize the Secretary-Treasurer to send correspondence to the NDDWR regarding the status and updated cost estimate for the Davenport Flood Risk Reduction Project. Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program – Upper Maple River Watershed

Pat Downs updated the Board on the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. continues to update the Plan with review and assistance from the Natural Resources Conservation Service.

Application to Install a Subsurface Water Management System No. 20234 for Steve Olson in the NE 1/4 of Section 21 in Clifton Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 20234*, filed February 16, 2023, by Applicant Steve Olson. Under the Application, Applicant seeks to install a 127-acre drain tile system in the NE 1/4 of Section 21 in Clifton Township, Cass County, North Dakota. The project will include a pump outlet near the southeast corner of the NE 1/4 in Section 21; the pump will discharge directly into a natural watercourse, as defined under North Dakota law, that flows east, under 136th Avenue SE, and continues east into Section 22, towards the Maple River.

According to records on file with Cass County, Steven J. Olson is purchasing the NE 1/4 of Section 21 in Clifton Township under a contract for deed with David and Mary Nudell.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20234*, filed February 16, 2023, for Steve Olson regarding a proposed tile system in the NE 1/4 of Section 21 in Clifton Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20234*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the natural drain in the NW 1/4 of Section 15.
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 NE 1/4 of Section 21 in Clifton 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. 20234* 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. The Board recommends that Applicant obtain written consent from the Clifton Township Board of Township Supervisors to discharge into a natural drain within 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. 20234*, and Applicant's downstream flow map to the North Dakota Department of Water Resources, Clifton Township, David and Mary Nudell, 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. 20235 for Justin Johnson in the SW 1/4 of Section 10 and NW 1/4 of Section 15 in Hill Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 20235*, filed February 21, 2023, by Applicant Justin Johnson. Under the Application, Applicant seeks to install a 190-acre drain tile system in the SW 1/4 of Section 10 and the NW 1/4 of Section 15 in Hill Township, Cass County, North Dakota. The system in the SW 1/4 of Section 10 will connect to the system in the NW 1/4 of Section 15 via lines under 38th Street SE. The project will include four gravity outlets, all in the NW 1/4 of Section 15, that will all discharge directly into a tributary of the Maple River.

According to County tax roll information supplied by Applicant, Justin and Lindsey Johnson own the SW 1/4 of Section 10 in Hill Township, and also own 120 acres in the NW 1/4 of Section 15 where Applicant intends to install the tile system.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20235*, filed February 21, 2023, for Justin Johnson regarding a proposed tile system in the SW 1/4 of Section 10 and the NW 1/4 of Section 15 in Hill Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20235*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the tributary of the Maple River in the NW 1/4 of Section 15.
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 SW 1/4 of Section 10 or the NW 1/4 of Section 15 in Hill Township under any blanket easements, or otherwise beyond the Water Users District's existing easement(s).
4. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 20235* 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. The Board recommends that Applicant obtain written consent from the Hill Township Board of Township Supervisors to install and maintain any project components within its 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. 20235*, and Applicant's downstream flow map to the North Dakota Department of Water Resources, Hill Township, 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.

Weed, cattail, tree and brush control

Discussion was held on the bid received for spraying spotted hemlock in Maple River Water Resource District facilities. A motion was made by Manager Miller and seconded by Manager Melvin to approve and authorize ground spraying of spotted hemlock by DL Barkie Construction, Inc., in Maple River Water Resource District facilities as identified by the Cass County Weed Officer. Upon roll call vote, the motion carried unanimously.

Letter of engagement to the Office of the State Auditor for 2022 audit services

A motion was made by Manager Melvin and seconded by Manager Miller to approve the letter of engagement to the Office of the State Auditor for 2022 audit services for Maple River Water Resource District. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Miller and seconded by Manager Melvin to approve payment of Check #6135, 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.

Upper Swan Creek Channel Improvement Project No. 2020-01

Brief discussion was held on right of way regarding Upper Swan Creek Channel Improvement Project No. 2020-01.

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