

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
SOUTHEAST CASS WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
MARCH 14, 2023

A virtual / conference call meeting of the Southeast Cass Water Resource District was held on March 14, 2023, at 8:30 a.m.

Present were Keith Weston, Chairman; Dave Branson, Manager; Rick Steen, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Nina Stone, Accountant; Melissa Hinkemeyer, Administrative Assistant; Sean M. Fredricks, Ohnstad Twichell, P.C.; Kurt Lysne, Alexa Ducioame and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Jody Bertrand, Jim Hausauer, Tom Knakmuhs and Donald Kress, City of Fargo; Duane Breitling, Cass County Commissioner; Kyle Litchy, Cass County Highway Department; Joel Luing, City of Horace; Christine Holland and Jill Wilkey, River Keepers; Roger Haberman, Industrial Builders, Inc.; John Wirries, KLJ; and Ryan Ottis, Ottis Contracting, LLC.

Approval of agenda

It was moved by Manager Branson, seconded by Manager Steen and unanimously carried to approve the order of the agenda, as amended.

Minutes

It was moved by Manager Branson, seconded by Manager Steen and unanimously carried to approve the minutes of the February 14 and March 2 (as amended), 2023, meetings.

Sheyenne Maple Flood Control Project #2 – assessment on parcel 02-3000-01240-012 for West Fargo Improvement District No. 02-2250 – property disposal options

Chairman Weston reported he is coordinating a meeting with the City of West Fargo to discuss options regarding the pending special assessment on parcel 02-3000-01240-012. Brady Woodard said he has begun looking into potential interest in the material on the property.

Sheyenne-Maple Flood Control Project #2 – control structure operation to accommodate the 52nd Avenue S and Cass County Highway 17 projects

Kyle Litchy and Roger Haberman discussed the 52nd Avenue S and Cass County Highway 17 projects that are occurring this year. To accommodate the projects, Industrial Builders, Inc. would like to install a needle dam in the Sheyenne River at the inlet of Sheyenne-Maple Flood Control District #2 to divert water from the Sheyenne River to

Sheyenne-Maple Flood Control District #2. Kurt Lysne indicated the needle dam will reduce flows in the Sheyenne River which will greatly aid construction and benefit the public. Mr. Haberman stated Industrial Builders, Inc. has experience constructing needle dams and by using a needle dam, the flows in the Sheyenne River can be controlled. Mr. Lysne noted the needle dam would need to be removed in the event of a flood so Sheyenne-Maple Flood Control District #2 can be operated as designed. Mr. Haberman discussed the proposed project timeline and noted a crane will be on-site in the event the needle dam needs to be removed. Moore Engineering, Inc. will monitor Sheyenne River flows and remain in contact with Industrial Builders, Inc. throughout the project.

It was moved by Manager Steen and seconded by Manager Branson to approve and authorize the Chairman to sign the *Access Agreement* with Industrial Builders, Inc. to operate Sheyenne-Maple Flood Control District #2 to accommodate the 52nd Avenue S and Cass County Highway 17 projects. Upon roll call vote, the motion carried unanimously.

Sheyenne-Maple Flood Control Projects #1 and #2 – 2023 spring melt / flood outlook

Discussion was held on the 2003 spring operation and flood outlook regarding Sheyenne-Maple Flood Control Projects #1 and #2. Mr. Lysne gave a brief history and said in previous years, the Water Resource District has retained a long-reach excavator that is primarily used to break up ice jams and debris. The Water Resource District maintains close communication with the City of West Fargo and the North Dakota Department of Transportation throughout the spring melt to coordinate efforts. The Board directed Moore Engineering, Inc. to contact contractors to inquire about the availability of specialty equipment that may be needed during the 2023 spring melt. Mr. Lysne will keep the Board updated on the matter.

Drain #3 – notice of undocumented encroachment in City of Fargo right of way and notice of City of Fargo sidewalk construction project at 1901 1st Avenue S

Discussion was held on notices from the City of Fargo regarding an undocumented encroachment and a sidewalk construction project at 1901 1st Avenue S. Mr. Lysne recommended the City of Fargo handle construction of the sidewalk. He noted the encroachment is related to a driveway and guardrail in City of Fargo right of way. Mr. Woodard noted the driveway may have been installed for access to maintain Drain #3. Tom Knakmuhs indicated the City of Fargo is willing to remove the encroachment for the Water Resource District as part of the sidewalk construction project at that location.

It was moved by Manager Branson and seconded by Manager Steen to authorize the Secretary-Treasurer to contact the City of Fargo to confirm the City will construct the sidewalk and remove the encroachment in City of Fargo right away adjacent to Drain #3 at 1901 1st Avenue S. Upon roll call vote, the motion carried unanimously. Mr. Knakmuhs indicated he will communicate with the adjacent property owner regarding the matter.

Drain #10 – slide repairs north of Cass County Highway 20

Alexa Ducioame reported Braun Intertec Corporation has completed a draft geotechnical report of the Drain #10 slide repairs north of Cass County Highway 20. Moore Engineering, Inc. is reviewing the draft report with Braun Intertec Corporation.

Drain #27 – improvement project from 64th Avenue S to 100th Avenue S (Cass County Highway 14)

Mr. Lysne reviewed the Drain #27 improvement project from 64th Avenue South to 100th Avenue South (Cass County Highway 14). Moore Engineering, Inc. is working on the final project design and is in communication with the City of Fargo regarding the future plans for the 64th Avenue S corridor, and with the City of Horace regarding the 88th Avenue S corridor. Mr. Lysne briefly discussed the public meeting that was held recently in Horace regarding the project and noted right of way discussions with property owners will begin soon.

The Secretary-Treasurer noted the North Dakota Department of Water Resources (NDDWR) recently sent a solicitation of views regarding *Application for Surface Drain No. 6202* for the project. A response was submitted to the NDDWR stating the Southeast Cass Water Resource District had no comments on the matter as they are the applicant.

Drain #40 – Access Easement for the City of Fargo to install a water main crossing at approximately 38th Avenue N

Mr. Knakmuhs discussed the City of Fargo water main project that will cross Drain #40 at approximately 38th Avenue N. It was moved by Manager Branson and seconded by Manager Steen to approve and authorize the Chairman to sign the *Access Easement* with the City of Fargo regarding the installation of a water main crossing on Drain #40 at approximately 38th Avenue N, contingent on review and approval of the survey by the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

Sheyenne River and Wild Rice River Snagging and Clearing

Mr. Woodard reported the contractor has concluded snagging and clearing efforts on the Sheyenne River and Wild Rice River for the season. The contractor completed a significant amount of work and expended nearly all the available funding for the projects.

River Keepers 2024 budget allocation

Christine Holland presented on the activities and efforts of River Keepers. Ms. Holland indicated River Keepers aims to promote learning about rivers through hands-on activities and has reached numerous people, including a total of over 35,000 local 3rd grade students. River Keepers activities include cleaning trash out of drains and rivers in local urban areas, reforesting the Red River, educational tours of the Red River and several youth activities. Ms. Holland stated River Keepers is requesting a budget allocation of \$65,000 in the 2024 Water Resource District budget. The allocation assists River Keepers with programming. The Board expressed their support for River Keepers and

their past work, including their ability to gather volunteers for activities such as debris clean up. The Board directed the Secretary-Treasurer to allocate \$65,000 for River Keepers in the preliminary 2024 Southeast Cass Water Resource District budget.

Application to Install a Subsurface Water Management System No. 20236 for Kelly Perhus, Julie Ottis and Matthew Ottis in the W 1/2 of Section 12 in Normanna Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 20236*, filed March 10, 2023, by Applicants Kelly Perhus, Julie Ottis, and Matthew Ottis. Under the Application, Applicants seek to install a 306-acre drain tile system in the W 1/2 of Section 12 in Normanna Township, Cass County, North Dakota. The project will include a single pump outlet located in the northeast corner of the SW 1/4 of Section 12; the pump will discharge into an existing private drain that runs east along the half-section line between the NE 1/4 and the SE 1/4 of Section 12, until discharging into Cass County Drain No. 47 along the east boundary of Section 12, a legal assessment drain owned and operated by the Southeast Cass Water Resource District.

According to County tax roll information supplied by Applicants, Kelly and Debra Perhus own the NW 1/4 of Section 12 in Normanna Township and the Julie A. Ottis Revocable Trust owns the SW 1/4 of Section 12. With regard to downstream properties, Cheryl Evert owns the south 32 acres in the NE 1/4 of Section 12; the Henry A. & Joyce E. Trangsrud Revocable Living Trust owns the W 1/2 of the SE 1/4 in Section 12; and Wayne Grangaard owns the E 1/2 of the SE 1/4 in Section 12.

The Board discussed how the project will impact benefits and assessments for Cass County Drain No. 47, a legal assessment drain and corresponding assessment district. Kurt Lysne indicated that, currently, the SW 1/4 of Section 12 is within the Drain 47 assessment district, but the NW 1/4 of Section 12 is not in the Drain 47 assessment district. As a result of this project, surface drainage and runoff from the NW 1/4 of Section 12 will discharge into Drain 47. The Board discussed the benefits of Drain 47 to the NW 1/4 of Section 12 as a result of this tile project. Under N.D. Cent. Code § 61-32-03.1, if a tile project will result in new legal drain benefits to a parcel, the Board can include that parcel in the drain assessment district. In this case, the Board concluded the parcel should be included within the Drain 47 assessment district at 100% benefit. Drain 47 does not have any outstanding construction bonds so assessment district members only pay annual “maintenance levy” assessments, with a maximum of \$4 per acre per year.

The Board also discussed the downstream private drain and the potential for future disputes in the event the downstream landowners attempt to limit Applicants’ abilities to discharge into that private drain. Mr. Fredricks explained that, under Section 61-32-03.1, the Board cannot require Applicants to secure an easement from those downstream landowners, nor can the Board require the downstream landowners to allow Applicants to utilize their private drain as an outlet. Manager Branson recommended that the Board’s *Notice of Decision* in this matter recommend to Applicants that they enter into some type of agreement with those downstream landowners, to protect Applicants’ project outlet in the future.

Manager Branson moved, and Manager Steen seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20236*, filed March 10, 2023, for Kelly Perhus, Julie Ottis, and Matthew Ottis regarding a proposed tile system in the W 1/2 of Section 12 in Normanna Township; to include a recommendation in the Board's *Notice of Decision* that Applicants enter into an agreement with the downstream landowners regarding use of the private drain as a project outlet; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20236*, subject to the following conditions:

1. Applicants must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Southeast Cass Water Resource District.
2. The NW 1/4 of Section 12 in Normanna Township will be included in the Cass County Drain No. 47 assessment district at 100% benefit.
3. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
4. 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 W 1/2 of Section 12 in Normanna Township under any blanket easements, or otherwise beyond the Water Users District's existing easement(s).
5. Applicants must remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicants' tile system, but only up to the tile discharge into Cass County Drain No. 47.
6. Applicants must apply for an amendment to *Subsurface Water Management Permit No. 20236* 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, 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 enter into an agreement with the downstream landowners regarding use of the private drain along the half-section line between the NE 1/4 and the SE 1/4 of Section 12 as a project outlet.
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. 20236*, and Applicants' downstream flow map to the Department of Water Resources, Cheryl Evert, the Henry A. & Joyce E. Trangsrud Revocable Living Trust, Wayne Grangaard, 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.

Utility Permit for Consolidated Communications Enterprise Services, Inc. to install fiber optic cables under Drain #40 south of 19th Avenue N

A motion was made by Manager Steen and seconded by Manager Branson to approve the *Utility Permit* for Consolidated Communications Enterprise Services, Inc. to install fiber optic cables under Drain #40 south of 19th Avenue N, with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

Access Agreement for the Kindred-Davenport Regional Airport Authority to install a road approach and culvert over Drain #60 on the north side of 53rd Street SE into Robert Odegaard Field

John Wirries discussed a project by the Kindred-Davenport Regional Airport Authority to improve taxiways on the east end of the airport property. To facilitate the work, the Kindred-Davenport Regional Airport Authority submitted a *Utility Permit* to install a road approach and culvert over Drain #60 on the north side of 53rd Street SE into Robert Odegaard Field. The size of the proposed culvert will match the downstream culvert. Mr. Wirries said should Drain #60 be enclosed in the future, the Kindred-Davenport Regional Airport Authority recognizes they would be required to remove the crossing at their expense as a larger culvert would be needed. Mr. Wirries noted it is not feasible for the Kindred-Davenport Regional Airport Authority to install the larger culvert as part of their project.

A motion was made by Manager Steen and seconded by Manager Branson to authorize the Water Resource District Attorney to draft an *Access Agreement* with the Kindred-Davenport Regional Airport Authority regarding installation of a road approach and culvert over Drain #60 on the north side of 53rd Street SE into Robert Odegaard Field and to approve and authorize the Chairman to sign the *Access Agreement*. Upon roll call vote, the motion carried unanimously.

Utility Permits for Cass Rural Water Users District to install a 16-inch water line under Drain #27 on the south side of 64th Avenue S and on the north side of 76th Avenue S

It was moved by manager Branson and seconded by Manager Steen to approve *Utility Permits* for Cass Rural Water Users District to install a 16-inch water line under Drain #27 at the following locations, with input from the Water Resource District Engineer:

- On the south side of 64th Avenue S
- On the north side of 76th Avenue S

Upon roll call vote, the motion carried unanimously.

Items for review and comment, with input provided by the Water Resource District Engineer

Donald Kress reviewed the Fargo Department of Planning and Development April Preliminary Packet. Mr. Kress noted the Fargo City Commission approved annexing a portion of Drain #40 recently as part of the annexation of property in Sections 15 and 22 of Reed Township.

A motion was made by Manager Steen and seconded by Manager Branson to authorize the Secretary-Treasurer to submit comment on the following, with input from the Water Resource District Engineer:

- Fargo Department of Planning and Development
 - April Preliminary Packet
- West Fargo Planning and Zoning Commission
 - Kost Fourth Addition
 - Sukut's Sixth Addition
 - Brooks Harbor Tenth Addition

Upon roll call vote, the motion carried unanimously.

The Board invited the City of Horace to regularly attend Water Resource District meetings to provide updates on planning and development and other activities occurring in the City of Horace, especially topics related to Drain #27 or Sheyenne-Maple Flood Control District #2. Joel Luing indicated he will be participating in future Water Resource District meetings regarding matters involving the City of Horace. Discussion was also held on exploring the possibility of a future maintenance agreement with the City of Horace regarding Drain #27.

Weed, cattail, tree and brush control

Discussion was held on the bid received for spraying spotted hemlock and the bids received for aerial and ground spraying for weed, cattail, tree and brush control on Southeast Cass Water Resource District facilities.

A motion was made by Manager Steen and seconded by Manager Branson to approve and authorize the Chairman to sign the *Agreement* with Dakota Helicopter, Inc. to provide aerial and ground spraying services for weed, cattail, tree and brush control on Southeast Cass Water Resource District facilities for 2023. Upon roll call vote, the motion carried unanimously.

The Board indicated they will consider hiring a contractor to spray spotted hemlock in the future if it is identified in Southeast Cass Water Resource District facilities.

It was moved by Manager Branson and seconded by Manager Steen to approve the Cass County Weed Control Work Order regarding weed, cattail, tree and brush control on Southeast Cass Water Resource District facilities for 2023. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Steen and seconded by Manager Branson to approve payment of the wire transfers and the electronic funds transfers, as presented. Upon roll call vote, the following Managers voted in favor: Weston, Branson and Steen. The Chairman declared the motion passed.

Legislative updates

Sean Fredricks briefly updated the Board on legislative items regarding water resource districts.

Proposed sanitary sewer for Commerce on I-29

Brief discussion was held on the proposed sanitary sewer for the Commerce on I-29 development. Mr. Fredricks noted the Commerce on I-29 representatives have indicated they are ready to proceed with an Agreement with the City of Fargo regarding the project. When the Agreement is signed, the Water Resource District will proceed with developing the assessment district for the project, including drafting a multi-party Agreement with the City of Fargo and the Commerce on I-29 property owners.

Adjournment

There being no further business for the Board to consider, it was moved by Manager Branson, seconded by Manager Steen and unanimously carried to adjourn the meeting.

APPROVED:

Keith Weston
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer