

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
RUSH RIVER WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
MAY 16, 2023

A virtual / conference call meeting of the Rush River Water Resource District was held on May 16, 2023, at 8:00 a.m.

Present were William A. Hejl, Chairman; Richard Sundberg, Manager; Jacob Gust, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Nina Stone, Accountant; Melissa Hinkemeyer, Administrative Assistant; Sean M. Fredricks, Ohnstad Twichell, P.C.; Kurt Lysne, Josh Hassell, Alexa Ducioame and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling, Cass County Commissioner; Tom Soucy, Cass County Highway Department; Kellen Grubb, AE2S; David Baumler and Kyle Faught, Amenia Township property owners.

Agenda

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

Minutes

It was moved by Manager Gust, seconded by Manager Sundberg and unanimously carried to approve the minutes of the April 17 and 18, 2023, meetings.

Drain #30 – Metro Flood Diversion Project interface

Discussion was held on the interface between Drain #30 and the Metro Flood Diversion Project. It was moved by Manager Sundberg and seconded by Manager Gust to approve and authorize the Chairman to sign *Task Order No. 4* with Moore Engineering, Inc. regarding engineering for the transition between Drain #30 and the Diversion Channel of the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Complaint for Water-Related Issues from Kim Bruesch against David Baumler for drainage in the E 1/2 of Section 29 in Amenia Township

The Board next considered Kim Bruesch's *Complaint for Water-Related Issues* filed against David Baumler, dated December 17, 2022. Mr. Bruesch alleges that David Baumler constructed drainage improvements in the E 1/2 of Section 29 in Amenia Township, Cass County, North Dakota. Mr. Baumler was present to discuss the matter.

The Board has discussed this matter at several recent meetings. Kim Bruesch, David Baumler, and David Knight all attended the Board's meeting on December 20, 2022, and discussed the matter with the Board. At that meeting, Mr. Baumler acknowledged he

constructed improvements in the west road ditch along 152nd Avenue SE, in the E 1/2 of Section 29, and further acknowledged the ditch improvements he constructed were deeper than the original depth of the township road ditch. The Board directed Kurt Lysne to investigate the matter further to determine if Mr. Baumler's activities required a surface drainage permit.

Mr. Baumler and Mr. Bruesch both attended the Board's meeting on March 21, 2023. At that meeting, Mr. Lysne explained his findings that the drainage area impacted by the ditch improvements Mr. Baumler constructed in the west road ditch along 152nd Avenue is only 28.5 acres (less than the 80-acre surface permitting threshold). However, the parties agreed Mr. Baumler also constructed ditch improvements outside of the township road ditch. More specifically, Mr. Baumler indicated he constructed field ditching in the NE 1/4 of Section 29 to provide an outlet to the east, to provide some relief from flooding. He indicated the purpose of the field ditching was to drain that watershed to the east to the township ditch improvements he constructed. The Board directed Mr. Lysne to investigate those improvements.

Mr. Baumler and Mr. Bruesch both attended the Board's meeting on April 18, 2023. At that meeting, Mr. Lysne described the additional field work. Mr. Baumler indicated he constructed those ditch improvements to provide an outlet to high water in the field in the NE 1/4 of Section 29. Those improvements drain field sheetwater to the northeast, towards the ditch improvements Mr. Baumler constructed in the west road ditch along 152nd Avenue. However, Mr. Baumler alleged he filled in that field ditching with 6 inches of fill. The Board directed Mr. Lysne to investigate and determine whether or not Mr. Baumler effectively closed or filled that field ditching.

Mr. Lysne presented an aerial photograph that depicts the ditch improvements along 152nd Avenue and the field improvements; a map that compares the survey data Moore Engineering, Inc. gathered compared to LiDAR elevation data; and a watershed map. Mr. Lysne reiterated that the ditch improvements along 152nd Avenue only impact or drain a 28.5-acre watershed.

With regard to the field ditch improvements, Mr. Lysne indicated Mr. Baumler initially dug a ditch approximately 2.5-feet deep, but later filled in approximately 6 inches of fill. As a result, the field ditch improvements currently consist of a channel approximately 2 feet deep. Mr. Lysne evaluated the watershed area drained by this ditch and ultimately concluded those improvements do not drain or impact an 80-acre watershed. Rather, Mr. Lysne concluded these improvements only drain high water during flood conditions. Since the ditch does not drain an 80-acre watershed, those improvements did not require a surface drainage permit.

Mr. Baumler noted he would be willing to fill in the field ditching with another one foot of fill, if necessary.

Under North Dakota law, specifically N.D. Cent. Code § 61-32-03, any party who seeks to construct surface drainage improvements that will drain sheetwater must first obtain a surface drainage permit if the drainage will impact a watershed area of 80 acres or more. Under Section 89-02-01-03 of the Administrative Code, a permit is required for construction of new ditching, including deepening or widening an existing ditch or drain. Sections 89-02-01-05 and 89-02-01-02(10) provide a “maintenance” exemption for removal of silt and vegetation from an existing ditch; however, the Administrative Code is clear that deepening or widening an existing ditch does *not* qualify for the maintenance exemption, and *does* require a surface drainage permit, but only if the drainage will impact a watershed area of 80 acres or more).

In this case, if the watershed area drained by the deepening or widening of the 152nd Avenue ditch was 80 acres or more, the work would have required a permit under Section 61-32-03. However, in this instance, Mr. Lysne found the watershed area impacted by the ditch improvements was less than 80 acres and, therefore, Mr. Baumler’s improvements to the 152nd Avenue ditch did not require a surface drainage permit under North Dakota law.

Similarly, the field ditch improvements in the NE 1/4 of Section 29 included new drainage and, under Section 61-32-03, would have required a permit if the improvements drained a watershed of 80 acres or more. However, in light of Mr. Lysne’s findings that the field ditching does not drain a watershed of 80 acres or more, those improvements did not require a surface drainage permit under North Dakota law.

Because neither of the drainage improvements required a surface drainage permit, under Sections 61-32-03 and 61-32-07 the Board had no choice but to dismiss the *Complaint for Water-Related Issues* regarding allegations of unpermitted drainage by Mr. Baumler.

In light of the lack of jurisdiction over the *Complaint for Water-Related Issues*, the Board determined dismissal was the only option available for the Board. Manager Gust moved to dismiss the *Complaint for Water-Related Issues* filed by Kim Bruesch due to lack of jurisdiction under Sections 61-32-03 and 61-32-07. Manager Sundberg seconded the motion. Upon roll call vote, the motion carried unanimously.

The Board directed Sean Fredricks to prepare the requisite *Notice of Decision* and to provide the *Notice* to the parties of record. The Board directed Mr. Fredricks to include copies of the aerial photograph and maps presented today by Mr. Lysne along with the *Notice of Decision*.

Despite the Board’s lack of jurisdiction, Mr. Fredricks noted the Township has jurisdiction over improvements to their road ditch, and the Township possesses enforcement capabilities under N.D. Cent. Code § 24-06-26.2, 24-06-26.3, and 24-06-27.

2024 budget and 2023 maintenance levy assessments

The Board tabled discussion on the 2024 budget and 2023 maintenance levy assessments until the next meeting as the Rush River Water Resource District Master

Plan is currently being updated. The Board briefly discussed potentially appropriating funds in the 2024 budget for emergency spring snow removal work in Rush River Water Resource District facilities.

Harmony Township invoices for Rush River snow removal

The Board reviewed two invoices submitted by Harmony Township for the removal of snow from the Rush River channel. The Board indicated that it is not the policy of the Water Resource District to reimburse snow removal expenses and respectfully declined reimbursement of the Harmony Township invoices. The Board authorized the Chairman to sign a letter to the Harmony Township Chairman regarding the matter.

Amenia Township Improvement District No. 75

David Baumler suggested revisiting the Amenia Township Improvement District No. 75 project. The Board indicated the project would require a petition and bond from property owners to move the project forward.

Rush River – spring flood damages in the northwest corner of Section 1 in Raymond Township and the southeast corner of Section 36 in Berlin Township

Manager Sundberg said a property owner reported the box culvert on the Rush River between Section 2 in Raymond Township and Section 36 in Berlin Township was damaged during the spring melt and that the west bank near the box culvert has eroded significantly. It was also reported that the markers at the box culvert are missing. Brady Woodard indicated Cass County Highway Department will be replacing the markers at the box culvert. Manager Sundberg also noted a Rush River intercept culvert and flap gate in the northwest corner of Section 1 in Raymond Township was damaged. The Board directed Mr. Woodard to follow up on the information provided and report back at a future meeting.

Manager Sundberg discussed a concern from a property owner adjacent to the Rush River in Section 2 of Raymond Township. The property owner is concerned about access to his property during high water conditions after the Metro Flood Diversion Project is completed as the Project will remove an adjacent roadway that is utilized during high water conditions. Manager Gust indicated he will bring the matter at a future Cass County Joint Water Resource District meeting for discussion.

Office remodel

The Secretary-Treasurer reported the Cass County Highway Department is currently being renovated and future Rush River Water Resource District meetings are planned to be held in a different room at the Cass County Highway Department during the renovation.

Drain #74 – tree removal from the overflow structure between Sections 20 and 21 in Amenia Township

Mr. Lysne reported Moore Engineering, Inc. completed a site visit of the trees in Drain #74 from the overflow structure between Sections 20 and 21 in Amenia Township. A contractor will remove the trees this week.

2023 facility inspections

Mr. Woodard inquired about conducting facility inspections following the spring flood event. Following discussion, the Board directed Moore Engineering, Inc. to conduct an inspection of Drain #52.

Regional Conservation Partnership Program (RCPP) – Rush River Watershed

Mr. Lysne reported on the RCPP – Rush River Watershed Plan. Work continues on the final alignment of the levee. Cass County Joint Water Resource District has contracted with SRF Consulting Group, Inc. to provide perspective on the alignment of the levee. SRF Consulting Group, Inc. will be reaching out to property owners impacted by the levee alignment soon. Moore Engineering, Inc. submitted 90% complete design plans to the Natural Resources Conservation Service (NRCS) for review. The NRCS is aware there may be changes to the levee alignment.

Application to Install a Subsurface Water Management System No. 20237 for Kyle Faught in the W 1/2 SE 1/4 and SW 1/4 of Section 12 in Empire Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 20237*, filed March 27, 2023, by Applicant Kyle Faught. Under the Application, Applicant seeks to install a 95-acre drain tile system in the W 1/2 of the SE 1/4 and the SW 1/4 of Section 12 in Empire Township, Cass County, North Dakota. The project will include a single gravity outlet that will discharge directly into the Rush River.

According to County tax roll information submitted by Applicant, David and Ardell Strand own the W 1/2 of the SE 1/4 and the SW 1/4 of Section 12 in Empire Township. Once the project discharges into the Rush River, the Rush River Water Resource District loses jurisdiction over the discharge.

Manager Gust moved, and Manager Sundberg seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20237*, filed March 27, 2023, for Kyle Faught regarding a proposed tile system in the W 1/2 of the SE 1/4 and the SW 1/4 of Section 12 in Empire Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20237*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the Rush River.
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 W 1/2 of the SE 1/4 and the SW 1/4 of Section 12 in Empire 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. 20237* 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 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. 20237*, and Applicant's downstream flow map to the North Dakota Department of Water Resources, David and Ardell Strand, 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.

Notification to Install a Subsurface Water Management System provided by Aim Ag Drainage in the NE 1/4 of Section 31 in Amenia Township

The Board received and filed a *Notification to Install a Subsurface Water Management System* provided by Aim Ag Drainage in the NE 1/4 of Section 31 in Amenia Township.

Utility Permit for Cass Rural Water Users District to install a water supply pipeline and a water return pipeline under Drain #67 south of 64th Avenue N

It was moved by Manager Sundberg and seconded by Manager Gust to approve the *Utility Permit* for Cass Rural Water Users District to install a water supply pipeline and a water return pipeline under Drain #67 south of 64th Avenue N, with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

Cass County Planning

Tom Soucy discussed the Lilleberg Subdivision application in Section 13 of Harwood Township and noted the property owner hired a geotechnical firm to ensure they meet a certain factor of safety regarding structures on the proposed subdivision. The Board noted the property owner should be cautious as the property is on an outside bank of the Red River and further erosion of the property should be expected.

A motion was made by Manager Sundberg and seconded by Manager Gust to authorize the Secretary-Treasurer to submit comment on the Lilleberg Subdivision application to Cass County Planning, with input from the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

Chairman Hejl left the meeting at this time.

Cass County Joint Water Resource District report

Manager Gust reported on the closure of Cass County Highway 81 near Harwood, North Dakota, regarding the Metro Flood Diversion Project. The Board discussed the importance of Cass County Highway 81 for agricultural transportation. Mr. Soucy noted Cass County Highway 31 is an alternate route that could be used. He also said Cass County is urging the P3 developer for the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project to shorten the time Cass County Highway 81 will be closed. The Cass County Joint Water Resource District will continue to discuss the matter with the Metro Flood Diversion Authority.

Mr. Lysne noted plans are currently being reviewed regarding Rush River inlets to the Diversion Channel of the Metro Flood Diversion Project.

Red River Joint Water Resource District report

The next Red River Joint Water Resource District Full Board meeting will be held June 14, 2023, at 9:00 a.m.

Bills

It was moved by Manager Gust and seconded by Manager Sundberg to approve the wire transfers and the electronic funds transfers, as presented. Upon roll call vote, the following Managers voted in favor: Sundberg and Gust. Chairman Hejl was absent. The motion passed.

Adjournment

There being no further business to be considered by the Board, it was moved by Manager Gust, seconded by Manager Sundberg and unanimously carried to adjourn the meeting.

APPROVED:

William A. Hejl
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer