

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
OCTOBER 5, 2023

A virtual / conference call meeting of the Maple River Water Resource District was held on October 5, 2023, at 8:00 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, Ohnstad Twichell, P.C.; Kurt Lysne, Alexa Ducioame, Brady Woodard and Levi Hanson, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling, Cass County Commissioner; Tom Soucy, Cass County Highway Department; Dean Vetter and Steve Swanson, AE2S; Doug VanMeter, North Dakota Soybean Processors, LLC; Michael Faught, Casselton; Sidney Steinweg, Davenport Township property owner; and Terry Kensok, Gill Township property owner.

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 September 7, 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 has installed the crossing in the NE 1/4 of Section 8 in Everest Township.

Wheatland Channel – channel cleanout north of I-94

Brady Woodard reported the contractor completed the Wheatland Channel clean out north of I-94.

Drain #14 – First Amendment to District Memorandum of Understanding with the Metro Flood Diversion Authority regarding the Drain #14B inlet transition

Sean Fredricks discussed a *First Amendment to District Memorandum of Understanding* with the Metro Flood Diversion Authority regarding the Drain #14B inlet transition. Mr. Fredricks will bring the document to a future meeting for consideration.

Mr. Lysne then discussed the transition between the Metro Flood Diversion Project and Drain #14B. Transitions are required so that future improvements of Water Resource District facilities can be accomplished without initiating federal permit requirements related to the Metro Flood Diversion Project. Mr. Lysne stated he has received written confirmation from the Corps of Engineers that transitions between the Metro Flood Diversion Project and legal assessment drains, constructed by the Water Resource District, are standalone projects that are not related to the Metro Flood Diversion Project. Mr. Lysne said this means the transitions will not require a Section 408 permit from the Corps of Engineers. Mr. Lysne suggested beginning the process to obtain environmental permits this fall on all transition projects between the Metro Flood Diversion Project and legal assessment drains. Construction of the transitions could occur at a later date and all work related to the transitions is reimbursable by the Metro Flood Diversion Authority. Alexa Ducioame discussed Task Order No. 17 regarding work related to the Section 404 permit needed for the transition between the Metro Flood Diversion Project and Drain #14B.

A motion was made by Manager Miller and seconded by Manager Melvin to approve and authorize the Chairman to sign Task Order No. 17 with Moore Engineering, Inc. regarding engineering for the transition between the Metro Flood Diversion Project and Drain #14B. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Melvin and seconded by Manager Miller to authorize Moore Engineering, Inc. to conduct environmental field services regarding the transition between the Metro Flood Diversion Project and Drain #14B. Upon roll call vote, the motion carried unanimously.

Drain #34 Channel Improvement Project No. 2022-01

Mr. Lysne reported Moore Engineering, Inc. continues to communicate with the North Dakota Department of Water Resources (NDDWR) Economist regarding an update of the economic analysis for Drain #34 Channel Improvement Project No. 2022-01. The project design is complete and is ready to proceed once the funding is in place for the project.

Levi Hanson updated the Board on right of way acquisition regarding Drain #34 Channel Improvement Project No. 2022-01.

It was moved by Manager Miller and seconded by Manager Melvin to approve the *Purchase Agreement* with Horne Family Limited Partnership regarding Drain #34 Channel Improvement Project No. 2022-01. Upon roll call vote, the motion carried unanimously.

Drain #37 Improvement Project No. 2022-01

Mr. Hanson updated the Board on the right of way acquisition regarding Drain #37 Improvement Project No. 2022-01.

It was moved by Manager Melvin and seconded by Manager Miller to approve the *Purchase Agreement* with Lucille Johnson, et al. regarding Drain #37 Improvement Project No. 2022-01. Upon roll call vote, the motion carried unanimously.

Drain #39 Improvement Project No. 2023-01

Mr. Lysne stated Moore Engineering, Inc. continues to work on the final design and cost estimate for Drain #39 Improvement Project No. 2023-01. Construction is anticipated for 2024.

A motion was made by Manager Miller and seconded by Manager Melvin to authorize the Secretary-Treasurer to sign the *Approved Jurisdictional Determination* request regarding a Corps of Engineers Section 404 Permit for Drain #39 Improvement Project No. 2023-01. Upon roll call vote, the motion carried unanimously.

Mr. Woodard reported he has been in communication with Maple River Township and the Cass County Highway Department regarding the slide on Drain #39 in the project area. The Cass County Highway Department coordinated the marking of the slide for safety purposes.

Drain #46 – inspection and crossing in Section 28 of Rochester Township

Mr. Woodard reported the contractor plans to start on the Drain #46 crossing stabilization project in Section 28 of Rochester Township in a couple of weeks.

Drain #62 – North Dakota Soybean Processors, LLC - extension of Cass County Highway 23 box culvert

Mr. Lysne stated the Cass County Highway Department is making improvements to Cass County Highway 23 between Sections 32 and 33 of Casselton Township to accommodate the new Cass County Highway 30 for North Dakota Soybean Processors, LLC. The Cass County Highway Department will need access to Drain #62 right of way to complete the work. An *Agreement* with Cass County has been drafted and signed by Cass County regarding the project. Tom Soucy said the Cass County Highway Department plans to bid the project early next year with completion anticipated next summer.

A motion was made by Manager Miller and seconded by Manager Melvin to approve and authorize the Chairman to sign the *Agreement* with Cass County regarding improvements to Cass County Highway #23 regarding Drain #62. Upon roll call vote, the motion carried unanimously.

Mr. Fredricks updated the Board on the status of an *Access Easement* that is being negotiated with North Dakota Soybean Processors, LLC regarding the relocation of Drain #62 in Section 33 of Casselton Township.

Drain #62 – channel cleanout in Section 32 of Casselton Township

Ms. Ducioame discussed the survey and channel profile developed for the Drain #62 channel cleanout project in Section 32 of Casselton Township. The channel cleanout work will tie into the existing channel profile near Cass County Highway 23. The Board directed Moore Engineering, Inc. to obtain quotes and availability from contractors for the project and bring the information to the Board at a future meeting.

Lynchburg-Buffalo Project No. 2023-01

Mr. Lysne stated Moore Engineering, Inc. continues to work on the design of Lynchburg- Buffalo Project No. 2023-01, including hydraulic modeling work. Moore Engineering, Inc. will bring plans and a cost estimate for the project for discussion at a future meeting.

Cornell Township Drainage Improvement District No. 80

Mr. Lysne updated the Board on Cornell Township Drainage Improvement District No. 80. Moore Engineering, Inc. continues to work with the petitioners on finalizing the petitioner's preferred design alternative. A cost-share request has been submitted to the NDDWR regarding additional preliminary engineering costs for the project.

Davenport Flood Risk Reduction Project

Ms. Ducioame reported a meeting is being scheduled with FEMA regarding the Conditional Letter of Map Revision (CLOMR) submitted for the project and the NDDWR is reviewing the *Application to Construct* that was submitted for the project. Moore Engineering, Inc. will continue to work with FEMA and the NDDWR on the permits needed for the project.

Mr. Fredricks briefly updated the Board on an Agreement needed with Burlington Northern Santa Fe Railway Company and Red River Valley and Western Railroad Company regarding the project. Discussions continue between parties on the draft Agreement.

Mr. Fredricks reported formal negotiations regarding right of way acquisition for the Davenport Flood Risk Reduction Project are commencing with some property owners. The property owners will be invited to a future Water Resource District meeting to discuss the project and right of way needed. Mr. Fredricks reviewed the formal negotiation process regarding right of way acquisition for Water Resource District projects.

Regional Conservation Partnership Program – Upper Maple River Watershed

Mr. Lysne updated the Board on the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. submitted the Plan to the Natural Resources Conservation Service (NRCS) for final review and completion.

Mr. Lysne stated the NRCS is coordinating a tour in Manitoba, Canada, of biomass harvesting on October 11 with NRCS Regional Conservation Partnership Program (RCPP) Plan sponsors. Biomass harvesting is included in several North Dakota RCPP Plans, including the RCPP – Upper Maple River Watershed Plan. The tour is an opportunity to discuss biomass harvesting with individuals experienced in the process.

Application to Install a Subsurface Water Management System No. 202324 for Mark Ottis and James Plath in the S 1/2 of Section 5 in Davenport Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202324*, filed October 4, 2023, by Applicants Mark Ottis and James Plath. Under the Application, Applicants seek to install a 311-acre drain tile system in the S 1/2 of Section 5 in Davenport Township, Cass County, North Dakota. The project will include a single pump outlet located in the northeast corner of the SE 1/4 in Section 5; the pump will

discharge into the west road ditch along 159th Avenue SE; the discharge will flow north in the west road ditch, along the east boundary of the NE 1/4 in Section 5; at the northeast corner of the NE 1/4 in Section 5, the discharge will flow into the south road ditch along Cass County Highway 16 and will flow east, under 159th Avenue SE, in the south road ditch along Highway 16, along the north boundary of the NW 1/4 in Section 4.

According to records submitted by Applicants, James Plath owns the SW 1/4 of Section 5, and Mark and Joan Ottis own the SE 1/4 of Section 5 in Davenport Township. With regard to downstream landowners, the Jill J. Kalsow Revocable Living Trust owns the NE 1/4 of Section 5, and the Cass County Highway Department owns its Cass County Highway 16 right of way along the north boundary of the NW 1/4 in Section 4.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202324*, filed October 4, 2023, for Mark Ottis and James Plath regarding a proposed tile system in the S 1/2 of Section 5 in Davenport Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202324*, subject to the following conditions:

1. Applicants will install and maintain erosion protection at any and all outlets into Davenport Township's road right of way.
2. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
3. Applicants 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. 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 of 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 S 1/2 of Section 5 in Davenport 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. 202324* 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 recommends that Applicants comply with the following:

1. The Board recommends that Applicants obtain written consent from the Davenport Township Board to discharge into or otherwise utilize any of its road right of way.
2. The Board recommends that Applicants obtain written consent from the Cass County Highway Department to discharge into or otherwise utilize any of its Highway 16 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. 202324*, and Applicants' downstream flow map to the North Dakota Department of Water Resources, the Cass County Highway Department, the Davenport Township Board of Township Supervisors, the Jill J. Kalsow Revocable Living Trust, 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. 202325 for Matthew Ottis and James Plath in the SE 1/4 of Section 6 in Davenport Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202325*, filed October 4, 2023, by Applicants Matthew Ottis and James Plath. Under the Application, Applicants seek to install a 135-acre drain tile system in the SE 1/4 of Section 6 in Davenport Township, Cass County, North Dakota. The project will include a single pump outlet located in the northeast corner of the SE 1/4 in Section 6; the pump will discharge into the west road ditch along 158th Avenue SE; the discharge will flow north in the west road ditch, along the east boundary of the NE 1/4 in Section 6; at the northeast corner of the NE 1/4 in Section 6, the discharge will flow into the south road ditch along Cass County Highway 16 and will flow east, under 158th Avenue SE, in the south road ditch along Highway 16, along the north boundary of the NW 1/4 in Section 5.

According to records submitted by Applicants, James Plath owns the SE 1/4 of Section 6 in Davenport Township. With regard to downstream landowners, Catherine A. Lee owns the NE 1/4 of Section 6, and the Cass County Highway Department owns its Cass County Highway 16 right of way along the north boundary of the N 1/2 in Section 5.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202325*, filed October 4, 2023, for Matthew Ottis and James Plath regarding a proposed tile system in the SE 1/4 of Section 6 in Davenport Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202325*, subject to the following conditions:

1. Applicants will install and maintain erosion protection at any and all outlets into Davenport Township's road right of way.
2. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
3. Applicants 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. 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 of 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 SE 1/4 of Section 6 in Davenport 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. 202325* 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 recommends that Applicants comply with the following:

1. The Board recommends that Applicants obtain written consent from the Davenport Township Board to discharge into or otherwise utilize any of its road right of way.
2. The Board recommends that Applicants obtain written consent from the Cass County Highway Department to discharge into or otherwise utilize any of its Highway 16 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. 202325*, and Applicants' downstream flow map to the North Dakota Department of Water Resources, the Cass County Highway Department, the Davenport Township Board of Township Supervisors, Catherine A. Lee, 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 Permits

A motion was made by Manager Melvin and seconded by Manager Miller to approve the following *Utility Permits*, with input from the Water Resource District Engineer:

- For MLGC, L.L.C. to install fiber optic cable under Drain #39 in the NE 1/4 of Section 35 in Maple River Township
- For MLGC, L.L.C. to install fiber optic cable under Drain #39 in the NE 1/4 of Section 36 in Maple River Township
- For Montana-Dakota Utilities Co. to install 6" steel pipe gas line on and under Drain #62 in the SE 1/4 of Section 32 and the SW 1/4 of Section 34 in Casselton Township
- For Cass County Electric Cooperative to install underground power line under Wheatland Channel in the NE 1/4 of Section 8 in Everest Township
- For Dakota Carrier Network to install fiber optic cable under the Wheatland Channel in the NE 1/4 of Section 8 in Everest Township

Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Melvin and seconded by Manager Miller to approve payment of 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.

Notification to Install Subsurface Water Management System

The Board received and filed a *Notification to Install Subsurface Water Management System* from Empire Drainage in the N 1/2 NW 1/4 of Section 13 in Tower Township.

Subsurface Water Management System Permits – critical flood periods

The Board discussed ways to communicate with Subsurface Water Management Systems permittees regarding turning off pumps during critical flood periods, as determined by the Water Resource District.

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