

MINUTES OF VIRTUAL / CONFERENCE CALL SPECIAL MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
APRIL 4, 2024
8:00 A.M.

A virtual / conference call meeting of the Maple River Water Resource District was held on April 4, 2024, at 8:00 a.m.

Present were Rodger Olson, Chairman; Gerald Melvin, Manager; Chad Miller, Manager; Melissa Hinkemeyer, Secretary-Treasurer; Leilei Bao, Accountant; Carolyn Fiechtner, Administrative Assistant; Sean M. Fredricks and Christie Rust, Ohnstad Twichell, P.C.; Alexa Ducioame, Josh Hassell, Brady Woodard and Levi Hanson, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling, Cass County Commissioner; Ron Geerdes, Davenport Township property owner; Carl Brehm and Suzanne Brehm, Addison Township property owners.

Approval of agenda

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

Minutes

It was moved by Manager Miller, seconded by Manager Melvin, and unanimously carried to approve the minutes of the March 7, 2024, meeting.

Drain #14 – request from Suzanne Brehm to clean out a blocked intercept culvert in Section 25 of Addison Township

Suzanne Brehm reported to the Board her concern regarding a blocked intercept culvert in Section 25 of Addison Township regarding Drain #14, and requested the Board remove the sediment blocking the culvert.

Brady Woodard showed pictures of the culvert in Section 25 of Addison Township and there is significant blockage and appears the culvert may have been damaged. Mr. Woodard indicated repairs could start in about 2-3 weeks.

The Board authorized Moore Engineering, Inc. to hire a contractor to clean out and repair the blocked intercept culvert on Drain #14 in Section 25 of Addison Township. The Chairman thanked Ms. Brehm for bringing the item to the Board's attention.

Drain #34 Channel Improvement Project No. 2022-01

Levi Hanson updated the Board on right of way acquisition for the Drain #34 Channel Improvement Project No. 2022-01. Alexa Ducioame stated that once the right of way is secured, project funding discussions will continue.

Drain #37 Improvement Project No. 2022-01

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

Following a brief discussion, it was moved by Manager Melvin and seconded by Manager Miller to approve and authorize the Chairman to sign the following:

- *Purchase Agreement* with David and Teresa Braaten
- *Purchase Agreement* with Eunice Johnson, et al.

Upon roll call vote, the motion carried unanimously.

Drain #39 Improvement Project No. 2023-01

Brady Woodard provided project updates for Drain #39 Improvement Project No. 2023-01. Mr. Woodard stated discussions with property owners have included lengthening of an approach, section line and road concerns and the need for surveying the road. Once the survey is completed, a discussion can be held with the Township regarding the road.

Alexa Ducioame stated the cost-share application was submitted but understood it was pulled from the consent agenda on the 11th. Chairman Olson confirmed the item was removed from the agenda and will be moved to the June meeting in hopes that any landowner issues have been resolved.

Lynchburg-Buffalo Project No. 2023-01

Ms. Ducioame stated to the Board that the cost-share application has been submitted to the North Dakota Department of Water Resources for the Lynchburg-Buffalo Project No. 2023-01 and Moore Engineering, Inc. continues to work on permitting for the project.

Cornell Township Drainage Improvement District No. 80

Ms. Ducioame reported to the Board that Moore Engineering, Inc. continues to work with the petitioners on finalizing the petitioner's preferred design alternative for Cornell Township Drainage Improvement District No. 80. Once the petitioners have finalized the preferred design alternative, work can begin on forming the assessment district for the project.

Sean Fredricks stated that due to SB 2372, a joint water resource district with Barnes County Water Resource District may be required for the project.

Davenport Flood Risk Reduction Project

Property owner Ron Geerdes had an opportunity to address the Board with his comments and counteroffer regarding right of way negotiations for the Davenport Flood Risk Reduction Project.

After discussion, Manager Melvin moved to accept the counteroffer from Mr. Geerdes and authorize the Board Attorney to draft a *Purchase Agreement* regarding Mr. Geerdes property. Manager Miller seconded the motion. Upon roll call vote, the motion carried unanimously.

Mr. Hanson updated the Board on the status of right of way acquisitions for the Davenport Flood Risk Reduction Project.

Following a brief discussion, it was moved by Manager Miller and seconded by Manager Melvin to approve and authorize the Chairman to sign the following:

- *Purchase Agreement* with Andy Alsop and Troy Goltz
- *Purchase Agreement* with James Fredrikson

Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program – Upper Maple River Watershed

Josh Hassell updated the Board on the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. submitted the plan to the Natural Resources Conservation Service (NRCS) and is awaiting their updates and comments.

Complaint for Water-Related Issues from Randy Coon against Dennis Smith for unpermitted drainage in the S 1/2 of Section 7 in Tower Township

Josh Hassell stated that a meeting is being coordinated on-site and Moore Engineering, Inc. continues to investigate the *Complaint for Water-Related Issues* from Randy Coon against Dennis Smith for unpermitted drainage in the S 1/2 of Section 7 in Tower Township. Based on the investigational findings, Moore Engineering Inc. will prepare a report for a future meeting.

Application for Surface Drain No. 6270 for Sinner Bros. and Pat Bresnahan in Section 13 of Everest Township

The Board reviewed the *Record of Decision* from the North Dakota Department of Water Resources (“DWR”) regarding *Application for Surface Drain No. 6270* for Applicant Sinner Bros. & Bresnahan, L.L.P. The project includes the construction of road ditch improvements along 39th Street SE and 157th Avenue in Section 13 in Everest Township. More specifically, Applicant seeks a surface permit for grade improvements and deepening to the north township road ditch along 39th Street SE, along the south boundary of Section 13 in Everest Township. In addition, the project will include grade improvements and deepening to the west township road ditch along 157th Avenue SE, along the east boundary of the East Half of Section 13 in Everest Township. The permitted drain will include the following dimensions:

Length of Drain:	4,000 feet
Maximum Cut:	0.5 feet
Bottom Width:	6 feet
Side Slopes:	4:1

The ditch improvements will converge at the southeast corner of Section 13; the discharge from the ditch improvements will drain to the east, through an existing culvert under 157th Avenue SE; the discharge will continue to the east through the north road ditch along 39th Street, along the south boundary of Section 18 in Durbin Township, until flowing into the Durbin-Everest Channel in the SE 1/4 of Section 18. The Durbin-Everest Channel is a tributary to the Maple River.

According to records on file with the Cass County Recorder's office, Sinner-Bresnahan Land Partnership, LLP, owns the SE 1/4 of Section 13. With regard to downstream properties, Thomas S. Hull, as Trustee of the Thomas S. Hull Revocable Trust, owns the S 1/2 of Section 18 in Durbin Township.

In accordance with N.D. Admin. Code §§ 89-02-01-08 and 89-02-01-09, upon receipt of *Application for Surface Drain No. 6270*, DWR conducted a "statewide or interdistrict significance" review of regarding the proposed ditch improvements. The outcome of DWR's "statewide or interdistrict significance" review is significant for any surface permit application; if DWR concludes an application does not propose drainage of "statewide or interdistrict significance," after attaching conditions DWR deems appropriate and necessary, DWR forwards the application to the appropriate water resource district for review, and final consideration and approval or denial under N.D. Admin. Code § 89-02-01-09.1(2). If, however, DWR concludes an application does propose drainage of "statewide or interdistrict significance," that finding triggers a more rigorous, time-consuming, arduous, and expensive hearing and application process under N.D. Admin. Code § 89-02-01-09.1(1). The initial "statewide or interdistrict significance" review process by DWR affords DWR an initial opportunity to consider impacts of a project proposed under a surface drainage permit application.

Section 89-02-01-09 provides DWR's criteria for its "statewide or interdistrict significance" review:

89-02-01-09. Criteria for determining whether drainage is of statewide or interdistrict significance. In determining whether the proposed drainage is of statewide or interdistrict significance, the department must consider:

1. Drainage affecting property owned by the state or its political subdivisions.
2. Drainage of sloughs, ponds, or lakes having recognized fish and wildlife values.
3. Drainage having a substantial effect on another district.
4. Drainage converting previously noncontributing areas (based on the National Oceanic and Atmospheric Administration Atlas 14 twenty-five-year event - four percent chance) into permanently contributing areas.
5. For good cause, the department may classify or refuse to classify any proposed drainage as having statewide or interdistrict significance.

In accordance with DWR policy, DWR's "statewide or interdistrict significance" review includes a "solicitation of views" process, under which DWR seeks comments from various state and federal agencies, including road authorities that could be impacted by the proposed project. DWR's initial review indicated the project will impact township road right of way and, therefore, could qualify as "drainage of statewide or interdistrict significance."

For purposes of *Application for Surface Drain No. 6270*, DWR issued a "Solicitation of Views" dated November 16, 2023 (the "SOV"). DWR provided the SOV to several agencies, including the United States Army Corps of Engineers ("USACE"), the North

Dakota Department of Environmental Quality (“NDDEQ”), the Natural Resources Conservation Service (“NRCS”), the North Dakota Department of Game and Fish (“NDG&F”), Everest Township, and Durbin Township. In response to the SOV, DWR only received substantive comments from DEQ and Everest Township; DEQ commented that the project may require a DEQ permit, and Everest Township indicated the Township had no objection to the project.

The lack of concern from the Townships, coupled with DWR’s own review of the proposed project, prompted DWR to conclude Application No. 6270 does **not** propose drainage of “statewide or interdistrict significance.” By issuing that finding, DWR effectively concluded the proposed project will **not** convert previously non-contributing areas to contributing watershed areas (will not contribute any additional drainage).

DWR forwarded *Application for Surface Drain No. 6270* to the Board for processing in accordance with Section 89-02-01-09.1(2) of the North Dakota Administrative Code, via DWR’s *Record of Decision* (the “ROD”).

Under Section 89-02-01-09.1(2), once the Board received the *ROD*, the Board’s first step was to determine if “public and private interests would be better served by a specific public meeting to consider the project.” In this case, the Board does not anticipate any downstream impacts and concluded a formal hearing was not necessary. However, the Board also noted the downstream landowner, Thomas S. Hull, as Trustee of the Thomas S. Hull Revocable Trust, owner of the S 1/2 of Section 18 in Durbin Township, was not a recipient of the SOV and may not be aware of the proposed project. With that in mind, in a letter dated March 19, 2024, the Board notified Mr. Hull and Dalrymple Farms of *Application for Surface Drain No. 6270*, provided a copy of DWR’s *ROD*, invited any comments or concerns, and invited the parties to the Board’s meeting on April 4, 2024.

In response to the Board’s letter, Mr. Jack Dalrymple, representative for Mr. Hull, sent an email to Secretary Melissa Hinkemeyer in which he indicated neither Mr. Hull nor Mr. Dalrymple have any objections to the project as long as Sinner Bros. and Bresnahan do not modify the culvert in the southeast corner of Section 13 in Everest Township. Mr. Bresnahan later sent an email to Melissa Hinkemeyer and confirmed the project will not include any modifications to the culvert in the southeast corner of Section 13 in Everest Township. With that in mind, neither the Townships nor the downstream landowner have any objections to the proposed project.

Under Section 89-02-01-09.2 of the Administrative Code and Section 61-32-03 of the North Dakota Century Code, the Board must ultimately determine if the project will result in downstream impacts and, if so, the Board must require Sinner Bros. & Bresnahan, L.L.P., to obtain downstream flowage easements from impacted downstream parties as a condition to any approval of *Application for Surface Drain No. 6270*, under Section 61-32-03.

The Board reviewed draft responses to the eight elements under Section 89 02 01-09.2 of the North Dakota Administrative Code prepared by Kurt Lysne, as follows:

89-02-01-09.2. Evaluation of applications - Factors considered. All applications to drain, must consider the following factors:

- 1. The water volume proposed to be drained and its impact upon the watercourse into which it will be drained.**

The project outlets into the upstream end of a culvert in the Southeast corner of Section 13, the culvert crossing under 157th Ave SE and the downstream channel underwent an improvement in 2022 that lowered the culvert and channel inverts. The watershed contributing to the culvert remains unchanged under the project conditions and conveys approximately 43 cfs during a 10-year design event. As the project does not propose any changes or increases to the watershed or the crossing sizes, a notable change in volume conveyance capacity is not anticipated. Therefore, the proposed project will not have significant impacts on downstream watercourses.

- 2. Adverse effects that may occur to downstream landowners. This factor is limited to the project's hydrologic effects, such as erosion, flood duration, sustained flows impacts, and downstream water control device operation impacts.**

The proposed changes along the project extents will not materially change the hydrologic characteristics of the area. Flows out of watershed are not expected to increase and downstream watercourses, the Durbin-Everest Channel that outlets into Swan Creek, have adequate conveyance capacities.

- 3. The engineering design and other physical aspects of the drain.**

The project consists of a regrade and cleanout of the existing roadside channel. The natural drainage channel consists of roughly a 6-foot bottom width and 4H:1V side slopes with a channel slope of 0.04%. The project's purpose is to maintain positive drainage along the extents and remove high spots to prevent water from pooling along the channel.

- 4. The project's impact on flooding problems in the project watershed.**

The current channel has an inconsistent slope with high spots that hold water during large storm events, the purpose of the project is to maintain positive drainage along the project extents and to improve conveyance of sheet flow for the purpose of agricultural production and protection of property. Thus, the project will reduce flooding impacts in the project watershed which will result in positive benefits to the project watershed.

- 5. The project's impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values.**

There are no ponds, sloughs, streams, or lakes along the project extents. The project does not have significant impacts on aquatic or wildlife resources.

- 6. The project's impact on agricultural lands.**

The main purpose of the project is to provide improved drainage for agricultural land. The drainage provided by the project will have a positive impact on agricultural lands.

- 7. Whether easements are required.**

The permittee is also the owner of the property and therefore additional easements are not necessary to complete construction of the project.

- 8. Other factors unique to the project.**

None.

The Board agreed with Mr. Lysne's responses, including his findings that, because the project does not propose any increases to the watershed or road crossings, the project will not result in any increase downstream flows and that, because the project will address inconsistent slopes and high spots, the project will actually improve drainage in the watershed.

Manager Melvin moved, and Manager Miller seconded the motion, to adopt Moore Engineering's responses to the eight elements under Section 89 02 01-09.2 of the North Dakota Administrative Code; to conclude the project will not result in adverse downstream impacts; and to approve *Surface Drain Permit No. 6270* for Sinner Bros. & Bresnahan, L.L.P., subject to the conditions attached by the North Dakota Department of Water Resources, subject to the following conditions:

1. Applicant will not construct or improve the drain in any manner that exceeds the dimensions indicated in the Application.
2. Applicant will obtain written consent from the Everest Township Board of Township Supervisors to construct any improvements to the Township's 39th Street and 157th Avenue road ditches.
3. Applicant will notify the Maple River Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, submit an additional permit application.

Upon roll call vote, the motion carried unanimously.

In addition to those conditions, the Board will also 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.

Secretary-Treasurer Melissa Hinkemeyer will sign the permit form and staff will prepare the requisite *Notice of Decision* and provide the *Notice of Decision* to all parties of record, as required by law.

Application to Install a Subsurface Water Management System No. 20243 for Bradley Koetz in the NE 1/4 and W 1/2 of Section 10 in Watson Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 20243*, filed March 20, 2024, by Applicant Bradley Koetz. Under the Application, Applicant seeks to install a 177-acre drain tile system in the W 1/2 and the NE 1/4 of Section 10 in Watson Township, Cass County, North Dakota. The project will include a single gravity outlet located in the northeast corner of Section 10; the outlet will discharge at the intersection of Cass County Highway 5 and 49th Street SE; the discharge will flow north in the west road ditch along Cass County Highway 5, under 49th Street SE, and will continue north along the east boundary of Section 3 in Watson Township.

According to records submitted by Applicant, Bradley and Wendy Koetz own the W 1/2 of Section 10, and Charleen Greuel owns 135.04 acres in the NE 1/4 of Section 10 where Applicant intends to install the tile system. With regard to downstream landowners, the Cass County Highway Department owns its Highway 5 right of way. Grant and Roberta Phipps own a 24.39-acre parcel in the SE 1/4 of Section 3; Garry and Harriet Greuel own 133.10 acres in the SE 1/4 of Section 3; and Harriet Greuel owns the NE 1/4 of Section 3.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20243*, filed March 20, 2024, for Bradley Koetz regarding a proposed tile system in the W 1/2 and the NE 1/4 of Section 10 in Watson Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20243*, 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 install and maintain erosion protection at any and all outlets into Watson Township's road right of way.
3. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
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 W 1/2 and the NE 1/4 of Section 10 in Watson Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
5. 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 of the project outlet.
6. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 20243* 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, 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 the County's highway right of way.
2. The Board recommends that Applicant obtain written consent from the Watson Township Board to discharge into or otherwise utilize any of the Township's road right of way.
3. The Board recommends that Applicant obtain written consent from the owner of any land not owned by Applicant where Applicant intends to install tile components.
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. 20243*, and Applicant's downstream flow map to the North Dakota Department of Water Resources, Watson Township, the Cass County Highway Department, 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.

Cass County Planning – ASD Subdivision

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

Weed, cattail, tree and brush control

It was moved by Manager Melvin and seconded by Manager Miller 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 Maple River Water Resource District facilities for 2024. Upon roll call vote, the motion carried unanimously.

NDDWR 2025-2027 Water Development Plan

Discussion was held on the draft list of projects for the NDDWR 2025-2027 Water Development Plan.

After a brief discussion, Manager Miller motioned and Manager Melvin seconded to authorize Moore Engineering, Inc. to submit the list of projects for the NDDWR 2025-2027 Water Development Plan, as discussed. Upon roll call vote, the motion carried

unanimously.

Cass County Flood Sales Tax – request for projects

The Secretary discussed a letter received from the Cass County Commission requesting flood risk reduction projects for Cass County Flood Sales Tax funding consideration. Moore Engineering, Inc. will update the Cass County Flood Sales Tax Committee on the status of the Davenport Flood Risk Reduction Project at their upcoming meeting.

North Dakota Insurance Reserve Fund – annual meeting

The Secretary reported a letter was received from the North Dakota Insurance Reserve Fund providing notice of their upcoming annual meeting and proxy for the election of officers.

A motion was made by Manager Melvin and seconded by Chairman Olson to authorize the Secretary-Treasurer to sign and return the North Dakota Insurance Reserve Fund proxy for Maple River Water Resource District. Upon roll call vote, the motion carried unanimously.

Letter of engagement to the Office of the State Auditor for 2023 audit services

A motion was made by Manager Miller and seconded by Manager Melvin to approve the Letter of engagement to the Office of the State Auditor for 2023 audit services for Maple River Water Resource District. Upon roll call vote, the motion carried unanimously.

Swan Creek Diversion – Access Agreement with the City of Casselton

Mr. Fredricks discussed a City of Casselton project to construct a pedestrian bridge over the Swan Creek Diversion at State Highway 18. Mr. Fredricks drafted an *Access Agreement* with the City of Casselton to construct and maintain the pedestrian bridge.

Mr. Fredricks indicated that Ohnstad Twichell, P.C. represents both the Maple River – Rush River Joint Water Resource District and the City of Casselton. Under the North Dakota Rules of Professional Conduct for attorneys, this representation of both parties is a technical conflict of interest under Rule 1.7. A *Consent Letter* must be signed in order for Ohnstad Twichell, P.C. to negotiate the *Access Agreement* for the Swan Creek Diversion being presented to the Board.

Manager Melvin moved and Manager Miller seconded to approve and authorize the Chairman to sign the *Consent Letter* for Ohnstad Twichell, P.C. regarding representation related to the *Access Agreement* with the City of Casselton for construction and maintenance of a pedestrian bridge over the Swan Creek Diversion at State Highway 18. Upon roll call vote, the motion carried unanimously.

Manager Miller moved and Manager Melvin seconded to approve the *Access Agreement* with the City of Casselton regarding the construction and maintenance of a pedestrian bridge over the Swan Creek Diversion at State Highway 18. Upon roll call vote, the motion carried unanimously.

Mr. Fredricks noted the Rush River Water Resource District will also consider the *Access Agreement* for the bridge at their next meeting.

2024 facility inspections

It was moved by Manager Melvin and seconded by Manager Miller to authorize Moore Engineering, Inc. to conduct the 2024 inspection of Maple River Water Resource District facilities. Upon roll call vote, the motion carried unanimously.

Complaint for Water-Related Issues from Harold Miller against Dobler Trust for unpermitted drainage in the NE 1/4 of Section 8 in Cornell Township

Mr. Woodard reported he conducted a site visit and confirmed the Dobler Trust adequately filled in the unpermitted drainage improvements in the NE 1/4 of Section 8 in Cornell Township, as required by the Water Resource District at the February 2, 2024, meeting.

Bills

It was moved by Manager Melvin and seconded by Manager Miller to approve the payment of Checks #6172 through #6174, the wire transfers, and electronic funds transfers, as presented. Upon roll call vote, the motion carried unanimously.

Adjournment

There being no further business to be considered by the Board, Manager Melvin moved, and Manager Miller seconded, to adjourn the meeting. The meeting adjourned without objection.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary-Treasurer