

MINUTES OF VIRTUAL / CONFERENCE CALL SPECIAL MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
HERITAGE CONFERENCE ROOM
WEST FARGO, NORTH DAKOTA
JULY 15, 2024
8:00 A.M.

A virtual / conference call special meeting of the Maple River Water Resource District was held on July 15, 2024, at 8:00 a.m.

Present were Rodger Olson, Chairman; Gerald Melvin, Manager; Melissa Hinkemeyer, Director, Secretary; Carolyn Fiechtner, Administrative Assistant; Sean M. Fredricks, Ohnstad Twichell, P.C.; Kurt Lysne, Moore Engineering, Inc.; and Duane Breitling, Cass County Commissioner. Manager Chad Miller was absent.

Application to Install a Subsurface Water Management System No. 202412 for Jeff Wadeson in the SW 1/4 of Section 28 in Clifton Township

The Board reviewed *Application to Install a Subsurface Water Management System No. 202412*, filed July 2, 2024, by Applicant Jeff Wadeson. Before discussing the Application, Sean Fredricks noted that, on Friday, Ms. Jan Jenks submitted a *Complaint for Water-Related Issues* against the Wadesons and against this particular project.

Under the Application, Applicant seeks to install a 116-acre drain tile system in the SW 1/4 of Section 28 in Clifton Township, Cass County, North Dakota. The project will include a single gravity outlet that will discharge via a pipeline that will run to the southeast, across a portion of the S 1/2 of the SE 1/4 of Section 28; the pipeline will run under 47th Street SE and will continue to the southeast across a portion of the NE 1/4 of Section 33; the pipeline will daylight in the NE 1/4 of Section 33 and discharge into a natural watercourse, as that term is defined under N.D. Cent. Code § 61-01-06; the discharge will flow to the southeast into the Maple River.

According to Cass County tax records, Wadeson Land Partnership LLLP owns the SW 1/4 of Section 28 in Clifton Township where Applicant intends to install the tile system. With regard to properties where Applicant intends to install pipeline components, Triple F Farms LLLP, owns the SE 1/4 of Section 28 and the NE 1/4 of Section 33 in Clifton Township. Because the project tile discharge will flow directly into a natural watercourse, no downstream notices are necessary under N.D. Cent. Code § 61-32-03.1.

Further, according to Cass County tax records, David and Jan Jenks own the farmstead in the southeast corner of the SE 1/4 of Section 28. The Jenkses are evidently concerned about the prospect of tile discharge upstream of their property. However, the pipeline outlet proposed by Mr. Wadeson under the Application will mitigate any downstream

impacts to the Jenks' property since the pipeline will discharge downstream from their farmstead in the southeast corner of the SE 1/4 of Section 28.

Mr. Fredricks reminded the Board that, under current law, N.D. Cent. Code § 61-32-03.1 as amended by the Legislature in 2021, the Board has no choice but to approve *Application No. 202412* or the permit will be deemed automatically approved, without any conditions, within 30 days of Mr. Wadeson's submission of *Application No. 202412*. Mr. Wadeson's pipeline outlet plan may assuage Ms. Jenks' concerns, but if Ms. Jenks is still concerned about impacts from Mr. Wadeson's project, the tile statute specifically preserves the right for Ms. Jenks to pursue civil remedies against Mr. Wadeson. Section 61-32-03.1(9) provides:

Approval of a [tile] permit under this section does not prohibit a downstream party unreasonably damaged by the discharge of water from a subsurface water management system from seeking damages in a civil action.

With that provision in mind, Ms. Jenks could commence a civil action against Mr. Wadeson in District Court if she wishes, but the Maple River Water Resource District lacks any statutory authority to deny Mr. Wadeson's tile application. With that in mind, under the tile statute, Section 61-32-03.1, and the drainage complaint statute, N.D. Cent. Code § 61-32-07, the Maple River Water Resource District cannot deny Mr. Wadeson's tile application and cannot prohibit Mr. Wadeson from installing his proposed tile system in response to Ms. Jenks' *Complaint*.

More specifically, under the drainage complaint statute, Section 61-32-07, the Board has jurisdiction to order Mr. Wadeson to "close or fill" unpermitted drainage. However, Mr. Wadeson submitted *Application No. 202412* to amend *Permit No. 2020-09* and to seek approval of Mr. Wadeson's proposed tile system in the NE 1/4 of Section 14. Even if the system Mr. Wadeson installed varies from the project approved under *Permit No. 2020-09*, because Mr. Wadeson submitted a new application, under Section 61-32-03.1, the Board has no choice but to approve *Application No. 202412* or the permit will be deemed automatically approved, without any conditions. Therefore, the Board has no choice but to approve *Application No. 202412*, if the Board wants to ensure the tile permit includes conditions.

Under the drainage complaint statute, Section 61-32-07, the Board only has jurisdiction to order a landowner to "close or fill" any unpermitted "drain, lateral drain, or ditch ... opened or established by a landowner or tenant contrary to this title [Title 61 of the North Dakota Century Code]." In other words, if a landowner constructs or installs a drain without a permit, as required under Title 61, a water resource district can order that party to close or fill the unpermitted drainage. However, if a party obtains a permit for any drain, the drain is no longer "contrary to" Title 61 of the Century Code. In this case, Mr. Wadeson has not installed any drainage system at this point. Further, if the Board approves *Application No. 202412*, the Board will not have any jurisdiction to order Mr. Wadeson to "close or fill" his tile system in the SW 1/4 of Section 28 in Clifton Township or to prohibit him from installing the system. The tile statute, approved by the North Dakota Legislature

in 2021, well after the passage of the drainage complaint statute, requires the Board to approve the tile application submitted by Mr. Wadeson. Once Mr. Wadeson's system is approved and included within a valid tile permit, the Board will no longer have any jurisdiction to order or force Mr. Wadeson to close or fill the tile system.

In terms of the process for the Board, Mr. Fredricks recommended that the Board approve *Application No. 202412*, as required under the tile statute. If the Board does not approve the application today, *Application No. 202412* will be deemed automatically approved without any conditions 30 days after Mr. Wadeson's submission of the application. If the Board approves the application with conditions, the Board can provide a Notice of Decision and related permit approval documents and can serve the documents as required by law. The Board can then consider and act on Ms. Jenks' Complaint at a later date.

Manager Melvin moved, and Chairman Olson seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202412*, filed July 2, 2024, for Jeff Wadeson regarding a proposed tile system in the SW 1/4 of Section 28 in Clifton Township; and to authorize the Secretary to sign *Subsurface Water Management Permit No. 202412*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the natural watercourse in the NE 1/4 of Section 33 in Clifton Township.
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 28 in Clifton Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
4. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 202412* 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 to install any pipeline or other tile components in any of the Township's road right of way.

2. The Board recommends that Applicant obtain and record pipeline easements from the record owners of the SE 1/4 of Section 28 and the NE 1/4 of Section 33 in Clifton Township, where Applicant intends to install pipeline components.
3. 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. 202412*, and Applicant's downstream flow map to the Department of Water Resources, Clifton Township, Triple F Farms LLLP, and Cass Rural Water Users District. In addition, although Section 61-32-03.1 does not require service of the approval documents on Ms. Jenks, the Board will provide copies of the approval documents to David and Jan Jenks since the tile project is the subject of Ms. Jenks' *Complaint*. Applicant's detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Mr. Fredricks advised the Board to hold Ms. Jenks' *Complaint* for a month, to allow Secretary Hinkemeyer and Mr. Fredricks to prepare and serve the tile permit approval documents. The Board agreed and can discuss the *Complaint* at the Board's next meeting.

Application to Install a Subsurface Water Management System No. 202413 for J&J Roesler Farms LLC in the S 1/2 of Section 31 and the W 1/2 of Section 32 in Walburg Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202413*, filed July 8, 2024, by Applicant J&J Roesler Farms LLC. Under the Application, Applicant seeks to install a 365-acre drain tile system in the S 1/2 of Section 31 and the W 1/2 of Section 32 in Walburg Township, Cass County, North Dakota. The system in the S 1/2 of Section 31 will connect to the NW 1/4 of Section 32 via a line that will run under 146th Avenue SE. The project will include a single gravity outlet that will discharge via a pipeline that will run along the south boundary of the NW 1/4 of Section 32; the pipeline will daylight and discharge directly into a tributary of Buffalo Creek.

According to Cass County tax records supplied by Applicant, the Leon A. Roesler Revocable Living Trust owns the S 1/2 of Section 31 in Walburg Township; Glen P. Sitz and Nancy L. Sitz own the SW 1/4 of Section 32; and Jon and Lisa Baumler own the NW 1/4 of Section 32. Because the project tile discharge will flow directly into a tributary of Buffalo Creek, no downstream notices are necessary under N.D. Cent. Code § 61-32-03.1.

Manager Melvin moved, and Chairman Olson seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202413*, filed July 8, 2024, for J&J Roesler Farms LLC, regarding a proposed tile system in the S 1/2 of Section

31 and the W 1/2 of Section 32 in Walburg Township; and to authorize the Secretary to sign *Subsurface Water Management Permit No. 202413*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the tributary of Buffalo Creek in the NW 1/4 of Section 32 in Walburg Township.
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 S 1/2 of Section 31 and the W 1/2 of Section 32 in Walburg Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
4. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 202413* 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 Walburg Township Board to install any pipeline or other tile components in any of the Township's road right of way.
2. The Board recommends that Applicant obtain written consent from the owners of any property not owned by Applicant where Applicant intends to install tile components.
3. 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. 202413*, and Applicant's downstream flow map to the Department of Water Resources, Walburg Township, the Leon A. Roesler Revocable Living Trust, Glen P. Sitz and Nancy L. Sitz, Jon and Lisa Baumler, 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.

Adjournment

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

APPROVED:

Rodger Olson
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary