

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
MAPLE RIVER WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
HERITAGE CONFERENCE ROOM  
SEPTEMBER 5, 2024  
8:00 A.M.

A virtual / conference call meeting of the Maple River Water Resource District was held on September 5, 2024, at 8:00 a.m.

Present were Gerald Melvin, Chairman; Chad Miller, Manager; Melissa Hinkemeyer, Director, Secretary; Leilei Bao, Treasurer; 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; Kyle Litchy, Cass County Highway Department; Sidney Steinweg, Davenport Township property owner; and Nick Pyle, Wheatland Township property owner.

**Approval of agenda**

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

**Minutes**

It was moved by Manager Miller and seconded by Manager Melvin to approve the minutes of the August 1 and 16, 2024, meetings, as presented. Upon roll call vote, the motion carried unanimously.

**Resignation of Chairman Rodger Olson**

Manager Melvin indicated Chairman Rodger Olson has resigned from the Maple River Water Resource District. Sean Fredricks noted the Board will need to replace Mr. Olson in the various roles he served in.

It was moved by Manager Miller, seconded by Manager Melvin and unanimously carried to appoint the following individuals to serve in the designated capacities for the remainder of calendar year 2024:

Gerald Melvin	Chairman
Chad Miller	Vice Chairman
Gerald Melvin	Cass County Joint Water Resource District Representative

Chad Miller	Cass County Joint Water Resource District Alternate Representative 1
Gerald Melvin	Red River Joint Water Resource District Representative
Chad Miller	Red River Joint Water Resource District Alternate Representative.

**Complaint for Water-Related Issues from Jan Jenks against Wadeson PTP LLLP for unpermitted drainage in the S 1/2 of Section 28 in Clifton Township**

The Board next considered Jan Jenks' Complaint for Water-Related Issues, dated July 12, 2024, against Jeff Wadeson. Under the Complaint, Ms. Jenks objects to a tile system Mr. Wadeson is currently installing in the SW 1/4 of Section 28 in Clifton Township.

On July 2, 2024, Jeff Wadeson submitted *Application to Install a Subsurface Water Management System No. 202412* to the Board for review and consideration. Under *Application No. 202412*, Mr. Wadeson proposed a 116-acre tile system in the SW 1/4 of Section 28 in Clifton Township. Mr. Wadeson's 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 will 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, 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, as the Board noted at the Board's meeting on July 15, 2024, the pipeline outlet proposed by Mr. Wadeson under the *Application* will mitigate any downstream impacts to the Jenkses' property since the pipeline will discharge downstream from their farmstead in the southeast corner of the SE 1/4 of Section 28.

Under Section 61-32-03.1, the Board had no choice but to approve *Subsurface Water Management Permit No. 202412*, with appropriate and legal conditions, or the application would have been deemed automatically approved ***without any conditions***, within 30 days of Mr. Wadeson's submission of *Application No. 202412*. With that in mind, at the Board's meeting on July 15, 2024, the Board approved *Subsurface Water Management Permit No. 202412* with 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.

Section 61-32-03.1 specifically identifies those conditions water resource districts may attach to tile permits; water resource districts lack any legal authority to attach any additional conditions not specifically provided under Section 61-32-03.1. With regard to *Permit No. 202412*, under Section 61-32-03.1, the Board lacked any authority to attach any additional conditions to Permit No. 202412.

Further, under Sections 61-32-03.1 and 61-32-07 of the Century Code, the Board lacked any legal authority to deny Mr. Wadson's tile application simply by virtue of Ms. Jenks' Complaint; under Section 61-32-03.1, the Board had no choice but to approve *Application No. 202412* or the permit would have been deemed automatically approved, **without any conditions**. With that in mind, the Board legally had no choice but to approve *Subsurface Water Management Permit No. 202412* at the Board's meeting on July 15, 2024, and the Board included the only conditions permissible under the tile statute; the Board lacked any authority to attach any additional conditions to mitigate possible impacts.

The Board approved *Permit No. 202412* at the Board's meeting on July 15, 2024. Secretary Hinkemeyer provided notice regarding the Board's approval of *Permit No. 202412* in a *Notice of Decision* dated July 17, 2024. Secretary Hinkemeyer provided the *Notice of Decision* and *Subsurface Water Management Permit No. 202412* to the North Dakota Department of Water Resources and parties of record, including Ms. Jenks. Because the project tile discharge will flow directly into a natural watercourse, the Board had no obligation to provide a copy of the permit documents to Ms. Jenks under N.D. Cent. Code § 61-32-03.1. However, in light of Ms. Jenks' Complaint, Secretary Hinkemeyer provided a copy of the permit documents to Ms. Jenks. The *Notice of Decision* identified all applicable appeal periods available to any aggrieved parties, including Ms. Jenks.

The appeal period regarding the Board's approval of *Permit No. 202412*, under N.D. Cent. Code §§ 61-16.1-54 and 28-34-01, has expired. With that in mind, the Board's approval of *Permit No. 202412* is no longer subject to any appeal or legal challenge.

In the *Notice of Decision* regarding *Permit No. 202412*, Secretary Hinkemeyer noted that, if Ms. Jenks is concerned about impacts from Mr. Wadeson’s tile system, Ms. Jenks can 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 lacked any legal authority to deny *Permit No. 202412* and lacked any authority to attach any additional conditions to *Permit No. 202412*.

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, and the drain required a permit under Title 61 of the Century Code, a water resource district can order that party to close or fill the unpermitted drainage. However, if a party obtains a permit for a drain, the drain is not “contrary to” Title 61 of the Century Code. In this case, the tile statute, approved by the North Dakota Legislature in 2021, well after the passage of the drainage complaint statute, required the Board to approve Mr. Wadeson’s tile application. Mr. Wadeson submitted *Application No. 202412*, and the Board either had to approve that application with conditions or the application would have otherwise been deemed automatically approved without any conditions. The Board opted to approve the *Application* to ensure the Board’s ability to attach conditions. With that in mind, Mr. Wadeson’s tile system in the SW 1/4 of Section 28 in Clifton Township is an approved and permitted tile project, included within a valid tile permit, and the Board lacks any jurisdiction to order or force Mr. Wadeson to close or fill his tile system.

Because the tile system in the SW 1/4 of Section 28 in Clifton Township is a permitted system, the Board lacks any jurisdiction under Sections 61-32-03.1 and 61-32-07 to order Mr. Wadeson to “close or fill” the system. Therefore, the Board concluded dismissal of Ms. Jenks’ *Complaint for Water-Related Issues* was the Board’s only option.

Manager Miller moved to dismiss Jan Jenks’ *Complaint for Water-Related Issues*, dated July 12, 2024, regarding Mr. Wadeson’s tile system in the SW 1/4 of Section 28 in Clifton Township due to lack of jurisdiction under Sections 61-32-03.1 and 61-32-07. Manager Melvin seconded the motion. Upon roll call vote, the motion carried unanimously.

**Subsurface Water Management Permit No. 202412 for Jeff Wadeson in the SW 1/4 of Section 28 in Clifton Township**

Sean Fredricks notified the Board of and discussed a letter from an adjacent property owner’s legal counsel regarding *Subsurface Water Management Permit No. 202412* for

Jeff Wadeson in the SW 1/4 of Section 28 in Clifton Township. Mr. Wadeson's subsurface water management system project in the SW 1/4 of Section 28 in Clifton Township is a permitted project under *Subsurface Water Management Permit No. 202412* and there is no current action for the Board to take regarding the matter.

**Drain #34 Channel Improvement Project No. 2022-01**

Kurt Lysne indicated right of way acquisition is complete for the Drain #34 Channel Improvement Project No. 2022-01. The project is on hold until the financing for the project is established.

**Drain #37 Improvement Project No. 2022-01**

Mr. Lysne indicated right of way acquisition is nearly complete for the Drain #37 Improvement Project No. 2022-01. Moore Engineering, Inc. is working on the economic analysis tool used for State Water Commission cost-share consideration for the project with the North Dakota Department of Water Resources. The project is on hold until the financing for the project is established.

**Drain #39 Improvement Project No. 2023-01**

Mr. Lysne updated the Board on Drain #39 Improvement Project No. 2023-01, including discussions with property owners regarding the project. Moore Engineering, Inc. will continue project discussions with adjacent property owners, and will begin completing the legal descriptions needed to develop Purchase Agreements regarding right of way acquisition for the project.

**Drain #46 – bridge cleanout in Sections 21 and 28 of Rochester Township**

Brady Woodard reported Maple River Excavating completed the Drain #46 bridge cleanout in Sections 21 and 28 of Rochester Township. Manager Miller noted the project was completed satisfactorily.

**Swan Creek Diversion – Casselton Cottages Addition plat**

Mr. Lysne discussed the proposed Casselton Cottages Addition plat adjacent to the Swan Creek Diversion. Mr. Lysne noted the Swan Creek Diversion has the right of way needed for the facility, however the City of Casselton currently does not have a drain or watercourse setback for development. Mr. Lysne recommends a 100-foot drain and watercourse setback for development.

It was moved by Manager Miller and seconded by Manager Melvin to authorize the Secretary to respond to the City of Casselton regarding the Casselton Cottages Addition plat recommending the City of Casselton consider adopting a 100-foot drain and watercourse setback from the centerline of the drain/watercourse for development. Upon roll call vote, the motion carried unanimously.

**Lynchburg-Buffalo Project No. 2023-01**

Mr. Lysne updated the Board on the status of the Lynchburg-Buffalo Project No. 2023-01 and stated Moore Engineering, Inc. continues to work on the project design and permitting. Moore Engineering, Inc. is in contact with the Corps of Engineers regarding

permitting of the preferred project design that would use less farmland.

**Cornell Township Drainage Improvement District No. 80**

Mr. Lysne reported the petition for Cornell Township Drainage Improvement District No. 80 was updated to reflect the petitioners' finalized preferred design alternative. The petitioners are gathering signatures for the updated petition and will need to submit the updated petition before the Board continues with the process to establish the assessment district for the project. The Board briefly discussed the project design.

**Davenport Flood Risk Reduction Project**

Alexa Ducioame updated the Board on the Davenport Flood Risk Reduction Project. Moore Engineering, Inc. continues to communicate with FEMA on the Conditional Letter of Map Revision status, as well as communicating with the North Dakota Department of Water Resources on the construction permit for the project. Moore Engineering, Inc. also continues to work with Burlington Northern Santa Fe Railway Company and Red River Valley & Western Railroad Company regarding an agreement related to operation and maintenance of the project.

Levi Hanson briefly updated the Board on the status of right of way acquisition for the project.

It was moved by Manager Miller and seconded by Manager Melvin to approve the *Purchase Agreement* with Sidney Steinweg regarding the Davenport Flood Risk Reduction Project, including approval of the concept to split the payment to Mr. Steinweg between calendar years 2024 and 2025, per Mr. Steinweg's request. Upon roll call vote, the motion carried unanimously.

Right of way acquisition is now complete for the project.

**Regional Conservation Partnership Program – Upper Maple River Watershed**

Mr. Lysne updated the Board on the RCPP – Upper Maple River Watershed Plan. The Natural Resources Conservation Service (NRCS) recently conducted an agency tour of the site. The NRCS is also currently reviewing the Plan.

**Low head dam hazard mitigation project**

Discussion was held regarding the low head dam hazard mitigation project in Maple River Water Resource District. Mr. Lysne stated that a cost-share request for the project has been submitted to the North Dakota Department of Water Resources. The project will also be submitted to the Cass County Flood Sales Tax Committee. Additional work will not be done on the project until cost-share requests to the State Water Commission and to the Cass County Flood Sales Tax Committee have been approved, and the Board decides whether to proceed with the project.

**Cost-Share Agreement with the Red River Joint Water Resource District for the Maple River Dam Emergency Action Plan update**

Mr. Fredricks stated the Cass County Joint Water Resource District (CCJWRD), which is

a joint water resource district composed of all four water resource districts in Cass County, is pursuing a project to update the *Emergency Action Plan* for the Maple River Dam. The CCJWRD applied for cost-share funding to the Red River Joint Water Resource District (RRJWRD) for the project. Because the CCJWRD is not a member of the RRJWRD, the Maple River Water Resource District will be the signatory to the *Cost-Share Agreement* with the RRJWRD for the Maple River Dam *Emergency Action Plan* update project, as the Maple River Dam is located in Maple River Water Resource District and the Maple River Water Resource District is a member of the RRJWRD.

A motion was made by Manager Miller and seconded by Manager Melvin to approve and authorize the Chairman to sign the *Cost-Share Agreement* with the RRJWRD for the Maple River Dam *Emergency Action Plan* update project. Upon roll call vote, the motion carried unanimously.

**Application to Install a Subsurface Water Management System No. 202421 for M and M Farms Partnership in the S 1/2 of Section 27 in Tower Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202421*, filed August 20, 2024, by Applicant M and M Farms Partnership, LLP. Under the Application, Applicant seeks to add an additional 56 acres of drain tile in the SW 1/4 of Section 27 in Tower Township to an existing 121-acre drain tile system in the NE 1/4 of Section 28, the W 1/2 of Section 27, and the SE 1/4 of Section 27 in Tower Township; the Board approved *Subsurface Water Management System Permit No. 202316* for M and M Farms Partnership on July 6, 2023. *Application to Install a Subsurface Water Management System No. 202421* is for the full 177-acre system, and *Subsurface Water Management System Permit No. 202421* will amend and replace *Subsurface Water Management System Permit No. 202316*.

The project will include a surface inlet along the east boundary of the NE 1/4 of Section 28 that will connect to the system in the W 1/2 of Section 27 via a line under 136th Avenue SE. The project will include four gravity outlets, all of which will discharge via pipelines that will commence along the east boundary of the SW 1/4 of Section 27 and will run into the SE 1/4 of Section 27; one outlet will daylight and discharge directly into the Maple River and the other three will discharge into a natural watercourse in the SE 1/4 of Section 27 that ultimately flows into the Maple River.

According to Cass County tax records, Jacob Paul Richman owns the NE 1/4 of Section 28; Matthew and Jennifer Richman own the NW 1/4 of Section 27 and the SE 1/4 of Section 27; and Mark and Pamela Johnson own the SW 1/4 of Section 27.

Manager Miller moved, and Manager Melvin seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202421*, filed August 20, 2024, for M and M Farms Partnership regarding a proposed tile system in the NE 1/4 of Section 28, the W 1/2 of Section 27, and the SE 1/4 of Section 27 in Tower Township; and to authorize the Secretary to sign *Subsurface Water Management Permit No. 202421*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into the Maple River and the natural watercourse in the SE 1/4 of Section 27 in Tower 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 NE 1/4 of Section 28, the W 1/2 of Section 27, or in the SE 1/4 of Section 27 in Tower 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. 202421* 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 Tower Township Board of Township Supervisors to install any pipeline or other project components in the Township's road right of way.
2. The Board recommends that Applicant obtain easements or written consent from the owners of the property where Applicant intends to install any 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. 202421*, and Applicant's downstream flow map to the North Dakota Department of Water Resources, Tower Township, Matthew and Jennifer Richman, Jacob Paul Richman, Mark and Pamela Johnson, 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.



**Complaint for Water-Related Issues from Rick Kensok against Aaron Larson for construction of an unpermitted dike in the S 1/2 of Section 31 in Casselton Township**

Mr. Lysne discussed the *Complaint for Water-Related Issues* received from Rick Kensok against Aaron Larson for construction of an unpermitted dike in the S 1/2 of Section 31 in Casselton Township.

A motion was made by Manager Miller and seconded by Manager Melvin to authorize Moore Engineering, Inc. to investigate the *Complaint for Water-Related Issues* from Rick Kensok against Aaron Larson for construction of an unpermitted dike in the S 1/2 of Section 31 in Casselton Township and prepare a report of the findings. Upon roll call vote, the motion carried unanimously.

**Temporary Water Permit for WBI Energy Transmission, Inc. from the Maple River in the NW 1/4 of Section 31 in Raymond Township**

The Board received and filed a *Temporary Water Permit* for WBI Energy Transmission, Inc. from the Maple River in the NW 1/4 of Section 31 in Raymond Township.

**Bills**

It was moved by Manager Miller and seconded by Manager Melvin to approve the payment of Checks #6190 through #6193, 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, it was moved by Manager Miller and seconded by Manager Melvin to adjourn the meeting. The meeting adjourned without objection.

APPROVED:

\_\_\_\_\_  
Gerald Melvin  
Chairman

ATTEST:

\_\_\_\_\_  
Melissa Hinkemeyer  
Secretary