

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
NORTH CASS WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
HERITAGE CONFERENCE ROOM
WEST FARGO, NORTH DAKOTA
SEPTEMBER 24, 2024
8:00 A.M.

A virtual / conference call meeting of the North Cass Water Resource District was held on September 24, 2024, at 8:00 a.m.

Present were Ken Lougheed, Chairman; Robert Thompson, Manager; Jay Colwell, Manager; Melissa Hinkemeyer, Director, Secretary; Leilei Bao, Treasurer; Elizabeth Smith, Administrative Assistant; Sean M. Fredricks, Ohnstad Twichell, P.C.; Kurt Lysne, Alexa Ducioame, Josh Hassell, and Brady Woodard, Moore Engineering, Inc.; Duane Breitling, Cass County Commissioner; Blaine Laaveg, Cass County Highway Department; Kevin Hochhalter, Arthur Township property owner.

Approval of Agenda and Minutes

It was moved by Manager Colwell, seconded by Manager Thompson, and unanimously carried to approve the order of the agenda and the minutes of August 27, 2024, meeting, as presented.

Drain #13 – erosion at the bridge between Sections 10 and 15 in Wisner Township

Alexa Ducioame stated Moore Engineering, Inc. collected the survey for the Drain #13 erosion at the bridge between Sections 10 and 15 in Wisner Township. Moore Engineering, Inc. is comparing the survey to the Drain #13 channel profile design and hopes to have results for the next meeting.

Drain #23 – culvert replacement and associated intersection improvements project between Sections 1 and 12 in Gunkel Township and between Sections 6 and 7 in Gardner Township and right of way acquisition

Ms. Ducioame updated the Board on the status of right of way acquisition on Drain #23.

The Board indicated once right of way is acquired on Drain #23 for the culvert replacement and associated intersection improvement project, the Board can move ahead with the project that will resolve the culvert issues in that area. Brady Woodard noted he has contacted contractors regarding timing of the project and believes the project can be completed this year.

Drain #23 – slide in the NW 1/4 of Section 10 in Wisner Township

Mr. Woodard found an available contractor for the Drain #23 slide repair project in the NW 1/4 of Section 10 in Wisner Township. The contractor plans to begin the project soon.

Drain #42 – slides east of Cass County Highway 31

Ms. Ducioame discussed various repair options for the Drain #42 slides east of Cass County Highway 31. The Board directed Moore Engineering, Inc. to bring back a cost-effective repair method for consideration by the Board.

Complaint for Water-Related Issues from Kevin Hochhalter against Gebeke Farms for unpermitted drainage in the NE 1/4 of Section 28 in Arthur Township

The Board next considered the *Complaint for Water-Related Issues* filed by Kevin Hochhalter against Gebeke Farms, dated June 4, 2024. Under the Complaint, Mr. Hochhalter alleges Gebeke Farms constructed illegal and unpermitted drainage in the NE 1/4 of Section 28 of Arthur Township. More specifically, Mr. Hochhalter alleges that, in the fall of 2023, Gebeke Farms over-excavated portions of the south road ditch along 22nd Street SE, along the north boundary of the N 1/2 of Section 28.

According to records on file with the Cass County Recorder’s office, Kevin Hochhalter owns the NE 1/4 of Section 28 in Arthur Township, and William J. Schak owns the NW¼ of Section 28. According to Mr. Hochhalter, Gebeke Farms rents the NW¼ of Section 28 from Mr. Schak. Mr. Hochhalter indicated his references to Gebeke Farms are regarding Gregory Gebeke and Jeff Gebeke.

The Board previously directed Moore Engineering, Inc. to investigate the Complaint. Josh Hassell prepared and submitted a written report dated September 20, 2024; a copy of Mr. Hassell’s report is on file with the Board. Mr. Hassell conducted an on-site investigation, reviewed maps and LiDAR, and spoke with Mr. Hochhalter. Mr. Hochhalter contends drainage in the south road ditch along 22nd Street SE normally and naturally flows to the west but that the Gebekes constructed deepening and widening in the road ditch to alter the drainage to the east, across the NE 1/4 of Section 28. Mr. Hochhalter indicated that he spoke with the Gebekes following the ditch improvements the Gebekes constructed, and they confirmed the Gebekes had completed the work.

Under the drainage complaint statute, N.D. Cent. Code § 61-32-07, the District 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 improperly constructs surface drainage without a permit, if the project 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. In this case, Mr. Hochhalter alleges the Gebekes constructed surface drainage improvements in violation of Sections 61-32-03 and 61-32-07. Under Section 61-32-03, if the Gebekes constructed surface drainage improvements that drained “a pond, slough, lake, or sheetwater, or any series thereof,” and the drainage impacted a watershed of 80 acres or more, his activity required a permit. Section 61-32-03 defines “sheetwater” as “shallow water that floods land not normally subject to standing water.” Failure to secure a permit under Section 61-32-03 would be “contrary to” Title 61 of the Century Code.

Mr. Hassell’s report confirmed the Gebekes had, in fact, constructed improvements, including deepening and widening, of the south road ditch along 22nd Street SE in the

NE 1/4 of Section 28 in Arthur Township. The Board concluded the drainage improvements constructed by the Gebekes drain “sheetwater” as that term is defined under Section 61-32-03. Mr. Hassell’s report further confirmed the watershed area drained by the Gebekes’ ditch improvements is a 146.26-acre watershed, well beyond the 80-acre permitting threshold.

Under Sections 89-02-01-05(1) of the North Dakota Administrative Code, “maintenance” of existing drains or ditches does not require a permit. Section 89-02-01-02(10) of the North Dakota Administrative Code defines “maintenance” as follows:

“Maintenance” means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.

In this case, Mr. Hassell found the ditch improvements constructed by the Gebekes went far beyond mere removal of silt and vegetation; rather, Mr. Hassell found the Gebekes deepened and widened the ditch. In fact, Mr. Hassell noted that, in some locations, the Gebekes excavated up to 18 inches of material.

With all of this in mind, Mr. Hassell concluded the improvements constructed by the Gebekes included construction of new drainage that required a surface permit under Section 61-32-03. Because the Gebekes’ drainage improvements required a surface permit and the Gebekes failed to obtain one, the Gebekes’ drainage activities were then “contrary to” Title 61 of the Century Code, and the District has jurisdiction to order or force the Gebekes to close or fill the unpermitted drainage under Section 61-32-07.

The Board reviewed Mr. Hassell’s report and concurred with the findings. The Board further concluded the Gebekes ditching improvements, constructed in 2023, drain “sheetwater” from a drainage area and watershed area beyond 80 acres. Because Gebeke Farms failed to obtain a surface permit before constructing these drainage improvements, the Board has no choice but to order the drain and ditch improvements closed or filled, as required under N.D. Cent. Code § 61-32-07.

The Board discussed the timing of closing or filling these improvements. Mr. Hochhalter has corn planted on his property. With that in mind, the Board and Mr. Hochhalter agreed that requiring Gebeke Farms to close or fill these improvements before 5:00 on Monday, November 25, 2024, would be reasonable. Because the drainage improvements are within a township road ditch, the Board’s Notice of Decision should include the Township as a recipient and will direct Gebeke Farms to coordinate with the Township to ensure compliance with the Township’s road and safety standards.

Under Section 61-32-07, the Board can assess its costs “against the property of the landowner responsible” for the unpermitted drainage. In this case, Gebeke Farms is the tenant of Mr. Schak, and Gebeke Farms constructed the unpermitted improvements to benefit the NW 1/4 of Section 28. Therefore, the Board will notify Mr. Schak of the Board’s order in this matter and may later assess Mr. Schak’s property.

Manager Colwell, seconded by Manager Thompson, moved to declare the drainage and ditch improvements constructed by Gebeke Farms in the NE 1/4 of Section 28 as unpermitted and illegal, and to order Gebeke Farms and Mr. William Schak to close or fill the drain and ditch improvements by 5:00 p.m. on November 25, 2024, as required under North Dakota law. Upon roll call vote, the motion carried unanimously.

Cass County Flood Sales Tax Committee – request for flood risk reduction projects

There are no projects to submit for Cass County flood sales tax funding in North Cass Water Resource District at this time. Manager Thompson will attend the upcoming Committee meeting to provide an update on the Elm River Dam No. 3 Improvement Project.

Bills

It was moved by Manager Thompson and seconded by Manager Colwell to approve the payment of 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 Thompson motioned, and Manager Colwell seconded to adjourn the meeting. The motion carried unanimously.

APPROVED:

Ken Lougheed
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary