

MINUTES OF VIRTUAL / CONFERENCE CALL SPECIAL MEETING  
RUSH RIVER WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
HERITAGE CONFERENCE ROOM  
WEST FARGO, NORTH DAKOTA  
OCTOBER 15, 2024  
9:00 A.M.

A virtual / conference call special meeting of the Rush River Water Resource District was held on October 15, 2024, at 9:00 a.m.

Present were William A. Hejl, Chairman; Richard Sundberg, Manager; Jacob Gust, Manager; Melissa Hinkemeyer, Director, Secretary; Leilei Bao, Treasurer; Elizabeth Smith, Administrative Assistant; Sean Fredricks, Christie Rust, and David C. Piper, 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; and Tom Fuchs, Metro Flood Diversion Authority.

**Approval of agenda**

It was moved by Manager Gust and seconded by Manager Sundberg to approve the order of the agenda, as presented. Upon roll call vote, the motion carried unanimously.

**Minutes**

It was moved by Manager Sundberg and seconded by Manager Gust to approve the minutes of the September 17, 2024, meeting, as presented. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – Construction update**

Tom Fuchs updated the Board on the construction status of the Metro Flood Diversion Project. Mr. Fuchs said work is ongoing on all components of the Diversion Channel and Associated Infrastructure within the boundaries of the Rush River Water Resource District. The Cass County Highways 4 and 31 combined crossing is planned to open soon. Soon after that, Drain #30 will be connected to the Diversion Channel. Mr. Fuchs indicated by the end of 2025 he expects Drain #29 and Drain #30 to be connected to the Diversion Channel from I-29 downstream to the outlet. The Diversion Channel and Associated Infrastructure developer is focusing on channel excavation in the remaining locations and finishing details near the outlet.

The Board discussed the issue with the construction of the Rush River inlet to the Diversion Channel. Mr. Fuchs noted the vertical transition from the inlet to the Channel was not constructed according to the approved plans. The developer of the Diversion Channel and Associated Infrastructure is deciding whether to revise the plans and seek approval of the revised plans, or reconstruct the transition per the approved plans.

Brief discussion was held on the status of bridge work on I-94. The bypass on the south side of I-94 is planned to be completed by November 1, 2024.

**Metro Flood Diversion Project – Rush River, Lower Rush River (Drain #2), and Drain #30 transitions**

Levi Hanson and Christie Rust updated the Board on the status of right-of-way acquisition for the Drain #30 transition regarding the Metro Flood Diversion Project. It was noted there will be no access to the property until closing occurs at the request of the property owner.

Alexa Ducioame updated the Board on the status of the transitions between the Metro Flood Diversion Project and legal assessment drains. Task order amendments are needed to continue engineering work for the transitions regarding Drain #12, Drain #2, and Drain #30.

A motion was made by Manager Sundberg and seconded by Manager Gust to approve and authorize the Chairman to sign the following with Moore Engineering, Inc. regarding engineering for the transitions between the Metro Flood Diversion Project and legal assessment drains:

- *Task Order No. 4 - Amendment 1*, in the amount of \$12,500 regarding Drain #30
- *Task Order No. 5 - Amendment 1*, in the amount of \$22,500 regarding Drain #2
- *Task Order No. 6 - Amendment 1*, in the amount of \$22,500 regarding Drain #12

Upon roll call vote, the motion carried unanimously.

**Rush River / Lower Rush River – Future bridge replacements and flattening of side slopes**

Discussion was next held on the proposed comprehensive side slope flattening project regarding the Rush River and Lower Rush River. Ms. Ducioame discussed modeling that was done to determine if there are any impacts downstream in various locations including downstream of the Metro Flood Diversion Project. The main impact shown in the modeling from the flattening of side slopes was a small area near the inlet to the Diversion Channel. Moore Engineering, Inc. indicated the area impacted could most likely be mitigated with flap gates and increasing berm heights in the area.

Chairman Hejl inquired about the difference in grade of the side slopes of the Diversion Channel and the preliminary design of the flattened side slopes of the Rush River. The Board asked Kurt Lysne to investigate the differences in grade of the side slopes of the Diversion Channel and the Rush River.

The Board briefly discussed financing of the comprehensive side slope flattening project and asked Moore Engineering, Inc. to prepare a cost estimate reflecting the cost of flattening side slopes of the portion of the Rush River that is a legal assessment drain.

Manager Gust expressed concerns regarding potential impacts of the comprehensive project. Additional discussion was held on the modeling and impacts of the project.

**Rush River / Lower Rush River – Mowing**

Brady Woodard stated he was not able to find anyone interested in haying the Lower Rush River. Mr. Woodard discussed a quote from a contractor to mow approximately 2 miles on the Lower Rush River in Section 1 Raymond Township and Section 6 in Reed Township. The contractor’s quote for mowing this year is approximately \$1,800. Discussion was held on removing and spraying woody material at the same time as mowing. The Board will continue discussion on the matter at a future meeting.

**Drainage concerns in the S 1/2 of Section 29 in Harwood Township**

Manager Sundberg reported Moore Engineering, Inc. investigated drainage of the swale into the Rush River in the S 1/2 of Section 29 in Harwood Township. No action is required for drainage to function properly.

**Drain #74 – Berm removal in the N 1/2 of Section 7 of Amenia Township**

Brady Woodard updated the Board on the berm removal by the property owner in the N 1/2 of Section 7 of Amenia Township. Mr. Woodard indicated the property owner intends to seed the area within ten feet from the top of the edge of the Drain with grass to remedy the encroachment. Moore Engineering, Inc. will monitor this site to ensure it is seeded.

A motion was made by Manager Sundberg and seconded by Manager Gust to approve and authorize the Chairman to sign a letter to be sent to the property owners that removed the berm on Drain #74 in the N ½ of Section 7 of Amenia Township regarding the activities taken place. Upon roll call vote, the motion carried unanimously.

**Erie Dam / Brewer Lake – Valve operations update**

North Dakota Game and Fish provided the Board with a summary of the valve operations at Brewer Lake during 2024. They stated the auto valve was operated spring, summer, and a portion of the fall for about 181 days. The auto valve was closed October 4<sup>th</sup> at an elevation of 13” below full pool. The manual valve was not operated in 2024.

**Application to Install a Subsurface Water Management System No. 202424 for Lindstrom Enterprises LLC in the N 1/2 and SW 1/4 of Section 28 in Amenia Township**

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202424*, filed October 10, 2024, by Applicant Lindstrom Enterprises LLC. Under the Application, Applicant seeks to install a 220-acre drain tile system in the N 1/2 and the SW 1/4 of Section 28 in Amenia Township, Cass County, North Dakota. The project will include three gravity outlets; the first outlet will be an existing gravity outlet along the north boundary of the NE 1/4 of Section 28 that discharges directly into the Rush River. The second outlet will be along the north boundary of the NE 1/4 of Section 28 in the south road ditch along County Road 32; the discharge will flow to the east, in the south road ditch, for a short distance before flowing into the Rush River. The third outlet will be in the southwest corner of the SW 1/4 of Section 28; the outlet will discharge into the north road ditch along 29th Street SE; the discharge will flow to the east, in the north road ditch along 29th Street, along the south boundary of Section 28.

According to records submitted by Applicant, regarding the property Applicant intends to tile, the Lindstrom Family Farm Limited Partnership, LLLP, owns the NE 1/4 of Section 28 in Amenia Township, less the farmstead in the northeast corner, owned by Erik Lindstrom; the Peter W. Lindstrom Marital Trust owns the W 1/2 of the W 1/2 of Section 28; Eric P. Lindstrom owns the E 1/2 of the NW 1/4 of Section 28; and Brandon Lindstrom owns the E 1/2 of the SW 1/4 of Section 28. With regard to notices to downstream landowners, the existing tile outlet in the NE 1/4 of Section 28 discharges into the Rush River and, therefore, no downstream notices are necessary under N.D. Cent. Code § 61-32-03.1. With regard to the second outlet in the NE 1/4 of Section 28 that discharges into the south road ditch along County Road 32, the Board will provide downstream notices to the Cass County Highway Department; because the tile discharge flows into the Rush River, no further downstream notices are necessary under Section 61-32-03.1. Finally, with regard to the outlet in the southwest corner of the SW 1/4 of Section 28, the Peter W. Lindstrom Marital Trust owns the SE 1/4 of Section 28.

Manager Sundberg moved, and Manager Gust seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202424*, filed October 10, 2024, for Lindstrom Enterprises LLC regarding a proposed tile system in the N 1/2 and the SW 1/4 of Section 28 in Amenia Township; and to authorize the Secretary to sign *Subsurface Water Management Permit No. 202424*, 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 County Road 32 right of way.
2. Applicant will install and maintain erosion protection at any and all outlets into Amenia Township's road right of way.
3. Applicant will install and maintain erosion protection at any and all outlets into the Rush River.
4. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.
5. 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 N 1/2 and the SW 1/4 of Section 28 in Amenia Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
6. With regard to the gravity outlet in the NE 1/4 of Section 28 that will discharge into the south road ditch along County Road 32, Applicant will remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicant's tile system, but only up to the point where the tile discharge flows into the Rush River.
7. With regard to the gravity outlet in the SW 1/4 of Section 28, 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 outlet.

8. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 202424* 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 conditions #6 and #7, 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 County Road 32 right of way.
2. The Board recommends that Applicant obtain written consent from the Amenia Township Board to discharge into or otherwise utilize any of the Township's road right of way.
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. 202424*, and Applicant's downstream flow map to the Department of Water Resources, Amenia Township, the Cass County Highway Department, 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.

### **Regional Conservation Partnership Program (RCPP) – Rush River Watershed**

Mr. Lysne reported Moore Engineering, Inc. has been coordinating with FEMA regarding the Conditional Letter of Map Revision needed for the Regional Conservation Partnership Program – Rush River Watershed Plan. FEMA is delaying the new maps that are part of the Western Cass Flood Insurance Study until early next year. The maps will be effective 6 months after they are released. Moore Engineering, Inc. is also working on filing a construction permit with the North Dakota Department of Water Resources for the project.

### **Weed Control**

Mr. Woodard reported Dakota Helicopters, Inc. is no longer able to fulfill their Agreement with the Cass County Water Resource Districts regarding weed control. DL Barkie Construction, Inc. submitted a quote for ground spraying of the Cass County Water Resource Districts facilities.

Manager Sundberg moved, and Manager Gust seconded to approve and authorize the Chairman to sign the Agreement with DL Barkie Construction Inc. regarding weed control on Maple River Water Resource District facilities. Upon roll call vote the motion carried unanimously.

### **Cass County Flood Sales Tax Committee – Request for flood risk reduction projects**

Mr. Lysne noted the Cass County Flood Sales Tax Committee is requesting submission of flood risk reduction projects to consider approving cost-share for at their upcoming meeting. The Cass County Joint Water Resource District will be submitting the RCPP – Rush River Watershed Project permitting costs to the Cass County Flood Sales Tax Committee for their consideration. There are no projects for the Rush River Water Resource District to submit at this time.

### **Cass County Joint Water Resource District report**

Manager Gust stated the Cass County Water Resource Districts Managers were invited to tour the Metro Flood Diversion Project with Industrial Builders, Inc.

### **Red River Joint Water Resource District (RRJWRD) report**

Manager Sundberg reported on the September 18, 2024, RRJWRD Full Board meeting. The Board approved a cost-share request for emergency action plan updates in Walsh County Water Resource District. Sean Fredricks briefly discussed legislative updates regarding water resource districts. Manager Sundberg reported the next RRJWRD meeting is scheduled for December 12, 2024, at the 61<sup>st</sup> Annual Joint North Dakota Water Convention in Bismarck, ND.

### **Bills**

It was moved by Manager Sundberg and seconded by Manager Gust to approve the wire transfers and the electronic funds transfers, as amended. Upon roll call vote, the following Managers voted in favor: Hejl, Sundberg, and Gust. The motion carried unanimously.

**Adjournment**

There being no further business to be considered by the Board, it was moved by Manager Gust, seconded by Manager Sundberg, and unanimously carried to adjourn the meeting.

APPROVED:

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William A. Hejl  
Chairman

ATTEST:

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Melissa Hinkemeyer  
Secretary