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Maple River Water Resource District.

MINUTES OF MAPLE RIVER WATER RESOURCE DISTRICT MEETING
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
HERITAGE CONFERENCE ROOM
WEST FARGO, NORTH DAKOTA
FEBRUARY 6, 2025
9:00 A.M.

A meeting of the Maple River Water Resource District was held on February 6, 2025, at 9:00 a.m.

Present were Gerald Melvin, Chairman; Chad Miller, Manager; Dallas Hoffmann, Manager; Melissa Hinkemeyer, Director, Secretary-Treasurer; Elizabeth Smith, Administrative Assistant; Rita Nelson, Accounting Assistant; 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; Tom Soucy, Cass County Highway Department; and Sidney Steinweg, Davenport Township property owner.

Approval of agenda

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

Minutes

It was moved by Manager Hofmann, seconded by Manager Miller, and unanimously carried to approve the minutes of the January 2, 2025, meeting, as presented.

Appointment of Treasurer

It was moved by Manager Miller, seconded by Manager Hoffmann and unanimously carried to appoint Melissa Hinkemeyer to serve as Treasurer for the remainder of calendar year 2025. Upon roll call vote, the motion carried unanimously.

First Amendment to the Agreement between Owner and Engineer for Professional Services with Houston Engineering, Inc.

The Water Resource District Secretary and Mike Opat briefly reviewed the *First Amendment to the Agreement between Owner and Engineer for Professional Services* with Houston Engineering, Inc. regarding engineering services for Maple River Water Resource District. The *Agreement* has expired, and Mr. Opat requested the Board consider renewing the *Agreement*.

A motion was made by Manager Miller and seconded by Manager Hoffmann to approve and authorize the Chairman to sign the *First Amendment to the Agreement between Owner and Engineer for Professional Services* with Houston Engineering, Inc. regarding engineering services for Maple River Water Resource District. Upon roll call vote, the motion carried unanimously.

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Drain #34 Channel Improvement Project No. 2022-01

Kurt Lysne stated the Drain #34 Channel Improvement Project No. 2022-01 surface drain permit was extended during a recent special meeting of the Water Resource District on February 4, 2025. Cost-share for the project has been approved by the State Water Commission. Once potential legislative changes impacting water resource districts are known, Moore Engineering, Inc. will bring back recommended next steps for the project.

Drain #37 Improvement Project No. 2022-01

Alexa Ducioame indicated the Drain #37 Improvement Project No. 2022-01 is on hold until the financing for the project is established. The Project may require a vote of the assessment district.

Drain #39 Improvement Project No. 2023-01

Ms. Ducioame reported Moore Engineering, Inc. is continuing to work on preliminary plans regarding the Drain #39 Improvement Project No. 2023-01. Moore Engineering, Inc. will continue to communicate with property owners throughout the winter on the project.

Lynchburg-Buffalo Project No. 2023-01

Ms. Ducioame updated the Board on the status of the Lynchburg-Buffalo Project No. 2023-01. The Secretary recently submitted an *Application for Surface Drain* to the North Dakota Department of Water Resources for the project. The Corps of Engineers approved the Section 404 permit for the project. Moore Engineering, Inc. will continue to work on right of way and meeting with landowners.

Cornell Township Drainage Improvement District No. 80

Mr. Lysne reported that he remains in contact with the petitioners for Cornell Township Drainage Improvement District No. 80 regarding the project design. Mr. Lysne noted there are other potential changes upcoming to cost-share and project aspects such as economic analysis and benefits determination that would impact the project.

Davenport Flood Risk Reduction Project

Brady Woodard updated the Board on the Davenport Flood Risk Reduction Project. Moore Engineering, Inc. continues to work with Burlington Northern Santa Fe Railway Company (BNSF) and Red River Valley & Western Railroad Company regarding an agreement related to operation and maintenance of the project. Mr. Woodard indicated he recently met with Red River Valley & Western Railroad Company to discuss the project. BNSF continues to review the agreement for the project. The North Dakota Department of Water Resources (NDDWR) has indicated they will not issue the construction permit for the Project until the agreement with the railroads is complete.

Brief discussion was held on potential project construction commencement. Ms. Ducioame noted the project cannot proceed until the NDDWR issues the construction permit. Moore Engineering, Inc. will coordinate project timelines with the adjacent Cass County Highway Department project.

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Maple River low head dam hazard mitigation project

Ms. Ducioame reported Moore Engineering, Inc. has completed the surveying for the Maple River low head dam hazard mitigation project. The next step is to complete the geotechnical evaluation. Once the geotechnical work is completed, the project design will commence.

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 continues to review and make minor updates to the Plan.

Complaint for Water-Related Issues from Rick Kensok against Aaron Larson for construction of an unpermitted dike in the S ½ of Section 31 in Casselton Township

The Board next considered Rick Kensok's *Complaint for Water-Related Issues* filed against Aaron Larson, dated August 26, 2024, filed under N.D. Cent. Code §§ 61-16.1-38 and 61-16.1-53. In the Complaint, Mr. Kensok alleges Mr. Larson constructed a "dike" parallel to the township road ditch along 36th Street SE, along the south boundary of Section 31 in Casselton Township. Mr. Kensok alleges the improvements allegedly constructed by Mr. Larson impact Mr. Kensok's farmstead in the SE 1/4 of Section 36 in Wheatland Township.

According to records on file with Cass County, Aaron and Stacie Larson own the S 1/2 of the SW 1/4 of Section 31 in Casselton Township, and Brandon and Nicole Larson own the S 1/2 of the SW 1/4 of Section 31 in Casselton Township.

The Board previously directed Moore Engineering, Inc. to investigate the matter. Initially, Mr. Kensok indicated that he planned to work with Mr. Larson on a mutually acceptable solution. However, the parties evidently did not reach a solution and, with that in mind, Brady Woodard conducted a site visit and spoke to both parties. Mr. Woodard did not find any evidence of any substantial structure in the S 1/2 of Section 31 that would have required a permit.

Under the dam/dike complaint statute, Section 61-16.1-53, the Board only has jurisdiction over a structure to the extent the structure requires a permit. The dam/dike permitting statute, Section 61-16.1-38, provides, in relevant part:

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency. Dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or water storage must be constructed in accordance with this chapter. A permit is required from the department for the construction of a low-hazard dam or other device capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water; a medium-hazard or high-hazard dam capable of retaining, obstructing, or diverting more than twenty-five acre-feet [30837.04 cubic meters] of water; an agricultural dike capable of protecting more than eighty acres [32.37 hectares] of land area; or any dike capable of protecting an occupied residence or structure or public infrastructure....

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The Administrative Code provides the applicable definitions:

89-08-01-01. Definitions. The following definitions apply in this article:

1. "Agricultural dike" means a dike capable of protecting land used for agriculture or similar purposes.

5. "Dam" means any barrier, including any appurtenant works, constructed across a watercourse or an area that drains naturally to impound or attenuate the flow of water. All structures necessary to impound a single body of water are considered a single dam.

7. "Dike" means any artificial structures, including an embankment, floodwall, levee, or any appurtenant works, constructed with the primary intent to divert surface water for real or personal property protection or to otherwise provide storm or flood-risk reduction resulting from flooding due to seasonally high water or precipitation.

Again, Mr. Woodard did not find any evidence that Mr. Larson, or any other party, had constructed a "dam," a "dike," or an "agricultural dike" in the S 1/2 of Section 31, or any other structure that would have required a permit under Section 61-16.1-38. Therefore, the Board has no jurisdiction to order removal of any structure or to take any other action under the complaint statute, Section 61-16.1-53.

Mr. Woodard did observe that culverts through 36th Street SE were obstructed on the north side by debris, along the south boundary of the S 1/2 of Section 31. Mr. Larson indicated he planned to remove the debris following corn harvest. Mr. Woodard later conducted an additional site visit and found Mr. Larson had, in fact, removed the debris from the culverts and that water was flowing through the 36th Street SE culverts unobstructed.

Mr. Woodard then spoke with Mr. Kensok and indicated that Mr. Larson had adequately and properly removed any obstructions to the culverts along the S 1/2 of Section 31. Mr. Woodard asked if Mr. Kensok would consider withdrawing the Complaint voluntarily. Mr. Kensok indicated he had other concerns regarding obstructed culverts in Section 36 in Wheatland Township. Mr. Kensok's *Complaint for Water-Related Issues* did not contain any allegations regarding obstructed culverts in Section 36 and, therefore, the Board did not investigate those verbal allegations offered by Mr. Kensok. Rather, Mr. Kensok's *Complaint for Water-Related Issues* only addressed allegations of a "dam" or "dike" in the S 1/2 of Section 31.

Because there is no evidence that Mr. Larson constructed or installed any structure that required a permit under Section 61-16.1-38, and because Mr. Larson removed any debris from the culverts through 36th Street SE, along the south boundary of the S 1/2 of Section 31, the Board lacks any jurisdiction to order any removal under Sections 61-16.1-38 and 61-16.1-53. Therefore, the Board has no choice but to dismiss Mr. Kensok's Complaint.

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Manager Miller moved to dismiss Mr. Kensok's *Complaint for Water-Related Issues* due to lack of jurisdiction. Manager Hoffmann seconded the motion. Upon roll call vote, the motion carried unanimously.

The Board directed Attorney Sean Fredricks to prepare the requisite *Notice of Decision* to provide the Notice to the parties of record. Mr. Fredricks will also provide a courtesy copy to Casselton Township.

Casselton Airport Runway Relocation Project – Solicitation of views

Mr. Lysne reviewed the Casselton Airport Runway Relocation Project. It was moved by Manager Miller and seconded by Manager Hoffmann to authorize the Secretary to respond to the solicitation of views regarding the Casselton Airport Runway Relocation Project with no comment. Upon roll call vote, the motion carried unanimously.

WBI Energy – Bakken East Pipeline Project – Right of Entry

Mr. Fredricks reported that WBI Energy is requesting access to a portion of Water Resource District Swan Creek property as part of the Bakken East Pipeline Project. Mr. Fredricks reviewed the drafted *Access Agreement* with WBI Energy regarding the Bakken East Pipeline Project.

It was moved by Manager Miller and seconded by Manager Hoffmann to approve and authorize the Chairman to sign the *Access Agreement* with WBI Energy regarding the Bakken East Pipeline Project.

Discussion: Mr. Lysne noted that this project will be a benefit to the Water Resource District as WBI is relocating a pipeline that is currently exposed across Swan Creek.

Upon roll call vote, the motion carried unanimously.

Cass County Planning – Erickson-Bekker Subdivision

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

Application to Install a Subsurface Water Management System No. 20251 for Gerald Hagensen, Paula Swenson, and Mary Larsen in the N 1/2 and the SE 1/4 of Section 18 and in the SE 1/4 of Section 17 in Mapleton Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 20251*, filed February 4, 2025, by Applicants Gerald Hagensen, Paula Swenson, and Mary Larsen. Under the Application, Applicants seek to install a 601-acre drain tile system in the N 1/2 and the SE 1/4 of Section 18 and in the SE 1/4 of Section 17 in Mapleton Township, Cass County, North Dakota. The portion of the system in the N 1/2 and the SE 1/4 of Section 18 will include a pump outlet located along the north boundary of the NE 1/4 of Section 18; the pump will discharge directly into a natural watercourse, as that term is defined under N.D. Cent. Code § 61-01-06. The portion of the system in the SE 1/4 of Section 17 will discharge via a gravity line that will commence near the

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northwest corner of the SE 1/4, across a small portion of the NE 1/4 of the SW 1/4 of Section 17; the pipe will discharge directly into Cass County Drain No. 14, a legal assessment drain owned and operated by the Maple River Water Resource District.

With regard to the property Applicants intend to tile, according to Cass County tax records, Gerald Hagensen owns the W 1/2 of the NE 1/4 of Section 18, the NW 1/4 of Section 18, and 55.69 acres in the E 1/2 of the SE 1/4 of Section 17; Dean and Paula Swenson own the E 1/2 of the NE 1/4 of Section 18 and the SE 1/4 of Section 18; and Paula Swenson owns 55.67 acres in the W 1/2 of the SE 1/4 of Section 17, all in Mapleton Township. With regard to the gravity line and outlet for the portion of the system in the SE 1/4 of Section 17, according to Cass County tax records, Mary Larsen owns the NE 1/4 of the SW 1/4 of Section 17 in Mapleton Township. Because the project outlets will discharge directly into a natural watercourse and a legal assessment drain, respectively, no downstream notices are required under N.D. Cent. Code § 61-32-03.1.

Manager Miller moved, and Manager Hoffmann seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 20251*, filed February 4, 2025, for Gerald Hagensen, Paula Swenson, and Mary Larsen regarding a proposed tile system in the N 1/2 and the SE 1/4 of Section 18 and in the SE 1/4 of Section 17 in Mapleton Township; and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 20251*, subject to the following conditions:

1. Applicants will install and maintain erosion protection at any and all outlets into the natural watercourse in the N 1/2 of Section 18.
2. Applicants will install and maintain erosion protection at any and all outlets into Cass County Drain No. 14.
3. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
4. Applicants will turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Maple River Water Resource District.
5. Applicants will not install Applicants' tile system within 20 feet, on either side, of any rural water lines Cass Rural Water Users District has in the N 1/2 of Section 18, the SE 1/4 of Section 18, and the SE 1/4 of Section 17 in Mapleton Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
6. Applicants must apply for an amendment to *Subsurface Water Management Permit No. 20251* 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.

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Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicants' permit. However, for Applicants' protection, and to ensure protection of Applicants' tile system, the Board recommends that Applicants 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 and Subsurface Water Management Permit No. 20251* to the North Dakota Department of Water Resources, Mapleton Township, and Cass Rural Water Users District. Applicants' detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Bills

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

Legislative update

Mr. Fredricks briefly updated the Board on legislative items related to water resource districts.

Davenport Flood Risk Reduction Project continued

Sidney Steinweg inquired about construction timeline and staking of right of way regarding the Davenport Flood Risk Reduction Project. Ms. Ducioame indicated the current best estimate is a fall 2025 construction start, however that is an estimation. Moore Engineering, Inc. will work with Mr. Steinweg regarding staking of the project right of way, as requested by Mr. Steinweg.

Adjournment

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

APPROVED:

Gerald Melvin
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary