

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
JUNE 9, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on June 9, 2022, at 8:00 a.m.

Present were Dan Jacobson and Keith Weston, Southeast Cass Water Resource District; Rodger Olson, Maple River Water Resource District; Ken Lougheed, North Cass Water Resource District; Jacob Gust, Rush River Water Resource District; Nina Stone, Accountant; Melissa Maertens, Administrative Assistant; Sean M. Fredricks, Chris McShane, Luke Andrud and Katie J. Schmidt, Ohnstad Twichell, P.C.; Lyndon Pease, Kurt Lysne and Josh Hassell, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Rob Stefonowicz, Larkin Hoffman Attorneys; Eric Dodds and Sabrina Tusa, AE2S; Scott Stenger, ProSource Technologies, LLC; Oly Olafson, Lee Kaffar, Wade Whitworth and Kelsey Lee, HDR, Inc.; Ken Helvey, SRF Consulting Group, Inc.; Lisa Brekkestran and Davon Hutchinson, Ulteig Engineers, Inc.; Mary Scherling and Duane Breitling, Cass County Commissioners; Jodi Smith, Diversion Authority Director of Lands; Leo Richard and Terry and Kristie Sauvageau, Stanley Township property owners; and Ben Hanson, Fargo.

Agenda

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

Minutes

It was moved by Manager Lougheed, seconded by Manager Gust and unanimously carried to approve the minutes of the May 26, 2022, meeting.

Metro Flood Diversion Project – Executive Session for purposes of discussing contract negotiation strategies, litigation strategies, and attorney consultation regarding ongoing litigation related to right of way and property acquisitions necessary to accommodate the Metro Flood Diversion Project, in accordance with N.D. Cent. Code §§ 44-04-19.1(2), (5), and (9)

It was moved by Manager Gust and seconded by Manager Weston to close the meeting at 8:05 a.m. for the purposes of discussing contract negotiation strategies, litigation strategies, and attorney consultation regarding ongoing litigation related to right of way and property acquisitions necessary to accommodate the Metro Flood Diversion Project, in accordance with N.D. Cent. Code §§ 44-04-19.1(2), (5), and (9) regarding the following matters:

1. Cass County Joint Water Resource District v. Karn E. Jameson, et al, Civil File No. 09-2021-CV-03903 (OIN 9749)
2. Cass County Joint Water Resource District v. Barbara J. Coster, as Trustee of the Charles F. Coster Real Estate Trust under the Declaration of Trust dated September 26, 2009, Civil File No. 09-2021-CV-00156 (OINs 9736 and 9737)

Upon roll call vote, the following Managers voted in favor: Jacobson, Olson, Lougheed, Weston and Gust. The motion carried unanimously.

The executive session was attended by Managers Jacobson, Olson, Lougheed, Weston and Gust, Melissa Maertens, Sean Fredricks, Chris McShane, Luke Andrud, Katie Schmidt, Jodi Smith, Duane Breitling, Eric Dodds, Sabrina Tusa and Ken Helvey.

The executive session adjourned at 8:49 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project – relocation benefits and RHDP reimbursement review / approval

A motion was made by Manager Lougheed and seconded by Manager Olson to approve the relocation and replacement housing payment for OIN 1102, as outlined in the letter dated June 6, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – contracting actions

It was moved by Manager Weston and seconded by Manager Gust to approve and authorize the Chairman to sign *Task Order No. 6 – Amendment 0* with Compass Land Consultants, Inc., in the amount of \$150,000 regarding appraisal services for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – acquisition review / approval

Chairman Jacobson asked if any members of the Board wished to offer any motions regarding the following matter:

Cass County Joint Water Resource District v. Barbara J. Coster, as Trustee of the Charles F. Coster Real Estate Trust under the Declaration of Trust dated September 26, 2009, Civ. File No. 09-2021-CV-001506 (OINs 9736 and 9737).

Manager Gust moved to approve a settlement with the Coster Trust as follows:

1. The Coster Trust will convey fee simple title regarding the property identified as the “Permanent Property” in the Complaint in this matter to the Cass County Joint Water Resource District;
2. In exchange, the Cass County Joint Water Resource District will convey to the Coster Trust the portion of the following properties lying east of the Diversion Channel: 717Y, 724Y, 728Y, 729Y, 730Y, 726Y, and 1166Y;
3. If the Cass County Joint Water Resource District is unable to provide title to any of the above identified properties free and clear of the prior

landowner(s) Rights of First Offer (if any), or if the Coster Trust rejects any of the properties after completing due diligence, the Cass County Joint Water Resource District will pay the Coster Trust cash compensation equal to the Cass County Joint Water Resource District's previous appraisals of the trade property in question;

4. If the total amount of property the Cass County Joint Water Resource District is conveying to the Coster Trust is, by area, less than 65% of the total trade property identified above, the Coster Trust will have the option to withdraw from the settlement agreement;
5. The exchanges of real property are contingent upon approval by the Metro Flood Diversion Authority, as required under the Joint Powers Agreement that governs the Diversion Authority and its members regarding the Metro Flood Diversion Project;
6. The Cass County Joint Water Resource District's legal counsel will provide notice of availability of land under the Rights of First Offer regarding OIN 717 and OIN 724 to the owners from whom the Cass County Joint Water Resource District acquired those properties; and
7. The Cass County Joint Water Resource District will reimburse the Coster Trust for reasonable attorneys' fees and costs incurred related to the acquisition of their property or this proposed settlement, not to exceed \$70,000, and only following review and approval by the Board's legal counsel.

Manager Loughheed seconded the motion. Upon roll call vote, the motion carried unanimously.

Maple River Dam – current conditions

Kurt Lysne reported on current conditions at the Maple River Dam. The concrete spillway is no longer being utilized and the backwater pool is slowly decreasing. The pumps along State Highway 46 are not currently operating and may be removed in a few weeks if they are no longer needed. Mr. Lysne stated Moore Engineering, Inc. is in close contact with Highland Township officials regarding road closures and maintenance. Moore Engineering, Inc. continues to conduct piezometer readings daily at the Maple River Dam per the operating plan. Mr. Lysne discussed recent flood and weather forecasts in relation to the Maple River Dam.

Regional Conservation Partnership Program

Josh Hassell reported Moore Engineering, Inc. continues to work on the design and feasibility of road raises with the Burlington Northern Santa Fe Railway Company regarding the RCPP – Rush River Watershed Plan. Mr. Hassell stated meetings are being scheduled with property owners where right of way is needed for the project. Minor levee alignment shifts may be requested as a result of discussions with the property owners.

Bills

It was moved by Manager Lougheed and seconded by Manager Olson to approve the payment of Checks #15109 through #15110, the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Jacobson, Olson, Lougheed, Weston and Gust. The Chairman declared the motion passed.

State Water Commission cost-share policy update

Brief discussion was held on the potential updates to the State Water Commission cost-share policy. The NDDWR will be hosting meetings this summer to discuss and solicit feedback on the potential policy updates. Mr. Lysne noted the North Dakota Water Users Association is reviewing the potential updates and will be distributing comments on the matter to water resource districts.

Legislative updates

Mr. Fredricks briefly reported on legislative updates that impact water resource districts.

Adjournment

There being no further business for the Board to consider, it was moved by Manager Gust, seconded by Manager Lougheed and unanimously carried to adjourn the meeting.

APPROVED:

Dan Jacobson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer