

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
AUGUST 25, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on August 25, 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; Carol Harbeke Lewis, Secretary-Treasurer; Melissa Hinkemeyer, Administrative Assistant; Sean M. Fredricks, Chris McShane, Luke Andrud and Katie Schmidt, Ohnstad Twichell, P.C.; Lyndon Pease and Kurt Lysne, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Rob Stefonowicz, Larkin Hoffman Attorneys; Eric Dodds, Dean Vetter and Sabrina Tusa, AE2S; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, Lee Kaffar, Wade Whitworth and Kelsey Lee, HDR, Inc.; Ken Helvey and Lisa Kilde, SRF Consulting Group, Inc.; Lisa Brekkestran, Davon Hutchinson and Drew Nicklay, Ulteig Engineers, Inc.; Joel Paulsen, Diversion Authority Executive Director; Jodi Smith, Diversion Authority Director of Lands and Compliance; John Albrecht, Jacobs; Duane Breitling and Mary Scherling, Cass County Commissioners; Matt Stamness, Cass County Highway Department; Leo Richard and Kristie Sauvageau, Stanley Township property owners; and Tara Bultema, Pleasant Township property owner.

Agenda

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

Minutes

It was moved by Manager Lougheed, seconded by Manager Weston and unanimously carried to approve the minutes of the August 11, 2022, meeting.

Metro Flood Diversion Project – property owner negotiation / discussion

Tara Bultema discussed the relocation of their family from OIN 1131 to replacement housing regarding the Metro Flood Diversion Project. Ms. Bultema indicated after the previous meeting she met with Jodi Smith to discuss expenses and the requested compensation from the Water Resource District related to the relocation. Ms. Bultema stated in addition to the requests that are being recommended for approval today, they are requesting compensation of \$112,346 for 28 months of interim housing costs, \$56,000 in loss of foster care income, and realtor fees for their temporary and permanent housing. The Board tabled the matter for further discussion later in the meeting.

Metro Flood Diversion Project / Oxbow-Hickson-Bakke Ring Levee Project – project updates and general topics

Eric Dodds discussed the *Property Acquisition Status Report* regarding the Metro Flood Diversion Project. Current property acquisition activities include ongoing settlement negotiations, Phase 3 Flowage Easement appraisals, work on Phase 2 Flowage Easement offers and plans related to structure mitigation in the Upstream Mitigation Area.

Mr. Dodds discussed the Oxbow Ninth Addition plat regarding the Oxbow-Hickson-Bakke Ring Levee Project. The Water Resource District owns three lots in the proposed Oxbow Ninth Addition and will be a signatory on the plat. Mr. Dodds indicated the lots are not buildable and may be deed restricted in the future.

Metro Flood Diversion Project – appraisal / RHDP review / approval

John Albrecht reviewed various Phase III Flowage Easement and Southern Embankment – Reach 2B appraisals regarding the Metro Flood Diversion Project.

It was moved by Manager Gust and seconded by Manager Weston to approve the following appraisals, with an effective date of July 20, 2022, as an estimate of just compensation for acquisition of property regarding the Metro Flood Diversion Project:

- OIN 9347
- OIN 9404

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Gust to approve the following appraisals, as an estimate of just compensation for acquisition of property regarding the Metro Flood Diversion Project:

- OIN 1075, with an effective date of May 23, 2022
- OINs 1076 and 1077, with an effective date of July 29, 2022
- OIN 1078X, with an effective date of July 29, 2022
- OIN 1118, with an effective date of May 23, 2022
- OINs 5000, 5001 and 5054, with an effective date of May 23, 2022

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – acquisition review / approval

Mr. Dodds discussed the *Flowage Easement* needed on OIN 8919 regarding the Metro Flood Diversion Project. An offer to acquire the *Flowage Easement* on OIN 8919 based on the completed appraisal was sent to the property owner. Mr. Dodds said it has been recently determined the appraisal had an error regarding a portion of the property that will ultimately be protected by the Metro Flood Diversion Project. The Corps of Engineers is anticipating sending right of way drawings for the Southern Embankment – Reach 3 footprint this fall which includes OIN 8919. Mr. Dodds recommended rescinding the current offer to acquire a *Flowage Easement* on OIN 8919 and obtaining an appraisal for all property rights needed regarding OIN 8919 for the Metro Flood Diversion Project following receipt of the right of way drawings from the Corps of Engineers. A new offer

for all property rights needed regarding OIN 8919 for the Metro Flood Diversion Project would be sent to the property owner following the completion of the new appraisal.

It was moved by Manager Olson and seconded by Manager Lougheed to rescind the offer to acquire a Flowage Easement on OIN 8919 in the amount of \$332,600 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Chris McShane discussed ongoing formal negotiations regarding OINs 8674, 8675 and 9747 regarding the Metro Flood Diversion Project. The Board is currently in litigation with the property owners of OINs 8674, 8675 and 9747 in Civil File No. 09-2021-CV-03908. The parties have reached an agreement that would permit access to the property for construction of the Metro Flood Diversion Project while the parties continue negotiations regarding final compensation for the requisite property rights in OINs 8674, 8675, and 9747. In the meantime, the Water Resource District would pay the property owners the appraised amount of \$838,000; that amount will serve as a credit against the final just compensation awarded by a court or negotiated by the parties for the requisite property rights in OINs 8674, 8675, and 9747; and the parties will enter into a stipulation to dismiss the current eminent domain action, without prejudice, to allow the parties to continue negotiations. Under the agreement, if the parties cannot reach a mutually acceptable resolution regarding final just compensation, the Water Resource District would have legal authority to commence a new eminent domain action under Chapter 32-15 (standard eminent domain, as opposed to quick take eminent domain).

Manager Gust moved to approve and authorize the Chair and Secretary-Treasurer to execute an *Agreement for Entry and Construction* with the owners of OINs 8674, 8675, and 9747, and to authorize payment to the property owners at the appraised amount of \$838,000.00 in accordance with the terms of the *Agreement for Entry and Construction*. Manager Weston seconded the motion. Upon roll call vote, the motion carried unanimously.

Mr. McShane and Rob Stefonowicz reported on the status of formal negotiations regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – land agent reports

Ken Helvey, Oly Olafson, Wade Whitworth, Lisa Brekkestran and Scott Stenger reported on activities, meetings and discussions with various property owners regarding the Metro Flood Diversion Project.

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

A motion was made by Manager Weston and seconded by Manager Gust to approve the relocation and replacement housing payment for OIN 877, as outlined in the letter dated August 12, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Lougheed and seconded by Manager Olson to approve the Replacement Housing Differential Advance Payment for OIN 2014, as outlined in the letter dated August 15, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Weston and seconded by Manager Gust to approve the Revised Max Rent Supplement Payment and the relocation and replacement housing payment for OIN 5033, as outlined in the letter dated August 18, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. Olafson reviewed the expenses the former owners of OIN 1131 are requesting compensation for from the Water Resource District regarding their recent relocation to replacement housing regarding the Metro Flood Diversion Project. The requests have been reviewed by senior Diversion Authority staff and evaluated through the Uniform Relocation Act. Mr. Olafson discussed the recommended relocation and replacement housing compensation to the former owners of OIN 1131. A motion was made by Manager Gust and seconded by Manager Weston to approve the recommended relocation and replacement housing payment for OIN 1131, as outlined, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

Dean Vetter reported Rental Agreements where the previous property owner is renting the property are currently being revised to include a 90-day notice to vacate provision, instead of a 30-day notice to vacate, as requested by the Board at the previous meeting.

Mr. Vetter stated Work Package 50G regarding relocation and demolition of structures regarding the Metro Flood Diversion Project has been advertised and includes eight properties, with the possibility of the addition of more properties to the contract as structures are vacated.

Metro Flood Diversion Project – right of way conference

Mr. Dodds stated many land agents and consultants for the Metro Flood Diversion Project will be attending a Minnesota Department of Transportation right of way conference during the Board's September 22, 2022, scheduled meeting. Some Metro Flood Diversion Project topics will be moved to other regular meetings of the Water Resource District.

Sheldon Flood Protection Project No. 2019-01

Kurt Lysne stated the cost-share agreement with the State Water Commission regarding Sheldon Flood Protection Project No. 2019-01 is expiring soon and an extension will need to be requested. Sean Fredricks reported the right of way needed for the project was recently acquired and the assessment district has been formed. Mr. Lysne indicated the Water Resource District has an agreement with the Metro Flood Diversion Authority that requires the developer for the construction of the adjacent Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project to deliver a stockpile of

12,000 cubic yards of clay to Sheldon Flood Protection Project No. 2019-01 by September 1, 2023. This is a substantial cost savings for the project. Mr. Lysne also noted the North Dakota Department of Water Resources has yet to act on the *Application to Construct* that was submitted in 2020. Mr. Lysne also discussed possibly sending a letter to the petitioners of the Sheldon Flood Protection Project No. 2019-01 to update them on the status of the project.

It was moved by Manager Gust and seconded by Manager Weston to authorize the Secretary-Treasurer, with input from the Water Resource District Engineer, to request a two-year extension of the existing cost-share agreement with the State Water Commission regarding Sheldon Flood Protection Project No. 2019-01 and to send a letter to the project petitioners to update them on the matter. Upon roll call vote, the motion carried unanimously.

Maple River Dam – current conditions

Mr. Lysne reported the debris has been cleaned up and the roads are open at the Maple River Dam. Tenants of Water Resource District property at the Maple River Dam are currently haying the leased property.

Maple River Dam – proposal from ALO Environmental Associates to complete Year 16 (2022) archaeological monitoring

Brief discussion was held on the proposal from ALO Environmental Associates to complete Year 16 (2022) archaeological monitoring required at the Maple River Dam. Mr. Lysne stated Moore Engineering, Inc. will complete the annual surveying at the Maple River Dam prior to the archaeological monitoring site visit.

It was moved by Manager Weston and seconded by Manager Olson to accept the proposal from ALO Environmental Associates, LLC for Year 16 (2022) archaeological monitoring required at the Maple River Dam. Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program

Mr. Lysne updated the Board on the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. is preparing to remove Site 5 from the Plan and update the economic analysis for Site 2A as requested by the National Watershed Management Center. Mr. Lysne indicated he will procure a cost estimate from Barr Engineering Co. to update the geotechnical reports in the Plan and bring the estimate to a future meeting. Once the cost estimates to update the Plan are available, the Water Resource District can apply for additional cost-share to complete the Plan. When the Plan is completely updated, it will be sent to the NRCS and the National Watershed Management Center for review.

Mr. Lysne next reported on the RCPP – Rush River Watershed Plan. Moore Engineering, Inc. continues to have discussions with property owners and Burlington Northern Santa Fe Railway Company regarding the project. The Plan will be submitted to the Natural Resources Conservation Service after the final alignment has been determined.

Bills

It was moved by Manager Gust and seconded by Manager Lougheed to approve the payment of Checks #15117 through #15119 and 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.

Legislative update

Mr. Fredricks provided a brief update on legislative matters that impact water resource districts.

Chairman Jacobson retirement

Chairman Jacobson announced his plans to retire from the Southeast Cass Water Resource District and Cass County Joint Water Resource District Boards at the end of this year. The Board thanked him for his many years of service to North Dakota water resource districts.

Adjournment

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

APPROVED:

Dan Jacobson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer