

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
CASS COUNTY JOINT WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
SEPTEMBER 8, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on September 8, 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; Nina Stone, Accountant; Melissa Hinkemeyer, Administrative Assistant; Sean M. Fredricks, Chris McShane, Luke Andrud, Katie Schmidt and Andrew Cook, Ohnstad Twichell, P.C.; Lyndon Pease, Kurt Lysne and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Rob Stefonowicz, Larkin Hoffman Attorneys; Eric Dodds, Dean Vetter and Sabrina Tusa, AE2S; Scott Stenger, ProSource Technologies, LLC; Oly Olafson, Wade Whitworth and Kelsey Lee, HDR, Inc.; Lisa Kilde and Katie Laidley, 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, Cass County Commissioner; and Kristie Sauvageau, Stanley 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 Olson, seconded by Manager Weston and unanimously carried to approve the minutes of the August 25, 2022 (two sets), meetings.

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

Eric Dodds discussed a proposed administrative allowance to close remaining Flowage Easements with an appraised value less than \$26,000. The allowance is structured in four steps, based on the appraised values of the Flowage Easements. Mr. Dodds indicated he believes the administrative allowance will save on the time it takes Land Agents to secure the Flowage Easements.

It was moved by Manager Gust and seconded by Manager Olson to approve the Flowage Easement administrative allowance for Flowage Easements with an appraised value less than \$26,000, as set forth by the Program Management Consultant, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. Dodds updated the Board on the use of an Irrevocable License Agreement as an alternative option for the Environmental Monitoring Easement. Mr. Dodds noted the Corps of Engineers has approved the use of the Irrevocable License Agreement.

**Metro Flood Diversion Project – appraisal / RHDP review / approval**

John Albrecht reviewed various Phase III Flowage Easement appraisals regarding the Metro Flood Diversion Project.

It was moved by Manager Olson and seconded by Manager Gust to approve the appraisal for OIN 1344, with an effective date of July 20, 2022, as an estimate of just compensation for a Flowage Easement and structure mitigation regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Olson and seconded by Manager Weston to approve the appraisal for OIN 1959, with an effective date of August 12, 2022, as an estimate of just compensation for a Flowage Easement and structure mitigation regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Gust and seconded by Manager Weston to approve the maximum Replacement Housing Differential Payment for OIN 1959 in the amount of \$118,700 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Gust to approve the maximum rent supplement for OIN 1992 in the amount of \$66,990 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – Executive Session for purposes of discussing contract negotiation strategies, litigation strategies and attorney consultation regarding ongoing litigation and ongoing contract negotiations 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 8:26 a.m. for the purposes of discussing contract negotiation strategies, litigation strategies and attorney consultation regarding ongoing litigation and ongoing contract negotiations 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 matter:

1. Cass County Joint Water Resource District v. Allen L. Thunberg, Trustee under the Thunberg Living Trust, et al., Civil File No. 09-2020-CV-03900 (OIN 720)

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, Carol Harbeke Lewis, Melissa Hinkemeyer, Sean Fredricks, Luke Andrud, Chris McShane, Katie Schmidt, Andrew Cook, Joel Paulsen, Jodi Smith, Eric Dodds, Dean Vetter, Sabrina Tusa and Lisa Kilde.

The executive session adjourned at 8:52 a.m. and the regular meeting was reconvened and opened to the public.

**Metro Flood Diversion Project – acquisition review / approval**

Manager Lougheed moved to authorize acquisition of the entirety of OINs 720 and 9284 in fee simple for \$3,750,000, plus attorney fees and costs not to exceed \$256,000, with the acquisition of OIN 9284 subject to an existing farm lease that expires in 2023. Manager Gust seconded the motion. Upon roll call vote, the motion carried unanimously. The acquisition will not be subject to a right of first offer for the owners.

**Metro Flood Diversion Project – land agent reports**

Oly Olafson, Lisa Kilde, 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 Olson to approve the relocation and replacement housing payments for the following properties, as outlined in the letters dated September 1, 2022, regarding the Metro Flood Diversion Project:

- OIN 1131
- OIN 8385
- OIN 1107
- OIN 877

Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – property management**

Dean Vetter discussed a meeting with Pifer's Land Management regarding land rental rates for Water Resource District owned property regarding the Metro Flood Diversion Project. National land rental rates have increased 10% to 20%, so Pifer's Land Management is recommending a land rental rate of Water Resource District owned property at \$150 per acre for 2023. Mr. Vetter noted properties owned by the Water Resource District with special accommodations will be priced on an individual basis.

It was moved by Manager Olson and seconded by Manager Gust to approve the land rental rate for 2023 at \$150 per acre regarding Water Resource District owned property for 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. 5 – Amendment 2* with Compass Land Consultants, Inc. in the amount of \$500 regarding appraisal services for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

### **Maple River Dam – current conditions**

Brady Woodard reported Moore Engineering, Inc. is currently surveying the cultural sites at the Maple River Dam and will send the survey data to the project archaeologist, Dr. Amy Ollendorf, before her site visit this fall. A few cultural sites in the Maple River Dam backwater pool area have changed this year from the flooding and weather conditions. Moore Engineering, Inc. is working with Dr. Ollendorf to determine if any repairs are needed on the sites prior to the site visit.

### **Regional Conservation Partnership Program**

Kurt Lysne updated the Board on the RCPP – Upper Maple River Watershed Plan. A recalculation of the benefit-cost ratio has been completed and 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. Barr Engineering Co. is preparing a cost estimate to update the geotechnical reports in the Plan. Mr. Lysne indicated he will 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 Weston and seconded by Manager Gust to approve the payment of Checks #15120 through #15126 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**

Sean Fredricks provided a brief update on legislative matters 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 Weston and unanimously carried to adjourn the meeting.

APPROVED:

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Dan Jacobson  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer