

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
SEPTEMBER 22, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on September 22, 2022, at 8:00 a.m.

Present were Dan Jacobson, 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 and Katie Schmidt, Ohnstad Twichell, P.C.; Kurt Lysne and Josh Hassell, 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, HDR, Inc.; Lisa Kilde, SRF Consulting Group, Inc.; Joel Paulsen, Diversion Authority Executive Director; Jodi Smith, Diversion Authority Director of Lands and Compliance; John Albrecht, Jacobs; Duane Breitling, Cass County Commissioner; Leo Richard, Terry Sauvageau and Kristie Sauvageau, Stanley Township property owners. Keith Weston, Southeast Cass Water Resource District, was absent.

Agenda

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

Minutes

It was moved by Manager Olson, seconded by Manager Gust and unanimously carried to approve the minutes of the September 8, 2022, 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, review of Southern Embankment – Reach 2B appraisals and Phase 3 Flowage Easement appraisals, planning related to last written offers for Flowage Easements, planning of two Upstream Mitigation Area crop insurance and Flowage Easement public meetings that will be held this fall and presenting Irrevocable License Agreements to property owners as an alternative to Environmental Monitoring Easements.

Chris McShane and Rob Stefonowicz updated the Board on the status of various formal negotiations regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – appraisal / RHDP review / approval

It was moved by Manager Olson and seconded by Manager Gust to approve the appraisal for OINs 1080 and 1081, with an effective date of May 23, 2022, as an estimate of just compensation for a Flowage Easement and Temporary Construction Easement 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 Olson to close the meeting at 8:14 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 and parties:

1. Cass County Joint Water Resource District v. Steve J. Loberg, et al., Civ. No. 09-2020-CV-03883 (OINs 9199, 9738 and 9739)

Upon roll call vote, the following Managers voted in favor: Jacobson, Olson and Gust. Managers Loughheed and Weston were absent. The motion passed.

The executive session was attended by Managers Jacobson, Olson, Loughheed and Gust, Carol Harbeke Lewis, Melissa Hinkemeyer, Sean Fredricks, Luke Andrud, Chris McShane, Katie Schmidt, Rob Stefonowicz, Joel Paulsen, Jodi Smith, Eric Dodds, Dean Vetter, Sabrina Tusa, Duane Breitling, Scott Stenger, Dale Ahlsten and Lisa Kilde.

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

Metro Flood Diversion Project – acquisition review / approval

Mr. McShane updated the Board on the status of settlement negotiations regarding OINs 1087, 1093, 1095 and 5002 regarding the Metro Flood Diversion Project.

Dale Ahlsten discussed a counteroffer regarding a *Flowage Easement* for OIN 838 regarding the Metro Flood Diversion Project. It was moved by Manager Olson and seconded by Manager Gust to approve the *Flowage Easement* for OIN 838 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – land agent reports

Scott Stenger, Ms. Ahlsten, Oly Olafson and Lisa Kilde reported on activities, meetings and discussions with various property owners regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – property management

Dean Vetter discussed proposed changes to the *Rental Agreement* for OINs 1893 and 9462 regarding the Metro Flood Diversion Project. The changes include a 90-day notice to vacate instead of a 30-day notice and maintenance by the tenant of all areas of the property including weed control, in exchange for a reduced rental rate.

It was moved by Manager Lougheed and seconded by Manager Gust to approve the *Amendment to Rental Agreement* for OINs 1893 and 9462 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. Vetter discussed proposed changes to the *Rental Agreement* for OIN 8385 regarding the Metro Flood Diversion Project. The changes include a 90-day notice to vacate instead of a 30-day notice, and a time extension of the Agreement through January 31, 2023, to allow the tenant to complete the construction of their replacement home and business.

It was moved by Manager Gust and seconded by Manager Olson to approve the *Amendment to Rental Agreement* for OIN 8385 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – reimbursement request #128 from the Diversion Authority pursuant to terms and conditions of HB 1020

It was moved by Manager Lougheed and seconded by Manager Olson to approve and authorize the Secretary-Treasurer to sign reimbursement request #128 from the Diversion Authority, pursuant to the terms and conditions of HB 1020. Upon roll call vote, the motion carried unanimously.

Maple River Dam – cultural sites

Kurt Lysne reported Moore Engineering, Inc. is currently finishing surveys of 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.

Regional Conservation Partnership Program

Josh Hassell updated the Board on the RCPP – Rush River Watershed Plan. Mr. Hassell discussed comments received from property owners regarding the project design, including the levee alignment. Mr. Hassell presented various levee alignment options based on the feedback from the property owners. Mr. Hassell also indicated there is one property owner that wishes to be excluded from the project and they are aware their property would remain in the floodplain if the property were to be excluded from the project. Changes to the levee alignment may also require an updated environmental assessment and various drainage improvements. The Board discussed the levee alignment options in more detail. Mr. Hassell noted flowage easements may need to be acquired on property outside of the levee. Discussion was held on the cost estimate for the project including potential cost-share funding opportunities.

It was moved by Manager Gust and seconded by Manager Olson to authorize Moore Engineering, Inc. to proceed with the final design of the RCPP – Rush River Watershed Plan, as discussed. Upon roll call vote, the motion carried unanimously.

Mr. Hassell then discussed comments from property owners regarding potential improvements along the Rush River north of the City of Amenia, including improvements to the berm on the south side of the channel, a clean out of the channel, straightening a portion of the Rush River northeast of Amenia and other ideas. Mr. Hassell indicated these ideas were discussed during the planning process of the RCPP – Rush River Watershed Plan and were eliminated at that time for a variety of reasons.

Mr. Hassell next reported on the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. is preparing to remove Site 5 from the Plan as requested by the National Watershed Management Center. The cost estimate to update the Plan and re-submit it to the NRCS and the National Watershed Management Center is \$60,000. The Water Resource District can apply for additional cost-share to complete the Plan.

It was moved by Manager Olson and seconded by Manager Lougheed to authorize the Secretary-Treasurer to submit cost-share requests to the North Dakota Department of Water Resources, Red River Joint Water Resource District and Cass County Flood Sales Tax Committee on the additional cost to update the RCPP – Upper Maple River Watershed Plan. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Gust and seconded by Manager Lougheed to approve the payment of Check #15129 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Jacobson, Olson, Lougheed and Gust. Manager Weston was absent. The Chairman declared the motion passed.

Adjournment

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

APPROVED:

Dan Jacobson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer