

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
OCTOBER 13, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on October 13, 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 and Katie Schmidt, Ohnstad Twichell, P.C.; Lyndon Pease, Kurt Lysne, Jeff Ebsch 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.; Ken Helvey 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; Mary Scherling, Cass County Commissioner; Matt Stamness, Cass County Highway Department; John Albrecht, Jacobs; and Kristie Sauvageau, Stanley Township property owner.

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 Olson, seconded by Manager Lougheed and unanimously carried to approve the minutes of the September 22, 2022, meeting.

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

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

Metro Flood Diversion Project – appraisal / RHDP review / approval

John Albrecht discussed the appraisal for OIN 818 regarding the Metro Flood Diversion Project. It was moved by Manager Weston and seconded by Manager Lougheed to approve the appraisal for OIN 818, with an effective date of August 29, 2022, as an

estimate of just compensation for acquisition of property, 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 Lougheed to close the meeting at 8:10 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)
2. Cass County Joint Water Resource District v. BREI Estates, LLLP, Civ. No. 09-2022-CV-00567 (OIN 843)

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, Rob Stefonowicz, Joel Paulsen, Jodi Smith, Eric Dodds, Dean Vetter, Sabrina Tusa, Mary Scherling, Oly Olafson and Scott Stenger.

The executive session adjourned at 8:28 a.m. and the regular meeting was reconvened and opened to the public.

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. Steve J. Loberg, et al., Civ. No. 09-2020-CV-03883 (OINs 9199, 9738, and 9739).

Manager Olson moved to approve a settlement with Steve J. Loberg and the other defendants in Civ. No. 09-2020-CV-03883, as follows:

1. The Cass County Joint Water Resource District will convey OINs 9284 and 720Y (west) to the Lobergs;
2. The Lobergs will convey right of way easements and temporary construction easements to the Cass County Joint Water Resource District regarding OINs 9738, 9739, and 9199, as identified in the Complaint in this matter;
3. The Lobergs will return \$742,000 of the Board's deposit with the District Court to the Cass County Joint Water Resource District; and

4. The Cass County Joint Water Resource District will reimburse the Lobergs for reasonable attorneys' fees and costs incurred related to the acquisition of their property or this proposed settlement, not to exceed \$65,000.

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

The Board previously commenced an action to acquire certain property rights from BREI Estates, LLLP, in the following matter:

Cass County Joint Water Resource District v. BREI Estates, LLLP, et al.,
Civ. No. 09-2020-CV-03598 (OIN 843).

In January of 2022, the parties entered into a *Settlement Agreement* in which BREI agreed to convey fee simple ownership of the full 143 acres in the NE 1/4 of Section 11 in Pleasant Township to the Cass County Joint Water Resource District in exchange for payment of \$805,750, release to BREI of the \$31,728 filed by the Board in the original suit, and payment of BREI's attorneys' fees and costs. The parties further stipulated that the Board would later commence a separate eminent domain action against BREI solely for purposes of seeking judicial determination of the value of the fee simple ownership of the property conveyed to the Board, with the idea that the \$805,750 paid under the *Settlement Agreement* would be "credited towards the total just compensation" for the property, as determined in the second suit. Once BREI executed a Warranty Deed and the parties otherwise met the conditions of the *Settlement Agreement*, the Board then commenced the following suit:

Cass County Joint Water Resource District v. BREI Estates, LLLP, Civ. No.
09-2022-CV-00567 (OIN 843).

The parties have since negotiated a settlement to resolve the just compensation issue.

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. BREI Estates, LLLP, Civ. No.
09-2022-CV-00567 (OIN 843).

Manager Weston moved to approve a settlement with BREI Estates in Civ. No. 09-2022-CV-00567, as follows:

1. The Cass County Joint Water Resource District will pay BREI an additional \$794,250 as just compensation for fee simple ownership of the property identified in the Complaint in this matter; and
2. The Cass County Joint Water Resource District will reimburse BREI for reasonable attorneys' fees and costs incurred related to Civ. No. 09-2022-CV-00567, not to exceed \$40,000.

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

Ken Helvey discussed a counteroffer and proposed Rural Impact Mitigation Program (RIMP) loan for OIN 1899 regarding the Metro Flood Diversion Project. It was moved by Manager Loughheed and seconded by Manager Gust to approve the *Purchase Agreement* and RIMP loan proposal for OIN 1899 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – land agent reports

Mr. Helvey, Scott Stenger, Oly Olafson, Lisa Brekkestran and Wade Whitworth 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 Gust and seconded by Manager Weston to approve the relocation and replacement housing payment for OIN 1131, as outlined in the letter dated October 6, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

Eric Dodds stated the former property owner of OIN 1101 that is renting the shop building on OIN 1120 as additional storage space is requesting to continue renting the space for an additional year. Mr. Dodds discussed the proposed terms of the *Lease Agreement* regarding OIN 1120. It was moved by Manager Weston and seconded by Manager Loughheed to approve and authorize the Chairman to sign the *Lease Agreement* with Walter Rasmussen regarding OIN 1120. 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 the following regarding appraisal services for the Metro Flood Diversion Project:

- *Task Order No. 5 – Amendment 2* with Crown Appraisals, Inc. for a contract reduction of \$38,500
- *Task Order No. 1 – Amendment 6* with Patchin Messner Valuation Counselors in the amount of \$1,587.50
- *Task Order No. 2 – Amendment 4* with Tinjum Appraisal Company, Inc. for a contract reduction of \$5,400
- *Task Order No. 7 – Amendment 0* with Crown Appraisals, Inc. in the amount of \$280,000
- *Task Order No. 7 – Amendment 1* with Patchin Messner Valuation Counselors in the amount of \$2,500
- *Task Order No. 6 – Amendment 1* with Compass Land Consultants, Inc. in the amount of \$10,000

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Utility Easements for Cass County Electric Cooperative and Midcontinent Communications in the W 1/2 of Section 32 in Stanley Township

Jeff Ebsch discussed *Utility Easements* for Cass County Electric Cooperative and Midcontinent Communications to provide service to and pass through the Diversion Inlet Structure of the Metro Flood Diversion Project in the W 1/2 of Section 32 in Stanley Township.

It was moved by Manager Weston and seconded by Manager Gust to approve and authorize the Chairman to sign the following:

- *Utility Easement* for Cass County Electric in the W 1/2 of Section 32 in Stanley Township
- *Utility Easement* for Midcontinent Communications in the W 1/2 of Section 32 in Stanley Township

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Resolution of Necessity regarding acquisition of property in the Upstream Mitigation Area

Sean Fredricks reviewed the *Resolution of Necessity* previously approved at the February 10, 2022, meeting, regarding acquisition of property in the Upstream Mitigation Area of the Metro Flood Diversion Project.

Sheldon Flood Protection Project No. 2019-01

Kurt Lysne indicated the North Dakota Department of Water Resources (NDDWR) will not issue the construction permit for Sheldon Flood Protection Project No. 2019-01 until final plans and specifications and requested modeling are completed and right of way has been secured for the project. The project has been on hold in order for the Public-Private Partnership (P3) process for the Metro Flood Diversion Project to be completed as the project will receive material from excavation of the Diversion Channel. Mr. Lysne said now that the P3 developer is in place for the Metro Flood Diversion Project, the material for Sheldon Flood Protection Project No. 2019-01 is scheduled for delivery by September 1, 2023. Final plans and specifications and the requested modeling for Sheldon Flood Protection Project No. 2019-01 can now be completed. Mr. Fredricks noted right of way access has been secured for the project.

It was moved by Manager Olson and seconded by Manager Gust to authorize Moore Engineering, Inc. to prepare final plans and specifications regarding Sheldon Flood Protection Project No. 2019-01. Upon roll call vote, the motion carried unanimously.

Manager Olson reported the property owner where right of way was acquired for the project has inquired if the Water Resource District can provide better access to property on the north side of Drain #14 where it will be intercepted by the Metro Flood Diversion Project Diversion Channel. Lyndon Pease noted this request was discussed previously

with the P3 developer and engineering groups for the Metro Flood Diversion Project. Mr. Pease will revisit the topic with the applicable parties and reach out to the property owner to discuss the matter.

Mr. Lysne noted he would be available to answer any questions at the State Water Commission meeting later today regarding Sheldon Flood Protection Project No. 2019-01 under the Four-Year Progress Reports agenda item.

Maple River Dam – cultural sites

Brady Woodard reported the project archaeologist, Dr. Amy Ollendorf, recently completed the cultural sites visit at the Maple River Dam. There are currently two sites that are at a priority 1 status for repairs. Mr. Woodard will bring a synopsis of Dr. Ollendorf's findings to the next meeting for discussion on the maintenance of the cultural sites at the Maple River Dam.

Regional Conservation Partnership Program

Mr. Lysne reported on the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. is preparing cost-share requests to the NDDWR, Red River Joint Water Resource District and Cass County Flood Sales Tax Committee to update the Plan and re-submit it to the Natural Resources Conservation Service (NRCS) and the National Watershed Management Center.

Mr. Lysne next reported on the RCPP – Rush River Watershed Plan. The updated levee alignment was submitted to the NRCS for review and to determine if the environmental assessment for the project will need to be updated. Moore Engineering, Inc. also continues to work on the 90% complete design of the project.

Bills

It was moved by Manager Lougheed and seconded by Manager Gust to approve the payment of Check #15130 through #15133 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Jacobson, Olson, Lougheed, Weston and Gust. The motion carried unanimously.

North Dakota Water Coalition meeting

Chairman Jacobson briefly updated the Board on the recent North Dakota Water Coalition meeting.

Adjournment

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

APPROVED:

Dan Jacobson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer