

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
OCTOBER 27, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on October 27, 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, Katie Schmidt and Kat McNamara, 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 Katie Laidley, SRF Consulting Group, Inc.; Lisa Brekkestran, Ulteig Engineers, Inc.; Joel Paulsen, Diversion Authority Executive Director; Jodi Smith, Diversion Authority Director of Lands and Compliance; Madeline Gorghuber, Diversion Authority Lands Specialist; Mary Scherling and Duane Breitling, Cass County Commissioners; Matt Stamness, Cass County Highway Department; and John Albrecht, Jacobs.

Agenda

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

Minutes

It was moved by Manager Olson, seconded by Manager Lougheed and unanimously carried to approve the minutes of the October 13, 2022, meeting.

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 8:05 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. Estate of Janet L. Wanzek, et al., Civ. No. 09-2020-CV-03908 (OINs 8674, 8675, and 9747)
2. Steven D. Schultz, et al; and Southwind Asset Management LLC, aka Southwind Stable (OIN 8359)
3. Cass County Joint Water Resource District v. Patsy G. Gust Living Trust, et al., Civ. No. 09-2020-CV-03597 (OIN 952)

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, Chris McShane, Katie Schmidt, Joel Paulsen, Jodi Smith, Madeline Gorghuber, Eric Dodds, Dean Vetter, Sabrina Tusa, Mary Scherling, Duane Breitling and Ken Helvey.

Manager Olson left the meeting during this time.

The executive session adjourned at 9:28 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project – introductions – Lands Specialist

Jodi Smith introduced Madeline Gorghuber, recently hired as a Lands Specialist for the Metro Flood Diversion Authority. Ms. Gorghuber will be assisting with property management and Cass County Joint Water Resource District and Moorhead/Clay County Joint Powers Authority meetings regarding the Metro Flood Diversion Project.

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.

Eric Dodds reported public meetings are scheduled for November 2 and 3, 2022, to discuss the supplemental crop insurance programs and Flowage Easements in the Upstream Mitigation Area regarding the Metro Flood Diversion Project. Alex Offerdahl with Watts and Associates will be present at the meetings to discuss the draft insurance policies for the crop insurance programs in more detail and answer questions property owners may have regarding the programs. Property owners will also have the opportunity to ask questions regarding the Metro Flood Diversion Project.

Mr. Dodds discussed the Property Acquisition Status Report regarding the Metro Flood Diversion Project.

Jodi Smith played a video from the Metro Flood Diversion Authority communications team regarding construction updates for the Metro Flood Diversion Project. The updates included progress within the last two months on the Diversion Inlet Structure, Red River

Control Structure, Wild Rice River Control Structure, Southern Embankment Reaches 1 and 2A, and the I-29 Road Raise components of the Metro Flood Diversion Project. The Board thanked Ms. Smith for the construction updates and asked Ms. Smith to continue bringing construction update videos to future meetings.

Metro Flood Diversion Project – appraisal / RHDP review / approval

It was moved by Manager Lougheed and seconded by Manager Gust to approve the appraisal for OIN 8359, 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 – acquisition review / approval

Mr. Dodds reported negotiations are at a standstill with some property owners regarding the acquisition of Flowage Easements for the Metro Flood Diversion Project. Mr. Dodds proposed sending letters to groups of property owners where land agents have identified Flowage Easement negotiations are not proceeding. The letters would provide a last written offer for the property owner to sign an Agreement to Acquire a Flowage Easement or reach an agreement with their land agent by a certain date. If an agreement is not reached by that date, legal counsel would be authorized to file an eminent domain proceeding to acquire the Flowage Easement on the property. Negotiations would also continue throughout the process.

A motion was made by Manager Weston and seconded by Manager Lougheed to approve and authorize the following regarding acquisition of Flowage Easements for the Metro Flood Diversion Project:

- Authorize the Secretary-Treasurer to send final next steps letters and Agreements to Acquire a Flowage Easement to the owners of the following properties:
 - OINs 872, 873, 874, 875
 - OIN 1130
 - OINs 1896 and 2052
 - OINs 1947 and 1948
 - OIN 1964
 - OIN 1997
 - OIN 2051
 - OIN 2361
 - OINs 5014X and 5015X
 - OINs 5016X, 5017, 5019, 5027 and 5029
- Authorize the Secretary-Treasurer to include an Environmental Monitoring Easement with the letter for OINs 872, 873, 874 and 875
- Authorize legal counsel to file and proceed with eminent domain actions under Chapter 32-15 of the North Dakota Century Code if property owners do not sign and return agreements on or before November 28, 2022

Upon roll call vote, the motion carried unanimously.

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. Estate of Janet L. Wanzek, et al., Civ. No. 09-2020-CV-03908 (OIN 8674, 8675 and 9747).

Manager Gust moved to approve a settlement with the Estate of Janet L. Wanzek and other defendants in Civ. No. 09-2020-CV-03908, as follows:

- The defendants will convey fee simple ownership of OINs 8674, 8675 and 9747 to the Cass County Joint Water Resource District, as identified in the Complaint in this matter;
- The defendants will convey fee simple ownership of 8.32 acres in OIN 9747X, east of the Stormwater Diversion Channel, to the Cass County Joint Water Resource District;
- The Cass County Joint Water Resource District will convey 80 acres on OIN 9751X and 41.51 acres on OIN 9755Y to the defendants subject to an Easement in favor of Cass Rural Water District;
- The Cass County Joint Water Resource District will install and construct a crossing north of Drain #14C, that the defendants will maintain at their expense;
- The defendants will retain the payment previously made in conjunction with the *Agreement for Entry and Construction*. All funds the Cass County Joint Water Resource District deposited with the District Court in Civ. No. 09-2020-CV-03908 will be returned to Cass County Joint Water Resource District; and
- The Cass County Joint Water Resource District will reimburse the defendants for reasonable attorneys' fees and costs incurred related to Civ. No. 03908, not to exceed \$100,000.

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

Scott Stenger discussed the counteroffer from the property owners of OINs 1076 and 1077 regarding the Metro Flood Diversion Project. The property owners would like to retain the portion of the property south of the Southern Embankment, subject to a Flowage Easement on the property. Mr. Stenger stated there is no access to the remaining portion of the property that the property owners wish to retain, and the property owners indicated they understand this.

It was moved by Manager Lougheed and seconded by Manager Gust to approve the *Purchase Agreement* for OINs 1076 and 1077 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. Dodds discussed OIN 718 regarding the Metro Flood Diversion Project. The Diversion Channel of the Metro Flood Diversion Project will be constructed adjacent to OIN 718 and the property was not initially impacted by the project; however, it was determined additional right of way is needed on the south side of the property for future improvements to adjacent 32nd Avenue South. As part of the negotiations, the property owners requested a driveway Easement be granted across Southeast Cass Water Resource District property where their driveway is currently located to ensure long-term

access to their property. Southeast Cass Water Resource District approved an *Access Easement* for the driveway at their meeting on October 24, 2022. Mr. Dodds indicated the *Purchase Agreement* will reference the *Access Easement*.

A motion was made by Manager Gust and seconded by Manager Weston to approve the *Purchase Agreement* for OIN 718 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – land agent reports

Mr. Stenger, Ken Helvey, Lisa Brekkestran, Oly Olafson, Kelsey Lee 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

Mr. Dodds discussed a moving cost estimate for the former property owners of OIN 1127 regarding the Metro Flood Diversion Project. The former property owners requested the invoice be billed directly to the Water Resource District. The Board indicated approval for the moving cost invoice for the former property owners of OIN 1127 to be billed directly to the Water Resource District and authorized the Secretary-Treasurer to sign the Service Quote from 5 Star Moving, Inc.

Metro Flood Diversion Project – property management

Mr. Dodds discussed crop damage to OIN 1094 regarding the Metro Flood Diversion Project. The contractor for the Southern Embankment – Reach 2A component of the Metro Flood Diversion Project disturbed approximately 15 acres of crop on OIN 1094. The area that was damaged was surveyed and the Diversion Authority has been in contact with the tenant regarding the matter.

It was moved by Manager Gust and seconded by Manager Lougheed to approve a crop damage payment to the tenant of OIN 1094, as outlined in the letter dated October 6, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Oxbow-Hickson-Bakke Ring Levee Project – Oxbow Ninth Addition replat

Mr. Dodds discussed the Oxbow Ninth Addition replat regarding the Oxbow-Hickson-Bakke Ring Levee Project and stated the Water Resource District is the owners of Lots 7, 8 and 9 on the plat.

It was moved by Manager Weston and seconded by Manager Gust to approve and authorize the Chairman to sign the Oxbow Ninth Addition plat regarding the Oxbow-Hickson-Bakke Ring Levee Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – permanent obstruction of right of way and underlying section line crossings

Katie Schmidt discussed a Resolution regarding various road crossings in Harwood, Berlin and Raymond Townships. Ms. Schmidt noted the crossings are located within Phase II of the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project. Additional minutes relating to the matter are attached hereto.

Metro Flood Diversion Project – Clean Water State Revolving Fund loans

Kat McNamara stated the Metro Flood Diversion Project was approved for North Dakota Clean Water State Revolving Fund loans. The loans will help finance projects such as stormwater lift stations and other features within the City of Fargo for the Metro Flood Diversion Project. The Water Resource District and Metro Flood Diversion Authority previously entered into a *Master Indenture of Trust* in 2021 that authorizes the issue of the loan bonds. Ms. McNamara noted the *Joint Resolution – CWSRF Loan Resolution* with the Metro Flood Diversion Authority regarding the loans will be considered by the Metro Flood Diversion Authority at their meeting this afternoon.

It was moved by Manager Lougheed and seconded by Manager Weston to approve and authorize the Chair to sign the *Supplemental Indenture of Trust No. 2* and *Joint Resolution – CWSRF Loan Resolution* regarding the Clean Water State Revolving Fund loans for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Maple River Dam – cultural sites

Kurt Lysne reported they are coordinating with Dr. Amy Ollendorf regarding proposed repairs for the two cultural sites at the Maple River Dam that are at priority 1 status. Mr. Lysne noted the work may require a Section 408 Permit from the Corps of Engineers.

Regional Conservation Partnership Program

Mr. Lysne reported on the RCPP – Rush River Watershed Plan. Once the Natural Resources Conservation Service (NRCS) has provided feedback on the recently submitted updated levee alignment, the cost estimate for the project can be updated and public meetings will be held to discuss the project changes with local stakeholders.

Mr. Lysne next reported on the RCPP – Upper Maple River Watershed Plan. An updated cost-share request has been submitted to the North Dakota Department of Water Resources and numbers are being finalized for updated cost-share requests to submit to the Red River Joint Water Resource District and Cass County Flood Sales Tax Committee related to the costs to update the Plan and re-submit it to the NRCS and the National Watershed Management Center.

Red River Joint Water Resource District - Red River Basinwide Plan

Sean Fredricks briefly updated the Board on the Red River Joint Water Resource District Red River Basinwide Plan.

Bills

It was moved by Manager Gust and seconded by Manager Weston to approve the payment of Checks #15134 through #15157 and the wire transfers, including payment of the moving cost invoice for the former property owners of OIN 1127 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Jacobson, Loughheed, Weston and Gust. Manager Olson was absent. The Chairman declared the motion passed.

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