

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
NOVEMBER 17, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on November 17, 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, Josh Hassell 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 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, Davon Hutchinson and Drew Nicklay, 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, Cass County Commissioner; Matt Stamness, Cass County Highway Department; Jordan Weir, Vogel Law Firm; Leo Richard and Kristie Sauvageau, Stanley Township property owners; David and Patsy Gust and Dane Larsen, Raymond Township property owners.

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 Weston, seconded by Manager Lougheed and unanimously carried to approve the minutes of the October 27, 2022, meeting.

Metro Flood Diversion 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 discussed the Property Acquisition Status Report regarding the Metro Flood Diversion Project. Approximately 65% of property acquisitions are complete in North Dakota. Mr. Dodds reviewed the public meetings held recently to discuss the supplemental crop insurance programs and Flowage Easements in the Upstream Mitigation Area regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – appraisal / RHDP review / approval

Mr. Dodds discussed alternative mitigation options that are being identified for impacted structures in Mitigation Zones 2, 3 and 4 of the Upstream Mitigation Area regarding the Metro Flood Diversion Project. The alternative mitigation options identified will be shared with appraisers to be used in upcoming appraisals to help determine just compensation for property rights acquisition regarding the Metro Flood Diversion Project.

It was moved by Manager Olson and seconded by Manager Weston to approve the appraisal for OIN 2002, as an estimate of just compensation for acquisition of property 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 Lougheed and seconded by Manager Gust to close the meeting at 8:18 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. Patsy G. Gust Living Trust, et al., Civ. No. 09-2020-CV-03597 (OIN 952)
2. Cass County Joint Water Resource District v. Kelly Roseen, et al., Civ. No. 09-2022-CV-00195 (OIN 25)
3. Cass County Joint Water Resource District v. Edward O. Samuelson, et al., Civ. No. 09-2020-CV-03728 (OINs 1181 and 1182)

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, Luke Andrud, Katie Schmidt, Joel Paulsen, Jodi Smith, Madeline Gorghuber, Eric Dodds, Dean Vetter, Sabrina Tusa, Lyndon Pease, Mary Scherling, Ken Helvey, Scott Stenger and Oly Olafson.

Manager Gust left the meeting during this time.

The executive session adjourned at 9:00 a.m. and the regular meeting was reconvened and opened to the public.

Manager Gust re-joined the meeting at this time.

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. Patsy G. Gust Living Trust, et al., Civ. No. 09-2020-CV-03597 (OIN 952)

Manager Olson moved to approve a settlement with the Patsy G. Gust Living Trust and other defendants in Civ. No. 09-2020-CV-03597, as follows:

- The defendants will convey fee simple ownership of OIN 952 to the Cass County Joint Water Resource District, as identified in the Complaint in this matter;
- The Cass County Joint Water Resource District will convey 40.6 acres on OIN 922Y and 25 acres on OIN 923Y to the defendants;
- The defendants will retain the amount the Cass County Joint Water Resource District deposited with the District Court in Civ. No. 09-2020-CV-03597; and
- The Cass County Joint Water Resource District will reimburse the defendants for reasonable attorneys' fees and costs incurred related to Civ. No. 09-2020-CV-03597, not to exceed \$90,000.

Manager Weston seconded the motion. Upon roll call vote, the following Managers voted in favor: Jacobson, Olson, Lougheed and Weston. Manager Gust abstained from voting. The motion passed.

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. Kelly Roseen, et al, Civ. No. 09-2022-CV-00195 (OIN 25)

Manager Weston moved to approve a settlement with the Roseens and other defendants in Civ. No. 09-2022-CV-00195, as follows:

- The defendants will convey fee simple ownership of the entirety of OIN 25 to the Cass County Joint Water Resource District;
- The defendants will retain the \$241,950.00 the Cass County Joint Water Resource District deposited with the District Court in Civ. No. 09-2022-CV-00195; and
- The Cass County Joint Water Resource District will pay defendants an additional \$408,050.00.

Manager Lougheed seconded the motion. 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. Edward O. Samuelson, et al, Civ. No. 09-2020-CV-03728 (OINs 1181 and 1182).

Manager Olson moved to approve a settlement with the Samuelsons and other defendants in Civ. No. 09-2020-CV-03728, subject to the availability of OINs 213Y and 214Y, as follows:

- The defendants will convey fee simple ownership of OINs 1181 and 1182 to the Cass County Joint Water Resource District, as identified in the Complaint in this matter;
- The Cass County Joint Water Resource District will convey 66.86 acres on OIN 213Y, 38.09 acres on OIN 214Y, and 10.44 acres on OIN 1177Y to the defendants;
- The funds deposited with the District Court in Civ. No. 09-2020-CV-03728 will be returned to the Cass County Joint Water Resource District;
- The Cass County Joint Water Resource District will pay the defendants \$250,000.00 upon closing of the real estate transactions contemplated under the parties' settlement agreement; and
- The Cass County Joint Water Resource District will reimburse the defendants for reasonable attorneys' fees and costs incurred related to Civ. No. 09-2020-CV-03728, not to exceed \$180,000.

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

A motion was made by Manager Olson and seconded by Manager Gust 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 232, 836 and 5013
 - OIN 839
 - OIN 842
 - OIN 845
 - OINs 860 and 2005
 - OINs 1938, 1977 and 1978
 - OIN 1946
 - OINs 1949, 1956 and 5036
 - OINs 1950, 1963 and 1966
 - OINs 1974 and 1976
 - OIN 2006
 - OIN 2011
 - OIN 2021
 - OIN 2042
 - OIN 5032
- Authorize the Secretary-Treasurer to include an Environmental Monitoring Easement with the letter for OINs 845 and 860

- 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 January 2, 2023

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Lougheed to approve the *Purchase Agreement* for OIN 2010 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Lougheed and seconded by Manager Gust to approve the *Purchase Agreement* for OIN 1450 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Jordan Weir stated the property owners of OINs 1076 and 1077, for which a *Purchase Agreement* was approved at the last Water Resource District meeting, are requesting a longer Right of First Offer time period than five years, which is currently stated in the *Purchase Agreement*. Mr. Weir discussed his client's request in more detail and noted they are flexible regarding the terms of the extended Right of First Offer. The property owners wish to retain the opportunity to repurchase the property for as long as possible due to the generational aspect of the property. Mr. Dodds indicated the property is needed for the Southern Embankment – Reach 2B component of the Metro Flood Diversion Project and it is very unlikely the property would not be utilized as intended. The Board discussed an extended Right of First Offer in more detail and discussed methods to determine the repurchase price of the property should it become available in the future.

A motion was made by Manager Olson and seconded by Manager Weston to amend the *Purchase Agreement* for OINs 1076 and 1077 regarding the Metro Flood Diversion Project to include a Right of First Offer time period of the sooner of 10 years or the date of substantial completion of Southern Embankment – Reach 2B, with the repurchase price based on the price the Water Resource District paid for the property or the appraised value at the time of repurchase, whichever is higher. Upon roll call vote, the motion carried unanimously.

Oly Olafson and Jodi Smith discussed a proposed property exchange regarding OINs 818 and 816Y1 regarding the Metro Flood Diversion Project. Approximately 8.6 acres of OIN 818 is needed for Southern Embankment – Reach 2B and drainage improvements. The property owners of OIN 818 will trade the property rights for the Southern Embankment Reach 2B and the drainage improvements regarding OIN 818 to the Water Resource District in exchange for approximately 19.89 acres of OIN 816Y1. The property owners of OIN 818 will also pay the Water Resource District the value difference of the trade based on a survey of OIN 816Y1.

It was moved by Manager Gust and seconded by Manager Olson to approve the property exchange as presented regarding OINs 818 and 816Y1 regarding the Metro Flood Diversion Project, subject to availability of OIN 816Y1. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Olson and seconded by Manager Gust to approve the *Purchase Agreement* for OIN 8922 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – land agent reports

Mr. Olafson, Wade Whitworth, Kelsey Lee, Ken Helvey, Scott Stenger and Drew Nicklay 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

It was moved by Manager Olson and seconded by Manager Weston to approve the following relocation and replacement housing payments regarding the Metro Flood Diversion Project:

- OIN 1102, as outlined in the letter dated November 2, 2022
- OIN 1899, as outlined in the letter dated November 2, 2022
- OIN 1129, as outlined in the letter dated November 9, 2022

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

Mr. Vetter discussed a proposed *Exclusive Barn/Cattle Pen Lease Agreement* with Bob Schmidt to winter cattle at OIN 1899, following the closing on the purchase of OIN 1899 regarding the Metro Flood Diversion Project.

It was moved by Manager Loughheed and seconded by Manager Weston to approve and authorize the Chairman to sign the *Exclusive Barn/Cattle Pen Lease Agreement* for Bob Schmidt regarding OIN 1899, contingent on successful closing on the purchase of OIN 1899. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Reimbursement request #129 from the Diversion Authority pursuant to terms and conditions of HB 1020

It was moved by Manager Gust and seconded by Manager Olson to approve and authorize the Secretary-Treasurer to sign reimbursement request #129 from the Diversion Authority, pursuant to the terms and conditions of HB 1020. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – recommendation of one Diversion Authority Board member to the Planning Committee of the Metro Flood Diversion Authority

It was moved by Manager Gust and seconded by Manager Loughheed to recommend Manager Olson to the *Planning Committee of the Metro Flood Diversion Authority*. Upon roll call vote, the motion carried unanimously.

Maple River Dam – cultural sites

Brady Woodard reported Moore Engineering, Inc. is coordinating with Dr. Amy Ollendorf regarding proposed repairs for the two cultural sites at the Maple River Dam that are at priority 1 status.

Maple River Dam – signage

Mr. Woodard provided a brief update on signage at the Maple River Dam.

Regional Conservation Partnership Program

Josh Hassell reported on the RCPP – Upper Maple River Watershed Plan. An updated cost-share request related to the cost of updating the Plan and re-submitting it to the NRCS and the National Watershed Management Center has been submitted to the North Dakota Department of Water Resources (NDDWR); however, the request exceeds the threshold for approval by NDDWR staff and will have to be approved by the full State Water Commission at its February meeting.

It was moved by Manager Gust and seconded by Manager Weston to reduce the NDDWR cost-share request related to the costs to update the RCPP – Upper Maple River Watershed Plan \$2,000 to keep it under the \$75,000 threshold for approval consideration by NDDWR staff. Upon roll call vote, the motion carried unanimously.

Kurt Lysne noted an updated cost-share request will be submitted to the Red River Joint Water Resource District and Cass County Flood Sales Tax Committee as well. Both will review the respective cost-share requests at their December meetings.

Mr. Hassell next reported on the RCPP – Rush River Watershed Plan. Additional tasks need to be completed to accommodate the modifications to the final levee alignment. The estimated cost of the additional work is \$195,000. Cost-share requests will be submitted to the NDDWR and the Cass County Flood Sales Tax Committee for the additional work.

It was moved by Manager Lougheed and seconded by Manager Gust to authorize the Secretary-Treasurer to submit cost-share requests to the NDDWR and Cass County Flood Sales Tax Committee related to the additional costs to complete the design of the RCPP – Rush River Watershed Plan. Upon roll call vote, the motion carried unanimously.

Letter from the Cass County Commission regarding potential flood risk reduction projects for Cass County Flood Sales Tax funding consideration (due by November 28, 2022)

Mr. Lysne indicated he is not aware of any Cass County Joint Water Resource District projects to submit for Cass County Flood Sales Tax funding consideration at this time. Mr. Lysne said he will be present at the Cass County Flood Sales Tax Committee meeting to provide updates on Water Resource District projects that have been approved for funding through the Cass County Flood Sales Tax.

Bills

It was moved by Manager Weston and seconded by Manager Lougheed to approve the payment of Checks #15158 through #15194 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.

Adjournment

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

APPROVED:

Dan Jacobson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer