

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
CASS COUNTY JOINT WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
DECEMBER 15, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on December 15, 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, Luke Andrud and Katie Schmidt, 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 and Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, Wade Whitworth and Kelsey Lee, HDR, Inc.; Ken Helvey and Katie Laidley, SRF Consulting Group, Inc.; Lisa Brekkestran, Ulteig Engineers, Inc.; Jodi Smith, Diversion Authority Director of Lands and Compliance; Madeline Gorghuber, Diversion Authority Lands Specialist; Duane Breitling, Cass County Commissioner; John Albrecht, Jacobs; Nick Delaney, Rinke Noonan; Leo Richard, Rita Richards and Kristie Sauvageau, Stanley Township property owners; and Linda Jacobson, Fargo.

**Agenda**

It was moved by Manager Gust, seconded by Manager Lougheed 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 November 17, 2022 (two sets), meetings.

**Metro Flood Diversion Project– project updates and general topics**

Jodi Smith and Rob Stefonowicz 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. Right of way drawings have been received from the Corps of Engineers for Southern Embankment Reaches 3 and 5 and Flowage Easement negotiations are ongoing. Jodi Smith played a video from the Metro Flood Diversion Authority communications team regarding construction updates of various components of the Metro Flood Diversion Project.

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

John Albrecht reviewed appraisals for OINs 825 and 9243 regarding the Metro Flood Diversion Project.

It was moved by Manager Weston and seconded by Manager Olson to approve the following appraisals, as an estimate of just compensation for acquisition of property regarding the Metro Flood Diversion Project:

- OIN 825, with an effective date of July 20, 2022
- OIN 9243, with an effective date of October 22, 2022

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Olson and seconded by Manager Gust to approve the updated maximum Replacement Housing Differential Payment for OINs 2039 and 2041 in the amount of \$60,794 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

### **Metro Flood Diversion Project – property management**

Dean Vetter updated the Board on property management regarding the Metro Flood Diversion Project. The land management team is currently preparing for 2023 agricultural land leases and various structure removal projects are ongoing on Water Resource District owned property for the Metro Flood Diversion Project.

### **Metro Flood Diversion Project – contracting actions**

It was moved by Manager Gust and seconded by Manager Weston to approve and authorize the Chairman to sign the following regarding appraisal and property acquisition services for the Metro Flood Diversion Project:

- *Master Agreement for Professional Services* with SRF Consulting Group, Inc.
- *Master Agreement for Professional Services* with Compass Land Consultants, Inc.
- *Master Agreement for Professional Services* with Crown Appraisals, Inc.
- *Master Agreement for Professional Services* with Integra Realty Resources
- *Master Agreement for Professional Services* with Patchin Messner Valuation Counselors
- *Master Agreement for Professional Services* with Tinjum Appraisal Company, Inc.
- *Master Agreement for Professional Services* with GE Bock Real Estate, LLC

Upon roll call vote, the motion carried unanimously.

### **Metro Flood Diversion Project – relocation benefits and RHDP reimbursement review / approval**

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

- OIN 1992, as outlined in the letter dated December 2, 2022
- OIN 5033, as outlined in the letter dated December 1, 2022
- OIN 858, as outlined in the letter dated December 2, 2022

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 Gust and seconded by Manager Weston 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:
  - OIN 831
  - OIN 833
  - OINs 1335, 1338, 1351, 1355, 1360, 1363 and 1512
  - OINs 1352, 1354, 1361, 1368, 1515, 1578, 1580, 1616, 8789, 8473 and 8465
  - OIN 1369
  - OIN 1371
  - OINs 1412, 1485 and 1486
  - OINs 1471, 1475, 1479 and 1496
  - OIN 1478
  - OIN 1541
  - OINs 1584 and 1585
  - OINs 1594 and 2022
  - OINs 1596 and 1615
  - OINs 1895 and 1991
  - OIN 1898
  - OINs 1922 and 1927
  - OIN 1958
  - OINs 1996X and 2001
  - OIN 2025
  - OIN 5023
  - OIN 7110
  - OIN 8475
  - OIN 8476
  - OIN 8781
  - OIN 8782
  - OIN 8783
  - OIN 9112
  - OINs 9115 and 9116
  - OIN 9235

- OIN 9347
- OIN 9404
- OINs 9431 and 9438
- Authorize the Secretary-Treasurer to include an Environmental Monitoring Easement with the letter for OIN 9431
- 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 25, 2023

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 Weston and seconded by Manager Lougheed to close the meeting at 8:42 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. David Germanson, et al., Civ. No. 09-2020-CV-03608 (OINs 5004, 5009, 5010, 5011, 5012, 9054, 9055, and 9056);
2. Terry and Kristie Sauvageau (OINs 1112 and 1113); and
3. Cass County Joint Water Resource District v. Terry Sauvageau and Kristie Sauvageau, et al., Civil File No. 09-2022-CV-00618 (OIN 1098)

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, Katie Schmidt, Rob Stefonowicz, Jodi Smith, Madeline Gorhuber, Eric Dodds, Dean Vetter, Sabrina Tusa, Duane Breitling, Ken Helvey, Katie Laidley, Scott Stenger and Dale Ahlsten.

The executive session adjourned at 9:15 a.m. and the regular meeting was reconvened and opened to the public.

**Metro Flood Diversion Project – acquisition review / approval (continued)**

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. David Germanson, et al., Civ. No. 09-2020-CV-03608 (OINs 5004, 5009, 5010, 5011, 5012, 9054, 9055, and 9056)

Manager Olson moved to approve a settlement with David Germanson in Civ. No. 09-2020-CV-03608, as follows:

- David Germanson will convey the requisite ownership and easement interests to the Cass County Joint Water Resource District regarding OINs 1079 and 1105, as necessary to accommodate the project, including conveyance of interests and acres in fee simple ownership, Flowage Easement interests, and Temporary Construction Easement interests, as defined by survey.
- The Cass County Joint Water Resource District will convey to David Germanson fee simple ownership of certain acres within OINs 5004, 5009, 5012, 5055, 9054, 9055, and 9056, lying south and east of the southern embankment, as defined by survey, subject to the exception and reservation of Flowage Easement interests and Temporary Construction Easement interests in favor of the Cass County Joint Water Resource District, also as defined by survey.
- David Germanson will pay the Cass County Joint Water Resource District \$1,414,067 for the conveyance of fee simple ownership regarding OINs 5004, 5009, 5012, 5055, 9054, 9055, and 9056, as described above, upon closing of the real estate transactions contemplated under the parties' settlement agreement.
- The Cass County Joint Water Resource District will request and obtain the amount previously deposited with the District Court in Civ. No. 09-2020-CV-03608.
- David Germanson will retain the funds previously paid by the Cass County Joint Water Resource District.
- The Cass County Joint Water Resource District will pay David Germanson \$4,412,093 upon closing of the real estate transactions contemplated under the parties' settlement agreement.
- The Cass County Joint Water Resource District will reimburse David Germanson for reasonable attorneys' fees related to Civ. No. 09-2020-CV-03608, not to exceed \$125,000.

Manager Weston 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 matters:

Terry and Kristie Sauvageau (OINs 1112 and 1113); and  
Cass County Joint Water Resource District v. Terry Sauvageau and Kristie Sauvageau, et al., Civil File No. 09-2022-CV-00618 (OIN 1098).

Manager Lougheed moved to approve a settlement with Terry and Kristie Sauvageau in Civ. No. 09-2022-CV-00618, and regarding OINs 1098, 1112, and 1113, as follows:

- Terry and Kristie Sauvageau will convey fee simple ownership of 20.563 total acres in OINs 1098, 1112, and 1113, to the Cass County Joint Water Resource District, to be defined by survey.
- Terry and Kristie Sauvageau will convey Flowage Easement interests in the remainder of OINs 1098, 1112, and 1113 (those portions not conveyed in fee), to the Cass County Joint Water Resource District, as defined by survey.

- The Cass County Joint Water Resource District will pay Terry and Kristie Sauvageau \$2,998,026 as compensation for the fair market value of their home and home site, shed and residential site improvements, replacement housing differential payment (RHDP), and for right of way of 20.563 acres acquired in fee, and the requisite Flowage Easements for balance of OINs 1098, 1112, and 1113.
- The Cass County Joint Water Resource District will reimburse Terry and Kristie Sauvageau for reasonable relocation costs and expenses in accordance with the Uniform Relocation Act for eligible expenses, including costs related to the relocation of their dryer system and pad; installation of natural gas service for their dryer system and farm buildings; and installation of electrical service for their bins, conveyors, the dryer system, and farm buildings.
- The Cass County Joint Water Resource District will pay the defendants \$2,998,026 upon closing of the real estate transactions contemplated under the parties' settlement agreement.
- The Cass County Joint Water Resource District approves a *Rural Impact Mitigation Program* loan for the Sauvageaus in the amount of \$692,407.
- The Cass County Joint Water Resource District will reimburse the defendants for reasonable attorneys' fees, engineering fees, appraisal costs, and other costs incurred related to Civ. No. 09-2022-CV-00618, and regarding the Cass County Joint Water Resource District's acquisition of the requisite property interests in OINs 1098, 1112, and 1113, not to exceed \$165,000.

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

Eric Dodds presented Pre-Approval Application Forms for *Rural Impact Mitigation Program* loans for OIN 8359 and OIN 1939 regarding the Metro Flood Diversion Project.

A motion was made by Manager Gust and seconded by Manager Weston to approve the Pre-Approval Application Forms for *Rural Impact Mitigation Program* loans for the following properties regarding the Metro Flood Diversion Project:

- OIN 8359
- OIN 1939

Upon roll call vote, the motion carried unanimously.

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

- *Purchase Agreement* for OIN 1881
- *Purchase Agreement* for OIN 2006

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Gust to approve the *Purchase Agreement* for OINs 5016, 5017, 5019, 5027 and 5029 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Olson and seconded by Manager Lougheed to approve the following regarding the Metro Flood Diversion Project:

- *Purchase Agreement* for OINs 1994X and 847

- *Purchase Agreement* for OINs 1923 and 1925

Upon roll call vote, the motion carried unanimously.

Mr. Dodds discussed OIN 718 regarding the Metro Flood Diversion Project. A *Purchase Agreement* for additional right of way needed regarding OIN 718 for future improvements to adjacent 32nd Avenue South was approved at the October 27, 2022, meeting. As part of the negotiations, the Southeast Cass Water Resource District approved an *Access Easement* for the driveway to OIN 718 per the property owners' request. The property owners have indicated the *Access Easement* from Southeast Cass Water Resource District is too restrictive. Mr. Fredricks noted the *Access Easement* has language that protects Sheyenne-Maple Flood Control District #2. It was concluded the property is no longer needed for Sheyenne-Maple Flood Control District #2, as it was purchased for local projects related to Sheyenne-Maple Flood Control District #2. Southeast Cass Water Resource District approved a *Quit Claim Deed* for a 0.51 acre parcel in the SE 1/4 of Section 24 in Mapleton Township to Cass County Joint Water Resource District at its December 13, 2022, meeting. Cass County Joint Water Resource District can then grant a less-restrictive *Access Easement* to the property owners of OIN 718 for the driveway.

A motion was made by Manager Weston and seconded by Manager Gust to approve the following regarding the Metro Flood Diversion Project:

- An amended *Purchase Agreement* for OIN 718
- Acceptance of property adjacent to 32nd Avenue W from Southeast Cass Water Resource District via *Quit Claim Deed*
- Conveyance of an *Access Easement* to the property owners of OIN 718 for a driveway at 1604 32nd Avenue W

Upon roll call vote, the motion carried unanimously

It was moved by Manager Gust and seconded by Manager Weston to approve and authorize the Chairman to sign the *Pifer's Auction & Realty and Pifer's Land Management Disclosure Notice* regarding OIN 1078X regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed, Weston and Gust. Manager Olson was absent. The motion passed.

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

Dale Ahlsten, Ken Helvey, Oly Olafson, Wade Whitworth and Lisa Brekkestran reported on activities, meetings and discussions with various property owners regarding the Metro Flood Diversion Project.

### **Metro Flood Diversion Project – Notice of Intent to Dispose of Railroad Property - Burlington Northern Santa Fe Railway Company**

Katie Schmidt discussed a *Notice of Intent to Dispose of Railroad Property* regarding the purchase of railroad right of way from Burlington Northern Santa Fe Railway Company for the Metro Flood Diversion Project. It was moved by Manager Weston and seconded by Manager Lougheed to approve and authorize the Chairman to sign the *Notice of Intent to Dispose of Railroad Property* regarding the purchase of railroad right of way from

Burlington Northern Santa Fe Railway Company for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – Quit Claim Deed - Red River Valley and Western Railroad Company**

It was moved by Manager Gust and seconded by Manager Olson to approve the property closing and receipt of a *Quit Claim Deed* from Red River Valley and Western Railroad Company regarding the purchase of OINs 1236A and 1236B regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – Utility Easement – Cass County Electric Cooperative**

Mr. Dodds discussed a *Utility Easement* with Cass County Electric Cooperative to bring power through and out of the Diversion Inlet Structure for the Metro Flood Diversion Project. A motion was made by Manager Weston and seconded by Manager Loughheed to approve and authorize the Chairman to sign the *Utility Easement* with Cass County Electric Cooperative in the S 1/2 of Section 31 in Stanley Township regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Maple River Dam – 2022-2023 tree removal**

Brady Woodard reported on tree removal needs in the backwater pool of the Maple River Dam. A motion was made by Manager Weston and seconded by Manager Olson to authorize Moore Engineering, Inc. to hire a contractor to conduct tree removal operations in the Maple River Dam backwater pool area, not to exceed a cost of \$150,000. Upon roll call vote, the motion carried unanimously.

Mr. Woodard briefly updated the Board on agricultural property rented at the Maple River Dam.

**Regional Conservation Partnership Program**

Kurt Lysne reported on the RCPP – Upper Maple River Watershed Plan. Updated cost-share requests related to the cost of updating the Plan and re-submitting it to the Natural Resources Conservation Service and the National Watershed Management Center have been approved by the North Dakota Department of Water Resources (NDDWR), Red River Joint Water Resource District and Cass County Flood Sales Tax Committee.

It was moved by Manager Gust and seconded by Manager Olson to approve and authorize the Chairman to sign *Amendment III to the Agreement for Cost-Share Reimbursement* with the State Water Commission regarding the RCPP – Upper Maple River Watershed Plan. Upon roll call vote, the motion carried unanimously.

Mr. Lysne 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. A cost-share request will be submitted to the NDDWR for consideration at the February State Water Commission meeting. The



Cass County Flood Sales Tax Committee tabled the submitted cost-share request until the NDDWR cost-share request has been considered.

**Bills**

It was moved by Manager Lougheed and seconded by Manager Weston to approve the payment of Checks #15195 through #15213 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.

**2023 meeting dates**

The Board discussed its regular meeting dates for the year 2023. It was moved by Manager Gust and seconded by Manager Olson to adopt the following Resolution. Upon roll call vote, the motion carried unanimously.

RESOLUTION

BE IT RESOLVED, that the Cass County Joint Water Resource District does hereby set the second and fourth Thursdays of January through October at 8:00 a.m., the 16th of November at 9:00 a.m., and the 14th of December at 9:00 a.m., all in the Cass County Highway Department building, 1201 Main Avenue West, West Fargo, North Dakota, as its regular meeting dates, time and place for the year 2023.

BE IT FURTHER RESOLVED, that the Secretary be and she hereby is directed to forward a copy of said schedule of meetings to the Cass County Auditor and post said schedule at the Water Resource District's principal office and the location of the scheduled meetings, all in accordance with the provisions of Section 44-04.20 as amended.

APPROVED:

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Rodger Olson  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer

**Adjournment**

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

APPROVED:

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Rodger Olson  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer