

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
CASS COUNTY JOINT WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
JANUARY 12, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on January 12, 2023, at 8:00 a.m.

Present were Keith Weston and Rick Steen, 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, Chris McShane 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.; Katie Laidley, SRF Consulting Group, Inc.; Lisa Brekkestran and Drew Nicklay, Ulteig Engineers, Inc.; Jodi Smith, Diversion Authority Director of Lands and Compliance; Madeline Gorghuber, Diversion Authority Lands Specialist; Duane Breitling and Mary Scherling, Cass County Commissioners; Matt Stamness, Cass County Highway Department; John Albrecht, Jacobs; Nick Delaney, Rinke Noonan; Leo Richard and Kristie Sauvageau, Stanley Township property owners; Tony Roth, Mayor of Amenia, Cody Cashman, Scott McConnell and Riley Streit, City of Amenia; and Derrick Taylor, Amenia resident.

**Agenda**

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

**Minutes**

It was moved by Manager Lougheed, seconded by Manager Gust and unanimously carried to approve the minutes of the December 15, 2022 (two sets), meetings.

**Reorganization of the Board for 2023**

Manager Lougheed nominated Rodger Olson to serve in the capacity of Chairman of the Cass County Joint Water Resource District for calendar year 2023. Manager Gust seconded the nomination. Hearing no other nominations, a roll call vote was taken and all Managers voted in favor.

Manager Weston nominated Ken Lougheed to serve in the capacity of Vice Chairman of the Cass County Joint Water Resource District for calendar year 2023. Manager Steen seconded the nomination. Manager Lougheed nominated Keith Weston to serve in the capacity of Vice Chairman of the Cass County Joint Water Resource District for calendar year 2023. Manager Weston declined the nomination. Hearing no other nominations, a roll call vote was taken for the nomination of Ken Lougheed to serve in the capacity of Vice Chairman of the Cass County Joint Water Resource District for calendar year 2023 and all Managers voted in favor.

It was moved by Manager Steen and seconded by Manager Gust to appoint Carol Harbeke Lewis to serve in the capacity of Secretary-Treasurer of the Cass County Joint Water Resource District for calendar year 2023. Upon roll call vote, the motion carried unanimously.

Manager Steen nominated Rodger Olson to serve in the capacity of Diversion Authority Representative for calendar year 2023. Manager Weston nominated Rick Steen to serve in the capacity of Diversion Authority Alternate Representative for calendar year 2023. Hearing no other nominations, a roll call vote was taken and all Managers voted in favor.

Manager Lougheed nominated Rodger Olson to serve in the capacity of Diversion Authority Planning Committee Representative, and Rick Steen to serve in the capacity of Diversion Authority Planning Committee Alternate Representative for calendar year 2023. Hearing no other nominations, a roll call vote was taken and all Managers voted in favor.

Manager Weston nominated Ken Lougheed to serve in the capacity of Diversion Authority Land Management Committee Representative and Jacob Gust to serve in the capacity of Diversion Authority Land Management Committee Alternate Representative for calendar year 2023. Hearing no other nominations, a roll call vote was taken and all Managers voted in favor.

Manager Olson nominated Rick Steen to serve in the capacity of Diversion Authority Finance Committee Representative, and Jacob Gust to serve in the capacity of Diversion Authority Finance Committee Alternate Representative for calendar year 2023. Hearing no other nominations, a roll call vote was taken and all Managers voted in favor.

Manager Lougheed nominated Keith Weston to serve in the capacity of North Dakota Water Coalition Representative for calendar year 2023. Manager Weston nominated Jacob Gust to serve in the capacity of North Dakota Water Coalition Alternate Representative for calendar year 2023. Hearing no other nominations, a roll call vote was taken and all Managers voted in favor.

### **Review of agreement for legal services**

It was moved by Manager Weston and seconded by Manager Lougheed to reaffirm the agreement with Ohnstad Twichell, P.C. for legal services and approve the 2023 billing rates, as presented. Upon roll call vote, the motion carried unanimously.

**Review of agreement for engineering services**

It was moved by Manager Gust and seconded by Manager Lougheed to reaffirm the agreement with Moore Engineering, Inc. for engineering services and approve the 2023 billing rates, as presented. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Gust to reaffirm the agreement with Houston Engineering, Inc. for engineering services and approve the 2023 billing rates, as presented. Upon roll call vote, the motion carried unanimously.

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

Discussion was held on various appraisals regarding the Metro Flood Diversion Project.

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

- OINs 829, 840, 856, 857 and 1972, with an effective date of July 20, 2022
- OIN 1330, with an effective date of December 21, 2022
- OINs 1447 and 1517, with an effective date of December 21, 2022
- OIN 1550, with an effective date of July 20, 2022
- OIN 1551, with an effective date of July 20, 2022
- OIN 2023, with an effective date of July 20, 2022
- OIN 5059, with an effective date of December 21, 2022
- OINs 7205, 7206, 7207, 7208 and 7210, with an effective date of July 20, 2022
- OIN 7209, with an effective date of July 20, 2022
- OINs 9227 and 9228, with an effective date of July 20, 2022
- OINs 9236 and 9246, with an effective date of December 21, 2022
- OINs 9995 and 9998, with an effective date of July 20, 2022

Upon roll call vote, the motion carried unanimously.

Drew Nicklay discussed a quote to make American Disability Act (ADA) updates to the replacement home of the previous tenants of OIN 1992. It was moved by Manager Weston and seconded by Manager Steen to approve the quote from American Custom Decks for ADA updates to the replacement home of the previous tenants of OIN 1992, not to exceed \$19,700. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Lougheed and seconded by Manager Steen to approve the updated maximum Replacement Housing Differential Payment for OIN 9423 in the amount of \$236,365 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 Weston and seconded by Manager Steen to close the meeting at 8:52 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. Daniel Flaten, et al., Civil No. 09-2020-CV-02841 (OINs 9286 and 9743);
2. Cass County Joint Water Resource District v. Glenn Libbrecht, et al., Civil File No. 09-2020-CV-03935 (OINs 698, 945, 9741, 9756, 9757, 9758, 9759, and 9760);
3. Terry and Kristie Sauvageau (OINs 1112 and 1113); and
4. 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: Olson, Lougheed, Weston, Gust and Steen. The motion carried unanimously.

The executive session was attended by Managers Olson, Lougheed, Weston, Gust and Steen, Carol Harbeke Lewis, Melissa Hinkemeyer, Sean Fredricks, Luke Andrud, Chris McShane, Katie Schmidt, Rob Stefonowicz, Jodi Smith, Madeline Gorghuber, Eric Dodds, Dean Vetter, Sabrina Tusa, Duane Breitling, Mary Scherling and Oly Olafson.

The executive session adjourned at 10:40 a.m. and the regular meeting was reconvened and opened to the public.

**Metro Flood Diversion Project – acquisition review / approval**

Chairman Olson asked if any members of the Board wished to offer any motions regarding the following matter:

Cass County Joint Water Resource District v. Daniel Flaten, et al., Civil No. 09-2020-CV-02841 (OINs 9286 and 9743)

Manager Weston moved to approve a settlement with Daniel Flaten in 09-2020-CV-02841, and regarding OINs 9286 and 9743, as follows:

- Daniel Flaten will initially stipulate to entry of judgment that will include conveyance of the requisite permanent right of way easements over approximately 10.45 acres and temporary construction easements regarding OINs 9286 and 9743, as identified in the Complaint in this matter.
- Following entry of judgment, Daniel Flaten will convey fee simple ownership of the approximately 10.45 acres of permanent right of way and temporary construction easement acres in OINs 9286 and 9743 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 to Daniel Flaten fee simple ownership of approximately 132.82 acres in OINs 1175Y, that portion of 1177Y lying west of the Diversion channel, and 1197Y, as defined by survey, subject to any rights of first offer regarding OIN 1197Y.
- Daniel Flaten will pay the Cass County Joint Water Resource District \$250,000 upon closing of the real estate transactions contemplated under the parties' settlement.
- The Cass County Joint Water Resource District will reimburse Daniel Flaten for reasonable attorneys' fees, appraisal costs, and other costs incurred related to Civ. No. 09-2020-CV-02841, not to exceed \$80,000.

Manager Lougheed seconded the motion. 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 833 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Steen to approve the *Purchase Agreement* for OINs 5000, 5001 and 5054 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 1541 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Eric Dodds presented Pre-Approval Application Form for a *Rural Impact Mitigation Program* loan for OINs 818 and 1916 regarding the Metro Flood Diversion Project.

A motion was made by Manager Lougheed and seconded by Manager Steen to approve the Pre-Approval Application Form for a *Rural Impact Mitigation Program* loan for OINs 818 and 1916 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

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

It was moved by Manager Gust and seconded by Manager Weston to approve the relocation and replacement housing payment for OIN 1992, as outlined in the letter dated January 12, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – property management**

Madeline Gorghuber discussed a proposed *License Agreement* for property maintenance of OINs 1889 and 1990 regarding the Metro Flood Diversion Project. A motion was made by Manager Weston and seconded by Manager Lougheed to approve and authorize the

Chairman to sign the *License Agreement* with Ryan Weibye for property maintenance of OINs 1889 and 1990 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Ms. Gorghuber next discussed crop damage claims from the tenants of OIN 217N and OINs 213N, 1106N, 1099N, 1097NY, 1086X and 1086N for damages related to the Drain #27 Wetlands Restoration Project construction for the Metro Flood Diversion Project. The crop damage claims have been reviewed by Pifer's Land Management.

It was moved by Manager Steen and seconded by Manager Gust to approve the crop damage payment for the tenant of OIN 217N, in the amount of \$3,918.75 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Lougheed and seconded by Manager Weston to approve the crop damage payment for the tenant of OINs 213N, 1106N, 1099N, 1097NY, 1086X and 1086N, in the amount of \$37,748.25 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Manager Weston left the meeting at this time.

Ms. Gorghuber discussed various farmland leases regarding the Metro Flood Diversion Project. A motion was made by Manager Steen and seconded by Manager Lougheed to approve the 2023 *Cash Crop Lease Agreements* on the following properties regarding the Metro Flood Diversion Project:

- OINs 884Y and 885Y
- OINs 9162, 9163, 9164 and 9165
- OINs 571Y, 572, 573Y, 574Y, 2363Y
- OIN 524Y
- OINs 720X East, 724Y West, 726Y West, 728Y West, 729Y West and 730Y West
- OIN 1221Y

Upon roll call vote, the motion carried unanimously.

Ms. Gorghuber discussed the proposed termination of the *Rental Agreement* with the tenant of OIN 822 as the structures on the property will be included in a near term work package to remove or demolish structures regarding the Metro Flood Diversion Project.

Dean Vetter updated the Board on a recent structure fire at OIN 9163 regarding the Metro Flood Diversion Project. The tenant was out of the country when the fire occurred, and the matter is currently under investigation. Mr. Vetter also noted the insurance claims adjuster has visited the site. More information regarding the matter will be brought to a future meeting.

Manager Weston returned to the meeting at this time.

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

It was moved by Manager Lougheed and seconded by Manager Gust to approve and authorize the Chairman to sign *Task Order No. 6 - Amendment 1* with Crown Appraisals, Inc., in the amount of \$87,500 regarding appraisal services for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

### **Metro Flood Diversion Project – Southern Embankment Reaches 2B and 3 Resolutions of Necessity**

Manager Gust moved and Manager Weston seconded to approve the following regarding the acquisition of property for the Metro Flood Diversion Project:

- *Resolution of Necessity* for Reach 2B of the Southern Embankment
- *Resolution of Necessity* for Reach 3 of the Southern Embankment

Upon roll call vote, the motion carried unanimously.

### **Metro Flood Diversion Project – property management (continued)**

A motion was made by Manager Steen and seconded by Manager Lougheed to approve and authorize the Secretary-Treasurer to send a letter to the tenant of OIN 822 notifying them of the termination of the *Rental Agreement* effective April 28, 2023. Upon roll call vote, the motion carried unanimously.

Manager Gust left the meeting at this time.

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

Kurt Lysne reported the contractor has started the tree removal project in the backwater pool of the Maple River Dam.

### **Maple River Dam – cultural sites**

Brady Woodard reported on three cultural sites that are recommended for repair, two of the sites are categorized as priority level one sites that will need to be repaired. Mr. Woodard discussed the proposed repair method which was determined to be satisfactory by the project archaeologist, Dr. Amy Ollendorf.

It was moved by Manager Lougheed and seconded by Manager Steen to authorize Moore Engineering, Inc. to obtain quotes from contractors to repair cultural site 1 at the Maple River Dam and authorize the contractor to proceed with repairing the site if the quote received does not exceed \$40,000. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston and Steen. Manager Gust was absent. The Chairman declared the motion passed.

It was moved by Manager Lougheed and seconded by Manager Steen to amend the previous motion to authorize Moore Engineering, Inc. to obtain quotes from contractors to repair three cultural sites at the Maple River Dam and authorize the contractor to proceed with repairing the sites if the quotes received for the repairs of the three cultural

sites do not exceed a total of \$70,000. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston and Steen. Manager Gust was absent. The Chairman declared the motion passed.

### **Regional Conservation Partnership Program**

Mr. Lysne reported on the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. is updating the Plan and will re-submit it to the Natural Resources Conservation Service and the National Watershed Management Center when the updates are complete.

Discussion was held on the RCPP – Rush River Watershed Plan. Derrick Taylor discussed concerns regarding the project in relation to his property in Amenia. The Board directed Moore Engineering, Inc. to meet with Mr. Taylor to discuss the project and his concerns. Moore Engineering, Inc. will bring back more information on the matter to a future meeting.

Mr. Lysne reported Moore Engineering, Inc. has been in contact recently with City of Amenia officials regarding the draft operation and maintenance manual for the project. The Water Resource District will need to discuss details of operation and maintenance of the project with the City of Amenia soon.

### **Administrative items**

It was moved by Manager Lougheed and seconded by Manager Weston to approve the staff salary increases, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston and Steen. Manager Gust was absent. The Chairman declared the motion passed.

### **Bills**

It was moved by Manager Weston and seconded by Manager Lougheed to approve the payment of Checks #15214 through #15225 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston and Steen. Manager Gust was absent. The Chairman declared the motion passed.

### **Legislative updates**

Sean Fredricks updated the Board on legislative items regarding water resource districts.



**Adjournment**

There being no further business for the Board to consider, it was moved by Manager Steen, seconded by Manager Loughheed 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