

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
CASS COUNTY JOINT WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
APRIL 13, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on April 13, 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, Chris McShane, Luke Andrud and Katie Schmidt, Ohnstad Twichell, P.C.; Kurt Lysne, Josh Hassell and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Eric Dodds, Dean Vetter and Sabrina Tusa, AE2S; Ken Helvey and Katie Laidley, SRF Consulting Group, Inc.; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, Lee Kaffar, and Wade Whitworth, HDR, Inc.; Lisa Brekkestran and Davon Hutchinson, Ulteig Engineers, Inc.; Madeline Gorghuber, Diversion Authority Lands Specialist; Duane Breitling and Mary Scherling, Cass County Commissioners; Matt Stamness, Cass County Highway Department; Leo Richard, Stanley Township property owner; and William A Hejl, Amenia Township property owner.

**Agenda**

It was moved by Manager Gust, seconded by Manager Weston 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 March 23, 2023 (two sets), meetings.

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

Eric Dodds reported negotiations are at a standstill with property owners regarding the acquisition of Flowage Easements for the Metro Flood Diversion Project. Mr. Dodds indicated eminent domain proceedings have been filed for other property rights needed for the Metro Flood Diversion Project from the same property owners and the property owners have requested the Flowage Easements be included in the eminent domain proceedings. Mr. Dodds proposed authorizing legal counsel to file eminent domain proceedings to acquire the Flowage Easements on the properties. Negotiations would also continue throughout the process.

A motion was made by Manager Gust and seconded by Manager Weston to authorize legal counsel to file and proceed with eminent domain actions under Chapter 32-15 of the North Dakota Century Code regarding acquisition of Flowage Easements on the following properties for the Metro Flood Diversion Project:

- OINs 821, 828, 829, 840, 841, 849, 856, 857, 1904, 1918, 1929, 1930, 1932, 1940, 1941, 1944, 1951, 1970, 1971, 1972, 1973, 1998 and 2000
- OINs 8517 and 8518
- OINs 809, 830 and 1883
- OINs 846 and 9438

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 Weston 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 parties and matters:

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. Mary Ann Tintes (OINs 9751 and 9751X)

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, Chris McShane, Luke Andrud, Katie Schmidt, Madeline Gorghuber, Eric Dodds, Dean Vetter, Sabrina Tusa, Duane Breitling, Mary Scherling and Ken Helvey.

The executive session adjourned at 8:34 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 Mary Ann Tintes and OINs 9751 and 9751X.

Manager Lougheed moved to approve a payment to Mary Ann Tintes regarding OIN 9751X, as follows:

- Ms. Tintes will execute a *Quit Claim Deed* in favor of the Cass County Joint Water Resource District regarding OIN 9751X, to release any right of first offer or any other rights she might have in OIN 9751X; and

- The Cass County Joint Water Resource District will pay Mary Ann Tintes \$200,000 as consideration for her release of any remaining rights in OIN 9751X.

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

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

Manager Weston moved to amend the Cass County Joint Water Resource District's motion on October 27, 2022, regarding a settlement with the Estate of Janet L. Wanzek and other defendants in Civ. No. 09-2020-CV-03908, to reduce the amount of attorneys' fees payable from \$100,000 to \$50,000, 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 Users 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 \$50,000.

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

It was moved by Manager Gust and seconded by Manager Lougheed to approve the *Purchase Agreement* for OIN 7209 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 *Purchase Agreement* for OIN 1551 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

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

Madeline Gorghuber discussed various farmland leases regarding the Metro Flood Diversion Project. A motion was made by Manager Gust and seconded by Manager Weston to approve the 2023 *Cash Crop Lease Agreements*, as presented, on the following properties regarding the Metro Flood Diversion Project:

- OIN 9751X
- OINs 227Y and 228Y

Upon roll call vote, the motion carried unanimously.

Ms. Gorghuber discussed the proposed termination of Rental Agreements with various property owners as the structures on the properties will be included in a work package this fall to remove or demolish the structures regarding the Metro Flood Diversion Project.

It was moved by Manager Lougheed and seconded by Manager Gust to approve and authorize the Secretary-Treasurer to send letters to the tenants of the following properties notifying them of the termination of the associated *Rental Agreement* effective August 31, 2023:

- OIN 839
- OIN 8385
- OIN 9163
- OIN 9405

Upon roll call vote, the motion carried unanimously.

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

Sean Fredricks discussed a Resolution regarding road crossings in Mapleton Township located at the intersections of Cass County Highways 8 and 40 and the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project. Additional minutes relating to the matter are attached hereto.

### **Regional Conservation Partnership Program (RCPP)**

Josh Hassell updated the Board on the RCPP – Upper Maple River Watershed Plan. The Natural Resources Conservation Service (NRCS) has scheduled an agency scoping meeting regarding the Plan. Moore Engineering, Inc. has made minor changes to the Plan from feedback received from the NRCS.

Kurt Lysne next updated the Board on the RCPP – Rush River Watershed Plan. Moore Engineering, Inc. met with SRF Consulting Group, Inc. to provide background and right of way information related to the Plan. Ken Helvey discussed the proposal from SRF Consulting Group, Inc. to provide perspective on the final alignment of the levee for the project, including impartial economic and other perspectives and acting as a liaison between property owners, the City of Amenia and the Water Resource District.

A motion was made by Manager Weston and seconded by Manager Gust to approve the proposal from SRF Consulting Group, Inc. regarding the RCPP – Rush River Watershed Plan, contingent upon legal review. Upon roll call vote, the motion carried unanimously.

Mr. Lysne reported the State Water Commission and the Cass County Flood Sales Tax Committee both approved the respective cost-share requests for the remaining RCPP – Rush River Watershed Plan design. The NRCS funds have been expended; however, they will continue to review and provide feedback on the project design.

Mr. Hassell reported the 90% complete design has been submitted to the NRCS. The NRCS will allow changes to the alignment yet, based on final negotiation and discussion.

### **Maple River Dam – spring operations**

Brady Woodard reported snow removal efforts are occurring at the Maple River Dam to gain access to the facility and for equipment parking areas in the event equipment is needed related to the spring melt. Moore Engineering, Inc. continues to monitor the facility in accordance with the Operation and Maintenance plan.

### **2023 flood outlook**

Discussion was held on the 2023 spring melt and flood outlook. Mr. Lysne reported there is significant overland flooding in Cass County at this time. Mr. Lysne also reported there is storage currently available at Baldhill Dam. Moore Engineering, Inc. will continue to monitor the 2023 spring melt and flood outlook and will provide information to the Board as necessary.

### **North Dakota Insurance Reserve Fund – proxy for annual meeting**

A motion was made by Manager Weston, seconded by Manager Loughheed and unanimously carried to authorize the Secretary-Treasurer to sign and return the North Dakota Insurance Reserve Fund proxy for Cass County Joint Water Resource District.

### **Bills**

It was moved by Manager Steen and seconded by Manager Gust to approve the payment of Check # 15255 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Loughheed, Weston, Gust and Steen. The Chairman declared the motion passed.

### **Sheldon Flood Protection Project No. 2019-01**

Discussion was held on the status of Sheldon Flood Protection Project No. 2019-01. Mr. Lysne reported the right of way for the project has been acquired and the North Dakota Department of Water Resources (NDDWR) is reviewing the *Application to Construct* for the project. The project can be bid once the construction permit is received from the NDDWR. Mr. Lysne said the Public-Private Partnership developer of the Metro Flood Diversion Project is obligated to provide 12,500 cubic yards of clay by September for the project, so project construction could potentially begin this fall. Mr. Lysne noted property

owners were updated last fall on the status of the project and will be updated again if anything changes. Moore Engineering, Inc. is also in discussions with Raymond Township officials regarding the raise of 166th Avenue SE that is currently designed to be the levee on the west side of the project. The Board briefly discussed when to bid the project.

**RCPP continued**

Manager Weston reported the NRCS may host a tour this fall in Canada of biomass harvesting that is implemented in several RCPP plans in the Red River Basin in North Dakota.

**Adjournment**

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

APPROVED:

\_\_\_\_\_  
Rodger Olson  
Chairman

ATTEST:

\_\_\_\_\_  
Carol Harbeke Lewis  
Secretary-Treasurer