

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
CASS COUNTY JOINT WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
APRIL 27, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on April 27, 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.; Rob Stefonowicz, Larkin Hoffman; Kurt Lysne, Lyndon Pease and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Eric Dodds, Dean Vetter and Sabrina Tusa, AE2S; Katie Laidley, SRF Consulting Group, Inc.; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, Wade Whitworth and Lee Kaffar, HDR, Inc.; Lisa Brekkestran, Davon Hutchinson and Drew Nicklay, Ulteig Engineers, Inc.; Joel Paulsen, Diversion Authority Executive Director; Martin Nicholson, Diversion Authority Deputy Executive Director; Jodi Smith, Diversion Authority Director of Lands and Compliance; Jessica Warren, Diversion Authority Compliance Specialist; Madeline Gorghuber, Diversion Authority Lands Specialist; Duane Breitling and Mary Scherling, Cass County Commissioners; Matt Stamness, Cass County Highway Department; John Albrecht and Katrina Olson, Jacobs; Nick Delaney, Rinke Noonan; Adam Fischer, Pleasant Township property owner; Kristie Sauvageau, Leo Richard, Larry Richard and Alex Richard, Stanley Township property owners.

**Agenda**

It was moved by Manager Gust, seconded by Manager Steen 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 April 13, 2023, meetings.

**Metro Flood Diversion Project – property owner negotiation / discussion**

Kristie Sauvageau inquired if the counteroffer being presented to the Board during the meeting is being presented without any changes. Jodi Smith confirmed the counteroffer would be presented to the Board as previously discussed with the Sauvageaus.

**Metro Flood Diversion Project / Oxbow-Hickson-Bakke Ring Levee Project – project updates and general topics**

Ms. Smith introduced Jessica Warren as the new Compliance Specialist for the Diversion Authority.

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 and Oxbow-Hickson-Bakke Ring Levee Project. Mr. Dodds reported the final right of way request for the Oxbow-Hickson-Bakke Ring Levee Project was received from the Corps of Engineers. The Corps of Engineers hopes to start construction on the remaining portion of the project next year. Mr. Dodds said the Corps of Engineers also approved the redesignation request of properties from Zone 1 to Zone 2 of the Upstream Mitigation Area.

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

It was moved by Manager Gust and seconded by Manager Weston to approve the appraisal for OINs 1543, 1600 and 7221, with an effective date of January 31, 2023, as an estimate of just compensation for acquisition of property 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 appraisal for OINs 1947 and 1948, with an effective date of September 20, 2022, 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 – acquisition review / approval**

It was moved by Manager Weston and seconded by Manager Gust to approve the *Purchase Agreement* for OINs 7205, 7206 and 7210 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston and Gust. Manager Steen voted against the motion. The Chairman declared the motion passed.

It was moved by Manager Weston and seconded by Manager Gust to approve the *Purchase Agreement* for OIN 7208 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Manager voted in favor: Lougheed. Managers Olson, Weston, Gust and Steen voted against the motion. The motion failed.

It was moved by Manager Steen and seconded by Manager Lougheed to approve the *Purchase Agreement* for OINs 9237 and 1587 regarding the Metro Flood Diversion Project. 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 OIN 2043 regarding the Metro Flood Diversion Project. 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 824 and 825 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed and Weston. Manager Gust and Steen voted against the motion. The Chairman declared the motion passed.

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 a letter to the property owners, which would provide a last written offer for the property owners 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 Steen 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 letter and Agreements to Acquire a Flowage Easement to the owners of the following properties:
  - OINs 7205, 7206 and 7210
  - OIN 7208
- 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 May 29, 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 Gust and seconded by Manager Lougheed to close the meeting at 9:03 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. Lawrence G. Richard and Susan E. Richard, Trustees under the Lawrence & Susan Richard Living Trust, dated May 20, 2015, et al. (OINs 818, 1915, 1916, 1917, 1943, and 1945);
2. Cass County Joint Water Resource District v. Barbara J. Coster, as Trustee of the Charles F. Coster Real Estate Trust under the Declaration of Trust dated September 26, 2009, Civ. File No. 09-2021-CV-00156 (OINs 9736 and 9737);
3. Terry and Kristie Sauvageau (OINs 1112 and 1113);

4. Cass County Joint Water Resource District v. Terry Sauvageau and Kristie Sauvageau, et al., Civil File No. 09-2022-CV-00618 (OIN 1098);
5. Rae Dell and Heidi Braaten (OIN 1882); and
6. Kenneth D. and Lois M. Bergh (OINs 1550 and 1573)

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, Rob Stefonowicz, Joel Paulsen, Martin Nicholson, Jodi Smith, Jessica Warren, Madeline Gorghuber, Eric Dodds, Dean Vetter, Duane Breitling, Mary Scherling, Katie Laidley, Dale Ahlsten and Oly Olafson.

The executive session adjourned at 10:45 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:

Lawrence G. Richard and Susan E. Richard, Trustees under the Lawrence & Susan Richard Living Trust, dated May 20, 2015, et al. (OINs 818, 1915, 1916, 1917, 1943, and 1945)

Manager Lougheed moved to approve a settlement with the Richards regarding OINs 818, 1915, 1916, 1917, 1943, and 1945, as follows:

- The Richards will convey fee simple ownership of 8.63 acres of OIN 818 to the Cass County Joint Water Resource District (more specifically described as 818N1 and 818N2);
- The Richards will convey Flowage Easement interests in OINs 818X, 1915, 1916, 1917, 1943, and 1945 to the Cass County Joint Water Resource District;
- The Cass County Joint Water Resource District will convey to the Richards fee simple ownership of OINs 816Y1, 820, 1124, 1131, 1128, 1127, 1126, 1129, 1116, 844, 26, and the north 200 feet of OIN 817Y1 (approximately 4.13 acres), all as defined by survey, and all 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.
- The Richards will accept fee ownership of all parcels subject to existing farmland leases; the Richards will become the landlords/lessors under those leases and will be entitled to all rental payments due or owed under each lease.
- Contingent upon the Cass County Joint Water Resource District's acquisition in fee of OIN 1130, OIN 8386, and/or OIN 8359, then in the event the District elects to sell or convey any portion of OIN 1130, OIN 8386, or OIN 8359, each proposed sale or conveyance will be subject to a right of first offer in favor of the Richards at a price of \$3,000 per acre regarding OINs 1130 and 8386 and at a price of \$4,000

per acre regarding OIN 8359, until May 1, 2026, when the Richards' rights of first offer will expire.

- The Richards will lease OIN 1916, including homestead improvements and structures, and 6.19 acres of OIN 818, including improvements and structures, from the Cass County Joint Water Resource District for \$500 per month until 30 days' written termination notice from the Richards or until December 30, 2024, whichever occurs sooner.
- The Cass County Joint Water Resource District's demolition on OINs 818X and 820 will require the District's contractor to leave existing gravel in place to temporarily accommodate the Richards' farm equipment.
- The parties will cooperate in good faith to develop a mutually acceptable drainage plan regarding OIN 818X that will not interfere with the District's use of the property.
- The Cass County Joint Water Resource District will reimburse the Richards for reasonable relocation costs and expenses in accordance with the Uniform Relocation Act for eligible expenses, including costs related to utility relocations to accommodate the Richards' use of OIN 816Y1, not to exceed \$50,000, as final resolution of any and all of the Richards' URA and Replacement Housing Differential Payment claims.
- The Cass County Joint Water Resource District will pay the Richards \$1,146,176 upon closing of the real estate transactions contemplated under the parties' settlement agreement as just compensation;
- The Cass County Joint Water Resource District will pay the Richards \$1,192,326 as just compensation for the contributory value of the non-residential improvements on their existing property.
- The Cass County Joint Water Resource District approves a RIMP loan for the Richards in the amount of \$1,025,140.
- The Cass County Joint Water Resource District will reimburse the Richards for reasonable attorneys' fees, engineering fees, appraisal costs, and other costs incurred related to the real estate transactions contemplated under the parties' settlement, not to exceed \$105,000.

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

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. Barbara J. Coster, as Trustee of the Charles F. Coster Real Estate Trust under the Declaration of Trust dated September 26, 2009, Civ. File No. 09-2021-CV-00156 (OINs 9736 and 9737)

Manager Lougheed moved to amend the Cass County Joint Water Resource District's motion on June 9, 2022, regarding a settlement with the Coster Trust, as follows:

- The Coster Trust will convey fee simple title regarding the property identified as the "Permanent Property" in the Complaint in this matter to the Cass County Joint Water Resource District;

- In exchange, the Cass County Joint Water Resource District will convey to the Coster Trust the portion of the following properties lying east of the Diversion Channel: 720X1, 724Y, 728Y, 729Y, 730Y, 726Y, and 1166Y;
- The Cass County Joint Water Resource District will pay the Costers \$69,920 upon closing of the real estate transactions contemplated under the parties' settlement agreement;
- If the parties cannot timely and successfully close the real estate transactions contemplated under the parties' settlement agreement before the 2024 crop season, the Cass County Joint Water Resource District will lease OINs 720X1, 724Y, 728Y, 729Y, 730Y, 726Y, and 1166Y to the Costers in 2024 for \$1; and
- The Cass County Joint Water Resource District will reimburse the Coster Trust for reasonable attorneys' fees and costs incurred related to the acquisition of their property or this proposed settlement, not to exceed \$70,000.

Manager Gust seconded the motion. Upon roll call vote, the following Managers voted in favor: Olson, Loughheed and Gust. Managers Weston and Steen voted against the motion. The Chairman declared the motion passed.

It was moved by Manager Steen and seconded by Manager Weston to approve payment of \$55,000 to Kenneth and Lois Bergh in exchange for Flowage Easement interests in 25.84 acres regarding OINs 1550 and 1573 of the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

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

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

#### **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 April 13, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Loughheed to approve the relocation and replacement housing payment for OIN 8385, as outlined in the letter dated April 17, 2023, 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 Weston and seconded by Manager Gust to approve the 2023 *Cash Crop Lease Agreements*, as presented, on the following properties regarding the Metro Flood Diversion Project:

- OINs 816N, 816Y1, 816Y2, 818N1

- OIN 229Y
- OINs 23, 24, 29, 31, 213N, 213Y, 214N, 214Y, 822Y, 823Y, 1082, 1084, 1085, 1086X, 1097Y, 1099X, 1099N, 1106Y and 1906

Upon roll call vote, the motion carried unanimously.

Madeline Gorghuber discussed crop damage on OINs 11Y, 12Y and 13Y as a result of construction of the Drain #27 Wetland Mitigation Project. The reported damages have been verified by Pifer's Land Management. It was moved by Manager Gust and seconded by Manager Lougheed to approve the crop damage payment to the tenant of OINs 11Y, 12Y and 13Y in the amount of \$5,700 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

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

Kurt Lysne updated the Board on the RCPP – Upper Maple River Watershed Plan. The Natural Resources Conservation Service has scheduled an agency scoping meeting regarding the Plan. Property owners will be updated on the changes to the Plan soon.

The Board next discussed the RCPP – Rush River Watershed Plan. Sean Fredricks noted the proposal from SRF Consulting Group, Inc. regarding the Plan has been finalized.

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

Brady Woodard reported on the current conditions at the Maple River Dam. All four roads are now closed. Moore Engineering, Inc. is conducting the daily piezometer readings and continuing to monitor the facility. Pumps have been mobilized to North Dakota Highway 46. Mr. Lysne estimated the secondary spillway will be reached if there is a rain event in the near future. The Board noted the Maple River Dam significantly reduced flood damage downstream again this spring.

### **2023 flood update**

Mr. Lysne updated the Board on the 2023 spring flood. Sheyenne-Maple Flood Control Projects #1 and #2 are currently in use; however, there appears to be less overland flooding along the Sheyenne River. Inflows at Baldhill Dam are rising but the pool has a significant amount of storage available. Mr. Lysne noted there is significant snowpack remaining upstream of Baldhill Dam.

### **Bills**

It was moved by Manager Steen and seconded by Manager Weston to approve the payment of Checks #15256 through #15260 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston, Gust and Steen. The Chairman declared the motion passed.

**Adjournment**

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