

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
MAY 11, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on May 11, 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; Ken Helvey, SRF Consulting Group, Inc.; Scott Stenger, ProSource Technologies, LLC; Oly Olafson, Wade Whitworth and Lee Kaffar, HDR, Inc.; Lisa Brekkestran, Davon Hutchinson and Drew Nicklay, Ulteig Engineers, Inc.; 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; John Albrecht and Katrina Olson, Jacobs; William A. Hejl, Amenia Township property owner; Leo Richard and Steve Schultz, Stanley Township property owners.

Agenda

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

Minutes

It was moved by Manager Lougheed seconded by Manager Weston and unanimously carried to approve the minutes of the April 27, 2023 (two sets), meetings.

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

Eric Dodds discussed the Sheyenne River Habitat Improvement Project. The project is to ensure adequate fish passage in the Sheyenne River and Maple River near the aqueduct structures for the Metro Flood Diversion Project and is necessary to comply with various permits. A meeting was held in Horace yesterday with property owners to discuss the project, including *Rights of Entry* needed for survey work related to the project. Jodi Smith stated *Rights of Entry* will be pursued soon to facilitate survey work this summer. Following the survey work, another meeting with property owners will be

scheduled to discuss the impact of the project on specific properties. Mr. Dodds indicated the work is also expected to help reduce erosion and slope instability issues, especially erosion that plagues the Sheyenne River. Mr. Dodds also noted the portion of the project on the Maple River is less extensive than the portion on the Sheyenne River and will be completed on property owned by the Water Resource District for the Metro Flood Diversion Project. The Board discussed the Project in more detail, including concerns related to flooding. Mr. Dodds said following project construction, berms and banks will be reconstructed to the current existing elevation. This is also why the survey work is necessary for the project. Kurt Lysne noted the current breakout flows along the Sheyenne River need to be maintained as part of the Section 404 Permit for Sheyenne-Maple Flood Control Projects #1 and #2.

Metro Flood Diversion Project – appraisal / RHDP review / approval

John Albrecht discussed various appraisals regarding the Metro Flood Diversion Project.

It was moved by Manager Gust and seconded by Manager Weston to approve the appraisal for OIN 8920, with an effective date of March 20, 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 Weston and seconded by Manager Gust to approve the appraisal for OINs 9993 and 9994, with an effective date of March 20, 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.

Metro Flood Diversion Project – acquisition review / approval

Manager Gust moved to amend the motion approved at the April 27, 2023, meeting to approve a settlement with Lawrence G. Richard and Susan E. Richard, Trustees under the Lawrence & Susan Richard Living Trust, dated May 20, 2015, et al. 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.

- Following acquisition of OINs 818 and 1916 by the Cass County Joint Water Resource District, 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 eligible business re-establishment expenses in accordance with the Uniform Relocation Act up to \$50,000. Cass County joint Water Resource District will reimburse the Richards for reasonable relocation costs and expenses in accordance with the Uniform Relocation Act. The Cass County Joint Water Resource District will be responsible for ensuring utility relocations to accommodate the Richards' use of OIN 816Y1 consistent with utility usage at current site.
- 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.

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 Olson to close the meeting at 8:39 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. Steven D. Schultz and Southwind Asset Management, LLC (OIN 8359)
2. Cass County Joint Water Resource District v. K-F Farm Partnership, LLLP, Civil File No. 09-2023-CV-00622 (OINs 1996X and 2001)

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, Jodi Smith, Jessica Warren, Madeline Gorghuber, Eric Dodds, Dean Vetter, Mary Scherling, Ken Helvey and Oly Olafson.

The executive session adjourned at 9:09 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:

Steven D. Schultz and Southwind Asset Management, LLC (OIN 8359).

Manager Weston moved to approve a settlement with Steven D. Schultz and Southwind Asset Management, LLC, regarding OIN 8359, as follows:

- Southwind Asset Management, LLC, will convey fee simple ownership of 48.45 acres of OIN 8359 to the Cass County Joint Water Resource District, as defined by survey;
- Southwind Asset Management, LLC, Steven Schultz, and Emily Schultz will lease OIN 8359, including homestead improvements and other structures, from the Cass County Joint Water Resource District for \$500 per month until March 1, 2024, or until the parties provide the District with 30 days written termination notice, whichever occurs sooner.
- The Cass County Joint Water Resource District will reimburse Southwind Asset Management, LLC, and Emily Schultz for reasonable relocation costs and eligible expenses in accordance with the Uniform Relocation Act.
- The Cass County Joint Water Resource District will pay Southwind Asset Management, LLC, and Steven Shultz \$4,033,750 upon closing of the real estate transactions contemplated under the parties' settlement agreement as just compensation, including final compensation for all real property interests, and as final resolution of any and all Replacement Housing Differential Payment claims and any RIMP program eligibility.
- The Cass County Joint Water Resource District will reimburse Southwind Asset Management, LLC, and Steven Schultz for reasonable attorneys' fees, not to exceed \$30,000.

Manager Gust 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. K-F Farm Partnership, LLLP, Civil File No. 09-2023-CV-00622 (OINs 1996X and 2001)

Manager Lougheed moved to approve a settlement with K-F Farm Partnership, LLLP, as follows:

- K-F Farm Partnership, LLLP, will convey flowage easement interests in 209.5 acres over OINs 1996X and 2001 to the Cass County Joint Water Resource District.
- The Cass County Joint Water Resource District will pay K-F Farm Partnership, LLLP, \$930,000 upon closing of the real estate transactions contemplated under the parties' settlement agreement as just compensation.

Manager Weston seconded the motion. 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 Lougheed to approve the relocation and replacement housing payment for OINs 1112 and 1113, as outlined in the letter dated May 5, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

A motion was made by Manager Steen and seconded by Manager Weston to approve the 2023 *Cash Crop Lease Agreement*, as presented, on OIN 5024 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Gust and seconded by Manager Lougheed to approve the *Addendum to Lease Agreement*, as presented, regarding OINs 23, 24, 29, 31, 213N, 213Y, 214N, 214Y, 822Y, 823Y, 1082, 1084, 1085, 1086X, 1097Y, 1099X, 1099N, 1106Y and 1906 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Madeline Gorghuber stated Dakota Underground Company is interested in leasing a portion of OIN 7234 to use as a staging area for an adjacent City of Horace project. A motion was made by Manager Steen and seconded by Manager Weston to approve the *Lease Agreement* with Dakota Underground Company for a portion of OIN 7234 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – contracting actions

It was moved by Manager Weston and seconded by Manager Gust to approve and authorize the Chairman to sign *Task Order No. 6 – Amendment 3* with Patchin Messner Valuation Counselors in the amount of \$14,950 regarding appraisal services for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – land acquisition budget

Discussion was held on the budget for land acquisition regarding the Metro Flood Diversion Project. Jodi Smith reported she is working on a report showing the expenditures related to land acquisition. Manager Steen reported there is also an ongoing effort to update the financial plan for the project. Ms. Smith indicated presentations regarding the land acquisition budget as well as the financial plan will be presented at a future Water Resource District meeting.

Metro Flood Diversion Project – Cass County Highway 81 closure

Manager Loughheed inquired about movement of farm equipment this year with the closure of Cass County Highway 81 for the Metro Flood Diversion Project. Ms. Smith indicated the P3 developer for the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project has contacted property owners near the Cass County Highway 81 closure to discuss access issues. The Board noted that many farm producers rely on Cass County Highway 81 to move equipment, not just in the immediate area, but from many miles outside the area, and farm equipment is not allowed on I-29. Without an efficient way to move equipment, producers will have increased hardships moving equipment through the lengthy detour. The Board asked Ms. Smith to discuss the matter with the P3 developer, particularly through the area between Harwood and Argusville, and report back to the Board.

Regional Conservation Partnership Program (RCP)

Kurt Lysne reported that notices will be sent to property owners and ads will be placed in the newspaper regarding the May 30, 2023, RCP – Upper Maple River Watershed Plan scoping meeting.

The Board next discussed the RCP – Rush River Watershed Plan. SRF Consulting Group, Inc. has begun reaching out to property owners to discuss the levee alignment for the project.

Maple River Dam – spring operations

Brady Woodard reported on the current conditions at the Maple River Dam. Moore Engineering, Inc. continues to conduct daily piezometer readings and monitor the facility. Mr. Woodard said he maintains close contact with Highland Township officials regarding the road closures.

Mr. Woodard discussed a concern from a property owner about no road closure barriers on two low-traffic township minimum maintenance roads that are intercepted by the

backwater pool of the Maple River Dam, west of the Maple River on the south side of Section 29 in Highland Township. The Board discussed options including installing temporary barriers and signage. Mr. Woodard does not recall there ever being any issues in that area or that there was ever a bridge at that location, even prior to construction of the Maple River Dam. Following discussion, the Board directed Mr. Woodard to attend a Highland Township meeting to discuss the matter. The possibility of adding the locations to the list of sites to be monitored by the township was discussed.

Maple River Dam – tieback levee

Mr. Woodard reported there is gopher activity at the Maple River Dam tieback levee along North Dakota Highway 46. He discussed the possibility of conducting a controlled burn to assist with animal damage control efforts in the area. There is currently water on both sides of the levee so now would be the ideal time to conduct the controlled burn.

A motion was made by Manager Weston and seconded by Manager Gust to approve the controlled burn on the Maple River Dam tieback levee along North Dakota Highway 46, contingent upon approval by the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Steen and seconded by Manager Gust to approve the payment of 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:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer