

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE WEST FARGO PUBLIC WORKS BUILDING
WEST FARGO, NORTH DAKOTA
JUNE 8, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on June 8, 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 Stefanowicz, Larkin Hoffman; Kurt Lysne, Lyndon Pease and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Dean Vetter, Sabrina Tusa and Kellen Grubb, AE2S; Ken Helvey and Katie Laidley, SRF Consulting Group, Inc.; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, Lee Kaffer and Wade Whitworth, HDR, Inc.; Lisa Brekkestran and Davon Hutchinson, Ulteig Engineers, Inc.; Joel Paulsen, Diversion Authority Executive Director; Jodi Smith, Diversion Authority Director of Lands and Compliance; Jessica Warren, Diversion Authority Compliance Specialist; Duane Breitling, Cass County Commissioner; Terry and Kristie Sauvageau, Stanley Township property owners; and Scottie Shreve, H.B. Construction, Inc..

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 Steen seconded by Manager Gust and unanimously carried to approve the minutes of the May 25 (two sets) and 30 (as amended), 2023, meetings.

Metro Flood Diversion Project – appraisal / RHDP review / approval

Discussion was held on the appraisal for OINs 1112 and 1113 regarding the Metro Flood Diversion Project. The Board discussed potentially selling property encumbered with a Flowage Easement to determine current market value of the property. Jodi Smith reviewed the policy regarding disposal of excess property in the *Property Rights Acquisition and Mitigation Plan* regarding the Metro Flood Diversion Project.

A motion was made by Manager Steen and seconded by Manager Gust to direct Jodi Smith to bring a recommendation of Water Resource District owned properties for the Metro Flood Diversion Project that are encumbered with a Flowage Easement that could

potentially be sold to determine market value. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Gust and seconded by Manager Steen to approve the appraisal for OINs 1112 and 1113, with an effective date of May 10, 2023, as 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 Chairman Olson to approve the maximum Replacement Housing Differential Payment for OINs 1885 and 9416 in the amount of \$157,489 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Gust and seconded by Manager Lougheed to approve the maximum Replacement Housing Differential Payment for OIN 8920 in the amount of \$87,088 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Manager Lougheed left the meeting at this time.

It was moved by Manager Gust and seconded by Chairman Olson to approve the maximum Replacement Housing Differential Payment for OIN 2002 in the amount of \$339,900 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Olson, Weston Gust and Steen. Manager Lougheed was absent. The motion carried.

Metro Flood Diversion Project – acquisition review / approval

It was moved by Chairman Olson 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 Managers voted in favor: Olson, Weston, Gust and Steen. Manager Lougheed was absent. The motion carried.

Manager Lougheed returned to the meeting at this time.

It was moved by Manager Lougheed and seconded by Manager Gust to approve the *Purchase Agreement* for OIN 1882 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Lougheed and seconded by Chairman Olson to approve and authorize the Chairman to sign the *Temporary Construction Agreement* for OINs 1975 and 8856 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed and Weston. Managers Gust and Steen voted against the motion. The motion passed.

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 Steen to close the meeting at 9:07 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. Glenn Libbrecht, et al., Civil File No. 09-2020-CV-03935 (OINs 698, 945, 9741, 9756, 9757, 9758, 9759, and 9760)

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, Joel Paulsen, Jodi Smith, Jessica Warren, Dean Vetter, Sabrina Tusa and Ken Helvey.

The executive session adjourned at 9:30 a.m. and the regular meeting was reconvened and opened to the public.

Manager Steen left the meeting at this time.

Metro Flood Diversion Project – acquisition review / approval continued

It was moved by Manager Lougheed and seconded by Manager Gust to approve and authorize the Chairman to sign the *Exchange Agreement and Purchase Agreement* for OINs 698, 945, 9741, 9756, 9757, 9758, 9759 and 9760 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston and Gust. Manager Steen was absent. The motion passed.

Metro Flood Diversion Project – land agent reports

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

Metro Flood Diversion Project – property management

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 June 6, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston and Gust. Manager Steen was absent. The motion carried.

Scottie Shreve stated H.B. Construction, Inc. was awarded the contract from the Corps of Engineers for construction of the Southern Embankment – Reach 2A for the Metro Flood Diversion Project. Mr. Shreve indicated the site needs to be dewatered to allow for construction and he discussed a proposed dewatering plan. The contractor plans to pump the water north through the existing toe drain of the Southern Embankment – Reach 2A and outflow into Drain #27. Mr. Shreve said they have discussed the dewatering plan with adjacent property owners and tenants, the Water Resource District Engineer and the have confirmed it does not meet the requirement for a state drainage permit. Mr. Lysne stated the water being pumped will contribute to Drain #27; however, it is not a high flow rate, so there are no negative impacts to Drain #27 anticipated from the dewatering of the site.

It was moved by Manager Gust and seconded by Manager Lougheed to approve and authorize the Secretary-Treasurer to sign the dewatering plan for H.B. Construction, Inc. regarding the Southern Embankment – Reach 2A of the Metro Flood Diversion Project, with the following conditions:

- If the dewatering plan causes any impacts, the contractor shall stop pumping at the direction of the Water Resource Engineer
- The contractor is responsible for obtaining all necessary permits or approvals

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

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

- OIN 213N
- OIN 507Y
- OINs 724Y East and 724Y West
- OINs 726Y, 728Y, 729Y and 730Y
- OINs 935X and 936Y
- OINs 1083N and 1083X
- OIN 5214N

Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston and Gust. Manager Steen was absent. Motion carried.

Ms. Warren stated Compass Land Consultants, Inc. has been acquired by Huber Resources Corp. The *Master Agreement for Professional Services* with Compass Land Consultants, Inc. will need to be assigned to Huber Resources Corp.

Additional minutes related to the assignment of the *Master Agreement for Professional Services* between Cass County Joint Water Resource District and Compass Land Consultants, Inc. to Huber Resources Corp. are attached hereto.

Metro Flood Diversion Project – contracting actions

It was moved by Manager Lougheed and seconded by Chairman Olson to approve and authorize the Chairman to sign the following regarding appraisal services for the Metro Flood Diversion Project:

- *Task Order No. 2 – Amendment 7* with Ulteig Engineers, Inc. with a contract reduction of \$100,000
- *Task Order No. 2 – Amendment 5* with ProSource Technologies, LLC in the amount of \$100,000

Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program (RCP)

Kurt Lysne briefly discussed the RCP – Rush River Watershed Plan. SRF Consulting Group, Inc. is meeting with property owners to discuss the levee alignment for the project and will bring a report of their findings to a future meeting.

The Board next discussed the RCP – Upper Maple River Watershed Plan. The public scoping / plan update meeting was held on May 30, 2023. Moore Engineering, Inc. will be attending an upcoming Barnes County Water Resource District meeting to update them on the Plan. Manager Weston noted an on-site meeting is being coordinated with property owners and the NRCS to discuss the preliminary design of the project.

Maple River Dam – spring operations

Brady Woodard reported on the current conditions at the Maple River Dam. The pumps at State Highway 46 are no longer needed and have been removed.

Maple River Dam – tieback levee

Mr. Woodard stated the contractor was able to complete a majority of the controlled burn on the Maple River Dam tieback levee along North Dakota Highway 46 to assist with animal damage control efforts in the area. Due to the changing wind conditions, the contractor was unable to complete the controlled burn, but will return to do so when conditions allow. The contractor will return to complete the controlled burn when safe conditions allow. Mr. Woodard indicated animal control efforts are occurring at the Maple River Dam and the associated tieback levee. Small repairs to the Maple River Dam and tieback levee may be necessary following completion of the animal control efforts.

Maple River Dam – debris removal

A motion was made by Manager Gust and seconded by Manager Lougheed to authorize Moore Engineering, Inc. to hire a contractor to proceed with 2023 spring flood cleanup and repair work at the Maple River Dam. Upon roll call vote, the motion carried unanimously.

2023 maintenance levy assessments

A motion was made by Manager Gust and seconded by Manager Lougheed to set the following maintenance levies for 2023:

- Maple River Dam at the \$0.60 level
- Lake Bertha Flood Control Project No. 75 at the \$0.50 level

Upon roll call vote, the motion carried unanimously.

2024 budgets – Flood Control, Mitigation and Retention obligated fund

The Board discussed contributions to the Flood Control, Mitigation and Retention obligated fund in the 2024 Cass County Water Resource Districts' budgets. A motion was made by Manager Gust and seconded by Chairman Olson to recommend reducing the annual contributions to the Flood Control, Mitigation and Retention obligated fund in the 2024 Cass County Water Resource Districts budgets, as follows:

- Southeast Cass Water Resource District – 0.5 mill
- Maple River Water Resource District – 0.5 mill
- Rush River Water Resource District – 0.25 mill
- North Cass Water Resource District - 0.25 mill

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

Bills

It was moved by Manager Lougheed 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 and Gust. Manager Steen was absent. The Chairman declared the motion passed.

Sheldon Flood Protection Project No. 2019-01

Mr. Lysne reported Sheldon Flood Protection Project No. 2019-01 is ready to proceed to bidding and construction following receipt of the construction permit from the North Dakota Department of Water Resources. Moore Engineering, Inc. remains in contact with the P3 developer for the Metro Flood Diversion Project regarding the availability and location of stockpiled clay from the Metro Flood Diversion Project reserved for Sheldon Flood Protection Project No. 2019-01. Mr. Lysne stated a meeting with property owners will be scheduled soon to update them on and discuss the project.

Adjournment

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

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer