

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 22, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on June 22, 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; 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 and Katie Laidley, SRF Consulting Group, Inc.; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, Wade Whitworth and Kelsey Lee, HDR, Inc.; Lisa Brekkestran and Davon Hutchinson, 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; Duane Breitling and Mary Scherling, Cass County Commissioners; John Albrecht, Paul Barthel and Katrina Olson, Jacobs; Nick Delaney, Rinke Noonan; Leo Richard, Stanley Township property owner.

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 June 8, 2023, meeting.

Metro Flood Diversion Project – project updates and general topics

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. Mr. Dodds said appraisals and Flowage Easement acquisitions are ongoing and work is also being done to plat the Diversion Channel of the Metro Flood Diversion Project. Mr. Dodds also noted Work Package 38A has been initiated and includes the removal of structures on five properties, four of which are in North Dakota. Manager Weston left the meeting at this time.

Metro Flood Diversion Project – appraisal / RHDP review / approval

Discussion was held on the appraisal for OIN 1953 regarding the Metro Flood Diversion Project. It was moved by Manager Gust and seconded by Manager Steen to approve the appraisal for OIN 1953, with an effective date of July 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.

It was moved by Manager Steen and seconded by Manager Gust to approve the appraisal for OIN 9258, with an effective date of March 22, 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

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 letters to groups of property owners where land agents have identified Flowage Easement negotiations are not proceeding. The letters would provide a last written offer for the property owner 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 Gust and seconded by Manager Lougheed 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 letters and Agreements to Acquire a Flowage Easement to the owners of the following properties:
 - OINs 1543, 1600 and 7221
 - OINs 1947 and 1948
 - OINs 5059, 8779, 8784 and 8788
- 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 July 24, 2023

Upon roll call vote, the motion carried unanimously.

Manager Weston returned to the meeting at this time.

It was moved by Manager Lougheed and seconded by Manager Weston to approve the *Purchase Agreement* for OINs 850, 1901, 1902 and 1952 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Steen and seconded by Chairman Gust to approve and authorize the Chairman to sign the *Temporary Construction Agreement* for OINs 8921 and 1985 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 Gust and seconded by Manager Lougheed to close the meeting at 8:32 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. Terry and Kristie Sauvageau (OINs 1112 and 1113)
2. 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, Melissa Hinkemeyer, Sean Fredricks, Chris McShane, Luke Andrud, Katie Schmidt, Rob Stefonowicz, Joel Paulsen, Jodi Smith, Jessica Warren, Eric Dodds, Dean Vetter, Sabrina Tusa, Ken Helvey, Oly Olafson, Duane Breitling and Mary Scherling.

The executive session adjourned at 8:56 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project – acquisition review / approval continued

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

Terry and Kristie Sauvageau (OINs 1112 and 1113) and Cass County Joint Water Resource District v. Terry Sauvageau and Kristie Sauvageau, et al., Civil File No. 09-2022-CV-00618 (OIN 1098).

Manager Steen moved to approve a settlement with Terry and Kristie Sauvageau regarding OINs 1098, 1112 and 1113, as follows:

- Terry and Kristi Sauvageau (“Sauvageaus”) will convey fee simple ownership of 16.153 acres in OIN 1098N and a Temporary Construction Easement of 4.41 acres on OIN 1098X to the Cass County Joint Water Resource District (“District”), to be defined by survey;
- Sauvageaus will convey Flowage Easements over 143.2 acres regarding OINs 1098X, 1112, 1113, 7240, and 7241 to the District, to be defined by survey;
- The District will convey to Sauvageaus fee simple ownership of 372.12 acres regarding OINs 30, 31, 826, 827, 1106Y, and 1199X, all subject to the exception and reservation of Flowage Easement interests and Temporary Construction Easement interests in favor of the District on all parcels, as defined by survey, and subject to Rights of First Offer regarding OINs 1106Y and 1199X;

- The District’s legal counsel will provide notice of availability of land under the Rights of First Offer regarding OINs 1106Y and 1199X to the owners from whom the District acquired those properties;
- Sauvageaus will accept fee ownership of all parcels subject to existing farmland leases; Sauvageaus will become the landlords/lessors under those leases and will be entitled to all rental payments already paid or received by the District or still due under the 2023 leases. Rental payments for 2023 leases received by the District will be credited at closing. Taxes for all such parcels will be paid by Sauvageaus;
- Sauvageaus will lease OIN 1112 from the District for \$250 per month until 30 days’ written termination notice from Sauvageaus or until November 30, 2024, whichever occurs sooner;
- The District will reimburse Sauvageaus for reasonable and eligible relocation costs and expenses in accordance with the Uniform Relocation Act (“URA”). Terry Sauvageau and Joe Sauvageau will be eligible for up to \$50,000 of reimbursement for eligible reestablishment under the URA;
- The District will extend the natural gas to the Sauvageaus’ new farmstead site at the District’s expense. Until the natural gas line is extended, the District will provide rental propane tanks to the new Sauvageau farmstead site. Diesel tanks will also be provided to the extent allowed under the URA;
- Subject to USACE approval, Sauvageaus may install and keep a light pole with solar light only on their current farmstead parcel;
- Sauvageaus will retain the \$538,600 the District previously paid to them pursuant to the quick take deposit on parcel OIN 1098;
- The District will pay Sauvageaus \$894,000 upon closing of the real estate transactions contemplated under the parties’ settlement agreement as just compensation and for Sauvageaus’ replacement housing payment differential under the URA;
- The District will pay Sauvageaus \$1,233,798 as just compensation for the contributory value of the non-residential improvements on their existing property;
- The District approves a RIMP loan for Sauvageaus in the amount of \$692,407; and
- The District will reimburse Sauvageaus for reasonable attorneys’ fees, engineering fees, and surveying fees, not to exceed \$180,000.

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

Metro Flood Diversion Project – land agent reports

Oly Olafson, Ken Helvey, Scott Stenger and Lisa Brekkestran reported on activities, meetings and discussions with various property owners regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – Pipeline Easement for Cass Rural Water Users District

Paul Barthel discussed a proposed *Pipeline Easement* for Cass Rural Water Users District on OIN 816Y1 east of Southern Embankment – Reach 2B near Cass County Highway 16 regarding the Metro Flood Diversion Project. Cass Rural Water Users District is relocating their pipeline to minimize impact to the Southern Embankment and Upstream Mitigation Area of the Metro Flood Diversion Project. The *Easement* includes a temporary location for the pipeline during construction of Southern Embankment – Reach 2B and a permanent pipeline location following construction.

It was moved by Manager Weston and seconded by Manager Lougheed to approve and authorize the Chairman to sign the *Pipeline Easement* on OIN 816Y1 with Cass Rural Water Users District regarding pipeline relocation related to the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – weed control

Manager Gust stated property owners adjacent to the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project have reported the need for weed control on properties where work is not currently occurring. Jodi Smith stated she has discussed weed control with the P3 developer for the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project and the P3 developer has now hired a contractor for weed control efforts throughout the P3 work limits of the project.

Regional Conservation Partnership Program (RCPP)

Kurt Lysne discussed the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. attended a recent Barnes County Water Resource District meeting to update them on the Plan. An on-site meeting is being coordinated with property owners and the NRCS to discuss the preliminary design of the project.

Mr. Lysne next discussed the RCPP – Rush River Watershed Plan. SRF Consulting Group, Inc. has met with property owners to discuss the levee alignment for the project and will bring a report of their findings to a future meeting.

Maple River Dam – spring operations and debris removal

Brady Woodard reported on the current conditions at the Maple River Dam. The water in the backwater pool of the Maple River Dam is receding and the remaining road under water should be out of water next week. The first road to come out of water has been restored and is open. The second and third roads are currently being repaired in coordination with Highland Township. Discussion was held on damage to the Maple River bridge abutment on 52nd Street SE. Mr. Woodard indicated there may have been ice jams or debris at the bridge that caused water to flow over the abutment instead of under the bridge. The Board inquired about additional protection for the abutment as it has been damaged before. Mr. Woodard said he will discuss repair options that will provide additional protection to the abutment with the Cass County Highway Department and will bring back information on the matter to a future meeting.

Maple River Dam – cultural sites

Mr. Woodard indicated repairs to two cultural sites at the Maple River Dam are anticipated to begin soon.

Bills

It was moved by Manager Steen and seconded by Manager Gust to approve the payment of Checks #15265 and #15266 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston, Gust and Steen. The motion carried unanimously.

Lake Bertha Flood Control Project No. 75

Mr. Woodard stated a property owner adjacent to Lake Bertha Flood Control Project No. 75 reported an obstruction of flow in the channel. There is sediment and cattails in the channel that could be removed from the channel to help aid the flow. The Board directed Moore Engineering, Inc. to bring a cost estimate to clean out sediment and cattails from the Lake Bertha Flood Control Project No. 75 channel to a future meeting for further discussion.

Adjournment

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

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer