

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
CASS COUNTY JOINT WATER RESOURCE DISTRICT  
ORIGINATING AT THE WEST FARGO PUBLIC WORKS BUILDING  
WEST FARGO, NORTH DAKOTA  
AUGUST 24, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on August 10, 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, Luke Andrud, Chris McShane and Katie Schmidt, Ohnstad Twichell, P.C.; Rob Stefonowicz, Larkin Hoffman; Kurt Lysne, Lyndon Pease and Josh Hassell, 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 Kaffer, Wade Whitworth, Kelsey Lee and Katy Moore, HDR, Inc.; Davon Hutchinson and Drew Nicklay, Ulteig Engineers, Inc.; Joel Paulson, Diversion Authority Executive Director; Martin Nicholson, Diversion Authority Deputy Executive Director; Jodi Smith, Diversion Authority Director of Lands and Compliance; Madeline Gorghuber, Diversion Authority Lands Specialist; Jessica Warren, Diversion Authority Compliance Specialist; John Albrecht and Katrina Olson, Jacobs; Leo Richard and Kristie Sauvageau, Stanley Township property owners; Tony Roth, Cody Cashman and Riley Streit, City of Amenia; Matt Kapaun and Scott McConnell, City of Amenia residents; William A. Hejl, John Hejl and Brandon Lindstrom, Amenia Township property owners.

**Agenda and Minutes**

It was moved by Manager Gust, seconded by Manager Weston and unanimously carried to approve the order of the agenda, as presented, and the minutes of the August 10, 2023, meeting.

**Metro Flood Diversion Project – project updates and general topics**

Eric Dodds discussed the Property Acquisition Status Report regarding the Metro Flood Diversion Project. Discussion was held on the status of acquiring the remaining *Environmental Monitoring Easements* for the Project.

Jodi Smith discussed various parcels owned by the Water Resource District for the Metro Flood Diversion Project that have been deemed excess property by the Metro Flood Diversion Authority Executive Director. The properties include small strips of land along Southern-Embankment Reach 1 that is now complete, strips of land where Cass County

is seeking right of way along various Cass County Highways for future projects and OIN 507Y along the Metro Flood Diversion Project Diversion Channel. Ms. Smith said if the Board approves the properties as excess, the Metro Flood Diversion Authority will then consider if the properties are deemed excess and if so, the process to dispose of the properties will follow the Metro Flood Diversion Project *Policy on the Disposition and Management of Comprehensive Project Lands*.

A motion was made by Manager Gust and seconded by Manager Steen to declare the following properties as excess land and begin the process to dispose of the property following the *Policy on the Disposition and Management of Comprehensive Project Lands* regarding the Metro Flood Diversion Project:

- OIN 507Y
- OIN 507Y1
- OIN 510Y1
- OIN 574Y1
- OIN 885Y1
- OIN 897Y1
- OIN 922Y3
- OIN 1185Y2
- OIN 5024Y
- OIN 5214Y
- OIN 5278Y

Upon roll call vote, the motion carried unanimously.

Ms. Smith said she will continue to update the Board on the status of the excess lands disposal at future meetings.

Chris McShane updated the Board on the status of various formal negotiations regarding the Metro Flood Diversion Project.

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

John Albrecht discussed appraisals for OINs 5028, 1349 and 7226 regarding the Metro Flood Diversion Project.

It was moved by Manager Weston and seconded by Manager Lougheed to approve the appraisals on the following properties as an estimate of just compensation for acquisition of property regarding the Metro Flood Diversion Project:

- OIN 5028, with an effective date of April 12, 2023
- OINs 1349 and 7226, with an effective date of July 20, 2022

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Lougheed and seconded by Manager Gust to approve the maximum Replacement Housing Differential Payment for OIN 1968 in the amount of \$109,500 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 Steen 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. Cass County Joint Water Resource District v. Daniel Flaten, et al., Civil File No. 09-2020-CV-02841 (OINs 9286 and 9743)
2. Cass County Joint Water Resource District v. Harvey Brakken, et al., (OIN 1173N)
3. Kenty Westby (OIN 8386)
4. Michael Staber (OINs 855 and 1961)

Upon roll call vote, the motion carried unanimously.

The executive session was attended by Managers Olson, Lougheed, Weston, Gust and Steen, Carol Harbeke Lewis, Melissa Hinkemeyer, Sean Fredricks, Luke Andrud, Chris McShane, Katie Schmidt, Rob Stefanowicz, Joel Paulsen, Martin Nicholson, Jodi Smith, Madeline Gorghuber, Jessica Warren, Eric Dodds, Dean Vetter, Sabrina Tusa, Ken Helvey, Katie Laidley, Scott Stenger, Dale Ahlsten, Oly Olafson and Wade Whitworth.

The executive session adjourned at 9:31 a.m. and the regular meeting was reconvened and opened to the public.

Manager Gust left the meeting at this time.

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

It was moved by Manager Steen and seconded by Manager Weston to approve the *Exchange Agreement and Purchase Agreement* for OINs 9286 and 9743 regarding the Metro Flood Diversion Project. 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. Harvey Brakken, et al. (OIN 1173N)

Manager Weston moved to approve a settlement with Harvey Brakken as follows:

- Harvey Brakken will convey fee simple ownership of 108.18 acres of OIN 1173N to the Cass County Joint Water Resource District (the “District”), to be defined by survey, free and clear of any rights of Mr. Brakken, including any rights to repurchase.

- The District will convey to Mr. Brakken fee simple ownership of 89.523 acres regarding OINs 233Y1 and 1088Y, all subject to the exception and reservation of temporary construction easement interests in favor of the District on both parcels, as defined by survey, and subject to Rights of First Offer.
- The District will pay Mr. Brakken a total of \$100,000 upon closing of the real estate transactions contemplated under the parties' settlement agreement for the property rights conveyed by Mr. Brakken as outlined above;
- Mr. Brakken will retain the \$1,011,090 previously paid by the District in accordance with the parties' *Agreement for Entry and Construction*.
- The District will reimburse Mr. Brakken for reasonable attorneys' fees, appraisal fees, engineering fees, and surveying fees for the new site, not to exceed \$50,000.
- The parties will execute a stipulation to dismiss the unfiled lawsuit in this matter.

Manager Lougheed 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 Kent and Bernice Westby negotiations regarding OIN 8386.

Manager Lougheed moved to approve a settlement with Kent and Bernice Westby as follows:

- The Westbys will convey flowage easement interests over 5.15 acres on OIN 8386 to the District.
- The District will convey fee simple ownership of approximately 39.66 acres regarding OIN 822Y east and 815Y west to the Westbys, subject to the exception and reservation of temporary construction easement interests in favor of the District on both parcels, as defined by survey, and subject to Rights of First Offer regarding OIN 822Y east.
- The District will pay the Westbys a total of \$244,215.50 upon closing of the real estate transactions agreed to by the parties; the \$244,215.50 payment will constitute full just compensation for the flowage easement rights conveyed to the District.
- In addition to the \$244,215.50 just compensation payment, the District will pay the Westbys \$169,834 for the contributory value of the business property on OIN 8386.
- The Westbys will lease the homestead improvements and structures on OIN 8386 from the District for \$500 per month until 30 days' written termination notice from Mr. Westby or until December 30, 2024, whichever occurs sooner.
- The District will pay the Westbys up to \$280,641 as a replacement housing differential payment (RHDP).
- The District will reimburse the Westbys for reasonable and eligible relocation costs and expenses in accordance with the Uniform Relocation Act ("URA"), currently estimated as follows:
  - \$18,500 as necessary to comply with the Americans with Disabilities Act;
  - \$50,000 for business re-establishment reimbursement under 49 CFR § 24.304;
  - \$2,500 for replacement site search expenses under 49 CFR § 24.301(g)(17);

- \$4,250 for providing utilities to Mr. Westby's business shop under 49 CFR § 24.303(a); and
- \$4,100 for professional services under 49 CFR § 24.303(b).
- The District approves a Rural Impact Mitigation Program (RIMP) loan for the Westbys in the amount of \$438,623.
- The District will secure an agreement with Ames Construction to leave all site material within the fenced job site on OIN 815Y west (approximately 5 acres).
- The District will leave sufficient asphalt and concrete improvements on OIN 8386 to ensure adequate ingress and egress.

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 Michael Staber negotiations regarding OINs 855 and 1961.

Manager Steen moved to approve a settlement with Michael Staber as follows:

- Michael Staber will convey fee simple ownership of 151.25 acres of OINs 1961 and 855 to the Cass County Joint Resource District (the "District"), to be defined by survey, free and clear of any rights of Mr. Staber, including any rights to repurchase.
- The District will pay Mr. Staber a total of \$1,368,000 upon closing of the real estate transactions contemplated under the parties' settlement agreement for the property rights conveyed by Mr. Staber as outlined above.

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

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

Oly Olafson, Ken Helvey and Scott Stenger 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 Steen and seconded by Manager Lougheed to approve the relocation and replacement housing payment for OINs 1112 and 1113, as outlined in the letter dated August 16, 2023, 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 relocation and replacement housing payment for OIN 1916, as outlined in the letter dated August 18, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – property management**

Madeline Gorghuber discussed the proposed termination of two Rental Agreements on OIN 1120 as the property is being exchanged with the property owners of OINs 9431 and 9438 regarding the Metro Flood Diversion Project.

It was moved by Manager Steen and seconded by Manager Lougheed to approve and authorize the Secretary-Treasurer to send letters to the tenants of OIN 1120 notifying them of the termination of the *Lease Agreements* effective October 26, 2023. Upon roll call vote, the motion carried unanimously.

**Regional Conservation Partnership Program (RCPP)**

The Board discussed various levee alignment options for the RCPP – Rush River Watershed Plan in detail with impacted property owners and City of Amenia officials. Discussion was also held on road raises and exterior drainage associated with the project.

Following discussion, a motion was made by Manager Steen and seconded by Manager Lougheed to approve the revised levee alignment, as discussed, regarding the RCPP – Rush River Watershed Plan. Upon roll call vote, the motion carried unanimously.

**Maple River Dam – weed control**

Kurt Lysne reported the weed control contractor is on site regarding the Maple River Dam.

**Maple River Dam – cultural sites**

Mr. Lysne said repairs at two cultural sites at the Maple River Dam are ongoing. Moore Engineering, Inc. is also completing the annual surveys of the cultural sites that will be provided to the project Archaeologist.

**Lake Bertha Flood Control Project No. 75**

Mr. Lysne indicated a contractor is looking at the Lake Bertha Flood Control Project No. 75 sediment and cattail removal project tomorrow and he hopes to get a quote from the contractor to complete the work this fall, after the adjacent crops have been harvested.

**Bills**

It was moved by Manager Steen and seconded by Manager Lougheed to approve the payment of Checks #15279 through #15280 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston and Steen. Manager Gust was absent. The motion passed.

**Adjournment**

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