

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE WEST FARGO PUBLIC WORKS BUILDING
WEST FARGO, NORTH DAKOTA
OCTOBER 12, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on October 12, 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 Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling and Mary Scherling, Cass County Commissioners; Blaine Laaveg, Cass County Highway Department; Jodi Smith, Diversion Authority Director of Lands and Compliance; Madeline Daudt, Diversion Authority Lands Specialist; Eric Dodds, Dean Vetter and Sabrina Tusa, AE2S; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, Lee Kaffer, Kelsey Lee and Katy Moore, HDR, Inc.; Lisa Brekkestran, Davon Hutchinson and Drew Nicklay, Ulteig Engineers, Inc.; John Albrecht and Katrina Olson, Jacobs; and David Dillman, SAM Companies.

Agenda

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

Minutes

It was moved by Manager Weston, seconded by Manager Steen and unanimously carried to approve the minutes of the September 28, 2023 (two sets), meetings.

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 Steen to approve appraisals on the following properties as estimates of just compensation for acquisition of property regarding the Metro Flood Diversion Project:

- OINs 1328 and 1345, with an effective date of July 20, 2022
- OIN 1329, with an effective date of April 20, 2023

Upon roll call vote, the motion carried unanimously.

Mr. Albrecht noted the remaining appraisals in North Dakota regarding right of way acquisition for the Metro Flood Diversion Project should be completed by the end of the year.

Metro Flood Diversion Project – Executive Session for purposes of discussing contract negotiation strategies, litigation strategies and attorney consultation regarding reasonably predictable litigation 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 Weston to close the meeting at 8:15 a.m. for the purposes of discussing contract negotiation strategies, litigation strategies and attorney consultation regarding reasonably predictable litigation 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 matter:

1. Terry Compson and Kay Compson as Trustees of the Terry Compson and Kay Compson Revocable Trust under Agreement dated February 10, 2009 (OINs 1921, 1995, 9332, 9337, 9352, 9359, 9363, and 9412); and
2. Cass County Joint Water Resource District v. Andrew Cossette, et. al. Civ. No. 09-2023-CV-00698 (OIN 1075)

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, Madeline Daudt, Eric Dodds, Dean Vetter, Sabrina Tusa, Duane Breitling, Mary Scherling and Oly Olafson.

The executive session adjourned at 8:40 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:

Cass County Joint Water Resource District v. Andrew Cossette, et. al. Civ. No. 09-2023-CV-00698 (OIN 1075).

Manager Lougheed moved to approve a settlement with Andrew Cossette, as follows:

- The Cossettes will convey fee simple ownership of approximately 31.91 acres and a temporary construction easement of 0.78 acres regarding OIN 1075 to the Cass County Joint Water Resource District (the “District”), to be defined by survey, free and clear of any rights of the Cossettes, including any rights to repurchase.
- The District will pay the Cossettes a total of \$1,245,290.00 upon closing of the real estate transactions contemplated under the parties’ settlement agreement for the property rights conveyed by the Cossettes as outlined above.

- The District will reimburse the Cossettes for reasonable attorneys' fees, appraisal fees, engineering fees, and surveying fees for the new site, not to exceed \$15,000.
- The parties will execute a stipulation to dismiss the lawsuit in this matter.

Manager Gust 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 Steen to approve the relocation and replacement housing payment for OIN 2014, as outlined in the letter dated October 3, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

Madeline Daudt discussed the proposed termination of the Rental Agreements for OIN 8359 and OINs 1893 and 9462 regarding the Metro Flood Diversion Project. The structures on the properties will be removed next year as the properties are located in zone 1 of the Upstream Mitigation Area of the Metro Flood Diversion Project.

It was moved by Manager Weston and seconded by Manager Gust to approve and authorize the Secretary-Treasurer to send letters to the tenants of OIN 8359 and OINs 1893 and 9462 notifying them of the termination of the *Lease Agreements* effective March 1, 2024, and March 31, 2024, respectively. Upon roll call vote, the motion carried unanimously.

Katie Schmidt stated easements are needed from the Burlington Northern Santa Fe Railway Company (BNSF) for railroad crossings of the Diversion Channel for the Metro Flood Diversion Project. BNSF requires that a letter is sent to them per the *Construction and Maintenance Agreement* between the Metro Flood Diversion Authority and BNSF.

A motion was made by Manager Lougheed and seconded by Manager Steen to authorize the Chairman to sign a letter with the Metro Flood Diversion Authority to BNSF regarding easements needed for the Metro Flood Diversion Project in accordance with the *Construction and Maintenance Agreement* between the Metro Flood Diversion Authority and BNSF. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Utility Permit for Cass County Electric Cooperative to install an underground electric transmission system on OIN 898N

David Dillman discussed a *Utility Permit* with Cass County Electric Cooperative to install an underground electric transmission system on OIN 898N to provide power for the Maple River aqueduct regarding the Metro Flood Diversion Project

A motion was made by Manager Weston and seconded by Manager Gust to approve the *Utility Permit* for Cass County Electric Cooperative to install underground electric transmission system on OIN 898N 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 – Rush River Watershed Plan. Moore Engineering, Inc. is responding to comments from the NRCS on the Plan. Once the Plan is approved by the NRCS, funding can be secured for the project.

Manager Weston briefly reported on the tour with NRCS and NRCS RCPP Plan sponsors in Manitoba, Canada, of biomass harvesting on October 11. Biomass harvesting is included in the RCPP – Upper Maple River Watershed Plan. The tour was a great opportunity to discuss biomass harvesting with individuals experienced in the process. Manager Weston indicated he will share more information regarding the tour at a future meeting.

Sheldon Flood Protection Project No. 2019-01

Mr. Lysne updated the Board on Sheldon Flood Protection Project No. 2019-01. The right of way was acquired for the project in conjunction with right of way needed for the Metro Flood Diversion Project. The P3 developer for the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project will be stockpiling the material for Sheldon Flood Protection Project No. 2019-01 this month. Mr. Lysne said the North Dakota Department of Water Resources (NDDWR) is now reviewing the construction permit for the project. During discussions with the NDDWR, the NDDWR indicated they are requiring the Water Resource District to obtain easements related to the raising of 166th Avenue SE for the project. Mr. Lysne noted permission has been obtained from Raymond Township for the project. Moore Engineering, Inc. will survey and discuss the easements needed for the project with the property owners adjacent to 166th Avenue SE. The Board briefly discussed the project design. Discussion was held on the updated cost estimate for the project and the potential need for additional cost-share funding from the State Water Commission and the Cass County Flood Sales Tax Committee. Mr. Lysne noted the project will be bid once the construction permit is received from the NDDWR. Project construction is anticipated to occur next year.

Maple River Dam – Cass County Highway Department bridge repair at 52nd Street SE between Sections 21 and 28 in Highland Township

Blaine Laaveg stated repairs are needed to the Cass County wooden bridge on 52nd Street SE between Sections 21 and 28 in Highland Township in the backwater pool area of the Maple River Dam. The Cass County Highway Department has obtained a quote from a contractor to do the project. Mr. Laaveg explained the past damages to the bridge due to flooding. Mr. Laaveg said the Cass County Highway Department is inquiring if the Water Resource District would consider providing cost-share on the bridge repairs or discussing a way to alleviate the flood damages to the bridge in the future. The Board indicated they would be willing to discuss a more permanent solution to avoid future flood damages to the bridge, such as replacing the bridge with box culverts or a low water crossing. Brady Woodard noted the Water Resource District has previously participated in costs related to the bridge including replacing the rip rap on the bridge abutment this summer and hiring a contractor to remove ice near the bridge during previous operations

of the Maple River Dam. The Board suggested the Cass County Highway Department explore options for a more permanent solution to avoid future flood damages to the bridge and bring the options to a future meeting for further discussion on the matter.

Bills

It was moved by Manager Steen and seconded by Manager Gust to approve the payment of Checks #15288 through #15291 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.

BNSF appeal of Maple River Water Resource District Subsurface Water Management Permit No. 202314

Sean Fredricks briefly discussed an appeal by BNSF of Maple River Water Resource District's approval of *Subsurface Water Management Permit No. 202314*.

Lake Bertha Flood Control Project No. 75

Mr. Woodard reported the contractor has completed the Lake Bertha Flood Control Project No. 75 sediment and cattail removal project. The contractor cleaned out approximately 1.5 miles of channel.

Adjournment

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

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer