

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE WEST FARGO PUBLIC WORKS BUILDING
WEST FARGO, NORTH DAKOTA
NOVEMBER 16, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on November 16, 2023, at 9:00 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, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling and Mary Scherling, Cass County Commissioners; Joel Paulsen, Jodi Smith, Madeline Daudt and Jessica Warren, Metro Flood Diversion Authority; 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, Kelsey Lee and Katy Moore, HDR Engineering, Inc.; Davon Hutchinson and Drew Nicklay, Ulteig Engineers, Inc.

Agenda

It was moved by Manager Gust, seconded by Manager Steen 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 October 26, 2023 (two sets), meetings.

Metro Flood Diversion Project – project updates and general topics

Chris McShane and Rob Stefonowicz 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. Property acquisition is approximately 70% complete in North Dakota.

Manager Gust inquired if a construction update on the Metro Flood Diversion Project could be provided at Water Resource District meetings. Jodi Smith indicated Metro Flood Diversion Authority staff will update the Board on construction of the Metro Flood Diversion Project at future meetings.

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 Weston and seconded by Manager Gust 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 1903, 1905, 1907, 1908, 1910, 1913, 1957 and 1960
 - OIN 1912
 - OIN 1914
- 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 December 18, 2023.

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Steen and seconded by Manager Lougheed to approve the *Purchase Agreement* for OIN 9236 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 Weston to close the meeting at 9:20 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. Robert Klein and Paul Klein, et al., Civ. No. 39-2023-CV-00207 (OINs 1352, 1354, 1361, 1368, 1515, 1578, 1580, 1616, 8465, 8473, and 8789)

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, Joel Paulsen, Jodi Smith, Madeline Daudt, Jessica Warren, Eric Dodds, Dean Vetter, Sabrina Tusa, Duane Breitling, Mary Scherling, Oly Olafson, Dale Ahlsten, Ken Helvey and Katie Laidley.

The executive session adjourned at 9:55 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project – acquisition review / approval continued

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. Robert Klein and Paul Klein, et al., Civ. No. 39-2023-CV-00207 (OINs 1352, 1354, 1361, 1368, 1515, 1578, 1580, 1616, 8465, 8473, and 8789)

Manager Lougheed moved to approve a settlement with Robert Klein and Paul Klein, et al. as follows:

- The Kleins will convey to the Cass County Joint Water Resource District (the “District”) flowage easement interests over approximately 225.54 acres on OINs 1352, 1354, 1361, 1368, 1515, 1578, 1580, 1616, 8465, 8473 and 8789.
- The District will pay the Kleins a total of \$380,000 upon closing of the real estate transactions contemplated under the parties’ settlement agreement for the property rights conveyed by the Kleins, as outlined above.
- Following the closing of the of the real estate transactions contemplated under the parties’ settlement agreement, and following payment to the Kleins, the parties will execute and file a stipulation to dismiss the eminent domain action, *Cass County Joint Water Resource District v. Robert Klein and Paul Klein, et al.*, Civ. No. 39-2023-CV-00207 (OINs 1352, 1354, 1361, 1368, 1515, 1578, 1580, 1616, 8465, 8473, and 8789).

Manager Gust seconded the motion. Upon roll call vote, the following Managers voted in favor of the motion: Olson, Lougheed, Gust and Steen. Manager Weston voted no. The motion passed.

Metro Flood Diversion Project – land agent reports

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

Mr. Dodds reported on an upcoming auction of property located in the Upstream Mitigation Area of the Metro Flood Diversion Project that has a Flowage Easement attached.

Metro Flood Diversion Project – property management

A motion was made by Manager Weston and seconded by Manager Gust to approve and authorize the Chairman to sign *License Agreements* with Schmidt and Sons, Inc. for haying and maintenance of the following properties regarding the Metro Flood Diversion Project:

- OIN 858
- OIN 5033

Upon roll call vote, the motion carried unanimously.

Madeline Daudt discussed a proposed *Agreement* with the Metro Flood Diversion Authority and Red River Valley Alliance for access to OIN 523Y to facilitate construction of a headwall regarding the Metro Flood Diversion Project. The *Agreement* has a termination date of February 29, 2024.

A motion was made by Manager Lougheed and seconded by Manager Gust to approve and authorize the Chairman to sign the *Agreement* with the Metro Flood Diversion Authority and Red River Valley Alliance regarding access to OIN 523Y to facilitate construction regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Steen to approve and authorize the Chairman to sign the *Amendment to Rental Agreement Lease* with Chad Carlson and JDC Tree Farm, Inc. regarding an extension of the lease of OINs 1893 and 9462 until September 30, 2024. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – contracting actions

It was moved by Manager Steen and seconded by Manager Gust to approve and authorize the Chairman to sign the following regarding appraisal, property acquisition and relocation services for the Metro Flood Diversion Project:

- *Master Agreement for Professional Services* with LandVest, Inc.
- *Master Agreement for Professional Services* with ProSource Technologies, LLC
- *Master Agreement for Professional Services* with Ulteig Engineers, Inc.
- *Master Agreement for Professional Services* with HDR Engineering, Inc.
- *Master Agreement for Professional Services* with The Pifer Group, Inc.
- *Task Order No. 1 – Amendment 4* with SRF Consulting Group, Inc. in the amount of \$258,000
- *Task Order No. 6 – Amendment 5* with Crown Appraisals, Inc. in the amount of \$110,000
- *Task Order No. 6 – Amendment 4* with Patchin Messner Valuation Counselors in the amount of \$3,750

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – disposal of abandoned rail right of way

Ms. Smith reported the Metro Flood Diversion Authority extended an offer to the City of Horace to purchase the remaining Burlington Northern Santa Fe Railway Company (BNSF) railroad right of way near Horace that was acquired by the Water Resource

District for the Metro Flood Diversion Project. The City of Horace declined the offer, so the Water Resource District and Metro Flood Diversion Authority are obligated, under an Agreement with BNSF, to purchase the remaining right of way. Ms. Smith noted several parties have reached out to the Metro Flood Diversion Authority with interest in purchasing portions of the BNSF railroad right of way from the Water Resource District; the properties will likely be deemed as excess property next year. Ms. Smith noted the properties will be maintained until they are disposed of.

It was moved by Manager Weston and seconded by Manager Steen to approve and authorize the Chairman to sign the *Real Estate Purchase and Sale Agreement* with BNSF regarding purchase of remaining BNSF railroad right of way near Horace, as per an Agreement with BNSF and the Metro Flood Diversion Authority. Upon roll call vote, the motion carried unanimously.

Katie Schmidt discussed a Quit Claim Deed needed to clear title for BNSF to sell a portion of the rail corridor near Horace to a priority purchaser per the North Dakota statutory process for abandoned railroad right of way.

It was moved by Manager Gust and seconded by Manager Lougheed to approve and authorize the Chair to sign a *Quit Claim Deed* to James K. Danielson regarding BNSF sale of rail corridor to priority purchasers regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program (RCPP)

Kurt Lysne reported the Natural Resources Conservation Service is finalizing the RCPP – Upper Maple River Watershed Plan.

Mr. Lysne next reported on the RCPP – Rush River Watershed Plan. A meeting is being held today with BNSF and the Mayor of Amenia to discuss the alignment of the levee and operation and maintenance of the project in relation to BNSF property in the project area.

Maple River Dam – land lease

Mr. Lysne noted Brady Woodard is meeting with the tenants of Water Resource District property in the backwater pool of the Maple River Dam to determine how many low ground acres were harvested this year as per the *Lease Agreements* with the tenants.

Bills

It was moved by Manager Steen and seconded by Manager Weston to approve the payment of Checks #15293 through #15294 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.

Office staffing

The Board discussed future office staffing needs upon retirement of the current Secretary-Treasurer at the end of the year. Managers Weston and Steen volunteered to meet with Water Resource District staff to further discuss the matter and update job descriptions for the Water Resource District positions, as needed. The Board will further discuss office staffing needs at the next meeting.

Cass County Flood Sales Tax Committee meeting

The next Cass County Flood Sales Tax Committee meeting will be held Monday, November 20th at 1:00 p.m. Mr. Lysne indicated he will update the Committee on Water Resource District projects the Committee has approved funding for, including Sheldon Flood Protection Project No. 2019-01.

Sheldon Flood Protection Project No. 2019-01

Sean Fredricks noted easements are being sent to property owners related to the raise of 166th Avenue SE for Sheldon Flood Protection Project No. 2019-01. Obtaining easements for the raise of 166th Avenue SE is a requirement from the North Dakota Department of Water Resources.

Adjournment

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

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer