

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
CASS COUNTY JOINT WATER RESOURCE DISTRICT  
ORIGINATING AT WEST FARGO PUBLIC WORKS  
810 12TH AVENUE NW, WEST FARGO, NORTH DAKOTA  
FEBRUARY 08, 2024  
8:00 A.M.

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on February 8, 2024, at 8:00 a.m.

Present were Rodger Olson, Maple River Water Resource District; Ken Lougheed, North Cass Water Resource District; Jacob Gust, Rush River Water Resource District; Keith Weston, Southeast Cass Water Resource District; Melissa Hinkemeyer, Secretary-Treasurer; Leilei Bao, Accountant; Carolyn Fiechtner, Administrative Assistant; Sean M. Fredricks, Luke Andrud, and Chris McShane, Ohnstad Twichell, P.C.; Rob Stefonowicz, Larkin Hoffman; Lyndon Pease and Kurt Lysne, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Jodi Smith, Tom Fuchs, Madeline Daudt, and Jessica Warren, Metro Flood Diversion Authority; Duane Breitling and Mary Scherling, Cass County Commissioners; Sabrina Tusa and Kellen Grubb, AE2S; Paul Barthel, Jacobs; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Ken Helvey and Katie Laidley, SRF Consulting Group, Inc.; Lee Kaffar, Kelsey Lee and Katy Moore, HDR, Inc.; Brian Fuder, Red River Retention Authority; and Leo Richard, Stanley Township property owner. Manager Rick Steen, Southeast Cass Water Resource District was absent.

**Approval of agenda**

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

**Minutes**

It was moved by Manager Lougheed and seconded by Manager Weston to approve the minutes of the January 25, 2024, meetings (two sets). Upon roll call vote, the motion carried unanimously.

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

Paul Barthel provided an overview of the construction status of various components of the Metro Flood Diversion Project. Discussion was held on construction timelines of various portions of the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project.

**Metro Flood Diversion Project – acquisition of flowage easements in/around the City of Christine**

Jodi Smith reported to the Board the Metro Flood Diversion Authority (MFDA) has been working with the City of Christine regarding implementation of a city flood control project per the provisions of the Settlement Agreement between the MFDA and the Richland-Wilkin Joint Powers Authority, dated February 2021. The Agreement outlines a plan for

the MFDA and the City to cooperate and work in good faith to implement a flood control project to protect the City against any adverse flood impacts of the Metro Flood Diversion Project. The MFDA also entered into a *Memorandum of Understanding* with the City of Christine regarding the flood control project for the City.

Ms. Smith said the MFDA stands by and is committed to what was outlined in the Settlement Agreement and Memorandum of Understanding; however, the City of Christine has not yet completed or delivered the required submittals to the MFDA for the flood control project. As such, to achieve on-time completion for operation of the Metro Flood Diversion Project, in accordance with state permit requirements, the MFDA must begin the process of acquiring flowage easements within and around the City of Christine.

To maintain the Metro Flood Diversion Project timeline, the MFDA has notified the City of Christine and the impacted landowners that the Cass County Joint Water Resource District is proceeding with the process to purchase flowage easements starting in February. The MFDA has arranged for an informational meeting for property owners at 7 p.m. on February 21, 2024, at the Christine Community Center. Land agents and MFDA representatives will be in attendance to provide information to landowners. Ms. Smith said invitations have been sent to property owners and the Board is welcome to attend the meeting.

**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), regarding the following parties and matters:**

It was moved by Manager Gust and seconded by Manager Weston to close the meeting at 8:13 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. Darwin and Sandra Duval (OIN 1912); and
2. Cass County Joint Water Resource District v. Dale L. Hamilton and Roxanne D. Whittaker, et al., Civ. No. 09-2023-CV-00243 (OINs 1949, 1956, and 5036)

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

The executive session was attended by Managers Olson, Lougheed, Weston, and Gust, Melissa Hinkemeyer, Leilei Bao, Carolyn Fiechtner, Sean Fredricks, Chris McShane, Luke Andrud, Rob Stefanowicz, Jodi Smith, Madeline Daudt, Sabrina Tusa, Duane Breitling, Mary Scherling, Ken Helvey and Katie Laidley.

The executive session adjourned at 8:37 a.m. and the regular meeting was reconvened and opened to the public.

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

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

Darwin and Sandra Duval (OIN 1912)

Manager Lougheed moved, and Manager Gust seconded the motion to approve a settlement with Darwin and Sandra Duval, as follows:

- The Duvals will convey to the Cass County Joint Water Resource District (the “District”) flowage easement interests over approximately 9.25 acres on OIN 1912, as defined by survey.
- The District’s flowage easement rights regarding OIN 1912 will include the right for the District, the Diversion Authority, and their contractors, to remove all structures, in accordance with “Upstream Mitigation Area – Federal Mitigation Zone 1” requirements.
- The District will convey to the Duvals fee simple ownership of OIN 834, all subject to the exception and reservation of flowage easement interests in favor of the District as defined by survey, and subject to certain rights in favor of the District as more specifically described in the parties’ Exchange Agreement.
- The District will pay the Duvals a total of \$740,000 upon closing of the real estate transactions contemplated under the parties’ Exchange Agreement for the property rights conveyed by the Duvals, as outlined above.
- The Duvals will lease the homestead improvements and structures on OIN 1912 from the District for \$500 per month from closing until 30 days’ written termination notice from the Duvals or until December 30, 2024, whichever occurs sooner.
- The District will reimburse the Duvals for reasonable and eligible relocation costs and expenses in accordance with the Uniform Relocation Act.
- The District will reimburse the Duvals for attorneys’ fees, not to exceed \$10,000.

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. Dale L. Hamilton and Roxanne D. Whittaker, et al., Civ. No. 09-2023-CV-00243 (OINs 1949, 1956, and 5036)

Manager Weston moved and Manager Lougheed seconded the motion to approve a settlement with Dale L. Hamilton and Roxanne D. Whittaker, as follows:

- Dale L. Hamilton and Roxanne D. Whittaker (“Hamilton/Whittaker”) will convey to the Cass County Joint Water Resource District (the “District”) flowage easement interests over approximately 259.52 acres on OINs 1949, 1956, and 5036, as defined by survey.
- The District will pay Hamilton/Whittaker a total of \$950,000 upon closing of the real estate transactions contemplated under the parties’ settlement agreement for the property rights conveyed by Hamilton/Whittaker, as outlined above.
- Following the closing of the real estate transactions contemplated under the

parties' settlement agreement, and following payment to Hamilton/Whittaker, the parties will execute and file a stipulation to dismiss the eminent domain action, *Cass County Joint Water Resource District v. Dale L. Hamilton and Roxanne D. Whittaker, et al.*, Civ. No. 09-2023-CV-00243 OINs 1949, 1956, and 5036).

- The District will reimburse Dale L. Hamilton and Roxanne D. Whittaker for reasonable attorneys' fees, not to exceed \$20,000.

Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – Pipeline Easement for Cass Rural Water Users District to install new water pipelines south of 100th Avenue S in Sections 27 and 28 of Stanley Township**

Mr. Barthel discussed the *Pipeline Easement* for Cass Rural Water Users District to install new water pipelines south of 100th Avenue S in Sections 27 and 28 of Stanley Township.

Following discussion, Manager Gust moved, and Manager Weston seconded to approve and authorize the Chairman to sign the *Pipeline Easement* with Cass Rural Water Users District regarding installation of new water pipelines south of 100th Avenue S in Sections 27 and 28 of Stanley Township. Upon roll call vote, the motion carried unanimously.

**Regional Conservation Partnership Program**

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

Mr. Lysne next reported Moore Engineering, Inc. is drafting the operation and maintenance manual for the RCPP – Rush River Watershed Plan, with input from the City of Amenia and Burlington Northern Santa Fe Railway Company.

Manager Weston left the meeting at this time.

**Maple River Dam – tree removal**

Mr. Lysne reported the tree removal efforts in the backwater pool area of the Maple River Dam are underway and progress is being made.

**Maple River Dam – spring melt**

Mr. Lysne noted Moore Engineering, Inc. will attend a Highland Township meeting soon to review spring melt operations at the Maple River Dam. Moore Engineering, Inc. will continue to communicate with Highland Township regarding the Maple River Dam as the spring melt occurs.

**Request from Noble Township for assistance in reviewing a CLOMR for the City of Perley, MN**

Mr. Lysne reported that Noble Township is requesting the assistance of the Cass County Water Resource District in reviewing the paperwork and offering a recommendation to the Township, regarding a FEMA CLOMR for the City of Perley, MN. Noble Township is a signatory to the CLOMR for the City of Perley, MN as there are changes to modeling in North Dakota related to the CLOMR.

Following discussion, Manager Gust moved, and Manager Lougheed seconded to authorize the Water Resource District Engineer to provide technical assistance to Noble Township in reviewing a CLOMR for the City of Perley, MN, not to exceed \$1,000. Upon roll call vote, the motion carried unanimously. Managers Weston and Steen were absent.

**North Dakota Red Tape Reduction initiative**

The Secretary reported that the State sent a notice solicitating input to reduce red tape regulation in North Dakota. The Red Tape Reduction initiative aims to eliminate unnecessary and outdated regulation, rules, policies, and procedures to make government more efficient and effective.

After discussion, Manager Gust moved to authorize the Secretary to work with the Water Resource District Attorney and Engineer and submit comments to the State regarding the Red Tape Reduction initiative, as discussed. Manager Lougheed seconded the motion. Upon roll call vote, the motion carried unanimously. Managers Weston and Steen were absent.

**Bills**

It was moved by Manager Lougheed and seconded by Manager Gust to approve payment of Check #15308 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed and Gust. Managers Weston and Steen were absent. The Chairman declared the motion passed.

**Adjournment**

There being no further business to be considered by the Board, it was moved by Manager Lougheed, seconded by Manager Gust, and unanimously carried to adjourn the meeting.

APPROVED:

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Rodger Olson  
Chairman

ATTEST:

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Melissa Hinkemeyer  
Secretary-Treasurer