

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 26, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on October 26, 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; Joel Paulsen, Diversion Authority Executive Director; Martin Nicholson, Diversion Authority Deputy Executive Director; Tom Fuchs, Diversion Authority Senior Construction Manager; Jodi Smith, Diversion Authority Director of Lands and Compliance; Madeline Daudt, Diversion Authority Lands Specialist; Jessica Warren, Diversion Authority Compliance Specialist; 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, Kelsey Lee and Katy Moore, HDR, Inc.; John Albrecht and Katrina Olson, Jacobs; Leo Richard, Stanley Township property owner; and William A. Hejl, Amenia Township property owner.

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 Weston, seconded by Manager Lougheed and unanimously carried to approve the minutes of the October 12, 2023, meeting.

Metro Flood Diversion Project – project updates and general topics

Jodi Smith briefly 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. Key activities include continuing to negotiate and acquire property rights for the Metro Flood Diversion Project, platting Metro Flood Diversion Project right

of way and disposing of lands declared as excess following the *Policy on the Disposition and Management of Comprehensive Project Lands* regarding the Metro Flood Diversion Project.

The Board discussed excess properties regarding the Metro Flood Diversion Project in more detail. Ms. Smith indicated she will continue to update the Board on the status of the properties that have been declared as excess as they move through the process detailed in the *Policy*.

Metro Flood Diversion Project – appraisal / RHDP review / approval

John Albrecht discussed various appraisals regarding the Metro Flood Diversion Project.

It was moved by Manager Steen and seconded by Manager Gust to approve appraisals on the following properties as estimates of just compensation for acquisition of property regarding the Metro Flood Diversion Project:

- OINs 1348 and 1346, with an effective date of April 26, 2023
- OIN 1545, with an effective date of April 17, 2023
- OINs 9231 and 9232, with an effective date of September 15, 2023

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Steen and seconded by Manager Lougheed to approve the maximum Replacement Housing Differential Payment for OIN 9232 in the amount of \$213,066 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 866, 867, 2031, 2032, 2033, 2035 and 8360
 - OINs 1342 and 1583
 - OINs 1349 and 7226
 - OINs 1920, 1933, 1934 and 1939

- OIN 2024
- OIN 5028
- 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 November 27, 2023.

Upon roll call vote, the motion carried unanimously.

Before the Board went into Executive Session, Sean Fredricks recommended that the Board conduct additional conflict analysis regarding the Board's ongoing negotiations with Mr. Mike Staber. The Board conducted conflict analysis in 2019 regarding OIN 7004. At the Board's meeting on July 11, 2019, before the Board took any action regarding RHDP related to OIN 7004, the Board noted Manager Olson's niece had an ownership interest in OIN 7004. At that meeting, the Board voted "to conclude that Manager Olson does not have a 'direct and substantial personal ... interest' conflict, and to require Manager Olson to participate in discussions and votes regarding OIN 7004."

In August of this year, in the course of negotiations with Mr. Staber regarding OINs 855 and 1961, Mr. Staber requested an access easement across OIN 7004. At that time, the Board revisited the 2019 conflict analysis the Board conducted at that time and ultimately concluded the Board had adequately addressed any potential conflict regarding OIN 7004 relative to any interest Chairman Olson or his family may have in the property. However, more recently, Mr. Staber raised additional objections to Chairman Olson's involvement, and suggested that Chairman Olson or his family may now have a more direct interest in the property or in acquiring the property. With that in mind, Mr. Fredricks recommended that the Board conclude that Chairman Olson has a "direct and substantial personal interest" conflict under N.D. Cent. Code § 44-04-22 and that the Board further preclude Chairman Olson from participating in any votes regarding OINs 855, 1961, and 7004.

Manager Steen moved to conclude that Chairman Olson has a statutory conflict regarding any negotiations related to OINs 855, 1961, and 7004, and that Chairman Olson should not vote on any matters related to or regarding OINs 855, 1961, and 7004. Manager Gust seconded the motion. Upon a roll call vote, Managers Lougheed, Weston, Gust, and Steen voted in favor of the motion. Chairman Olson abstained. The motion passed.

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 8:36 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. Sylvia W. Storvick, et al. Civ. No. 09-2023-CV-00245 (OINs 2005 and 860)
2. Michael Staber (OINs 855 and 1961)

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

The executive session adjourned at 9:03 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project – acquisition review / approval

Manager Weston moved to approve a settlement with Sylvia Storvick, as follows:

- Sylvia Storvick will convey to the Cass County Joint Water Resource District (the “District”) flowage easement interests over approximately 201.36 acres on OINs 860 & 2005.
- Sylvia Storvick will convey to the District an environmental monitoring easement on OIN 860.
- The District will pay Sylvia Storvick a total of \$370,620 upon closing of the real estate transactions contemplated under the parties’ settlement agreement for the property rights conveyed by Ms. Storvick, as outlined above.
- The District will reimburse Sylvia Storvick for reasonable attorneys’ fees, not to exceed \$15,000.
- Following the closing of the of the real estate transactions contemplated under the parties’ settlement agreement, and following payment to Ms. Storvick, the parties will execute and file a stipulation to dismiss the eminent domain action, *Cass County Joint Water Resource District v. Sylvia W. Storvick, et. al.* Civ. No. 09-2023-CV-00245 (OINs 2005 and 860).

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

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

- Michael Staber will convey to the District flowage easement interests over approximately 52.46 acres on OIN 855 and 75.03 acres on OIN 1961.
- The District will pay Michael Staber a total of \$554,500 upon closing of the real estate transaction.

Manager Weston seconded the motion. Upon roll call vote, the following Managers voted in favor: Lougheed, Weston, Gust, Steen. Chairman Olson abstained. The motion carried.

Metro Flood Diversion Project – land agent reports

Scott Stenger, Oly Olafson and Katie Laidley reported on activities, meetings and discussions with various property owners regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – acquisition review / approval (continued)

Chris McShane discussed an amended Complaint to combine all property interests needed on OINs 809, 830, 846 and 9348 regarding the Metro Flood Diversion Project. Mr. McShane noted the property owners have agreed to combine the property interests and additional funds will need to be deposited with the Cass County Clerk of District Court in the amount of \$627,571.54 as an estimate of just compensation for the property interests added to the Complaint.

It was moved by Manager Gust and seconded by Manager Weston to approve payment of \$627,571.54 to the Cass County Clerk of District Court regarding the amended Complaint for acquisition of all property interests on OINs 809, 830, 846 and 9348 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Luke Andrud discussed a proposed amended settlement with Corey and Sherri Smith, previously approved at the July 27, 2023, meeting for OINs 9431 and 9438 regarding the Metro Flood Diversion Project.

A motion was made by Manager Lougheed and seconded by Manager Gust to amend the settlement with Corey and Sherri Smith for OINs 9431 and 9438 approved at the July 27, 2023, meeting to include the following regarding the Metro Flood Diversion Project:

- The District will reimburse the Smiths for reasonable attorneys' fees, not to exceed \$3,000; and
- The District will lease OIN 1120Y to the Smiths for \$1.00 between now and closing. The Lease Agreement provides the Smiths the ability to sublease OIN 1120Y to Industrial Builders, Inc. (IBI); or the District, the Smiths and IBI will enter into an amendment to the existing Lease Agreement between the Water Resource District and IBI regarding OIN 1120Y providing the previously delivered lease termination letter to IBI is revoked. The Lease will continue until closing, at which time the District's obligations under the Lease shall cease.

Upon roll call vote, the motion carried unanimously.

Mr. Andrud discussed a *Second Amendment to Exchange Agreement and Purchase Agreement* for OINs 9736N and 9737N regarding the Metro Flood Diversion Project.

It was moved by Manager Gust and seconded by Manager Lougheed to approve the *Second Amendment to Exchange Agreement and Purchase Agreement* for OINs 9736N and 9737N 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 land rental rates for 2024 based on recommendations from Pifer's Land Management as well as land rental rates data in Cass County.

A motion was made by Manager Weston and seconded by Manager Steen to approve the 2024 rental rates, as proposed, for Cass County Joint Water Resource District property owned for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

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

Ms. Smith stated the Water Resource District recently acquired the CHS Elevator in Horace and underlying property rights, Red River Valley and Western Railroad operating rights and a portion of Burlington Northern Santa Fe Railway Company (BNSF) right of way near Horace. These purchases were part of an effort to abandon the rail line and avoid constructing an incredibly costly rail bridge across the Diversion Channel for the Metro Flood Diversion Project. As a result of the purchase, BNSF is currently following the ND statutory process for abandoned railroad right of way sales to priority purchasers. If the priority purchasers choose not to purchase the rail corridor, the Water Resource District and the Metro Flood Diversion Authority are obligated, under an Agreement with BNSF, to purchase any remaining right of way. Ms. Smith discussed the purchase price of the properties acquired and an offer from the City of Horace to purchase the railroad right of way and the CHS Elevator and underlying property. Discussion was held on the offer from the City of Horace and the annual costs to maintain the CHS Elevator and underlying property. Ms. Smith noted the Diversion Authority Lands Committee considered various options related to the CHS Elevator and underlying property, including the offer from the City of Horace, and ultimately tabled the matter to gather more information. The Board further discussed the matter and how it relates to the *Policy on the Disposition and Management of Comprehensive Project Lands* regarding the Metro Flood Diversion Project. No action was taken.

Katie Schmidt discussed Quit Claim Deeds needed to clear title for BNSF to sell portions of the rail corridor near Horace to priority purchasers per the ND statutory process for abandoned railroad right of way.

It was moved by Manager Lougheed and seconded by Manager Steen to approve and authorize the Chair to sign *Quit Claim Deeds* to the following property owners regarding BNSF sale of rail corridor to priority purchasers regarding the Metro Flood Diversion Project:

- Joseph Arnold and Sharon Arnold
- MicKeal Fosse and Bonnie Kay Lien-Fosse
- Dennis G. Holmen and Cathy Holmen

Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program (RCP)

Manager Weston discussed the tour with NRCS and NRCS RCP Plan sponsors in Manitoba, Canada, of biomass harvesting on October 11. Biomass harvesting is included in the RCP – Upper Maple River Watershed Plan and several other North Dakota RCP Plans. Manager Weston discussed the process, logistics and results of biomass harvesting by the Redboine Watershed District at Pelly’s Lake in Manitoba, Canada. The Redboine Watershed District has been successful in removing phosphorous in Pelly’s

Lake by biomass harvesting; however, the harvester machinery is expensive and there are challenges to biomass harvesting. The challenges include finding a suitable use for the harvested material and the drier conditions needed to harvest the material. The Board discussed concerns of phosphorous re-entering systems after using biomass harvesting to remove phosphorous from the systems. Manager Weston indicated there may be an opportunity to further discuss the topic with Dr. Richard Grosshands at the upcoming Red River Basin Commission Conference in West Fargo in January 2024. Manager Weston encouraged the Board to attend the conference and learn more about biomass harvesting from Dr. Grosshands. The Board further discussed biomass harvesting and considered potentially more-efficient ideas to remove phosphorous in water that could be considered for inclusion in RCPP Plans. Additional discussion on biomass harvesting regarding RCPP Plans will be held at future meetings.

Maple River Dam – animal damage control

Brady Woodard reported on animal damage control efforts at the Maple River Dam tieback levee and Maple River Dam T-180.

Maple River Dam – Year 17 (2023) archaeological monitoring

Mr. Woodard stated Moore Engineering, Inc. continues to work with the project Archaeologist on the annual surveys of the environmentally sensitive sites at the Maple River Dam. The project Archaeologist is compiling the Year 17 (2023) archaeological monitoring data into her annual report.

Bills

It was moved by Manager Steen and seconded by Manager Gust to approve the payment of Check #15292 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.

Legislative working group with the North Dakota Department of Water Resources

Mr. Fredricks updated the Board on the working group established with the North Dakota Department of Water Resources to discuss various legislative issues regarding water resource districts during the interim.

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