

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 22, 2024
8:00 A.M.

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on February 22, 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 and Rick Steen, Southeast Cass Water Resource District; Melissa Hinkemeyer, Secretary-Treasurer; Leilei Bao, Accountant; Carolyn Fiechtner, Administrative Assistant; Sean M. Fredricks, Luke Andrud, Chris McShane, Katie Schmidt, and John Shockley, Ohnstad Twichell, P.C.; Rob Stefonowicz, Larkin Hoffman; Lyndon Pease, Josh Hassell, and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Joel Paulsen, Jodi Smith, Madeline Daudt and Jessica Warren, Metro Flood Diversion Authority; Duane Breitling, and Mary Scherling, Cass County Commissioners; Dean Vetter and Sabrina Tusa, AE2S; Paul Barthel, Jacobs; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Ken Helvey and Katie Laidley, SRF Consulting Group, Inc.; Katy Moore, Oly Olafson, Lee Kaffar and Kelsey Lee, HDR, Inc.; John Lundby, Colliers Securities; and Leo Richard, Stanley Township property owner.

Approval of agenda

It was moved by Manager Steen, seconded by Manager Lougheed 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 October 26, 2023, and January 25, 2024, meetings, as amended, and the minutes of the February 8, 2024, meeting, as presented. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – project updates and general topics

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

Jodi Smith presented the Property Acquisition Status Report regarding the Metro Flood Diversion Project.

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

Ms. Smith reported an informational meeting was held in the City of Christine regarding acquisition of flowage easements for the Metro Flood Diversion Project. The meeting was well attended by property owners and questions regarding the easements were answered. The next step is to acquire Right of Entry Agreements to survey the flowage easement areas.

Metro Flood Diversion Project – excess lands

Ms. Smith presented to the Board properties deemed as excess land by the Executive Director of the Metro Flood Diversion Authority and to request the Board consider approval of the properties as excess land and authorize the sale of the properties. The following OINs have been identified as excess land:

- OIN 837
- OIN 839
- OIN 2185
- OIN 5055Y

After discussion, it was moved by Manager Weston and seconded by Manager Loughed to declare OINs 837, 839, 2185 and 5055Y as excess land regarding the Metro Flood Diversion Project and authorize the sale of the properties. Upon roll call vote, the motion carried unanimously.

Ms. Smith reported to the Board that OINs 726Y2 and 730Y2 have both been declared excess land by the Executive Director of the Metro Flood Diversion Authority, and the Metro Flood Diversion Authority Lands Committee approved the sale of the properties from Cass County Joint Water Resource District to Southeast Cass Water Resource District. Before the sale can occur, the Cass County Joint Water Resource District must declare the properties as excess land and authorize the sale to the Southeast Cass Water Resource District.

After discussion, it was moved by Manager Steen and seconded by Manager Loughed to declare OINs 726Y2 and 730Y2 as excess land regarding the Metro Flood Diversion Project and authorize the sale of the properties to Southeast Cass Water Resource District. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – acquisition review / approval – Offutt/Brandt amended Complaint

Mr. McShane reported to the Board that based on an updated appraisal for the necessary property rights regarding OINs 809, 830, 846, 1883 and 9348, an additional deposit of \$4,089,378.36 is needed.

Manager Gust motioned, and Manager Weston seconded to approve and authorize an additional deposit of \$4,089,378.36 for OINs 809, 830, 846, 1883 and 9348 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, reasonably predictable 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 Steen and seconded by Manager Lougheed to close the meeting at 8:31 a.m. for the purposes of discussing contract negotiation strategies, litigation strategies and attorney consultation regarding ongoing litigation, reasonably predictable 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. BJM Land, Inc. (OIN 9993).
2. Robert Mitchell (OIN 9994); and
3. Cass County Joint Water Resource District v. Emden Partners, LLLP, Civ. No. 09-2023-CV-00160 (OINs 232, 836, and 5013)

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, Melissa Hinkemeyer, Carolyn Fiechtner, Sean Fredricks, Chris McShane, Luke Andrud, Joel Paulsen, Jodi Smith, Madeline Daudt, Dean Vetter, Sabrina Tusa, Duane Breitling, Mary Scherling, Ken Helvey, Katie Laidley, Scott Stenger, and Dale Ahlsten.

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

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

BJM Land, Inc. and Robert Mitchell (OINs 9993 and 9994)

A motion was made by Manager Lougheed and seconded by Manager Steen to approve and authorize the Chairman to sign the *Purchase Agreement* with BJM Land, Inc., and Robert Mitchell regarding OINs 9993 and 9994 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. Emden Partners, LLLP, Civ. No. 09-2023-CV-00160 (OINs 232, 836, and 5013)

Manager Steen moved and Manager Gust seconded to approve a settlement with Emden Partners, LLLP (“Emden”), as follows:

- Emden will convey to the Cass County Joint Water Resource District (the “District”) flowage easement interests over approximately 274.27 acres on OINs 232, 836, and 5013, as defined by survey.
- The District will pay Emden a total of \$2,400,000 upon closing of the real estate transaction contemplated under the parties’ settlement agreement for the property rights conveyed by Emden, as outlined above.
- Following the closing of the real estate transaction contemplated under the parties’ settlement agreement, and following payment to Emden, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. Emden Partners, LLLP, Civ. No. 09-2023-CV-00160.
- The District will reimburse Emden for reasonable attorneys’ fees, not to exceed \$50,000.

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – land agent reports

Ken Helvey, Oly Olafson 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 Weston and seconded by Manager Lougheed to approve the relocation and replacement housing payment for OIN 2014, as outlined in the letter dated February 24, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

Madeline Daudt discussed 2024 farmland leases regarding the Metro Flood Diversion Project. A motion was made by Manager Gust and seconded by Manager Steen to approve the 2024 *Cash Crop Lease Agreements*, as presented, on the following properties regarding the Metro Flood Diversion Project:

- OIN 938Y
- OINs 523Y and 937Y

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Access Agreement with the Metro Flood Diversion Authority on OINs 12 and 13

Paul Barthel discussed an *Access Agreement* with the Metro Flood Diversion Authority on OINs 12 and 13 regarding the Metro Flood Diversion Project. The *Agreement* is to allow the Public Private Partnership contractor for the Diversion Channel of the Metro Flood Diversion Project to remove excavated and stockpiled material from the property. This *Agreement* will terminate when the work is completed.

Manager Steen moved to approve and authorize the Chairman to sign the *Access Agreement* with the Metro Flood Diversion Authority regarding OINs 12 and 13 regarding the Metro Flood Diversion Project. Manager Weston seconded the motion. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Temporary Refunding Improvement Bonds, Series 2024A

John Shockley addressed the Board regarding the Cass County Joint Water Resource District Temporary Refunding Improvement Bonds, Series 2024A regarding the Metro Flood Diversion Project. The *Resolution* authorizes the issuance of \$180,000,000 Cass County Joint Water Resource District Temporary Refunding Improvement Bonds, Series 2024A for the purpose of refunding the Cass County Joint Water Resource District Temporary Refunding Improvement Bonds, Series 2021A, and paying the Costs of Issuance of the Cass County Joint Water Resource District Series 2024A Bonds.

Mr. Shockley also seeks the Board’s approval of the *Master Advisory Agreement* between Cass County Joint Water Resource District, and Kensington CA, LLC, the Registered Municipal Advisor.

After discussion, Manager Steen moved, and Manager Gust seconded to approve and authorize the Chairman to sign the *Resolution* and the *Master Advisory Agreement* regarding the Cass County Joint Water Resource District Temporary Refunding Improvement Bonds, Series 2024A, regarding the Metro Flood Diversion Project. Additional minutes are attached hereto. Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program

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

Mr. Hassell then reported on the RCPP – Rush River Watershed Plan. Discussions continue to be held with Burlington Northern Santa Fe Railway Company regarding operation and maintenance of the project.

Maple River Dam – tree and debris removal

Brady Woodard reported tree and debris removal efforts in the backwater pool area of the Maple River Dam are underway and progress is being made, nearing the point where the removal efforts ended last year. The weather has been optimal for the project. The Board discussed continuing the tree and debris removal efforts in the backwater pool area of the Maple River Dam.

Manager Gust moved to approve and authorize Chairman Olson to sign the *First Amendment* to the *Agreement* with Industrial Builders, Inc. regarding tree and debris removal in the backwater pool area of the Maple River Dam, not to exceed \$50,000. Manager Lougheed seconded the motion. Upon roll call vote, the motion carried unanimously.

Cass County Weed Control Work Order

It was moved by Manager Weston and seconded by Manager Lougheed to approve and authorize Chairman Olson to sign the Cass County Weed Control *Work Order* for spraying

services regarding weed, cattail, tree and brush control for Cass County Joint Water Resource District facilities. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Steen and seconded by Manager Lougheed to approve payment of Check #15310 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Gust, Steen and Weston. The Chairman declared the motion passed.

Adjournment

There being no further business to be considered by the Board, the meeting adjourned without objection.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary-Treasurer