

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
HERITAGE CONFERENCE ROOM
MAY 9, 2024
8:00 A.M.

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on May 9, 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, Director, Secretary; Leilei Bao, Treasurer; Carolyn Fiechtner, 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, and Jerry Bents, Houston Engineering, Inc.; Jodi Smith, Jessica Warren, and Madeline Daudt, Metro Flood Diversion Authority; Duane Breitling, and Mary Scherling, Cass County Commissioners; Kellen Grub, Dean Vetter, and Sabrina Tusa, AE2S; Paul Barthel, Jacobs; Dale Ahlsten, ProSource Technologies, LLC; Ken Helvey and Katie Laidley, SRF Consulting Group, Inc.; Oly Olafson, Kelsey Lee, and Wade Whitworth, HDR, Inc.; Tara Jensen, Wild Rice Watershed District; Leo Richard and Cynthia Varriano, Stanley Township property owners.

Approval of agenda

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

Minutes

It was moved by Manager Steen, seconded by Manager Weston, and unanimously carried to approve the minutes of the April 25, 2024, meetings (two sets).

Metro Flood Diversion Project – project updates and general topics

Paul Barthel updated the Board on the construction status of various components of the Metro Flood Diversion Project.

Metro Flood Diversion Project – excess lands status update

Jodi Smith updated the Board on the status of excess lands regarding the Metro Flood Diversion Project. Ms. Smith said the Metro Flood Diversion Authority has been actively working to dispose of excess lands that are no longer needed to facilitate the construction or operation of the Metro Flood Diversion Project. 25 parcels have been deemed as excess land and have either been sold or are currently in the process of being sold, following the *Policy on the Disposition and Management of Comprehensive Project*

Lands.

The Board received and filed a notice from the Metro Flood Diversion Authority regarding the sale of excess property OIN 507Y regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – lands budget update

Ms. Smith updated the Board on the status of the lands budget for the Metro Flood Diversion Project.

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 matters:

It was moved by Manager Lougheed and seconded by Manager Gust to close the meeting at 8:29 a.m. for the purposes of discussing contract negotiation strategies, litigation strategies and attorney consultation regarding 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. Cass County Joint Water Resource District v. John Varriano, et al., Civ. No. 09-2023-CV-01826 (OIN 1130);
2. Cass County Joint Water Resource District v. Ted and Mary Johnson, Civ. No. 09-2023-CV-01214 (OIN 9423); and
3. Cass County Joint Water Resource District v. Cindy Norberg, et al., Civ. No. 09-2023-CV-00554 (OIN 5023).

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, Leilei Bao, Carolyn Fiechtner, Sean Fredricks, Chris McShane, Luke Andrud, Katie Schmidt, Rob Stefonowicz, Jodi Smith, Madeline Daudt, Jessica Warren, Dean Vetter, Sabrina Tusa, Duane Breitling, Mary Scherling, Ken Helvey, Katie Laidley, Dale Ahlsten, and Oly Olafson.

Manager Weston left the meeting at 9:00 a.m.

The executive session adjourned at 9:29 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. John Varriano, et al, Civ. No. 09-

2023-CV-01826 (OIN 1130).

Manager Lougheed moved, and Manager Steen seconded to approve a settlement with John and Cynthia Varriano, as follows:

- The Varrianos will convey to the Cass County Joint Water Resource District (the “District”) fee simple ownership of approximately 1.5 acres on OIN 1130, as defined by survey; closing must occur on or before June 14, 2024.
- The District will pay the Varrianos a total of \$1,625,000, inclusive of any replacement housing differential payment, upon closing of the real estate transaction contemplated under the parties’ settlement agreement for the property rights conveyed by the Varrianos, as outlined above.
- Following the closing of the real estate transaction contemplated under the parties’ settlement agreement, and following payment to the Varrianos, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. John Varriano, et al, Civ. No. 09-2023-CV-01826.
- The Varrianos will lease back the property conveyed to the District for \$500 per month through December 31, 2024, in accordance with the terms of a written lease the parties will execute in conjunction with execution of the parties’ settlement agreement; the lease will acknowledge restricted access during the tenancy.
- The District will reimburse the Varrianos for reasonable attorneys’ fees, not to exceed \$33,000.

Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, and Steen. Manager Gust voted no. Manager Weston was absent from the vote. The motion carried.

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. Ted and Mary Johnson, Civ. No. 09-2023-CV-01214 (OIN 9423).

Manager Steen moved and Manager Lougheed seconded to approve a settlement with Ted and Mary Johnson, as follows:

- The Johnsons will convey to the Cass County Joint Water Resource District (the “District”) fee simple ownership of approximately 1.86 acres on OIN 9423, as defined by survey; closing must occur on or before August 1, 2024.
- The District will pay the Johnsons a total of \$753,000, inclusive of any replacement housing differential payment, upon closing of the real estate transaction contemplated under the parties’ settlement agreement for the property rights conveyed by the Johnsons, as outlined above.
- Following the closing of the real estate transaction contemplated under the parties’ settlement agreement, and following payment to the Johnsons, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. Ted and Mary Johnson, Civ. No. 09-2023-CV-01214.
- The Johnsons will lease back the property conveyed to the District for \$500 per month through December 31, 2024, in accordance with the terms of a written lease

the parties will execute in conjunction with execution of the parties' settlement agreement; the lease will acknowledge restricted access during the tenancy.

- The District will reimburse the Johnsons for reasonable attorneys' fees, not to exceed \$30,000.

Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, and Steen. Manager Gust voted no. Manager Weston was absent from the vote. The motion carried.

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. Cindy Norberg, et al, Civ. No. 09-2023-CV-00554 (OIN 5023).

Manager Lougheed moved, and Manager Gust seconded to approve a settlement with Cindy Norberg, et al, as follows:

- The Norbergs will convey to the Cass County Joint Water Resource District (the "District") fee simple ownership of approximately 8.97 acres on OIN 5023, as defined by survey; closing must occur on or before August 1, 2024.
- The District will pay the Norbergs a total of \$850,000, inclusive of any replacement housing differential payment, upon closing of the real estate transaction contemplated under the parties' settlement agreement for the property rights conveyed by the Norbergs, as outlined above.
- Following the closing of the real estate transaction contemplated under the parties' settlement agreement, and following payment to the Norbergs, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. Cindy Norberg, et al, Civ. No. 09-2023-CV-00554.
- The Norbergs will lease back the property conveyed to the District for \$500 per month through December 31, 2024, in accordance with the terms of a written lease the parties will execute in conjunction with execution of the parties' settlement agreement; the lease will acknowledge restricted access during the tenancy.
- The District will reimburse the landowner(s) for reasonable attorneys' fees and costs, not to exceed \$22,000.

Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, and Steen. Manager Gust voted no. Manager Weston was absent from the vote. The motion carried.

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 1916, as outlined in the letter dated May 9, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, Managers Olson, Lougheed, Steen and Gust voted in favor. Manager Weston was absent from the vote. The motion carried.

Metro Flood Diversion Project – contracting actions

It was moved by Manager Lougheed 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:

- *Task Order 2 – Amendment 9* with Ulteig Engineers, Inc. with a cost reduction of \$119,864.50
- *Task Order 2 – Amendment 0* with LandVest, Inc. in the amount of \$160,000.00

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

Metro Flood Diversion Project – Pipeline Easements with Cass Rural Water Users District on OINs 221Y and 1194N

Paul Barthel discussed a *Pipeline Easement* with Cass Rural Water Users District on OIN 221Y regarding the Metro Flood Diversion Project.

It was moved by Manager Steen and seconded by Manager Gust to approve and authorize the Chairman to sign the *Pipeline Easement* with Cass Rural Water Users District on OIN 221Y regarding the Metro Flood Diversion Project. Upon roll call vote, Managers Olson, Lougheed, Steen and Gust voted in favor. Manager Weston was absent from the vote. The motion carried.

Paul Barthel next discussed a *Pipeline Easement* with Cass Rural Water Users District on OIN 1194N regarding the Metro Flood Diversion Project.

Manager Weston returned to the meeting at this time.

It was moved by Manager Steen and seconded by Manager Gust to approve and authorize the Chairman to sign the *Pipeline Easement* with Cass Rural Water Users District on OIN 1194N regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

Madeline Daudt discussed a 2024 farmland lease on OINs 18, 19, 20, 21, and 22 regarding the Metro Flood Diversion Project. A motion was made by Manager Weston and seconded by Manager Steen to approve the 2024 *Cash Crop Lease Agreement* on OINs 18, 19, 20, 21, and 22 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Western Cass Flood Insurance Study – City of Perley, MN CLOMR

Kurt Lysne provided an update on the technical assistance to Noble Township in reviewing a Conditional Letter of Map Revision (CLOMR) for the City of Perley, MN. The CLOMR requires concurrence from Noble Township. Mr. Lysne indicated there are no impacts to Noble Township from the City of Perley, MN CLOMR. Jerry Bents noted changes to the floodplain are related to additional cross sections that correct the effective model.

Manager Gust moved to authorize the Secretary to send a statement of non-objection to

Noble Township regarding the City of Perley, MN CLOMR. Manager Lougheed seconded the motion. Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program

Kurt Lysne briefly reported on the RCPP – Upper Maple River Watershed Plan. The NRCS continues to work on finalizing the Plan.

Maple River Dam

Mr. Lysne reported on routine animal mitigation, monitoring, and inspection efforts at the Maple River Dam. Moore Engineering, Inc. continues to work with ALO Environmental Associates LLC regarding environmentally sensitive sites at the Maple River Dam.

Bills

It was moved by Manager Steen and seconded by Manager Gust to approve payment of Checks #15328 through #15330, 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.

Legislative Update

Sean Fredricks briefly updated the Board on legislative items related to water resource districts.

Adjournment

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

APPROVED:

Rodger Olson
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary