

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
JUNE 13, 2024
8:00 A.M.

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on June 13, 2024, at 8:00 a.m.

Present were Rodger Olson, Maple River Water Resource District; Jacob Gust, Rush River Water Resource District; Keith Weston and Rick Steen, Southeast Cass Water Resource District; Melissa Hinkemeyer, Secretary; Leilei Bao, Treasurer; Carolyn Fiechtner, Administrative Assistant; Sean M. Fredricks and Luke Andrud, 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, Cass County Commissioner; Jodi Smith, Tom Fuchs, Jessica Warren, and Madeline Daudt, Metro Flood Diversion Authority; Eric Dodds, Dean Vetter, and Sabrina Tusa, AE2S; Dale Ahlsten, and Scott Stenger, ProSource Technologies, LLC; Ken Helvey and Katie Laidley, SRF Consulting Group, Inc.; Oly Olafson, Kelsey Lee, and Wade Whitworth, HDR, Inc.; Paul Barthel, Jacobs; Doug Johnson, DKJ Appraisal LLC. Ken Lougheed, North Cass Water Resource District was absent.

Approval of agenda

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

Minutes

It was moved by Manager Steen, seconded by Manager Gust, and unanimously carried to approve the minutes of the May 23 and June 3, 2024, meetings, as presented.

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. The Board discussed their concerns regarding the construction status of bridges near Harwood for the Metro Flood Diversion Project. Mr. Barthel noted the developer of the Diversion Channel is coordinating with Burlington Northern Santa Fe Railway Company on the completion of the railroad bypass in that area which has delayed the progress of the bridge work near Harwood.

Metro Flood Diversion Project – acquisition review / approval – Coster amended Exchange Agreement

Luke Andrud discussed the *Third Amendment to Exchange And Purchase Agreement* with the Charles F. Coster Real Estate Trust regarding OINs 720Y, 724Y, 726Y, 728Y,

729Y, 730Y, and 1166Y regarding the Metro Flood Diversion Project. This amendment changes the legal description of OIN 724 to exclude the land under the SBA cell tower site, allows the Water Resource District to enter into the *Partial Release of Easement Agreement* to exclude the portion of OIN 724 being conveyed to the Coster Trust (leaving intact the easement with respect to the land being retained by the Water Resource District); and changes the closing date to on or before June 28, 2024. Mr. Andrud recommended the Board approve the amendment.

Manager Weston moved to approve and authorize the Chairman to sign the *Third Amendment to Exchange and Purchase Agreement* with the Charles F. Coster Real Estate Trust regarding OINs 720Y, 724Y, 726Y, 728Y, 729Y, 730Y, and 1166Y regarding the Metro Flood Diversion Project. Manager Gust seconded the motion. 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 matters and parties:

It was moved by Manager Gust and seconded by Manager Steen to close the meeting at 8:20 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. Cass County Joint Water Resource District v. KLF, LLP, Civ. No. 09-2023-CV-01123 (OIN 9347);
2. Cass County Joint Water Resource District v. JRD Campbell Family Investments, LLP, Civ. No. 09-2023-CV-00550 (OIN 9404); and
3. George J. Richard, Sharon A. Richard, Leo Richard, and Shirley Richard (OIN 1914).

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

The executive session was attended by Managers Olson, Weston, Gust, and Steen, Melissa Hinkemeyer, Leilei Bao, Carolyn Fiechtner, Sean Fredricks, Luke Andrud, Rob Stefonowicz, Jodi Smith, Madeline Daudt, Eric Dodds, Dean Vetter, Sabrina Tusa, Duane Breitling, Ken Helvey, Katie Laidley, Oly Olafson, and Wade Whitworth.

The executive session adjourned at 9:33 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:

Cass County Joint Water Resource District v. KLF, LLP, et al, Civ. No.09-2023-CV-01123 (OIN 9347).

Manager Weston moved and Manager Gust seconded to approve a settlement with KLF, LLP, et al, as follows:

- KLF, LLP (“KLF”), will convey to the Cass County Joint Water Resource District (the “District”) fee simple ownership of OIN 9347, consisting of approximately 3.01 acres, as defined by survey, which is the entire tract of property.
- The District will pay KLF a total of \$550,000 upon closing of the real estate transaction contemplated under the parties' settlement agreement for the property rights conveyed by KLF, as outlined above.
- KLF has waived their relocation rights; therefore, the Purchase Agreement between the parties will include an acknowledgement by KLF that KLF understands their rights under the Uniform Relocation Act, the North Dakota Relocation Act, and the Property Rights Acquisition and Mitigation document; that the District did not propose nor coerce this waiver and that KLF is voluntarily waiving these rights by KLF's own volition.
- Following the closing of the real estate transaction contemplated under the parties' settlement agreement, and following payment to KLF, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. KLF, LLP, et al, Civ. No.09-2023-CV-01123.
- KLF will lease back the property conveyed to the District for \$500 per month through March 1, 2025, 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 \$35,000.

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. JRD Campbell Family Investments, LLP, Civ. No. 09-2023-CV-00550 (OIN 9404).

Manager Steen moved and Manager Weston seconded to approve a settlement with JRD Campbell Family Investments, LLP, et al, as follows:

- JRD Campbell Family Investments, LLP (“Campbell”) will convey to the Cass County Joint Water Resource District (the “District”) fee simple ownership of OIN 9404, consisting of approximately 4.11 acres, as defined by survey.
- The District will pay Campbell a total of \$615,000 upon closing of the real estate transaction contemplated under the parties' settlement agreement for the property rights conveyed by Campbell, as outlined above.

- Campbell has waived their relocation rights; therefore, the Purchase Agreement between the parties will include an acknowledgement by Campbell that Campbell understands their rights under the Uniform Relocation Act, the North Dakota Relocation Act, and the Property Rights Acquisition and Mitigation document; that the District did not propose nor coerce this waiver and that Campbell is voluntarily waiving these rights by Campbell's own volition.
- Following the closing of the real estate transaction contemplated under the parties' settlement agreement, and following payment to Campbell, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. JRD Campbell Family Investments, LLP, Civ. No. 09-2023-CV-00550.
- Campbell will lease back the property conveyed to the District for \$500 per month through September 1, 2025, 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.
- IF Cass County Electric Cooperative terminates electricity to the property prior to September 1, 2025, the District will provide a generator until September 1, 2025.
- The District will reimburse Campbell for reasonable attorneys' fees and costs, not to exceed \$30,000.

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – relocation and RHDP reimbursement review / approval

It was moved by Manager Gust and seconded by Manager Weston to approve the relocation and replacement housing payment for OIN 1093, as outlined in the letter dated June 6, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

Madeline Daudt discussed six lease termination letters of the *Rental Agreements* for OINs 818X, 1093X, 1912, 1916, 5002, 8386 and 9258 regarding the Metro Flood Diversion Project. The structures on the properties will be removed as the properties are located in the Upstream Mitigation Area of the Metro Flood Diversion Project.

It was moved by Manager Weston and seconded by Manager Gust to approve and authorize the Secretary to send letters to the tenants of OINs 818X, 1093X, 1912, 1916, 5002, 8386 and 9258 notifying them of the termination of the *Rental Agreements* effective December 31, 2024. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Tree Removal Agreement on OIN 1113

Jodi Smith explained to the Board that during the design phase of the Metro Flood Diversion Project, the Corps of Engineers and state natural resource agencies raised concerns related to high velocity events due to increased potential erosion and fish passage issues. In response to these concerns, the Metro Flood Diversion Authority developed and evaluated a series of options to reduce velocities upstream of the Maple

River Aqueduct and Sheyenne River Aqueduct. The range of options were compared to a series of engineering and land criteria to identify a proposed concept.

The determination was made to line the riverbank with root wads, particularly on outside river bends, to reduce water velocities, reduce erosion potential, and provide aquatic habitat. The trees to be used for root wads need to be about 12 to 18-inches in diameter with relatively straight trunks resulting in a root ball with structurally sound roots that extend to about 6-feet in diameter. Along the Sheyenne River, trees will be removed to construct the benches and these trees will be used to provide root wads. However, additional trees with root wads from offsite sources will be required.

Ms. Smith is requesting the Board approve and authorize the Chairman to sign the *Tree Removal Agreement* with the property owners of OIN 1113 to source and remove the necessary trees from the property.

Manager Gust moved to approve and authorize the Chairman to sign the *Tree Removal Agreement* with the property owners of OIN 1113, to source and remove the necessary trees for the Sheyenne River benching mitigation project regarding the Metro Flood Diversion Project. Manager Steen seconded the motion. Upon roll call vote, the motion carried unanimously.

Maple River Dam – current conditions

Brady Woodard reported there is some water in the backwater pool area of the Maple River Dam from the recent rain events.

Maple River Dam – prescribed burn

Mr. Woodard discussed a proposed prescribed burn of the Maple River Dam to improve and encourage new grass and vegetative growth. The quote for the prescribed burn is \$12,500, with a tentative completion of late July.

Manager Weston moved to authorize Moore Engineering, Inc. to hire a contractor to complete a prescribed burn of the Maple River Dam, not to exceed \$12,500. Manager Gust seconded the motion. Upon roll call vote, the motion carried unanimously.

2024 maintenance levy assessments

A motion was made by Manager Steen and seconded by Manager Gust to approve the Cass County Joint Water Resource District maintenance levies at the following levels for 2024:

- Maple River Dam: \$0.60
- Lake Bertha Flood Control Project No. 75: \$0.50

Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Steen and seconded by Manager Weston to approve payment of the wire transfers, as presented. Upon roll call vote, the following Managers voted in

favor: Olson, Steen, Gust, and Weston. Manager Lougheed was absent. The Chairman declared the motion passed.

State Water Commissioner-hosted basin meetings

Cass County Joint Water Resource District Managers were encouraged to attend the State Water Commissioner-hosted meetings in the Red River Basin and to communicate with the Commissioners about the importance of legal assessment drains, especially the importance of drains to agriculture in North Dakota.

Adjournment

There being no further business to be considered by the Board, Manager Gust motioned, and Manager Steen seconded to adjourn the meeting. The meeting adjourned without objection.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary