

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
CASS COUNTY JOINT WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
HERITAGE CONFERENCE ROOM  
WEST FARGO, NORTH DAKOTA  
JULY 11, 2024  
8:00 A.M.

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on July 11, 2024, at 8:00 a.m.

Present were Rodger Olson, Maple River Water Resource District; Keith Weston and Rick Steen, Southeast Cass Water Resource District; Jacob Gust and William A. Hejl, Rush River Water Resource District; Ken Lougheed, North Cass Water Resource District; Melissa Hinkemeyer, Director, Secretary; Carolyn Fiechtner, Administrative Assistant; Sean M. Fredricks, Chris McShane, Lukas Andrud, and Katie Schmidt, Ohnstad Twichell, P.C.; Rob Stefonowicz, Larkin Hoffman; Duane Breitling, Cass County Commissioner; Kurt Lysne, Lyndon Pease, and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Jodi Smith, Jessica Warren, and Madeline Daudt, Metro Flood Diversion Authority; Eric Dodds, Dean Vetter, 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.; Oly Olafson, Kelsey Lee, and Wade Whitworth, HDR, Inc.; Levi Otis, Ellingson Companies; and Nick Delaney, Rinke Noonan.

**Approval of agenda**

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

**Minutes**

It was moved by Manager Weston, seconded by Manager Steen, and unanimously carried to approve the minutes of the June 26, 2024, and June 27, 2024 (two sets) meetings, as presented.

**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 Lougheed to close the meeting at 8:04 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:

- a. Cass County Joint Water Resource District v. Karen Offutt, as Trustee of the Karen G. Offutt Trust U/A dated October 18, 2018, et al, Civ. No. 09-2021-CV-03567, and Cass County Joint Water Resource District v. Karen O. Offutt and Bell Bank, Co-Trustees Residuary Trust under the Larry A. Brandt Revocable Living Trust, et al, Civ. No. 09-2020-CV-03630 (OINs 809N, 809X, 830, 846, 1883, and 9348); and
- b. 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, Lougheed, 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, Katie Schmidt, Rob Stefanowicz, 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 8:44 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. Karen Offutt, as Trustee of the Karen G. Offutt Trust U/A dated October 18, 2018, et al, Civ. No. 09-2021-CV-03567, and Cass County Joint Water Resource District v. Karen O. Offutt and Bell Bank, Co-Trustees Residuary Trust under the Larry A. Brandt Revocable Living Trust, et al, Civ. No. 09-2020-CV-03630 (OINs 809N, 809X, 830, 846, 1883, and 9348).

Manager Weston moved and Manger Gust seconded the motion to approve a settlement with Offutt and Brandt as follows:

- In accordance with the *Partial Judgment of Condemnation* issued by the District Court in the consolidated eminent domain actions, District Court in Civ. No. 09-2020-CV-03630 and Civ. No. 09-2021-CV-03567, issued by the District Court on September 28, 2023 (the “Partial Judgment”), the defendants in these matters (collectively, “Brandts”) conveyed to the Cass County Joint Water Resource District (the “District”) fee simple ownership of OIN 9348 and OIN 809N, containing approximately 47.19 acres, and a Temporary Construction Easement of approximately 1.63 acres on OIN 809.
- In accordance with the Partial Judgment, Brandts conveyed Flowage Easements to the District over approximately 550 acres on OINs 830, 846, 809, and 1883.

- In accordance with the Partial Judgment, Brandts conveyed an Environmental Monitoring Easement to the District on OIN 809.
- The District will convey to Brandts fee simple ownership of OINs 9993 and 9994 (approximately 7.21 acres) subject to the exception and reservation of a flowage easement, as defined by survey, and fee simple ownership of OINs 6, 8, 9, 12Y, 13Y, 14Y (approximately 47.23 acres), all subject to the exception and reservation of temporary construction easement interests in favor of the District, as defined by survey.
- The District's temporary construction easement interests, identified as "Temporary Construction Easement, RRVA" in a map dated June 27, 2024, on file with the District, regarding OINs 12Y and 13Y ("RRVA TCE") will expire before April 1, 2027, and the District will remove stockpiled fill material from the RRVA TCE prior to April 1, 2027. All of the District's other temporary construction easement interests identified above will expire in six years or upon completion of the Project's southern embankment, whichever occurs sooner.
- The District will pay Brandts \$7,450,000.00, less the amount of \$5,434,000.00 previously deposited with the District Court in Civ. No. 09-2020-CV-03630 and Civ. No. 09-2021-CV-03567 or already paid to Brandts, leaving \$2,016,000.00 still due to Brandts under this settlement.
- Following the closing of the real estate transactions contemplated under the parties' settlement agreement, and following payment to Brandts, the parties will execute and file a stipulation for entry of judgment and final orders of condemnation, to dismiss the eminent domain actions, Cass County Joint Water Resource District v. Karen Offutt, as Trustee of the Karen G. Offutt Trust U/A dated October 18, 2018, et al, Civ. No. 09-2021-CV-03567, and Cass County Joint Water Resource District v. Karen O. Offutt and Bell Bank, Co-Trustees Residuary Trust under the Larry A. Brandt Revocable Living Trust, et al, Civ. No. 09-2020-CV-03630.
- The District will reimburse Brandts for reasonable attorney's fees and costs not to exceed \$215,000.

Upon roll call vote, the motion carried unanimously.

Chairman Olson asked if any members of the Board wished to offer any motions regarding OIN 1914.

Manager Gust moved and Manager Lougheed seconded the motion to approve an agreement with George J. Richard, Sharon A. Richard, Leo Richard, and Shirley Richard, regarding OIN 1914, as follows:

- George J. Richard, Sharon A. Richard, Leo Richard, and Shirley Richard ("Richards") will convey to the Cass County Joint Water Resource District (the "District") flowage easement interests over approximately 20 acres on OIN 1914, as defined by survey.
- The District's flowage easement rights regarding OIN 1914 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 pay Richards a total of \$2,200,000 upon closing of the real estate transactions contemplated under the parties’ agreement for the property rights conveyed by Richards as outlined above.
- Upon closing, Richards will lease the homestead improvements and structures on OIN 1914 from the District for \$500 per month until 30 days’ written termination notice from Richards or until December 30, 2025, whichever occurs sooner.
- The District will reimburse Richards for reasonable and eligible relocation costs and expenses in accordance with the Uniform Relocation Act.
- The District will reimburse Richards for reasonable attorneys’ fees, not to exceed \$7,500.

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.

Manager Weston left the meeting at this time.

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

Chris McShane explained to the Board that the CCJWRD executed a *Purchase Agreement* with Terry and Kay Compson in 2020 that included an option provision to modify the taking if necessary for final design of Southern Embankment Reach 3. The Water Resource District sent a letter to the Compsons regarding its intentions to exercise the *Option Agreement*. The *Purchase Agreement* includes the purchase of temporary easements from the Compsons for \$2,000 per acre for a five-year period, equating to \$400 per acre per year. In addition, the *Option Agreement* included a provision to extend the term of the temporary easement; however, the extension price was noted as \$250 per acre per year. The Compsons requested that if the temporary easement needs to be extended, that the payment continue at \$400 per acre per year to match the original payment amount. It is requested that the Board approve this modification to the *Option Agreement* to include a payment of \$400 per acre per year should the temporary easement need to be extended beyond December 31, 2029.

Manager Gust moved to modify the *Option Agreement* with Terry and Kay Compson to amend the temporary easement payment to \$400 per acre per year should the temporary easement need to be extended beyond December 31, 2029. Manager Steen seconded the motion. Upon roll call vote, the motion carried unanimously. Manager Weston was absent from the vote.

**Metro Flood Diversion Project – OINs 2044 and 2045 Rural Impact Mitigation Program Pre-Approval Application**

Ken Helvey discussed a Rural Impact Mitigation Program pre-approval application for the owners of a business located on OINs 2044 and 2045 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 the *Pre-Approval Application Form* for a Rural Impact Mitigation Program loan for the owners of a business located on OINs 2044 and 2045 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

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

It was moved by Manager Lougheed and seconded by Manager Gust to approve the relocation and replacement housing payment for OINs 1112 and 1113, as outlined in the letter dated July 11, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – property management**

Madeline Daudt discussed amended *Flowage Easement* language for OIN 8386 and requested the Board approve the amended *Flowage Easement* language, as presented.

It was moved by Manager Steen and seconded by Manager Lougheed to approve the amended *Flowage Easement* language for OIN 8386 and authorize the Chairman to sign the amended *Flowage Easement*, as presented. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – contracting actions**

It was moved by Manager Steen and seconded by Manager Lougheed to approve and authorize the Chairman to sign the following contracting actions regarding appraisal services for the Metro Flood Diversion Project:

- *Task Order No. 1 – Amendment 2* with LandVest, Inc., reducing the contract price in the amount of \$167,000
- *Task Order No. 2 – Amendment 5* with Tinjum Appraisal Company, Inc., in the amount of \$128,500
- *Task Order No. 6 – Amendment 5* with Patchin Messner Valuation Counselors, in the amount of \$46,000

Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – Utility Easement with Cass Rural Water Users District – OINs 6 and 8**

Kellen Grubb discussed a *Utility Easement* with Cass Rural Water Users District on OINs 6 and 8 regarding the Metro Flood Diversion Project.

It was moved by Manager Steen and seconded by Manager Weston to approve and authorize the Chairman to sign the *Utility Easement* with Cass Rural Water Users District on OINs 6 and 8 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Maple River Dam – Emergency Action Plan update**

Mike Opat reported Houston Engineering, Inc. is drafting a proposal to update the Emergency Action Plan for the Maple River Dam. The proposal should be ready to present at the next meeting.

**Maple River Dam – animal damage control**

Brady Woodard reported animal activity has increased with the recent rainy weather. Moore Engineering, Inc. is working with the animal damage control contractor to resolve the issues.

**Sheldon Flood Protection Project No. 2019-01**

Kurt Lysne briefly updated the Board on the status of right of way acquisition for the Sheldon Flood Protection Project No. 2019-01.

**Regional Conservation Partnership Program (RCP)P**

Mr. Lysne briefly reported the Natural Resources Conservation Service (NRCS) will be touring the area of the RCP)P – Upper Maple River Watershed Plan soon.

Mr. Lysne then reported on the RCP)P – Rush River Watershed Project. Moore Engineering, Inc. and the NRCS are working on final updates to the Plan.

**Cornell Township Drainage Improvement District No. 80 – joint water resource district with Barnes County Water Resource District**

Chairman Olson stated that after discussion with the Maple River Water Resource District, the Maple River Water Resource District requests to form a Maple River – Barnes County joint water resource district for the Cornell Township Drainage Improvement District No. 80 project. Sean Fredricks noted Barnes County Water Resource District has agreed to a joint board with the Maple River Water Resource District, with the Maple River Water Resource District having the administrative responsibilities for the joint board.

**Bills**

It was moved by Manager Steen and seconded by Manager Weston to approve payment of Checks #15343 through #15345 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston, Gust and Steen. The Chairman declared the motion passed.

**Human Resources Committee update**

Manager Weston discussed with the Board the part-time Accounting Assistant job description and job advertisement for consideration by the Board. Manager Weston moved to approve the part-time Accounting Assistant job description and advertisement,

as presented. Manager Gust seconded the motion. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Weston and seconded by Manager Gust to approve and authorize the Director to advertise the Accounting Assistant position, interview candidates, and hire an individual for the position. Upon roll call vote, the motion carried unanimously.

Manager Weston reported the Committee continues to work on updates to the Cass County Water Resource Districts Personal Policy Manual. The updates to the Manual are anticipated to be completed this fall and the Manual will be reviewed annually thereafter.

Manager Weston also shared with the Board re-certification and continuing education items that the staff has interest in completing. Manager Weston moved to approve the staff continuing education requests as presented, not to exceed \$3,000. Manager Steen seconded the motion. Upon roll call vote, the motion carried unanimously.

**Adjournment**

There being no further business to be considered by the Board, it was moved by Manager Steen, seconded by Manager Loughheed, and unanimously carried to adjourn the meeting. The meeting adjourned without objection.

APPROVED:

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Rodger Olson  
Chairman

ATTEST:

\_\_\_\_\_  
Melissa Hinkemeyer  
Secretary