

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 25, 2024  
8:00 A.M.

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on July 25, 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, Rush River Water Resource District; Ken Lougheed, North Cass Water Resource District; Melissa Hinkemeyer, Director, Secretary; Leilei Bao, Treasurer; Carolyn Fiechtner, Administrative Assistant; Sean M. Fredricks, Chris McShane, Lukas Andrud, 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.; Jodi Smith, Tom Fuchs, Jessica Warren, and Madeline Daudt, Metro Flood Diversion Authority (MFDA); Eric Dodds, Dean Vetter, and Sabrina Tusa, AE2S; David Dillman, SAM; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Ken Helvey, SRF Consulting Group, Inc.; Oly Olafson, Kelsey Lee, and Wade Whitworth, HDR, Inc.; Leo Richard, Stanley Township property owner; and Jarrett Christoferson, JAC Predator and Large Pest Control, Inc.

**Approval of agenda**

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

**Minutes**

It was moved by Manager Lougheed, seconded by Manager Gust, and unanimously carried to approve the minutes of the July 11, 2024, meeting, as presented.

**Metro Flood Diversion Project – project updates and general topics**

Chris McShane reported on the status of formal negotiations regarding the Metro Flood Diversion Project.

Eric Dodds discussed the Property Acquisition Status Report regarding the Metro Flood Diversion Project and reported on key activities regarding property rights acquisitions and Rights of Entry for the project. Mr. Dodds shared a major milestone achieved, the final two parcels for the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project have been acquired. Brief discussion was held on the status of the ring levee for the community of Christine, North Dakota.

**Metro Flood Diversion Project – OINs 7247 and 7248 approach for selling of excess lands**

Jodi Smith stated to the Board that the MFDA and the Cass County Joint Water Resource District declared OINs 7247 and 7248 excess lands on April 24 and 25, 2024. Property owners adjacent to OINs 7247 and 7248 were contacted regarding the availability to purchase the properties and all adjacent property owners have stated their intent in purchasing the portions of OINs 7247 and 7248 adjacent to their properties. Ms. Smith is requesting the Board approve the recommended approach to split and sell OINs 7247 and 7248 to the adjacent property owners. Ms. Smith noted the MFDA Land Management Committee has approved the recommended approach to split and sell OINs 7247 and 7248 to the adjacent property owners.

Manager Gust moved and Manager Weston seconded the motion to approve the approach for splitting and selling OINs 7247 and 7248 to the adjacent property owners, as recommended, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – OIN 7249 approach for selling of excess land**

Ms. Smith stated to the Board that the MFDA and the Cass County Joint Water Resource District declared OIN 7249 excess land on April 24 and 25, 2024. Property owners adjacent to OIN 7249 were contacted regarding the availability to purchase the property and all adjacent property owners have stated their intent in purchasing the portions of OIN 7249 adjacent to their properties. Ms. Smith is requesting the Board approve the recommended approach to split and sell OIN 7249 to the adjacent property owners. Ms. Smith noted the MFDA Land Management Committee has approved the recommended approach to split and sell OIN 7249 to the adjacent property owners.

Manager Gust moved and Manager Steen seconded the motion to approve the approach for splitting and selling OIN 7249 to the adjacent property owners, as recommended, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – OIN 858 excess land recommendation**

Ms. Smith stated OIN 858 has been deemed as excess land by the MFDA Co-Executive Directors, and requested the Board consider approval of OIN 858 as excess land and authorize sale of the property per the *Policy on the Disposition and Management of Comprehensive Project Lands* regarding the Metro Flood Diversion Project.

It was moved by Manager Steen and seconded by Manager Weston to declare OIN 858 as excess land regarding the Metro Flood Diversion Project and authorize sale of the property, subject to a Flowage Easement, per the *Policy on the Disposition and Management of Comprehensive Project Lands*. 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 Weston 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 2040 and 2184
  - OINs 2044 and 2045
  - OINs 2046, 1047, and 2183
- 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 August 26, 2024.

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 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 8:44 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. Wesley N. Berg, et al, Civ. No. 39-2023-CV-00083 (OIN 1371); and
- b. Cass County Joint Water Resource District v. Brendan Christenson, et al, Civ. No. 39-2023-CV-01147 (OIN 7002).

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, Leilei Bao, Carolyn Fiechtner, Sean Fredricks, Chris McShane, Luke Andrud, Katie Schmidt, Rob Stefonowicz, Jodi Smith, Jessica Warren, Madeline Daudt, Eric Dodds, Dean Vetter, Sabrina Tusa, Ken Helvey, Oly Olafson, and Wade Whitworth.

The executive session adjourned at 9:11 a.m. and the regular meeting was reconvened and opened to the public.

**Metro Flood Diversion Project – acquisition review / approval continued**

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. Wesley N. Berg, et al, Civ. No. 39-2023-CV-00083 (OIN 1371)

Manager Weston moved and Manager Gust seconded the motion to approve a settlement with Wesley N. Berg and Shirley A. Berg, as follows:

- Wesley N. Berg and Shirley A. Berg (the “Bergs”) will convey to the Cass County Joint Water Resource District (the “District”) flowage easement interests over approximately 7.93 acres on OIN 1371, as defined by survey.
- The District will pay the Bergs \$16,250 upon closing of the real estate transactions contemplated under the parties’ settlement agreement for the property rights conveyed by the Bergs as outlined above.
- Following the closing of the of the real estate transaction contemplated under the parties’ settlement agreement, and following payment to the Bergs, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. Bergs, Civ. No. 39-2023-CV-00083.

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. Brendan Christenson, et al, Civ. No. 39-2023-CV-01147 (OIN 7002)

Manager Lougheed moved, and Manager Weston seconded the motion to approve a settlement with Brendan Christenson and Daniel Christenson, as follows:

- Brendan Christenson and Daniel Christenson (the “Christensons”) will convey to the Cass County Joint Water Resource District (the “District”) flowage easement interests over approximately 23.58 acres on OIN 7002, as defined by survey (the “Flowage Easement Property”).
- The District will pay the Christensons a total of \$140,000 upon closing of the real estate transaction contemplated under the parties’ settlement agreement for the property rights conveyed by the Christensons, as outlined above.

- The Christensons have waived their relocation rights; therefore, the settlement agreement between the parties will include an acknowledgement by the Christensons that the Christensons understand 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 the Christensons are voluntarily waiving these rights by their own volition.
- Following the closing of the of the real estate transaction contemplated under the parties' settlement agreement, and following payment to the Christensons, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. Brendan Christenson, et al, Civ. No. 39-2023-CV-01147.
- The District will not demolish the building currently existing on the Flowage Easement Property prior to May 1, 2025, and the Christensons will retain the right to use the building until demolition; the District will have no obligation to maintain the building and the Christensons' use following the date of closing will be at the Christensons' sole risk, cost, and expense.
- The District will reimburse the Christensons for reasonable attorneys' fees and costs, not to exceed \$26,000.

Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – land agent reports**

Scott Stenger, Dale Ahlsten, Ken Helvey, Oly Olafson, and Wade Whitworth, 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 Steen and seconded by Manager Gust to approve the relocation and replacement housing payment for OIN 1916, as outlined in the letter dated July 25, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Gust and seconded by Manager Steen to approve the relocation and replacement housing payment for OIN 9994, as outlined in the letter dated July 25, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – property management**

Madeline Daudt discussed a lease termination letter of the *Rental Agreement* for OINs 840, 829, 856, and 1972 regarding the Metro Flood Diversion Project.

It was moved by Manager Weston and seconded by Manager Steen to approve and authorize the Secretary to send a letter to the tenant of OINs 840, 829, 856, and 1972

notifying them of the termination of the associated *Rental Agreement* effective December 31, 2024. Upon roll call vote, the motion carried unanimously.

Ms. Daudt stated the structures on OIN 9163 regarding the Metro Flood Diversion Project were removed last year and the property is now a vacant site that needs to be maintained. To maintain the property, mowing, haying and/or spraying is necessary. Ms. Daudt is requesting the Board approve the *License Agreement* with Schmidt and Sons, Inc. at no cost to the Water Resource District, for haying, mowing, and weed control activities on OIN 9163 to maintain the property.

Manager Lougheed moved to approve and authorize the Chairman to sign the *License Agreement* with Schmidt and Sons, Inc. for haying, mowing, and weed control activities on OIN 9163 regarding the Metro Flood Diversion Project. Manager Gust seconded the motion. Upon roll call vote, the motion carried unanimously.

Ms. Daudt reported to the Board that OIN 8385 is currently on a work package to remove the structures on the property, and the contractor needs to coordinate moving a radio line before moving the house from the property. The radio line won't be terminated until the end of August and the contractor has asked that they are able to park the house on the site until such time they can remove the home safely. Ms. Daudt is requesting the Board approve the *Structure Parking Agreement* with Schmidt and Sons Construction, Inc. regarding OIN 8385 regarding the Metro Flood Diversion Project.

Chairman Olson moved to approve and authorize the Chairman to sign the *Structure Parking Agreement* with Schmidt and Sons Construction, Inc. for OIN 8385 regarding the Metro Flood Diversion Project. Manager Gust seconded the motion. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – contracting actions**

Manager Lougheed moved to approve *Task Order No. 6 – Amendment 7* with Crown Appraisals, Inc., in the amount of \$17,500, regarding appraisal services for the Metro Flood Diversion Project. Manager Weston seconded the motion. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – Subdivision Agreement with the City of West Fargo for the FMD-Raymond Subdivision Plat**

Eric Dodds reviewed the FMD-Raymond Subdivision Plat that was approved by the Cass County Joint Water Resource District at the May 23, 2024, meeting. The plat has also been approved by the Cass County Planning Commission and the City of West Fargo Planning Commission. The City of West Fargo has requested a *Subdivision Agreement* that lays out certain terms and conditions of plat and development approval and responsibilities of the Cass County Joint Water Resource District and the City.

Manager Gust moved and Manager Weston seconded to approve and authorize the Chairman to sign the *Subdivision Agreement* between the Cass County Joint Water

Resource District and the City of West Fargo for the FMD-Raymond Subdivision Plat regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – OIN 816Y Temporary Stockpile Agreement**

Ms. Daudt stated that R.J. Zavoral & Sons, Inc. is seeking to sublease a portion of OIN 816Y for a temporary stockpile area from Joe Sauvageau, who is currently renting OIN 816Y from the Water Resource District. According to the *Cash Crop Lease Agreement* it states,

“The Leased Property shall be used only for agricultural purposes, specifically, planting, growing, and harvesting of legal crops. Any other use of the Leased Property may be permitted only with prior authorization of the Landowner(s)...”.

Ms. Daudt is seeking Board approval to authorize Joe Sauvageau to enter into a *Temporary Stockpile Agreement* with R.J. Zavoral & Sons, Inc. regarding OIN 816Y.

Manager Steen moved to approve and authorize Joe Sauvageau to enter into the *Temporary Stockpile Agreement* with R.J. Zavoral & Sons, Inc. regarding OIN 816Y regarding the Metro Flood Diversion Project. Manager Loughheed seconded the motion. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – Utility Permit for MLGC, LLC to cross the Diversion Channel at 38th Street for relocation of existing fiber optic cables**

David Dillman reported that the MFDA has been working with MLGC, LLC and the P3 Developer for the Diversion Channel of the Metro Flood Diversion Project to relocate existing MLGC, LLC fiber optic cables. The proposed *Utility Permit* with MLGC, LLC will allow MLGC to occupy this location within the right of way for the Metro Flood Diversion Project. Mr. Dillman is seeking Board approval of the *Utility Permit* with MLGC, LLC for a crossing of the Diversion Channel at 38th Street for relocation of existing fiber optic cables regarding the Metro Flood Diversion Project.

Manager Steen moved, and Manager Gust seconded the motion to approve the *Utility Permit* with MLGC, LLC regarding a crossing of the Diversion Channel at 38th Street for relocation of existing fiber optic cables regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – attorney-client privileges**

Sean Fredricks stated to the Board that Mr. Joel Paulson was involved in discussions with counsel for the Cass County Joint Water Resource District regarding litigation strategies related to the acquisition of the necessary property rights for the Diversion Project, and he was involved in executive sessions regarding acquisition of property rights by the District necessary for the construction, operation, and maintenance of the Diversion Project.

A motion was made by Manager Steen and seconded by Manager Gust regarding *Cass County Joint Water Resource District v. Robert R. Askegaard, et. al*, Civil Number 09-2023-CV-00109, and all matters consolidated therein, as follows:

- The Cass County Joint Water Resource District does not waive its attorney-client privileges under Rule 502 of the North Dakota Rules of Evidence in this matter; the District objects to any disclosure of confidential information and authorizes counsel and the Metro Flood Diversion Authority to take whatever action is necessary to protect this privilege up to, and including, referral of any violation to the Cass County States Attorney's office; and
- The Cass County Joint Water Resource District authorizes counsel to submit a cease and desist letter to Mr. Joel Paulsen's attorney objecting to disclosure of any confidential information and reserving any rights the District has to commence a civil action regarding any disclosure of confidential information.

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 for the Maple River Dam Emergency Action Plan update. The proposal will be presented at a future meeting.

### **Maple River Dam updates**

Brady Woodard updated the Board on activities regarding the Maple River Dam. Mr. Woodard reported cultural site work at the Dam will continue when the project Archaeologist returns for the annual archaeological monitoring efforts. Mr. Woodard also stated the proposed prescribed burn of the Maple River Dam to improve and encourage new grass and vegetative growth will begin when nesting season is past, and weather conditions are optimal. Dakota Helicopters, Inc. is scheduled to begin weed control work in Cass County, including at the Maple River Dam, in early-mid August.

### **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. Mr. Lysne recently met with the remaining property owner to discuss their concerns and continues to communicate with them regarding the project.

### **Regional Conservation Partnership Program (RCPP)**

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

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

### **Bills**

The Secretary requested an addition to the bills of \$783,275.00 to be paid to The Title Company for the OIN 9423 closing regarding the Metro Flood Diversion Project.



Manager Steen moved to approve payment to The Title Company in the amount of \$783,275.00 regarding the closing of OIN 9423 regarding the Metro Flood Diversion Project. Manager Loughheed seconded the motion. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Steen and seconded by Manager Weston to approve payment of Checks #15346 through #15348 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Loughheed, Weston, Gust and Steen. The Chairman declared the motion passed.

**Animal damage control**

Jarrett Christoferson explained the animal damage control services he provides for the water resource districts in Cass County. The Board thanked Mr. Christoferson for taking the time to discuss his efforts with the Board.

**Adjournment**

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

APPROVED:

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Rodger Olson  
Chairman

ATTEST:

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Melissa Hinkemeyer  
Secretary