

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  
AUGUST 22, 2024  
8:00 A.M.

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on August 22, 2024, at 8:00 a.m.

Present were Ken Lougheed, North Cass Water Resource District; Keith Weston, and Rick Steen, Southeast Cass Water Resource District; Gerald Melvin, Maple River Water Resource District; Jacob Gust and William A. Hejl, Rush River 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.; Kurt Lysne, Lyndon Pease, Josh Hassell, and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling and Mary Scherling, Cass County Commissioners; Jodi Smith, Jessica Warren, and Madeline Daudt, Metro Flood Diversion Authority (MFDA); Eric Dodds, 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.; Oly Olafson, Kelsey Lee, and Wade Whitworth, HDR, Inc.; Nicholas Delaney, Rinke Noonan; and Eric Dahl, Cass County Soil Conservation District.

**Resignation of Chairman Rodger Olson**

Ken Lougheed reported Chairman Rodger Olson has resigned from the Maple River Water Resource District and Cass County Joint Water Resource District. Sean Fredricks noted the Board will need to replace Mr. Olson in the various roles he served in.

Manager Steen moved to appoint Ken Lougheed as Chairman of the Cass County Joint Water Resource District. Manager Gust seconded the motion. Hearing no other nominations, a roll call vote was taken, and all Managers voted in favor.

Manager Gust moved to appoint Keith Weston as Vice Chair of the Cass County Joint Water Resource District. Manager Steen seconded the motion. Hearing no other nominations, a roll call vote was taken, and all Managers voted in favor.

Mr. Fredricks noted Manager Steen was the alternate Diversion Authority representative and Diversion Authority Planning Committee representative. A motion was made by Manager Steen to appoint Manager Steen to serve in the capacities of the Diversion Authority representative and the Diversion Authority Planning Committee representative. Chairman Lougheed seconded the motion. Hearing no other nominations, a roll call vote was taken, and all Managers voted in favor.

Manager Weston moved to appoint Ken Lougheed to serve in the capacities of Diversion Authority alternate representative and Diversion Authority Planning Committee alternate representative. Manager Steen seconded the motion. Hearing no other nominations, a roll call vote was taken, and all Managers voted in favor.

### **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 Steen, seconded by Manager Weston, and unanimously carried to approve the minutes of the August 8, 2024, meeting, as presented.

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

Chris McShane updated the Board 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 disposal of Project lands deemed excess.

### **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 Weston to close the meeting at 8:26 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. Paul S. Cose and Margaret R. Cose (OINs 2044 and 2045);
2. John L. Luecke and Kathleen J. Luecke; Katie Carlson; Caleb Luecke; and Daniel Luecke (OINs 2046, 2047, and 2183);
3. Aaron Carlson and Katie Carlson (OINs 2040 and 2184); and
4. Cass County Joint Water Resource District v. Theresa J.B. Nelson, as Trustee of the Theresa J. B. Nelson GST Trust, created under the Eleanor K. Brandt Revocable Living Trust, et al, Civ. No. 09-2023-CV-01227 (OINs 1922 and 1927)

Upon roll call vote, the following Managers voted in favor: Lougheed, Weston, Gust, Steen, and Melvin. The motion carried unanimously.

The executive session was attended by Managers Lougheed, Weston, Gust, Steen, and Melvin, Melissa Hinkemeyer, Leilei Bao, Carolyn Fiechtner, Sean Fredricks, Chris McShane, Luke Andrud, Katie Schmidt, Jodi Smith, Madeline Daudt, Duane Breitling, Mary Scherling, Eric Dodds, Dean Vetter, Sabrina Tusa, Ken Helvey, Katie Laidley, Dale Ahlsten, Oly Olafson, and Wade Whitworth.

The executive session adjourned at 9:22 a.m. and the regular meeting was reconvened and opened to the public.

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

Manager Weston moved to approve the *Pre-Approval Application Form* for Rural Impact Mitigation Program (RIMP) loans for the following regarding the Metro Flood Diversion Project:

- Paul S. Cose and Margaret R. Cose (OINs 2044 and 2045)
- KayJay Ag Services, Inc. (OINs 2040, 2046, 2047, 2183, and 2184)

Manager Steen seconded the motion. Upon roll call vote, the motion carried unanimously.

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

Cass County Joint Water Resource District v. Theresa J. B. Nelson, as Trustee of the Theresa J. B. Nelson GST Trust, created under the Eleanor K. Brandt Revocable Living Trust, et al, Civ. No. 09-2023-CV-01227 (OINs 1922 and 1927)

Manager Weston moved to approve a settlement with the Nelson Trust parties in this matter (the “Nelsons”), and Manger Gust seconded the motion as follows:

- The Nelsons will convey to the Cass County Joint Water Resource District (the “District”) flowage easement interests over approximately 178.2 acres on OIN 1922 1927, as defined by survey.
- The District will pay the Nelsons a total of \$1,800,000 upon closing of the real estate transaction contemplated under the parties’ settlement agreement for the property rights conveyed by the Nelsons, as outlined above.
- Following the closing of the of the real estate transaction contemplated under the parties’ settlement agreement, and following payment to the Nelsons, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. Theresa J. B. Nelson, as Trustee of the Theresa J. B. Nelson GST Trust, created under the Eleanor K. Brandt Revocable Living Trust, et al, Civ. No. 09-2023-CV-01227.
- The District will reimburse the Nelsons for reasonable attorneys’ fees and costs, not to exceed \$40,000.

Upon roll call vote, the motion carried unanimously.

Manager Weston moved to approve the RIMP loan for Paul S. Cose and Margaret R. Cose (OINs 2044 and 2045), as presented. The motion died for lack of a second.

Manager Weston moved to approve the RIMP loan for KayJay Ag Services, Inc. (OINs 2040, 2046, 2047, 2183, and 2184), as presented. The motion died for lack of a second.

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

Wade Whitworth, Oly Olafson Ken Helvey, and Dale Ahlsten 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 Gust and seconded by Manager Steen to approve the relocation and replacement housing payment for OIN 5023, as outlined in the letter dated August 22, 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 payments regarding the following properties regarding the Metro Flood Diversion Project:

- OIN 9993, as outlined in the letter dated August 22, 2024
- OIN 1893, as outlined in the letter dated August 22, 2024
- OINs 1087, 1093, and 1095, as outlined in the letters dated August 22, 2024

Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – Utility Permits for Cass County Electric Cooperative**

Paul Barthel discussed two *Utility Permits* for Cass County Electric Cooperative which would provide electrical service to the Maple River Aqueduct and to the Sheyenne River Aqueduct components of 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 *Utility Permits* for Cass County Electric Cooperative regarding electrical service to the Maple River Aqueduct and to the Sheyenne River Aqueduct of the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

**Metro Flood Diversion Project – Drain #27 Wetland Mitigation Project – encroachment**

Jodi Smith stated an adjacent property owner to the Drain #27 Wetland Mitigation Project planted crops on approximately 9 acres of Cass County Joint Water Resource District right of way for the Drain #27 Wetland Mitigation Project component of the Metro Flood Diversion Project. The Corps of Engineers has indicated the crops will need to be removed as the contractor for the Project will be working in the area soon.

A motion was made by Manager Gust and seconded by Manager Steen to authorize the Water Resource District Attorney to send a letter to the encroaching party regarding the encroaching crops on Cass County Joint Water Resource District right of way for the Drain #27 Wetland Mitigation Project component of the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

#### **Maple River Dam – general operation and maintenance updates**

Brady Woodard reported on general operation and maintenance updates at the Maple River Dam including haying on a portion of the downstream side of the Dam, animal damage control work, and surveying the environmentally sensitive sites.

Manager Weston indicated the Cass County Soil Conservation District (CCSCD) has utilized the EPA 319 Grant Program for implementation of best management practices (BMPs). Manager Weston suggested the CCSCD tour the Maple River Dam and look at BMPs for erosion near the Dam. The Board had no objections. Managers Weston and Melvin volunteered to meet with the CCSCD at the Maple River Dam to discuss the matter further and will bring a report on the discussions with CCSCD to a future meeting.

#### **Maple River Dam – Emergency Action Plan (EAP) update**

Mike Opat updated the Board on the Maple River Dam EAP update. Cost-share requests were submitted to the North Dakota Department of Water Resources (NDDWR) and the Red River Joint Water Resource District for the project. The Red River Joint Water Resource District approved the cost-share as requested. The NDDWR removed the two optional tasks from the cost-share request and are considering funding the cost-share request of the base project proposal. The NDDWR indicated the optional tasks will need to be submitted as separate projects for cost-share consideration, should the Board wish to pursue them. The Board discussed various funding scenarios and whether to include the optional tasks in the project scope.

It was moved by Manager Steen and seconded by Manager Melvin to include optional task no. 1, field surveys of bridges in culverts on the Maple River, in the scope of the Maple River Dam EAP update and authorize the Secretary to submit a cost-share request for optional task no. 1 to the NDDWR. Upon roll call vote, the motion carried unanimously.

#### **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 and Manager Gust will meet with the remaining property owner to discuss their concerns and continue to communicate with them regarding the project.

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

Mr. Lysne reported on the RCP – Rush River Watershed Plan. Moore Engineering, Inc. has submitted the final Plan to the Natural Resources Conservation Service (NRCS) for review and approval.

Mr. Lysne briefly noted the NRCS will be touring the area of the RCPP – Upper Maple River Watershed Plan soon.

### **Harmony Solar Project**

William A. Hejl, Rush River Water Resource District Chair, reported to the Board that he attended a meeting regarding a solar farm project in Harmony Township that the Red River Retention Authority identified as having the possibility of doubling as a water retention site. The project is within the Rush River Water Resource District boundaries. Chairman Hejl stated the solar company has a 20–25-year lease with a Harmony Township property owner that includes two optional extension periods. Chairman Hejl suggested a potential land swap with excess Cass County Joint Water Resource District property purchased for the Metro Flood Diversion Project, to be able to own and operate the property underlying the solar farm for flood control storage, and as a revenue generator for the Water Resource District. The project could also potentially include a control structure to divert flows from the Rush River during periods of high flows, especially in the spring. Chairman Hejl inquired if the Cass County Joint Water Resource District could provide a list of Metro Flood Diversion Project excess lands. The Board had no objections to the request. Eric Dodds indicated he will work with the Water Resource District Engineer to provide the requested excess lands information.

### **Bills**

The Secretary noted SRF Consulting Group, Inc. invoice #13783.0290 in the amount of \$31,694.05 may need to be revised per review by the Metro Flood Diversion Authority staff. The Secretary suggested the invoice be removed from today's bills.

It was moved by Manager Steen and seconded by Manager Gust to approve payment of Check #15352 and the wire transfers, with the removal of SRF Consulting Group, Inc. invoice #13783.0290 in the amount of \$31,694.05. Upon roll call vote, the following Managers voted in favor: Lougheed, Weston, Gust, Steen, and Melvin. The Chairman declared the motion passed.

### **Cass County Flood Sales Tax representative**

Manager Steen stated that Mr. Olson was the Cass County Flood Sales Tax representative for the Cass County Joint Water Resource District and asked Commissioner Scherling if that was a Commission appointed position, or if the Board can appoint the position. Ms. Scherling believed it was appointed by the Water Resource District but will research the matter. Chairman Lougheed nominated Rick Steen to serve on the Cass County Flood Sales Tax Committee. Hearing no other nominations, a roll call vote was taken, and all Managers voted in favor.

**Adjournment**

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

APPROVED:

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Ken Lougheed  
Chairman

ATTEST:

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Melissa Hinkemeyer  
Secretary