

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
SEPTEMBER 26, 2024
8:00 A.M.

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on September 26, 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, Rush River Water Resource District; Melissa Hinkemeyer, Director, Secretary; Leilei Bao, Treasurer; Elizabeth Smith, Administrative Assistant; Sean M. Fredricks, Chris McShane, Lukas Andrud, and Katie Schmidt, Ohnstad Twichell, P.C.; Rob Stefonowicz, Larkin Hoffman; Kurt Lysne and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling, Cass County Commissioner; Jodi Smith, Jessica Warren, and Madeline Daudt, Metro Flood Diversion Authority (MFDA); Eric Dodds, Dean Vetter, and Sabrina Tusa, AE2S; 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.; Tom Soucy, Cass County Highway Department; Doug Johnson, DKJ Appraisal LLC.; and Leo Richard, Stanley Township property owner.

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 Melvin, seconded by Manager Steen, and unanimously carried to approve the minutes of the August 22 and September 12, 2024, meetings, 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 - Appraisal / RHDP review / approval

Doug Johnson discussed the appraisal for OIN 8775 regarding the Metro Flood Diversion Project.

It was moved by Manager Gust and seconded by Manager Steen to approve the appraisal for OIN 8775 with an effective date of July 23, 2024, as an estimate of just compensation for acquisition of property regarding the Metro Flood Diversion Project. 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 Weston and seconded by Manager Gust to close the meeting at 8:17 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 matters and parties:

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);
4. Cass County Joint Water Resource District v. Daniel Trottier, et al, Civ. No. 09-2023-CV-00549 (OIN 1958); and
5. Cass County Joint Water Resource District v. Ryan Hanson, et al, Civ. No. 09-2023-CV-01128 (OIN 1898)

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, Elizabeth Smith, Sean Fredricks, Chris McShane, Luke Andrud, Katie Schmidt, Rob Stefonowicz, Jodi Smith, Madeline Daudt, Duane Breitling, Eric Dodds, Dean Vetter, Sabrina Tusa, Ken Helvey, Katie Laidley, Scott Stenger, Dale Ahlsten, Oly Olafson, and Wade Whitworth.

The executive session adjourned at 9:19 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project - Acquisition Review and Approval

Manager Weston moved to approve a settlement with Daniel Trottier, as follows:

- Trottier will convey to the Cass County Joint Water Resource District (the “District”) fee simple ownership of OIN 1958, consisting of approximately 2.01 acres, as defined by survey.

- The District will pay Trottier a total of \$740,000 upon closing of the real estate transaction contemplated under the parties' settlement agreement for OIN 1958, as outlined above, inclusive of the replacement housing differential payment (RHDP).
- Following the closing of the of the real estate transaction contemplated under the parties' settlement agreement, and following payment to Trottier, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. Daniel Trottier, et al, Civ. No. 09-2023-CV-00549, as well as that portion of Civ. No. 09-2023-CV-00109 as it relates to Trottier and OIN 1958.
- Trottier will lease back OIN 1958 for \$500 per month through December 31, 2025, in accordance with the terms of a written lease the parties will execute in conjunction with execution of the parties' settlement agreement.
- The District will reimburse Trottier for reasonable attorneys' fees and costs, not to exceed \$67,000.

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

Manager Weston moved to approve a settlement with Ryan Hanson, as follows:

- Hanson will convey to the Cass County Joint Water Resource District (the "District") flowage easement interests over OIN 1898, consisting of approximately 41.1 acres, as defined by survey.
- The District will pay Hanson a total of \$405,000 upon closing of the real estate transaction contemplated under the parties' settlement agreement, as outlined above.
- Following the closing of the of the real estate transaction contemplated under the parties' settlement agreement, and following payment to Hanson, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. Ryan Hanson, et al, Civ. No. 09-2023-CV-01128, as well as that portion of Civ. No. 09-2023-CV-00109 as it relates to Hanson and OIN 1898.
- The District will reimburse Hanson for reasonable attorneys' fees and costs, not to exceed \$52,000.

Manager Melvin seconded the motion. Upon roll call vote the motion carried unanimously.

Manager Steen moved to approve the draft Rural Impact Mitigation Program (RIMP) report for OINs 2044 and 2045 regarding the Metro Flood Diversion Project. Manager Melvin seconded the motion. Upon roll call vote the motion carried unanimously.

Manager Steen moved to approve the draft RIMP report for OINs 2046, 2047, and 2183 regarding the Metro Flood Diversion Project. Manager Weston seconded the motion. Upon roll call vote the motion carried unanimously.

Metro Flood Diversion Project – Land agent reports

Ken Helvey, Oly Olafson, Dale Ahlsten, 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 Weston and seconded by Manager Steen to approve the relocation and replacement housing payment for OIN 8386, as outlined in the letter dated September 26, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Property management

Madeline Daudt discussed the lease termination of the *Rental Agreement* for OINs 9993 and 9994 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 Steen and seconded by Manager Melvin to approve and authorize the Secretary to send a letter to the tenant of OIN 9993 and 9994 notifying them of the termination of the *Rental Agreement* effective March 1, 2025. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project - Contracting actions

It was moved by Manager Weston and seconded by Manager Melvin to approve and authorize the Chairman to sign *Task Order No. 1 – Amendment 6* with SRF Consulting Group, Inc. at no additional cost regarding property acquisition and relocation services for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Permanent obstruction of right of way and underlying section line crossings

Katie Schmidt discussed a Resolution regarding road crossings between Sections 27 and 24 in Stanley Township and between Sections 1 and 2 in Pleasant Township regarding the Metro Flood Diversion Project. Additional minutes relating to the matter are attached hereto.

Metro Flood Diversion Project – Volunteer Release and Liability Waiver

Sean Fredricks discussed a volunteer *Release and Liability Waiver* for the purpose of relocating aquatic species during the operation of Metro Flood Diversion Project aqueducts.

Manager Weston moved to approve the *Release and Liability Waiver* form and presence of volunteers on Cass County Joint Water Resource District property for the purpose of relocating aquatic species during the operation of aqueducts regarding the Metro Flood Diversion Project. Manager Steen seconded the motion. Upon roll call vote the motion carried unanimously.

Metro Flood Diversion Project – Hunting

The Board discussed hunting on Cass County Joint Water Resource District property owned for the Metro Flood Diversion Project. Jodi Smith stated most properties have active construction or mitigation activities occurring therefore hunting is not advised. The Board agreed to keep the properties electronically posted as not available for hunting until further notice.

Maple River Dam – Hunting

The Board discussed hunting on Cass County Joint Water Resource District properties at the Maple River Dam. It was suggested to inquire with North Dakota Game and Fish what assistance they could provide regarding hunting and other related activities on Cass County Joint Water Resource District properties at the Maple River Dam. The Board directed the Secretary and Brady Woodard to reach out to the North Dakota Game and Fish department regarding the matter and bring back information to a future meeting for discussion.

Maple River Dam - General operation and maintenance updates

Brady Woodard reported the project archaeologist will be conducting her annual site visit in early October. The project archaeologist will be observing the environmentally sensitive sites regarding the Maple River Dam.

Maple River Dam – Emergency Action Plan (EAP) update

The Secretary 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 Secretary continues to discuss the cost-share request with the NDDWR.

Regional Conservation Partnership Program (RCPP)

Kurt Lysne updated the Board on the RCPP – Rush River Watershed Plan. The Natural Resources Conservation Services (NRCS) is reviewing the Plan. Mr. Lysne indicated Conditional Letter of Map Revision (CLOMR) from FEMA will be needed for the project as well as a construction permit from the NDDWR. The Board discussed permitting timelines and associated costs.

It was moved by Manager Weston and seconded by Manager Melvin to authorize the Secretary to submit cost-share applications to the NDDWR and the Cass County Flood Sales Tax Committee regarding the permitting for the RCPP – Rush River Watershed Plan. Upon roll call vote, the motion carried unanimously.

Sheldon Flood Protection Project No. 2019-01

Mr. Lysne briefly updated the Board on the status of right of way acquisition for the Sheldon Flood Protection Project No. 2019-01. Mr. Lysne will be meeting with the remaining property owner today to discuss the project further. Mr. Lysne indicated once the right of way acquisition is complete, the project can be bid.

Bills

It was moved by Manager Steen and seconded by Manager Melvin to approve payment of Checks #15356 through #15359 and the wire transfers as presented. 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 Committee – Request for flood risk reduction projects

There are no new projects to submit for Cass County flood sales tax funding in Cass County Joint Water Resource District at this time. Mr. Lysne will attend the upcoming Committee meeting to provide an update on the RCPP – Rush River Watershed Plan and the RCPP – Upper Maple River Watershed Plan.

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:

Ken Lougheed
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary