

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
OCTOBER 24, 2024
8:00 A.M.

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on October 24, 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; Rita Nelson, Accounting Assistant; Sean Fredricks, Chris McShane, and Katie Schmidt, Ohnstad Twichell, P.C.; Rob Stefonowicz, Larkin Hoffman; Lyndon Pease, Alexa Ducioame, Brady Woodard, and Levi Hanson, 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.; 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 Weston, and unanimously carried to approve the minutes of the October 10 and October 16, 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 Report regarding the Metro Flood Diversion Project and reported on key activities regarding property rights acquisition, disposal of Project lands deemed excess, release of Temporary Construction Easements, and initiation of the process for farmland leases in 2025.

Jodi Smith updated the board on the sale of OIN 837 that was previously deemed excess regarding the Metro Flood Diversion Project. In accordance with the *Policy on the*

Disposition and Management of Comprehensive Project Lands, the notice of this sale was sent to the Metro Flood Diversion Authority member entities, previous property owner, and adjacent property owners. Throughout those efforts no interest was received, and the parcel was made available for public sale. An interested party is proposing to purchase the property for \$4,500 which is lower than the approved value of \$7,500. Ms. Smith discussed the annual maintenance costs of the property and recommended the Board proceed with the sale of OIN 837 for \$4,500.

It was moved by Manager Gust and seconded by Manager Melvin to approve the sale of OIN 837 for \$4,500 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Ms. Smith updated the board on the sale of OIN 2185 that was previously deemed excess regarding the Metro Flood Diversion Project. In accordance with the *Policy on the Disposition and Management of Comprehensive Project Land*, the notice of this sale was sent to the Metro Flood Diversion Authority member entities, previous property owner, and adjacent property owners. Throughout those efforts no interest was received, and the parcel was made available for public sale. An interested party is proposing to purchase the property for \$4,000 which is lower than the approved value of \$10,500. Ms. Smith discussed the annual maintenance costs of the property and recommended the Board proceed with the sale of OIN 2185 for \$4,000.

It was moved by Manager Gust and seconded by Manager Steen to approve the sale of OIN 2185 for \$4,000 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Ms. Smith indicated OINs 1080Y and 1926 have been deemed excess property by the Metro Flood Diversion Authority Co-Executive Directors.

A motion was made by Manager Weston and seconded by Manger Melvin to declare OINs 1080Y and 1926 as excess land and begin the process to dispose of the property following the *Policy on the Disposition and Management of Comprehensive Project Lands* regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Ms. Smith reviewed the Rural Impact Mitigation Program (RIMP) regarding the Metro Flood Diversion Project to enhance the Board's understanding and background of the Program.

Mr. Dodds discussed the *Guidance Document for Mitigation of Impacted Private Structure Sites in the Upstream Mitigation Area* regarding the Metro Flood Diversion Project. The Document provides guidance for mitigating impacts to existing private structure sites within zones 2, 3, and 4 of the Upstream Mitigation Area. Structures in these zones may be allowed to remain in place under certain conditions.

It was moved by Manager Steen and seconded by Manager Gust to approve the *Guidance Document for Mitigation of Impacted Private Structure Sites in the Upstream Mitigation Area* regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Appraisal review/approval

Dean Vetter discussed various appraisals regarding the Metro Flood Diversion Project.

It was moved by Manager Steen and approved by Manager Melvin to approve the appraisals for the following properties as an estimate of just compensation for acquisition of property regarding the Metro Flood Diversion Project:

- OIN 1462C with an effective date of September 26, 2024
- OIN 7243 and 7244 with an effective date of July 23, 2024
- OIN 8689 with an effective date of August 22, 2024
- OIN 8703, 8704, 8706 with an effective date of September 19, 2024
- OIN 8708, 8709 with an effective date of September 19, 2024

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project - Acquisition review and approval

Mr. Vetter discussed a *Farming Access Agreement* to provide access to OIN 1195X.

A motion was made by Manager Steen and seconded by Manager Melvin to approve and authorize the Chairman to sign the *Farming Access Agreement* for OIN 1195X 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 and 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:

It was moved by Manager Weston and seconded by Manager Steen to close the meeting at 8:43 a.m. for purposes of discussing contract negotiation strategies, litigation strategies, and attorney consultation regarding ongoing litigation and 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:

- Cass County Joint Water Resource District v. Kenneth J. Speten, Karen M. Speten, et al, Civ. No. 39-2023-CV-00194 (OIN 9235); and
- Cass County Joint Water Resource District v. John Loffelmacher, et al, Civ. No. 09-2023-CV-00459 (OIN 831)

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, Rita Nelson, Sean Fredricks, Chris McShane, Katie Schmidt, Rob Stefonowicz, Jodi Smith, Jessica Warren, Madeline Daudt, Duane Breitling, Eric Dodds, Dean Vetter, Sabrina Tusa, Ken Helvey, Katie Laidley, and Wade Whitworth.

The executive session adjourned at 9:05 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project - Acquisition review and approval continued

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

- Cass County Joint Water Resource District v. Kenneth J. Speten, Karen M. Speten, et al, Civ. No. 39-2023-CV-00194 (OIN 9235); and
- Cass County Joint Water Resource District v. John Loffelmacher, et al, Civ. No. 09-2023-CV-00459 (OIN 831).

Manager Steen moved to approve a settlement with Kenneth and Karen Speten, as follows:

- The Spetens will convey to the Cass County Joint Water Resource District (the "District") flowage easements interests over OIN 9235, consisting of approximately 6.46 acres, as defined by survey.
- The District will pay a total of \$40,000 upon closing of the real estate transaction contemplated under the parties' settlement agreement for OIN 9235, as outlined above.
- Following the closing of the of the real estate transaction contemplated under the parties' settlement agreement, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Cass County Joint Water Resource District v. Kenneth J. Speten, Karen M. Speten, et al, Civ. No. 39-2023-CV-00194.
- The District will reimburse the Spetens' reasonable attorneys' fees and costs, not to exceed \$2,500.

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

Manager Steen moved to approve a settlement with John Loffelmacher, as follows:

- Loffelmacher will convey to the Cass County Joint Water Resource District (the "District") fee simple ownership of OIN 831, consisting of approximately 8.55 acres, as defined by survey.
- The District will pay a total of \$400,000 upon closing of the real estate transaction contemplated under the parties' settlement agreement for OIN 831, as outlined above.

- Loffelmacher will lease back OIN 831 for \$500 per month through May 1, 2025, in accordance with the terms of a written lease the parties will execute in conjunction with execution of the parties' settlement agreement.
- Following the closing of the real estate transaction contemplated under the parties' settlement agreement, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. John Loffelmacher, et al, et al., Civ. No. 09-2023-CV-00459, as well as that portion of Civ. No. 09-2023-CV-00109, as it relates to Loffelmacher and OIN 831.
- The District will reimburse Loffelmacher reasonable attorneys' fees and costs, not to exceed \$37,000.00.

Discussion: Discussion was held on the estimated cost to clear the property. Manager Steen noted he appreciates the review of property owners' legal fees by Water Resource District Attorneys.

Manager Gust seconded the motion. Upon roll call vote, the following Managers voted in favor: Loughheed, Gust, Steen, and Melvin. Manager Weston voted against the motion. The Chairman declared the motion passed.

Metro Flood Diversion Project – Land agent reports

Wade Whitworth, Ken Helvey, and Dale Ahlsten reported on activities, meetings, and discussions with various owners regarding the Metro Flood Diversion Authority. Mr. Helvey noted increasing amounts of relocation reimbursement requests will be coming forward to the Board for consideration as property owners are relocating.

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 9993, as outlined in the letter dated October 11, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Gust to approve the relocation and replacement housing payment for OIN 1893, as outlined in the letter dated October 15, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Steen and seconded by Manager Weston to approve the relocation and replacement housing payment for OIN 9462, as outlined in the letter dated October 15, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Melvin to approve the relocation and replacement housing payment for the tenant of OIN 1093X, as outlined in the letter dated October 24, 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 the tenant OIN 840, as outlined in the letter dated October 24, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Contracting actions

Jessica Warren reviewed *Task Order No. 1 – Amendment No. 5* with Pifer’s Land Management Group regarding the Metro Flood Diversion Project. Discussion was held on farmland rental rates for 2025 and potentially implementing a flat rate or a three-tier rental rate. Ms. Smith will bring back farmland rental rate options for continued discussion at a future meeting.

A motion was made by Manager Steen and seconded by Manager Weston to approve and authorize the Chairman to sign *Task Order No. 1 – Amendment No. 5* with Pifer’s Land Management Group at no cost regarding 2025 farmland rental management for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Maple River Dam - General operation and maintenance updates

Brady Woodard updated the Board on the fence repairs and animal damage control at the Maple River Dam.

Weed control

Mr. Woodard indicated that DL Barkie Construction, Inc. was spraying at the Maple River Dam recently. Mr. Woodard requested the Board approve an agreement with DL Barkie Construction, Inc. for weed control at the Maple River Dam.

Manager Melvin moved, and Manager Gust seconded to approve and authorize the Chairman to sign the Agreement with DL Barkie Construction, Inc. regarding weed control at the Maple River Dam. Upon roll call vote, the motion carried unanimously.

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. Mr. Opat and the Secretary continue to discuss the cost-share request with the NDDWR. Mr. Opat noted there are new requirements from the NDDWR including a required cover letter and a copy of the Board minutes approving the cost share submittal.

A motion was made by Manager Steen and seconded by Manager Gust to authorize the Chairman to sign a cover letter and approve submission of a cost-share request for the Maple River Dam EAP update. Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program (RCPP) – Rush River Watershed

A motion was made by Manager Weston and seconded by Manager Melvin to authorize the Chairman to sign a cover letter and approve submission of a cost-share request for

the RCPP – Rush River Watershed required CLOMR and permitting. Upon roll call vote, the motion carried unanimously.

Sheldon Flood Protection Project No. 2019-01

Levi Hanson briefly updated the Board on the status of right of way acquisition for the Sheldon Flood Protection Project No. 2019-01. Mr. Hanson is meeting today with the remaining property owner to close the transaction.

Alexa Ducioame briefly reported on the construction permit for the project. The permit has been issued with special conditions.

Bills

It was moved by Manager Steen and seconded by Manager Gust to approve payment of Checks #15368 through #15374 and the wire transfers as presented. Upon roll call vote, the following Managers voted in favor: Lougheed, Gust, Steen, Weston and Melvin. The Chairman declared the motion passed.

December meeting

The Secretary noted the annual water convention conflicts with the previously scheduled December Board meeting and suggested the Board consider moving the December meeting to December 19, 2024.

A motion was made by Manager Steen and seconded by Manager Melvin to approve rescheduling the December Cass County Joint Water Resource District meeting to December 19, 2024. 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 Gust, and unanimously carried to adjourn the meeting.

APPROVED:

Ken Lougheed
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary