

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
JANUARY 13, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on January 13, 2022, at 8:00 a.m.

Present were Dan Jacobson and Keith Weston, Southeast Cass Water Resource District; Rodger Olson, Maple River Water Resource District; Ken Lougheed, North Cass Water Resource District; Jacob Gust, Rush River Water Resource District; Carol Harbeke Lewis, Secretary-Treasurer; Melissa Maertens, Administrative Assistant; Sean Fredricks, Chris McShane, Luke Andrud and Katie J. Bertsch, Ohnstad Twichell, P.C.; Kurt Lysne, Lyndon Pease and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Rob Stefonowicz, Larkin Hoffman Attorneys; Eric Dodds, Dean Vetter and Sabrina Tusa, AE2S; Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, Lee Kaffar, Wade Whitworth and Kelsey Lee, HDR, Inc.; Ken Helvey and Lisa Kilde, SRF Consulting Group, Inc.; Lisa Brekkestran, Davon Hutchinson and Drew Nicklay, Ulteig Engineers, Inc.; Mary Scherling, Cass County Commissioner; Joel Paulsen, Diversion Authority Executive Director; Jodi Smith, Diversion Authority Director of Lands; Matt Stamness, Cass County Highway Department; Lynn Mesteth, Dwyer Law Office, PLLC; Leo Richard, Gene Sauvageau, Terry and Kristie Sauvageau, Stanley Township property owners.

Agenda

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

Reorganization of the Board for 2022

It was moved by Manager Lougheed and seconded by Manager Gust to appoint the following individuals to serve in the designated capacities for calendar year 2022:

Dan Jacobson	Chairman
Rodger Olson	Vice Chairman
Carol Harbeke Lewis	Secretary-Treasurer
Rodger Olson	Diversion Authority Representative
Dan Jacobson	Diversion Authority Alternate Representative

Rodger Olson	Public Outreach Committee
Jacob Gust	Public Outreach Committee Alternate Representative
Rodger Olson	Land Management Committee Representative
Dan Jacobson	Land Management Committee Alternate Representative
Dan Jacobson	Finance Committee Representative
Rodger Olson	Finance Committee Alternate Representative
Dan Jacobson	North Dakota Water Coalition Representative
Jacob Gust	North Dakota Water Coalition Alternate Representative

Upon roll call vote, the motion carried unanimously.

Minutes

It was moved by Manager Weston, seconded by Manager Gust and unanimously carried to approve the minutes of the December 16, 2021 (two sets), meetings.

Review of contract for legal services

It was moved by Manager Lougheed and seconded by Manager Weston to reaffirm the agreement with Ohnstad Twichell, P.C. for legal services and approve the 2022 billing rates, as presented. Upon roll call vote, the motion carried unanimously.

Review of contracts for engineering services

It was moved by Manager Gust and seconded by Manager Lougheed to reaffirm the agreement with Moore Engineering, Inc. for engineering services and approve the 2022 billing rates, as presented. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Lougheed to reaffirm the agreement with Houston Engineering, Inc. for engineering services and approve the 2022 billing rates, as presented. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – project updates and general topics

Eric Dodds reported Phase IB of the *Market Study of the Effects on Farmland Value due to Flooding and Flood Easements* is nearly complete. Crown Appraisals, Inc. has supplied the appraisal reports regarding the study, which are now being reviewed. Work is ongoing to populate the data from the appraisal reports into an easily readable spreadsheet to be distributed to the Board for consideration at a future meeting.

Mr. Dodds stated work is ongoing in conjunction with Metro Flood Diversion Authority staff to prepare the letter and packet of informational materials that will be sent to property owners where flowage easements are needed regarding the Metro Flood Diversion

Project. The packet will include an appraisal report regarding the flowage easement, a map where the easement is needed, a draft Purchase Agreement and the Flowage Easement. Also included in the packet will be a frequently asked questions page as requested by the Board at the last meeting. Mr. Dodds stated it is anticipated the flowage easement packets will be mailed in late February 2022 with open house informational meetings being scheduled for March.

Dean Vetter stated the Corps of Engineers has asked for assistance in completing a Phase I Questionnaire regarding hazardous, toxic and radioactive waste that could be present on properties in the Upstream Mitigation Area of the Metro Flood Diversion Project. Land agents will be assisting property owners in filling out the questionnaire and returning it to the Corps of Engineers by the end of March 2022.

Chris McShane and Rob Stefonowicz reported on formal negotiation updates regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – appraisal / RHDP review / approval

Mr. Vetter reported a *Request for Proposals* regarding appraisals for the Southern Embankment – Reach 2B is planned to be released following receipt of final right of way drawings from the Corps of Engineers for that area.

It was moved by Manager Gust and seconded by Manager Weston to approve the appraisal for OIN 8359, with an effective date of September 8, 2021, 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 – acquisition review / approval

Mr. Vetter updated the Board on the Acquisition Timeline Status Summary regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – Executive Session for purposes of discussing ongoing contract negotiations and attorney consultation regarding ongoing litigation associated with right of way acquisition to accommodate the Metro Flood Diversion Project, in accordance with N.D. Cent. Code §§ 44-04-19.1(2), (5) and (9)

It was moved by Manager Olson and seconded by Manager Gust to close the meeting at 8:29 a.m. for the purposes of discussing ongoing contract negotiations and attorney consultation regarding ongoing litigation associated with right of way acquisition 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. Cass County Joint Water Resource District v. Jon D. Larson, et al., Civil File No. 09-2020-CV-03800 (OIN 1199)
2. Cass County Joint Water Resource District v. Mary E. Newman, et al., Civil File No. 09-2020-CV-03421 (OINs 8874, 8875, 8876 and 9753)

Upon roll call vote, the motion carried unanimously.

The executive session was attended by Managers Jacobson, Olson, Lougheed, Weston and Gust, Carol Harbeke Lewis, Melissa Maertens, Sean Fredricks, Luke Andrud, Chris McShane, Rob Stefanowicz, Mary Scherling, Joel Paulsen, Jodi Smith, Eric Dodds, Dean Vetter, Sabrina Tusa, Ken Helvey, and Lisa Kilde.

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 continued

It was moved by Manager Gust and seconded by Manager Weston to approve the *Settlement Agreement* for OIN 1199 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Lougheed and seconded by Manager Olson to approve the *Settlement Agreement* for OINs 8874, 8875, 8876 and 9753 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. McShane discussed a proposed settlement regarding OIN 843 regarding the Metro Flood Diversion Project. A motion was made by Manager Lougheed and seconded by Manager Weston to approve the *Settlement Agreement* for OIN 843 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Oly Olafson reported on a farmstead re-establishment and *Rural Impact Mitigation Program* (RIMP) loan report for OIN 2014 regarding the Metro Flood Diversion Project. Mr. Olafson reviewed the existing facilities at OIN 2014 as well as estimated costs to re-establish the facilities on a replacement site. The data was used to calculate a proposed RIMP loan amount.

It was moved by Manager Gust and seconded by Manager Olson to approve the RIMP loan proposal for OIN 2014 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Land Agent reports

Mr. Olafson, Wade Whitworth, Ken Helvey, Lisa Brekkestran and Dale Ahlsten reported on meetings and discussions with various property owners regarding the Metro Flood Diversion Project.

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

A motion was made by Manager Lougheed and seconded by Manager Gust to approve the relocation and replacement housing payment for OIN 220, as outlined in the letter dated January 11, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Gust and seconded by Manager Weston to approve the relocation and replacement housing payment for OIN 731, as outlined in the letter dated January 5, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Weston and seconded by Manager Olson to approve the relocation and replacement housing payment for OIN 837, as outlined in the letter dated January 11, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. McShane reported an appeal of the maximum replacement housing differential payment determination for OIN 1107 regarding the Metro Flood Diversion Project has been submitted recently. More information on the matter will be brought to a future meeting.

Metro Flood Diversion Project / Oxbow-Hickson-Bakke Ring Levee Project – property management

Sabrina Tusa discussed various farmland leases regarding the Metro Flood Diversion Project. A motion was made by Manager Gust and seconded by Manager Olson to approve the 2022 *Cash Crop Lease Agreements* on the following properties regarding the Metro Flood Diversion Project:

- OINs 511Y, 512Y, 986Y and 897Y
- OINs 523Y and 937Y
- OIN 524Y
- OINs 900Y and 2368Y
- OIN 901Y
- OIN 1221Y

Upon roll call vote, the motion carried unanimously.

Discussion was held on the Score Residence Subdivision in regard to the Metro Flood Diversion Project. Per Cass County Planning Subdivision Ordinance, the subdivision will need to deed restrict a total of 40 acres. Mr. Vetter stated the Subdivision is approximately 8 acres and it is proposed to deed restrict OIN 1123 and OIN 816 owned by the Water Resource District for the Metro Flood Diversion Project to meet the remaining 32 acres needed. Portions of OIN 1123 and OIN 816 are located in the Upstream Mitigation Area Zone 1 and underneath the footprint of the Southern Embankment, of which development will be prohibited in both areas.

A motion was made by Manager Lougheed and seconded by Manager Olson to approve and authorize the Chairman to sign the *Deed Restriction* for the Score Residence Subdivision regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – contracting actions

It was moved by Manager Weston and seconded by Manager Gust to approve and authorize the Chairman to sign *Task Order No. 1 – Amendment 2* with HDR, Inc. for right of way, relocation and property management services in the amount of \$960,000 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project / Oxbow-Hickson-Bakke Ring Levee Project – property management continued

Mr. Vetter briefly discussed a CRP contract termination fee for OIN 924 regarding the Metro Flood Diversion Project. It was moved by Manager Gust and seconded by Manager Lougheed to approve payment of the CRP contract termination fee in the amount of \$15,738.11 for OIN 924 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. Vetter briefly discussed a disclosure notice that will be submitted by Pifer's Auction & Realty in scenarios where there may be a potential conflict with regard to land management services provided by Pifer's for the Metro Flood Diversion Project.

Metro Flood Diversion Project – reimbursement request #120 from the Diversion Authority pursuant to terms and conditions of HB 1020

It was moved by Manager Lougheed and seconded by Manager Olson to approve and authorize the Secretary-Treasurer to sign reimbursement request #120 from the Diversion Authority, pursuant to the terms and conditions of HB 1020. Upon roll call vote, the motion carried unanimously.

Maple River Dam – 2021-2022 tree removal

Brady Woodard updated the Board on tree removal in the backwater pool of the Maple River Dam. The contractor has been working for a couple of weeks on the project and is making good progress.

Regional Conservation Partnership Program

Kurt Lysne stated the formal 60-day comment period regarding the RCPP – Rush River Watershed Plan closed December 24, 2021. The Natural Resources Conservation Service (NRCS) is currently addressing any comments that were submitted during the comment period. Project design will continue once all comments are addressed.

Mr. Lysne indicated the NRCS is completing calculations regarding the additional environmental benefits that have been incorporated into the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. will finalize the Plan with the data from the NRCS.

Administrative items

It was moved by Manager Gust and seconded by Manager Olson to approve the staff salary increases, as presented. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Lougheed and seconded by Manager Weston to approve the payment of Checks #15075 through #15082 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Jacobson, Olson, Lougheed, Weston and Gust. Upon roll call vote, the motion carried unanimously.

Legislative updates

Sean Fredricks briefly updated the Board on legislative items regarding water resource districts.

Adjournment

There being no further business for the Board to consider, it was moved by Manager Gust, seconded by Manager Weston and unanimously carried to adjourn the meeting.

APPROVED:

Dan Jacobson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer