

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
FEBRUARY 10, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on February 10, 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; Nina Stone, Accountant; Melissa Maertens, Administrative Assistant; Sean M. Fredricks; Chris McShane, Luke Andrud and Katie J. Schmidt, 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; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, Wade Whitworth and Kelsey Lee, HDR, Inc.; Ken Helvey and Lisa Kilde, SRF Consulting Group, Inc.; Lisa Brekkestran and Davon Hutchinson, Ulteig Engineers, Inc.; Duane Breitling and Mary Scherling, Cass County Commissioners; Joel Paulsen, Diversion Authority Executive Director; Jodi Smith, Diversion Authority Director of Lands; John Albrecht, Jacobs; Dylan Brown, Paul Johnson and Greg Yavicoli, ASN Constructors; Matt Stamness, Cass County Highway Department; Lynn Mesteth, Dwyer Law Office, PLLC; Leo Richard Kristi Sauvageau and Gene Sauvageau, Stanley Township property owners; and Brian Nelson, Fargo.

Agenda

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

Minutes

It was moved by Manager Lougheed, seconded by Manager Weston and unanimously carried to approve the minutes of the January 27, 2022 (two sets), meetings.

Metro Flood Diversion Project – P3 introduction

Dylan Brown, Greg Yavicoli and Paul Johnson introduced themselves as the designated points of contact for the P3 developer regarding the Metro Flood Diversion Project. Mr. Brown indicated he will begin attending Water Resource District meetings regularly as construction of the Metro Flood Diversion Project occurs on Water Resource District property.

Manager Gust inquired if construction of the Diversion Channel will occur concurrently with work on bridges regarding the Metro Flood Diversion Project. Mr. Brown and Mr. Yavicoli briefly discussed the anticipated 2022 construction schedule regarding the Metro Flood Diversion Project, which includes breaking ground on the Diversion Channel, utility relocations, preliminary bridge work and work on the outlet structure into the Red River. Mr. Yavicoli noted 2022 construction activities are currently planned between the Metro Flood Diversion Project outlet and I-29.

Metro Flood Diversion Project – Upstream Mitigation Area Resolution of Necessity

Manager Olson moved and Manager Gust seconded to approve the *Resolution of Necessity* regarding the acquisition of property in the Upstream Mitigation Area regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously. The Resolution is attached to these minutes.

Metro Flood Diversion Project – project updates and general topics

Eric Dodds reported the flowage easement acquisition and negotiation schedule regarding the Metro Flood Diversion Project is proceeding as scheduled. A short presentation on the completed flowage easement appraisal reports is being prepared for the next Water Resource District meeting. Land agents are currently finishing the packets of informational materials that will be sent to property owners where flowage easements are needed. It is anticipated the flowage easement packets will be mailed in late February 2022 with open house informational meetings scheduled for March. Manager Olson thanked Jodi Smith for her outreach work regarding flowage easements for the Metro Flood Diversion Project.

Chris McShane and Rob Stefonowicz reported on formal negotiation updates regarding the Metro Flood Diversion Project. Discussion was held on attorney conflict analysis regarding the Metro Flood Diversion Project. The matter will be discussed further at a future meeting.

Metro Flood Diversion Project – appraisal / RHDP review / approval

It was moved by Manager Lougheed and seconded by Manager Gust to approve the revised maximum Replacement Housing Differential Payment for OIN 1130, in the amount of \$167,000 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – acquisition review / approval

Dean 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 Weston and seconded by Manager Lougheed to close the meeting at 8:32 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 matter:

1. Cass County Joint Water Resource District v. Daniel Flaten, et al., Civil File No. 09-2020-CV-02841 (OINs 9286 and 9743)

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, Rob Stefonowicz, Joel Paulsen, Jodi Smith, Mary Scherling, Eric Dodds, Dean Vetter, Sabrina Tusa, Ken Helvey, and Lisa Kilde.

The executive session adjourned at 8:51 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project – Land Agent reports

Oly Olafson, Wade Whitworth, Ken Helvey 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 Olson and seconded by Manager Lougheed to approve the relocation and replacement housing payment for OIN 220 as outlined in the letter dated February 4, 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 220, as outlined in the letter dated February 4, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Lougheed and seconded by Manager Olson to approve the relocation and replacement housing payment for OIN 731, as outlined in the letter dated February 4, 2022, 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

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

- OINs 217Y and 233Y

- OIN 229Y
- OINs 507Y1 and 508Y
- OINs 510Y, 590Y, 2376Y, 2377Y and 2378Y
- OINs 530Y, 2372Y and 9182Y
- OIN 938Y
- OIN 1088
- OINs 1094 and 9191Y
- OINs 1123, 1183Y and 8923
- OIN 1124
- OINs 1890, 1990, 2182, 9332N and 9359N
- OIN 1906
- OINs 9162-9165

Upon roll call vote, the motion carried unanimously.

Mr. Vetter stated the Diversion Authority will soon be considering a contract to remove several homes on Water Resource District owned property for the Metro Flood Diversion Project. Work is ongoing to winterize the properties in preparation for the removal of the homes.

Brief discussion was held on staking property lines of rented tillable agricultural properties regarding the Metro Flood Diversion Project as the P3 developer is managing the properties within the boundaries of the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project. Ms. Smith noted weekly meetings are being held with the P3 developer to discuss and ensure a smooth transition regarding property management for the Metro Flood Diversion Project.

Metro Flood Diversion Project – contracting actions

It was moved by Manager Olson and seconded by Manager Weston to approve and authorize the Chairman to sign the following regarding appraisal services for the Metro Flood Diversion Project:

- *Task Order No. 1 – Amendment 6* with Compass Land Consultants, Inc., in the amount of \$3,000
- *Task Order No. 1 – Amendment 5* with Integra Realty Resources for a contract reduction of \$5,000

Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program

Kurt Lysne indicated the Natural Resources Conservation Service (NRCS) recently sent the archaeological inventory and the calculations regarding the additional environmental benefits that have been incorporated into the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. is finalizing the Plan with the data from the NRCS. Once

the Plan is finalized, NRCS will draft an exception request letter for the benefit-cost ratio for the RCPP – Upper Maple River Watershed Plan to be sent with the Plan to the National Watershed Management Center for consideration.

Mr. Lysne stated the NRCS recently sent a *Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact* to area Tribes and agencies regarding the RCPP – Rush River Watershed Plan. Mr. Lysne noted project design can now continue and public meetings regarding the project are being coordinated with City of Amenia officials. Final project design is due in September 2022.

A motion was made by Manager Olson and seconded by Manager Lougheed to approve and authorize the Chairman to sign the *Rush River Watershed Plan Agreement* with the NRCS regarding the RCPP – Rush River Watershed Plan. 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 is working near State Highway 46 and is planning to move north along the Maple River this week. Mr. Woodard stated the weather has been good for the project and the contractor will exhaust the allocated funding for the project within approximately one week. Mr. Woodard inquired if the Board would like to pursue any additional tree removal work this year while conditions are favorable. Mr. Woodard estimated \$50,000 would allow for another 1-2 weeks of work.

A motion was made by Manager Olson and seconded by Manager Gust to extend the *Agreement* with Industrial Builders, Inc. to conduct tree removal operations in the Maple River Dam backwater pool area, not to exceed a cost of \$50,000. Upon roll call vote, the motion carried unanimously.

Maple River Dam – dam rating

Mr. Lysne stated the current safety ratings for dams in North Dakota will soon be made public by the North Dakota Department of Water Resources (NDDWR). The current rating for the Maple River Dam is satisfactory, which is the highest rating available for dams.

2023 Water Development Plan – request from the NDDWR / State Water Commission to identify potential water development projects, the timing of their implementation and estimated costs

Mr. Lysne briefly discussed a letter from the NDDWR regarding the identification of potential water development projects, the timing of their implementation and estimated costs for inclusion in the 2023 Water Development Plan. A list of potential Cass County Joint Water Resource District projects to submit to the DWR for the 2023 Water Development Plan will be brought to a future meeting for consideration.

Letter from the Cass County Commission seeking input on potential flood risk reduction projects to submit for Cass County Flood Sales Tax funding consideration

Discussion was held on Cass County Water Resource Districts' potential projects that may request funding through the Cass County Flood Sales Tax. Mr. Lysne will work with Jason Benson, Cass County Engineer, to develop a list of potential projects for consideration.

Animal Damage Control rates

The Secretary-Treasurer indicated JAC Predator and Large Pest Control has requested a rate increase due to the increase in cost of equipment and staff. Rates have not been increased for 7 years.

It was moved by Manager Gust and seconded by Manager Weston to approve and authorize the Chairman to sign the *Second Amendment to Independent Contractor Agreement* with Jarrett Christoferson. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Lougheed and seconded by Manager Gust to approve the payment of Checks #15092 through #15094 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.

Adjournment

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

APPROVED:

Dan Jacobson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer