

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING  
CASS COUNTY JOINT WATER RESOURCE DISTRICT  
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
APRIL 14, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on April 14, 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.; Lyndon Pease, Kurt Lysne 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.; Mary Scherling and Duane Breitling, Cass County Commissioners; Jodi Smith, Diversion Authority Director of Lands; John Albrecht, Jacobs; Matt Stamness, Cass County Highway Department; Leo Richard, Gene Sauvageau, Terry and Kristie Sauvageau, Stanley Township property owners.

**Agenda**

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

**Minutes**

It was moved by Manager Olson, seconded by Manager Gust and unanimously carried to approve the minutes of the March 21, 23 and 24 (two sets), 2022, meetings.

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

Eric Dodds and Jodi Smith discussed moving a majority of the Metro Flood Diversion Project topics to the second meeting of the Water Resource District every month. This would allow more time for preparation of the Metro Flood Diversion Project items to be discussed during the meetings, as well as more time for land agents and other consultants to work on Metro Flood Diversion Project matters. The Board indicated property acquisition negotiations and any time-sensitive items should continue to be brought to Water Resource District meetings as they transpire and should not be delayed until the second Water Resource District meeting of the month for discussion. The Board tabled the matter until the next meeting for further discussion on the topic.

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

**Metro Flood Diversion Project – appraisal / RHDP review / approval**

Dean Vetter reported on upcoming appraisal work for Southern Embankment – Reach 2B and the Upstream Mitigation Area regarding the Metro Flood Diversion Project.

**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 Gust and seconded by Manager Weston to close the meeting at 8:21 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. Phyllis J. Brunelle, et al, Civ. File No. 09-2021-CV-03301 (OINs 1108, 1109, 1110, and 1117)

Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed, Weston and Gust. Manager Olson was absent. The motion passed.

The executive session was attended by Managers Jacobson, Olson, Lougheed, Weston and Gust, Carol Harbeke Lewis, Melissa Maertens, Sean Fredricks, Luke Andrud, Chris McShane, Katie Schmidt, Jodi Smith, Mary Scherling, 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.

Manager Olson left the meeting at this time.

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

It was moved by Manager Lougheed and seconded by Manager Weston to approve the *Settlement Agreement* for OINs 1108, 1109, 1110 and 1117 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed, Weston and Gust. Manager Olson was absent. The motion passed.

It was moved by Manager Lougheed and seconded by Manager Gust to approve the *Flowage Easement* for OIN 852 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed, Weston and Gust. Manager Olson was absent. The motion passed.

It was moved by Manager Lougheed and seconded by Manager Weston to approve the *Purchase Agreement* for OIN 877 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed and Weston. Manager Gust voted against the motion. Manager Olson was absent. The motion passed.

It was moved by Manager Gust and seconded by Manager Weston to approve the *Temporary Construction Easement* for OIN 544X regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed, Weston and Gust. Manager Olson was absent. The motion passed.

Ken Helvey indicated the business formerly operating on OIN 220 is preparing to construct the replacement storage units for the business. Mr. Helvey requested the previously approved Rural Impact Mitigation Program (RIMP) loan amount for the business be deposited into escrow to reimburse the business owner for eligible costs during construction of the replacement storage units.

It was moved by Manager Weston and seconded by Manager Gust to approve the deposit of the previously approved RIMP loan amount for the business formerly operating on OIN 220 into escrow to reimburse the business owner for eligible costs during construction of the replacement storage units for the business regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed, Weston and Gust. Manager Olson was absent. The motion passed.

### **Metro Flood Diversion Project – Land Agent reports**

Mr. Helvey, Ms. Brekkestran, Scott Stenger, Dale Ahlsten, Oly Olafson, Wade Whitworth and Kelsey Lee reported on activities, meetings and discussions with various property owners regarding the Metro Flood Diversion Project.

Mr. Dodds reported on a focus group meeting recently held regarding the supplemental crop loss protection program for the Metro Flood Diversion Project. Mr. Dodds indicated it was determined through the focus group that a draft policy for the program would be helpful for discussions with property owners. The draft policy is projected to be prepared later this summer, with another focus group meeting held thereafter. Mr. Dodds noted the supplemental crop loss protection program is subject to change and finalization of the program will occur when the Metro Flood Diversion Project is operational, in approximately 2027.

### **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 Weston and seconded by Manager Gust to approve the 2022 *Cash Crop Lease Agreements* on the following properties regarding the Metro Flood Diversion Project:

- OINs 11N2, 12Y, 13Y and 18-22
- OINs 213N, 214N, 1097N, 1099N, 1099N2 and 1106N

- OIN 217N
- OIN 1088N
- OIN 1089N
- OIN 1094N
- OINs 1100N and 1102N

Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed, Weston and Gust. Manager Olson was absent. The motion passed.

It was moved by Manager Gust and seconded by Manager Weston to approve the *Utility Permit* for Cass County Electric Cooperative to install electrical service cables in the northeast corner of Section 36 in Mapleton Township, with input from the Water Resource District Engineer. Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed, Weston and Gust. Manager Olson was absent. The motion passed.

**Metro Flood Diversion Project – contracting actions**

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

- *Task Order No. 5 – Amendment 0* with Crown Appraisals, Inc., in the amount of \$114,000
- *Task Order No. 4 – Amendment 5* with Patchin Messner Valuation Counselors, for a contract reduction of \$26,000
- *Task Order No. 5 – Amendment 1* with Patchin Messner Valuation Counselors, for a contract reduction of \$6,000

Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed, Weston and Gust. Manager Olson was absent. The motion passed.

**Metro Flood Diversion Project – reimbursement request #123 from the Diversion Authority pursuant to terms and conditions of HB 1020**

It was moved by Manager Gust and seconded by Manager Lougheed to approve and authorize the Secretary-Treasurer to sign reimbursement request #123 from the Diversion Authority, pursuant to the terms and conditions of HB 1020. Upon roll call vote, the following Managers voted in favor: Jacobson, Lougheed, Weston and Gust. Manager Olson was absent. The motion passed.

Manager Olson joined the meeting at this time.

**Maple River Dam – spring melt**

Brady Woodard reported two roads continue to be closed at the Maple River Dam as they are drying out from the recent spring melt. The third road was closed but is now open as the water in the backwater pool of the Maple River Dam did not overtop that road.

**Regional Conservation Partnership Program**

Mr. Lysne stated Moore Engineering, Inc. is working on adjustments to project design in response to feedback from recently held public meetings with City of Amenia officials, the

North Dakota Department of Transportation and the Cass County Highway Department regarding the RCPP – Rush River Watershed Plan design. Final project design is due in September 2022.

Mr. Lysne said the Natural Resources Conservation Service reported that due to the heavy workload, they are not sure when the exception letter and packet of information submitted to the National Watershed Management Center will be reviewed.

**2023 Water Development Plan – request from the North Dakota Department of Water Resources (NDDWR) / State Water Commission to identify potential water development projects, the timing of their implementation and estimated costs**

Mr. Lysne briefly reviewed a list of Cass County Joint Water Resource District projects to submit to the NDDWR for the 2023 Water Development Plan. A motion was made by Manager Weston and seconded by Manager Lougheed to authorize Moore Engineering, Inc. to submit the list of Cass County Joint Water Resource District projects to the NDDWR for the 2023 Water Development Plan. 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 #15101 through #15103 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 Lougheed and unanimously carried to adjourn the meeting.

APPROVED:

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Dan Jacobson  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer