

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

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on July 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 Hinkemeyer, Administrative Assistant; Sean M. Fredricks, Chris McShane, Luke Andrud and Katie 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, SRF Consulting Group, Inc.; Lisa Brekkestran, Ulteig Engineers, Inc.; Mary Scherling and Duane Breitling, Cass County Commissioners; Joel Paulsen, Diversion Authority Executive Director; Jodi Smith, Diversion Authority Director of Lands and Compliance; Nick Delaney, Rinke Noonan; Leo Richard, Terry and Kristie Sauvageau, Stanley Township property owners; and Linda Clemedtson, Pleasant Township property owner.

Agenda

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

Minutes

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

Metro Flood Diversion Project – property owner negotiation / discussion

Linda Clemedtson discussed proposed counteroffers regarding Flowage Easements for OINs 847, 1923, 1925 and 1994 regarding the Metro Flood Diversion Project. Ms. Clemedtson discussed the soil productivity of the properties and stated she believes the properties have development potential and should be valued as transitional property.

Keith Weston joined the meeting at this time.

The Board thanked Ms. Clemedtson for her counteroffers and directed Oly Olafson to continue negotiating with Ms. Clemedtson regarding the counteroffers for Flowage Easement for OINs 847, 1923, 1925 and 1994 regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – Executive Session for purposes of discussing contract negotiation strategies, litigation strategies, and attorney consultation regarding ongoing 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)

It was moved by Manager Gust and seconded by Manager Lougheed to close the meeting at 8:23 a.m. for the purposes of discussing contract negotiation strategies, litigation strategies, and attorney consultation regarding ongoing 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:

1. Cass County Joint Water Resource District v. Claude Richard, et al., Civ. No. 09-2021-CV-03310 (OINs 5002, 1087, and 1093)
2. Richard Farm Enterprises (OIN 1095)
3. Cass County Joint Water Resource District v. Bruce R. Cossette, et al., Civ. No. 09-2020-CV-03597 (OINs 722 and 723)
4. Cass County Joint Water Resource District v. Gene J. Sauvageau and Brenda J. Sauvageau, et al., Civ. No. 09-2021-CV-03297 (OIN 1107)
5. Cass County Joint Water Resource District v. Leo A. Richard and Shirley J. Richard, Civ. No. 09-2021-CV-03298 (OINs 27 and 1083)
6. Cass County Joint Water Resource District v. Kelly Roseen, et al., Civ. No. 09-2022-CV-00195 (OIN 25)
7. Cass County Joint Water Resource District v. Stuart Johnson, et al., Civ. No. 09-2020-02370 (OINs 903, 935, and 936)

Upon roll call vote, the following Managers voted in favor: Jacobson, Olson, Lougheed, Weston and Gust. The motion carried unanimously.

The executive session was attended by Managers Jacobson, Olson, Lougheed, Weston and Gust, Carol Harbeke Lewis, Melissa Hinkemeyer, Sean Fredricks, Chris McShane, Luke Andrud, Katie Schmidt, Rob Stefonowicz, Joel Paulsen, Jodi Smith, Eric Dodds, Dean Vetter, Sabrina Tusa, Oly Olafson, Ken Helvey and Duane Breitling.

The executive session adjourned at 9:20 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project – acquisition review / approval

It was moved by Manager Weston and seconded by Manager Gust to approve the *Purchase Agreement* and *Temporary Construction Easements* for OINs 5002, 1087, 1093 and 1095 and *Flowage Easements* for OINs 1087, 1093 and 1095 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 Lougheed to approve the *Settlement Agreement* for OINs 722 and 723 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 Weston to approve the *Settlement Agreement* for OIN 1107 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Manager Gust moved to declare the necessity to acquire in fee simple certain real property identified as a part of OINs 27 and 1083 and more fully described in the Complaint in Civil No. 09-20121-CV-03298 as the Permanent Right of Way Property, for the FM Area Diversion Project and its related components and to instruct legal counsel to amend the Complaint in Civil Number 09-2021-CV-03298 to acquire the Permanent Right of Way Property in fee simple by eminent domain, and to acquire a flowage easement encompassing approximately 53.56 acres over across and through the properties identified as OINs 27 and 1083. Manager Lougheed seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Weston moved to declare the necessity to acquire the entirety of real property identified as OIN 25 in fee simple for the FM Area Diversion Project and its associated components, and to instruct legal counsel to amend the Complaint in Civil Number 09-2022-CV-00195 to acquire the entire property identified as OIN 25 in fee simple by eminent domain. Manager Olson seconded the motion. Upon roll call vote, the motion carried unanimously.

Ken Helvey discussed a proposed land swap from the property owners of OINs 903, 935 and 936 regarding the Metro Flood Diversion Project. A motion was made by Manager Lougheed and seconded by Manager Gust to approve the *Exchange Agreement and Purchase Agreement* for OINs 903, 935 and 936 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. Helvey discussed a counteroffer for the billboard signs located on OIN 566X regarding the Metro Flood Diversion Project. It was moved by Manager Lougheed and seconded by Manager Weston to approve the *Purchase Agreement* regarding the billboard signs located on OIN 566X regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Oly Olafson discussed a counteroffer regarding a Flowage Easement for OINs 1473 and 1474 regarding the Metro Flood Diversion Project. It was moved by Manager Gust and seconded by Manager Lougheed to approve the *Flowage Easement* for OINs 1473 and 1474 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. Helvey discussed a counteroffer for OINs 30 and 827 regarding the Metro Flood Diversion Project. It was moved by Manager Weston and seconded by Manager Olson to approve the *Purchase Agreement* for OINs 30 and 827 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – appraisal / RHDP review / approval

Eric Dodds noted the *Rental Agreement* with the tenants of OIN 1992 has been terminated as the property is included in Work Package 50-G regarding the Metro Flood Diversion Project.

It was moved by Manager Lougheed and seconded by Manager Gust to approve the Tenant Replacement Housing Allowance for OIN 1992, in the amount of \$35,700, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

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

A motion was made by Manager Gust and seconded by Manager Weston to approve the relocation and replacement housing payment for OIN 852, as outlined in the letter dated July 5, 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 Gust to approve the relocation and replacement housing payment for OINs 1112 and 1113, as outlined in the letter dated July 5, 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 1899, as outlined in the letter dated July 5, 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 Weston to approve the relocation and replacement housing payment for OIN 1899, as outlined in the letter dated July 5, 2022, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. Helvey noted moving costs in the Fargo-Moorhead metro area have significantly increased recently due to lack of labor and availability of local moving companies.

Maple River Dam – current conditions

Brady Woodard and Kurt Lysne reported on current conditions at the Maple River Dam. The backwater pool is steadily decreasing and is low enough that water is no longer overtopping any roads. Mr. Woodard stated two roads have been repaired and opened and he remains in contact with Highland Township regarding the repair of the remaining two roads next week. Cass County will also be completing the required bridge inspection next week. Mr. Woodard noted a contractor has been hired to clean up debris in the backwater pool area of the Maple River Dam. The grass in the backwater pool area did not survive, so the area will be monitored for weeds.

Regional Conservation Partnership Program

Mr. Lysne reported Moore Engineering, Inc. is coordinating a meeting with Burlington Northern Santa Fe Railway Company regarding crossings for the RCPP – Rush River Watershed Plan.

Bills

It was moved by Manager Gust and seconded by Manager Lougheed to approve the payment of Checks #15111 through #15113 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Jacobson, Olson, Lougheed, Weston and Gust. The Chairman declared the motion passed.

Manager Weston left the meeting at this time.

Compensation for Water Resource District Managers in accordance with HB 1216

During the 2021 Legislative Session, the Legislature approved HB 1216, a bill that increased the maximum compensation for water managers to match compensation for legislators. In accordance with N.D. Cent. Code § 54-03-20, commencing on July 1, 2022, legislative compensation increased to \$193 per day. The Board agreed to set compensation at the amount permissible for legislators under North Dakota law, currently and as modified in the future by the Legislature, as opposed to requiring approvals each time the legislature modifies or increases legislative compensation.

Manager Gust moved to match legislative compensation for Cass County Joint Water Resource District Managers in accordance with HB 1216 and applicable North Dakota law. Manager Lougheed seconded the motion. Upon roll call vote, the motion carried unanimously.

Adjournment

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

APPROVED:

Dan Jacobson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer