

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
JULY 28, 2022

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on July 28, 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, Katie Schmidt and Andrew D. Cook, Ohnstad Twichell, P.C.; Lyndon Pease, Kurt Lysne and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Eric Dodds, Dean Vetter and Sabrina Tusa, AE2S; Scott Stenger and 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 and Duane Breitling, Cass County Commissioners; Joel Paulsen, Diversion Authority Executive Director; Jodi Smith, Diversion Authority Director of Lands and Compliance; John Albrecht, Jacobs; Nick Delaney, Rinke Noonan; Leo Richard and Kristie Sauvageau, Stanley Township property owners; Katie Laidley, Park Company Realtors; Anita Beauchamp and Joleen Loewen, Pleasant Township property owners.

Agenda

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

Minutes

It was moved by Manager Weston, seconded by Manager Gust and unanimously carried to approve the minutes of the July 14, 2022, meeting.

Metro Flood Diversion Project – project updates and general topics

Chris McShane briefly reported on negotiations regarding the Metro Flood Diversion Project.

Eric Dodds discussed the *Property Acquisition Status Report* regarding the Metro Flood Diversion Project. Over 700 parcels have been acquired for the project.

Metro Flood Diversion Project – appraisal / RHDP review / approval

John Albrecht reviewed various appraisals regarding the Metro Flood Diversion Project.

It was moved by Manager Olson and seconded by Manager Lougheed to approve the following appraisals as just compensation for acquisition of property regarding the Metro Flood Diversion Project:

- OINs 1412, 1485 and 1486, with an effective date of June 30, 2022
- OIN 1478, with an effective date of June 30, 2022
- OIN 1541, with an effective date of June 29, 2022
- OIN 1548, with an effective date of June 16, 2022
- OIN 1597, with an effective date of June 17, 2022
- OIN 2029, with an effective date of June 30, 2022
- OIN 7110, with an effective date of June 17, 2022
- OIN 8475, with an effective date of June 16, 2022
- OIN 8476, with an effective date of June 16, 2022
- OIN 8786, with an effective date of June 17, 2022
- OIN 9237, with an effective date of June 17, 2022

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Gust and seconded by Manager Weston to approve the maximum Replacement Housing Differential Payment for OINs 2039 and 2041 in the amount of \$57,860 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – acquisition review / approval

Pat Downs discussed *Utility Easements* for Cass County Electric Cooperative and Midcontinent Communications to provide service to and through the Diversion Inlet Structure of the Metro Flood Diversion Project.

It was moved by Manager Lougheed and seconded by Manager Gust to approve and authorize the Chairman to sign the *Utility Easements* for Cass County Electric Cooperative and Midcontinent Communications in the W 1/2 of Section 32 in Stanley Township regarding the Diversion Inlet Structure of 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 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 Weston and seconded by Manager Olson to close the meeting at 8:19 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. David Delaney, et al., Civil File No. 09-2021-CV-03301 (OIN 1202)

2. Cass County Joint Water Resource District v. Estate of Nancy Loberg, et al., Civil File No. 09-2020-CV-03918 (OIN 716)
3. Cass County Joint Water Resource District v. David Germanson, et al., Civil File No. 09-2020-CV-03608 (OINs 5004, 5009, 5010, 5011, 5012, 9054, 9055, and 9056)
4. Cass County Joint Water Resource District v. Bruce C. Thue, Trustee of the Bruce C. Thue Living Trust dated February 2002, et al., Civil File No. 09-2020-CV-03897 (OINs 1169 and 1200)
5. Cass County Joint Water Resource District v. Claude Richard, et al., Civ. No. 09-2021-CV-03310 (OINs 5002, 1087, and 1093)
6. Richard Farm Enterprises (OIN 1095)
7. Cass County Joint Water Resource District v. Leo A. Richard and Shirley J. Richard, Civil File No. 09-2021-CV-03298 (OINs 27 and 1083)

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, Andrew Cook, Joel Paulsen, Jodi Smith, Eric Dodds, Dean Vetter, Sabrina Tusa, Ken Helvey, Mary Scherling and Duane Breitling.

The executive session adjourned at 9:06 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project – acquisition review / approval

Manager Weston moved to approve and authorize an increase in attorneys’ fees and costs from \$100,000 to a maximum of \$105,000 and reserving a Right of First Offer for the landowners for a term of ten years, regarding the Board’s previous motion to approve a settlement in the following matter: Cass County Joint Water Resource District v. David Delaney, et al., Civil File No. 09-2021-CV-03301 (OIN 1202). Manager Gust seconded the motion. Upon roll call vote, the motion carried unanimously.

Manager Gust moved to approve and authorize a settlement in Cass County Joint Water Resource District v. Estate of Nancy Loberg, et al., Civil File No. 09-2020-CV-03918 (OIN 716), upon the following terms:

- Payment of total just compensation of \$775,000 to the Estate of Nancy Loberg
- Cass County Joint Water Resource District’s acquisition of an easement for a right of way over, across, and through 56.51 acres regarding OIN 716
- Payment of the Estate’s reasonable costs and attorneys’ fees, not to exceed \$95,000 based upon a lodestar method of hours worked multiplied by a regular hourly rate

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

Manager Lougheed moved to approve and authorize a settlement in Cass County Joint Water Resource District v. David Germanson, et al., Civil File No. 09-2020-CV-03608 (OINs 5004, 5009, 5010, 5011, 5012, 9054, 9055, and 9056), upon the following terms:

- Payment of \$4,610,457 to David Germanson in addition to the amounts previously paid.
- Cass County Joint Water Resource District's acquisition of the necessary property rights in and to OINs 1079 and 1105, including fee simple, temporary construction easement, and flowage easement rights, to be defined by survey
- Sale of property within OINs 5004, 5009, 5012, 9054, 9055, and 9056 lying south and east of the Southern Embankment, as defined by survey, to David Germanson subject to the District's exception and reservation of a flowage easement, in exchange for \$1,603,930
- Payment of David Germanson's reasonable costs and attorneys' fees, not to exceed \$125,000

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

Manager Gust moved to approve and authorize a settlement in Cass County Joint Water Resource District v. Bruce C. Thue, Trustee of the Bruce C. Thue Living Trust dated February 2002, et al., Civ. File No. 09-2020-CV-03897 (OINs 1169 and 1200), upon the following terms:

- Payment of total just compensation of \$1,700,000 to Bruce C. Thue, Trustee of the Bruce C. Thue Living Trust dated February 2002
- Cass County Joint Water Resource District's acquisition of fee simple title to the entirety of OINs 1169 and 1200
- Payment of the Trust's reasonable costs and attorneys' fees, not to exceed \$100,000

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

Manager Lougheed moved to modify and replace the Board's previous motion on July 14, 2022, approving a *Purchase Agreement* and *Temporary Construction Easement* regarding OINs 5002, 1087, 1093, and 1095, and to approve and authorize a joint and comprehensive settlement in Cass County Joint Water Resource District v. Claude Richard, Ryan and Jessica Richard, et al., Civ. No. 09-2021-CV-03310 (OINs 5002, 1087, and 1093), and with Richard Farm Enterprises (OIN 1095), upon the following terms:

- Cass County Joint Water Resource District's acquisition of fee simple title of 30.923 acres regarding OINs 1087 and 1093, to be defined by survey
- Cass County Joint Water Resource District's acquisition of flowage easement interests in 151.91 acres regarding OINs 1087, 1093, and 1095, to be defined by survey
- Cass County Joint Water Resource District's acquisition of temporary construction easement interests in 2.862 acres regarding OINs 1087, 1093, and 1095, to be defined by survey
- Approval of a RIMP Loan in the amount of \$2,087,929

- Payment of total just compensation of \$7,769,555 to Claude Richard, Richard Farm Enterprises LP, and Ryan and Jessica Richard, including compensation for the property interests, the two homes on the properties, and additional improvements
- Payment of the parties' reasonable costs and attorneys' fees, not to exceed \$145,000
- Settlement Agreement to include the following additional terms:
 - Lease-back rights of the defendants in the fee simple title property for \$500 per month, contingent upon execution of a written lease agreement with Cass County Joint Water Resource District, but excluding land required for the Drain 27 project, with a lease expiration no later than November 1, 2024
 - Defendants' salvage rights regarding the following personal property and fixtures in the two homes: three chandeliers, pantry door, appliances, and electric step-down transformers
 - Cass County Joint Water Resource District will reimburse defendants regarding installation of propane service to the defendants' new properties, up to a maximum of \$450,000
 - Cass County Joint Water Resource District will reimburse defendants regarding installation of natural gas service to the defendants' new properties, up to a maximum of \$40,000
 - Reasonable relocation costs and expenses in accordance with the Uniform Relocation Act for occupants

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

Manager Lougheed moved to approve and authorize a settlement in Cass County Joint Water Resource District v. Leo A. Richard and Shirley J. Richard, Civ. No. 09-2021-CV-03298 (OINs 27, 1083, 851, 853, 1965, and 5035), upon the following terms:

- Total payment of \$5,500,000, including attorneys' fees, to Leo and Shirley Richard
- Cass County Joint Water Resource District's acquisition of approximately 95 acres in fee simple regarding OINs 27 and 1083, to be defined by survey
- Cass County Joint Water Resource District's acquisition of any necessary temporary construction easement rights in the property north of the 95 acres Cass County Joint Water Resource District will acquire in fee simple regarding OINs 27 and 1083, to be defined by survey
- Cass County Joint Water Resource District's acquisition of necessary flowage easement rights over and across OINs 851, 853, 1965, and 5035, to be defined by survey

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

A motion was made by Manager Gust and seconded by Manager Weston to approve and authorize the Chairman to sign *Task Order No. 16* with Moore Engineering, Inc., not to exceed \$20,000, for expert witness services regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Dean Vetter reviewed the Acquisition Timeline Status Summary regarding the Metro Flood Diversion Project.

Ken Helvey discussed a counteroffer regarding a *Flowage Easement* for OIN 848 regarding the Metro Flood Diversion Project. It was moved by Manager Gust and seconded by Manager Lougheed to approve the *Flowage Easement* for OIN 848 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Wade Whitworth presented a Pre-Approval Application Form for a *Rural Impact Mitigation Program* loan for OIN 8386 regarding the Metro Flood Diversion Project. The property owners of OIN 8386 have begun preparing to relocate the business currently operating on OIN 8386. A motion was made by Manager Weston and seconded by Manager Gust to approve the Pre-Approval Application Form for a *Rural Impact Mitigation Program* loan for OIN 8386 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. Dodds briefly reviewed the schedule for negotiation of property rights within the Southern Embankment – Reach 2B area of the Metro Flood Diversion Project.

Metro Flood Diversion Project – Land agent reports

Mr. Helvey, Mr. Whitworth, Oly Olafson, Lisa Brekkestran, Scott Stenger and Dale Ahlsten reported on activities, 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 Gust and seconded by Manger Lougheed to approve the crop damage payment for OIN 1093, as outlined in the letter dated June 20, 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 877, as outlined in the letter dated July 20, 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 1924, as outlined in the letter dated July 22, 2022, 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 Lougheed and seconded by Manager Olson to approve and authorize the Chairman to sign the following regarding appraisal services for the Metro Flood Diversion Project:

- *Task Order No. 6 – Amendment 1* with Patchin Messner Valuation Counselors, in the amount of \$3,500
- *Task Order No. 5 – Amendment 1* with Compass Land Consultants, Inc. for a contract reduction of \$2,000

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Gust to approve and authorize the Chairman to sign *Task Order No. 7 – Amendment 0* with Patchin Messner Valuation Counselors in the amount of \$72,000 regarding appraisal services for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Gust and seconded by Manager Lougheed to approve and authorize the Chairman to sign *Task Order No. 5 – Amendment 1* with Crown Appraisals, Inc. in the amount of \$2,000 regarding appraisal services for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – reimbursement request #126 from the Diversion Authority pursuant to terms and conditions of HB 1020

It was moved by Manager Lougheed and seconded by Manager Weston to approve and authorize the Secretary-Treasurer to sign reimbursement request #128 from the Diversion Authority, pursuant to the terms and conditions of HB 1020. Upon roll call vote, the motion carried unanimously.

Maple River Dam – current conditions

Brady Woodard reported on current conditions at the Maple River Dam. Mr. Woodard stated all roads have been repaired and opened and there was one bridge with a washout near an abutment that was also repaired. The contractor should finish cleaning up debris in the backwater pool area of the Maple River Dam this week. Mr. Woodard noted there will be additional tree removal work needed in the backwater pool area of the Maple River Dam this winter. The grass in the backwater pool area did not survive, so the area will continue to be monitored for weeds.

Regional Conservation Partnership Program

Kurt Lysne reported Moore Engineering, Inc. is coordinating a meeting with Burlington Northern Santa Fe Railway Company (BNSF) regarding crossings for the RCPP – Rush River Watershed Plan. The Natural Resources Conservation Service (NRCS) has offered to extend the design schedule for the RCPP- Rush River Watershed Plan to allow more time for Moore Engineering, Inc. to meet with BNSF to discuss the crossings and complete the project design.

It was moved by Manager Gust and seconded by Manager Olson to approve and authorize the Secretary-Treasurer to sign a request for an extension to the agreement with the NRCS regarding the RCPP – Rush River Watershed Plan. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Olson and seconded by Manager Lougheed to approve the payment of Checks #15114 through #15116 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.

Legislative update

Sean Fredricks provided a brief update on legislative matters that impact water resource districts.

2023 budget

The Secretary-Treasurer briefly reviewed the 2023 budget hearing with the Cass County Commission.

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