

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
FEBURARY 23, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on February 23, 2023, at 8:00 a.m.

Present were Keith Weston and Rick Steen, 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.; Kurt Lysne, Lyndon Pease, Josh Hassell and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Rob Stefonowicz, Larkin Hoffman Attorneys; Eric Dodds, Dean Vetter and Sabrina Tusa, AE2S; Ken Helvey and Katie Laidley, SRF Consulting Group, Inc.; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, Lee Kaffar and Kelsey Lee, HDR, Inc.; Lisa Brekkestran, Davon Hutchinson and Drew Nicklay, Ulteig Engineers, Inc.; Joel Paulsen, Diversion Authority Executive Director; Kris Bakkegard, Diversion Authority Director of Engineering; Jodi Smith, Diversion Authority Director of Lands and Compliance; Madeline Gorghuber, Diversion Authority Lands Specialist; Duane Breitling and Mary Scherling, Cass County Commissioners; Stan Wolf, Cass County Weed Officer; Jason Benson, Cass County Engineer; Matt Stamness, Cass County Highway Department; Adam Fischer, Pleasant Township property owner; Leo Richard, Kristie Sauvageau and Steven Schultz, Stanley Township property owners; Tony Roth, Mayor of Amenia; Cody Cashman and Riley Streit, City of Amenia; William A. Hejl, John Hejl, Brandon Lindstrom, Merle Myers and Derrick Taylor, property owners in and around the City of Amenia.

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 Lougheed, seconded by Manager Steen and unanimously carried to approve the minutes of the February 9, 2023, meeting

Metro Flood Diversion Project – project updates and general topics

Chris McShane updated the Board on the status of various formal negotiations regarding the Metro Flood Diversion Project.

Eric Dodds discussed the Property Acquisition Status Report regarding the Metro Flood Diversion Project. Jodi Smith noted settlements have been reached on all remaining parcels for the Diversion Channel component of the Metro Flood Diversion Project.

Ms. Smith played a video update of construction progress on various components of the Metro Flood Diversion Project.

Metro Flood Diversion Project – Executive Session for purposes of discussing contract negotiation strategies and attorney and negotiator consultation 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 Weston to close the meeting at 8:25 a.m. for the purposes of discussing contract negotiation strategies and attorney and negotiator consultation 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 matter and parties:

1. Mark and Kristinn Hiatt (OIN 1886)
2. Norman M. Mell, Trustee of the Roise Trust (OIN 2003)
3. Jeffrey Donat Trust (OIN 1118)

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

The executive session was attended by Managers Olson, Lougheed, Weston, Gust and Steen, Carol Harbeke Lewis, Melissa Hinkemeyer, Sean Fredricks, Luke Andrud, Chris McShane, Katie Schmidt, Rob Stefonowicz, Joel Paulsen, Jodi Smith, Madeline Gorghuber, Eric Dodds, Dean Vetter, Sabrina Tusa, Duane Breitling, Mary Scherling, Scott Stenger, Dale Ahlsten and Oly Olafson.

The executive session adjourned at 10:04 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 Lougheed and seconded by Manager Weston to approve the *Purchase Agreement* for OIN 1886 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed and Weston. Managers Gust and Steen voted against the motion. The motion passed.

It was moved by Manager Weston and seconded by Manager Lougheed to approve the *Purchase Agreement* for OIN 2003 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Lougheed and seconded by Chairman Olson to approve the *Purchase Agreement* for OIN 1118 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Olson and Lougheed. Managers Weston, Gust and Steen voted against the motion. The motion failed.

Mr. Dodds reported negotiations are at a standstill with some property owners regarding the acquisition of Flowage Easements for the Metro Flood Diversion Project. Mr. Dodds proposed sending letters to groups of property owners where land agents have identified Flowage Easement negotiations are not proceeding. The letters would provide a last written offer for the property owner to sign an Agreement to Acquire a Flowage Easement or reach an agreement with their land agent by a certain date. If an agreement is not reached by that date, legal counsel would be authorized to file an eminent domain proceeding to acquire the Flowage Easement on the property. Negotiations would also continue throughout the process.

A motion was made by Manager Weston and seconded by Manager Gust to approve and authorize the following regarding acquisition of Flowage Easements for the Metro Flood Diversion Project:

- Authorize the Secretary-Treasurer to send final next steps letters and Agreements to Acquire a Flowage Easement to the owners of the following properties:
 - OIN 176
 - OINs 824 and 825
 - OINs 850, 1901, 1902 and 1952
 - OIN 1330
 - OIN 1548
 - OINs 1587 and 9237
 - OIN 2003
 - OIN 2043
 - OINs 5020, 5021 and 5022
 - OIN 7209
 - OIN 8786
 - OIN 9236
 - OIN 9423
- Authorize legal counsel to file and proceed with eminent domain actions under Chapter 32-15 of the North Dakota Century Code if property owners do not sign and return agreements on or before March 27, 2023.

Upon roll call vote, the motion carried unanimously.

Ken Helvey discussed Pre-Approval Application Forms for *Rural Impact Mitigation Program* loans for OINs 9404 and 9347 regarding the Metro Flood Diversion Project. Mr. Helvey indicated the applicants do not meet the requirements of the program at this time and requested business verification documents were not received.

A motion was made by Manager Lougheed and seconded by Manager Steen to deny the Pre-Approval Application Forms for *Rural Impact Mitigation Program* loans for OINs 9404 and 9347 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – land agent reports

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

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

It was moved by Manager Gust and seconded by Manager Weston to approve the relocation and replacement housing payment for OIN 1101, as outlined in the letter dated February 9, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously

It was moved by Manager Lougheed and seconded by Manager Gust to approve the relocation and replacement housing payment for OIN 1899, as outlined in the letter dated February 15, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Lougheed and seconded by Manager Weston to approve the relocation and replacement housing payment for OIN 8385, as outlined in the letter dated February 9, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

Madeline Gorghuber discussed various farmland leases regarding the Metro Flood Diversion Project. A motion was made by Manager Gust and seconded by Manager Weston to approve the 2023 *Cash Crop Lease Agreements*, as presented, on the following properties regarding the Metro Flood Diversion Project:

- OINs 221Y, 222Y and 1185Y1
- OINs 1116, 1166Y, 1168Y, 1171Y and 1184Y
- OIN 9755Y
- OINs 1222, 2366Y, 2367Y, 8852Y, 1169X, 1200X, 561Y
- OINs 507Y (area 1), 508Y, 510Y, 590Y, 2376Y, 2377Y, 2378Y
- OIN 1124

Upon roll call vote, the motion carried unanimously.

Ms. Gorghuber discussed a proposed *License Agreement* for property maintenance of OINs 1091NX and 1097N regarding the Metro Flood Diversion Project. A motion was made by Manager Steen and seconded by Manager Lougheed to approve and authorize the Chairman to sign the *License Agreement* with Pete Livdahl for property maintenance of OINs 1091NX and 1097N regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Ms. Gorghuber briefly reviewed the Pifer’s Land Management *2022 Land Management Summary* regarding leased Water Resource District owned property for the Metro Flood Diversion Project.

Kris Bakkegard stated the Diversion Authority recently approved a Land Acquisition Directive for Burlington Northern Santa Fe Railway Company (BNSF) property that is impacted by the Metro Flood Diversion Project, OINs 1236A, 1236B and portions of Sections 18 and 19 in Stanley Township near the Horace grain elevator. Brief discussion was held on the condition of the railroad infrastructure on the property and environmental hazard testing results.

It was moved by Manager Lougheed and seconded by Manager Weston to do the following regarding OINs 1236A, 1236B and portions of Sections 18 and 19 in Stanley Township near the Horace grain elevator regarding the Metro Flood Diversion Project:

- Approve and authorize the Chairman to sign the BNSF *Real Estate Purchase and Sale Agreement*;
- Approve and authorize the Chairman to sign the BNSF *Assignment and Assumption of Lease*; and
- Authorize the Secretary-Treasurer to send a letter to BNSF outlining the above.

Upon roll call vote, the motion carried unanimously.

Maple River Dam – 2022-2023 tree removal

Brady Woodard reported the contractor is finishing work on the tree removal project in the backwater pool of the Maple River Dam this week. The weather has been optimal for the project and the project went very well.

Maple River Dam – Lease Agreements

It was moved by Manager Gust and seconded by Manager Weston to approve the following regarding Cass County Joint Water Resource District owned property for the Maple River Dam:

- *Lease Agreement* with Steven Fleischfresser for 2023
- *Lease Agreement* with Dean Sprunk for 2023

Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program

A motion was made by Manager Gust and seconded by Manager Lougheed to approve and authorize the Chairman to sign the *Agreement for Cost-Share Reimbursement* with the North Dakota Department of Water Resources regarding the RCPP – Rush River - Amenia Flood Protection – Final Design. Upon roll call vote, the motion carried unanimously.

Kurt Lysne briefly reviewed the RCPP – Rush River Watershed Plan history to date including the project design. City of Amenia officials and various property owners provided their feedback on the project and extensively discussed the alignment of the levee and pond. Tony Roth, Mayor of Amenia, asked the Board to consider providing additional information on the project to the residents of Amenia. Kurt Lysne noted additional informational meetings regarding the project will be held in the future.

Manager Weston and Manager Gust left the meeting during this time.

Mr. Lysne indicated the feedback provided today will be analyzed to determine the feasibility of various options discussed and Moore Engineering, Inc. will bring maps and alignment options to the next Water Resource District meeting for further discussion on the matter.

The Board directed Moore Engineering, Inc. to work with the Secretary-Treasurer to request a special meeting of the Cass County Flood Sales Tax Committee to consider the cost-share request submitted for the Rush River – Amenia Flood Protection – Final Design.

Weed, cattail, tree and brush control

Brief discussion was held regarding spraying spotted hemlock on Water Resource District property. The Board tabled the weed, cattail, tree and brush control matter until the next meeting to gather more information and estimates from contractors regarding spraying spotted hemlock.

Bills

It was moved by Manager Steen and seconded by Manager Lougheed to approve the payment of Checks #15248 through #15252 and the wire transfers, as amended. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, and Steen. Manager Weston and Gust were absent. The Chairman declared the motion passed.

Adjournment

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

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer