

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

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

Present were 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 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, Wade Whitworth and Cassidy Moon, HDR, Inc.; 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; Matt Stamness, Cass County Highway Department; John Albrecht, Jacobs; Igor Lenzner, Rinke Noonan; Jon Brakke, Pleasant Township property owner; Leo Richard, Terry and Kristie Sauvageau, and Joe Sauvageau, Stanley Township property owners. Manager Keith Weston, Southeast Cass Water Resource District, was absent.

Agenda

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

Minutes

It was moved by Manager Gust seconded by Manager Steen and unanimously carried to approve the minutes of the March 9, 2023, meeting.

Metro Flood Diversion Project – property owner negotiation / discussion

Jon Brakke discussed negotiations regarding OINs 1996X and 2001 regarding the Metro Flood Diversion Project. Mr. Brakke stated he believes OIN 2001 has transitional development value and is willing to negotiate with the Water Resource District. The Board thanked Mr. Brakke for his time and comments regarding the matter.

Kristie Sauvageau presented a timeline of negotiations regarding various property rights needed for the Metro Flood Diversion Project. Ms. Sauvageau discussed the matter in detail including issues they have encountered throughout the property rights acquisition process. The Board thanked Ms. Sauvageau for her comments on the matter and indicated they will look into the issues presented.

Manager Lougheed joined the meeting at this time.

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.

Manager Gust inquired about the status of Environmental Monitoring Easement acquisitions. Jodi Smith reported discussions are ongoing with the Corps of Engineers on the status of Environmental Monitoring Easement acquisitions regarding various components and activities of the Metro Flood Diversion Project.

Mr. Dodds reported OINs 1513, 1514 and 1516 were previously sent offers to acquire Flowage Easements on the parcels. The parcels are now included in the footprint of the City of Christine levee, so Flowage Easements are no longer needed on the parcels. Mr. Dodds indicated because the Flowage Easements are no longer needed on OINs 1513, 1514 and 1516, the offer letters need to be rescinded. Brief discussion was held on the City of Christine levee.

It was moved by Manager Lougheed and seconded by Manager Gust to rescind the March 2022 offers to purchase Flowage Easements on the following properties regarding the Metro Flood Diversion Project:

- OIN 1513
- OIN 1514
- OIN 1516

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – appraisal / RHDP review / approval

Mr. Dodds discussed appraisal waivers for Temporary Access Easements that are needed on OINs 1450 and 1495 and OIN 1471 to allow access to the *Flowage Easement* area of the properties for structure and debris removal activities following acquisition of the *Flowage Easements*.

A motion was made by Manager Gust and seconded by Manager Lougheed to approve the appraisal waiver valuations regarding Temporary Access Easements for OINs 1450 and 1495 and OIN 1471 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 appraisal for OIN 5059, with an effective date of December 21, 2022, as an estimate of just compensation for acquisition of property regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed and Gust. Manager Steen voted against the motion and Manager Weston was absent. The Chairman declared the motion passed.

Metro Flood Diversion Project – acquisition review / approval

Mr. Dodds reported negotiations are at a standstill with a property owner regarding the acquisition of Flowage Easements for the Metro Flood Diversion Project. Mr. Dodds proposed sending a letter to the property owner, which 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 Gust and seconded by Manager Steen 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 letter and Agreements to Purchase and Acquire a Flowage Easement to the owners of OIN 8386
- 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 April 24, 2023.

Upon roll call vote, the motion carried unanimously.

It was moved by Manager Lougheed and seconded by Manager Gust to approve the *Purchase Agreement* for OINs 7220, 9995 and 9998 regarding 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 Gust and seconded by Manager Lougheed to close the meeting at 8:53 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 matter and parties:

1. Margaret Pronovost (OIN 1078X)

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

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

The executive session adjourned at 9:19 a.m. and the regular meeting was reconvened and opened to the public.

Metro Flood Diversion Project – acquisition review / approval

Chairman Olson asked if any members of the Board wished to offer any motions regarding right of way necessary from Margaret Pronovost (OIN 1078X).

Manager Lougheed moved to approve a settlement with Margaret Pronovost regarding OIN 1078X, as follows:

- Margaret Pronovost will convey fee simple ownership of OIN 1078X to the Cass County Joint Water Resource District.
- The Cass County Joint Water Resource District will pay Margaret Pronovost \$1,493,000 upon closing of the real estate transaction contemplated under the parties' settlement agreement.
- The Cass County Joint Water Resource District will lease OIN 1078X to Andrew and Max Cossette for a three-year lease term, contingent upon approval of acceptable lease terms with the Cossette's.
- The Cass County Joint Water Resource District will reimburse Margaret Pronovost for reasonable attorneys' fees and costs incurred, not to exceed \$20,000.

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

Metro Flood Diversion Project – land agent reports

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

Brief discussion was held on properties that may be shifted from Zone 1 to Zone 2 of the Upstream Mitigation Area of the Metro Flood Diversion Project. Mr. Dodds stated there are strict criteria that must be met for properties to be considered by the Corps of Engineers for the redesignation to Zone 2 of the Upstream Mitigation Area.

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

It was moved by Manager Gust and seconded by Manager Lougheed to approve the relocation and replacement housing payment for OIN 8385, as outlined in the letter dated March 23, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Ken Helvey discussed reimbursement of costs to the former property owner of OIN 220 for expenses related to development of the Rural Impact Mitigation Program (RIMP). The former property owner of OIN 220 was the first to utilize the program and the assistance received helped develop the program for all participants.

A motion was made by Manager Lougheed and seconded by Manager Steen to approve a reimbursement of \$12,359.75 to the former property owner of OIN 220 for RIMP development support regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed and Steen. Manager Gust voted against the motion and Manager Weston was absent. The Chairman declared the motion passed.

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 Lougheed to approve the 2023 *Cash Crop Lease Agreements*, as presented, on the following properties regarding the Metro Flood Diversion Project:

- OINs 717Y (East) and 9732Y
- OIN 1089Y
- OINs 1076N and 1077N
- OIN 720X (East)
- OINs 817N, 817Y1 and 817Y2

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – contracting actions

A motion was made by Manager Steen and seconded by Manager Gust to approve and authorize the Chairman to sign *Task Order No. 6 – Amendment 2* with Crown Appraisals, Inc. reducing the contract by \$5,500, regarding appraisal services for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management continued

It was moved by Manager Lougheed and seconded by Manager Gust to authorize the Secretary-Treasurer to sign and submit the Cass Rural Water Users District Proxies for properties acquired for the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – permanent obstruction of right of way and underlying section line crossings

Sean Fredricks discussed a Resolution regarding various road crossings in Mapleton Township. The crossings are located within Phase III of the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project. Additional minutes relating to the matter are attached hereto.

Regional Conservation Partnership Program

Kurt Lysne updated the Board on the RCPP – Upper Maple River Watershed Plan. Moore Engineering, Inc. continues to discuss the Plan with the Natural Resources Conservation Service (NRCS) and is updating property owners on the changes to the Plan.

Mr. Lysne next updated the Board on the RCPP – Rush River Watershed Plan. Moore Engineering, Inc. is working with the NRCS on the finalizing processes related to the final design of the project. Mike Opat indicated he discussed the opportunity for Houston Engineering, Inc. to be involved in the final alignment of the levee for the project; however, due to potential conflicts, Houston Engineering, Inc. believes it is in the Board's best interest to consult an independent party to provide perspective on the matter. The Board discussed the matter with Ken Helvey, SRF Consulting Group, Inc. Mr. Helvey indicated SRF Consulting Group, Inc. is interested in the possibility and has resources and expertise within their company that could provide impartial economic and other perspectives and could act as a liaison between property owners, the City of Amenia and the Water Resource District regarding the final alignment of the levee for the project. Mr. Helvey stated SRF Consulting Group, Inc. will gather more information on the project and will bring a proposal to a future Water Resource District meeting for further discussion.

Weed, cattail, tree and brush control

Discussion was held on the bid received for spraying spotted hemlock in Cass County Joint Water Resource District facilities. A motion was made by Manager Steen and seconded by Manager Gust to approve and authorize ground spraying of spotted hemlock by DL Barkie Construction, Inc., in Cass County Joint Water Resource District facilities as identified by the Cass County Weed Officer. Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Steen and seconded by Manager Loughheed to approve and authorize the Chairman to sign the *Agreement* with Dakota Helicopter, Inc. to provide aerial and ground spraying services for weed, cattail, tree and brush control on Cass County Joint Water Resource District facilities for 2023. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Gust and seconded by Manager Loughheed to approve the Cass County Weed Control Work Order regarding weed, cattail, tree and brush control on Cass County Joint Water Resource District facilities for 2023. Upon roll call vote, the motion carried unanimously.

Bills

A motion was made by Manager Steen and seconded by Manager Loughheed to set policy that bills are due by 5:00 p.m. the Monday before Cass County Joint Water Resource District meetings. Bills received after that time will be considered at the following meeting. Upon roll call vote, the motion carried unanimously.

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

Spring melt

Brief discussion was held on the 2023 spring melt and flood outlook.

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:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer