

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE WEST FARGO PUBLIC WORKS BUILDING
WEST FARGO, NORTH DAKOTA
JULY 27, 2023

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on July 27, 2023, at 8:00 a.m.

Present were 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 and Katie Schmidt, Ohnstad Twichell, P.C.; Rob Stefonowicz, Larkin Hoffman; Kurt Lysne, Lyndon Pease and Josh Hassell, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; 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 Kelsey Lee, HDR, Inc.; Davon Hutchinson and Drew Nicklay, Ulteig Engineers, Inc.; Jodi Smith, Diversion Authority Director of Lands and Compliance; Madeline Gorghuber, Diversion Authority Lands Specialist; Jessica Warren, Diversion Authority Compliance Specialist; Katrina Olson, Jacobs; Brian Fuder, Red River Retention Authority Executive Director; Nick Delaney, Rinke Noonan; Cody Cashman, Tony Roth and Riley Streit, City of Amenia; William A. Hejl and John Hejl, Amenia Township property owners; Terry and Kay Compson, Pleasant Township property owners; Leo Richard and Jessica Richard, Stanley Township property owners. Manager Rick Steen, Southeast Cass Water Resource District, was absent.

Agenda

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

Minutes

It was moved by Manager Lougheed seconded by Manager Gust and unanimously carried to approve the minutes of the July 13, 2023, meeting.

Metro Flood Diversion Project – property owner negotiation / discussion

Terry Compson discussed the value of Flowage Easements on OINs 1921, 1995, 9332, 9337, 9352, 9359, 9363 and 9412 that were included in a previously negotiated property acquisition regarding the Metro Flood Diversion Project. Mr. Compson said the Flowage Easement valuations on his properties were determined before Flowage Easements were appraised on individual properties. Mr. Compson requested the Board appraise the

Flowage Easements on OINs 1921, 1995, 9332, 9337, 9352, 9359, 9363 and 9412 and compensate him for the difference between the previously negotiated values and the appraised values. Jodi Smith said she will look into the request and will contact Mr. Compson to discuss the matter further. The Board thanked Mr. Compson for his comments regarding the matter.

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.

Metro Flood Diversion Project – appraisal / RHDP review / approval

It was moved by Manager Lougheed and seconded by Manager Weston to approve the following maximum Replacement Housing Differential Payments regarding the Metro Flood Diversion Project:

- OIN 1953, in the amount of \$255,161
- OIN 9248, in the amount of \$201,000

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 8:26 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 parties and 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. Lawrence G. Richard and Susan E. Richard, Trustees under the Lawrence & Susan Richard Living Trust, dated May 20, 2015, et al. (OINs 818, 1915, 1916, 1917, 1943 and 1945)
4. Corey and Sherri Smith (OINs 9431 and 9438)
5. Cass County Joint Water Resource District v. Stanley E. Anderson and Terri Rae Anderson, et al., Civil File No. 09-2022-CV-03612 (OINs 1896 and 2052)
6. Cass County Joint Water Resource District v. Nancy L. Johnson as the Personal Representative of the Estate of Patricia N. Askegaard, et al., Civil File No. 09-2022-CV-03661 (OIN 2051)
7. Cass County Joint Water Resource District v. Michael D. Brakke and Paul E. Brakke, et al., Civil File No. 09-2022-CV-03621 (OIN 1964)

8. Cass County Joint Water Resource District v. Donald Robert Cossette, et al., Civil File No. 09-2022-CV-03614 (OIN 2361)
9. Cass County Joint Water Resource District v. Allen M. Ricker and Diane M. Ricker, et al., Civil File No. 09-2022-CV-03625 (OINs 872, 873, 874 and 875)
10. Cass County Joint Water Resource District v. Robert W. Helbling and Mari Palm, as Trustees of the MKRM Trust under Trust Agreement dated April 10, 2007, et al., Civil File No. 09-2022-CV-03622 (OIN 1997)

Upon roll call vote, the motion carried unanimously.

The executive session was attended by Managers Olson, Lougheed, Weston and Gust, Carol Harbeke Lewis, Melissa Hinkemeyer, Sean Fredricks, Chris McShane, Katie Schmidt, Rob Stefonowicz, Jodi Smith, Madeline Gorghuber, Jessica Warren, Eric Dodds, Dean Vetter, Sabrina Tusa, Ken Helvey, Katie Laidley, Scott Stenger, Dale Ahlsten, Oly Olafson and Wade Whitworth.

The executive session adjourned at 9:24 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 the following matters and parties:

Cass County Joint Water Resource District v. Claude Richard, et al., Civ. No. 09-2021-CV-03310 (OINs 5002, 1087, and 1093) and Richard Farm Enterprises (OIN 1095).

Manager Lougheed moved to approve a settlement with Claude Richard and Richard Farm Enterprises as follows:

- The Richards will convey fee simple ownership of 30.92 acres of OIN 1087N and 1093N to the Cass County Joint Water Resource District (the “District”), to be defined by survey, free and clear of any rights of the Richards, including any rights to repurchase.
- The Richards will convey flowage easement interests over, across, and through approximately 151 acres in OINs 1087X, 1093X, 1095, and 5002 to District, to be defined by survey.
- The Richards will convey easements for a term of years over, across, and through approximately 2.8 acres in OINs 1087X and 1093X, to the District, to be defined by survey.
- The District will pay the Richards a total of \$9,286,531 upon closing of the real estate transactions contemplated under the parties’ settlement agreement for the property rights conveyed by the Richards as outlined above; the total amount of payment in cash to the Richards is inclusive of payment for the home on OIN 5002, the historic farm home, and \$4,718,905 for the nonresidential improvements located on OIN 1093X.
- The District will give notice to the previous owners of OINs 217Y and 1094Y of the District’s intent to sell the remnant properties; if the previous owners do not

exercise the right of first offer on each property, Claude Richard will purchase OINs 217Y and 1094Y at a price of \$5,000 per acre prior to May 1, 2024, subject to the reservation of a flowage easement and easement in favor of the District for a term of years; Claude Richard will accept fee ownership of all parcels subject to existing farmland leases; and Claude Richard will become the landlord/lessor under those leases and will be entitled to all rental payments due or owed under each lease and rental payments for 2023 will be credited at closing.

- The Richards will lease the improvements on OIN 5002 and OIN 1093 from the District for \$500 per month until 30 days' written termination notice from the Richards or until December 30, 2024, whichever occurs sooner.
- The District will reimburse the Richards for reasonable relocation costs and expenses in accordance with the Uniform Relocation Act for eligible expenses.
- Ryan and Jessica Richard will have salvage rights for select personal property (three chandeliers, pantry door, appliances, and electric step-down transformers).
- The District will reimburse the Richards for the costs of installing and providing propane service at the Richards' new property, at an estimated cost of \$450,000.
- The District will reimburse the Richards for the costs of installing and providing natural gas service at Claude Richard's existing farmstead, at an estimated cost of \$40,000.
- The District will be entitled to the \$368,300 previously deposited with the district court.
- The parties will stipulate to dismissal of the existing eminent domain action and the Richards will release any and all claims for additional compensation or just compensation related to the Diversion Project for property rights taken.
- The District approves two RIMP loans for 6G Farms, LLC, as borrower in the total amount of \$2,383,759, secured by a mortgage encumbering the property on which the replacement improvements are constructed.
- The District will reimburse the Richards for reasonable attorneys' fees, appraisal fees, engineering fees, and surveying fees for the new site, not to exceed \$240,000.

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

Chairman Olson asked if any members of the Board wished to offer any motions regarding the following matter:

Lawrence G. Richard and Susan E. Richard, Trustees under the Lawrence & Susan Richard Living Trust, dated May 20, 2015, et al. (OINs 818, 1915, 1916, 1917, 1943, and 1945).

Manager Weston moved to approve a settlement with the Lawrence & Susan Richard Living Trust as follows:

- The Richards will convey fee simple ownership of 8.63 acres of OIN 818 (more specifically described as 818N1 and 818N2) to the Cass County Joint Water Resource District (the "District") and in exchange the Richards would receive fee simple ownership on OIN 816Y1 and 817Y1 (approximately 4.13 acres).

- The Richards will convey flowage easement interests in OINs 818X, 1915, 1916, 1917, 1943, and 1945 to the District.
- The District will convey to the Richards fee simple ownership of OINs 820, 1116, 844, 26, 23, 24, 25, 1084, 1085, 1100Y, 1101, 1102Y, 1103, and 1104 all as defined by survey, and all subject to the exception and reservation of flowage easement interests and temporary construction easement interests in favor of the District, also as defined by survey. The parties agree and recognize exchange parcels the District will convey to the Richards may also be subject to and conditioned upon the release or waiver of Right of First Offers options held by prior owners.
- In the event the Right of First Offers are not released or this comprehensive settlement does not occur, the exchange of fee simple ownership of OIN 818N1 and 818N2 for fee simple ownership of OIN 816Y1 and OIN 817Y1 with all land being valued at \$18,000 per acre will occur no later than December 31, 2023.
- The Richards will accept fee ownership of all parcels subject to existing farmland leases; the Richards will become the landlords/lessors under those leases and will be entitled to all rental payments received and/or due or owed under each lease for 2023 and beyond.
- The Richards will lease OIN 1916, including homestead improvements and structures, and 6.19 acres of OIN 818, including improvements and structures, to the District for \$500 per month until 30 days' written termination notice from the Richards or until December 30, 2024, whichever occurs sooner. Prior to terminating the aforementioned leaseback for OIN 818 and vacating the property, the Richards may remove and relocate to their new site their electrical shed (approx. 8' X 12') that houses the control system for the grain dryer.
- The District's demolition on OINs 818X and 820 will require the District's contractor to leave existing gravel in place to accommodate the Richards' use of the area to park their farm equipment.
- The parties will cooperate in good faith to develop a mutually acceptable drainage plan regarding OIN 818X that will not interfere with the District's use of the property.
- The District will reimburse eligible business re-establishment expenses in accordance with the Uniform Relocation Act up to \$50,000; the District will reimburse the Richards for reasonable relocation costs and expenses in accordance with the Uniform Relocation Act; and the District will be responsible for ensuring utility relocation to accommodate the Richards' use of 816Y1 consistent with utility usage at the current site.
- The District will pay the Richards \$675,000 upon closing of the real estate transactions contemplated under the parties' settlement agreement as just compensation.
- The District will pay the Richards \$1,192,326 as just compensation for the contributory value of the non-residential improvements on their existing property.
- The District approves a RIMP loan for the Richards in the amount of \$1,025,140.
- The District will reimburse the Richards for reasonable attorneys' fees, engineering fees, appraisal costs, and other costs incurred related to the real estate transactions contemplated under the parties' settlement, not to exceed \$110,000.

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

Manager Gust moved to approve a settlement with the Corey and Sherri Smith as follows:

- The Smith's will convey to the Cass County Joint Water Resource District fee simple ownership of 3.13 acres of OINs 9431 and 9438.
- The District will convey to the Smith's fee simple ownership of OINs 1120 and 1123.
- The District will pay the Smith's \$70,000 upon closing of the real estate transactions contemplated under the parties' settlement agreement as just compensation.

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

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:
 - OINs 1402 and 1477
 - OINs 1542, 1544 and 1586
 - OINs 1885 and 9416
 - OIN 1953
 - OIN 2002
 - OINs 2039 and 2041
 - OIN 8919
 - OIN 8920
 - OIN 9258
 - OINs 9993 and 9994
- Authorize the Secretary-Treasurer to include Environmental Monitoring Easements in the Agreements for the following properties:
 - OINs 1885 and 9416
 - OIN 9258

- 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 August 28, 2023.

Upon roll call vote, the motion carried unanimously.

A motion was made by Manager Gust and seconded by Manager Lougheed to approve the amended *Settlement Agreement* for OINs 8674, 8675 and 9747 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Lougheed to approve the *Purchase Agreement* for OINs 861, 1595, 1954, 1962, 1969, 2007, 2008, 2009, 2015 and 2016 regarding 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 the *Purchase Agreement* for OIN 1367 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

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

It was moved by Manager Weston and seconded by Manager Gust to approve the relocation and replacement housing payment for OIN 839, as outlined in the letter dated July 14, 2023, regarding 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 the relocation and replacement housing payment for OINs 1112 and 1113, as outlined in the letter dated July 17, 2023, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

A motion was made by Manager Lougheed and seconded by Manager Weston to approve the *2023 Cash Crop Lease Agreement*, as presented, for OIN 5278 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – land agent reports

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

Metro Flood Diversion Project – weed control

The Board discussed the continued need for weed control on Water Resource District owned properties for the Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project where the P3 developer is not currently working. Mr. Dodds indicated the matter will be discussed internally.

Metro Flood Diversion Project – review of P3 design for transitions at Water Resource District facilities

A motion was made by Manager Weston and seconded by Manager Lougheed to approve and authorize the Chairman to sign *Task Order No. 11 – Amendment 4* with Moore Engineering, Inc. related to design review of transitions between the Metro Flood Diversion Project and Water Resource District facilities. Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program (RCPP)

Ken Helvey presented a report analyzing various levee alignment options for the RCPP – Rush River Watershed Plan. The Board discussed the levee alignment options in detail with impacted property owners and City of Amenia officials. Following discussion, the Board directed Moore Engineering, Inc. to prepare an exhibit depicting the revised levee alignment, as discussed, and bring the exhibit to the next Water Resource District meeting for consideration.

Maple River Dam – cultural sites

Kurt Lysne reported repairs at two cultural sites at the Maple River Dam will begin next week.

Maple River Dam – weed control

Brady Woodard is meeting with the weed control contractor next week regarding the Maple River Dam.

Maple River Dam tieback levee – animal control

Brief discussion was held on animal control efforts at the Maple River Dam tieback levee.

Bills

It was moved by Manager Gust and seconded by Manager Weston to approve the payment of Checks #15271 through #15273 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Lougheed, Weston and Gust. Manager Steen was absent. The motion carried unanimously.

Secretary-Treasurer position / office staffing

Discussion was held on the Secretary and Treasurer positions and future office staffing needs upon retirement of the current Secretary-Treasurer towards the end of the year. A motion was made by Manager Gust and seconded by Manager Lougheed to name Melissa Hinkemeyer as Secretary and Nina Stone as Treasurer of the Cass County Water Resource Districts upon retirement of the current Secretary-Treasurer and to begin the process of advertising for two support staff positions. Upon roll call vote, the motion carried unanimously.

Adjournment

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

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer