

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
MARCH 28, 2024
8:00 A.M.

A virtual / conference call meeting of the Cass County Joint Water Resource District was held on March 28, 2024, at 8:00 a.m.

Present were Rodger Olson, Maple River Water Resource District; Ken Lougheed, North Cass Water Resource District; Jacob Gust, Rush River Water Resource District; Keith Weston and Rick Steen, Southeast Cass Water Resource District; Melissa Hinkemeyer, Secretary-Treasurer; Leilei Bao, Accountant, Carolyn Fiechtner, Administrative Assistant; Sean M. Fredricks, Chris McShane, Luke Andrud and Katie Schmidt, Ohnstad Twichell, P.C.; Rob Stefonowicz, Larkin Hoffman; Kurt Lysne, Lyndon Pease, and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Jodi Smith, Madeline Daudt, Jessica Warren, and Tom Fuchs, Metro Flood Diversion Authority; Duane Breitling, Cass County Commissioner; Eric Dodds, Dean Vetter, Sabrina Tusa and Kellen Grubb, AE2S; Paul Barthel, Jacobs; Doug Johnson, DKJ Appraisal LLC; Scott Stenger and Dale Ahlsten, ProSource Technologies, LLC; Ken Helvey and Katie Laidley, SRF Consulting Group, Inc.; Oly Olafson, Lee Kaffer and Kelsey Lee, HDR, Inc.; Nicholas Delaney and Igor Lenzner, Rinke Noonan; Brian Fuder, Red River Retention Authority; and Leo Richard, Stanley Township property owner.

Approval of agenda

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

Minutes

It was moved by Manager Weston, seconded by Manager Gust and unanimously carried to approve the minutes of the March 14, 2024, meeting.

Metro Flood Diversion Project – project updates and general topics

Chris McShane reported on the status of formal negotiations regarding the Metro Flood Diversion Project.

Eric Dodds discussed the Property Acquisition Status Report regarding the Metro Flood Diversion Project. Mr. Dodds reported on key activities regarding land acquisitions and Rights of Entry for the project. A landowner meeting is scheduled in Wolverton, Minnesota for April 2024.

Mr. Dodds stated that Rights of Entry were requested on 56 Christine, North Dakota properties. As of March 19, 30 Rights of Entry have been signed, leaving 26 remaining.

In order to remain on schedule, Mr. Dodds is requesting the Board authorize the use of court action to obtain the remaining Rights of Entry.

After discussion, It was moved by Manager Gust, and seconded by Manager Weston to approve and authorize Water Resource District legal counsel to pursue court action to obtain Rights of Entry on the following properties for surveying purposes in Christine, North Dakota regarding the Metro Flood Diversion Project:

- OIN 1375
- OIN 1455
- OIN 1468
- OIN 1491
- OIN 1520
- OIN 1523
- OIN 1566
- OIN 1567
- OIN 1568
- OIN 1569
- OIN 1570
- OIN 7243
- OIN 7244
- OIN 8695
- OIN 8705
- OIN 8707
- OIN 8708
- OIN 8709
- OIN 8712
- OIN 8714
- OIN 8715
- OIN 8716
- OIN 8717
- OIN 8727
- OIN 8728
- OIN 8772

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – appraisal / RHDP review / approval

Doug Johnson reviewed various appraisals regarding the Metro Flood Diversion Project. The Board discussed the appraisals in greater detail. Following discussion, the Board tabled the following appraisals to allow more time for review of the appraisals:

- OIN 2040
- OINs 2044 and 2045
- OINs 2046 and 2047
- OINs 2183 and part of 2046
- OIN 2184

Katie Laidley discussed a fair market rent study for the tenants of OINs 9993 and 9994 regarding the Metro Flood Diversion Project. A motion was made by Manager Gust and seconded by Manager Weston to approve the rental assistance maximum payment for the tenants OINs 9993 and 9994 as outlined in the letter dated March 6, 2024, 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 *Pre-Approval Application Form* for a Rural Impact Mitigation Program loan for the property owner of OIN 1914 regarding the Metro Flood Diversion Project. Upon roll call vote, Chairman Olson, and Managers Lougheed, Gust, and Weston voted yes. Manager Steen voted no. The motion carried.

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

It was moved by Manager Gust and seconded by Manager Weston to close the meeting at 9:28 a.m. for the purposes of discussing contract negotiation strategies, litigation strategies and attorney consultation regarding reasonably predictable 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. Terry Compson and Kay Compson as Trustees of the Terry Compson and Kay Compson Revocable Trust Under Agreement Dated February 10, 2009 (OINs 9332 and 9359); and
2. Brodshaug Cass County Farms, LLLP (OINs 1929, 1930, 1932, 1940, 1941, 821, 828, 829, 840, 841, 849, 856, 857, 1904, 1918, 1944, 1951, 1970, 1971, 1972, 1973, 1998, 2000, 1930, 1932, 1940, 1941, 8517, and 8518).

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, Melissa Hinkemeyer, Carolyn Fiechtner, Sean Fredricks, Chris McShane, Luke Andrud, Katie Schmidt, Jodi Smith, Madeline Daudt, Jessica Warren, Eric Dodds, Dean Vetter, Sabrina Tusa, Duane Breitling, Ken Helvey, Katie Laidley, Dale Ahlsten and Oly Olafson.

The executive session adjourned at 9:47 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 matter:

Terry Compson and Kay Compson as Trustees of the Terry Compson and Kay Compson Revocable Trust Under Agreement Dated February 10, 2009 (OINs 9332 and 9359).

The Board previously entered into a *Purchase Agreement* with the Compsons dated January 17, 2020, regarding the acquisition of various property interests to accommodate the Comprehensive Project, including fee simple acquisition and temporary construction easement rights regarding OINs 9332 and 9359. However, under the Agreement, the parties recognized the U.S. Army Corps of Engineers had not finalized right of way drawings for the Southern Embankment and that the Board may have to acquire additional fee simple acres and additional temporary construction easement rights from the Compsons regarding OINs 9332 and 9359 once the Corps, the Diversion Authority,

and the Cass County Joint Water Resource District have identified final right of way needs. In the Agreement, the parties agreed to the future purchase prices for any additional fee simple acreage and additional temporary construction easement rights, including fee simple prices for acreage encumbered by flowage easements and for acreage not encumbered by flowage easements. The Corps, the Diversion Authority, and the Cass County Joint Water Resource District have now identified the remaining acreage necessary from the Compsons regarding OINs 9332 and 9359.

Manager Weston moved and Manager Gust seconded to declare the necessity to acquire 9.486 acres in fee simple and to acquire temporary construction easement rights in 5.076 acres regarding OINs 9332 and 9359, as defined by survey, to accommodate construction, operation, and maintenance of the Comprehensive Project, and to instruct legal counsel to commence and proceed with an eminent domain action to acquire 9.486 acres in fee simple and to acquire temporary construction easement rights in 5.076 acres regarding OINs 9332 and 9359, as defined by survey, at the compensation and prices identified in the *Purchase Agreement* dated January 17, 2020, between the Cass County Joint Water Resource District and Terry Compson and Kay Compson as Trustees of the Terry Compson and Kay Compson Revocable Trust Under Agreement Dated February 10, 2009. 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:

Brodshaug Cass County Farms, LLLP (OINs 1929, 1930, 1932, 1940, 1941, 821, 828, 829, 840, 841, 849, 856, 857, 1904, 1918, 1944, 1951, 1970, 1971, 1972, 1973, 1998, 2000, 1930, 1932, 1940, 1941, 8517, and 8518)

Manager Steen moved and Manager Lougheed seconded to approve the following settlement:

- Brodshaug Cass County Farms, LLLP (“Brodshaug”) will convey to the Cass County Joint Water Resource District (the “District”) flowage easement interests over approximately 2,500 GIS acres regarding OINs 1929, 1930, 1932, 1940, 1941, 821, 828, 829, 840, 841, 849, 856, 857, 1904, 1918, 1944, 1951, 1970, 1971, 1972, 1973, 1998, and 2000.
- The District’s flowage easement rights regarding OINs 829, 840, 856, and 1972 will include the right for the District, the Diversion Authority, and their contractors to remove all structures, in accordance with “Upstream Mitigation Area – Federal Mitigation Zone 1” requirements, subject to Brodshaug’s lease of the homestead improvements and structures on OINs 829, 840, 856, and 1972 from the District for \$500 per month from closing until 30 days’ written termination notice from Brodshaug or until December 31, 2024, whichever occurs sooner.
- The District acquired temporary construction easement rights from Brodshaug over approximately 56.70 acres on OINs 1930, 1932, 1940, and 1941, via quick take eminent domain proceedings.
- Brodshaug will convey to the District fee simple ownership of 43.52 acres regarding OINs 8517 and 8518, as defined by survey.

- Brodshaug will convey to the District an environmental monitoring easement on OINs 840 and 857.
- The District will pay Brodshaug a total of \$13,000,000 (inclusive of a replacement housing differential payment in the amount of \$299,400), less the \$322,466.00 previously deposited by the District in the eminent domain action, Cass County Joint Water Resource District v. Brodshaug Cass County Farms, LLLP Civ. No. 09-2020-CV-03627, and subsequently withdrawn by Brodshaug, for a total payment of \$12,677,534.00, upon closing of the real estate transaction contemplated under the parties' settlement agreement for the property rights conveyed by Brodshaug, as outlined above.
- The District will reimburse Brodshaug and eligible tenants (specifically regarding OIN 840) for reasonable and eligible relocation costs and expenses in accordance with the Uniform Relocation Act.
- Following the closing of the real estate transaction contemplated under the parties' settlement agreement, and following payment to Brodshaug, the parties will execute and file a stipulation to dismiss the eminent domain action, Cass County Joint Water Resource District v. Brodshaug Cass County Farms, LLLP Civ. No. 09-2020-CV-03627.
- The District will reimburse Brodshaug for reasonable attorneys' and appraisers' fees and costs, not to exceed \$275,000.00.

Upon roll call vote, the motion carried unanimously.

Chris McShane updated the Board on the *Exchange, Settlement, and Purchase Agreement* for OIN 1173N regarding the Metro Flood Diversion Project. The property owner of OIN 1173N is requesting an additional \$10,000 in reimbursement of attorneys' fees, appraisal fees, engineering fees, and surveying fees for the replacement site, not to exceed \$60,000. The property owner is also requesting to rent the exchange property OINs 233Y1 and 1088Y for 2024.

After discussion, it was moved by Manager Steen and seconded by Manager Gust to authorize the Water Resource District legal counsel to negotiate with the property owner of OIN 1173 regarding the *Exchange, Settlement, and Purchase Agreement* regarding the Metro Flood Diversion Project and approve payment of additional \$10,000 in reimbursement of attorneys' fees, appraisal fees, engineering fees, and surveying fees for the replacement site, not to exceed \$60,000 or allow the property owner to rent OINs 233Y1 and 1088Y for 2024, at the choice of the property owner. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – land agent reports

Dale Ahlsten, Oly Olafson and Ken Helvey 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 Loughheed to approve the relocation and replacement housing payment for OIN 1916, as outlined in the letter dated

March 28, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Weston and seconded by Manager Gust to approve the relocation and replacement housing payment for OIN 1093, as outlined in the letter dated March 28, 2024, regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – property management

Madeline Daudt discussed the proposed termination of the Rental Agreement for OINs 1893 and 9462 regarding the Metro Flood Diversion Project. The structures on the properties will be removed as the properties are located in zone 1 of the Upstream Mitigation Area of the Metro Flood Diversion Project.

It was moved by Manager Gust and seconded by Manager Steen to approve and authorize the Secretary-Treasurer to send a letter to the tenant of OINs 1893 and 9462 notifying them of the termination of the *Lease Agreement* effective September 30, 2024. Upon roll call vote, the motion carried unanimously.

Ms. Daudt discussed 2024 farmland leases regarding the Metro Flood Diversion Project. A motion was made by Manager Weston and seconded by Manager Gust to approve 2024 *Cash Crop Lease Agreements* on the following properties regarding the Metro Flood Diversion Project:

- OIN 233Y
- OINs 530Y, 2372Y, 9182Y
- OINs 717Y, 9732Y
- OINs 724Y, 726Y, 728Y, 729Y, 730Y, 1166Y, 1171Y
- OINs 1082, 1097Y, 1906, 27N, 1083N, 1083X, 817Y3, 822Y2, 823Y, 817Y2, 816Y2
- OIN 1089Y
- OIN 1184Y
- OIN 8923
- OINs 9332N, 9359N

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – contracting actions

It was moved by Manager Gust and seconded by Manager Weston to approve and authorize the Chairman to sign the following regarding appraisal, property acquisition and relocation services for the Metro Flood Diversion Project:

- *Task Order 3 Amendment 0 – Consulting Services* with Ulteig Engineers, Inc. in the amount of \$48,000
- *Task Order 2 Amendment 0 – Consulting Services* with HDR Engineering, Inc. in the amount of \$653,500.
- *Task Order 3 Amendment 0 – Consulting Services* with ProSource Technologies, LLC in the amount of \$ 245,000.

- *Task Order 1 Amendment 4 – Property Acquisition and Relocation Services* with HDR Engineering, Inc. with a cost reduction of \$ 557,315.40.
- *Task Order 2 Amendment 6 – Property Acquisition and Relocation Services* with ProSource Technologies, LLC with a cost reduction of \$ 768,282.16.

Upon roll call vote, the motion carried unanimously.

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

Katie Schmidt presented to the Board a Resolution pursuant to N.D.C.C. § 24-06-28, seeking permission from the Board to permanently obstruct right of way and underlying section lines within Phase 4 of the Storm Water Diversion Channel and Associated Infrastructure of the Metro Flood Diversion Project. Additional minutes relating to the matter are attached hereto.

Metro Flood Diversion Project – Pipeline Easement with Cass Rural Water Users District

Paul Barthel discussed a *Pipeline Easement* with Cass Rural Water Users District on OINs 233, 720X1, 724Y, 726, 728, 729, 730, 1166Y, 1169, 1171, 1173N and 1186 regarding the Metro Flood Diversion Project .

It was moved by Manager Weston and seconded by Manager Steen to approve and authorize the Chairman to sign the *Pipeline Easement* with Cass Rural Water Users District on OINs 233, 720X1, 724Y, 726, 728, 729, 730, 1166Y, 1169, 1171, 1173N and 1186 regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Purchase Agreement with Cass County for sale of excess lands

It was moved by Manager Gust and seconded by Manager Lougheed to approve and authorize the Chairman to sign the *Purchase Agreement* with Cass County regarding sale of the following excess properties regarding the Metro Flood Diversion Project:

- OIN 507Y1
- OIN 510Y1
- OIN 574Y1
- OIN 885Y1
- OIN 897Y1
- OIN 922Y3
- OIN 1185Y2

Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program

Kurt Lysne reported the Natural Resources Conservation Service is finalizing the RCPP – Upper Maple River Watershed Plan.

Mr. Lyse then reported on the RCPP – Rush River Watershed Plan. Discussions continue with Burlington Northern Santa Fe Railway Company, NRCS and the City of Amenia

regarding the Plan.

Maple River Dam – tree and debris removal

Brady Woodard reported to the Board that the weather has been optimal for the tree and debris removal project at the Maple River Dam.

Maple River Dam – spring melt

Mr. Woodard noted Moore Engineering, Inc. is monitoring the Maple River Dam during the spring melt.

Notices of increases in real estate assessments

The Board received and filed notices of increases in real estate assessments on various Cass County Joint Water Resource District properties.

Cass County Flood Sales Tax – request for projects

The Secretary discussed a letter received from the Cass County Commission requesting flood risk reduction projects for Cass County Flood Sales Tax funding consideration. Mr. Lysne indicated he will update the Committee on future Water Resource District requests including the RCPP – Rush River Watershed project and the Sheldon Flood Protection Project No. 2019-01.

Sheldon Flood Protection Project No. 2019-01

Mr. Lysne updated the Board on the Sheldon Flood Protection Project No. 2019-01. The material for the levee has been stockpiled for the project. The project is ready to proceed once the remaining easement is acquired for the raise of 166th Avenue SE. Mr. Lysne indicated he plans to update cost-share partners on the current cost estimate of the project as the cost of the project has increased.

A motion was made by Manager Gust and seconded by Manager Weston to approve and authorize the Secretary to work with Moore Engineering, Inc. to send a letter to the Cass County Flood Sales Tax Committee requesting an increase in cost-share participation for the Sheldon Flood Protection Project No. 2019-01 as the cost of the project has increased. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Steen and seconded by Manager Gust to approve payment of Checks #15316 through #15319 and the wire transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Loughed, Gust, Steen, and Weston. The Chairman declared the motion passed.

Human Resources Committee – staff professional development policy

Manager Weston requested the Board take into consideration a policy related to staff professional development and continuing education. The Board discussed the need for a staff professional development/continuing education policy and an updated employee policy manual and directed the Human Resources Committee to convene and discuss these items and come back to the Board with draft information for review.

Legislative update

Sean Fredricks updated the Board on legislative items regarding water resource districts.

Adjournment

There being no further business to be considered by the Board, it was moved by Manager Gust, seconded by Manager Steen, and unanimously carried to adjourn the meeting.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary-Treasurer