

MINUTES OF CASS COUNTY JOINT WATER RESOURCE DISTRICT MEETING
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
HERITAGE CONFERENCE ROOM
WEST FARGO, NORTH DAKOTA
FEBRUARY 27, 2025
8:30 A.M.

A meeting of the Cass County Joint Water Resource District (CCJWRD) was held on February 27, 2025, at 8:30 a.m.

Present were Ken Loughheed, North Cass Water Resource District; Keith Weston and Rick Steen, Southeast Cass Water Resource District; Gerald Melvin, Maple River Water Resource District; Jacob Gust, Rush River Water Resource District; Melissa Hinkemeyer, Director, Secretary-Treasurer; Amy Hepper, Accountant; Elizabeth Smith, Administrative Assistant; Rita Nelson, Accounting Assistant; Sean Fredricks, Chris McShane, Lukas Andrud, Katie Schmidt, John Shockley, and Andrew Cook, Ohnstad Twichell, P.C.; Kurt Lysne, Lyndon Pease, Levi Hanson, and Brady Woodard, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Rob Stefonowicz, Larkin Hoffman; Duane Breitling, Cass County Commissioner; Jessica Warren, Metro Flood Diversion Authority (MFDA); Eric Dodds, Dean Vetter, and Sabrina Tusa, AE2S; Ken Helvey and Katie Laidley, SRF Consulting Group, Inc.; Paul Barthel, Jacobs; Dale Ahlsten, ProSource Technologies, LLC; Oly Olafson, HDR, Inc.; Doug Johnson, DKJ Appraisal LLC; and Leo Richard, Stanley Township property owner.

Approval of agenda

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

Minutes

It was moved by Manager Melvin, seconded by Manager Steen, and unanimously carried to approve the minutes of the February 11 and 13, 2025, meetings, as presented.

Metro Flood Diversion Project – Project updates and general topics

Paul Barthel reported that due to the cold weather there has not been significant construction progress since the last meeting.

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

Eric Dodds discussed the Property Acquisition Report regarding the Metro Flood Diversion Project and reported on key activities including continued negotiation of settlement agreements for existing eminent domain actions, completion of appraisal reports for Christine-area flowage easements and Horace Mobility Improvements, disposal of Project lands deemed excess, and continued work on farmland leases for 2025.

Mr. Dodds reported that the land agents are assisting with relocation and advisory services, processing Rural Impact Mitigation Program reimbursement requests, assisting with mediations and settlement negotiations, and negotiating with landowners for the Sheyenne River Benching Project.

Mr. Dodds reported there was an error in the calculation of temporary construction easement acres on OIN 1080Y that has been deemed excess land and is for sale. Mr. Dodds requested the Board consider a revised sale price with the corrected acreage.

Chairman Lougheed joined the meeting at this time.

A motion was made by Manager Steen and seconded by Manager Gust to approve the amended listing of OIN 1080Y for sale for \$33,000 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Gust, Steen, Weston, and Melvin. Manager Lougheed was absent. The motion passed.

Mr. Dodds updated the Board on the sale of OIN 839 that was previously deemed excess regarding the Metro Flood Diversion Project. In accordance with the *Policy on the Disposition and Management of Comprehensive Project Lands*, the notice of this sale was sent to the Metro Flood Diversion Authority member entities, previous property owner, and adjacent property owners. Throughout those efforts no interest was received, and the parcel was made available for public sale. An interested party is proposing to purchase the property for \$7,000 which is lower than the approved sale price of \$10,500.

A motion was made by Manager Gust and seconded by Manager Steen to approve the sale of OIN 839 for \$7,000 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Gust, Steen, Weston, and Melvin. Manager Lougheed was absent. The motion passed.

The Board discussed OINs 7234B through 7234D that was discussed at the Metro Flood Diversion Authority Lands Committee meeting. The Board suggested a meeting of the Lands Committee with the parties interested in acquiring the property.

The Board next discussed USACE's requests for the Board to seek and obtain right of entry related to the Sheyenne River Mitigation Project. USACE is proceeding with the design of the Sheyenne River Mitigation Project and has requested the Board's assistance in seeking the requisite Right of Entry (ROE) agreements on eight parcels to allow USACE to conduct surveys for cultural and geotechnical purposes, including the right to conduct boring and shovel tests. USACE has requested access through April 1, 2026.

Before discussing USACE's request, Chairman Ken Lougheed indicated he may have a conflict regarding one of the parcels. One of the landowners from whom the Board will have to acquire access is DCR, Inc. Chairman Lougheed indicated Joel Dahl owns DCR,

Inc., and Chairman Lougheed has contracted with Mr. Dahl to perform combining for Chairman Lougheed for several years. Sean Fredricks suggested the Board conduct a conflict analysis in light of Chairman Lougheed's ongoing business relationship with Mr. Dahl. Mr. Fredricks explained the law in North Dakota regarding conflicts, Section 44-04-22 of the North Dakota Century Code, provides the relevant standard. That statute provides:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

In this case, Chairman Lougheed has a contractual relationship with Mr. Dahl, the owner of DCR, Inc., a relationship that could certainly trigger the "direct and substantial personal interest" provision in Section 44-04-22. Manager Gust moved to declare that Chairman Lougheed has a direct and substantial personal interest in the matter and, thus, has a conflict and should not participate in any votes regarding USACE's ROE request regarding DCR, Inc., and the related agreement. Manager Steen seconded the motion. Upon roll call vote, Managers Weston, Gust, Steen, and Melvin voted in favor of the motion. Chairman Lougheed abstained. The motion carried.

There is an additional conflict statute specific to water resource districts, Section 61-16-08.1 of the Century Code, that provides the County Commission with discretionary authority to appoint alternate water managers if a full-time member has a conflict. However, that statute was effectively superseded by Section 44-04-22 when the Legislature adopted Section 44-04-22 in 1995; therefore, the process under Section 44-04-22 controls all conflict matters.

With the conflict issue concluded, the Board proceeded with discussion regarding the ROEs.

A motion was made by Manager Gust and seconded by Manager Steen to authorize land agents to secure rights of entry for the Sheyenne River Mitigation Project, approve payment of \$250 for each soil boring conducted on private property, and approve and authorize the Secretary to sign the Right of Entry for OIN 198 regarding the Metro Flood Diversion Project. Upon roll call vote, the following Managers voted in favor: Gust, Steen, Weston, and Melvin. Manager Lougheed abstained. The motion passed.

Metro Flood Diversion Project – Appraisal review and approval

Doug Johnson reviewed various appraisals regarding the Metro Flood Diversion Project.

It was moved by Manager Gust and seconded by Manager Steen to approve the appraisals for the following properties as an estimate of just compensation for acquisition of property regarding the Metro Flood Diversion Project:

- OIN 8714 with an effective date of January 9, 2025
- OIN 8715 with an effective date of January 14, 2025
- OIN 8687 with an effective date of January 3, 2025
- OIN 8717 with an effective date of February 13, 2025
- OIN 1411, 1880, and 1892 with an effective date of August 27, 2024

Upon roll call vote, the motion carried unanimously.

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

It was moved by Manager Steen and seconded by Manager Gust to approve relocation and replacement housing payments for the following regarding the Metro Flood Diversion Project:

- OIN 1914, as outlined in the letter dated February 27, 2025
- OIN 1972, as outlined in the letter dated February 17, 2025
- OIN 9994, as outlined in the letter dated February 18, 2025, conditional on approval by the land agent

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – Property management

A motion was made by Manager Steen and was seconded by Manager Loughheed to approve the 2025 *Cash Crop Lease Agreements* on the following properties regarding the Metro Flood Diversion Project:

- OINs 507Y (Area 2)
- OIN 938Y
- OIN 213N (portion)
- OIN 8923 (NE Corner)
- OIN 15Y, 16Y, 21Y, and 22Y
- OIN 9751Y and 9747X

Upon roll call vote, the motion carried unanimously.

March Meetings

Discussion was held on the March CCJWRD meetings. The Board decided to cancel the March 13, 2025, meeting. The March 27, 2025, meeting will be held as normal.

Discussion was held on noticing the March 26, 2025, Metro Flood Diversion Authority Lands Committee meeting as a CCJWRD meeting in the event a quorum of Managers attends. The Secretary indicated she will notice the meeting.

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 Steen and seconded by Manager Melvin to close the meeting at 9:20 a.m. for purposes of discussing contract negotiation strategies, litigation

strategies, and attorney consultation regarding ongoing litigation and 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:

- Cass County Joint Water Resource District v. Riley Braaten, et. al., Civ. No. 09-2023-CV-00182 (OIN 5032); and
- Cass County Joint Water Resource District v. Allen and Diane Ricker, Civ. No. 09-2023-CV-03625 (OINs 872, 873, 874, and 875).

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

The executive session was attended by Managers Lougheed, Weston, Gust, Melvin, and Steen, Melissa Hinkemeyer, Amy Hepper, Elizabeth Smith, Sean Fredricks, Chris McShane, Lukas Andrud, Katie Schmidt, John Shockley, Andrew Cook, and Rob Stefonowicz.

The executive session adjourned at 10:06 a.m. and the regular meeting was reconvened and opened to the public.

Maple River Dam - General operation and maintenance updates

Brady Woodard updated the Board on the activities at the Maple River Dam. Mr. Woodard reported that the Maple River Dam tree and debris removal project in the backwater pool of the Maple River Dam is almost complete. The contractor should have the project completed sometime next week.

Mr. Woodard reviewed the 2025 Maple River Dam Lease Agreements. Mr. Woodard reported that Steven Fleischfresser would like to transfer the lease into his sons' names as he is retiring. Due to the condition of the pasture land Mr. Fleischfresser requested to pay for 67% of the pasture land while still maintaining access to the entire pasture land.

Manager Melvin moved to approve and authorize the Chairman to sign the *Lease Agreement* with Gerald and Jacob Fleischfresser for 2025 regarding the Maple River Dam. Manager Steen seconded the motion. Upon roll call vote, the motion carried unanimously.

The Board briefly discussed renewing the lease agreement with Dean Sprunk for 2025.

Manager Steen moved to approve and authorize the Chairman to sign the *Lease Agreement* with Dean Sprunk for 2025 regarding the Maple River Dam. Manager Melvin seconded the motion. Upon roll call vote, the motion carried unanimously.

Regional Conservation Partnership Program (RCPP) – Rush River Watershed

Kurt Lysne reported the North Dakota Natural Resources Conservation Service (NRCS) has completed their portion of the RCPP – Rush River Watershed Plan. They have submitted the plan to the National Watershed Management Center for their review.

Regional Conservation Partnership Program (RCPP) – Upper Maple River Watershed

Mr. Lysne briefly updated the Board on the status of the RCPP Upper Maple River Watershed Plan. The NRCS finished their adjustments to the Plan and will be sending the Plan to the National Watershed Management Center for their review. Brief discussion was held on the timeline of right of way acquisition for the project.

Sheldon Flood Protection Project No. 2019-01

Mr. Lysne briefly updated the Board on the status of the Sheldon Flood Protection Project No. 2019-01. Mr. Lysne reported that Moore Engineering, Inc. is finalizing the bid package and is working on the bid timeline to align with the Cass County Flood Sales Tax Committee's April 14, 2025, cost-share application deadline.

Bills

It was moved by Manager Steen and seconded by Manager Gust to approve Check #15399 and payment of the wire transfers as presented. Upon roll call vote, the following Managers voted in favor: Lougheed, Gust, Steen, Weston and Melvin. The motion passed.

Legislative updates

Mr. Fredricks reported on legislative items that impact the water resource districts including cost-share percentages, economic analyses, and an interim study regarding watershed districts.

Adjournment

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

APPROVED:

Ken Lougheed
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary