

MINUTES OF MEETING
CASS COUNTY JOINT WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
MARCH 26, 2015

The Cass County Joint Water Resource District met on March 26, 2015, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Mark Brodshaug (by phone) and Dan Jacobson, Southeast Cass Water Resource District; Rodger Olson, Maple River Water Resource District; Ken Lougheed, North Cass Water Resource District; Raymond Wolfer, Rush River Water Resource District; Carol Harbeke Lewis, Secretary-Treasurer; Michelle Anderson, Administrative Assistant; Sean Fredricks, Lukas Andrud, and John Shockley, Attorneys for the Board; Lee Beauvais, Engineer for the Board; Ty Smith, CH2M HILL Engineers, Inc.; Jacob Strombeck and Tanaya Reitz, Advanced Engineering and Environmental Services, Inc. (AE2S); Mary Scherling, Cass County Commissioner; Jacob Gust, Reed Township resident; and Paul Breen, Fargo resident.

Chairman Brodshaug asked Manager Olson to run the meeting on his behalf.

Minutes

It was moved by Manager Jacobson, seconded by Manager Lougheed, and unanimously carried to approve the minutes of the March 10, 12 (two sets), and March 17, 2015, meetings.

Agenda

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

Metro Flood Diversion Project – access update

Lukas Andrud reported new *Right of Entry Agreements* went out to some property owners in the Mickelson neighborhood. Surveys are being completed.

Tanaya Reitz reported the *Right of Entry Agreements* for metes and bounds surveys on the northern end of the diversion channel on 70 to 80 parcels of property are on hold, pending the lawsuit hearing today. A letter will be sent out and the public meeting that was to be held on April 9, 2015, will be rescheduled.

Lee Beauvais stated the Corps of Engineers is done with soil borings in the Maple River structure area. Soil borings are still needed on the southern alignment. Houston-Moore Group, LLC (HMG) is coordinating with the utility companies to complete surveys and are

taking the locator flags off the property before leaving. HMG is also doing soil borings around the bridge near Cass County Highways 16 and 17.

The cultural resource survey will be done on the South Pleasant Cemetery by AECOM, in coordination with the Corps of Engineers, next week. Cultural resource surveys and mitigation need to be done near the northern end of the Sheyenne River where acquisition of property is in process.

Metro Flood Diversion Project / Oxbow-Hickson-Bakke Ring Levee Project – appraisal review and approval

It was moved by Manager Jacobson and seconded by Manager Brodshaug to approve the following:

- The appraisal of 309 Schnell Drive, Oxbow, North Dakota, with an effective date of value of January 21, 2015, as just compensation for acquisition of the property for the Oxbow-Hickson-Bakke Ring Levee Project.
- The appraisal of 325 Schnell Drive, Oxbow, North Dakota, with an effective date of value of January 21, 2015, as just compensation for acquisition of the property for the Oxbow-Hickson-Bakke Ring Levee Project.
- The appraisal of 341 Schnell Drive, Oxbow, North Dakota, with an effective date of value of January 21, 2015, as just compensation for acquisition of the property for the Oxbow-Hickson-Bakke Ring Levee Project.
- The appraisal of 724 Riverbend Road, Oxbow, North Dakota, with an effective date of value of March 19, 2015, as just compensation for acquisition of the property for the Oxbow-Hickson-Bakke Ring Levee Project.
- The appraisal of 809 Riverbend Road, Oxbow, North Dakota, with an effective date of value of January 27, 2015, as just compensation for acquisition of the property for the Oxbow-Hickson-Bakke Ring Levee Project.

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project / Oxbow-Hickson-Bakke Ring Levee Project / In Town Levees Project – relocation benefits

Tanaya Reitz presented a summary of relocation payment requests for residents of the In Town Levees Project. Approximately 58% or about 72 units are vacant. Future summaries will include a relocation payment total as well as an update on the number of vacant units. Brief discussion was held on the relocation process and resident feedback.

It was moved by Manager Wolfer, seconded by Manager Loughheed to approve the following:

- Payment for moving costs in the amount of \$1,420.00 and rental assistance in the amount of \$4,830.00 for Park East Unit #1-206 regarding the In Town Levees Project;
- Payment for moving costs in the amount of \$1,420.00 and rental assistance in the amount of \$6,720.00 for Park East Unit #1-301 regarding the In Town Levees Project;
- Payment for rental assistance in the amount of \$4,704.00 for Park East Unit #1-303 regarding the In Town Levees Project;

- Payment for moving costs in the amount of \$1,015.00 and rental assistance in the amount of \$5,040.00 for Park East Unit #1-307 regarding the In Town Levees Project;
- Payment for rental assistance in the amount of \$6,720.00 for Park East Unit #1-401 regarding the In Town Levees Project;
- Payment for moving costs in the amount of \$845.00, rental assistance in the amount of \$7,200.00, and Last Resort Housing costs in the amount of \$11,358.96 for Park East Unit #1-407 regarding the In Town Levees Project;
- Payment for moving costs in the amount of \$1,190.00 for Park East Unit #3-204 regarding the In Town Levees Project;
- Payment for moving costs in the amount of \$595.00 and rental assistance in the amount of \$1,995.00 for Park East Unit #3-301 regarding the In Town Levees Project;
- Payment for moving costs in the amount of \$1,190.00 and 1/2 rental assistance in the amount of \$2,247.00 for Park East Unit #3-303 regarding the In Town Levees Project;
- Payment for moving costs in the amount of \$1,420.00 and rental assistance in the amount of \$3,570.00 for Park East Unit #3-306 regarding the In Town Levees Project;
- Payment for additional moving costs in the amount of \$270.00, rental assistance in the amount of \$7,200.00, and Last Resort Housing costs in the amount of \$2,979.96 for Park East Unit #3-404 regarding the In Town Levees Project;
- Payment for moving costs in the amount of \$9,024.26 for Park East Unit #5-308 regarding the In Town Levees Project;
- Payment for moving costs in the amount of \$375.00 for Park East Unit #5-310 regarding the In Town Levees Project; and
- Payment for moving costs in the amount of \$2,699.50 for Park East Unit #5-402 regarding the In Town Levees Project;

Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project / Oxbow-Hickson-Bakke Ring Levee Project / In Town Levees Project – land acquisition

Lukas Andrud gave an update on land acquisition. Two El Zagel property acquisitions will close at the end of the month. Closings are also being coordinated for properties in Section 2 of Harwood Township and Section 2 in Raymond Township.

Brief discussion was held on the timing and deadlines for advertising for bids and the negotiation progress with land owners. Two additional properties need to be acquired in El Zagel regarding the In Town Levees Project. The City of Fargo would like to bid the project in June. Designs need to be completed for the El Zagel and Mickelson areas. The appraisals will be done as soon as the design is final. Residents have been contacted regarding the property acquisition and the timeline.

Ty Smith presented and reviewed the *Guidelines for Property Salvage and Demo* for properties acquired by the Cass County Joint Water Resource District for the Metro Flood Diversion Project.

Manager Jacobson made a motion and Manager Wolfer seconded to approve and authorize CH2MHILL Engineers, Inc. and AE2S to follow the *Guidelines for Property Salvage and Demo* for properties acquired by the Cass County Joint Water Resource District for the Metro Flood Diversion Project and that salvage items obtained from vacated properties have no value. Upon roll call vote, the motion carried unanimously.

Manager Brodshaug made a motion and Manager Lougheed seconded to finish the appraisal, but wait for direction from the Land Management Committee before going any further with acquisition of a hardship property in Minnesota. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – assessment district

Jacob Strombeck updated the Board on the progress of the assessment district ballot process. Three public meetings were held. The Public Hearing will be held on March 31, 2015, at the Fargodome at 5:30 p.m. A court reporter will record the hearing. The ballot deadline is April 30, 2015. Approximately 8,000 - 9,000 ballots have been received at the Cass County Joint Water Resource District office.

Additional minutes relating to FM Flood Risk Management District No. 1 are attached hereto.

Metro Flood Diversion Project – bonding

John Shockley explained to the Board he will be putting together a memorandum outlining the bond procedure process, intergovernmental agreement process, and timeline to present to Cass County, the City of Fargo, the Finance Committee, and to the Diversion Authority for approval.

The current temporary loans are set to expire in two years. Temporary loans could be utilized again or issuance of a small amount of special assessment bonds could be considered. Before the sales tax sunset provision expires Cass County and the City of Fargo will ask residents to vote on an extension to finance the Metro Flood Diversion Project.

Metro Flood Diversion Project – project updates

Ty Smith presented program and construction updates for the Oxbow Golf and Country Club and the Oxbow-Hickson-Bakke Ring Levee Project.

- Golf course construction activities will resume in April with contractor re-mobilization. The Oxbow Golf and Country Club financial tracking sheet will be provided at the next Board meeting.
- Bids were received for the 42” coated steel pipe on Work Package 43D of the Oxbow-Hickson-Bakke Ring Levee Project. HMG is confirming specifications with the vendor and a recommendation to award may be presented to the Board at the next meeting. A bid was received for the 60” check valve that did not comply with the response format requirements and did not include all requested goods and services.

- On Work Package 43D of the Oxbow-Hickson-Bakke Ring Levee Project, RFQs were issued to multiple vendors for home demolition to include asbestos testing. The bid quotes are due March 31, 2015, by 3:00 p.m. Responses will be reviewed and a recommendation for approval will be provided at the next meeting.
- Tree removal is necessary for multiple aspects of 2015 construction for the Oxbow-Hickson-Bakke Ring Levee Project.

It was moved by Manager Wolfer and seconded by Manager Lougheed to the approve payment to reimburse Oxbow Golf and Country Club in the amount of \$33,000 for various engineering and construction services. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Wolfer and seconded by Manager Jacobson to reject the current bid received for the 60” check valve regarding Oxbow-Hickson-Bakke Ring Levee Project Work Package 43D and to authorize CH2M HILL Engineers, Inc. to negotiate directly with the vendor. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Jacobson and seconded by Manger Lougheed to authorize CH2M HILL Engineers, Inc. to solicit quotes for a tree removal contract regarding the Oxbow-Hickson-Bakke Ring Levee Project and the In Town Levees Project. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Brodshaug and seconded by Manager Wolfer to approve Work Directive 00001 Revision 0 to HMG to provide services during bidding for WP-43D of the Oxbow-Hickson-Bakke Ring Levee Project, not to exceed \$20,000. Upon roll call vote, the motion carried unanimously. The Task Order amendment will be approved at a future meeting.

Metro Flood Diversion Project – conflict analysis

Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Lougheed’s involvement in FARGO-MOORHEAD METROPOLITAN FEASIBILITY STUDY matters. 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.

Mr. Fredricks indicated the North Dakota Supreme Court and the Attorney General’s Office have taken a narrow view of situations where a public official can abstain from participating in a matter. A public official must have a “direct and substantial personal or pecuniary interest” in the matter. The mere appearance of a conflict is not enough to allow the public official to refrain from participating. The North Dakota Supreme Court

adopted a “rule of necessity” that requires public officials to participate in matters before their respective boards. The public policy rationale is that public officials have a duty to vote on issues before them, and cannot avoid participation simply to avoid the appearance of impropriety.

The Section 44-04-22 test requires a multi-step analysis. In this case, Manager Lougheed owns property outside of the Diversion, but his property could be subject to assessments via indirect assessments to Wisner Township. By statute, Mr. Fredricks indicated Manager Lougheed’s property assessment would raise a “direct and substantial personal or pecuniary interest” conflict under section 44-04-22. Mr. Fredricks indicated that, with that in mind, the remainder of the Board should next vote on whether or not Manager Lougheed should “participate in or vote on” issues related to the Diversion, including assessments. The remainder of the Board voted unanimously to require Manager Lougheed to continue to participate regarding Diversion and the assessment district.

Legislative update

Sean Fredricks informed the Board that the hearing will be held today on HB 1095.

Bills

It was moved by Manager Jacobson and seconded by Manager Lougheed to approve the payment of Checks #11715 through #11742, as presented. Upon roll call vote, the following Manager voted in favor: Brodshaug, Jacobson, Olson, Lougheed and Wolfer. The Chairman declared the motion passed.

Policy relating to research/photocopying

It was moved by Manager Brodshaug and seconded by Manger Lougheed to adopt the following policy:

POLICY RELATING TO RESEARCH/PHOTOCOPYING

Requests for photocopies of Water Resource District files/materials shall be provided in a prompt manner at the rate of \$.25 per copy, with the first hour of research/photocopying being free and each additional hour at the rate of \$25 per hour. Upon request, electronic media will be provided at cost. Prepayment, as estimated by the Secretary-Treasurer, will be required for the above services. Upon roll call vote, the following Managers voted in favor: Brodshaug, Olson, Jacobson, Lougheed, and Wolfer. The Chairman declared the motion carried.

Adjournment

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

APPROVED:

Mark Brodshaug
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer