

CASS COUNTY JOINT WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
AUGUST 25, 2016
8:00 A.M.

The Cass County Joint Water Resource District met on August 25, 2016, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Mark Brodshaug and Dan Jacobson, Southeast Cass Water Resource District; Ken Lougheed, North Cass Water Resource District; Jacob Gust, Rush River Water Resource District; Carol Harbeke Lewis, Secretary-Treasurer; Michelle Anderson, Administrative Assistant; Sean M. Fredricks, Chris McShane, Lukas Andrud and Calley Campbell; Attorneys for the Board; Lyndon Pease and Mike Opat, Engineers for the Board; John Glatzmaier, CH2M HILL Engineers, Inc.; Eric Dodds, Paul Breen and Joe Herbst, Advanced Engineering and Environmental Services, Inc. (AE2S); Pat Downs, Moore Engineering, Inc.; Keith Berndt, Cass County Administrator; Nathan Boerboom, City of Fargo Division Engineer-Metro Flood Diversion; Don Hellman, Bryan Kary, Troy Fitchner and R. L. Melvin; WBI Energy Transmission, Inc.; Terry Sauvageau, Horace resident; and those whose names appear on the attached roster. Absent was Rodger Olson, Maple River Water Resource District.

Minutes

It was moved by Manager Gust, seconded by Manager Lougheed and unanimously carried to approve the minutes of the July 25, August 2, August 3 and August 11, 2016, meetings.

Agenda

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

Metro Flood Diversion Project – access update

Chris McShane stated a recent opinion by the North Dakota Supreme Court affirmed the District Court's decision regarding the *Right of Entry* process utilized for the Metro Flood Diversion Project. Mr. McShane provided a brief update on an appeal filed by Jonathan Garaas and property needed for the diversion inlet structure.

Mr. McShane explained the current surveys needed at the north end of the diversion channel and the surveys required by the Corps of Engineers for the outfall locations.

Joe Herbst stated the land agents are contacting property owners and the results have been positive. Land agents are listening to property owner concerns and answering questions. Two property owners have requested voluntary land acquisition.

Lyndon Pease stated the Corps of Engineers has completed soil borings for re-testing on 3 sites near Drain #14 and south of I-94. Soil boring payments will be sent to the property owners.

Metro Flood Diversion Project – relocation benefits

It was moved by Manager Jacobson and seconded by Manager Gust to approve the Relocation Payments for #9641 and #9503 as outlined in the letter dated August 22, 2016, regarding the Oxbow-Hickson-Bakke Ring Levee Project and for OIN #9204 as outlined in correspondence dated August 23, 2016, regarding the In Town Levees Project. Upon roll call vote, the motion carried unanimously.

Swan Creek, Upper Maple River and Rush River Watershed Project Teams

Mike Opat and Pat Downs updated the Board on the Swan Creek, Upper Maple River and Rush River Watershed Project Team meetings. Mr. Opat acknowledged the landowners present at the meeting, gave a brief review of the planning meetings, the participants on the three project Teams, his role as an engineering representative for the Water Resource Districts and the process required by the Natural Resource Conservation Service (NRCS) through the Regional Conservation Partnership Program (RCPP).

Mr. Opat stated four meetings were anticipated to review the information and determine potential flood damage reduction solutions based on spring runoff, crop damage and previous flood data damages reported by Cass County township officials, supervisors and residents. The Teams were asked to keep an open mind, review previous flood damage data and identify the problem areas in the watershed. Mr. Opat stated additional meetings were requested by the Teams to review the data and identify the problem areas. Once the problem areas were identified, the Team examined potential flood damage reduction solutions. Mr. Opat reviewed a few of the potential solutions identified by the Team and emphasized the solutions are only concepts. In August, the Teams continued to narrow the alternatives by examining data and criteria. Mr. Opat explained the planning process will take at least three years, and if the Teams determine solutions do exist for flood damage reduction in the respective watersheds, construction would not begin for many years. He also explained the sites identified by the Team can also be moved one direction or another, and many of the potential sites will likely be reduced and optimized.

Mr. Opat stated the Board knows public outreach and landowner knowledge is key in this process. Specific landowner meetings are not a part of the process at this point because most of the potential sites identified by the Team as flood damage reduction solutions will be eliminated. If the decision is made to move forward with a project, the public process will begin by notification to landowners. The landowners are providing information and have been sharing input and suggestions from their neighbors to the Team. Those concerns and suggestions are considered by the Team and balanced with the need for potential flood damage reduction in the watersheds.

Pat Downs explained the planning process is in the very early stages. Many decisions and conclusions will continue to change and evolve. The goal is to narrow down the potential projects for flood damage reduction.

Chairman Brodshaug asked if landowners wanted to offer comments or had questions regarding the watershed project planning meetings.

Keith Monilaws explained he is here with all of the people affected by the concept of a dam impoundment in Section 27 of Empire Township. Mr. Monilaws explained he heard from Duane and David Gulland, his neighbors, a dam impoundment was going to be constructed on Section 27 in Empire Township. Mr. Monilaws was concerned and felt the landowners should have been notified. After speaking to the Gullands, Mr. Monilaws, family members and neighbors attended the Swan Creek Watershed Planning Team meeting on August 17, 2016. Mr. Monilaws stated he was told it was just a concept from a member of the Team. After hearing the presentation, he stated the site appeared to be more than just a concept. Mr. Monilaws stated he requested the concept be removed from the list. He later learned the concept remained as one of the potential sites. He was told at the project planning meeting the concepts presented would not be forced on landowners and he expressed concern about the possibility of his land being taken away from him and that his legacy would be destroyed. Mr. Monilaws stated the people present today are friends, family and renters who would be impacted by a dam impoundment on Section 27 in Empire Township.

Mr. Monilaws understood the purpose behind the potential project planning was to keep water from flowing into the Red River. Chairman Brodshaug explained the Swan Creek, Upper Maple River and Rush River Watershed Project Planning is not related to the Metro Flood Diversion Project. It is a separate program with different criteria and requirements from NRCS initiated through the Farm Bill. Chairman Brodshaug and Mr. Opat stated the potential projects considered by the Teams would not provide a significant impact on the Red River. Solutions identified by the Teams are intended to benefit the local watershed to reduce damage from future flood events. The Board suggested Mr. Monilaws attend the project planning meetings to help identify the problem areas and provide input for solutions.

Duane Gulland inquired about the Swan Creek Watershed Project Planning Team's concept of a dam impoundment on Section 27 in Empire Township. Mr. Opat explained dam impoundment benefits. Mr. Downs stated the Team is looking at a comprehensive view of the farmland, overland flooding, damage to roads, bridges and culverts.

David Gulland stated he does not understand the concept of flooding agricultural land to reduce flood impacts. He would like to see water held on non-agricultural land. Mr. Opat explained non-agricultural land is sparse and the environmental agencies would not agree due to the environmental impacts, which would make permits difficult to obtain.

A comment was made to increase the storage at the Absaraka Dam. Mr. Opat explained the concept to increase storage at Absaraka Dam was reviewed. A landowner commented he attended the Swan Creek Watershed Project Planning Team meeting on August 17, 2016, and said the Team members were in disagreement on the elimination of the concept of the dam impoundment on Section 27 in Empire Township.

Mr. Downs explained the Team wanted to evaluate the data in more detail before making the final determination. The process involves the members of the Team evaluating the data on their own time, then reviewing the data at the next meeting to make a determination. Each part of the process requires written reasons and criteria for keeping or removing a conceptual project site. Mr. Downs said the Team did not come to a consensus on the site that day and that is why the site remains on the list.

Eric Pueppke stated he does realize it takes years for a project to develop, but feels landowners should be involved. He stated his son plans to reside in the area and is concerned about the impact of a dam impoundment.

Brief discussion was held on how the members were selected for each Team, the determination process involved for project approval by the Board and the review and approval process of meeting minutes.

Chairman Brodshaug stated the Board is very sympathetic to the concerns presented by the landowners. Most of the Managers on the Board are farmers, have farmed and are landowners themselves. Chairman Brodshaug and Mr. Opat stated the landowners at the meeting and any landowner in the Swan Creek, Upper Maple River and Rush River Watersheds have the opportunity to attend the Project Team meetings. A sign up sheet was presented for the landowners to give information for notification of future planning meetings. Mr. Opat stated landowners are welcome to attend and provide information. Mr. Opat requested landowners notify him if they plan to attend the meetings so they can have sufficient materials available at the meetings for everyone. Mr. Downs stated dates have not been scheduled for the next round of meetings due to harvest. Mr. Opat stated additional meetings could be scheduled to provide information and answer questions for landowners new to the process.

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

Chris McShane updated the Board regarding the hearings held on property needed for the Metro Flood Diversion Project inlet structure. Mr. McShane explained the motion filed by the property owners for OIN #230 was denied. The District Court Judge outlined a different method for requesting an order confirming right of way has been acquired. The documents filed with the court will be amended and an appraisal will be considered by the Board at a future meeting. Brief discussion was held on public outreach for the Metro Flood Diversion Project.

Metro Flood Diversion Project / Oxbow-Hickson-Bakke Ring Levee Project – property management

Eric Dodds reviewed the Request for Proposals (RFP) for the Oxbow House Relocation Project. Mr. Dodds stated the Oxbow-Hickson-Bakke Ring Levee Project requires acquisition of homes in Oxbow and the establishment of a new development for replacement housing. Thirteen homes have been identified for potential relocation to the south development and 10 lots have been identified in the south development as suitable for placement of 10 buyout houses. The Cass County Joint Water Resource District is

seeking proposals for a developer to relocate 10 buyout houses from the older portion of Oxbow to move into the new, south development in Oxbow. The RFQ is due by September 26, 2016.

Discussion was held on the RFQ process and concession agreement, developer responsibilities, asbestos testing and the construction schedule. It was moved by Manager Jacobson and seconded by Manager Loughheed to approve and authorize publication of the Request for Proposals (RFP) for the Oxbow House Relocation Project, subject to final review by the Cass County Joint Water Resource District Attorney, regarding the Oxbow-Hickson-Bakke Ring Levee Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – WBI Energy Transmission, Inc. proposed natural gas pipeline route

Don Hellman and Bryan Kary, representatives with WBI Energy Transmission, Inc., requested permission from the Board to survey property owned by the Cass County Joint Water Resource District in Raymond and Berlin Township for the proposed route of a natural gas pipeline. Discussion was held on the proposed route, project timeline, pipeline depth, possession and value of the easements, potential crop damage, and the Metro Flood Diversion Project land acquisition schedule. The Board suggested consultants coordinate with the Public-Private Partnership (P3) Procurement Team to review the proposal presented by WBI Energy Transmission, Inc. representatives.

It was moved by Manager Gust and seconded by Manager Jacobson to approve and authorize Chairman Brodshaug to sign the *License Agreement* for WBI Energy Transmission, Inc. to enter and survey property owned by the Cass County Joint Water Resource District in Raymond and Berlin Townships for the proposed route of a natural gas pipeline. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – project updates

Brief discussion was held on the importance of having adequate time to acquire property for the Metro Flood Diversion Project. Chris McShane reviewed North Dakota statutory law regarding eminent domain authority for Water Resource Districts. Chairman Brodshaug suggested consultants bring the land acquisition schedule to review at the next meeting.

John Glatzmaier reviewed and presented information detailing the proposed construction schedule and timeline for the Oxbow-Hickson-Bakke Ring Levee Project. Discussion was held on utility easements and land acquisition for the Oxbow-Hickson-Bakke Ring Levee Project.

Brief discussion was held on the 2010 levee construction for the City of Oxbow. The Board agreed to satisfy the loan and request reimbursement from the Diversion Authority to meet the requirements in the *Memorandum of Understanding* for the Oxbow-Hickson-Bakke Ring Levee Project. The request will be submitted to the Technical Advisory Group for consideration.

Discussion was held on lots available in the City of Oxbow for possible relocation of residents in the staging area interested in early voluntary land acquisition. It was moved by Manager Jacobson and seconded by Manager Gust to make a recommendation to the Diversion Authority to request the City of Oxbow delay further lot sales until February 1, 2017, or until response is received to a letter sent by the Cass County Joint Water Resource District to property owners in the staging area regarding early voluntary land acquisition. Upon roll call vote, the motion carried unanimously.

Water Topics Overview Committee

Sean Fredricks updated the Board on the ongoing study of Water Resource District quick-take eminent authority by the Water Topics Overview Committee (Committee). The Legislative Council prepared three bill drafts for the Committee to consider. Mr. Fredricks stated all three bill drafts would either eliminate or drastically limit quick-take eminent domain authority for Water Resource Districts. Correspondence was sent to the Committee by the Red River Joint Water Resource District and the Cass County Joint Water Resource District emphasizing the importance of quick-take to water development in the state. The Committee meets to discuss the bill drafts on August 24-25, 2016, in Watford City, North Dakota.

Bills

It was moved by Manager Lougheed and seconded by Manager Gust to approve the payment of Checks #12865 through #12883, as presented. Upon roll call vote, the following Managers voted in favor: Brodshaug, Jacobson, Lougheed and Gust. Manager Olson was absent. The Chairman declared the motion passed.

Adjournment

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

APPROVED:

Mark Brodshaug
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer