

**FLOOD DIVERSION BOARD OF AUTHORITY
SEPTEMBER 12, 2013—3:30 PM**

1. MEETING TO ORDER

A meeting of the Flood Diversion Board of Authority was held Thursday, September 12, 2013, at 3:30 PM in the Fargo City Commission Room with the following members present: Cass County Commissioner Darrell Vanyo; Cass County Commissioner Ken Pawluk; West Fargo City Commissioner Mike Thorstad; Fargo City Commissioner Tim Mahoney; Fargo City Commissioner Melissa Sobolik; Fargo City Commissioner Mike Williams; Cass County Joint Water Resource District Manager Rodger Olson; Clay County Commissioner Kevin Campbell; and Moorhead City Council Member Nancy Otto. Also present was ex-officio member Gerald Van Amburg, Buffalo-Red River Watershed District.

Staff members and others present: Cass County Administrator Keith Berndt; Fargo City Administrator Pat Zavoral; Moorhead City Manager Mike Redlinger; Clay County Administrator Brian Berg; Fargo City Director of Engineering Mark Bittner; Fargo City Engineer April Walker; Cass County Engineer Jason Benson; Moorhead City Engineer Bob Zimmerman; Tom O'Hara, Program Manager, CH2MHill; Bruce Spiller, CH2MHill; Tom Dawson, Chairman, Chamber of Commerce Business Leader Task Force for Permanent Flood Protection; Brett Coleman, Project Manager, Corps of Engineers; and Terry Williams, Project Manager, Corps of Engineers.

2. EXECUTIVE SESSION

MOTION, passed

Mr. Pawluk moved and Mr. Thorstad seconded to retire into executive session to consult with the Diversion Authority's attorneys, as provided in North Dakota Century Code Section 44-04-19.1, regarding the lawsuit filed by the Richland-Wilkin Joint Powers Authority vs. the U.S. Army Corps of Engineers. Discussion: Mr. Pawluk asked about the open meeting law in regard to executive sessions. Erik Johnson, Attorney, said state law allows governing bodies to enter into executive sessions to confer with legal counsel regarding pending lawsuits. On roll call vote, the motion carried unanimously.

The Flood Diversion board members, administrative staff and legal counsel moved to the River Room for the executive session at 3:35 PM, and returned to the regular meeting at 4:30 PM.

MOTION, passed

Mr. Pawluk moved and Ms. Otto seconded to authorize the Diversion Authority's legal counsel to immediately proceed with a motion to allow the Diversion Authority to participate in the lawsuit filed by the Richland-Wilkin Joint Powers Authority against the U.S. Army Corps of Engineers—the flood risk protection that will be provided by the FM Diversion project is critically important to the successful future of the Fargo, Moorhead and surrounding community. On roll call vote, the motion carried unanimously.

3. MINUTES APPROVED

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve minutes from the August 8, 2013, meeting as written. Motion carried.

4. AGENDA ORDER

MOTION, passed

Mr. Mahoney moved and Ms. Sobolik seconded to approve the order of the agenda revising Item 5c. to consider task order amendments and adding Item 6f. for an update from the Cass County Joint Water Resource District (CCJWRD) regarding land acquisitions. Motion carried.

5. PROGRAM MANAGEMENT FIRM UPDATE

Program manager consultant monthly report

Bruce Spiller provided an update on activities over the last month including participation in a design team kickoff meeting for the Oxbow/Hickson/Bakke (O/H/B) levee; public outreach with communities in the Minnesota staging area, including Comstock; continued support to the Corps with work-in-kind activities; and assistance with pre-design work on the O/H/B levee.

Corps of Engineers status update

Brett Coleman provided an update of activities by Corps of Engineers staff including continued support for the Minnesota EIS (Environmental Impact Statement) process; preparation of responses to public comments received regarding the supplemental Environmental Assessment (EA); helped in coordination of design team meeting for the O/H/B levee held on August 28th; and began on-site geotechnical soil borings on September 9th for the O/H/B levee.

Mr. Coleman discussed the path forward and said the Corps will soon finalize and sign the EA. The project is awaiting federal authorization with the United States House of Representatives expected to address the Water Resources Development Act (WRDA) bill in the next few weeks.

Task Order Amendments

Bruce Spiller reviewed Task Order (TO) amendments with Houston Moore Group (HMG), ProSource and Ulteig Engineers. He reviewed three task order amendments with HMG as follows: Task Order No. 1, Amendment 3 in the amount of \$350,000; HMG Task Order No. 7, Amendment 1 at no additional cost; and HMG Task Order No. 9, Amendment 8 in the amount of \$310,000.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve Task Order No. 1, Amendment 3 for project management; Task Order No. 7, Amendment 1 to pause design work on the channel south of the Maple River; and Task Order No. 9, Amendment 8 for hydrology and hydraulic modeling to extend the Red River model from Grand Forks to Drayton. On roll call vote, the motion carried unanimously.

Mr. Spiller reviewed Task Order No. 15, Amendment 0 with HMG in the amount of \$500,000 for engineering services to develop a draft operations plan to simulate the range of flooding conditions and determine interim operation plans for the project. April Walker said this will help determine parameters regarding the operation of the flood gates and when to raise and lower the gates and the resulting impacts.

MOTION, passed

Mr. Olson moved and Mr. Campbell seconded to approve Task Order No. 15, Amendment 0 with HMG for development of a draft operations plan. On roll call vote, the motion carried unanimously.

Mr. Spiller reviewed Task Order No. 1, Amendment 1 with ProSource for land acquisition services, and Task Order No. 1, Amendment 1 with Ulteig Engineers for land acquisition services. There are no additional costs associated with either one.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve Task Order No. 1, Amendment 1 with ProSource and Task Order No. 1, Amendment 1 with Ulteig Engineers. Motion carried.

Limited Joint Powers Agreement Amendment No. 2

Erik Johnson, Fargo City Attorney, said the second amendment to the Limited Joint Powers Agreement (LJPA) was forwarded to the six member entities after the last meeting, and each entity has formally approved the document. The revisions included the name of the entity created by the JPA to be known as the “Metro Flood Diversion Authority”; clarification of existing powers to enter into contracts, specifically with Oxbow for the ring levee, replacement property, and advancement and recoupment of funds; FY14 budget which clarifies that Minnesota entities will ask the Minnesota legislature to fund their share; and the official date when the Limited Joint Powers Agreement became effective, which was July 11, 2011.

MOTION, passed

Mr. Olson moved and Ms. Otto seconded to ratify and accept Amendment No. 2 to the Limited Joint Powers Agreement (LJPA) based upon approval of all six LJPA signatories. On roll call vote, the motion carried unanimously.

Design Agreement Amendment No. 1

Mr. Johnson said the first amendment to the design agreement has been approved by the three signatories of the original agreement—Fargo, Moorhead and Corps of Engineers. The changes include addition of the Flood Diversion Board of Authority as a non-federal sponsor along with Moorhead and Fargo; allowing non-federal sponsors to provide additional in-kind contributions; allowing non-federal sponsors to accelerate local funding in advance of receipt of matching federal funds for design; and authorization up to \$60,000,000 in combined federal and local design expenditures, which is necessary since the previous authorized limit of \$30,000,000 will soon be exceeded.

MOTION, passed

Mr. Mahoney moved and Ms. Sobolik seconded to approve Amendment No. 1 to the design agreement with the Department of the Army, Flood Diversion Board of Authority, City of Fargo, and City of Moorhead for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. On roll call vote, the motion carried unanimously.

6. UPDATES FROM COMMITTEES

Retention efforts update from Red River Basin Commission

Lance Yohe, Executive Director of the Red River Basin Commission, was present to provide an update on the Halstad Upstream Retention Project. He highlighted a few areas including standard snow melt progression—when and how fast it occurs and its effect on flooding; multiple interests involved with standardized hydrologic analysis including the Red River Basin Commission, Corps of Engineers, Minnesota DNR, and Flood Diversion Board of Authority; and the three project tasks including sensitivity analysis, retention conditions scenario modeling, and prioritization for funding and reporting. Mr. Yohe said the goal is to provide preliminary information from the study at the next meeting, including site impacts and funding allocation options for retention.

Land Management Committee

Mr. Vanyo said the Land Management Committee met earlier this afternoon. He said the committee approved the purchase of two additional properties that meet the medical hardship requirements. One of the homes is in Oxbow and one is located south of Moorhead for a cost of \$513,000 and \$274,000 respectively.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve the purchase of two additional homes that meet the medical hardship requirements. On roll call vote, the motion carried unanimously.

Mr. Vanyo said the committee discussed the medical hardship program that was implemented and used to purchase three properties in Oxbow before the O/H/B levee was approved. As a result of the levee, the homes will be protected from flooding. Two homes are being leased; however, a third home has not been rented and there was discussion by the committee about selling the property.

Mr. Campbell believes it is premature to sell the house at this point until all alignments are finalized and accepted. There was discussion about selling the property contingent on the levee being constructed, and a suggestion was made that the Land Management Committee look into the option of renting the home with the option to sell.

MOTION, passed

Mr. Pawluk moved and Mr. Campbell seconded to direct the Land Management Committee to further investigate the possibility of renting the property in Oxbow with the option to sell. Motion carried.

Public Outreach Committee

Mr. Olson said the Public Outreach Committee met on September 11th, and discussed numerous outreach activities as follows: met with Comstock leaders and residents to discuss the project and a potential ring levee around the community; will schedule individual one-on-one meetings with Minnesota residents in the staging area; continued to work with the Corps of Engineers to answer comments and questions from the public; provided a presentation to the League of Women Voters; scheduled a briefing to be held September 19th with candidates running for elected office in Moorhead; followed progress on the WRDA bill, which will be considered by the U.S. House in the next few weeks; updated the diversion website; and distributed the most current e-newsletter.

Finance Committee

Michael Montplaisir, Cass County Auditor, said the Finance Committee met on September 11th. He said the committee reviewed financial reports showing revenues and expenditures for the project beginning in 2011 through August 2013. He said a new FY13 summary budget report was provided which outlines the remaining budget balance for the year, and a cumulative vendor payment spreadsheet was also created showing contracts, payments, and outstanding encumbrances since the inception of the board. The committee also reviewed FY14 funding sources.

Mr. Campbell asked if the Finance Committee could review possible legal costs resulting from the lawsuit to see if appropriate funds will be available.

LIDAR funding

Mr. Berndt said the board will be asked at a future meeting to approve some dollars for an aerial flight and photography. He estimates the cost will be around \$300,000.

Business Leaders Task Force Committee

Mr. Dawson said the committee met on September 9th, and will meet continue to meet on a quarterly basis. He said legislators were invited to the last meeting, and representatives from the business community will be invited to the next meeting to discuss the importance of the project and impacts to local businesses.

CCJWRD Land Acquisitions Update

Dirk Draper, CH2MHill, said the Cass County Joint Water Resource District (CCRWRD) assumed responsibility of land acquisitions associated with the project. He said a purchase agreement has been reached for a property in Oxbow on Schnell Drive that is within the footprint of the levee. The house is vacant and in poor condition, so it will be demolished.

7. OTHER BUSINESS

Mr. Vanyo said he read the WRDA legislation that will be considered by the United States House of Representatives. He said the bill de-authorizes \$12 billion in projects and adds \$10 billion in new projects, including the FM Diversion.

8. VOUCHERS, Approved

MOTION, passed

Mr. Mahoney moved and Mr. Pawluk seconded to approve the vouchers for August, 2013. On roll call vote, the motion carried unanimously.

9. NEXT MEETING DATE

The next meeting will be held on Thursday, October 10, 2013, at 3:30 PM.

10. ADJOURNMENT

MOTION, passed

On motion by Mr. Mahoney, seconded by Ms. Otto, and all voting in favor, the meeting was adjourned at 5:35 PM.