

**FLOOD DIVERSION BOARD OF AUTHORITY  
AUGUST 14, 2014—3:30 PM**

**1. MEETING TO ORDER**

A meeting of the Flood Diversion Board of Authority was held Thursday, August 14, 2014, 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 Mayor Dennis Walaker; Fargo City Commissioner Tim Mahoney; Fargo City Commissioner Melissa Sobolik; Cass County Joint Water Resource District Manager Rodger Olson; and Clay County Commissioner Kevin Campbell. Moorhead City Council Member Nancy Otto was absent. Also present was ex-officio member Gerald Van Amburg, Buffalo-Red River Watershed District.

Staff members and others present: Cass County Administrator Keith Berndt; Moorhead City Manager Michael Redlinger; Clay County Administrator Brian Berg; Fargo City Director of Engineering Mark Bittner; Moorhead City Engineer Bob Zimmerman; Bruce Spiller, CH2MHill; Brett Coleman, Project Manager, Corps of Engineers; and Terry Williams, Project Manager, Corps of Engineers.

**2. MINUTES APPROVED**

***MOTION, passed***

**Mr. Mahoney moved and Mr. Campbell seconded to approve minutes from the July 10, 2014 regular meeting and August 6, 2014, executive session meeting as presented. Motion carried.**

**3. AGENDA ORDER**

The chairman asked for any changes to the agenda order, and hearing none, the order stands as presented.

**4. MANAGEMENT UPDATE**

**Program management consultant (PMC) report**

Bruce Spiller provided an update on activities over the last month including construction of the Oxbow/Hickson/Bakke (OHB) levee; in-town levee design work in coordination with the new Fargo City Hall building; socio-economic analysis for the Minnesota EIS (Environmental Impact Statement); continued work on land acquisition activities and policies; and development of mitigation plans associated with impacted cemeteries.

**Corps of Engineers report**

Terry Williams provided an update of activities by Corps of Engineers staff including Maple River aqueduct physical model work; continued coordination and information to the Minnesota DNR during their EIS process; participation in weekly OHB levee coordination meetings; continued coordination on in-town levee design; and individual site visits to cemeteries conducted on July 21-22, 2014.

Ms. Williams said about 180 people attended the open house for the Maple River aqueduct physical model on July 24, 2014, in Rosemount, Minnesota. Another tour is being organized for staff and officials who were unable to attend the event last month.

**5. ADMINISTRATIVE/LEGAL UPDATE**Lawsuit update

Attorney Erik Johnson provided an update regarding lawsuits filed by the Richland-Wilkin Joint Powers Authority. The first lawsuit was filed in Federal Court and last month a second lawsuit was filed in Wilkin County District Court. As a result of the second lawsuit, a motion was filed in Federal Court to make a determination if the case should remain under Federal jurisdiction. He said today a decision was received from the Federal Court that recognized the inherent Federal nature of the claims. The case will remain in Federal Court and will not be heard in State Court.

**6. TECHNICAL UPDATE**Task Orders / Authority Work Directives (AWD)

Mr. Spiller reviewed a Master Services Agreement with Terracon Consultants, Inc. for material testing with work to be authorized through task orders for specific projects.

***MOTION, passed***

**Mr. Mahoney moved and Mr. Thorstad seconded to authorize the chairman to sign a Master Services Agreement with Terracon Consultants, Inc. On roll call vote, the motion carried unanimously.**

Mr. Spiller reviewed four task orders with financial impacts from Houston Moore Group (HMG) totaling \$1,858,000 as follows:

- Task Order No. 1 Amendment 5—extend period of performance to September 30, 2015; FY15 funding for project management services; and 2015 insurance for \$920,000;
- Task Order No. 7 Amendment 2—extend period of performance to September 30, 2015 and additional undulating design revisions for recreation master plan at a cost of \$16,000;
- Task Order No. 9 Amendment 11—extend period of performance to September 30, 2015, and other work associated with hydrology and hydraulic modeling at a cost of \$373,000;
- Task Order No. 13 Amendment 6—extend period of performance to September 30, 2015; design work for in-town levee pump stations at 2<sup>nd</sup> Street and 4<sup>th</sup> Street; design services for pump station construction for OHB ring levee; and right of way surveys at a cost of \$549,000.

There are another nine task orders which extend the period of performance with no cost ramifications. Mr. Spiller said the reason there are numerous task orders for consideration today is because the fiscal year ends on September 30<sup>th</sup>.

***MOTION, passed***

**Mr. Mahoney moved and Mr. Pawluk seconded to approve 13 task orders with HMG for a total cost of \$1,858,000. On roll call vote, the motion carried unanimously.**

USGS Contract

Mr. Spiller discussed a contract with the United States Geological Survey (USGS) in the amount of \$105,000 for water surface profile and discharge measurement data collection. The Corps of Engineers requested the Diversion Authority take the lead and enter into a contract for the services.

***MOTION, passed***

**Mr. Walaker moved and Mr. Pawluk seconded to enter into a contract with the USGS. On roll call vote, the motion carried unanimously.**

***Interim Agreement with Oxbow Country Club***

Mr. Spiller discussed an interim agreement with Oxbow Country Club which would allow the Diversion Authority to cover costs associated with the golf course architect and construction contractor until acquisitions and relocation agreements are reached with homeowners. Erik Johnson worked with the attorney representing the Oxbow Country Club to draft the agreement.

Mr. Pawluk does not have a problem with the intent of the agreement, but said the board has not been given the chance to review the document until now.

Mr. Vanyo said a special board meeting will be held on Thursday, August 28, 2014, to award contracts for the in-town levees and consider an additional funding request from the Minnesota Department of Natural Resources (DNR). The board agreed to also consider the interim agreement at this meeting. Board members decided to hold the special meeting at 3:30 PM on August 28<sup>th</sup>.

**7. PUBLIC OUTREACH UPDATE*****Committee report***

Mr. Olson discussed numerous outreach activities including coordination with the Corps of Engineer to organize an open house for the Maple River aqueduct physical model; work with the Corps as part of a task force to study mitigation options for impacted cemeteries; attended meetings with local legislators to provide project updates; worked with staff to develop a list of FAQ's regarding flood impacts on the State of Minnesota as a result of the OHB levee; and work on the most recent e-newsletter and updates to the diversion website.

Mr. Olson said the OHB levee impact in Minnesota has been studied, which determined there is no appreciable impact on the river level as a result of this levee project. Mr. Campbell asked if the Corps of Engineers agreed that there is no impact to Minnesota. Terry Williams said the Corps has studied the issue during the EA (environmental assessment) for the Federal EIS and 404 permit process for the levee, and agrees that there are no appreciable flood impacts or environmental impacts to Minnesota.

***Business Leaders Task Force update***

Mr. Dawson said task force members have met with a small group of rural community members recently, which he thought was beneficial for everyone involved. He said their group welcomes the opportunity to meet with anyone to discuss the project.

**8. LAND MANAGEMENT UPDATE*****Committee report***

Mr. Vanyo said the Land Management Committee met earlier this afternoon. He said members received an update on farm land management rentals from Pifer Group. Also discussed was the draft proposal for Ag Risk Economic Evaluation Request for Qualifications (RFQs).

Agricultural Risk Economic Evaluation RFQs

Mr. Olson said the RFQ's will allow a firm to be selected to study temporary water retention easement values and crop insurance. He said a small selection of farm land will be appraised using land with flowage easements only and land with flowage easements in conjunction with crop insurance. Answers to these questions will help farmers whose land will be impacted by the diversion project.

Mr. Vanyo said the Agricultural Policy Subcommittee has reviewed the RFQs, and the Land Management and Finance Committee have approved the proposal. He recommends the board approve the RFQs in order to move forward with the process.

***MOTION, passed***

**Mr. Mahoney moved and Mr. Pawluk seconded to approve the Agricultural Risk Economic Evaluation for Temporary Water Retention Easement Values and Crop Insurance Request for Qualifications proposal. Discussion: Mr. Campbell asked who will serve on the selection committee to decide on a firm. Mr. Berndt recommended a staff subcommittee be formed and it was decided that Keith Berndt, Pat Zavoral, Rodger Olson, Eric Dodds and Jon Evert will serve on the subcommittee. On roll call vote, the motion carried unanimously.**

CCJWRD update

Mr. Brodshaug provided an update on land acquisitions completed through July 31, 2014. He reviewed a handout with information on completed acquisitions, budget figures, and completed negotiations. He said numerous appraisals are in progress for properties associated with the OHB levee and in-town levee, and prioritization of acquisitions is on-going. He said approval has been received from the Corps of Engineers on eight residential and one agricultural appraisal.

**9. FINANCE UPDATE**Committee report

Michael Montplaisir, Cass County Auditor, said the Finance Committee met on August 13<sup>th</sup>. He said financial statements and monthly bills were approved. The committee also discussed loan financing through U.S. Bank.

US Bank Loan

Mr. Montplaisir said the loan application procedures have been completed with U.S. Bank for \$50 million. He said an initial draw down of loan funds for \$60,200 was done as part of the closing on July 31<sup>st</sup>. The intergovernmental agreement between Cass County and Fargo City requires draw down requests to be approved by the Finance Committee and Flood Diversion Board of Authority.

***MOTION, passed***

**Mr. Olson moved and Mr. Walaker seconded to retroactively approve a draw request for loan funds from U.S. Bank in the amount of \$60,200 to cover the expected legal and closing costs of obtaining the loan. Discussion: Mr. Campbell questioned whether he should vote on the motion since he represents Clay County, Minnesota, and the loan is between Cass County and Fargo. John Shockley, bond counsel, said the funds are being used by the**

**Diversion Authority itself and as part of the intergovernmental agreement, final authority and approval is needed by the entire Diversion Board of Authority. On roll call vote, the motion carried unanimously.**

Mr. Montplaisir discussed an additional request to draw \$20 million from the U.S. Bank loan, which will be used to pay monthly expenses until the money is exhausted.

***MOTION, passed***

**Mr. Mahoney moved and Mr. Thorstad seconded to authorize the Cass County Auditor to initiate a draw request for loan funds from U.S. Bank in the amount of \$20 million to pay construction and other expenses of the Diversion Board of Authority. On roll call vote, the motion carried unanimously.**

*Task Order No. 5 with CH2MHill*

The Finance Committee authorized Keith Berndt and Pat Zavoral to negotiate a contract extension with CH2MHill. The current contract ends on September 30<sup>th</sup>. Mr. Berndt said it is imperative to receive additional assistance from CH2MHill and a six-month extension was agreed upon in the amount of \$1,860,000.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Walaker seconded to approve the six-month contract extension with CH2MHill in the amount of \$1,860,000. On roll call vote, the motion carried unanimously.**

*Voucher approval*

The bills for the month are for legal services with Erik Johnson & Associates, Dorsey & Whitney LLP, Ohnstad Twichell, P.C., Nixon Peabody LLP, and Gary Pannell & Woodward LLP; financial advisory services with Public Financial Management; and access, DPAC and ring levee work with the Cass County Joint Water Resource District.

***MOTION, passed***

**Mr. Mahoney moved and Mr. Campbell seconded to approve the vouchers for July, 2014. On roll call vote, the motion carried unanimously.**

**10. NEXT MEETING DATE**

A special meeting will be held on Thursday, August 28, 2014 at 3:30 PM, and the next regular meeting will be held on Thursday, September 11, 2014, at 3:30 PM.

**11. ADJOURNMENT**

***MOTION, passed***

**On motion by Mr. Mahoney, seconded by Mr. Thorstad, and all voting in favor, the meeting was adjourned at 4:46 PM.**