

**FLOOD DIVERSION BOARD OF AUTHORITY
AUGUST 28, 2014—3:30 PM**

1. MEETING TO ORDER

A special meeting of the Flood Diversion Board of Authority was held Thursday, August 28, 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 City Commissioner Tim Mahoney; Fargo City Commissioner Mike Williams; Cass County Joint Water Resource District Manager Mark Brodshaug; Moorhead City Council Member Nancy Otto; and Clay County Commissioner Kevin Campbell. Absent were Fargo City Commissioner Melissa Sobolik and ex-officio member Gerald Van Amburg, Buffalo-Red River Watershed District.

Staff members 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; and Bruce Spiller, CH2MHill.

Also present were Kent Lokkesmoe, Randall Doneen, and Jill Townley from the Minnesota Department of Natural Resources (MDNR).

2. AGENDA ORDER

MOTION, passed

Mr. Pawluk moved and Mr. Campbell seconded to approve the order of the agenda. Motion carried.

3. MINNESOTA EIS UPDATE AND CONTRACT AMENDMENT

Mr. Vanyo said a third amendment to the income contract with the Minnesota Department of Natural Resources (MDNR) has been submitted for board consideration. The document extends the contract period to March 4, 2016, and increases the contract amount by \$695,289. He said officials from the MDNR are present today to discuss the timeline and plan of action associated with the Minnesota Environmental Impact Statement (EIS). The amendment includes \$300,000 (out of the \$695,289) in funding necessary to accelerate the environmental review process and provide a goal of publishing a draft EIS by May, 2015.

Mr. Doneen provided a history of the Minnesota EIS and said because of the water control structure component of the diversion project, a mandatory EIS is required by Minnesota. He said once the Federal EIS was completed, Minnesota began the scoping process for the state EIS. The plan was to use data from the Federal EIS for the Minnesota EIS. He said when the in-town flow component was added, the income contract was changed to reflect this addition. The work load associated with the EIS is being shared by the MDNR, Corps of Engineers and diversion staff. He said after the scoping was completed, two alternatives have been drafted: the distributed storage alternative and northern alignment alternative. The second amendment to the income contract previously approved did not include the environmental analysis (EA) for these two options.

Mr. Doneen said the third amendment includes an EA for the northern alignment alternative but does not include one for the distributed storage alternative. The contract amendment will add one FTE to serve as a management analyst for six months to write and edit reviews of chapters that will be part of the preliminary draft EIS. He said the term of the contract period of March 4, 2016, is not the same as the date for completion of a draft and final EIS. He said the timeline for final completion is difficult to determine since it is dependent on the volume of public comments received from the draft EIS. The goal is to have the draft EIS published in May, 2015, which is followed by a 40-day public comment period and one public information meeting will be held.

Mr. Doneen anticipates a fourth contract amendment will be needed after the public comments are received to prepare the final EIS, which requires a 10-day public comment period. He said the final EIS must address all substantive comments raised from the draft EIS, cover all issues in the scope of the EIS, and meet all procedural goals of the EIS under requirements of Minnesota law.

Mr. Vanyo asked if the MDNR is mandated to complete the EIS within a specific time frame. Mr. Doneen said the final EIS is to be completed within 280 days after the preparation notice was published, which was February 10, 2014—280 days from that date would be November 17, 2014. Mr. Doneen said he is unaware of any legal or procedural ramifications if the 280 day deadline is exceeded.

Mr. Vanyo asked about the timeline involved from the draft to the final EIS. Mr. Doneen said based on previous EIS's, the time ranges from 9 to 12 months and is dependent on further analysis that may be needed. Mr. Vanyo asked what will be included in the EIS, and Mr. Doneen said environmental effects and issues, alternatives and mitigation measures are some of the information that will be part of the document. Mr. Vanyo asked if any interim findings will be presented by the MDNR. Mr. Doneen said the draft EIS would be considered interim findings, and the DNR prefers to wait until the preliminary draft is complete before releasing any information.

Mr. Vanyo asked how often the MDNR is in contact with staff from the Corps of Engineers. Mr. Doneen estimates staff is in contact with the Corps at least once per week and up to three times per week.

Mr. Mahoney said the Diversion Authority committed funds to study using distributed storage in conjunction with the diversion and asked if the MDNR has studied this as an alternative to the project. Mr. Doneen said distributed storage is being considered along with levee systems and other mechanisms to determine if this is a viable alternative to the diversion project. Mr. Mahoney discussed changes to flood insurance rates and said timeliness in moving the project forward is important so residents are not subjected to significantly higher flood insurance rates. Mr. Doneen said the MDNR fully supports flood protection and is not trying to slow the project, but to ensure Minnesota rules are followed. Mr. Lokkesmoe said the MDNR supports continued work on the in-town levees. Mr. Mahoney asked about cost benefit ratios, which have changed over the last few years. Mr. Doneen said the MDNR is not doing a cost benefit analysis, but an analysis of socioeconomic impacts.

Mr. Pawluk asked about the work product to date as a result of the approximately \$1.49 million already dedicated to the EIS. Mr. Doneen said \$700,000 has been paid to the MDNR, which has been used toward 15 special studies that will become chapters within the EIS document. Mr. Pawluk asked if the work conducted by the MDNR is scientific or subjective. Mr. Doneen said the information is scientific and administrative records need to support environmental decisions made by their organization.

Mr. Pawluk said if MDNR has concerns regarding the Oxbow-Hickson-Bakke (OHB) levee, answers are available in the study completed as part of the Federal EIS. Mr. Doneen said Minnesota rules state that an environmental review needs to be completed before work begins on a project. The MDNR review of the OHB levee deemed it was a connected action. The MDNR acknowledges there is a complexity since the OHB levee is in North Dakota. Mr. Doneen said there is an open question on how Minnesota rules apply in North Dakota, and this is the part of the original lawsuit filed by the Richland-Wilkin JPA. Mr. Doneen said the MDNR joining the lawsuit was related to preemption of state regulations.

Mr. Lokkesmoe said the MDNR is concerned over the applicability of state rule and law with starting any part of the project until the EIS is done. He said the concern is not about the design standards, hydrology or the impacts—it is about the timing of construction on the OHB levee, not the project itself. The MDNR has not intervened as a party to the lawsuit, but has filed information to the court as merits of the lawsuit are considered. The information was provided in regard to whether there was preemption of state regulations, which was argued that because the project was authorized by the WRDDA bill, Minnesota does not have any permitting authority. The MDNR does not agree with that argument.

Mr. Vanyo asked if the MDNR is studying the levees in the Fargo-Moorhead area as well. Mr. Doneen said the in-town levees are considered “no action” alternatives because they are not a connected activity of the diversion project like the OHB levee. Mr. Lokkesmoe said if the OHB levee was constructed three feet over the existing 100-year elevation, then it could be compared to the in-town levees in Fargo-Moorhead. The MDNR believes the OHB levee is connected to the diversion because the levee is being constructed to an elevation higher.

Ms. Otto said the impact from the OHB levee on Minnesota has been modeled and shows the levee would have less than 1/8 of an inch change in the river elevation. She asked if this information is correct. MDNR officials agreed this information is correct, and Mr. Doneen said there are no issues with additional flooding on the Minnesota side as result of the OHB levee.

Mr. Pawluk expressed his concerns with the length of time that has passed since the Minnesota EIS process began in 2012. He said the longer the process takes for the diversion project to begin, residents are questioning how they will be protected from flooding. Mr. Doneen said the MDNR is not dragging out the EIS process or taking more time than is needed to complete the EIS, which he said needs to be thorough.

Mr. Campbell understands that the MDNR and Corps of Engineers need to ensure the plan is “bullet proof”, but he expressed frustration over the time taken to complete the EIS and said residents are also frustrated. Mr. Campbell also questioned any environmental issues resulting from less than 1/8 of an inch impact. Mr. Doneen said the MDNR still needs to complete an EA and the rules are not being followed if project construction has begun without a final EIS as the OHB is a “connected” action of the diversion project. Mr. Campbell also had questions about the impact to Minnesota when the OHB levee was first discussed; however, the diversion board made the decision to move forward with the OHB levee because with or without the diversion project, it will provide much needed protection to this area.

Mr. Berndt appreciates the MDNR following statutes and asked how this pertains to the 280-day deadline to complete the EIS which appears will not be met by the MDNR. Mr. Doneen said the study and work needed for the EIS will not be done within the 280 day timeframe, and said it is a less defensible approach to take than submitting an incomplete EIS.

Mr. Brodshaug asked how many EIS’s are being done at the present time. Mr. Doneen said two EIS are being worked on by the MDNR—one for the diversion project and one for a mining project. Mr. Doneen said the EIS for the mining project has taken nine years due to several supplemental EIS that have been required.

Mr. Mahoney said if additional help was provided if this would expedite the process. Mr. Doneen said the amendment being considered today will help provide additional resources toward the process. Mr. Vanyo asked what the additional funds today provide to the Diversion Authority. Mr. Doneen said the funds will give additional certainty to meet the schedule to complete the reviews.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to authorize the chairman to sign Amendment No. 3 with the Minnesota DNR for additional funding with the goal to complete the draft Minnesota EIS by May of 2015. On roll call vote, the motion carried with seven members voting in favor and Mr. Pawluk opposed.

4. OXBOW GOLF & COUNTRY CLUB, Interim agreement approved

Erik Johnson, Attorney, said an interim agreement has been drafted between the Diversion Authority and Oxbow Golf and Country Club that sets forth basic terms to advance funds to pay for costs associated with the golf course architect and construction contractor until acquisitions and relocation agreements are reached with homeowners.

Mr. Berndt said some inquiries have been received about land relocation provisions outlined in the agreement. The Diversion Authority will ultimately own the land on which the Oxbow-Hickson-Bakke (OHB) levee is located. The land is being acquired and construction is being administered by the Cass County Joint Water Resource District on behalf of the Diversion Authority, which requires purchasing land the Oxbow Golf & Country Club, Oxbow Job Development Authority, and private land owners.

The new portion of the golf course will be owned by the Oxbow Golf & Country Club, and residential lots in the new development are owned by the Oxbow Job Development Authority to be sold to private parties. The City of Oxbow will own the public streets within the new development.

Mr. Berndt said Oxbow homeowners who wish to relocate within the city will be entitled to compensation for their homes and reimbursement of certain relocation costs. Similarly, the Oxbow Golf & Country Club is a business within the city and is entitled to compensation for the land needed for the levee project, and certain relocation reimbursement for the portions of the property that will be relocated. He said all of the transactions will be done in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, N.D.C.C. Chapter 54-01.1, and any other applicable laws, rules or regulations.

MOTION, passed

Mr. Pawluk moved and Mr. Mahoney seconded to authorize the chairman to sign an interim agreement with the Oxbow Country Club. On roll call vote, the motion carried unanimously.

5. NEXT MEETING DATE

The next regular meeting will be held on **Friday, September 12, 2014, at 3:30 PM.**

6. ADJOURNMENT

MOTION, passed

On motion by Ms. Otto, seconded by Mr. Campbell, and all voting in favor, the meeting was adjourned at 5:25 PM.