

**FLOOD DIVERSION BOARD OF AUTHORITY  
OCTOBER 9, 2014—3:30 PM**

**1. MEETING TO ORDER**

A meeting of the Flood Diversion Board of Authority was held Thursday, October 9, 2014, at 3:30 PM in the Fargo City Commission Room with the following members present: Cass County Commissioner Darrell Vanyo; Cass County Commissioner Vern Bennett; West Fargo City Commissioner Mike Thorstad; Fargo City Commissioner Tim Mahoney; Fargo City Commissioner Melissa Sobolik; Cass County Joint Water Resource District Manager Mark Brodshaug; Clay County Commissioner Kevin Campbell; and Moorhead City Council Member Nancy Otto. Fargo Mayor Dennis Walaker and ex-officio member Gerald Van Amburg from the Buffalo-Red River Watershed District were absent.

Staff members and others present: Cass County Administrator Keith Berndt; Moorhead City Manager Michael Redlinger; Clay County Administrator Brian Berg; Cass County Engineer Jason Benson; Fargo City Director of Engineering Mark Bittner; Fargo City Engineer April Walker; 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. Thorstad seconded to approve minutes from the September 12, 2014, meeting as presented. Motion carried.**

**3. AGENDA ORDER**

***MOTION, passed***

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

**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; socio-economic analysis, operation plan and adaptive management plan for the Minnesota EIS (Environmental Impact Statement); bid opening for the 2<sup>nd</sup> Street North pump station work package; continued work on land acquisition activities and policies; and development of mitigation plans associated with impacted cemeteries.

**Corps of Engineers report**

Brett Coleman provided an update of activities by Corps of Engineers staff including Maple River aqueduct physical modeling work; continued coordination and information to the Minnesota DNR during their EIS process; participation in weekly OHB levee coordination meetings; and continuing work on the operation plan and adaptive management plan for the project.

## 5. ADMINISTRATIVE/LEGAL UPDATE

### Lawsuit update

Attorney Erik Johnson provided an update regarding lawsuits filed by the Richland-Wilkin Joint Powers Authority. He said a scheduling conference will be held on October 22<sup>nd</sup> for counsel to identify the timelines associated with the case.

### Oxbow Golf Course Interim Agreement

Mr. Johnson briefly discussed the interim agreement with the Oxbow Golf Course and Country Club, which the board approved in August. The agreement outlines 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. The agreement also identifies different tasks to be handled by the project managing consultant, CH2MHill, on behalf of the Diversion Authority. Mr. Johnson asked for the board to delegate the tasks to the CCJWRD since the tasks involve land acquisitions.

#### **MOTION, passed**

**Mr. Brodshaug moved and Mr. Mahoney seconded to delegate the tasks outlined in the interim agreement to the Cass County Joint Water Resource District on behalf of the Diversion Authority. Motion carried.**

### History of Diversion Board of Authority

Mr. Vanyo said a brief presentation has been prepared about the formation of the FM Diversion Board of Authority with information on its membership and funding cost shares, which date back to 2009 when discussions began on flood risk management for the area.

Keith Berndt said the Metro Flood Management Committee was created in 2009 after record flooding and consisted of elected officials from Fargo, Moorhead, Cass County, Clay County, Cass County Joint Water Resource District and Buffalo-Red River Watershed District—a total of 11 North Dakota members and 15 Minnesota members. Next, the Metropolitan Flood Management Work Group was formed with six Minnesota and five North Dakota representatives, which met regularly until 2011. In April 2011, the work group voted unanimously to endorse a North Dakota diversion plan that included an upstream staging area, and shortly thereafter the six entities approved a resolution of support. When it became apparent a majority of the diversion would be constructed in North Dakota, and a majority of the benefits would be in North Dakota, a decision was made that North Dakota should provide more funding toward the project than Minnesota. A tentative agreement was reached for North Dakota entities to cover 90% of the non-federal cost with Minnesota covering the remaining 10%. Also the board makeup changed as a result of the endorsed plan. In May 2011, the work group unanimously approved the Joint Powers Authority Board to be formed with representatives from the same six entities with seven members from North Dakota and five members from Minnesota. A Joint Powers Agreement (JPA) outlined voting powers in order to protect the minority power of its members and states involved. The provision was specifically added to address future misinterpretation by individuals who were not involved when the Diversion Authority Board membership was approved. In June and July of 2011, the board membership and 90/10 cost split between North Dakota and Minnesota was submitted to the Fargo City Commission, Moorhead City Council, Cass County Commission, Clay County Commission, Cass County Joint Water Resource District and Buffalo-Red River Watershed District with all entities approving the proposal.

Additional member from upstream area

Mr. Vanyo said an offer was extended last month to Perry Miller, Chairman of the Richland-Wilkin JPA and Dave Morken, Chairman of the MNDAC Upstream Coalition, for their groups to nominate a member to the diversion board to represent upstream interests. He did not receive a response until this morning, which was sent by their attorney, and did not provide an answer about appointing a new member to the board.

Ms. Otto said Fargo, Moorhead, West Fargo and Dilworth have been in this together since 2009 when the area experienced serious flooding. She said Fargo and Moorhead almost lost portions of their cities, and despite additional flood control measures implemented since 2009, Moorhead still does not have sufficient protection from significant flooding without the diversion project.

OHB levee lowered to 100-year protection

Mr. Campbell discussed the meeting held in Moorhead with Governor Dayton last month, and said it appeared the governor was not provided with all of the information regarding the project and its history. Mr. Campbell is encouraged to hear the governor is willing to talk to Corps of Engineers officials next month, and said he and Ms. Otto also offered to talk with him about the project. Mr. Campbell said given the comments made by the MDNR regarding the OHB levee, he would like to see the diversion board lower the levee to the 100-year level until the MN EIS is complete.

Mr. Vanyo said the Land Management Committee approved the OHB levee to be lowered to the 100-year level without the diversion project, which would lower the structure by about six feet. He suggested the board also approve that any further construction on the levee be lowered to the 100-year level without the diversion with the understanding that the issue will be readdressed after the MN EIS is complete.

**MOTION, passed**

**Mr. Campbell moved and Ms. Otto seconded that further construction on the Oxbow-Hickson-Bakke levee be lowered to the 100-year certifiable level without the diversion project. Discussion: Mr. Bennett asked about the cost involved with the change. Mr. Berndt said in order to minimize costs, the levee will be constructed to the full width with the intent to add to the structure later. Mr. Brodshaug said the Cass County Joint Water Resource District (CCJRW) also discussed the wider footprint in order to allow for a higher elevation at a later time. On roll call vote, the motion carried unanimously.**

Mr. Campbell asked that Governor Mark Dayton and the MDNR be informed of this action taken by the board.

Mr. Brodshaug said the Agricultural Policy Subcommittee is studying the impacts on land in the staging area. He said additional members (farmers or other affected residents) are needed to provide additional input, and he encouraged anyone interested in serving on the committee to contact a board representative.

## 6. TECHNICAL UPDATE

### Award construction contract for 2<sup>nd</sup> Street North pump station

Mr. Spiller said bids were opened on September 30, 2014, for the 2<sup>nd</sup> Street North pump station work package. He said CH2M Hill recommends the board award the contract to Industrial Builders, Inc. in the amount of \$8,069,000 as it is the lowest and best bid.

#### ***MOTION, passed***

**Ms. Sobolik moved and Mr. Thorstad seconded to award the construction contract for the 2<sup>nd</sup> Street North pump station work package to Industrial Builders, Inc. in the amount of \$8,069,000. Motion carried.**

### Task Orders / Authority Work Directives (AWD)

Mr. Spiller reviewed three task orders and one authority work directive with Houston Moore Group (HMG) totaling \$1,761,000 as follows:

- Task Order No. 8 Amendment 7—extend period of performance to September 30, 2015; for work-in-kind support tasks including evaluation of cemetery berm concepts, additional cemetery assessment team support services, and engineering consultation services to the USACE large structure design team at a cost of \$86,000;
- Task Order No. 13 Amendment 7—design services for optional design for “without project 100-year event elevation” and real estate drawings for El Zagal project at a cost of \$115,000;
- Task Order No. 17 Amendment 0—engineering services during construction for Red River levees, 4<sup>th</sup> Street pump station, 2<sup>nd</sup> Street pump station, and 2<sup>nd</sup> Street flood wall projects at a cost of \$1,550,000;
- AWD-00043—added engineering design and modeling services for evaluation of eastern staging area at a cost of \$10,000.

#### ***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to approve three task orders and one authority work directive with HMG totaling \$1,761,000. On roll call vote, the motion carried unanimously.**

## 7. PUBLIC OUTREACH UPDATE

### Committee report

Rocky Schneider, AE2S, discussed numerous outreach activities including community outreach meetings; coordination with the Land Management Committee to provide adequate information to the public; working with the Business Leaders Task Force to provide their memberships in North Dakota and Minnesota with information about the diversion project; and e-newsletter and diversion website updates.

## 8. LAND MANAGEMENT UPDATE

### CCJWRD update

Mr. Brodshaug provided an update on land acquisitions completed through September 30, 2014. He reviewed a handout with information on completed acquisitions, budget figures, and completed negotiations. He said numerous appraisals are underway on properties for the OHB levee and in-town levee. He said approval has been received from the Corps of Engineers on one residential, one agricultural, and two commercial appraisals.

Committee report

Mr. Vanyo said the Land Management Committee met earlier this afternoon. He said the NDSU Agribusiness and Applied Economics Department began work on the Ag Risk Evaluation for Temporary Water Retention Easement Values and Crop Insurance. He believes their staff have quickly grasped the scope of the project and issues involved.

**9. FINANCE UPDATE**

Committee report

Michael Montplaisir, Cass County Auditor, said the Finance Committee met on October 8<sup>th</sup>. He said financial statements and monthly bills were approved. The committee discussed concerns with the timing of the bills because it is important to receive them in a timely manner in order to submit the expenses to the State Water Commission for reimbursement. He said currently the board is operating on borrowed money from the \$20 million loan, which is being used to pay the monthly bills to allow for Fargo and Cass County sales tax funds to build up some reserves.

Voucher approval

The bills for the month are for legal services with Gray Pannell & Woodward LLP and Erik Johnson & Associates.

***MOTION, passed***

**Ms. Otto moved and Mr. Brodshaug seconded to approve the vouchers in the amount of \$148,987.05 for September, 2014. On roll call vote, the motion carried unanimously.**

**10. NEXT MEETING DATE**

Mr. Spiller said a special meeting may be requested after bids are opened on October 24<sup>th</sup> for the 4<sup>th</sup> Street pump station and 2<sup>nd</sup> Street flood wall work package.

The next regular meeting will be held on Thursday, November 13, 2014, at 3:30 PM.

**11. ADJOURNMENT**

***MOTION, passed***

**On motion by Ms. Sobolik, seconded by Mr. Thorstad, and all voting in favor, the meeting was adjourned at 4:45 PM.**