

**FLOOD DIVERSION BOARD OF AUTHORITY  
DECEMBER 11, 2014—3:30 PM**

**1. MEETING TO ORDER**

A meeting of the Flood Diversion Board of Authority was held Thursday, December 11, 2014, at 3:30 PM in the Fargo City Commission Room with the following members present: Cass County Commission Representative Darrell Vanyo; Cass County Commissioner Ken Pawluk; West Fargo City Commissioner Mike Thorstad; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Dave Piepkorn; Cass County Joint Water Resource District Manager Rodger Olson; Clay County Commissioner Kevin Campbell; and Moorhead City Council Member Nancy Otto. Fargo City Commissioner Melissa Sobolik 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; Fargo City Administrator Pat Zavoral; 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; Tom Dawson, Chairman, Chamber of Commerce Business Leaders Task Force; Brett Coleman, Project Manager, Corps of Engineers; and Terry Williams, Project Manager, Corps of Engineers.

**2. RESOLUTION, Adopted for late Mayor Dennis Walaker**

***MOTION, passed***

**Mr. Pawluk moved and Ms. Otto seconded to adopt a resolution for the late Mayor Dennis Walaker as follows:**

WHEREAS, Dennis Walaker, the Honorable Mayor of the City of Fargo who first took office on June 28, 2006, was a man who fought tirelessly and continuously to protect the City from flooding; and

WHEREAS, Mayor Walaker waged repeated, epic battles against the frigid floodwaters of the Red River of the North; and

WHEREAS, Mayor Walaker mobilized tens of thousands of volunteers over and over to sandbag along the banks of the flood-prone river and spare the low-lying city from rising water; and

WHEREAS, Mayor Walaker would model calm and reassurance to the people of his City and its workers, no matter the extent of the flood threat; and

WHEREAS, Mayor Walaker dedicated four decades of his life serving the City of Fargo, first as a Civil Engineer, then as Public Works Director before being elected as Mayor; and

WHEREAS, Mayor Walaker was a champion for the F-M Area Diversion Project and recognized the Project's necessity;

NOW BE IT THEREFORE RESOLVED that we, the members of the Flood Diversion Board of Authority, officially recognize Mayor Dennis Walaker's countless efforts and

contributions to establish effective and permanent flood protection for the Fargo-Moorhead area; and that we will continue to work to plan, design and manage a Diversion Project which will put an end to the kind of recurring emergency responses that Mayor Walaker tirelessly coordinated and directed, despite overwhelming odds.

**3. MINUTES APPROVED**

***MOTION, passed***

**Mr. Mahoney moved and Mr. Campbell seconded to approve minutes from the November 13, 2014, meeting as presented. Motion carried.**

**4. AGENDA ORDER**

***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to approve the order of the agenda. Motion carried.**

**5. MANAGEMENT UPDATE**

**Program management consultant (PMC) report**

Bruce Spiller provided an update on activities over the last month including work on the in-town levees, 2<sup>nd</sup> Street North pump station, 4<sup>th</sup> Street pump station, and 2<sup>nd</sup> Street South flood wall; participation in a public meeting held in Oxbow regarding the OHB levee; continued design and coordination with the city hall project; submittal of a revised socio-economic analysis to the Minnesota DNR 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 modeling work; continued coordination to provide information to the Minnesota DNR for the EIS; continuing work on the cemetery mitigation plan; work on the operation plan and adaptive management plan for the project; participation in weekly OHB levee coordination meetings; assistance with local efforts on the in-town levees; and continued development of alternative resourcing and delivery plan for expedited implementation of the project.

Ms. Williams briefly discussed the alternative resourcing and delivery plan with the goal to complete the project as soon as possible, saving taxpayer dollars and reducing the flood risk sooner. She said all available federal and local options to fund the project are being pursued, including Public-Private Partnerships (PPP) which would utilize available resources and incentives to complete the project sooner at a lower cost.

**6. ADMINISTRATIVE/LEGAL UPDATE**

**Lawsuit update**

Attorney Erik Johnson provided an update regarding lawsuits filed by the Richland-Wilkin Joint Powers Authority. He said all motions were to be filed by December 9<sup>th</sup>. He said the administrative record needs to be compiled by February 23, 2015, and a hearing most likely will be held in early summer.

## 7. TECHNICAL UPDATE

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

Mr. Spiller reviewed three Task Orders and two Authority Work Directives with Houston Moore Group (HMG) totaling \$1,484,000 as follows:

- Task Order No. 8 Amendment 8—Work-in-Kind for hydraulic structure aesthetics evaluation and baseline stream bank erosion evaluation for \$264,000;
- Task Order No. 9 Amendment 12—hydrology and hydraulic modeling work associated with additional modeling of the Maple River Aqueduct, eastern staging area evaluation, and staging area culvert and bridge survey for \$193,000;
- Task Order No. 18 Amendment 0—design work package to prepare plans and specifications for construction of CR-16/CR-17 bridge, associated roads, and local drainage facilities for \$980,000;
- AWD-00045—Phase II environmental site assessment for 2<sup>nd</sup> Street and downtown levees for \$27,000;
- AWD-00046—additional technical support services for a response to the Minnesota Department of Natural Resources (DNR) flow through town information request for \$20,000.

***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to three Task Orders and two Authority Work Directives with HMG totaling \$1,484,000. On roll call vote, the motion carried unanimously.**

### Change Order No. 1

Mr. Spiller discussed Change Order No. 1 (CO1) to the 2<sup>nd</sup> Street North Pump Station to incorporate a revised traffic control plan by providing concrete barriers and larger lane sizes more conducive to winter snow removal; and an administrative correction to the agreement that clarifies the substantial completion requirement to November 30, 2015.

***MOTION, passed***

**Mr. Olson moved and Ms. Otto seconded to award Change Order No. 1 (CO1) for the 2<sup>nd</sup> Street North Pump Station project in the amount of \$66,920 for a total contract amount of \$8,135,920. On roll call vote, the motion carried unanimously.**

### Work Change Directives

Mr. Spiller said a policy has been drafted which outlines work change directives (WCDs) for construction contracts on behalf of the Diversion Authority for up to \$200,000 and a cumulative amount up to 5% of the contract price. The chairman and vice chairman would both be authorized to sign a WCD. He said a similar policy was approved for WCDs for design contracts. The policy will provide a method to order contract changes in a timely manner to allow for efficient management of construction projects.

Mr. Pawluk feels \$200,000 is too high and said \$100,000 or less would be more acceptable. Mr. Berndt said once construction starts on the diversion project, an estimated \$1 million will be spent per day, and if WCDs are not allowed, this could delay construction. Mr. Olson said the Corps of Engineers has a contingency fund of \$300 to \$400 million for unexpected changes to project costs. Mr. Mahoney recommended the threshold be set at \$150,000.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Thorstad seconded to approve a policy for ordering an addition, deletion, or revision in the work for construction contracts via Work Change Directives (WCDs) on behalf of the Diversion Authority for up to \$150,000 per WCD and a cumulative amount up to five percent of the contract price and that in the absence of the chairman, the vice chair shall also be authorized. Discussion: Mr. Spiller said this policy would only be used for time sensitive change orders. On roll call vote, the motion carried unanimously.**

**8. PUBLIC OUTREACH UPDATE****Committee report**

Rodger Olson discussed numerous outreach activities of the committee including hosting a booth at the North Dakota Water Convention; review of the Governor's proposed budget which includes \$69 million for the diversion project; work with the Business Leaders Flood Task Force to provide an update at their upcoming meeting; and e-newsletter and diversion website updates.

**Business Leaders Task Force**

Tom Dawson said the next meeting of the task force will be held on December 16<sup>th</sup> with North Dakota legislators. He said task force members and other officials will travel to Bismarck on February 12, 2015.

**9. LAND MANAGEMENT UPDATE****Committee report**

Mr. Vanyo said the Land Management Committee met earlier this afternoon. He said Pifer Group provided an annual report on farm land owned by the Diversion Authority and managed by their firm. He said work continues on the Ag Risk Evaluation for Temporary Water Retention Easement Values and Crop Insurance by the NDSU Agribusiness and Applied Economics Department. NDSU will provide an update to the Ag Policy Subcommittee at their meeting tomorrow, December 12<sup>th</sup>.

**CCJWRD update**

Mark Brodshaug provided an update on land acquisitions completed through November 30, 2014. He reviewed a handout with information on completed acquisitions, budget figures, and completed negotiations. He said six homes are under construction in Oxbow, and appraisals continue for properties associated with the OHB levee and in-town levee. He said the CCJWRD approved an agreement with the Oxbow Country Club at their meeting earlier today for the purchase and relocation of the golf course.

**License Agreement – Entry upon Diversion Authority Property**

Mr. Vanyo said the committee approved a license agreement similar to what the CCJWRD uses for property access. The agreement would be with the Diversion Authority and licensee who has requested permission to enter upon property owned by the Diversion Authority.

***MOTION, passed***

**Mr. Mahoney moved and Mr. Pawluk seconded to approve a license agreement for entry upon Diversion Authority property. Discussion: Mr. Campbell said Clay County has a policy that**

**allows only very limited access onto properties. He asked the legal team to review whether there are any conflicts with this license agreement and Clay County policy. Erik Johnson said he will look into the issue. Motion carried.**

#### 10. FINANCE UPDATE

##### Special Assessment District Financing

Michael Montplaisir, Cass County Auditor, said the Finance Committee met on December 10<sup>th</sup>. He said the Diversion Project Assessment Committee (DPAC) met earlier this week, and an update was given at the Finance Committee meeting. The DPAC has met over the last two years to establish a method to assign direct and indirect benefits.

Mark Brodshaug and Rocky Schneider from AE2S provided a presentation on the special assessment district process. Mr. Brodshaug said the sales tax for Fargo and Cass County is expected to generate \$700 million, which will cover the North Dakota local cost share for the project. The rationale behind establishing a special assessment district is because sales tax financing is not considered an attractive financing method to borrow funds and comes with a higher interest rate than special assessment bonding. A special assessment district will also provide a way to finance the maintenance costs of the project. The CCJWRD has the ability under North Dakota law to administer assessment districts. The CCJWRD met earlier today and approved two resolutions to begin the legal process to set up a special assessment district, and are using \$725 million as the estimated project cost to assess. The schedule and the voting process was discussed with an estimated timeline of five months to complete.

Mr. Vanyo stressed that the special assessment district will not be used for additional revenue but as leverage for bond financing. He said Fargo and Cass County sales taxes raised will cover the North Dakota local cost share of the project.

##### Draw Request No. 3

Mr. Montplaisir said the Finance Committee approved an additional draw of \$25 million from the U.S. Bank Loan. He said two separate draws of \$20,060,200 have already been done to cover monthly diversion expenses. The additional request is a result of projected cash flow needs for December.

**Mr. Mahoney moved and Ms. Otto seconded to approve Draw Request No. 3 from the U.S. Bank Loan in the amount of \$25 million. On roll call vote, the motion carried unanimously.**

##### Voucher approval

The bills for the month are for legal services with Erik Johnson & Associates and Dorsey & Whitney LLP.

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

**Mr. Mahoney moved and Ms. Otto seconded to approve the vouchers in the amount of \$94,069.87 for November, 2014. On roll call vote, the motion carried unanimously.**

#### 11. NEXT MEETING DATE

The next meeting will be held on Thursday, January 8, 2015, at 3:30 PM.

**12. ADJOURNMENT**

***MOTION, passed***

**On motion by Mr. Pawluk, seconded by Mr. Campbell, and all voting in favor, the meeting was adjourned at 5:00 PM.**

Minutes prepared by Heather Worden, Cass County Administrative Assistant