

**FLOOD DIVERSION BOARD OF AUTHORITY
MAY 14, 2015—3:30 PM**

1. MEETING TO ORDER

A meeting of the Flood Diversion Board of Authority was held Thursday, May 14, 2015, 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 Melissa Sobolik; Cass County Joint Water Resource District Manager Rodger Olson; and Moorhead City Council Member Nancy Otto. Also present was ex-officio member Gerald Van Amburg, Buffalo-Red River Watershed District. Fargo City Commissioner Mike Williams and Clay County Commissioner Kevin Campbell were absent.

Staff members and others present: Cass County Administrator Keith Berndt; Clay County Administrator Brian Berg; Cass County Engineer Jason Benson; Moorhead City Engineer Bob Zimmerman; Fargo City Director of Engineering Mark Bittner; Fargo Engineer April Walker; Bruce Spiller, CH2MHill; 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 April 9, 2015, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Pawluk moved and Ms. Otto 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 work on the in-town levees and OHB levee and pump design work; MNDNR Environmental Impact Statement (EIS) review of work products; evaluation of maintenance needs on the diversion inlet structure; and cultural surveys on impacted cemeteries in the staging area.

Mr. Spiller said a bid opening was scheduled later this month for the OHB levee, but with the recent injunction issued on levee construction, the bid letting has been cancelled. He said field work has been completed on seven cemetery sites, and three cemetery sites have not allowed right-of-entry (ROE) on the property to conduct cultural surveys.

Corps of Engineers report

Terry Williams provided an update of activities by Corps of Engineers staff including work on the operation plan and adaptive management plan; development of the cemetery mitigation plan with a draft to be released in June; OHB and in-town levees design and construction support; cultural surveys for cemetery sites in the staging area; continued review of draft documents for the MN EIS process; updates to the Maple River aqueduct physical model; and work on the alternative resourcing and delivery plan for expedited implementation of the project.

Ms. Williams reviewed the timeline for the cemetery mitigation study including site visits, cultural surveys and right of entry onto sites, and mitigation alternatives. A mitigation alternatives report was prepared with several options including protective berms, access, debris fencing, anchoring headstones and raising sites. The berm with access alternative for all sites would cost in excess of \$14 million. The Federal mitigation plan consists of obtaining flowage easements for cemeteries within the staging area; there would be no mitigation required on sites outside the staging area. The Diversion Authority, as part of the project Operation and Maintenance Plan, may clean up or offer assistance to clean up the staging area after times of project operation. She said the Corps plans to release the draft plan by June 8, 2015, and will ask for comments to be submitted by June 30, 2015.

5. **ECONOMIC DEVELOPMENT PRESENTATION**

Chad Peterson, Chairman of the Cass County Commission, provided a presentation on the regional economic impacts to the area in the event of a catastrophic flood event. He referred to employment data compiled in reports prepared by the Greater Fargo Moorhead Economic Development Corporation (GFMEDC). He said the diversion project will not only protect properties in Fargo-Moorhead, but will protect a \$15 billion regional economy. He said if the City of Fargo experiences catastrophic flooding, the impacts would be devastating to this area and to the State of North Dakota. He discussed information within the report regarding employment and the percentage of workers that live in other counties besides Cass-Clay that work in this area, who would be adversely affected if the cities of Fargo and Moorhead are destroyed by a flood.

Jim Gartin, President of GFMEDC, described the impact of an event to the numerous private sector industries in the area and said it would be devastating to the market place. Mr. Vanyo agreed that the diversion project is not only about flood protection for the area, but just as importantly, will provide protection to the local and regional economy.

6. **ADMINISTRATIVE/LEGAL UPDATE**

Lawsuit update

Attorney Erik Johnson provided an update regarding lawsuits filed by the Richland-Wilkin Joint Powers Authority. An order was issued by the Federal District Court yesterday on motions filed by both parties. The judge dismissed the claims against the Corps of Engineers, but ordered an injunction to stop construction on the OHB levee. He said the injunction is temporary and is meant to be released once the MN DNR completes its EIS. The injunction applies to physical construction of the levee itself, not to construction of new replacement homes in Oxbow.

7. **TECHNICAL UPDATE**

Task Orders / Authority Work Directives / Change Orders

Mr. Spiller discussed one Authority Work Directive (AWD) with Terracon Consultants, Inc. and one change order with ICS, Inc. totaling \$298,555.24 as follows:

- AWD-00048 Rev-0 with Terracon Consultants, Inc.—additional budget for owner's quality assurance testing on the 4th Street pump station and 2nd Street pump station in the amount of \$30,000;
- Change Order No. 1 with ICS, Inc.—4th Street pump station changes including Fargo Highrise parking lot modifications, re-route of electrical service for Fargo Park District warming house, and installation of new storm sewer line in the amount of \$268,555.24.

Mr. Pawluk questioned the need for a change order to re-route the electrical line to the warming house as this should have been known before work began on the pump station. Mr. Spiller said the information on the utility line was not accurate during the design phase. April Walker said Fargo engineering staff have reviewed the change order and support it.

MOTION, passed

Mr. Pawluk moved and Ms. Sobolik seconded to AWD-00048 Rev-0 with Terracon Consultants, Inc. and Change Order No. 1 with ICS, Inc. totaling \$298,555.24. On roll call vote, the motion carried unanimously.

8. PUBLIC OUTREACH UPDATE

Committee report

Rodger Olson said the Public Outreach Committee met May 13th. The draft cemetery mitigation plan was discussed, and the committee suggested representatives from North Dakota and Minnesota be appointed to assist with the process.

The committee also discussed the special assessment district vote, and the questions generated through the FMDiversion.com website. Mr. Mahoney said there seemed to be confusion about the special assessment district among local elected officials and the general public. Mr. Olson said the Cass County Joint Water Resource District hosted three public meetings, and one public hearing to promote public input. The assessment voting process for water boards is dictated by state law and only requires one public hearing to be held. Ms. Sobolik said this topic generated much discussion among Fargo City Commissioners, and it was suggested that updates on the diversion project be provided to the full board since not all members serve on the Diversion Board.

9. LAND MANAGEMENT UPDATE

Cemetery Mitigation Report

The Land Management Committee met earlier this afternoon. Mr. Mahoney said the committee discussed the cemetery mitigation plan, and in order for the Corps to release the document to the public, the Diversion Board needs to approve its release.

MOTION, passed

Mr. Olson moved and Ms. Sobolik seconded to authorize the release of the draft cemetery mitigation report to the public. Motion carried.

NDSU Ag Study Amendment No. 2

Mr. Mahoney said the committee approved a second amendment to the contract with NDSU for Ag Risk Study services. The amendment of \$43,960 increases the budget from \$91,207 to \$135,167 to incorporate landowners' data to the model. Ms. Sobolik asked if they intend to complete the study within the same time frame. Mr. Berndt said NDSU still plans to finish the study by the end of June. Mr. Olson said the additional funds are needed to re-run the model to include information from several area producers that were part of a focus group meeting.

MOTION, passed

Ms. Sobolik moved and Mr. Pawluk seconded to approve Amendment No. 2 for the NDSU Ag Risk Study. On roll call vote, the motion carried unanimously.

CCJWRD update

Mark Brodshaug provided an update on land acquisitions completed through April 30, 2015. He reviewed information on completed acquisitions, budget figures, and completed negotiations. Negotiations continue with Oxbow homeowners as part of the replacement housing process and three new purchase agreements were signed for Oxbow area properties. One opportunistic farmland purchase was completed. He said relocations from the Park East apartment complex continue to move forward and tenants have until July 15th to be out of the building, which is the scheduled closing date.

10. FINANCE UPDATECommittee report

The Finance Committee met on May 13th. Michael Montplaisir, Cass County Auditor, said a little over \$100 million has been spent so far on the project. He also reviewed total revenues, budget report summary, state aid, and in-town levee work.

City of Fargo – First Draw Down Request

The Finance Committee approved the first draw down request from the \$50 million loan with U.S. Bank, which will cover legal and closing costs. The closing is scheduled for May 28th.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to authorize the City of Fargo to draw down funds in the amount of \$5,000,000 from U.S. Bank at the time of closing on the loan. On roll call vote, the motion carried unanimously.

Change Fiscal Year to Calendar Year

Mr. Montplaisir said the committee approved an extension of the current FY2015 budget year from September 30, 2015, to December 31, 2015, to coincide with the city and county's calendar year for financial records.

MOTION, passed

Mr. Pawluk moved and Mr. Thorstad seconded to extend the current FY2015 budget year to December 31, 2015, and to change the fiscal year thereafter to the calendar year used by Fargo and Cass County. On roll call vote, the motion carried unanimously.

Third Amendment to Joint Powers Agreement – Dakota Metro Flood Board

The Buffalo-Red River Watershed District approved \$1.5 million out of the \$211 million Diversion Authority budget to complete the MN EIS. As a result, a proposed third amendment to the existing Joint Powers Agreement (JPA) with Fargo, Cass County and Cass County Joint Water Resource District has been drafted. Erik Johnson provided some background on the JPA, which was first approved in 2010 and has been amended twice over the last five years. The proposal today provides a mechanism to approve and/or ratify expenditures, agreements and other decisions of the Flood Diversion Authority Board, and establishes the Dakota Metro Flood Board. The Dakota Metro Flood Board will consist of seven members: three from Cass County, three from Fargo, and one from the CCJWRD. This will serve as an interim measure to act in conjunction with the Diversion Authority. The plan is for the Dakota Metro Board to convene immediately after the Diversion Authority meeting. Mr. Johnson said the request today is for the Diversion Authority to approve the amendment in concept and form and forward it to Fargo, Cass County and CCJRWD for action.

Mr. Thorstad asked why the budget approval section of the JPA was not amended rather than the proposal presented today. Mr. Johnson said that type of change would require approval by all six member entities, and there is uncertainty that all six would approve such a change.

Mr. Thorstad asked whether this new committee could circumvent actions taken by the Diversion Authority Board. Mr. Johnson said the Dakota Metro Flood Board will provide a mechanism to expend in excess of the dollars approved by the Buffalo Red River Watershed District, one of the six member entities of the Diversion Authority Board. Mr. Johnson said the committee may contradict financial decisions made by the Diversion Authority.

MOTION, passed

Mr. Pawluk moved and Mr. Mahoney seconded to approve in concept and form the Third Amendment to the Joint Powers Agreement as proposed. On roll call vote, the motion carried with Mr. Pawluk, Mr. Mahoney, Ms. Sobolik, Mr. Vanyo, Mr. Olson and Ms. Otto voting “Yes”; Mr. Thorstad voting “No”.

Ernst & Young Contract for P3 Services

Erik Johnson said the Finance Committee approved a contract with Ernst & Young Infrastructure Advisors, LLC, to provide financial advisory services for the Public Private Partnership (P3) process. He said task orders will be identified and submitted to the Diversion Authority for approval. Ms. Sobolik asked about the cost of services. Mr. Vanyo said Ernst & Young will either bill the Diversion Authority at an hourly rate or on a project by project basis.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve a contract with Ernst & Young Infrastructure Advisors, LLC, to provide financial advisory services. On roll call vote, the motion carried unanimously.

Voucher approval

The bills for the month are with Fredrikson & Byron, P.A. for government relation services; Erik Johnson & Associates, Ltd. and Dorsey & Whitney LLP for legal services; and Cass County Joint Water Resource District for costs associated with the in-town levee, OHB ring levee, Diversion Project Assessment Committee (DPAC), and Oxbow Country Club golf course construction.

MOTION, passed

Mr. Mahoney moved and Mr. Pawluk seconded to approve the vouchers in the amount of \$2,946,128.13 for April, 2015. On roll call vote, the motion carried unanimously.

11. OTHER BUSINESS

Mr. Pawluk asked how many homes in Fargo have been bought or demolished as a result of flooding. April Walker said around 300 homes have been purchased by the city since 1990. Mr. Berndt said Cass County has bought around 200 homes.

Mr. Pawluk wants to ensure the Diversion Authority is compliant with the injunction ruling on the OHB levee. Erik Johnson said the intent is to fully comply and honor the court order. Mr. Johnson said contact has been made with opposing counsel to ensure everyone is aware of what is and is not allowed as part of the ruling.

12. NEXT MEETING DATE

The next meeting will be held on Thursday, June 11, 2015, at 3:30 PM.

13. ADJOURNMENT

MOTION, passed

On motion by Mr. Pawluk, seconded by Ms. Sobolik, and all voting in favor, the meeting was adjourned at 4:50 PM.

Minutes prepared by Heather Worden, Cass County Administrative Assistant