

**FLOOD DIVERSION BOARD OF AUTHORITY  
JUNE 11, 2015—3:30 PM**

**1. MEETING TO ORDER**

A meeting of the Flood Diversion Board of Authority was held Thursday, June 11, 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 Mary Scherling; West Fargo City Commissioner Mike Thorstad; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Melissa Sobolik; Fargo City Commissioner Mike Williams; Cass County Joint Water Resource District Manager Mark Brodshaug; and Moorhead City Council Member Nancy Otto. Clay County Commissioner Kevin Campbell 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; Clay County Administrator Brian Berg; Moorhead City Manager Michael Redlinger; Fargo City Engineer April Walker; and Mark Nesbit, Chamber of Commerce Business Leaders Taskforce.

**2. MINUTES APPROVED**

***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to approve minutes from the May 14, 2015, meeting as presented. Motion carried.**

**3. AGENDA ORDER**

Keith Berndt asked if the board would be willing to allow public comments from Clay Dietrich and Jim Nyhof prior to the executive session.

***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to approve the order of the agenda with the addition of public comments from Clay Dietrich and Jim Nyhof prior to the executive session. Motion carried.**

**4. ADMINISTRATIVE/LEGAL UPDATE**

*Public comments on stoppage of Oxbow home construction*

Clay Dietrich, Owner of Dietrich Homes and President of the F-M Homebuilders' Association, discussed the issues facing home builders currently working with Oxbow residents whose homes are on hold because of the injunction issued to stop work on the Oxbow Hickson Bakke (OHB) levee. He said custom home builders have scheduled the entire summer to work on homes and will have to be laid off. There are 20 homes that were slated to be completed before winter time. He estimates approximately 1,000 staff including construction workers and subcontractors are affected by the work being halted. He said his company needs to know in the next one or two weeks in order to make contingency plans for its construction schedule and employees.

Jim Nyhof, Oxbow City Mayor, said he finds it difficult to believe that the judge's injunction ruling was intended to harm innocent people that are not party to the lawsuit. He said regardless of the outcome, there is going to be a ring dike around Oxbow to provide long-term flood protection for Oxbow and the surrounding areas. He said it is important to move forward on infrastructure in Oxbow, which includes the replacement homes, golf course and roads.

Mr. Mahoney asked about the 20% property tax reduction approved by the State Board of Equalization in 2012 for Oxbow properties and issues recently raised by Pleasant Township regarding the impact to the Kindred Public School District. Mr. Nyhof said the City of Oxbow Board of Equalization approved a 5% increase for 2015 to begin making up the 20% reduction; however, this was approved before the injunction. Mr. Mahoney asked how the 20% reduction has affected the Kindred Public School District since 2012. Mr. Nyhof said the school district's valuation has increased despite the reduction.

Lawsuit Update – Executive Session

Attorney Erik Johnson provided an update regarding lawsuits filed by the Richland-Wilkin Joint Powers Authority. An injunction order was issued by the Federal District Court on May 13<sup>th</sup> to stop construction on the OHB levee. He said there are issues to discuss and the board is allowed under North Dakota state law to meet in private session to consult with legal counsel.

**MOTION, passed**

**Mrs. Scherling moved and Ms. Otto seconded to meet in executive session as authorized by North Dakota Century Code Section 44-04-19.1 Sub. (2) for consultation with its attorneys regarding pending litigation with the Richland-Wilkin Joint Powers Authority (JPA). Motion carried.**

The Flood Diversion Board members, key administrative and engineering staff, Attorney Erik Johnson and Attorney John Shockley moved to the River Room at 3:45 PM. Robert Cattnach, Attorney for the Board, joined the closed meeting via conference call.

The executive session ended at 5:26 PM, and the meeting was re-opened to the public.

Mr. Johnson said the board fully intends to follow the injunction ruling and is seeking clarification from the judge on home construction in Oxbow. The board also agreed to support Oxbow if the city decides to participate in the lawsuit.

Dakota Metro JPA

Mr. Johnson said a third amendment to the Joint Powers Agreement (JPA) was approved in concept by the Diversion Board at the last meeting. The JPA 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 JPA has been approved by the member entities of Fargo, Cass County and Cass County Joint Water Resource District. Moorhead Mayor Del Rae Williams asked for language to be included in the JPA for the Dakota Metro Flood Board to re-visit the need for this board at the end of the year and every six months if necessary.

Ms. Otto vehemently objects to those saying that Minnesota does not have a voice as a result of the Dakota Metro Flood Board. She said Minnesota has three representatives on the Finance Committee, including herself, that review expenditures and make recommendations to the Flood Diversion Board. She said this mechanism will also allow Fargo to move forward with its dike projects.

**5. MANAGEMENT UPDATE**

Program management consultant (PMC) report

Ty Smith from CH2M provided an update on activities over the last month including work on in-town levees at 2<sup>nd</sup> Street North, El Zagal, and Mickelson; assistance with the MNDNR

Environmental Impact Statement (EIS) process; and work with the Corp of Engineers to develop strategies for public-private partnership (PPP) options.

Corps of Engineers report

Terry Williams was not present at the meeting, but provided a written update of activities by Corps of Engineers staff which include continued support of MN EIS process through reviewing draft documents and supplying requested data; work on completion of the Maple River aqueduct physical model; mailing of draft cemetery mitigation plan on June 4<sup>th</sup>; continued review of appraisals and support of land acquisition activities; and work on the alternative resourcing and delivery plan for expedited implementation of the project.

**6. TECHNICAL UPDATE**

Recommended Contract Actions Summary

Mr. Smith discussed one task order with Houston Moore Group (HMG) and cost reimbursement agreements for utility relocations totaling \$3,445,266.51 as follows:

- HMG Task Order No. 13 Amendment 10—levee design and design support for in-town levees in the amount of \$602,000;
- 702 Communications cost reimbursement agreement—utility relocation associated with the 2<sup>nd</sup> Street flood wall in the amount of \$175,379.73;
- AT&T cost reimbursement agreement—utility relocation associated with the 2<sup>nd</sup> Street flood wall in the amount of \$441,330.44;
- Cable One cost reimbursement agreement—utility relocation associated with the 2<sup>nd</sup> Street flood wall in the amount of \$148,511.37;
- Enventis Telcom, Inc. cost reimbursement agreement—utility relocation associated with the 2<sup>nd</sup> Street flood wall in the amount of \$1,324,403;
- Xcel Energy cost reimbursement agreement—utility relocation associated with the 2<sup>nd</sup> Street flood wall in the amount of \$700,000;
- Xcel Energy cost reimbursement agreement—utility relocation associated with the 4<sup>th</sup> Street High Rise in the amount of \$53,641.97.

***MOTION, passed***

**Mr. Mahoney moved and Mr. Brodshaug seconded to approve HMG Task Order No. 13 Amendment 10 and recommend approval of the appropriation of funds for the task order by the Dakota Metro Flood Board in the amount of \$602,000; and approve the Cost Reimbursement Agreements for 702 Communications, AT&T, Cable One, Enventis Telecom, and Xcel Energy and recommend approval of the appropriation of funds for said agreements by the Dakota Metro Flood Board in the amount of \$2,843,266.51. On roll call vote, the motion carried unanimously.**

**7. PUBLIC OUTREACH UPDATE**

Committee report

Ms. Sobolik said the Public Outreach Committee met June 10<sup>th</sup> and referred to the handout provided to the board members on activities over the last month including community outreach meetings; efforts to provide accurate information on the draft cemetery mitigation report and OHB levee injunction to impacted homeowners and businesses; and e-newsletter and website updates.

## 8. LAND MANAGEMENT UPDATE

Mr. Mahoney said the Land Management Committee met earlier this afternoon and discussed topics including:

### CCJWRD update

Mark Brodshaug referred to the handout regarding land acquisitions completed through May 31, 2015 which includes completed acquisitions, budget figures, and completed negotiations. He said clarification on the OHB levee injunction is needed in order for construction to continue on replacement homes in Oxbow. He said relocations from the Park East apartment complex continue to move forward and tenants have until July 15<sup>th</sup> to be out of the building.

Eric Dodds from AE2S discussed an agreement with the Cass County Joint Water Resource District to clarify liability insurance language outlined in the Limited Joint Powers Agreement (JPA), which will allow the CCJWRD to secure premise liability insurance through the North Dakota Insurance Reserve Fund. Through the JPA, the Diversion Authority directed and delegated authority to the CCJWRD to obtain rights of entry necessary for the FM diversion project and OHB levee project. This new agreement will provide specific indemnity protection for the CCJWRD for the tasks delegated to it by the Diversion Authority.

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

**Ms. Sobolik moved and Mr. Williams seconded to authorize the chairman to sign the agreement to clarify liability insurance language and indemnity protection for the CCJWRD under the Limited JPA. Motion carried.**

## 9. FINANCE UPDATE

### Committee report

The Finance Committee met on June 10<sup>th</sup>. Kent Costin, Fargo Finance Director, said approximately \$106 million has been spent so far on the project.

### City of Fargo – Loan Advance

The City of Fargo recently closed on the second round of financing with U.S. Bank for \$50 million. The Finance Committee approved a loan advance for \$15 million to help fund upcoming property acquisitions, including the Park East apartment complex which will total around \$9 million.

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

**Mr. Mahoney moved and Ms. Sobolik seconded to approve a loan advance from U.S. Bank in the amount of \$15,000,000. 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. for legal services; and Cass County Joint Water Resource District for costs associated with the in-town levees, OHB ring levee, Diversion Project Assessment Committee (DPAC), and Oxbow Country Club golf course construction.

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

**Mr. Mahoney moved and Mr. Thorstad seconded to approve the vouchers in the amount of \$5,762,127.13 for May, 2015. On roll call vote, the motion carried unanimously.**

**10. NEXT MEETING DATE**

The next meeting will be held on Thursday, July 9, 2015, at 3:30 PM.

**11. ADJOURNMENT**

***MOTION, passed***

**On motion by Ms. Otto, seconded by Ms. Sobolik, and all voting in favor,  
the meeting was adjourned at 5:50 PM.**

Minutes prepared by Heather Worden, Cass County Administrative Assistant