

**FLOOD DIVERSION BOARD OF AUTHORITY  
JULY 9, 2015—3:30 PM**

**1. MEETING TO ORDER**

A meeting of the Flood Diversion Board of Authority was held Thursday, July 9, 2015, at 3:31 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; Fargo City Commissioner Mike Williams; Cass County Joint Water Resource District Manager Rodger Olson; 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: Clay County Administrator Brian Berg; Moorhead City Manager Michael Redlinger; Cass County Engineer Jason Benson; Fargo City Director of Engineering Mark Bittner; Fargo City Engineer April Walker; Moorhead City Engineer Bob Zimmerman; Tom Dawson, Chairman; Chamber of Commerce Business Leaders Taskforce; Bruce Spiller, CH2M; and Terry Williams, Project Manager, Corps of Engineers.

**2. MINUTES APPROVED**

*MOTION, passed*

**Mr. Mahoney moved and Ms. Otto seconded to approve minutes from the June 11, 2015, meeting as presented. Motion carried.**

**3. AGENDA ORDER**

*MOTION, passed*

**Mr. Mahoney 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 in-town levees at 2<sup>nd</sup> Street North, El Zagal, and Mickelson; review and comments to the MNDNR on the draft Environmental Impact Statement (EIS), which is scheduled for release on August 28<sup>th</sup>; and work with the Corp of Engineers to develop strategies for public-private partnership (PPP) options.

Mr. Williams asked whether in-town levee projects in Fargo will be FEMA certified and how this may affect home owners' flood insurance. There was discussion about the Fargo levees that are being designed and constructed to the 100-year flood level of 39.5 feet. If FEMA changes the figure to 41 feet, the levees would no longer be certifiable according to their standards. Mr. Williams said this is another indicator that the diversion project is still needed for protection as the levees will complement and work with the project. Ms. Otto said the City of Moorhead would be in the same situation with their levees if FEMA changes the 100-year floodplain.

Corps of Engineers report

Terry Williams provided an update of activities by Corps of Engineers staff which include review and coordination of draft documents for the MN EIS; completion of the Maple River aqueduct physical model; release of draft cemetery mitigation plan on June 4<sup>th</sup>; review of levee designs; and work on alternate financing and split delivery plan for expedited implementation of the project.

**5. ADMINISTRATIVE/LEGAL UPDATE**Lawsuit update

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. The Diversion Authority requested a stay on the injunction, which was denied by the judge. The City of Oxbow requested to intervene as a party to the lawsuit along with the Diversion Authority, which the judge granted. The Diversion Authority has asked the Court to clarify the injunction order as it relates to construction of homes in Oxbow, and is awaiting a decision from the judge. Mr. Johnson said briefs will be submitted to the court throughout the summer on the main case involved with the lawsuit.

Mr. Vanyo said the Diversion Authority is following the injunction ruling. He said when the injunction was issued, eight homes were under construction. Closings have been completed on two of the homes.

**6. TECHNICAL UPDATE**Recommended Contract Actions Summary

Mr. Spiller discussed one Authority Work Directive (AWD) with Houston Moore Group (HMG) totaling \$20,000 as follows:

- HMG AWD-00050 R0—services during bidding for WP-42F.1S (Flood Control, 2<sup>nd</sup> Street North, South of Pump Station 2 Station-Phase 42F.1S) of the in-town levees project in the amount of \$20,000.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Piepkorn seconded to approve HMG AWD-00050 R0 and recommend approval of the appropriation of funds for the task order by the Dakota Metro Flood Board in the amount of \$20,000. On roll call vote, the motion carried unanimously.**

**7. PUBLIC OUTREACH UPDATE**Committee report

Mr. Olson said the Public Outreach Committee met July 8<sup>th</sup>. He said the State Water Commission is in town today taking a tour of the in-town levee work. Daron Selvig from AE2S provided an update on the e-newsletter and website, which continue to generate public interest.

Business Leaders Task Force

Mr. Dawson said the task force met this week and received an update from Senator John Hoeven's staff. There was an update on the Minnesota EIS and discussion on the injunction issued on the OHB levee and its impact on area contractors and home builders.

**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 June 30, 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 the closing was held on the Park East apartment complex, and 13 occupied apartments remain. He said a security firm will patrol the building until it is demolished, which will likely occur in late fall. He said prior to demolition of the homes in the EI

Zagal neighborhood and Park East apartments, Habitat for Humanity will be allowed to salvage items from the structures. The Fargo Fire Department will conduct some training exercises in the apartment complex before demolition.

Committee Membership

Mr. Vanyo said the Fargo City Commission recently appointed Mike Williams to the Finance Committee to replace Pat Zavoral and Dave Piepkorn to the Land Management Committee. He said since Mr. Piepkorn is an additional member on the committee, he asked for approval of the appointment by the Diversion Board.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Olson seconded to approve the addition of Fargo City Commissioner Dave Piepkorn to the Land Management Committee. On roll call vote, the motion carried with Mr. Vanyo, Mr. Mahoney, Mr. Williams, Mr. Pawluk, Mr. Thorstad, Ms. Otto, and Mr. Olson voting “Yes”; Mr. Piepkorn abstaining.**

**9. FINANCE UPDATE**

Committee report

The Finance Committee met on July 8<sup>th</sup>. Kent Costin, Fargo Finance Director, said the total disbursed on the project to date is \$127 million. The committee acted on the following items:

City of Fargo – Loan Advance

The Finance Committee approved an advance of \$10 million from the U.S. Bank Loan to help fund property closings on the Howard Johnson Hotel and Sidestreet Bar. This is the third draw down request from the \$50 million loan taken out by the City of Fargo.

***MOTION, passed***

**Mr. Mahoney moved and Mr. Williams seconded to approve a draw down request for loan funds from U.S. Bank in the amount of \$10,000,000. On roll call vote, the motion carried unanimously.**

Clean up of property in Clay County

Mr. Costin said the Diversion Authority purchased buildings located at 387 170<sup>th</sup> Avenue SW in Clay County as part of the hardship buyout program. The committee authorized Clay County to contract to clean up the property at a cost not to exceed \$40,000.

***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to authorize Clay County to contract for the necessary work to clean up the property located at 387 170<sup>th</sup> Avenue SW, Moorhead, Minnesota, with a budget appropriation not to exceed \$40,000 to be billed to the Diversion Authority. On roll call vote, the motion carried unanimously.**

Corps of Engineers Cost Share Funding Request

Mr. Costin said a request of \$525,000 for the final installment of FY2014 funds was received from the Corps of Engineers. This will be the last installment out of the \$3.35 million total work plan that was approved.

***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to approve the cost share funding request from the Corps of Engineers in the amount of \$525,000. On roll call vote, the motion carried unanimously.**

Escrow Construction Funds for Oxbow Houses

There are six homes in Oxbow in which builders have entered into negotiations or already signed contracts to construct replacement homes. The contractors have been dealing with uncertainty since the injunction was issued to stop construction on the OHB levee. Mr. Brodshaug explained the appraisal and negotiation process used for replacement homes in Oxbow. As a result of the injunction, bankers and builders are concerned and have requested the Diversion Authority Board consider establishing escrow funds for homes under contract to provide assurance the builders will be paid. Mr. Brodshaug said the CCJWRD will negotiate escrow agreements with the builders with the funds to be held in an escrow account at the title company until the closing on the property. Mr. Vanyo said the time frame associated with the accounts will be short-term as four of the homes will close in July, one in August and one in December.

***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to authorize the Cass County Joint Water Resource District to establish and fund construction escrow accounts for contracted work related to six homes in Oxbow. Discussion: Mr. Pawluk does not object to the request, but asked for clarification on the process. Mr. Spiller said there are concerns from home builders due to uncertainty resulting from the injunction and whether the Diversion Authority will be able to disburse funds to builders. Mr. Brodshaug said the intent is to put the funds into an escrow account until the closing is done. On roll call vote, the motion carried with Mr. Mahoney, Ms. Otto, Mr. Vanyo, Mr. Pawluk, Mr. Williams, Mr. Thorstad, and Mr. Olson voting “Yes”; Mr. Piepkorn voting “No”.**

Voucher approval

The bills for the month are with Fredrikson & Byron, P.A. for government relation services; Dorsey & Whitney, LLP 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. Piepkorn seconded to approve the vouchers in the amount of \$5,811,497.32 for June, 2015. On roll call vote, the motion carried unanimously.**

**10. NEXT MEETING DATE**

The next meeting will be held on Thursday, August 13, 2015, at 3:30 PM.

**11. ADJOURNMENT*****MOTION, passed***

**On motion by Mr. Pawluk, seconded by Mr. Williams, and all voting in favor, the meeting was adjourned at 4:40 PM.**