

**FLOOD DIVERSION BOARD OF AUTHORITY
AUGUST 13, 2015—3:30 PM**

1. MEETING TO ORDER

A meeting of the Flood Diversion Board of Authority was held Thursday, August 13, 2015, at 3:40 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 Mike Williams; Fargo City Commissioner Tony Gehrig; Cass County Joint Water Resource District Manager Rodger Olson; Clay County Commissioner Kevin Campbell; and Moorhead City Council Member Nancy Otto. Also present was ex-officio member Gerald Van Amburg, Buffalo-Red River Watershed District.

Staff members and others present: Cass County Administrator Keith Berndt; Interim Fargo City Administrator Bruce Grubb; 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 the minutes from the July 9, 2015, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Campbell 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 2nd Street North, El Zagal, and Mickelson; work on the 4th Street and 2nd Street pump stations; review and comments to the MNDNR on the draft Environmental Impact Statement (EIS), which is scheduled for completion on August 28th; and work to develop the Notice of Intent (NOI) for public-private partnership (P3) for action at the next board meeting.

Corps of Engineers report

Terry Williams provided an update of activities by Corps of Engineers staff which includes continued review and coordination of draft documents with the Minnesota DNR on the MN EIS; review comments and a signed petition from five cemetery sites in response to the draft cemetery mitigation plan; review of in-town levee designs; prepare for visit to Fargo from Lt. General Thomas Bostwick, Commanding General of the Corps of Engineers on September 2nd; continue to refine the project to reduce impacts; 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. He said briefs on the base lawsuit are to be submitted shortly and then oral arguments on the case merits will be scheduled.

An injunction order was issued by the Federal District Court on May 13th 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's request to intervene as a party to the lawsuit with the Diversion Authority was granted. The judge issued a clarification on the injunction order which allows property acquisitions and negotiations to resume in Oxbow.

6. TECHNICAL UPDATE

Recommended Contract Actions Summary

Mr. Spiller discussed two change orders and one new contract as follows:

- Change Order No. 2 with Industrial Contract Services, Inc. for 4th Street pump station project in the amount of \$176,462.97;
- Change Order No. 3 with Industrial Builders, Inc. for 2nd Street downtown levee project in the amount of \$225,056;
- Contract award with Industrial Builders, Inc. for 2nd Street North Floodwall South of Pump Station project in the amount of \$16,184,905.85; and Change Order No. 1 (at no cost) which will allow for the Mid-America Steel and Case Plaza properties to be removed from the contract if negotiations are not reached.

MOTION, passed

Mr. Mahoney moved and Mr. Gehrig seconded to approve the appropriation of funds for Change Order No. 2 with Industrial Contract Services, Inc. in the amount of \$176,462.97; Change Order No. 3 with Industrial Builders, Inc. in the amount of \$225,056; and contract award and Change Order No. 1 with Industrial Builders, Inc. in the amount of \$16,184,905.85 and recommend approval of the appropriation of funds by the Dakota Metro Flood Board for the Diversion Authority. On roll call vote, the motion carried unanimously.

Mr. Spiller discussed one Authority Work Directive (AWD) with URS and Task Order Amendments with Houston Moore Group LLC (HMG) as follows:

- URS AWD-00051 R0—cultural mitigation for five impacted homes that are part of the Mickelson Levee extension project in the amount of \$43,000;
- HMG Task Order 2 Amendment 5—close out task order for a deduction of \$4,001.30;
- HMG Task Order 3 Amendment 5—close out task order for a deduction of \$265.10;
- HMG Task Order 4 Amendment 5—close out task order for a deduction of \$20,209.95;
- HMG Task Order 5 Amendment 4—close out task order for a deduction of \$59,016.55;
- HMG Task Order 7 Amendment 4—extend period of performance to March 31, 2016 at no additional cost;
- HMG Task Order 10 Amendment 6—extend period of performance to March 31, 2016, at no additional cost;
- HMG Task Order 11 Amendment 3— extend period of performance to March 31, 2016, at no additional cost;
- HMG Task Order 14 Amendment 3—extend period of performance to March 31, 2016, at no additional cost;
- HMG Task Order 16 Amendment 2—extend period of performance to March 31, 2016, at no additional cost;
- HMG Task Order 1 Amendment 6—extend period of performance to March 31, 2016, in the amount of \$450,000 for project management;
- HMG Task Order 6 Amendment 7—extend period of performance to March 31, 2016, in the amount of \$11,000 for land management services;
- HMG Task Order 8 Amendment 11—extend period of performance to March 31, 2016 for Work-In-Kind at no additional cost;
- HMG Task Order 9 Amendment 14—extend period of performance to March 31, 2016 in the amount of \$330,000 for hydrology and hydraulic modeling;

- HMG Task Order 13 Amendment 11—extend period of performance to March 31, 2016, in the amount of \$418,000 for OHB levee design and support;
- HMG Task Order 15 Amendment 2—extend period of performance to March 31, 2016, in the amount of \$150,000 for draft operations plan hydrology work;
- HMG Task Order 17 Amendment 1—bidding services for 2nd Street floodwall, El Zagal Phase 2, Park East demolition and Mickelson levee extension in the amount of \$693,000;
- HMG Task Order 19 Amendment 0—Public Private Partnership (PPP) document preparation support in the amount of \$250,000.

MOTION, passed

Mr. Olson moved and Mrs. Scherling seconded to approve the appropriation of funds for an Authority Work Directive with URS in the amount of \$43,000; Task Order Amendments with Houston Moore Group, LLC in the amount of \$2,218,507.50 and recommend approval of the appropriation of funds by the Dakota Metro Flood Board for the Diversion Authority. On roll call vote, the motion carried unanimously.

7. PUBLIC OUTREACH UPDATE

Committee report

Mr. Olson said the Public Outreach Committee did not meet yesterday since various staff and board members attended the Water Topics Overview Committee meeting held in Bismarck. Mr. Vanyo and Mr. Mahoney provided an update on the project to the overview committee.

Daron Selvig from AE2S provided an update on the newsletter and website, which will include information on construction and relocation of homes in Oxbow, and the revised schedule of committee meetings beginning next month

Meeting Schedule for Diversion Committees

Mr. Vanyo said the Finance and Land Management Committees discussed proposed changes to the sequence and schedule of meeting times and locations to allow for input on land acquisitions and other items prior to the CCJWRD and Diversion Authority Board meetings. The Finance Committee approved the schedule with both Finance and Land Management Committees to meet at the Cass County Courthouse. The Land Management Committee approved the schedule but voted to keep the meeting at Fargo City Hall so the meeting may continue to be taped and broadcast for public viewing.

MOTION, passed

Mr. Mahoney moved and Mr. Williams seconded to approve changes to the schedule of committee meetings to meet on Wednesday prior to the Thursday Diversion Authority meetings with the Public Outreach Committee at 1:00 PM at the Cass County Highway Department; Finance Committee at 2:30 PM at a location to be determined; and Land Management Committee at 4:00 PM at Fargo City Hall. Motion carried.

Business Leaders Task Force

Mr. Dawson said the task force met in June. Currently, a communication strategy is being discussed to inform local communities about the facts of the diversion project.

8. LAND MANAGEMENT UPDATE

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

Property Acquisition Philosophies

Mr. Mahoney said the Finance and Land Management Committees both approved a document titled, "Property Acquisition Philosophies"; however, versions that were approved were slightly different. Mr. Mahoney said there was discussion about including language in the document about Minnesota property acquisitions as well.

Eric Dodds from AE2S briefly outlined the philosophies for the board. The mission is “to acquire the property necessary for the FM Area Diversion Project, in compliance with State and Federal guidelines, and in accordance with the philosophy of being friendly, fair and flexible to those whose property is required for the project”. Both the Finance Committee and Land Management Committee discussed guidelines used for properties in the staging area and rural residences that states, “Housing of Last Resort to be determined on a case by case basis. It is anticipated that some of these properties may qualify for this designation.” The Finance Committee approved the philosophies with deletion of the entire paragraph because of concerns with a precedent being set. The Land Management Committee approved the philosophies, leaving the entire paragraph within the document.

Mark Brodshaug, CCJWRD Chairman, said both the Finance and Land Management Committees will make land acquisition recommendations to the CCJWRD. At their meetings today, the Finance Committee approved five out of six property acquisitions in Oxbow, and asked for more information regarding house style change betterments on the sixth property. The Land Management Committee approved all six property acquisitions. The CCJWRD will consider both recommendations and take action at their meeting tomorrow.

Mr. Campbell believes the language regarding housing of last resort should be included in the philosophies; otherwise, it may create issues with residents in the staging area. Ms. Otto said the last sentence of “it is anticipated that some of these properties may qualify for this designation” is unnecessary and could be deleted without losing the intent of the paragraph.

MOTION, passed

Mr. Campbell moved and Ms. Otto seconded to approve the Property Acquisition Philosophies, including the paragraph titled “other considerations” under the staging area and rural residential properties stating “Housing of Last Resort to be determined on a case by case basis” but deleting the last sentence as noted above. On roll call vote, the motion carried unanimously.

Hardship Property in Minnesota

The committee discussed the one hardship property case in Minnesota that was put on hold a few months ago. The committee authorized that staff to talk with the Minnesota DNR to see whether there are issues with moving forward on the acquisition of this property given the MN EIS is not finalized.

MOTION, passed

Mr. Campbell moved and Mr. Williams seconded to authorize staff to talk with the Minnesota DNR regarding the hardship property in Minnesota to ensure there are no issues with moving forward on the acquisition process. On roll call vote, the motion carried unanimously.

CCJWRD update

A handout was provided to the board regarding land acquisitions completed through July 31, 2015, which includes completed acquisitions, budget figures, and completed negotiations. Relocations on the Park East apartment complex are complete and the building is vacant.

9. FINANCE UPDATE

Committee report

The Finance Committee met this morning. Kent Costin, Fargo Finance Director, said the total disbursed on the project to date is \$137 million. The committee discussed the following items:

Voucher approval

The bills for the month are with Erik R. Johnson & Associates, Ltd. for legal services; U.S. Geological Survey for river level information; CCJWRD for costs associated with right of entry work, in-town levees, OHB ring levee, Diversion Project Assessment Committee (DPAC) work, OHB levee, and Oxbow Country Club golf course construction; Ohnstad Twichell, P.C. for legal services; and Dorsey & Whitney, LLP for legal services.

The committee removed \$93,810.46 regarding access issues for further review.

MOTION, passed

Mr. Olson moved and Mrs. Scherling seconded to approve the vouchers in the amount of \$2,082,560.71 for July, 2015. On roll call vote, the motion carried unanimously.

Corps of Engineers Funding

The committee approved additional funding for the Corps of Engineers since they did not receive funding in the FY2016 work plan. The funds will allow essential work to continue in preparation of a 2016/2017 construction start. Mr. Olson asked about the oversight of dollars spent by the Corps. Mr. Berndt said a list of tasks was submitted by the Corps to be accomplished. Ms. Williams said as project manager for the Corps, she provides the oversight on the activities and costs.

MOTION, passed

Mr. Mahoney moved and Mr. Williams seconded to authorize up to \$3,579,000 in funding for the Corps of Engineers to complete planned 2016 work necessary for a 2016/2017 construction start. Discussion: Mrs. Scherling asked if a series of payments will be made to the Corps. Mr. Berndt said the Diversion Authority has a 5% requirement to pay to the Corps and these funds will go toward that cost. Also, if Federal funding is received, payments to the Corps will be discontinued. On roll call vote, the motion carried unanimously.

CH2M Contract Amendment – Task Order No. 5 Amendment No. 2

The committee approved an amendment to the contract with CH2M which increases their fees from \$310,000 to \$425,000 per month through February 2016. Mr. Berndt said the additional dollars will assist in preparation of P3 procurement documents and assistance with additional land purchases.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve Task Order No. 5 Amendment No. 2 with CH2M and increase fees in the amount of \$425,000 per month. Discussion: Mr. Olson asked about oversight on the dollars spent for services with CH2M. He said the board needs to consider hiring a project manager to oversee the project. Mr. Vanyo said the Finance Committee also discussed this issue. On roll call vote, the motion carried unanimously.

Escrow Accounts for Oxbow Homes

Mr. Costin said the committee approved two escrow construction accounts be established by the CCJWRD. There were four requests received but the committee only approved the two that were submitted prior to clarification on the OHB injunction ruling.

Fredrikson & Byron, P.A. Phase 2 Agreement

Mr. Costin said the committee approved Phase 2 of an agreement with Fredrikson & Byron, P.A. for public relations services. The agreement increases the cost from \$3,000 to \$3,500 per month.

MOTION, passed

Mr. Campbell moved and Ms. Otto seconded to approve Phase 2 of the agreement with Fredrikson & Byron, P.A. in the amount of \$3,500 per month. On roll call vote, the motion carried unanimously.

10. NEXT MEETING DATE

The next meeting will be held on Thursday, September 10, 2015, at 3:30 PM.

11. ADJOURNMENT

MOTION, passed

On motion by Mr. Williams, seconded by Ms. Otto, and all voting in favor, the meeting was adjourned at 5:37 PM.