

**FLOOD DIVERSION BOARD OF AUTHORITY  
NOVEMBER 12, 2015—3:30 PM**

**1. MEETING TO ORDER**

A meeting of the Flood Diversion Board of Authority was held Thursday, November 12, 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 Mike Williams; Fargo City Commissioner Melissa Sobolik; Cass County Joint Water Resource District Manager Mark Brodshaug; 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 Mr. Williams seconded to approve the minutes from the October 8, 2015, meeting as presented. Motion carried.**

**3. AGENDA ORDER**

***MOTION, passed***

**Mr. Mahoney moved and Mr. Campbell 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 and the bid schedule for 2016; ongoing construction on 15 homes in Oxbow; preparation for the 404 and dam safety permits; and development of procurement documents for the Public-Private Partnership (P3). Mr. Spiller said the public comment period closed on the draft MN EIS and 340 valid comments are currently under review by the Minnesota DNR.

*Corps of Engineers report*

Terry Williams provided an update of activities by Corps of Engineers staff which includes continued review of in-town levee designs; final technical review of the diversion inlet structure; completion of flume study on the Maple River aqueduct; assist with development of RFP and reference documents on alternate financing and split delivery plan; and continued design of southern embankment elements.

**5. ADMINISTRATIVE/LEGAL UPDATE**

*P3 Legal Services*

Attorney John Shockley said Request for Qualifications (RFQ's) were sent out for P3 legal services. A subcommittee is in the process of narrowing down the candidates and is looking for a firm with significant P3 experience. He said once a firm is selected, a specific scope of services will be defined.

*Lawsuit update*

Attorney Erik Johnson provided an update regarding the lawsuit filed by the Richland-Wilkin Joint Powers Authority. A hearing is scheduled for Monday, November 16<sup>th</sup> at 10:00 AM at the Federal

Courthouse in Minneapolis to hear final arguments from both sides on the merits of the lawsuit. He said the court will most likely take the case under advisement after the hearing.

Amendment to Oxbow MOU

Mr. Johnson said the Diversion Authority and Oxbow entered into a Memorandum of Understanding (MOU) in 2013 to deal with property transactions. For consideration today is an amendment to address lot sale proceeds. The Diversion Authority will receive 100% of proceeds from replacement lot sales to Oxbow residents whose existing homes and lots were acquired by the Diversion Authority and 75% from replacement lot sales to anyone else with 25% going to the City of Oxbow. The MOU has been approved by Fargo, Cass County, CCJWRD and Oxbow.

***MOTION, passed***

**Mr. Mahoney moved and Mr. Brodshaug seconded to approve the amendment to the Oxbow Memorandum of Understanding. On roll call vote, the motion carried unanimously.**

**6. TECHNICAL UPDATE**

Recommended Policy Actions

Mr. Spiller said the final draft of the detention policy funding manual is complete, which outlines criteria to qualify for upstream retention funding through the Diversion Authority. Mr. Vanyo said the policy outlines the process and procedures for project sponsors to apply for funds.

***MOTION, passed***

**Mr. Williams moved and Mr. Campbell seconded to approve the FMDA Detention Funding Policy Manual. Motion carried.**

Recommended Contract Actions Summary

Mr. Spiller discussed Utility Relocation Agreements, Change Orders, Authority Work Directives and Retention Phase I Funding as follows:

Utility Relocation Agreements

- Century Link—relocation along 1<sup>st</sup> Avenue in Fargo and under the Red River as part of the 2<sup>nd</sup> Street floodwall project in the amount of \$2,586,742.
- Xcel Energy—transformer and distribution lines as part of the 4<sup>th</sup> Street pump station and floodwall project in the amount of \$65,613.11.

Change Orders

- Industrial Builders, Inc. Change Order No. 4—addition of baffle wall to wet well, cut and leave sheeting, and 2<sup>nd</sup> Street North closure in the amount of \$238,871.75.
- ICS Change Order No. 3—deduct exterior electrical work, installation of fence, bollards and lighting at Fargo High Rise at a cost savings of \$10,570.93.
- Industrial Builders, Inc. Change Order No. 3—change water main size, paint traffic signal poles, and revise traffic control plan in the amount of \$96,806.17.

Authority Work Directive

- HMG AWD-00052—design and permitting services during bidding and construction of Park East demolition and Howard Johnson Hotel, Shakey's and Fargo Public Schools building demolition in the amount of \$50,000.

Retention Phase 1 Project Funding

- Stoney Creek Retention for \$86,000
- Brandrup 9 Retention for \$32,980
- Redpath Retention for \$90,000
- Western 32 Retention for \$22,400

***MOTION, passed***

**Mr. Mahoney moved and Mr. Williams seconded to approve the appropriation of funds for the above listed Utility Relocation Agreements, Change Orders, Authority Work Directive, and Retention Phase 1 Funding; 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. Campbell said the Public Outreach Committee met on November 10<sup>th</sup> and discussed community outreach efforts including a presentation given to Horace Lions Club and Moorhead Business Association (MBA). Mr. Campbell said the MBA has officially endorsed the diversion project. Mr. Vanyo and Mr. Mahoney gave a project update to the North Dakota Water Topics Overview Committee earlier this month and also discussed the MN EIS and NDSU Ag Study. The diversion project will be discussed at the Minnesota Association of Floodplain Managers' annual conference next week, North Dakota State Water Convention in December, and Red River Basin Commission conference in January.

Daron Selvig from AE2S provided an update on the newsletter and website. The new version of the website went live in October, which is fully mobile compatible and organized to provide better access to information on the site. He said for the first time, the website has more mobile users than desktop users.

***Business Leaders Task Force***

Mr. Dawson said a press conference was held on October 14<sup>th</sup> before the MN EIS public hearing, which some members attended. The task force continues to work on marketing strategies, including a new bumper sticker that has been developed.

**8. LAND MANAGEMENT UPDATE*****Committee report***

Mr. Mahoney said the Land Management Committee met on November 10<sup>th</sup> and approved seven land acquisitions. One hardship acquisition for a property in Moorhead was tabled because of concerns with the comparable properties used to determine the amount offered for the property. Mr. Campbell encouraged this property be reviewed again as soon as possible and does not believe the purchase conflicts with the MN EIS process. Mr. Brodshaug said the acquisition team is looking for other comps, and the legal team is reviewing it as well.

***CCJWRD update***

Mr. Brodshaug referred to the handout regarding land acquisitions completed through October 31, 2015, which includes completed acquisitions, budget figures, and completed negotiations. He said fifteen homes are under construction and six homes have been completed in Oxbow; Sidestreet Bar & Grille has been relocated and acquisition of the Howard Johnson is complete; bids were awarded for the demolition of the Park East Apartments and for two homes in Oxbow; critical in-town property negotiations continue with Fargo Public Schools, Mid-America Steel, Case Plaza, Shakey's and MEPS properties.

Mr. Brodshaug said the CCJWRD hired a private security company to help control vandalism at the Park East Apartments and Howard Johnson properties in Fargo. He said the CCJWRD also discussed the need for private security and increased patrol in the Oxbow area until homes are demolished or moved. The Diversion Authority has been reimbursing the CCJWRD for security costs associated with the Fargo properties. Mr. Vanyo suggested the issue of whether to hire security for Oxbow properties be discussed by the Finance Committee.

**9. FINANCE UPDATE**Committee report

Michael Montplaisir Cass County Auditor, said the Finance Committee met on November 10<sup>th</sup>. The committee approved seven property acquisitions in Oxbow. One hardship property acquisition was not approved and will be considered at a later date after additional information is obtained on comparable properties. He said with two months of the fiscal year remaining, the Diversion Authority has spent \$173.7 million of the \$224 million budget. The committee discussed the 2016 budget and different financing options for next year. He said about \$60 million of loan and sales tax funds are available. The committee received a draft of the cost accounting management system that will connect data between the City of Fargo and CCJWRD systems to improve the timeliness of data and provide more complete project accounting.

Voucher approval

The bills for the month are with Fredrikson & Byron, P.A. for government relations services; U.S. Army Corps of Engineers for FY15/16 cost share funding; Aevenia for 2<sup>nd</sup> Street project fiber relocation; Dorsey & Whitney, LLP for legal services; Erik R. Johnson & Associates, Ltd. for legal services; 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; and Clay County Highway Department for demolition and clean of property located at 387 170<sup>th</sup> Avenue SW in rural Moorhead.

***MOTION, passed***

**Mr. Mahoney moved and Ms. Sobolik seconded to approve the vouchers in the amount of \$6,608,089.68 for October, 2015. On roll call vote, the motion carried unanimously.**

**10. CHANGE IN NEXT MEETING DATE**

The next meeting will be held on Thursday, December 17, 2015, at 3:30 PM.

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

**On motion by Ms. Sobolik, seconded by Mr. Williams, and all voting in favor, the meeting was adjourned at 4:38 PM.**