

**DIVERSION AUTHORITY
Land Management Committee
Thursday, May 10, 2012
Fargo City Commission Room**

Committee Members Present: Chair Fargo Mayor Dennis Walaker, Oxbow Mayor Jim Nyhof, Cass County Commission Representative Darrell Vanyo, Clay County Commission Representative Jon Evert, Cass County Joint Water Resource District Representative Rodger Olson, Buffalo-Red River Watershed District Manager Gerald VanAmburg, Fargo City Administrator Pat Zavoral, Cass County Administrator Keith Berndt, Moorhead City Administrator Michael Redlinger, Clay County Administrator Brian Berg, Fargo Director of Engineering Mark Bittner, Moorhead City Engineer Bob Zimmerman, Clay County Engineer David Overbo, Tom Waters - CH2M (ex-officio).

Others present: U.S. Army Corps of Engineers Project Manager Brett Coleman, U.S. Army Corps of Engineers Project Manager Terry Williams, Jon Diebel - CH2M, Eric Dodds - AE2S, Mark Lambrecht - AE2S, Lee Beauvais - Moore Engineering.

Approve April 12, 2012 minutes:

Darrell Vanyo moved the minutes of the April 12, 2012 meeting be approved as written. Jon Evert seconded the motion. All the members voted aye and the motion was declared carried.

Land Management Plan update:

Jon Diebel presented highlights of the draft Land Management Plan and asked committee members to begin to review the document and share comments and feedback. He said the six sections are: Scope of Land Acquisition Requirements, Federal Acquisition Process Summary, Potential Variations to the Federal Process, Non-Acquisition Related Impacts and Land Management Communication Plan. He said the goal is to come out with the first version of the plan by the June or July meeting.

In response to a question from Dennis Walaker about whether the letter from John Albrecht mailed to the cities of Fargo and Moorhead was any cause for concern, Tom Waters stated it was a routine letter required by regulation for notification about risks associated with acquiring real estate interest in advance of the Project Partnership Agreement (PPA) being fully executed and prior to approval of the final design specifications.

In answer to a question from Pat Zavoral about requirements to purchase land where more than 3' of water would be stored and then having to lease it back, Jon Diebel said the feasibility study was not clear on that. He said additional opinion was sought and it was determined all agricultural land could be farmed with only flowage easements purchased, which is a huge benefit. He said the goal is to keep as much land in production as possible.

Terry Williams said the method presented by the Corps in all the public meetings was that agricultural land is paid a flowage easement and structures are to be bought out. She said the Authority does not have to make an offer to purchase agricultural land.

Tom Waters said he would request documentation from the Corps stating that agricultural land is not required to be purchased.

Jon Diebel said there still needs to be more study for the flow through town options. That option significantly changes the frequency of operation of the channel and the cost, he said, and the reduced affect on the storage area is a benefit. He said the Agricultural Advisory Subcommittee has a number of representatives from different communities and industries and will be tasked to look at approaches that will benefit the community and reduce the cost for the Diversion Authority. He said there are options for paying for flowage easements such as in a lump sum, over time, compensation for the years the diversion operates, the years the diversion affects crops, and other ways. It will be a crucial next step to evaluate those options, he said.

Brett Coleman pointed out a distinction when using the term “impacts.” He said when flows are allowed through town or in heavy rain events, there is potential for farmers to have impacts; however, payments being discussed are for impacts only when the project is actually in operation.

Pat Zavoral said that is likely the most difficult piece of the land management issue and it is important for property owners to understand that distinction. Once the PPA is signed, he said, there are expectations in Oxbow and other areas that land purchases outside the right-of-way acquisitions will begin; yet, according to the Corps, it would not be done till the diversion is in operation, which could be 8-10 years.

Proposed Membership for the Agricultural Advisory Subcommittee, Early Acquisition Policy Subcommittee and Hardship Policy Subcommittee Approved:

Dennis Walaker asked the group to review the lists of proposed members who have agreed to serve on subcommittees.

Early Acquisition Subcommittee:

Purpose: Assist in early acquisition policy development and implementation of early acquisition policies; reports to the Land Management Committee.

Proposed members: Pat Zavoral (Chair), Brian Berg, Mike Redlinger, Tim Solberg, Bob Zimmerman, Brian Neugebauer, Nancy Morris, Jon Diebel and Eric Dodds.

Hardship Review Committee:

Purpose: Review submitted requests under the hardship policy and make recommendations to the EASC on which applications meet the policy requirements. The Hardship Review Committee reports to the EASC.

Proposed members: Brian Berg (Chair), Keith Berndt, Dr. John Baird, Chip Ammerman, Mike Montplaisir, Nancy Morris and Eric Dodds.

Agricultural Advisory Subcommittee:

Purpose: Assist in the development of policies and procedures to mitigate project related impacts to agriculture. The Agricultural Advisory Subcommittee coordinates policy with AAS and reports to the Land Management Committee.

Proposed members: Rodger Olson (Chair), Pat Zavoral, Jon Evert, Mark Bittner, Dave Overbo, Mark Askegaard, Matt Ness, Mark Brodshaug, Mark Ottis, Scott Nipstad, Tyler Odegaard, Jon Diebel, and Mark Lambrecht.

Chair Dennis Walaker said there is flexibility on all the committees to add to the membership or add members ad hoc, such as in an appeal situation.

Darrell Vanyo moved the members of the three subcommittees be approved as presented. Mark Bittner seconded the motion. All the members voted aye and the motion was declared carried.

ROE Team Update and Cultural Resources Easement Acquisition Status:

Mark Lambrecht said at the March meeting the legal staff of the Ohnstad Twichell Law Firm explained access to private property accomplished through general ROE (Right of Entry). He said lately the need to enter is more specifically for shovel type access, looking for cultural artifacts. This requires more time and is invasive work, he said, and rather than push the limits on the ROE access, he proposed moving forward with temporary easements to conduct the Phase 2 cultural resources testing. He said there are currently only about a half dozen parcels and may be only 12 to 20 over the whole breadth of the project; however, a policy is needed to conduct this activity. He said the first will occur after harvest this fall to lessen the affect on agricultural use of the land. The guidelines are what the legal team will use in preparation of the easement, not the actual easement document, he said, and the provisions are easily understood and not controversial. In their April Meeting, he said, the Joint Water Resource Board moved to adopt these guidelines as guiding principles for obtaining easements. He said this committee needs to be aware of the compensation guideline. The Corps urges caution not to offer compensation based on acreage, he said, instead there is a lump sum of \$1,000 for the privilege of access to the land and \$250 for each 1 meter by 1 meter excavation, plus actual cost of crop damage or other cleanup.

In answer to a question from Jon Evert about whether the definition of cultural artifacts pertains strictly to Native American history, Mr. Lambrecht said sites may be European as well, although the potential sites identified to date are early Native American burial grounds, encampments, and the like. There are guidelines for cultural resources, he said, and even bridge structures of unique or unusual style may have historical components and historic cemeteries will require evaluation. He said the emphasis when dealing with cultural artifacts is first avoidance and the second method may be relocation, it is on a case-by-case-basis.

Jon Evert moved the guiding principles and compensation guidelines be approved as presented. Brian Berg seconded the motion. All the members voted aye and the motion was declared carried.

Other business:

Tom Waters reported that last month the hardship policy was approved subject to legal review and that review has been completed and the policy is now being implemented.

Eric Dodds stated a new hardship application form has been implemented to provide consistency and completeness. The suggested path forward, he said, is to be sure all applications are complete and then submitted to the Hardship Review Committee and the Program Administrator. The Hardship Review Committee will schedule a public meeting to formally consider the applicants and prepare an early buy-out process per the policy. He said once that list is developed, estimated costs for those properties should be established and then actual appraisals conducted with the appraised value brought back to the full board for consideration.

Keith Berndt said of the five applications received to date, two are medically related and in the eligible area, one is financially related and in the eligible area and two are medical related but not in the eligible area.

In answer to a question from Darrell Vanyo about whether there were some means, such as a release or statement, to insure people being discussed have given approval to have their health discussed to avoid conflict with HIPAA, Eric Dodds said the topic has been discussed with legal counsel and the forms clearly state that information is public information under open records law. He said there is a physician's statement required which was included specifically for this reason and the Hardship Review Committee would accept the physician's statement and no further disclosure should be needed, he said.

Darrell Vanyo said while there is not a specific timeframe identified for responses to hardship applications, now that the committee is set up, it is likely a first meeting will happen within 30 days to at least address the five applications received. To keep the communications open, he said, those that do not qualify can be notified and those that do qualify can be informed the process is moving ahead.

In response to a question from Mark Bittner about whether there was a decision on the disposition of acquired property, Pat Zavoral said the sense of staff is that it is preferred the maintenance of acquired property would become the responsibility of the incorporated area or county, not the Diversion Authority. Having a memorandum of understanding with the incorporated entities has been discussed to deal with the details, he said, and more discussion will be needed.

Jon Diebel gave an overview of outreach meetings planned over the next couple months with the lending community and assessors to emphasize the federal acquisition process and work to clear up confusion.

Pat Zavoral said work is being done on putting together a policy on the use of the \$25M pledged for upstream retention and he requested more direction from this committee prior to adoption. He said a draft could be brought to this committee for review before it goes out, it could go to the Red River Retention Authority first or input from the Minnesota DNR and ND State Water Commission could be requested. He said it is suggested that the \$25M pledged for upstream retention be allocated 85% to projects

and 15% for plans or studies, a piece of that being for regional studies. He said if it has more impact on this project, the pay would be more and if there is less impact, the pay would be less.

Rodger Olson agreed and said it could be similar to an assessment district, the more benefits, the more the pay. He suggested working through the Red River Retention Authority, as there are joint agreements in both Minnesota and North Dakota.

Jon Evert said it would be appropriate to go to the Red River Retention Authority and ask how they would spend \$25M if they received it.

Darryl Vanyo said he agrees with payments according to the benefit ultimately received in reducing water in the metro area. He said he supports making the Red River Retention Authority aware of the possible funding and requesting recommendations from them.

Next meeting:

The next meeting will be held Thursday, June 14, 2012 at 1:00 p.m.

The meeting was adjourned at 2:03 o'clock p.m.