

**DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Thursday, July 11, 2013
2:00 p.m.**

Committee Members Present: 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 Representative Gerald Van Amburg, Fargo City Administrator Pat Zavoral, Cass County Administrator Keith Berndt, Moorhead City Administrator Michael Redlinger, Clay County Administrator Brian Berg, Moorhead City Engineer Bob Zimmerman, Fargo City Engineer April Walker (Alternate), Tom O'Hara (Ex-Officio).

Others Present: Eric Dodds – AE2S, U.S. Army Corps of Engineers Project Manager Terry Williams, Lee Beauvais – Moore Engineering, Sean Frederick – Ohnstad Twichell P.C.

The meeting was called to order by Dennis Walaker.

Agenda Review

There were no additions or amendments to the agenda.

Approve June 13, 2013 Minutes

Darrell Vanyo moved the minutes of the June 13, 2013 meeting be approved as written. Jon Evert seconded the motion. All the members voted aye and the motion was declared carried.

Hardship Acquisition Program Update

Eric Dodds said no new applications have been received since last month. He said two properties have been acquired and the closing for a third acquired property is scheduled later this month. Negotiations continue on the fourth property, he said, and an appraisal has been ordered for a fifth property.

Oxbow Memorandum of Understanding (MOU) Update

Jim Nyhof said in a poll taken of Oxbow residents, 61 voted to move forward with the Memorandum of Understanding (MOU) and 22 were opposed. He said the Oxbow City Council reviewed the MOU and approved it with minor changes in the language.

Tom O'Hara said changes will be incorporated into the MOU and it will come through this committee to the Diversion Authority next month for final action.

Agricultural Policy Subcommittee Report

Eric Dodds said at the July 9th Agricultural Policy Subcommittee Meeting topics discussed were staging area inundation maps and animations, flowage easements,

and crop insurance. He said there was good discussion on how the project and staging area will operate and the impact durations have on crop insurance and flowage easements. He said it was proposed to conduct some appraisals early to help define and estimate values for flowage easements; however, not all members saw an urgency to establish such a process and the topic was tabled. He said a crop insurance expert was in attendance at the meeting and was able to answer many questions. He said if this committee agrees, his team will work with a couple members of the Agricultural Policy Subcommittee on drafting a proposal to engage a private or independent insurance or actuarial agent to better define the risks and associated rates for crop insurance in the staging area.

Rodger Olson said the subcommittee is not looking at a replacement for crop insurance; it is looking at a rider or addition to the existing federal crop insurance. He said that if the project is operating and causes harm, the Diversion Authority could be liable for losses and a rider could possibly be purchased to cover such losses. He said subcommittee members were more secure with a rider on federal crop insurance than with self insurance.

Jon Evert moved to proceed with a proposal to work with a private or independent insurance or actuarial agent to better define the risks and associated rates for crop insurance in the staging area. Keith Berndt seconded the motion. All the members voted aye and the motion was declared carried.

Land Management Services Plan

Eric Dodds said this project will require a fair amount of land acquisition. He said one of the members of the Joint Powers Agreement, the Cass County Joint Water Resources District (CCJWRD), has the legal right to acquire land and to use condemnation if possible. To date, he said, the right of entry process has been routed through the Joint Water Board and hardship acquisitions have been routed through the Diversion Authority, and that has worked well. The CCJWRD will likely have a larger role in land activities in the future, he said, with more land purchases in areas like the ring levee and portions of the channel.

Rodger Olson said quick take and eminent domain are two ways of acquiring land for projects of public use granted by the State Legislature. He said the quick take option gives a project an opportunity to go forward while negotiations continue with a landowner who is adverse to selling. Eminent domain can be used when an agreement cannot be reached, he said, and if eminent domain processes are not followed from the start, there will be challenges in court.

Sean Frederick said the Joint Water Board is comfortable with the hardship acquisition process. He said voluntary acquisitions are a separate issue from eminent domain. A uniform process is needed for negotiations of property that must be acquired, he said, with work underway to establish a formal process treating all property the same. He said the Corp's rules and the Land Management Plan will have to be incorporated into the process, which will need to be followed through each step of the acquisition, including the negotiation and appraisal phases. The Joint Board is more comfortable

having contracts that establish them as the sole entity to conduct eminent domain, he said, and ultimately, ownership of all the property acquired will be turned over to the Diversion Authority. He said the process needs to be put in place prior to the appraisals being done for the Oxbow area and it will be prepared in time for next month's meeting.

In response to a question from Pat Zavoral about whether it has officially been determined that the Joint Water Resources Board will be doing the acquisitions, Tom O'Hara stated at last month's Diversion Authority Board meeting it was approved to have the Joint Board do the land acquisitions for Oxbow; however, it has not been determined outside of that scope.

Right of Entry (ROE) Status and Cultural Resources Easement Acquisition Update

Lee Beauvais said a right of entry survey being done is for a parcel needed for a Phase 1 Cultural Study in an area where design is being finalized, and another is in process and is expected to end up in court. Problems were encountered last month with a tenant allowing access for a Phase 1 Cultural Study, he said, and efforts are being made to contact the actual owner. He stated several sites for Phase 2 Cultural surveys that did not get completed last year will be finished once the crops are off and easements are in place and one non-agricultural Phase 2 study will be done soon. He said the next area coming up for ROE is the Oxbow area and the necessary documentation and parcel information is being compiled

Terry Williams said the Corps is beginning to determine which Oxbow parcels rights of entry will be needed on. Included will be the levee footprint, any area that needs relocation or demolition types of things performed, interior drainage and cultural surveys, she said.

The next meeting will be Thursday, August 8, 2013 at 2:00 p.m.

The meeting adjourned at 2:25 pm.