

**DIVERSION AUTHORITY  
Land Management Committee  
City Commission Room  
Fargo City Hall  
Thursday, June 13, 2013  
2:00 p.m.**

Committee Members Present: Oxbow Mayor Jim Nyhof, Clay County Commission Representative Jon Evert, Cass County Joint Water Resource District Representative Rodger Olson, Fargo City Administrator Pat Zavoral, Cass County Administrator Keith Berndt, Moorhead City Administrator Michael Redlinger, Clay County Administrator Brian Berg, Fargo City Engineer April Walker (Alternate), Tom O'Hara (Ex-Officio).

Others Present: Eric Dodds – AE2S, Lee Beauvais – Moore Engineering, Fargo City Attorney Erik Johnson, Sean Frederick – Ohnstad Twichell Law Firm.

The meeting was called to order by Jon Evert.

Agenda Review

Keith Berndt asked that three items be added to the end of the agenda for discussion: acquisitions, Hayden Heights and farmland for relocation.

Approve May 9, 2013 Minutes

Brian Berg moved the minutes of the May 9, 2013 meeting be approved as written. Mike Redlinger seconded the motion. All the members voted aye and the motion was declared carried.

Upstream Structure Impacts Summary

Lee Beauvais outlined the draft Summary of Upstream Property Impacts Table. He said the table shows the number of properties in each county requiring federal mitigation, those potentially requiring mitigation, and those with no impact. He said the Corps will analyze properties for depth, duration and frequency of impacts to make a determination on mitigation requirements. He said of the 66 requiring federal mitigation, the 8 classified as "other" property are unique, such as having a cell tower, being abandoned or a business.

Eric Dodds said this report was developed in response to inquiries at the last Land Management Committee Meeting about how many properties are affected upstream. Those listed as requiring federal mitigation exclude properties in Oxbow/Hickson/Bakke and Comstock, he said.

Tom O'Hara said having those classified that have a potential for mitigation (one foot of inundation or less) will be beneficial if the Diversion Authority were to decide in the future to mitigate beyond what federal guidelines require. Another benefit is that having this database will assist in determining costs, he said.

In response to a question from Jon Evert about the reasoning for including those with no impact, Mr. O'Hara said it is helpful to look at the whole geographic area, as well as to demonstrate that a majority are not impacted.

Cass County Commission Representative Darrell Vanyo present.

Darrell Vanyo presiding.

#### Staging Area Mitigation Timeline

Tom O'Hara shared a chart outlining the staging area mitigation timeline. He said this builds on the database and outlines required mitigation over time from now up until 2017. He said the trigger for most of the required mitigation is when the southern embankment work begins, which cannot start until there is federal authorization, appropriation and a PPA put in place. The ongoing actions now, he said, are the design and construction of the Oxbow/Hickson/Bakke levee, some design concept work being done for Comstock, hardship mitigation acquisition and the ongoing FEMA buyouts. He said once the Oxbow/Hickson/Bakke levee is in place, and there is room established for relocation, offers would be expanded to those willing sellers of North Dakota rural impacted property to relocate to a protected area. After the Comstock design gets to the same stage, he said, that offer could be made to Minnesota residents that are impacted.

#### Hardship Acquisition Program Update

Eric Dodds said to date ten applications have been received. He said two properties have been acquired, and the closing on a third is scheduled in July. A property management firm is managing the rental of the first two properties, he said. Two applications are pending, he said, one is in negotiations with the property owners and the application for the second was approved by the Hardship Review Committee in May. He said an appraisal on that property, which is in rural Clay County and assessed at \$192,300, is recommended. He said the Corps has offered to conduct analysis on properties scheduled for hardship acquisition in the event that acquisition requirements are not clear.

Jon Evert moved to proceed with an appraisal on the property. Jim Nyhof seconded the motion. All the members voted aye and the motion was declared carried.

#### Oxbow Memorandum of Understanding (MOU)

Erik Johnson reviewed a draft MOU and spoke about proposed revisions to be incorporated to add clarity to the document. He said the changes are based on discussions at the Finance Committee meeting, at the staff level and with City of Oxbow representatives. He said the proposed revisions include:

- Clarifying that Oxbow will have an opportunity to comment on the Corps construction MOU.
- Base the offset for loss of tax base on replacement lots rather than a comparison of the tax base of the entire city.
- Adding language supporting indemnification for Oxbow.

- Special assessment for maintenance will be in the same manner for Oxbow as other lands benefited by the project.
- Clarification that drainage and pump stations service the entire area protected by the levee.
- The Diversion Authority will install infrastructure for both replacement lots and relocation lots.
- Concepts for loan arrangements if the Diversion Authority advances funds for Oxbow to enter into purchase agreements for replacement land.
- The same interim rental arrangements offered to homeowners will be made available to the Country Club.
- Turnover of the Oxbow/Hickson/Bakke levee will only occur after 53 years if the Authority or successor is not in existence.
- Where levees are used for golf courses or park land, the Authority is responsible for maintenance of only the functional area of the levee.

Erik Johnson suggested this Committee approve the Memorandum of Understanding, with the proposed revisions, and forward it to the Diversion Authority. He said the MOU is still subject to approval by the Oxbow City Council.

In response to a question from Jon Evert about whether there would be another agreement with Hickson, Bakke or Pleasant Township, Keith Berndt said while a similar request would be considered, so far there seems to be a concern on their part that if an agreement were made it could appear to be an endorsement of the project and they remain opposed.

Darrell Vanyo said there is a sense of urgency to get the MOU done in order to take the necessary steps and not hold things up. Attempts will continue to be made to address issues with Bakke and Hickson, he said.

Pat Zavoral moved approval of the Memorandum of Understanding with the suggested changes. Keith Berndt seconded the motion. All the members voted aye and the motion was declared carried.

#### Agricultural Policy Subcommittee Report

Eric Dodds said the next meeting, scheduled for July 9th, will include discussion on crop insurance and flowage easements.

#### Right of Entry Status & Cultural Resources Easement Acquisition Update

Lee Beauvais said Rights of Entry are being finalized with two land owners in areas identified for Phase 1 Cultural and work is being done on an easement for Phase 2 Cultural.

#### Other Business

Keith Berndt said there have been ongoing discussions with the Cass County Joint Water Resource District on the mechanics of acquisition for the project overall, as well as the Oxbow land. He said he met with their Board this morning and inquired if they would take the lead on acquisitions and received an affirmative response.

In response to a question from Darrell Vanyo on the issue of ownership, and whether it

would be the Diversion Authority that would then be the owner, Sean Frederick said the Joint Water Resource District has condemnation authority, which will be significant. He said the legal team will continue to work through it and would like everything to be consistent in terms of voluntary acquisitions, as well as condemnations. He said actual ownership is a sensitive issue when property is condemned.

Pat Zavoral moved to recommend to the Diversion Authority that the Joint Water Resource Board act on behalf of the Diversion Authority to purchase the right of way for the diversion in Oxbow. Keith Berndt seconded the motion. All the members voted aye and the motion was declared carried.

Keith Berndt said he was approached by a property owner in Hayden Heights. He said there about 30 lots in that subdivision and the Authority owns about 21 of them. The restrictive covenants in Hayden Heights requires the establishment of a property owners association, and as the majority owner, the Authority would be in a position to play an active role. He said he would recommend the appointment of a representative and unless someone is interested, he is willing to serve in that role.

Darrell Vanyo thanked Mr. Berndt for his offer and asked that he report back to the committee.

Keith Berndt said he visited with an individual contemplating selling 300 acres of agricultural land south of Fargo. He said one of the three parcels is adjacent to the diversion channel which could be an opportunity to acquire the rest. He said it has been suggested that the Diversion Authority may look for large amounts of farmland in the future to be able to offer relocation as an option to farmers. He said having land available, a farmer could do a land swap as an option rather than an outright buyout.

Darrell Vanyo said a response is necessary and it would be prudent to look at where the property is and gather more information. He asked Mr. Berndt to respond on behalf of the Committee, gather additional information and report back.

In response to a question from Pat Zavoral about whether the MOU with Oxbow needs to be signed by all six entities in the Joint Powers Agreement, Erik Johnson said the current draft has all six member entities as cosignatories, meaning they are as responsible as the Diversion Authority to see that obligations of the agreement are carried out. He said there is language in the Joint Powers Agreement that says if one is liable, the others agree to make that party whole; however, he said, it is possible to leave the Minnesota entities out and have this MOU signed by just the North Dakota entities. He said it could be addressed in a separate action from the Diversion Authority.

Mike Redlinger said from his perspective it seems logical moving forward to clarify that in these procedural matters that are local in nature and outside of state boundaries, and because the Joint Powers Agreement is in force, that the entities of that state sign rather than going to all the entities to approve.

Jim Nyhof said he is comfortable with the North Dakota entities being the parties in the agreement, along with the Diversion Authority.

Pat Zavoral moved the North Dakota entities be the signees on the Oxbow Memorandum of Understanding. Jon Evert seconded the motion. All the members voted aye and the motion was declared carried.

The next meeting will be Thursday, July 11, 2013 at 2:00 p.m.

The meeting adjourned at 3:04 pm.