

**DIVERSION AUTHORITY  
Land Management Committee  
City Commission Room  
Fargo City Hall  
Thursday, August 14, 2014  
2:00 p.m.**

Committee Members Present: Moorhead City Council Member Heidi Durand, 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, 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.

Others Present: Eric Dodds - AE2S; Terry Williams and Brett Coleman - US Army Corps of Engineers; Mark Brodshaug - Cass County Joint Water Resource District; Lyndon Pease - Moore Engineering; Paul Breen - Oxbow Project Manager; Rocky Schneider - AE2S.

The meeting was called to order by Darrell Vanyo.

Agenda Review

There were no additions or amendments to the agenda.

Approve July 10, 2014 Minutes

Brian Berg moved the minutes from the July 10, 2014 meeting be approved. Rodger Olson seconded the motion. All the members voted aye and the motion was declared carried.

CCJWRD Land Management Summary

Mark Brodshaug said the Land Management Summary Report format now has items highlighted to feature what has changed within the last month. Negotiations have not yet begun on Oxbow homes, he said, although several are ready to enter that phase. The Oxbow Country Club, a Fargo Public School's property, eight residential and an agricultural property have been reviewed and approved by the USACE, he said, and additional residential appraisals in Oxbow continue to be submitted for review. He said now that the appraiser understands more what the reviewer is looking for, the process seems to be going quicker. Task Orders were approved at the morning's CCJWRD meeting for parcel acquisitions from the Rush to the outlet, he said, and some properties associated with the El Zagal project. Acquisitions continue to be prioritized, he said. The first group of five or six appraisals that were a top priority and have the potential to start construction this fall, have been through the review process, he said, and negotiations can begin soon. It is possible that due to the amount of time the process has taken, a builder selected by the property owner may have lost their availability, he said.

Oxbow Project Manager Paul Breen said waiting has been very difficult for residents, especially for homeowners on the end of Schnell Drive who do not know whether they are able to build and may lose out on their plans if they are not able to engage or

keep a builder. He said those residents will have to be moving into the new development by spring when the sewer will be cut off at that end of town. He said cutting off the sewer is required for construction of a storm pump station and gatewell structure and storm sewer outfall next spring. All but one of those homeowners at the north end of Schnell Drive are hoping to remain in Oxbow, he said.

Mark Brodshaug said there are options to do advanced payments or some way to hold and keep the builders interested.

In response to a question from Mr. Vanyo about recent medical hardship cases, Mr. Brodshaug said two applications were recently received by the Hardship Review Committee. One application in North Dakota was approved with the appraisal added to the Task Orders just approved by the CCJWRD Board, he said.

Eric Dodds said the second medical hardship application was tabled due to questions about whether the property qualifies as a buyout under the federal mitigation rules. The property itself is above flood impacts from the project, he said; however, some access and areas around it will be impacted, and the Committee is working with the Corps for clarification. He said historically medical hardship recommendations were brought to this group; however, following the agreement with CCJWRD to facilitate acquisitions, the committee felt comfortable asking them to take medical hardship on. The second property is in Minnesota, he stated, and the CCJWRD would legally be able to purchase land in Minnesota as a voluntary buyout.

Eric Dodds said work is underway with ProSource and local attorneys to draft an offer package which will include a cover letter, appraisal, purchase agreement and relocation documents. ProSource also wants to include the price of the new lot in Oxbow that the property owners will be moving to, he said, and that information should be available in a week or so.

#### Property & Farmland Management Update

Eric Dodds shared a report from Pifer's Land Management. Two parcels had been planned to be purchased in the fall, he said; however, the property owner had the opportunity for replacement land so the closing date on one parcel was moved up.

In response to a question from Jon Evert about flex rent, Mr. Brodshaug said two farmers asked for flexible lease contracts similar to what they had used in the past. Such contracts vary by yield and price, he said, with a minimum price or base rent price per acre with a possible additional payment at the end of the season depending on the crop and price.

#### Agricultural Sub-Committee Meeting Update

Agricultural Risk Economic Evaluation RFQ - Rodger Olson said the Committee met on August 12th with five members present. He said that was not a quorum; however, the group continued to look at the ag issues and AE2S presented the detailed RFQ. He said the hope is to find the value of crop insurance and that the RFQ will provide more information needed by the Corps for their input about the differential in the amount of flowage easements with and without flood insurance. He said all the committee members agreed this is an important step and indicated they felt the Diversion Authority should go forward with the RFQ.

Darrell Vanyo said he feels it is important to proceed with the RFQ and keep with the timeline.

In response to a question from Mark Bittner about whether there is a relationship between crop insurance and declared disasters, Rodger Olson said there is no interaction between the two. Crop insurance is based on individual fields, he said, and a disaster declaration would not make a difference. He said if the project causes water to back up onto a farmer's land in the staging area, crop insurance will not cover it, so supplemental coverage is being looked at. He said flowage easement payments go to the landowner, not to a renter, so a supplemental policy is being considered to cover that gap. He said the Corps stand is that a flowage easement payment to the landowner for storage of water on the land is adequate; however, this entity recognizes that up to half of the land in the staging area is rented, then it is the renter, not the landowner, facing the risk.

Jon Evert moved this committee forward its recommendation to the Diversion Authority to move forward with the Agricultural Risk Economic Evaluation RFQ process. Mark Bittner seconded the motion. All the members voted aye and the motion was declared carried.

#### Right-of-Entry Status and Cultural Resources Easement Acquisition Update

Lyndon Pease said the right-of-entry process is active in the Reach 6 area and in the southern alignment. In the Reach 6 area of the Diversion channel, he said, the design team is looking at access in the area of the railroad. For now, he said, surveys for topographic surveys and soil borings will be limited to the BNSF Railroad right of way. He said adjacent landowners have been made aware that there will be survey crews in the area. He said the process began in the spring to identify survey needs on the North Dakota side of the southern alignment for future study and design related to the embankment. Of about 80 properties, he said, about 50 have willingly granted access. He said the process for gaining access to the remaining parcels is currently going through District Court, with a court date possible for the end of the month or early September.

In response to a question from Jon Evert about whether action has been taken on cemeteries, Terry Williams said the Corps has determined that Phases 1 and 2 Cultural Resource studies will be done on the eleven cemeteries that will be impacted. She said John Sobiech has called most landowners to explain what the plan is for doing surveys and the Corps will be asking the Diversion Authority to seek right-of-entry.

#### Other Business - Oxbow Construction

Paul Breen said three contractors are actively working in Oxbow, one on the dike, one in the new residential area and one on the golf course. Curb is being put in the area for the first six selected lots, he said, and the dike is ahead of schedule due to good weather.

In response to a question from Jon Evert about landowners' concerns about drainage changes, Mark Brodshaug said the existing drainage will be unchanged until alternative drainage around the ring levee is in place. He said part of the reason the construction will take place over a three-year period is to allow drainage to stay open.

In response to a question from Heidi Durand about when the decision was made to move the alignment for the Oxbow/Hickson/Bakke levee further east, Lyndon Pease said that has happened gradually throughout the design process. He said a project begins with a series of conceptual designs and then the alignment adjusts as a result of surveys, boring samples and efforts to reduce impacts to trees and environment.

Gerald Van Amburg said people see a concept and get their mind set on it, then don't understand why that design changed. He said there is a need to be clear about changes made and why.

Rocky Schneider, Public Affairs Strategist for AE2S, said an article is planned for next week's FM Area Diversion newsletter to make the issue of the levy alignment more clear. Project designs start out as lines on a map and are drafted with a big marker, he said, and then over time the lines become more refined as steps are made toward a final design.

Jon Evert said the initial maps are still out for the public to view and he has seen concept maps showing it further west.

Rodger Olson said efforts must continue to be transparent, keeping in mind not everyone is an engineer or architect. He said perhaps even an explanation is needed of what a concept map is, and how and why changes occur in the process.

#### Retention

Eric Dodds said some time ago the Diversion Authority put \$25M on the table to support upstream retention efforts. He said Congressman Peterson has now included another \$50M for water retention projects in the proposed Federal Farm Bill. He said in an effort to get the word out about the funds available through the Diversion Authority, a letter was sent to many of the water resource districts making them aware of the available funding.

Rodger Olson suggested that a way to budget the \$25M would be to gauge the interest of water boards by polling each of them about their needs and desires over the next biennium.

The next meeting will be Thursday, September 11, 2014 at 2:00 p.m.

Bob Zimmerman moved the meeting be adjourned. Keith Berndt seconded the motion. All the members voted aye and the motion was declared carried.

The meeting adjourned at 3:00 p.m.