

**DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Wednesday, April 26, 2017
3:00 p.m.**

Present: Cass County Commission Representative Mary Scherling; Clay County Commission Representative Kevin Campbell; Moorhead City Engineer Bob Zimmerman; Fargo City Administrator Bruce Grubb; Fargo Division Engineer Nathan Boerboom; Cass County Commission Representative Chad Peterson; and Cass County Joint Water Resource District Representative (CCJWRD) Rodger Olson.

Others present: Eric Dodds and Rocky Schneider - AE2S; Mark Brodshaug - CCJWRD; and Robert Wilson - Cass County Administrator.

Absent: Moorhead Mayor Del Rae Williams; Moorhead City Council Representative Heidi Durand; Oxbow Mayor Jim Nyhof; and Clay County Commission Representative Jenny Mongeau.

The meeting was called to order by Chair Mary Scherling.

Agenda Review

All the members voted aye to approve the agenda and the motion was declared carried.

Minutes Approved

Mr. Olson moved the minutes from the March 22, 2017 meeting be approved. Mr. Campbell seconded the motion. All the members voted aye and the motion was declared carried.

Property Acquisition Report

Mr. Dodds said the acquisition report is current as of a few days ago and shows some status changes. He said he would present the information to the FM Diversion Authority Board. In regards to the budget, he said, the lands team has been reaching out to local resources and ag land realtors who track and monitor land prices. He said the land budget is solid but it will have to be sliced and diced to fit in the buckets in the property report and getting feedback about land prices will help with that process. He said in the report, parcels with no shading are impacted and not in a definitive step at this point. He said the orange areas are appraisals pending and the blue category shows areas where appraisals have been reviewed and offers have been presented and are in negotiation. He said on the north end there is a lot of blue, which is Phase 1, and includes the aqueduct structures in the Maple and Sheyenne river areas. He said there are 15 purchase agreements and some are waiting for closings, which are shown in purple, and 147 parcels acquired or easements secured to date, which are shown in green. He said quick-take condemnation has been used on five parcels.

In response to a question from Ms. Scherling regarding offers, Mr. Brodshaug said counter offers are coming back and many of those will be worked towards a deal. He said things are coming together and it is good to get the ball rolling and get some deals done.

In response to a question from Ms. Scherling about the policy being consistent in negotiations, Mr. Brodshaug said it is good to come to an agreement so the same deal can be made with the neighbors.

CCJWRD Update

Mr. Brodshaug said in addition to the Diversion, other activities include the Schmidt house move contract on Schnell Drive in Oxbow, which was slowed down due to weather, and there is still work on River Bend Road. He said the final phase of the assessment district process is about done and in about a month mailings will go out.

In response to a question from Mr. Grubb about legislation and quick-take eminent domain legislation, what is left in committee and if there is any angst about impacts those pieces of legislation could have, Mr. Brodshaug said he had not heard anything; however, there are always suspicions. He said he has been in contact with attorneys and the Water Resource District and he has not heard any new news. He said they have been discussing procedures so the county can match any new legislation; however, unless there are drastic changes in the next few days, it seems it is something the county can live with.

In response to a question from Ms. Scherling about procedures in Bismarck, Mr. Peterson said he has been the liaison and he sees no indication funding will be withdrawn this late in the game; however, everything else slows the process. He said regarding how quick quick-take really is, he is not too keen on it. He said all of sudden the five county commissioners are going to have to be up to speed on a series of projects the commissioners would not otherwise have to address. He said it would take additional time to learn about very important, large projects at the last minute and he said they would be brought in at the end stage rather than at infancy. He said he struggles with that and does not think it is fair these people are impacted and he is going to be thrown in on things done in the past. He said the commissioners should get involved sooner in a project due to the fact it is a time commitment.

Mr. Dodds said the legislation that will likely pass is a compromise and is very prescriptive in the steps required to take before Water Resource Districts can use quick-take. Nobody wants to use quick-takes, he said; however, with 1,500 parcels to get property rights on, quick-take will probably have to happen in some cases. If these very prescriptive steps are followed, he said, there is a case history with a lot of documentation that should keep us out of trouble. He said if quick-take does have to be used, by the time it is documented and the procedural steps followed, it is now a six-month process, which is not quick.

Mr. Schneider advised the group Governor Doug Burgum has signed the quick-take legislation. He said the funding was approved by the House last night and the Senate approved it this morning.

Outreach Plan to Impacted Property Owners

Mr. Dodds said property owners have been in contact with the Diversion Authority at a steady pace with many wanting to know how they will be impacted and what their options are. He said his group needs to get out, talk to these people and begin the process of making connections. The strategy of when the Diversion Authority should reach out and what is the right strategy will be known once FEMA approves the project's Conditional Letter of Map Revision (CLOMR). The CLOMR defines the impact area for the project and once that is defined, he said, it can be used for an outreach campaign and will have more information about how property is impacted. He said this is important and there are many other steps to finalize mitigation details. He said once the CLOMR is known, letters will be mailed to property owners printed on Diversion Authority letterhead. He said the letters will include how the property will be impacted by the project construction and/or operation, an individual map of each property with 100-year impacts, an invitation to a one-on-one meeting regarding the impacts to their property either by email, a phone call or online. The letter will also identify the land agent assigned to the property along with contact information and a link to the online interactive map of land acquisition status, he said. For properties with impacted structures, he said, phone calls from staff or land agents would be made in advance of the letter. Personal contact is critical, he said, due to the need for additional acquisition steps involving the property.

Agricultural Policy Subcommittee Meeting Recap

Mr. Olson said 25 to 30 people attended the meeting on April 4, 2017 and there was good discussion about the draft Mitigation Plan relating to agricultural impacts and mitigation plans. He said he made it clear to the group the Mitigation Plan was still a draft and things can be added or subtracted. He said compensation for impacts was discussed and the pros and cons of the pay for damages approach versus flowage easements. He said other topics included how to capture an appropriate value of flowage easement for an event that may not occur for 10 years or more and a dynamic flowage easement that relates to impact due to the fact every flood is different and each flood causes different damage. Transfer of revenue and how to spread out the revenue to future generations was talked about and another topic of discussion, he said, was the crop assurance programs and how to compensate for those damages, especially in a summer event. He said multi-peril crop insurance would not cover a summer event due to the fact it is a man-made disaster. In those cases, he said, they are looking at purchasing crop insurance. He said an operator at the meeting said he was a sugar beet grower and if he is going to plant beets in the staging area, but is not able to plant because the Diversion is in operation, he will still get a bill from the coop which would be \$500.00 to \$600.00 per acre if he cannot plant the amount of beets he was contracted to plant. He said this is the first time this issue has come to the ag committee and it needs to be considered. He said there is also a risk due to changes to the federal crop program and if it can be kept flexible enough to work for generations. He said another topic of discussion at the meeting was when the Diversion project operates and it delays planting, a farmer does get the crop in; however, because of the delay, it is at a lower yield. He said the farmer puts this yield information in his database and it could affect his operations for 10 years or more due to one year of low yields. He said there were questions about clean up and debris removal, who collects the material and will the flowage easement payment compensate enough with the volume of debris that is

cleaned up. With organic farms, he said, there is a plan that seems to be working. He said residents in the Comstock and Wolverton area want to know what the plan is for one-on-one meetings. He said there have been public meetings in Comstock; however, as far as acquisitions in Minnesota, he said he did not know which entities would serve in that role. He said he wanted this committee to know the question did come up.

Mr. Dodds said with Minnesota acquisitions, originally the thought was Moorhead and Clay County would form a joint entity that would have the ability to acquire lands. He said the Minnesota permit so far has been unsuccessful. He said the PPA provides a mechanism for the Corps to do acquisitions; however, not much has developed beyond that.

Mr. Campbell said he would want to work with the city and do a joint city/county effort and he is hopeful dialogue will happen. He said he is being cautious and once litigation is done, the city and county will be able to come up with a plan. As of right now, he said, the DNR is telling the city and the county not to deal with land acquisitions.

In response to a question from Mr. Peterson about a study by North Dakota State University and their help with data gathering, Mr. Olson said the study was done and the impacts they found are small.

Mr. Peterson said the one thing about all of this transpiring is people are acknowledging their land will be flooding periodically which means the Diversion is needed. He said it is needed and landowners need to know the alternative to no staging areas. He said this is a positive step to see residents are finally acknowledging the Diversion is needed.

Mr. Olson said if emergency measures are used in Fargo, the water would be stacked up south. He said it is the same land the Diversion will compensate. He said in addition to being compensated, the release of the water will be quicker because there will be two outlets.

Mr. Campbell said Clay County engineering is having discussions with the mayor of Comstock who understands if this goes through, the county wants to know what Comstock needs.

Ms. Scherling said this information emphasizes what bothers people the most is unknowns and the quicker they can be provided some answers, that input is valuable. She said with the sugar beet issue, she would have never known about it unless someone had brought it up at a meeting.

Mr. Dodds said with many of these questions it is obvious people are uncertain what a flowage easement is worth. The mitigation plan, he said, does have a sample flowage easement intended to cover all the risks including debris cleanup and sugar beet payments. He said it is a simplistic model; however, the Diversion Authority is trying to figure out the flowage easement worth and to do that, is working with appraisal experts. He said CCJWRD has retained an appraisal expert referred to us from the Corps and also reached out to a local appraisal firm. He said the firm has submitted a draft valuation of flowage easements and they are reviewing the proposal, which includes

doing small focus groups with the result being a baseline report for all easement areas as well as mass output, showing values down to the quarter section level. Initial indications are this study would be helpful, he said, and for everyone impacted it will define flowage easement value, the crop insurance perspective and which property rights are taken. He said if the go ahead is received, it should take a year, but the Diversion Authority needs to be prepared to jump in.

Mr. Peterson predicted the flowage easements and people's perception will be low; however, if all of the data is presented simultaneously, for example, a person gets \$2,000.00 for their land, and they are told they are safe. He said here is money to pay for your land and should anything happen on your land, there is no fiscal impact to you. He said those pieces of information cannot be independent of each other. He said by landowners knowing what they are getting, it is a courtesy. He said if landowners perceive they will never farm their land again, whatever transpires, in the end, they can harvest and if not they will be compensated accordingly. He said if the conversations are at the same time, landowners will know they are safe. He said the Board needs both data points to provide an accurate argument from and to assure the landowners.

Mr. Olson said the Ag committee meeting got heated at times. Due to that fact this is a federal project, he said the Diversion Authority only requires a one-time flowage easement; however, the mitigation plan goes beyond that. He said he had some individual meetings with bankers who told him the only person the Diversion Authority has to appease and compensate is the landowner. He said the Diversion Authority is going above and beyond the federal guidelines. He said if he were a farmer, he would be looking at these things as well.

Farmland Management Report

Mr. Dodds said Pifer's Land Management has been under contract for a number of years, managing acreage owned by the CCJWRD, collecting rents, doing crop management and more.

In response to a question from Ms. Scherling about acquiring more property for Pifer's to manage, Mr. Dodds said there have been a lot of offers made and some good counter offers received. He said some property owners have asked that entire parcels be purchased, even though the footprint says only 80 percent of a parcel is needed. He said there are some advantages for the Diversion Authority and property owners. He said due to those types of purchases, Pifer's would still be needed to manage the land. He said in 2018 when the P3 contractor is ready to start, it is not known if the contractor will start before or after harvest; therefore, Pifer's will likely manage farmland for the 2018 season. He said if farmland were damaged, there would be provisions in place for the producers. He said this is probably something that will evolve.

Mr. Peterson moved the meeting be adjourned. Mr. Olson seconded the motion. All the members present voted aye and the motion was declared carried.

The meeting adjourned at 3:50 p.m.

The next meeting will be May 24, 2017 at 3:00 p.m.