

**METRO FLOOD DIVERSION AUTHORITY
DECEMBER 21, 2017—3:30 PM**

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, December 21, 2017, at 3:30 PM in the Fargo City Commission Room with the following members present: Fargo City Mayor Tim Mahoney; Fargo City Commissioner Dave Piepkorn; Fargo City Commissioner Tony Grindberg; Moorhead City Mayor Del Rae Williams; Moorhead City Council Member Chuck Hendrickson; Moorhead City Council Member Joel Paulsen; Cass County Commissioner Mary Scherling; Cass County Commissioner Chad M. Peterson; Cass County Commission representative Darrell Vanyo; Clay County Commissioner Kevin Campbell; Clay County Commissioner Grant Weyland; Cass County Joint Water Resource District Manager Rodger Olson; and West Fargo City Commissioner Mike Thorstad.

2. MINUTES APPROVED

MOTION, passed

Mr. Weyland moved and Mr. Paulsen seconded to approve the minutes from the November 16, 2017, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Grindberg moved and Mr. Campbell seconded to approve the order of the agenda with the addition of Item 4c. “Establish Operations Committee”. Motion carried.

4. GOVERNORS’ TASK FORCE REPORT

Levi Bachmeier, Policy Advisor to North Dakota Governor Doug Burgum, provided a brief update on the Governors’ Diversion Task Force, which met for the final time last week. The final report is not yet complete, so Mr. Bachmeier will present the report at the next Diversion meeting in January. The report will consist of four components which include an executive summary, high level summary, individual statements of task force members, and statements from Governor Doug Burgum and Governor Mark Dayton.

Mr. Bachmeier also said both governors stressed the importance for residents upstream and downstream to have input into the project, and asked the Diversion Board to strongly consider appointing an upstream and a downstream representative to its board. Attorney John Shockley said there is an open seat for an upstream member to be appointed jointly by Richland County and Wilkin County through the end of 2020 that has not been filled.

Mr. Vanyo said some of the recommendations discussed by the task force would increase the project cost by several hundred million dollars, provide less protection for structures, and affect more residents at a higher risk if the levee is lengthened. He strongly recommends the Diversion Board give careful consideration to where additional funding would come from and if there will be an assurance from the Minnesota DNR that they will issue a permit for the project.

Mr. Shockley said the Minnesota DNR has asked for a formal request from the Diversion Board for the DNR to continue working with the Technical Advisory Group (TAG) to review proposed southern embankment alignments and other matters related to permitting. He prepared a letter to the Minnesota DNR along with a resolution requesting the DNR to continue working with the TAG. Mr. Grindberg supports the resolution but suggested a paragraph be added to include a deadline for work to be completed. Board members were in consensus to add a section that would authorize the TAG to meet for the next 60 days and report back to the Diversion Board.

MOTION, passed

Mr. Campbell moved and Mr. Peterson seconded to authorize a letter be sent to the Minnesota DNR and adopt a Resolution Requesting the Minnesota Department of Natural Resources Continue Working with the Technical Advisory Group on a Proposed Alignment for the Southern Embankment of the FM Diversion Project and Other Matters Related to the Minnesota DNR Permitting of the Project with the inclusion of the 60-day deadline. On roll call vote, the motion carried unanimously.

Establish Operations Committee

Mr. Campbell suggested an Operations Committee be established to focus on future operations regarding the project design and permitting.

MOTION, passed

Mr. Campbell moved and Mr. Weyland seconded to establish an Operations Committee to report back to the Diversion Board regarding permitting in Minnesota and North Dakota. Discussion: Mr. Campbell suggested Mr. Shockley work on committee membership for consideration at the next board meeting. There was discussion that the committee include individuals from the Diversion Board, Corps of Engineers, Minnesota DNR and Technical Advisory Group. On roll call vote, the motion carried unanimously.

5. DISCUSSION ON UPSTREAM AND DOWNSTREAM MEMBERSHIP

Board members discussed the possible addition of an upstream and a downstream member to the Diversion Board. Mr. Piepkorn said as mentioned before there is an unfilled seat on the board for an upstream member. There was discussion about whether they would be voting or non-voting members and that the Joint Powers Agreement would need to be amended and approved by all member entities to address any changes in membership.

Mr. Peterson said there seemed to be an implication during the Governors' Task Force meetings that residents who live upstream have not had a voice in the project, which he said is not true considering the open seat on the board. He feels the only benefit to adding the members is to provide them with plausible deniability because they would need to be present at meetings and listen to information about the project. He believes they should be able to vote if they are appointed to the Diversion Board.

Mr. Campbell understands the comments made by Mr. Peterson, however, he is open to listening to the governors' recommendations regarding a change in membership.

Mr. Shockley said the board may have a better direction on how to proceed with this issue after they receive an update during the executive session.

6. MANAGEMENT UPDATE***Program management consultant (PMC) report***

Robert Cowen from CH2M provided an update on activities over the last month which include providing support as the Governor's Task Force prepares its report; presentation of the FY2018 budget; and continuation OHB home removals. The priorities for next month include starting the flowage easement valuation study and coordinating outreach efforts as the report is released by the Governors' Task Force.

Mr. Cowen provided brief a financial update on the overall program status and said \$406 million has been expended to date. He said \$73 million has been expended out of the \$240 million FY2017 budget.

Mr. Cowen provided a construction update on continued work on in-town levees, and Oxbow home demolition and relocation projects. A suspension of work to cease was issued as of December 31, 2017, on OHB levee construction until clarification is received from the Federal Court regarding whether work may continue in 2018.

7. CORPS OF ENGINEERS UPDATE

Terry Williams, Corps of Engineers Project Manager, was present. She said the Corps of Engineers will be supportive of the path forward once an alignment is chosen and will be ready to resume work on the project.

8. ADMINISTRATIVE/LEGAL UPDATE

Executive Director Position Profile

Michael Redlinger, Co-Executive Director and Assistant Fargo City Administrator, discussed the position profile used in the previous Executive Director search. The process to reboot the search would not take as much as time because a lot of the ground work has been done by CPS Consulting. He said the board could choose to continue working with CPS Consulting and/or a local firm in the search, or could choose to start over with the process.

Mrs. Scherling and Mr. Thorstad said they would like the search to not focus solely on engineering backgrounds since many local engineers are already involved with the project. They believe someone with administrative experience is important. Mr. Piepkorn said the board should look for the best person to manage this multibillion dollar project and is not sure this can be done locally. Mr. Peterson said someone with a legal and/or construction management background would be beneficial and suggested the board continue with CPS Consulting in a new search. Mr. Peterson also believes the qualifications could be broadened but still require 15 years of experience.

Mr. Redlinger will revise the position profile and work with the same subcommittee used the last time to review the profile before the full board approves it in order to move forward with the process.

Crown Appraisals Master Services Agreement

Eric Dodds from AE2S said a Master Services Agreement (MSA) with Crown Appraisals has been drafted to begin the process of valuing flowage easements. The Finance Committee and Land Management Committee approved the MSA at their meetings yesterday.

MOTION, passed

Mr. Grindberg moved and Mr. Peterson seconded to approve the Master Services Agreement with Crown Appraisals. On roll call vote, the motion carried unanimously.

9. PUBLIC OUTREACH UPDATE

Committee report

The Public Outreach Committee met on December 20th. Mr. Olson said the committee discussed public outreach efforts with residents in the event the project alignment changes and the importance of keeping everyone informed. Rocky Schneider from AE2S provided a handout on the 2017 year in review regarding website and social media analytics.

Business Leaders Task Force

Mr. Schneider said the February Eggs & Issues event hosted by the Chamber of Commerce will include a wrap-up of work conducted by the Governors' Diversion Task Force.

10. LAND MANAGEMENT UPDATE

The Land Management Committee met on December 20th. Mrs. Scherling said most of the discussion focused on the Crown Appraisals MSA, and need for accurate flowage easement values.

11. FINANCE UPDATECommittee report

The Finance Committee met on December 20th. Mr. Grindberg briefly discussed the financial report and said \$406 million in total has been expended for the project. The net cash position is \$70 million.

Voucher approval

The bills for the month are with Studio 7 Productions, Inc. for Governors' Task Force meeting expenses; Erik R. Johnson & Associates, Ltd. for legal services; Springsted, Inc. for financial services; Dorsey & Whitney LLP for legal services; Ohnstad Twichell, P.C. for legal services; North Dakota Water Users Association for membership dues; Gray Pannell & Woodward LLP for legal services; Cass County Government for traffic control reimbursement; and the Cass County Joint Water Resource District (CCJWRD) for costs associated with the Metro Flood Diversion, Diversion Project Assessment District, OHB levee, Oxbow Golf and Country Club, and in-town levees.

MOTION, passed

Mr. Grindberg moved and Mr. Campbell seconded to approve the vouchers received through December 14, 2017, in the amount of \$4,223,013.22. On roll call vote, the motion carried unanimously.

Recommended Contracting Actions

Mr. Cowen discussed the following contracting actions, which were approved by the Finance Committee and Technical Team:

- Crown Appraisals, Inc. (Task Order 1 Amendment 0 – Flowage Easements Valuation Phase 1)—appraisal services for Flowage Easements Valuation Phase 1 in the amount of \$500,000.

MOTION, passed

Mr. Grindberg moved and Mr. Peterson seconded to approve the appropriation of funds for the task order as outlined. On roll call vote, the motion carried unanimously.

- Industrial Builders, Inc. (Change Order 07 – 2nd Street North, North of Pump Station)—final unit price quantity balancing, additional fiber optic conduit and cable, additional sidewalk traffic control, and additional vibration monitoring in the amount of \$6,875.42;
- Meyer Contracting (Change Order 02 – OHB Ring Levee Phase C and D)—incorporate previously approved work change directives, additional borrow pit striping, additional utility removals, protection, relocations and damage repair; and add temporary access road in the amount of \$508,207.56;
- Industrial Builders, Inc. (Change Order 12 – 2nd Street North Pump Station)—modify lubrication system, add submersible transducer, and furnish track rack guides in the amount of \$12,898.48.

MOTION, passed

Mr. Grindberg moved and Mr. Vanyo seconded to approve the appropriation of funds for the change orders as outlined. On roll call vote, the motion carried unanimously.

12. FY2018 CASH BUDGET

Mr. Cowen said the Finance Committee approved the FY2018 cash budget in the amount of \$82.6 million. He said after an alternative project is developed, a revised budget will be proposed to reflect planned program spending for the remainder of FY2018.

MOTION, passed

Mr. Grindberg moved and Mr. Weyland seconded to approve the FY2018 budget as outlined. On roll call vote, the motion carried unanimously.

13. 2018 MEETING SCHEDULE

Mr. Dodds discussed the 2018 meeting schedule for the board to consider. The Diversion Board is scheduled to meet the fourth Thursday of each month with the exception of January, November and December.

Mayor Mahoney said the plan is to hold one board meeting per month unless two are needed to consider bills or other business. Board members were in agreement with the meeting schedule as proposed.

14. OTHER BUSINESS, Outgoing board members

Mr. Mahoney presented a gift to Mark Brodshaug, who will retire at the end of this month from the Southeast Cass Water Resource Board and Cass County Joint Water Resource Board. He also served on the Finance Committee. He thanked him for his work over the past several years.

Mr. Mahoney presented gifts to Darrell Vanyo, whose term on the Diversion Authority Board ends this month. Mr. Vanyo served on the board since its inception in 2009.

Mr. Vanyo provided a project commentary regarding his thoughts on flood protection for the area, and the future of the project. He thanked everyone for allowing him to serve on the board.

15. EXECUTIVE SESSION

North Dakota state law allows the Board to meet in private session to consult legal counsel to discuss ongoing litigation and contract negotiations.

MOTION, passed

Mr. Piepkorn moved and Mr. Peterson seconded that the Metro Flood Diversion Authority meet in Executive Session pursuant to N.D.C.C. § 44-04-19.1, subsections 2 and 9, to consult with its Attorneys regarding the ongoing litigation in the matters of Richland/Wilkin JPA and MNDNR v. the United States Army Corps of Engineers and Fargo Moorhead Flood Diversion Authority as Intervenor, Civil File No. 0:13-cv-02262-JRT-LIB and the contested case hearing before the Minnesota Office of Administrative Hearings regarding the MNDNR permit for Metro Flood Diversion Authority. All voting in favor, the motion carried unanimously.

Diversion Authority Board members, key administrative staff, Attorney Robert Cattnach, and Attorney John Shockley moved to the River Room at 5:30 PM.

The Executive Session ended at 6:30 PM and the meeting was re-opened to the public.

16. ADJOURNMENT

MOTION, passed

On motion by Mr. Campbell, seconded by Mr. Hendrickson, and all voting in favor, the meeting was adjourned at 6:31 PM.