



**DIVERSION AUTHORITY  
Land Management Committee  
City Commission Room  
Fargo City Hall  
Wednesday, March 21, 2018  
3:00 p.m.**

1. Agenda Review
2. Approve December 20, 2017 Minutes (**item A**)
3. Updated Property Acquisition Schedule (**item B**)
4. Updated 'Mitigation Plan' (**item C**)
5. Flowage Easement Valuation Study
6. CCJWRD Update
7. Other business
8. Next meeting April 25, 2018

*These minutes are subject to approval.*

**DIVERSION AUTHORITY  
Land Management Committee  
City Commission Room  
Fargo City Hall  
Wednesday, December 20, 2017  
9:00 a.m.**

Present: Moorhead City Engineer Bob Zimmerman; Fargo Division Engineer Nathan Boerboom; Fargo City Administrator Bruce Grubb; Cass County Commission Representatives Mary Scherling and Chad Peterson; CCJWRD Representative Rodger Olson.

Others present: Eric Dodds and Joe Herbst of AE2S.

Absent: Moorhead Mayor Del Rae Williams; Clay County Commission Representatives Kevin Campbell and Jenny Mongeau; Fargo City Commissioner John Strand.

The meeting was called to order by Chair Mary Scherling.

Agenda Review

Mr. Olson moved to approve the agenda. Second by Mr. Peterson. All the members present voted aye and the motion was declared carried.

Minutes Approved

Mr. Zimmerman moved the minutes from the October 25, 2017 meeting be approved. Second by Mr. Boerboom. All the members present voted aye and the motion was declared carried.

Oxbow Mayor Jim Nyhof present.

Governors' Task Force

Mr. Dodds said the Governors' Task Force concluded their meetings a week ago and he expects a report will be issued and followed by an opportunity for the Task Force members to comment. In the meantime, he said, a Summary of Potential Project Changes was compiled to make some talking points available to share with the committees.

Ms. Scherling commented that the Task Force had many hours of discussions and she finds it interesting how different people can hear the same things differently. Her perception was that there was a stronger commitment to having zero impacts going into Canada, she said.

In response to a question from Mr. Grubb about whether there was a conclusion from the Governors' Task Force and if there would be support in working towards a solution, Mr. Boerboom said other than turning it over to the Diversion Authority to work with the DNR, there may not be a clear path forward.

### Flowage Easement Valuation Study

Mr. Dodds said the Finance Committee reviewed the Master Service Agreement with Crown Appraisals, Inc. and recommends approval for the Diversion Authority Board. There are some things that remain fluid since the injunction, he said, and it is suggested the proposal be split into two phases. The first would involve building the model, he said, and the second, after details of the project are clear, would be a valuation report.

Joe Herbst said flowage easements are relatively unknown with many variables. He said appraisals are only one step in the process and have a big impact in setting the price for minimum compensation. Good quality, consistent appraisals go far and help in getting things right as far as tendering offers and acquiring property. He said previously the idea was presented to start with some representative parcels to build methodology around; however, knowing the staging area will change, it was determined that the time is not right to actually select certain parcels. Instead, he said, it was determined to look at what can be done now to move things forward so easements can be acquired when the staging area is defined. The two-phase approach and doing background work now will be good for the timeline and for cost efficiencies, he said. Things can be fluid enough to get background research done, he said, and the efforts can be built on in Phase 2. There will be a heavy reliance on a data driven model, he said, looking at different areas of the country, other projects and efforts. Not every field is the same, he said, and while appraisals need to be similar, variables must be taken into account. There is not a lot of history for this type of thing, he said; when consulted, even master appraisers are challenged by the appraisal problems this project presents. Getting the bulk of the work done in Phase 1 will be a huge benefit later, he said, and the better the job done with the valuation process, the more it will help keep things out of the courts. There will be heavy reliance on a data driven model, he said, with basic data gathered looking at similar projects or encumbrances, and matching them up with comparable sales to build an equation of different variables and components and defined multipliers to then apply to this project.

In response to a question from Ms. Scherling on the number of comparative valuations required, Mr. Herbst said there is no minimum and requirements are much lighter than this approach. Part of the reasoning for selecting Crown Appraisals is that most of their work is in the Ag community and they have a strong desire to get it right. Going to court on a parcel could cost upward of \$150,000.00, he said, so making a high level of effort right out of the gate will pay off in the long run. He said setting a number of comparables is challenging and it is not known how many of these types of projects exist. He said there may be none in our immediate region. He feels it would be good if an appraiser came up with a dozen geographic areas, he said, although they will search for more than that.

Mr. Dodds said there have been a number of discussions with appraisers and they have a good grasp on what is required to build a defensible database. He said there are some flowage easements and encumbrances for comparisons, such as conservation easements or power line easements that diminish development value and parallels can be drawn from those.

Mr. Herbst said by Phase 2, the regression analysis will be built, the models of methodology will be finalized, and it will be known what parcels will be considered for flowage easements and the NDSU data will be incorporated, as far as planting delays and ag impacts. He said then this can all be put together in a well-reasoned way and each individual field can be examined for property specific reports.

In response to a question from Ms. Scherling about updating the NDSU data, Mr. Herbst said it would be important to understand both legal and appraisal team's comfort with that data and challenges expected in court. He said if they feel their testimony will not be as strong because the study could be validly pointed to as being outdated, that would be their call.

Mr. Dodds said the previous NDSU study was based on the staging area and hydraulic model of the previous project and as the project changes there may be some things worth updating. In particular, he said, there will likely be a decision made to allow more flow through town, 37 feet instead of 35 feet. He said this means instead of operating every 10 years it would be more like once every 20 years; reducing the impacts to Ag production. While there is much more to it, he said, if annualized impacts to ag production were small previously, and the diversion will be operated even less frequently, impacts would be even smaller. He said if that is a point of contention with farmers, or they do not believe it, it could erode confidence and lead to court battles to obtain easements, so good quality data is valuable.

Mr. Herbst said the flowage easement calculation would be a complicated equation. Initial components include combining: hydraulic model (Hydraulic), NDSU data (Agricultural) and Crown Appraisal model (Parcel), and using field specific data based on market data to determine a total value loss amount (= payment to owner).

In response to a question from Ms. Scherling about whether a combination of income and sales is used in calculations, Mr. Herbst said he assumes NDSU data on planting delays will have a relationship with income; however, the exact relationship, and how the equation will handle it, has yet to be determined.

In response to a question from Mr. Boerboom about communicating with the Corps on this approach and whether it meets the Corps and sponsor's requirements, Mr. Herbst said, no, not specifically. However, he said, there have been conversations with the Corps about alternative methods of valuation that would satisfy the Corp's and federal requirements. Their response, he said, and the industry standard, relies much more on state law and how the state sets up its requirements for just compensation. Valuations are critically important when eminent domain is used, he said, and there will be more conversations with the Corps and with the legal team. He said the legal team has said on more than one occasion that the 3-4 page summary report specific to individual parcels or individual owners with contiguous parcels, is sufficient to go to court. North Dakota's law is a minimal standard and the initial report, coupled with the property specific report, would become the final product, expected to satisfy all requirements.

Mr. Herbst said there is some anxiety in the Ag community about what a flowage easement is and its detriment to operations. He said attention will need to be paid to

that because if stakeholder engagement does not occur at the proper place and time in the process, there will be potential for diminished return. He said previous meetings regarding the staging area have elicited good feedback and helped uncover some variables landowners are concerned about. Communications with farmers have taken place through well-advertised public meetings, he said, and ideas have been floated in less formal communications. He said when talking about complex methodology and valuation, it would be best to have the professionals at least rough-in an approach and then it can be tested at the kitchen tables of impacted farmers who will be impacted and in public meetings. There is a duty to incorporate feedback, he said, and recommends looking closely at the moving parts and the nonmoving parts, as in how this is paid for, what about crop insurance, development restrictions, etc. He said when it comes to answering the question “what is this flowage easement worth,” likely everyone will say “not enough;” however that sort of input is not constructive. Sometimes in the large local public meetings with friends and neighbors, there is social pressure, he said. There can be loud voices that are not as reasonable as others who tend to drown out the conversation. He said engagement is desired; however, it needs to be done in a useful and meaningful way. He said it is important to take feedback and be able to show “here’s what we did with your feedback.” Proper buy-in from landowners will make the whole process better, he said.

Ms. Scherling said in a public setting, having smaller groups is much more productive than filling a room full of people who are not going to engage except for the vocal minority. She said selecting a few groups like local township officers meetings or a group of certain type of producers could give valuable input about things not yet considered. One thing she has heard at many meetings is that people want a number, she said, and at some point that number may be “this is what my neighbor got.”

Mr. Dodds said ultimately, after Phase 2 of the study, every parcel will have an evaluation; however, the question prior to that is the outcome of Phase 1. He said Crown Appraisals indicated in their scope they will establish parameters. For example, he said, wooded land may have a value reduction of five percent while for flat farmland with a high productivity it could be ten percent, and development land would be X percent, etc. Such parameters then can be used for metrics and budgeting parameters, he said, and will be one of the outcomes of Phase 1.

Mr. Herbst said working sessions are best. In his experience in leasing wind energy, where it is important to have everyone in a block to be on board, he said, there tends to be a few movers and shakers in an ag community or neighborhood. He said, most often, there is that one guy, who is the shrewd but also most reasonable and dives in and works through details. Once that person gives a stamp of approval, others will buy-in making mass acceptance possible once the right people are at the table.

Mr. Olson said between the Ag Committee, the NDSU study and all that has been discovered, he feels all the issues could already be on the table. If those issues are answered and outcomes explained, many will be satisfied, he said. The track record for excellent communication has not been good, and there has been some disconnect, he said.

In response to a question from Mr. Olson on whether Crown will be working on their own and not taking local input, or whether there could be value in involvement from a handful of farmers, Mr. Dodds said there is room for further input. He said right now, the scope includes meetings with engineers, the hydraulic team and the NDSU Ag team. Also, he said, routine update meetings have been requested. He said as far as Phase 2, he feels that besides valuation reports it should contain a larger component of stakeholder input.

Mr. Herbst said he expects the first question to be how a number was arrived at and it is important to be able to answer that question. He said it would be good to sit down with farmers and landowners prior to finalizing the Phase 1 study, then once it is roughed-in, it can be tested and after feedback, necessary adjustments can be made. He said there is a duty to face questions head-on even if it is expected the answer is going to be unpopular, explaining with confidence feedback is being addressed.

Mr. Dodds said Phase 1 is scheduled to be completed in August.

Mr. Peterson said with litigation and all the other activities slowing the project down, the silver lining is that this is an opportunity to take the time to do this right. He acknowledged the valuation study is a lot of money; however, the water is going to go somewhere and getting the baseline started now is logical.

Mr. Peterson moved to recommend to the Diversion Authority Board the approval of the Master Agreement for Professional Services with Crown Appraisals, Inc. for a flowage easement valuation study. Second by Mr. Grubb. All the members present voted aye and the motion was declared carried.

#### 2018 Calendar

Ms. Scherling said there has been some discussion about moving some of the committee meetings to Tuesdays; however, the Finance Committee discussed it and it was not well received. She said in her opinion, it works best to have these meetings back to back and moving them to Wednesdays again is fine. She said there are opportunities to meet in other places such as at the Courthouse or Highway Department.

Mr. Dodds said efforts to coordinate meeting time changes within Fargo City Hall ran into room conflicts; however, now with direction to schedule meetings on Wednesdays back to back, he can work on schedule the meetings for next year.

#### Other Business

In response to a question from Mr. Nyhof about the likelihood of more residential properties being included in buyouts, Mr. Dodds said the changes contemplated impact now is for something like 80 additional residential structures. He said the original concept for adding new lots in Oxbow was to preserve 40 or so for the then-known residential structures in Oxbow. He said the policy question would be whether that offer needs to be extended for newly impacted.

Mr. Olson said he definitely thinks some lots need to be preserved. He said additional lots are intended to be used for mitigation and once they are gone, the ability to mitigate in Oxbow would be gone.

Mr. Dodds said just for awareness, there is some additional land within the Oxbow ring levee that is undeveloped.

Mr. Peterson moved the meeting be adjourned. Second by Mr. Zimmerman. All the members present voted aye and the motion was declared carried.

The meeting adjourned at 9:57 a.m.

The next meeting will be January 17, 2018 at 3:00 p.m.

**Property Acquisition Schedule 1**

Major Project Feature <sup>2</sup>	Location (State)	Work Limits Defined by Designer	Start Property Acquisition <sup>3</sup>	Notification to Property Owners <sup>4</sup>	Final Design Complete	Final Permit Application	Complete Property Acquisition <sup>5</sup>	Permit Issuance (Goal) <sup>6</sup>	Number of Parcels Impacted
<b>Features Constructed by Diversion Authority using Public-Private-Partnership (P3)</b>									
<b>Diversion Channel Phase 1<sup>7</sup></b>	ND	June 2016	June 2016	July 2016	Nov 2019	Nov 2019	March 2019	Feb 2020	86
<b>Diversion Channel Phase 2</b>	ND	June 2017	June 2017	July 2017	Nov 2019	Nov 2019	July 2019	Feb 2020	67
<b>Diversion Channel Phase 3</b>	ND	June 2017	March 2018	April 2018	Nov 2020	Nov 2020	Feb 2020	Feb 2021	56
<b>Features Constructed by USACE</b>									
<b>Diversion Inlet Control Structure</b>	ND							July 2016 (actual)	3
<b>Wild Rice Control Structure</b>	ND	July 2017	April 2018	April 2018	Dec 2018	Dec 2018	Dec 2018	Feb 2019	6
<b>I-29 Bridge / Road Raise</b>	ND	April 2019	April 2019	April 2019	April 2020	April 2020	Dec 2019	July 2020	9 <sup>8</sup>
<b>Red River Control Structure</b>	TBD	Nov 2019	Nov 2019	Nov 2019	April 2021	April 2021	July 2020	July 2021	24
<b>CR 81 Road Raise</b>	ND	July 2022	July 2022	July 2022	April 2023	April 2023	March 2023	July 2023	5 <sup>9</sup>
<b>ND Embankment Reach A</b>	ND	July 2019	July 2019	July 2019	April 2020	April 2020	March 2020	July 2020	37
<b>ND Embankment Reach B</b>	ND	July 2022	July 2022	July 2022	April 2023	April 2023	March 2023	July 2023	14
<b>MN Embankment Reach C</b>	MN	July 2021	July 2021	July 2021	April 2022	April 2022	March 2022	July 2022	25
<b>ND Embankment Reach D</b>	ND	July 2020	July 2020	July 2020	April 2021	April 2021	March 2021	July 2021	18
<b>ND Upstream Mitigation Area<sup>10</sup></b>	ND	Oct 2018	Oct 2018	Oct 2018	-	-	March 2025	May 2023	740
<b>MN Upstream Mitigation Area</b>	MN	Oct 2018	Oct 2018	Oct 2018	-	-	March 2025	May 2023	115

<sup>1</sup> Based on proposed P3 and USACE schedules from March 2018.

<sup>2</sup> See associated maps for location of main project features.

<sup>3</sup> The work limits defining property acquisition needs are generally expected at the 65 percent design level.

<sup>4</sup> Initial notification shall be a letter from the acquiring entity, introducing the Land Agent, who will follow-up with separate correspondence indicating an intent to acquire, the process for acquisition, and an offer to meet.

<sup>5</sup> Assume nine months duration to complete the property acquisition process.

<sup>6</sup> Assume permit can be issued within three months after final permit application.

<sup>7</sup> Diversion Channel Phase 1 includes Maple River & Sheyenne River Aqueduct Structures.

<sup>8</sup> Some of the parcels impacted by the I-29 Road Raise are also impacted by the Wild Rice Control Structure.

<sup>9</sup> Some of the parcels impacted by the CR 81 Road Raise are also impacted by ND Embankment Reach B.

<sup>10</sup> The property rights in the Upstream Mitigation Area will be acquired prior to the Project being operational, which is after the final segment of the embankment is constructed.



**DRAFT**

# Property Rights Acquisition and Mitigation Plan v.2

---

March 16, 2018



*This is a draft Property Rights Acquisition and Mitigation Plan and the Diversion Authority requests MDNR provide input and comments on the Plan.*

## Table of Contents

Preface .....	6
Property Acquisition Philosophies .....	7
Mission.....	7
Overarching Property Acquisition Philosophies .....	7
Typical MN Property Acquisition Process .....	8
Typical ND Property Acquisition Process .....	11
Appraisal Review Plan.....	14
Introduction .....	14
Appraisal Review Process.....	14
Attachments.....	15
APPRAISAL REVIEW ANALYSIS and CERTIFICATION .....	16
Offer Presentation and Negotiations Process .....	22
Introduction .....	22
Offer Presentation & Negotiation Process .....	22
Property Rights Map .....	24
Property Acquisition Schedule.....	25
Early Residential Property Acquisition Program.....	26
Introduction .....	26
Early Acquisition Process .....	26
Organic Farmland Acquisition Plan .....	27
Introduction .....	27
Organic Farmland Acquisition Plan.....	27
Disposal of Excess Property .....	29
Introduction .....	29
Disposal Process.....	29
Mitigation of Properties in the Upstream Mitigation Area .....	30
Introduction .....	30
USACE / FEMA Coordination Plan.....	30
Structure Mitigation in the Upstream Mitigation Area .....	31

Land Mitigation in the Upstream Mitigation Area..... 32

    Attachments..... 33

USACE / FEMA Coordination Plan..... 45

Flowage Easement Plan ..... 55

    Why is a Flowage Easement needed?..... 55

    What is a Flowage Easement? ..... 55

    How will the value of the Flowage Easement be determined? ..... 55

    What are the terms and conditions of the Flowage Easement? ..... 56

    When will the Flowage Easements be obtained?..... 56

    Who will obtain the Flowage Easements?..... 56

Sample Flowage Easement ..... 57

Dispute Resolution Board ..... 64

    Introduction ..... 64

    Intent..... 64

    Jurisdiction ..... 64

    Purpose ..... 64

    Creation..... 64

    Composition ..... 64

    Procedure..... 65

    Compensation for Damages..... 65

    Release of All Claims ..... 66

    Judicial Review ..... 66

Sample Claim Form ..... 67

Cemetery Mitigation Plan ..... 69

    Introduction ..... 69

    Local Cemetery Mitigation Plan..... 69

    Minimum Federal Mitigation Plan and Requirements ..... 69

    Clean-Up Assistance ..... 70

    National Register of Historic Places ..... 70

    Cemetery Mitigation Alternatives ..... 70

    Attachments..... 71

Mitigation of Historic Properties ..... 81

Attachments.....	81
Post-Operation Private Lands Debris Clean-Up Plan .....	96
Introduction .....	96
Post-Operation Debris Clean-Up Plan.....	96
Post-Operation Public Lands Repair and Clean-Up Plan.....	97
Introduction .....	97
Post-Operation Public Lands Repair and Clean-Up Plan.....	97
Summer Operation Supplemental Crop Loss Program.....	98
Introduction .....	98
Proposed Summer Operation Supplemental Crop Loss Program.....	98
Additional Background:.....	99
Financial Assurance Plan for O&M and On-Going Mitigation.....	101
Introduction .....	101
O&M Funding Program.....	101
Mitigation Communication Plan .....	104
Introduction .....	104
Existing Communication Structures.....	104
Future Project-Specific Communication Methods.....	104
Oxbow Hickson Bakke Mitigation Project.....	106
Summary .....	106
Supplemental EA Appendix C.....	106
Additional Details.....	106
In-Town Levee Mitigation Projects .....	117
Summary .....	117
Pre-PPA Medical Hardship Acquisition Program .....	118
Adaptive Management and Mitigation Plan.....	125
Introduction .....	125
AMMP Funding .....	125
Environmental Mitigation.....	126
A. Environmental Impacts and Mitigation .....	126
B. Water Supply Impacts and Mitigation .....	126
C. Groundwater or Sub-Surface Water Impacts and Mitigation.....	126

D. Navigation Impacts and Mitigation .....	126
E. Drainage Impacts and Mitigation.....	126
F. Fish and Wildlife Habitat Impacts and Mitigation.....	127
G. Agricultural Impacts and Mitigation.....	128
H. Waterways, Bank Stability, Erosion, and Sedimentation Impacts and Mitigation.....	129
I. Wetlands and Land Use Impacts and Mitigation .....	129
K. Invasive Species Management Plan.....	130
Attachments.....	130

## Preface

---

The Metro Flood Diversion Authority (Diversion Authority) has prepared this Property Rights Acquisition and Mitigation Plan to document the property rights acquisition and mitigation policies that will be followed for the Fargo-Moorhead (FM) Area Diversion Project (Project). This Property Rights Acquisition and Mitigation Plan has been drafted in coordination with the US Army Corps of Engineers (USACE), and in consultation with the North Dakota State Water Commission (NDSWC) and the Minnesota Department of Natural Resources (MDNR). Throughout this Property Rights Acquisition and Mitigation Plan, the Project is commonly referred to as the 'FM Area Diversion Project', but it should be noted that USACE, other agencies, and certain documents identify the Project as the 'Fargo-Moorhead Metro Flood Risk Management Project'.

It should also be noted that the Project being referenced in this Property Rights Acquisition and Mitigation Plan is the Project that the Diversion Authority has submitted to MDNR as part of a permit application. The Project is now considered "Plan B", and is intended to be consistent with the recommendations of the Governors' Task Force.

This Property Rights Acquisition and Mitigation Plan is intended to be a living document that will be reviewed and amended periodically as additional information and operations prompt updates.

This Property Rights Acquisition and Mitigation Plan contains information about the acquisition of property rights needed for the Project, and this plan consists of both property mitigation and environmental mitigation plans. This document is a compilation of a series of plans for a variety of topics. Collectively, the individual topics contained within this document serve as the comprehensive Property Rights Acquisition and Mitigation Plan for the Project.