

These minutes are subject to approval.

**DIVERSION AUTHORITY
Land Management Committee
Old City Commission Room
Fargo City Hall
Wednesday, January 23, 2019
3:00 p.m.**

Present: Clay County Commissioner Kevin Campbell, Moorhead City Engineer Bob Zimmerman, Fargo Division Engineer Nathan Boerboom, Fargo City Administrator Bruce Grubb, Cass County Commissioner Mary Scherling (via conference call), Clay County Commissioner Jenny Mongeau (via conference call), Cass County Joint Water Resource District Manager Rodger Olson and City of Horace Mayor Kory Peterson.

Others present: Eric Dodds, AE2S, John Shockley, Ohnstad Twichell, Moorhead City Councilman Chuck Hendrickson and Cass County Commissioner Duane Breitling.

Absent: Cass County Representative Chad Peterson, Fargo City Commissioner John Strand.

The meeting was called to order by Mr. Campbell.

Agenda Review

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

Minutes Approved

Mr. Zimmerman moved the minutes from the December 19, 2018 meeting be approved. Second by Mr. Boerboom. All the members present voted aye and the motion was declared carried. Mr. Dodds said the minutes do a good job of summarizing the presentation and discussion at that meeting.

Property Acquisitions Program Update

Mr. Dodds said the injunction was placed on the project in 2017, followed by the process of working through the Minnesota Department of Natural Resource's environmental review on Plan B. While the injunction may not have applied to the process of buying land, he said out of respect for the environmental review process and recognizing that the project may change, the land acquisition program was put on hold. He said at the end of 2018, there were phone calls and inquiries from impacted landowners and a variety of impacted properties listed for sale, so after the permit was issued it was possible to quickly ramp the lands program back into gear and there has been an uptick in activity the last few weeks. The CCJWRD is still willing to serve in the role of being the acquiring entity in North Dakota, he said, and at their meeting two weeks ago they moved forward with signing purchase agreements for roughly \$4 million of property impacted by the project. A Request for Proposal has been issued and questions have been coming in from appraisers, he said, with responses due back February 6th, he said, and it is expected to have a number of appraisal firms to recommend at the February 14th CCJWRD Board meeting. He said the intention is to have a group of qualified appraisers under contract

on the project so different appraisal packages can be assigned, with a master services agreement in place to expedite processing of appraisal work.

Lands “Green Light” (PMC Lands Task Order No. 4)

Mr. Shockley said Task Order No. 4 is between the project management consultant Jacobs (formerly CH2M) and the Diversion Authority and it covers a host of activities, which Mr. Dodds will explain. He said in addition to Mr. Dodd’s report, work is being done on the Minnesota side to form the entity that will be responsible for negotiation with landowners, comprised of the City of Moorhead and Clay County. There has been some discussion of perhaps having one or two members from the Buffalo Red River Watershed District Board as members also, he said.

Mr. Dodds shared a PowerPoint presentation on the Property Acquisition Program and Structure, including FM Area Diversion Project Organizational Structure and highlighting components related to the lands program. He said the CCJWRD is the entity that has the statutory authority over the entire geography of the project in North Dakota to buy land and has power through the Century Code to use eminent domain in the unfortunate event that is needed. He said the primary function of Task Order No. 4 is being considered today at this committee, the Finance Committee and Diversion Authority, for mitigation management. He said Ohnstad Twichell is providing the legal services necessary to sign purchase agreements and other acquisition services.

He shared the workflow of land acquisition:

- Design
- Diversion Authority Approval to Begin (Land Acquisition Directive Approved)
- Boundary Survey Completed
- Determination of Fair Market Value (Appraisal Approved)
- Offer of Just Compensation
- Negotiate with Property Owner
- Relocation and Re-establishment of Benefits Established
- Purchase Agreement Signed
- Property Closed

He said the decision structure has five levels:

- CCJWRD (acquiring entity)
- Land Management Committee (focus on policy)
- Strategic Negotiating Team (3rd level advisory)
- Administrative Advisory Team (2nd level advisory)
- Lands Coordination Team (1st level advisory)

There are 1,200 to 1,400 parcels to acquire, he said, and to bring each one through multiple committees and processes becomes cumbersome. This structure in place seems to be working well. He shared a map showing the property rights needed for the project coded to indicate parcels owned, parcels in negotiation, parcels awaiting closing and pending or in negotiations. He said it seems getting land rights is on the critical path component of the project and property rights must be acquired prior to construction. He said the diversion channel is a priority due to the P3 portion, and the Corps is anxious to move forward with the design of the southern embankment, followed by property acquisition. There are some environmental mitigation sites scattered throughout that require property rights, he said. The project involves over 1,200 parcels and about \$500 million in land rights, he said, and it is anticipated to take about eight years to have all the

land rights secure. The lands program is part of the overall \$2.75 billion estimate with a significant amount done to date, he said, and a significant amount left to do.

Mr. Shockley said Task Order No. 4 is probably the most significant. It is sizable, he said, and having all the land in place for the channel prior to commencement of construction mitigates the Diversion Authority's risk so all right-of-way is accessible to the contractor at the time the contract is awarded. Having all right-of-way guaranteed for the P3 developer has been estimated save close to \$50 million, he said, and given the large scale of the channel, it would allow the ability to relocate equipment from one area to another if needed due to weather conditions or flooding. He said a critical piece of Task Order No. 4 is outreach to all impacted property owners. He said an issue surrounding the DNR's permitting process was the request to not pursue land acquisitions during the permit application process, so it is critical to start in early 2019 on that process and outreach to landowners. Early acquisitions will focus on the right-of-way needed for construction of the actual infrastructure, the right-of-way under the channel and southern embankment, he said, while taking advantage of opportunistic acquisitions that may occur within the staging area and ultimately obtaining flowage easements within the staging area. The task order includes language that mirrors that in the Master Service Agreement, so in the event the Master Service Agreement is terminated, the task order would also be terminated, he said. There are also some yearly requirements for meeting with and keeping the Board up to date on budgeting and other issues, he said, as well as keeping the process of information flowing from the PMC to the Board. The task order also includes management of impacted property mitigation, he said, such as determining the valuation of flowage easements. The intent is that the staging area would not have water in it year-round, he said, it would only be staged during operation of the project, and now with the increased flow through town it is estimated it would only be only once every 20 years with inundation lasting roughly 7 to 9 days. He said the closer to the southern embankment, the higher the inundation. The task order has been vetted through legal, the co-executive directors and some of the Diversion leadership, he said, and the intent for Minnesota is to follow a similar process as North Dakota's, although there may need to be some nuances added due to Minnesota's eminent domain law and the requirements for appraisals in Minnesota and negotiations with landowners. The process would be very similar, with a significant amount of outreach and negotiation with property owners, he said,

In response to a question from Mr. Olson about how the process would work with an executive director, Mr. Shockley said if an executive director were hired, that role is supplemental to the task of actually acquiring property. While an Executive Director may be involved, property acquisition is a huge task requiring a firm to manage it, he said. It would be difficult to staff 10-15 people at the height of land acquisition, he said, or to retain a staff in later years when only 1 or 2 are needed. From an entity standpoint, this may not be the task for full-time people, he said.

In response to a question from Mr. Campbell on whether the numbers for the Phase I flowage easements study still fall within the scope of the \$500 million project cost for lands, Mr. Dodds said that the budget assumptions that built the \$500 million and the \$2.75 billion are not inconsistent with the findings from Phase 1. There will be variations within the categories of flowage easements, he said; however, in total, he feels comfortable the budget assumptions are in line with Crown Appraisal's work. He said

this is a federal project, therefore federal laws must be followed, as well as state laws. One of the big things is the Uniform Relocation Act requires the relocation of displaced people, he said.

Ms. Scherling said the presentation really helps clarify the process going forward and is a good refresher for everybody.

Mr. Olson moved the approval and acceptance of Task Order No. 4 be recommended to the Diversion Authority. Second by Mr. Zimmerman. There was unanimous approval by all the members present.

Land Acquisition Directives

Mr. Dodds said he is bringing these two Land Acquisition Directives to the group for visibility since it has been awhile since any have been done. He said the first is for a variety of opportunistic acquisitions which are properties impacted by the project that are requesting action sooner than the property owners would be approached. He said the property owners have reached out and been advised it is not a quick process. There are a few complex commercial properties included, he said, and those require a significant amount of time, especially on the relocation side of things. The second LAD is related to the remaining parcels on the diversion channel, he said. The channel was split into three phases, he said, and LAD's have already been authorized for Phase 1 and Phase 2 and this is Phase 3, for parcels south of I-94 down to about the Horace /Sheyenne River area. He said doing a directive now would put things in place to authorize appraisal work as a next step.

In response to a question from Mr. Zimmerman about the process for those properties in the directives that are in Minnesota, Mr. Dodds said the CCJWRD has purchased property in Minnesota and is willing to continue. He said this is on a voluntary basis, obviously a great time to buy property is when someone is selling. Ultimately, he said, the Minnesota entity will be established and the LADs would be funneled to that group.

CCJWRD Update

Mr. Olson said purchase agreements for four properties were approved and more are coming forward, all with willing sellers asking to be bought out. He said quick take and eminent domain are scary when a landowner hears of that happening; however, to put it into perspective, of about 200 properties so far, court action was started on five properties due to a stalemate and before actually going to court a price was negotiated on all but one. He said that reinforces that land purchases are being handled in a fair, flexible way.

Moorhead Clay County Joint Powers Agreement Update

Mr. Campbell said work is being done in forming an entity on the Minnesota side and on a draft for a Moorhead Clay County Joint Powers Agreement that would function much like the Cass County Joint Water Resource District Board. He said an invitation has been sent to the Buffalo Red River Watershed District Board to have one, possibly two members join the group and get involved early as the agreement is being drafted. This gives them an opportunity to be part of this to make sure they can feel the process is fair. He said the goal in all the land acquisition has been to make sure everyone is treated fairly. As Mr. Shockley said, there are some differences in how law works in each of the two states, he said.

Mr. Shockley said there are some different laws in Minnesota and North Dakota, most notably eminent domain. There is also a condition for property acquisition in Minnesota that a noncommercial property can have an appraisal on their own, he said, with an opportunity for reimbursement from the acquiring entity. He said the JPA will cover unique and special issues. The entity being formed is ultimately there to negotiate the land purchases and if unable to make a resolution with a property owner, it would go back to the entity that has jurisdiction over the area for eminent domain, he stated.

Mr. Campbell said t Mr. Hendrickson is also part of that. He said the goal is certainly to establish a JPA and hopefully include the members of the BRRWD Board.

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

The meeting adjourned at 3:48 p.m.

The next meeting will be February 27, 2019.