

MEMORANDUM

TO: File - Cass County Joint
Water Resource District
Oxbow-Hickson-Bakke Levee

FROM: Lukas D. Andrud

DATE: July 7, 2015

RE: Escrow
OT File No. 14-07-03



Builders who have either entered into negotiations or already signed contracts for the construction of replacement homes in Oxbow have been dealing with a good deal of uncertainty since the time of the issuance of the injunction against the Diversion Authority. In particular these builders are concerned that the funds necessary to pay for their work will not be available when they have completed the replacement homes and are ready to close. Therefore, in order to hopefully alleviate these concerns, we have been asked to develop a proposal whereby, the necessary funds would be deposited in escrow early on in the relocation process and released upon closing on the purchase of the owner's current house and completion of the replacement home. The following is one possibility of how the acquisition and relocation process could incorporate the escrow of funds.

1. CCJWRD Enters into Agreements with Homeowner:
 - A. Purchase Agreement - CCJWRD agrees to buy existing house.
 - i. Provides earnest money to be used for purchase of new Oxbow lot and Builder's deposit. Includes other standard Purchase Agreement terms, Owner will deliver clear title, etc.
 - ii. One unique aspect is the Purchase Agreement provides closing shall occur within 30 days of when replacement home is completed. The idea being that closing on the existing house and the replacement home will take place at or around the same time to minimize the need for temporary relocations.
 - B. Replacement Housing Agreement (RHA) - provides for payment of the additional costs necessary to construct an equivalent home in Oxbow.
 - i. Amounts subject to change for necessary costs (such as winter construction costs) which must be approved by CCJWRD's agent (PMC).

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- ii. Does not include betterments which if they are to be included in the replacement home must be done at Owner's sole cost and expense.
 - iii. Reimbursement based on actual costs and not disbursed until closing. If not utilized, Owner not entitled to payment.
 - C. Construction Contract Addendum
 - i. Includes required completion dates and Builder insurance requirements and indemnity provisions.
 - ii. Also provides Builder notice of the change order approval process.
 - iii. Entered into by CCJWRD, Owner, and Builder.
- 2. CCJWRD Pays Owner the Earnest Money Contemplated under the Purchase Agreement.
- 3. Owner Takes the Earnest Money and Buys the Replacement Lot from Oxbow JDA and Pays the Builder's Deposit. (Please note steps 1-3 take place essentially contemporaneously.)
 - i. In all transactions to date the replacement homes have been Builder financed and title to replacement lot has been transferred to Builder during construction, so at this stage a deed conveying the replacement lot to the builder is signed by Owner.
- 4. Enter into Escrow Agreement for Deposit of Balance of Funds.
 - A. Agreement entered into by CCJWRD, Owner, The Title Company, and Builder
 - i. Provides the balance of funds (purchase price under Purchase Agreement less previously paid earnest money + amount described in RHA) shall be deposited into escrow with the Title Company (the Title Company is already under contract with CCJWRD to provide closing services so it would be convenient if they acted as escrow agent as well)
 - ii. The Escrow Agreement would further provide these funds will be held in escrow and not released until the terms of the Purchase Agreement, RHA and Construction Contract Addendum have been

fully complied with (title requirements satisfied, replacement house completed, etc.).

5. CCJWRD Deposits the Funds Contemplated in the Escrow Agreement with the Title Company.
6. Construction of Replacement Home.
 - A. In the event change orders are required and approved during construction, additional necessary funds could be deposited into escrow.
7. Closing.
 - A. Close on existing home—disburse from escrow the balance of the purchase price contemplated in the Purchase Agreement.
 - B. Closing on replacement home
 - i. Builder conveys replacement home to Owner.
 - ii. CCJWRD releases RHA funds at closing from escrow which Owner uses to pay Builder.
 - a. If all work has not been completed at time of closing on replacement home (for instance, replacement home may be suitable for occupation and closing takes place before all landscaping work has been completed) the amount necessary to pay for the uncompleted work shall continue to be held in escrow pending completion of such work and receipt of necessary lien waivers.
 - b. Disbursement would not take place until CCJWRD's agent confirms the work has been completed as required and lien waivers delivered. Any funds remaining in escrow are released back to CCJWRD.

LDA:kmm