



**DIVERSION AUTHORITY  
Land Management Committee  
City Commission Room  
Fargo City Hall  
Thursday, May 14, 2015  
2:00 p.m.**

1. Agenda review
2. Approve April 9, 2015 minutes
3. CCJWRD Land Management Report
4. Cemetery Mitigation Report
5. Right of Entry Status & Cultural Resources Easement Acquisition Update
6. Other business
7. Next meeting Thursday, June 11, 2015

**DIVERSION AUTHORITY  
Land Management Committee  
City Commission Room  
Fargo City Hall  
Thursday, April 9, 2015  
2:00 p.m.**

Present: Fargo Mayor Timothy Mahoney; Cass County Commission Representative Darrell Vanyo; Clay County Commission Representative Jenny Mongeau; Cass County Joint Water Resource District Representative Rodger Olson; Buffalo-Red River Watershed District Representative Gerald Van Amburg; Fargo City Administrator Pat Zavoral; Cass County Administrator Keith Berndt; Moorhead City Manager Michael Redlinger; Clay County Administrator Brian Berg; Fargo Director of Engineering Mark Bittner; Moorhead City Engineer Bob Zimmerman; Clay County Assistant Engineer Nathan Gannon (for David Overbo), City Engineer April Walker (alternate).

Others present: Eric Dodds – AE2S; Mark Brodshaug – Cass County Joint Water Resource District (CCJWRD); Lyndon Pease – Moore Engineering; US Army Corps of Engineers Project Managers Terry Williams and Brett Coleman.

The meeting was called to order by Darrell Vanyo. He said Mayor Mahoney and Pat Zavoral had another meeting; however, they will be here before the meeting ends.

Agenda Review

Darrell Vanyo asked to have a report from Gerald Van Amberg on the Buffalo-Red River Watershed District Board meeting and related discussion added to the agenda.

Approve March 12, 2015 Minutes

Rodger Olson moved the minutes from the March 12, 2015 meeting be approved. Brian Berg seconded the motion. All the members voted aye and the motion was declared carried.

CCJWRD Land Management Summary

Mark Brodshaug gave an overview of the Land Management Summary, highlighting recent activities. The land acquisition team is engaged with property owners in Oxbow, he said. A number of appraisals that went to the Corps all at once about a month ago have been returned and have gone out to property owners, he said, so negotiations are underway. He said he believes all the appraisals for houses in Oxbow that need to be purchased have been completed and a number of initial offers are on the table. Relocations from Park East Apartments continue, he stated, with approximately 60% of the tenants vacated or having secured plans to move. There are 120 units in the building and the process seems to be going as well as can be expected, he said, although having to move is difficult for some of the tenants. Sixty-five percent of the design drawings are complete for the Mickelson area and now the temporary construction easements can be defined and real estate needs identified to get that project going, he said. There have been some issues with the in-town levees, he said, and appraisals are ongoing. He said summer construction schedules for the El Zagal and Mickelson projects are being worked on.

In response to a question from Mark Bittner about whether the public has been confused about the purchases being made by the Cass County Joint Water Resource District, Mark Brodshaug said efforts are made to make it clear when communicating with the public. He said he can see some potential for confusion when more work is done in town and how the diversion fits in with City of Fargo plans.

Eric Dodds said as part of a federal project, it is required people be put in a similar housing situation, which means finding comparable housing; however, with none available in Oxbow, a ruling was made and approved by the Corps for a “housing of last resort” situation. Building new as a replacement is accepted and Oxbow residents have an opportunity to rebuild, which brings up many issues, he said. Efforts are made to be consistent yet allow flexibility and fairness, he said, due to each property owner having unique conditions.

#### NDSU Ag Risk Study Amendment 1

Eric Dodds said going into the study it was envisioned that a handful of sites within the staging area would be identified for impacts for those regions; however, once the study began it was recognized that the hydraulic model was capable of producing output that identified 97 different sites. He said that information was given to the research team which built a more robust model to incorporate all the sites; however, later it was recognized that some of the culvert information was not built in. He said now the culvert data has been updated and updated hydrology information has been submitted to the NDSU research team, so there has been some re-work to do. After the study began, he said, it became apparent that more than one hydrograph of a flood event should be looked at, meaning there will be more complexity than originally planned. For all those reasons, he said, they are asking for an amendment of \$26,712.00, bringing the total to \$91,207.00 and he recommends approval of the amendment. He said preliminary results originally were anticipated to be issued at the beginning of the year but now with additional research it is hoped to have preliminary results to the Agricultural Policy Subcommittee in June and possibly come to this group in June or July.

Keith Berndt said there have been discussions and some back and forth at the State Legislature about SB 2020, from which some language for a State Water Commission study had been removed. He said now there has been some language drafted to be reinserted that is acceptable to all parties and he is optimistic it will be accepted. He said it expands the study; yet is confined to agricultural impacts and goes to a six inch level. This would likely be as a second phase to what NDSU is doing now for this committee, he said.

Eric Dodds said the language being contemplated would have the State Water Commission working directly with NDSU on ag impacts, with a completion date of October of 2016. It is important to get through this original study first, he said, as there may be some things that need to be done based on the first study.

Rodger Olson said the Agriculture Policy Subcommittee meeting this week had 19 in attendance: five from NDSU, seven committee members, four farmers who were asked to attend and three others. He said there was good discussion and NDSU presented six key questions for input. NDSU said the comments would be helpful for inputting data into their model. He said NDSU asked for average crop yields and two farmers

gave average yields for corn and soybeans that seem reasonable, and several additional yields estimates were shared with NDSU that will help with their datasets.

In response to a question from Jenny Mongeau about what averages are being used, such as dry years or wet years, Mr. Brodshaug said he believes they use long term Olympic type averages where highs and lows are discarded. He said there are some privacy obstacles and NDSU is working mostly off public information and exploring the best data to use.

Rodger Olson said farmers could be asked to submit multi-peril records, including yields, anonymously, which would take coordination. He said NDSU did not feel that was practical for this study and are using general yields. Yields vary, he said, depending on things like what kind of land it is and the type of farmer.

Darrell Vanyo said ultimately more data will be available as more farmers become engaged in the process and are willing to share.

Keith Berndt moved the NDSU Ag Risk Study Amendment 1, in the amount of \$26,712.00, be approved. Mark Bittner seconded the motion. All the members voted aye and the motion was declared carried.

#### Right of Entry Status & Cultural Resources Easement Acquisition Update

Lyndon Pease said access will be needed for surveys that will continue for a few years along the western alignment of the diversion. He said coordination efforts have begun, about half the letters and agreements have gone out with some signed agreements returned by landowners. Surveys are needed for bridge design beginning on the west side, he said, south of Horace along County Road 17. He said access has been obtained for geotechnical boring work underway and expected to be completed next week. He said additional surveys may be needed on that property once the bridge design is more fully developed. Throughout the year, he said, the USGS will be doing discharge and water surface measurements during various flows where the Maple River aqueduct structure would be. Access is still needed for four of eleven cemeteries for part of the mitigation study to be completed in June, he said. Survey work continues for the design for in-town levees in the 2nd Street, 4th Street, Mickelson and El Zagal areas, he said, and some cultural resource surveys will be needed for various parcels. He said it has been decided to wait to hold the meeting for landowners along the northern portion of the channel until the Minnesota EIS is completed.

Eric Dodds said besides delaying the northern meeting, acquisition efforts are also being slowed to be conscious of the process in Minnesota.

Terry Williams said the cemetery cultural surveys have turned out to have lots of good historical information for local churches and those interested.

#### Other Business

Gerald Van Amburg said there was budget discussion at the last meeting of the Buffalo-Red River Watershed District Board with motions made, and finally passed to approve that part of the budget allocation that goes towards the DNR's EIS work. Of the seven board members present, several are from Wilkin or Ottertail Counties, he

said, and there is a lot of pressure for them to act a certain way. He said there seems to be mixed signals coming from Minnesota, one being from the DNR that the budget having anything to do with the Diversion project should not be approved until due course is finished. He said he has not been told anything directly by the DNR; however, members are feeling pressure. He said he would like to see the parts involving in-town Fargo levees approved at the next meeting; however, anything dealing with Oxbow or land purchases may not be approved.

Darrell Vanyo said the bylaws call for acceptance by all six of the entities. He said legal counsel will need to advise the Diversion Authority of what it means if there is not agreement. The Diversion Authority Board meeting this afternoon will follow normal protocol, he said; however, he will take an opportunity to ask Attorney Erik Johnson what this could mean for upcoming meetings and for the fiscal year. The alternative, he said, is to stop all wheels in motion because everything comes with a dollar amount attached to it, and then wait until the EIS is done. He asked what the Minnesota representatives would propose to do for issues like the pending hardship acquisition in Minnesota, the existing opportunistic land purchase possibilities and the request from the Buffalo-Red River Watershed District for retention.

Jenny Mongeau suggested it be deferred to the Minnesota legislators. She said at the Buffalo-Red River Watershed District Board meeting the managers expressed concerns about the budget they were asked to approve in January but had started the previous October, which left them feeling like their seat at the table was not valued.

Keith Berndt said he understood the request was to take the budget first to the County and Moorhead, and it took several months for the City of Moorhead to address the budget.

Mayor Mahoney said Fargo has a sense of urgency now and needs to keep going. 2,000 homes were recently mapped into the flood plain requiring flood insurance. He said 20,000 properties could be affected if the FEMA level goes up again. Oxbow is building homes, selling homes and moving ahead with their community, he said, and would not want progress to stop either.

Mark Bittner said properties could be sold if the project is not built, so acquiring them when there is an opportunity and it is cost effective makes sense. He said the Diversion Authority needs to define what it wants to do and see if it is appropriate.

Brian Berg said the Hardship Committee was established out of concern for the people with serious medical conditions, and although a small number, they are the hardest hit. That element is needed with the support of the representation, he said, but there seems to be no other choice under the circumstances with the Buffalo-Red Watershed District holding up the budget.

Darrell Vanyo said it would be a dangerous thing to allow a line item veto on a proposed budget. He said while there may be disagreement on particular items, avenues exist, some of which are being pursued. He said North Dakota's Attorney General said that without impacts to Minnesota, that state does not have authority to stop anything in North Dakota.

Pat Zavoral said it is best to operate under the assumption that the Buffalo-Red River Watershed District is still discussing the budget. A decision will have to be made in May, he said. It could be that the North Dakota entities assume the responsibility of the budget, he said, and then it would need to be determined before the 2016 budget is presented whether that would be a procedure for this year, or ongoing. He said one question to address is whether Buffalo-Red's concerns are simply due to the EIS process or if there is something more. He said likely the EIS will not be finished until late this year or early next year and because of the lawsuit, activity has to wait.

Eric Dodds said stopping an appraisal underway for a hardship case and an opportunistic farmland purchase are being contemplated.

Darrell Vanyo said things are on hold for the moment. He said he and Rocky Schneider will meet on Monday with an organic farmer on the Minnesota side who has been asking why he has not heard about his appraisal. He said the explanation will be that it is on hold. Also, he said, at the Finance Committee meeting there was discussion regarding Buffalo-Red retention, and although the technical committee felt the request was appropriate, it will be pended.

Next meeting will be Thursday, May 14, 2015 at 2:00 p.m.

The meeting adjourned at 3:15 o'clock p.m.