

**DIVERSION AUTHORITY  
Land Management Committee  
Thursday, June 14, 2012  
1:00 p.m.  
Fargo City Commission Room**

Committee Members present: Oxbow Mayor Jim Nyhof, Cass County Commissioner Darrell Vanyo, Clay County Commission Representative Jon Evert, Cass County Joint Water Resource District Representative Rodger Olson, Fargo City Administrator Pat Zavoral, Cass County Administrator Keith Berndt, Clay County Administrator Brian Berg, Fargo Director of Engineering Mark Bittner, Moorhead City Engineer Bob Zimmerman, Tom Waters - CH2M (ex-officio).

Others present: U.S. Army Corps of Engineers Project Managers: Brett Coleman and Terry Williams, Eric Dodds - AE2S, Brad Dahl - Moore Engineering, Gene Barr - CH2M, Mark Lambrecht - AE2S, Sean Fredericks - Ohnstad Twichell Law Firm.

In the absence of Chair Dennis Walaker, the meeting was called to order by Darrell Vanyo.

Agenda Review:

Tom Waters requested that a report from Gene Barr be added to the agenda.

Approve May 10, 2012 Minutes:

Jim Nyhof expressed concern with wording in the minutes about land purchases (page 2, paragraph 5) stating: "Once the PPA is signed, there are expectations in Oxbow and other areas that land purchases outside the right-of-way will begin; yet, according to the Corps, land purchases would not be done until the diversion is in operation, which could be 8-10 years." He said stating purchases will not be done until the Diversion is operating is too strict of terminology due to the fact that it is likely acquisitions will occur along the way.

Brett Coleman said the Corps position is that property is needed before the project goes into operation. It could be said that buyouts may be done between year zero and year ten, as opportunities arise, he stated, with the goal that by the time the project becomes operational all the real estate would be obtained.

Pat Zavoral said the statement was to alert this committee that some of the purchases, in terms of mitigation, will not take place until the facility is operational and his impression is that may be too late for some people in areas where mitigation is needed. He said this committee will need to make decisions whether buyouts should be undertaken prior to operation. Right-of-way purchases will be done before construction, he said; however, what may be in policy and how the letter of the law is followed on buyouts, will be discussed as land management issues move forward. Rather than amending the May 10th minutes, he suggested Mr. Nyhof's concerns be included in the current minutes.

Bob Zimmerman moved the minutes of the May 10, 2012 be approved as written. Jon Evert seconded the motion. All the members voted aye and the motion was declared carried.

#### Land Management Plan:

Tom Waters said the draft Land Management Plan is being reviewed and comments have been received. He said they are looking to finalize it prior to the July Diversion Board Authority meeting.

In response to a question from Jim Nyhof about language pertaining to “housing of last resort” not being included in the plan, Gene Barr said it is part of the plan. He said there is general information referring to relocation assistance; however, too much detail was avoided to save confusion and literature is referenced that defines the benefits in great detail.

#### Agricultural Advisory Subcommittee:

Mark Lambrecht said the Agricultural Advisory Subcommittee meeting on May 30th was hosted at Dakota AG Coop in Kindred and attended by 17 individuals. He said some of the issues discussed included the impacts of the Diversion channel specifically on local drainage, affects of staged water on crop yields, crop insurance programs and how coverage may be impacted, flowage easements, balance between risk tolerance and payment for flowage easements, and transportation aspects. He said Diversion channel cross-section modification was discussed in detail and Eric Dodds will report on that later.

Rodger Olson said a recommendation to add Lyle Hovland from Wilkin County, Minnesota as a member of the Agricultural Advisory Subcommittee was left open-ended for the Agricultural Committee to decide. He said it is not the intention to add many members; however, Mr. Hovland could bring more to the table.

#### Diversion Channel Cross-Section Modification:

Eric Dodds said during the feasibility study there were conservative assumptions made on the stability of the excavated material berms (EMB). He said that approach limited the height of the piles which widened the width of the footprint and the EMBs. Additional geotechnical work concluded the soils are stable enough to pile the EMBs higher, he said, and the technical team has produced an alternative which could save upwards of 1,000 acres of land.

Pat Zavoral said the decision relating to the width of the channel itself is a design issue that may reach the level of policy makers. He said the policy issue of whether more or less land is wanted should be discussed, with a recommendation forwarded to the Authority. He said the difference is in the amount of land to be purchased and there have been arguments for saving land, yet that land could be purchased now to avoid having to come back and purchase more later.

Terry Williams said the Corps is proceeding in the design of Reach 1 with the bottom diagram shown on the sheet titled “FM Diversion Typical Cross Section Comparison.” She said if something different is desired, comments would be received in July when the design comes to the Committee for review.

Mark Bittner commented that the first diagram, the cross section used in the feasibility study, makes more room available for recreational features.

Tom Waters said his team will work with the Corps to understand the implications on the schedule and whether working sessions need to be scheduled soon or if the July Board meeting is adequate to get a position.

Rodger Olson moved the PMC prepare a decision paper outlining pros and cons to be made available to the Committee for a decision on whether or not to forward it to the Diversion Authority Board. Mark Bittner seconded the motion. All the members voted aye and the motion was declared carried.

#### Early Acquisition Policy Subcommittee:

Pat Zavoral said the Early Acquisition Subcommittee is a staff subcommittee in place to handle requests prior to authorization. He said the Hardship Review Committee reports to the Early Acquisition Subcommittee, which in turn reports to the Land Management Committee. He said at the June 11th meeting, the subcommittee discussed its charter, funding policy and the disposition of acquired property. Financial hardships will be next for review, he said, following medical hardship buyouts.

Pat Zavoral moved the Land Management Committee accept the Early Acquisition Subcommittee charter as presented. Brian Berg seconded the motion. All the members voted aye and the motion was declared carried.

Pat Zavoral said it is being suggested that the funding for buyouts be part of the Diversion Authority's responsibility with accounts kept internally as to where the purchases were made (MN or ND). If the project does not proceed it will fall back to the entity responsible on each side of the river, and outside or inside the city, to pay the cost of acquisition, he said.

Rodger Olson moved the funding be accepted as a Diversion expense. Bob Zimmerman seconded the motion. All the members voted aye and the motion was declared carried.

Darrell Vanyo said this Committee should endorse the leaseback arrangement and the Early Acquisition Subcommittee will continue to work on the fine details with each jurisdiction.

Jim Nyhof said the City of Oxbow Council discussed the leaseback issue and is willing to accept the responsibilities; however, there are concerns about the extent of liability exposure. He said there is interest in renting a couple of the homes proposed for early buyouts.

In response to a question from Jim Nyhof about timing, Keith Berndt said the buyout process for the three medical hardship properties would begin immediately, running on a parallel track with policy development.

Eric Dodds said the hardship policy adopted recommends following the federal process, therefore, the Corps will be engaged.

Pat Zavoral moved the proposed disposition of property on a leaseback to either the governmental entity responsible or the county be accepted and recommended to the Diversion Authority. Jim Nyhof seconded the motion. All the members voted aye and the motion was declared carried.

#### Hardship Review Subcommittee:

Brian Berg said the subcommittee met on June 5th and reviewed eight applications. He said the subcommittee gave its recommendation to the Early Acquisition Subcommittee that three properties be bought out and appraisals be authorized.

Eric Dodds said the assessed value of the properties is approximately \$750,000.00; however, the appraised value could be different.

Keith Berndt moved to approve the buyouts of the three homes indicated and appraisals for the three homes in Oxbow, along with other actions necessary to proceed with those procurements, be authorized. Jon Evert seconded the motion. All the members voted aye and the motion was declared carried.

#### ROE Team Update:

Brad Dahl said a lot of right-of-entry agreements expire between now and September 30th and work is being done with the attorneys to get the agreements to landowners so they can be signed and returned.

Sean Fredericks said agreements are done based on timing. Initially a letter goes out, he said, and a personal follow up is done if the agreement is not returned. If voluntary consent is not obtained, he said, the right-of entry request goes to court. The percentage that goes to court is low, he said, perhaps 15%, and there have not been adverse decisions from the courts.

Terry Williams said there are over 1,100 parcels in the ROE database with first requests being for 18 months. She said, not all requests were sent out at the same time, and do not expire at the same time; however, the requests now are for 2 to 3 years.

Darrell Vanyo excused himself from the meeting and Pat Zavoral took over as Chair.

#### Cultural Resources Easement Acquisition:

Mark Lambrecht reported that since last month's meeting, attorneys have prepared a prototypical easement form which was approved by John Albrecht from the Corps. He said the Cass County Joint Water Board also reviewed and approved it. A consultant from the Corps has reviewed and identified the necessity for this type of work in the northern area of the project, he stated, and these agreements will be necessary in the near future. The surveys will occur after harvest, he said, and legal advisors will work with six property owners on eleven tracts of land that will need this type of survey. He said there is one site in Reach 1 north of Harwood where the diversion channel runs parallel with the Sheyenne River for a short distance, which is important. The other sites, he said, are near water courses where the crossing of the Maple and the Sheyenne Rivers occur.

Flood Plain Criteria:

Tom Waters said the Corps continues analysis of whether levee or dam criteria applies to the southern alignment and Gene Barr is leading a team formed to work with the Corps on the implications involved.

Gene Barr said the process as to what the impacts are and what needs to be done has just begun and the Committee will be kept updated. There are many complicated issues whether the project is designated a dry dam or a levee, he stated, and there are also issues with the state that would not exist if this were solely a Corps dam project.

Tom Waters said some of the initial reports are expected in July and studies are being done on increasing flows through town and the VE13 analysis on inlets. It will likely be the end of September before all the reports can be tied together, he said.

Terry Williams said the Corps process to determine whether the guidelines for a dam or a levee need to be followed could take several months. She said the Corps believes upstream mitigation would be the same whether it classified as a levee or a dam.

Next Meeting:

The next meeting will be held Thursday, July 12, 2012 at 1:00 p.m.

The meeting was adjourned at 2:15 p.m.