

DIVERSION AUTHORITY
Land Management Committee
Thursday, July 12, 2012
1:00 p.m.
Fargo City Commission Room

Committee Members present: Fargo Mayor Dennis Walaker, 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, Jon Diebel - CH2M, Mark Lambrecht - AE2S, Brad Dahl - Moore Engineering

Approve June 14, 2012 Minutes

Darrell Vanyo moved the minutes of the June 14, 2012 meeting be approved as written. Bob Zimmerman seconded the motion. All the members voted aye and the motion was declared carried.

Land Management Plan

Jon Diebel said the initial version of the Land Management Plan is being released to the public today, July 12, 2012.

Early Acquisition Subcommittee

The Early Acquisition Subcommittee met once, Eric Dodds said, and has not met since the last Land Management Committee meeting.

Hardship Review Subcommittee

Eric Dodds said the appraisal firms have been verbally approved by the Corps. He said work is being done to obtain access to three properties for appraisals in July, followed by a period of time for the owners to negotiate the appraisal. He said one property owner requested an extension because of improvements being done on the property. The intention is to bring the appraisals to this Committee and the Board at the September meeting, he said.

Property Disposition Policy Development

Eric Dodds said the intent of the Flood Diversion Authority's Early Acquisition Property Disposition General Policy is to have a policy to serve as the framework for the disposition of any of the early acquired properties. He said the Diversion Authority would work to enter into a leaseback agreement with the local jurisdiction. A leaseback agreement would then define the specifics of each property, he said, and the local jurisdiction would be asked to manage, maintain and assume some liability for those properties. He said the local jurisdiction will be given the ability to sublease the property

and receive the rental income. The Diversion Authority would retain ownership and control of the property, he said. He said if the leaseback agreement is not signed, the Diversion Authority would have discretion for the disposition, including the removal of the property. An important question is whether the Diversion Authority is willing to retain a property management firm if Oxbow will not take it on, he said.

Oxbow does not want to be in the property management business, Jim Nyhof said, and would prefer that a property manager be retained. He said as the contract is written, the City of Oxbow will not sign it. He stated the problem is in the details of the leaseback agreement, particularly liability.

Jon Diebel said the draft lease agreement is being discussed between attorneys. Generally in such an agreement the lessee acts like a property manager, he said, including maintaining the property, getting taxes paid and being responsible for liability insurance. He said even with modifications, an agreement would require more risk than the jurisdiction may agree to assume if the jurisdiction does not want to operate like a property manager.

Tom Waters stated the lease agreement is a work in progress and negotiations can continue with Oxbow to arrive at a mutual agreement. He said as the project moves along there could be lots of properties to be managed.

A lease agreement may vary from place to place, said Brian Berg. The general policy gives the jurisdiction an opportunity to manage the property, he said.

Darrell Vanyo moved the Flood Diversion Authority Early Acquisition Property Disposition General Policy be approved. Pat Zavoral seconded the motion. All the members voted aye and the motion was declared carried.

Status Report: Levee vs. Dam Policy Team

Tom Waters said the Levee vs. Dam Policy Team, working with the Corps, has identified a number of questions that need to be answered and documented. He said meetings are being arranged with FEMA and the two states and a final report defining criteria and policy issues is targeted for September 28th.

Channel Cross-Section Proposal

The Corps is trying to firm up the geometry of the excavated material berm (EMB), Tom Waters said. The design of the channel started out wider and lower, he said; however, geotechnical studies since the Feasibility Study have shown that the soils can support EMB's of 15 feet in height. He stated the smaller footprint will result in a cost reduction and the narrower EMB's will require more than a thousand less acres of land and will be recommended to the Diversion Authority Board.

Pat Zavoral said the new, proposed design can reduce the footprint of the diversion by a thousand acres, provide adequate drainage in the area and still allow an opportunity to expand the diversion in the future, if need be.

In response to a question from Jon Evert about the possibility that the proposed meandering flow of the channel will wash out each time the diversion is used as some people have said, Terry Williams said the Corps is closely studying the low flow channel to properly size it and be sure it functions properly. She said a properly sized low flow channel is essential to the health of the entire channel and the proposed meander serves for mitigation and technical reasons.

Mark Bittner said the issue of the low flow/meandering channel will be brought back once more information is gathered.

Darrell Vanyo said it is the cross section dealing with the banks and the width of the channel being approved now, and not the concept of the meandering route at the base.

Darrell Vanyo moved to recommend that the Diversion Authority approve the proposed channel cross section. Bob Zimmerman seconded the motion. All the members voted aye and the motion was declared carried.

ROE Team Update and Cultural Resources Easement Acquisition Status

Brad Dahl said there were two successful court hearings for rights-of-entry last week and currently access to eight properties is being sought in court. He said about 10% go to court and access has been granted in those cases.

Access to eleven properties involving six property owners, has been obtained through Cultural Easement Acquisition rather than ROE, said Mark Lambrecht. Attorneys are in the process of preparing documents and obtaining permissions, he said, with the intent to have it done this fall.

Other Business

Mark Lambrecht said the draft charter of the Agricultural Policy Subcommittee was reviewed and recommended at the last meeting with a few changes. He said the topics for next month will be crop insurance issues and effects of inundation on yields.

Jon Evert moved the Agricultural Policy Subcommittee's charter be approved. Mark Bittner seconded the motion. All the members voted aye and the motion was declared carried.

Next Meeting

The next meeting will be held Thursday, August 9, 2012 at 1:00 p.m.

The meeting was adjourned at 1:50 p.m.