

**DIVERSION AUTHORITY  
Land Management Committee  
Thursday, May 9, 2013  
2:00 p.m.  
City Commission Room  
Fargo City Hall**

Committee Members Present: Fargo Mayor Dennis Walaker, Moorhead Mayor Mark Voxland, Oxbow Mayor Jim Nyhof, Cass County Commission Representative Darrell Vanyo, Clay County Commission Representative Jon Evert, Cass County Joint Water Resource District Representative Mark Brodshaug, Buffalo-Red River Watershed District Representative Gerald Van Amburg, Fargo City Administrator Pat Zavoral, Cass County Administrator Keith Berndt, Moorhead City Administrator Michael Redlinger, Clay County Administrator Brian Berg, Fargo Director of Engineering Mark Bittner, Moorhead City Engineer Bob Zimmerman, Fargo City Engineer April Walker (Alternate), Tom O'Hara (Ex-Officio).

Others Present: Eric Dodds – AE2S, U.S. Army Corps of Engineers Project Managers Terry Williams, Brett Coleman and Aaron Snyder, Mark Lambrecht – AE2S, Lyndon Pease – Moore Engineering,

Approve March 14, 2013 Minutes

Darrell Vanyo moved the minutes from the March 14, 2013 meeting be approved as written. Mark Voxland seconded the motion. All the members voted aye and the motion was declared carried.

Hardship Acquisition Program Update

Eric Dodds gave a status update of the Hardship Acquisition Policy. He said ten hardship applications have been received since the program was initiated and three applications were approved for acquisition. Two properties in Oxbow have been acquired, he said, and a property management firm (Coldwell Banker) has been retained to administer renting the properties. He said the property at 121 Oxbow Drive was approved for hardship acquisition and after the first appraisal, a second appraisal was done; however, it was determined not to be compliant with USACE 'yellow book' standards and was dismissed. Negotiations with the property owner led to an agreement to purchase the property based on an average of the first and third appraisal, he said. This approach will be presented for board approval, he said. A ninth application was approved by the Hardship Review Committee in February and an appraisal was completed in April, with negotiations ongoing. Several additional property owners have indicated interest, he said, and a tenth application was received last week.

Approval of Hardship Property Purchase Agreement:

Eric Dodds said the Administrative Advisory Committee of the Early Acquisition Subcommittee and the Finance Committee have reviewed the purchase offer for a hardship property in Oxbow and request a concurrence from this Committee. He said the property owner has agreed to the sale for a compensation of not less than \$356,000.00, plus any average from the pending third appraisal.

Mark Bittner moved the Hardship Property Purchase Agreement be approved as outlined and the recommendation be presented to the Diversion Authority Board. Pat Zavoral seconded the motion. All the members voted aye and the motion was declared carried.

#### Summary of Meeting with Individual Residents in Staging Area

Eric Dodds said teams met with 57 different property owners to explore their interest in buyouts, ring levees and relocation within a proposed protected area. He said a majority preferred buyouts and a handful said they would consider moving within the levee. If offered in an early timeframe, and if the Oxbow/Hickson/Bakke ring levee is large enough, he said, there may be more interest in relocating there. In addition to the meetings, 150 survey letters went out, many to recipients who are not impacted. He shared a summary of the survey forms returned after the meetings. He stated there are ongoing concerns about what people will do with their houses and timing of acquisitions. Feedback indicated most believed the buyout process was fair, he said, and the Hardship Acquisition Program is gaining interest. Those surveyed are in North Dakota, he said, and there are intentions to do similar information gathering with Minnesota residents. The development of a ring levee concept for Comstock would follow a similar pattern, he said.

In response to a question from Jon Evert about whether individual ring levees will protect houses and not farm buildings, Mr. Dodds said details on ring levees are uncertain at this point. Individual ring levees would have to be certified, he said, which by FEMA standards requires a government agency to own the land the levee sits on.

Aaron Snyder said the Corps would look at rural ring levees on a case-by-case basis. He said it is generally preferred that the entire farmstead be protected which is expensive. Individual assessments would determine whether it is more feasible to buy out a property or protect it, he said.

In response to a question from Jim Nyhof about whether anything has been communicated to residents about whether a buyout could be triggered sooner if a resident were willing to relocate within the levee, Tom O'Hara said no commitments for early acquisition to relocate within a levee were made as part of the meetings with residents; however, that does not preclude the Authority from creating a policy to change that.

Pat Zavoral said it is important to draft a policy statement for buyouts within these retention areas. The timing of the staging area buyouts will be a critical piece, he said, and it will be costly if all the buyouts are done and the diversion does not happen. The Corps policy is that buyouts do not happen until the project is in sight of operation, he said.

Keith Berndt said he would feel more comfortable enacting early acquisition of vulnerable property along the river rather than early acquisition of houses on higher land. Cass County has eleven such properties on the recently approved FEMA acquisition list, he said, which is a start.

Fargo Director of Engineering Mark Bittner said he was surprised when reviewing the actual drawings at how difficult it will be to put ring dikes around individual structures due to the depths and access.

In response to a question from Aaron Snyder about the possibility of residents displaced by the staging area relocating to existing homes, Jim Nyhof said there will be existing homes for sale, as well as other potential lots in Oxbow.

In response to a question from Gerald Van Amburg about maximum depth on a farm ring dike before that option is eliminated, Aaron Snyder said it would be site specific, having much to do with water depth, type of house and access. He said acquisition offers are to be made for depths above three feet, including farmsteads, although negotiations are possible.

Darrell Vanyo cautioned that comparisons may be made between individual ring dikes and what may be done in Oxbow/Hickson/Bakke. He said there is a difference in the depths involved, as well as the risks, access, maintenance and operations.

#### Oxbow/Hickson/Bakke Ring Levee Alignment

Keith Berndt said the full ring levee alignment provides 500 year protection to 196 properties, an Oxbow/Hickson alignment protects 139, and an Oxbow only alignment protects only 106 properties. A full alignment protects key businesses, he said, and maintains the tax base for the Kindred School District. He said construction of the full alignment provides more certainty starting in 2014, while lesser alignments will leave property owners in limbo until at least 2018. The full alignment cost of \$65 million is \$20 million less than an Oxbow/Hickson alignment, he said, and \$25 million less than Oxbow only protection. He stated the disadvantages to the full alignment are that there is a lack of support from Bakke residents and opposition by Pleasant Township residents.

In response to a question from Mark Bittner about the number of lots available for relocation, Tom O'Hara said the final design will be based on the alignment selected. He said currently the figure is about 42 properties with the agreement being one-to-one for those displaced.

Pat Zavoral said it has been discussed that there would be a minimum of ten lots available in addition to the 42, because of the interest from people in the staging area to move within the protected area.

Eric Dodds said he has records of individuals who have indicated interest. He said relocation was discussed at an Outreach Committee meeting recently and Cass County Commissioner Ken Pawluk asked him to convey his suggestion that relocation could be a viable technical mitigation solution compared to buyouts.

Brett Coleman said that is something the Corps would have to discuss. He said it will depend on the alignment and there are constraints on how large the ring levee can be.

Darrell Vanyo said he feels the right thing to do is construct a ring dike to protect Oxbow/Hickson/Bakke. A primary advantage is that the communities retain their existence and maintain a tax base for the Kindred School District, he said. He has heard people say their area can handle higher floods, he said, yet that does not take into consideration the measures that would need to be taken to protect Fargo in the event of a catastrophic flood and affect areas to the south. He said he looks at this added flood protection as a way of looking out for the people and putting them first.

Darrell Vanyo moved to support the full Oxbow/Hickson/Bakke alignment for the Oxbow Area Levee and the recommendation be presented to the Diversion Authority Board. Keith Berndt seconded the motion. All the members voted aye and the motion was declared carried.

#### Agricultural Policy Subcommittee Update

Mark Lambrecht said the Agricultural Policy Subcommittee meeting on April 17th took place just after the individual property owners meetings and there was a large amount of interest. He said the Houston-Moore Group reported on the farmstead ring levee evaluation and had maps available so participants were able to discuss the feasibility of ring levees or the necessity of buyouts. In many areas, he said, due to the lack of access and depth of water, ring dikes are not feasible. Flowage easements and crop insurance/risk management continue to be discussed, he said, and work continues on the Agricultural Impacts Mitigation Plan. He said the next meeting of the subcommittee is scheduled for June 18th.

Eric Dodds said since the Agricultural Policy Subcommittee meeting, there have been discussions through Federal Crop Insurance with a reinsurer and he is optimistic that a Crop Insurance Plan can be worked out that is mutually agreeable.

Mayor Walaker said for the most part, farm residences are now located in the same area as they farm. It does not seem there are many solutions, other than relocating the residents to the protected area, he said. Farmers are being told the land will be accessible, he said, but what is too great a distance for them to travel to the land they are physically farming. He said greater detail is needed on the process.

Eric Dodds said there are 68 total properties within the staging area, and of the 62 that require mitigation, 49 are in Cass County, 12 are in Clay County, and 1 is in Richland County. There are 20 farmsteads total, he said, 14 in Cass County, 5 in Clay County and 1 in Richland County. Of the 48 total residences, he said, 38 are in Cass County and 10 are in Clay County.

Pat Zavoral said this committee will need to make a recommendation on how flowage easements will be initiated, when crop insurance will be paid, and the timing of relocations. He said if the south side levee gets built ahead of the completion of the diversion, farmland may be impacted.

Aaron Snyder stated if that south side levee construction is proposed and decided upon, there would be a requirement by the Corps to acquire the all land necessary in the southern portion that would correspond with the construction of those features.

In response to a question from Jon Evert about how high the railroad will need to be raised in the Comstock area, Mr. Snyder said he would have to verify that, but he believes the track is quite high and would only need to be elevated a modest amount.

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

Lyndon Pease said there continues to be access updates, and various types of surveys continue which are necessary for design. Cultural Phase 1 and Cultural Phase 2 Surveys, and design surveys will continue this summer and into the fall, in the Reach 1, 2, 4 and 5 areas on the north end of the project, he said. All access has been obtained for the in-town area of the project, he said.

Efforts are being concentrated on current design work in Reaches 1-5, Terry Williams said.

#### Other Business

Darrell Vanyo said recent legislation requires a report on the progress of the project be made to the State Water Commission twice a year.

Jim Nyhof said the City of Oxbow is close to signing the Memorandum of Understanding (MOU), with the goal of having it done in June. He asked about the process of having it approved and Pat Zavoral said the MOU will come to this Committee for a recommendation to the Diversion Authority.

Pat Zavoral said some items to discuss in June are whether the local water board would be the responsible entity for purchasing the right-of-way, including the homes, and also, who will be doing the internal infrastructure work, with possibly a separate agreement with Oxbow.

The next meeting will be Thursday, June 13, 2013 at 2:00 p.m.

The meeting was adjourned at 3:00 o'clock p.m.