



**DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Wednesday, July 13, 2016
4:00 p.m.**

- | | |
|--|-------------|
| 1. Committee Organization | action |
| 2. Agenda Review | |
| 3. Approve June 8, 2016 Minutes | action |
| 4. Property Acquisition – Organic Farmland | information |
| 5. CCJWRD Land Management Report | information |
| 6. Other business | |
| 7. Next meeting August 10, 2016 | |

Diversions Authority Land Management Committee

Committee Membership (as of July 13, 2016)

1. TBD, Diversions Authority Board Member
2. TBD, Diversions Authority Board Member
3. John Strand, City of Fargo
4. Nathan Boerboom, City of Fargo
5. Bruce Grubb, City of Fargo
6. Heidi Durand, City of Moorhead
7. Bob Zimmerman, City of Moorhead
8. Mary Scherling, Cass County
9. Chad Peterson, Cass County
10. Aarland Rasmussen, Cass County
11. Jenny Mongeau, Clay County
12. Rodger Olson, Cass County Joint Water Resource District

Temporary Chair – TBD by majority vote of Land Management Committee on July 13, 2016.

Permanent Chair – TBD after Diversions Authority appoints its two members to the Land Management Committee on July 14, 2016. Permanent Chair must be one of the two Diversions Authority appointed members. Committee can also elect a vice chair.

**DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Wednesday, June 8, 2016
4:00 p.m.**

Present: Cass County Commission Representative Mary Scherling; Moorhead City Council Representative Heidi Durand; Clay County Commission Representative Jenny Mongeau; Cass County Joint Water Resource District Representative Rodger Olson; Fargo City Commission Representative Dave Piepkorn; Cass County Administrator Keith Berndt; Clay County Administrator Brian Berg; Fargo Director of Engineering Mark Bittner; Moorhead City Engineer Bob Zimmerman.

Others present: Eric Dodds - AE2S; Mark Brodshaug - Cass County Joint Water Resource District; US Army Corps of Engineers Project Manager Terry Williams; Fargo City Engineer April Walker; Fargo City Attorney Erik Johnson.

The meeting was called to order by Mary Scherling.

Agenda Review

Rodger Olson moved to approve the order of the agenda, moving Item 3 "Typical Property Acquisition Process" to later in the agenda. Heidi Durand seconded the motion. All the members voted aye and the motion was declared carried.

Approve May 11, 2016 Minutes

Jenny Mongeau moved the minutes from the May 11, 2016 meeting be approved, correcting her question under "Flowage Easements" to refer to crop insurance and not easements. Brian Berg seconded the motion. All the members voted aye and the motion was declared carried.

Property Acquisition Schedule

Eric Dodds said the Property Acquisition Schedule is still getting some input and review from the Corps and others. He said he wanted to share it in its current form for discussion. He said this will be helpful as property acquisitions are planned and will help property owners understand when they could be approached to talk about property acquisitions. It is expected to take more than a year to acquire the necessary property rights for each project in most cases, he said; however, in some instances the schedule for acquisition ended up shorter than desirable, such as for the Diversion inlet control structure. There will be different land firms assigned to acquire parcels for each project element and work project, he said.

In response to a question from Mary Scherling about whether all 12 property owners along County Road 16/17 have been contacted, Mr. Dodds said property owners have all been contacted and the properties have been appraised. The appraisals have been reviewed by the Corps, offers have been presented and negotiations are ongoing. He said the focus was on the three properties for the inlet structure and there were some court filings

made last week. He said now attention will turn to the remaining properties with a goal of acquisition by fall so the bids for road realignment work bids could be opened and construction could start late this year or early next year.

In response to a request from Heidi Durand about whether the schedule could include a breakdown showing how many parcels are in North Dakota and how many are in Minnesota, Eric Dodds said that detail could be included in the future.

Typical Property Acquisition Process

Eric Dodds said rights will need to be obtained for over 1,400 parcels and the hope is to have that done by 2022. With so much work to be done, it is important to have a process to fall back on with certain delineated steps. He said after the design team determines the need for a parcel, a land agent is assigned and the agent will be a primary point of contact for the landowner. Right of Entry requests allow boundary survey work to be done, which is necessary for the appraiser, he said, and notices of intent to acquire will be distributed by land agents. Once an appraisal is conducted and reviewed, an offer is presented and followed by negotiations, he said. There is a goal of completing negotiations in 45 days which gives agents some boundaries for them to be diligent in contact and negotiations with landowners, he said, and there is a court action process only if negotiations are unsuccessful.

In response to a question from Dave Piepkorn about some acquisitions having gone through the City of Fargo in a separate process, Erik Johnson said an example is Mid America Steel, where there was an interest the city had in addition to the project itself. Another example, he said, would be the Howard Johnson hotel property where there was the liquor license buyout issue and relocation. He said the default position is to have the diversion project lead the way; however, there can be circumstances outside of the project.

April Walker said the policy is generally followed and it is in the downtown area where some of the acquisitions have deviated from the process. She said it is due to other interests of the city that have nothing to do with the Diversion Authority project.

Mark Brodshaug said where there is a need to relocate people and/or businesses, as in the staging area or path of the channel, there will be a need for a negotiation time of more than 45 days. It could even be a six-month or longer timeframe, he said.

Rodger Olson said there was discussion at the Outreach Committee meeting on being certain there is notification and information sent out soon enough to give property owners a chance to start making plans.

Eric Dodds said in most cases the initial notification step is at least a year ahead of when the acquisition would be completed. He said the Typical Property Acquisition Process handout that was distributed is specific to North Dakota. While there are a lot of similarities between the two states, there are some differences, primarily the court action process, so there will also be a version for Minnesota.

In response to a question from Mary Scherling about whether it is the Corps guidelines or Century Code being followed, Eric Dodds said the Corps and federal guidelines must be followed for the appraisal aspect. The relocation aspects are also federal requirements, he said and some nuances are more local, particularly in terms of the steps used.

Property Acquisitions

Mid America Steel, 92 & 93 Northern Pacific Avenue North, Fargo

Eric Dodds said the Mid America Steel acquisition and relocation is needed because the parking lot north of NP Avenue is required to accommodate construction of the in-town levee and floodwall project. The impacts to the parking lot have been determined to have a potential to result in severance damages to the entire manufacturing facility, he said. Bids for the Second Street/Downtown component of the in-town levees project were based on the assumption that the necessary property would be acquired for construction, he said, and if it is not acquired a change order deduct and rebid/re-award would be needed and could additionally cost approximately \$1M, he said. Three separate appraisals have been done on the site, he said, one on the parking lot north of NP Avenue which is the actual footprint needed for the project, the second for the land south of NP Avenue, and a third for the equipment and fixtures within the Mid America site. Collectively, he said, those three appraisals plus the construction cost avoidance, equate to the Joint Board's portion being \$5.8 million. Legal counsel saw some exposure to the Diversion Authority or CCJWRD Board if just the parking lot were condemned, he said.

Dave Piepkorn said for consistency, a better job needs to be done on valuations. He said a manufacturing company like Mid America is valuable to keep in the area. He said he has concerns about the tremendous potential negative environmental impacts of what may be under the ground at that property. Moving forward, this area is a gateway between Moorhead and Fargo, he said, and will likely be developed and be more public friendly and made to look much nicer.

Mary Scherling said there is potential for redevelopment in the area and it appears it is the City of Fargo that would benefit. It is exciting that something besides a factory will be in that location someday, she said, plus higher property taxes could benefit the city, county and schools. She said she understands Fargo is also taking on the liability; however, she would like to see some consideration to monitoring the outcome so that if there is a huge windfall, some may come back to the Diversion Authority.

Mark Brodshaug said it is proposed the CCJWRD and Diversion Authority would acquire the property north of NP Avenue needed for the floodwall project and the City of Fargo would get the property to the south. In the discussions and negotiations with City of Fargo officials, he said he thought it appropriate that because the city is taking on the risk of the cleanup in this acquisition, the city should also have the potential reward. The city is in the best position to handle the cleanup since they own the landfill, he said, and have access to things like EPA grants.

Keith Berndt moved to recommend to CCJWRD, the execution of an "Entry and Construction Agreement" to allow for immediate access to the Mid America property for

construction of the floodwall project and execution of a Purchase Agreement in the amount of \$5,800,000.00 as administrative settlement for the Mid America parking lot. Mark Bittner seconded the motion. On call of the roll Scherling, Durand, Berg, Zimmerman, Mongeau, Berndt, Olson and Bittner voted aye. Piepkorn voted nay. The motion was declared carried.

Property Atlas

Eric Dodds said the property atlas is an informational piece being shared to show the overall project area, parcels that need to be acquired and status of various parcels.

CCJWRD Land Management Report

Mark Brodshaug said there is not much change from last month, the most significant change is the Mid America Steel acquisition which was just voted on. He pointed out that when this Committee and CCJWRD Board approve purchase and relocation agreements, it takes some time because it is the start of a process and not the end of it. Sixteen homes are under construction in Oxbow, he said, nine have been completed and the owners relocated and eleven owners have chosen to relocate outside of Oxbow. Rights of Entry and survey work continue on Phase 1 in the Argusville and Georgetown areas. He said there is an update in the Diversion Inlet Control Structure Lands Acquisition Update document that was presented to the Diversion Authority a couple weeks ago. On May 31, 2016 the CCJWRD filed three separate eminent domain actions to acquire the inlet properties needed for the Corps construction schedule this fall, he said, and negotiations are ongoing with owners of 12 other parcels necessary for the County Road 16/17 realignment work near the inlet control structure. He said these parcels are needed for the Diversion Authority opening bids in fall, 2016.

Jenny Mongeau said she has heard questions from farmers who have not had land purchased regarding how properties acquired will be leased.

Mark Brodshaug said land bought voluntarily, in many cases, had a rent back provision for a period of time through negotiations with the landowner. Pifer's Land Management is managing the farm land, he said, and where there was no rent back provision, instructions are to minimize the impact on the community. If a deal near market rent can be worked out with the person who had been renting the property, then the choice would be to stay with that renter. He said opening it up to the highest bidder could cause unnecessary disruption in the community and so far working with the previous renters has been successful. He said the next step would be to solicit neighbors, then after that it could be opened up to a rental auction or to advertise it for rent. His suggestion would be to tell people interested in renting eligible property that they could contact Pifers, he said, as they would find it helpful to know local people are interested.

Other Business

Keith Berndt said there has been a lot of outreach with more being lined up with the contracting community and the Industry Day held last week for contractors and vendors had an outstanding turnout of 140 folks. There is tremendous national interest in the project, he stated, and some international firms are coming to Fargo to learn about the project and potentially compete on it. He said a consistent theme heard from contractors

is that they can give the best bid if they can build fast and be assured all the land is acquired before they start. When contractors see the large number of parcels involved and the acquisition work ahead, he said, they have concerns about starting, then catching up and having to stop and wait.

In response to a question from Dave Piepkorn about whether some local contractors could be eliminated because this is a federal contract, Keith Berndt said the southern embankment and associated structures will be led by the Corps. He said it will be bid using Corps procedures with multiple contracts over multiple years and those contracts will have the federal requirements for certain set asides, such as for small business and minority enterprise. The P3 portion will be led by the Diversion Authority so some federal things will need to be followed because it is part of a federal project, he said; however, it will be a different process than the Federal Acquisition and Procurement Guidelines. The plan is to narrow the field down to likely three best firms through a request for qualifications later this summer, he said, and those firms would have about nine months to put together a proposal, how they would build the project and their price, with the most competitive firm being selected. He said interested firms have indicated that they recognize it is in their best interest to take advantage of local talent as much as possible.

Keith Berndt said certain mitigation is required for impacts created by the project, one being to restore aquatic habitat lost as a result. The Corps is proposing restoring flow to four meander bends on the Bois de Sioux River, he said, which could potentially achieve mitigation. The Corps is willing to take the lead; he said, and he noted that the project is located in Wilkin and Richland Counties. He said finding other aquatic habitat will be difficult, others identified are in Minnesota but North Dakota would like to see some done in North Dakota also. He said the application needs to be submitted, and although the work does not have to be completed, it is necessary to list where mitigation is planned and property owners would need to be contacted before being included in an application. He said this is a nice restoration project and landowners would be able to get some income for an easement on land not currently generating any income along the river; although it could be a political hot button because of the location.

April Walker said it was not just the Corps making the decision of where to look for mitigation. She said there was a team of experts that included North Dakota Game and Fish, Minnesota DNR along with other experts in the field that examined a list of potential locations.

Heidi Durand said it could be seen as problematic to have a restoration project in Richland and Wilkin counties when the deficit comes from Cass and Clay counties. She said she is not comfortable voting on it since the proposal was just brought to this committee.

Jenny Mongeau said she is concerned about approving a recommendation for a proposal when there is no representation from either of the counties involved. She said she is not comfortable voting in favor of the proposal since it was just brought to the Committee.

Keith Berndt said if the mitigation proposal is approved, it gives the Corps the go ahead to make the first step which would be to approach the landowners for their initial reaction.

Dave Piepkorn moved to recommend approval of the Fargo Moorhead Flood Risk Management Project Mitigation Proposal for Bois de Sioux Habitat Restoration. Keith Berndt seconded the motion. On call of the roll Scherling, Berg, Zimmerman, Berndt, Olson, Bittner and Piepkorn voted aye. Durand and Mongeau voted nay. The motion was declared carried.

The meeting adjourned at 5:05 p.m.

The next meeting will be Wednesday, July 13, 2016 at 4:00 p.m.

FM Area Diversion Project

Property Acquisition Summary

July 13, 2016

Owner	Askegaard Hope Partnership LLLP
Address	Holy Cross Township, MN (Staging Area)
Property Type	Organic Farmland
Identification Number	1790 & 1811

Property Need

The Askegaard Hope Partnership LLLP owns approximately 300 acres of tillable organic farmland (320 total acres) in Sections 28 and 34 of Holy Cross Township, Clay County, MN in the Staging Area. The farmland will be impacted by the upstream staging area. See attached map.

For typical farmland, the Project will need to obtain a flowage easement on the property, but for organic farmland, there is a chance that occasional flooding could result in loss of organic certification, which requires three to five years to establish. As such, a mitigation solution has been developed to acquire the organic farmlands early to allow the operator the opportunity to establish organic certification of new lands, while allowing the operator the opportunity to rent the purchased property during the timeframe in which the organic certification is being established on new lands. It is understood that there are four organic farming operations in the staging area, totaling approximately 2,900 acres within the staging area.

Valuation and Negotiation Summary:

The representative from the Askegaard Hope LLLP reached out to Diversion Authority representatives in October, 2014 to understand the impacts the Project would have on their organic farmland and to discuss potential mitigation solutions. It was decided to conduct an appraisal of the farmland as a first step toward considering acquisition of the property. An appraisal conducted by Crown Appraisals in January 2015 concluded a value of \$1,380,000, which was based on \$4,600 per tillable acre.

The appraisal was presented to the Askegaard Hope LLLP representatives as an initial offer to purchase. The property owners commissioned their own appraisal by Natwick & Associates Appraisal Services to update the valuation of the Askegaard Hope LLLP farmland holdings because some shares of the LLLP were going to be transferred. The Natwick appraisal was completed in January 2015 and concluded a value of \$1,536,000, which is based on \$5,120 per tillable acre. In addition, the property owner indicated that their 2016 Clay County Tax Assessor valuation was \$1,546,100.

The Askegaard Hope LLLP representatives have expressed a strong desire to find a mutually agreeable solution and were very constructive during negotiations, and there is benefit to the Diversion Authority in reaching a mitigation solution for organic farmlands impacted by the Project. The proposed mitigation solution could be utilized for the other organic farmlands that are impacted by the Project.

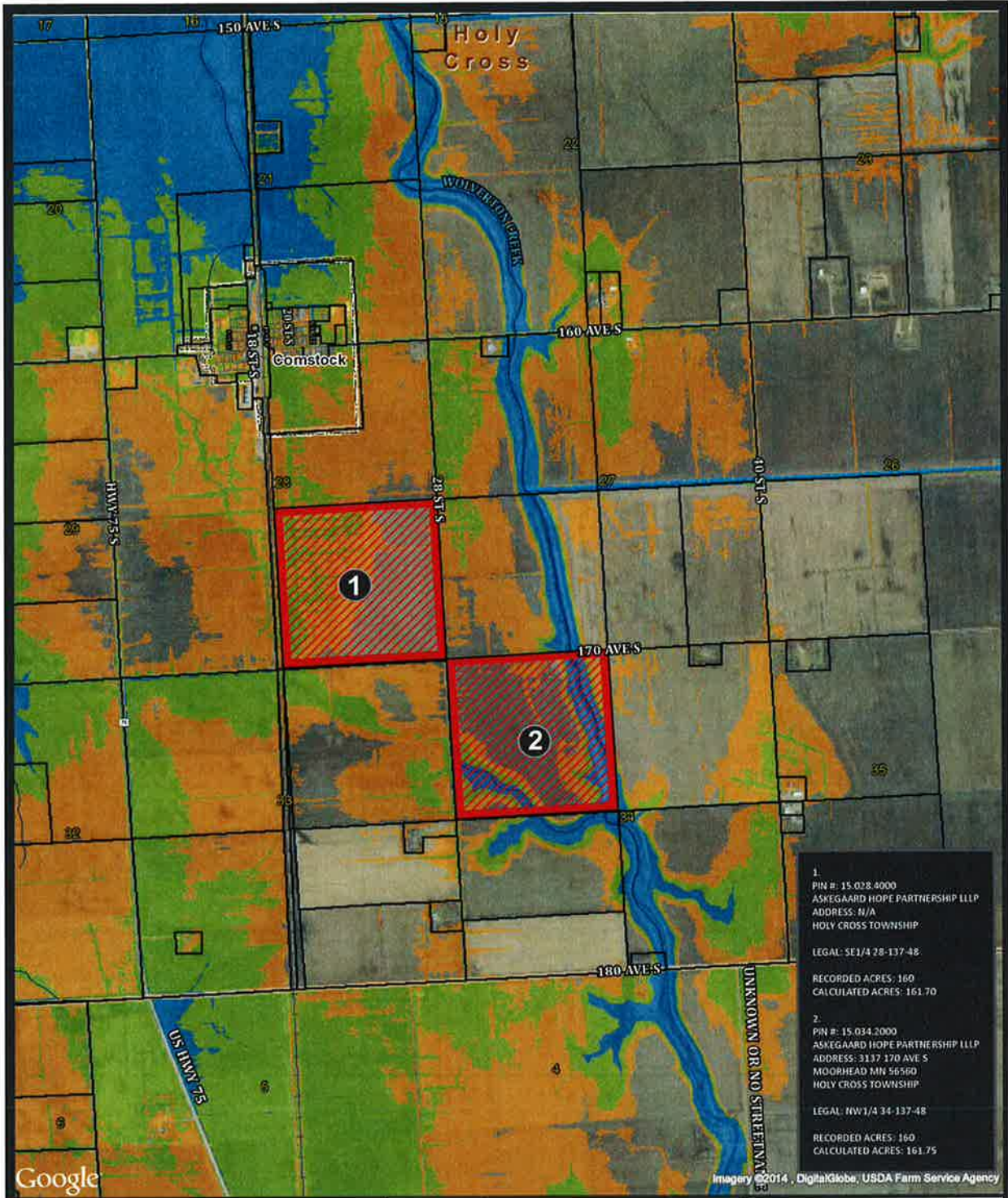
July 13, 2016

Given these mutual desires, it was negotiated to enter into a purchase agreement for the 320 acres of organic farmland from the Askegaard Hope LLLP for \$1,536,000 established by the Natwick appraisal, allow for a 1031 exchange, and allow the current organic producer to rent the farmland until the new land organic certification is established.

It should also be noted that the farmland includes approximately three acres of land near a drainage coulee that has been gifted to the Comstock Wildlife Club. This transaction was done in 1975 with an addendum agreement June 1, 2009. With the proposed acquisition, it is recommended that the Diversion Authority obtain the necessary flowage easement on this land and then sell the land to the Wildlife Club for a nominal amount after the 1031 exchange has occurred.

Requested Action

1. Execute a Purchase Agreement in the amount of \$1,536,000 as just compensation to Askegaard Hope Partnership LLLP for acquisition of organic farmland, and allow for a 1031 exchange.
2. Enter into a farmland rental agreement with the current organic producer for a period to time sufficient to allow for establishing organic certification of new land purchased through the 1031 exchange (assumed to be three years).
3. Apply a flowage easement on the three acres of land operated by the Comstock Wildlife Club and sell the land to the club for a nominal amount.
4. CCJWRD to conduct the acquisition and then transfer the land to the Minnesota acquiring entity after it is established (expected to be fall 2016).



1.
 PIN #: 15.028.4000
 ASKEGAARD HOPE PARTNERSHIP LLLP
 ADDRESS: N/A
 HOLY CROSS TOWNSHIP
 LEGAL: SE1/4 28-137-48
 RECORDED ACRES: 160
 CALCULATED ACRES: 161.75

2.
 PIN #: 15.034.2000
 ASKEGAARD HOPE PARTNERSHIP LLLP
 ADDRESS: 3137-170 AVE S
 MOORHEAD MN 56580
 HOLY CROSS TOWNSHIP
 LEGAL: NW1/4 34-137-48
 RECORDED ACRES: 160
 CALCULATED ACRES: 161.75

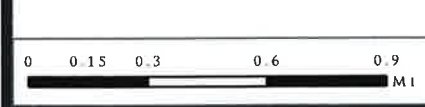
PROPERTY INFORMATION

**1. PIN: 15.028.4000
 ASKEGAARD HOPE
 PARTNERSHIP LLLP**

**2. PIN: 15.034.2000
 ASKEGAARD HOPE
 PARTNERSHIP LLLP**

LAST UPDATED: 10/23/2014

	Subject Parcels	100 Year Total Depth
	Parcels	0.5' - 1'
	Drain	1' - 3'
	Rivers	>3'
	Railroad	



Document Path: C:\GIS\Projects\FM-Diversion\FM-Area-Extension-Project-Land-Acquisition\Final-Property-Maps-General\Info\Askegaard\Askegaard_2014-10-23.mxd
 10/26/2014
 Coordinate System: NAD 1983 StatePlane ND S FIPS 5002 F1
 Projection: Lambert Conformal Conic Datum North American 1983
 Map scale is for practical purposes only. It is not intended to be a legal survey. While every effort has been made to ensure that the data are accurate and reliable, the District Authority does not guarantee the accuracy of the information, and makes no warranty or guarantee of any kind, expressed or implied. The data involved in the project is continuously verified and revised, you

Diversion Inlet Control Structure Lands Acquisition Update

July 11, 2016

Background:

The U.S. Army Corps of Engineers (Corps) FY2016 Work Plan included federal appropriations for construction for the Diversion Project. The Corp intends to obligate the federal appropriations for the Diversion Inlet Control Structure with a construction project starting this fall. The Diversion Inlet Control Structure will be located just south of Horace, ND.

The Diversion Project was one of six new starts selected and one of only 11 new starts in the last six years.

2016 Acquisition Needs

To accommodate the Corps-led construction this fall, 15 parcels were identified as needed for the Diversion Inlet Control Structure, the portion of the channel as it exits the Diversion Inlet Control Structure and the associated realignment of Cass County Highways 16 & 17. Specifically, three parcels are needed for the Diversion Inlet Control Structure.

In January, initial contact letters were sent to the owners of the 15 parcels. Following news of federal appropriations in February, Yellow-book appraisals were completed on all 15 parcels, the appraisals were approved by the Corps, and offers were presented in March based on those appraisals. Discussions and negotiations with many of these property owners are ongoing.

There are two requirements driving the schedule for acquiring the three parcels for the Diversion Inlet Control Structure. One is that the Corps will open proposals from interested contractors in late summer, and they need to have the property rights in hand prior to opening proposals. Secondly, the North Dakota State Water Commission (NDSWC) has indicated that property rights need to be secured prior to issuing a permit. Due to the timing of land needs for construction this fall, negotiations of the three parcels needed for the inlet structure occurred at an accelerated pace.

These lands are all included in the 2016 Diversion Authority Budget, which included \$109.9 Million for property acquisitions.

Diversion Inlet Acquisitions Status

- The acquisition process for the inlet area started in January, 2016 with initial contact letters sent to the property owners by Land Agents contracted to the CCJWRD.
- The Land Agents maintained close contact with the property owners during negotiations, and remain available should the property owner wish to continue working towards administrative settlement.
- Land appraisals were completed in March and acquisition offers were presented to property owners based on the appraised values.
- In communications between the Land Agent and property owners, it became clear that the property owners were not going to accept the offers.
- In recognition of the required acquisition timeframe, and that state of negotiations, the CCJWRD board passed resolutions of necessity and resolutions of offer to purchase on May 18, 2016 for the three properties necessary for the Diversion Inlet Control Structure.
- Final offer letters were sent to the three property owners by CCJWRD on May 18, 2016. The letters asked the property owners to respond by May 25, 2016.
- The three land owners have not agreed to the final offer, although two of them submitted counteroffers. Both counteroffers were well above the appraised value, and the owners have been notified that the counteroffers were rejected.
- The CCJWRD directed its Land Agents to respond to all counteroffers received, regardless of whether the terms of the counteroffer are acceptable.
- At its meeting on May 26, 2016, CCJWRD board approved filing the eminent domain actions on the three inlet properties and directed its attorneys to file the actions and deposit the offer amounts in court. The board indicated that if agreement was not reached by May 31, 2016, eminent domain actions would be commenced at that time.
- On Tuesday afternoon May 31, 2016, the CCJWRD filed three separate eminent domain actions seeking permanent right of way easements for the three parcels where USACE will be conducting work on the Inlet structure. The Court assigned a file number to the actions, and the amount of the last written offer was deposited with the Cass County clerk of District Court for each of the three files.
- Of these three owners, one of the owners has maintained contact post-filing, and the Land Agent is working to arrive at an agreeable price prior to the Court's order.
- Negotiations are on-going with the property owners of the 12 other parcels necessary for the County Road 16/17 re-alignment work near the inlet control structure. These parcels are needed prior to the Diversion Authority opening bids for the Project, ideally in fall 2016.
- The first of these owners gave verbal agreement to a counteroffer that was authorized by the CCJWRD on June 28. It is expected the property acquisition will close in September.
- Negotiations are permissible, and will continue even as the court actions commence, and the land agents have been directed to keep the lines of communication open as long as the landowners are willing.
- The legal actions may be withdrawn at any time if an agreement is reached.