

*These minutes are subject to approval.*

**DIVERSION AUTHORITY  
Land Management Committee  
City Commission Room  
Fargo City Hall  
Wednesday, July 26, 2017  
3:00 p.m.**

Present: Cass County Commission Representatives Mary Scherling and Chad Peterson; Clay County Representatives Kevin Campbell and Jenny Mongeau; Moorhead Mayor Del Rae Williams; Moorhead City Engineer Bob Zimmerman; Fargo City Commissioner John Strand; Fargo Division Engineer Nathan Boerboom; Fargo City Administrator Bruce Grubb; Oxbow Mayor Jim Nyhof.

Others Present: Eric Dodds - AE2S (via teleconference); Dean Vetter - AE2S; Mark Brodshaug - Cass County Joint Water Resource District.

Absent: Moorhead City Council Representative Heidi Durand; Cass County Joint Water Resource District Representative Rodger Olson

The meeting was called to order by Chair Mary Scherling.

Agenda Review

Mr. Campbell moved to approve the agenda. Second by Mr. Grubb. All the members present voted aye and the motion was declared carried.

Minutes approved

Mr. Strand moved the minutes from the June 21, 2017 meeting be approved. Second by Mr. Zimmerman. All the members present voted aye and the motion was declared carried.

Property Acquisition Report

Mr. Vetter reviewed the Property Acquisition Status Report dated 7/19/2017. He pointed out the diagrams showing acquired property and properties with purchase agreements in hand. He said since the report was printed, three parcels (921, 924 and 925) are scheduled to close at the end of the month. He said the appraisal review on the Drain 14 Phase 2, Stu Johnson property, is due to be brought forward.

In response to a question from Mr. Boerboom regarding timing of the Corps completion of cultural mitigation work on the Phase 3 lands, Mr. Vetter said those should be done this year; however, there were some contract issues on one of the two.

In response to a question from Mr. Strand about categorizing these sites as cultural mitigation areas and if they are Native American sites, Mr. Vetter said they are listed

under Cultural Mitigation due to some details being found these sites needed a higher level of survey and required a closer look.

Mr. Dodds said the cultural mitigation areas are where different phases of cultural investigation work have been done, typically involving 3 phases. He said the entire project requires a Phase 1, and if artifacts are found it goes to a Phase 2, and if there are substantial artifacts found it goes to Phase 3. He said the Phase 3 process can involve unearthing artifacts and the work is done closely with the State Historical Preservation Office (SHPO) and the Corps archeological office. He believes there are some Native American artifacts and, he said, there have been discussions with the Corps about doing more outreach. The Corps has been in contact with the ND SHPO and the tribes, he said, and he expects as that work comes close to starting in late summer or early fall, there will be a ramp-up of outreach activity. More details will be brought forward in the next month or two about those outreach plans, he stated.

Mr. Strand said the sooner communication begins the better. He said it would be best to avoid a situation with Native American tribes where it can be said the SHPO officers do not recognize cultural sites for what they may be; however, Native Americans might. He said he sits on the Native America Commission and if he can connect in any way or help with connections with other tribal leaders, he is willing to help.

In response to a question from Ms. Scherling on the progress of negotiations and appraisals, Mr. Vetter said the lands in the Phase 1 area have been gaining momentum. He said even in the inlet area and with the eminent domain activity, communication continues and due diligence is being done to find resolutions. He said requests for voluntary acquisitions are becoming more prevalent.

Mr. Brodshaug said in the past three to four weeks there has been agreements for about \$8 million to \$9 million worth of land, so things are moving. He said it takes time and a lot of negotiation to get to the point where people are agreeing to settle.

In response to a question from Ms. Scherling about whether opportunities to acquire land for trade are actively being sought, Mr. Vetter said in areas where an acquisition is needed, remnants are considered and that land would not necessarily be sold right away, it may be retained for potential trade or sale later.

Mr. Brodshaug said the position has been to not buy property strictly to have in inventory for trade, or to buy land to trade as part of a negotiation. He said the purchase of a whole parcel is considered and remnants not needed could be sold or traded off. It is difficult to match parcels up, he said; however, efforts are made to make an exchange easier as far as legal language and timeframes.

In response to a question from Ms. Williams about tax deferrals on exchanges, Mr. Brodshaug said language could be worked into a purchase agreement for IRS 1033 tax deferred exchanges, which apply when there is a threat of eminent domain. He said all the acquisitions now could theoretically end in eminent domain even though all efforts are being made to avoid that.

In response to a question from Ms. Scherling about whether there is pressure to move forward quickly with any properties, Mr. Brodshaug said the one cultural site left to acquire has some urgency to be completed before construction of various stages can begin.

Mr. Boerboom said there is a deadline early next year for financial close for the P3 developer. He said at some point in the upcoming months a decision needs to be made on Phase 1 acquisitions and whether to move forward with quick take on some of those properties.

#### CCJWRD Update

Mr. Brodshaug said CCJWRD is reducing the expense for the security patrol in Oxbow; however, security will be retained at other project owned property.

#### Flowage Easement Valuation Request for Qualifications:

Mr. Dodds said there have been discussions on the importance of determining the value of flowage easements, including a review of the proposal from Crown Appraisals, Inc., and given its importance and the potential fees, there is value in doing an RFQ to solicit proposals from different appraisal companies. He said there is comfort with Crown's work; however, it is important to get the right company onboard and to search out whether there are other appraisal firms that may have other good ideas or other technology to use. The draft RFQ has been through several rounds of review, he said, and includes selection criteria and a schedule.

Mr. Strand said he feels it is important to weigh whether or not there is a long-term valuation change on lands relative to easements being placed on the properties.

Mr. Dodds said appraisers will have challenges since the easement needs to be obtained today and is intended to be a perpetual easement with a one-time payment. He said there may be scenarios where an annuity-type payout or other mechanism could be contemplated; however, appraisers will be looking at market value today and will have to take long-term impacts into account. Development restrictions and ag production both play a role in long-term value impact, he said.

In response to a question from Ms. Mongeau about how much weight inundation amounts carry, Mr. Dodds said the maps he shared show the extent of flooding at the different frequency events; however, the hydraulic model and the NDSU study also look at the time component of how long the water will be on the land. He said those maps are digital-type information and very large, making them difficult to convey in an agenda packet.

In response to a question from Ms. Williams asking if the appraisal firm would be licensed and experienced in both states and have knowledge on the rules in each, or whether there would be a firm for each side, Mr. Dodds said the intention is to hire one firm licensed to work in both North Dakota and Minnesota. He said the RFQ will be

helpful in showing the capabilities and strength of a firm for both sides of the river. He said he anticipates hiring one firm; however, depending on the proposals received, that path could be altered.

Mr. Campbell pointed out that in the draft, the request is for a firm to be licensed to work in Minnesota and North Dakota. He said he feels that needs to go a step further to require it, not just request it. Not being properly licensed in one of the two states should be grounds for disqualification, he stated.

Mr. Strand said programs such as the federal crop insurance program may be at risk and it would be wise to keep that on the radar, not knowing how such programs will affect dialogue.

Mr. Dodds said he has heard concerns from producers about the future of the crop insurance program. He said while that is another factor to consider, those concerns exist with or without this project. It is best to look at what the project is responsible for, he said, and what can be controlled. He said he would like this committee to make a recommendation to the CCJWRD Board to solicit and hire an appraisal firm.

Mr. Campbell said from past discussions he has heard there is a comfort level from producers with Crown Appraisals, Inc. and he hopes they will actively pursue this work. In fairness, and in dealing with public dollars, he said he feels it is good to send out this RFQ.

Mr. Campbell moved the recommendation to solicit and hire an appraisal firm through a RFQ be forwarded to the CCJWRD Board with changes as discussed. Second by Mr. Peterson. All the members voted aye and the motion was declared carried.

#### Use and Access of Project-Owned Lands

Mr. Dodds said this agenda item is related to hunting access. Much of the project-owned land is being managed by Pifer's, he said, and those farmland rental agreements currently require the tenant be responsible for posting the land and controlling access. Generally that course will be followed for 2017, he said; however, later this year and early in 2018, a hard look will be taken at all of the farmland rental agreements in anticipation of dirt being turned starting in 2018.

Ms. Scherling said it could be a can of worms to let people onto property for hunting if they do not live right next to it, and she sees no good reason to do it.

Mr. Vetter said most tillable land is being farmed right now and managed by Pifer's. He said a renter has hunting rights to an entire parcel, not only the area being farmed.

Mr. Brodshaug said a couple years ago there was a request to cut dead trees for firewood and at that time a policy was developed for a license agreement allowing a third party access for something like that. He said the language was left somewhat vague to be used for a variety of access; however, hunting is different which is why the policy is being looked at specifically address hunting.

### Other Business

In response to a request from Mr. Strand for an update on the auction on the property south along the river by Oxbow, Mr. Vetter said the sale exceeded expectations selling for \$127,500.00, roughly over \$4,500.00 per acre.

Mr. Peterson moved the meeting be adjourned. Second by Mr. Campbell. All the members present voted aye and the motion was declared carried.

The meeting adjourned at 3:36 p.m.

The next meeting will be August 23, 2017 at 3:00 p.m.