

# Metro Flood Diversion Authority Board of Authority Meeting Minutes

**3:30 PM – April 25, 2024**

**City of Fargo Commission Chambers**

A regular meeting of the Metro Flood Diversion Authority Board of Authority was held on April 25, 2024. The following members were present: Shelly Carlson, Mayor, City of Moorhead; Dr. Tim Mahoney, Mayor, City of Fargo; Bernie Dardis, Mayor, City of West Fargo; Chad Peterson, Cass County Commissioner; Chuck Hendrickson, Moorhead City Council; Dave Piepkorn, Fargo City Commissioner; David Ebinger, Clay County Commissioner; Kevin Campbell, Clay County Commissioner; Mary Scherling, Cass County Commissioner; Tony Grindberg, Cass County Commissioner; John Strand, Fargo City Commissioner and Rodger Olson, Cass County Joint Water Resource District.

Member(s) absent: Larry Seljevoll, Moorhead City Council.

**1. CALL TO ORDER**

Mayor Carlson called the meeting to order at 3:30 PM. Roll call was taken, and a quorum was present.

**2. APPROVE MINUTES FROM THE MARCH 2024 MEETING**

**MOTION PASSED**

**Mr. Hendrickson moved to approve the minutes from the March 2024 meeting and Mr. Ebinger seconded the motion. On a voice vote, the motion carried.**

**3. APPROVE ORDER OF THE AGENDA**

**MOTION PASSED**

**Mr. Grindberg moved to approve the order of the agenda as amended, moving item 4., board chair update, to precede the consent agenda and Mr. Ebinger seconded the motion. On a voice vote, the motion carried.**

**MOTION FAILED**

**Mr. Strand made an additional motion requesting full disclosure to the diversion authority board, a detailed report of the April 9, 2024, planning committee executive session and the discussions(s) that followed. Mr. Piepkorn seconded the motion and on a roll call vote, the motion failed.**

**4. BOARD CHAIR UPDATE**

Mayor Carlson provided the following board chair update:

*There has been a lot of misinformation and rumors that have been floating around, so I wanted to take this opportunity to clarify what took place and state the facts.*

*In accordance with the JPA and the executive director employment agreement (Article 6), the executive director serves as a report to the Board chair. In that role, as Board chair, I was made aware of, and additionally had my own increasing concerns related to the former executive director's inappropriate communications with the P3 developer, his leadership abilities, and his insufficient communication with Board members. These warranted further examination. Separate from the Planning Committee, I met with the former director to discuss these concerns. I did not take, and I do not take, this responsibility as the chair, nor the information that was presented to me or the information that I personally had, lightly.*

*Based on the course of our discussion regarding the concerns with his work performance, I chose to present Joel with a letter that sought to offer him a non-disciplinary – and I want to fully emphasize that, that it was a non-disciplinary – paid administrative leave to examine the concerns more closely. After what I hoped would be placing him on a non-disciplinary paid administrative leave, I intended to immediately call a special Board meeting where the Board could either affirm my decision, override my decision, or take a completely different action, and the former executive director was made aware of that. It was also made clear to the former executive director that this was non-disciplinary action and again that the Board could have a different position than mine. At no point was he asked to resign or forced to resign. In fact, I told him several times he did not have to resign. The former director ultimately did decide to resign after this discussion and gave a verbal resignation.*

*As a result of his decision, I did call a special Board meeting, and the Board accepted his resignation in a 11-2 vote on April 11, 2024. In addition to that vote, there was also a vote to allow legal counsel and myself as the chair to negotiate with the former director regarding compensation for his time that may be needed for ongoing litigation matters.*

*Furthermore, considering all the discussion related to epoxy-coated rebar and the dispute resolution board, I've asked Dorsey Whitney to review the Metro Flood Diversion Authority's contract related to our specifications within that contract related and regarding epoxy-coated reinforcing steel and to provide an overview of the dispute resolution board process and timeline.*

## **CONSENT AGENDA**

### **MOTION PASSED**

**Mr. Grindberg moved to approve the Consent Agenda and Mr. Ebinger seconded the motion. On a roll call vote, the motion carried.**

## **5. CO-EXECUTIVE DIRECTOR UPDATE**

Mr. Wilson reported that he and Mr. Redlinger will continue to assist in keeping the project moving forward in the absence of an executive director.

## **6. GENERAL COUNSEL UPDATE**

There was no general counsel update.

## **7. CONSTRUCTION PROJECT UPDATES**

### **a. USACE Project Update**

Ms. Williams provided the following USACE update:

#### **1 Diversion Inlet Structure (DIS) – Construction**

Structure includes 3-50 ft. wide Tainter gates. Construction is 99% complete. Construction completion date will be revised pending outcome of modifications to the gate machinery design. Schedule for remaining work:

2024: Complete operating machinery corrections; turf established.

## 2 Wild Rice River Structure (WRRS) – Construction

Structure includes 2-40 ft. wide Tainter gates. Construction is 97% complete. The construction completion date of 3 December 2023 was not met due to work remaining. Schedule for remaining work:

2024: Complete operating machinery corrections; resolve punchlist items; turf established.

## 3 I-29 Raise – Construction

Includes approximately 4 miles of interstate raise between County Roads 16 and 18. Construction is 99% complete. Final inspection held 3 January 2024; turf establishment to be extended to 26 July 2024. Planning for O&M documents and turnover is ongoing.

## 4 Red River Structure (RRS) - Construction

Structure includes 3-50 ft. wide Tainter gates. Construction is 56% complete. Construction completion date is 19 March 2026. Placing concrete for piers, fabricating gates. Tainter gate #1 delivery continues.

## 5 Drain 27 Wetland Mitigation Project Plantings - Construction

Native plantings 5-year contract awarded 17 May 2023. Remaining seeding is in progress. Completion date for wetland establishment is 1 December 2027.

## 6 Drayton Dam Mitigation Project Design - Construction

Construction is complete. Turnover to MFDA for O&M occurred on 28 Nov 2023. Willow plantings in 2024 during low water conditions, potentially in May.

## 7 Southern Embankment – Reach SE-2A - Construction

Construction is 69% complete. Embankment construction shut down for the winter, with 1/3 built to full height and remaining to elevation 918. Scheduled completion date is 30 September 2024.

## 8 FY2024 Contract Awards:

OHB Ring Levee: Awarded 22 February

Reach SE-1B: Awarded 27 February

Reach SE-2B: Awarded 11 March

Forest Mitigation: Award pending, April 2024

Reach SE-4: Advertised: 2 April. Contract award planned for May 2024

## 9 Southern Embankment Design: Remaining Reaches:

SE-3: 95% review started 28 March 2024 ..... Contract award: January 2025

SE-5: 95% review delayed until July 2024 ..... Contract award: January 2025

## 10 Supplemental Environmental Assessment – Diversion Channel

Issued to disclose updated designs and impacts. Public comment period closed on 15 March 2024 and the final SEA is being prepared.

### b. SWDCAI Project Update

Mr. Bakkegard provided an update of the construction map that shows current work in progress, 30 and 60 day projected progress:

#### **New Features Under Construction**

- Mapleton Township Drain Inlet
- Channel Reach 13

#### **30- to 60-Day Outlook**

- River/Drain Inlets
  - Rush
  - Lower Rush
  - Drain 14B
  - Drain 21C
  - Sheyenne Aqueduct
  - Drain 50
- CR-6 Crossing
- Channel Reach 10

### **Misc. Highlights**

- Channel Excavation
- I-29
- Lower Rush Maintenance Road Bridge
- Maple River Aqueduct - Flume/Conduit Structure

### **c. Project Safety Update**

Mr. Bakkegard provided the safety update for the period March 1, 2024, to March 31, 2024, and reported that it was a good month with only two minor injuries. Mr. Bakkegard also noted that we are nearing one million hours worked on the channel project.

### **d. Drone Footage Video**

A drone video highlighting the progress that has been achieved since March 2024 was viewed.

## **8. COMMUNICATIONS UPDATE**

Ms. Willson provided the following Communications update:

### **Outreach Support:**

UND School of Engineering

Western Association of State Highway Transportation Officials Construction/Materials Committee Annual Meeting, hosted by ND DOT

UND Civil Engineering & Water Resources

Spring 2024 State Partners Conference

### **North Dakota Professional Communicators Recognition:**

1st Place: MFDA Funding & Financing 101 video

*\* Advancing to national competition*

2nd Place: www.FMDiversion.gov editing and management

2nd Place: Public-Private Partnerships 101 video

2nd Place: The Diversion Current newsletter writing

2nd Place: Green & Dry: This Isn't Just About Flood Control specialty article

3rd Place: Single Advertisement: Turning the Tide Together

3rd Place: Advertising Campaign

Honorable Mention: The Diversion Current

## **9. LAND MANAGEMENT UPDATE**

### **a. Property Acquisition Status Report**

Mr. Dodds provided the following property acquisition status report:

- 95.4% completion in the Construction Footprint
- 48.0% completion in the UMA Footprint
- 88.7% of the parcels in the Southern Embankment have been acquired
- 48.1% of the parcels in the Upstream Mitigation Area have been acquired
- 74.3% of the Environmental Easements have been signed
- 99.0% of the parcels in the Stormwater Diversion Channel have been acquired
- 97.4% of the Oxbow-Hickson-Bakke levee
- 100% MFDA constructed in-town levees and the Drayton Dam mitigation is completed

### **Key Activities:**

- Continue negotiating settlement agreements for existing eminent domain actions
- Successfully completed the necessity hearing for property rights on 29 parcels/11 owners in MN
- In the last month, successfully closed 12 parcels/5 landowner groups (8 parcels in MN and 4 parcels in ND)
- Completed the Right of Way Certifications for SE-4 & SE-5

- Obtained Right of Entry on 32 of the 56 Christine Easement parcels (57%)
- Initiated Right of Way acquisition process with Wolverton property owners
- Finalized platting the Diversion Channel lands in Harwood and Berlin Townships
- Completed staking of farmable areas along the Southern Embankment and OHB project limits
- Continuing farmland leases for 2024

**b. OINs 717Y 9732Y, 7247, 7248, 7249, 8385Y and 877 excess land recommendations (group one)**

Mr. Dodds introduced the above-referenced excess land parcels, advising that they will be sold in two separate groups, and asked for approval to sell the parcels per the Excess Lands Policy.

**OINs 717Y and 9732Y:** it is recommended that these parcels be sold together as two small strips on the unprotected (western) side of the diversion channel.

**OIN 7247:** this parcel is part of the rail corridor south of Horace. The land committee recommended selling 2.46 acres at \$0.50/SF based on adjacent sales from BNSF. Bids may be received from both adjacent landowners and if so, it will need to be revisited by the lands committee. A ROE will be needed as we are required to remove the rail ballasts.

**OIN 7248:** this parcel is part of the rail corridor south of Horace, south of OIN 7247. Slightly over one acre, it is recommended to sell at \$0.50/SF based on adjacent sales from BNSF. It is the same landowner on both sides of the corridor, and they have expressed interest in purchasing.

**OIN 7249:** this parcel is part of the rail corridor south of Horace. Slightly under four acres, it is recommended to sell the parcel at \$0.50/SF based on adjacent sales from BNSF.

**OINs 877 and 8385Y (group two)**

**OIN 877:** we reserve the right to maintain a flowage easement with no structures allowed on this parcel. Located in the UMA, it is approximately 2.75 acres, and the recommended price is \$5,000/acre. This parcel is an expense to the project as we are paying for mowing and weed control.

**OIN 8385Y:** we reserve the right to maintain a flowage easement with no structures allowed on this parcel. Located UMA, it is slightly over eight acres. The recommended price is \$5,000/acre. This parcel is an expense to the project as we are paying for mowing and weed control.

**MOTION PASSED**

**Mayor Mahoney moved to approve both the recommended motions as listed in the packet and Mr. Ebinger seconded the motion. On a roll call vote, the motion carried.**

**10. FINANCE UPDATE**

**Finance Report**

Mayor Dardis reported that the bills payable through April 17, 2024, totaled \$7,166,699, and the current net position is \$245,061,927. Mayor Dardis also reported three land acquisition directives (LADs) were presented and all were approved.

**11. OTHER BUSINESS**

There was no other business to discuss.

**12. NEXT MEETING**

The next meeting will be May 23, 2024.

**13. ADJOURNMENT**

The meeting adjourned at 4:59 PM.