

Metro Flood Diversion Authority Board of Authority Meeting Minutes

3:30 PM – May 23, 2024

City of Fargo Commission Chambers

A regular meeting of the Metro Flood Diversion Authority Board of Authority was held on May 23, 2024. The following members were present: Shelly Carlson, Mayor, City of Moorhead; Dr. Tim Mahoney, Mayor, City of Fargo; Chad Peterson, Cass County Commissioner; Chuck Hendrickson, Moorhead City Council; 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 Larry Seljevold, Moorhead City Council.

Member(s) absent: Bernie Dardis, Mayor, City of West Fargo; Dave Piepkorn, Fargo City Commissioner and Rodger Olson, Cass County Joint Water Resource District.

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 APRIL 11, 2024, MEETING

MOTION PASSED

Mayor Mahoney moved to approve the minutes from the April 11, 2024, meeting and Mr. Campbell seconded the motion. On a voice vote, the motion carried.

3. APPROVE MINUTES FROM THE APRIL 25, 2024, MEETING

MOTION PASSED

Mr. Strand moved to approve the minutes from the April 25, 2024, meeting and Mr. Ebinger seconded the motion. On a voice vote, the motion carried.

4. APPROVE ORDER OF THE AGENDA

MOTION PASSED

Mr. Campbell moved to approve the order of the agenda and Mr. Grindberg seconded the motion. On a voice vote, the motion carried.

CONSENT AGENDA

MOTION PASSED

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

5. CO-EXECUTIVE DIRECTORS UPDATE

Mr. Wilson provided an update on the MFDA employee manual, noting that the one being utilized compiled by High Road Partners, has not been approved by the board.

MOTION PRESENTED

Mr. Peterson moved to eliminate the MFDA employee manual that is currently being utilized and for staff to fall under the Cass County personnel manual for HR related services. Mr. Ebinger seconded the motion. Additional dialogue continued without a vote.

Mr. Wilson stated that time will be needed to transition MFDA staff to the Cass County manual to ensure that there will be no disruption or negative impacts on DA employees. Mayor Carlson asked for an additional motion to reiterate that staff will be treated fairly and not negatively impacted with the transition.

AMENDED MOTION PASSED

Mr. Peterson amended his initial motion adding that MFDA staff will be treated fairly and without any negative impact as they transition to the Cass County personnel manual. Legal counsel, along with the co-executive directors, will review the Cass County manual to develop a plan, and any changes that will affect MFDA staff negatively will be brought to the board for review and/or approval. Mayor Mahoney seconded the motion and on a roll call vote with Mr. Strand voting “nay”, the motion carried.

Mr. Redlinger provided the following executive director recruitment update:

On May 7, 2024, the Metro Flood Diversion Authority's Planning Committee discussed the recruitment and selection process for the MFDA Executive Director. The appointment procedure for the Executive Director position is outlined in the Diversion Authority's Joint Powers Agreement (JPA).

To support the Planning Committee's discussion of this item, the Co-Executive Directors compiled background material from previous search processes the Board authorized in the 2017-2019 timeframe. The previous search processes, like the one today, focused on the solicitation, recruitment, interview process, and placement of the MFDA Executive Director-designee. A link to the May 7, 2024, Planning Committee agenda packet is below for your reference and includes historical documents for background and use by the full Board.

May 7, 2024, MFDA Planning Committee Agenda Packet:

<https://fmdiversion.gov/wp-content/uploads/2024/05/May-Planning-Committee-Packet.pdf>

At the conclusion of the Planning Committee's May 7th discussion, it was requested that the Co-Executive Directors provide the full Board of Authority with the current position description for review and to request any feedback Board Members have on the current position description. An electronic copy of this position description is attached for reference.

Request: Please send any suggestions or requested changes to the position description by Tuesday, May 21, 2023, by email to: MRedlinger@FargoND.gov. Proposed revisions will be summarized by the Co-Executive Directors and presented to the Board of Authority at your May 23, 2024, regular meeting. At that time, a proposed schedule of events will be discussed with the Board of Authority, and the Board will be requested to provide its approval of the final position description and search process parameters, including the advertising and recruitment phase. It is intended that the Executive Director advertising and recruitment will begin shortly after this approval on May 23rd.

MOTION PASSED

Mayor Mahoney moved to have the co-executive directors work with county and city HR teams to rewrite the executive director position description; it will go to the Planning Committee for review and to the board for final approval. Mr. Grindberg seconded the motion and on a roll call vote, the motion carried.

6. GENERAL COUNSEL UPDATE

a. Resolution Amending the Appointment of Members to the Land Management Committee of the MFDA

Mr. Shockley provided an overview and summary outlining the above-referenced resolution:

MOTION PASSED

Mayor Mahoney moved to approve the resolution as presented and Mr. Ebinger seconded the motion. On a roll call vote, the motion passed.

b. Resolution Related to the Automatic Issuance and Exchange of Temporary Authority Loan Improvement Warrants

Mr. Shockley provided an overview and summary outlining the above-referenced resolution:

MOTION PASSED

Mr. Grindberg moved to approve the resolution as presented and Mayor Mahoney seconded the motion. On a roll call vote, the motion passed.

7. CONSTRUCTION PROJECT UPDATES

a. USACE Project Update

Mr. Bakkegard 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. Construction completion date will be revised pending outcome of modifications to the gate machinery design. 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 downstream baffle blocks, fabricating gates. Tainter gate #1 delivery is complete and assembly on site is pending.

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 partially completed; remaining requires low water conditions.

7 Southern Embankment – Reach SE-2A - Construction

Construction is 69% complete. Contractor mobilizing to commence work after winter break. 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: Bid protest is delaying contract work

Reach SE-4: Bid opening on 7 May; 6 bids received. Contract award planned for May/June 2024.

Apparent Low Bid: \$23,893,746 by PWS, Inc., Brooklyn Park, MN

Government Estimate: \$37,485,404

9 Southern Embankment Design: Remaining Reaches:

SE-3: Final review starts 10 June 2024 Contract award: January 2025

SE-5: 95% review starts 10 July 2024 Contract award: January 2025

10 Supplemental Environmental Assessment – Diversion Channel

Issued to disclose updated designs and impacts. FONSI signed and the final SEA was posted 6 May 2024.

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

- Rush River Inlet
- Drain 14B Inlet
- CR-6 Sheyenne Aqueduct

30 to 60 Day Outlook

- Lower Rush River Inlet
- Channel Reach 10
- Channel Reach 11
- Drain 21C Inlet
- Drain 50 Inlet

Misc. Highlights

- Channel Excavation
- CR-4/31 Crossing
- BNSF Hillsboro
- Maple River Aqueduct

c. Project Safety Update

Mr. Bakkegard provided the safety update for the period April 1, 2024, to April 30, 2024, and reported that it was a good month with only two minor incidents. The team has officially worked over one million hours on the project.

d. Drone Footage Video

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

8. COMMUNICATIONS UPDATE

Ms. Willson provided the following Communications update:

Faces of the Diversion: Alex Offerdahl released in May; Capt. Kyle Volk to be released in June

Construction Update Videos: Current Event videos on Red River Structure and I-29 crossing

Media Relations:

- April Construction Update release
- Educating on DRB process
- Blog on crop insurance programs
- USACE: OHB Open House
- ASN: Safety week food donation

9. LAND MANAGEMENT UPDATE

a. Property Acquisition Status Report

Ms. Smith provided the following property acquisition status report:

- 95.4% completion in the Construction Footprint
- 49.1% completion in the UMA Footprint
- 88.7% of the parcels in the Southern Embankment have been acquired

- 49.1% 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
- Reached a mediated settlement on 6 parcels / 5 owners (4 ND, 1 MN)
- In the last month, successfully closed 3 parcels / 1 landowner group (all in ND)
- Held landowner informational meeting for the Wolverton project with BRRWD
- Supported a pre-construction meeting for the OHB project with USACE
- Developing a tracking system for release of temporary construction easements
- Continuing farmland leases for 2024

10. FINANCE UPDATE

Finance Report

Mr. Wilson reported that the bills payable through May 15, 2024, totaled \$4,714,017, and the current net position is \$243,698,752. Mr. Wilson also reported that the two contracting actions that were presented were approved as well as the bid award for WP52A to Industrial Builders, Inc., in the amount of \$479,655.

11. OTHER BUSINESS

WP52A Bid Award

Mr. Bakkegard reported that the contract for Work Package 52A gravel resurfacing, Cass County, North Dakota was publicly advertised, and three bids were received at the virtual public bid opening on April 25, 2024, at 1:00 PM.

Bids were received from Central Specialties, Inc., in the amount of \$501,551; Industrial Builders, Inc., in the amount of \$479,655 and Park Construction Company, in the amount of \$538,829. The engineers estimate for the project was \$459,002.

Jacobs (PMC), HMG LLC (EOR), and the Authority's legal counsel have reviewed and evaluated the bid documents and recommend the Metro Flood Diversion Authority award the contract for WP52A to Industrial Builders, Inc., in the amount of \$479,655, as the lowest responsive bidder.

MOTION PASSED

Mayor Mahoney moved to award the bid to Industrial Builders, Inc., and Mr. Ebinger seconded the motion. On a roll call vote, the motion carried.

12. CLOSED EXECUTIVE SESSIONS

Closed Executive Session pursuant to N.D.C.C. § 44-04-19.1, subdivision (2) and (5) and N.D.C.C. § 44-04-19.2 in anticipation of reasonably predictable and pending civil or adversarial administrative proceedings regarding the submittal of the ECR issue to the Technical Dispute Resolution Board and to receive external P3 Litigation Counsel's advice and guidance in anticipation of reasonably anticipated adversarial administrative proceedings and disputes regarding the interrelated matters of the status and potential application of Non-Compliance Points pursuant to the Project Agreement.

**No final action concerning the topics discussed or considered during the above-described executive session is anticipated to be taken after the above-described executive session so the Board will then proceed to the second Closed Executive Session.*

MOTION PASSED

Mr. Strand moved to go into executive session and Mr. Peterson seconded the motion. On a voice vote, the motion carried.

Closed Executive Session pursuant to N.D.C.C. § 44-04-19.1, subdivision (2) (5) and (9) and N.D.C.C. § 44-04-19.2 regarding an update from the Chair and External P3 Litigation and HR Counsel's advice and guidance regarding negotiating instructions and updates for a potential agreement with the Former Executive Director.

MOTION PASSED

Mr. Grindberg moved to consecutively continue with the second executive session and Mr. Hendrickson seconded the motion. On a voice vote, the motion carried. Members retreated to the Red River Room at 4:53 PM.

A quorum returned to the Chambers at 6:36 PM.

14. NEXT MEETING

The next meeting will be June 27, 2024.

15. ADJOURNMENT

Mr. Peterson moved to adjourn, and Mr. Ebinger seconded the motion. The meeting adjourned at 6:36 PM.