

These minutes are subject to approval.

**DIVERSION AUTHORITY
Land Management Committee
Commission Chambers
Fargo City Hall
Wednesday, March 27, 2019
3:00 p.m**

Present: Fargo Division Engineer Nathan Boerboom, Clay County Commission Representative Kevin Campbell; Moorhead City Council Member Chuck Hendrickson, Clay County Commission Representative Jenny Mongeau (via conference call), Cass County Joint Water Resource District Manager Rodger Olson, Cass County Commission Representative Mary Scherling, Fargo City Commission Representative John Strand and Moorhead City Engineer Bob Zimmerman.

Others present: Eric Dodds – AE2S.

Absent: Cass County Commissioner Duane Breitling, Fargo City Administrator Bruce Grubb, City of Horace Mayor Kory Peterson and City of Moorhead Mayor Johnathan Judd.

The meeting was called to order by Ms. Scherling.

Introductions

Members of the Committee introduced themselves.

Agenda Review

Mr. Dodds said Agenda Item No. 5 indicates an attachment (Item C); however, there is none, he said, and he will give a verbal update.

Mr. Zimmerman moved to approve the agenda. Second by Mr. Boerboom. All the members voted aye and the motion was declared carried.

Minutes Approved

Mr. Campbell moved the minutes from the February 27, 2019 meeting be approved. Second by Mr. Olson. All the members voted aye and the motion was declared carried.

Property Acquisitions Program Report

Mr. Dodds said the first two pages in the agenda packet show maps of the overall status and key acquisition areas. He explained the color-coding system that shows areas with appraisal pending, in negotiation, purchase agreements signed, acquired, condemnations, flowage easements secured and areas of bio/geo monitoring. He said the property acquisition status map shows parcels broken down, the three phases for the project, the southern embankment and control structures. The plan, he said, is to produce this type detail report each month to show the status of acquisitions as the project moves

forward. He said there is good progress made in certain areas and progress left to be made in others. Budgets are being tracked as well, he said, and synced up with what the Finance Committee and Board of Authority see in their packets.

In response to a question from Mr. Campbell about whether the Minnesota parcels being monitored are mostly Clay County properties, Mr. Dodds said the only properties showing in that category in Minnesota are the government owned properties. He said there are some additional bio/geo sites in Minnesota that are private property; however, right of entry or easements have yet not been requested from those property owners. He said the Corps of Engineers has identified where monitoring is needed and parcels they want access to allow placement of some monuments to use for long-term record keeping. As far as timing, he said, it is in the Corps' hands and they are working toward sharing those boundaries and requesting acquisition of those property rights proceed. He said he anticipates the request will be made in 2019 and teams will work with property owners to begin that monitoring work later this year.

Lands Outreach Update

Mr. Dodds said about 550 letters were sent last week to property owners whose land is affected by the project. He said some phone calls were received as a result, but not overwhelming and about what was expected. There were about 3 dozen calls, he said, most from the upstream area on both sides of the river. He said most callers ask about the process, many are anxious to proceed, some had frustration in how long it took to be contacted and most all are appreciative. He said the Cass County Joint Water Resource District Board will consider a follow-up letter soon, providing property owners along the channel more detail. That area will have a somewhat different approach in that they will be contacted directly, he said, rather than having them respond to a general invitation. He said the goal has been to acquire all the channel properties by spring of 2020, which is aggressive; however, there is a desire to be ready for the P3 contractor. That timeline will be discussed with the CCJWRD and is being reviewed by attorneys, he said.

In response to a question from Ms. Scherling about the handling of properties in the fringe area, Mr. Dodds said the letter to property owners on the upstream side indicated that FEMA needed to do a final approval of the hydraulic model. As he understands it, he said, that hydraulic model will be submitted to FEMA in a week or so, then FEMA review will take 3 to 4 months. He said there is great confidence in the model; however, due to it being the fringe, there is hesitation in putting a final stamp on it until FEMA is done with their review.

In response to a question from Ms. Scherling about whether more letters are planned in the near future, Mr. Dodds said, other than the intended letter from the CCJWRD to channel property owners, nothing in the near term, although there will be multiple other letters that will go out to property owners as the design advances.

Upstream Mitigation – Development Restrictions in Maximum Pool

Mr. Dodds said the Committee has seen the map before, and it is the same as the one shared with property owners in the upstream mitigation area. He said there have been ongoing discussions with the permitting agencies, the Buffalo Red River Water District

(BRRWD), the DNR and the State Water Commission. There has been continued discussion about what development restrictions will be required for the maximum pool, he said. A maximum pool is defined by the Probable Maximum Flood (PMF), he said, so really a biblical size flood seven times the size of the 100-year flood event. Property owners have been asking about development restrictions and elevation for things such as machine sheds or relocating houses, he said. There is an addition to the map highlighted in yellow since information was sent to property owners, he said, showing areas above the PMF flood level. There will be easements on property with restrictions on future development, he said, and in some situations will have to be four to five feet above existing land. Floods of that size can happen, as in Houston during the hurricanes, he said, and the goal is to avoid those types of situations locally. He said flowage easements in the operating pool/floodway would have a prohibition on development so virtually no structures there; however, the defined flood plain next to it could be developed if raised. He said it is a new standard; however, tied to the dam safety conditions.

Mr. Campbell said it becomes basically a defined flood plain area. He said currently, one can build within a flood plain; however, to certain specifications.

Mr. Dodds said Phase 2 flowage easements will take all the information and restrictions into account and fit it into a formula for valuing easements. In a situation where only a portion of a parcel is impacted by this flowage easement and development restriction, technically a property right would be needed on that portion, he said. If the owner wanted to build a machine shed or whatever, and the restriction calls for elevating the structure, he said, perhaps there is the opportunity to, rather than buying a valued easement, the project could pay for or reimburse for the fill. He said an easement would be needed to provide the legal authority to have this water back up in the event of a biblical flood.

Mr. Olson said grain bins could be damaged by floods and result in total destruction of the grain and the bin if it gets wet, so the elevation of these structures is important.

Mr. Dodds said there has been discussion on what constitutes an insurable structure and the application of development restrictions and mitigation of structures as it applies to farm structures. He said there is more flexibility on nonresidential structures in terms of alternative mitigation and rather than simply a buy out for elevation, dry flood proofing or wet flood proofing could be considered.

In response to a question from Ms. Scherling regarding outbuildings that have outlived their useful life, Mr. Dodds said there will be structures that have very little contributory value. He said they will be looked at from a market value and if the structure is still in good use, it will be accounted for in the appraisal process.

In response to a question from Commissioner Strand about historical properties, Mr. Dodds said the Corps is required to do a historical property survey, and if a historic property has to be acquired, work must be done with the Corps and the State's historical offices to properly mitigate for that historical significance. He said there could be a suite of details involved. As far as cultural sites, he said, a few have been found along the

channel, preliminary efforts have been made to identify the size and scope and a future effort is needed to do the archaeological dig on those sites. He said for the embankment alignment, some cultural surveys have been done; however, more work needs to be done in the areas where the embankment has changed.

Commissioner Strand said the more proactive communication can be, the less likely to hit walls later and he is willing help with that.

In response to a question from Ms. Scherling about when discussion will start on cemeteries again, Mr. Dodds said the local cemetery mitigation team can be reassembled. Given that several cemeteries are in the upstream area, he said, it will be important to get the FEMA blessing before going too far down that path. Many of the Diversion Authority members have changed, he said, and the group needs to be reconstituted before meeting with property owners.

Ms. Scherling said some of the criticism she hears at public meetings is individuals not knowing how they will be affected, whether it is a fringe area, a grain bin or a cemetery, so outreach is important. She suggested looking at who was on the previous cemetery mitigation group and who could volunteer now, possibly Commission Strand, she said.

Crop Insurance

Mr. Dodds reviewed a letter in the agenda packet that was sent to the House Appropriations Committee in Bismarck responding to questions they had regarding whether or not crop insurance would be available for producers in the upstream mitigation area. He said documents attached to the letter are from USDA's Risk Management Agency and they indicate that as long as a producer is able to plant their crop in accordance with USDA's planting guidelines, they are eligible for Federal Crop Insurance. If the project operates and impacts growing crops, he said, they would likely be ineligible for Federal Crop Insurance from a manmade event. He said that is why the Diversion Authority has committed to establishing a Summer Operation Supplemental Crop Loss Program, which is somewhat like crop insurance; however, not asking anyone to pay a premium.

Mr. Olson said if the project is operated and the land dries up so the farmer can put his crop in within the window of insurability, the crop will be insured by multi-peril crop insurance. He said if the project operates and the farmer is not able to plant, then due to the project it would not be covered by multi-peril. There was also discussion, he said, about if a farmer did not plant during the set window, for whatever reason, he would not be insured. He said what the government is saying is that they do want to provide insurance; however, a farmer cannot say they were prevented from planting due to equipment not working or their equipment was not big enough to get it done within the window. The rules are more stringent, he said; however, if there is general loss in the area they become more lenient. If it is a single claim, he said, it would be scrutinized.

Mr. Dodds said one of the conditions in the DNR's permit is to provide more detail on the crop insurance program and there are some timelines involved. Federal Crop Insurance

is a federally-subsidized program which has seven or eight reinsurers, he said, and two of them operate locally. There is a system and structure in place to sign up for crop insurance on which to piggyback, he said. The concept being worked on, he said, is to develop a rider for those reinsurers to go out and offer the producers a rider at no cost. Then, he said, if a summer rain event is so massive it causes water to enter the river, threatening the community and forcing closure of the gates, and water backs up upstream, an insurance adjuster would look at what caused the crop loss. If the adjuster says the Diversion Authority is a percentage responsible, then the Diversion Authority is on the hook for paying crop losses. It is proposed the summer crop loss program cover 90%, he said, and as he understands it, most producers cover 70% to 80%.

Mr. Olson said at 90%, this program would go beyond and is based on individual farm yields.

Mr. Dodds said he has asked the NDSU Ag Department if they have the expertise to advance the development of this crop insurance rider program and he awaits their reply. He said it would be great to have the local expertise or they may need to team up with someone like Watts and Associates who develops crop insurance products. He said there will be some work for the Diversion Authority to create the program and the rider and meet with the reinsurers.

In response to a question from Ms. Scherling about planting dates and if they allow enough time to dry out fields and plant, Mr. Olson said there is a provision in the insurance that allows planting after that last date, called late planting window, which reduces coverage by 1% per day to when it is certified to be planted.

Mr. Dodds said when working with the NDSU Ag team on the Ag study, they held a focus group with producers and asked how much time it takes from when the water is off the field until planting can begin. He said the conclusion was to assume 10 days for the dry down period. The latest crest on record here was around April 17th in 1997, he said, and the insurance dates are significantly beyond that. He said from an annualized standpoint, the risk of having a delayed plant is small. He said in some years there could be overlap of planting timeframes with when floodwaters leave the land; however, from a recurring annualized basis the risk was very small. He said the operating frequency from once every 10 years to once every 20 years makes the risk more remote for an impact of planting dates.

Mr. Olson said NDSU also looked at the economics of switching crops and the frequency was small.

Mr. Dodds said NDSU was asked to put together a proposal to update their study including a review of the dry down period and the switching of crops.

In response to a question from Ms. Scherling on whether 90% is reasonable compensation and why not 100%, and does it take into account that flowage easements have been paid, Mr. Dodds said most producers buy 75% to 80%, so going beyond is a

recognition of the responsibility. He said the Federal Crop Insurance Program is really for the producer and flowage easements are for the property owner, which may or may not be the producer. He said if a producer knows he has an insurance provision against a catastrophic loss, he is more likely to pay a decent rental rate for the land which then helps the property owner absolve the risk as well.

Mr. Olson said to pay 100% could result in an advantage in an area and in competition such as other farmers coming into the staging area and competing with farmers already there and possibly bidding up the rent. Discussions in Ag Committee meetings several years ago indicated most felt comfortable with 90%, he said.

CCJWRD Update

Mr. Olson said there have been a couple offers and some appraisal amounts were approved for just compensation. He said he expects some offers coming back for approval at the next meeting. Land agents gave an update at the last CCJWRD meeting, he said, and generally felt good about the process and had positive feedback.

MCCJPA Update

Mr. Shockley said the modified draft of the MCCJPA is nearly finished and will be distributed to Clay County, Moorhead and to the BBRWD.

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

The meeting adjourned at 3:48 p.m.

The next meeting will be April 24, 2019.