

**METRO FLOOD DIVERSION AUTHORITY
JANUARY 26, 2017—3:30 PM**

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, January 26, 2017, at 3:30 PM in the Fargo City Commission Room with the following members present: Fargo City Mayor Tim Mahoney; Fargo City Commissioner Tony Grindberg; Fargo City Commissioner Dave Piepkorn; Cass County Commission representative Darrell Vanyo via conference call; Cass County Commissioner Chad M. Peterson; Cass County Commissioner Arland Rasmussen; Moorhead City Mayor Del Rae Williams; Moorhead City Council Member Chuck Hendrickson; Moorhead City Council Member Joel Paulsen via conference call; Clay County Commissioner Kevin Campbell; Clay County Commissioner Frank Gross; and Cass County Joint Water Resource District Manager Roger Olson. West Fargo City Commissioner Mike Thorstad was absent.

2. MINUTES APPROVED

MOTION, passed

Mr. Olson moved and Mr. Campbell seconded to approve the minutes from the January 12, 2017, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Piepkorn moved and Mr. Grindberg seconded to approve the order of the agenda with one change to remove the PMC report. Motion carried.

4. ADMINISTRATIVE/LEGAL UPDATE

Admissibility Agreement for MN DNR Working Group

Attorney John Shockley said negotiations are considered confidential and in order for the Minnesota Department of Natural Resources (MN DNR) working group to hold its meetings, an admissibility agreement is needed. The agreement will provide protection of the information disclosed to each other during settlement discussions.

Mr. Olson said Commissioner Tom Landwehr made some comments at the Red River Basin Commission conference last week stating that Minnesota will not issue a permit for the project as it has been presented. He questioned whether efforts to continue discussion with the MN DNR are necessary given the position of Mr. Landwehr.

Ms. Williams said board members have been encouraged by the Corps of Engineers to work with the State of Minnesota. She supports continued discussions to hear broader ideas on how to proceed with the project. Mr. Campbell also believes the issues are important to discuss and being at the table is better than no discussion at all. Mr. Vanyo said there has not been an opportunity to discuss the 56-page Findings of Fact document released by the MN DNR. He believes it is important to continue meeting with Minnesota officials.

Mr. Shockley said a meeting of the working group has been scheduled for next week, and he supports on-going dialogue with the MN DNR.

MOTION, passed

Mr. Hendrickson moved and Mr. Campbell seconded to approve the admissibility agreement with the Minnesota Department of Natural Resources. On roll call vote, the motion carried with ten members voting “Yes”; and Mr. Grindberg and Mr. Olson voting “No”.

Executive Director position description

Mr. Shockley discussed the job description for the Executive Director position and said board members did not submit any comments or changes to him after the last meeting. The notice for the position will be posted after approval by the board.

Michael Redlinger, Assistant Fargo City Administrator and Co-Executive Director, said the goal is to take the position to market to provide exposure to all parts of the country.

MOTION, passed

Mr. Olson moved and Ms. Williams seconded to approve the job description for the Executive Director position. On roll call vote, the motion carried unanimously.

Fredrikson & Byron Conflict of Waiver Agreement

Mr. Shockley said Fredrikson & Byron currently serves as counsel for the Diversion Authority for Minnesota government relation services. The company would like to represent one of the four short-listed Public Private Partnership (P3) teams. A conflict of waiver agreement has been drafted to protect the confidences of the Diversion Authority and authorize Fredrikson & Byron to serve in a dual capacity.

MOTION, passed

Ms. Williams moved and Mr. Vanyo seconded to approve the conflict of waiver agreement with Fredrikson & Byron, P.A. Discussion: Mr. Shockley said there is no financial obligation with this agreement. Mr. Peterson asked about protection for the Diversion Authority if confidentiality is compromised. Mr. Shockley said the agreement includes a release of liability and indemnity in which Fredrikson & Byron releases and indemnifies the Diversion Authority for all claims arising from a violation of the provisions as outlined. On roll call vote, the motion carried unanimously.

5. FINANCE UPDATECommittee report

The Finance Committee met on January 25th. Robert Cowen from CH2M briefly reviewed the overall program summary, FY 2016 year-end budget and FY 2017 cash budget.

Voucher approval

The bills for the month are with Erik R. Johnson & Associates, Ltd. for legal services.

MOTION, passed

Mr. Grindberg moved and Ms. Williams seconded to approve the vouchers received through January 18, 2017, in the amount of \$1,453.04. On roll call vote, the motion carried unanimously.

Recommended Contracting ActionsConstruction Change Order

Ty Smith from CH2M discussed the following Change Order, which was reviewed and approved by the Technical Team and Finance Committee:

- ICS, Inc. Change Order 9 (4th Street Pump Station)—fuel lever sensors and floodwall coping in the amount of \$6,113.80.

MOTION, passed

Mr. Grindberg moved and Mr. Hendrickson seconded to approve the appropriation of funds for the outlined Change Order. On roll call vote, the motion carried unanimously.

6. OTHER BUSINESS

Mark Nisbet from the Chamber of Commerce Business Leaders Task Force said the Diversion project is a top priority of the task force and business leaders appreciate the efforts of the Diversion Board. He said the chamber will host a meeting with state legislators in Bismarck on Thursday, February 9th and invited board members to attend.

7. EXECUTIVE SESSION

North Dakota state law allows the board to meet in private session to consult with legal counsel.

MOTION, passed

Mr. Piepkorn moved and Mr. Grindberg seconded that the Metro Flood Diversion Authority meet in executive session pursuant to N.D.C.C. §44-04-19 through §44-04-19.2 for the purpose of attorney client consultation and update regarding matters arising out of or related to the on-going litigation matter of the Richland/Wilkin County Joint Powers Authority v. Army Corps of Engineers and the City of Oxbow as intervenors and to receive legal advice regarding the Minnesota DNR's decision to deny the Dam Safety and Public Waters Work Permit Application submitted by the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

Diversion Authority board members, key administrative and engineering staff, and Attorney John Shockley moved to the River Room at 3:56 PM. Also present via conference call were Mr. Vanyo, Mr. Paulsen, and Attorney Robert Cattnach from Dorsey & Whitney, LLP.

The executive session ended at 4:31 PM, and the meeting was re-opened to the public.

8. NEXT MEETING DATE

The next regularly scheduled meeting is Thursday, February 9th. However, this is subject to change as the Chamber of Commerce invited board members to attend a meeting with North Dakota legislators in Bismarck on February 9th.

9. ADJOURNMENT

MOTION, passed

On motion by Mr. Campbell, seconded by Mr. Peterson, and all voting in favor, the meeting was adjourned at 4:32 PM.