



Memo to: Board of Directors

From: Les Sterman

Subject: Program Status Report

Date: March, 2011

Design/Construction

The first set of “progress drawings” for the 30% design milestone was submitted on schedule by AMEC on March 1. This marked the beginning of a focused two month period to complete the preliminary design, cost estimate, and schedule. As I have indicated before, this is a critical landmark for the project, since it will be the first time that we can express with a degree of confidence the basic design elements of the project, its cost, and how long it will take to get done. Our goal all along has been to complete the project (achieve FEMA certification and accreditation) with the money that can be raised through the sales tax and to get the job done in five years.

The process to get from the set of progress drawings to a complete preliminary design will consist of the following steps:

1. A series of overview meetings with partners/stakeholders to review and refine the design. Meetings have already been held with the Corps of Engineers on March 11, and the area levee districts on March 11. A full workshop with the Council’s Board is scheduled for March 16.
2. Overview meetings will be followed up with detailed review sessions for each levee district with both the Corps and the staff of each district. A number of those meetings are already scheduled for the week of March 14.
3. A series of reviews by our project management oversight consultant. Those reviews will include a value engineering appraisal by a peer team, a review of cost-estimates and a constructability review. Those activities will likely take place on or about the week of March 27.
4. Preparation of cost estimates will be done by AMEC following the refinement of the progress design resulting from the above activities.
5. Re-engage our financial planning consultants to refine the financing model and develop a financing plan based on current market conditions and our project schedule to determine our financial capacity to build a project in accordance with the preliminary design.
6. Bring together the design, cost estimate and financial plan to develop a draft project schedule and construction sequence.

Our goal is an ambitious one, which is to accomplish the foregoing activities by April 30. This is in keeping with our commitment to the community to provide some certainty in a situation that has undermined the economic confidence and prospects of the area.

Based upon the discussions that have already taken place following the design submittal there are a number of key conclusions:

1. As all of the extensive data collected over the last two years have been analyzed and turned over to project designers, the job has become more complex and potentially more costly. While there was some headroom between our financial capacity and earlier cost estimates, that margin may shrink significantly or disappear. (AMEC's conceptual cost estimate was \$146.5 million and our financial capacity has been modeled at between \$160 and \$170 million).
2. At the outset of planning three years ago, it was believed that certification of the Wood River levee system could be achieved at a relatively small cost and in a limited time, but that conclusion was clearly inaccurate. This portion of the project will be costly and complex.
3. Some of the conditions that could lead to increased costs are:
 - a. In some areas new borings disclosed that bedrock is significantly deeper than expected. This is critical in locations where cutoff walls are being considered to control underseepage. Cutoff walls are by far the most costly element of the project, so any change in the design parameters of this feature could have a significant effect on the cost of the project.
 - b. There is more of a potential problem with through-seepage in some of the levees than anticipated. None of the earlier borings done by the Corps were done through the crown of the levees to gauge the permeability of the soil in the embankment. The supplemental borings done as part of the project in the last several months disclosed several areas where the levees will need to be reinforced with a clay layer to control through-seepage.
 - c. Topographic features adjacent to the levees such as drainage ditches and borrow pits that have been permitted over the years potentially increase the potential for underseepage.
4. Even at this stage of the design, there remains some uncertainty, which must be reflected in a contingency in the cost estimate. At the conceptual stage, we used a contingency of 25% of construction cost. While many of the unknown conditions at the conceptual stage are now better understood, it remains clear that uncertainty will be with us for awhile and that needs to be reflected in a cost contingency.
5. There are still opportunities to reduce the cost of the project. I have asked AMEC to look for every opportunity to bring costs down, and it appears that there may be some ability to do that, although those opportunities are narrowing. Unfortunately, we can't discount the possibility that some project elements may increase in cost as the design is further reviewed.

6. The schedule and cost impacts of permitting and approvals by regulatory agencies continue to be a concern. Managing the regulatory process will be a key to achieving the project goals.
7. A linchpin in the plan to achieve certification of the area levee system is the commitment of the Corps of Engineers to seek certification from FEMA for the Chain of Rocks levee and for the interim measures taken in the vicinity of the Mel Price Lock and Dam in Alton. We do not yet have that commitment from the Corps.

Conoco Phillips has now agreed to perform the necessary subsurface borings at their site in the Cahokia in lieu of providing site access to our consultants and subcontractors. While this will suffice for now, we need to have a more effective arrangement in the future, since the preliminary design anticipates seepage berms and relief wells on their site.

The Corps of Engineers provided a preliminary report to the MESD staff on the results of their periodic inspection. There were a number of items that were determined to be unacceptable. Following a meeting and field inspection by the District staff with the Corps of Engineers, each of these items was effectively addressed and a formal response issued by the District to the Corps. We anticipate that this response will be sufficient for MESD to maintain its status within the PL 84-99 program for federal emergency response and repair of flood control facilities.

Financing

As noted above, we will need to produce a financial plan to effectively determine project schedule. I hope to have that done as part of the April 30 submittal.

Legislation

Following the adoption of an extensive list of legislative proposals by the Council at the February Board meeting, the Leadership Council arranged a meeting with the local representatives of the area's legislative delegation. They were very supportive and made a number of helpful suggestions. Following that meeting I developed a smaller list of proposals that would be a better indication of our priorities. I have forwarded the list to the members of the delegation; a copy is attached.

Congressmen Costello and Shimkus along with a number of cosponsors in the House introduced H.R. 898, which contains the same provisions of H.R. 3415 introduced in the last Congress. This bill is one that we strongly support, since it imposes a moratorium on the issuance of new flood insurance maps as long as there are ongoing credible efforts to improve flood protection and meet certain other conditions to improve the safety of levee systems while they are being improved.

On March 10, FEMA responded to a request made by a large number of Senate and House members (including all of our delegation) to change the way that risk is determined for areas behind de-accredited levees. The current procedure is for flood insurance rate maps to show the entire 100-year floodplain as a special flood hazard area as if no flood protection exists, commonly known as the "without levees" scenario. Obviously, this procedure defies common

sense, especially in an area like ours where the existing levee system has never failed, even under the duress of a high water event significantly greater than the one that is the basis for accreditation.

The good news about the FEMA announcement is that it will further delay the issuance of any letter of determination and subsequent issuance of new flood insurance rate maps. According to FEMA statements, this action will cause a delay of a “few months,” although experience suggests that FEMA’s deadlines typically aren’t achieved. Any delay is helpful to property owners so they may continue to purchase inexpensive flood insurance should they choose and not be subject to a mandatory requirement to do so.

What is less certain is whether there will be any material effect on the flood maps themselves. Despite some statements that this action could shrink the 100-year floodplain and affect a smaller number of property owners, there is no indication in the FEMA announcement that this possibility exists. The law only recognizes the 100-year floodplain, not any lesser level of protection, so the flood hazard area itself would likely not change. Moreover, if new maps were to be developed and issued, the delay would be far greater than a “few months.” New preliminary maps would need to be issued, and the appeal process would need to be reopened. If this were to be done, the delay would be measured in years, not months.

Legal

FEMA submitted a motion to dismiss our lawsuit against the agency, primarily on the grounds that we have not yet exhausted all of the administrative steps prior to the issuance of new flood insurance rate maps, a milestone that would be indicated, in their view, by FEMA’s issuance of a final letter of determination. They also argued that the agency was protected from our constitution claims by sovereign immunity. Our attorneys developed a full response to FEMA’s motion that was submitted to the court on February 23rd.

On February 22nd, our attorneys finally received the administrative record that would allegedly support the decisions to deny the various appeals of the preliminary maps. A review of those documents failed to produce any analysis, data or studies to support the levee de-accreditation decision that is the basis for the enlargement of the special flood hazard area on the preliminary maps. This finding lends further weight to the claims that we have made in our lawsuit.

Project Administration

The East-West Gateway Council of Governments has acted as our fiscal agent since the inception of our organization in July, 2009. Given the limited financial transactions over that period of time, this was a very cost-effective arrangement. We used the EWG staff to monthly and annual financial statements, conduct procurement activities, issue and pay our bills, conduct our banking and most recently, to request reimbursement from the bond trustee for the organization’s expenses.

As long as the demands were not large, the EWG staff had the capacity to meet our needs while performing their other responsibilities. That situation has now changed. Our activities have ramped up considerably in recent months and the demands on the fiscal agent have increased accordingly. As we embark on construction, those demands will increase far more. Even now,

we take far longer than I would like to review and pay incoming invoices and meet our commitments under our contracts. It has become clear that we need to find a more effective way to provide independent fiscal agency services to the Council. I am suggesting, therefore, that over the next few months we seek an individual or firm to act as our fiscal agent through a competitive procurement.

The Council's website is nearly complete and should be fully online within the next month.

Legislative Priorities

Our objective is to provide incentives for local sponsors to invest in flood protection systems and reduce flood risk. Given the current efforts to reduce federal spending and the historically very long timeframes for the Corps of Engineers to pay for and implement flood protection improvements, these proposals should be particularly timely.

1. Pass H.R. 898. This bill postpones the adoption of new Flood Insurance Rate Maps by FEMA up to seven years providing that a local sponsor can credibly demonstrate a good-faith effort to make levee improvements to address deficiencies in flood protection disclosed through a FEMA certification inspection. In order to take advantage of this provision, a local sponsor would need to have a funded plan to make necessary levee improvements, make significant efforts to promote the purchase of flood insurance, adopt a robust reconnaissance plan to be used during high water events, and develop and adopt an evacuation plan to be used during a catastrophic flood event.
2. Change the methodology by which FEMA remaps areas behind de-accredited levees. Under current procedure, following a levee de-accreditation by FEMA, new FIRMs are drawn with the assumption that there are no levees or other flood protection systems in place at all. This approach significantly exaggerates flood risk and has profound economic effects on the levee-protected area, including loss of property value and limitations on economic growth. We support an administrative rule or legislation an approach that recognizes the presence of and historical performance of existing local flood protection systems and considers typical floodfighting efforts in determining the boundaries of special flood hazard areas.
3. Adopt legislation to extend the A99 flood insurance rate map classification to consider projects done with local funds by local sponsors. Under current FEMA regulation 44 CFR 61.12 the Administrator can grant A99 zone designation after 100 percent of the funds have been authorized for a project that will remove an area from a special flood hazard zone, at least 60 percent of the funds have been appropriated, and 50 percent spent. The significance of the A99 zone is that flood insurance rates will be the same as if the area was fully protected.
4. Allow for local expenditures to improve a federal levee to serve as the local-share for future federal projects. This is known as a credit for “work-in-kind.” Local expenditures made to advance a federal project would be considered as the local cost-share for future federal projects. The authority for work-in-kind credit has already been provided in the Water Resources Development Act (WRDA) of 2007, Section 2003, titled “Written Agreement for Water Resources Projects.” Current legislation authorizing work-in-kind credit recognizes only those projects authorized after 1986. The projects in our area however, were authorized in Flood Control Acts passed in the 1930’s.

5. Allow the Corps greater flexibility in reprogramming funds between authorized projects by removing Committee approval requirements for reprogramming. There are multiple discrete authorized federal projects in our area. Even though these projects are part of a single system, appropriations are made by individual project and may not reflect current priorities. Greater flexibility with reprogramming granted to the Corps would facilitate the most cost-effective and productive management approach to improving the levee system.