



Memo to: Board of Directors

From: Les Sterman

Subject: Program Status Report

Date: May 13, 2010

Over the last month considerable progress has been made in four principal areas: developing a financing plan, securing a conceptual design and cost estimate, completing the certification inspection and meeting our legislative and regulatory goals to reduce short-term economic hardship during the period when the project is under construction and accreditation is sought. Specific progress in the last month is described below:

Design

Responses are due on May 21 from three design teams who were chosen to submit conceptual design proposals and cost estimates. These teams were charged with developing cost-effective design concepts, with the principal goal of achieving levee certification at the lowest cost and in the shortest time. Individual consultation sessions were held with each design team in the last few weeks as well as a meeting with the Corps of Engineers project managers. Proposal development continues to be somewhat hampered by the timely provision of data from the Corps, but I expect the proposals to be responsive and provide significant new information that will help in defining the project plan and cost estimate. Proposals will be reviewed carefully and interviews with each of the teams scheduled for the first or second week of June. I anticipate a consultant selection will be considered at the June Board meeting.

The Corps of Engineers completed a draft Limited Reevaluation Report for the MESD levee system. The draft is currently being circulated for review. The Council and MESD have been asked to submit comments and suggestions. The Corps will then initiate the independent external peer review, which is required by federal statute. I do not anticipate that the LRR will ultimately be the blueprint for the project that we will build since, among other things, it describes a project that is considerably more expensive than we can afford. However, it establishes the basis for future federal funding.

Underseepage analysis is ongoing for the Prairie DuPont and Fish Lake levee systems.

Additional issues have arisen in the Corps of Engineers design for the Wood River project. In an area on the south flank of the lower Wood River Levee where a small number of relief wells were anticipated and scheduled to be built with ARRA funds, underseepage analysis has determined that a much larger number of wells will be required. Since there isn't sufficient capacity to handle the potential discharge from a large number of wells, the

project cannot be accomplished within the deadlines required with ARRA funds. The Corps is currently reviewing this design and looking for alternatives.

Inspection

The levee certification inspection being conducted by a team led by AMEC Earth & Environmental has been underway for several months. The inspection is on schedule, although progress in some areas has been limited by lack of sufficient data. Because the Corps has focused principally on the issue of underseepage, data and modeling related to a number of other subjects that are an integral part of certification, such as slope stability, through seepage, and internal drainage, are not available. For those subject areas, the inspection team is relying on a combination of field inspection and past performance to determine potential problem areas and “fatal flaws.” For these areas particularly, final certification will require additional analysis. The inspection is on schedule for completion by July.

Financing

The Council’s advisors have been developing the financial capacity analysis, developing recommendations on borrowing structure, and making preparations for future bond issues. Efforts have focused on optimizing the proceeds from any borrowing. A financial planning “summit” was held on April 20 involving all stakeholders in the financing process including our financial advisors, bond counsel, legal counsel, and representatives of the levee districts and counties. The “summit” was a wide ranging discussion of potential financing structures. A preliminary recommendation from the financial advisory team will be made at the May Board meeting.

Legislation

The Council has advocated for legislation to limit the temporary, but severe, economic consequences of levee deaccreditation including mandatory high cost flood insurance and constraints on building and development.

HR 3415, introduced by Congressmen Costello, would provide for a moratorium on mandatory flood insurance for up to seven years during the period levees systems are being restored. This legislation has also been introduced in the Senate by Sen. Vitter of Louisiana. Many of the principal provisions of HR 3415 were incorporated into a flood insurance reform bill, HR 5114, put forward by Congresswoman Maxine Waters, chair of the House Financial Services Committee Subcommittee on Housing and Community. The bill passed the subcommittee and will be considered by the full committee where it has been endorsed by the Committee Chairman, Congressman Barney Frank. HR 5114 provides for a five year moratorium on mandatory flood insurance. Unlike HR 3415, however, it does not prevent the issuance of new flood insurance rate maps. Prospects in the Senate are less uncertain.

At the state level, efforts have focused on mitigating the unintended impacts of a Governor’s Executive Order issued in 2006 that would limit development even more severely than required by the federal flood insurance program. SB 2556 was introduced by Sen. Haine and sponsored in the House by Reps. Holbrook and Hoffman after unsuccessful attempts to secure changes in the existing Order to address our situation. This bill would limit the

applicability of the Order in the counties that have formed Flood Prevention Districts under Illinois law and are making good faith efforts to restore flood protection. The bill passed the General Assembly and has gone to the Governor for signature.

SB 2520, also introduced by Sen. Haine, and sponsored in the House by Rep. Beiser, would provide the Metro-East Sanitary District with the authority to annex areas now protected by the District's levee system, but who are not now part of the District. This bill will make it possible for the District to recover costs by collecting revenues from all property owners in the protected area. SB 2520 has also passed the General Assembly and has gone to Governor Quinn for signature.

Legal

We have been making continuing efforts to determine the basis of the announcement by FEMA in 2007 to deaccredit area levee systems. Late last week, FEMA finally responded to the Council's FOIA request submitted last year. While we and our attorneys are currently reviewing the documents, there does not appear to be any data, analysis or studies that would support the decision on deaccreditation. Rather, FEMA states that they relied on the Corps of Engineers for that information. The response to a similar request from the Corps last year also did not yield any data, analysis, or studies to support FEMA's findings or the Corps' opinion.

None of the information now made available by FEMA or the Corps in any way diminishes my opinion that the decision-making process by FEMA in 2007 was unsupported by conclusive or documented findings. Further, none of the FEMA documents reviewed thus far suggest any request for certification information from the levee districts or any local government, either before or after the 2007 decision, despite the agency's representation to Sen. Durbin that they had made repeated requests for the information. Worse yet, last year FEMA denied our request to provide information to the agency, insisting that they already had the necessary information provided by the Corps of Engineers.

My continuing belief is that the clock on the deaccreditation process should be restarted, because this critical decision was evidently not based on any documented information or due process.

Construction

The Corps is continuing construction activities on the Wood River levees, primarily using economic stimulus monies.

Outreach

I am continuing to meet with communities and civic groups as requested and responding to many requests for information.

In summary, the project is advancing steadily toward meeting our key goals to achieve certification and accreditation of all the area levee systems at a cost we can afford and in a reasonable and predictable time period.