



Memo to: Board of Directors

From: Les Sterman

Subject: Program Status Report for June, 2011

Date: June 11, 2011

In September 2009, the Council adopted a strategy to initiate the project and advance it through steps to determine a conceptual design, develop a cost estimate, prepare a financial plan and issue the first series of bonds. We have now executed that strategy to a positive conclusion, confirming the feasibility and desirability of a project to assure accreditation of area's flood protection systems. The time has now come to adopt a *Project Implementation Plan* to describe how the Council will complete the design and build the project. The *Plan* will document the design, cost estimate, and schedule for the project, and describe how it will be financed. I have developed a draft of the *Plan* for distribution to the Board at the June meeting and it would be my hope that it could be adopted at the July meeting. Having this *Plan* in place, even recognizing that it may be subject to adjustment from time to time, is an essential ingredient in helping businesses and citizens prepare for the future, to restore investor confidence in the area, and to assure taxpayers that their money is being spent effectively.

#### Design/Construction

Following the submittal of the 30% design documents last month, AMEC is beginning the process of advancing the design and moving forward with developing submissions to state and federal agencies to receive the required permits for construction. Meetings have been held with state and federal agencies to clarify submittal requirements and schedules for receiving permits. Permitting will be a critical path item on our schedule.

Work continued on finalizing the financial plan for the project so that we can align our financing capability with the construction schedule. This process should be completed in June.

Discussions have continued regarding the extent of the process required for the Corps of Engineers to issue a "Section 408" permission that will be required to make alterations to a federal levee. To recap the situation, the Corps has suggested that to make improvements to the levee system such as those contemplated in our project, the process for granting 408 permission would effectively follow the identical project planning and development process that they would follow on a similar project. As you know, this lengthy process is exactly what we are choosing to avoid by funding the project with local monies. The process includes lengthy and costly

internal and external reviews and the preparation of significant additional documentation. The net effect of complying with the Corps' requests would be to delay our project for at least a year.

A plain English reading of the law, the Corps' internal guidance and relevant regulations suggests that our project should not be subject to such a layered and time consuming review. I asked our special counsel, Husch Blackwell, to review the legal basis for the Corps' position and to advise us on a course of action. Husch prepared a legal review that concluded, in part, that because the actions defined in our project are contributing to maintaining the federally authorized level of protection, an engineering analysis done by the District is all that would be necessary for the Corps to grant its permission to the Council. We met with the Corps on June 8 to discuss the issue, and although Corps staff understands our position and does not want to cause undue delays for the project, the outcome of the decision-making process remains uncertain. The Corps is currently assessing the various options and the uncertainty could remain for a number of months. Joe Kellett, the Deputy District Engineer, will be at our June Board meeting to address the 408 issue. We continue to hope that the Corps can be persuaded to adopt a more reasonable, common-sense approach to granting the 408 permission.

We recently received a response from the Corps of Engineers to my May 4 letter that requested a commitment to expedite processing of permits and to provide certification documentation to FEMA for the Chain of Rocks levee and the Mel Price Lock and Dam levee segment. A copy of the response is attached. My conclusion is that the response to these requests was not particularly satisfying. While once again confirming the Corps' support for the project, it did not the letter did not contain the substantive commitments that we will need. For example, the letter noted that the Corps will "maintain visibility of all permit submittal requirements...and advocate judicious processing of permits." This language hardly suggests the level of vigor or urgency that we are seeking on the permit issue. On the certification issue, the Corps will not commit to submitting the required materials directly to FEMA, only submitting documentation to the Council. For our consultants to be responsible (and legally liable) for certification, they will need to do considerable more work than now contemplated or budgeted to complete the submission to FEMA.

We are continuing discussions regarding the Corps undertaking a limited portion of the project for which they can access funding over the next few years. The limited reevaluation reports for the Wood River and Prairie DuPont design deficiency corrections have essentially been completed and are moving through the Corps review and approval process. The approval of those documents will lead to the authorization of those projects, qualifying them to receive federal funding. I have signed letters of intent for our participation that are required to continue processing those reports.

### Financing

Our financial advisors at ButcherMark have completed the financial modeling based on current market conditions, the availability of other revenue sources, and our project funding draw schedule to determine our financial capacity to build a project in accordance with the preliminary design. That financial plan is nearing completion and should be available in late June.

### Legislation

When the STAR bonds legislation was approved by the Illinois General Assembly last year and the site of the subject project was changed late in the session, there were provisions remaining in the bill that applied to our area. Of immediate concern to us were provisions that related to the FPD sales tax that specified conditions under which the proceeds of the tax could be diverted to support a STAR bonds project. While those provisions are inoperative in the absence of a specific project in our area, I thought it would be prudent to have those provisions removed as a technical correction to the bill. Sen. Haine and Rep. Holbrook agreed to sponsor a bill to make such a correction. SB 1712 was successfully passed by the General Assembly and was sent to Gov. Quinn for signature. I sent a letter to the Governor requesting that he sign the bill. Our lobbyist, Jim McPike, was instrumental in getting the bill developed and advocating for its approval.

### Legal

We continue to await the federal court's ruling on FEMA's motion to dismiss our lawsuit. A teleconference between the parties and the federal judge to discuss the status of the pending motions has been scheduled for June 22.

### Administrative

As I indicated several months ago, the Council's arrangement with East-West Gateway to serve as our fiscal agent will no longer work well as we move into later design and construction phases of the project. The workload has already increased to the point where EWG staff has difficulty accommodating our needs within their normal work schedules. The arrangement has been very cost-effective for the Council up to now, but our need for additional assistance means that we must seek a new fiscal agent. Several weeks ago I sent out a request for proposal to private accounting firms and posted the RFP on our website. Proposals are due on Friday, June 17.



REPLY TO

DEPARTMENT OF THE ARMY  
ST. LOUIS DISTRICT CORPS OF ENGINEERS  
1222 SPRUCE STREET  
ST. LOUIS, MISSOURI 63103-2833

MAY 23 2011

Planning, Programs and Project Management Division  
Project Management Branch

Mr. Les Sterman, Chief Supervisor of Construction  
and the Works  
Southwestern Illinois Flood Prevention District Council  
104 United Drive  
Collinsville, Illinois 62234

Dear Mr. Sterman:

Thank you for communicating your thoughts, insights, and concerns, in your letter of 4 May 2011 pertaining to flood protection systems along the Mississippi River in the Metro-East. Ensuring public safety is the Corps of Engineers' primary priority and, to that end, accurately and effectively communicating risk and ultimately reducing risk in our flood risk management projects is a common objective we share with the Southwestern Illinois Flood Prevention District Council. Therefore, restoration of the Metro East Levees to the authorized level of protection is the St. Louis District's highest priority.

The Corps of Engineers is fully committed to supporting the Metro East and the work of the Council. We also acknowledge the Council's objectives towards Federal Emergency Management Agency (FEMA) accreditation while aligning its work with the most probable approaches for the Corps' plans for achieving the authorized level of protection. The Corps is proceeding very aggressively with planning and budgeting processes to first support the Council's goal of achieving 100-year level of protection, and secondly the mutual end goal of final design and construction of the levee systems to the authorized level of protection. While proceeding with these projects, we will also maintain visibility of all permit submittal requirements with the Council, and advocate judicious processing of permits. In your letter specific reference is made to the Clean Water Act Section 404 permit and the USACE Section 408 permit. The State of Illinois will also be a partner in the Section 404 permit approval process. Again, the Corps of Engineers will assist the Council as much as possible throughout this process. I encourage you to engage Mr. Keith McMullen (314-331-8582, [Keith.A.Mcmullen@usace.army.mil](mailto:Keith.A.Mcmullen@usace.army.mil)) early and often for assistance with the 404 permit.


I am confident that through our mutual attention, communication, and work we will position the Chain of Rocks levee and the segment of the Wood River Levee impacted by Melvin Price Lock and Dam for meeting requirements for the overall Metro East Levee System Accreditation. I agree that the Corps has sole responsibility for improving the segment of levee in the vicinity of the Melvin Price Lock and Dam. We have developed an Operational Plan that will provide 100-year level of protection until the permanent solutions are in place. However, the levee is still a sponsor-owned project and, as such, the sponsor is responsible making application for

certification with FEMA. The Corps of Engineers is committed to working with the Council to prepare the necessary documentation for the overall certification submittal package to FEMA.

Please trust that the Corps' cooperation and support of the Council's work towards its production of construction drawings, and scheduled start of construction, will continue. Lastly, we equally share the Council's sense of urgency and importance of the Metro East Levee Projects.

Should you have further questions, please contact my project manager, Mr. Gary Andruska, at 314-331-8719.

Sincerely,



Thomas E. O'Hara, Jr.  
for Colonel, U.S. Army  
District Commander



## Southwestern Illinois Flood Prevention District Council

May 4, 2011

104 United Drive  
Collinsville, IL 62234

618-343-9120  
Fax 618-343-9132

Col. Thomas E. O'Hara, District Commander  
Department of the Army  
St. Louis District, Corps of Engineers  
1222 Spruce Street  
St. Louis, MO 63103-2833

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Les Sterman  
Chief Supervisor of  
Construction and the Works

Dear Col. O'Hara:

We have been making good progress toward improving the flood protection systems along the Mississippi River in Metro-East. As you know, we have worked cooperatively with USACE staff to develop the most cost-effective designs for improvements to the system. Our principal objective is to assure accreditation of our levee system by the Federal Emergency Management Agency (FEMA) over the next five years. While the objective of the USACE is somewhat different (achieving the authorized level of protection), we have worked to align our design with the likely approaches to reach the authorized level of protection.

While we have made substantial progress toward the Council's objective, we have come to the collective understanding that the lengthy project development process and the difficult federal budget environment will limit the role of the USACE in constructing significant project elements over the next few years. Because the USACE is unable to make any reliable funding commitments, we must recognize that the agency's role will be circumscribed. However, the USACE will continue to have a substantial part to play in the project, principally during the design process and through regulatory approvals. Several key tasks that are the responsibility of the Corps are critical path items on our schedule. The purpose of this letter is to outline our understanding of some specific tasks that USACE will be undertaking that are critical to our success and to seek your support in focusing the agency's efforts on those tasks.

We recognize that the permitting process for levee system improvements can be lengthy, but we need to make every effort to optimize the process for obtaining the Clean Water Act Section 404 Permit and the USACE Section 408 Permission from the USACE. These permits are clearly on the project's critical path schedule and we are seeking the agency's commitment to expeditious processing of our submittal for those approvals. In that regard, we want to work with your staff to clarify submittal requirements and schedules so that there will be no misunderstandings or delays because we haven't provided you with adequate information to consider in granting those key permits.

*a regional partnership to rebuild Mississippi River flood protection*



Col. Thomas E. O'Hara

May 4, 2011

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Two segments of the levee system are either under the jurisdiction or responsibility of the USACE. The Chain of Rocks levee is owned and operated by the USACE and significant improvements have been made in recent years. The agency has represented that the Chain of Rocks levee meets FEMA standards for accreditation under 44 CFR 65.10. The USACE has also assumed sole responsibility for improving the segment of levee in the vicinity of the Melvin Price Lock and Dam, owing to the effect of the Lock and Dam in increasing underseepage in the area. An interim solution has been implemented in this area until a more permanent fix can be funded and built. The Corps has represented to us that the interim fix is adequate to satisfy FEMA accreditation requirements. In both of these cases, we will need the USACE to submit the required levee certification documentation to FEMA. In the absence of certification documentation for these reaches of levee, FEMA will be unable to accredit the system and we would not meet our critical objective.

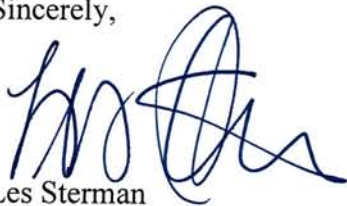
We will continue to work with your design and construction staff on individual design elements and we trust that there will be ongoing cooperation on plans and specifications, so that we can meet our ambitious schedule for producing construction drawings.

Lastly, while we know that the federal budget will be constrained, it is likely that there will be some appropriations to the USACE for the project over the next few years. Rather than dilute those limited appropriations over the expanse of the entire levee system, we would ask that the agency target its funding requests to Congress on areas that are most likely to be funded, that are discrete project elements that will contribute to accreditation, and that can be undertaken independently by the USACE in concert with our project.

The Council appreciates the support that you and your staff have given to our project. The leadership of the St. Louis District has periodically reminded us of the high priority given to this project by the Corps of Engineers. We hope that shared sense of urgency and importance will continue to define how the agency approaches the administrative matters described above that are so critical to the progress of the project.

Thank you for your continued and timely attention. Please let us know if you have any questions or concerns in meeting our requests.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Les Sterman', with a stylized, overlapping flourish at the end.

Les Sterman  
Chief Supervisor of Construction and the Works

cc: Joe Kellett (USACE)  
Board of Directors