



Memo to: Board of Directors

From: Les Sterman

Subject: Program Status Report for July, 2011

Date: July 18, 2011

At the June meeting of the Board of Directors I presented a draft of the Project Implementation Plan for your consideration. Since that time I have done some additional work to better align the financial plan and construction schedule, improved some of the graphics in the report and addressed suggestions from several people. My hope is to have the report 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

AMEC's current work is focused mainly on the process of advancing the design toward the 60% stage of completion later this year and moving forward with the development of 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.

The financial plan was reworked to align with a "draw schedule" that AMEC developed for the project so that we can fit our financing capability with the construction schedule. The resulting plan shifted the timing of future bond issuances and changed the relative balance of bond financing and use of surplus sales tax monies from the counties. The revisions to the plan will be reflected in the latest Project Implementation Plan presented to the Board in July.

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 the necessary 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. At their invitation, I travelled to Washington for a meeting on July 7 for a meeting with our four member (Durbin, Kirk, Costello,

Shimkus) congressional delegation to provide a briefing on the permitting issues and how they would affect the project. The delegation was well-briefed, understood the situation quite well, and agreed to request a meeting with Jo-Ellen Darcy, who is the Assistant Secretary of the Army (Civil Works). That request is still pending. A copy of the briefing materials that I provided to the delegation is attached.

In addition, I have been in contact with the City of Dallas and the various interests representing the Sacramento area concerning our shared experiences (and frustrations) working with the Corps and FEMA. There have been several conference calls to identify common interests and strategies. Problems with the Sec. 408 process are clearly one of those common interests. I have authorized our attorneys at Husch Blackwell to work with the group to develop an issue paper that can be presented to the Corps and to our legislative delegations to try to bring about sensible change in this process.

The Corps has still not provided answers to a number of important questions that we have about the permitting process. These questions relate to the timing, submission requirements and approval authorities for permits. It is my understanding that the District office is working to clarify the permitting processes with Division and Headquarters offices.

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 Corps reports that about \$850,000 has been included in the President's budget for MESD for FY2012 beginning on October 1. That amount of federal money would require nearly \$460,000 in local cost-share. It remains to be seen if that investment will be cost-effective for us.

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.

#### Legal

There was a hearing in federal court in Benton, Illinois on July 14 for the two sides to present arguments related to FEMA's motion to dismiss our case and our motion for a preliminary injunction to prevent FEMA from issuing new flood insurance rate maps.

Our attorneys addressed all points raised by the judge and made a vigorous argument in opposition to the motion to dismiss based primarily on the fact that there is no analysis to support the August, 2007 decision to de-accredit our levee systems, nor did FEMA follow the legally prescribed process to do so. Those failures by FEMA were continuing to cause great economic harm to our area. FEMA, on the other hand, argued that since the mapping process is on hold because of the recent decision to re-examine the "without levee" methodology of mapping areas behind de-accredited levees, the case is moot. In effect, they argued that our levee are currently accredited on the existing maps, there has been no official adoption of new maps, so our lawsuit is not "ripe" for filing. The judge asked if, given those circumstances, FEMA would then comply with our request to withdraw the preliminary maps and the October, 2007 letter to local governments announcing the de-accreditation decision. FEMA responded that they would not

withdraw those documents. The judge indicated that he would make a decision in the next two weeks.

Administrative

Proposals to serve as the Council's fiscal agent were received from five firms on June 17. I have reviewed these proposals and will recommend that three firms be interviewed prior to a selection. A report will be made at the July meeting.