



Memo to: Board of Directors

From: Les Sterman

Subject: Program Status Report for February, 2013

Date: February 15, 2013

Project design is moving toward completion, with attention focused on securing the necessary approvals, permits and permissions to start construction. Since the last Board meeting, three more construction packages (#6 – PdP relief wells and berms; #4 – MESD relief wells and clay caps; and, #2b – pump stations) have been submitted to the Corps of Engineers to initiate the Sec. 408 review. All Corps comments on construction package #2a -- Fish Lake pump stations -- have been resolved and approval is imminent. By mid-April, all final designs and Sec. 408 application materials will have been submitted to the Corps. The review of bid package #7 (for cutoff walls) has been put on hold, while we consider whether to request that the Corps take responsibility for designing and building that portion of the project (see below for more discussion of that decision).

The Sec. 401 water quality certification by the Illinois Environmental Protection Agency is weeks away following the public hearing and the closing of the comment period on our application. I have contacted IEPA and they are diligently working on preparing responses to all comments that were submitted. They believe that they have adequate information to provide complete and authoritative answers to those comments within several weeks, after which the certification could be issued. The water quality certification is a precursor to the final approval of the Sec. 404 (wetlands) permit for the project and Sec. 408 permissions. Bid documents are already prepared for construction package #2a and will be issued as soon as these approvals are granted – we hope in the next few weeks.

We continue to work with the Corps of Engineers to identify design elements that are common to our project to achieve FEMA standards and to the Corps' ongoing project to meet the authorized level of flood protection. The challenges for the Corps are to meet our schedule requirements and to secure sufficient Federal appropriations to provide certainty of funding. Discussions over the last month have provided no more clarity or produced any assurances from the Corps that our conditions can be met. Consequently, no decision has been made at this point whether to request that the Corps of Engineers undertake critical parts of the project.

We require some basic scope, cost and schedule information from the Corps before we can determine whether offloading parts of the project would be a prudent decision. I have defined and communicated the information that we need from the Corps (see attached), initially on

January 18 and again on February 5 (see attached) but have not yet received a response. A meeting held with Corps staff on January 24 raised some additional concerns about the Corps' approach to the project that I felt needed to be addressed. In the meantime, I have asked our consultants to defer any continued activities or expenditures on the cutoff wall project (i.e. responding to the Corps Sec. 408 review comments). The situation must be resolved soon or we will risk having an impact on our deadline for project completion.

Contracts with consultants to provide real estate acquisition services have been executed. The contract with Bernardin, Lochmueller for appraisal work has been successfully negotiated and is awaiting execution. Our attorneys have recommended that they be the contracting party for the appraisal work in case any of the acquisitions would need to be made by condemnation and there was ensuing litigation. We took this approach on a previous contract for levee inspections while we were anticipating litigation with FEMA. Board approval is required for us to enter into agreement with Husch, Blackwell for this work; it will not affect the cost of the contract or the project schedule.

A draft of the Council's FY2012 audit has been produced by our auditor, Scheffel & Co. The audit process was more time-consuming this year because of the transition to a new fiscal agent, and the assignment of new staff to the project by Scheffel. The final audit report should be presented at the March Board meeting.

I am continuing to seek representation for the Council to advocate for the interests of the project at the federal level, much like we already have at the state level. I hope to have a specific recommendation at the March meeting. The Board will consider an ambitious federal legislative agenda at the February meeting. As you will note, despite the fact that our project is locally funded, there is a significant federal regulatory role through the Corps of Engineers that has proven to be problematic. The federal relationship will be important to our budget and schedule and I think it is prudent to take steps to advocate our interests at the federal level.

Les Stermán

From: Les Stermán <lsterman@floodpreventiondistrict.org>
Sent: Friday, January 18, 2013 3:04 PM
To: Joe Kellett
Cc: Kelsey, Tracey B MVS; Jim Pennekamp ; John Conrad; Dan Maher
Subject: Proceeding with Corps Project

Joe-

While I am certainly inclined to move ahead immediately with an initial Corps project to design and build the two cutoff walls in the Wood River levee district, I would like to have some additional information from the Corps:

1. A specific proposal from the Corps including a cost estimate and schedule for the work. Right now all we have is a powerpoint slide. A letter from the Corps describing the work, the current cost estimate and a schedule would be good. I know that the Corps can't be held to commitments like this, but we need some record of the general terms of our understanding.
2. Agreement to provide a written bimonthly progress report from the Corps, and for the Corps to host a monthly meeting to review the status of the design and construction.
3. An approach to maximizing the use of local labor on the project. I know that your flexibility is limited, but I'm told that Corps projects in other districts have addressed this issue, perhaps even through a PLA of some kind.

If we can reach resolution on the above items, I am prepared to immediately tell AMEC to suspend all activities relating to these projects, other than to coordinate with the Corps going forward. While I would like to concur with the optimistic assessment of the Sec. 408 process that you gave in the Board meeting yesterday, my review of the comments received to date, subsequent discussions with AMEC, and my general observation of the Corps' behavior, suggest that this will be a drawn out process that effectively has no end. Under those circumstances it wouldn't make sense for us to pay for AMEC's ongoing parallel work on the cutoff wall projects. I don't think it is an exaggeration at all to conclude that the Sec. 408 process alone will take longer than your internal design process for the same projects. There is something very wrong with that picture (and it is not a reflection on the quality of AMEC/URS design), but it seems beyond anyone's willingness or ability to fix it.

I am also concerned about the quality of the Corps' cost estimate. While the arithmetic says that we will save money even if that estimate goes up substantially, I think it would be unfortunate for everyone if that happens. Your current estimate is based on the LRR level conceptual design, while AMEC's is based on a 100% design. Perhaps some of the cost differences can be resolved when we meet next week, but I think the Corps should be concerned about using a cost estimate that is not well-developed and destined to increase, perhaps substantially, in the near future.

Les

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From: [Les Serman](#)
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Cc: [Jim Pennekamp \(jpennek@siue.edu\)](#); [Dan Maher \(dmaher@co.st-clair.il.us\)](#); [John Conrad \(conrad@htc.net\)](#); [Ellen Krohne \(ellenkrohne@siue.edu\)](#)
Subject: Issues re: Corps design of FPD project
Date: Tuesday, February 05, 2013 5:39:00 PM

Joe and Tracey-

I just wanted to clarify our position with respect to the Corps undertaking portions of the FPD levee improvement project (i.e. improvements to FEMA standards). I think we all believe that this is a promising strategy, but there remain some issues that we need to address before proceeding. I addressed some of those concerns in an email on January 18, but when we met with Corps staff on January 22nd (at the Levee Issues Alliance meeting) and 24th at the District office, there were some additional problems that surfaced. Basically, we need to clarify the scope, cost and schedule of the projects that the Corps would undertake before we can cease our design work and provide sponsor cost-share to the Corps for this work.

From the meeting on the 24th it became clear to me that there remains some confusion about the scope of the design work. As we discussed the Wood River cutoff wall project, most Corps staff in attendance believed that the Corps would be designing for the authorized project and simply building the portion needed for FEMA certification. That is not our understanding. Also, the level of new primary data collection that the Corps is proposing to undertake is a matter of some concern. As you know, our consultants have already collected and provided to the Corps all of the extensive data that they used to design the cutoff wall for our project and there has been no indication thus far as part of the Sec. 408 review that those data have been insufficient to support the design. Gathering new subsurface data is very costly and we would certainly like to review the justification for going beyond the work that has already been done. It also became clear from the discussions that the Corps cost estimate, having been based on a conceptual design from the Limited Reevaluation Report, may be subject to change. As I indicated to you earlier, a significant increase in the cost estimate, even though it would not nullify the fiscal benefit to us, would be problematic for all concerned.

At the meeting on January 22nd at the Leadership Council, Col. Hall indicated that if the Corps did not get the expected appropriation for construction, we could indeed move forward locally to build the Corps design. However, Corps Headquarters advised that under those circumstances the project would be subject to a Sec. 408 review. That position certainly defies common sense, and Col. Hall said that the District would be engaging Headquarter staff to seek clarification and relief from that seemingly odd requirement. We would like to get some clarification on this issue, because it could put our schedule at risk.

We have discussed a Memorandum of Understanding to formalize our mutual agreement to proceed with Corps execution of portions of the FPD project. An MOU would give us the assurances that we would meet our schedule and time commitments and would allow us to "stand down" on any further design work on the projects that the Corps would undertake. As I understand it, the

MOU would contain the following elements:

1. A description of the scope of the project(s) to be undertaken by the Corps (including data collection, design, construction and related activities).
2. Cost-estimate including contingency, with a schedule of cash needs from the Council.
3. Design and construction schedule.
4. Provision of required FEMA certification information.
5. Commitment to appropriate progress reports.

As you know, we also have a strong commitment to use local labor on the project. While we know that you may not be fully able to make the same commitments that we have, we are aware that the Corps has made accommodations in other districts to address this issue. We would like to review this issue with you before proceeding.

I hope the foregoing clarifies our understanding as we move forward in our discussions. Let me know if I can be of assistance in expediting our agreement.

Thanks.

Les

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