



Memo to: Board of Directors

From: Chuck Etwert

Subject: Program Status Report for February, 2014

Date: February 14, 2014

The learning process continues as numerous administrative processes and procedures arise each week. Mr. Sterman has been very gracious with his time and has assisted often during the last month.

The process of property acquisition continues to move along. As stated last month, several owners involving relatively small transactions have engaged attorneys and communication has gotten more difficult. We are still needing easements or property acquisition in Bid Packages 3, 5 and 6. With all three of these packages already having been awarded, it is imperative that we reach agreements with these property owners as soon as possible before our contractors start requesting change orders due to delay of site access. Most likely there will be an executive session at the end of the meeting to discuss one or two situations.

Regarding the Council's request for additional information supporting the Corps decision concerning the use of a project labor agreement (PLA), we did receive an additional data disk that included the remaining responses the Corps received during their market survey involving the PLA consideration. However, still lacking is evidence that would support their decision regarding this issue. This issue will be at the forefront as the Council considers all funding options for additional flood protection projects after completing all of our projects bringing the area's levee system to accreditation by the Federal Emergency Management Agency. We will continue to work with the Levee Issues Alliance group to encourage the Corps to reconsider the use of PLAs in the future.

One of the Council's principal legislative priorities has been to provide the Corps with greater flexibility to spend federal funds on the highest priority projects in the Metro-East levee system. Federal appropriations are generally associated with a specific "project" as identified by the Corps and authorized by Congress. As projects are developed over a very long period of time, appropriations may end up out of sequence with actual priorities as measured by current conditions. For example, the Mel Price uncontrolled underseepage deficiency was identified in 2009 by the Corps as a very severe problem. Yet significant funding for other lower priority projects (including some that the Council is already doing with local funds) is coming before funding for the badly needed Mel Price project. We believe that the Corps should be able to shift

federal funds among the set of projects that comprise the Metro-East levee system. This would allow funds to be applied optimally to address the greatest needs, better coordinate with the work of the Council, and provide for greater efficiency in the use of funds.

At our request, the congressional delegation has been working on two legislative strategies to provide the Corps with the flexibility described above. The first approach is to provide appropriate language in the omnibus appropriation bill recently passed by Congress and signed by the President. The delegation was successful in getting this done, although the language is somewhat arcane and designed to avoid any appearance that this approach would effectively result in an earmark. The second strategy is to provide more explicit language in the Water Resources Development Act, a version of which has now been passed by both houses, with the differences now being worked out by a conference committee. We do not yet have any firm indication of the outcome.

Our delegation assures us that the language included in the omnibus appropriations bill provides the Corps with the legal basis to move funds among projects in our area. We now need to encourage the Corps to take advantage of this flexibility.

The Corps handed over the completed design work for the Wood River cutoff walls to AMEC on February 6. AMEC will start immediately converting the plans to their specifications with a goal of completing the task within a two month time frame, thus getting the plans back to the Corps for the 408 review as soon as possible. There is a work order on February's agenda for AMEC to do this design.

Per the Board's approval last month we have negotiated a contract with Columbia Capital to serve as the Council's Financial Adviser for the next two years.

With impending Notice to Proceeds being issued on Bid Packages #3, #4 and #5, work orders need to be executed with ABNA Engineering, Inc. and Juneau Associates, Inc. for Quality Control and Materials Testing. Master Service Agreements with these two firms were approved in July of last year.

As discussed the last two months the St. Louis District of the Corps has received a waiver from Headquarters that would allow them to use federal funds to perform a levee system evaluation of the Upper Wood River and East St. Louis (MESD) levee systems. This evaluation would substitute for the certification required by FEMA and would address two levee reaches of concern to us: the Mel Price uncontrolled underseepage area, and the Chain of Rocks levee. In the former case, AMEC has indicated it would not be able to certify the levee under the current circumstances. In the latter, AMEC will likely be able to certify, but significant data gaps will have to be filled at substantial expense to the Council. The potential problem with accepting the offer from the Corps will be the bifurcation of the design and certification process. The Council purposely combined the two processes under a contract with a single party to assure that, once designed and constructed, the improvements would be certified. It is possible, especially given our experience on the Sec. 408 review that the Corps may not fully agree with the current design. That would create an untenable situation that would jeopardize the progress of the entire project.

We have been working with the Corps to assess the risk of allowing the Corps to undertake the certification process. The initial analysis suggest that the risk of any technical disagreements for Upper Wood River (which contains the Mel Price segment), is very low. I have talked to Dave Busse at the Corps and AMEX, both are in agreement with this analysis. Such risks would be marginally greater in the MESD area, because the design is more robust and complex. Therefore, at this point, it would be my recommendation to request that the Corps undertake the levee system evaluation for the Upper Wood River levee system at one hundred percent federal cost. In that case, the small risk is justified by eliminating the near certainty that AMEC would not be able to certify that system as meeting the FEMA criteria. With the East St. Louis (MESD) levee system with the risks being much greater and the potential of the certification process being jeopardized, it is felt that it is best that we do not have the Corps perform a levee system evaluation.