

GARRISON DIVERSION CONSERVANCY DISTRICT

RED RIVER VALLEY COMMITTEE

**Holiday Inn – Club II
Fargo, North Dakota**

**September 14, 2018
9:00 AM**

A G E N D A

- I. Pledge of Allegiance
- II. Roll Call
- III. **>Consideration of Minutes** – Jay Anderson
- IV. Red River Valley Water Supply Project Update – Kip Kovar
 - A. Value Engineering Study
 - B. ***Easement Values**
 1. >Easement Pricing Memo
 - C. **>*Crop Damage Policy**
- V. Other Business
- VI. Adjourn

The following minutes are in draft form subject to review and approval by the Red River Valley Committee at its next meeting.

18-11

GARRISON DIVERSION CONSERVANCY DISTRICT

RED RIVER VALLEY COMMITTEE

**Holiday Inn
Fargo, North Dakota
August 20, 2018**

A meeting of the Red River Valley Committee of the Garrison Diversion Conservancy District was held on August 20, 2018, at the Holiday Inn, Fargo, North Dakota. The meeting was called to order by Chairman Anderson at 12:30 p.m.

DIRECTORS PRESENT

Board Chairman Ken Royse
Chairman Jay Anderson
Director Greg Bischoff
Director Geneva Kaiser
Secretary Duane DeKrey

DIRECTORS ABSENT

Director Roger Fenstad
Director Ken Vein

OTHERS PRESENT

Steve Metzger, Director, Foster County, Garrison Diversion Conservancy District, Carrington, North Dakota
Kip Kovar, District Engineer, Garrison Diversion Conservancy District, Carrington, North Dakota
Merri Mooridian, Administrative Officer, Garrison Diversion Conservancy District, Carrington, North Dakota
Kimberly Cook, Communications Director, Garrison Diversion Conservancy District, Carrington, North Dakota
Lisa Schafer, Executive Assistant, Garrison Diversion Conservancy District, Carrington, North Dakota
Steve Burian, Advanced Engineering and Environmental Services, Grand Forks, North Dakota
Tami Norgard, Vogel Law Firm, Fargo, North Dakota

The meeting was recorded to assist with compilation of the minutes.

READING OF THE MINUTES

Motion by Director Bischoff to dispense with a reading of the May 18, 2018, Red River Valley Committee minutes and approve them as distributed. Second by Director Kaiser. Upon voice vote, motion carried.

RED RIVER VALLEY WATER SUPPLY PROJECT (RRVWSP) UPDATE

The committee reviewed the topics of discussion from the Lake Agassiz Water Authority (LAWA) meeting.

Value Engineering Study

Agreement and Scope of Work

Board Chairman Ken Royse reported on the interviews held with the two firms that submitted proposals for the RRVWSP Value Engineering Study. One was Barr Engineering, and the other was HDR. A selection committee was convened made up of two representatives from Garrison Diversion, two from LAWA and one from the State Water Commission. Interviews were held on July 18 and 19.

Both firms had project managers with extensive experience in value engineering studies.

Both firms scored well, but it was the consensus of the Selection Committee that HDR had the edge for a number of reasons. One thing that tipped it toward HDR is them having a nationally recognized staff person in cathodic protection.

Fee Proposal Summary

Kip Kovar, District Engineer, Garrison Diversion, referred to the proposal from HDR, commenting that the original proposal was a little higher than anticipated. He has been visiting with HDR, and they agreed to reduce costs in certain areas of the proposal. The fee proposal is now \$198,539.

Mr. Kovar said that a Value Engineering workshop will be held in Fargo the week of September 10. Opening comments will be heard on September 10, and a presentation of findings will take place on September 14. A summary will also be provided at the Garrison Diversion and LAWA board meetings.

Motion by Director Kaiser to approve HDR's fee proposal summary and scope of work for the purpose of conducting a value engineering study on the Red River Valley Water Supply Project in the amount of \$198,539. Second by Director Bischoff. Upon roll call vote, the following directors voted aye: Anderson, Bischoff, Kaiser and Royse. Those voting nay: none. Absent and not voting: Fenstad and Vein. Motion carried.

Updated Easement Values

Duane DeKrey, Secretary, stated that he has been doing some research on crop productivity, and he explained the process that is being used by NDSU for assigning values. He suggested going to the affected counties to get the assessed value of the land, and then take the assessed value multiplied by 1.5 as an alternate method.

Crop and land damage costs were discussed.

Work Plan Update

Chairman Anderson referred to the Work Plan Update at which time a progress report on task orders was received from Mr. Kovar and a status update regarding the financial aspects of the project was given by Merri Mooridian, Administrative Officer, Garrison Diversion.

NEW BUSINESS

Insurance Advisor

Ms. Mooridian commented that the idea of seeking an insurance advisor for the RRVWSP came up at the Contract Review Committee when insurance coverage and liability was discussed during review of the engineering contract.

Tami Norgard, Vogel Law Firm, informed the committee that a meeting was held with one insurance company to discuss options for insuring a project of this size to make sure adequate coverage is provided for everyone involved. Typically, a broker is hired and prices are sought from various insurance companies on different types of insurance.

Ms. Norgard said the Contract Review Committee recommended that a request for qualifications (RFQ) be prepared and advertised for an insurance advisor/broker with experience in large-scale water projects to assist with the acquisition of proper insurance coverage on the RRVWSP.

Motion by Director Bischoff to recommend preparing an RFQ and advertising for an insurance advisor for the RRVWSP. Second by Director Kaiser. Upon roll call vote, the following directors voted aye: Anderson, Bischoff, Kaiser and Royse. Those voting nay: none. Absent and not voting: Fenstad and Vein. Motion carried.

OTHER

Secretary DeKrey asked for direction from this committee when it comes to pipe inspectors for the project and what options are available. He questioned whether to hire someone with expertise in this area or including it in the contract with the contractor.

Mr. Kovar suggested looking into educational tools and different options that are available for construction services.

There being no further business to come before the committee, the meeting was adjourned at 1:20 p.m.

(SEAL)

Jay Anderson, Chairman

Duane DeKrey, Secretary

Red River Valley Water Supply Project

Easement Pricing File Memorandum

7-7-09

The Red River Valley Water Supply Project (RRVWSP) consists of 123 miles of 66 inch pipeline that stretches from the McClusky Canal to the Sheyenne River, crossing four counties. Staff will negotiate with approximately 192 land owners for pipeline options and easements. This white paper outlines Garrison Diversion's general analysis of easement valuation and offers to land owners. The process described herein is an internal reference document and is not otherwise binding or committing Garrison Diversion to a particular course of action or valuation for a specific property.

The process of setting a price to offer for a pipeline easement is difficult since the pipeline will be underground, will traverse four counties and a variety of types and values of land. In order to establish an easement offer price, Garrison Diversion consulted with Kyle Nelson, of Alerus Appraisals to discuss valuation of pipeline easements and/or general valuation of agricultural properties in the affected counties. The difficulty of proposing an offer for an easement stems from the fact that a pipeline easement really has minimal impact on the long-term value of the land traversed. Typically, the value of an easement is calculated by subtracting the pre-easement value minus the post-easement value of the land. The difference in the before/after land value constitutes the easement value. With an underground pipeline, Alerus Appraisals finds little to no difference in the pre/post-easement value of agricultural land due to the existence of an underground pipeline. There would be no higher payment justified by tilled land versus pasture land, since the underground pipeline does not change the fair market value of either type of property; so the value of the easement is the same regardless of the type of land crossed. Simply put, if Garrison Diversion were required to pay 'fair market value' to landowners as their offer for a pipeline easement, Garrison Diversion may not be paying much, if anything at all based upon the before/after valuation methodology. That said, landowners would receive varying levels of compensation depending on the type and extent of crop damage occasioned as a payment.

Under this scenario, few landowners would voluntarily give an easement to their property without some level of compensation for the easement. As such, Garrison Diversion analyzed payments made to landowners in other pipeline projects as a reference for calculating an attractive price to offer for voluntarily entering into option and easement agreements with Garrison Diversion. It is important to Garrison Diversion to be fair and cordial to the landowners, fostering a strong working relationship that will benefit the RRVWSP as operation and maintenance activities occur in the future.

Garrison Diversion is mindful of the political controversy created by constructing, but not ultimately using the canal systems. Garrison Diversion plans to only purchase options for easement at this stage, so as not to tie up land permanently at this stage. In order to accomplish the goal and gain the trust

level with the landowners, it was decided to complete the negotiations early in the design process and using a three step approach.

The first step is to notify landowners about the project, providing basic information and asking them to return an Access Agreement that would allow our design team to access and investigate the property. The information collected during these investigations will be used to refine the pipeline alignment and to make sure that the alignment meets environmental and cultural resource guidelines while limiting the impact on the landowners.

The second step is to obtain an option for an easement. During this step, an offer of (\$1,350/acre) was conveyed for the easement. Ten percent of the offer would be paid up front for an Option, with the remaining 90% to be paid if/when the option is exercised and the permanent easement taken. During the Option period, Garrison Diversion will talk to the landowners to identify specific concerns that can be addressed during the design. By obtaining an option for an easement, the easement acquisition process should be fairly quick and without controversy or surprise.

The third step is to exercise the option and obtain the permanent easement. This step will be primarily administrative. Landowners will be advised that the easement is being exercised. Final paperwork and the final easement payment will be exchanged and documents recorded. Landowners will also be notified if/when the project construction will begin in their area and on what time schedule.

Based on the input from Alerus Appraisals, along with anecdotal information from other pipeline projects, it was decided that the price offered for the right of way would be one price per acre for all of the cooperating land owners. The price of agricultural land does not vary significantly with or without an underground pipeline, which supports the conclusion that the easements should be uniformly priced regardless of the type of land traversed. If Garrison Diversion only offered the true change in fair market value for the easement, there would be few, if any, property owners who would be willing to sell an easement at such a minimal price (plus a payment of crop loss). Garrison Diversion intends to offer a reasonable amount of compensation to make the offer attractive to property owners. Otherwise, much of the entire pipeline route would have to be taken by eminent domain, which would be a costly and time consuming endeavor that Garrison Diversion certainly hopes to avoid.

As one factor in devising a reasonable amount to offer landowners for voluntarily entering into an option agreement for a pipeline easement, Garrison Diversion asked Alerus Appraisals (based on sales) to advise Garrison Diversion of the general land prices in the counties that are included along the pipeline alignment. In addition, Garrison Diversion consulted with project managers for the NAWS pipeline and the City of Devils Lake to discuss their methodology in setting easement offers. With NAWS, the state typically offered 80% of the fee value of the land as the easement offer price. But in the case of the transmission line they made an offer that equated to approximately 100% of the land value in exchange for a permanent easement. In the case of the Devils Lake water line, the City took the average of the land values, increased them by 50% because of the small tract size compared to average sale size, and added 10 years of potential impacts costs because the soil could not be replaced exactly like it was before.

Alerus Appraisals identified a range of land prices for crop and pasture land in each of the impacted counties. If Garrison Diversion were to follow the methodology for voluntary acquisition followed by NAWS, using the higher property value numbers in the Alerus Appraisals report and 100% of land value offered for transmission lines, the corresponding offer to landowners would be approximately \$1,200 per acre. If Garrison Diversion offered the 80% of land value otherwise offered by NAWS, the corresponding offer would be approximately \$960 per acre. If the Devils Lake methodology is applied to the County Tax Assessor data, the corresponding voluntary acquisition offer would be \$1,350 per acre. The total easement cost for the project using these methodologies range from \$2,146,000 to \$3,019,000.

The losses of agricultural crops will be paid for based on the actual losses. Higher producing lands will be paid more when actual construction occurs.

This document does not ascribe a value to any easement properties, but merely outlines the process and research used to determine an attractive price to offer to landowners for easements. If there is litigation over easement prices, it is likely that an appraiser could find little to no value to the actual easements using a before and after fair market value approach. Nothing in this document impacts the ascribed fair market value of the easements or claims to constitute actual 'fair market value' of a pipeline easement.

CROP DAMAGE PAYMENT POLICY

RED RIVER VALLEY WATER SUPPLY PROJECT

As outlined in the Access Agreement, Option Contract and Permanent Pipeline Easement, Garrison Diversion Conservancy District (“Garrison Diversion”) agrees to pay demonstrated crop damage incurred as part of the construction, installation, repair or maintenance of a water pipeline. The crop damage payment will be calculated to provide reimbursement for income that would have been received by the landowner and/or tenant if Garrison Diversion had not caused the damage.

Garrison Diversion will be responsible for measuring the crop damage areas. The landowner and/or tenant will provide information regarding the yield of the area damaged. Yield information can be provided in one of three forms:

1. Documentation stating the certified yield for the impacted field used for crop insurance purposes.
2. Documentation provided by the landowner/tenant to a crop insurance agent stating this year’s yield for the field impacted.
3. Another mutually agreed upon method.

The crop damage payment will not necessarily be paid upon the best yield obtained on the parcel, as some areas Garrison Diversion impacts may have yielded well while other areas may reflect impact by flooding, erosion or other problems. Therefore, the landowner and/or tenant will be required to provide his/her best reasonable estimate for the percent increase or decrease from the field yield certification to best reflect the yield of the area damaged by Garrison Diversion’s construction operations.

Crop prices will be based on the contract or sale price if the crop has been contracted or sold, utilizing documentation provided by the landowner and/or tenant. If the crop has not been sold or contracted by December 31 of the year damaged, the average local market price for the month during which the crop was harvested will be used for payment purposes.

If the parcel is rented out and the landowner wishes to have the renter receive the crop damage payment, it is the landowner’s obligation to provide Garrison Diversion with a letter to that effect, along with the renter’s name, address, and tax ID information.

Any questions regarding crop damage payments can be directed to Garrison Diversion at 652.3194 or 800.532.0074.