



**US Army Corps  
of Engineers®**  
St. Paul District

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# **Public Comments Appendix J**

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Fargo Moorhead Metropolitan Area  
Flood Risk Management Project

Supplemental Environmental  
Assessment Document

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PUBLIC MEETING COMMENTS

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REGARDING DRAFT ENVIRONMENTAL DOCUMENTS  
FOR THE REVISED FARGO-MOORHEAD  
FLOOD RISK MANAGEMENT PROJECT  
-----

TRANSCRIPT  
OF  
PUBLIC MEETING COMMENTS

SEPTEMBER 13, 2018  
5:00 p.m.

TAKEN AT: COURTYARD BY MARRIOTT  
1080 28th Avenue South  
Moorhead, Minnesota

REPORTED BY: ELIZABETH H. LUNDQUIST

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A P P E A R A N C E S

PUBLIC COMMENTERS:

CHARLES CHRISTIANSON

KRISTIE SAUVAGEAU

JOEL HANSON



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WHEREUPON,

the following proceedings were had at  
5:00 p.m., to wit:

CHARLES CHRISTIANSON: I'm Charles  
Christianson from Kindred, North Dakota, and I  
still think that this is taking in too much extra  
territorial area for Fargo.

I'm not against Fargo having flood  
control for the City of Fargo, but not for future  
development.

If there's one thing that Fargo is  
doing, it is that they're using West Fargo and  
Dilworth -- which don't have a flood problem -- to  
get the cost ratio in line.

And I think that is wrong, because they  
are protected. So I would appreciate if they  
would narrow this up and work on flood protection  
for the City of Fargo itself. Thank you.

(Off the record.)

KRISTIE SAUVAGEAU: Kristie Sauvageau.  
And my concern with this is: We've been bought  
out once already.

We lost 80 acres of our farmland. And  
with this new plan, we lose our home and  
everything we own; all of our property.

1           Five-hundred-year flood -- our land is  
2 dry. Your project looks like you're going to have  
3 to pump water up to drain out, which seems not  
4 very efficient.

5           Land along the river: That is the last  
6 land to dry out when we're ready to get in the  
7 field. It is now high and dry.

8           There's properties that have been  
9 already bought out by FEMA for floods, and now  
10 they're protected. It doesn't seem logical.

11           Our governor owns property along the  
12 river that's skirted. My 500-year flood land is  
13 being bought out -- or, is in the flood zone,  
14 which doesn't seem logical.

15           It's just concerning. It's been going  
16 on for so long. I don't know how you're ever  
17 going to manage this project.

18           You have already dug up 40 acres, and we  
19 had to call and call and call to get you to  
20 maintain that site for weed control.

21           You destroyed the road. We've been  
22 driving on bad roads for a year now. You detoured  
23 them last year, before you opened the road up  
24 again.

25           You couldn't even put up a detour sign.

1 They drove by my house night and day, constant.  
2 How tough would it have been to put up a detour  
3 sign? I thought that was very disrespectful.

4 I could go on and on. You know where I  
5 am. You know my situation. I don't think this  
6 plan is right. I don't know if there is a right  
7 plan.

8 I do understand Fargo needs flood  
9 protection. I don't understand why the new city  
10 hall was built along the river, where it floods.  
11 I don't understand why the new library was built  
12 along the river, where it floods.

13 I need Fargo. I work in Fargo. I shop  
14 in Fargo. I need Fargo. I enjoy being in close  
15 proximity.

16 But I am not comfortable with what  
17 you're doing. You're taking everything: My  
18 retirement.

19 Everything we have is going to be gone  
20 away from us, and that's a pretty tough thing to  
21 swallow. Thank you very much.

22 (Off the record.)

23 JOEL HANSON: My comments will be brief.  
24 In my opinion, if you give Fargo/Moorhead the  
25 permit for this Plan B, you minimize the residents

1 of Minnesota, who will be flooded out.

2 Giving them this permit will enable them  
3 to proceed as they wish with any plans that they  
4 want.

5 We have not had a seat at the table.  
6 They have not talked to us about easements or crop  
7 insurance issues or solutions for those of us that  
8 own land south of Fargo and people who rent our  
9 land from us.

10 There's still an issue with cemeteries  
11 that will be flooded out and, to me, they have  
12 minimized the emotional and overall issues  
13 pertaining to the impacts on cemeteries.

14 With the permit, they will screw the  
15 little guy for the sake of future development in  
16 the floodplain of Fargo, in the floodplain south  
17 of Fargo. And to me, that's what it's all about,  
18 is being able to build on flood-prone land.

19 (Off the record.)

20 (Whereupon, the public hearing concluded  
21 at 10:00 p.m.)

22

23

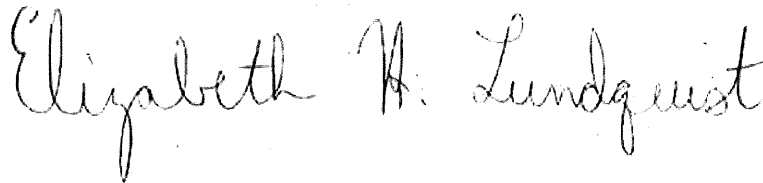
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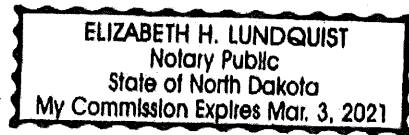
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REPORTER'S CERTIFICATE

I, Elizabeth H. Lundquist, a general shorthand reporter, 51 Broadway, Suite 130, Fargo, North Dakota, do hereby certify that the foregoing six (6) pages of typewritten material constitute a full, true, and correct transcript of my original stenotype notes, as they purport to contain, of the public hearing comments reported by me at the time and place hereinbefore mentioned.



Elizabeth H. Lundquist  
51 Broadway  
Suite 130  
Fargo, North Dakota 58102



Dated this 15th day of September, 2018.

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO THE REPRODUCTION OF THE SAME BY ANY MEANS, UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING COURT REPORTER.

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# Oral Comments

Please complete this form and hand it to the facilitator before you speak.

My comment is for:

Minnesota DNR (Draft SEIS)

Army Corps of Engineers (Draft  
SEA)

Both DNR and USACE

My preferred method to receive future DNR documents (optional, please provide one below):

Mailing Address

Email

Please print clearly.

Name: VIRGIL SCHULTZ 3325 45 AVES FARGO ND	Mailing Address:
Representing (if applicable):	
	Or Email:

\*Please note that any information provided is public data. Comments will go to both the DNR and the Army Corps, but only one may respond. Providing contact information means you will receive the DNR Final SEIS.



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PUBLIC MEETING PRESENTATION and COMMENTS

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DRAFT ENVIRONMENTAL DOCUMENTS  
FOR THE REVISED FARGO-MOORHEAD  
FLOOD RISK MANAGEMENT PROJECT

---

PUBLIC MEETING PRESENTATION and COMMENTS

Taken September 13, 2018

Commencing at 5:00 p.m.

REPORTED BY: CHRISTA A. REESER, RPR, CRR, CRC

1                   Public Meeting Presentation and Comments  
2 taken on September 13, 2018, commencing at 5:00 p.m.,  
3 at the Courtyard by Marriott, 1080 28th Avenue South,  
4 Moorhead, Minnesota 56560, before Christa A. Reeser,  
5 Registered Professional Reporter, Certified Realtime  
6 Reporter, Certified Realtime Captioner, and Notary  
7 Public of and for the State of North Dakota.

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APPEARANCES

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13

PUBLIC COMMENTERS:

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Virgil Schultz

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LeRoy Richard

17

Shannon Roers Jones

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Mark Nisbet

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Virgil Schultz

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Mark Vanyo

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Susan Nelson

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Marty Johnson

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Paul Krabbenhoft

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P R O C E E D I N G S

ONE-ON-ONE COMMENTS

**VIRGIL SCHULTZ:** My wife, Karen, and I live at 3325 45th Avenue South in Fargo, a very nice neighborhood with the finest people. I have a farm in Sheldon, North Dakota. We have been flooded in 1969, '75, '97, 2009, 2010 and 2011.

In '69, the whole thing wasn't under -- the only thing that wasn't under water was the first floor of the house and the grain bins. All the other buildings and the cattle pens were under two feet of water or more.

In '75 was the same except that the 960 acres of pasture and farmland were under from six to one-and-a-half feet of water. That happened on the Fourth of July in '75. It was flooded from Milnor, North Dakota, to Leonard to Fargo. The road in Leonard, a guy took and cut across the road with a shovel a little bit and it cut the road out and it cut a path that you could fit a 100-car train in and you'd have to walk over to the edge to see the train. I never farmed one acre in '75, but in '76 I farmed all of my land, water was all gone.

1           The reason I am stating this is because the  
2 biggest problem that Fargo has is overland flooding,  
3 it's not the river that's going to hurt you, it's the  
4 water. If you have like a seven-and-a-half inch rain,  
5 that is what's going to do you in, as it happened a few  
6 years ago in Fargo, North Dakota. On the north side,  
7 my sister lived on 7th Avenue, she put her house up for  
8 sale and had all her stuff on the sidewalk for a sale  
9 and they redid the basement, new furnace and new water  
10 heater and all. And before the sale was over that day,  
11 they got seven inches of rain or more and her whole  
12 house was flooded, along with hundreds of others in  
13 West Fargo, along with the Fargo Dome basement. That  
14 is to prove that overland flooding is more dangerous  
15 than the diversion -- or the river.

16           Then in '97 was the same story, only it was in  
17 the spring. All the floods were in the spring except  
18 the one in '75, that was on the Fourth of July. Then  
19 came 2009, 2010 and 2011. That was all the same. And  
20 everything was flooded. From -- or in other words,  
21 everything under my farm was under water except the  
22 house and a couple of grain bins, the cattle pens. And  
23 I lost a lot of cattle in that there. That was from  
24 the overland flooding. And the river really has  
25 nothing to do with telling the story about the

1 diversion, because a diversion is protected by the  
2 wall.

3 The wall has -- I commend the Corps for putting  
4 the wall in, and they done an awful good job on it.  
5 But that is all that is necessary. We don't need this  
6 diversion. And I don't believe that we have the right  
7 to charge our children, us and our children and their  
8 children's children and their children's children for  
9 the next 60 to 100 years for something that may never  
10 happen. It's not necessary.

11 My point is that Mother Nature will do what it  
12 plans on doing or does through hell and high water. I  
13 don't spend one second worried about flooding. You  
14 just sit -- you just let it pass, clean up your wounds  
15 and go on. That's a fact of life. And the biggest  
16 thing that happens is your basement floods. And if  
17 your basement floods, it's pretty simple to clean it  
18 out and redo it, which will probably only happen very,  
19 very seldom. And it will probably happen sooner with a  
20 sump pump that fails than it will from overland  
21 flooding or from the river.

22 Okay. And then I'd like to comment on the  
23 Horace road. I travel to Horace fairly often, and I  
24 don't see why they went ahead and did what they did out  
25 there. It appears to me in my mind that it's just a

1 big bunch of bullies trying to push something through  
2 because they didn't have a permit. And I know a little  
3 bit about a permit because my neighbor did the same  
4 thing. He cut the road out and drained his land into  
5 the Sheyenne River. And when we got to court, the  
6 judge asked him, "Where's your permit?"

7 And he says, "I had a permit." He said,  
8 "That's why I put the drain in."

9 He says, "Well, let's see your permit."

10 And my neighbor says, "I gave myself -- I was  
11 chairman of the zoning commission" -- which I was, and  
12 he was no part of the zoning commission. And he said  
13 that he gave himself a verbal permit.

14 And the judge -- I don't know, the judge  
15 just -- it just sounded to me like the judge -- I don't  
16 know, he just didn't recognize that at all. And that  
17 sounds like what they did in Horace. They gave  
18 themselves a verbal permit. People that do that should  
19 be locked up in jail as far as I'm concerned.

20 What about the care? I have a question about  
21 the care of the 30-mile -- the 35 miles of diversion  
22 and the ditch and the seven bridges that are going in  
23 at an enormous cost. And who's going to take care of  
24 that? That's going to take care for a long, long time.  
25 And not only that, what about another country --

1 somebody from another country coming and -- or somebody  
2 from Fargo when the -- when the river is at its  
3 highest, coming and blowing that thing up? That's a  
4 concern of mine, too. People are doing that nowadays.  
5 It just seems like people are -- you know what they do.

6 I feel that if you go upstream, I know many,  
7 many places upstream that you can hold water back. And  
8 my farm, you -- I hold a lot of water back over my  
9 land. I don't care how much water gets on my land in  
10 the spring through the river because in two weeks it's  
11 gone and it dries up and I go farming. So that  
12 shouldn't be a concern. But if you look upstream,  
13 there's where the help is needed, and that can slow the  
14 water down. So you have that option.

15 How come we don't get to vote on this? You  
16 know, the people should be able to vote as to what they  
17 want. We don't even know what the plan is. So how can  
18 -- how can they just push it through?

19 Okay. And then the cost of -- cost to benefit.  
20 I don't think that for every dollar spent on the  
21 diversion that you get -- you get anything back. There  
22 is no savings there at all. I'd like to know how they  
23 figure that this is a cost to benefit. They must take  
24 a look at that.

25 And I thank you for your time, and I appreciate

1 the opportunity to speak my mind. And I hope that  
2 smarter minds and wiser people will prevail. This is  
3 crazy. Thank you.

4  
5 (Off the record.)  
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# Oral Comments

Please complete this form and hand it to the facilitator before you speak.

My comment is for:

- Minnesota DNR (Draft SEIS)       Army Corps of Engineers (Draft SEA)       Both DNR and USACE

My preferred method to receive future DNR documents (please provide one below):

- Mailing Address       Email

Please print clearly.

Name: <i>LeRoy Richard</i>	Mailing Address:
	<i>15687 53rd St SE</i>
	<i>Kindred, ND.</i>
Representing (If applicable):	Or Email:

\*Please note that any information provided is public data. Comments will go to both the DNR and the Army Corps, but only one may respond. Providing contact information means you will receive the DNR Final SEIS.

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APPEARANCES

12

13

PUBLIC COMMENTERS:

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Virgil Schultz

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LeRoy Richard

17

Shannon Roers Jones

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Mark Nisbet

19

Virgil Schultz

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Mark Vanyo

21

Susan Nelson

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Marty Johnson

23

Paul Krabbenhoft

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1 stenographers are available right outside this room.  
2 So really the emphasis here is we want you to comment,  
3 tell us what your concerns are in the way that's most  
4 comfortable for you. So we have a lot of different  
5 options here.

6 So if anyone is interested in commenting, we  
7 can have people come forward now.

8 There we go. **LeRoy Richard**, comment for the  
9 Army Corps of Engineers and the DNR.

10 LeROY RICHARD: Back in 1973, there was an  
11 individual by the name of Frank Richard who was the  
12 surveyor for the city of Fargo, but he was also the  
13 genealogist of the Richard family. Back in 1963, he  
14 printed a book for me with all of the history of the  
15 Richard family.

16 Now, I can't speak to what they've done in the  
17 past as far as this program or anything, but my  
18 heritage and a lot of my relatives live and farm in the  
19 area that they are talking about right now. Alex  
20 Richard came to that area in 1877 and homesteaded, and  
21 there's still a lot of us still in that area and still  
22 farming. There's six generations of kids and families  
23 that are farming and have grown their families and have  
24 grown their businesses in those areas.

25 So what I'd like to do is put a name and a face

1 to the people that you people are impacting because it  
2 seems like we don't do that. We need to talk about the  
3 people's lives that we're going to disrupt. And I  
4 realize that there's probably some kind of, you know,  
5 mitigation part of it where they'll go in and try to  
6 make something good for them to happen, but whenever  
7 you take and disrupt a family's life, you're basically  
8 kicking them off their land, they've got to go  
9 reestablish themselves. I mean, this is very, very  
10 difficult. It's really a traumatizing thing to some of  
11 these people. A lot of these people don't even want to  
12 talk about it. They think -- they just hope it goes  
13 away, that this is just a bad dream.

14 So like I say, I just -- if somebody's going to  
15 do something with this, and I realize that this is not  
16 a project, but if you're proposing to go into an area  
17 where you're going to disrupt lives, I would think it  
18 would be good that you could go out there and at least  
19 meet some of those people because I've talked to a lot  
20 of people in that area, nobody has ever heard one word  
21 from anybody that this -- at this meeting. Nobody.  
22 But we're willing to go out there and dislodge them.  
23 We don't even know who the heck they are. And I think  
24 that's, in my opinion and I think in my dad's opinion,  
25 that would be just a little bit arrogant.

1           So, like I say, it's really affecting a lot of  
2 people, and you're not hearing from the right people.  
3 You're not hearing from the people that's it's  
4 impacting the most.

5           Thank you for your time.

6           JUDY GREW: Thank you, Mr. Richards.

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# Oral Comments

Please complete this form and hand it to the facilitator before you speak.

My comment is for:

Minnesota DNR (Draft SEIS)

Army Corps of Engineers (Draft SEA)

Both DNR and USACE

My preferred method to receive future DNR documents (optional, please provide one below):

Mailing Address

Email

shroersjones@nd.gov

Please print clearly.

Name: Shannon Roers Jones	Mailing Address: 5948 Silverleaf Dr S.
Representing (If applicable): Self + Dist. 46 SE FARGO	Fargo ND 58104
	Or Email:

\*Please note that any information provided is public data. Comments will go to both the DNR and the Army Corps, but only one may respond. Providing contact information means you will receive the DNR Final SEIS.

1                   Public Meeting Presentation and Comments  
2 taken on September 13, 2018, commencing at 5:00 p.m.,  
3 at the Courtyard by Marriott, 1080 28th Avenue South,  
4 Moorhead, Minnesota 56560, before Christa A. Reeser,  
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APPEARANCES

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PUBLIC COMMENTERS:

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Virgil Schultz

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LeRoy Richard

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Shannon Roers Jones

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Mark Nisbet

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Virgil Schultz

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Mark Vanyo

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Susan Nelson

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Marty Johnson

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Paul Krabbenhoft

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Next we have Shannon Roers Jones with a comment for both agencies.

**SHANNON ROERS JONES:** Good evening. And thank you for the time tonight. My name is Shannon Roers Jones, and I'll just --

THE AUDIENCE: Can't hear you.

SHANNON ROERS JONES: Thank you. I'm a state representative in District 46, which is Southeast Fargo. My district is under I94 and east of I29.

A few years back, FEMA was moving forward with a revised floodplain map and they put it on hold because of the FM Diversion. With the remap, as it stands, my -- almost my entire district would be placed into the revised floodplain.

Additionally, after the overwhelming expenses of the federal flood insurance program has incurred as

1 a result of mega hurricanes like Hurricane Katrina,  
2 Sandy and now potentially Hurricane Florence, FEMA has  
3 been taking steps to move all flood insurance property  
4 into actuarially correct rates. This would have a  
5 significant impact on the residents of my district.  
6 For example, homeowners in South Fargo who have homes  
7 in the range of \$300 to \$500,000 would be looking at  
8 annual flood insurance increases between 3,000 and  
9 \$5,000. This would be an increase in a monthly  
10 mortgage payment in the range of 250 to \$420 per month.  
11 That's not an insignificant amount for most families  
12 who live in my district.

13 FEMA has already reviewed the FM Diversion  
14 Hydrology and stated that this project would be  
15 sufficient to not only prevent any new homes from being  
16 placed in the flood zone but would potentially remove  
17 homes that are currently in the flood zone.

18 And just talking about personal impacts and  
19 impacts for people that could be affected by the new  
20 diversion project, I will tell you that I have fought  
21 three floods already from the 1997, 2009 and 2010  
22 floods that have come through. So when you're talking  
23 about considering the impacts on people's lives, I -- I  
24 was involved in building a sandbag wall this tall many  
25 hundreds of yards long. And so it's already impacting

1 people in Southeast Fargo. And so I just want to  
2 mention that as well.

3 I appreciate all of the hours that Governor  
4 Dayton, Governor Burgum and all of the members and the  
5 support staff of the task force have put into  
6 redesigning the Project to decrease the impacts on the  
7 communities outside of Fargo. I think they've done an  
8 outstanding job moving the impacts out of the counties  
9 to the south of the project and utilizing more than  
10 8,000 acres of natural floodplain.

11 I appreciate Minnesota's recognition of a  
12 catastrophic and economic impact another flood will  
13 have on the region and that the Diversion Project  
14 benefits citizens on both sides of the river. I  
15 support Minnesota DNR's decision to eliminate  
16 Alternative C from consideration. Alternative C would  
17 increase costs as well, without providing additional  
18 protection for the area. It would impact more homes,  
19 and it creates the need for more ring levees to protect  
20 buildings.

21 I support Plan B, and I believe that it is the  
22 best option to achieve the goals for all of the  
23 stakeholders in the region. And I thank you for your  
24 efforts to move flood protection forward for our  
25 community. JUDY GREW: Thank you.

# Oral Comments

Please complete this form and hand it to the facilitator before you speak.

My comment is for:

Minnesota DNR (Draft SEIS)

Army Corps of Engineers (Draft SEA)

Both DNR and USACE

My preferred method to receive future DNR documents (please provide one below):

Mailing Address

Email

Please print clearly.

Name: Mark Nisket	Mailing Address:
Representing (if applicable): Chamber of Commerce Business Task Force	Or Email: mark.nisketto@xcelenergy.com

\*Please note that any information provided is public data. Comments will go to both the DNR and the Army Corps, but only one may respond. Providing contact information means you will receive the DNR Final SEIS.

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PUBLIC MEETING PRESENTATION and COMMENTS

---

DRAFT ENVIRONMENTAL DOCUMENTS  
FOR THE REVISED FARGO-MOORHEAD  
FLOOD RISK MANAGEMENT PROJECT

---

PUBLIC MEETING PRESENTATION and COMMENTS

Taken September 13, 2018

Commencing at 5:00 p.m.

REPORTED BY: CHRISTA A. REESER, RPR, CRR, CRC

1                   Public Meeting Presentation and Comments  
2 taken on September 13, 2018, commencing at 5:00 p.m.,  
3 at the Courtyard by Marriott, 1080 28th Avenue South,  
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APPEARANCES

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PUBLIC COMMENTERS:

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Virgil Schultz

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LeRoy Richard

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Shannon Roers Jones

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Mark Nisbet

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Virgil Schultz

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Mark Vanyo

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Susan Nelson

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Marty Johnson

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Paul Krabbenhoft

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1 Next we have Mark Nisbet from the Chamber of Commerce  
2 Business Task Force.

3 **MARK NISBET:** Thank you. I'm Mark Nisbet  
4 representing the Fargo-Moorhead, West Fargo Chamber of  
5 Commerce. I'm here to thank all of you for the  
6 thoughtful review that you've provided to the  
7 environmental issues and the time and effort put into  
8 this Project and a thorough review to provide permanent  
9 flood protection to this vital economic hub of the Upper  
10 Midwest. So critically important.

11 This issue has been a top priority of the  
12 Chamber of Commerce since the herculean task of  
13 protecting the communities from impending disaster  
14 during the floods that have been mentioned back in the  
15 2009 time frame. They have united the business  
16 community as well as the citizens of this area to look  
17 for that permanent solution. And we truly believe that  
18 Plan B is a balanced approach to addressing the issues  
19 that need to be addressed. So we appreciate the extra  
20 time and effort that was put into this review. So thank  
21 you, Commissioner Landwehr, for being here today.

22 And again, the Chamber represents the business  
23 leaders and citizens on both sides of the river. So we  
24 think finding a fair approach to solve this situation  
25 is critical. So, thank you.

JUDY GREW: Thank you.

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- Virgil Schultz
- LeRoy Richard
- Shannon Roers Jones
- Mark Nisbet
- Virgil Schultz
- Mark Vanyo
- Susan Nelson
- Marty Johnson
- Paul Krabbenhoft

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Next up we have Virgil Schultz from Fargo.

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VIRGIL SCHULTZ: I'd like to commend the Corps and whoever built the wall. I think you done a superb job. I think that is the thing. You've gone -- you did what you could do there.

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But the Diversion Project is a monster, in my opinion. I compare Hoover Dam. You take Hoover Dam, they built that and it provides electricity, and it provides irrigation, it's very beneficial to the states that it serves. And that was a project well thought out and well done. But this Project, all I see is destruction. Destruction of farms, destruction of land.

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The cost to our children is going to go on for 20 -- 200 years. And the cost to maintain that Diversion is astronomical. And to me, I think we should stop this thing right here. Let's not go any farther. Do we get a vote on it? Do the people get to vote on it? Or is it a decision that's made by -- I'd like to know that. Is it a decision that's just made by some Corps of Engineers, or 10, 15 people that are in favor of the project? Or do the people at one time all get to stand up and take a vote on it? Because

1 we're going to be paying for it, and it's going to be  
2 damn costly. The estimated cost was too low in my  
3 estimation, and the destruction is terrible what's  
4 taking place.

5 Look at the road out in Horace out there.  
6 Whoever started that? Why was that ever dug up? Why  
7 did you have to dig that road up? You know, I mean, it  
8 sits there for 30 years. I mean, did you have a  
9 permit? Did you go and ask permission to do that? I'd  
10 like to know.

11 THE AUDIENCE: No.

12 VIRGIL SCHULTZ: They didn't have a  
13 permit. You know, I had a neighbor that did the same  
14 damn thing. And when he got to court, we took him to  
15 court, he says, "I gave myself a permit." Well, you  
16 know, he gave himself a permit. He said he was a  
17 zoning commissioner and he gave himself a permit. The  
18 judge says, "Where's the permit?"

19 He says, "It was a verbal. I gave myself a  
20 verbal permit."

21 And he -- he should have been locked up in jail  
22 for taking our road out. Is that what you did out  
23 there? Is that what took place out there? That's  
24 terrible.

25 Thank you. JUDY GREW: Thank you, Virgil.

# Oral Comments

Please complete this form and hand it to the facilitator before you speak.

My comment is for: DNR

Minnesota DNR (Draft SEIS)

Army Corps of Engineers (Draft SEA)

Both DNR and USACE

My preferred method to receive future DNR documents (please provide one below):

Mailing Address

Email

Please print clearly.

Name: <u>MARK D. VANYO</u>	Mailing Address: <u>4846 3<sup>rd</sup> St. SW</u>
	<u>Moorhead, Minn 56560</u>
	Or Email: <u>MARKDVANYO@gmail.com</u>
Representing (If applicable):	

\*Please note that any information provided is public data. Comments will go to both the DNR and the Army Corps, but only one may respond. Providing contact information means you will receive the DNR Final SEIS.

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PUBLIC MEETING PRESENTATION and COMMENTS

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FOR THE REVISED FARGO-MOORHEAD  
FLOOD RISK MANAGEMENT PROJECT

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PUBLIC MEETING PRESENTATION and COMMENTS

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Commencing at 5:00 p.m.

REPORTED BY: CHRISTA A. REESER, RPR, CRR, CRC

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- LeRoy Richard
- Shannon Roers Jones
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- Virgil Schultz
- Mark Vanyo
- Susan Nelson
- Marty Johnson
- Paul Krabbenhoft





1 spent researching than these people have put in, plus  
2 the Diversion Authority and all the committees. Over  
3 ten years. They're trying to come up with something  
4 that is the least impact, not no impact. The least  
5 impact for all the people involved in this.

6 So back in my -- I own a business in Fargo, and  
7 every day when the floods were going on people said,  
8 what are we going to do. Because I was in the real  
9 estate business for 40 years. What are we going to do  
10 if this town gets flooded? Now, I live in town; Cousin  
11 LeRoy does not. He lives out in rural. We're on  
12 opposite sides. But we're trying to do the least  
13 impact.

14 And I say thoroughness, the completeness of  
15 this project, it's time to go forward. And I  
16 support -- I supported Plan A. I understand there was  
17 problems with it. I support Plan B. And I don't have  
18 any specific questions for it, but I've lived this for  
19 ten years, so I kind of know what it's about as much as  
20 anybody, and I say go forward and thank you for your  
21 work.

22 JUDY GREW: Is there anyone else  
23 interested in commenting?  
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# Oral Comments

Please complete this form and hand it to the facilitator before you speak.

My comment is for:

- Minnesota DNR (Draft SEIS)       Army Corps of Engineers (Draft SEA)       Both DNR and USACE

My preferred method to receive future DNR documents (optional, please provide one below):

- Mailing Address       Email

Please print clearly.

Name: <i>SUSAN NELSON</i>	Mailing Address:
	Representing (If applicable):
	Or Email: <i>SUSAN NELSON RS1@aol.com</i>

\*Please note that any information provided is public data. Comments will go to both the DNR and the Army Corps, but only one may respond. Providing contact information means you will receive the DNR Final SEIS.

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PUBLIC MEETING PRESENTATION and COMMENTS

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JUDY GREW: Is there anyone else interested in commenting?

This is Susan Nelson.

**SUSAN NELSON:** Hi. I'm originally from Minnesota, I've lived in Minnesota most of my life. And I also have property in South Moorhead comparable to the previous speaker. But I have to say I can understand why someone might peripherally support this because it promotes flood protection. And we all want flood protection for this area. We all in the Fargo-Moorhead area love this area and we want it supported and protected.

I appreciate all the people and all of the hard work that's gone forward on this. I'm disappointed with some of the leadership in pursuit of some of the options that to me are focused on preserving the greatest amount of land for development on the North Dakota side. I understand they're supporting their area, so of course they want to do that. I wasn't planning on speaking today, but I really had to after the last speaker, because I have to speak in opposition to Plan B. And I want that to go on record so that people know that those who pay Minnesota taxes and those who live in the community and those who support the local Fargo-Moorhead

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people who are in charge of trying to advance something for flood protection understand how this can really negatively impact the area. We do need a solution, we really do. It shouldn't take this long. We should have all been able to get behind something and really drive it home and have started on it already, I believe. But I'm disappointed that some of those solutions that they push have too great of a negative impact on some people. And I don't know how many people understand still that there's a high-hazard dam involved in this project, and I would like that to go on record in this room. And also, I would like to know if they've ever really pushed for a solution that didn't involve a high-hazard dam. Has that ever been a priority? It's my understanding that there is a flood solution that does not require a high-hazard dam. And I think you could get a lot of people supporting that. I think you could get a lot of people supporting that if there weren't a high-hazard dam.

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I love this area. I'm from Moorhead. I've gone to school in Moorhead. I've gone to school in North Dakota, I graduated from NDSU. I've worked on both side of the river. I've thrown sandbags for both sides of the river. We love each area. And I think that people need to know that we want a solution. We really do. But we need a solution that doesn't involve a high-hazard dam. To me, that puts up future risk. A high-hazard dam means should that fail, you probably and likely and have lost lives. And I don't think we need to set ourselves up for future disaster. We need a solution, not a future disaster. Thank you.

JUDY GREW: Anyone else interested in commenting this evening?

# Oral Comments

Please complete this form and hand it to the facilitator before you speak.

My comment is for:

Minnesota DNR (Draft SEIS)

Army Corps of Engineers (Draft SEA)

Both DNR and USACE

My preferred method to receive future DNR documents (please provide one below):

Mailing Address

Email

Please print clearly.

Name: <b>MARTY JOHNSON</b> Representing (If applicable):	Mailing Address:
	<b>7806 112 Ave South Horace NDak 58047</b>
	Or Email:

\*Please note that any information provided is public data. Comments will go to both the DNR and the Army Corps, but only one may respond. Providing contact information means you will receive the DNR Final SEIS.



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PUBLIC MEETING PRESENTATION and COMMENTS

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APPEARANCES

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PUBLIC COMMENTERS:

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Virgil Schultz

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LeRoy Richard

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Shannon Roers Jones

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Mark Nisbet

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Virgil Schultz

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Mark Vanyo

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Susan Nelson

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Marty Johnson

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Paul Krabbenhoft

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1 JUDY GREW: Anyone else interested in commenting this  
2 evening?

3 Thank you, sir. Marty Johnson.

4 **MARTY JOHNSON**: I too live on a generation  
5 farm. My grandfather came from Norway and built a  
6 place over in Horace, and we still live in the same  
7 house he built in 1889.

8 The problem is when they did this project nine  
9 years ago, Fargo -- the North Dakota side, Minnesota  
10 side each had to meet a cost effective benefit ratio.  
11 Moorhead's passed automatically. Our -- North Dakota's  
12 did not. Two days before the deadline it made it. We  
13 know the floods and numbers, they did some trickery to  
14 make it work.

15 Had they done this cost benefit program on Plan  
16 B -- it's a brand new plan, and now they give these  
17 figures of 2.8, \$2.2 billion. This thing is going to  
18 hit 5 billion and above. So if you use the correct  
19 numbers today, if this does not make that ratio, you  
20 cannot issue a permit. What they're looking for is to  
21 guide through this and get a permit. And once they got  
22 it, they're going to cut everybody off to the wayside and  
23 we're going to be yesterday's news. Fargo could have  
24 permanent flood protection for \$900 million if this first  
25 project came through, but they would have had to give up

1 the economical development. Plan B takes the economical  
2 development out of Horace, North Dakota. So one city  
3 doesn't have economical development after this plan, but  
4 Fargo does. Look at what we're giving up in the rural in  
5 acreage and land. Ask me what Fargo has given up. How  
6 many acres has Fargo given up of this plan if this is an  
7 equal plan? I can tell you Fargo has given up zero acres  
8 on this plan. And we got to protect Fargo. We can't  
9 have another disaster. But there's got to be another  
10 plan because I don't want to see my grandchildren be  
11 paying sales tax and assessments until the year 2084. In  
12 2084, us people in this room are not going to be here.  
13 And do you really want to put that much of a dent?  
14 Fargo's already behind in their budget this year. They're  
15 paying their firefighters 19 percent less. And they want  
16 to take on this project? Well, do you want to see Fargo  
17 or Cass County go bankrupt? Let's work together as a  
18 group and figure something out.  
19 And, I applause the DNR's work. I love what they've done  
20 to put the ponies back in the barn. At least get this  
21 thing working for everybody. Thank you.

22  
23  
24  
25  
JUDY GREW: Any other comments?

# Oral Comments

Please complete this form and hand it to the facilitator before you speak.

My comment is for:

- Minnesota DNR (Draft SEIS)       Army Corps of Engineers (Draft SEA)       Both DNR and USACE

My preferred method to receive future DNR documents (optional, please provide one below):

- Mailing Address       Email

Please print clearly.

Name: Paul Krabbenhoft	Mailing Address: 1119 25 <sup>th</sup> Ave S
Representing (If applicable): - Citizen <del>Home Builders Association of Fargo-Moorhead</del>	Moorhead MN 56560
- Fargo-Moorhead Area Association of Realtors	Or Email: pkrabbenhoft@gmail.com

\*Please note that any information provided is public data. Comments will go to both the DNR and the Army Corps, but only one may respond. Providing contact information means you will receive the DNR Final SEIS.

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PUBLIC MEETING PRESENTATION and COMMENTS

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DRAFT ENVIRONMENTAL DOCUMENTS  
FOR THE REVISED FARGO-MOORHEAD  
FLOOD RISK MANAGEMENT PROJECT

---

PUBLIC MEETING PRESENTATION and COMMENTS

Taken September 13, 2018

Commencing at 5:00 p.m.

REPORTED BY: CHRISTA A. REESER, RPR, CRR, CRC

1                   Public Meeting Presentation and Comments  
2 taken on September 13, 2018, commencing at 5:00 p.m.,  
3 at the Courtyard by Marriott, 1080 28th Avenue South,  
4 Moorhead, Minnesota 56560, before Christa A. Reeser,  
5 Registered Professional Reporter, Certified Realtime  
6 Reporter, Certified Realtime Captioner, and Notary  
7 Public of and for the State of North Dakota.

8

9

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10

11

APPEARANCES

12

13

PUBLIC COMMENTERS:

14

15

Virgil Schultz

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LeRoy Richard

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Shannon Roers Jones

18

Mark Nisbet

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Virgil Schultz

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Mark Vanyo

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Susan Nelson

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Marty Johnson

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Paul Krabbenhoft

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JUDY GREW: Any other comments?

Paul Krabbenhoft.

**PAUL KRABBENHOFT:** Hi. Paul Krabbenhoft, citizen here in Moorhead, just south of town. I'm from the rural area, also a realtor in the area for the last 30 years, and also involved with the conservation efforts on the Minnesota side.

The comment I really want to make I guess is what I see in the report and urging -- as part of the permit process, a continuation that consideration of the economic impact on the people that would be paying flood insurance premiums if we don't have a certified coverage in your flood plan with the new mapping, 11,000 homes in Fargo and 1,000 homes in Moorhead. And on those evaluations, I know a lot of press and a lot of talk takes place along the river or the higher-end homes, you know, Fargo having more land, you know, protected by the protection.

My main concern and my point tonight is about that over half of the people involved in this town, and as I sell property in the middle of the town on the -- you know, throughout the metro area, half of these homes have valuations under \$250,000. So what we're



1 doing is we're taking the affordable housing stock in  
2 town, putting it in jeopardy, having these people pay,  
3 you know, without protection making premium payments  
4 of -- that will probably -- that will be in 1,000,  
5 \$3,000 on the lower-end home over time per year. And  
6 it makes our most vulnerable, most affordable housing  
7 in this town subject to bankruptcies and hurting  
8 people.

9 So as much as I want people -- and I trust the  
10 system for Minnesota taking care of its citizens, as  
11 well as I want them to be taken care, making people  
12 whole and people that are impacted, there's the other  
13 side. We need to keep and make sure that our housing  
14 inventory stock, people protection of the lower, you  
15 know, end, affordable housing, a handful of homes on  
16 the area are protected and we'll only achieve that by  
17 having certified protection.

18 So thank you. I appreciate all your work. And  
19 certainly appreciate the great work of the task force.  
20 It's made a huge difference in our process. So thank  
21 you for the developing Plan B.

22 JUDY GREW: Thank you.  
23  
24  
25

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.  
From: Trana Rogne <tranarogne@gmail.com>  
Sent: Sunday, September 2, 2018 12:51 PM  
To: Williams, Terry L CIV USARMY CEMVP (US); Eric Dodds  
Subject: [Non-DoD Source] Roads closed

Terry and Eric,

Is the Transportation Plan in the DNR EIS the current plan?

If it is, when the roads in the staging area are closed how are the homes, farms going to get to necessary services?

Ring dike etc. will not provide access to the necessary services.

If State HWY 49 is closed, that being major transportation artery for traffic as far as Endrerlin ND, since the DA will be for mitigation and what is that mitigation for the road closures of 46 and all other road closures?

Thanks

Trana

--

Trana

"The middle of the road is for yellow lines and dead armadillos."

Jim Hightower

-----Original Message-----

From:.mvp-admin@dma.mil [mailto:mvp-admin@dma.mil]  
Sent: Friday, September 14, 2018 5:30 AM  
To: CEMVP-EC MVP <CEMVP-EC@usace.army.mil>  
Subject: St. Paul District Contact Form: Red River Diversion

This message was sent from the St. Paul District website.

Message From: Gary D Drewlow

Email: gedrewlow@gmail.com

Response requested: No

Message:

Why can't the Red River be dredged. There has to be at least 4 feet of good top soil on the bottom of the river. If that was taken out it would lower the river and make the banks higher, saving the valuable farm land.

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HTTP\_CMS\_CLIENT\_IP:  
HTTP\_X\_ARR\_LOG\_ID: e628f9c6-84fb-4b58-815e-b99fb1653e3c  
HTTP\_ORIGIN: Blockedhttp://www.mvp.usace.army.mil  
HTTP\_TRUE\_CLIENT\_IP: 70.40.43.195

**From:** [Diane Ista](#)  
**To:** [CEMVP-Fargo-SEA](#)  
**Subject:** [Non-DoD Source] Flooding Downstream.  
**Date:** Saturday, September 15, 2018 4:30:30 PM

---

It seems Plan B with the dam moved further north allowing more floodwaters on the Red River through Fargo-Moorhead is a great concern. The Fargo Diversion and the USACE as one of their first plans was to run all floodwaters north on the Red River with no consideration of what it would do to the downstream residents, farms, schools, towns, etc. which were battling flood waters already. It took two Environmental Reviews that the people downstream had to answer with a cost of \$50,000 out of residents pockets, no tax funds, to hire attorneys to present answers that the USACE directed had to be of substance not just that it was your grandpas farm!! The USACE after being told several times by credible engineers that the floodwaters would affect Canada. After the USACE and Diversion incurred all the expense they went through, they finally realized that the floodwaters would affect Canada which is in violation of the International Agreement!

It was agreed and the USACE stated, as we requested, there be zero impacts downstream from the flood waters from the Fargo Diversion! Please assure those downstream that there will be still "ZERO" impacts in the future!!

Land Owner in Richland County in North Dakota and Norman County in Minnesota.

Diane J. Ista

4345 47th Ave. S.

Fargo, ND 58104

**From:** [Diane Ista](#)  
**To:** [CEMVP-Fargo-SEA](#)  
**Subject:** [Non-DoD Source] DNR approve a dam?  
**Date:** Saturday, September 15, 2018 4:30:33 PM

---

As a former manager of the Minnesota Wild Rice Watershed District (WRWD), I find it interesting that the DNR is again doing an Environment Review for "Plan B". In 2009 the WRWD moved forward researching several retention sites in the WRWD District. The WRWD was going through serious flooding year after year. The WRWD is made up of all of or part of 6 counties. Norman, Mahnomen, Clay, Clearwater ??????. A concept for water retention on the Wild Rice River has been discussed over the years but a plan was developed through Mediation with all agencies for a retention area which could be a dry dam or a dam built for a recreational area. This would include fish passage and a thorough environmental review of the dam area. The Twin Valley dam is in the WRDA bill, with tentative support for funding.

We met with the DNR in Bemidji to request a permit for the dam, which had been reviewed by all agencies except the USACE as they did not attend local meetings. The DNR Commissioner stated he felt there would be a push back from the Environmental Division as they would be very opposed and would, "knock my door down". With very little discussion the WRWD was told that they would not permit the dam. We stated that we were willing to work with the DNR and USACE to develop a retention area that they could permit.. My understanding from their decision was they do not permit dams and did not plan on permitting any.

Why is the DNR spending taxpayer money again to do an environmental review of a dam when they have no intention to permit any dam? If the Fargo Diversion gets a permit for it's dam, I am assuming the WRWD and other watersheds could bring their requests for permits to build dams to help control the severe flooding on the Red River and they would be approved!

Diane J. Ista

4345 47th Ave. S.

Fargo, ND 58104

September 16, 2018

**From:** [Jeff M. Thomas](mailto:Jeff.M.Thomas)  
**To:** [CEMVP-Fargo-SEA](mailto:CEMVP-Fargo-SEA)  
**Cc:** [Jeff M. Thomas](mailto:Jeff.M.Thomas); "[environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us)"  
**Subject:** [Non-DoD Source] Comments re DNR's Draft Supplemental Environmental Impact Statement  
**Date:** Wednesday, September 19, 2018 8:02:54 AM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image005.png](#)

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September 19, 2018

Jill Townley,

Minnesota Department of Natural Resources,

500 Lafayette Road,

Box 25,

St. Paul, MN 55155-4025

Email: [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us) <<mailto:environmentalrev.dnr@state.mn.us>>

Re: Plan B, Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

My name is Jeff Thomas I am the Market President for Cornerstone bank in the Fargo, Moorhead and West Fargo communities. Our job is to help businesses and individuals in our community make important decisions about their money. To do that we employ over 65 team members in this community who call Fargo, Moorhead and West Fargo home. I am also, wife my wife Sue, am small business owner that employees another 36 people who live, work and play in this great community. Flood protection is vital for this community to continue to grow and thrive. In discussions with my teams, they feel the very same way as their livelihoods depend on the strength and vibrancy of our community. I want you to know I support Plan B as outlined in the Draft Supplemental Environmental Impact Statement prepared by the Department for the Fargo-Moorhead Flood Diversion Project. This plan will provide enhanced flood risk management for the region, and I believe that the task force created last year by North Dakota Governor Doug Burgum and Minnesota Governor Mark Dayton in the wake of DNR's denial of the original alternative did a phenomenal job of addressing the original documents shortcomings and making appropriate recommendations. I believe the end result of this process is a step in the right direction, and will ultimately provide the citizens and property of this area the protections they require in the all-too-likely event of a catastrophic flood.

Most people, including your Department, agree that the third option, alternative "C", evaluated alongside the "no-action" alternative and Plan B, is not viable. While it looks as though many trade-offs were made to put together alternative C, in the end the negative socio-economic impacts proved worse than those offered in alternative B, for about the same environmental benefits. Essentially, nothing was gained, but much was lost in contriving alternative C. Your agency was correct in rejecting it.

Regarding alternative B, the Diversion Authority developed purpose and need statements for meeting the requirements of the state's environmental review process, and this alternative fits those statements. The overall purpose is to reduce flood risk, flood damage, and flood protection costs within the Fargo-Moorhead metro area; this is precisely what plan B does – far more effectively than doing nothing, and at lower cost and less socio-economic impact than any other option looked at. In fact, plan B would be so effective at reducing flood risk in the project area that a revision to the Flood Insurance Rate Maps (FIRM) would be required.

In the end, this is a well-thought-out and evaluated project that has addressed and reversed the shortcomings identified by your department in the initial application, and which will fulfill its purpose exceptionally. I recommend that the Department of Natural Resources approve the project under the rubric of plan B this time around.

Sincerely,

Jeff Thomas

Experts. Right there across the table.

<Blocked<http://www.facebook.com/cornerstonebanks>>

<Blocked<http://www.linkedin.com/company/cornerstone-bank-nd>>

Electronic Privacy Notice. This e-mail, and any attachments, contains information that is, or may be, covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Thank you in advance for your cooperation.







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**SEP 26 2018**

REPLY TO THE ATTENTION OF:

Terry Williams, District Engineer  
Department of the Army  
U.S. Army Corps of Engineers – St. Paul District  
180 Fifth Street East, Suite 700  
St. Paul, Minnesota 55101-1678

**Re: Draft Supplemental Environmental Assessment #2 – Modifications to the Fargo Moorhead Metropolitan Area Flood Risk Management Project, Cass County, North Dakota and Clay County, Minnesota**

Dear Ms. Williams:

The U.S. Environmental Protection Agency has reviewed the above-mentioned environmental assessment (hereafter, Draft EA) dated August 2018 regarding the proposed project. This letter is a joint effort of Regions 5 and 8, having responsibility for Minnesota and North Dakota, respectively, and provides EPA's comments on the Draft EA, pursuant to our authorities under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR 1500-1508), and Section 309 of the Clean Air Act.

The Red River basin in eastern North Dakota and western Minnesota has a long history of flooding. The US Army Corps of Engineers (USACE) completed a Final Feasibility Report and Environmental Impact Statement (FEIS) for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project) in 2011. Detailed engineering and design studies conducted since the completion of the FEIS resulted in several proposed modifications to the Project. An initial round of modifications was addressed in a Supplemental Environmental Assessment (SEA), dated September 2013.

The current Draft EA addresses changes in the affected environment and impacts from those described in the 2013 SEA, and focuses primarily on modifications to the alignment of the Southern Embankment and the passage of more flow through town during project operation. The Project with all proposed modifications is referred to as "Plan B." Construction and operation of Plan B would result in several changes in impacts to the human environment from those presented in the 2013 SEA. An environmental review indicates that while the proposed modifications of Plan B would result in some changes in the location, timing, and magnitude of effects on some resources, there would not be an appreciable change in the overall types and scope of impacts from those described in the 2013 SEA.

A Task Force, created by the governors of North Dakota and Minnesota to propose a framework for flood risk management for the Fargo-Moorhead area, made recommendations which resulted in the formulation of Plan B.

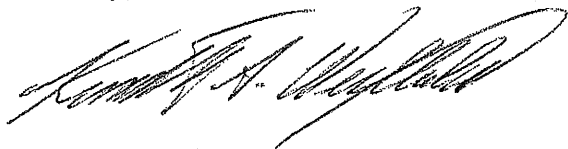
The Plan B Southern Embankment was selected as the preferred alternative for the following reasons:

- Plan B would result in a balance of impacts (staging area total acres) and benefits (protected acres) between Minnesota (~20%) and North Dakota (~80%). The other alternatives considered would further shift impacts into North Dakota beyond those necessary to equitably balance the impacts and benefits between the states.
- The other southern alignment alternatives generally extended farther north and east and would have greater impacts to residential and non-residential structures, utilities, transportation, and public services, at greater cost. Most alternatives would also place the St. Benedict area, with historic church and cemetery, into the area inundated upstream of the Southern Embankment unless a ring levee is added.
- The other southern alignment alternatives have longer dam lengths. There is greater risk associated with longer dam lengths located closer to the population at risk from flooding.
- The other southern alignment alternatives likely would result in greater impacts to the environment, including increased potential impacts to wetlands and cultural resources due to larger project footprint and increased forested wetland impacts due to more northern crossings of the Wild Rice River.

EPA has reviewed the Draft EA; we have no comments on this portion of the flood risk reduction project. However, to encourage reductions in air pollution impacts from construction to the greatest extent feasible, since most of the proposed work will be completed in urban areas, we have enclosed a copy of EPA's Construction Emission Control Checklist. We urge USACE to commit to employing all applicable construction emission reduction measures.

EPA appreciates the opportunity to review and comment on this proposed project. Please send future NEPA documents concerning this proposed project to our office. If you have any questions about this letter, please contact Kathy Kowal (312-353-5206 or via email at [kowal.kathleen@epa.gov](mailto:kowal.kathleen@epa.gov)) of my staff.

Sincerely,



Kenneth A. Westlake, Chief  
NEPA Implementation Section  
Office of Enforcement and Compliance Assurance

Enclosure: EPA's Construction Emission Control Checklist

**U.S. Environmental Protection Agency**  
**Construction Emission Control Checklist**

Diesel emissions and fugitive dust from project construction may pose environmental and human health risks and should be minimized. In 2002, EPA classified diesel emissions as a likely human carcinogen, and in 2012 the International Agency for Research on Cancer concluded that diesel exhaust is carcinogenic to humans. Acute exposures can lead to other health problems, such as eye and nose irritation, headaches, nausea, asthma, and other respiratory system issues. Longer term exposure may worsen heart and lung disease.<sup>1</sup> We recommend USACE consider the following protective measures and commit to applicable measures in the EA and Finding of No Significant Impacts.

**Mobile and Stationary Source Diesel Controls**

Purchase or solicit bids that require the use of vehicles that are equipped with zero-emission technologies or the most advanced emission control systems available. Commit to the best available emissions control technologies for project equipment in order to meet the following standards.

- On-Highway Vehicles: On-highway vehicles should meet, or exceed, the EPA exhaust emissions standards for model year 2010 and newer heavy-duty, on-highway compression-ignition engines (e.g., long-haul trucks, refuse haulers, shuttle buses, etc.).<sup>2</sup>
- Non-road Vehicles and Equipment: Non-road vehicles and equipment should meet, or exceed, the EPA Tier 4 exhaust emissions standards for heavy-duty, non-road compression-ignition engines (e.g., construction equipment, non-road trucks, etc.).<sup>3</sup>
- Low Emission Equipment Exemptions: The equipment specifications outlined above should be met unless: 1) a piece of specialized equipment is not available for purchase or lease within the United States; or 2) the relevant project contractor has been awarded funds to retrofit existing equipment, or purchase/lease new equipment, but the funds are not yet available.

Consider requiring the following best practices through the construction contracting or oversight process:

- Establish and enforce a clear anti-idling policy for the construction site.
- Use onsite renewable electricity generation and/or grid-based electricity rather than diesel-powered generators or other equipment.
- Use electric starting aids such as block heaters with older vehicles to warm the engine.
- Regularly maintain diesel engines to keep exhaust emissions low. Follow the manufacturer's recommended maintenance schedule and procedures. Smoke color can signal the need for maintenance (e.g., blue/black smoke indicates that an engine requires servicing or tuning).
- Retrofit engines with an exhaust filtration device to capture diesel particulate matter before it enters the construction site.
- Repower older vehicles and/or equipment with diesel- or alternatively-fueled engines certified to meet newer, more stringent emissions standards (e.g., plug-in hybrid-electric vehicles, battery-electric vehicles, fuel cell electric vehicles, advanced technology locomotives, etc.).
- Retire older vehicles, given the significant contribution of vehicle emissions to the poor air quality conditions. Implement programs to encourage the voluntary removal from use and the marketplace of pre-2010 model year on-highway vehicles (e.g., scrappage rebates) and replace them with newer vehicles that meet or exceed the latest EPA exhaust emissions standards.

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<sup>1</sup> [https://www3.epa.gov/region1/eco/diesel/health\\_effects.html](https://www3.epa.gov/region1/eco/diesel/health_effects.html)

<sup>2</sup> <http://www.epa.gov/otaq/standards/heavy-duty/hdci-exhaust.htm>

<sup>3</sup> <http://www.epa.gov/otaq/standards/nonroad/nonroadci.htm>

### **Fugitive Dust Source Controls**

- Stabilize open storage piles and disturbed areas by covering and/or applying water or chemical/organic dust palliative, where appropriate. This applies to both inactive and active sites, during workdays, weekends, holidays, and windy conditions.
- Install wind fencing and phase grading operations where appropriate, and operate water trucks for stabilization of surfaces under windy conditions.
- When hauling material and operating non-earthmoving equipment, prevent spillage and limit speeds to 15 miles per hour (mph). Limit speed of earth-moving equipment to 10 mph.

### **Occupational Health**

- Reduce exposure through work practices and training, such as maintaining filtration devices and training diesel-equipment operators to perform routine inspections.
- Position the exhaust pipe so that diesel fumes are directed away from the operator and nearby workers, reducing the fume concentration to which personnel are exposed.
- Use enclosed, climate-controlled cabs pressurized and equipped with high-efficiency particulate air (HEPA) filters to reduce the operators' exposure to diesel fumes. Pressurization ensures that air moves from inside to outside. HEPA filters ensure that any incoming air is filtered first.
- Use respirators, which are only an interim measure to control exposure to diesel emissions. In most cases, an N95 respirator is adequate. Workers must be trained and fit-tested before they wear respirators. Depending on the type of work being conducted, and if oil is present, concentrations of particulates present will determine the efficiency and type of mask and respirator. Personnel familiar with the selection, care, and use of respirators must perform the fit testing. Respirators must bear a NIOSH approval number.

### **Children's Health**

- Per Executive Order 13045 on Children's Health<sup>4</sup>, EPA recommends the lead agency and project proponent pay particular attention to worksite proximity to places where children live, learn, and play, such as homes, schools, and playgrounds. Construction emission reduction measures should be strictly implemented near these locations in order to be protective of children's health.

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<sup>4</sup> Children may be more highly exposed to contaminants because they generally eat more food, drink more water, and have higher inhalation rates relative to their size. Also, children's normal activities, such as putting their hands in their mouths or playing on the ground, can result in higher exposures to contaminants as compared with adults. Children may be more vulnerable to the toxic effects of contaminants because their bodies and systems are not fully developed and their growing organs are more easily harmed. EPA views childhood as a sequence of life stages, from conception through fetal development, infancy, and adolescence.

**From:** [Teanna Limpy](#)  
**To:** [CEMVP-Fargo-SEA](#)  
**Subject:** [Non-DoD Source] Fargo-Moorehead FRMP SEA  
**Date:** Wednesday, September 26, 2018 7:04:53 PM

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Comments from Northern Cheyenne THPO regarding the Supplemental Environmental Assessment(SEA) for the proposed modifications to the Fargo-Moorehead Metropolitan Area Flood Risk Management Project, including the following:

“The Supplemental Draft EA identifies various archaeological and cultural resources formally evaluated by contract archaeologists and the State Historic Preservation Officer. However, there is no mention of outreach to consulting tribes on this project. Additionally, Tribal Historic Preservation Officers and tribes who may have requested to participate in survey work and further evaluation of pre-historic sites identified were not included based on our initial review of the draft Supplemental Environmental Assessment. Furthermore, it is a concern when tribes are not involved in the site identification phase as tribes are the only participants who hold knowledge of traditional cultural properties that may have been missed during survey work. Our office requests a record of consultation requests to the Northern Cheyenne Tribe during the initial scoping period of this project. “

Thank You,

Teanna Limpy, THPO

Tribal Historic Preservation Office

Northern Cheyenne Tribe

14 E. Medicine Lodge Drive

P.O. Box 128

Lame Deer, MT. 59043

Work: (406) 477-4839/4838

Cell: (406) 850-7691

**From:** [Joseph M. Schmitt](mailto:Joseph.M.Schmitt)  
**To:** [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us); [CEMVP-Fargo-SEA](#)  
**Cc:** [Joseph Schmitt](#)  
**Subject:** [Non-DoD Source] Fargo-Moorhead SEIS, Terry Williams, District Engineer, St. Paul District, Corps of Engineers  
**Date:** Wednesday, September 26, 2018 4:08:14 PM

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Ladies and Gentlemen:

Please insure yourselves and the general public that unauthorized agricultural drainage as defined under North Dakota law is being properly considered in decisions related to the FM Diversion project. Of particular note and concern is the apparent requirement that surface drainage requires a permit when the watershed exceeds 80 acres, while subsurface drainage requires a permit only when the tiling system exceeds 80 acres, irrespective of the watershed involved. This apparent flaw in the law could allow for series of 79.99 acre tiling systems to be installed without the requirement for a permit. It appears that thousands of acres are being tiled in the Red River Valley, with work being performed by multiple large companies that have developed to provide this service. Many of these tiling systems are reportedly under 80 acres, but visibly lie adjacent to one another up and down the entire Red River Valley. It should be noted that permits for drainage tiling projects are applied to through the local Water Resource Districts, while surface drainage permits are applied to through the State Engineer. Different levels of expertise and scrutiny are undoubtedly applied as a result of these varied application processes for a variety of reasons.

When the true amount of drainage of agricultural land is likely unknown as a result of the manner in which North Dakota's drainage laws have been drafted, implemented, interpreted, and enforced, it is exceedingly and increasingly difficult for the various state and federal agencies charged with the responsibility of monitoring, predicting, charting, and controlling the flow of water which eventually ends up in the Red River and the FM Diversion project to properly perform their duties. Likewise, one must ask whether North Dakota law as drafted, implemented, interpreted, and enforced actually results in the state's laws actually conforming with the Clean Water Act under which the State of North Dakota has obtained its authority to regulate drainage.

Hopefully those charged with the responsibility of protecting the land, waters, and tax paying public in such matters insure that these questions and issues are adequately and properly addressed in the FM Diversion project.

I have included the text of an email I sent on December 12, 2017 which sets out specific facts that relate to all of the general issues set forth above which I am currently addressing personally in and around land that I own near Jamestown, North Dakota. That email provided:

"Ladies and Gentlemen:

The taxpayers of the US are being faced with a \$2 Billion infrastructure project in the FM Diversion. Please assure yourselves and the public that unauthorized agricultural drainage is being properly considered, and addressed in the planning and impact evaluation of the FM Diversion project. I live in the Jamestown, North Dakota area which overall drainage flows through the Mississippi River Basin and ends up in the Gulf of Mexico, which I am aware is not in the Hudson's Bay drainage area of the FM Diversion project. However, the same North Dakota rules, regulations, and boards control and regulate drainage in the FM Diversion drainage area as in my area.

I would like to point out a few facts about surface drainage in my immediate area, as well as some observations I made while driving along I-94 recently on my way to Fargo prior to the snow.

In my immediate area within a 5 mile radius of my home at 8871 35th Street SE, Jamestown, North Dakota, I can very easily point out three specific areas of clearly evident unauthorized surface drainage, two of which three areas affect me directly, as well as two areas where drainage tile has been installed without the necessary permits.

The first of those two areas of unauthorized surface drainage have in large part been the subject of a complaint of unauthorized drainage to the local Water Management Board, which in turn ordered the drain closed. Notwithstanding that decision; the unauthorized drainage continues, and in fact, the drainage is made wider, deeper, and longer nearly each year. This first area includes probably 20 miles of drainage ditches dug in Sections 2,3, 10,

11, 12, 13, 14, 22, 23, 25 and 26 of Bloom Township, Stutsman County, North Dakota, which drainage, except for Sections 25 and 26, empties in to a coulee that leads within a couple of miles in to the James River, and continues downstream. As the water moves downstream it is potentially adversely impacting the downstream regions and cumulatively affecting large portions of the US with the water leaving the immediate area traveling through the Mississippi watershed to the Gulf of Mexico, while simultaneously being prevented from re-entering and regenerating the local subsurface water reservoir.

The second area is found in Sections 34: E1/2 and 35: W1/2 of Bloom Township, Stutsman County, North Dakota and it appears there are about 3 miles of drainage ditches in the acres directly involved. One can easily see that the land immediately east and west of this land, with similar topography both to the naked eye and on topographic maps, retains far more surface water. In fact, this area drains toward I-94 where two gentlemen apparently drowned in standing water in the I-94 ditch adjoining this drained land when their pickup overturned as it travelled westward on I-94 on March 23, 2010.

The third area is in Section 29: W1/2 of Bloom Township, Stutsman County, North Dakota where the land is relatively flat, but what appears to be unauthorized surface drainage consisting of 2-3 miles of drains causes the runoff to go toward 35th Street SE, and then into either the City of Jamestown's storm water system or directly in to the James River, both of which result in the surface water leaving the area where it could re-infiltrate in to the subsurface aquifer.

I mentioned the water leaving the area, and in turn leaving the area where it would filter its way back in to the subsurface aquifer because at this very time, the agencies charged with controlling surface drainage are also funding a project to investigate artificially re-injecting water in to the very aquifer from which the unauthorized drainage results in the water leaving the aquifer area mentioned here. Ironic isn't it; government spending money to help resolve a problem that could be avoided by enforcing existing laws and placing responsibility where it should be. Seems to be something we hear more and more now days.

In addition to the aforementioned unauthorized surface drainage, I noticed two areas where drainage tile was apparently being and now has apparently been installed locally. The first of these two areas is in Section 10 of Bloom Township, Stutsman County, North Dakota, and the second is in Section 35 of Spiritwood Township, North Dakota. Upon inquiry to the local water management board, I found that neither of these areas of apparently installed drainage tile was covered by permits likely necessary for such installation, and both are appear to be adjacent to apparently unauthorized surface drainage. The one in Section 10 of Bloom Township ties in to the apparent unauthorized surface drainage mentioned above in Sections 2,3, 10, 11, 12, 13, 14, 22, 23 of Bloom Township. When there are discussions at the local coffee shops about the installation of drainage tile, it appears that few if any of the local drainage tile installation projects have sought or are seeking the required permits. Is this the case throughout North Dakota? Perhaps!

So much for the effectiveness of drainage laws in my immediate area. One must wonder if the same is the case for surface drainage in the FM Diversion Drainage area. As above, during my recent trip to Fargo (before the snow) I noticed what appeared to be surface drainage along I-94 at the following locations noted as Mile Post (MP) (Number) (Direction from I-94), to wit: MP 278-279- N, MP 282-N, MP 298-N & S, MP 300-N, MP 301-S, MP 302-S, MP 303-S, MP 305-S, MP 308-N & S, MP 309-S & N, MP 310-N, MP 311-S, MP-312-S, MP 313-314-S, MP 315-316-S & N, MP 316-317-S, MP 317-S, MP 317-318-S, MP 323-324-N.

Is there indeed surface drainage in these areas? Is it artificially created? Is it unauthorized? I would think these are questions that one might want to know the answer to before this massive project is billed to the taxpayers. Perhaps the need for such a large project can be minimized if there is extensive unauthorized surface drainage that is brought under control by ordering it ceased. Does the same situation exist on the Minnesota side of this project? The advent of GPS control on equipment and very large equipment, have enabled farmers to relatively easily conduct drainage operations that can be hard to discern upon quick glance.

When you combine the advancements in technology making drainage relatively physically easy to accomplish with North Dakota's law apparently requiring a complaint by neighbor against neighbor instead of regulatory agencies comprised of these very farmers enforcing the law even when they are aware of the unauthorized drainage, it is not surprising problems arise. As the area increases so does the cumulative effect of any unauthorized drainage. The drainage that appears to exist along I-94 that I mentioned is that which is visible while driving 70+ miles per hour

down the road. Is it occurring throughout the drainage area contributing to the need for the FM Diversion, and throughout the state? If drainage is managed throughout the State of North Dakota as it is managed in my immediate area, I would suggest that is probably the case.

I don't think it is a much of a secret that a large portion of the Red River Valley land is "drained", even though it is quite flat and naturally drained to an extent. Water from outside the Valley certainly doesn't help the problem, and if unauthorized, should be stopped.

Assuming you have not already taken this issue in to proper account, I trust you will investigate the issue to insure that the size and scope of the project are considered in light of any unauthorized drainage that should be curtailed to minimize the negative impact of such drainage. I can assure you that I can show you sufficient evidence of the unauthorized drainage in my immediate area to back up the assertions I have set forth in this correspondence to you. I do plan to file a complaint for unauthorized drainage on the lands I have referenced above in my immediate area in the upcoming months upon my completion of gathering information/evidence in the matter.

I have heard little or no discussion of the impact of unauthorized agricultural drainage and its impact on the FM Diversion project. The taxpayers of this area, North Dakota and Minnesota, as well as the US as a whole should not pay for mitigating damages caused by unauthorized surface drainage to the extent it exists while unjustly enriching those engaged in unauthorized drainage. I believe this needs further serious investigation in the FM Diversion area based on the facts and circumstances in my immediate area."

Thank you.

Sincerely,

Joseph M. Schmitt

P.O. Box 1936

Jamestown, North Dakota 58402

701-252-0556 (land)

307-689-0588 (cell)

NOTE: The information contained in this message may be privileged and confidential and protected from disclosure. If the reader of this message is not the intended recipient, or any employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by replying to the message and deleting it from your computer.

Thank you for your time.

Joseph M. Schmitt

P.O. Box 1936

Jamestown, North Dakota 58402

701-252-0556 (Land)

307-689-0588 (Cell)



**From:** Thibodeaux, Jaime (DNR)  
**To:** CEMVP-Fargo-SEA  
**Subject:** [Non-DoD Source] FW: DNR Comments on the Fargo-Moorhead Diversion Draft SEA  
**Date:** Thursday, September 27, 2018 1:13:53 PM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image001.png](#)  
[2018-09-27-F-M Diversion DSEA MNDNR comments final.pdf](#)

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Ms. Williams,

MN DNR appreciates the opportunity to review the Draft Supplemental Environmental Assessment for the Fargo-Moorhead Diversion project. Attached you will find our comment letter for your review.

Respectfully,

Jaimé Thibodeaux

Environmental Assessment Ecologist | Division of Ecological & Water Resources

Minnesota Department of Natural Resources

2115 Birchmont Beach Rd NE

Bemidji, MN 56601

Phone: 218-308-2672

Fax: 218-755-4066

Email: [Jaime.Thibodeaux@state.mn.us](mailto:Jaime.Thibodeaux@state.mn.us) <<mailto:Jaime.Thibodeaux@state.mn.us>>

[mndnr.gov](http://mndnr.gov) <[Blockedhttp://mndnr.gov/](http://mndnr.gov)>

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<[Blockedhttp://www.dnr.state.mn.us/emailupdates/index.html](http://www.dnr.state.mn.us/emailupdates/index.html)>

500 Lafayette Road  
St. Paul, MN 55155

September 27, 2018

Terry Williams, FMM Program Manager  
U.S. Army Corps of Engineers  
180 Fifth Street East, Suite 700  
St. Paul, MN 55101-1678

## **Minnesota Department of Natural Resources (DNR) Comments Draft Supplemental Environmental Assessment, Fargo-Moorhead Diversion**

Dear Ms. Williams,

The State of Minnesota and Minnesota Department of Natural Resources (DNR) remain committed to enhanced flood risk management for developed portions of the Fargo-Moorhead area that meets Minnesota state standards. One of the primary functions of The National Environmental Policy Act (NEPA) is to disclose potential project impacts so well-informed land use and permit decisions can be made. As such, the DNR appreciates the opportunity to provide comment on the Army Corps of Engineers' (USACE) Draft Supplemental Environmental Assessment (DSEA). We are also taking this opportunity to identify information not in the DSEA, but that we will evaluate during our review of the application for necessary DNR permits.

DNR's comments on the DSEA are consistent with past correspondence but also include additional topics. Key considerations in DNR's 2016 permit denial included: 1) alternatives to the proposed project that can provide needed flood protection, 2) lack of consistency with state and local plans, and 3) insufficient mitigation for the project. As highlighted in DNR's draft supplemental environmental impact statement (DSEIS) for the proposed project, mitigation and consistency with state and local plans remain important considerations as we consider the revised project.

### **General Comments**

- Project Description - The DSEA does not describe the entirety of the proposed Fargo-Moorhead Diversion project in sufficient detail to convey the full scope of the proposed project. The project description should be amended to include the diversion channel, diversion inlet, aqueducts, staging area, and associated ring dikes, drainage ditches, and infrastructural changes. These descriptions can be brief, but should be included to provide a reader with a comprehensive picture of Plan B and the relationships of its components.
- Purpose and Need - The DSEA does not use the primary purpose of the project or reference the primary purpose that was used in the 2011 Federal Final Environmental Impact Statement (EIS). The purpose statement in the DSEA instead describes the Task Force outcome to resolve differences between agencies. The DNR recommends that the SEA restate the primary project purpose of evaluating flood

mitigation strategies for the Fargo-Moorhead Metropolitan area. All evaluated alternatives, including Plan B, need to meet the original purpose for the project proposal. The DSEA also does not describe the need for the proposed project. The DNR recommends clarifying the need for the project.

- No Action Alternative – The 2011 EIS No Action Alternative is described as the future without a diversion project in the Fargo-Moorhead Metropolitan area. “Plan B” is not a different state of the project, but a completely new alternative. The DSEA No Action Alternative is the proposed 2016 project. This provides an inaccurate baseline against which to compare environmental impacts of the project. As with the project description, the No Action Alternative should be the same as what was in the 2011 FEIS.
- Description of Alternatives Considered - The bulleted points of the Alternatives Considered section do not describe the alternatives considered. Instead, the section justifies why “Plan B” is the best alternative. These statements appear as pre-decisional and come before any analysis of effects of the proposed action.
- Disclosure of Full Environmental Effects - The DSEA must disclose the full environmental effects of each alternative, not merely the incremental effects from one alternative to another. Because the DSEA only describes the incremental impacts of the project relative to the 2016 proposed project, rather than the 2011 EIS No Action Alternative, the DSEA underestimates the environmental effects of the currently proposed project.

## **Specific comments on Environmental Effects (Environmental Consequences)**

### **Aquatic Organism Passage and Biological Connectivity**

The DSEA analysis of aquatic organism passage underestimates fish passage impacts. The DSEA states that passage will be impacted for 10 to 14 days following operation of the structures. At a September 13, 2018 interagency meeting, the agencies collectively learned that the high velocities would continue to occur while the staging area is draining following structure operations. This would extend the unpassable period to a total of 12 to 26 days. This is likely to bring high velocities into the beginning of May. The DNR recommends further clarification of these impacts in the Final SEA.

High velocities into May would disrupt the migration period of nearly all species depicted in the DSEA’s Figure 15. Spawning timelines are also more varied than described in the DSEA. While the main spawning period for lake sturgeon is from mid-April through mid-June, upstream migration starts earlier due to the large migratory distances. The DNR recommends further discussion of potential impacts to early migrating species.

In addition to the operational impacts described above, the proposed in-stream structures would also introduce velocity related blockages to fish and aquatic organism passage. As noted in the DSEA, velocities during the 10% event through the culverts at Wolverton Creek and Wild Rice River are estimated to be 3.5 feet per second (fps) and 4 fps respectively for a length of approximately 106 feet. These velocities, along with the length of the structures, would adversely affect upstream migration of Red River basin species. For example, northern pike have very high burst speeds but are unable to sustain these speeds over long distances. Velocities over 3 fps would generally start inhibiting northern pike upstream migrations at distances more than approximately 30 feet. The proposed diversion channel might also be a barrier to successful fish spawning. Designed to contain flows from the Rush and Lower Rush rivers as well as over-flows from the Sheyenne and Maple rivers, it may be an attractant to spawning fish with or without project operation. The SEA should provide a discussion of these potential impacts to fish passage from proposed structures without project operation.

DNR finds the impacts to biological connectivity and fish passage to be underestimated in the DSEA. The proposed mitigation may be insufficient. The previous USACE analysis identified construction of fish passage at Drayton Dam as mitigation for fish passage impacts with project operation triggered at 17,000 cubic feet per second (cfs). "Plan B" modifies the project to operate at a reduced frequency when flow reaches 21,000 cfs. In assessing mitigation needs and the implications of the proposed operating changes, it is important to recognize that fish passage impacts will occur both with and without project operation.

### **Aquatic Habitat Impacts**

The Draft SEA describes the intersection of the eastern tieback levee and Wolverton Creek at 500 feet north of 180<sup>th</sup> Ave S. (County Road 50). The eastern tieback levee and associated culverts introduce new culverts on Wolverton Creek. Culverts have both direct and indirect impacts to the public waters and fish passage. DNR recommends assessing the feasibility aligning this segment of the eastern tieback with County Road 50 to minimize culvert crossing and associated impacts.

The Wild Rice and Red River structures are currently proposed for construction off-channel and include abandonment of sections of river channel. DNR recommends assessing the feasibility of placing these structures within the existing channel as measures to avoid river channel abandonment.

If it is determined that the measures above are feasible, it is recommended that a comparison of overall impacts associated with these avoidance measures be provided.

### **Wetland Impacts**

Wetland impacts, monitoring needs, and mitigation for wetland impacts may not be fully addressed in the DSEA. The description of wetland impacts in the inundation area does not address impacts to natural oxbows that would be separated from the main channel along the Red River, north of Fargo and near the city of Oxbow. The geomorphology monitoring focuses on the active channel and not remnant channels. The wetland assessment has focused on depressional wetlands, but does not address whether sedimentation or channel geomorphology impacts may affect water levels or increase sedimentation in these oxbow remnant wetlands. The DNR recommends the USACE convene a group of wetland experts to further elucidate wetland impacts (such as rare natural plant communities, sedimentation, and hydrology), monitoring needs, and mitigation.

## **Information Needs for Public Water and Dam Safety Permitting**

### **Local Land Use Plan Compatibility**

The proposed project would affect a very large area and impact many communities. The DSEA includes little information on the project's ability to demonstrate compatibility with local land use and water management plans. The SEA is an opportunity to provide this information. Consistency with state and local plans remains an important consideration under Minnesota law.

### **Dam Safety and Design Questions**

The DSEA does not adequately describe details related to some of the proposed project designs. Specifically, DNR suggests including:

- updated information on funded and recently constructed flood damage reduction projects to determine the extent of impacts associated with each alternative;
- a further description of overtopping designs and potential impacts associated with eastern and western tieback levees;
- consistent maximum pool elevation throughout the document (currently there are inconsistencies);
- a description of potential impacts associated with a breach and evacuation plans for the Oxbow community for events greater than the 100-year event (the Draft SEA notes Interstate 29 will be elevated to be above the elevation for a 100-year flood event. Interstate 29 is the primary evacuation route for the Oxbow community, which is embedded within the staging area); and
- further discussion on drainage infrastructure and length of time that would be required to fully drain the staging area, allow for cleanup, and resume normal activities.

### Monitoring and Mitigation

The DNR has reviewed the Adaptive Management and Mitigation Plan (AMMP) contained in the DSEA as Appendix G and has the following comments:

- The Index of Biological Integrity (IBI) score should not be used in isolation to evaluate mitigation adequacy. Rather, a holistic approach to assessing stream habitat should be used that considers the five components of a stream ecology (biology, hydrology, connectivity, geomorphology and water quality). Using these techniques, in combination with the IBI protocols, would provide a more robust, quantitative assessment of the meander of the Red River being abandoned at the Red River structure. After a more robust assessment is complete, it can then be used as a baseline to measure the success of mitigation measures.
- The DSEA proposes to use new channels created on the Red River and Wild Rice River for non-habitat purposes to mitigate for in-stream habitat impacts. Constructed channels would not replace the habitat abandoned by cutting off a meander of the Red River. Straightened channels function differently from natural meandering channels and do not provide the same self-forming, self-maintaining sediment flow, pool and riffle formation, and microhabitat features. The 2011 Federal Final EIS assumed no habitat value in these constructed channels. Given the lack of detail regarding how these features will be constructed and absence of any plan to construct habitat features within those channels, the DNR does not see mitigation potential associated with the constructed channels. We believe the more conservative approach reflected in the 2011 EIS is more appropriate.
- DNR believes the AMMP should include more specific management triggers for off-site mitigation, on-site restoration, or project alteration based on monitoring results.
- The AMMP states floodplain forest mitigation sites would be protected and managed into perpetuity by an agreement for management as a DNR wildlife management area. The DNR has not entered into any agreement with the USACE regarding the management of mitigation lands, nor have we been approached for such an agreement.

- DNR continues to believe that fish passage on Drayton Dam would be a more suitable mitigation measure for the proposed project's impact to fish passage and biological connectivity, compared to the mitigation contemplated in the DSEA.
- DNR requests that the disagreements regarding the nature and scope of appropriate mitigation be included in the SEA under "areas of controversy".

While the above changes would enhance the SEA's disclosure of environmental impacts, Minnesota does not make final determinations regarding mitigation requirements as part of the environmental review. DNR will determine mitigation requirements as part of its action on the permit application.

## **Conclusion**

DNR appreciates the opportunity to comment on this important supplemental environmental review document. We have attempted to identify important issues for both the DSEA and our ultimate public interest determination and permit decision

Sincerely,



Steve Colvin, Director  
Division of Ecological and Water Resources

CC: Jaime Thibodeaux, Environmental Assessment Ecologist  
Barb Naramore, Assistant Commissioner  
Rita Albrecht, NW Regional Director  
Nathan Kestner, Ecological and Water Resources Manager  
Jim Leach, Division of Fish and Wildlife Director

*Equal Opportunity Employer*

**From:** [Best, Steve L.](#)  
**To:** [CEMVP-Fargo-SEA](#)  
**Subject:** [Non-DoD Source] F-M Metropolitan Area Flood Risk Management Project SEA Comments  
**Date:** Thursday, September 27, 2018 3:02:29 PM  
**Attachments:** [USACE F-M EA Comments.pdf](#)

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Good Afternoon,

Attached you will find the North Dakota State Water Commission's comments regarding the Fargo-Moorhead Metropolitan Area Flood Risk Management Project SEA. Thank you for allowing us to comment on this Project.

Steve Best

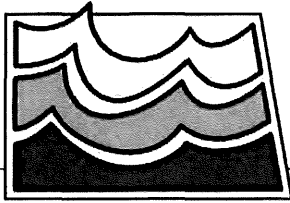
Water Resource Planner

North Dakota State Water Commission

900 E. Boulevard Ave.

Bismarck, ND 58503

701-328-4970



# North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850  
(701) 328-2750 • TTY 1-800-366-6888 or 711 • FAX (701) 328-3696 • <http://swc.nd.gov>

September 27, 2018

Attn: Terry Williams, Project Manager  
District Engineer, St. Paul District  
US Army Corps of Engineers  
180 Fifth Street East, Suite 700  
St. Paul, MN 55101

Dear Terry Williams:

This is in response to your request for a review of the environmental impacts associated with the draft Supplemental Environmental Assessment for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

The document has been reviewed by State Water Commission and Office of the State Engineer staff, and the following comments are provided:

- A Sovereign Land Permit will be required if any portion of the project is constructed below the Ordinary High Water Mark of the Red River or the Sheyenne River. Please contact Ashley Persinger at 701-328-4988 or [apersinger@nd.gov](mailto:apersinger@nd.gov) with questions regarding this process.
- Through the National Flood Insurance Program, a floodplain permit is required for all development that takes place within a Special Flood Hazard Area, as identified by FEMA. Please work with the local floodplain administrator(s) for additional information and permit requirements.

In addition, projects located within the regulated floodway must meet the requirements of North Dakota Century Code § 61-16.2-14. Before authorizing any development, the community responsible for permitting such use shall request a floodway review from the State Engineer. The application form may be downloaded from our website under "Regulation & Appropriation, Floodplain Management." Please contact Dionne Haynes at 701-328-4961 or [dfhaynes@nd.gov](mailto:dfhaynes@nd.gov) with questions regarding this process.

- If surfacewater or groundwater will be diverted for construction of the project, a water permit will be required per North Dakota Century Code § 61-04-02. Please consult with the Water Appropriations Division of the Office of the State Engineer at (701) 328-2754 or [waterpermits@nd.gov](mailto:waterpermits@nd.gov) if you have any questions regarding this comment, or the comments that follow.

Cass Rural Water District holds perfected water permit nos. 2293 & 4485 with an approved point of diversion in the NW1/4 of Section 3, Township 137 North, Range 49 West. Their well field appears just south of the Plan B southern embankment.



Ames Construction holds conditionally approved water permit no. 6918 for industrial use. The approved point of diversion is in the SW1/4 of Section 32, Township 138 North, Range 49 West just south of the Plan B south embankment. The purpose for the water is for concrete batching during F-M Diversion construction.

A Water Permit will not be required for the proposed flood control operations proposed by the Plan B operations as long as the intentions of holding back water remain in detention capacity for short periods of time and there is no beneficial use of the detained water proposed. If, however, the intention of Plan B changes to a retention capacity of water for long periods of time or there is a proposed beneficial use of the detained or retained water, then a flood control or other corresponding beneficial use Water Permit will be required under North Dakota Administrative Code § 89-03-01-01.3.

A water permit may authorize the storage of water for flood control or other reasons deemed necessary by the State Engineer. However, authorization to store water for flood control or other reasons does not create a water right. If stored water will be put to beneficial use, a water permit must be obtained.

- As State Engineer staff have stated on numerous prior opportunities to comment on the Fargo-Moorhead Flood Risk Management Project, since the proposed project route traverses over and through surface water resources such as watercourses (i.e. streams or rivers), agricultural drains, and wetlands (i.e. ponds, sloughs, lakes, or any series thereof), any alterations, modifications, improvements, or impacts to those water resources will require authorization through the construction and drainage permitting processes. Additionally, any stream crossing (or opening to permit the flow of water under, adjacent to, or because of a highway, street, or road) proposed to be replaced along the project route must meet North Dakota Stream Crossing Standards. Please contact the Engineering and Permitting Section at 701-328-4288 if you have any questions.

Thank you for the opportunity to provide review comments. The point of contact for this letter is Jared Huibregtse at 701-328-4967 or [jjhuibregtse@nd.gov](mailto:jjhuibregtse@nd.gov).

Sincerely



Steve Best  
Water Resource Planner

JH:sb:pf/1570

**From:** [Darlene Finken](#)  
**To:** [CEMVP-Fargo-SEA](#)  
**Cc:** [Jerry Von Korff](#)  
**Subject:** [Non-DoD Source] Comments of the Joint Powers Authority for Richland and Wilkin County and the Richland County Water Resource District RE: Draft Supplemental EIS, FONSI and Request for 404(b) Hearing  
**Date:** Thursday, September 27, 2018 3:17:17 PM  
**Attachments:** [image001.png](#)  
[Comment Letter to USACE-DSEIS 09 27 2018.pdf](#)  
[Ex 1 2017PrInj Appendix to JPA Comments.pdf active \(JVK exhibit\)\(1\).pdf](#)  
[Ex 2 Charlie Anderson comments DSEIS09 25 2018.PDF](#)  
[Ex 3 Final Comments Leadership Committe FCLT- Tim Fox.pdf](#)  
[Ex 4 Final Comments to Leadership Group, FM Diversion DNR FCLT-Cash Aaland.pdf](#)

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Please accepted the attached Comment Letter for the Joint Powers Authority for Richland and Wilkin County and the Richland County Water Resource District together with our Exhibits 1, 2, 3 and 4, submitted by counsel, Gerald Von Korff.

Thank you.

Darlene V. Finken

Paralegal to Gerald Von Korff

RINKE NOONAN

Suite 300, US Bank Plaza

P.O. Box 1497

St. Cloud, MN 56302

(320) 656-3550 Direct

(320) 656-3500 Fax

website <Blocked<http://www.rinkenoonan.com/>> | email <<mailto:dfinken@rinkenoonan.com>> | map  
<Blocked<http://www.rinkenoonan.com/contact-us/>>

<Blocked<http://www.rinkenoonan.com/>>

<Blocked[https://www.linkedin.com/company/rinke-noonan-law-firm?trk=hb\\_tab\\_compy\\_id\\_766490](https://www.linkedin.com/company/rinke-noonan-law-firm?trk=hb_tab_compy_id_766490)>

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---



September 27, 2018

District Engineer  
St. Paul District, Corps of Engineers  
ATTN: Terry Williams

***SUBMITTED BY EMAIL: CEMVP-Fargo-SEA@USACE.ARMY.MIL***

**Re: Comments on Draft Supplemental EIS, FONSI,  
And request for 404(b) Hearing**

Dear Mr. Williams:

The Richland Wilkin County Joint Powers Authority and the Richland County Water Resource District submit the following comments regarding the environmental review, 404(b) review and FONSI proposed for the proposed revised Fargo-Moorhead flood mitigation project.

There are four major issues with this project, and the DSEIS compounds and repeats those problems:

- The underlying flaw in this project is that it is designed to develop 40-50 square miles of currently undeveloped floodplain South and Northwest of Fargo. That generates massive volumes of extra water flow, which must either be stored in Minnesota or North Dakota or sent downstream. The solution is to refrain from developing the floodplain.
- In the original Environmental Impact Statement, USACE concluded that the best way to divert floodwaters was to run it around Moorhead and through Minnesota. Doing that avoids sending flood waters stored in the floodplain downstream. The revised permit application has failed to explain adequately why this option – which is a billion dollars cheaper – has been rejected.

Suite 300 US Bank Plaza  
1015 W. St. Germain St.  
P.O. Box 1497  
St. Cloud, MN 56302  
320.251.6700

[www.rinkenoonan.com](http://www.rinkenoonan.com)

[3151925]jvk-USACE-DSEIS-9-25-2018  
9/27/2018 8:58 AM

- The process established by USACE to arrive at the NED was designed to arrive at a cost-effective solution that avoids harm to the environment. By ignoring EO 11988 and its 8-step process, project proponent has created a fiscal and hydrological monstrosity. It costs a billion dollars more. It unleashes flooding across Cass and Clay County unnecessarily submerging prime farm land, cemeteries, and surrounds the communities of Oxbow, Hickson, Bakke and Comstock with flooding, requiring the construction of costly ring-dikes. It ignores the sustainability provisions of the WRDA-2007. It purchases homes at up to double their value and even builds a new private golf-clubhouse at taxpayer expense. All of this is a byproduct of abandonment of economic and environmental principles designed to incorporate sound engineering principles into water resource development projects.
- Recognizing that there was political pressure to avoid a Minnesota diversion, JPA provided alternative ideas that run the Diversion through North Dakota: designated options B or C, or 30 and 31. If a Minnesota diversion is rejected, these alternatives are workable and they are being rationalized away, just as the one-billion-dollar cheaper alternative is being rationalized away by Minnesota. The DSEIS blows off these alternatives with erroneous assumptions resulting from inadequate investigation. Our opinion from engineer Anderson addresses these issues.

In April of 2010, under apparent pressure from two powerful North Dakota Democratic Senators, Assistant Secretary Darcy made an unusual, costly and unwise decision that has led to the doubling of the cost of the proposed Fargo Moorhead flood mitigation project from one billion to two billion dollars. Acting under the original representation by the St. Paul office of USACE, that her decision would not cause appreciable downstream flooding, Secretary Darcy authorized the USACE to disregard its own recommendation to select a Minnesota diversion as the National Economic Development (NED) project, that is the project with the greatest benefits and least negative environmental impacts.

The negative environmental impacts caused by this project aren't snail darters, bats, or rare plants. The impacts involve the intentional flooding of farms and communities – real live people-- so that Fargo can unwisely and unnecessarily expand its development into the natural floodplain, building homes and businesses in the floodplain behind taxpayer funded levees. The magnitude of this floodplain development is unprecedented. It dwarfs many times over, exponentially, any federally funded floodplain development in many decades. It flaunts the WRDA's sustainability provisions and eviscerates the 8-step process.

The project would virtually double the area of Fargo, which is already way too sparsely settled. The purpose of this project is to allow people to develop flood prone land instead of high ground, and it does so at great cost. The details of our comments follow.

**President Trump's August 15, 2018 Executive Order  
Rescinds the Obama Executive Order that USACE Counsel Relied on as Rendering  
EO 11988 Unenforceable in this Case**

JPA has submitted extensive comments regarding the blatant violation of EO 11988 in the past. Those comments are attached to this filing. To undermine the EO, USACE told Judge Tunheim that President Obama's floodplain executive order rendered EO 11988 unenforceable. However, President Trump has now rescinded the Obama Executive Order in section 6 of the August 15, 2018 executive order. As a result, USACE can no longer ignore EO 11988 with impunity<sup>1</sup>. EO 11988 is legally enforceable, and the failure of USACE to follow the 8-Step process is arbitrary and capricious.

This project cannot meet the public interest requirements of Section 404(b). There are multiple practicable alternatives to avoid floodplain development – the Minnesota Diversion, and the alternatives advanced by JPA. The project violates other laws, including 42 U.S.C.A. § 1962-3. The project degrades the environment by flooding massive areas of North Dakota and Minnesota and inflicting major unnecessary changes in the ecosystem. The project does not minimize adverse impacts.

Not only has President Trump's August 15 Executive Order rescinded the Obama order upon which USACE relied, but the choices presented at this juncture are starkly different than they were at the time that Assistant Secretary Darcy unwisely allowed Diversion Authority to depart from USACE's NED project. We now know that Minnesota has decided that the LPP is not permissible. The reasons contained in the Commissioner's Order change the universe of permissible projects and change the tradeoffs and considerations involved in the alternatives review.

In 2015, President Obama issued an amendment to EO 11988 intended to create a mechanism to factor climate change in application of EO 11988. The EO amendment contained language which stated that the *amending order* did not create an enforceable right. To justify its disregard of EO 11988 and the 8-step process, USACE told Federal Judge Tunheim that it regarded EO 11988 as a mere unenforceable guidance, that could

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<sup>1</sup> Sec. 6 of the Order states: "Executive Order 13690 of January 30, 2015 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input), is revoked."

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be ignored without consequence, because President Obama's amendment to the order contained a provision to taking away the right to enforce.

Now, however, Section 6 of President Trump's August 15, 2018 Executive Order has rescinded the Obama Executive Order in its entirety, leaving no basis to avoid EO 11988. The 8-Step Process now clearly applies, and this project clearly fails the 8-step test. Developing the floodplain is unnecessary: there is plenty of developable land available. This floodplain has been flooding for centuries. There is high ground elsewhere. **The USACE's own Final EIS selected the Minnesota Diversion as a superior project in terms of national objectives and protection of the environment.** It is frankly silly even to suggest that there is no viable alternative: USACE itself has identified that alternative.

Minnesota has argued that the Minnesota diversion should not be permitted, but its reasons are not supported by Minnesota law, and they are flimsy indeed, as we later show. EO 11988 represents the Presidential implementation of fundamental concepts of sustainable water management and ecology. We discuss these principles in detail in our Appendix A to our Minnesota permitting submission. In 1942, Gilbert White published his groundbreaking thesis warning that private and governmental efforts to develop the floodplain were increasing the cost and the danger of catastrophic flooding. Gilbert White, *Human Adjustment to Floods: A Geographic Approach to the Flood Problem in the United States* (1942).

In 2004, the environmental group National Wildlife Association and fiscal conservative group Taxpayers for Common Sense, issued their report Crossroads, the Corps of Engineers and the Future of America's Water Resources (2004) showing that USACE continued to violate the principles found in EO 11988 and continued to distort cost-benefit estimates in order to foster the big dam and ditch projects which the engineers of USACE historically favor. That led to an intensive lobbying effort by proponents of fiscal responsibility and environmental protection to incorporate sustainability principles into the Water Resources Development Act of 2007. Their success resulted in the incorporation of those principles into 42 U.S.C.A. § 1962-3, which states:

It is the policy of the United States that all water resources projects should reflect national priorities, encourage economic development, and protect the environment by-- (1) seeking to maximize sustainable economic development; (2) seeking to avoid the unwise use of floodplains and flood-prone areas and minimizing adverse impacts and vulnerabilities in any case in which a floodplain or flood-prone area must be used; and (3) protecting and restoring the functions of natural systems and mitigating any unavoidable damage to natural systems.

EO 11988 is now embodied in statute and it is incorporated into FEMA and USACE regulations. Failure to comply with the mandates of EO 11988 is clearly arbitrary and capricious, and worse, it makes flood control more difficult, more dangerous, and more expensive, as this case shows.

Federal policy and regulations dictate that proposals to develop floodplain are to be avoided. A proposal to develop the floodplain is evaluated according to the 8-step process, a copy of which is appended to these comments. The original record of the FEIS does not apply the 8-step process, and were it applied, this project would utterly fail. The Fargo area has plenty of land outside the floodplain that can be developed. Fargo's own comprehensive plan specifically states that Fargo has plenty of land in the already developed boundaries to handle development demands for decades to come. And, on the Minnesota side there is a plentiful supply of high ground that is convenient to the urban core.

### **Minnesota Lacks an Adequate Basis for Rejecting the Minnesota Diversion**

At some point in the Minnesota process, Governor Dayton complained that the proposed diversion was unfair to Minnesota because the benefits of the project were disproportionately slanted towards North Dakota. While that assertion is understandable from a political point of view, it somehow found its way into the Minnesota environmental review, as if the Governor's statement was now a permitting statute or regulation. The LPP is un-permittable in Minnesota based upon statutes and regulations not the Governor's comments. The Commissioner's order refers directly to those permits and regulations. None of those statutes and regulations suggest that a diversion cannot be run through Minnesota simply because the diversion primarily benefits North Dakota.

Minnesota properly rejected the LPP because the LPP violates Minnesota permitting law. The LPP never should have been considered as a viable alternative in the first place by USACE, but Diversion Authority and USACE assumed incorrectly that somehow, the federal status of the funding would pre-empt Minnesota permitting law, despite the fact that the documents submitted to Congress directly represented that Minnesota permits were required.

One of the fatal flaws in the comparisons now used by both USACE and Minnesota is that once Diversion Authority chose the LPP in March of 2010, no effort was made to improve the NED. Staging and storage was added to the LPP to reduce downstream impacts, but no storage was added to the NED. Flow through town options were engineered for the LPP, but not for the NED. Distributed storage was rejected in the screening process during the original FEIS, arbitrarily, but the addition of distributed



storage would reduce the NED flows by over a foot and a half. The comparisons between the two projects are not parallel, making it appear perhaps as if someone doesn't want them to be parallel.

Allowing Minnesota to assert that no federal project can be permitted in Minnesota unless the Minnesota benefits are justified by the Minnesota harms would set a dangerous and probably unconstitutional precedent. The NED project is far better from an environmental standpoint than either the LPP or the variant now proposed. The Governor's concern about the balancing of benefits and harms is not justified by Minnesota law. Minnesota law demands the least impact solution, not the solution that has the least impact in Minnesota. Application of Minnesota's version of the least impact is unworkable when considering a project that involves flood management of a cross border project involving the Red River. Floodplain storage is an ecological benefit for both states in the valley. When floodplain storage is removed on one side, both sides of the river are environmentally harmed. When levees are built on one side of the river, the flow of water impacted on the other. The NED is better than the other options being studied, and would be vastly superior if appropriately subjected to value engineering, than the other projects.

**The only feasible alternative before the USACE when the original FEIS was completed was the Minnesota diversion.** The Minnesota diversion consumed less land because the diversion was shorter. The Minnesota diversion avoids development of the floodplain and dramatically reduces the volume of floodwaters that need to be controlled as a result. It is one billion dollars cheaper, at least. It does not flood Bakke, Hickson, Oxbow, or Comstock. It does not require construction and maintenance of ring dikes around these communities and it does not flood southern Cass and Clay counties. Its future maintenance costs will be proportionately less, and it does not entail the possibility that during an extraordinary flood, there will be 50 square additional miles of uninsured development that must be evacuated and then rehabilitated by FEMA.

Despite the fact that the Minnesota Diversion was selected by USACE in the FEIS as the NED project, it was summarily excluded from consideration by both Minnesota and now the Supplemental Draft EIS on the following grounds:

Construction of the diversion channel in Minnesota would have resulted in the majority of permanent impacts from the Project occurring within Minnesota, while Minnesota received limited flood-risk reduction benefits. As such, this alternative would be unable to be permitted and has been excluded from further consideration as unreasonable.

This contention is nowhere supported in the federal record, nor is it supported in

the Minnesota record, except by the above quoted statement. As a constitutional consideration it is of doubtful merit. Pipelines go through Minnesota that primarily benefit North Dakota and states east of Minnesota. There is no permitting law, nor should there be, that asserts that needed infrastructure must be rejected because it primarily benefits citizens or residents of another state. The above quotation has no legal foundation, nor does it have a factual foundation.

Minnesota law bars the LPP because it is environmentally damaging, and there are lesser impact alternatives, not because Minnesota bars construction of infrastructure that benefits other states. If a pipeline carries petroleum from North Dakota to a refinery in Ohio, it is not prohibited by Minnesota environmental law because the petroleum is North Dakota petroleum delivered ultimately to the East Coast. Minnesota law requires the pipeline to follow a route that does the least damage, that is the most environmentally sound but it does not demand that the petroleum must be delivered to Minnesota refineries. If the Minnesota diversion is globally the safest, cheapest, least impact diversion possible, the fact that the primary benefit runs to Fargo is not grounds for denying a permit.

USACE has determined that the NED is the baseline project that determines the rate of reimbursement for the LPP. Minnesota is now suggesting – albeit with virtually no support – that USACE is using the NED to govern the federal rate of reimbursement for the LPP, even though the NED is not permissible and thus not feasible.

There may be other legitimate grounds for denying such a diversion. For example, the project's failure to reduce impacts to Minnesota or the Red River as a whole by failing to mitigate with distributed storage is a fair consideration. The use of a diversion to develop floodplain is a matter properly considered by Minnesota, in fact it must be. The possibility of fully protecting Fargo – as Moorhead has done – with other flood control means: these are all properly considered in the Minnesota permitting process. However, if, as USACE has determined, the Minnesota Diversion is the NED project, even if the diversion benefits only North Dakota, it would not be grounds for denying the permit, provided that the project is constructed in compliance with Minnesota water and environmental law and landowners are properly compensated. The Minnesota diversion has been improperly excluded as an alternative, both by the Federal SEIS and by the Minnesota SEIS.

The approach taken by USACE and Minnesota in this regard leads to an absurd result. A major portion of the Buffalo Red River Watershed District is to be intentionally flooded to promote the development of floodplain in North Dakota. There exist multiple alternatives that avoid this damage, and one of them was originally designated as the NED project. The record of neither Minnesota nor North Dakota proceedings offer any

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basis for rejecting the alternative determined to be the best, simply because there are more benefits to North Dakota.

JPA requests a 404(b) hearing to fully elucidate these issues. Engineer Anderson developed the JPA alternatives. He reports that the engineers who evidently rejected summarily JPA's alternatives made no effort to contact him to discuss how the problems suggested in the DSEIS would be solved. The hearing should examine as well the application of the 8-step process to the proposed project, which under the Trump August 15 order is clearly binding on USACE, now that the Obama order has been rescinded.

The Richland Wilkin County Joint Powers Authority and the Richland County Water Resource District oppose the Draft supplemental environmental impact statement and seek a 404(b)-permit followed by denial of that permit. Additional materials in support of this position are attached:

- Materials submitted to the State of Minnesota -- Executive Order 11988 argument; Fargo Comprehensive Plan; Anderson Testimony (**Exhibit 1**)
- Anderson Report Regarding Alternatives Review (**Exhibit 2**)
- Fox Submission to the DNR Leadership Team (**Exhibit 3**)
- Aaland Submission to the DNR Leadership Team (**Exhibit 4**)

Sincerely,

/s/ Gerald VonKorff

Gerald Von Korff

JVK/dvf

Enclosures

**Minnesota Department of Natural Resources  
Division of Ecological & Water Resources**

*In Re: Public Waters/Dam Permit Application*

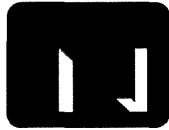
*Reference Number: 2016-0386*

*Application Reference Name: Fargo-Moorhead Flood Risk Management Project*

**Appendix to Comments by Richland-Wilkin Joint Powers Authority**

Attorney Gerald Von Korff  
Rinke Noonan  
PO Box 1497  
St. Cloud, MN 56307  
320-251-6700  
Email: [jvonkorff@rinkenoonan.com](mailto:jvonkorff@rinkenoonan.com)

**August 26, 2016**



RINKE NOONAN

*attorneys at law*

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1015 W. St. Germain St., Ste. 300, P.O. Box 1497  
St. Cloud, Minnesota 56302-1497  
Email: [jvonkorff@rinkenoonan.com](mailto:jvonkorff@rinkenoonan.com)  
Telephone 320-251-6700, Fax 320-656-3500  
Direct Dial: 320-656-3508

### **Memorandum**

To: Richland-Wilkin Joint Powers Authority  
From: *Gerald Von Korff*  
Re: Locally Preferred Project Violates Executive Orders 11988-13690  
Date: August 23, 2016

The purpose of this memorandum is to update the legal background supporting the application and legal enforceability of Executive Order 11988 and President Obama's more recent amending Executive Order 13690 to the Locally Preferred project. EO 11988 establishes legally binding sustainability principles embodying decades of engineering research and public policy analysis, and EO 13690 confirms those principles.

Diversion Authority has argued, incorrectly, that President Obama's amendment to the Carter-Mondale Executive Order intentionally made the floodplain Executive Order legally unenforceable, but that is a misreading of the Obama Order, and we rebut that error below. However, this argument misses a fundamental point. The floodplain executive order articulates a fundamental environmental and engineering principle that results from decades of study and experience: use of structural measures to expand settlement and development into the floodplain is a failed strategy that is economically unsustainable and that makes the nation's flood problems worse. EO 11988 principles are part of the foundation laid in statute and regulation in Minnesota Water Policy. See Minn Stat §§ 103G.245 subdivision 9(b) (barring issuance of public waters permits involving the control of floodwaters by structural means.... only after the commissioner has considered all other flood damage reduction alternatives); 103G.245 subdivision 7(a) (barring issuance of public waters permits unless the project will involve a minimum encroachment, change, or damage to the environment); Minn Rules 6115.0150 (project must be "consistent with the goals and objectives of applicable federal, state, and local environmental quality programs and policies"); 103G.245 subdivision 9(a) (barring issuance of public waters permits controlling flood waters unless consistent with the floodplain management ordinance that complies with applicable floodplain policy); 116D.04 (barring projects which damage the environment when alternatives available).

The orders recognize that big-engineering structural solutions (levees, channel modifications, diversions, and dams) which expand development into the floodplain actually increase flood risk and concurrently waste federal resources. Even when development is located behind certified levees, floodplain development encourages development on low ground, and low-ground development is inherently risky, what we often refer to as "gambling against the

river.” Moreover, development of floodplain removes flood needed storage and thus exacerbates flooding in the remainder of the basin.

In Section-A of this memorandum we explain how EO 11988 emerged from decades of evidence that floodplain development made flood risks greater and exacerbated floods in the rest of the impacted basin. Presidents from both parties learned that without a robust enforceable national policy, pressure to reap short term local gains by developing floodplain would foster earmarked local projects that harmed the national interest. Section B of this memorandum shows that Congress amended the Water Resources Development Act of 2007 to reinforce EO 11988’s floodplain protection principles. Section C shows that in 2009 USACE rejected as unlawful, Fargo’s proposal to develop 20 square miles of floodplain. It follows with greater force that the Locally Preferred Project’s proposal to develop that same 20 square miles along with 30 square miles more is also unlawful. Section D shows that USACE failed to complete the 8-step test required for projects impacting floodplain and that the locally preferred plan flagrantly fails the 8-Step EO 11988 test

#### **A. EO 11988 Was Issued to Reverse Decades of Federal Support for Floodplain Development and Floodplain Storage Destruction**

EO 11988 was issued by the Carter-Mondale administration, because previous efforts to apply sustainability principles had failed to reign in the USACE and Bureau of Reclamation’s propensity to build large, environmentally damaging, costly engineering water control projects to economically benefit local sponsors. Starting in the 1940’s, with the groundbreaking scholarship of water engineer Gilbert White, evidence mounted that development of floodplain (as Diversion Authority proposes here) was not cost-effective, was actually exacerbating floods, and was increasing the cost to taxpayers of flood relief.<sup>1</sup> White and others showed that preservation of natural floodplain storage was critical to maintaining river and watershed storage capacity during major storm events and snowmelts. By constructing levies around these natural floodplains, thereby attracting development into low-lying flood prone areas, federal and state water projects were creating more flooding, not less, and were locating capital projects in low areas vulnerable to flooding.

Combined with massive federal flood insurance subsidies, the approval of water resource development projects that offered protection to undeveloped floodplain was encouraging development in places vulnerable to flooding and simply shifting floodwaters onto others. Despite a growing consensus that national floodplain policy must shift to a strategy of floodplain preservation, Congress continued to receive, and then approve, pork barrel Corps projects that failed to take these principles into account.

In the Flood Control Act of 1960, Congress stressed the need for guidance in reducing flood losses by controlling development of floodplains. (PL 86-645). Then, in 1966, President Lyndon Johnson’s Task Force on Federal Flood Control Policy issued “*A Unified National*

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<sup>1</sup> See, e.g., Gilbert White, *Human Adjustment to Floods: A Geographic Approach to the Flood Problem in the United States*. (1942); Hoyt and Langbein, *Floods*, (1955); White, et al, *Changes in Urban Occupancy of Flood Plains in the United States* (1958). White’s landmark work, beginning with his 1942 University of Chicago doctoral dissertation “*Human Adjustment to Floods*,” challenged the notion that natural hazards are best addressed by engineering solutions.

*Program for Managing Flood Losses.*” Concurrently, President Johnson issued the first floodplain Executive Order, 11296, directing federal agencies to provide leadership in preventing uneconomic use and development of floodplains and reducing flood losses<sup>2</sup>. Still, the National Water Commission's report "Water Policies for the Future" warned, floodplain development continued unabated:

*Citizens in all parts of the Nation have been content to see billions of dollars spent to help fellow citizens subject to loss of life or fortune. But, throughout the many years that this benevolent effort has been under way, other individuals have been busily developing other flood plain areas in such ways that the initial goal of rescuing those unfortunate enough to be endangered by floods has become less and less attainable.*  
1973: National Water Commission, *Water Policies for the Future*.

Despite a growing consensus that national flood control policy should be based upon sustainable solutions, instead of big engineering and floodplain development, agencies like the USACE continued to sponsor project after project connected to floodplain development. Local and state sponsors proved unable to resist the intense pressures to pursue local profits for land speculators realized when federal funds paid for the conversion of floodplain for development.

Two years after the National Water Commission's report, the Comptroller General issued a report warning that as a result of inertia favoring costly structural engineering solutions, federal agencies had still failed effectively to implement national policy regarding floodplains and called for redoubled efforts. Comptroller General, *National Attempts To Reduce Losses From Floods By Planning For And Controlling The Uses Of Flood-Prone Lands (1975)*. The report explained,

*Historically, the primary method to reduce flood damage has been through structural measures such as dams, reservoirs, dikes, levees, channel improvements, and watershed treatment. In the past decade, however, greater emphasis has been placed on planning and regulating the use of floodplains to curtail flood damages.*

Despite this emphasis, the report concluded:

*Some agencies . . . encourage unwise use and development of flood-prone areas, which may be used to justify the construction of flood control projects that would not be necessary if such use and development had not occurred. Comptroller Report, Id. pages 10-11. . . Although the need for reducing flood losses through more rational use of flood-prone lands has long been recognized, we found that only limited progress has been made in achieving this goal. 1975 Comptroller Report, p. 47.*

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<sup>2</sup> In National Attempts to Reduce Losses from Floods by Planning for and Controlling Uses of Flood-Prone Lands, the GAO reported that federal agencies do not adequately evaluate flood hazards in their programs. Many of the agencies, the report noted, did not have or properly implement their flood-related procedures. In addition, the report observed, Executive Order 11296 had had limited effect in reducing flood losses due lack of implementing procedures and, among agencies that did have procedures, there was limited compliance.

The resilience of inertia in the federal bureaucracy to resist implementation of new sustainable floodplain policy required some form of policing function to ensure that floodplain preservation policies were being observed, the Report continued:

*We believe that the lack of progress by Federal agencies in considering flood hazards in their own programs demonstrates a need for OMB to take a more active role in monitoring Federal efforts and for Water Resources Council to fulfill its leadership role more promptly. Id. at page 40-41.*

If national floodplain policy were to reverse course, it would require a mechanism to ensure that proposals to invade or destroy natural floodplain would be identified as such to the public, to Congress, and to those within the executive branch charged with accountability functions. In 1977, President Carter, citing the National Environmental Policy Act, (NEPA), the National Flood Insurance Act, and the Flood Disaster Protection Act, issued a new and strengthened Executive Order, 11988, to foster agency implementation of national floodplain policy.

Across the executive branch, all agencies were required to implement EO 11988 policies in their administrative regulations, thus giving the sustainability principles the force of law. This is the fundamental error in the approach that USACE and DA have taken in this project. Unfortunately, the local St. Paul District treated EO 11988 as something that could be considered and discarded at the discretion of local project proponents. They have repeatedly cited EO 11988 as something that could be overridden, and even ignored, depending upon whether the St. Paul District believes that in a specific instance, some other competing policy outweighs the requirement that floodplain be preserved. USACE St. Paul District has instructed the Justice Department to tell the United States District Court that EO 11988 is nothing more than a suggestion of the President, which cannot be enforced<sup>3</sup>.

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<sup>3</sup> The St. Paul District's assertion that EO 11988 is not legally binding on the USACE is legally unsustainable. USACE regulations state: "In accordance with Executive Order 11988, the district engineer should avoid authorizing floodplain developments whenever practicable alternatives exist outside the floodplain. If there are no such practicable alternatives, the district engineer shall consider, as a means of mitigation, alternatives within the floodplain which will lessen any significant adverse impact to the floodplain." 33 C.F.R. §320.4(l)(3). See *Daingerfield Island Protective Soc. v. Babbitt*, 823 F. Supp. 950, 960-61 (D.D.C. 1993)(determining that, while EO 11988 does not create a private cause of action, the plaintiffs were entitled to "APA review of their EO 11988 claim"); *City of Carmel-by-the-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142 (9th Cir. 1997)("agency implementation of both Executive Orders 11988 and 11990 are subject to judicial review under the Administrative Procedure Act); *Citizens for Smart Growth v. Secretary of Dept. of Transp.*, 669 F.3d 1203 (11th Cir. 2012)(considering compliance with EO 11988 in determining whether the agency took a "hard look" at the direct environmental effects of the proposed action as required by NEPA); *Prairie Band Pottawatomie Nation v. Federal Highway Admin.*, 684 F.3d 1002, 1019 (10th Cir. 2012)(analyzing the Federal Highway Administration's compliance with EO 11988, as adopted in FHWA regulations, in the context of the DOT Act requirements); *City of Waltham v. U.S. Postal Serv.*, 786 F. Supp. 105, 130-31 (D. Mass. 1992) aff'd, 11 F.3d 235 (1st Cir. 1993) (EO 11988 "possess[es] the full force of law and [is] as fully judicially enforceable as NEPA itself.)



On the contrary, EO 11988 requires that a federal project “**must avoid direct or indirect support of floodplain development wherever there is a practicable alternative**” to development in the floodplain. The purpose of the order is not fulfilled by “considering” floodplain development, nor is it fulfilled by “considering alternatives.” The order requires avoiding direct or indirect support of floodplain development wherever there is a practicable alternative. The language of the order contains the following key words:

**Avoid:** The project *must* avoid direct or indirect support of floodplain development. (Here the project provides direct and indirect support of floodplain development)

**Whenever:** Direct or indirect support of floodplain development must be avoided whenever there is a practicable alternative

**Practicable alternative:** The project must not support floodplain development if development can occur somewhere else. (Here, as discussed below, there are plainly practicable alternatives to development of the floodplain).

Providing flood protection to the floodplains south and north of metropolitan Fargo violates the principles of EO 11988. The USACE itself made that determination in 2009, but failed to acknowledge that determination in the Federal EIS.

Diversion Authority has argued that Obama’s Executive Order 13690 makes Executive Order 11988 unenforceable, but that is a complete misreading of the Obama order. Executive Order 11988 contains no provision that negates its enforceability. EO 13690 does not replace EO 11988, it merely amends it. In fact, EO 13690 explicitly states that its purpose is to strengthen the Carter-Mondale Executive Order. The purpose of EO 13690 is to require that floodplain policy must consider the impact of climate change, especially in coastal areas, because climate change has increased ocean levels and increased the force of coastal Hurricanes, thus expanding the reach of windblown floods. Section 2 of the Obama EO contains the new language that must now be inserted into the Carter-Mondale Executive Order, and section 2 contains no disclaimer of enforceability. A mechanical and faithful implementation of these amendments results in an amended EO 11988 with no disclaimer of enforceability.

The disclaimer language is routine language intended for orders that are procedural. It says that “This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person” “This Order” is not EO 11988, it is EO 13690. If the President had intended to undermine the enforceability of EO 11988, as amended, he would have placed the disclaimer language in Section 2, which governs the changes in EO 11988 text.

Moreover, Diversion Authority’s argument completely misses the difference between MEPA and NEPA. NEPA is a procedural disclosure statute. It requires the Environmental Impact Statement to disclose environmental harm, but does not prevent infliction of that harm. MEPA is both a procedural disclosure statute and a substantive enforceable environmental protection statute. Nothing can change the central fact that violation of EO 11988, and its underlying principles, represent damage to the environment, and as such, Minnesota’s sequencing principles embodied in Section 116D.04, requires avoidance of that damage.

## **B. Congress Acted to Reinforce EO 11988 Sustainability Principles in 2007**

Congress acted in 2007 to reinforce EO 11988, because several studies showed that USACE and other agencies were disregarding its principles. In 2003-2004, a series of reports confirmed agencies continued to promote projects that were not cost effective by distorting the relative costs and benefits of these projects and by promoting continued development of natural floodplains. A coalition of environmental groups and budget conservatives called for redoubled Congressional support for EO 11988 principles. The National Wildlife Federation and Taxpayers for Common Sense captured this sentiment in their "Crossroads Report," published in 2004. The report called for Congress to strengthen the implementation of EO 11988 in the coming Water Resources Development Act, ultimately passed in 2007. The Crossroads report details the long history of USACE manipulation of hydrological, economic, and other data to justify the highly engineered massive flood control projects. While USACE projects have produced some positive economic benefits for the nation, they have also caused significant environmental harm. Large-scale structural projects planned and constructed by the USACE have also increased flood risks for many communities, reduced water quality, impaired recreational opportunities, and damaged economies that rely on a healthy environment. See Crossroads, Congress, the Corps of Engineers, and the Future of America's Water Resources, National Wildlife Federation and Taxpayers for Common Sense (2004).

### **Damage caused by USACE projects encompassed both initial projects and ongoing operations, according to the Crossroads report:**

During the past decade, the National Academy of Sciences, the Government Accountability Office, the Army Inspector General, federal agencies, and Independent experts have issued a flood of studies highlighting a pattern of stunning flaws in Corps project planning and urging substantial changes to the Corps' planning process. Two National Academy of Sciences panels and the Department of the Army Inspector General concluded that the Corps has an institutional bias for approving large and environmentally damaging structural projects, and that its' planning process lacks adequate environmental safeguards. Less environmentally damaging, less costly, nonstructural measures that would result in the same or better outcomes are routinely ignored or given short shrift. This results in projects that are unnecessarily destructive, costly, and, in many cases, simply not needed. *See Id. See also* Houck, Breaking The Golden Rule: Judicial Review Of Federal Water Project Planning, *65 Rutgers Law Review 1 (2012)*.

In section 1036 of the Water Resources Development Act of 2007, Congress responded to these concerns by including recognition of a national policy fully supportive of EO 11988's requirements. The WRDA amendments stated:

*It is the policy of the United States that all water resources projects should reflect national priorities, encourage economic development, and protect the environment by (1) seeking to maximize sustainable economic development; (2) seeking to avoid the unwise use of floodplains and flood-prone areas and minimizing adverse impacts and vulnerabilities in any case in which a floodplain or flood-prone area must be used; and (3) protecting*

*and restoring the functions of natural systems and mitigating any unavoidable damage to natural systems.*

In explaining the purpose of this amendment, the chair of the Senate Environment and Public Works Committee stated:

*The bill will also establish a new policy that gives a stronger emphasis on protecting the environment and the natural systems that provide critical natural flood protection to communities. It also directs that there be a comprehensive study of the nation's flood risks and flood management programs. 153 Cong. Rec. S11974-02, 153 Cong. Rec. S11974-02, 2007 WL 2767477.*

### **C. USACE Ignored its Own 2009 Ruling that USACE Could Not Fund or Participate in the Very Floodplain Development Proposed in the LPP**

Before the 2009 flood, Fargo and Cass County commissioned a study of a “Southside Project,” separate from the project under federal study. The Southside project would open 20 square miles of agricultural floodplain south of I-94 to development. The Southside project would protect the floodplain located east of Horace (ND) from floodwaters that overflowed the banks of the five tributaries. (Horace and West Fargo were already protected from flooding by the Horace-Sheyenne diversion.) Once this protection was provided, Fargo could then rezone the land for commercial and residential development, handing a huge windfall to landowners. The Southside project proposed to mitigate the loss of floodplain by building internal storage in the floodplain itself. As originally conceived, the Southside project would be locally funded, but it would still require federal permits, and consequently it needed to pass a EO 11988 review.

In 2009, perceiving that the recent flood created the political atmosphere in which Senators Conrad and Dorgan could use their considerable power to expand the 1 billion dollar project even further, Southside project sponsors asked USACE to add the Southside project to the Fargo-Moorhead project. May 2009 Congressional hearings were scheduled for Fargo, and to prepare for the hearings, USACE arranged a meeting at the Senate Office building with ND Senator Byron Dorgan, and Governors Hoeven and Pawlenty. The attendance list included Senator Klobuchar, Representative Peterson and two North Dakota Congressmen, and eight key USACE representatives, including Major General Walsh.

A USACE “*Read-ahead*” (attached) was prepared to brief the participants on both the USACE diversion and local Southside project. The Read-Ahead went through at least seven drafts. The Read-ahead correctly found that the Southside project plainly violated EO 11988. It sought to promote development in the floodplain. There is plenty of land available for alternative development. The ReadAhead was presented to USACE officials, including the lead USACE engineer, and the Major General who was to testify at the hearings and before two Governors. All of the versions in the administrative record contain the following or similar statement:

*The Fargo Southside project as currently proposed would not be in compliance with Executive Order 11988 as a Federal project, because it facilitates development of over 20 square miles of undeveloped floodplain. Legislation would be necessary to exempt the Southside project from this*

*executive order. The Corps NED plan may include alternative measures to protect existing development in the area.*

This USACE ruling decisively rejects USACE's current position that the project complies with EO 11988. At the Congressional Hearings themselves Major General Walsh, reflecting the thrust of the preparatory meeting he had recently attended, testified that state and local government had an obligation to use planning and zoning to keep development out of the floodplain, stating:

*The first step in minimizing future flood damage is to restrict development - urban, rural, agricultural, industrial, and commercial - in the areas within the flood plain. We urge communities responsible for making land-use decisions to act wisely in this regard, and restrict development in areas that are known to be at high flood risk. If communities can limit development within the flood plain, the largest and most expensive issue related to flood risk management has been resolved before it ever has become a problematic issue. (emphasis added) AR0000656; see also Congressional Hearing 55140, pg.36, par.2-3 AR0000705.*

Senator Dorgan recognized the importance of this same policy. At the hearing, he stated:

*But rather than trying to provide protection for something that doesn't yet exist, the Corps would much prefer that if there is a risk to that area that they move elsewhere and build where there is not such a risk. Congressional Hearing, P 44. AR0000714*

The 2009 hearings show that USACE's EO 11988 determination sustains our position; that the USACE leadership, and even powerful Congressional advocates for Fargo, recognized that EO 11988 required Fargo to channel development elsewhere; and that they all had just been told that there was an EO 11988 violation in the Southside project.

This is just one more example of the USACE ignoring national policy to make one of its projects go, so that billions of dollars can flow through the St. Paul District. But by violating EO 11988, they are removing flood storage, when it is obvious that the Red River Valley needs more storage, not less.

#### **D. The Locally Preferred Plan Flagrantly Fails the 8-Step EO 11988 Test**

For several decades, all US agencies have been required to examine proposals to develop floodplain through what is called the 8-step process. The 8-step process is a mechanical, step-by-step method to scrutinize floodplain development proposals applying the legal constraints found in the EO and implementing regulations. Had USACE's St. Paul District followed the 8-step process, it would have become clear that the LPP fails utterly to meet the requirements of EO 11988.

**STEP 1 Identify Floodplain Impacted**— The project proposes to flood protect and open for development 50 Square Miles of Undeveloped Floodplain Which Holds Floodwaters and thus protects the entire basin downstream The Locally Preferred Project would remove 50 square

miles of undeveloped floodplain south of Fargo and Northwest of Fargo. The floodplain to the South of I-94 parallels the Red River and receives floodwaters that overflow the banks of the Red River and its tributaries. It is currently zoned and used for farming and provides critical floodwater storage during major floods. The floodplain to the northwest is also undeveloped, zoned agricultural, and provides about 30 square miles of floodwater storage during major floods.

STEP 2 *Identify and evaluate practicable alternatives to developing the floodplain.* The NED project recommended by USACE, but rejected by local interests, does not promote development of the floodplain and maintains the floodplain's natural storage function. It is therefore a practicable alternative to floodplain development.

Moreover, the USACE failed to recognize that Fargo's own comprehensive plan urges that development should not occur in these floodplain areas far from central Fargo. Indeed, Fargo's own comprehensive plan counsel's against development far outside the metropolitan area<sup>4</sup>. There is plenty of high ground available in the metropolitan area that can be developed without violating EO 11988. Fargo's official land use plan says

*[Fargo should] Quit building on the richest farmland in the world. Create a better planning and zoning base and work within our current limits to create better use of the land. Planning should be looking long term and creating a better structure and infrastructure. (Fargo Comp Plan 218)*

When this project was presented to Congressional Committees, MVP Walsh told the Committees that St. Paul District was committed to minimizing floodplain development, but that commitment was abandoned one year later, when the USACE allowed North Dakota to reject the NED project and substitute a "locally preferred" project which develops floodplain currently zoned agricultural.

Col Walsh said:

*The first step in minimizing future flood damage is to restrict development - urban, rural, agricultural, industrial, and commercial - in the areas within the flood plain. We urge communities responsible for making land-use decisions to act wisely in this regard, and restrict development in areas that are known to be at high flood risk. If communities can limit development within the flood plain, the largest and most expensive issue related to flood risk management has been resolved before it ever has become a problematic issue.*

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<sup>4</sup> Fargo's official plan states "Analyzing the existing City of Fargo we find that the current average density is just under 10 people per net developable acre..... For a comparison, density figures in some urban areas in this country can top 100 people per acre. These areas are not overcrowded and offer a tremendous quality of life for their residents. Fargo is a very low density city.." The Fargo Plan says Fargo will promote infill development, planned growth, and increasing density and vitality in its established neighborhoods. (Fargo Growth Plan, Appendix 1, page 72.)

We've included in our attachments to this memo, sections of Fargo's Growth Plan, its Comprehensive Plan and a number of newspaper articles, all of which recognize our position and totally contradict any contention that developing 50 square miles of floodplain by a city with a population of just over 100,000 is sound planning. Fargo doesn't need more development room: in fact it desperately needs to use less room.

Far from suggesting that Fargo needs to expand into the rural hinterland, Fargo's Comprehensive plan states that the City should:

*Promote Infill Develop policies to promote infill and density within areas that are already developed and are protected by a flood resiliency strategy. Control sprawl and focus on areas outside of the floodplain.*

The attached pages from the Fargo Comprehensive plan that show that the LPP actually subsidizes development that runs completely counter to Fargo's own comprehensive plan, which appears to have been drafted with actual planning expertise. The plan says:

- The downtown neighborhood has the potential to become more dense with infill development and incorporate a broader mix of uses including residential, neighborhood services, retail, and offices. (Comp plan page 35)
- Mixed use areas have the potential to become denser. (Comp plan page 35)
- Dense development lowers infrastructure costs because each mile of road or sewer line serves more development. Mixing uses also creates infrastructure efficiencies because it eliminates the need to provide parallel infrastructure systems to residential and nonresidential areas. (Comp plan page 38)
- Dense, mixed-use development generates more revenue and fewer costs for the city budget. Multifamily housing produces more tax revenue and requires less infrastructure and service costs per unit. Denser retail and office developments also produce more property and sales tax revenue. (Comp plan page 38)
- Dense development consumes less land and saves open space for agriculture and habitat. Studies from around the country have found that dense development alternatives consume between 10-40 percent less land. (Comp plan page 38)
- Dense mixed use development wastes less energy, especially gasoline through fewer vehicle trips. Comp Plan page 39)
- Analyzing the existing City of Fargo we find that the current average density is just under 10 people per net developable acre..... For a comparison, density figures in some urban areas in this country can top 100 people per acre. These areas are not overcrowded and offer a tremendous quality of life for their residents. Fargo is a very low density city.
- Fargo will promote infill development, planned growth, and increasing density and vitality in its established neighborhoods. (Fargo Growth Plan, Appendix 1, page 72.)
- [Fargo should] Quit building on the richest farmland in the world. Create a better planning and zoning base and work within our current limits to create better use of the land. Planning should be looking long term and creating a better structure and infrastructure. (Fargo Comp Plan 218)
- Controlling the expansion of infrastructure is one way that the city can assure responsible, sustainable growth in a fiscally sound way. Limiting land development to tier one within the next 25 years is important because it allows the city to increase the density of the city, create walkable environments, and fight the onslaught of sprawl.

Sprawl is expensive and demands unrealistic levels of expenditure, resource use, and pollution. (Fargo Growth Plan, Page 75.)

- One of the main concerns with rural non-farm development in the City's extraterritorial area is the proliferation of individual on-site septic systems for the treatment of sewage. (Fargo Growth Plan, Page 76.)

Fargo's growth plan estimates that "Recent development patterns in Fargo have resulted in approximately 266 acres being built on every year." Fargo Growth Plan Page 71 (attached). At that rate, if none of that was infill development and all every last acre of development took place in the floodplain south of I-94, it would consume about 8 square miles over twenty years.

In an article in the Washington Times, a Fargo city official is quoted as warning that the City is creating major financial problems should it continue its low density growth:

*We're basically incentivizing sprawl, but the people who are living in the core are paying the same tax rate of the people who are requiring a higher cost rate for delivery of services," Williams said. "So it really matters how you grow and where you grow."*

Fargo's growth plan admits that at a high rate of growth the city could absorb all of its growth until 2020 within the city limits. At a more modest rate, that growth could be accommodated until 2040. (Fargo Growth Plan, page 72). In 2009, Major General Walsh testified before a Congressional Committee holding hearings across the river. He said:

*The first step in minimizing future flood damage is to restrict development - urban, rural, agricultural, industrial, and commercial - in the areas within the flood plain. We urge communities responsible for making land-use decisions to act wisely in this regard, and restrict development in areas that are known to be at high flood risk. If communities can limit development within the flood plain, the largest and most expensive issue related to flood risk management has been resolved before it ever has become a problematic issue.*

**At those hearings, Senator Dorgan stated:**

*But rather than trying to provide protection for something that doesn't yet exist, the Corps would much prefer that if there is a risk to that area that they move elsewhere and build where there is not such a risk. Congressional Hearing, P 44.*

The Diversion's attempt to foster development in the floodplain violates these fundamental principles.

Another way of looking at this is to start with the proposition that the DA and USACE have both recognized that at most, Fargo is likely to need 266 acres per year of land for development. See USACE FEIS administrative record AR0001704-07. Fifty square miles is the area of the entire city of Minneapolis, a city that easily accommodated a Big Ten University and

a population more than four times larger than Fargo's population today.<sup>5</sup> See also FMM Feasibility Economics, February 2010. Fifty square miles is 32,000 acres. Moreover, the Fargo-Moorhead metropolitan area has plenty of additional land in which to expand above the floodplain on the Moorhead side of the river, and plenty of land for the infill development lauded as necessary by Fargo's own comprehensive plan. See Appendix P for Agency Technical Review (Phase 2), January 2010, AR 0002907. If Fargo were to confine its development to high ground above the floodplain, at the rate of 266 acres per year, it could accommodate all of that development for 20 years, without needing any additional land at all, and there are huge expanses of high ground in the Fargo-Moorhead area suitable for development.

Step 4 requires the EO analysis to "*identify Potential Direct and Indirect Impacts Associated with Floodplain Development.*" Step four is perhaps where USACE most critically, and obviously, failed. USACE has failed to recognize that federally subsidized development of the floodplain dramatically reduces storage capacity in the basin at the very time that USACE is asserting that flood risks are increasing, not decreasing. USACE completely failed to even acknowledge that thousands and thousands of additional acre-feet of water would be added to the basin's flooding problem by the floodplain development the LPP would induce.

Step 5<sup>6</sup> requires that, "*Where practicable, design or modify the proposed action to minimize the potential adverse impacts to lives, property, and natural values within the floodplain and to restore, and preserve the values of the floodplain.*" The NED plan does just that.

The designation of the NED project as meeting national objectives establishes that there is an alternative that reduces floodplain impact. In addition, the USACE eliminated features found in the Southside project to locate internal storage within the floodplain itself. Perhaps worse than omitting these items, however, is the assertion that "[t]he Corps also preserved and expanded floodplain values in the staging area, where development will be restricted." Failing to restrict development in the natural floodplain in Fargo, using that failure as a justification to violate EO 11988 because the development will occur anyway, and then saying floodplain values have been preserved by turning high ground into a man-made lake that has never been in the floodplain and that contains high ground farms and communities, is a perverse application of step five.

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<sup>5</sup> According to U.S. Census Bureau data, as of 2010, the population of Fargo was 105,549, and the total land area in square miles was 48.82. For comparison, at a similar land area of 53.97 square miles, the City of Minneapolis had a population of 382,578 in 2010. Functionally, removing an additional 50 square miles of largely undeveloped agricultural lands from the floodplain on the outskirts of Fargo would give Fargo twice the space of Minneapolis for roughly a quarter the population.

<sup>6</sup> When building in the floodplain is determined to be the only practicable alternative, EO 11988 requires that the agency "design or modify its action in order to minimize potential harm to or within the floodplain consistent with regulations issued in accord with Section 2(d) of this Order." EO 11988, § 2(a)(2). Oxbow EIS Comments. AR 56337.



By this reasoning, any project that pushes water off of a project proponent and onto someone else would meet step five, because those who wisely chose to develop on high ground have had their land converted into an unnatural floodplain. Floodplain is where nature wants water to go. USACE is not preserving or “expanding” floodplain by putting the water where USACE wants it to go.

**Step six — reevaluation of alternatives** — is meant to not only be a reflection of previously made decisions, but also to be an opportunity to take a look at new alternatives based on new information that has become available. Assistant Secretary Darcy conditioned approval of the LPP on a determination that the April 2010 projections of downstream flooding would be vindicated. When it became evident that the LPP produced large downstream impacts — a reality that would have come to light earlier had step four been completed — USACE should have taken a significant step back to satisfy step six, looking at options, including those it had ruled out at earlier stages, that removed less land from the floodplain. Instead, in a rush and with unshakable commitment to the LPP, USACE tacked upstream staging and storage onto the LPP.

**Step 7 requires the issuance of EO findings and a public explanation.** The findings requirement assures that there will be a transparent EO 11988 explanation that the public can identify as such. USACE failed utterly to comply with this requirement. The absence of findings here is merely a symptom of the ultimate insult to the environment inflicted by this project. In all of the cases described above in the footnote, parties are litigating relatively small invasions of the floodplain. A few acres assigned to a post office location, where no high ground is available. The placement of bridge abutments on less than an acre of land, so that a road can reach across water. The largest EO 11988 violation that we can find involves 5000 acres (about 7 square miles) along the Missouri River, but that was the completion of a project commenced decades before EO 11988 was issued. This project is seven times larger, and it was concocted decades after issuance of the EO, and following the Congressional passage of the 2007 sustainability provisions.

**\$ ECONOMY**



**Amenities and Beautification as an Economic Development Tool**

Invest in amenities and beautification as an economic development tool to attract creative individuals. For example, improve the streetscape and walkability of Fargo's main corridors.



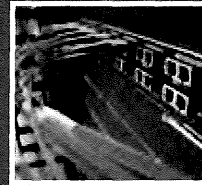
**Workforce Training**

Promote workforce training at the local universities and colleges.



**Entrepreneurship**

Create an environment of entrepreneurship through business support and public awareness campaigns.



**Technology Infrastructure**

Create strategies to increase the quality of Fargo's communication infrastructure. This infrastructure will give Fargo a competitive advantage for technology related businesses to locate in Fargo.



**Promote Connections and Infill within Strip Commercial Developments**

Promote redevelopment of strip commercial areas to increase the amount of retail space, density, and promote walkability to increase competitiveness of these shopping destinations.



**Attract and Retain Businesses and Qualified Workforce**

Provide incentives for developing specialized space where both the demand and public benefit are substantially demonstrated. For example, there may be a need for more "wet" laboratory space to strengthen the bioscience industry and provide more jobs.

**NEIGHBORHOODS, INFILL, AND NEW DEVELOPMENT**



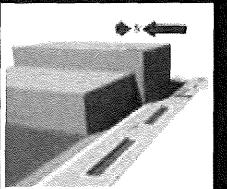
**Promote Infill**

Develop policies to promote infill and density within areas that are already developed and are protected by a flood resiliency strategy. Control sprawl and focus on areas outside of the floodplain.



**Historical Preservation**

Strengthen historical preservation incentives.



**Design Standards**

Develop a Commercial Design Zone District and continue to follow the Design Guidelines for Growth Areas of the City of Fargo (May 2003) for infill and new residential development. Improve quality of new housing by fostering strong relationships with the development and building community to promote dense, walkable communities with neighborhood centers.



**High Quality Affordable Housing near NDSU**

Develop higher quality affordable housing near the North Dakota State University campus.



**Quality New Development**

Support homebuilders and developers that construct high quality, energy efficient buildings, and require new development to meet site design standards that result in well-designed new neighborhoods.



**Housing for workforce and low income residents**

Pursue strategies to increase access to housing for workforce and low income residents.



**Neighborhood Support and Communication**

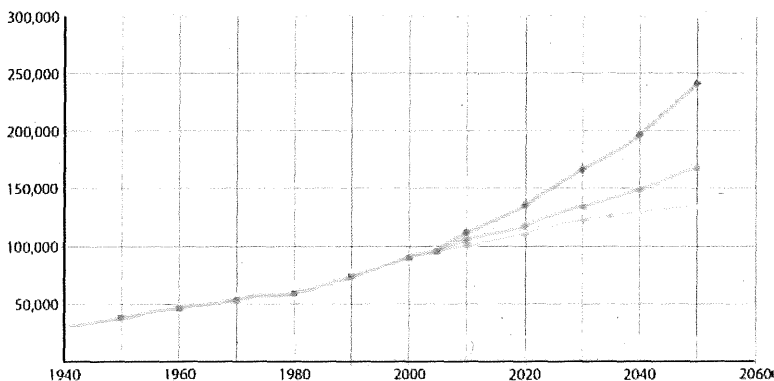
Improve communication between the City and established neighborhoods. Encourage neighborhoods to establish a vision and create neighborhood plans.

## Appendix One Growth Projection Data

Demographic projections show that Fargo will continue to have a healthy rate of population, household, and job growth into the future. There are varying projections of just how much growth and how soon but broad agreement that the city will continue to grow. This appendix provides some background information about the demographics of Fargo as well as acreage consumption figures for our growing city.

### Population/Households

The City of Fargo has a history of steady population growth. In 1960, the city's population was 47,000; by 1998, the Census estimate of city population was 86,718. The 2000 census data showed a population of over 90,500. The population in 2006 was over 93,000. This represents an average growth rate of over 2 percent per year. The chart below indicates the population growth from 1940 through 2006 and illustrates three separate projections of growth in the City of Fargo. The most conservative projection of the three indicates a growth rate similar to the past 70 years. The more aggressive projection shows a marked increase in the number of people residing in the city.



*Population Projections for the City of Fargo*

Planning for growth in the next 50 years must be done with the range of these population projections in mind. The planning assumptions listed later in this appendix are based on accommodating the highest growth projections but allowing for the slower pattern of growth without encountering sprawl and leap-frog development.

For the past 30 years the rate of households being created in the City of Fargo has been faster than the growth rate in the population. This is an indication that family size, or number of people in the household, is decreasing. In 1980 the average family size in the City of Fargo was 2.6 people per household. In 2005 that figure had dropped to 2.21 people per household. Population projection extended until 2035 indicate that the family size in Fargo will not change substantially, remaining at about 2.2 people per household. The projections show a decrease in family size in the Fargo/Moorhead metropolitan statistical area while the City of Fargo remains constant.

The type of housing being added to the city is also impacted by the degree of home ownership in the city. The City of Fargo has historically been below the national average for home ownership resulting in a larger than average number of rental units in the city. Home ownership is increasing in the city but at a very slow pace. Ownership numbers hover around 50% while the national average is closer to 65%.

### Acreage Consumption

Recent development patterns in Fargo have resulted in approximately 266 acres being built on every year. This number indicates the amount of acreage being consumed in a year to build new houses, stores, schools, industry, etc. This rate if consumption has been fairly constant for several years and has been adopted by this study as a reasonable rate of consumption for the future. This rate of acreage consumption corresponds to the lower population growth projects. The number of acres consumed each year would certainly increase if faster growth projections became reality.

The growth plan identifies two tiers of future development for the city. Tier 1 is sized to accommodate 25 years of growth at approximately 266 acres a year. Growth of the city should be limited to Tier 1 until that area is largely developed. Tier 2 is sized to accommodate growth for the following 25 years. Because there is more land area, within the extra-territorial area, in the south of the city, more land has been allocated in the southern portion of Tier 1 than in the northern portion.

### Density Discussions

Population density is a way to track how the land in the city is being used and how efficiently the city is being planned. Density is usually measured in people per acre, or how many people live on an acre of land. Since we can only live on a portion of the available land the most fitting density figure is people per net developable acre. Land that is dedicated to roadways, drainage, utilities, parks and other civic uses is subtracted from the total available land to arrive at an acreage that can be built on; the net developable acreage.

Density figures are significantly influenced by two counterbalancing factors: the number of housing units built per acre and the number of people occupying each housing unit. Family size has been steadily decreasing in the United States for the past 50 years. Average family size in the U.S. is approaching two people per family. That is a major decrease in family size since the 1940's. Fewer people in a house reduces the overall density.

Consequently, to build more energy efficient and sustainable cities it is necessary to build more housing units per acre than was the case in the past.

This decrease in density is felt throughout the city. In our current development model this decreased density has added to sprawl and to a dramatic increase in traffic, gasoline consumption and pollution generation. Smaller family size has also impacted our school systems. In the past a typical elementary school could be filled by the families in an area of about 640 acres (1 square mile). It now takes approximately 1920 acres (3 square miles) to fill that same size elementary school. Reductions in density are very costly and expensive to a city.

Analyzing the existing City of Fargo we find that the current average density is just under 10 people per net developable acre. This is an average. The figures vary from about 4 people per acre to almost 15 people per acre in various parts of the city. For a comparison, density figures in some urban areas in this country can top 100 people per acre. These areas are not overcrowded and offer a tremendous quality of life for their residents. Fargo is a very low density city.

In order to plan for a more sustainable city that is less expensive to operate the decision was made to increase the density goals for the ET area covered in this plan. The increase is a fairly modest one but one that extends the number of years of growth possible within the existing ET. The targeted density goal for the extra-territorial areas of Fargo has been set at 12 people per net developable acre. The accompanying chart illustrates the potential differences as a result of this modest increase in development density.

The chart indicates that the city could continue to grow rather substantially within the current city limits. At the faster growth rates indicated on the previous page, the city could absorb all of its growth until 2020 within the city limits. At the slower growth rates that growth could be accommodated until 2040. Of course, no city utilizes 100% of its developable land and Fargo is no different. There is however a substantial amount of land still to be developed within the city limits. The

higher density rate of 12 people per acre allows the city to handle a significantly greater amount of growth. At the higher density the City of Fargo could extend growth in the Tier 1 extra-territorial area until 2045 utilizing the faster population growth estimates and to 2060 using the slower population growth estimates. The build out of the city to include all of the extra-territorial area could be extended to 2060 at the fastest population growth estimates and well into the 22nd century at the slower population growth rates.

One current trend that might impact the overall density of the city is the increased demand for housing in the downtown. A number of condominium units have been constructed in downtown Fargo as a response to increased interest in living in an active downtown. This new housing trend will not substantially change the average housing density of the city but it does help when housing is added to existing buildings or built on existing lots in the developed portions of the city. This is a trend that the city government and planning staff should encourage and facilitate.

<b>Section of Fargo</b>	<b>10 people/acre</b>	<b>12 people/acre</b>
	<b>Population</b>	<b>Population</b>
Existing City Limits	134,700	134,700
Tier 1 ET Area	69,800	85,500
Subtotal (City + Tier 1)	204,500	220,200
Tier 2 ET Area	52,600	64,500
Total City	257,100	284,700

*Impact of Density on Population Growth Accommodation in the ET*

## Growth Plan Assumptions

In addition to the increased density targets mentioned above this Growth Plan has used several assumptions to develop the approaches to planning and the standards for development for the extra-territorial areas of the city.

One key set of assumptions for the Growth Plan involves the adoption of land use designation goals for the city. These goals set the relative percentage of the city that will accommodate each use. The adjacent chart shows the various land uses being considered in this growth plan and their existing percentage of the city. These land use percentages were established by analyzing the existing use patterns in Fargo and comparing them to a series of similar cities throughout the Mid-west. The land use percentage goals were used to allocate an appropriate amount of land within the extra-territorial areas of the city to the various uses. As an example, 40% of the available land in the extra-territorial area has been designated as low to medium density residential land.

Land Use Designation	Existing	Goal
Low-Medium Density Residential	16 %	40 %
Medium-High Density Residential	4 %	8 %
Commercial	6 %	7 %
Industrial	5 %	8 %
Parks	6 %	10 %
Public/Institutional	39 %	27 %
Undeveloped Land	24 %	0 %

The changes from the existing percentages to those in the goal section are worth discussing.

*Land Use Goals for the Growth Plan*

- The low to medium density residential areas of the city are a relatively small 16% of the total city compared to the goal of 40% of the city. This small percentage is due to several conditions, two of which are significant. One; the fairly large amount of land that is currently undeveloped within the city limits is designated largely for residential uses and is developing in that way and two; our sister city of West Fargo has been almost entirely developed as residential land skewing the use percentages for both Fargo and West Fargo. As the metropolitan area grows these differences are disappearing.
- Fargo has a great park system but it is advantageous to increase the total amount of the city dedicated to parks and recreation from 6% to 10%. This will naturally increase as the city grows because of the need to incorporate new flood control and drainage systems throughout the city.
- The relatively high percentage of public and institutional land should shrink as the city grows. The major public and institutional uses such as North Dakota State University and Hector International Airport already exist within the city and are not expected to increase their holdings substantially in the future.

One additional planning assumption includes the adoption of mixed use as the standard for each land use category within the city. This will allow for a more efficient and livable city to develop. The assumption is that mixed use and type developments allow for a reduction of transportation and utility costs and a resultant reduction in pollution.



## Appendix Two

### Utility Issues for Growth

Expansion of a city, as accommodated in this growth plan, always places tremendous burdens on the infrastructure elements of the city such as water, sewer, roads and power services. The construction of new utilities is initially very expensive while the lifetime maintenance of the infrastructure is a major expenditure for the citizens of any city. Most of our cities are experiencing significant problems with aging utilities and are finding it necessary to increase budgets to provide the level of services desired by its citizens. The recent collapse of the I-35 bridge in Minneapolis is a stark reminder of the aging of our infrastructure.

Infrastructure development in Fargo is as expensive as in any other city. Besides the typical infrastructure of water, sewer, roads, and power, Fargo has a significant investment in flood protection. Since 1997 flood protection has become increasingly important to the development of this city. All of this infrastructure is expensive to maintain once it is built and is a cost to the city forever. Because of these factors, the development of utilities is closely linked to the tiered approach of the Fargo Growth Plan. Controlling the expansion of infrastructure is one way that the city can assure responsible, sustainable growth in a fiscally sound way. Limiting land development to tier one within the next 25 years is important because it allows the city to increase the density of the city, create walkable environments, and fight the onslaught of sprawl. Sprawl is expensive and demands unrealistic levels of expenditure, resource use, and pollution.

Sprawl, the continued expansion of the city in low density developments places huge financial burdens on the city. It is fiscally irresponsible for the city to allow the costs of infrastructure to rise on a per capita basis. The goal of good planning is to create healthy, efficient places to live, work and play which is not possible if we give in to the pressures of sprawl. Increasing the usage of the existing infrastructure system before expanding it is a realistic approach for city growth.

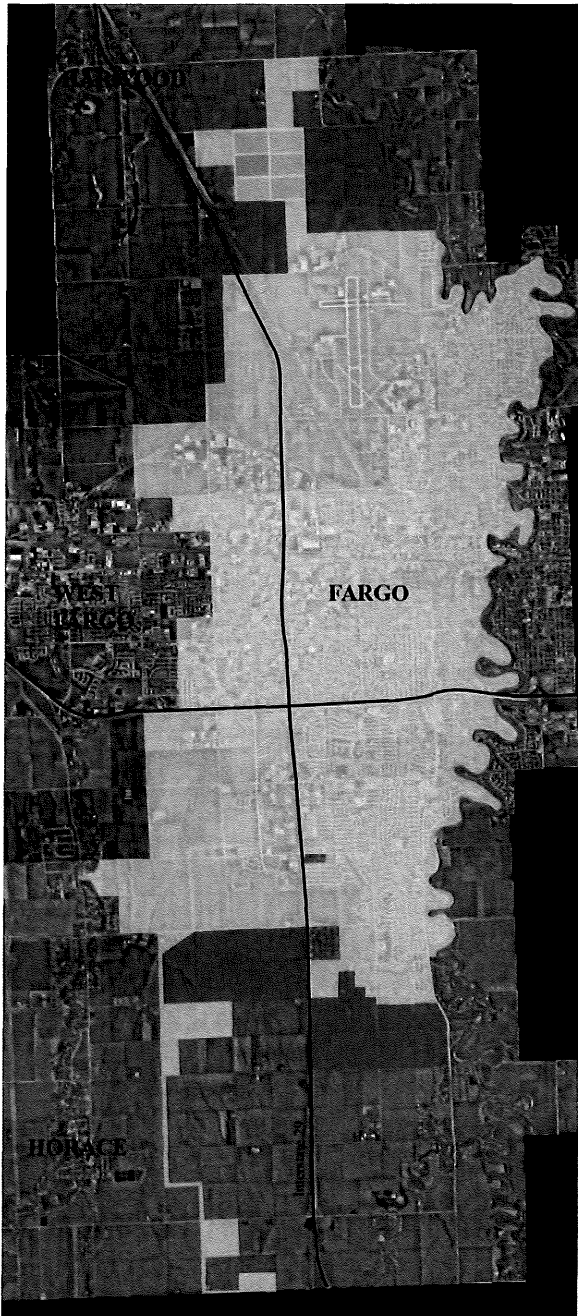
Limiting the expense of the infrastructure system while providing the services desired is an ongoing challenge for the city. Fargo has been very successful with some early attempts at developing alternative energy sources. The city is involved in generating power utilizing the wind and has a unique program for generating energy from the methane gas extracted from the city land fill. Other alternatives to the traditional infrastructure systems should be continued to be explored and developed. The city has a great start toward a more sustainable and livable future.

We will review briefly the challenges faced in developing the infrastructure of the city, particularly the water system, the sewer system and the power system. Growth in each of these utility systems has an impact beyond the physical area being developed.

#### Water

Development of potable water sources for the City of Fargo is an important issue being faced by the city. Planning is ongoing to extend the water system significantly to the south with new sources





*Blue areas indicate the infrastructure development area for 2015.*

and treatment facilities being planned south of 52nd Avenue South. These planning efforts are occurring at both the engineering level and the political level. The needs of the water systems have been assessed and now the political discussions about funding the future water system expansion are occurring.

The City of Fargo currently provides water services to all of the incorporated city and has plans to extend water service both south and north by 2015. The planned extensions are illustrated on the following map. Development of these areas is directly limited by the ability to provide water services. Careful coordination between the various departments of the city is required to provide the necessary services and to meet the standards set forth in this growth plan.

Expansion of the city to the north is fairly straightforward from a water service standpoint due to the location of existing city water infrastructure. Expansion of the city to the south, into undeveloped land is also fairly straightforward but requires additional water system development as mentioned above. Expansion of the city into rural areas that have already been developed with housing or other forms of development present a more complicated situation. All rural developments within Fargo's extraterritorial area are required to install water pipes that meet City of Fargo standards. This ensures that residents of these areas will not need to replace water pipes in the future when they become part of the City's water service area. However, these rural developments exist within the service area of the Cass Rural Water Users (CRWU) and receive their water service from them. The CRWU and the City of Fargo have been working closely together to transfer water service responsibilities as the city limits are extended.

One of the issues that has been discussed and worked on with regard to urban growth into the CRWU service area is the fact that the rural water service does not have the water capacity to provide fire protection. This requires the extension of city water service and installation of fire hydrants into areas where residents have already paid for rural water service. This is one indication of the necessity for continued collaboration between Fargo and the CRWU as the urbanized portion of the city expands.

Please refer to the Fargo Growth Plan of 2000 for a more in-depth discussion of the CRWU and the challenges encountered with existing rural subdivisions in the southern portion of the ET.

#### **Sewer**

The areas that are provided with City of Fargo sewer service at this time correspond to the city limits early in 2005. Sewer service has not been provided to the southwest annexation adjacent to the city of Horace. One of the main concerns with rural non-farm development in the City's extraterritorial area is the proliferation of individual on-site septic systems for the treatment of sewage. Some areas of rural development are served by the Southeast Cass Water Management District, via a sewage pipe that carries wastewater into the City's sewage collection and treatment system. However, property owners are only required to hood into this system if they are within 200 feet of the line.

The Fargo Land Development Code (LDC) prohibits the installation of individual septic systems within the 15 year urban



service area. In other words, if planning studies show that a particular area is likely to be supplied with municipal services within 15 years, individual septic systems and drain fields are not permitted. The reasons for this include:

- Private investment in a septic system and drain field results in opposition to the special assessments that are charged to property owners for the extension of city services. This is especially noticeable in areas where the drain fields are relatively new, and property owners have not experienced failure of the system.
- The proliferation of drain fields is an environmental concern in much of the extraterritorial area due to the heavy clay soil, which causes drain fields to fail more frequently than in porous, loamy soil.
- Individual septic systems and drain fields require lot sizes of at least 40,000 square feet. Most rural lots are even larger than this. This results in lot widths that are wider than typical urban lots. Wider lot frontages generally equate to more expensive special assessments, since these costs are assessed on either “front foot” basis (primary benefiting properties) or a square footage basis (secondary benefiting properties). This, combined with the first item listed above, generally causes property owners to oppose the formation of special assessment districts for extensions of urban services into these areas.
- The large lot sizes necessary to construct septic systems are in direct conflict with the density goals set forth for the ET area and in direct conflict with the best practices in sustainable development.

Continued southerly development will result in greater need for the installation of lift stations to move wastewater to the sewage treatment plant. This will increase the cost of providing sewer service to these areas. This cost not only affects the extension of city sewer services into annexed areas, but also the extension and expansion of Southeast Cass sewer services into rural development areas. Ultimately, the expansion of the rural sewer service affects the City of Fargo because the rural sewage is treated by Fargo’s wastewater treatment plant.

A very important aspect of this Growth Plan is the establishment of the 15 year urban service area. This tool will guide the City of Fargo as to where urban services will be provided in a short enough time frame that installation of individual systems would create future problems. Policies on handling the 15 year urban service area or its extension into the entire ET will be developed outside the parameters of this plan.

### Power

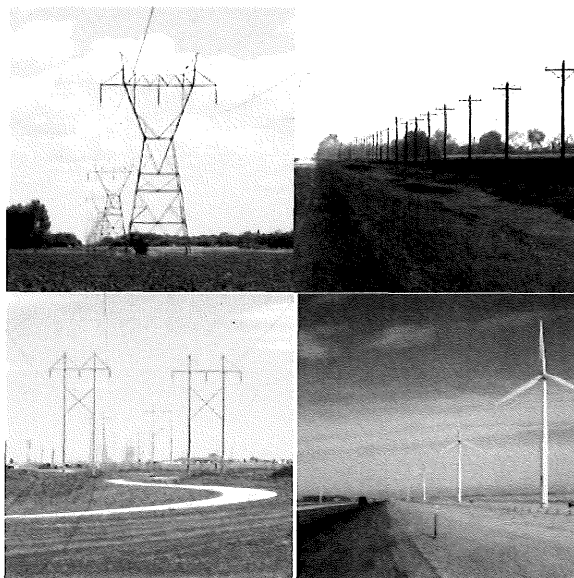
Maps on pages 18 and 19 of the Growth Plan show the location of existing major power lines that exist in the extraterritorial area of the city. The most obvious issue for the Growth Plan is the proliferation of above-ground electrical lines in the southwest growth area. Development constraints are mainly associated with the transmission line facilities. These constraints generally include the prohibition of

buildings within the power line right-of-way, plant height limitations both in and adjacent to the right-of-way, and ground elevation changes under the power lines.

The land use plan includes greenways and bikeways within and along most of the major transmission lines. This open space use intends to take advantage of these utility corridors and helps provide a positive use with a corridor that is typically viewed as a negative physical feature. The corridors can help create connections between all of the neighborhoods of the city and provide corridors of habitat for animals that link to the natural habitat along the rivers.

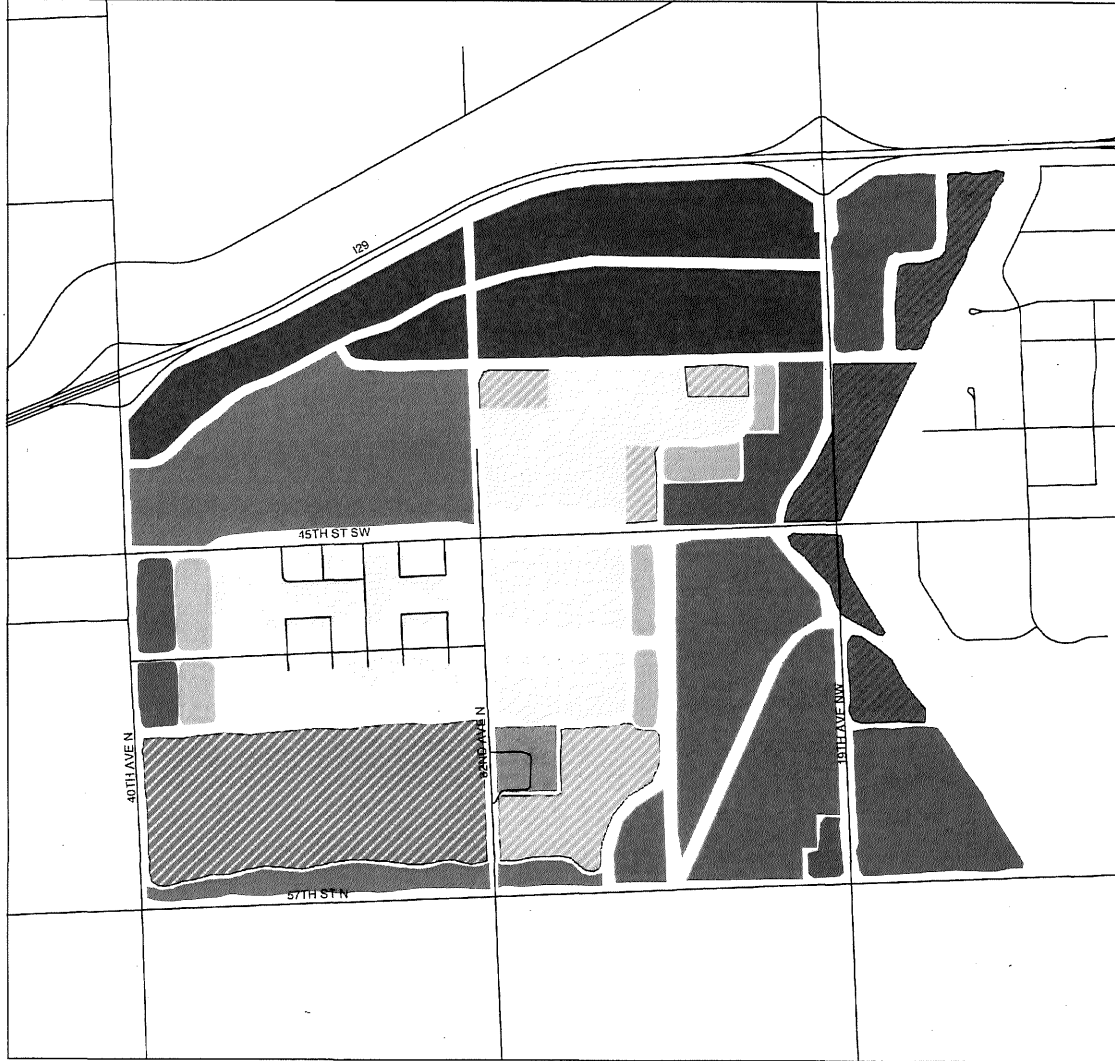
Discussions with Cass County Electric Cooperative have indicated their willingness to work with the City of Fargo to place as many of their lines underground as possible as development of the area takes place.

Discussions also need to take place about the possibilities and strategies for wind generation of power within the city limits of Fargo as a bold step toward the future sustainability of the city.

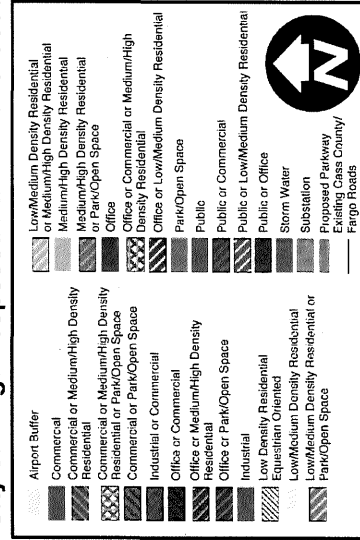




# Northwest Area Plan



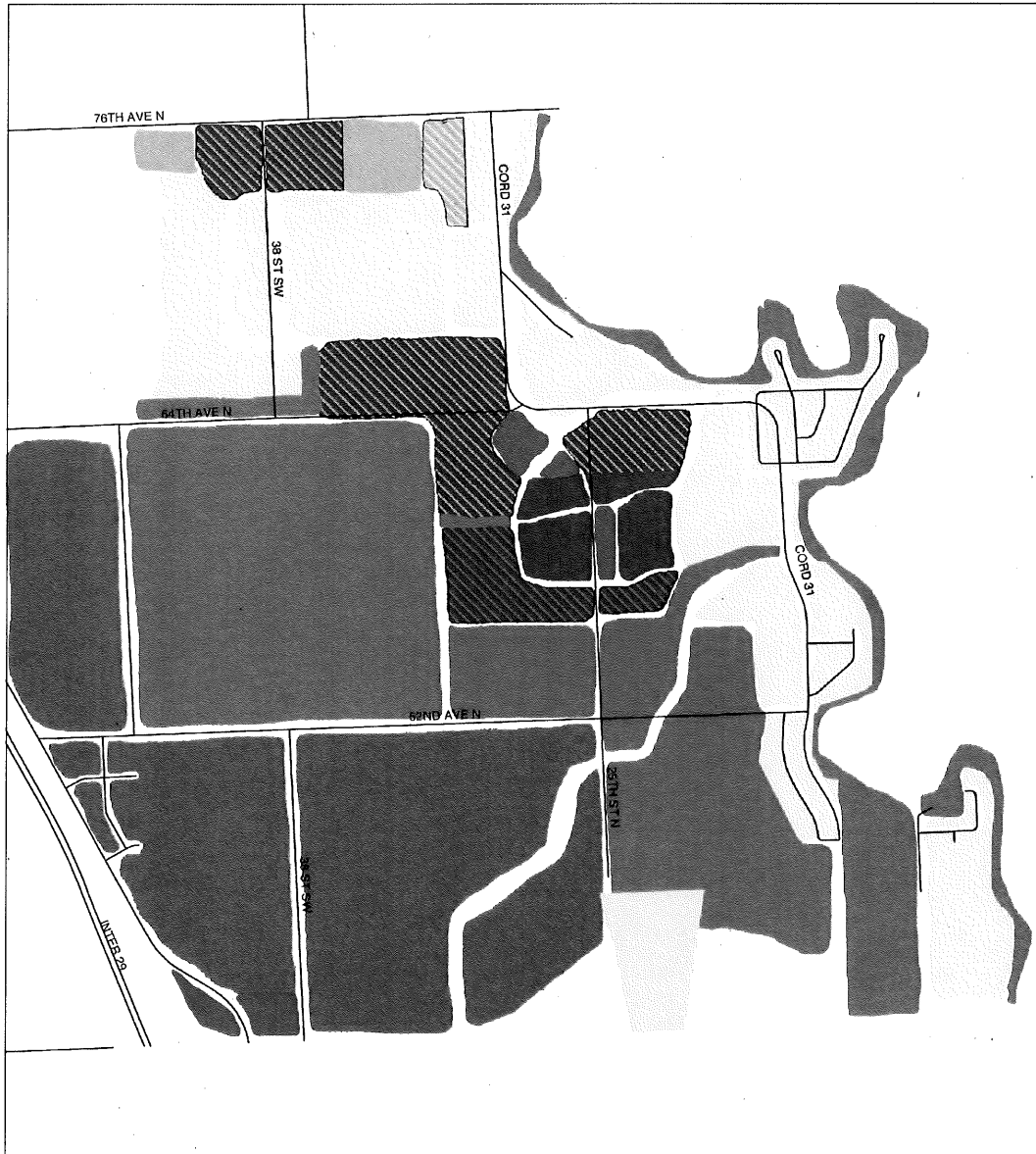
## City of Fargo Proposed Future Land Uses



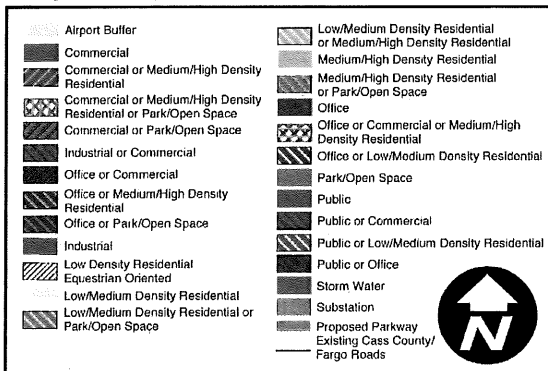
### Appendix Three Growth Plan Maps from 2001

Appendix three contains the maps associated with the 2001 Growth Plan for the Urban Fringe and Extraterritorial Area of the City of Fargo. These maps are included to provide some continuity to the successive plans and to enable those interested to ascertain which, if any, changes have been made to property close to the developed portions of the city. For additional information about these maps or the standards that they refer to please see the 2001 Growth Plan.

# North Area Plan



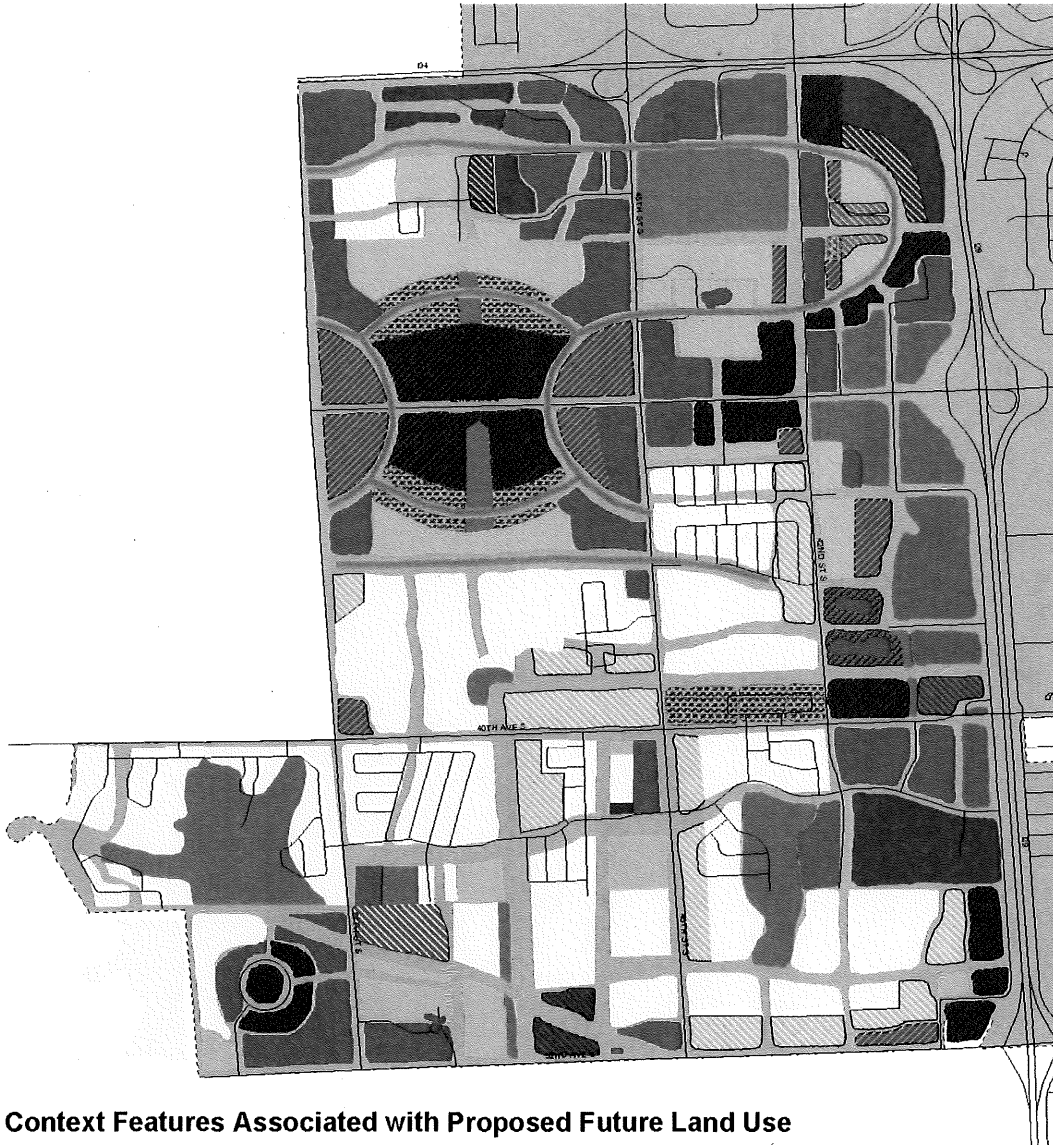
## City of Fargo Proposed Future Land Uses



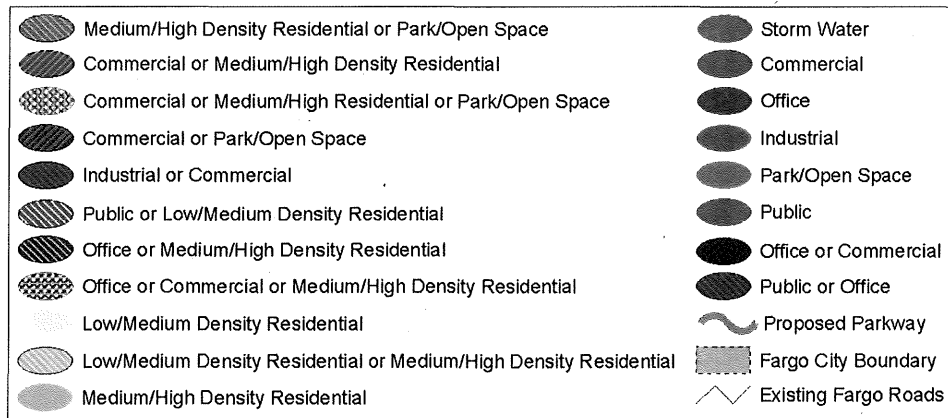
Map prepared by the City of Fargo Planning Department. The map is for informational purposes only and does not constitute a contract or any other legal instrument. The City of Fargo is not responsible for any errors or omissions on this map.



# Proposed Future Land Use in Southwest Fargo, July 2003

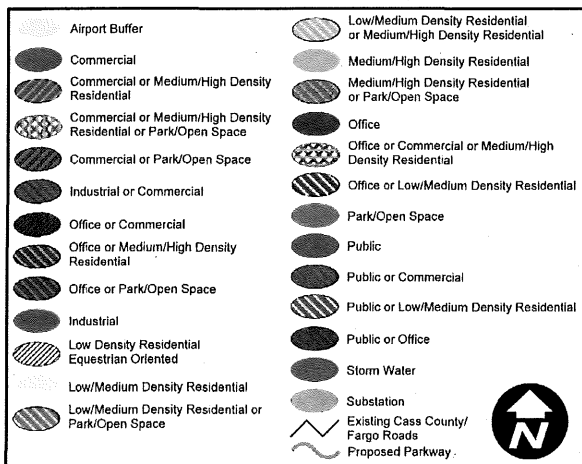


## Context Features Associated with Proposed Future Land Use



Map is subject to change without notice. The map is for informational purposes only and does not constitute a contract or warranty of any kind.

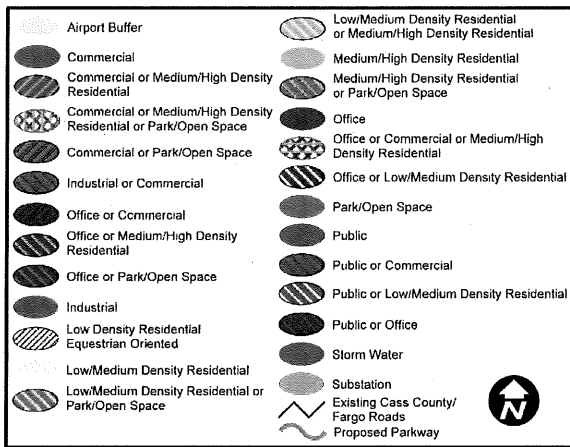
## City of Fargo Proposed Future Land Uses 70th Avenue Bridge Version



Map prepared by the City of Fargo Planning Department, 2011. All rights reserved. No part of this map may be reproduced without the written permission of the City of Fargo.

# City of Fargo Proposed Future Land Uses

76th Avenue Bridge Version



Affidavit of Charles Anderson

STATE OF MINNESOTA )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

Charles Anderson, being duly sworn under oath, states as follows:

1. I am a licensed engineer in the State of Minnesota since 1977 and hold a bachelors degree in civil engineering.

2. My primary field of practice and expertise has been working with watershed districts and water resource management. I am currently a Senior Professional Engineer of the water resources department within Widseth Smith Nolting (WSN). Our department specializes in water resource management relating to flood control, storm water, and water quality. A copy of my resume is attached to this affidavit. I have extensive experience in drainage and flood control projects.

3. My Minnesota work in flood control involves, among other things, extensive study of the use of distributed storage in the Red River Valley, work for watershed districts in connection with flood control and mitigation, and on comprehensive strategies to manage flooding in the Red River Valley. I served on the Technical and Scientific Advisory Committee ("TSAC") for the Red River Basin Flood Damage Reduction Work Group.

4. I've been asked by the Richland-Wilkin Joint Powers Board to provide advice on potential alternative approaches to the current design proposed by the Fargo-Moorhead Diversion Authority. In preparation for that work, I have reviewed a variety of materials obtained by the Diversion Authority from the US Army Corps of Engineers. I obtained from the US Army Corps of Engineers its flood flow modeling software and data and ran a variety of tests to simulate the impact of upstream distributed storage and its ability to reduce the impact of the project on Richland and Wilkin Counties.



5. In response to a mandate from the Minnesota Legislature to resolve gridlock over state permitting of flood damage reduction projects in the Red River Basin, the State of Minnesota and a variety of stakeholders participated in the mediated settlement process to resolve disputes over the content of a generic Environmental Impact Statement entitled Environmental Impact Study of Flood Control Impoundments in Northwestern Minnesota. The mediation process resulted in a "Mediation Agreement" signed in 1998. The agreement was "intended as the framework for a new, collaborative approach to implementing both flood damage reduction and natural resource protection and enhancement in the Red River Basin in ways that will benefit all Minnesota's citizens." The keys to this new approach were "clearly identified goals, comprehensive watershed planning, early consultation and collaboration on flood damage reduction projects among stakeholders, and a cooperative approach to permitting of those projects." The agreement was signed by the United States Army Corps of Engineers.

6. I believe that if the Fargo-Moorhead proposal had followed the process and implemented the policies adopted by the Mediation Agreement, the project would not have taken its current form. The Mediation Agreement contains a process designed to minimize impacts, maximize environmental benefits and economic benefits, and to make these objectives part of the process from the very beginning. By requiring plan development to pass through the flood damage reduction workgroup, projects are forced to include a Basin wide perspective that assures that scarce resources are being used effectively to maximize both local and basin wide benefits.

Among the important principles and policy objectives identified in the Agreement which should more effectively be implemented in this project are the following

- a. Water resource problems should not be passed along to others. A solution for a

watershed should not create a problem upstream or downstream.

- b. Water should be stored/managed as close to where it falls as is feasible and practical.
- c. A systems approach should be used to manage the timing of flow contributions from multiple minor watersheds.
- d. Promote the acquisition and permanent removal of flood-prone structures and establishment of greenways within the 100-year flood plain.
- e. Projects should be consistent with comprehensive watershed management planning.
- f. A comprehensive watershed planning process is essential for achieving the flood damage reduction and natural resource goals set out in this agreement.

7. The Fargo Moorhead Diversion Project proposed by the Corps and currently under environmental review is a seriously flawed plan from a basin wide perspective. Red River Basin hydrology is extremely complex for a number of reasons including its northward flow and the extremely flat topography of the Lake Plain Area. Flooding is widespread, involving virtually the entire Red River Mainstem and all of its tributaries.

8. The Corps proposal ignores the rest of the basin in its effort to provide an ideal solution for the Fargo Moorhead area. Unfortunately, its preferred option of diversion (a conveyance improvement similar to channelization) tends to move flooding problems downstream. This strategy can work well near the downstream end of a basin (like the Winnipeg Floodway) but should be avoided, if possible, in the upper reaches of a basin.

9. As the downstream impacts of the diversion became more apparent the Corps, to its credit, has made, or proposed, significant changes to the plan. Their preferred strategy

however, diversion of flood waters around the cities, continues to be the centerpiece of the project being considered for implementation.

10. The project currently being considered is a modified diversion plan. The central element is diversion. An upstream dam (staging area) is proposed to mitigate the downstream impacts of the diversion. Increased flows through town are proposed to minimize the impacts of the staging area.

11. The Joint Powers Authority has advised me that one of the purposes of the project is to reclaim natural floodplain for future development. If that is the case, from an engineering standpoint, conducting development behind levees is never as sound as locating that development on high ground. Developing land which is at an elevation below the base flood exposes that development to an unnecessary risk, even if protected by levees and diversions. For that reason, the mediated settlement agreement calls for undeveloped floodplain to remain undeveloped as greenways, open spaces, or potential additional flood storage. Second, the attempt to protect floodplain with levees or diversions can exacerbate upstream and downstream impacts by impairing the natural storage function of the floodplain.

12. I have approached my review of this project from two perspectives. First, I have considered whether there is a superior base concept that conforms to the principles of the mediated settlement. In other words, I considered, what central concept would be chosen had those principles been applied in the first instance. Second, I have considered whether it is possible to improve the existing project, by making incremental changes to that project.

## **Alternate Base Concept**

The Red River Flood Damage Reduction Work Group (Anderson and Kean, 2004) set forth a "Framework" for a coordinated approach to address flooding and related issues in the Red River Basin. A wide variety of flood damage reduction strategies were described, which fell into four broad categories: 1) Reduce flood volume; 2) Increase conveyance capacity; 3) Increase temporary flood storage; and 4) Protection/avoidance. The measures within each category were evaluated for their impact on mainstem flows, which depends on their location within the watershed. For simplicity, location is described as "early", "middle", and "late" timing zones relative to their contribution to peak flows at the international border. The mainstem impacts of each measure are summarized in Table 1 of the above referenced report. The Fargo Moorhead Metropolitan Area is within the middle zone and its upstream drainage area is predominantly within the late zone.

In developing a flood damage reduction strategy for any particular area, primary consideration should be given to those measures that would work toward, rather than against, basin wide flood damage reduction.

Developing a flood damage reduction strategy for Fargo Moorhead is a complex process. Consideration must be given to many factors, not all elements of which will be covered here. But it is important to point out how an alternate approach would differ from the approach taken. The Corps is proposing one measure (diversion) as a total solution that *does impact* other areas. To compensate, they have added measures to mitigate or eliminate those impacts.

An alternate approach would be to include a combination of measures to provide a total solution. First, include those measures that reduce flooding in other areas of the basin as well as the Fargo Moorhead area. Second, include those measures that reduce damages in the Fargo

Moorhead area without adversely affecting other areas. Last, add measures that will adversely impact other areas but are essential to reach a total solution.

### **Upstream storage**

Constructing flood control storage upstream from Fargo is a measure with basin wide benefits. With proper design and operation flood water impoundments will reduce local damages within the upstream watershed while reducing mainstem damages upstream, at, and downstream from Fargo Moorhead. The Red River Basin Commission has outlined a plan in its Long Term Flood Solutions study that would reduce peak flows on the Red River Mainstem by 20%. Estimates of the cost of implementing a comprehensive long term distributed storage program upstream of Fargo range from \$200 to \$400 million. The Corps' analysis of benefits neglects the fact that upstream distributed storage provides a benefit to the subwatersheds where they are located. The result is that distributed storage provides a local benefit in local flood situations not afforded by a large staging and storage located near Fargo.

This level of reduction would reduce the 100 year flood stage at the Fargo gage by at least 1½ feet. The Corps rejected that impact, because it does not offer a total solution, its implementation is not assured, and it is less effective during larger floods. It is true that a 1½ foot reduction will not nearly meet the current Fargo stage reduction goal and therefore is only a partial solution. However, it is also possible that greater than 20% reduction will ultimately be achieved. 20% is a reasonably foreseeable goal. The basin wide distributed storage effort should not have been dismissed. The contention that the planned distributed storage would have less flow reduction during larger floods, such as 500 year, is unsupported. The effect on large floods depends on design. Current design philosophies suggest that the effect on 500 year floods will be similar to that for 100 year floods.

The Corps of Engineers has used a very conservative estimate of the impact of distributed storage on Red River flows. The impact of distributed storage depends upon design, location, and operation. We conducted a hydrological review of potential distributed storage and found effectiveness that significantly exceeds the estimates used by the Corps.

#### **Evacuation of structures from the floodplain**

Evacuation of structures from the floodplain has no adverse impacts beyond the project area. However, its application is limited by practicality to only the most flood prone areas. Removing structures within those areas not only eliminates their potential damages and reverses the negative consequences of past development of the flood plain. It also makes it easier to protect the remaining areas. Commendably, this measure is being aggressively implemented on both sides of the river. However, the impact of this strategy would be undercut if development expanded into newly protected areas of the currently undeveloped floodplain.

#### **Raise the levee protection level**

Urban levees increase upstream and/or downstream flood levels due to loss of natural flood plain storage. Therefore the levee protected area should be kept as small as possible. That said, levees are a practical flood damage reduction measure that has generally been considered acceptable, especially if the loss of storage can be mitigated. Raising the existing levee levels allows more water safely to pass through town.

#### **Setting back existing levees**

This often can be done in conjunction with abandoning floodplain areas. Although this will tend to increase downstream flows, it is only a partial restoration of floodway capacity lost to existing levees. Like raising levees, this will allow more water to safely pass through town.

## **Diversion**

Adding diversion capacity (or other conveyance improvements) increases downstream flood flows more than any other flood damage reduction measure. Therefore, unless the downstream flood risk is very small, it should be considered a measure of last resort. The design of this project would be markedly different if diversion had been added to the project only as a last resort.

## **Alternate plan**

In spite of the individual drawbacks of the above measures, the optimum strategy may be a combination that includes them all.

- a. The LTFS 20% flow reduction strategy using distributed upstream storage should be a foundation element which reduces, but does not eliminate, the need for other measures.
- b. Raising the existing levee protection level and setting back existing levees should be done in combination to manage relatively frequently occurring flood flows. The permanent levee system should, by itself, provide a level of protection as high as practical corresponding to flows currently associated with 10 – 25 year peak flow range. In that upper range, there is a reasonable tradeoff between peak flow and flood duration. The loss of natural flood plain storage will tend to increase peak flows, but will decrease flood duration. The increase in peak flows during frequent floods is unlikely to cause major urban or infrastructure damages. The reduced duration of spring flooding will generally be considered an agricultural benefit.
- c. Staging area storage should be used during larger floods to provide the next level of protection as well as mitigate the downstream impacts associated with the loss of natural flood plain storage. The staging storage capacity would be used exclusively for peak trimming. If for example, levees protected to a 20 year level, staging storage would hold peak flows constant at

the current 20 year rate, up to a 100 year flood event. This will benefit Fargo Moorhead and areas downstream. When used in combination with other measures, it is possible to locate a staging area storage that does not reach into Richland and Wilkin Counties.

d. Diversion should be included as a measure of last resort to reduce the potential for catastrophic damages during larger events. Because it will be infrequently used, it can take different forms than the diversion channel that the Corps has proposed. The goal is to allow a way for water to move around the cities when and if the capacity of the other measures is exceeded. The current developed area extends almost completely across the floodplain. There must be provision to safely pass reasonably foreseeable major flood flows even though doing so may increase downstream flood damages. One method would be to leave open a natural overflow area. Another would be to excavate a diversion channel. Either would function much like an emergency spillway system. Creative multipurpose options should be considered. For example, a diversion channel on the Minnesota side could double as a below grade, controlled access, TH75 bypass highway that would be an improved traffic corridor functioning at all times up to a 100 year flood.

#### **Improving the current Federally Recommended Project**

As I have stated, the intent of the above discussion is to add a basin perspective that appears to have been marginalized by the Corps' planning process. I have also been asked to recommend approaches that involve further refinements of the currently recommended project, which may be a more expeditious pathway to an optimum solution than would be a fresh restart. I have recommended the following refinements which, among other benefits, achieve the goal of avoiding downstream impacts, while locating any necessary staging area entirely within the




counties that are sponsoring the flood control project. Those refinements should include the following:

1. Fully account for and include the Long Term Flood Solution 20% Flow Reduction Strategy in the Fargo Moorhead Flood Damage Reduction Plan. Even though it may be implemented by other than the Corps, its potential benefits should not be ignored.
2. Increase the permanent levee system level of protection. This should correspond to at least 17,000 cfs, preferably up to about 20,000cfs.
3. Move the staging area dam alignment as far north as possible to minimize the loss of natural floodplain storage.
4. Use storage in the staging area only when the levee protection level is exceeded.
5. Provide enough storage capacity in the staging area to control Red River flows to the levee protection level during a 100 year flood.
6. Use the diversion only when the storage capacity is exceeded.

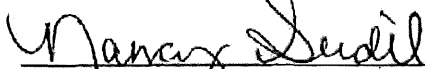
I strongly recommend that before work on any environmental review is completed that a detailed operational plan should be prepared that describes exactly when the staging and storage and diversion will be utilized.

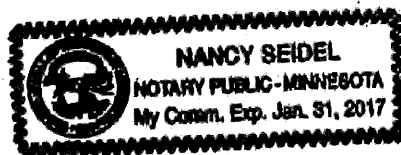
**FURTHER YOUR AFFIANT SAITH NOT.**

Dated: May 15, 2013

  
Charles Anderson




Subscribed and sworn to before me  
this 15<sup>th</sup> day of May, 2013.

  
Nancy Seidel  
Notary Public





Alexandria  
610 Fillmore Street  
PO Box 1028  
Alexandria, MN 56308-1028

320.762.8149   
320.762.0263   
Alexandria@wsn.us.com 

[WidsethSmithNolting.com](http://WidsethSmithNolting.com)

September 25, 2018

Jill Townley, Project Manager  
Environmental Policy and Review Unit, Box 25  
Ecological and Water Resources Division, DNR  
500 Lafayette Road  
St. Paul, Minnesota, 55155-4025

Re: Draft Supplemental Environmental Impact Statement, Fargo-Moorhead Flood Risk Management Project

Dear Ms. Townley:

I am submitting this comment letter regarding the Draft Supplemental EIS (DSEIS) on behalf of the Joint Powers Authority (JPA).

I was invited to present a Red River Basin perspective at a meeting of the Task Force on November 13, 2017 and again on November 29. I pointed out that, due to timing of peak flows from this late contributing area of the basin, which are attenuated naturally by floodplain storage in the FM area, the diversion channel component of the project would cause this water to arrive downstream earlier and more coincident with tributary inflows. Thus, resulting in increased peak flows with significant downstream impacts. Those impacts have been recognized by the project designers which lead to the inclusion of a dam upstream from Fargo that would be operated primarily to mitigate the downstream impacts.

I noted that early USACE models had shown that the Minnesota diversion alignment had much less downstream impact than the North Dakota alignment. The ND alignment is more impactful because it drains and isolates a large area of natural floodplain while the MN alignment does not. I suggested that the overall impacts of the project might be minimized by changing the diversion and/or levee alignments to preserve more of the existing flood plain storage areas. Specifically, I suggested looking at the area northwest of Fargo and the area south of Fargo between the proposed dam and the city.

JPA members took up the challenge and proposed to the Task force a dramatically altered alignment that would address both of those areas. To test their proposal we, at WSN, were hired by JPA to develop concept level H&H models of the JPA suggested alignment changes. We analyzed the two major components of the JPA proposal separately: the JPA northwest alignment and the JPA southern alignment. Our model results showed significant reduction in flood elevations both upstream and downstream. At that point, we were invited to join the Task Force's Technical Advisory Group (TAG).

The TAG further refined the northwest diversion alignment and modified the operation plan to essentially equalize the downstream flood elevations compared to existing conditions. The modeled

results of the refined JPA northwest diversion coupled with the Plan B southern alignment were reported by TAG. TAG also looked at the JPA southern alignment and suggested several alignment improvements, but TAG did not complete modeling of the refined JPA southern alignment coupled with the JPA northwest diversion alignment. Unfortunately, work on both JPA alignment alternatives ended prematurely with little opportunity to work on design details or to address issues and concerns that inevitably come up as a project progresses beyond the concept stage.

My remarks regarding the: DSEIS - Alternative Screening Exercise Report are set out below in outline form. Each remark begins with quotations from the DSEIS followed by my comments.

It is my opinion that the DSEIS improperly eliminated Alternative 30 based upon erroneous assumptions about how this alternative would be engineered and about the way the alternative would perform if properly engineered. Based on a better understanding of the issues addressed below, I believe that DNR should reconsider its determination as to Alternative 30.

#### Alternative 30

1. "Although this alternative would remove the Maple River Aqueduct, preserve existing floodplain and retain approximately five miles of the Rush and Lower Rush Rivers, there are other environmental impacts associated with this alternative that would outweigh these benefits."
  - a. Although Alternative 30 is said to include both the NW diversion and the southern dam alignments proposed by the JPA, the brief discussion only included references to aspects of the NW alignment. I assume this is because the JPA southern dam alignment was discussed in detail under Alternative 31.
  - b. In addition to the above stated benefits, the JPA NW alignment significantly reduced the hydrologic impact of the project. Modeling done by TAG demonstrated that, using the same Plan B dam alignment and with the same downstream elevations, The JPA NW diversion alignment lowered the 100-year pool elevation 1.37 feet, reduced the pool area by 5,200 acres, and reduced the stored volume by about 35,000 acre-feet.
  - c. Alternative 30 includes both the JPA NW and JPA southern alignments. When combined, we have estimated a 100-year pool elevation of 916.2 compared to Plan B elevation of 921.0. Therefore, **the JPA proposal would result in a pool elevation about 4.8 feet lower than Plan B.**
2. "The realignment of the northwest portion of the diversion channel (see Appendix B, Attachment 1) would require an at-grade crossing where the diversion channel crosses the Sheyenne River."
  - a. For purposes of simplicity, the at-grade crossing was selected for preparing the concept-level unsteady flow HECRAS model. The JPA alignment does not require an at-grade crossing. It simply makes an at-grade crossing possible, which seemed to us to be an advantage. The stated concerns with an at-grade crossing certainly need to be considered and addressed, if significant. As discussed below, they may not be that significant. However, if they are, the crossing can be modified to eliminate the ponding

with a design that would still be much simpler than the proposed Maple River Aqueduct included in Plan B.

3. "The at-grade crossing would cause water to back up in the diversion channel all the way to the Sheyenne River Aqueduct."
  - a. The level of backup would depend on the water level in the Sheyenne River at the crossing location. At those times when the Sheyenne River stage exceeds 8 feet, it would back up to the Sheyenne River Aqueduct.
  - b. The details of this crossing were not finalized to address concerns. Certainly, the crossing could be designed to prevent water from backing up except during significant events.
4. "To account for the backup, the width of the diversion would have to increase from 210 feet to almost 600 feet, thus requiring the Sheyenne River Aqueduct to also increase almost three times in width."
  - a. The reason the bottom width of the diversion channel would need to be increased with an at-grade crossing is not due to backup. It is to provide adequate conveyance with a higher channel bottom. Therefore, the channel would only need to be widened based on the raise in bottom grade at any given location. The width increase at the Sheyenne River Aqueduct would be very little.
5. "Additionally, an at-grade river crossing would cause a larger, slower-moving pool in the diversion channel which would be expected to quickly fill with sediment. The increased sedimentation would create an aquatic dead-zone near and around that location which would increase impacts to aquatic resources and habitat."
  - a. Although slow moving pools do tend to trap more sediment, the significance depends on the amount of sediment being carried by the stream. The diversion channel would carry very little bed load sediment because there is almost no potential source. The channel itself is certainly designed to be stable. The flow entering at the diversion inlet would have already lost its sediment within the flood pool. The flow entering at the Sheyenne River Aqueduct would be skimmed off the top, so bed load would remain in the river. The only other potential source would be local ditch inflows. Sediment from those sources, if significant, could easily be trapped by providing sedimentation ponds at their entry points to the diversion channel.
6. "Increased potential for invasive species colonization is also a concern during operation because the diversion channel would have a slower-moving pool, which is more attractive to invasive species."
  - a. Velocities during flood operation will not be significantly different than with the Plan B configuration.
7. "It would also render the proposed mitigation, which includes wetlands in the Diversion Channel, obsolete because the increased inundation and sedimentation would cover the wetlands up and they would not function as intended."

- a. As stated above, increased sedimentation would not seem to be a significant issue. Deeper standing water would certainly change wetland type, but not necessarily make them less beneficial.
8. "Finally, there was concern about excessive channel scour because the diversion outlet would be in such close proximity to the confluence of the Red River and Sheyenne."
  - a. We cannot envision why proximity to the Sheyenne confluence creates additional scour potential. As with any new outlet, some scour protection measures may be necessary to assure stability. This is a detail that can be engineered properly.
9. "These factors led the DNR to determine that this alternative did not have significant environmental benefits over Plan B".
  - a. Based on a better understanding of the issues addressed above, I believe that DNR should reconsider its determination.

#### Alternative 31

10. "During operation of Alternative C, the storage area immediately upstream of the Alternative C Dam Southern Embankment would fill quickly with the Wild Rice River peak flood flows." "...the inundation area would take longer to drain..."
  - a. This issue can be addressed by enlarging the WRRS, which will have an added benefit of improving fish passage due to lower velocities during periods of inoperation.
11. "As with plan B, Alternative C would need to be designed to hold the Probable Maximum Flood (PMF)"
  - a. It is unrealistic for any dam to be designed to "hold" the PMF. Rather, typical practice is to include sufficient spillway capacity to pass the PMF.
12. "...one or two additional 50-foot gates, which in turn would cause greater difficulties for fish passage... These impacts would be realized at all times--even when the project was not operating."
  - a. Additional gates would lower velocities through the structure, which we expect would improve fish passage.
13. "...since the PMF inundation areas for plan B and Alternative C are almost the same, the Eastern Tieback and Wolverton Creek box culverts would still be required with alternative C..."
  - a. The remedy that will lower PMF elevations is to increase gate and emergency spillway capacities. This also reduces dam height and footprint. Lower PMF elevations also reduce dam safety concerns and the size of the Property Rights Mitigation Area.

This concludes my comments at this time. Take note, my comments under Alternative 31 also apply to Alternative 30. If you have any questions or would like additional issues addressed, please contact me.

Respectfully submitted



Charles L Anderson, PE

## Final Comments following Leadership Committee meetings concluding March 8, 2018

Tim Fox

The new application offers flood protection for vast areas of rural Cass County located in the floodplain.

The original goal of providing protection to critical infrastructure, medical facilities and developed Fargo, as the economic engine of the region, have been set aside and forgotten.<sup>1</sup>

The new permit application instead seeks to provide rural Cass County with unlimited flood protection and to eliminate of the restrictions and flood insurance associated with building and developing in a floodplain.

These actions confirm that the process used by the DA in arriving at the current, so called revised proposal, continues to be centered on eliminating floodplain while promoting rural development.

The Diversion Authority's most recent proposal, mimicking the original proposal, is contrary to Commissioner Landwehr's findings and recommendations made to the Diversion Authority throughout the Task Force and Leadership meetings.<sup>2</sup>

Contemporaneous with this proposal, Richland /Wilkin JPA asked that parties study a common sense permissible project predicated on the core idea that protection should be provided to Fargo's urban core, while avoiding the elimination of natural flood plain storage. JPA's proposal was conceived in consultation with a respected engineer with years of experience in the Red River valley, Charlie

Anderson, was the key component to that effort, while continuing to participate in the process. The JPA initially provided a rough outline of a proposal align. Using Corps modeling, Anderson confirmed an alternative location of the northern alignment would provide significant benefits, while retaining floodplain otherwise removed by the DA's alignment. **Charlie Anderson further confirmed that these benefits would transfer to significant modification of the staging area reducing its elevation and even greater benefits with the staging area moved north by recapturing additional floodplain.**

As Anderson's modelling was nearing completion, DA preemptively announced that it would not consider the Anderson approach, regardless of the modelling results. The DA's new application continues to eliminate flood storage in thousands of rural undeveloped acres of Floodplain that extend 10 miles downstream and north of Fargo.

Originally, the DA justified its refusal to consider floodplain retention based on the hypothesis that doing so would only produce a marginal benefit<sup>3</sup>. DA's decision to file the new application was made before the Anderson modelling results were completed.

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<sup>1</sup> Footnote 1- Dam Safety and Work in Public Waters Permit Application 2016-0386; Findings of Fact October 3, 2016, page 3

<sup>2</sup> Footnote 2- Dam Safety and Work in Public Waters Permit Application 2016-0386; Findings of Fact October 3, 2016, page 44

Rather than rely on the claims of the DA that hundreds of structures and thousands of people would lose their “benefits” by a modification of the north alignment of the diversion channel in an expansive rural area, an onsite review of this area would quickly dispose any of those claims. This area is sparsely populated and rural with the exception of Harwood. Harwood has established 100-year flood protection and could expand that protection even under a new “Period of Record” 100-year flood event.

Further claims by the DA that a change of the diversion channel’s northern alignment, removing the Maple River Aqueduct and two crossings of the Rush River while creating a single river crossing, would increase costs are simply not true.

The all-out effort by the DA/Corps to exaggerate and fabricate new and extensive costs is consistent with opposing any change and continually comparing all alternatives proposals to a project that was denied a permit. Using an unlawful flood control project as a comparison, to one that is lawful and permissible, is distorted and absurd. Yet, the DA/ Corps continue to do so and have taken the TAG down that same path. Building a project that complies with the law may be expected to cost more than a project that disregards the law, whether it is a building, bridge or diversion channel. Recognizing that costs are not the determining factor, exaggeration of costs by the DA/ still need to be countered and addressed in greater detail.

Fargo In-Town Flood Protection: Fargo and Moorhead both designed and began construction for in-town levee and flood protection. The information is readily available on the respective websites. The Moorhead flood protection plan was supervised and approved by the MN DNR and funded by the MN legislature. The Fargo plan was commenced and approved by a general vote for approval of a local sales tax. The Fargo plan was also presented to the ND legislature and various legislative committees on numerous occasions. The North Dakota legislature has dedicated funding for the Fargo In-Town Levees Protection Plan beyond the 37-foot elevation that is now part of the current plan.

What is now occurring are erroneous claims that increasing the flow of the Red River through Fargo to 37’ have dramatic costs increases.

Both Fargo and Moorhead have begun, and in certain instances, completed internal flood protection to a 40.5 river elevation. Moorhead has at least 4 neighborhoods that have received FEMA certification removing them from 100-year flood restrictions.

Both communities have expended millions of dollars for flood protection intended to protect to a flood elevation of 40.5’, 3.5’ above the 37’ level. The constructed flood walls and levees provide additional freeboard up to 3 feet or greater. Reduced protection to a 37’ level will have extensive savings not additional costs. Costs savings should be reflected in this reduction.

100 Year Flood Protection: The comparison of alternative projects is required to be conducted using a 100-year flood event design. What is the required capacity of the diversion channel and staging area to establish 100-year flood protection? It certainly does not require a diversion channel designed with a 20,000 cfs capacity.

What cost savings did the DA/Corps calculate by reducing the necessary diversion capacity to accommodate 33,000 cfs flood event? The answer would be “ZERO”. What cost saving did the DA/Corps calculate by increasing the in-town flow to 37 feet? The answer would be “ZERO”.

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<sup>3</sup> The floodplain that would be reclaimed under the new proposal is generally occurring because of the 37’ through town flow and adopting the “Period of Record” 100-year flood event as opposed to the previous “Expert Opinion Elicitation” 100-year flood event.

The 20,000cfs-diversion flow capacity far exceeds the necessary capacity of a 100-year flood event, the size, including footprint, and ALL associated costs must be based on a diversion capacity necessary for 100 flood events.

Instead, it appears that the current diversion channel was and continues to be designed for a capacity exceeding a 500-year event. A rough analysis would suggest the DA/Corps proposed diversion channel has nearly twice the necessary capacity needed to provide 100-year flood protection. With a 37-foot elevation flow through Fargo it appears that the diversion channel design, and calculation of costs, should be based on something less than a design capacity of 11,000 cfs. All estimates of cost and other associated impacts should be modified to correctly reflect a 100-year flood event.

Protection beyond a 100-year event is to be provided by Distributive Storage, not a massively overly designed diversion channel.

North Diversion Realignment: When the DA realized an attack on Charlie Anderson modeling was only a confirmation of his findings, a distortion of construction hurdles including cost took place. The best example involves the increase in the width of the already oversized diversion channel. Charlie Anderson was clear that a slight width increase was necessary, at the Sheyenne river crossing, due to the elevation of the diversion channel in comparison to the Sheyenne River. This width increase was only necessary at the river crossing, yet the DA once again exaggerates the minor correction by showing an exaggerated width increase of the entire northern diversion channel by approximately 40%. The diversion channel does not require any width increase before the crossing or beyond the crossing. Without the bias and exaggerate calculations of the DA/Corps the JPA northern alignment preserves not only thousands of acres of floodplain but millions of dollars, if not hundreds of millions, in savings.

Staging Area: Once again, the DA only finds an increase in costs and ignores savings. The most obvious savings may result by removing Oxbow, Bakke and Hickson from the staging area or substantially reducing needed protection. In fact, removing Oxbow, Bakke and Hickson from the staging should be a goal. Miscalculations and unlawful acts of the DA cannot be an excuse to ignore otherwise attainable cost savings.

Inlet Structure: The premature and unlawful construction of the inlet structure cannot be accepted as a cost or a justification to block modification of the project. The inlet structure is not located in the most efficient location to accommodate the JPA southern alignment and hinders any real analysis. Unlawful actions cannot be a focal point of how to make the project function. As an example, the questions at the Leadership Committee concerning drainage of the JPA southern proposal would not have occurred but for the commencement of the inlet structure construction.

Cost Benefit Ratio: Section 3.7.5 Fargo-Moorhead Metro Feasibility Report, July, 2011, Flood proofing Cost Savings Benefit per acre:

Comm/ind/public	\$62,000.00
Residential	\$35,000.00

Executive Order 11988 was considered but not respected by the Corps in approving the project.<sup>4</sup> The cost benefit ratio of the project did not and could not meet federal minimums. It became obvious that

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<sup>4</sup> Footnote 3- Dam Safety and Work in Public Waters Permit Application 2016-0386; Findings of Fact October 3, 2016 Page



the inclusion of extensive areas of floodplain would be the only method of increasing the cost benefit ratio. The Corps placed the necessity of a minimal cost benefit ratio ahead of its obligation to apply and enforce Executive Order 11988. Least impactful alternatives were rejected by the Corps because they did not eliminate sufficient floodplain to maximize the cost benefit ratio.

500 Year Impacts-Maximum Capacity of Dam: During the finale Leadership committee meeting the Corps confirmed a DNR requirement for acquisitions. Yet, there was not a map of the impacted area in part because the Dam elevation has yet to be determined. Any claim that the impacts have been removed from any area, including Richland and Wilkin County, have not been determined and are similar to what occurred in the denied permit application.<sup>5</sup>

Four documents/maps are attached:

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160. The proposed Project appears to be inconsistent with the underlying intent of E.O. 11988 and E.O. 13690. The proposed Project does not preserve or rely on natural floodplain storage. Rather the USACE, as a contractor for the Permit Applicant, would construct a project that would permit development in over 39,000 acres of sparsely developed natural floodplain on the outskirts of the F-M metropolitan area. This natural floodplain would no longer be available for flood storage. The proposed Project would alter the natural flow of the Red River to create approximately 20,000 acres of new floodplain in sparsely populated areas south of the proposed dam. Much of this acreage is currently outside of the natural floodplain.

<sup>5</sup> Footnote 4 - Dam Safety and Work in Public Waters Permit Application 2016-0386; Findings of Fact October 3, 2016 Page 15-16

iii. DNR Evaluation: The measures contained in the various property acquisition plans are improperly characterized as project mitigation. Property acquisition is a constitutional requirement imposed on the Permit Applicant and is a prerequisite to both the permit and Project construction. Nonetheless, DNR has evaluated the various acquisition plans included in the Mitigation Plan and found the following deficiencies related to potential impacts: • As stated in the July 27, 2016 letter request for additional information, the DNR requires property interests be secured up to the water surface elevation at the maximum capacity of the dam (the 500-year event). Attachment 4: Project 100-year vs. Project 500-year. The Project Applicant does not propose to acquire property interests for all properties up the maximum water surface elevation at the maximum capacity of the dam. Therefore, the following are insufficient: FEMA/USACE Coordination Plan, Structure Mitigation Plan, Land Mitigation Plan, Flowage Easement Plan, and the Cemetery Mitigation Plan. •

- 1) The F-M Final Metro Feasibility Report 2011 Figure 4 depicts the original southern alignment. This depiction contains a storage area 1. Storage Area 1 and the alignment strongly resemble the Task Force 7C
- 2) The Modified Southern Alignment with comments: "This alignment eliminates the need for Storage Area 1 and the Wolverton Creek structure, reduces the length of the diversion channel and tie-back embankments, and reduces costs. As part of the alignment modifications analysis, the inlet structure was changed from a fixed weir to a gated structure to improve operability and minimize potential downstream impacts."
- 3) Task Force 7C
- 4) Leadership Tag Optional Alignments

It would appear in many respects that the current proposal of the Diversion Authority is a recycle of Figure 4 from the 2011 Feasibility Study. However, what was once called Storage Area 1 has not been fully recaptured nor has the staging area been eliminated. Rather than making substantial changes, the Diversion Authority/ Corps have re-spun the original plan maintaining a staging area. The staging area was basically the result of the elimination of the northern floodplain creating downstream impacts.

By adopting the JPA northern alignment with the restoration of the northern floodplain and a 37' through town flow, what would be the outcome of a plan restoring Storage Area 1 and eliminating the staging area? This would have been my next question to the Technical Advisory Committee! That question was never allowed to be asked.

Conclusion:

The consideration of the JPA alternative or similar alternative, as a least impactful alternative, can only occur if all activity surrounding Oxbow, the inlet structure and numerous land acquisitions be ignored. The Federal court sent a clear and unequivocal warning, as did Governor Dayton and Commissioner Landwehr, that commencement of construction was prohibited and unlawful. Callously and arrogantly ignoring those warnings cannot result in a distortion of benefits or costs of the project.

The DA/Corps have set forth a unique and inaccurate structure count, an exaggerated and erroneous cost analysis and creative terminology defining benefits to disguise the basic considerations of floodplain reduction, transfer of floodplain, protecting rural undeveloped land and required protection for a 100-year flood event not a 500-year plus flood event.

The Fargo flood protection plan must focus on protecting infrastructure, critical services and urban development areas in the F-M Metro area, rather than rural Cass County.

Floodplain preservation must seriously be considered by the Diversion Authority/Corps under applicable Federal and State Policy and Law.

The new permit application fails in numerous respects. I regret that the efforts of the JPA in seeking a permittable flood control project, complying with Federal and State Policy and Law and addressing the findings in the permit denial, was summarily rejected by the Diversion Authority.

Submitted by Timothy Fox  
/s/ Timothy Fox

**Final Comments of Cash Aaland following the four meetings of representatives of the Richland-Wilkin JPA, the Army Corps of Engineers, and the FM Diversion Authority hosted by the Minnesota DNR in St. Paul, MN and concluding on March 8, 2018.**

When the Minnesota DNR denied the FM Diversion Authority's Dam Safety and Work in Public Waters Permit Application in October of 2016, it did so for very specific reasons. Chief among them was that approximately 54% of the lands removed from flooding in the project's proposed 72,923 acre benefited area were "sparsely developed flood plain located outside of Fargo." (Para 36, 154 and 196, Dam Safety and Public Waters Permit Application 2016-0386, Findings of Fact, Conclusions and Order). The proposed high hazard dam, necessary only to mitigate downstream impacts caused by the destruction of so much flood plain storage, would have resulted in the inundation of approximately 20,000 acres of land that did not previously receive flood waters. (Para 34, Findings and Order). The plan: "simply shifts the burden of flooding from one sparsely developed rural area to another and, to this extent, is of minimal benefit to the public welfare." (Para 196, Findings and Order).

The DNR concluded that "[t]he review of the economic analysis and flood control benefits performed for the proposed project does not establish that the quantifiable benefits support the need for the project" as required by MN statute. (Para 137, Findings and Order). "Constructing a Class I (high hazard) dam is neither reasonable nor practical in light of the incremental increase of flood protection afforded to existing development in the F-M metro area." *Id.* The FM Diversion Authority failed to establish that its proposal represented the "minimal impact solution" with respect to all other reasonable alternatives as required by MN statute. (Para 85, 198, Findings and Order).

At nearly every meeting of the Fargo-Moorhead Area Flood Diversion Task Force Commissioner Landwehr cautioned everyone present that the "current" project was not permissible and that "major changes" must be made before a permit could be issued. The words "major changes" were repeated by Governor Dayton in his written statement in the Task Force Final Report and again by the Commissioner during the subsequent meetings held in St. Paul with leadership representatives from the Army Corps, the FM Diversion Authority and the Richland-Wilkin JPA.

The Richland-Wilkin JPA, having carefully noted the findings and comments contained in the order denying Fargo's permit application as well as the recommendations of hydrologist Charlie Anderson, proposed major modifications to the FM diversion footprint.

The JPA's proposal would reduce the size of the project from the 72,923-acre plan that was denied a permit, to a 49,000-acre plan that would leave unchanged the plan's specific features that protect the existing development in the FM Metro. (Para 154, Findings and Order). The JPA's proposal also allows a reasonable area for future growth. The northwest modification proposed by the JPA would preserve the flood plain of the Maple and Rush rivers northwest of the Metro area. By reducing the length of the diversion channel and moving it east, approximately 29,400 acres of sparsely developed flood plain would be excluded from the project footprint, maintaining its natural flood plain storage capacity. Existing development in this rural area would remain "as is" and not receive any additional waters. The JPA's proposal on the southern end of the project would move the dam a reasonable distance north preserving another 10,000 acres of rural flood plain. Charlie Anderson modeled, and the TAG

summary acknowledged, that the JPA's proposals would lower the staging area elevation by 5.4 feet to 916.2, wholly removing impacts from Richland and Wilkin Counties and greatly reducing Minnesota impacts in Clay County.

At the final leadership meeting on March 8, Kent Lokkesmoe acknowledged that if, in addition to the JPA's proposed modifications, another 6 inches of flow downstream was allowed as suggested in the Task Force Guidance for TAG, the result would reduce staging by another foot or more, wholly removing Oxbow Hickson Bakke from the staging area and potentially eliminating all the Minnesota impacts. The elevation of OHB is approximately 915 to 916.5. The new houses from the ring dike buyouts on the south side of the community are constructed to an elevation of 918.

The Army Corps and Diversion Authority went a different direction. In the press release circulated at the last Leadership meeting on March 8, and forwarded to the media the next day, Diversion Authority leaders announced their decision to seek a permit on Option 7A/10D. The Diversion Authority formally announced it would seek a permit on this alignment following a Diversion Authority board meeting held Friday, March 16. Option 7A is the alignment promoted by Diversion supporters at the December, 2017, final meeting of the Governor's Task Force, and for which Commissioner Landwehr indicated was not substantially different from the initial project to qualify for a Dam Safety permit. The initial project was objectionable primarily because it would permit development "in over 39,000 acres of sparsely developed natural floodplain on the outskirts of the F-M metropolitan area." (Para 160, Findings and Order).

Fargo's proposed Plan B, as outlined in the Diversion Authority's press release and the TAG documents reflecting the size and shape of 7A/10D, would actually *increase* the Diversion project from the 72,923-acre project that was denied a permit, to a 76,812-acre project with the dam located further south. (Para 36, 154 Findings and Order) (TAG spreadsheet: FM Diversion Project – Southern Embankment/Dam Option Comparison). The Northern Alignment Alternative, proposed for permit by the DA in their 2016 Dam Safety and Public Waters application, and upon which the DNR Denial Order was tied, proposed the dam and embankment be located *1.5 miles further north than that proposed by 7A10D*. I have attached two maps to illustrate this point. One shows the location the high hazard was proposed in the alignment that was denied permit. (Northern Alignment Alternative). The second depicts with a red line where the denied dam location was relative to Fargo's current 7A/10D proposal. (7A-10D).

The Governor's Task Force and the subsequent Leadership/TAG meetings held over the past six months created an opportunity for the FM Diversion Authority leadership to get feedback directly from the Minnesota DNR as to what a lawful and permissible project would look like. Following the conclusion of the Governor's Force, and at the first of four "leadership group" meetings in St. Paul, the Commissioner outlined a procedure whereby, after the various options were studied and discussed, the DNR leadership would provide a good indication of whether any of the TAG vetted alignments might pass the statutory hurdles allowing the issuance of a Dam Safety permit. Indeed, the whole purpose of the meetings, and the reason for the DNR dedicating substantial time and resources, was to provide the Diversion leaders this feedback at the end of the process at the March 8 meeting.

The Diversion leaders and Army Corps representatives wholly squandered this opportunity. Rather than explore or propose major changes, they elected to use everyone's time to try to re-litigate, *ad nauseum*, the details of their failed proposal. Ignoring the repeated warnings of the Commissioner and his staff that nothing less than major changes would do, the Diversion leadership proposed a project with a bigger foot print than what the DNR previously rejected. (Para 158, Findings and Order). They did so in a manner insulting to process by distributing a press release created before the final meeting, prior even to the engineers of the TAG group completing their comments and suggestions or communicating them to Kent Lokkesmoe. The Diversion Authority and Army Corps leadership thus effectively signaled that they cared little about what might constitute a lawful or least impact solution, or even what the Commissioner's opinion might be. In fact, by circulating the press release and DA decision mid meeting, prior to any discussion or alignment feedback, the Diversion leaders made evident their contempt for the generous contribution of time and efforts made by the DNR leadership and staff through the Governor's Task force and the subsequent TAG and Leadership Group meetings. Maybe that was the point. Maybe Mayors Mahoney and Williams wanted to pre-empt the words: "cold, ice cold."

The Richland-Wilkin JPA has always maintained that the original NED plan was a reasonable less impact alternative that should serve as the true baseline for comparison. The NED plan proposed a simple Minnesota side diversion, one-half the size of Fargo's plan, which fully protected the FM Metro while preserving the existing flood plains both North and South of the cities. This cost-efficient alignment, with its inlet north of the Wild Rice / Red River confluence, stands as proof that Fargo's past or current 7A/10D plan cannot survive the "least impact solution" test required by Minnesota statute.

The JPA proposal that emerged from the Task Force/Leadership meetings would also preserve valuable flood plain, fully protect the FM Metro, and has a footprint of 49,000 acres as opposed to Fargo's 7A/10D plan that covers 76,812 acres. The JPA's recent proposed northwest and south modifications to the project, which were vetted by Charlie Anderson and the TAG group, are further proof that Fargo's current "plan b" is not a "feasible, prudent, and minimal-impact alternative to provide flood protection to the F-M metropolitan area" with respect to all other reasonable alternatives. (Para 85, 198, Findings and Order).

Respectfully Submitted

/s/ Cash H. Aaland

Cash H. Aaland

**From:** [Kathleen Fenger](#)  
**To:** [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us); [CEMVP-Fargo-SEA](#)  
**Cc:** [Bruce Albright](#)  
**Subject:** [Non-DoD Source] DSEIS Comments, Fargo-Moorhead Flood Risk Management Project  
**Date:** Thursday, September 27, 2018 4:00:06 PM  
**Attachments:** [DSEIS Comments - Fargo-Moorhead.pdf](#)

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Please find our comments for the DSEIS for the Fargo-Moorhead Flood Risk Management Project attached.

Thank you,

Kathy Fenger

Administrative Assistant

Buffalo-Red River Watershed District

1303 4th AVE NE, PO Box 341

Barnesville, MN 56514

O: (218)354-7710 | F: (218)354-2503

# ***BUFFALO-RED RIVER WATERSHED DISTRICT***

BARNESVILLE, MINNESOTA 56514

1303 4th AVE NE  
Email: [general@brrwd.org](mailto:general@brrwd.org)

PO BOX 341

PHONE 218-354-7710  
Website: [www.brrwd.org](http://www.brrwd.org)

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September 27, 2018

Jill Townley, EIS Project Manager  
DNR Division of Ecological and Water Resources  
500 Lafayette Road, Box 25  
St. Paul, MN 55155-4025

District Engineer  
St. Paul District Corps of Engineers  
ATTN: Terry Williams  
180 Fifth ST E  
St. Paul, MN 55101-1678

RE: Fargo-Moorhead Flood Risk Management Project  
Comments Regarding Plan B Draft Supplemental Environmental Impact Statement (DSEIS)

Dear Mss. Townley and Williams,

The Buffalo-Red River Watershed District (BRRWD) has reviewed the DSEIS and supporting materials regarding Plan B of the proposed Fargo-Moorhead (F-M) Flood Risk Management Project. The purpose of this letter is to provide comments both to the Minnesota Department of Natural Resources (DNR) regarding the DSEIS and to the Army Corps of Engineers (COE) regarding the Draft Supplemental Environmental Assessment (DSEA). The comments can also be used by the DNR regarding their permitting process. We want to note, that the BRRWD has Rules regarding the development of this type of project within our jurisdictional boundaries. To date, the Diversion Authority (DA) has not applied for a permit from this office. Secondly, we would note the need for securing the necessary property interests and rights from all affected landowners before the issuance of any such permit(s), or at a minimum provide evidence that said land rights/easements can be obtained.

At the present time, we question if the project is consistent with the BRRWDs Revised Watershed Management Plan (RWMP) dated 06/23/10, or if it is consistent with the goals and policies identified in the Flood Damage Reduction Work Group Mediation Agreement, dated 12/09/98. The Mediation Agreement goals state "to reach consensus agreements and long-term solutions for reducing flood damage and for the protection and enhancement of natural resources. Such agreements should balance important economic, environmental, and social considerations. Such agreements should provide for fair and effective procedures to resolve future conflicts related to flood damage reduction."

In terms of the BRRWD's RWMP, as previously noted the Fargo-Moorhead Diversion Authority (DA) has not applied for a permit from our office for their proposed project. In Section 4.1.1.3, the RWMP talks about "an integrated resource management approach." It also states "the BRRWD believes an integrated approach to resource management is essential." This adaptive management approach can be defined as "an approach that uses credible, technical information to help formulate strategies, approaches, and policies in order to learn so that subsequent improvements can be made when implementing strategies and formulating successful policy approaches and strategies." In accordance with our plan, and as noted in Section 4.1.1.6, projects are to take a balanced approach to managing resources, resolving issues, and implementing solutions. The District tries to seek the best outcome considering the resources within the entire Watershed and the stakeholders involved. The BRRWD also believes cooperation is essential to effectively manage the resources of the District. Section 4.1.1.2 lists the goals and policies of the BRRWD. We feel that the proposed project may not include proper flood plain management. Section 3 of our goals and policies talks

about the legal drainage systems. Plan B seems to have eliminated this issue from our previous list of concerns. Section 4 of our goals and policies talks about water quality, which this project could have a major impact on. In the Minnesota staging area, the BRRWD and its partners (Soil and Water Conservation District) have done numerous projects along the Red River of the North to control erosion entering the Red River. The banks along the Red River of the North are very vulnerable, subject to bank failure, and erosion prone. Storing more water in this area and how this storage is released back into the River needs to be addressed. Section 6 talks about wetlands and we have not been provided with a detailed analysis as to which wetlands may be affected by the project. Section 8 talks about erosion and sediment control. When you store water in the noted area on the Minnesota side of the Red River, there are going to be effects regarding bank erosion, slumping, etc. that need to be addressed. Section 9 of our goals talks about education, and we feel that the DA could do more work with landowners on the Minnesota side of the Red River to design and support their project.

In Section 4.2, of our RWMP, we talk about District Programs and the Rules and Permitting. The purpose of our permitting process is to implement the Rules of the District and policies identified within the RWMP.

Some other issues which we have previously discussed with the DNR and COE, that still have to be addressed by the DA, include, but are not limited to:

1. How the DA is going to drain and release water from the new staging area upstream of the Plan B southern embankment?
2. How they are going to install an orderly conveyance system of water from the staging area. Right now, all of the conveyance systems are designed to handle local flows, not additional stored water from the proposed embankment when used.
3. What are the potential impacts to Wolverton Creek? The BRRWD is currently constructing a restoration project on Wolverton Creek. If the proposed Plan B Eastern tieback levee and culverts are built across the waterway, that could affect our project. We already have bank sloughing problems along the creek channel. If more water is routed in the channel, these problems could get worse. Channel aggradation and degradation are concerns. This important fisheries resource could also be impacted by the proposed tieback levee and the volume of water controlled by this feature. It has been suggested that this levee could be moved to the County line road to minimize impacts to prime ag lands.
4. What is the plan and process to obtain landowner approval/easements to store water on land, some that has never historically flooded before on the Minnesota side of the Red River?
5. We will need more information on which roads are going to be raised or maintained in the storage area in Minnesota and what structures in these roads will need to be increased in capacity to release the staging area water.
6. We still don't know the details about an outlet channel constructed on the Minnesota side of the tieback embankment to aid and assist in drawdown of the staging area or if the existing facilities will need to handle the stored water release. If there is a channel, will there be conveyance channels constructed in certain areas to get the water into the diversion channel?
7. To our knowledge, no discussions have taken place with the Minnesota Department of Transportation or the Burlington Northern Santa Fe (BNSF) Railroad regarding possible impacts to their facilities on the Minnesota side of the Red River of the North. These discussions could bring into play additional changes needed that would also factor into the BRRWD permitting process.
8. Since Plan B is being considered a "new" project, then shouldn't the COE consider a new or amended economic analysis?



September 27, 2018

Page 3

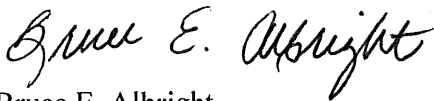
9. We note on Figure 6, Preliminary Plan for Dike along Embankment in Minnesota, that in the southeast corner of Section 32, on the west side of Trunk Highway (T.H.) No. 75, you have drainage arrows going west. Recently, we've worked with these landowners, and they have installed a new drainage ditch on the south side of the County line. However, this system has very limited capacity. The project should either consider taking this area water either directly north in the project ditch, or the County line ditch may have to be increased in size to accommodate any additional drainage.

We feel the Minnesota DNR should table action on the DA permit application until these and any other concerns and issues are adequately addressed. The BRRWD is very familiar with the DNR's permitting process, and we have used it successfully to develop several key projects within our Watershed District. Most recently, the Manston Slough and Wolverton Creek Restoration Projects. All of our planning, processes, etc. have had to follow the proper channels and the subsequent result has been the issuance of DNR permits to build our projects. The DA needs to do the same.

If you should have questions or comments concerning the above or enclosed, please feel free to contact this office.

Sincerely,

BUFFALO-RED RIVER WATERSHED DISTRICT



Bruce E. Albright  
Administrator

BEA/kf

cc: Senator Kent Eken, 3463 120<sup>th</sup> AVE, Twin Valley, MN 56584  
Representative Paul Marquart, 605 First ST NE, Dilworth, MN 56529  
Representative Ben Lien, 3001 Fifth ST S, Moorhead, MN 56560