

## Commenter 1

**From:** walleyebrooks@aol.com  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead Flood Risk Management Project DEIS  
**Date:** Monday, August 27, 2018 8:52:27 PM

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While not effected by this project, **Wouldn't it be cheaper to restore some wetlands?** This thing ain't cheap! Could restore a lot of wetlands for this price! And the economic value of them keeps coming!

1a

## Commenter 2

**From:** Westlake, Kenneth  
**To:** [Novak-Krebs, Cynthia \(DNR\)](#); [Cameron, Tamara E MVP](#); [Strobel, Philip](#)  
**Cc:** [Kowal, Kathleen](#)  
**Subject:** RE: Request for Comment on Minnesota Draft Supplemental EIS, Fargo-Moorhead Flood Risk Management Project  
**Date:** Tuesday, August 28, 2018 8:37:40 AM

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Tamara,

Will the additional alternative analyzed in the Minnesota state Supplemental EIS **trigger any additional analysis under NEPA** by the Corps of Engineers?

2a

Ken

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**From:** Novak-Krebs, Cynthia (DNR) [mailto:cynthia.novak-krebs@state.mn.us]  
**Sent:** Monday, August 27, 2018 8:42 AM  
**To:** MN\_Review, Environmental (DNR) <environmentalrev.dnr@state.mn.us>  
**Subject:** Request for Comment on Draft Supplemental EIS, Fargo-Moorhead Flood Risk Management Project

Date: August 27, 2018

To: Those on the EIS Distribution List, Other Interested Individuals

From: Jill Townley, Project Manager

Subject: Request for Comment on Draft Supplemental EIS, Fargo-Moorhead Flood Risk Management Project

The Minnesota Department of Natural Resources (DNR) has prepared the Draft Supplemental Environmental Impact Statement (DSEIS) for the Fargo-Moorhead Flood Risk Management Project to evaluate a new alternative to the previously-proposed Project in accordance with the Minnesota Environmental Policy Act, Minnesota Statutes 2008, section 116D.

The document is available for download on the [DNR Fargo-Moorhead Flood Risk Management Project webpage](#).

Abstract:

The previously-proposed Fargo-Moorhead Flood Risk Management Project was denied in October 2016. The proposer has developed a new alternative, called Plan B, which was not evaluated in the Final EIS and therefore requires by state law the preparation of a Supplemental Environmental Impact Statement (SEIS).

The Project is located in four counties: Cass and Richland Counties, North Dakota, and Clay and Wilkin Counties, Minnesota. The DSEIS evaluates and discloses potential environmental and socioeconomic impacts and proposed mitigations for Plan B and the No Action Alternative (with Emergency Measures). Examples of information on topics contained in the EIS includes, among others, aquatic resources, Project hydrology, wetlands, cultural resources, agricultural impacts, land use, and Federal Emergency Management Agency (FEMA) regulations associated with the Project.

The EIS also includes a cumulative potential effects analysis for impacts of the Project plus other area projects, a comparison of alternatives, and additional recommended mitigation. Intended as a full-disclosure document, the EIS does not recommend a final decision or alternative, but does provide valuable information to decision-makers for permitting and land use. Decisions about whether to proceed with the Project can only be made following completion of an EIS and, for the State of Minnesota, will involve a decision for a dam safety and work in public waters permit.

Public comment submittal:

A public review and comment period will begin on August 28, 2018. The DNR invites and encourages public comments on the DSEIS during the public review period that ends on September 27, 2018 at 4:30 p.m. A public informational meeting will be held on September 13, at Courtyard Marriott, 1080 28<sup>th</sup> Avenue S., Moorhead, MN. The meeting will begin at 5:30 p.m. with an open house where attendees can learn more about the project and ask detailed questions of technical staff. Formal presentations will begin at 7 p.m. followed by a public input session. You will have the opportunity to have your oral comments recorded individually at the public meeting. You may also register to speak at the podium in front of the assembled audience for a pre-determined length of time and have your comment recorded.

Public comments will be accepted on the DSEIS through September 27, 2018 at 4:30 PM. Comments submitted on the DSEIS will become part of the official record and as such, may be made available to the public. Comments and submittals will not be edited to remove any identifying or contact information; therefore, the DNR cautions against using any information that should not be publicly disclosed. Both mailed and emailed submittals will be accepted.

Email submittals should be directed to [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us) and should include "Fargo-Moorhead" in the subject line. Please include your first and last name with an email submission.

Mailed or faxed submittals should be directed to:

Jill Townley

EIS Project Manager

DNR Division of Ecological and Water Resources

500 Lafayette Road, Box 25

St. Paul, MN 55155-4025

Fax: 651-296-1811

TO: J. H. Townley  
EIS Project Manager

My Name is Marty JOHNSON  
I live on our Homestead Farm  
that is been IN our family for  
129 years. 5 Generations have Lived IN  
the same House my great grandfater  
Had Built IN 1889. The F-M Diverson  
Authority wants to put IN a Flood  
Control project right throug the Heart  
of it. Now if it was a truly  
region flood project from Lisbon ~~ND~~  
North  
Dakota to the ~~Canada~~ Canada Line  
like they want every body to Believe  
I would Not have a problem but  
when only one Town is going to  
Benefit from this & that is Fargo  
N.Dak we have a problem.

Right from day one they have lied  
Disrespected not only surring cities  
Townships & the state of North Dakota  
& Minnesota they have also treated  
the DNR of Minnesota with disrespect  
Lied to you.

Fago was told they could have  
permanet flood protection for 900 million  
dollars no cost to any body else. They  
turned it down.

They delved to the T.M. Division Authority  
① ~~They~~ they had a Minnesota plan & a  
North Dakota plan - North Dakota plan did  
not meet the Cost-Benefit Ratio was  
it looked like it was headed for the  
Minnesota plan - 3 Days before the deadline  
the North Dakota plan meet the Cost-Benefit  
ratio - we know they fudged the ~~the~~ ~~the~~ <sup>3a</sup> numbers  
to make the work they know they gave  
false number also.

② The second time they tried was to down stream area was not going to work they designed to upstream area & was staging water upstream to fix the problem Down stream - you cant fix a problem by moving it upstream.

③ The upstream problem was to flood & hold water IN Richland & W. Ken

3b

Counties. Problem is it is ~~ages~~ against the law to put flood water on another State. They did not abide by Minnesota law so the Injustice was put IN place so they could have time to fix problem #2

④ The task force was a good Idea but they just went back on how they would fix problem #1 & #2. They just moved the problem to the North Dakota side putting more problem on the cities West of Fargo. Again you cannot fix a problem by creating a new one.

The only concern to the Fm Diversian  
Authority they have is they want  
to permit off to the DNR of Minnesota  
once they have this game over & they  
win. They will tax ~~any~~ whoever they  
want. Oxbow & the good ole boys of  
Fargo won't pay a dime.

They still say the cost is 2.2 or 2.8  
Billion dollars to people who will be  
affected & most will pay the price  
we say the project will be between  
4.5 & 5 Billion dollars there is where  
you can help. If the Cost Benefit  
Ratio is not right by law they can't  
receive the permit - They are going to use  
false numbers & bend the numbers any  
way they can to show you it works

My hope is that you delay the  
 permit or decline to permit for  
 lack of the Truth. Make them use  
 the real Numbers Not the ones used  
 7-8 years ago. They are sacred the  
 clock is about to run out on them

The Federal Money will go somewhere  
 else it is Needed. Do Not give IN  
 you have been good Stewart of  
 Minnesota & have cared about the  
 people of North Dakota & I can't

Thank you enough I look forward  
 to meeting you on April 13

for your meeting IN Morehead If  
 any questions please feel free to  
 call me 701-212-6808 - Please do not  
 give out something they don't deserve for  
 Lying & deceiving ~~to~~ everyone,  
 If the true Numbers are used & they make  
 the cost benefit Ratio work that's OK

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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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           Commenter 3

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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 03d  
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.

JUDY GREW: Any other comments?

Larry Ness  
 17666 3rd STS  
 MND

My name is Larry Ness. I live in section 31 of Holy Cross. I also own land in section 32, along Hwy 75. My farm place or my farm land have never had a problem with water. With plan B my farm place, and my farm land would be flooded. I think the upstream had an engineer draw up a plan, that would be more friendly, to everyone in this area

4a

please don't give a permit for plan B.

4b

yours truly  
 Larry Ness

To Bill Townky EIS project Manager

Commenter 4

As a resident of May County I'm  
Totally against Plan B.

Most of the farm places along the  
Red River were started in the early 1900's

Most of these farm places have never  
had a problem with water.

Now if they build this dike along Hwy 75,  
all these farm places and the farm land, will  
be flooded

Please don't give a permit for plan B.

Yours truly  
Larry

4c

Commenter 4

To Jill Townley

Judy and I live in the S.W. corner of clay County. a long the Red River. Are farmstead and are farm land, have never had a flood problem from the Red River. If they put a dike along the west side of Hwy 75, are farmstead and many other homes and farm land would be flooded

the Deversion Authority says that the land west of Hwy 75 already floods. This is not true if you talk to people who have live here for many years.

For Fargo To push water back on us so they can develop in the in the flood plane is not right. 4d

Please do not give them a permit for plan B. 4b

Jany + Judy Ness

**From:** [Townley, Jill \(DNR\)](#)  
**To:** [Novak-Krebs, Cynthia \(DNR\)](#)  
**Subject:** FW: Fargo-Moorhead diversion SEIS  
**Date:** Thursday, September 27, 2018 9:14:04 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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**From:** Larry Ness <ljnness@att.net>  
**Sent:** Wednesday, September 26, 2018 11:28 PM  
**To:** Townley, Jill (DNR) <jill.townley@state.mn.us>  
**Subject:** Fargo-Moorhead diversion SEIS

Our farmstead sits right along the Red River, being a third generation family farm for seventy eight years. Not once in all seventy eight years been flooded from the Red River. In regards to the Holy Cross township map showing floodplain with or without project, the map shows we are in the floodplain without the project. We are NOT in the floodplain. There is little confidence in the mapping and theoretical impacts presented by FMDA and its engineers. Maybe some mapping should be revisited. The proposed plan B impacts new areas of Minnesota "high land", currently out of the floodplain, that would not have previously been inundated with water. The high hazard dam is of great concern and fear, putting public safety at high risk. Also, flooded roads with erosion would create a lack of ability to get help in case of emergencies.

04e

04f

04g

The proposed plan B would be flooding Minnesota land that is out of the floodplain with water removed from North Dakota's floodplain, which serves an important environmental function, is unacceptable to Minnesota residents. Flooding the high ground in Minnesota for the benefit of removing acres from North

Dakota floodplain for development purposes should not be considered. Plan B actually protects larger North Dakota floodplain acres for development growth than plan A. We request that plan B not be permitted.

Sincerely,  
Larry and Judith Ness  
17666 3rd St S  
Moorhead, MN 56560



September 6, 2018

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

Re: Draft SEIS Fargo-Moorhead Flood Risk Management Project  
Plan B and No Action Alternative (with Emergency Measures)  
Cass and Richland Counties, North Dakota

Dear Ms. Townley:

This department has reviewed the information concerning the above-referenced project submitted under date of August 27, 2018, with respect to possible environmental impacts.

This department believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. With respect to construction, we have the following comments:

5a

1. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction are attached.
2. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Projects disturbing less than one acre also are required to have a permit if the project is part of a larger common plan of development or sale, and the larger common plan ultimately disturbs one or more acres. A temporary dewatering permit is required to discharge water from sources other than storm water runoff including contaminated groundwater. Further information on the storm water and temporary dewatering permits may be obtained from the Department's website or by calling the Division of Water Quality (701-328-5210).
3. Cities, counties, or the North Dakota Department of Transportation may require additional sediment and erosion control measures for construction activity affecting their storm

5b

drainage system. Check with local officials to be sure local storm water management considerations are addressed.

4. Projects that discharge to a water body that has a total maximum daily load allocation or is listed as impaired under section 303(d) of the Federal CWA should ensure construction activity does not affect the water body. Slurry, residue, and concrete wash water resulting from concrete activities must be managed or treated to prevent the slurry, residue, or wash water from adversely affecting any water of the state.
5. The proposed construction project overlies the West Fargo glacial drift aquifer. Portions of the project may overlie community and non-community wellhead protection areas. Care should be taken to avoid spills of any materials that may have an adverse effect on groundwater quality. All spills must be immediately reported to this Department and appropriate remedial actions performed.

The department owns no land in or adjacent to the proposed improvements, nor does it have any projects scheduled in the area. In addition, we believe the proposed activities are consistent with the State Implementation Plan for the Control of Air Pollution for the State of North Dakota.

These comments are based on the information provided about the project in the above-referenced submittal. The U.S. Army Corps of Engineers may require a water quality certification from this department for the project if the project is subject to their Section 404 permitting process. Any additional information which may be required by the U.S. Army Corps of Engineers under the process will be considered by this department in our determination regarding the issuance of such a certification.

5c

If you have any questions regarding our comments, please feel free to contact this office.

Sincerely,



L. David Glatt, P.E., Chief  
Environmental Health Section

LDG:cc  
Attach.



## Construction and Environmental Disturbance Requirements

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

### **Soils**

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

### **Surface Waters**

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

### **Fill Material**

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.

**From:** Steve Scheel  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead Flood Risk  
**Date:** Tuesday, September 11, 2018 10:08:59 AM

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As a Business owner in Fargo, and a resident of Moorhead, I am 100% in support of the current Red River Diversion plan. It will provide MUCH needed protection from a record flood which would devastate thousands of businesses and residents in the cities of Fargo and Moorhead. This diversion is long overdo and we are fortunate nothing catastrophic has happened in the past to our beautiful community. The time is now.  
Thank you.

6a

**Steve D Scheel**  
**4550 15 Ave South**  
**Fargo ND 58103**  
**SCHEELS**

**Steve D Scheel**  
**3900 River Oak Circle**  
**Moorhead MN 56560**

**"Our goal is to be the best retailer in the USA in the eyes and minds of our customers, associates, and business partners."**

9-11-2018

Jill Townsend

Minnesota Department of Natural Resources  
500 Lafayette Road Box 25  
St. Paul, MN 55155-4025

Ms. Townsend:

I strongly urge the Mn DNR not to permit a dam of the magnitude the diversion authority has finally revealed to me and now is planning to move it even closer to Fargo-Moorhead.

7a

This diversion authority group really doesn't listen to the people. Several local engineers tried to give them plans and tell them effective ways to divert water without the magnitude of this plan and at significant less cost but since they engaged the Army Corp of Engineers they were not open to any other ideas. It's well known that the Army Corp of Engineers like big projects so they pushed it even though they admitted they didn't know if the north end could be accomplished. They are also known not to finish projects they have started

7b

Several months ago the Fargo mayor was

on t.v. telling us that with all the dikes and flood walls Fargo was well protected. When work was halted on the diversion (that was started without the proper permits because "they were sure to be given") he was then on t.v. with a hung-dog expression and a pile of sandbags in front of him stating we would all be sandbagging again if we didn't get behind and urge permits to be given.

Sincerely, money talks. This plan was developed for growth of Fargo southward on land that should be left undeveloped. The water table is so high that where they did bring in fill and built the owners need to have sump pumps because they will run if the neighbor waters his lawn.

Thank you,

Shirley Sweeney

1707 10<sup>th</sup> St South

Fargo ND 58103-4911

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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

Commenter 8

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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,** 8a  
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.

Commenter 09 - commenter sent email with no body of text, just signature block.

**From:** Mike Handlos  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead Flood Risk Management Project DEIS  
**Date:** Tuesday, August 28, 2018 1:45:11 PM

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**MICHAEL HANDLOS**

PARTS MANAGER

FARGO FREIGHTLINER

3440 36<sup>TH</sup> ST SW

FARGO, ND 58104

PH# 701-293-9133, FAX# 701-293-0325

e-mail: [mhandlos@fargofreightliner.com](mailto:mhandlos@fargofreightliner.com)

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Mark Nisbet                   Commenter 10

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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** 10a  
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.

September 14th, 2018

Ms. Jill Townley  
Environmental Policy and Review Unit  
Box 25, Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4025

Ref. Fargo-Moorhead Flood Diversion Project, Plan B

Dear Ms. Townley,

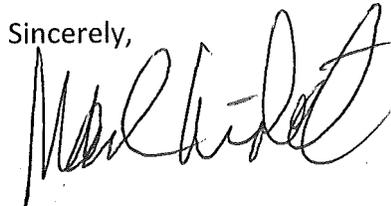
I am writing in support of Plan B of the proposed Fargo-Moorhead Flood Diversion Project. This is clearly a vitally important project for the Fargo-Moorhead region, where the risks of flooding from the Red River, and the Sheyenne, Wild Rice, Maple, Rush, and Lower Rush rivers makes flood mitigation a critical issue. 10a

Plan B, described in the Draft Supplemental Environmental Impact Statement, is not only the best option provided, but is in my opinion the best option possible, given the extensive study, review, and preparation that went into it.

Alternative C, which your office wisely already disregarded, was seen by some as a viable trade-off of competing issues, but in reality, would have more negative impacts on more people, and cost far more than Plan B. It would have impacted at least 37 more homes and 9 more businesses than Plan B does and require the state to acquire far more property. It would also require more construction, adding to the cost.

Plan B, on the other hand, strikes the proper balance between the benefits of enhanced flood control and the impacts associated with the measures required to do that. It more equitably balances the impact-benefit ratio between communities in both states, includes more mitigation measures than the original attempt at a long-term flood management program two years ago, and protects more developed property than that plan. Those were in fact some of the reasons the DNR gave for denying the proposal back then, and the Diversion Authority is to be commended for taking the time to incorporate needed changes based on that review. I encourage your office to take all this into consideration and approve the current Plan B.

Sincerely,



Mark Nisbet

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

PUBLIC COMMENTERS:

Virgil Schultz

LeRoy Richard

Shannon Roers Jones                   Commenter 11

Mark Nisbet

Virgil Schultz

Mark Vanyo

Susan Nelson

Marty Johnson

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.

11a

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 11b  
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 11c  
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.

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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    Commenter 12

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Susan Nelson

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Marty Johnson

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Paul Krabbenhoft

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2           **MARK VANYO**: Mark Vanyo, I live in South  
3 Moorhead.

4           The problem with projects like this is not the  
5 physical part of getting it done, it's the emotions,  
6 because we all have backgrounds and why this shouldn't  
7 be done. I had a lot of relatives -- and I grew up in  
8 the East Grand Forks area. So there, when all the  
9 relatives lived in town, and of course we know what  
10 happened to them. Theirs was let's take care of  
11 permanent flood protection.

12           And now I've got a cousin who just spoke and  
13 we're on opposite sides of this. So the emotions run  
14 through families, through communities. And I was  
15 involved in those floods. And certainly they wanted  
16 protection. I lived in South Moorhead, unfortunately,  
17 on the river. I was a buyout. So the home that I  
18 thought I was going to live in until I was gone is now  
19 gone. And I still live in South Moorhead.

20           And I want to back up here and thank these  
21 people. I don't know if you have a permit or not for  
22 what he was talking about. But I want to thank you for  
23 the thoroughness. I mean, how much more time can be  
24  
25

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 12a  
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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A P P E A R A N C E S

PUBLIC COMMENTERS :

CHARLES CHRISTIANSON Commenter 13

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.

13a

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.

13b

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.)

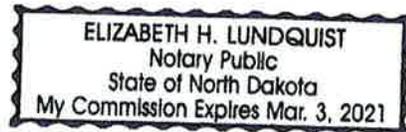
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REPORTER'S CERTIFICATE

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.



9/13/2018

Jill Townley  
Environmental Policy and Review Unit  
Minnesota Dept. of Natural Resources  
Box 25, 500 Lafayette Rd  
St. Paul, MN 55155-4025

RE: Plan B, Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

I would like to thank you and the Minnesota Department of Natural Resources for extending this opportunity to comment on the Draft Supplemental Environmental Impact Statement for what will be a very important project for the Fargo-Moorhead area. Plan B, as described in the document, will finally provide some enhanced flood risk management for the region, and I encourage you to approve the proposal.

14a

This plan was devised following the recommendations of the task force assigned by Governor Mark Dayton of Minnesota and Governor Doug Burgum of North Dakota to study the issues surrounding enhanced flood risk management for this unique region, and to find remedies for the shortfalls identified in a 2016 proposal. The result of this task force's hard work and thoroughness is before you now, in the form of Plan B.

One of the main items that Minnesota DNR identified as a shortcoming in the 2016 plan was the inequality of benefits and impacts between North Dakota and Minnesota. This inequity has been addressed and corrected in Plan B, by adjusting the inundation areas accordingly. Plan B also addresses a concern that the original proposal protected vast swaths of undeveloped land, rather than protecting homes and businesses as was the stated intent. The adjustments made in Plan B protect more structures.

There are also additional mitigations built into Plan B. Some of these include the provision of additional crop insurance, and assistance with debris clean-up, as well as a proposal to acquire property rights up to the maximum pool elevation.

The other benefits of Plan B are financial; not only does Plan B cost less than other proposals, such as the Joint Powers Agreement Alignment, but implementation of the plan will result in a revision of Flood Rate Insurance Maps and lower insurance rates.

With all the work that has gone into this over the years, no one can say that this project has not been studied adequately. This is a critical and overdue public safety improvement for our region and the Fargo-Moorhead metro area, and has my earnest support.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jon Riewer', with a large, stylized initial 'J'.

Jon Riewer, President & CEO

jmr



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 16a  
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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1                   Public Meeting Presentation and Comments  
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APPEARANCES

PUBLIC COMMENTERS:

- Virgil Schultz
- LeRoy Richard
- Shannon Roers Jones
- Mark Nisbet
- Virgil Schultz
- Mark Vanyo
- Susan Nelson Commenter 17
- Marty Johnson
- Paul Krabbenhoft

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2 JUDY GREW: Is there anyone else  
3 interested in commenting?

4 This is Susan Nelson.

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

14 I appreciate all the people and all of the hard work  
15 that's gone forward on this. I'm disappointed with some  
16 of the leadership in pursuit of some of the options that  
17 to me are focused on preserving the greatest amount of  
18 land for development on the North Dakota side. I 17a  
19 understand they're supporting their area, so of course  
20 they want to do that. I wasn't planning on speaking  
21 today, but I really had to after the last speaker,  
22 because I have to speak in opposition to Plan B. And I 17b  
23 want that to go on record so that people know that those  
24 who pay Minnesota taxes and those who live in the  
25 community and those who support the local Fargo-Moorhead

1  
2 people who are in charge of trying to advance something  
3 for flood protection understand how this can really  
4 negatively impact the area. We do need a solution, we  
5 really do. It shouldn't take this long. We should have  
6 all been able to get behind something and really drive it  
7 home and have started on it already, I believe. But I'm  
8 disappointed that some of those solutions that they push  
9 have too great of a negative impact on some people. And I  
10 don't know how many people understand still that there's  
11 a high-hazard dam involved in this project, and I would  
12 like that to go on record in this room. And also, I 17c  
13 would like to know if they've ever really pushed for a  
14 solution that didn't involve a high-hazard dam.  
15 Has that ever been a priority? It's my understanding  
16 that there is a flood solution that does not require a  
17 high-hazard dam. And I think you could get a lot of  
18 people supporting that. I think you could get a lot of  
19 people supporting that if there weren't a high-hazard  
20 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?

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A P P E A R A N C E S

PUBLIC COMMENTERS:

CHARLES CHRISTIANSON

KRISTIE SAUVAGEAU

JOEL HANSON Commenter 18

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JOEL HANSON: My comments will be brief.

In my opinion, if you give Fargo/Moorhead the permit for this Plan B, you minimize the residents of Minnesota, who will be flooded out.

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

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

18a

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

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

(Off the record.)

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A P P E A R A N C E S

PUBLIC COMMENTERS:

CHARLES CHRISTIANSON

KRISTIE SAUVAGEAU Commenter 19

JOEL HANSON

1           WHEREUPON,  
2                   the following proceedings were had at  
3           5:00 p.m., to wit:

4 **KRISTIE SAUVAGEAU:** Kristie Sauvageau. And my concern  
5 with this is: We've been bought out once already. We  
6 lost 80 acres of our farmland. And with this new  
7 plan, we lose our home and everything we own; all of  
8 our property.

9 **Five-hundred-year flood -- our land is dry.** Your   19a  
10 project looks like you're going to have **to pump**   19b  
11 **water up to drain out, which seems not very**  
12 **efficient.**

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

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

19 Our governor owns property along the river that's  
20 skirted. My 500-year flood land is being bought  
21 out -- or, is in the flood zone, which doesn't seem  
22 logical.

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

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

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

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

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

You couldn't even put up a detour sign.

1 I do understand Fargo needs flood protection. I  
2 don't understand why the new city hall was built  
3 along the river, where it floods. I don't  
4 understand why the new library was built along the  
5 river, where it floods.

6 I need Fargo. I work in Fargo. I shop in Fargo.  
7 I need Fargo. I enjoy being in close proximity.

8 But I am not comfortable with what  
9 you're doing. You're taking everything: My  
10 retirement.

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

14 (Off the record.)

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**From:** kristie sauvageau  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Cc:** [Terry Sauvageau](#)  
**Subject:** SEIS  
**Date:** Wednesday, September 26, 2018 7:38:59 PM

---

My comments on the proposed FM Diversion Project are as follows:

- The land where the inlet structure is under construction ( which has been ceased), was purchased from us under eminent domaine. This land is located above the 100 year and 500 year flood zone according to the Federal Management Agency. This information comes from the appraisal of our property that was taken under this eminent domain.
- Our business, agriculture, is located 1/2 mile east of this “under construction/ceased” inlet structure. The proposed diversion will take out our home where our farm business is based. The 80 acres that our farmstead is part of also lies above the 100 year flood plain. This 80 will be use as a “storage area”. They are planning to store water in an area that does not flood during a 100 year event.
- Our remaining acreage, the bulk of our business/farm land will also be “storage area”. Most of this land is located above the 100 year flood plain.
- We have researched land values from sales of land in our area over the past 5-7 within a ten mile radius of us. The sale prices of these parcels of land ranged from \$25,000 per acre to approximately 10, 000 per acre. Currently land values have dropped due to the uncertainty of what the diversion will do to property values. **If this plan goes through our land values will drop substantially** because of the plan to store water on us. These acres will no longer be marketable as future development land. Storing water on the land will impact even the agricultural value of this land due to the possibility of late planting, ponding, and the lack of the ability to insure our crops under the Federal Crop Insurance program. 19d
- The idea of storing and/or forcing water at our elevations make absolute no sense.
- We have reviewed the current diversion plans and question **why the land along the Wild Rice and the Red River beds are protected while our land, at higher elevation, is proposed storage area.** It is a well know fact the ND Governor, Doug Burgum, owns land along this proposed protected Red River. 19e
- We question why he was even able to be a part of this task force when he has a personal interest in the plan. Isn't that considered a conflict of interest?
- St Benedict Church will be in the protected area but the land surrounding the church will be uninhabitable. This **will affect the church's growth to the south and west. We have concerns that the church will fail with this project.** We have plans to construct a new church. These plans are also on hold because of the uncertainty surrounding the diversion project.
- We have been in a state of uncertainty for 10 years. We have our retirement in the land we have paid for over the years, only to fear that the value of our land will be taken to an unacceptable low level. We are looking toward semi retirement and our son taking over our farming business. We cannot make

decisions for our future nor can our son make plans for his future. It is time for this to be over.

- **The plan is not a good one.** The city of Fargo has not way to pay for this, the State of ND cannot pay for it. No one talks about their plans for funding this project. They cannot tell us what it will cost the citizens of Fargo and Cass County. Our children will be paying for this project forever. In our opinion, protecting Fargo for a 500 year flood event is not a good use of taxpayer money. Protection for a 100 year event seem more logical and more affordable.
- We were at the meeting in Moorhead on September 13. We were give a sheet of do's and don'ts that night. It told us that we could only talk about the environmental impact of the study. We did think that was the time to present the above thoughts due to the instructions we were given.
- It is apparent, that at every meeting we've been to, the room predominately consists of people opposed to the Diversion project. Do the people in the city of Fargo really want this project or is it being backed by a hand full of people such as realtors and developers?
- Millions of dollars have been spent on rebuilding Oxbow and the beginning construction of the inlet structure. We all know that this was done without a permit. the diversion authority said they did not need a permit because it was a Corp. project. It turns out they were wrong. WE all knew they were wrong and now they are back peddling trying to find a way to use the weedy swamp they call the inlet structure, while Oxbow in enjoying a private golf course, club house and swimming pool that taxpayers paid for, but cannot use. Concerning!
- We would like you, as member of this committee, to come visit us at our home. Come look at the area they are proposing to impact. We have elevation maps, we live here, we know how water wants to flow. This is a big deal to us, we deserve a chance to defend ourselves.

19g

Respectfully Submitted,  
Terry and Kristie Sauvageau  
12004 57 st s  
Horace, ND 58047

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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PUBLIC COMMENTERS:

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Virgil Schultz

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LeRoy Richard

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Shannon Roers Jones

18

Mark Nisbet

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Virgil Schultz           Commenter 20

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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 up we have Virgil Schultz from Fargo.  
**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.

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.

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 **20a** 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 20b  
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 20c  
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.

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APPEARANCES

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PUBLIC COMMENTERS:

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Virgil Schultz    Commenter 20

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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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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 200  
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. 20e

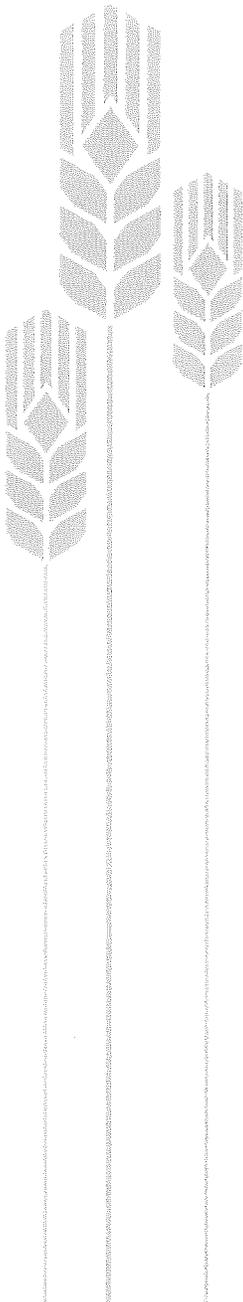
15 How come we don't get to vote on this? You 20f  
16 know, the people should be able to vote as to what they  
17 want. We don't even know what the plan is. So how can  
18 -- how can they just push it through?

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.

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5 (Off the record.)  
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September 13, 2018

Jill Townley  
Environmental Policy and Review Unit  
Department of Natural Resources  
Box 25  
500 Lafayette Road  
St. Paul, Minnesota, 55155-4025

Ref: Plan B, Fargo-Moorhead Flood Diversion Project DSEIS

Dear Ms. Townley,

Thank you for the opportunity to weigh in on Plan B for the Fargo-Moorhead Flood Diversion Project. I fully support this project, as and specifically this plan, which I believe has been thoroughly studied and vetted, and provides for a long term solution for enhanced flood risk management. 22a

I have a number of reasons for supporting Plan B. First, it was the result of years of study, analysis, and even an element of trial and error. A flood management plan was presented to the DNR two years ago but was rejected due to a few concerns and possible oversights, particularly the imbalance between the distribution of benefits in relation to impacts between North Dakota and Minnesota. This has been corrected in Plan B.

Other improvements were made as well. Following DNR's rejection of the original proposal, the governors of North Dakota and Minnesota formed a task force to study the issue of flood mitigation in the Fargo-Moorhead region in-depth and make recommendations. I am pleased to see that the Fargo-Moorhead Diversion Authority took all of the task force's recommendations.

Plan B will protect fewer undeveloped acres, and instead focus more squarely on protecting people and buildings. To help local landowners, the Plan also includes a supplemental crop insurance program, including an early buy-out option, as well as assistance for debris clean-up and restoration after the flood waters recede. These, and the fact that fewer cemeteries will be impacted under this new proposal, make Plan B even more attractive.

The benefits are significant. The most important benefit, of course, is the protection of life and property; but Plan B will also result in lower insurance rates, and a favorable revision to FEMA's Flood Insurance Rate Maps.

For all of these reasons, I strongly urge DNR to recognize the hard work that went into the development of this Plan, and to afford it all required approvals. 22b

Yours Truly,

WEST ACRES DEVELOPMENT, LLP

G. Bradley Schlossman  
CEO

**WEST ACRES**

West Acres Development, LLP  
3902 13th Ave. S, Suite 3717  
Fargo, ND 58103-7512

(701) 282-2222  
westacres.com

Written Comments

Share a comment with the DNR and/or Army Corps for the revised Fargo-Moorhead Flood Risk Management Project.

Please provide your preferred method of contact (mail or email). \*Note that any information provided is public data. While you are not required to provide your contact information, doing so allows the DNR to send you future DNR environmental review documents on the Project. Comments will be shared with both DNR and Army Corps.

Name: MICHAEL BRAKKE	Mailing Address: 16285 Co. Rd. 2 Walcott ND 58077
Representing: MYSELF	
	Or Email:

My comment is for:

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

① DAM ON WILKIN COUNTY LINE. Big problem  
NEEDS TO BE ELIMINATED!

23a

② I THINK YOU NEED TO LOOK AT  
RETENTION ON THE WILD RICE RIVER (SERIOUSLY)

23b

③ WHATS WRONG WITH LOOKING AT A WHOLE  
DASIN APPROACH INSTEAD OF JUST  
DEVELOPEMENT FOR FARGO.

23c

23d

④ IT IS TIME TO PUT THIS PROJECT TO BED.  
BE DONE WITH IT! PLAN B IS WORSE THAN  
PLAN A AS FAR AS I AM CONCERNED!

23e

9-14-18

Sept. 15th. 2018

Dear Jill Townley,

I am writing to you to ask that you please do not issue a permit for the dam south of Fargo. I feel that if it ever broke (and they do) that it would endanger to many lives. I do not feel that we need this dam, our mayor was on television last year and said that Fargo was pretty well protected now with the flood walls and dikes.

24a

They were not honest with the people when they put the diversion on the ballet, they never said a word about a dam, if they had alot of the people would of never voted for it. Most say the real reason they want the dam is to develop the land south of Fargo. Fargo has problems handing what we have now, it used to be when we had a snow fall the streets would be cleaned the same day, now some wait for a couple of days, garbage is the same way, after a day off we all wait.

24b

We were told that Federal money would cover most of the cost, I can't see that happening with all the floods and fires they are having, and they need the help more then we need a dam. Who is going to pay for it? Our taxes went up again this year. They always have these big ideas, but no sure plan behind them.

The Army Corp didn't even know if they could finish the divirsion at the north end, as they have never crossed 5 rivers before, they also have a reputation for never finishing a job.

I feel that the families that will be flooded out by this project should of had a say in it, most of them will not even be paid for their land, if it doesn't have building on it they get nothing. I don't think this is fair to them.

24c

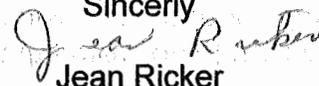
Another thing that should be looked into is who is going to profit by developing the land in south Fargo, both our Mayor and Governor have land out there to be developed, so I am sure they are looking to make money off this project

24d

I asked you again please do not give them this permit, if they get it I am sure a lot of the older citizens of Fargo will get taxed right out of their homes. I am 77 so this is a big concern of mine, I have lived in my home since 1964 and do not want to move.

Than you for taking the time to read this.

Sincerly



Jean Ricker

1909 South 17th. Street  
Fargo North Dakota 58103

## Commenter 25

**From:** wm2brtrd@wtc-mail.net  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** FM Diversion EIS  
**Date:** Monday, September 17, 2018 9:59:41 AM

---

We still feel that basin wide retention is the best solution for all concerned and definitely much cheaper than what the FM diversion 25a

is proposing. Why put this huge burden on the tax payers for years to come when there are better and cheaper ways to make Fargo safe.

In the corps 100 year flood map it shows areas that should have flooded during there last floods but in truth they did NOT flood. The 25b

impact to roads in the staging area will make it impossible for emergency vehicles to get to these areas as all the roads by I-29 will 25c

be flooded. It seems Fargo has tunnels vision on this project and can only see their own plan as the be all and end all for the

flooding problem. This attitude on their part does not inspire much trust in the parties affected that they will treated fairly

when it comes to compensation and saving the many generational farms and cemeteries that will be affected. We need to leave Mother 25d

nature in it's intended state for the tenant farmers and not to add more acres to Fargo's future developing.

Thank you for asking our input on this matter. Most of the time we just feel like pawns in this game and no one is hearing our voice.

Wayne & Marilyn Farsdale

Sept. 6, 2018

Minnesota Department of Natural Resources,  
Box 25, 500 Lafayette Road,  
St. Paul, Minnesota, 55155-4025

ATTN: Jill Townley  
Ref: Fargo-Moorhead Enhanced Flood Diversion Project DSEIS

Dear Ms. Townley,

Thank you for accepting comments on this project, and for the good work the Department of Natural Resources has done concerning it. **I support Plan B for this** project, and believe that it is not only a fantastic blueprint for enhanced flood risk management, but is also a great improvement on the 2016 project proposal, which was ultimately turned down by the Department of Natural Resources for several reasons. 26a

In 2016, the Department found that the proposal as put forth then demonstrated a lack of equitable geographic impacts between Minnesota and North Dakota, in relation to the relative benefits. It also found that the project proposed flood protection for too great of an area that was sparsely developed, rather than focusing on protection of developed properties, and contained insufficient mitigation measures for the impacts it incurred. The current proposal, described as Plan B, corrects all of these shortcomings – it provides more proportional balance of impacts-to-benefits between the two states, shifts protection to more developed areas, and includes several new mitigation measures to lessen environmental and socio-economic impacts.

There is no question that we need the type of enhanced flood protection that Plan B provides for. It offers a long-term solution to a serious problem, and reflects many hours of work, review, and analysis by qualified teams of experts. In retrospect, it is perhaps easy to see why DNR rejected the 2016 proposal; but Plan B in the current project outline corrects the initial oversights and builds on the original proposal. Residents on both sides of the state border need and deserve a long-term solution to flood protection, and this Plan B will provide it. **I request that your office adopt Plan B and approve the** project without further delay. 26b

Sincerely,



John Gunkelman

## Commenter 27

**From:** cisraelson@tampabay.rr.com  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** FM Diversion Authority's Plan B  
**Date:** Monday, September 17, 2018 4:18:29 PM  
**Attachments:** [The failure of a dam that is classified as high.docx](#)

---

Thank you for taking the time to review my comment regarding Plan B Fargo Diversion.

Sincerely,

Colleen Israelson

## Commenter 27

Jill Townley  
Tom Landwehr, DNR commissioner  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Sept. 16, 2018

I oppose the construction of a High-Hazard Dam for reasons shown below, as documented by USACE and FEMA, listing the possibility of dam failures and actual dam failures. There are other options other than a High-Hazard dam to resolve Fargo's flood issues. Consider: complete internal flood protection in Fargo, widen river in areas that have been narrowed over the years to allow the river a higher rate of flow through Fargo, finish internal flood protection.

27a

27b

USACE & FEMA reports below:

"The failure of a dam that is classified as high-hazard potential is anticipated to cause a loss of life.

In order to improve public safety and resilience, the risk and consequences of dam failure must be lowered. Progress requires better planning for mitigating the effects of failures; increased regulatory oversight of the safety of dams; improving coordination and communication across governing agencies; and the development of tools, training, and technology.

Dam failures not only risk public safety, they also can cost our economy millions of dollars in damages. Failure is not just limited to damage to the dam itself. It can result in the impairment of many other infrastructure systems, such as roads, bridges, and water systems. When a dam fails, resources must be devoted to the prevention and treatment of public health risks as well as the resulting structural consequences. For this reason, emergency action plans (EAPs) for use in the event of an impending dam failure or other uncontrolled release of water are vital.

The Association of State Dam Safety Officials estimates that the combined total cost to rehabilitate the nation's non-federal and federal dams exceeds \$64 billion. To rehabilitate just those dams categorized as most critical, or high-hazard, would cost the nation nearly \$22 billion, a cost that continues to rise as maintenance, repair, and rehabilitation are delayed. The U.S. Army Corps of Engineers estimates that more than \$25 billion will be required to address dam deficiencies for Corps-owned dams.

**High-Hazard Potential Dam** – A dam in which failure or mis-operation is expected to result in loss of life and may also cause significant economic losses, including damages to downstream property or critical infrastructure, environmental damage, or disruption of lifeline facilities".

### SOURCES

Association of State Dam Safety Officials, 2015 Statistics on State Dam Safety Regulation, August 2016

Federal Emergency Management Agency, National Dam Safety Program Fact Sheet  
Federal Emergency Management Agency, The National Dam Safety Program Biennial Report to U.S. Congress,  
Fiscal Years 2014-2015, August 2016  
U.S. Army Corps of Engineers, National Inventory of Dams.

The probable scenarios considered should be reasonable, justifiable, and consistent with the *Federal Guidelines for Dam Safety: Selecting and Accommodating Inflow Design Floods for Dams* (FEMA). For example, assuming reasonable breach parameters and a failure during normal operating conditions (“sunny day” failure) may result in the released water being confined to the river channel and no probable loss of human life, indicating a low hazard potential classification. However, if the dam were assumed to fail in a similar manner during a flood condition, and the result would be probable loss of human life (excluding the occasional passer-by or recreationist) but minor economic losses, a high hazard potential classification would be appropriate. **Once a project is placed in the high hazard potential classification, additional probable failure or mis-operation scenarios need only be considered if there is a need to determine if they would likely induce higher adverse incremental impacts.**

“In most situations, the investigation of the impact of failure or mis-operation of a dam on downstream human life, property damage, lifeline disruption, and environmental concerns is sufficient to determine the appropriate hazard potential classification. However, if failure or mis-operation of a dam contributes to failure of a downstream dam(s), the hazard potential classification of the dam should be at least as high as the classification of the downstream dam(s) and **should consider the adverse incremental consequences of the domino failures**”.

“The terms failure and mis-operation of a project are used by the Task Group to define the causes of the hazard to upstream and downstream interests. Failure of a dam is meant to include any cause that breaches the structure to release the stored contents (water, hazardous liquid wastes, slurries, or tailings). Mis-operation is meant to include any cause related to accidental or deliberate unscheduled release of the stored contents, such as a gate being opened more than planned but which does not result in full release of the reservoir contents”.

**\*Note:** These appendices are available only in the print publication of FEMA 333, which can be ordered through: FEMA Distribution Center, P.O. Box 2012, 8231 Stayton Drive, Jessup, Maryland 20794-2012, Phone Number 1-800-480-2520

***“High hazard potential dams are ones whose failure would likely kill people. Over 15,000 exist nationwide. Half are older than half a century. More than a third are in poor or unknown condition. And some states exempt dams from safety requirements.”***

#### **Smaller Dams = Bigger Hazard**

Some 17%—15,498—of the dams in the NID are categorized as high hazard potential. They do not have to be big to threaten lives. According to a 2011 statistical analysis by the U.S. Department of Homeland Security, at least two-thirds of fatal dam failures since 1900 resulted from the collapse of dams considered “small” or “intermediate”

between 20 and 49 feet high. Indeed, most were considerably lower and smaller than Ka Loko, with half a dozen impounding less than 100 acre-feet.<sup>30</sup>

The number of high hazard potential dams is inexorably growing—a phenomenon called “hazard creep.” One cause is increasing population around the country, which encroaches into previously uninhabited downstream hazard zones of dams originally built in comparatively isolated areas. Another cause is the decades-long increasing

trend toward exceptionally heavy rainfall events.<sup>19</sup> Both factors are forcing regulators to reclassify dams. Indeed, across the country, the number of dams now classified as high hazard has grown by nearly 60% in less than two decades, up from 9,281 in 1998".<sup>4</sup>

By **Trudy E. Bell** (©2017 Trudy E. Bell)

***Is the Fargo Dam going to be exempt from safety requirements? Our ND politicians seem to have had no issue moving forward on a denied MN DNR project without a permit; how will they be regarding safety requirements? FM Diversion has shown us that they have no accountability and trusting our lives with a group that has no interest, other than their own, is not safe for anyone in the Red River Valley.***

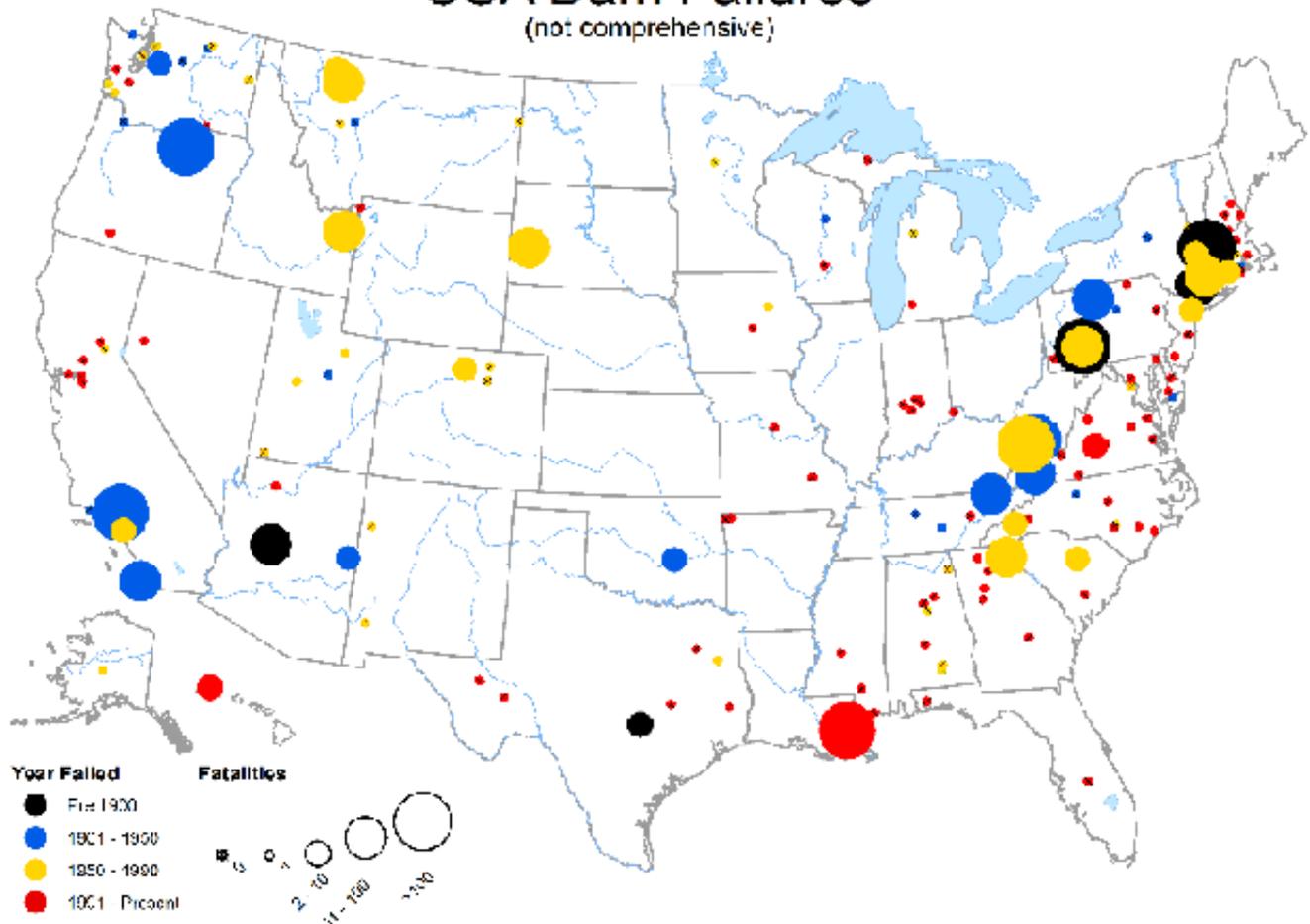
## **Understanding Dam Failures**

Hundreds of dam failures have occurred throughout U.S. history. These failures have caused immense property and environmental damages and have taken thousands of lives. As the nation's dams age and population increases, the potential for deadly dam failures grows.

No one knows precisely how many dam failures have occurred in the U.S., but they have been documented in every state. From January 2005 through June 2013, state dam safety programs reported 173 dam failures and 587 "incidents" - episodes

# USA Dam Failures

(not comprehensive)



hat, without intervention, would likely have resulted in dam failure.

This map is based on a (non-comprehensive) list of dam failures compiled by ASDSO. The map demonstrates that dam failures are not particularly common but they do continue to occur. Locations are approximate.

The large red dot on the Gulf Coast represents the New Orleans levee failures resulting from Hurricane Katrina. A few other levee failures are included on this illustration. If levee failures from the 1993 Midwest Floods were included, more failures would be indicated in the center of the map.

Below is an excerpt from the American Society of Civil Engineers' 2017 Infrastructure Report Card detailing the importance of public safety and proper maintenance?

"In order to improve public safety and resilience, the risk and consequences of dam failure must be lowered. Progress requires better planning for mitigating the effects of failures; increased regulatory oversight of the safety of dams; improving coordination and communication across governing agencies; and the development of tools, training, and technology. Dam failures not only risk public safety, they also can cost our economy millions of dollars in damages. Failure is not just limited to damage to the dam itself. It can result in the impairment of many other infrastructure systems, such as roads, bridges, and water systems. When a dam fails, resources must be devoted to the prevention and treatment of public health risks as well as the resulting structural consequences."

[damfailures.org](http://damfailures.org)

## Commenter 27

**From:** cisraelson@tampabay.rr.com  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** F-M Diversion Plan B  
**Date:** Thursday, September 20, 2018 12:50:51 PM

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Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Sept. 20, 2018

Ms. Townley:

I oppose Plan B because too many acres are affected in Richland County.

Area Inundated or Benefited	Number of Acres
With Plan B:	
Richland County Removed from Flooding	4 acres
Cass County Removed from Flooding	47,243 acres

The above table notes a total of 3,599 acres of total impact in Wilkin County, of which 409 is newly-inundated. Similarly, Richland County notes 8,697 acres of total potential impact, of which 576 is newly-inundated

Interesting how Richland County has even more acres added under plan B, where Cass county gained 47,243 acres that are no longer threatened..... isn't it Cass County that needs the flood protection?

Why is it Richland County's issue to become Fargo's holding pond? Richland County is on high ground, Cass County's Fargo isn't. 27C

Sincerely,

Colleen Israelson

## Commenter 27

**From:** cisraelson@tampabay.rr.com  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** F-M Diversion Authority Plan B  
**Date:** Monday, September 24, 2018 12:56:31 PM

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Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Sept. 24, 2018

Ms. Townley:

I oppose Plan B due to the added costs. Since inception of this project the land that has been purchased, ahead of the necessary permit, has sold, per acre, for between \$48,000 to \$25,000. If permitted, the cost of land alone may bankrupt the project.

Estimated costs for the project in the last 9 years have risen, those increases are not included in the estimation for the current Plan B project.

Real numbers should be made available prior to any permit consideration; not only for MN DNR, but for the everyone in ND and MN. ND state residents should be allowed to see how their local and state money may be spent.

27d

Show us the real numbers and how many of the Army Corps projects have failed over the last 75 years. Let's try to be realistic on all sides.

Honesty would be a welcome change.

Thank you for your consideration.

Sincerely,

Colleen Israelson

## Commeter 27

**From:** cisraelson@tampabay.rr.com  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** F-M Diversion"s Plan B  
**Date:** Wednesday, September 26, 2018 4:39:28 PM

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Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Sept. 26, 2018

Ms. Townley:

In looking at the Corp's 100 year flood map it shows what should have flooded in our last large floods (because it is the Corp's pre-existing condition) we know from experience our land has remained dry during flooding.

27e

Their numbers are unrealistic as is Plan B. The truth about this project is necessary for everyone involved.

Thank you.

Sincerely,

Colleen Israelson

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

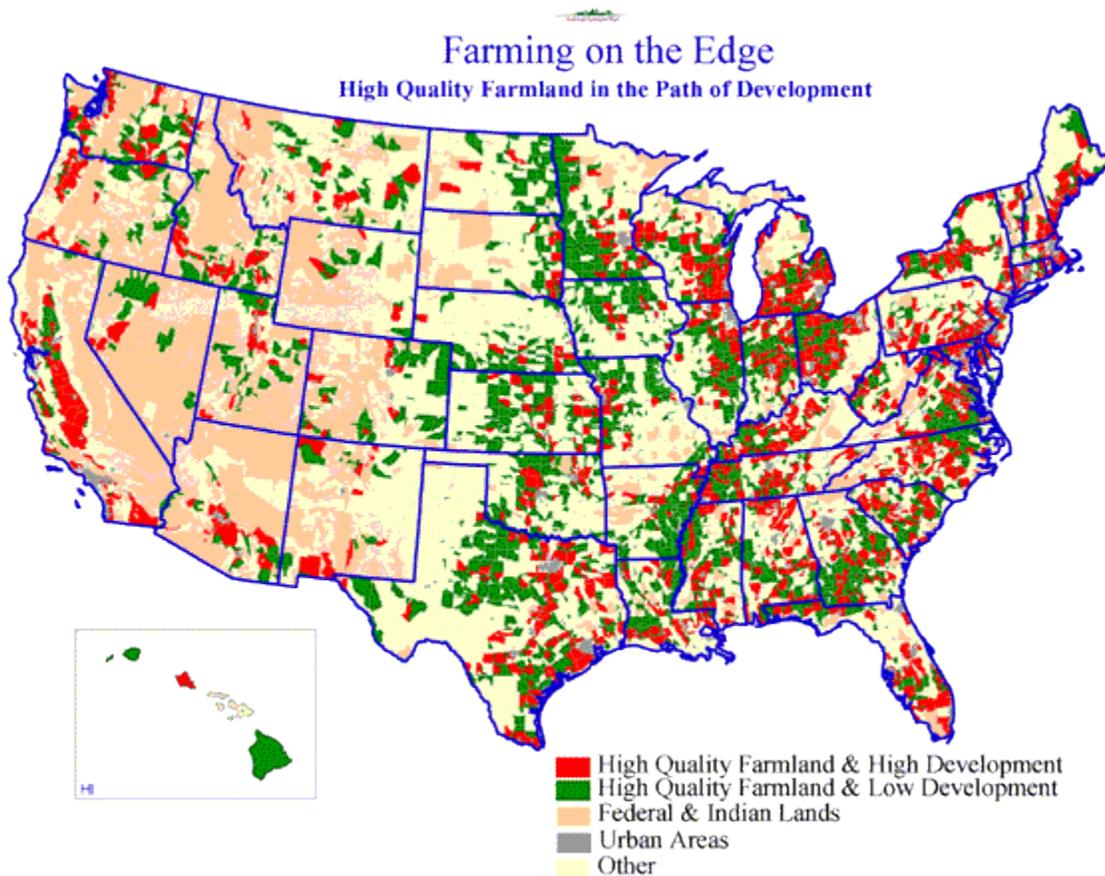
Sept. 27, 2018

Ms. Townley:

A new Veterans memorial cemetery is being built North of Fargo. We were told by the FM Diversion Authority that this cemetery absolutely cannot flood. However, **the FM Diversion board has no issue with flooding upstream cemeterys** that already have honorable Veterans buried there. **I oppose Plan B.** 27f 27a

North Dakota is a farming state; progress in our state depends on our Ag industry. I was personally told during an open forum meeting at the Kindred Public School Gymnasium by Mr. Vanyo, that the farmers South of Fargo were not needed for their income, tax dollars or purchases in Fargo for their diversion projects' funding.

When and where will it end? America feeds the world. At the very least America needs to feed America! **Permanent destruction of farmland is a misuse of power by government.** There is no going back to reclaim farmable land once it has been destroyed. It took thousands of years to create the rich soils in the Red River Valley and will only take a few years of politically motivated decision making to destroy it. 27g



September 17, 2018

Jill Townley  
Minnesota Department of Natural Resources  
Box 25, 500 Lafayette Road  
St. Paul, MN 55155-4025

Re: Fargo-Moorhead Flood Diversion Project DSEIS

Dear Ms. Townley,

**I write to express my full support for Plan B of the Fargo-Moorhead Flood Diversion Project.** It is a reasonable, feasible and possible way to provide for enhanced flood risk management.

28a

The Fargo-Moorhead Diversion Authority has developed this plan based on the recommendations of the task force established by the Governors of Minnesota and North Dakota to thoroughly study the issue of flood risk management in the metro area. It is a plan that meets the objectives described in the purpose and need statement included in the draft SEIS. That statement defines risk, damages, and protection costs associated with major flood events. This plan reduces risk by putting a viable diversion plan in place, rather than relying on sandbag berms erected at the last minute by property owners and community volunteers. It will reduce damages by protecting areas where homes and businesses are in danger.

The purpose of this project is to reduce flood risk, flood damages and flood protection costs with a permanent flood management system. This is a project that everyone can support. It will protect the lives, homes and businesses of residents in the Moorhead metro area, and in other parts of western Minnesota. It will include hundreds of Minnesotans who work in Fargo. The Fargo-Moorhead metro area is a critically important transportation, healthcare, financial and commercial center for the wider region.

Extensive flood damage, which is altogether possible given the history and geography of the area, has wide-ranging economic and social impacts on much of western Minnesota. Catastrophic flood damage will impede the transportation of needed goods to and from smaller Minnesota towns and will possibly impact the Minneapolis-St-Paul area as well. Access to health care, including emergency treatment, would be compromised in a major flood event, and the costs in loss of businesses, property and income would be devastating, as will the potential loss of human and animal life.

This proposed project will provide permanent protection against such losses. It is a well-engineered system that will impound flood waters upstream and divert them in an orderly, controlled manner around the metro area. This is far more preferable, and much more effective, than temporary emergency measures we have relied on in the past. Community sandbagging efforts are heroic and have served us miraculously well, but do not offer permanent protection.

The bottom line is that the proposed federally authorized project will provide a permanent solution to reduce flood risk, damages and costs, and should receive the support of the State of Minnesota. I applaud your efforts to date and **urge you to continue to do the right thing for the people of Minnesota by approving this project.**

28b

Very truly yours,

Bruce W Furness, Mayor of Fargo (1994-2006)  
311 11<sup>th</sup> Ave. S, Fargo, ND 58103 Phone: 701-235-0667

**From:** David Givers  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead Flood Risk Management Project DEIS  
**Date:** Tuesday, September 18, 2018 9:41:02 PM

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From: David Givers  
3312 West 5th ST Apt 104  
West Fargo, ND 58078

The Fargo Red River Diversion plan jeopardizes West Fargo in the event of an overtopping or a breach of the High Hazard dam, which is part of Plan B and the original plan.

29a

Minnesota law prohibits a High Hazard dam and MN DNR should enforce the law by prohibiting any F-M Diversion Plan that requires a High Hazard dam.

29b

We live in West Fargo, ND, and are protected by the Sheyenne Diversion. A High Hazard dam puts our extended family lives and property, who also live in West Fargo, at extreme and unacceptable cost. This negates the purpose of Sheyenne Diversion and the value of an existing federally-sponsored project logically goes to zero. This does not seem compliant with Federal Acts and Rules.

29a

29c

MN DNR needs to explicitly state that the Diversion Authority plans do comply with federal laws and rules with respect to the Sheyenne Diversion. If the MN DNR can not certify or approve a High Hazard dam on the Red River or certify that the Project does not impact the Sheyenne Diversion, then DNR must reject Diversion Authority Plan B.

29c

I am questioning the Minnesota DNR on why you would consider permitting a high hazard dam for a project that is more about economic development for the city of Fargo than for the main purpose of flood control for Fargo. If not, why is the dam so far south of Fargo? Why is so much of the lowest land in southern Cass County (a natural holding areas for water) being protected and some of the highest and best farm land in southern Cass County being flooded? I feel this Plan B has been rushed through and the impacts have not fully been studied. Here are some reasons I feel this way.

30a

1) Our farm would be a buyout and in 9 years we have not been contacted nor has anyone from the Corp or DA stepped foot in our yard. The only offer we were ever made was they would buy our house if we would relocated to Oxbow! What about our farm shop, sheds buildings and grain bins??

30b

2) What about the roads in the township? In the event they hold water back how will families get their children to school and how will people receive emergency help if all the roads are under water? Who will be responsible for that? What if someone needs an ambulance? Has this been addressed or thought through?

30c

3) The DA has bent over backwards for Oxbow but do not seem to care about anyone else. It makes one wonder where all the priorities lie. What about everyone else in the township and county?

4) Who will bear the tremendous cost? The Oxbow project has already doubled from the original estimate and is not near done. Do we want a 2 billion project that turns into 4 billion and there is no money to finish it? There are many scenarios that I don' believe have been fully addressed. The DA and Corps just seem to want to push forward and hope things work out.

30d

5) What are the impacts of the Wild Rice River Control structure and the one on the Wolverton Coulee? Has this been fully studied? What will all of these impacts be and who will they affect?

30e

Everything seems to be rushed through and the DA and the Corps keep changing all of their answers. We found that out on Thursday night when talking to them and asking questions. There was a lot of stammering going on not knowing answers when confronted directly. More study needs to be done for a safe and sound plan with protection for Fargo with the least amount of negative impacts for both North Dakota and Minnesota. Our ground is not always that stable and it would be devastating if a high hazard dam failed. I am sure you would not want in any way to be partly responsible for that.

Thank you for taking my concerns.

  
Sandy Nipstad

DEAR DNR -

THE DISC YOU SENT US COULD NOT BE WATCHED BY US AS WE HAVE NO COMPUTER.

OUR OPINION IS THE MINNESOTA DNR SHOULD IN NO WAY GIVE A PERMIT TO THE DIVERSION PROJECT. THE UPSTREAM PEOPLE SHOULD NOT HAVE WATER DUMPED UPON THEM SO THAT FARGO CAN BUILD HOUSES IN THE FLOOD PLAIN. 31a

FARGO NEEDS TO BUILD A LEVY ON THE SOUTH SIDE OF TOWN AND IT WILL BE SAFE. 31b

STEVE AND LENORE  
OLSON... COMSTOCK, MN.

**From:** Craig Hertsgaard  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead Flood Risk Management Project DEIS  
**Date:** Tuesday, September 18, 2018 7:17:51 AM

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Jill Townley

EIS Project Manager

DNR Division of Ecological and Water Resources

500 Lafayette Road, Box 25

St. Paul, MN 55155-4025

Thank you for the opportunity to comment on the DNR's DSEIS for the Fargo Moorhead Flood Risk Management Project. Flood control is important to the entire Red River Valley, and developing a sound plan to protect Fargo is vital to the process. I believe the review of current plan can be improved in several ways.

The DSEIS does not contain an adequate review of a diversion channel sized to handle a 100 year POR flood. The projected POR 100 year flood in Fargo is 33,000 cfs. The river channel capacity at a 37 foot level is 21,000 cfs. The practical requirement for a diversion channel with a staging area should be between 12,000 and 15,000 cfs, instead of the current 20,000 cfs. A portion of the original project purpose was to provide protection for an event larger than a 100 year flood. Flood events larger than 100 years should be addressed with distributed storage upstream of the proposed dam and staging area. The report contains no independent analysis of separating protections between 100 year and 100 year plus events. The chief benefit of separating the two goals is that a smaller channel would provide an opportunity for a less environmentally invasive project at a lower cost. It also would provide an opportunity for a smaller channel footprint and impact on the floodplain. The smaller size may allow the channel to follow a different path, which would also reduce floodplain impacts. Secondly, a purposeful development of distributed storage sites both upstream and downstream of the project would reduce frequency of operation of the project, and the size of the staging area. The DSEIS should include an analysis of 100 year flood protection, with a separate analysis of a complementary and optional higher levels of protection.

32a

The SDEIS does not adequately review an optional future development plan associated with socio-economic impacts. The project planners assume future unguided growth for the Fargo area in their calculations for needed protection and flood insurance. A viable option for avoiding the cost of floodproofing future development and flood insurance is to build outside the natural floodplain whenever possible. Transportation is the core of a regional economic center. The Fargo Moorhead area is served by a well developed transportation infrastructure that extends to both sides of the Red River. The intersection of I-29 and I-94 is the geographic center of the economic hub. Transportation to the undeveloped east edge of Moorhead is not significantly different from the area south of Davies High School in Fargo, or north of Harwood. The SDEIS

32b

should analyze the economic advantage of development in the areas east of Moorhead which is outside the 100 and often the 500 year flood plain, as opposed to developing in a floodplain area that must be protected by an expansive diversion on the southern and northern reaches of Fargo's metro area. A smaller, more compact diversion with the assistance of strategic dikes and levees may offer a significantly better BCR as well as a lower negative flood plain impact.

The SDEIS does not address increased flows downstream as a way to reduce staging impacts upstream of the project. While Plan B has additional downstream impacts of .14 feet, the SDEIS should study the effect of downstream impacts up to .5 feet. One of the chief impacts of the project is to create a large area which will be newly included in a 100 year flood plain. Exploring a balance of impacts upstream and downstream of the project could find a "sweet spot" where the creation of a new 100 year floodplain could be minimized.

32c

Thank you for the opportunity to comment on the study.

Craig Hertsgaard  
5530 165<sup>th</sup> Ave SE  
Kindred, ND 58051



Virus-free. [www.avast.com](http://www.avast.com)

Commenter 33

September 18, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Rd, Box 25  
St. Paul, MN 55155-4025

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

Re: Plan "B" Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

I am writing to offer my support for Plan "B" of the Fargo-Moorhead Flood Diversion Project, for which you are currently reviewing a Draft Supplemental Environmental Impact Statement. The proposed action is a well-designed, well-thought-out, and thoroughly studied project that will provide a long-term solution for 100-year flood protection and enhanced flood risk management to the greater Fargo-Moorhead metro area. 33a

I think that both the Fargo-Moorhead Diversion Authority and the task force which was set up by Governors Dayton and Burgum last year have done a fantastic job of analyzing the issues and difficulties associated with the complex problem of flood control in this area. The Diversion Authority accepted all of the task force's recommendations, and came up with a good plan which is an improvement upon earlier attempts, current programs, and competing options.

Plan B improves on an earlier attempt at comprehensive flood management, which was denied by the Department in 2016, prompting the formation of the task force. It improves and balances out how the benefit-impact ratio looks on either side of the state border, protects more developed land, and includes improved and expanded mitigations for both environmental and socio-economic impacts. It is less costly, and poses fewer economic impacts than a competing alternative, the "JPA alignment", and it is certainly better than the plan we currently would have to rely on, which requires extensive sandbagging and other antiquated measures.

As a resident of Fargo/Moorhead since 1991, I have seen and helped with numerous floods. I truly feel the diversion is necessary to protect our residents from future damage.

We are blessed to live in this community, but there is no question that living here comes with a constant risk of flooding from one of our beautiful riverways. Flood risk management is not a luxury here, it is a necessity, and Plan B is the best option for providing the needed solution. This is a well-designed plan, and I urge the Department to approve it, starting with a finding of adequacy for this very complete SEIS.

Sincerely,



Todd Anhorn  
Advantage Realtors

Fargo ND Resident

Written Comments

Share a comment with the DNR and/or Army Corps for the revised Fargo-Moorhead Flood Risk Management Project.

Please provide your preferred method of contact (mail or email). \*Note that any information provided is public data. While you are not required to provide your contact information, doing so allows the DNR to send you future DNR environmental review documents on the Project.

Comments will be shared with both DNR and Army Corps.

Name: STEVE BRAKKE	Mailing Address: 5060 173rd AVE SE
Representing: Myself Pleasant Township, Cass County ND	Hickson ND 58047 Or Email: Phone # (701) 371-3758

My comment is for:

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

I would like to see a basin wide approach to this problem. To simply put in dams and tie back levees, dig a ditch and flood every one to the south of FM area is ridiculous and cruel. My farmstead has been in Pleasant Township, Cass County since 1898. The big flood was in 1897 does the correlation? They knew where to put these farms.

34a

Put traps on every culvert basin wide and hold the water that is on the land until the rivers have a chance to open and clean out. This is not a water plan. It is simply holding the moisture I have on my land and letting it take out the frost and soak into the soil. I know the Corps does not like this because it provides no income for them. The engineering companies don't like this because they can't tell a farmer how to put on a trap to get paid for their services.

34b

I am also chairman of Pleasant Township which will be destroyed. Sometimes government has to put away the maps and calculators and use some common sense! Elevation does

34c

not always correlate to flooding. The water has to get there!

The numbers used for 50, 100, 500 year floods raise water levels to make people buy flood insurance. Let's work together for a solution, Fargo, Moorhead should not be able to dictate my, or my family's future. They should stay in their own jurisdiction. Thank Steve Brakke

**From:** Linda Hohertz  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Impacts of diversion  
**Date:** Wednesday, September 19, 2018 1:53:19 PM

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I am submitting comments to the diversion project being proposed by the city of Fargo. The area I live in in northern Richland county was settled by people who had enough sense to build on high ground. These spots were staked out during the flood of the 1890. The city of Fargo could learn something from this. Building permits should have never been given for the area along the river south of Fargo, but since it is desirable property, the nonsense continues and as such, the fight to keep this area dry, will mean huge and lasting impacts for thousands of hardworking people, who want nothing more that to just live in peace. It will mean contaminating ground used for organic farming. It will meaning moving cemeteries or contaminating and desecrating hallowed ground where loved ones are buried. The damage to roads in the holding area cannot be measured. It will slow or ground to a halt emergency services to people who are not a part of the diversion project and want nothing to do with it. The majority of the cost of this project will be passed onto people who, obviously, are not protected by it. They pass their flood fight onto us. It means loss of neighbors, schools, businesses as they try to move out of the way. We ask the DNR to stick to its guns and not allow this atrocity. Linda Hohertz, Christine, ND

35a

*Linda* 



Commenter 36

September 8, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Rd  
Box 25  
St. Paul, MN 55155-4025

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

RE: Plan B, Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley:

This proposed enhanced flood management project is great news for the Fargo-Moorhead metro area, and has been years in the making. Flooding is an issue throughout Minnesota, and particularly in our part of the state, owing to our geography and preponderance of rivers -- Red River, Sheyenne, Wild Rice, Maple and Rush and lower Rush -- all of which are historically prone to flooding. The Red River especially, flowing as it does through the heart of the metropolitan area, poses an enormous risk to businesses, homes, and even lives.

That is why it is so critical that action be taken sooner rather than later. Not acting – i.e., by adopting the no-action alternative in the Supplemental Environmental Impact Statement before you – would pretty much sentence us to having to deal with the next flood largely unprepared. Considering the history of the region, the potential and likely costs of inaction are too great.

**Plan B is the program that will best provide the sort of enhanced flood management that is needed to prevent and limit flood damage the next time the Red River tops its banks.** It is well-designed, being the culmination of months of study and effort on the part of a task force appointed by the governors of Minnesota and North Dakota in 2017. It makes some distinct improvements on an earlier proposal – protecting more developed acreage, rather than sparsely developed land, for example, and making sure that the benefits and impacts are shared equally between North Dakota and us. It also provides for greater mitigations for the unavoidable impacts it does potentially present, including a proposal for the Diversion Authority to acquire property rights up to the maximum pool level (923.5 ft), a supplemental crop insurance plan, and debris clean-up.

36a

Of all the proposals offered and analyzed, Plan B is the most effective at protecting homes and other properties, the most cost-efficient, and the least impactful in terms of local socio-economics.

Everyone has done a great job in studying and preparing this Plan, and the time is now to issue the needed approvals and put the plan into action. There are hundreds of homes and businesses that are counting on this getting done.

Best,

Simon Irish

## Commenter 38

**From:** Roger Reiersen - RR46  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** FMDiversion  
**Date:** Wednesday, September 19, 2018 10:48:49 AM

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I have lived in Minnesota and North Dakota and watched the devastation of floods for over 50 years. Time to get protection done. This is low cost to Minn residents. **Let's move forward.**

38a

Roger A. Reiersen  
Chairman, CEO  
RR46, Inc.

## Commenter 39

**From:** Jeff M. Thomas  
**To:** ["CEMVP-Fargo-SEA@usace.army.mil"](mailto:CEMVP-Fargo-SEA@usace.army.mil)  
**Cc:** [Jeff M. Thomas](#); [MN Review, Environmental \(DNR\)](#)  
**Subject:** Comments re DNR's Draft Supplemental Environmental Impact Statement  
**Date:** Wednesday, September 19, 2018 8:00:35 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)

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. **39a**

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

September 9, 2018

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

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

Ref: Plan B, Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

**I strongly support the above referenced** flood mitigation project, currently undergoing a Supplemental Environmental Impact Statement process by the Department of Natural Resources, and accordingly recommend that the DNR approve Plan B as described in the document.

40a

Plan B is a well-thought-through, and carefully designed project which strikes the best possible balance between providing flood protection and minimizing or mitigating the associated impacts. It provides the Fargo-Moorhead metro area with an enhanced flood risk management tool which protects the homes and businesses of the region, rather than wasting engineering and resources on protecting sparsely populated and undeveloped areas.

An alternate proposal that was briefly considered, then dropped, was know as Alternative "C", or the "JPA alignment". Unlike Plan B, the JAP alignment focused protection further to the north, protecting areas where very few people live, rather than the populated developed areas. It was far more expensive, and although it protected sparsely populated areas, it actually impacted more people. Not a good trade off.

Plan B, on the other hand, is more carefully and properly sited, and as such meets the requirements for an enhanced flood risk management system called for in the SEIS's purpose and need statement. These requirements include reducing risk, damage, and protection costs associated with floods from any of our regional waterways, and qualifying significant portions of the metro area for 100-year flood accreditation,

Plan B is clearly the best option for providing the kind of flood risk protection we need in western Minnesota, and I urge the DNR to follow up on the years of study and hard work completed by the Diversion Authority, the task force, and others with an approval of the project.

Sincerely,

Jodi Tollefson



United States Department of Agriculture

September 5, 2018

Natural Resources  
Conservation Service

Bismarck State Office  
PO Box 1458  
Bismarck, ND  
58502-1458

Voice 701.530.2000  
Fax 855.813.7556

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

RE: Plan B Fargo-Moorhead Flood Risk Management Project

Dear Ms. Townley:

The Natural Resources Conservation Service (NRCS) has reviewed your letter dated August 27, 2018, concerning the Plan B Fargo-Moorhead Flood Risk Management Project affecting Cass and Richland counties in North Dakota, and Clay and Wilkin counties in Minnesota.

NRCS has a major responsibility with Farmland Protection Policy Act (FPPA) in documenting conversion of farmland (i.e., Prime, Statewide Importance, and /or Local Importance) to non-agricultural use when the project utilizes federal funds. FPPA may apply to any portion of your projects. After a final alternative has been selected, follow the instruction listed below for completing a Farmland Conversion Impact Rating Form AD-1006 for all portions of the project that are outside of the Fargo-Moorhead city limits.

41a

#### Farmland

A web-based format of the Farmland Conversion Impact Rating Form AD-1006 may be utilized at the following URL:

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/alphabetical/fppa> to record the following. You will need to complete Part I and Part III and return to NRCS State Office, PO Box 1458, Bismarck, ND 58502-1458. If applicable, you may email the above information to [wade.bott@nd.usda.gov](mailto:wade.bott@nd.usda.gov). We will also need a scaled map or ESRI shape file of the site(s) so we can accurately assess the area (e.g., 1:20,000 or 1:24,000). If the farmland (i.e., Prime Farmland, Statewide Importance, Local Importance) is determined to be subject to the FPPA, we will then complete Parts II and IV. NRCS will measure the relative value of the site(s) as farmland on a scale of 0 to 100 according to the information sources listed in CFR 658.5(a). If FPPA applies to this site, Form AD-1006 will be returned to your agency for completion of Part VI, Site Assessment Criteria

#### Wetlands

The Wetland Conservation Provisions of the 1985 Food Security Act, as amended, provide that if a USDA participant converts a wetland for the purpose or to have the effect of making agricultural production possible, loss of USDA benefits could occur.

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Ms. Townley

Page 2

You are anticipating constructed outside of the right-of-way where wetland impacts may occur that could make production possible. The Natural Resource Conservation Service has developed the following guidelines to help avoid impacts to wetlands and possible loss of USDA benefits for producers. If these guidelines are followed, the impacts to the wetland will be considered minimal allowing USDA participants to continue to receive USDA benefits. Following are the requirements:

- Disturbance to the wetland must be temporary.
- No drainage of wetland is allowed (temporary or permanent).
- Mechanized landscaping necessary for installation is kept to a minimum and preconstruction contours are maintained.
- Temporary side cast material must be placed in such a manner not to be dispersed in the wetland.
- All trenches in a wetland must be backfilled to the original elevation.

NRCS recommends that impacts to wetland be avoided.

If you have questions concerning the Farmland Conversion Impact Ratings or assessment factors, please contact the undersigned by phone at (701) 530-2021 or by email at [wade.bott@nd.usda.gov](mailto:wade.bott@nd.usda.gov).

Sincerely,

**WADE BOTT** Digitally signed by WADE BOTT  
Date: 2018.09.05 11:20:20 -05'00'

WADE D. BOTT  
State Soil Scientist

**From:** Toby Christensen  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead Flood Diversion Project DSEIS - Plan B  
**Date:** Thursday, September 20, 2018 6:04:02 PM

---

9/20/2018

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

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

Ref: Fargo-Moorhead Flood Diversion Project DSEIS – Plan B

Dear Ms. Townley,

Thank you to you and your staff for the work you do in protecting our state and our water. Thank you as well for preparing this Supplemental draft Environmental Impact Statement on the Fargo-Moorhead Flood Diversion Project. I am writing in support of Plan B, which will put the project in motion and provide the Fargo-Moorhead metropolitan area the enhanced flood risk management program we need.

I am a small business owner in South Moorhead and have been a Moorhead resident for over 35 years. As a construction contractor, I have been intimately involved with fighting off record local floods in 1997 and 2009, along with other devastating floods in 2006, 2010, and 2011. While we didn't lose large areas of our communities to these floods, we won't continue to beat it back if/when it reaches those levels, or higher, as is projected as possible, and the economic, physical, and mental impact these floods have on our citizens and communities can't continue to be absorbed. While there is no plan that will not negatively impact someone, it is time we move forward and protect the largest metropolitan community along the Red River within the United States.

The F-M Diversion Authority developed purpose and need statements to reflect the requirements of the state's environmental review process, and Plan B meets those. The purpose of the project is to reduce flood risk, damage and protection costs related to flooding in the metro area from local rivers with a high historical probability for flooding. This will also qualify much of the metro area for 1-percent chance flood accreditation (100-year flood insurance accreditation), as the plan meets the standards to be shown on FEMA's Flood Insurance Rate Maps (FIRM) as providing protection.

Plan B accomplishes this while at the same time limiting the impacts on people in the region. The same cannot be said for competing proposals. The JPA alignment, submitted as Alternative 'C', impacts far more people and structures and sports a considerably higher bill, while protecting more sparsely developed areas and providing about the same environmental benefit as Plan B.

Clearly, Plan B came about through a thorough and intensive process of study, review and analysis. It improved on the original project, rejected in 2016, and fixed the shortcomings identified by DNR. It also took every one of the recommendations submitted by a task force created by Governors Dayton and Burgum last year to study flood risk management in the F-M metro area.

This is a well-prepared plan that reflects many years of diverse input and hard work, satisfies the purpose and need, and improves on previous submissions. I support it and ask

that you do as well.

Yours Truly,

*Toby Christensen*

President

CAMRUD FOSS CONCRETE CONSTR.

[\*\*www.camrudfoss.com\*\*](http://www.camrudfoss.com)

3300 8<sup>th</sup> Street South

Moorhead, MN 56560

Ph: 218-233-0065

Fax: 218-233-0475

Cell: 701-219-0400

[toby@camrudfoss.com](mailto:toby@camrudfoss.com)

Kimber, N.D.

Sept 13 2018

To Project Manager & all other Mn DNR members,  
 After looking at Maps of Plan B, I don't see  
 any roads & Highways that would be open to Traffic  
 from South to North and This includes I-29. All  
 this is true emergencies could be a problem.

43a

after this is over who will fund repair to Township  
 roads as they don't fund to do so.

Clean up of land and Property, I read in Diversion  
 Project Summary, property owners will be expected  
 to clean up and pile on ends of near road and it will  
 be pick up later, this is unacceptable, who has time  
 for this and it will cost land owner money.

43b

at meeting in Moorhead on 9-13-18 it was  
 commented about flood insurance cost to home owners,  
 this may be true, but if Fargo would complete  
 their diking a lot of these would not need the  
 insurance. It can be as much or more costs to farmers,  
 when land is flooded, or more.

43c

It is shameful to think of the number of Fish  
 that will die as when water goes down they will be  
 trapped on land & in ditches.

43d

It is said they will let 37 feet water go through  
 Fargo, that is good, but I don't trust crop & Engineers  
 as they will project river flow to be high, then close  
 gates and start diversion blowing and river will  
 not get close to 37 feet in Fargo, their answer will  
 be our charts projected this.

On closing my through is do the diking and no  
 further developing to the south in flood zone.

There is developments 907 elevation and whating  
 to hold water on 918-920 or higher elevation, this  
 is backwards.

-over-

Thank You,  
Douglas Christianson  
Kindred, N.D. 58051

Mr Doug Christianson  
16933 53rd St SE  
Kindred, ND 58051-9610

## Commenter 44

**From:** Chris Garty  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead SEIS  
**Date:** Thursday, September 20, 2018 5:01:46 PM

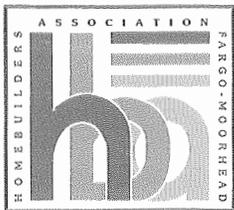
---

Hi DNR,

I see that the latest changes to the flood mitigation efforts haven't affected the recreational features (2.1.1.16). That is great to hear. I imagine there is a large and largely silent group of people eager to use the long pathways and trails that have been proposed as part of the project. Thanks for keeping all those feature options in tact.

44a

- Chris Garty  
45 Fremont Dr S, Fargo, ND 58103



est. 1956

# Home Builders Association of Fargo-Moorhead

1802 32nd Avenue South · Fargo, ND 58103 · (701) 232-5846 · info@hbafm.com · hbafm.com

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September 20, 2018

Jill Townley

Environmental Policy and Review Unit

Ecological and Water Resources Division

Box 25, Department of Natural Resources

500 Lafayette Rd,

St. Paul, MN 55155-4025

## **RE: Plan B, Fargo-Moorhead Flood Diversion Project Environmental Impact Statement**

Dear Ms. Townley:

**Please accept this letter supporting the above-referenced** Flood Diversion Project. Adopting Plan B of the Supplemental EIS prepared for the analysis of the project is the only option that will provide adequate, permanent flood protection for the Fargo/Moorhead region.

After the Department denied the original version of the project in 2016, the Governor of Minnesota and North Dakota formed a task force to analyze the project, look at Minnesota DNR's reasons for denial, and make solid recommendations for going forward. The Diversion Authority took the task force's work and recommendations to heart when designing this new proposal for enhanced flood risk management for the developed areas of the Fargo-Moorhead region. Among the changes made to the original concept are improved environmental and economic impact mitigations, and adjustments to ensure more and better protection for developed portions of the region, rather than areas that are more sparsely developed.

It should be mentioned that another alternative was submitted to the Department for review by the Richland/Wilkin JPA, but was ultimately, and wisely, rejected. This alternative, "C" would be far too costly for the minimal benefits it would provide; it would impact many more people and properties than Plan B does, requiring the state to purchase an additional 37 homes and 9 businesses, and would require flooding several thousand more acres during the operational phase.

Affiliated With



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The only other standing option is the No-Action Alternative, that is simply keeping in place the current flood control program, which is demonstrably antiquated and not up to the task of meeting the requirements spelled out by the Diversion Authority, which include reducing the flood risk potential alongside local streams and rivers with a historic high probability of flooding, and qualifying substantial portions of the Fargo-Moorhead metropolitan area for 100-year flood accreditation.

Plan B is the option before you which meets these requirements and provides enhanced flood risk management. It is the result of a very thorough and complete review process, and will certainly be better than the sandbagging which appears to be the current "solution".

Sincerely,

A handwritten signature in cursive script that reads "Bryce Johnson".

Bryce Johnson,  
HBA of F-M  
Chief Executive Officer

Commenter 47

**From:** Tom Jacobs <tjacobs2759@gmail.com>

**Sent:** Thursday, September 20, 2018 12:23 AM

**To:** Townley, Jill (DNR) <jill.townley@state.mn.us>; bob.zimmerman@ci.moorhead.mn.us

**Subject:** Comments on the FM Diversion

To: Diversion Authority.

The information in the "Flood Diversion Authority" identified my organically certified property in northern Wilkin County as being within the mitigation area and would thus be eligible for appraisal and the early property acquisition program.

#1. What is the time frame for these appraisals and 'early property acquisitions.

47a

I have just started to build a new house on my property at an elevation above the flood plain. If the appraisal value of my property were high enough I would consider building on a different site just to avoid being flooded by the diversion project. (The site has never flooded in the past 50+ years.)

#2 Land that is certified organic ought to be valued higher than land not certified organic. What valuation (+/-) will be used valuation of organically certified land?

47b

#3 My property is directly on the red river, thus I have irrigation water from the river available on my property which is ideal for my small organic operation which includes nearly 80 fruit trees, a variety berries, grapes and vegetables. The availability of irrigation water to an operation of this type is very valuable. Will the real value of water be considered when appraising my property? To relocate and have property with surface water would put me in lake country where land prices are considerably higher despite the fact the soil is of lesser quality.

47c

#4. I have doubts concerning fair valuation concerning #2 & 3 so I plan to stay put and move forward with building plans. Will the FM diversion make it more difficult to obtain home and property insurance within the mitigation area, or will it drive up the rates. If so what are the estimated future insurance rates for homes and property along the Red river which is above the identified flood plain?

47d

**In summary**, I am concerned the Diversion Authority has already failed to consider the full value of existing property in the mitigation area. Because of the Diversion Authorities lacks the ability to see the value of existing property they also lack the ability to understand the real cost of replacing and/or relocating farms and operators in the mitigation area.

Thank You

Tom Jacobs

1265 115<sup>th</sup> Ave.

Wolverton, MN 56594

Dan Lindquist Construction, Inc.

2318 N River Dr  
Moorhead, MN 56560  
701-261-8230

9/13/2018

Jill Townley  
Minnesota Department of Natural Resources  
Box 25  
500 Lafayette Road,  
St. Paul, Minnesota, 55155-4025

Dear Ms. Townley,

This letter is intended as my official comment on the Fargo-Moorhead Flood Diversion Project. I recommend that the Department of Natural Resources approve Plan B, which will allow the project to move forward and provide a long-term solution to protect lives and property in the event of a major flood.

48a

Given our geography and history it is all but certain that we will face another potentially catastrophic flood event in the near future. It is incumbent upon us to make sure we are fully prepared to handle it when it inevitably happens. Fortunately, the task force established by Governor Dayton of Minnesota and Governor Burgum of North Dakota in 2016 has studied this situation intensively, and has analyzed every aspect of this proposed flood control plan thoroughly, so we know that we have the framework for viable path forward.

The Diversion Authority accepted every one of the task force's recommendations, and developed a solution in Plan B that not only provides effective enhanced flood control and risk management, but balances that against the associated impacts.

Among the positive changes between plan B and the earlier 2016 proposal are the enhanced mitigation measures. Among these are the inclusion of a supplemental crop insurance plan which provides for help with debris

clean-up and early buy-out options, and environmental mitigations such as river and fish habitat restoration.

The Plan also does a better job of protecting property than the previous proposal; the 2016 project outline covered a lot of undeveloped or sparsely developed acreage – the current Plan B protects more developed and built up areas, which is the overall goal of flood risk management and damage prevention.

Flood risk is a part of living in our community, and therefore so is flood control. This project balances protection and risk management with mitigation of impacts. All involved are to be commended for their hard work on this, and for developing such a well-prepared project plan. Please approve Plan B in the supplemental EIS.

Cordially,

A handwritten signature in black ink, appearing to read "Dan Lindquist". The signature is stylized and cursive.

Dan Lindquist

Commenter 49

September 20, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4025

(sent via e-mail to [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us))

Dear Ms. Townley,

I wish to submit a comment on the Plan B SEIS. My comment is concerning the impacts to the Hemnes Cemetery which is located on the bank of the Red River, in the extreme northeast corner of Richland County. This cemetery is the oldest Lutheran Cemetery in the State of North Dakota. There are 69 gravesites there, 51 are marked, 18 are unmarked. The earliest burial occurred in 1872. There are veterans buried here.

The riverbank has been sloughing and eroding into the cemetery grounds for some years now. In years of high water, more erosion occurs, but even in the years when there is no high water in the spring, sloughing of the riverbank still happens to a degree due to soil instability. **If the dam and staging area are built and utilized, causing any amount of water to flood this cemetery, the bank will erode more rapidly than would occur naturally.** Currently it has eroded to approximately 13' from the nearest gravesite. Because the historic Hemnes Cemetery is so close to the river bank, a berm or ring dike is not an option unless extensive rebuilding of the riverbank is completed first, at considerable cost (\$1,072,000 per the USACE Draft Cemetery Mitigation Plan). **This cost has not been included in the cost estimate for the Fargo-Moorhead Metro Flood Risk Management Project.**

49a

This is just one of the numerous cemeteries that will be adversely affected by this Project. Also not included in the **Draft Plan are the affects this Project will have on the families who have ancestors and loved ones buried in these cemeteries. If the estimated cost to relocate a grave is between \$5,000 and \$8,000, how can an average family with numerous relatives to move afford to do it?** The news coverage of the recent hurricane flooding in North and South Carolina shows what happens to coffins in airtight burial vaults when water covers the grave for several days. They rise, float off and require retrieval and reburial. This unimaginable, traumatic scenario is entirely avoidable by not approving the permit for the Fargo/Moorhead Dam.

49b

Respectively,

Cherie Mathison  
5298 174 ½ Ave SE  
Hickson, ND 58047  
ckksbroom@gmail.com

Commenter 49

September 20, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4025

(sent via e-mail to [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us))

Dear Ms. Townley,

I wish to submit a comment on the Plan B SEIS. My comment is concerning the impacts to the gravel roads and ditches in the rural areas affected by the staging of water upstream of the proposed Fargo/Moorhead Metro Flood Risk Management Project (or the F/M Dam/Diversion).

In North Dakota, our Townships are responsible for the upkeep and maintenance of the Township roads, and they do not have the spare funds to rebuild all the roads, bridges and culverts that will be damaged every time the staging area upstream of the Fargo/Moorhead Dam/Diversion is used. I do not agree with the US Army Corps of Engineers when they state that minimal damage will occur to these roads. I've seen how much damage happens when just the Wild Rice floods a few of them. There is a place in Pleasant Township where they just quit rebuilding a bridge altogether because it was poorly designed and washed downriver every time the Wild Rice flooded. They simply put in a "drive-over" in the bottom of the Wild Rice riverbed and whenever the water is higher than this "drive-over", the nearby farmers and residents are forced to drive miles out of their way until the water goes back down. This will likely be the scenario in many places when the Townships run out of money to replace the washed-out roadbeds, culverts and ditches filled with debris that will occur every time the staging area is utilized.

49c

Please consider less impactful alternatives, such as a "waffle plan" consisting of plots of land dug to an appropriate depth to hold adequate amounts of flood water be placed in the current flood plain on the North Dakota side of the Red River south, and possibly even north of Fargo. The dirt removed from these plots of land could be reused to build a permanent dike system all the way through Fargo, and surrounding the current footprint of existing buildings. Further building into the floodplain would then require additional diking.

49d

Respectively,

Cherie Mathison  
5298 174 1/2 Ave SE  
Hickson, ND 58047  
ckksbroom@gmail.com

Commenter 49

September 20, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4025

(sent via e-mail to [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us))

Dear Ms. Townley,

I wish to submit a comment on the Plan B SEIS concerning the pollution that will occur in the Red River if the Plan B dam and staging area are implemented. I do not believe the DNR or the Army Corps of Engineers can accurately determine the type and amount of pollution that will occur when farmsteads are suddenly flooded. Since the farmsteads have never flooded before, many have old dumping areas in the shelter belts and wooded areas, and in and around the farm buildings. Some of these dumping sites go back generations. There could be old, buried fuel tanks and waste oil tanks and leftover chemicals in rusty drums that every farm seems to have laying around, or worse, buried and out of sight. Some of this garbage will float, some will leak, all of it will cause untold pollution. How can this possibly be avoided?

49e

The salt levels that will be brought to the surface of the ground after repeatedly flooding the staging area south of Fargo and Moorhead will eventually kill all the plants and trees, creating a barren wasteland. This would completely disrupt the wildlife and the green corridor that the Red River currently has from start to finish. We must be good stewards of this land for future generations. Please do not permit this project.

49f

49g

Respectively,

Cherie Mathison  
5298 174 ½ Ave SE  
Hickson, ND 58047  
ckksbroom@gmail.com

Commenter 50

September 20, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4025

(sent via e-mail to [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us))

Dear Ms. Townley,

I wish to submit a comment on the Plan B SEIS. My comment is concerning the cemeteries that will be affected by the proposed Fargo-Moorhead Flood Risk Management Project (Diversion/Dam). The eroding bank of the Red River where it runs past the Hemnes Cemetery is a huge concern. Every time the Red floods, more of the bank erodes into the river. The Diversion Authority wants to build a Class I High Hazard dam on unstable ground, uphill from Fargo, and they say that the water they plan to store to the south of this dam won't do much damage to the cemeteries? I would hate to be responsible for building it. I fear the ramifications will be terrible.

50a

I do not believe the Dam/Diversion is a good idea and it is wasting a lot of taxpayer money. Do not permit the Dam to be built on the Red River.

50b

Respectively,

Rodney Mathison  
5298 174 ½ Ave SE  
Hickson, ND 58047  
classadriverrod@gmail.com

Commenter 50

September 20, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4025

(sent via e-mail to [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us))

Dear Ms. Townley,

I wish to submit a comment on the Plan B SEIS regarding cleaning up the Red River, so it flows better. One possible solution that I haven't seen anyone publish a study for yet is the idea of River Maintenance Stations. Spread them out along the Red River between Wahpeton and Fargo (or even further north) with barge-type boats with equipment on board to remove river debris and dredge the bottom, using the dredged material to rebuild badly eroded areas. Then stabilize those areas. The Red River hasn't been cleaned up and dredged since the Riverboat times. This endeavor would also create jobs. I have heard some say cleaning and dredging the Red won't work, but I haven't seen anyone seriously study it or provide proof that it won't help. Just opinions from so-called experts saying, "That won't work."

50c

Respectively,

Rodney Mathison  
5298 174 ½ Ave SE  
Hickson, ND 58047  
classadriverrod@gmail.com

## Commenter 51

**From:** Trana Rogne  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fwd: Comments, draft  
**Date:** Thursday, September 20, 2018 8:09:57 PM

---

subject Fargo-Moorhead SEIS”

Trana Rogne  
5477 Co Rd 1  
Kindred ND 58051  
701 367 8911

### Plan B Dam Breach Assessment

#### Existing and Proposed Conditions

“ This expanded line of protection was selected as it provides protection to developed residential areas.”

Does this study only apply to developed residential areas? If so when the project area is fully developed **the Dam Breach analysis is invalid as it does not consider flooding of the benefited area between dam and Fargo levees.** 51a

“Table 5. Time Difference between Dam Breach and Fargo Levee Over topping for 90,000 Event under Proposed Conditions Dam Breach Location “

This table only referred to the time for a breach event would impact Fargo levees not the developed area between the dam and Fargo levees. **Does the analysis assume that the benefited area will not be developed?**

#### Summary

“Overtopping of the Fargo levee system does not occur until many hours after a dam breach, providing substantial warning time for evacuation notification. “

**"Adaptive management approach:** Following Project operation, if bank failures or increasing bank instability is observed under the typical receding limb rate, the drawdown should be decreased systematically until a solution is reached by the AMT. The AMT would consider potential impacts that would result from decreasing the drawdown (e.g., agricultural impacts) in their approach"

“The non-Federal sponsors will be responsible for contingency mitigation. They will collaborate with the AMT and other appropriate local, state and federal agency representatives to identify the appropriate mitigation needs and funding source. This could include the use of local or State funds to address remaining mitigation needs. The non-Federal sponsors could coordinate with the Corps for possible funding under the Corps' Continuing Authorities Program (CAP). The non-Federal sponsors also could coordinate with their congressional leaders for authorization and appropriation of additional funds to address contingency mitigation.”

**Funding for impacts** from decreasing draw down must be identified and be guaranteed as the loss of crop production is a impact requiring mitigation. **If sales tax and or O&M district funds are to be used there is no guarantee of required finding. A bonded source of funding is required.** Self bonding by the local non-federal sponsor will not suffice. 51b

The loss of contracted crops due to a late plant is a loss that required mitigation. A large part of the impacted **area is planted under contract and if this contract is not fulfilled there is a penalty to farmer. There is no mitigation for this loss.** This has been noted to the local sponsor with no resolution. 51c

Information Assumptions and Limitations

“When evaluating socioeconomic benefits or impacts (SDEIS Alternative Screening Exercise Question 4), a common criteria was number of impacted structures. “

It is difficult to understand that the consideration of new impacted structure and currently impacted structures are given equal value in the determination of socioeconomic benefits? In the determining of what is a lesser impact, new impacts that require removal and mitigation are most impactful. 51d

New Alternative 31

The results of Alt. 31 study are in apparent conflict with the Document “Final technical Memorandum” FM diversion Post -Feasibility Southern Alignment Analysis ; Ve 13 North of Wild Rice River, South of Oxbow”(PFSAA) 51e

2.2.5 North of The Wild Rice River “The staging area elevations associated with the NWRR(Equivalent Alt 31) option are significantly less than the FRP.( plan B equivalent). The staging area elevations reductions can be attributed to the significant increases in available land and lower natural ground elevation —“

No accommodation of the impacts to the Alt. 31 due to the increase of the flow through town of 37 feet. 51f

“Upon receiving the Alternative C Dam Breach Analysis,” The consideration of the impacts/Shadow Dam is the same consideration for Plan B or C as both alternatives will have the benefited area (flood plain) fully developed. 51g

Structures

Structures impacted in Plan B are currently impacted and it is not valid to compare existing impacts to new impacts as new impacts have higher level socioeconomic impacts. Existing impacts(current flooding) under Plan C do not require mitigation. 51h

Table 5-1 Summary of Environmental and Socioeconomic Effects for previously-proposed Project, Plan B and No Action Alternative (with Emergency Measures)  
Topic Infrastructure,

Note, noted is the flooding of roads other than I29 in the staging area. The loss of access to services must be considered and the possibility that occupancy will be restricted during staging events. 51i

**Table 6-1 Mitigation and Monitoring; Major Differences Between the 2016 and 2018 Proposals, and SEIS Recommendations**

What are “impactful activities”? Any construction must be a impactful activity. 51j

“The Diversion Authority proposes a Debris Clean-up and Repair program for public lands, which allows for reimbursement of clean-up costs. Private land clean-up would include pick-up, but not reimbursement. (PRAM Plan, Appendix F)”

Reimbursement for land owner to collect debris is part of mitigation. Mitigation is a federal requirement. 51k

“Enhanced land use controls (e.g., “no build zones”) downstream of the dam in the benefited area (e.g., the hydrolic shadow of the dam).”

This would be a means of addressing a dam breach in the downstream of the dam in the benefited area that will be fully developed. With a reduction in the benefited area (new development area) the life safety issues are addressed.

**Dam Breach Analysis**

It is not readily apparent that the breach analysis assumed all the flood plain was full developed.

The analysis of dam breach that does not consider that the area between the dam and Fargo levees is not a indicator of real time impacts for a future fully populated area. The St Benedict D\*V values are representative of the D\*V necessary for the future populated area between the dam and Fargo levees.

51a

The plan B fails the High Hazard test. The assumption of the extent of a dam breach (soil condition and size of the breach) is a problematic assumption. As the failure of the assumed conditions have such life safety risks assumptions are not reasonable.

**3.2.1.1.1 Accuracy of Modeling Results and Available Information**

“The calibration of the model to different datasets and different runoff conditions suggests that the level of detail and underlying assumptions are adequate and appropriate.

The runoff condition must be relative to frozen culverts and snow closed local drains as drain down time depend on melt conditions in the respective drains.

51l

**3.5.2.1.2 Operation**

“Based off historical gage data, the Project would have operated five times since 1969 with an average duration of six days under Plan B compared to operating 10 times for an average of 6.8 days with the previously-proposed Project. Project operations would add an additional 10-14 days of increased velocity at the water control structures to allow drawdown of the staging area. “

The drawdown of 6.8 days with a additional 10-14 days, not considering frozen culverts and drains would delay planting a min of 20 days without dry out time, approximate 10 days dry out given good weather conditions and additional precipitation is a impact to spring planting that is not considered.

51m

Plan B- 100year Event Total Duration Map is based on conditions with the culverts and drains not full of Ice and snow. Ice and snow significantly increases drain down time. This is observed each spring and is generally a accepted condition in the area. The Army corps only developed the map with open culverts. This concern has been voiced to the Army and the DA and they have choose to ignore the situation .

51l

Mitigation

“The Diversion Authority proposes a Debris Clean-up and Repair program for public lands, which allows for reimbursement of clean-up costs. Private land clean-up would include pick-up, but not reimbursement. “

The lack of reimbursement of clean-up does not meet the requirement for mitigation for impacts by the local non- federal partners.

51k

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Trana

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

Jim Hightower

## Commenter 51

**From:** Trana Rogne  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fwd: Relocations  
**Date:** Thursday, September 27, 2018 11:15:37 AM

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**Subject:** Fargo-Moorhead SEIS”

**To:** \*Review, Environmental (DNR) <[environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us)>

The locations for the homes and farm headquarters that will be relocated by the staging flooding impacts have not be determined. This lack of follow through is very is disconcerting as owners of home and farm operations need to know where they will be living or farming.

51n

In discussion with the DA “Land use Committee” representative Sept. 26 2018. It was made known that the DA has not been able to find new locations for the homes and farm operation headquarters that are not able to be ring diked etc. Some homes and farm headquarters are not able to be ring diked etc. due to location rear a water course or the staging water elevation and distance from access makes relocation necessary. According to the my discussion with the DA representative they have no solution. Apparently they hope to hope that those impacted will give up and sell out, or move voluntarily to town.

The DA representative said they have until 2025 to resolve this issue. I was asked for my solution, this is not my job it is theirs.

The DA has chosen many times to put forward plans that requires major impact to the upstream area. They have rejected plans that have much lower staging impacts for a plan to provide a new tax payer subsidized development area in a flood plain.

Now they are unable to resolve the issues the those plans have caused.

As of now the DA is asking for a permit for a project will not comply with —

**Sec. 24.204 Availability of comparable replacement dwelling before displacement.**(a) General. No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at Sec. 24.2) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if: **PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS.**

The plan B must be rejected.

51o

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Trana

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

Jim Hightower

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Commenter 52

September 18, 2018

Ms. Jill Townley  
Environmental Policy and Review Unit  
Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Dear Ms. Townley,

Please consider this letter my statement of support for the Fargo-Moorhead Flood Diversion Project, and specifically for Plan B of the proposed alternative described in the draft SEIS prepared by your agency to analyze it.

52a

Plan B is the only proposal offered that fully meets the purpose and need defined by the Fargo-Moorhead Flood Diversion Authority, that being to reduce flood risk, flood damages, and flood control costs. This project will reduce the flood risk potential associated with several waterways that run through the region, including the Red River and the Sheyenne, Wild Rice, Maple, Rush and lower Rush rivers, all of which have a history of frequent and potentially catastrophic flooding. The project will also ensure significant portions of the Fargo-Moorhead metropolitan area meet the standard to be shown on Flood Insurance Rate Maps as providing protection, and thus qualifying them for 100-year flood accreditation from FEMA under the National Flood insurance Program.

Plan B will effectively reduce the flood risk in the metro area for events hitting or exceeding the 100-year flood level. This is important, of course, to residents and business owners in the metro area itself, but is also important to the entire region. Fargo-Moorhead is an important regional hub, and serves as the transportation, financial, retail, communication, and cultural hub for a large part of western Minnesota and eastern North Dakota.

Plan B has been thoroughly studied, and is the best alternative for meeting the community's flood protection needs with the least possible impact.

Sincerely,

Vanessa Sams

September 8, 2018

Ms. Jill Townley  
MN Department of Natural Resources  
Box 25, 500 Lafayette Rd.  
St. Paul, MN 55155-4025  
Email: [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us)

Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley and DNR staff,

As a Moorhead resident, I would like to thank you for your continuing commitment to the well-being of our state and people, a commitment which extends to our shared desire to see enhanced flood risk management for the region and the metro area. To that end, I thank you for the opportunity to comment on the issue which is so critical to our region, and especially on Plan B, the current proposal for accomplishing the effective flood risk management.

The proposed Plan B, described in the Supplemental Environmental Impact Statement prepared by your department for the Fargo-Moorhead Flood Diversion Project is the best possible option for providing a long-term solution to the flooding which our region, and the Fargo-Moorhead metro area, is prone to. Plan B would change the FEMA Flood Insurance Rate Maps in a favorable way, and would also result in lower property and flood insurance rates. This will help every homeowner and business in the metro area.

Something needs to be done; selecting the no-action alternative would be irresponsible and reckless given the enormous risk to life and property. Sandbag berms are not a feasible modern approach to serious flood risk management. That may work in parts of the country where floods are infrequent and relatively minor, but in a place with the geography and number of rivers that we have here, that is inappropriate – especially when a solid plan is on the table and ready to go.

Plan B is not just an improvement over the status quo, it is an improvement over the previous, initial version, which had received the approval of the U.S. Corps of Engineers. Plan B includes a number of additional impact mitigation features that were not included in the original. Examples include a Debris Clean-up and Repair program and supplemental crop insurance for affected farmers, including an early buy-out option.

Everyone is in agreement that enhanced flood risk management is needed in our area; I firmly believe that Plan B is the best and most cost efficient manner in which to proceed.

53a

Sincerely,



9-20-18

Tom Spaeth

Commenter 54

SEPT. 21, 2018

Jill Townley  
Minnesota Department of natural Resources  
500 Lafayette Road, Box 25  
St. Paul, Minnesota 55155-4025

Ms. Townley,

Thank you for accepting comment on the Fargo-Moorhead Flood Diversion Project. This project – implemented as Plan B – is critically important for the safety and economic well-being of the people of the Fargo-Moorhead metro area, therefore **should receive all necessary permits and approvals.**

54a

The people of the Fargo-Moorhead metro area, and the many Minnesotans throughout the region who rely on it, cannot afford to wait for enhanced flood risk management. A flood could happen at any time; our area is historically known for the potential of massive flooding, and a system for controlling and reducing that risk is long overdue.

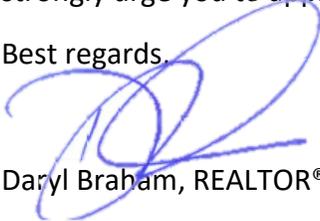
Furthermore, implementation of Plan B will result in large portions of the metro area being able to qualify for 100-year flood accreditation from the Federal Emergency Management Agency, via their National Flood Insurance Program. This will provide immediate financial relief to many homeowners and small business people, who will experience a reduction in their flood insurance rates.

As a business owner and real estate professional in our local market for over 20 years, I can share firsthand the negative economic impact caused by the uncertainty of this protection to current and new homeowners. By implementing Plan B and removing this uncertainty, it helps stabilize our communities, allow growing families to become homeowners, and support the overall health and welfare of Fargo-Moorhead homeownership in a positive, long term, and stable manner.

Plan B has been very thoroughly reviewed, and the more general issue of metro area flood risk has been studied for more than a year now by a task force assembled by Governor Mark Dayton of Minnesota, and Governor Doug Burgum of North Dakota. The F-M Diversion Authority took every one of their recommendations and worked them into Plan B.

This is therefore clearly a better plan than the one your office rejected in 2016. It is the result of many hours of work and analysis, and the result is an impressive project that will achieve its purpose. I strongly urge you to approve Plan B and put enhanced flood risk management in motion.

Best regards.

  
Daryl Braham, REALTOR®

National Association of REALTORS Board of Director and Homeownership Advocate

Commenter 55

September 21, 2018

Minnesota Department of Natural Resources  
Environmental Policy and Review Unit, Box 25  
Ecological and Water Resources Division  
500 Lafayette RD  
St. Paul, MN 55155-4025

ATTN: Jill Townley  
RE: Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

This proposed Flood Diversion Project is critically important for the Fargo-Moorhead region. We have a long history of flooding in the area from several streams, including the Red River of the North and the Sheyenne River, along with others. This project will reduce the risk of flooding from these streams causing massive economic damage, and risking people's lives.

Nearly everyone in the region agrees that flood control is vital. The Director of your agency is on record as saying that the State supports enhanced flood risk management for the metro area. Experts at many levels have studied and analyzed the risk and the alternatives for a solution, and all seem to agree that Plan B, the current proposal before you, is by far the best option. The task force put together last year by Governor Dayton and North Dakota Governor Doug Burgum studied this risk and offered several recommendations, all of which have been accepted and incorporated into the Plan.

Aside from the obvious and most important benefit of providing flood protection and safeguarding property and lives, Plan B will qualify substantial portions of the Fargo-Moorhead area for 100 year flood accreditation from FEMA under the National Flood Insurance Program. This will be of tremendous benefit to many working families who own homes in Fargo and Moorhead. These homeowners would face much lower insurance premiums, and the resale value of their homes will rise.

There were some legitimate concerns about the originally proposed project, but these have been ironed out and corrected in Plan B. Impacts will be more evenly dispersed between Minnesota and North Dakota, for instance. Greater mitigation programs have been included in Plan B, and the design has been adjusted in such a way as to ensure that more developed land is protected.

This is a well thought-through, and essential project, which has taken all factors into consideration. Please help protect our region **by approving Plan B** and allowing the project to be put into motion.

55a

Sincerely,

Kim Hochhalter



# North Dakota Department of Transportation

Thomas K. Sorel  
*Director*

Doug Burgum  
*Governor*

## Commenter 56

September 20, 2018

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

DEIS FARGO-MOOREHEAD FLOOD RISK MANAGEMENT TO EVALUATE NEW  
ALTERNATIVE TO PREVIOUSLY-PROPOSED PROJECT, CASS AND RICHLAND  
COUNTIES, FARGO, NORTH DAKOTA

We have reviewed your August 30, 2018, letter.

This project should have no adverse effect on the North Dakota Department of Transportation highways.

**56a**

However, if because of this project any work needs to be done on highway right of way, appropriate permits and risk management documents will need to be obtained from the Department of Transportation District Engineer, Robert Walton at 701-239-8903.

ROBERT A. FODE, P.E., DIRECTOR – OFFICE OF PROJECT DEVELOPMENT

57/raf/js

c: Robert Walton, Fargo District Engineer

## Commenter 57

**From:** Gloria Palm  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** FM Diversion Public Comment Period  
**Date:** Friday, September 21, 2018 3:55:56 PM

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Jill Townley

Environmental Policy and Review Unit  
MN Dept of Natural Resources  
500 Lafayette Rd, Box 25  
St. Paul, MN 55155-4025

Ref: Fargo-Moorhead Flood Diversion Project DSEIS

Dear Ms. Townley:

I believe that the proposed enhanced flood risk management project for the Fargo-Moorhead metropolitan area, **Plan B**, is a solid plan to provide effective 100-year flood protection for the developed portion of the region. I concurrently believe that the Supplemental Environmental Impact statement was completed properly, and that you should find in favor of a determination of adequacy.

57a

The purpose of the project as spelled out by the F-M Diversion Authority is clear, and appropriate: to reduce the risk of floods, flood damage, and flood control costs. Plan B accomplishes that.

Plan B is well enough designed, and will provide such effective flood risk management that it will change the actual risk enough so as to necessitate a revision to the Flood Insurance Rate Maps, and qualify significant portions of the metro area for 100-year accreditation, lowering flood insurance rates and helping potentially hundreds of families and businesses financially.

Fargo-Moorhead is an important regional hub, and serves the financial, transportation, healthcare, shopping, and other needs of residents for hundreds of miles. A major flood event in the metro area would have severe economic consequences for not only the city, but for a large part of the state as well. The F-M metro area is home to three colleges, and several medical centers, all of which would be at great risk in the event of another flood. I ask that you please do the right thing and provide the sort of enhanced flood risk management that your director assured us he is in favor of.

Sincerely,

Gloria Palm Connor, President/Broker  
Beyond Realty, Inc.

OFFICE: 701.540.5161 | CELL: 701.261.5972

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**From:** Robin Swanson  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** MN DNR  
**Date:** Friday, September 21, 2018 1:33:24 AM

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Dear Ms. Townley,

The purpose of this letter is to register my strong support for the Fargo-Moorhead Flood Diversion Project, and to formally ask the DNR to reach a finding of adequacy in the Draft Supplemental Environmental Impact Statement, and ultimately to approve Plan B.

58a

Plan B represents a marked improvement over the original flood risk management project proposed back I 2015, and rejected by the Department based on inequitable distribution of benefits-to-impacts between us the North Dakota. Plan B rectifies that issue, and also includes several impact mitigation features that were missing in the original plan. Among these are a proposal for the Diversion Authority to acquire property rights up to the maximum pool elevation of 923.5 feet, which is above the 100-year level, and to offer supplemental crop insurance for farmers whose fields are located in the inundation area. It also provides for post-operation clean-up of cemeteries and public lands.

Another problem that your agency discovered with the original project was that the proposed flood protection covered a large area of land that was at best sparsely developed and populated. The purpose of a flood risk management program, of course, is to protect lives and property. The Diversion Authority recognizes this and made changes to the project, reflected in Plan B, that ensures more structures are being protected.

It would seem that the Department of Natural Resources recognizes the need for enhanced flood risk management – indeed, the DNR Director had unequivocally stated such support – and also that the No-Action Alternative is insufficient to provide that level of risk management. One of the key benefits of Plan B is that it will qualify large portions of the metro area for 1-percent chance flood accreditation from FEMA under the National Flood Insurance Program. That not only demonstrated the efficacy of the plan for controlling flood risk, but also translates into insurance rate savings for home and commercial property owners and small businesses in the metro area.

Plan B will greatly reduce our risk of flood damage and the extreme expense that comes along with major flood events. We know that we at high risk for flooding here, and that an enhanced flood risk management project like Plan B provides for is a necessity, not a luxury. For that reason I ask for your agency's support.

Sincerely,  
Robin Swanson  
Superior Insurance, Fargo

September 22, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, Minnesota 55155-4025

Re: Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

As a real estate agent for the Fargo-Moorhead area, I help many buyers and sellers both buy & sell property in Moorhead. Many of my friends and family live in Moorhead as well. I am deeply concerned about the risk of flooding in the metro area, as this would affect many of my clients, as well as family and friends, both physically and economically. We have several rivers near Fargo-Moorhead, all of which pose a severe and historically predictable flood risk. The damage from a major flood would be devastating financially for metro-area property owners, and even those whose property emerged undamaged would be greatly affected by the economic disruption that a major flood event creates. Many of the Moorhead residents are employed in Fargo, and a flood to the Fargo-Moorhead area would greatly impact the bottom line of the Moorhead residents economically without the F-MN Flood Diversion in place to protect both Fargo and Moorhead. That is why **I support the proposed Plan B** for the F-M Flood Diversion Project wholeheartedly and recommend full permitting and all necessary approvals for it.

59a

Plan B has many things going for it: first, it is a technically sound plan that will provide long-term enhanced flood risk management and protection for the developed parts of the metro area. The plan was designed and developed using the best scientific data and the recommendations of the task force assembled last year to study the issue. And even though there will be some socio-economic impacts, as there would be with any major undertaking such as this, this plan minimizes and limits those impacts.

As stated, Plan B comes as a result of many months of study and analysis and is not a plan that was hastily put together. Some of the state's best engineers, scientists, and others were deeply involved in the design and planning phase, and no one can make the argument that this has not been thoroughly and completely studied.

These are just a couple of the reasons why this project is a good idea, and why Plan B is the best option for pursuing it.

Sincerely,

Vicky Matson

## Commenter 60

**From:** Mark Askegaard  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead SEIS  
**Date:** Monday, September 24, 2018 9:24:09 AM

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Thank you for allowing us to comment on the Supplemental EIS for the Fargo-Moorhead "Plan B" Diversion Project.

Our farm is located in the SW 1/4 of Section 15 in Holy Cross Township in southern Clay County Minnesota.

Plan B will impact our farming operation by storing water on 2 parcels of our property which are currently not in the 100 year flood plain.

The first property, which will be certified organic next summer and is not identified on the maps as organic, is described as the NW 1/4 of the NE 1/4 Section 17 and the NE 1/4 of the NW 1/4 Section 17 Holy Cross Township in Clay County. We purchased this property 2 years ago. It is directly to the west of the organic parcel of land which we own in the NE 1/4 Section 17 lying directly west of US Hwy 75. Please note this on your maps as future organic farmland impacted by the project.

60a

The second parcel of land is described as the east 97 acres of the NW 1/4 Section 5 Wolverton Township in Wilkin County Minnesota and is currently certified organic.

Both parcels of land will either have a tie back levee running through them and/or water stored on them.

We also question how and why land lying just to the east and to the south of Comstock in southern Clay county and land in northern Wilkin County have been placed in the "current 100 year under flood plain under existing conditions". To our knowledge, these parcels do not flood, have never flooded and have never been in the FEMA 100 year flood plain before. There seems to be inconsistencies in the modeling. Please inform us of your findings.

60b

We believe that any diversion permitted for the F-M area can be greatly downsized from both plans A and B, especially if existing flood plain is protected as much as possible and not be protected for development purposes or counted as being currently developed.

60c

Allowing a small increase in downstream impacts from any diversion should be analyzed in relation to a need for and size of upstream water staging.

60d

Any project which is permitted should provide for 100 year flood protection for the existing infrastructure of the communities protected from a diversion. Protection above the 100 year

60e

level should be achieved in conjunction with basin wide retention/detention water projects.

These projects, if implemented, can provide multiple benefits for every community in the basin as well as provide much needed environmental benefits.

Once again, thank you for letting us comment on the Supplemental EIS.

Mark & Barb Askegaard

Commenter 61



September 15, 2018

Jill Townley  
Box 25  
MN Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4025

RE: Supplemental Environmental Impact Statement for Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

I am sure I speak for many in the area when I say that I am happy to see that there is a plan to finally provide enhanced flood risk management for the Fargo-Moorhead area. Flooding in the region has the potential to cause millions of dollars in property damage, disrupt life for hundreds, if not thousands, of residents for days or even weeks, and inflict significant economic consequences for the surrounding region, and the state as a whole. Now that it has been thoroughly and fully studied, the time has certainly come for a project of this magnitude.

Your office is being asked at this point to provide a determination of adequacy for the Supplemental EIS, an administrative decision concerning whether or not the review process was completed properly. **I hope that you will eventually offer a full approval of the project,** at this stage the adequacy determination is all that is on the table. To that end, I think you can be quite certain that the review process has been quite adequate and entirely thorough. Beyond just this SEIS review, there have been several similar reviews of the precursor project; the Governor's task force which was assigned last year to study every facet of the problem of flood risk management for the Fargo-Moorhead metro area; federal studies and approvals; and comparative reviews of other alternatives, all of which have been rejected in favor of the current proposal, Plan B. It is more than safe to say this project has been thoroughly vetted and well-studied.

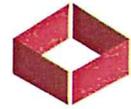
In regards to impacts, Plan B is designed in such a way as to impact the fewest people possible, and included several new mitigation measures to lessen those impacts that remain. The fact is that enhanced flood risk management of the magnitude needed in this case is going to have impacts; that is unavoidable. But Plan B keeps them at a minimum while still accomplishing the goals established for the project.

As DNR Director Tom Landwehr said, enhanced flood risk management is critical for the Fargo-Moorhead region, and Plan B is the best choice for providing it.

Sincerely,

Ben Meland  
Enclave Development, Managing Director

61a



commenter 62

September 21, 2018

Jill Townley  
Box 25  
MN Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4025

RE: Supplemental Environmental Impact Statement for Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

I strongly **urge the Department of Natural Resources to approve the proposed Plan "B"** in the draft Supplemental Environmental Impact Statement prepared for the Fargo-Moorhead Flood Diversion Project. Enhanced flood risk management is a vital necessity for the region, and Plan B is the only feasible option available to provide that protection.

62a

Doing nothing is not a reasonable option. There are several rivers passing through the region, including the Red River which flows right between Fargo and Moorhead, all of which are historically known to flood regularly. If we do not institute a viable flood protection plan, future floods cause millions of dollars of damage, and more money and resources in scrambling to put together emergency measures. This will be economically devastating for the Fargo-Moorhead metro area.

Other proposals have come up short. The JPA alignment, described in Alternative C, which was recently rejected by your office, would not only present more socio-economic impacts, but would cost so much more as to make it entirely unrealistic. For all that, it would also fail to protect more structures, and would have no measurable increase in environmental benefits.

Many years of effort have gone into developing Plan B. A good proposal was introduced a couple years ago, but several shortcomings were identified. This plan is in large part a result of thoroughly evaluating the issue and that previous proposal, keeping the workable parts, and fixing what needed to be fixed.

The final result is a good, feasible plan to provide enhanced flood risk management to the Fargo-Moorhead metro area, in hopes of avoiding a costly, even tragic, calamity. I believe these are good and compelling reasons to support Plan B, and I urge your office, and the rest of DNR, to support us in this region, and approve this project before it becomes too late.

Thank you,

Austin Morris  
Enclave Development, Managing Director

## Commenter 63

**From:** disraelson@tampabay.rr.com  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** F-M Diversion Plan B  
**Date:** Monday, September 24, 2018 5:06:14 PM

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Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Sept. 24, 2018

Dear Ms Townley,

As part of the F-M Diversion group's future plans, please be aware that the Diversion Authority has put our property in Richland County in an Assessment District. Effectively meaning we will be paying for a plan to flood ourselves!

63a

For our yet to be determined locations of acres in Richland County, the Diversion Board says they will save on each of our quarters of land that are allowed to flood on a 100 year flood, but plan to save same acreage on a 500 year flood. They gave us the number of acres but no location of acres? There is no mapping of this acreage yet they having every intention to bill us for it.

We have voting rights for \$1,500 dollars an acre but can be assessed by Cass County at \$4,500 per acre. Could this F-M Diversion group be any more corrupt?

The F-M Diversion group is unrealistic; their plan includes moving water under the Diversion project sending it to the river saying it will have to be heated; that is an accident waiting to happen. I repeat heated!

63b

I oppose Plan B.

Thank you.

Sincerely,

Dallas Israelson

## Commenter 63

**From:** disraelson@tampabay.rr.com  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** F-M Diversion Plan B  
**Date:** Monday, September 24, 2018 5:18:05 PM

---

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Sept. 24, 2018

Dear Ms Townley,

Please consider, the F-M Diversion Authority told MN Buffalo River Watershed Board that the Wolverton Creek's planned control structure will not be controlled. How can we believe a completed control structure at that cost isn't going to be controlled?

63c

More dishonesty and probably more coming.

I oppose Plan B.

Thank you.  
Sincerely,  
Dallas Israelson

## Commenter 63

**From:** disraelson@tampabay.rr.com  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** F-M Diversion Plan B  
**Date:** Monday, September 24, 2018 4:36:22 PM

---

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Sept. 24, 2018

Dear Ms Townley,

I oppose the new Plan B project because Fargo's leadership will continue to develop the river. At Oxbow they have gone half-way across the river to gain more ground to develop additional golf holes. They had to put up a 25' dike to protect those holes. Once again encroaching on the river; no lessons learned in the past 9 years.

63d

In 1969 Fargo allowed the river to flow at 37.5 feet which moved the same number of acre feet per minute through town in 2009 where it had increased to almost 41 feet. The river had moved 30% more volume per minute in 1897 at a lower level than in 2009. Fargo's water could go through town.

Why should our beautiful river be destroyed so Fargo's leadership can develop more of the river? The Governor of ND wouldn't even consider giving up his house for this diversion project; obviously this project is not very important. Under Plan B the Diversion is pushed even further South, due to need or is it convenience? A house is small potatoes next to the loss of the businesses being placed inside the Diversion Authority's Plan B floodplain.

The river will be nothing more than dead trees for the next 50 years with the river banks falling in without tree root protection. Taking of land to flood high ground in an effort to save low ground is illegal.

63e

The 1897 flood probably will be the benchmark because most of the section lines were built after 1897. In 1897 I had no relatives with wet homes! They found and built on high ground because they understood the benefits of high ground that does not flood. To this day it still does not flood.

Plan B will devastate and undermine our roads and bridges. Interstate commerce between Comstock, MN and ND farmers will be at risk because we were told by FM Diversion that there is no plan to maintain the Comstock bridge crossing into ND. The Diversion Authority has not been honest about the effect of the diversion on the surrounding rural areas, the cost, the damage, and the reason they need this mega amount of land for this project for their flood protection. Is it only about flood protection?

63f

Minnesota has nothing to gain from this diversion, only loss and expense. Permitting this project is of no benefit to Minnesota; their cities on the Red River from Moorhead to Breckenridge will suffer from this project.

We were told at one of our first Diversion meetings that the Diversion was for the next 60 years of Fargo's growth and that it would not affect Richland County. The current project campaign has conveniently changed its agenda; now the Diversion is only for Fargo's flood protection? And it appears on Plan B that they plan to flood the majority of Richland County between the two rivers.

Fargo has been encroaching on the river for the past 80 years, undo the damage restore the river to 80 year levels; that would be a real fix. Lacking honesty and common sense they are asking us to give up our generations of hard work and income to save 80 years of their bad decisions. Davie's School had 3 feet of water on that land, they homesteaded it and then started the diversion project. There is no honesty.

63g

Fargo has chosen and continues to choose to shrink the river at every opportunity. How about a new plan.... Grand Forks and Minot got it done.

Thank you.

Sincerely,  
Dallas Israelson 5515 Co Rd  
81 Christine, ND 58015

## Commenter 64

**From:** DAVE NESS  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead  
**Date:** Monday, September 24, 2018 12:39:45 AM  
**Attachments:** [dnr\\_dam 2018\(2\).pdf](#)  
[dnr\\_dam 2018.rtf](#)

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To: Jill Townley

I have attached comments on "Plan B" SEIS. They are the same document in both PDF and Word Pad formats. Thanks for the report, and for accepting comments. My full name and mailing address down here are :

Dave Ness 2505 16th ave s, Minneapolis, Mn 55404

Comments on Draft SEIS 2018 "Plan B"

To: MN DNR

From: Dave Ness (farm along the Red River)

Thank you for soliciting comments on the Draft SEIS 2018 for the latest iteration of the Fargo Dam Proposal, referred to as "Plan B". I also want to thank you for providing the ONLY transparent and publicly accountable forum that will accept public input regarding this proposal and for trying to do your job of protecting the environmental resources and citizens of the State of Minnesota. It's my sincere petition that you will stick to your principles and continue in that responsibility, as your work inspires hope in citizens such as myself. It seems remarkable to me that the law, as it is written, was clearly meant to be a guide for times/situations such as this. You at the DNR and the Governor have been true to your responsibility, and are to be commended for that.

I would encourage the DNR and the Governor to not forget the disrespect shown previously to Minnesotans by the Fargo Dam Commission and the USACE over this project, and the fact that it took an injunction from a Federal judge to keep them from proceeding with the project regardless of what the State of Minnesota thought. Although your efforts to negotiate with them are, perhaps, laudable, this result ("Plan B"), is still contrary to the interests of Minnesotans and Minnesota law, and should not be permitted. It is not really any better than Plan A.

64a

The photo below clearly shows the typical extent of flooding in Minnesota at the crest of the highest ever flood (2009) reading at this location. Minnesota is on the far side. ND on the near side. This is 2 miles north of my farm. There is not much to see in Minnesota, and it's that way for the most part all along the river up to Moorhead, except for an area of low farmland about 6 miles south of Moorhead, which is part of the natural flood plain. That single low area will be protected under "Plan B". Everything in this photo over to Comstock would be underwater with "Plan B", and for about a 9 mile swath, 5 miles north, and 4 miles south of here). (Comstock to the river is about a mile). Also, as you are aware, Moorhead is already protected and really doesn't need "Plan B".



Regarding The Draft SEIS:

This is a very large document and is well organized, but a lot to look through. Some of the maps are particularly helpful, especially the ones that show the very limited flooding that actually occurs in Minnesota in a 100 year event. The report is weakened by the extensive use of jargon and abbreviations which in some sections are largely indecipherable and therefore become meaningless to any normal person. One wonders if this is just to obscure some truth that would otherwise be obvious, and make it all look complex. The draft SEIS does do a fair job of laying out the criteria the DNR looks at to make a decision, the law, the proposed purposes of the project, and how it decides an alternative is unworthy; although without specific details about each alternative, the reader is left with no way to know for certain specifically why they wouldn't work and fit into the table. It's also unclear whether this unsuitability was determined independently by the DNR, or whether it came from USACE or Fargo. But it is clear the DNR is now back to either "Plan B" or do nothing.

64b

64c

The report, sadly, glosses over environmental concerns for the river, the forest, the fish, and the wildlife. The wild environment and structure of this river will surely be adversely affected by this project, and that continues to be largely ignored and minimized. There are no comparison studies included from similar flood control projects the USACE may have done in the past that might demonstrate what happens to the river, the forest, the wildlife and the fish upstream from a new flood control dam. Surely, they must have some examples?

64d

The mitigation section of the report says a lot about the specific process for condemning peoples land, homes, and cemeteries, but nothing about why none of them have ever been contacted by anyone, or how they feel about it. There is a lot of data about parcels and acres, but never any mention of actual human beings who live there, their history with their land, and how they will be affected. It does say there will be some effort to pick up trash after a flood, but with no specifics. There is also no comment about the weeds that will be seeded in by the flooding, which may be an issue for farmers and homeowners.

64e

64f

The report also clarifies that one of the admitted main goals of the project is to obtain lower flood insurance premium rates for Fargo and Moorhead and the land in the existing flood plain which will be protected under "Plan B", and therefore can be developed. These lower flood insurance rates are listed as a prime objective of the project and are determined by FEMA. The lower premiums and the green light to develop clearly seem to be economic benefit for the proponents of "Plan B".

64g

The dam breach study appears to say that such flooding might be a "slow motion" event and provide time for people to avoid drowning, but over all, it was not too helpful in describing what might occur in a catastrophic central structure failure, like an earthquake, or an act of terrorism.

64h

Lastly the report tries to make it look like North Dakota is taking on more of the flooding burden in "Plan B", and Minnesota less, as compared to "Plan A". This could probably give politicians some cover to endorse the project, because it's somehow more equitable for Minnesota. That's all a very obvious ploy, but it's untrue. Almost all of the Red River flooding now is in North Dakota. Fargo has a problem, but Moorhead and Minnesota really don't, and Minnesota doesn't need this project at all.. Further, it completely ignores that "Plan B" doesn't reduce flooding in Minnesota, it just moves it to a new location, and may actually increase it. It affects at least similar acreage (or perhaps more; one can't discern from the included tables), but more structures and people than the current situation. The people who will now be flooded out in Minnesota have never experienced flooding before, and the effects on the river environment and the land will be an unknown. It's a bad plan for Minnesota. This fact is quite clear if one regards the report in it's entirety and looks at the maps. MINNESOTA DOESN'T REALLY HAVE A SIGNIFICANT PROBLEM WITH FLOODING FROM THE RED RIVER. Moorhead is already well protected. Somebody needs to be honest enough to just come out and say it. There is no good reason for Minnesota to permit or contribute taxpayer money to this project. No action, and leaving the river alone should remain the logical decision for the DNR

64i

- **Minnesota Permitting Feasibility.** Any alternative that would not offer benefits to the state that are commensurate with the impacts to the state would be unable to be permitted in Minnesota. This is because such an alternative wouldn't represent the least impactful solution in Minnesota (as required by Minnesota Law), and thus it would be infeasible

Minnesota Statutes 116D.04 subdivision 6 reads that a permit cannot be granted where the "... action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. **Economic considerations alone shall not justify such conduct.**" ( i.e. lower insurance premiums)

Final comments:

1. There is no benefit to Minnesota from this project. What there is is:
  - A. Huge cost to the taxpayers (for nothing).
  - B. A lot of displaced Minnesotans who are unhappy
  - C. Environmental damage to the Red River, and its forests, fish, and wildlife.
2. The law as it is written is meant to prevent the exploitation of the environment and the citizens of Minnesota by others to enhance their own comfort and financial well being, and the DNR needs to uphold the law as it is written, not-withstanding Fargo's needs.
3. The effort to move the natural flood plain to a new location where people are "less important", meaning fewer in number and with less financial resources to defend themselves is, in itself, dishonorable. The flood plain has been known since settlement times 145 years ago.. The people who want to protect and build in these areas using "Plan B" are doing so because they are likely to profit from that. They don't care at all about the problems "Plan B" will cause for people who are going to be flooded out in either state, and they've made no tangible provision for them. Neither do they care about environmental damage to the river. They also would not want to build it if they had to pay for it themselves.
4. Those who do develop in the natural floodplain if "Plan B" is approved, will still be at risk for flooding whenever there comes a huge 12" rainstorm, but they will find that out.
5. My own situation: 4th generation farm on Minnesota riverbank between Comstock and Wolverton. Farmstead has never flooded. "Plan B" will put 1/2 to 1 foot of water around my house and barn and flood all my land and my 2 miles of woods along the river. Most of my relatives/neighbors will be condemned and required to move out, so it might be lonely. It appears I would not be bought out because flooding projected less than a foot, but would have to have a ring dike and live with whatever damage to the buildings, woods, river, and farmland. There are lots of people like me with "Plan B" on both sides of the river. We have been in limbo because of this for 9 years now.

Thank you. Please do what's right for Minnesota and the river.

Dave Ness

James A. Ness  
 represent myself

I have lived in Minnesota  
 all my life except for 41 years  
 in the service. I live in Moorhead  
 now, but still retain the land. I rent  
 the land out to a nephew. The land is  
 a good place to raise a family of which  
 he has four sons. The plans you have proposed  
 would destroy his family plans. **Do Not**  
**Destroy nature with your plan**

65a

James A. Ness

James A. Ness  
 1551 Belsey  
 Moorhead Minnesota

I am writing to ask that the Minnesota DNR not approve **any** plan to build a high hazard dam as part of the revised Fargo-Moorhead Flood Risk Management Project for the following reasons:

66a

**“Executive Order 11988 requires federal agencies to avoid to** the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.”<sup>1</sup>

66b

Certainly what the Diversion Authority has done to date has not followed this Executive Order. The destruction that would be caused to those of us living upstream of the proposed dam would certainly adversely affect us in both the short and long term. Destruction of farmsteads that are in the way of this project will certainly adversely affect our community as we lose residents due to buyouts. It will affect our small businesses, our schools and our churches.

If this high hazard dam is built, the possibility of not being able to plant crops during the critical window of time to produce the best yields could certainly be affected. And don't let anyone kid you—there is a **critical window which cannot be recouped once the optimum planting time has passed if our fields are** flooded for the sake of development in the Fargo area. We all know this isn't just about flood control.

66c

I know this can vary, but I read that the life expectancy of a dam is 50 years. I understand the **“easy payment plan”** proposed for this dam goes beyond that time frame. This is not responsible planning. Our grandchildren are already being expected to pay for this dam which is so unfair to them.

66d

**If this dam is built, there will be maintenance costs every year**—even if the dam is not used. To me it seems much more practical (given the flood protection work that has already been completed and is planned to be completed in Fargo-Moorhead) to not build the dam and, instead, sandbag if and when a flood occurs. From the figures I have read regarding past costs for sandbagging, it would be less than the cost of dam maintenance. And that was before Fargo and Moorhead constructed floodwalls which should lessen the costs of sandbagging should it be necessary in the future. This is a “practicable alternative.”

66d

In addition to the concerns I have already addressed, I am wondering why Gov. Burgum is allowed to have any say in what happens regarding this project. As a major player in the development of Fargo through his different companies, I would think he would excuse himself from having any input regarding this project.

Should this project be allowed to continue, it will have only adverse effects on those of us upstream. It reminds me of ham and eggs. Compare the contributions expected of us upstream residents (think ham) to those of the Fargo-Moorhead area (think eggs). The pig makes a total sacrifice to provide the ham while the chicken makes a small contribution and goes on with life.

Thank you so much for giving us a chance to be heard.

*Sincerely,  
Janeth M. New*

<sup>1</sup> <https://www.fema.gov/executive-order-11988-floodplain-management>

## Commenter 67

**From:** chola@wtc-mail.net  
**To:** [MN Info \(DNR\)](#)  
**Subject:** Fargo Moorhead Flood Risk Mgmt Project EIS comments  
**Date:** Monday, September 24, 2018 8:28:39 PM

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Jill Townley, Project Manager

I have a number of concerns about this project.

There are three cemeteries in the Christine, ND area that I believe will be impacted that are not listed in the Plan B 100-year event Figure 13. 67a

The Christine Cemetery is located just to the west of Christine in the southwest corner of Hwy 81 and County Rd 2N. That area is shown in pink but the cemetery is not shown.

The Richland Lutheran Cemetery is located further south, along the Wild Rice River, south of County Road 2 and is in the Project 100-year Floodplain where I believe it will be impacted.

The final cemetery is the Pioneer Cemetery that is located 1 mile east and 2-1/4 miles north of Christine in the pink but is not shown. This cemetery has both old and some relatively recent graves so the cemetery is still an active and valid cemetery.

All three of the cemeteries deserve respect and preservation as any other cemetery in the area whether it is old or new like the new Veterans' Cemetery that is being developed north of Fargo.

I see that there will not be any reimbursement for debris clean up costs on private land even though use of the project will be the cause of the cost of debris being deposited on private land. This is a cost that needs to be mitigated. 67b

Supplemental Crop Loss Program – only summer events are mentioned but of great concern is delayed or even prevented planting in the Spring due to project operation. 67c

How will unanticipated impacts be handled? Will damages to property or inability to plant crops in areas just outside the Reach Area be mitigated or will those individuals be out of luck? If the effects are in the contiguous area then they also need to be mitigated. 67d

Plan B Dam Breach Assessment – Will there be an area that will not be allowed to be developed because of the potential for loss of life if the Dam is breached? 67e

100 year Event Total Duration map – based on culverts and drains not full of ice and snow; which significantly increase drain down time. Ice & snow filled culverts and drains are a common/accepted condition in the area which has been ignored by the Corps of Engineers and the Diversion Authority. This has been a concern from the very beginning yet the Army Corps and the Diversion Authority continue to ignore that. 67f

Thank you for your consideration in fully looking at the concerns of all the people in the Red River Valley of the North.

Patricia E. Otto  
Christine, ND

**From:** Doreen Wetch  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead  
**Date:** Monday, September 24, 2018 8:23:59 AM  
**Attachments:** [DIVERSION.pdf](#)

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From:  
David and Marilyn Tessier  
4108 100th Ave SW  
Horace, ND 58047

1. The Diversion Dam, Plan B, will run right up to our homestead line. There are 2 homes on this homestead and this will jeopardize the under ground water course to our well, which services both our homes.

68a

2. It will also jeopardize our two drain fields from our septic tanks.

68a

3. I am concerned that it will interfere with the Migration flight path where the Trumpeter Swans, Mallard Ducks, Canadian Geese and a small black duck with yellow specks & short yellow beak, land in our field, just west of our shelter belt . They are there every spring & fall, flocks and flocks of them for weeks.

68b

Thanks,  
David & Marilyn Tessier

### version alignment

...e studying the environmental  
...of the Fargo-Moorhead flood  
...s the route of the upstream dam.

...ludes to develop while harming  
...nises upstream landowners.

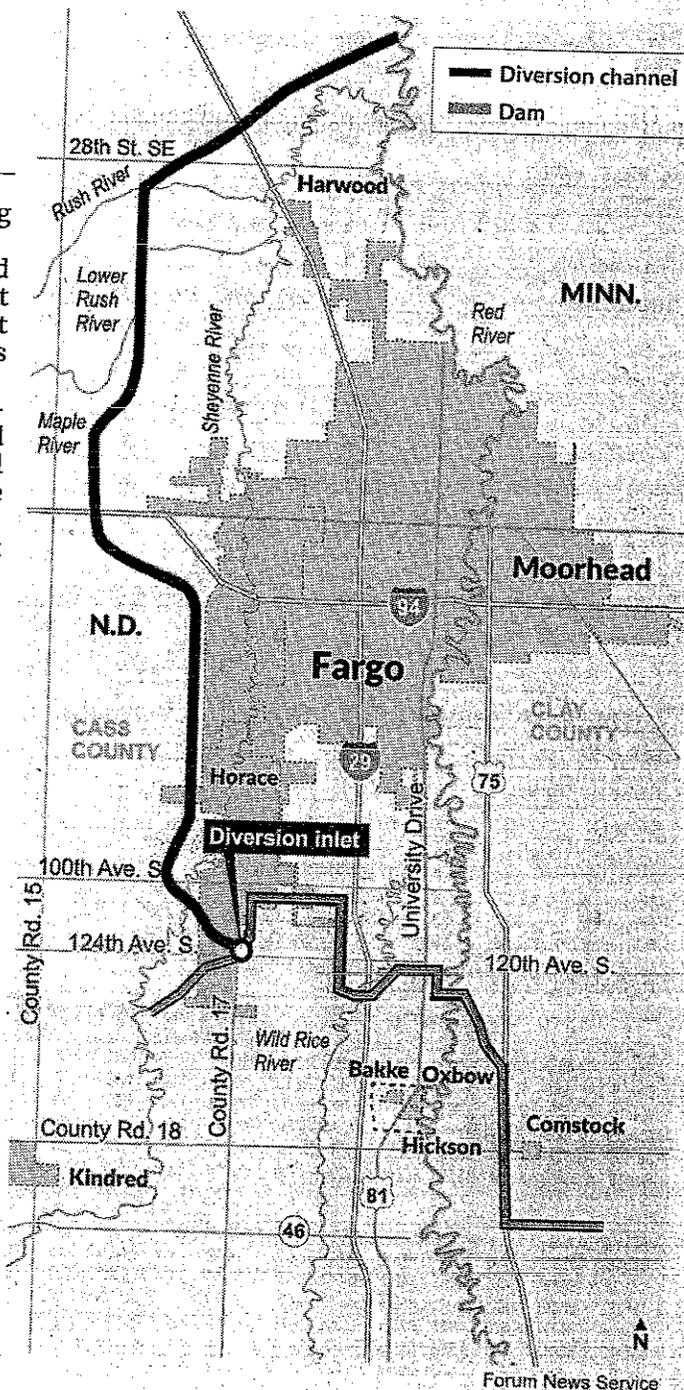
North The DNR review said  
...sota, this northern alignment  
...very- "did not have significant  
...er to environmental benefits  
...ard." over Plan B."

Naramore said Mon-  
...day that, in fact, it had  
...a greater impact overall  
...than Plan B, which led the  
...agency to modify it slight-  
...ly to see if the impact  
...could be reduced.

The review said that  
...modification, which still  
...moves the dam north as  
...the JPA wants but keeps  
...the diversion channel as it  
...is, "had similar environ-  
...mental benefits as Plan  
...B, but it also had greater  
...socioeconomic impacts  
...than Plan B." That is,  
...more buildings would be  
...protected by Plan B.

Under Minnesota law,  
...the DNR can conduct an  
...environmental review and  
...consider a permit applica-  
...tion at the same time,  
...which is what it's doing  
...now. But the agency can't  
...issue a permit until after  
...the review is finalized.

Landwehr said he  
...doesn't know how long  
...it will take to finalize the  
...review because it depends  
...greatly on how much and  
...what kind of public input  
...it receives. The review can  
...be finalized right away  
...if there's no input, or it  
...can take much longer if



...comments trigger a major  
...analysis, he said.

Readers can reach Forum reporter  
Tu-Uyen Tran at (701) 241-5417

...at On Monday, Herman set  
...a new bail at \$100,000.

...the Van De Streek said he  
...she was not aware of any  
...y 20. safety concerns placed on  
...is no Moser at the jail.

...ail. "I'm not aware of any  
...t you threats to her or anything  
...does like that," he said. "No  
...it," mental health defenses have  
...been raised in this case."

...Before resigning from  
...her post on July 12, the  
...same day the West Fargo  
...School District was noti-  
...fied of the ongoing inves-  
...tigation, Moser had been  
...a science teacher at Lib-  
...erty Middle School since  
...fall 2016.

An improvement plan  
...was placed in her teach-

...ing file during the 2017-18  
...school year regarding her  
...classroom conduct after  
...staff and students report-  
...ed inappropriate conduct.

A pre-sentence investi-  
...gation was ordered and a  
...sentencing will be set at a  
...later date.

Readers can reach Wendy Reuer  
at (701) 241-5530



**From:** Jess Azure  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Re: Plan B, Fargo-Moorhead Flood Diversion Project  
**Date:** Tuesday, September 25, 2018 1:12:36 PM  
**Attachments:** [image001.png](#)

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September 19, 2018

Box 25  
Ecological and Water Resources Division, DNR  
500 Lafayette Road,  
St. Paul, Minnesota, 55155-4025

ATTN: Jill Townley, Project Manager  
Email: [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us)

-  
Re: Plan B, Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

I wish to thank you and the Department of Natural Resources for your continued good work and dedication to the land and people of Minnesota. I am confident that that same dedication and diligence will result in your support for Plan B in the Fargo-Moorhead Flood Diversion Project Draft Supplemental Environmental Impact Statement.

69a

Two years ago, an initial version of this flood risk management plan was presented to you and was denied because of a number of flaws; namely, the geographical impacts in comparison to benefits was inequitable, the proposed protection included large swaths of undeveloped, unpopulated land, and there were insufficient mitigations provided for the impacts. All of these issues were addressed and corrected in the Plan B you have before you.

After your office issued the denial of the Dam Safety permit for the original plan in 2016, the governors of Minnesota and North Dakota formed a task force to look at the issues involved and to prepare recommendations for a new proposal. Every one of the task force's recommendations were incorporated into Plan B.

This issue and this proposed project have been studied almost to death. Extremely thorough reviews and analyses have been done by several different agencies and groups, at many levels of government. This is one more in a long chain. While this determination of the adequacy of the SEIS does not mean immediate project approval, it is a step in the right direction.

69a

Sincerely,

-  
Jess Azure

**Jess Azure | REALTOR**  
**RESIDENTIAL REAL ESTATE**

Cell 701.680.8091

Office 701.540.5161

4725 Amber Valley Parkway Ste A, Fargo, ND 58104

[jessazure@beyondrealtyfm.com](mailto:jessazure@beyondrealtyfm.com)

September 23, 2018

I have comments pertaining to Plan B of the FM Diversion Project. My comments are environmental and socioeconomical.

I have concerns regarding the possible environmental impact of Plan B as it runs a levee just on the west side of C-W Valley Co-op's agronomy center, bulk fuel site and retail fuel pumps. If the levee fails or is breached near that location, there is a possibility of an environmental impact. Even though the fuel and chemicals are in containment and stored in tanks or containers that should not leak a risk is involved if flooded. C-W Valley Co-op also owns a bulk dry fertilizer facility south of the eastern levee that extends from Highway 75 and 4 miles east along the Clay County and Wilkin County border. Most of the property where the fertilizer plant is located is in the 923'-924' elevation and the plant itself is slightly higher but this could also cause a concern of an environmental impact.

70a

Socioeconomical impacts of Plan B include a negative impact on not only the farmers and farmsteads in Minnesota as well as North Dakota that are impacted but also the negative impact on the business of C-W Valley Co-op which has been in business since 1929. It will include possible crop loss and bushel handle as well as lost sales of inputs of seed, fertilizer and fuel which this business depends on greatly.

70b

On the North Dakota side, Plan B has socioeconomic negative impacts on the Kindred School District as well as St. Benedict's Catholic church. The Kindred School District will have a no growth area from the Red River west to Kindred as well as Highway 46 on the south to north of County Road 16. St Benedict's church will be protected but growth to the south and west will be lost which combined with the industrial expansion on the east side of St. Benedict's will severely impact the sustainability of a vibrant and growing parish in its current location. St. Benedict's physical structures may be protected by Plan B but the future of a historical parish will be threatened by the reduced area of current and future parishioners.

70c

71d

I fully agree that flood protection is needed for Fargo and Moorhead but I do not agree with the expansion and protection of a flood plain for growth such as Fargo has done since the 1997 flood. The sacrifices and socioeconomic losses that are expected of everyone negatively impacted by Plan B are not ethically justified for the growth and development in a natural flood plain.

71e

Curt Bjertness  
20 Elm St  
Hickson, ND

[curt@cwvalley.net](mailto:curt@cwvalley.net)  
701-261-6932

Committer 71

September 24, 2018

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

Ref: Fargo-Moorhead Flood Risk Management Project

Dear Ms. Townley,

As Executive Director of the Fargo Housing and Redevelopment Authority (FHRA) and on behalf of the FHRA Board of Commissioners, **we strongly support** the Fargo-Moorhead Flood Risk Management Project as approved by the U.S. Army Corps of Engineers, and **recommend your agency approve** it as well. 71a 71b

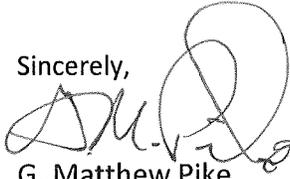
The need for permanent flood control is a crucial one in our part of North Dakota. Several local rivers, including the Red and Sheyenne, flow near or through the Fargo-Moorhead metro area and are prone to flooding. This flooding results in serious economic and social disruption with a particular and disproportional impact on the area's most vulnerable citizens, like those FHRA houses. In addition, Fargo-Moorhead is a major regional center for commerce, transportation, and other economic needs. As such we support the proposed action over the other alternatives for several reasons:

1. It has already received approval at the federal level, meaning that it has undergone a rigorous and comprehensive environmental review and been found to have little or no adverse environmental impacts. Moreover, a different action, like the Northern Alignment Alternative, would need to undergo the same process again, a waste of taxpayer money, time, and resources.
2. The proposed project is technically sound and will best serve the purpose of providing a permanent solution to reduce flood risk, damage, and protection costs.
3. Taking the "no action" approach will not provide substantive or reliable protection against even 50-year flood events, let alone 100-year or more.
4. Lack of approval for the project will result in a new FEMA mapping, which would likely raise the flood plain and put the property values of many additional homes and businesses at great risk, while simultaneously driving up insurance costs.

5. While owned and operated by a local authority, the proposed project will meet or exceed all state and federal standards.

There can be little disagreement as to the urgent need for a project of this type. Given the federal approval, the well-thought-out design of this project, and the urgency it demands, we again recommend that the DNR approve of it without delay.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Matthew Pike', written over a large, stylized circular flourish.

G. Matthew Pike  
Executive Director

**From:** Luick, Larry E.  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Cc:** [Larry Luick](#)  
**Subject:** Fargo-Moorhead SEIS  
**Date:** Tuesday, September 25, 2018 6:21:49 PM

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Thank you for the opportunity to share concerns and ideas about the project with you. I will not go into the technical aspects of your DSEIS but I would like to just touch on a few items.

1. In your document 2.0 under 2.1.1.5 you discuss the change in area that the staging area (please leave that name alone-things are too confusing as it is.), you talk about the elevation or area encompassed to be 1 ft more than the 100 yr. flood area. That sure sounds like a lot. That is not good, but what is worse about this than the 1 ft amount, is that the folks that live in that encompassed area are relating to the flood waters, or no flood waters, that they have grown accustomed to in the past. All of these document are comparing the flood water height of the operational dam to a 100 yr. flood event that they have never seen, instead of a 50 yr. event that they are familiar with. If you want it to look less intrusive yet, why not compare it to the dam holding back or functioning at 50% and then raise the staging area height by 1 inch by operating the dam at 50.5%. I am being sarcastic I know but what if this dam needs to be operated at something less than the 100 yr. event that you (or FEMA or USACE) is referring to? How does that affect the folks that are in the encompassed area? Why isn't this being compared to events that we have already witnessed? I would love to see the 50 yr. map (something that has already been dealt with) compared to the operational map that we are looking at. 72a
2. In regard to 3.2.1.1.1 as I read it there really isn't any HEC-RAS data compiled for detention area alternative flow modeling from multiple detention sites. Why not? I know that the administration of Fargo put the skids to any studying of the alternative water holding areas, but that is a tremendous benefit to the water management agenda that should be looked at here. 72b  
With the possibility of holding 200-300,000 acre feet of water further upstream with detention areas, the modeling flows would change tremendously. 15-20% easily.
3. As with the last comment, the agricultural tiling benefit would also change the flow amounts into the staging area. Those numbers are up in the air right now I know but between the UMN and NDSU we should have that figured out in a few years' time. I am willing to gamble to say that with 50% tillable land tiled south of Fargo, there goes another 20% of the problem water. 72c
4. Add another alternative into the mix- the EERC's (modified) waffle plan. Another 15-20% of the water managed. 72d
5. Another addition to the plan would be to extend a low profile berm from the permanent dikes in place today southwesterly from the south side of Fargo, that would not be subject to FEMA getting bent out of shape on, with its top elevation equal to the height of the permanent dikes and do not let any building or filling take place "east" of it. Period. 72e
6. In 2009 the USACE came up with the plan to send the diverted water around the east side of

Moorhead. As they said at the time that that was a more natural route for it. How about encompassing a highway 75 bypass that would complement the growth and traffic flows of Moorhead with a smaller diversion as was recommended in 2009? The construction of the two could also complement each other.

72f

My thoughts focus around the water management aspect of water control. No silver bullet, not even the dam. The larger the area inside of this structure, the more probable it is to flood from internal rain or snow melt. Water management in both dry and wet years is the answer and there are many other benefits to go along with my plans.

My best to you all,  
Senator Larry Luick  
Fairmount, ND  
701-474-5959

To whom it may concern:

Hi, I'm Eddie Bernhardson, Moorhead, MN.

My great-grandparents, Bernhard and Kirsten Bernhardson, homesteaded in

Sec 7, Holy Cross Twp. Clay Co, MN.

~~the original log cabin, built in~~ 73a

1892 still stands on its original site on the banks of the Red River.

It is the second oldest building on the banks of the Red River in Minnesota

and ~~is on the National Register of~~ 73a

~~Historic Buildings.~~

In all these years only once has high water gotten close to the structure.

I was born on a farm in section 30, Holy Cross Twp. in March, 1938.

This site has never been threatened by flood water.

The area west of US Hwy 75 in Holy Cross Twp. has never had a flooding problem. There are

Several farmsteads in the area, but not of them have "ring dikes."

Also there is a cemetery in the SW corner of Sec 17, which has never been flooded.

So who determined the area west of Hwy 75 in Holy Cross township is flood prone? 73b

There are natural watercourses that drain water to the Red River, but overland flooding has never been a problem.

If you have questions I may be contacted at:

Eddie Bernhardson  
1518 19th St. So  
Moorhead, MN 56560

Phone: 218 233-4681 Home  
701 238-2335 cell

Thank you!

Eddie Bernhardson

From: Arden Breimeier  
 To: [MN Review, Environmental \(DNR\)](#)  
 Subject: Fargo-Moorhead Diversion - Comments  
 Date: Wednesday, September 26, 2018 4:18:26 PM

Jill Townley  
 Minnesota Department of Natural Resources  
 500 Lafayette Road  
 Box 25  
 St. Paul, MN 55155-4025

September 25, 2018

Dear Ms. Townley:

I am Arden Breimeier, a resident of Oxbow, North Dakota. My family built our home in Oxbow in 1994 and we have lived here since that time. Our children are now grown and have moved away but my wife and I remain in Oxbow.

Oxbow is ground zero in the F-M Diversion project and was originally designated for removal to accommodate the proposed floodway required for water storage. The initial cost estimate to buy out properties in Oxbow, Hickson and Bakke was \$70 million to \$75 million. Though the USACE agreed with me that clearing the floodway is the best option (email from Aaron Snyder, USACE), a ring levee mitigation plan was instead proposed and accepted by the USACE, the total cost of which was to be around \$65 million. To date, \$130 million has been spent on mitigation for Oxbow and there is perhaps another \$30 million yet to be spent. Clearly, estimating project costs is a secondary skill for the USACE, the PMC and local leadership.

My **objections to the diversion project** as planned today are myriad but I will distill them down to a few key points: project cost, project purpose, veracity & interests of the Corps and local leadership, and likely project outcomes if a permit to dam the Red River is granted.

74a

COST:

The Oxbow project is the canary in the coal mine, pointing to the fiscal train wreck that will ensue if this project moves forward. The Oxbow project may well come in at somewhere around 130% to 140% higher than the original cost estimate. The work involved here is simple urban construction and landscaping: new streets, water & sewer, home relocations and golf course landscaping. This isn't rocket science and yet, the end cost will well exceed double the original estimate.

The diversion, meanwhile, includes work that the Corps has never done: aqueducts. These, along with the operational dam that must be built on the Red River, are to be constructed in the unstable clays of the Red River valley. This is the same stuff that slumps from highway interchanges or causes said interchanges to be built using huge blocks of man-made material as a base (Veteran's Boulevard). Sides of drains routinely slump and need to be reconstructed. Roads need to be relocated to accommodate drain slopes that are much more gradual. And even then, they slump.

The Corps and its minions (aka local leadership and engineering firms, to mention a few) tell us that they can accurately predict the overall diversion construction and operational costs. This from the same people who missed the cost of the Oxbow project by perhaps 140 percent. This would be laughable if the implications weren't so dire. The current project estimate is somewhere around \$2.45 billion, with the announcement in March of a \$200 million increase to the previous \$2.25 billion estimate. This change in cost triggered a reaction from some of Fargo's city commissioners and this headline in the March 24 Fargo Forum: "New F-M diversion estimate triggers funding search to cover \$200 million shortfall."

Minnesota Congressman Collin Peterson has pegged the cost of this project at \$4 billion. However, if the project's financial trajectory is anything like Oxbow's, we are talking about a project that exceeds \$5 billion. Such costs will bankrupt Fargo/Cass County and will then land in Bismarck. **It is fiscally irresponsible to proceed with this urban development project disguised as flood control, which brings me to...**

74b

## PROJECT PURPOSE:

The original Corps plan, the NED, protected Fargo and Moorhead but was scuttled because it didn't drain the floodplain south of Fargo, thus clearing the way for expansive development of said floodplain. It wasn't the Corps who chose to move the southern project boundary miles to the south, routing through North Dakota. That was the choice of Fargo/Cass County and those who stand to benefit the most from floodplain development.

The city of Fargo that exists today can be protected with far fewer impacts than the current plan imposes on the region. As I understand it, in Minnesota, a flood-control plan must conform to the least impactful alternative, something this project does not do. Though most of the project exists in North Dakota, its effects slop over to the Minnesota side of the Red. I have visited at length with my North Dakota Senator, Larry Luick, and am informed that he has shared his recommendations with the DNR. I am also aware of work done and recommendations made by Charlie Anderson. The current diversion plan is not the least impactful alternative. It is instead the most expedient alternative for Fargo and Cass County.

74b

Where North Dakota cares not one whit about environmental impacts, Minnesota, through its state laws and through its DNR, does place a priority on environmental factors. So, should the natural floodplain be displaced upstream to existing dry land to accommodate urban sprawl on the North Dakota side of the Red? Isn't there room for such sprawl on the Minnesota side of the Red, where the terrain is naturally higher? Is there not a viable flood control plan out there that is less impactful?

Make no mistake: the current plan is first and foremost about urban sprawl and development within the natural floodplain. Any protestations of this statement are disingenuous. It relocates water from low ground to higher ground. The self-serving development wing of local government has its eye on securing room for Fargo's future expansion: it's just that simple.

## VERACITY:

In September 2009, I became a member of the Oxbow city council, serving through June 2014. During that time, I witnessed the machinations of the Corps and Fargo/Cass County leadership up close and personal. I found that when a proposed project is so intensely agenda driven, 'truth' and 'facts' become as malleable as Gumby. Take EO 11988, for example. I had a seasoned, former USACE employee tell me flat out that EO 11988 means whatever the Corps needs it to mean: it's definition and application are situational. Then, there is the EOE (expert opinion elicitation) that determined, over a 48-hour period, that FEMA's flood elevation numbers were low to the tune of four feet. Subsequent to this visionary revelation, any reference to elevation became a guessing game: you talking FEMA or EOE? Muddled data leads to muddled answers, which suits professional prevaricators just fine.

The Corps and local leadership believe they are entitled to their own facts. Masked in modeling and technispeak, their alternative facts are difficult to rebut. Complicating things further, real facts and best practices are held hostage by politics. When pressed, Aaron Snyder (USACE) told me that clearing the proposed floodway of homes and structures is superior to levee-protecting said homes and structures. But, when political pressure came to bear, the Corps was quick to dump best practices to approve a ring levee for the Oxbow area. Look at an inundation map and, from that, justify leaving Oxbow where it is, especially when considering that the financial cost to do so is greater than the cost to remove the community from the floodway.

Residents of Bakke and Hickson were promised a voice in the decision about the ring levee: they were promised a vote. When it became clear that a vote including Hickson and Bakke would reject the ring levee idea, Cass County stepped in and stripped them of their voice. Instead, after greasing the wheels in Oxbow with promises of a new golf course and new homes for those in the path of the levee, only Oxbow voted. Even then, the vote in Oxbow passed by only a slim majority of its households/property owners.

Beyond flood protection, Fargo and Cass County covet the development potential of the

floodplain that their various plans drain. Make no mistake that one of the primary drivers for rejection of the NED and adoption of the route through North Dakota is development of floodplain. It's a land grab garbed as flood protection. The USACE, meanwhile, covets the dollars and prestige that come with this massive project. At the time this project was ramping up, North Dakota was awash in oil money so it was seen as a golden goose of sorts, a paying customer. Beyond that, the USACE gets to build dams and those aqueducts that they've never built before. It represents both a revenue stream and an engineering challenge. And what was that other thing....? Oh yeah, flood protection.

#### LIKELY OUTCOMES:

The current construction plan for the diversion channel is broken into three stages. Stage 1 is from Interstate 94 north to the outlet. Stage 2 is the storage reservoir and dam at the south end of the project. Stage 3 is the channel section that connects the north end to the southern reservoir. Please note the order of construction as it's important.

Assume for a moment that Congressman Peterson's project estimate of \$4 billion is at the low end of the cost spectrum. The recent increase of cost from \$2.25 billion to \$2.45 billion was enough to cause a stir at Fargo city hall. What will happen when the \$2.45 billion is spent and the project is only half done?

The first thing that will happen is that plans for Stage 3 will be shelved. Given the inevitable financial constraints, there is little likelihood that the channel connecting Stages 1 and 2 will be built. After all, once the storage is built on the south end, Fargo and Cass County won't really need the channel. Water will be held in the reservoir longer and perhaps the flow through Fargo will be increased but that close-in storage will be deemed adequate protection until Washington can fund the rest of the project.

74c

Phase 1 of the project is adequate to provide floodplain protection to the northern end of the project. The Sheyenne diversion will protect Fargo and West Fargo, as it does today. The newly constructed reservoir will protect Fargo from the Wild Rice and Red rivers.

#### WHAT SHOULD HAPPEN:

First, the dam permit for the Red River should not be granted as this is surely not the least impactful alternative for protecting Fargo. The flooding of higher ground in favor of draining lower ground, to the degree that this plan does so, should not be allowed.

74d

However, being a disappointed realist and understanding that, where politics is involved, all things are malleable (state laws and regulations, executive orders, etc.), let's assume the DNR misguidedly grants the dam permit. In this situation, the diversion project's construction plan should be required to proceed from north to south, with not a drop of water allowed to be stored within the reservoir footprint until the entire project is complete and operational. If the project proceeds in the currently-planned construction order, rest assured that the third stage will never get built. If the USACE and diversion authority are serious about building the entire project, then it should be built contiguously, from north to south.

74c

#### PERSONAL IMPACTS:

We have lived through the period when our home was not salable, when it could not be refinanced and when a home equity loan was not available to most home owners in Oxbow, Hickson and Bakke. I know of one family that was forced into bankruptcy as a result of the property devaluation issue and they may not have been alone. That financial storm has ebbed, for now. We don't know what will happen if a dam permit is granted and earth work begins on the diversion channel. At that point, the reservoir becomes real and we sit in the middle of it. And we don't know what the status of flood insurance will be when the ring levee is complete: will we be considered high risk? We aren't required to carry flood insurance today but may be required to when the levee is complete and the reservoir is built.

74e

What is the true flood risk to our property when it is surrounded by levee and located within the reservoir confines? Some years back, Wolverton, MN, was hit by an epic rain event, about 10-inches of rainfall in a short period of time. What happens to Oxbow if it is

similarly hit after the levee is complete? Our internal drainage system is designed to a 100-year event, I believe, and that is to handle a 7-inch event. Where do the other three inches go if that happens? Apart from basements, that is. And what happens if the levee breaches or is over-topped? If something like that were to happen, flood insurance would be utterly inadequate as everything we own would be lost: water would reach the microwave oven in our kitchen.

We have been told repeatedly by local leadership that we are the safest place in the state once all of this is built. Yet, as the reservoir fills, the USACE tells us that we will likely be evacuated. To where? On whose dime? They say that we will need an emergency warning system (sirens, I assume). If we are so safe, why do we need warnings and evacuation plans? "You guys are the safest bunch in North Dakota so we recommend that you be ready to run!" Sorry, but this makes no sense.

And run on what? During the 2009 flood, when Oxbow had nothing that could be called a flood control system, I drove to Fargo to get supplies. The road was icy and bordered on either side by ice-cold flood waters. This is what we will be expected to navigate during a flood event when the reservoir fills up, except the roads will now be elevated: buses taking kids to school, people commuting to work and, when the evacuation order comes, everyone heading out to points unknown.

74f

So, given the new risks and their accompanying unknowns, we will probably need to sell if the permit is granted. We will seek high ground somewhere outside of Cass County.

As for Fargo, yes, it needs to be flood protected. But is a multi-billion-dollar diversion required to do that? Should the completion of just two of the three construction phases constitute an operational system that is implemented for flood control? If yes, then hold times for water on flooded land will be longer and the risks to both the Oxbow area and Fargo will be elevated.

Finally, an observation connected to recent hurricane Florence: stranded fish. As the water recedes and leaves the fish behind, they die off and decay. The same will happen with a Red River flood that fills the proposed reservoir. As water recedes, fish will be stranded and will die. Whose job will it be to clean up the carcasses and debris left by the receding waters? I expect the smell of rotting fish to be rather obnoxious.

74g

Unlike North Dakota Governor Conflict-of-Interest Burgum, we have nothing to gain from this project. Without the additional feet of water backed up on us by Fargo and its dam, we would be just fine. The \$130 million spent on mitigation for Oxbow thus far was wholly unnecessary in the absence of the dam permit. The multi-million-dollar cart has been squarely in front of the horse on this project for years now.

74h

Yes, leaving the area sounds better all of the time.

Thank you for your time and attention.

Arden Breimeier  
614 Evergreen Cir  
Oxbow, ND

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## Commenter 75

**From:** Butch and Jean  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead SEIS  
**Date:** Wednesday, September 26, 2018 3:40:10 PM

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I am very disappointed in the plan B for the Fargo Diversion. I see no reason that the project should go forward when it plans to save vulnerable flood prone land at the expense of land that has never been flooded in Richland and Wilkin counties. In my opinion, there seems to be little change between the original plan and the current proposed plan. The costs versus benefits ratio is way out of line and the Army Corps has inflated some of the numbers to make it look more acceptable. I have not seen any solutions to all of the rural cemeteries that will be flooded and am not clear on how flooded farm land will be reimbursed. I think that what Grand Forks and East Grand Forks has done to resolve their flood issues should be looked at by the Fargo Diversion Authority.

75a

75b

75c

75d

75e

75f

Wayne Fuder  
Foxhome, Mn

## Commenter 76

**From:** Paulette Gronneberg  
**To:** [MN Info \(DNR\)](#)  
**Subject:** Diversion Comment  
**Date:** Wednesday, September 26, 2018 10:19:02 PM

---

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Wednesday, September 26, 2018  
Ms. Townley:

I do not live in the Plan B area, but have family that does. My concern is in regards to the immense expense of an “over the top excessive project” **to protect a city (Fargo) who has the expectation that the rest of the state and nation should pay for flood control** for a river level that only Noah’s Ark could protect you from. I do believe that Fargo should step up their flood protection, but please do it in a common sense way.

76a

Believe me, **it is more than just Cass and Richland counties who will end up paying for the diversion.** My tax dollars will also contribute to this flood protection through state and federal funds. Every time I shop in Fargo, I will be paying for your flood protection or choose to shop elsewhere. I believe the impact of the shopping aspect of this project has already affected Fargo. I just read in the Fargo Forum that a huge outlet retailer has backed out of building in the city. Could it be they believe that what they will have to charge for merchandise to offset taxes can’t compete with other retailers in the state?

76a

The land that is proposed (expected) to be handed over to the project for flood control is known to be the most productive agricultural land in the United States. **Lets’ go back to 4<sup>th</sup> grade social studies and I quote from this link:**

<https://www.ndstudies.gov/gr4/geology-geography-and-climate/part-2-geography/section-4-red-river-valley>

The Red River Valley has some of the richest soil and best farmland in the world. There are two reasons for this: (1) fertile (rich) soil had been brought down from Canada by the glaciers; and (2) a great deal of **organic** matter had been left from Lake Agassiz. Organic matter makes soil very rich which means it is good for growing crops. The Red River Valley has been called “The Breadbasket of the World” because so much food is raised there. Sugar beets, potatoes, corn, and wheat are some of the main crops raised by farmers in the Red River Valley.

Common sense tells me that **taking some of the most productive farmland in the world out of production is a really poor decision.** The bottom line is how in the world do you believe you could ever earmark enough money to buy out those farms? The astronomical value of the property involved leads me to another common sense idea, **move the flood plain to less expensive property,** and protect the city at a reasonable flood level.

76b

76c

Sincerely,

Paulette Gronneberg

Tax payer, frugal farmer, and proudly born and raised in the Red River Valley

September 12, 2018

Jill Townley, Environmental Policy and Review Unit  
Minnesota Department of Natural Resources  
Box 25, Lafayette Road,  
St. Paul, MN 55155-4025

RE: Fargo-Moorhead Flood Diversion Project DSEIS

Dear Ms. Townley,

Thank you for this opportunity to comment on this important issue. I strongly support the project, and urge your unit to adopt Plan B as the way forward, following a finding of adequacy for the Draft Supplemental Environmental Impact Statement.

77a

The project will have many benefits for the metro area, with fewer impact, and Plan B is by far the best proposal for enacting it. It will finally provide the Fargo-Moorhead metro area with a real, workable, enhanced flood risk management plan to reduce the risk, damages and costs associated with major floods.

This is something that we have needed for a long time. We have several rivers that run through our general area – including the Red River, Sheyenne, Wild Rice, Maple, and Rush rivers – all of which have a history of flooding. We also happen to have few natural geographic features that can hold back flood waters. The current system of deploying the community to build sandbag walls is laughably archaic.

The project will be effective enough to qualify much of the metro area for 100-year flood certification from the Federal Emergency Management Agency. And yet its impacts will be less than one might expect, due to thoughtful engineering and design. What impacts remain will be mitigated by a number of measures, including a supplemental crop insurance plan, the acquisition of property right up to the 923.5 foot mark (the maximum pool elevation), and assistance for debris clean-up after the flood waters have receded.

Plan B is a great proposal, and will provide effective enhanced flood risk management, consistent with the project's purpose and need statement. Please see fit to find the SEIS adequate, and issue subsequent approvals as required to get this done.

77b

Sincerely,



September 12<sup>th</sup>, 2018

ATTN: Jill Townley  
Ecological and Water Resources Division  
Minnesota DNR  
500 Lafayette Road, Box 25  
St. Paul, Minnesota 55155-4025  
Email: [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us)

Dear Ms. Townley:

This letter is intended to document my support for the Fargo-Moorhead Flood Diversion Project, and specifically for the Plan B. 79a

Plan B will provide enhanced flood risk management for the Fargo-Moorhead Metro area, which we are in great of due to the geographical realities of our region and the fact that we have several rivers traversing the area. Plan B is the best vehicle for providing this protection, and improves upon previous submissions and other alternatives in the following ways:

It offers protection for more developed acreage: The original 2015 proposal for flood risk management was found by your department to propose flood protection for large sparsely developed areas. Also, Alternative C, which was considered but rejected, had the inundation plain situated in such a way as to protect too much undeveloped open area. The purpose of such a project, of course, is to protect homes and businesses, so Plan B ensures that more built-up areas are being protected than open fields.

Plan B is more cost effective: Alternative C required much more construction, more ring levees, and also the acquisition of more homes and businesses. The costs for that alternative were quickly piling up. Plan B is not only more effective, but is less expensive.

Impacts are more evenly distributed: Another reason for the rejection of the 2015 plan was the inequitable distribution of benefits to impacts between us and North Dakota. Plan B rectifies this.

This proposed plan for enhanced flood control and risk management is thoughtfully researched, studied, and prepared, and will provide us a long-term flood control solution. Please approve Plan B for implementation. 79b

Regards,



Commenter 80

September 21, 2018

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

Dear Ms. Townley,

Thank you for the opportunity to review the Draft Supplemental Environmental Impact Statement (DSEIS) for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

As the Metropolitan Planning Organization (MPO) for the Fargo-Moorhead Metropolitan Statistical Area (MSA), Metro COG is supportive of the project proposed to you by the entities that make up the Diversion Authority to provide critically needed flood protection for the region, and specifically to its transportation infrastructure network.

80a

In addition to the numerous benefits provided by enhanced flood protection, the proposed project would provide additional benefit to numerous national and regional transportation routes which have been greatly challenged and impacted during past flooding. The Fargo-Moorhead MSA hosts the interchange of two interstates and the local population and commerce is geographically situated along each of these corridors. Metro COG is appreciative of the work by the Minnesota DNR's Alternative Screening Exercise and to put a priority on the socioeconomic factors as to how each of the 33 screened alternatives affected the intersections of our region's major transportation corridors.

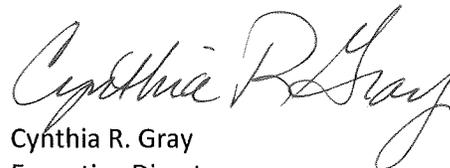
The Fargo-Moorhead Metropolitan Council of Governments (Metro COG) will continue to coordinate with our local partners, who are also participants of the FM Area Diversion Authority, on transportation-related improvements needed as the result of the project.

We appreciate the opportunity to provide these comments.

Sincerely,



Arland Rasmussen  
Policy Board Chair



Cynthia R. Gray  
Executive Director

09/12/2018

Minnesota DNR  
Ecological and Water Resources Division  
Box 25, 500 Lafayette Rd  
St. Paul, MN 55155-4025

RE: Fargo-Moorhead Flood Diversion Project  
ATTN: Jill Townley, Environmental Policy and Review Unit

Dear Ms. Townley,

Undoubtedly, you have heard from many residents of the Fargo-Moorhead region supporting Plan B of the F-M Flood Diversion Project. It is no wonder, given the inherent risk of flooding that comes with living here. We know full well just how devastating floods can be, and how at risk we are for another catastrophic one.

The Fargo-Moorhead Diversion Authority did a good job of developing a set of purpose and need statements for enhanced flood risk management, which I believe encapsulate the need quite well. The stated purpose is simple: "to reduce flood risk, flood damages, and flood protection costs related to flooding in the Fargo Moorhead metropolitan area."

Plan B of the current Flood Diversion Project satisfies that purpose very well, better than any previous plan or other alternative offered to date. It provides a blueprint for enhanced flood risk management, something that your Director has publicly stated he supports; it also qualifies significant portions of the metro area for 100-year flood accreditation from FEMA, under the National Flood Insurance Program. This will reduce the insurance rates for hundreds, if not thousands, of residents and business owners in the region.

For all the benefits, Plan B impacts far fewer people than the original project outline did. The inundation area and relevant construction is located in such a way as to minimize the impacts on landowners, while at the same time offering protection for more buildings, both residential and commercial.

This is a win-win for all, especially for the people of Fargo-Moorhead. Plan B has been well-studied and is the culmination of years of work and effort. I urge you to grant all needed approvals.

81a

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Brown". The signature is fluid and cursive, with a large loop at the end.

**From:** matt ness  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo Moorhead  
**Date:** Wednesday, September 26, 2018 9:45:13 PM

We are writing in regards to the proposed "Plan B" of the Fargo Moorhead Flood Risk Management Project. **We are opposed to the new Plan B**, as it has much more harmful impacts to our farmstead and farmland in Minnesota, than the first, original plan did. There will be larger volume of water and the duration of water will be magnified to a much larger degree. Our farmstead is located 2 1/2 miles southwest of Comstock, MN, along the Red River. **According to my father and grandfather, there has never been a real threat of flooding to our farmstead over the last 100 years**, even during the 1997 and 2009 floods. With this plan, our farmstead would be flooded for weeks if this project were to be implemented. In the great flood of 2009, when Fargo and Oxbow were sandbagging, we were high and dry. In fact, it would take an additional 4 feet of water in elevation compared to the 2009 flood, to reach our farm yard, and another 6 feet of water in elevation to reach our house. So, under existing conditions, it would take at least a 500 year flood event or greater, to flood us out.

82a

82b

The points made above seem to prove that if this Plan B were to happen, the **higher ground in Minnesota would be artificially flooded, while sparsely developed land to the South and Northwest of Fargo would be protected and developed**, as stated many times by the mayor of Fargo. This is proven to be the case, as the floods of 1997 and 2009 were perfect examples of where the water backs up and sits. This plan B is hyped up in the media to be ideas from a task force that was formed nearly one year ago. The task force group represented proponents and opponents of the first plan, trying to compromise and lessen impacts upstream and surrounding areas. But many of these ideas formed from this group got railroaded at the last minute by the Diversion Authority when they (Diversion Authority) ultimately pushed their own plan through that they wanted to try and get permitted. This is how we got to Plan B.

82b

Lastly, a major discrepancy we have with Plan B, is some of the maps the Army Corps of Engineers put out on existing conditions. We have even heard the chair of the Diversion Authority **explain to us that we will flood during a 100 year event with existing conditions anyway, so whats a little more water. This is completely untrue. We have taken laser readings on our farmstead and farmland, and we DO NOT flood with existing conditions.** This would seem to manipulate the number of acres and farmsteads that would be newly impacted and those that would not. For instance, We own some farmland in section 5 of Wolverton township that they claim just got put in the 100 year flood plain, but land to the north, northwest, and west, which is all lower in elevation, is NOT in the 100 year plain. We asked this question to the Army Corps in Moorhead and was told they would look into it. There are functioning ditches and culverts that properly drain these areas that I am discussed previously. This is just one example of many differences myself, neighbors, and people that know the lay of the land for many years, disagree with many of the maps under existing conditions. Experienced boots on the ground are more accurate than computer modeling. We would like some answers to these questions. Now, if there are inaccuracies to these maps with existing conditions, how in the world are these maps they hypothetically portray with Plan B, going to be taken as accurate or gospel?? We believe the effects to Minnesota will be much greater than the maps show with Plan B. Especially with the dam on the Wolverton creek. The number of acres impacted in Wilkin county with Plan B, will also be much greater than is being advertised from the Diversion Authority as well.

82c

**We ask you to not permit Plan B**, as Minnesota will be impacted much greater than what the Diversion Authority and Army Corp of Engineers are projecting. We thank you for taking our concerns and look forward to hearing from you.

82d

Matt and Rachel Ness  
 4763 Douglas Dr  
 Fargo, ND 58104  
 218-329-9487

Written Comments

FARGO - MOORHEAD

Share a comment with the DNR and/or Army Corps for the revised Fargo-Moorhead Flood Risk Management Project.

Please provide your preferred method of contact (mail or email). \*Note that any information provided is public data. While you are not required to provide your contact information, doing so allows the DNR to send you future DNR environmental review documents on the Project. Comments will be shared with both DNR and Army Corps.

<p>Name: Patricia Redhin</p>	<p>Mailing Address: 5273 COUNTY ROAD 81 S. HICKSON, ND 58047-9740</p>
<p>Representing: Gary &amp; Patricia Redhin</p>	<p>Or Email:</p>

My comment is for:

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

Flood Protection is needed but should be for the whole valley and not just for a selected area. The maps never show all the homes and farmsteads that have not flooded. They will now be in the area they want to flood. They want to move the flood plain so they can develop in the present flood plain, which is the area that kept Fargo from flooding. People should not have to be forced out of their home for a project that might be used once every 15-20 years. If a flood plan for the whole valley was done many people would not need to have their homes taken away. With all the internal flood protection Fargo has done and is doing there is no need for a dam to be built, a diversion is all the extra protection Fargo needs. Future development is not more important than existing homes.

83a

83b

83c

## Commenter 84

**From:** Joseph M. Schmitt  
**To:** [MN Review, Environmental \(DNR\); CEMVP-Fargo-SEA@usace.army.mil](#)  
**Cc:** [Joseph Schmitt](#)  
**Subject:** Fargo-Moorhead SEIS, Terry Williams, District Engineer, St. Paul District, Corps of Engineers  
**Date:** Wednesday, September 26, 2018 4:07:39 PM

---

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 tilled 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.

84b

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 35<sup>th</sup> 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 35<sup>th</sup> 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.

84a

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.

84b

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)

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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)

September 13, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, Minnesota 55155-4025

RE: Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

Thank you to you and your colleagues for reviewing this project. I encourage you to make a determination of adequacy in regards to the Supplemental Environmental Impact Statement, and I further urge you to subsequently **approve Plan B to initiate the project**, on the grounds that it will provide enhanced flood risk management, consistent with a goal the Director of your agency publicly stated he supports.

85a

The Directors support is in line with the purpose and need statement developed by the Fargo-Moorhead Diversion Authority, which states that the purpose of the project is to reduce flood risk, damages, and protection costs related to flooding in the Fargo-Moorhead metropolitan area. I am pleased to see that Plan B meets all of the requirements of that statement, as well as supplemental purpose and need statements developed by the Diversion Authority.

Concomitant to providing effective flood risk management, Plan B will allow substantial portions of the metro area to qualify for 100-year flood accreditation from the Federal Emergency Management Agency. This will have the direct result of reducing flood insurance premiums for many of our local working families and small businesses.

IT is also clearly a very well-studied and thought-out project, incorporating hundreds of hours of evaluation and review. Plan B is an effective improvement over the original project, alternative proposals, and the plan currently in place.

I hope that this comment is of some use in your planning and actions going forward. To reiterate, I find Plan B to be a well-designed project that provides enhanced flood risk management at a reasonable cost to the taxpayer, and will undoubtedly save lives, homes and businesses.

Best regards,

A handwritten signature in black ink that reads "Doug Stone". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

9-23-18

Minnesota Department of Natural Resources  
Environmental Policy and Review Unit  
Box 25  
500 Lafayette Rd,  
St. Paul, MN 55155-4025

Jill Townley, Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley and DNR staff,

This letter concerns the Supplemental Environmental Impact Statement your agency is reviewing for the Fargo-Moorhead Flood Diversion Project. I support Plan B, and urge you to find that the SEIS was adequately prepared so that this enhanced flood risk management project can get off the ground.

86a

After the initial version of the project was denied a Dam Safety permit two years ago, the Governors of Minnesota and North Dakota formed a task force to study flood mitigation in the Fargo-Moorhead area. That task force developed a number of recommendations that were all incorporated into Plan B.

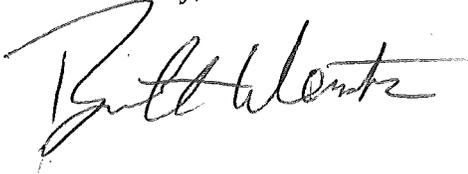
One of the problems that your agency identified with the original project was that the impacts were unevenly distributed between Minnesota and North Dakota. Plan B corrects that, minimizes impacts on both sides of the border, and also proposes a number of new mitigations for the impacts that remain. Among these are a new crop insurance program and debris clean-up assistance.

Plan B will impact far fewer people than other alternatives considered. Alternative C, which has already been rejected as inadequate, was the main competing plan, and it not only impacted far more people, but cost much more as well. Several additional homes and businesses would have had to have been acquired, and much of the protected area would be undeveloped farmland. Of course, doing nothing by accepting the No Action alternative is hardly an option, enhanced flood risk management being such a critical need for our community, which current plans do not provide.

Plan B of the Flood Diversion Project will provide that level of protection, and the future of hundreds of property owners in the metro area depend on your agency supporting and approving it.

86b

Cordially,



**From:** Sharon Weber  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Plan B, Fargo-Moorhead Flood Diversion Project  
**Date:** Wednesday, September 26, 2018 10:50:12 AM  
**Attachments:** [image001.png](#)

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September 26, 2018

Ecological and Water Resources Division, DNR

500 Lafayette Road,

St. Paul, Minnesota, 55155-4025

ATTN: Jill Townley, Project Manager

Re: Plan B, Fargo-Moorhead Flood Diversion Project

Dear Ms. Townley,

This is a copy of a form letter provided to me to reflect our wishes **for the approval of plan B.** With that being said, it reflect and relays much more eloquently than I could ever do, so please know I am submitting this with the understanding that this is my request also.

87a

I wish to thank you and the Department of Natural Resources for your continued good work and dedication to the land and people of Minnesota. I am confident that that same dedication and diligence will result in your support for Plan B in the Fargo-Moorhead Flood Diversion Project Draft Supplemental Environmental Impact Statement.

After your office issued the denial of the Dam Safety permit for the original plan in 2016, the governors of Minnesota and North Dakota formed a task force to look at the issues involved and to prepare recommendations for a new proposal. Every one of the task force's recommendations were incorporated into Plan B. Extremely thorough reviews and analyses have been done by several different agencies and groups, at many levels of government. This is one more in a long chain. While this determination of the adequacy of the SEIS does not mean immediate project approval, it is a step in the right direction.

Thank you for you hard work on our behalf.

**I CARE!**

**SHARON WEBER, SRES**

**Senior Real Estate Specialist**

CELL: 701.200.3585

OFFICE: 701.318.0509

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

## Commenter 88

**From:** Cash  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Comments on FM Flood Project EIS  
**Date:** Thursday, September 27, 2018 11:58:20 AM  
**Attachments:** [Cash H\\_Aaland.vcf](#)  
[Final Comments to Leadership Group FM Diversion DNR.docx](#)  
[northern alignment alternative 9- 18.pdf](#)  
[7A - 10D.pdf](#)

---

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Dear Ms. Townley:

I am writing to comment on the Fargo-Moorhead Flood Risk Management Project – SEIS.

Reading the SEIS it became apparent to me that the **alternative analysis review** of the proposals from Hydrologist Charlie Anderson and the Richland Wilkin JPA were conducted under **the assumption that the Red River Control Structure would have to remain in the location where the Fargo Diversion Authority/Army Corps began to construct it south of Horace, ND,** and therefore upstream and uphill from where Charlie Anderson and the JPA proposed to locate the dam/embankment. This is an unreasonable assumption.

88a

I have attached and hereby incorporate my comments submitted to Commissioner Landwehr following the conclusion of the meetings of representatives of the Army Corps, the FM Diversion Authority, and the Richland Wilkin JPA that were hosted by the Commissioner in St. Paul and ended on March 8 of this year.

As noted in my earlier comments, the Diversion Authority chose to prematurely end those conversations, submitting the current Plan B proposal, before the engineers, including Charlie Anderson, completed their comments. If memory serves, Tim Fox and I spoke to the fact that proposals by Charlie Anderson/JPA would necessitate **locating the inlet structure to the northwest of Horace, not southeast of Horace** where the Army Corps/Diversion Authority prematurely commenced construction.

88b

**If the inlet structure was properly located there would be no drawdown issues and flows would not need to be redirect through the WRRS.** Additionally, even with a levee on the east side of Horace, a properly located inlet structure would involve considerable savings as the diversion channel would be shortened.

The FM Diversion Authority and the Army Corps attempted to strong arm Minnesota and the upstream communities by commencing construction on this project in violation of state and federal laws. The first federal injunction was issued when construction of the Oxbow levee was commenced in violation of Minnesota statute prohibiting commencement during the environments review process. The second federal injunction was ordered after the Army Corps and the Diversion

Authority openly flaunted Minnesota’s regulatory authority by locating and commencing construction of the inlet structure southwest of Horace.

The DA/Army Corps were warned by Governor Dayton, Commissioner Landwehr and representatives of the Richland Wilkin JPA that pre-mature construction would violate state and federal law. More important to this alternative analysis, the DA/Army corps were *repeatedly* warned that by commencing construction they could be making a monumental error as the project might not be approved and/or be different from what they proposed.

The federal judge, in granting the injunctive relief in this case, noted the “bulldozer” effect of allowing project sponsors to commence construction pre-permit. It defeats the regulatory authority by prejudicing a legitimate analysis and search for the “least impact alternative.” **The permit process in a project such as the FM Diversion is designed to be constructive and beneficial to the project sponsors, to help identify and design the best project. The FM Diversion attempted to defeat this process by premature commencement of construction. I urge the DNR not to give effect to that unlawful conduct.** 88c

**The alternative analysis needs to take into account that the proposals by Charlie Anderson to reduce the staging area on the southern side of the project would necessitate a different location for the inlet structure** as suggested by representatives of the Richland Wilkin JPA in the meetings held in February and March of this year. A properly located inlet structure in relation to the proposals of Charlie Anderson would significantly shorten the diversion channel, materially reduce the costs of the project and make operation more efficient. 88b

The DNR should not accept the unlawful conduct of the Army Corps and the Diversion Authority, designed to “set in concrete” their failed/permit denied plan, to determine the parameters of the alternative analysis.

Cash Aaland



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**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."

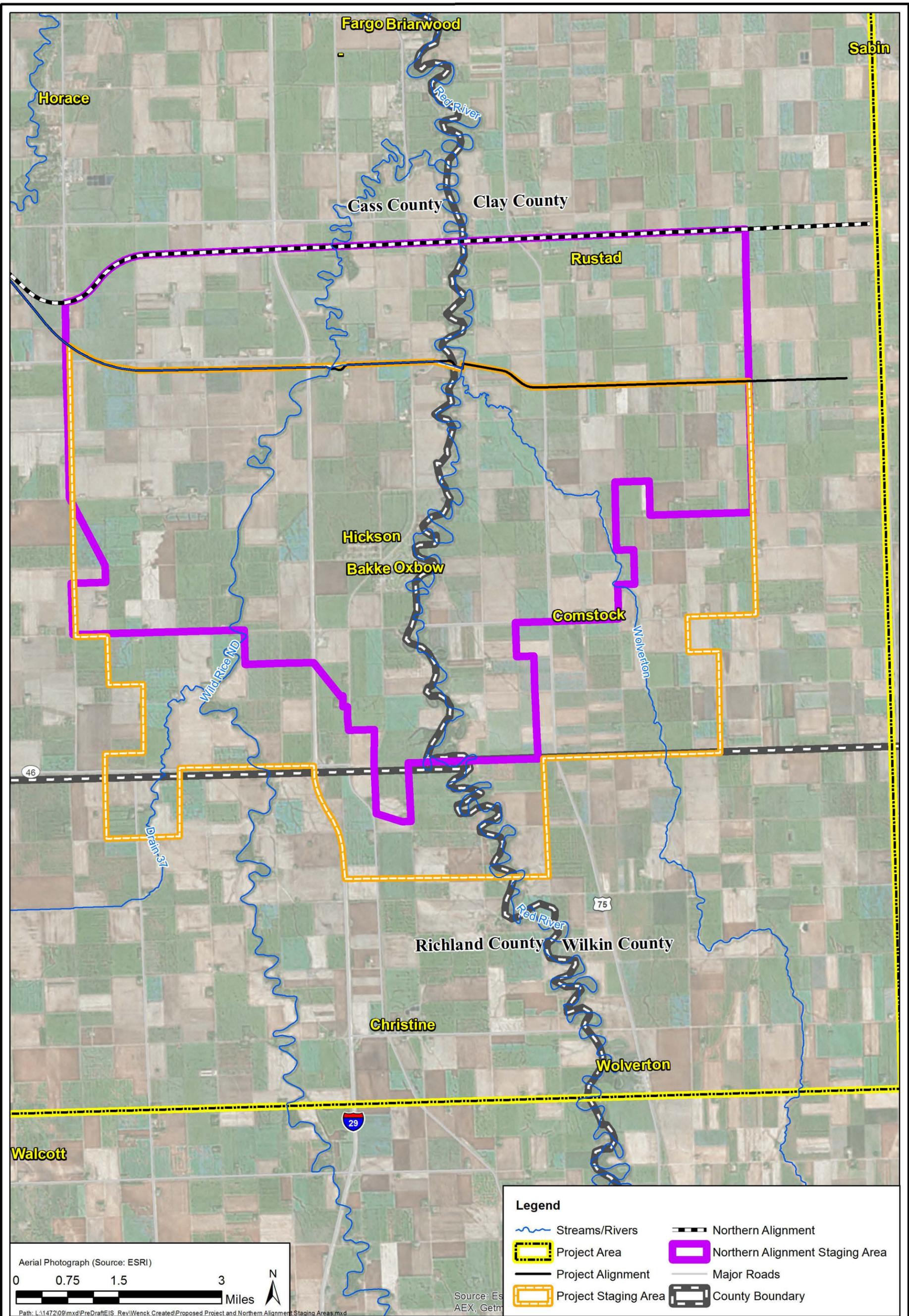
The Richland-Wilkin JPA has always maintained that the original NED plan was a reasonable less impact alternative that should serve as the true baseline for comparison. The NED plan proposed a simple Minnesota side diversion, one-half the size of Fargo's plan, which fully protected the FM Metro while 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.

88d

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

Cash H. Aaland



Aerial Photograph (Source: ESRI)  
 0 0.75 1.5 3 Miles  
 Path: L:\1472\09\mxd\PreDraft\EIS\_Rev\Wenck\_Created\Proposed Project and Northern Alignment Staging Areas.mxd

**Legend**

Streams/Rivers	Northern Alignment
Project Area	Northern Alignment Staging Area
Project Alignment	Major Roads
Project Staging Area	County Boundary

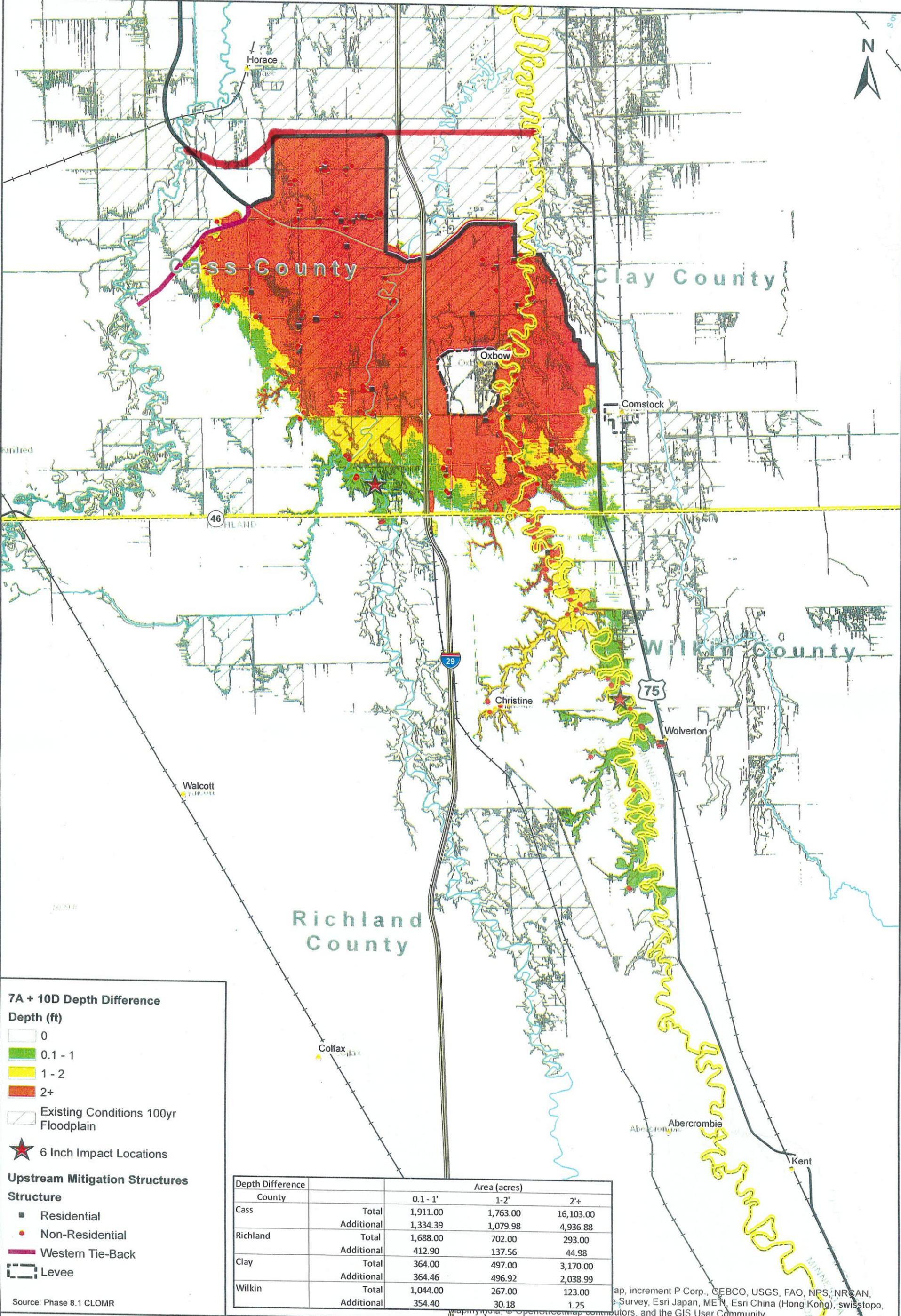
FARGO-MOORHEAD FLOOD RISK MANAGEMENT PROJECT

Proposed Project and Northern Alignment Staging Areas

Created By: ShuJC0243 Date Created: 05/22/2015 Date Exported: 2/17/2016

Figure 7

Source: 2014 1202 Diversion Authority Northern\_ALT\_Staging\_Area Shapefile; 2012 11 SEAW Figure 4 Project Features Shapefile.



**7A + 10D Depth Difference**

**Depth (ft)**

- 0
- 0.1 - 1
- 1 - 2
- 2+

Existing Conditions 100yr Floodplain

★ 6 Inch Impact Locations

**Upstream Mitigation Structures**

**Structure**

- Residential
- Non-Residential
- Western Tie-Back
- Levee

Source: Phase 8.1 CLOMR

Depth Difference	County	Area (acres)		
		0.1 - 1'	1-2'	2'+
Cass	Total	1,911.00	1,763.00	16,103.00
	Additional	1,334.39	1,079.98	4,936.88
Richland	Total	1,688.00	702.00	293.00
	Additional	412.90	137.56	44.98
Clay	Total	364.00	497.00	3,170.00
	Additional	364.46	496.92	2,038.99
Wilkin	Total	1,044.00	267.00	123.00
	Additional	354.40	30.18	1.25

Map, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, mapbox, OpenStreetMap contributors, and the GIS User Community

## Option 7A + 10DE Alignment Depth Difference Map



Created By: enelson Date Created: 12/06/2017 Date Exported: 1/20/2018 Image: 2016 County NAIP Elevation Data - Coordinate System: NAD 1983 UTM Zone 14N Datum: North American 1983 H:\Fargo\BHV\4007438\13\_7438\_015\Minnesota Dam Safety Permit\Small Team\2017-11-13 Tech Advisory Com\GIS\H7A\_10DE\_DD.mxd

## Commenter 89

**From:** Csajko, William L CIV USARMY CEMVP (US)  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Cc:** [Williams, Terry L CIV USARMY CEMVP \(US\)](#); [Ingvalson, Derek S CIV USARMY CEMVP \(US\)](#); [Sobiech, Jonathan J CIV USARMY CEMVP \(US\)](#); [Hunt, Molly M CIV USARMY CEMVP \(US\)](#); [Malin-Boyce, Susan B CIV USARMY CEMVP \(US\)](#); [Stefanik, Elliott L CIV USARMY CEMVP \(US\)](#)  
**Subject:** Fargo-Moorhead SEIS  
**Date:** Thursday, September 27, 2018 3:10:24 PM  
**Attachments:** [Corps Comments 9.27.18 Final.xlsx](#)  
[USACE Comment Transmit Letter9.27.18FINAL.PDF](#)

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Attached are comments from the St. Paul District, U.S. Army Corps of Engineers, and a copy of the transmittal letter.

Bill Csajko  
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REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
ST. PAUL DISTRICT, CORPS OF ENGINEERS  
180 FIFTH STREET EAST, SUITE 700  
ST. PAUL, MN 55101-1678

September 27, 2018

Regional Planning and Environment Division North

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

Dear Ms. Townley:

The Corps of Engineers is providing these comments as part of the public review of the Minnesota Department of Natural Resources Draft Supplemental Environmental Impact Statement (DSEIS), dated August 2018, for the Fargo-Moorhead Flood Risk Management Project. Our detailed comments are provided in the attached spreadsheet. This letter highlights our primary concerns.

Benefits to infrastructure from the action alternatives are not acknowledged in section 3.7 or Table 5-1. Reducing flood risk and reducing flood fights will have a significant benefit on existing infrastructure. We feel it is imperative to inform the public about both positive and negative impacts of the overall project relative to existing conditions.

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We anticipate that the Diversion Authority will more fully address the issues related to local land use plans and regulations. However, it is worth noting that while the DSEIS accurately quotes the Chief's Report in stating the sponsors are required to "comply with all applicable federal and state laws and regulations" (section 3.8.3.3), this would not require the sponsors to comply with all local ordinances. The Chief's Report requirement is limited to federal and state requirements that are "applicable." The DSEIS also states "The USACE has indicated regulations would be followed as required by federal law," which could imply that federal law requires compliance with local regulations. The Corps has previously suggested the following statement regarding sovereign immunity and federal preemption: "In implementing a federal project, the USACE is required to comply with state and local laws, regulations, and ordinances only to the extent specifically required by federal law."

89b

We understand there continues to be a gap between USACE and Minnesota DNR on the mitigation requirements for some resources. We anticipate continued discussions with DNR staff as we use best available science to more clearly define mitigation needs commensurate with the impacts caused by the project.

We appreciate the great effort the DNR has put forth in preparing this DSEIS. We are also grateful for the opportunities we have had to provide input and share information during development of our Draft Supplemental Environmental Assessment. We look forward to working closely with the DNR as we progress towards an implementable project that will provide the necessary flood risk management for the region. Thank you for considering our input regarding the DSEIS.

Sincerely,

A handwritten signature in blue ink, reading "Terry J. Birkenstock". The signature is written in a cursive style with a large initial "T" and a prominent "B".

Terry J. Birkenstock  
Acting Chief, Regional Planning &  
Environment Division North

Encl

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (other areas in EIS this comment may apply)
1	2.1	2-1	Second paragraph, first sentence under Plan B Overview: Does this include the temporary construction easement areas? Temporary easements are approximately 2,500 ac for the Southern Embankment and 8,018 ac for the diversion channel portion.	Verify acreage.	
2	2.1.1.1	2-3	The last sentence in the partial paragraph at the top should be modified.	Change to, "The portion of the Western Tieback constructed at the maximum pool elevation would only be overtopped in the event of a significant gate failure at one of the control structures during greater than 0.2 percent ACE flood events.	
3	2.1.1.1	2-3	Additional information regarding the maximum pool elevation should be added.	Add the following sentences after the first sentence in the first full paragraph: "The maximum pool elevation along the Western Tieback will be limited to 924.0 feet (if necessary the gated structures and/or the operation plan will be modified to keep the maximum pool elevation at or below 924.0 feet). However, the detailed design phase of this Project will attempt to achieve a maximum pool of 923.5 feet, which is achievable based on preliminary modeling results."	
4	2.1.1.1	2-3	Description of Wolverton Creek Crossing in second full paragraph should be revised.	Change "three 10-foot by 10-foot box culverts" to "a non-gated culvert structure." Also, change "culvert sizes were selected to" to "culvert size will."	Section 2.1.1.1, page 2-3; section 3.2.2.1.3, page 3-12; Table 5-1, page 5-3
5	2.1.1.4	2-4	Correction to section.	Change to, "The Diversion Inlet Structure (DIS) for Plan B would be designed the same as described for the previously-proposed Project. The Diversion Inlet Structure would be located where the diversion channel crosses Cass County Highway 17 in the southwest quarter of Section 32 (the previous EIS inadvertently cited Section 31), Stanley Township, Cass County, North Dakota, as shown in Figure 1. Conditions on the Red, Wild Rice, Sheyenne, Maple and Rush Rivers were proposed to be monitored to determine gate operation need and minimize downstream impacts. Plan B will expand monitoring to include Wolverton Creek."	
6	2.1.1.5	2-4	First sentence: USACE has not replaced the term but has used Zones 1 and 2 to further describe the staging area.	Change to, "The USACE has expanded the definition of the term "staging area" to include two zones: Zone 1 and Zone 2."	
7	2.1.1.9	2-5	First sentence of second paragraph is incorrect. The previous location of the Western Tieback intersected Drain 47, but the Plan B Western Tieback follows a drainage divide.	Delete first sentence.	
8	2.1.1.9	2-5	Third sentence of second paragraph is incorrect. This was also true with the previous alternative. It's just that the previous dam alignment was near the upstream end of the Drain 27 watershed and therefore wasn't as noticeable as intersecting Drain 27.	Delete third sentence.	
9	2.1.1.13	2-7	I-29 is the only road being raised in the staging area.	Change second sentence to, "As part of Plan B, Interstate 29 would be raised within the staging area."	
10	2.1.1.13	2-8	Last bullet: realignment of Cass County Highways 16/17 to accommodate the Diversion Inlet Structure was also true for the previous alternative.	Delete.	
11	2.1.1.14	2-8	Second sentence in first paragraph gives the wrong impression; the final details are not complete, but the basic plan is.	Change to, "The final details of the Operation Plan were not complete at the time of this Draft SEIS publication."	
12	3.2.1.1.1	3-4	Under "Overall Model Review," the model limits are incorrectly identified.	Change "Grand Forks" to "Drayton."	
13	3.2.2.1.5	3-13	The last sentence assumes an existing condition scenario where emergency protection measures are effective for the 0.2% ACE event. It is very unlikely that emergency measures would be effective for the 0.2% ACE flood event. At a minimum this assumption should be stated clearly. The downstream impacts are less for the 0.2% ACE event if the existing condition assumption is that emergency measures are not effective through Fargo-Moorhead (i.e. the with-project water surface elevations remain the same but the existing condition water surface elevations are higher downstream of FM if emergency measures are not effective).	Change last sentence to, "At a 500-year event (0.2% chance), assuming emergency protection measures are effective, the largest downstream increase is 0.58 feet at Grand Forks, North Dakota. The downstream impacts are less for the 0.2% ACE event if the existing condition assumption is that emergency measures are not effective through Fargo-Moorhead."	

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (other areas in EIS this comment may apply)
14	3.2.2.2	3-13	It should be made clear that USACE does not assume emergency measures are effective and that FEMA does not generally recognize emergency measures, except limited closures, in the development of FIS maps.	Add after the first sentence, "Note that USACE does not assume emergency measures are effective and FEMA does not generally recognize emergency measures, except limited closures, in the development of FIS maps."	
15	3.2.2.2	3-13	Third sentence (now fourth with above): It should be clear that the assumption of effective emergency measures extends through the 0.2% ACE (500-yr) flood.	Add to the end of this sentence, ", and which are assumed to provide protection through the 0.2% ACE (500-yr) flood."	
16	3.3.3	3-15	Third sentence in fourth paragraph: It should be made clear that the assumption is that emergency measures are not effective.	Add to the end of this sentence, "assuming emergency measures are not effective."	
17	3.3.3	3-16	Correction to second bullet under Structure Mitigation.	Change to, "The CLOMR-approved hydraulic model would be used to determine the Operating Pool (Zone 1) in the upstream mitigation area. It is expected that the floodway will be the same area as Zone 1."	
18	3.3.3	3-16	Correction to listing of Categories.	Change "the floodway" to "Zone 1."	Table 3-3, page 3-17; page 3-75; 3-76; Table 3-19, page 3-77; Table 3-20, page 3-78
19	3.3.3	3-16	First sentence is not clear on what mitigation will be provided by USACE and what will be provided by the DA.	Provide additional clarification on what mitigation the Corps is providing vs. what the DA is providing.	
20	3.3.3	3-17	Category 5: The statement on the requirement for takings analyses is not entirely accurate.	Replace "The USACE is required to perform a takings analysis on any properties with impacts resulting from the 100-year flood event, even if those impacts extend beyond the boundaries defined above." with "The USACE would conduct a legal analysis for land and structures for which the impacts are not mitigated as described above in order to determine if the impacts rise to the level of a "taking" under the Fifth Amendment of the U.S. Constitution."	Section 3.10.3.2, Page 3-76
21	3.4.2.1	3-18	The culvert structure at the Wolverton Creek crossing is an open culvert structure, not a control structure.	Change third sentence to, "The Project would have direct impacts from construction of an open culvert structure at Wolverton Creek; control structures in the Red and Wild Rice Rivers; aqueducts in the Maple and Sheyenne River; as well as the rerouting of the Lower Rush and Rush Rivers into the Diversion Channel."	
22	3.4.2.1	3-18	The tiebacks are embankments, not levees.	Second paragraph, second sentence, change "tieback levees" to "tieback embankments."	Page 3-22, 3-23, 3-25, 3-44
23	3.4.2.1	3-19	Second sentence: It should also be noted that the acreages included the temporary easement area and is likely an overestimate of impacts because the majority of wetlands in this area will not be affected.	Add note to this effect.	
24	Table 3-4	3-19	The wetlands in the Southern Embankment were not delineated in 2009, they were completed as part of a 2018 exercise.	Change source to 2018.	Table 3-5.
25	3.4.2.1	3-20	Second full paragraph, last sentence: The majority of wetlands in the table are actually Type 3 (shallow marsh) and Type 4 (deep marsh).	Change to, "The majority of potential impacts would be to Type 3 (shallow marsh) and Type 4 (deep marsh)."	
26	3.4.2.1	3-20	Last paragraph, last sentence: Sedimentation impacts could be accounted for with monitoring and adaptive management.	Add to end of sentence, "...although sedimentation impacts could be accounted for with monitoring and adaptive management."	
27	3.4.2.2	3-21	First sentence: Wetlands may be impacted by temporary measures, because of filling wetlands, or cutting off flows.	Change "Under the No Action Alternative (with Emergency Measures) there would be no direct wetland impacts." to "Under the No Action Alternative (with Emergency Measures) wetlands may be impacted by temporary measures, because of filling wetlands, or cutting off flows."	
28	3.4.3	3-21	First paragraph, fourth sentence: The credits purchased from DU were for impacts to OHB not the 244 acres of wetlands impacted from the southern embankment.	Delete sentence.	

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (other areas in EIS this comment may apply)
29	3.5.1	3-22	Last paragraph, third sentence: The USFWS does not recognize the presence of the rusty patched bumble bee in the project area.	Add after this sentence, "However, the USFWS does not recognize the presence of the rusty patched bumble bee in the project area." Should be noted that USACE coordinated with FWS on this species by letter June 22, 2017, letter from FWS stated that there are no recent verified observations in the greater Fargo area.	
30	3.5.2.1.1	3-23	First paragraph, fourth sentence of this section: It is unclear how the abandoned river sections would be restored.	Recommend removing the word "Restored" in the sentence.	
31	3.5.2.1.1	3-23	Fourth paragraph, last sentence: Construction of the project would result in 124 acres of forest impact, not all of this is floodplain forest. The total of 124 acres includes forest from windrows, building sites, etc.	Cite the number of floodplain forest.	3-26,
32	3.5.2.1.2	3-23	The last two sentences are incorrect.	We will provide substitute operational data.	
33	3.5.2.1.2	3-24	First paragraph: This paragraph is speculative with no specific grounds for this conclusion. The geomorphology of these rivers, and the duration and form of project operations, doesn't necessarily line up with this conclusion.	Revise.	
34	3.5.2.1.2	3-24	Fourth paragraph, second sentence: What is the basis for concluding aquatic invertebrate passage will be limited due to a concrete bottom of the structure? Mussel dispersement in rivers is typically the result of glochidial transport via fish movement. Aquatic insect movement includes many adult terrestrial phases where insects can fly. It's also unclear how riprap and other features have the potential to "limit passage."	Revise.	
35	3.5.3	3-26	Second bullet: The use of IBIs to measure habitat quality has been discussed with the agency team for this project for about 10 years. Several tools were considered. The IBI was selected for the following reasons:  1) IBIs have been developed specifically for the Red River basin. 2) Biota collected during sampling are a strong reflection of the microhabitat present, particularly during stable summer flow conditions when the sampling is performed (e.g., fish observations less influenced by spawning migrations). 3) While IBIs are a tool for watershed assessment, such assessments often include multiple sampling points on any river or tributary. The tool is a good reflection of habitat conditions at that sampling location.  As such, IBIs became the selected tool, and two rounds of pre-project data has been collected using this tool.	This should be acknowledged.	Table 6-1, Page 6-3
36	3.5.3	3-26	Fourth bullet: It's unclear what exactly the habitat limitation is for natural versus man-made channel.	Add: "However, adaptive management will specifically measure habitat conditions within both impacted and control areas, both pre- and post-project, to evaluate how well these new channels provide habitat."	
37	3.5.3	3-26	Sixth bullet: The USACE AMMP discusses triggers for monitoring within Sections 2 and 5. This includes outlining that net habitat amounts resulting from both impacts and mitigation measures should be zero. It also discusses that should mitigation prove ineffective, or should impacts prove more significant than previously anticipated, then additional mitigation may be warranted. Contingency mitigation would likely involve additional habitat creation or restoration in great enough quantity to satisfy the mitigation deficiency.  Specific triggers for geomorphology impacts are under development. Triggers for action will continue to be developed collaboratively with our agency partners.	Delete bullet and replace with "Triggers for action will continue to be developed collaboratively with our agency partners."	Table 6-1, Page 6-3

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (other areas in EIS this comment may apply)
38	3.8.3.3	3-47	Second paragraph: This cites the Chief's Report in stating that the sponsors are required to "comply with all applicable federal and state laws and regulations". While this is a correct statement, it is important to note the word "applicable" and also that local laws and regulations are not included. It also states "The USACE has indicated regulations would be followed as required by federal law", which could be misleading in implying that federal law requires compliance with local regulations. The Corps has previously suggested the following statement regarding sovereign immunity: "In implementing a federal project, the USACE is required to comply with State and local laws, regulations, and ordinances only to the extent specifically required by federal law."	Replace "The USACE has indicated regulations would be followed as required by federal law" with "In implementing a federal project, the USACE is required to comply with State and local laws, regulations, and ordinances only to the extent specifically required by federal law."	
39	4.2	4-86	Third paragraph, second sentence: What is the basis for stating the project would prevent upstream fish passage for flood events less than those that would trigger project operation?	Delete "or prevent."	
40	4.2	4-86	Third paragraph, third sentence: What is the basis that project construction would increase velocities at existing road crossings?	Delete sentence.	
41	4.2	4-86	Third paragraph, fifth sentence: This discussion on Wolverton Creek is correct but misleading. The two bridges referenced (170th and 180th) have substantially higher velocities under existing conditions at the 10-year event than the proposed Wolverton Creek structure. The 170th bridge has estimated velocities over 4.5ft/second; the 180th street bridge is over 5.5ft/second. The flow through the proposed Wolverton structure has estimated velocities of about 3.4ft/second.	Add "although the velocity at the Wolverton Creek structure is substantially lower than the two road crossings" to the end of the sentence.	
42	4.2.3	4-87	The first sentence implies that there will be more wetland impacts than have been identified, which is less than 2,000 acres.	Change "thousands of acres" to "hundreds of acres."	
43	Table 5-1	5-4	Wetlands: Wetland numbers need to be looked at and revised.	We will provide wetland numbers.	
44	Table 5-1	5-6	Benefits to infrastructure from the action alternatives are not acknowledged in this table. Reducing flood risk and reducing flood fights will have a significant benefit on existing infrastructure.	Include benefits to infrastructure.	Section 3.7
45	Table 5-1	5-8,9	Socioeconomics: The No Action Alternative (with Emergency Measures) is based on the assumption that emergency measures would be built in time and would withstand a 1 percent ACE event. The number of damaged structures would be significantly higher if the emergency measures are not successful.	Add text to show recognition of the risks associated with emergency measures and that the number of damaged structures would be significantly higher if emergency actions are not successful.	
46	Table 6-1	6-4	Wetland Impacts, fourth column: No wetland loss has been identified as a result of inundation due to the project.	Change to "Monitoring may be a consideration, but the likelihood of detecting any appreciable change to wetland areas due to project operations appears very unlikely."	
47	Table 6-1	6-4	Fish Passage and Biological Connectivity, fourth column: While disruptions to connectivity would be expected as a result of project operations, these would be infrequent, and typically of short duration and during early spring prior to major migrational movement of most species.	Provide additional information as to why Drayton Dam mitigation was determined to be commensurate to the impact caused by the project, and why other actions are not more suitable?	

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (other areas in EIS this comment may apply)
1	Cover Sheet	N/A	The first sentence of the second paragraph under Abstract is incorrect. The project is actually only in Cass and Clay Counties. Impacts of the project are realized in Richland and Wilkin Counties as well.	Change to, "The Project is located in two counties: Cass County, North Dakota, and Clay County, Minnesota."	
2	1.1	1-1	Regarding the project components listed in the third sentence as "levees and floodwalls in the FM metropolitan area and the upstream staging area; community ring levees," there is redundancy since levees in the upstream staging area are the community ring levees.	Delete "community ring levees."	
3	1.1	1-1	Clarify the last sentence in the fourth paragraph.	Change to, "The task force created a technical advisory group that included engineers and staff from the Diversion Authority and DNR, among others."	
4	1.2	1-2	The term "Fargo-Moorhead Flood Risk Reduction Project" is incorrect.	Use term "Fargo-Moorhead Flood Risk Management Project" instead.	
5	1.2	1-2	In the second bullet, the increase in length of embankment in Minnesota is incorrect.	Change "one mile" to "two miles."	
6	1.2	1-2	The terms "Diversion Inlet Control Structure," "Wild Rice River Control Structure," and "Red River Control Structure" are incorrect. Also, the words are inconsistently capitalized in various locations.	Change to "Diversion Inlet Structure," "Wild Rice River Structure," and "Red River Structure."	Pages xiv, xxv, xxvi, 1-3, 2-1, 2-2, 2-3, 2-4, 2-8, 2-9, 3-6, 3-23, 3-30, 3-36, 3-53, 3-54, 4-86, 6-4.
7	1.2	1-2	Second bullet, the culverts at Wolverton Creek may not necessarily be box culverts.	Change "box culverts" to "culverts."	Page 2-3, 2-6, 3-23, 5-3
8	1.2	1-2	The Eastern Tieback and Western Tieback are part of the dam embankment, they are not levees.	Change "Eastern Tieback levee" to "Eastern Tieback." Use the term "tieback embankments" instead of "tieback levees."	Pages 2-6, 3-12, 3-23, 3-25, 3-56, 4-86
9	1.2	1-2	Third bullet, the modified Southern Embankment crest elevation is incorrect.	Change "928.5 feet MSL" to "929.0 feet MSL."	
10	1.2	1-3	First bullet, the trigger for beginning project operations is incorrect, and the conclusion that indicates a river discharge greater than 21,000 cfs is unclear.	Change second sentence to, "The Plan B Project proposal indicates that operations would not begin until the combined flow at the Abercrombie and Enloe gages is 21,000 cfs, thus increasing the flow through town by 4,000 cfs under the Plan B Project proposal" and delete the third sentence.	
11	1.2	1-3	Second bullet, clarify the second sentence.	Change to, "This flood event is approximately 33,000 cfs with a 41.3 foot river stage under existing conditions and 37 feet under Plan B."	
12	1.2	1-3	2nd to last paragraph, second sentence, typographical error.	Change to, "However, this is a lower 100-year event than what was used to evaluate the Project in the 2016 EIS."	
13	2.1	2-2	Last sentence in paragraph at top of page: river stage is inconsistent with last bullet in Section 1.2.	Change "approximately 41.4 feet" to "approximately 41.3 feet."	
14	2.1.1.1	2-2	Apparently incorrect length cited in first paragraph under Dam/Southern Embankment.	Change "then east for 2.8 miles" to "then east for 2.2 miles."	
15	2.1.1.1	2-3	The term "Wolverton Creek Structure" is incorrect.	Change to "Wolverton Creek Crossing."	Page 3-23
16	2.1.1.1	2-3	Suggested grammatical change to first sentence under "Eastern Tieback and Wolverton Creek Structure."	Change to "The Eastern Tieback runs east-west in Minnesota, As shown in Figure 1, and would be located approximately 500 feet north of the Wilkin/Clay County line.	
17	2.1.1.2	2-4	Recommended clarification to first sentence.	Change to, "The updated dam alignment changes the potential location of the Red River Structure (RRS) and Wild Rice River Structure (WRRS).	
18	2.1.1.5	2-5	Suggested grammatical change to last sentence in first full paragraph.	Change to, "'Inundation area' is not tied to any specific flood event or to the Project or Project alternatives."	
19	2.1.1.5	2-5	Correction to fourth sentence in second full paragraph.	Change "Project operation water storage" to "Project operation."	
20	2.1.1.9	2-6	2nd to last sentence in paragraph at top, recommended phrasing.	Change "All other Creek tributaries" to "All other tributaries."	
21	2.1.1.11	2-6	Clarify the section.	Add after the first sentence, "Therefore, a ring levee was proposed to provide protection for the community."	
22	2.1.1.12	2-7	Last sentence: Typo.	Change "address in Chapter 4" to "addressed in Chapter 4."	

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (other areas in EIS this comment may apply)
23	2.1.1.13	2-7	Clarification.	Change fourth sentence to, "Portions of the remaining roads upstream of the dam would be inundated for a period of time during project operation."	
24	2.1.1.14	2-8,9	The text cited from the H&H Report attachment (Appendix C) has been updated. It is likely the text used in the document was copy and pasted from an earlier version.	Update text with the most current version of the H&H appendix.	
25	2.1.1.14	2-8	Clarify the second sentence in the summary of project operations.	Change "Due to time constraints associated with the 2018 Environmental Assessment modeling..." to "Due to time constraints associated with the USACE 2018 Environmental Assessment modeling..."	
26	2.1.1.14	2-9	Recommended clarification to third paragraph.	Add the following after the first sentence: "This results in storage of water upstream of the dam."	
27	2.1.1.14	2-9	Recommended clarification to third paragraph.	Change the second sentence (now third sentence with above comment) to, "Flows into the benefitted area are gradually reduced during this initial time period to minimize downstream stage impacts."	
28	2.1.1.14	2-9	Recommended clarifications to fifth paragraph, to be consistent with the H&H Appendix.	Change to, "An evacuation order would be issued for the F-M Urban Area if the pool approaches the maximum pool elevation. To prevent the pool from exceeding the maximum pool elevation, the Red River Structure and the Wild Rice River Structure gates would be opened to maintain that pool elevation and stages would rise above 40.0 feet at the Fargo gage resulting in flooding of the F-M Urban Area. There would be sufficient flow capacity at the gated structures and the Eastern Tieback to maintain the maximum pool elevation up through the PMF event."	
29	2.1.1.14	2-9	Clarification to last paragraph.	In the first sentence change "in the Staging Area" to "upstream of the dam."	
30	2.2.1.3	2-14	Third bullet, last sentence: Typo.	Change "DNR decided organize" to "DNR decided to organize."	
31	2.2.2	2-15	This states only one alternative (No Action Alternative" is included in this SEIS. What about Plan B? Isn't that considered an alternative?	Change to, "As a result of the 2018 SEIS alternative screening analysis (Appendix B), one alternative to Plan B is included in this SEIS: the No Action Alternative (with Emergency Measures)."	
32	3.2.1.1.1	3-4	Second paragraph, second sentence: Typo.	Change "the this Supplemental EIS" to "this Supplemental EIS."	
33	3.2.1.1.1	3-5	Correction to fourth sentence under Period of Record Hydrology.	Change "by USACE prior to 2009" to "by USACE through 2009."	
34	3.2.2.1	3-6	Clarification to second paragraph.	Add after the first sentence, "This results in storage of water upstream of the dam." In the second sentence (now third sentence), delete ", resulting in storage of water upstream of the dam."	
35	3.2.2.1	3-7	Correction regarding flows.	In last sentence in first full paragraph, change "64,000 cfs" to "66,000 cfs."	Pages 3-10, 3-11
36	Illustration 3-1	3-8	There are minor differences from the figure used in the H&H Appendix. It's my understanding that HMG has provided an updated figure.	Replace with correct figure.	Also applies to Illustrations 3-2, 3-3. Note that for Illustration 3-3, there is a typo for the Diversion Downstream of Sheyenne River flow.
37	3.2.2.1.2	3-12	Clarification to first sentence.	Change to, "Hydraulic changes in the staging area from Plan B would increase the area, duration and depth of floodwater inundation in the staging area compared to existing conditions."	
38	3.2.2.1.5	3-12	The EIS says that Plan B would protect 44,832 acres from inundation that would be flooded under existing conditions. The Corp's SEA (Section 5.2.2) says that approximately 56,000 acres of existing floodplain would be removed with Plan B. If anything the DNR's acreage should be more since the Corps used areas >0.1' of impact. Also in the first sentence of section 3.9.3.1.1 the same measurement is presented as 43,997 which is slightly different than the number on page 3-12.	Identify why there are discrepancies and change appropriately.	3-54

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (other areas in EIS this comment may apply)
39	3.2.2.1.3	3-12	Clarification to section.	Change second and third sentences to, "The preliminary design consists of a series of three, ten-foot by ten-foot box culverts within the embankment which would allow flow from Wolverton Creek to pass under the embankment. The H and H Report (Appendix C) identifies a very small increase of 0.11 feet in water surface elevation for the 100-year event just upstream of the Eastern Tieback."	
40	3.2.2.2	3-13	The first sentence says that Chapter 2 includes a list of current and planned levees. Chapter 2 only includes a list of current levees and references Chapter 4 for planned levees.	Change "A detailed discussion of the No Action Alternative (with Emergency Measures) is presented in Chapter 2, including a list of current and planned levees." to "A detailed discussion of the No Action Alternative (with Emergency Measures) is presented in Chapter 2, including a list of current levees. A list of planned levees is included in Chapter 4."	
41	3.4.2.1	3-18	Correction in last sentence.	Change to, "Plan B would directly impact approximately 36 fewer wetland acres than the previously-proposed Project."	
42	3.4.2.1	3-19	First sentence: OHB is not included in the numbers below. Another 45.3 acres should be included for this.	Correct the table. We can provide an updated table that includes OHB.	
43	3.5.2.1.1	3-23	Third paragraph: Corrections.	Change "41.1 acres" to "46 acres," and change "19.1 acres" to "18 acres."	
44	3.5.2.1.1	3-23	Fourth paragraph, 2nd to last sentence: Typo.	Change "scare habitat" to "scarce habitat."	
45	3.5.2.1.2	3-24	The fourth paragraph on 3-24 says that the concrete bottom of the WRRS and RRS would be placed above the stream bed which would limit passage. This makes it sound as if this would be a vertical impediment. The structures would be placed at or just below the stream bed.	Change to "concrete bottom would likely be placed at or below the elevation of the existing stream bed."	
46	3.5.3	3-26	The number of gates for the WRRS is incorrectly cited.	Change 2nd to last sentence to, "Additionally, the three gates planned for the RRS and two for the WRRS are separated by abutments that can collect debris and increase velocities through the structures (until it can be removed), thus creating conditions that could reduce fish passage."	
47	Table 3-13	3-66	This table is confusing. Is it possible to present information in another way?	Revise table.	
48	Table 3-18	3-70	This table is redundant with Table 3-13.	Delete table.	
49	3.10.3.2	3-75	Correction to second bullet.	Delete "Floodway,"	Page 3-77
50	4.1.1.3	4-85	Some of the projects listed in this table do not provide enough description to give any indication of what they are.	Provide short descriptions.	
51	Table 5-1	5-4	Third column, fourth sub-bullet: Are indirect impacts to all 253 acres of wetlands in the staging area?	Clarify.	
52	Table 5-1	5-4	Third column, last bullet: This bullet regarding Drayton Dam does not appear applicable to the Wetlands category.	Delete.	
53	Table 5-1	5-5	Second column, fourth bullet: The Corps previous 404 describes 49 acres of aquatic habitat impact.	Change "37.4 acres" to "49 acres."	
54	Table 5-1	5-5	Second column, last bullet under Aquatic and Terrestrial Resources: The 2013 Corps SEA describes 131 acres of forest impact plus another 12 acres for OHB. -Of the 131 acres, 60 were described as riparian and 71 were described as upland. The 2016 DNR EIS describes 62 acres of floodplain forest impact.	Edit numbers so they are comparable	
55	Table 5-1	5-5	Third column, last two bullets under Aquatic and Terrestrial Resources: Corrections	Change "increases to 44.1 acres" to "decreases from 49 to 46," and "increases to 124 acres" to "decreases by 6.8 acres."	
56	Table 5-1	5-6	Second column, second bullet: Correction.	Change "North Dakota Western" to "Western Tieback in North Dakota."	

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (other areas in EIS this comment may apply)
1	2.1	2-1	Second paragraph, first sentence under Plan B Overview: Does this include the temporary construction easement areas? Temporary easements are approximately 2,500 ac for the Southern Embankment and 8,018 ac for the diversion channel portion.	Verify acreage.	
2	2.1.1.1	2-3	The last sentence in the partial paragraph at the top should be modified.	Change to, "The portion of the Western Tieback constructed at the maximum pool elevation would only be overtopped in the event of a significant gate failure at one of the control structures during greater than 0.2 percent ACE flood events."	
3	2.1.1.1	2-3	Additional information regarding the maximum pool elevation should be added.	Add the following sentences after the first sentence in the first full paragraph: "The maximum pool elevation along the Western Tieback will be limited to 924.0 feet (if necessary the gated structures and/or the operation plan will be modified to keep the maximum pool elevation at or below 924.0 feet). However, the detailed design phase of this Project will attempt to achieve a maximum pool of 923.5 feet, which is achievable based on preliminary modeling results."	
4	2.1.1.1	2-3	Description of Wolverton Creek Crossing in second full paragraph should be revised.	Change "three 10-foot by 10-foot box culverts" to "a non-gated culvert structure." Also, change "culvert sizes were selected to" to "culvert size will."	Section 2.1.1.1, page 2-3; section 3.2.2.1.3, page 3-12; Table 5-1, page 5-3
5	2.1.1.4	2-4	Correction to section.	Change to, "The Diversion Inlet Structure (DIS) for Plan B would be designed the same as described for the previously-proposed Project. The Diversion Inlet Structure would be located where the diversion channel crosses Cass County Highway 17 in the southwest quarter of Section 32 (the previous EIS inadvertently cited Section 31), Stanley Township, Cass County, North Dakota, as shown in Figure 1. Conditions on the Red, Wild Rice, Sheyenne, Maple and Rush Rivers were proposed to be monitored to determine gate operation need and minimize downstream impacts. Plan B will expand monitoring to include Wolverton Creek."	
6	2.1.1.5	2-4	First sentence: USACE has not replaced the term but has used Zones 1 and 2 to further describe the staging area.	Change to, "The USACE has expanded the definition of the term "staging area" to include two zones: Zone 1 and Zone 2."	
7	2.1.1.9	2-5	First sentence of second paragraph is incorrect. The previous location of the Western Tieback intersected Drain 47, but the Plan B Western Tieback follows a drainage divide.	Delete first sentence.	
8	2.1.1.9	2-5	Third sentence of second paragraph is incorrect. This was also true with the previous alternative. It's just that the previous dam alignment was near the upstream end of the Drain 27 watershed and therefore wasn't as noticeable as intersecting Drain 27.	Delete third sentence.	
9	2.1.1.13	2-7	I-29 is the only road being raised in the staging area.	Change second sentence to, "As part of Plan B, Interstate 29 would be raised within the staging area."	
10	2.1.1.13	2-8	Last bullet: realignment of Cass County Highways 16/17 to accommodate the Diversion Inlet Structure was also true for the previous alternative.	Delete.	
11	2.1.1.14	2-8	Second sentence in first paragraph gives the wrong impression; the final details are not complete, but the basic plan is.	Change to, "The final details of the Operation Plan were not complete at the time of this Draft SEIS publication."	
12	3.2.1.1.1	3-4	Under "Overall Model Review," the model limits are incorrectly identified.	Change "Grand Forks" to "Drayton."	
13	3.2.2.1.5	3-13	The last sentence assumes an existing condition scenario where emergency protection measures are effective for the 0.2% ACE event. It is very unlikely that emergency measures would be effective for the 0.2% ACE flood event. At a minimum this assumption should be stated clearly. The downstream impacts are less for the 0.2% ACE event if the existing condition assumption is that emergency measures are not effective through Fargo-Moorhead (i.e. the with-project water surface elevations remain the same but the existing condition water surface elevations are higher downstream of FM if emergency measures are not effective).	Change last sentence to, "At a 500-year event (0.2% chance), assuming emergency protection measures are effective, the largest downstream increase is 0.58 feet at Grand Forks, North Dakota. The downstream impacts are less for the 0.2% ACE event if the existing condition assumption is that emergency measures are not effective through Fargo-Moorhead."	
14	3.2.2.2	3-13	It should be made clear that USACE does not assume emergency measures are effective and that FEMA does not generally recognize emergency measures, except limited closures, in the development of FIS maps.	Add after the first sentence, "Note that USACE does not assume emergency measures are effective and FEMA does not generally recognize emergency measures, except limited closures, in the development of FIS maps."	
15	3.2.2.2	3-13	Third sentence (now fourth with above): It should be clear that the assumption of effective emergency measures extends through the 0.2% ACE (500-yr) flood.	Add to the end of this sentence, ", and which are assumed to provide protection through the 0.2% ACE (500-yr) flood."	

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (Other areas in EIS this comment may apply)
16	3.3.3	3-15	Third sentence in fourth paragraph: It should be made clear that the assumption is that emergency measures are not effective.	Add to the end of this sentence, "assuming emergency measures are not effective."	
17	3.3.3	3-16	Correction to second bullet under Structure Mitigation.	Change to, "The CLOMR-approved hydraulic model would be used to determine the Operating Pool (Zone 1) in the upstream mitigation area. It is expected that the floodway will be the same area as Zone 1."	
18	3.3.3	3-16	Correction to listing of Categories.	Change "the floodway" to "Zone 1."	Table 3-3, page 3-17; page 3-75; 3-76; Table 3-19, page 3-77; Table 3-20, page 3-78
19	3.3.3	3-16	First sentence is not clear on what mitigation will be provided by USACE and what will be provided by the DA.	Provide additional clarification on what mitigation the Corps is providing vs. what the DA is providing.	
20	3.3.3	3-17	Category 5: The statement on the requirement for takings analyses is not entirely accurate.	Replace "The USACE is required to perform a takings analysis on any properties with impacts resulting from the 100-year flood event, even if those impacts extend beyond the boundaries defined above." with "The USACE would conduct a legal analysis for land and structures for which the impacts are not mitigated as described above in order to determine if the impacts rise to the level of a "taking" under the Fifth Amendment of the U.S. Constitution."	Section 3.10.3.2, Page 3-76
21	3.4.2.1	3-18	The culvert structure at the Wolverton Creek crossing is an open culvert structure, not a control structure.	Change third sentence to, "The Project would have direct impacts from construction of an open culvert structure at Wolverton Creek; control structures in the Red and Wild Rice Rivers; aqueducts in the Maple and Sheyenne River; as well as the rerouting of the Lower Rush and Rush Rivers into the Diversion Channel."	
22	3.4.2.1	3-18	The tiebacks are embankments, not levees.	Second paragraph, second sentence, change "tieback levees" to "tieback embankments."	Page 3-22, 3-23, 3-25, 3-44
23	3.4.2.1	3-19	Second sentence: It should also be noted that the acreages included the temporary easement area and is likely an overestimate of impacts because the majority of wetlands in this area will not be affected.	Add note to this effect.	
24	Table 3-4	3-19	The wetlands in the Southern Embankment were not delineated in 2009, they were completed as part of a 2018 exercise.	Change source to 2018.	Table 3-5.
25	3.4.2.1	3-20	Second full paragraph, last sentence: The majority of wetlands in the table are actually Type 3 (shallow marsh) and Type 4 (deep marsh).	Change to, "The majority of potential impacts would be to Type 3 (shallow marsh) and Type 4 (deep marsh)."	
26	3.4.2.1	3-20	Last paragraph, last sentence: Sedimentation impacts could be accounted for with monitoring and adaptive management.	Add to end of sentence, "...although sedimentation impacts could be accounted for with monitoring and adaptive management."	
27	3.4.2.2	3-21	First sentence: Wetlands may be impacted by temporary measures, because of filling wetlands, or cutting off flows.	Change "Under the No Action Alternative (with Emergency Measures) there would be no direct wetland impacts." to "Under the No Action Alternative (with Emergency Measures) wetlands may be impacted by temporary measures, because of filling wetlands, or cutting off flows."	
28	3.4.3	3-21	First paragraph, fourth sentence: The credits purchased from DU were for impacts to OHB not the 244 acres of wetlands impacted from the southern embankment.	Delete sentence.	
29	3.5.1	3-22	Last paragraph, third sentence: The USFWS does not recognize the presence of the rusty patched bumble bee in the project area.	Add after this sentence, "However, the USFWS does not recognize the presence of the rusty patched bumble bee in the project area." Should be noted that USACE coordinated with FWS on this species by letter June 22, 2017, letter from FWS stated that there are no recent verified observations in the greater Fargo area.	
30	3.5.2.1.1	3-23	First paragraph, fourth sentence of this section: It is unclear how the abandoned river sections would be restored.	Recommend removing the word "Restored" in the sentence.	
31	3.5.2.1.1	3-23	Fourth paragraph, last sentence: Construction of the project would result in 124 acres of forest impact, not all of this is floodplain forest. The total of 124 acres includes forest from windrows, building sites, etc.	Cite the number of floodplain forest.	3-26,
32	3.5.2.1.2	3-23	The last two sentences are incorrect.	We will provide substitute operational data.	

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (other areas in EIS this comment may apply)
33	3.5.2.1.2	3-24	First paragraph: This paragraph is speculative with no specific grounds for this conclusion. The geomorphology of these rivers, and the duration and form of project operations, doesn't necessarily line up with this conclusion.	Revise.	
34	3.5.2.1.2	3-24	Fourth paragraph, second sentence: What is the basis for concluding aquatic invertebrate passage will be limited due to a concrete bottom of the structure? Mussel dispersment in rivers is typically the result of glochidial transport via fish movement. Aquatic insect movement includes many adult terrestrial phases where insects can fly. It's also unclear how riprap and other features have the potential to "limit passage."	Revise.	
35	3.5.3	3-26	Second bullet: The use of IBIs to measure habitat quality has been discussed with the agency team for this project for about 10 years. Several tools were considered. The IBI was selected for the following reasons:  1) IBIs have been developed specifically for the Red River basin. 2) Biota collected during sampling are a strong reflection of the microhabitat present, particularly during stable summer flow conditions when the sampling is performed (e.g., fish observations less influenced by spawning migrations). 3) While IBIs are a tool for watershed assessment, such assessments often include multiple sampling points on any river or tributary. The tool is a good reflection of habitat conditions at that sampling location.  As such, IBIs became the selected tool, and two rounds of pre-project data has been collected using this tool.	This should be acknowledged.	Table 6-1, Page 6-3
36	3.5.3	3-26	Fourth bullet: It's unclear what exactly the habitat limitation is for natural versus man-made channel.	Add: "However, adaptive management will specifically measure habitat conditions within both impacted and control areas, both pre- and post-project, to evaluate how well these new channels provide habitat."	
37	3.5.3	3-26	Sixth bullet: The USACE AMMP discusses triggers for monitoring within Sections 2 and 5. This includes outlining that net habitat amounts resulting from both impacts and mitigation measures should be zero. It also discusses that should mitigation prove ineffective, or should impacts prove more significant than previously anticipated, then additional mitigation may be warranted. Contingency mitigation would likely involve additional habitat creation or restoration in great enough quantity to satisfy the mitigation deficiency.  Specific triggers for geomorphology impacts are under development. Triggers for action will continue to be developed collaboratively with our agency partners.	Delete bullet and replace with "Triggers for action will continue to be developed collaboratively with our agency partners."	Table 6-1, Page 6-3
38	3.8.3.3	3-47	Second paragraph: This cites the Chief's Report in stating that the sponsors are required to "comply with all applicable federal and state laws and regulations". While this is a correct statement, it is important to note the word "applicable" and also that local laws and regulations are not included. It also states "The USACE has indicated regulations would be followed as required by federal law", which could be misleading in implying that federal law requires compliance with local regulations. The Corps has previously suggested the following statement regarding sovereign immunity: "In implementing a federal project, the USACE is required to comply with State and local laws, regulations, and ordinances only to the extent specifically required by federal law."	Replace "The USACE has indicated regulations would be followed as required by federal law" with "In implementing a federal project, the USACE is required to comply with State and local laws, regulations, and ordinances only to the extent specifically required by federal law."	
39	4.2	4-86	Third paragraph, second sentence: What is the basis for stating the project would prevent upstream fish passage for flood events less than those that would trigger project operation?	Delete "or prevent."	
40	4.2	4-86	Third paragraph, third sentence: What is the basis that project construction would increase velocities at existing road crossings?	Delete sentence.	

Comment #	Chapter / Section / Appendix / Figure	Page #	Reviewer Comment	Reviewer Requested Action	Requires Changes to: (other areas in EIS this comment may apply)
41	4.2	4-86	Third paragraph, fifth sentence: This discussion on Wolverton Creek is correct but misleading. The two bridges referenced (170th and 180th) have substantially higher velocities under existing conditions at the 10-year event than the proposed Wolverton Creek structure. The 170th bridge has estimated velocities over 4.5ft/second; the 180th street bridge is over 5.5ft/second. The flow through the proposed Wolverton structure has estimated velocities of about 3.4ft/second.	Add "although the velocity at the Wolverton Creek structure is substantially lower than the two road crossings" to the end of the sentence.	
42	4.2.3	4-87	The first sentence implies that there will be more wetland impacts than have been identified, which is less than 2,000 acres.	Change "thousands of acres" to "hundreds of acres."	
43	Table 5-1	5-4	Wetlands: Wetland numbers need to be looked at and revised.	We will provide wetland numbers.	
44	Table 5-1	5-6	Benefits to infrastructure from the action alternatives are not acknowledged in this table. Reducing flood risk and reducing flood fights will have a significant benefit on existing infrastructure.	Include benefits to infrastructure.	Section 3.7
45	Table 5-1	5-8,9	Socioeconomics: The No Action Alternative (with Emergency Measures) is based on the assumption that emergency measures would be built in time and would withstand a 1 percent ACE event. The number of damaged structures would be significantly higher if the emergency measures are not successful.	Add text to show recognition of the risks associated with emergency measures and that the number of damaged structures would be significantly higher if emergency actions are not successful.	
46	Table 6-1	6-4	Wetland Impacts, fourth column: No wetland loss has been identified as a result of inundation due to the project.	Change to "Monitoring may be a consideration, but the likelihood of detecting any appreciable change to wetland areas due to project operations appears very unlikely."	
47	Table 6-1	6-4	Fish Passage and Biological Connectivity, fourth column: While disruptions to connectivity would be expected as a result of project operations, these would be infrequent, and typically of short duration and during early spring prior to major migrational movement of most species.	Provide additional information as to why Drayton Dam mitigation was determined to be commensurate to the impact caused by the project, and why other actions are not more suitable?	

# BUFFALO-RED RIVER WATERSHED DISTRICT

BARNESVILLE, MINNESOTA 56514

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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.

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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

90b

90b

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? 90c
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. 90d
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? 90f
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. 90g
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? 90c
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. 90g
8. Since Plan B is being considered a "new" project, then shouldn't the COE consider a new or amended economic analysis? 90h

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.

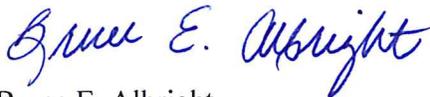
90i

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

## Commenter 91

**From:** Ken Bye  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead SEIS  
**Date:** Thursday, September 27, 2018 4:30:28 PM

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Dear Jill Townley

Thanks for the informational meeting on the 13<sup>th</sup>, our farmstead was established in 1897 and was dry in 1997 & 2009

91a

Please do not permit the high hazard dam per Minnesota Rules, retention options should be better utilized

91b

Thank You

Kenneth Bye  
218-287-4872  
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# City of East Grand Forks

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## **DRAFT SUPPLEMENTAL EIS CITY OF EAST GRAND FORKS COMMENTS**

Following the devastating flood of 1997, the communities of Grand Forks and East Grand Forks (GF/EGF) initiated a jointly sponsored, Federally funded flood protection project. The project was designed to provide protection equal to the 1997 flood plus allowances for risk and uncertainty. The primary structural means of protection employed by the project included combinations of flood walls and levees.

The best available hydraulic and hydrological information available at that time indicated the cities of Grand Forks and East Grand Forks could count on a level of protection which exceeded a 200 year event. This was considered to have a high level of reliability as the floodwalls/levees contained enough freeboard to cover generally recognized allowances for risk and uncertainty. The top elevations of the flood protection system were such that they were above a 500 year event. Emergency measures would still need to be employed by the communities to provide some allowance for things like wave action, erosion, etc. that present risks of overtopping to any type of system reliant on floodwalls and levees.

The development of the original Fargo/Moorhead Diversion Project's Environmental Impact Statement introduced a new hydrologic concept of Wet Cycle Hydrology. Subsequently, in the currently proposed Plan B, the hydrologic concept is changed from the wet cycle to an updated period of record hydrology. Through these analysis, the communities of Grand Forks and East Grand Forks are now aware that even with no upstream projects, baseline conditions have changed such that we no longer have the same level of protection, from a flood frequency standpoint, that we had originally counted on. Much of this degradation of protection is due to natural phenomenon. However, the Plan B proposal identifies degradation to our flood protection system introduced by the proposed project.

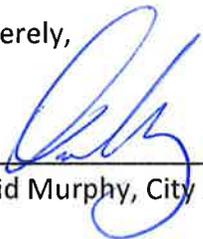
Table 8 of Appendix C (MNDNR DSEIS) identifies an impact of an additional 0.07 ft. of surface water elevation to our communities for the 1% (100 yr) chance event. Table 10 (MNDNR DSEIS) identifies an impact of an additional 0.58 ft. of surface water elevation to our communities for the 0.2% (500 yr) chance event. The DSEIS does not address the project impacts at a 200 year frequency event. However, one must conclude that the impact to the Grand Forks/East Grand Forks flood protection system for events larger than a 100 yr. event must be between 0.07 ft. and 0.58 ft. of increased water elevation.

East Grand Forks supports the Red River Basin Commission's goal for all communities within the Red River Basin to have 500-year flood protection. The fact that the East Grand Forks flood protection system currently protects residents from a repeat of the 97 flood (a 200-year event) and can generally contain a 500-year event shows a great investment in the future of our community and brings significant emotional security to our residents. Our flood protection project was designed to have less than a 0.1 ft impact both upstream and downstream. To date we still cannot make any modifications to our system that exceed the 0.1 ft limitation.

East Grand Forks supports Fargo's efforts to raise their level of protection to the 100-year event which is long overdue. However, the studies do identify impacts to our existing flood protection system that put our city at additional risk and we would like to know what will be done to mitigate the downstream impacts and how these mitigations will be funded. 92a

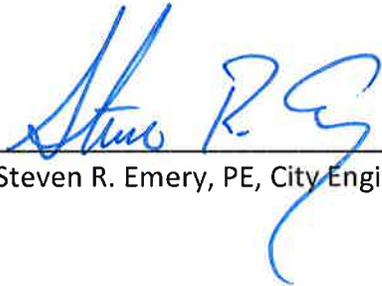
Thank you for allowing the City of East Grand Forks to comment.

Sincerely,



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David Murphy, City Administrator



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Steven R. Emery, PE, City Engineer

Cc: Mayor Gander  
Mark Olstad, Council President  
EGF City Council Members  
Al Grasser

September 15, 2018

Jill Townley  
Box 25  
Minnesota Department of Natural Resources  
500 Lafayette Rd.  
St. Paul, Minnesota, 55155-4025

Fargo-Moorhead Flood Diversion Project

To Ms. Townley,

Enhanced flood risk management is a critically important issue for Moorhead and the larger F-M metro area. Our topography is conducive to flooding, as there is little or no natural high ground, and we have several rivers – the Red River, Sheyenne, Wild Rice, Maple, Rush and Lower Rush – that flow through the region and have a history of flooding.

To meet the challenge of this risk, the F-M Diversion Authority prepared purpose and need statements describing what a proper enhanced flood risk management project, like what Director Landwehr said was needed, needs to accomplish. Specifically, a project like this is meant to reduce flood risk, flood damages and flood protection costs. As a simple matter of engineering, Plan B accomplishes this task effectively and at lower cost than other proposals put before your office. In addition, implementing Plan B will qualify large parts of the metro area for 100-year flood accreditation from FEMA, qualifying us for lower insurance rates.

Every project of this magnitude is a balancing act, and Plan B is a testament to the fact that with enough work, the proper balance can be struck. Plan B strikes a balance between providing effective flood protection and minimizing the associated impacts; between minimizing those impacts and protecting the environment; in distributing those impacts equitably between us and our neighbors in North Dakota; and between all those factors and cost.

Enhanced flood risk management is extremely important to the people of the Fargo-Moorhead metro region, and the surrounding area. Please help reduce our risk of devastating flood damage by approving the thoroughly prepared, well balanced, and cost efficient Plan B.

93a

Sincerely,



Shane Cullen  
Realtor, Park Co. Realtors

Commenter 94



Box 2806 • 211 Ninth Street South • Fargo, ND 58108

September 27, 2018

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

Dear Ms. Townley,

Thank you for the opportunity to comment on the Draft Supplemental Environmental Impact Statement (DSEIS) for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

On behalf of the Metro Flood Diversion Board of Authority, thank you for consideration of the enclosed comments.

Sincerely,

Chair Del Rae Williams  
Mayor, City of Moorhead

**Enclosure**

## *Comments on Proposed and Recommended Mitigation and Monitoring for Plan B Project*

The Diversion Authority is fully committed to appropriate mitigation of the impacts of the Project. We believe that all parties are in agreement that these impacts have been substantially reduced with the Plan B Alignment. Any remaining issues relate to a more granular matching of the mitigation commitment to the impacts of the Project. These relate to three principal areas: (1) wetland inundation, (2) aquatic habitat, and (3) fish passage/biological connectivity.

94a

### **Wetland Impacts - Inundation of Wetlands:**

For inundation of wetlands, there have been two basic ways discussed to address them: (1) assess actual impacts following flooding events, and then mitigate based on the results of that assessment, or (2) agree upon a reasonable technical assessment to evaluate wetlands likely to be impacted by increased wetland inundation and then mitigate on that basis. The Diversion Authority is willing to discuss this issue with a group of technical experts (consisting of USACE, MnDNR staff, partnering agencies and the potential inclusion of outside independent technical experts) to determine what potential option would be appropriate and technically sound. The Diversion Authority believes that such discussions can occur and be completed in the near future, so as not to delay permitting decisions.

94a

### **Aquatic Habitat Impacts and Mitigation:**

The Plan B alignment will have impacts on aquatic habitat, although again less than the original alignment and to the minimum practical extent. The Diversion Authority supports the IBI approach to measurement and mitigation as proposed by USACE and as discussed through multiple agency meetings. While we recognize that this tool, which has been specifically developed and calibrated to rivers of the Red River basin, may not be perfect, the IBI approach provides a reasonable way to measure habitat quality (both in terms of impact and mitigation).

That said, the Diversion Authority remains open to alternative mechanisms to the extent a more appropriate approach can be jointly established by DNR, USACE, and other agency team members from both Minnesota, North Dakota and other federal partners. The Diversion Authority believes this issue can also be resolved through technical meetings in the near future.

### **Fish Passage/Biological Connectivity:**

The Diversion Authority believes the project modifications that have been made as part of Plan B have greatly reduced the disruption of fish passage and biological connectivity on the Red River. Under Plan B, project operations generally do not occur for flood events that do not exceed a River Stage of 37' at the USGS Fargo gage (compared to River Stage 35' for the Pre-

Task Force Project). This equates to a discharge of 21,000 cfs. Based on a review of historic stream gage data at the USGS Fargo gage, this change results in a reduction of the Red River at Fargo having exceeded the operating level from 68 days for the Pre-Task Force Project to 30 days for Plan B. In particular, reducing project operations by passing more flows through the metro area was a recommendation from the DNR within the previous State EIS as an approach to further reduce connectivity concerns.

In addition to the reduction of historical days associated with a River Stage of 37', the total number of days the project is anticipated to operate has also been reduced to an approximate 10-14 days during the 5% annual exceedance event. Larger flood events (e.g., 2% event and larger) may have slightly longer periods of operation, but would be extremely infrequent. Based on historical data, project operations would occur before the likely primary migration periods of key species of management concern in the Red River.

The DNR has continued to support Drayton Dam fish passage, and the Diversion Authority believes that project has significant technical merit. The Drayton Dam fish passage project would essentially improve connectivity to 100% for 12 months of the year under almost all flow conditions, while current conditions at Drayton Dam allow for no connectivity except for when the dam is washed out by high flows. Drayton Dam fish passage was generally acknowledged to provide such large fish passage/connectivity benefits as to constitute sufficient mitigation of such impacts from the original alignment. Consequently, the Diversion Authority believes that Drayton Dam fish passage would provide benefits in excess of any potential fish passage and biological connectivity impacts arising from Plan B.

At an estimated cost of \$10-\$15 million, Drayton Dam fish passage is an expensive feature that provides substantially more connectivity than would be disrupted by Plan B. The Diversion Authority believes that Plan B has made great strides to reduce project operations by passing more flows through the metro area, which as previously mentioned, was a recommendation from the DNR within the previous State EIS as an approach to further reduce connectivity concerns. Therefore, the Diversion Authority would like the DNR to consider a connectivity mitigation option commensurate with the low level of disruption that Plan B is proposed to have.

However, the Diversion Authority is also open to discussing how the Drayton Dam fish passage project could provide mitigation for other project impacts, in addition to mitigation for any connectivity impacts on the Red River. As with the prior mitigation subjects, the Diversion Authority is prepared to work out the specifics in further technical meetings as part of the permitting process.

# *Comments on Compliance with Local Water and Related Land Use Management Plan*

The DSEIS identifies compliance with some local ordinances as an “Issue and Area of Controversy,” DSEIS at ES-23, and discusses these concerns in some detail at DSEIS Section 3.8. In considering the degree, significance, and potential resolution of conflicts with or potentially among local laws, it is critical to consider how those local provisions must be integrated with overarching, and occasionally inconsistent, regional and state considerations. It is also important to keep in mind the ability to address any remaining concerns of local units of government through further project refinement in a manner that maintains the essential design and elements, but avoids or at least minimizes to the maximum extent possible irreconcilable differences with local permitting requirements. In commenting on the DSEIS, the Diversion Authority will focus on how the scope of compliance concerns has been significantly reduced in the Plan B Alignment from the original configuration, the effect of North Dakota state law on the permitting process, the degree to which any remaining Minnesota compliance issues can be addressed to achieve substantial compliance, and the central fact that any further material changes to the Plan B Alignment would invariably create unintended, but virtually unavoidable, offsetting (and likely more significant) compliance, environmental, and safety concerns.

The DSEIS incorporates by reference the 2016 Final EIS section 3.14 as the starting point for discussion of potential conflicts with local plans. DSEIS at 3-40. Identified conflicts were further discussed and analyzed in the Commissioner’s Findings of Fact, Conclusions, and Order of October 16, 2016 (“Previous Order”).

The Previous Order identified potential conflicts with the plans and policies of seven jurisdictions:

- Clay County, ¶¶ 178-180;
- The Fargo Growth Plan, ¶ 181;
- The Buffalo Red River Water Management District (“BRRD”) Plan and Rules, ¶¶ 57, 187-88;
- Comstock, Minnesota, ¶¶ 60, 189-90;
- Wilkin County, Minnesota. ¶¶ 182-186;
- Holy Cross Township, Minnesota, ¶¶ 55, 191; and
- Pleasant Township, North Dakota, ¶¶ 59, 191.

Each of these is addressed in turn: in light of the changes effectuated in the Plan B Alignment, the comments provided by these jurisdictions during scoping, and the discussion in the DSEIS.

## **No New Conflicts Have Been Identified**

The DSEIS does not identify any new jurisdictions or potential conflicts beyond those identified in the FEIS and Previous Order. Nor were there any new compliance-related issues identified in scoping or in comments from local jurisdictions.

### **Several Original Conflicts Have Been Resolved**

The Previous Order identified a concern regarding the Fargo Growth Plan, concluding that significant extraterritorial development was not needed, and “[p]rotecting sparsely populated lands currently within the floodplain for the future development of the F-M metropolitan area is, therefore, inconsistent with Fargo’s development plans.” Previous Order at ¶ 181. The DSEIS concludes that the Plan B alignment provides “[r]educed protection of undeveloped floodplain in the benefitted area.” DSEIS at 5-7 and ES-23. Importantly, other alternatives that could conceivably further reduce effects on undeveloped floodplain were screened out for a variety of reasons, including infeasibility, failure to meet the project purpose and need, and/or lack of material incremental environmental benefits. Plan B therefore resolves any potential conflict identified in the FEIS and Previous Order.

94b

Regarding Clay County, the Previous Order identified a conflict in that the original alignment would “change the topography and adversely affect numerous properties upstream of the dam,” Order at ¶ 179, and “would flood lands in Clay County that were previously outside of the floodplain.” Order at ¶ 181. The Plan B alignment substantially reduces the impacts to Clay County, reducing the upstream inundation effects from 35,987 acres to 29,946 acres. As with the Fargo Growth Plan, alternatives that would further reduce inundation impacts have been screened out for valid reasons. Consequently, we believe that any material concerns raised in the FEIS and Previous Order regarding Clay County have been addressed.

94b

Finally, the City of Comstock will not be impacted by Plan B. The Comstock related issues identified in the FEIS and Order have been resolved.

### **North Dakota Local Zoning Requirements are Superseded by State Law**

The DSEIS identifies concerns regarding the ability of Plan B to comply with the zoning requirements of Pleasant Township, North Dakota. Pleasant Township’s zoning ordinance prohibits development that will increase the base flood level more than one inch. Pleasant Township Zoning Ordinance § 4.3-1. Although Pleasant Township did not reply to the DNR’s inquiries, the DSEIS states: “Plan B may have direct conflict with Pleasant Township’s floodplain ordinance, which is more restrictive than the state standard. If Plan B conflicts with the Township’s, a permit or variance would be required.” DSEIS at 3-46, 3-47. Any conclusion that a permit or variance is required as a matter of law even in those instances where a local unit of government attempts to regulate extraterritorially, or is itself inconsistent with other state or regional provisions, would ignore basic concepts of statutory interpretation. Perhaps even more importantly, such an interpretation would fail to recognize that North Dakota state law pre-empts local regulations in circumstances like this one. When North Dakota law is properly applied, the Pleasant Township zoning ordinance cannot be interpreted to relegate overarching state law provisions, and hence no conflict exists.

94c

After completion of the FEIS and the Commissioner’s 2016 Order regarding the original configuration of the Project, the North Dakota Supreme Court addressed the relationship between state permitting and local zoning regulations. In *Envtl. Driven Solutions, LLC v. Dunn Cnty.*, 890 N.W.2d 841 (N.D. 2017), the Court considered an attempt by a County to block the siting of a waste oil treating plant that had received a permit from the North Dakota Industrial Commission. Notwithstanding the fact that the state permit required the facility to “comply with all applicable local, state, and federal laws and regulations,” *id.* at 843, the Court held that the Industrial Commission had exclusive jurisdiction to determine the siting of the facility, and the County’s zoning law was pre-empted. *Id.* at 846. The Court reasoned that the Legislature had

given the Industrial Commission “comprehensive powers” to regulate the siting of oil and gas facilities, and this authority overrode local zoning powers where the State’s siting decision could not be reconciled with the attempted exercise of County zoning. *Id.* at 846. The Court concluded that “the County had no authority through its zoning regulations to veto the Commission’s siting” of the facility. *Id.*

The North Dakota Legislature has granted even more comprehensive authority to the State Water Commission to regulate the siting of flood control projects. The North Dakota Century Code grants the State Water Commission the “full and complete power, authority, and general jurisdiction” to “investigate, plan, regulate, undertake, establish, maintain, control, operate, and supervise all work, dams, and projects,” for “flood control” by “the construction and maintenance of dams, reservoirs, and diversion canals.” N.D.C.C. § 61-02-14(1)(g). The State Engineer of the State Water Commission is also granted exclusive authority to permit flood control projects capable to storing more than 25 acre-feet floodwaters. N.D.C.C. § 61-16.1-38.

94c

In addition to these general grants of authority, the Legislature has enacted a specific authorization for the “construction of any such projects” necessary to respond to “the major flood disaster in 1997 and other recent floods” as an “exercise of the sovereign powers of the state.” N.D.C.C. § 61-02-01.

94c

Finally, North Dakota waives state and local floodplain management restrictions on development where FEMA grants a federal exemption. N.D.C.C. § 61-16.2-10. FEMA has not yet granted an exception for the Plan B Alignment, but can be expected to do so given that FEMA granted an exception for the original alignment, and the Plan B Alignment lessens the degree of incremental inundation over the original alignment.

94d

In the Order, the Commissioner declined to adopt what was apparently interpreted to be a claim by the Diversion Authority that the DNR could ignore the requirements of North Dakota law and focus exclusively on Minnesota. Order at ¶¶ 193-194. The Diversion Authority did not mean to suggest that the DNR ignore North Dakota law, but rather that in considering North Dakota law, as a matter of comity the DNR must respect the allocation of responsibilities between state and local permitting authorities in the context of flood control projects. State law, as clarified and reinforced by the North Dakota Supreme Court in 2017, clearly places siting determinations in the hands of the State Water Commission, and pre-empts local zoning authority. Consequently, the DNR should solely consider the position of the State Water Commission on the Plan B Alignment as the authoritative voice on whether the Plan B Alignment complies with North Dakota law.

No other conflicts with North Dakota laws were claimed by local jurisdictions or identified in the DSEIS. To the extent any are claimed in the future, these would also be subject to the pre-emptive effect of the permitting decisions of the State Water Commission.

### **Minnesota Law and Jurisdictions**

- **Holy Cross Township**

The DSEIS states that “the [original] Project may not be consistent with Holy Cross Township’s interim ordinance establishing a moratorium on water impoundment projects,” but does not identify this as a current concern. DSEIS at 5-7. It should be noted that the Order identified permitting requirements related to Holy Cross Township provisions, but also observed that the only identified conflict with Holy Cross provisions was with “Holy Cross Township Ordinance

#0001 establishing a moratorium on water impoundments within Holy Cross Township.” Order at ¶ 55. However, the Order further stated that because Ordinance #0001 expired on January 6, 2016, there was no need to consider that conflict. **In the interests of clarity, the DNR may wish to confirm in the FSEIS that there is no current conflict.**

94e

- **Buffalo Red River Watershed District**

The Order identified concerns over compliance with Section 5 of the Buffalo Red River Watershed District (“BRRWD”) Rules, specifically that “[s]urface water shall not be artificially removed from the upper land to and across lower land without adequate provision being made on the lower land for its passage, *nor shall the natural flow of surface water be obstructed so as to cause an overflow onto the property of others.*” Order at ¶ 187 (citing BRRWD Rules Section 5) (emphasis added). Interpreted literally, this provision would prohibit any and all structural floodworks, since by definition structural flood protection obstructs the natural flow of surface water and redirects it elsewhere, inevitably to other properties, especially where a larger project is involved. This was plainly not the intent of the Rules, since the Rules explicitly allow for flood protection projects, see BRRWD Rules §5D.

The BRRWD provided comments on the DSEIS that confirm that the Plan B alignment is not inherently inconsistent with the BRRWD Rule. The BRRWD’s comments did not raise any objections to overall design and layout of the Plan B alignment, but rather focused on the need for further development and refinement. As summarized in the DSEIS, water projects:

take considerable time to materialize/develop. All ideas/concepts have to be thoroughly reviewed/vetted with all affected parties, including landowners. Project design/designers have to be flexible to incorporate other’s concerns/ideas. By working together, most of the time, you end up with a “better” project in the end.

DSEIS at 3-44. The BRRWD also emphasized the need for further specification of inlet channels in the storage area and culvert sizes and locations, all with a focus on further minimizing impacts. The issues are also in flux because the BRRWD is in the process of updating its rules. (Although the update in Rules was targeted for September 1, 2018, they do not yet appear to have been finalized).

The Diversion Authority believes that the BRRWD’s comments generally reflect and are consistent with its objectives. Consistent with the core parameters of the Plan B Alignment, the Diversion Authority (and the Corps) recognize that there is additional refinement and optimization of the project that remains to be completed. The Diversion Authority looks forward to working with BRRWD and its consultant to refine those segments and elements impacting the watershed. **Such iterative refinement is entirely typical of major water projects, and the fact that collaborative work will be ongoing does not constitute a “conflict” with local plans that could justify denial of the Diversion Authority’s permit applications.**

94f

- **Wilkin County**

The Order identified a conflict between Wilkin County’s prohibition on “large surface impoundments” – defined as impoundments exceeding 640 acres – and the original project alignment. Order at ¶ 186. As the DSEIS notes, the Plan B Alignment resolves this conflict. DSEIS at 3-47.

The Order also observed that other more qualitative sections of Wilkin County’s zoning ordinance might be interpreted to prohibit *any* amount of incremental inundation caused by a flood control project on the Red River, see Order at ¶ 186 (ordinance does not “allow, provide for, nor contemplate the use of Wilkin County lands for staging and storage behind a Red River Dam.”), or incremental effects on floodplain or flood fringe designated areas. Order at ¶¶ 183-184. As with the situation involving Pleasant Township discussed above, however, a contextual and reasonable interpretation of these provisions would not produce the illogical result of prohibiting *any* permanent flood control project for the Fargo-Moorhead area. Basic principles of statutory construction and interpretation require that laws be interpreted in a way that does not create an unnecessary conflict with more specific provisions in the same ordinance, as well as avoid serious issues of state versus local supremacy. **Wilkin County’s ordinance, viewed in this context, should not be so rigidly applied as to create conflicts with other provisions of that same ordinance, or ignore principles of supremacy. As the SDEIS amply demonstrates, further modifications to the Plan B alignment that theoretically might be necessary to comply with this qualitative provision of a local ordinance would then violate other provisions of state and local law, and frustrate local, regional, state, and federal objectives.**

94g

### **The Plan B Alignment has Achieved General Compliance with Local Plans**

As shown in the DSEIS and in the prior discussion, the Plan B Alignment has substantially addressed virtually all the local compliance issues identified with respect to the original alignment. Any remaining concerns not otherwise resolved under basic principles of statutory construction, comity, and supremacy, and which do not require further material changes in project design, can be addressed through refinements in consultation with local units of government. It would be illogical in the extreme to interpret the aspirational principles of Minnesota’s statutory and regulatory provisions regarding compliance with local law in a way that defeats much-needed permanent flood control altogether.

Central to Minnesota’s regulatory scheme is the requirement that local units of government will enact and apply local plans and programs in a way that would be consistent with the overarching needs of state law and public safety and welfare. **In the event such local plans or programs are in conflict with overarching state objectives, however, Minnesota R. 6115.0220, subp. 5 expressly exempts projects from having to comply with local plans or programs that by design or effect would thwart the best interests of the state as a whole.** The Minnesota Legislature has vested the DNR with overall oversight and decision-making authority similar to that the North Dakota Legislature has afforded the North Dakota State Water Commission. See Minn. Stat. § 103F.105(c)(4) (providing “the commissioner of natural resources with authority necessary to carry out a floodplain management program for the state and *to coordinate federal, state, and local floodplain management activities in this state.*” (emphasis added)).

94h

For these reasons, the Diversion Authority recognizes the need for further interstitial project development in subsequent discussions with local units of government as the project details become more refined, but respectfully urges the DNR to confirm that the Plan B Alignment substantially complies with local water and related land use management plans so that any future doubts about this issue can be removed.



Commenter 95

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.

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- 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.”

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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Page 8

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

**From:** timothy fox  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead SEIS  
**Date:** Thursday, September 27, 2018 10:09:54 AM  
**Attachments:** [Final Comments Leadership Committe.docx](#)  
[F-M Task Force Option 7C.pdf](#)

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These are my final comments to commissioner Landwehr following the Executive Committee meetings. The Executive Committee included Commission Landwehr, Deputy Commission Barb Naramore, the Army Corps, Diversion Authority and JPA representatives. I believe my final comments are also relevant in reviewing the EIS draft report, in particular issues involving structure count and alternatives. The TAG Committee had been reviewing and presenting alternatives to the Executive Committee. As my comments note the progress of the Committee was "short circuited" when the DA prematurely announced that a new permit application, Plan B, was going to be submitted.

My comments and observations are made as a member of the Executive Committee. Richland/Wilkin JPA comments will be submitted by Attorney Jerry Von Korff, including comments by Engineer Charlie Anderson, a member of the TAG Committee.

Timothy Fox

Final Comments following Leadership Committee meetings concluding March 8, 2018

The Diversion Authority, following a permit denial, which set forth in great detail the findings for the denial, continues to insist on flood protection for vast areas of rural Cass County located in the floodplain. The arguments and despair demanding the protection of critical infrastructure, medical facilities and Fargo, as the economic engine of the region, have been set aside and forgotten. <sup>1</sup> The new permit application of Fargo/DA have apparently renewed the promise to rural Cass County of unlimited flood protection and elimination of the restrictions and flood insurance associated with currently 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>

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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

B. Project Purpose and Need 14. The Project purpose and need set forth in the Permit Application is "to reduce flood risk, flood damages, and flood protection costs related to flooding in the Fargo-Moorhead metropolitan area (F-M metropolitan area)."

15. The Project purpose and need identified in the Permit Application differs from that in the State FEIS. The Project purpose and need statement in the State FEIS included the following additional specifics: • Reduce flood risk potential associated with a long history of frequent flooding on local streams including the Red River, Sheyenne, Wild Rice, Maple, Rush and Lower Rush Rivers passing through or into the [F-M metropolitan area]; • Qualify substantial portions of the F-M metropolitan area for 100-year flood accreditation (i.e., meets the standard to be shown on a Flood Insurance Rate Maps (FIRMS) as providing protection) by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program (NFIP); and • Reduce flood risk for floods exceeding the 100-year flood or greater, given the importance of the F-M metropolitan area to the region and recent frequencies of potentially catastrophic flood events.

State FEIS § 1.4.

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

173. Responsible floodplain management maximizes the natural and beneficial uses of the existing floodplain, especially undeveloped floodplain, and minimizes the expansion of the floodplain, especially where there is existing development. As set forth in ¶ xxx, the proposed Project would remove 17,000 structures and a large undeveloped land area from the existing regulatory floodplain. Conversely, the proposed Project would expand the floodplain upstream of the embankment requiring removal or mitigation of structures in this expanded floodplain area.

The Richland /Wilkin JPA become part of the joint effort of the Task Force and Leadership Committee to provide a common sense permissible project. Retaining a respected engineer, 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 alignment based the handout and presentations made by Charlie Anderson during the Task Force meetings. Charlie Anderson took on the task of examining his theories using Corps modeling and confirmed an alternative location of the northern alignment would provide significant benefits, while retaining floodplain otherwise removed by the DA 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.

96b

Prior to the DA understanding the benefits of the JPA proposed modifications, they preemptively took an approach that defends leaving “in tact” the elimination of the thousands of rural undeveloped acres of Floodplain that extend 10 miles downstream and north of Fargo. The DA has flatly refused to consider, let alone restore, a single acre of floodplain removed by the location and design of the northern alignment of the diversion channel. The floodplain that would be reclaimed under the current 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 following are items of conversation that were cut short or never occurred at the Leadership Committee because of the preemptive action of the Diversion Authority announcing a new permit application.

The Diversion Authority continues to use its self-designed method of structure count to justify a disregard for the critical elements of the permit denial. The DA summarily declared thousands of people and hundreds of structures would be impacted by any change in the north alignment. It is unquestionable that the JPA proposal simply leaves floodplain northwest of the JPA diversion alignment “as is”.

96c

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.

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174. The proposed Project is inconsistent with and undermines State floodplain management policy and goals by rewarding floodplain development to the detriment of those who live outside the floodplain.

175. Allowing development in the floodplain immediately downstream of the dam is not consistent with either current Federal or State policy because dams can and do fail, and allowing development in vulnerable areas would increase the consequences of a dam failure or improper operation.

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.

96d

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".

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,

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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.

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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.

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

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.

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>4</sup>

Four documents/maps are attached:

- 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

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<sup>4</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. •

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.

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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.

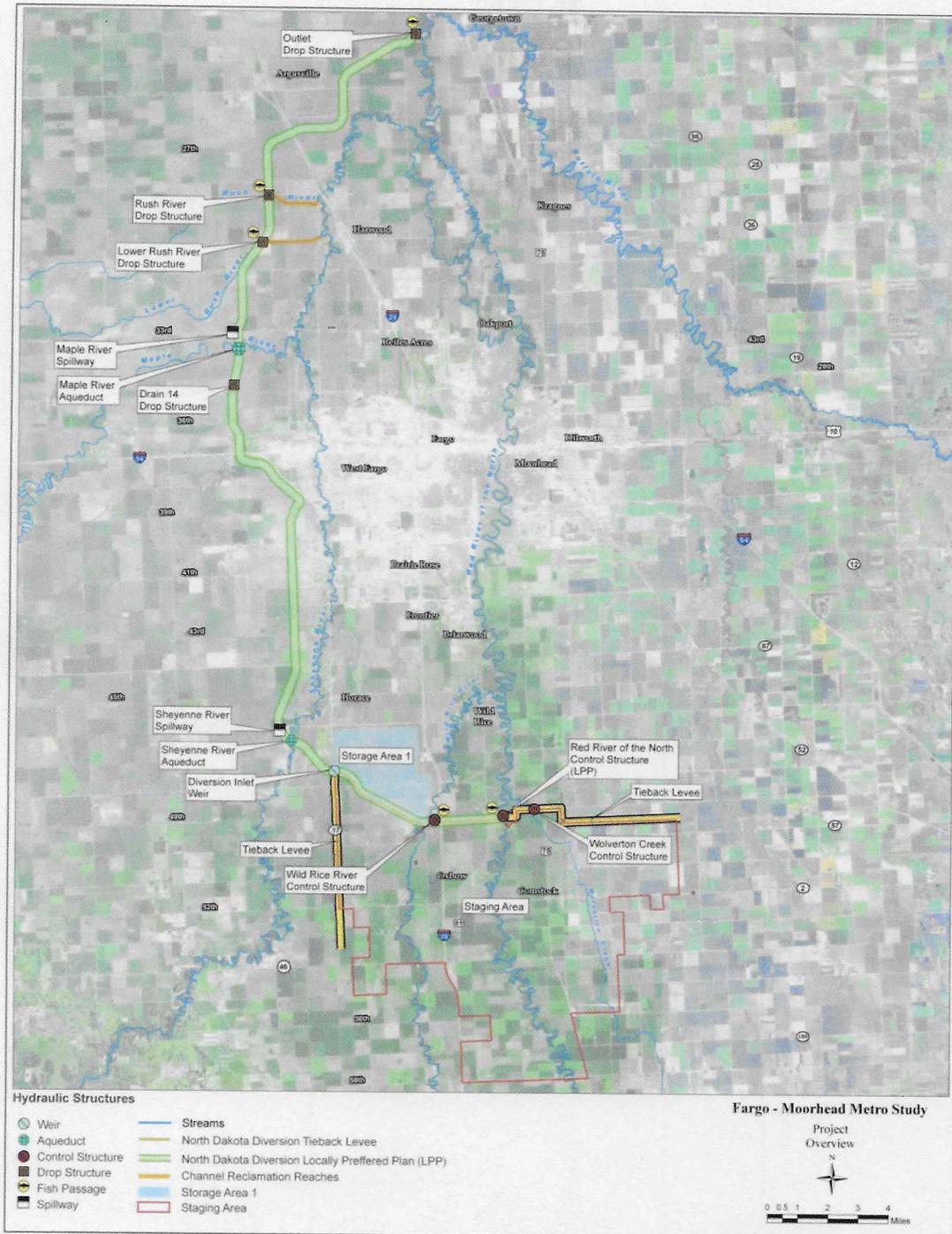
The Fargo flood protection plan must focus on protecting infrastructure, critical services and urban development areas in the F-M Metro area, rather than rural Cass County.

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 permissible 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

**Figure 4 – LPP Diversion Alignment and Features**



### 3.1.1.3 Southern Alignment

During a value engineering study for the Project, elimination of the Wolverton Creek structure and Storage Area 1 were identified as a possible improvement to the alignment. When compared with the FEIS alignment, the proposed modified diversion channel alignment from the diversion inlet structure to the Minnesota tieback embankment would be approximately 1 mile north and follow a line parallel to and just south of Country Road 16 (CR 16) (Figure 4). 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.

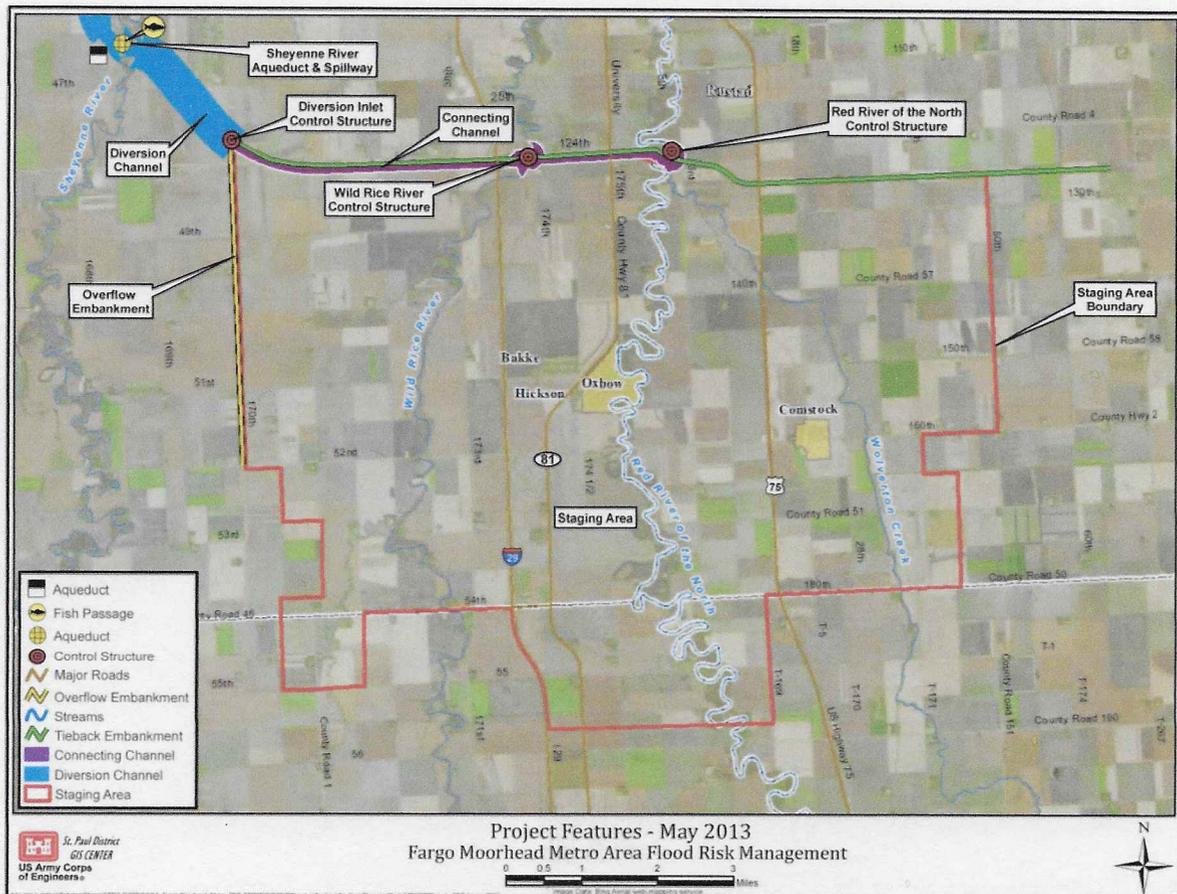
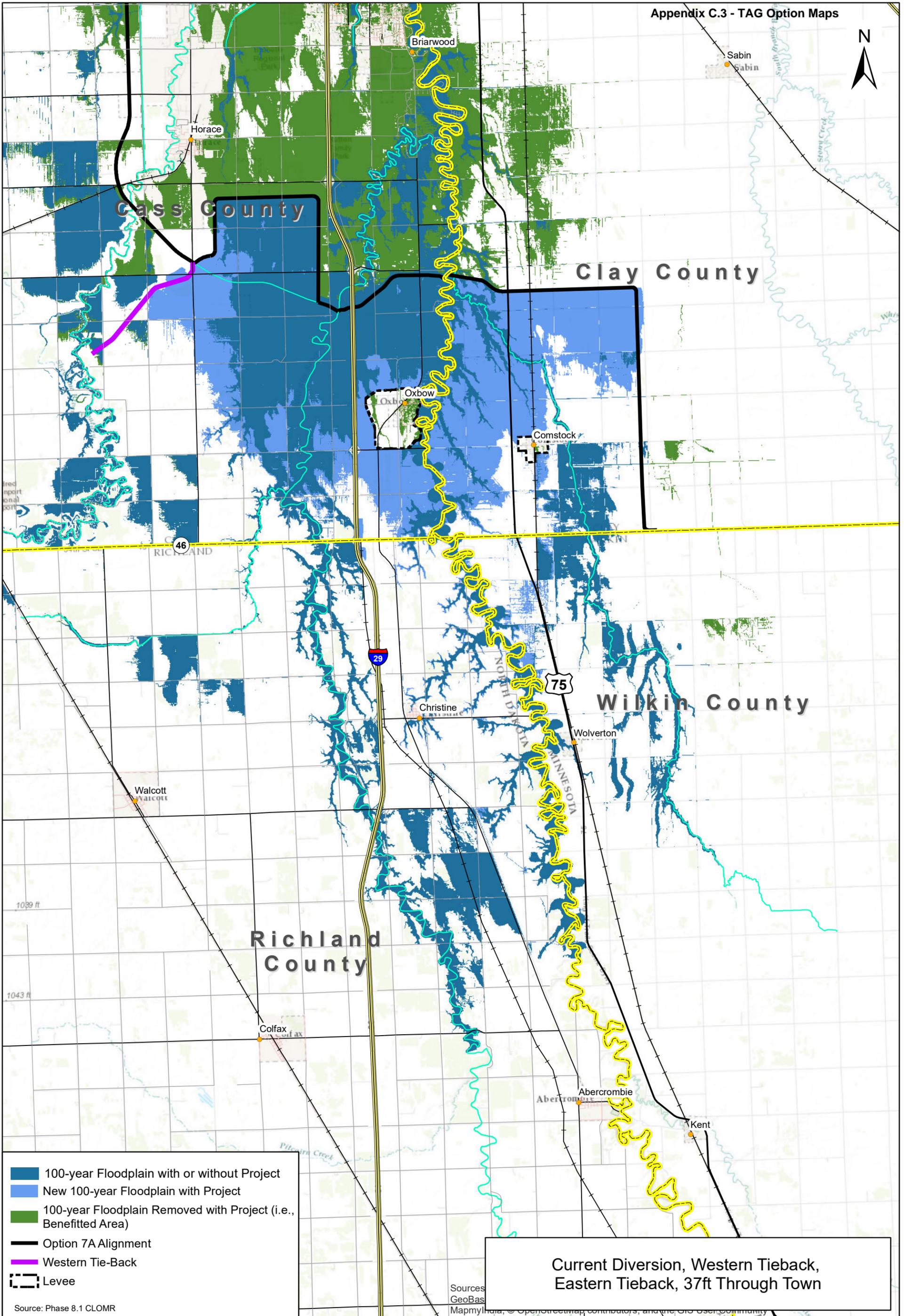


Figure 4: Proposed Sothern Alignment Shift

### 3.1.2 DIVERSION CHANNEL DESIGN CHANGES

Following completion of the FEIS, additional modeling and design determined that the diversion channel cross-section should be modified to address geotechnical, sediment transport, and constructability considerations. The cross-section modifications did not require the footprint to be expanded, however,



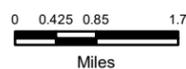
- 100-year Floodplain with or without Project
- New 100-year Floodplain with Project
- 100-year Floodplain Removed with Project (i.e., Benefitted Area)
- Option 7A Alignment
- Western Tie-Back
- Levee

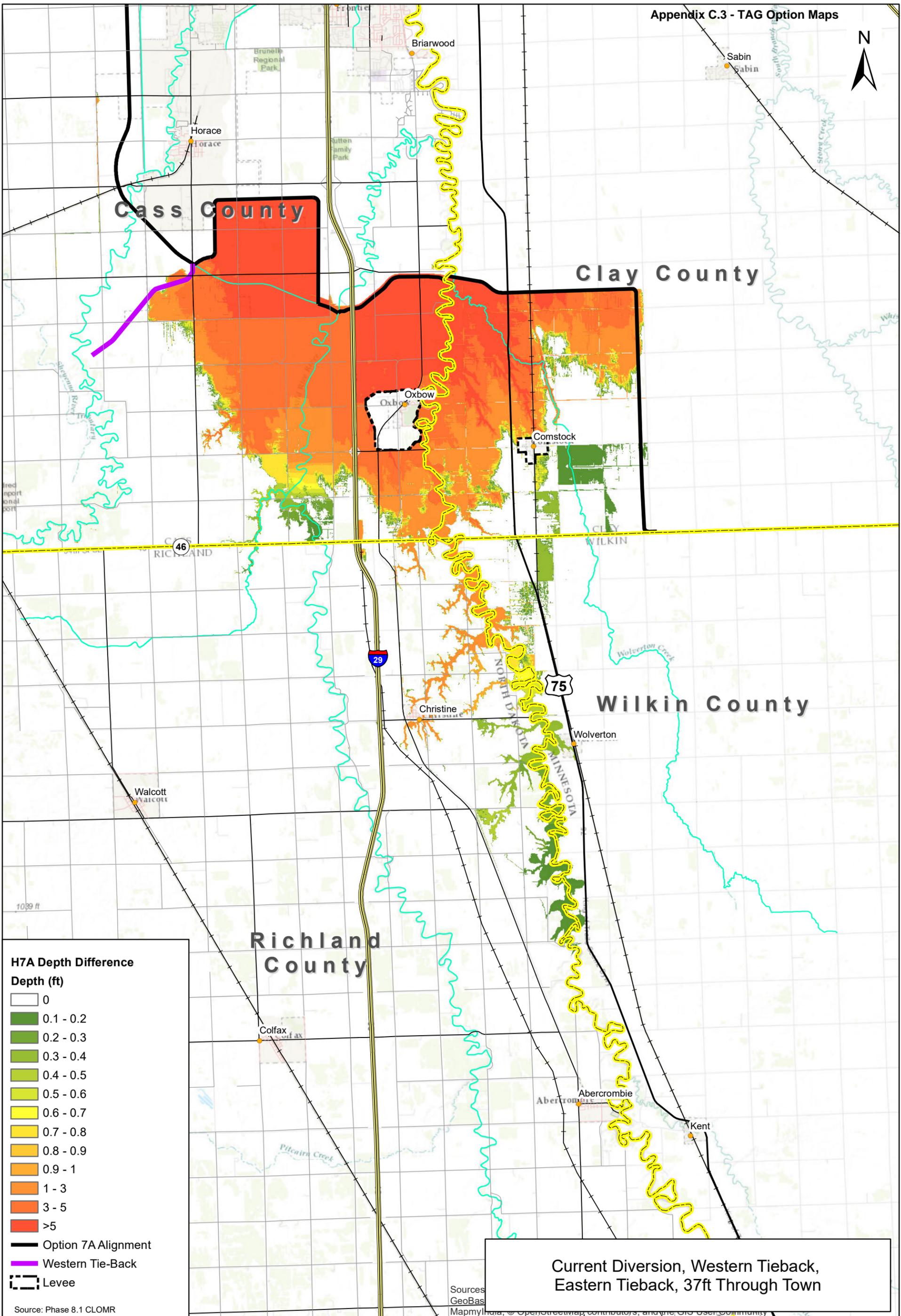
Source: Phase 8.1 CLOMR

Current Diversion, Western Tieback,  
Eastern Tieback, 37ft Through Town

Sources: GeoBas, MapmyIndia, OpenStreetMap contributors, and the OpenStreetMap community

### Option 7A Alignment Map





**H7A Depth Difference**  
**Depth (ft)**

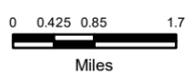
- 0
- 0.1 - 0.2
- 0.2 - 0.3
- 0.3 - 0.4
- 0.4 - 0.5
- 0.5 - 0.6
- 0.6 - 0.7
- 0.7 - 0.8
- 0.8 - 0.9
- 0.9 - 1
- 1 - 3
- 3 - 5
- >5

- Option 7A Alignment
- Western Tie-Back
- Levee

Source: Phase 8.1 CLOMR

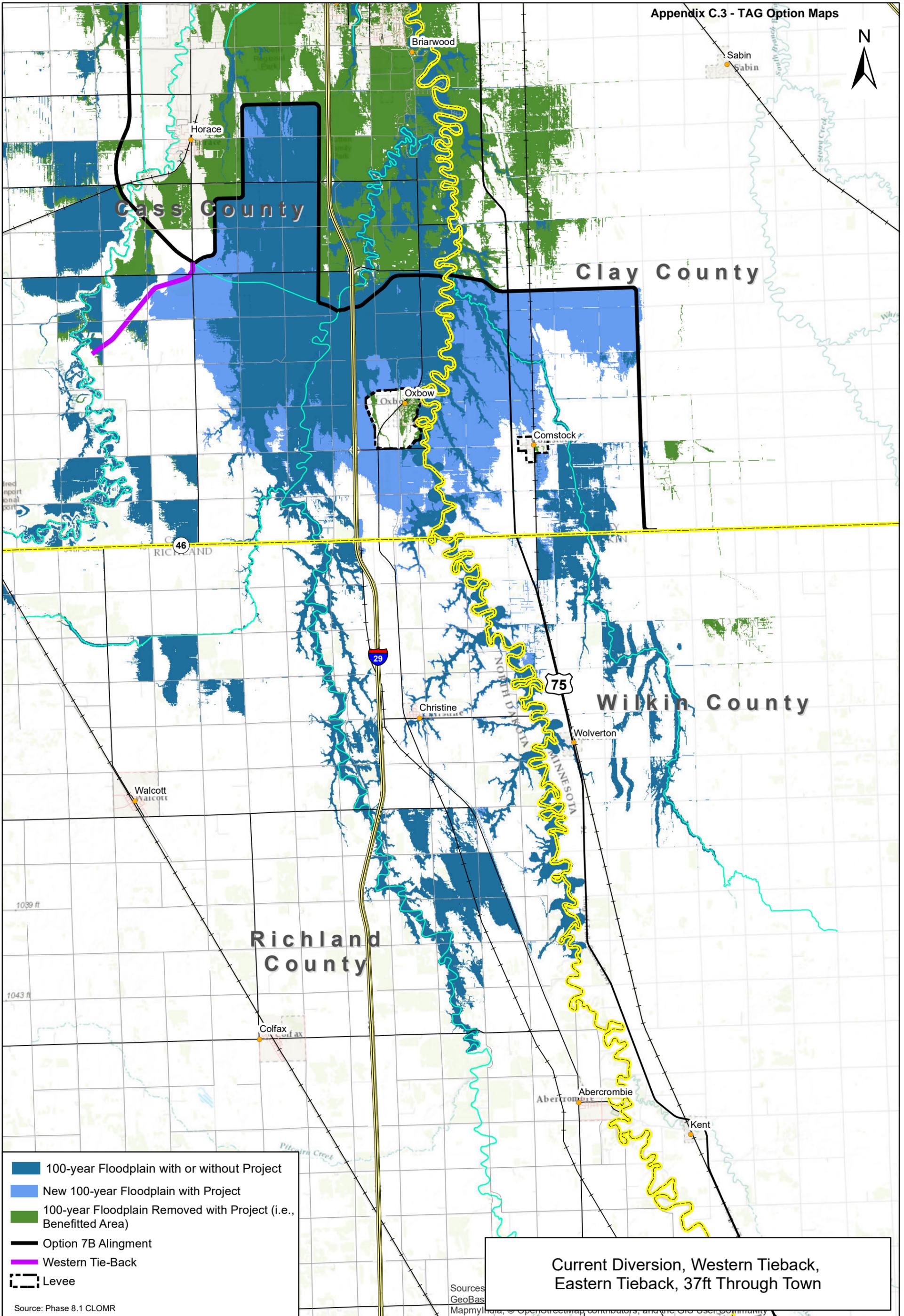
Current Diversion, Western Tieback,  
Eastern Tieback, 37ft Through Town

**Option 7A Alignment**  
**Depth Difference Map**



Created By: enelson Date Created: 12/06/2017 Date Exported: 12/7/2017 Image: 2016 County NAIP Elevation Data: -  
Coordinate System: NAD 1983 UTM Zone 14N Datum: North American 1983  
H:\Fargo\UBN\74007438\13\_7438\_015\Minnesota Dam Safety Permit\Small Team\2017-11-13 Tech Advisory Com\GIS\H7A\_DD\_CountyZoom.mxd



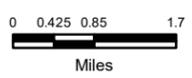


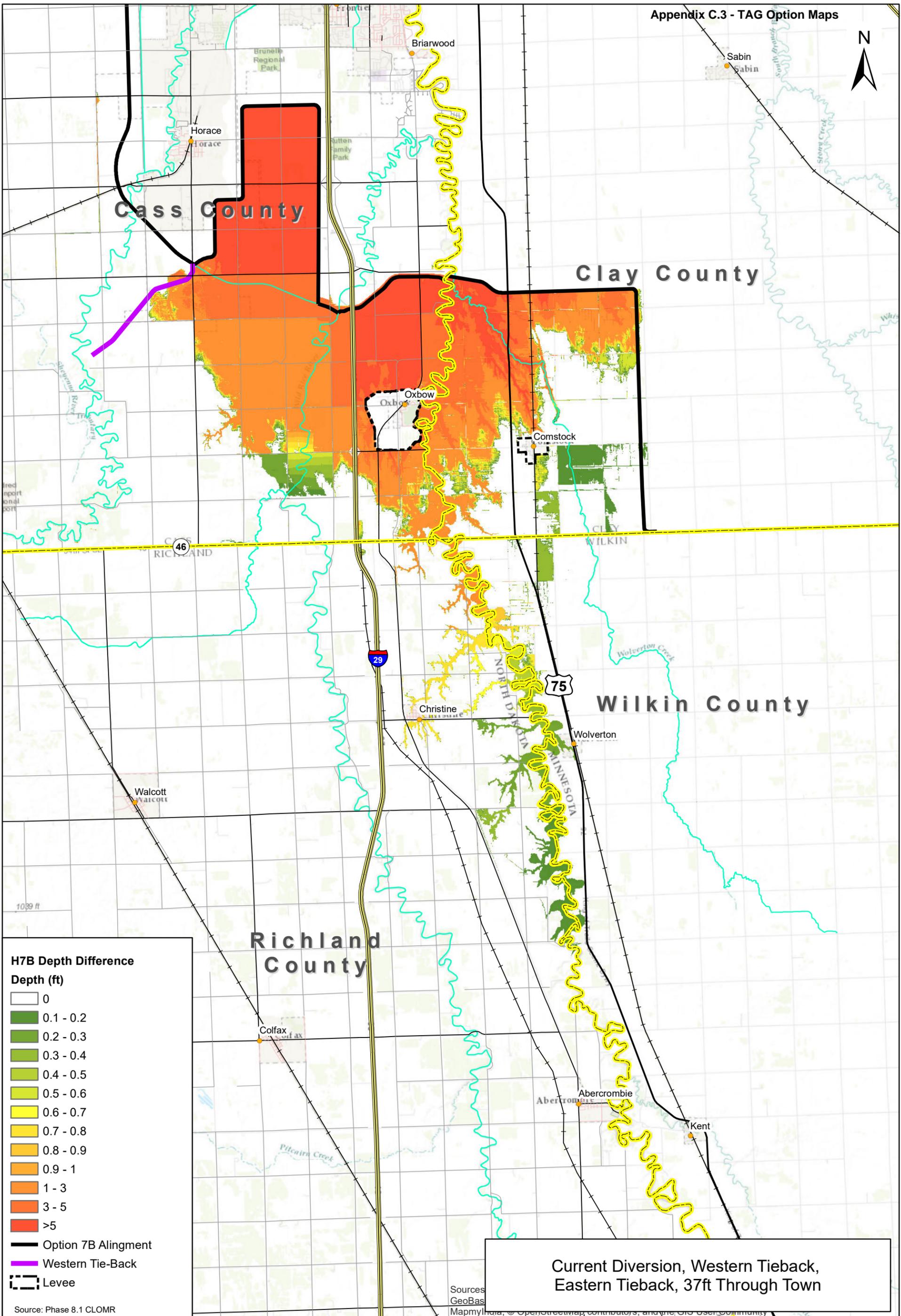
- 100-year Floodplain with or without Project
- New 100-year Floodplain with Project
- 100-year Floodplain Removed with Project (i.e., Benefitted Area)
- Option 7B Alingment
- Western Tie-Back
- Levee

Source: Phase 8.1 CLOMR

Current Diversion, Western Tieback, Eastern Tieback, 37ft Through Town

### Option 7B Alignment Map





**H7B Depth Difference**  
**Depth (ft)**

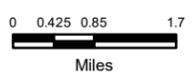
- 0
- 0.1 - 0.2
- 0.2 - 0.3
- 0.3 - 0.4
- 0.4 - 0.5
- 0.5 - 0.6
- 0.6 - 0.7
- 0.7 - 0.8
- 0.8 - 0.9
- 0.9 - 1
- 1 - 3
- 3 - 5
- >5

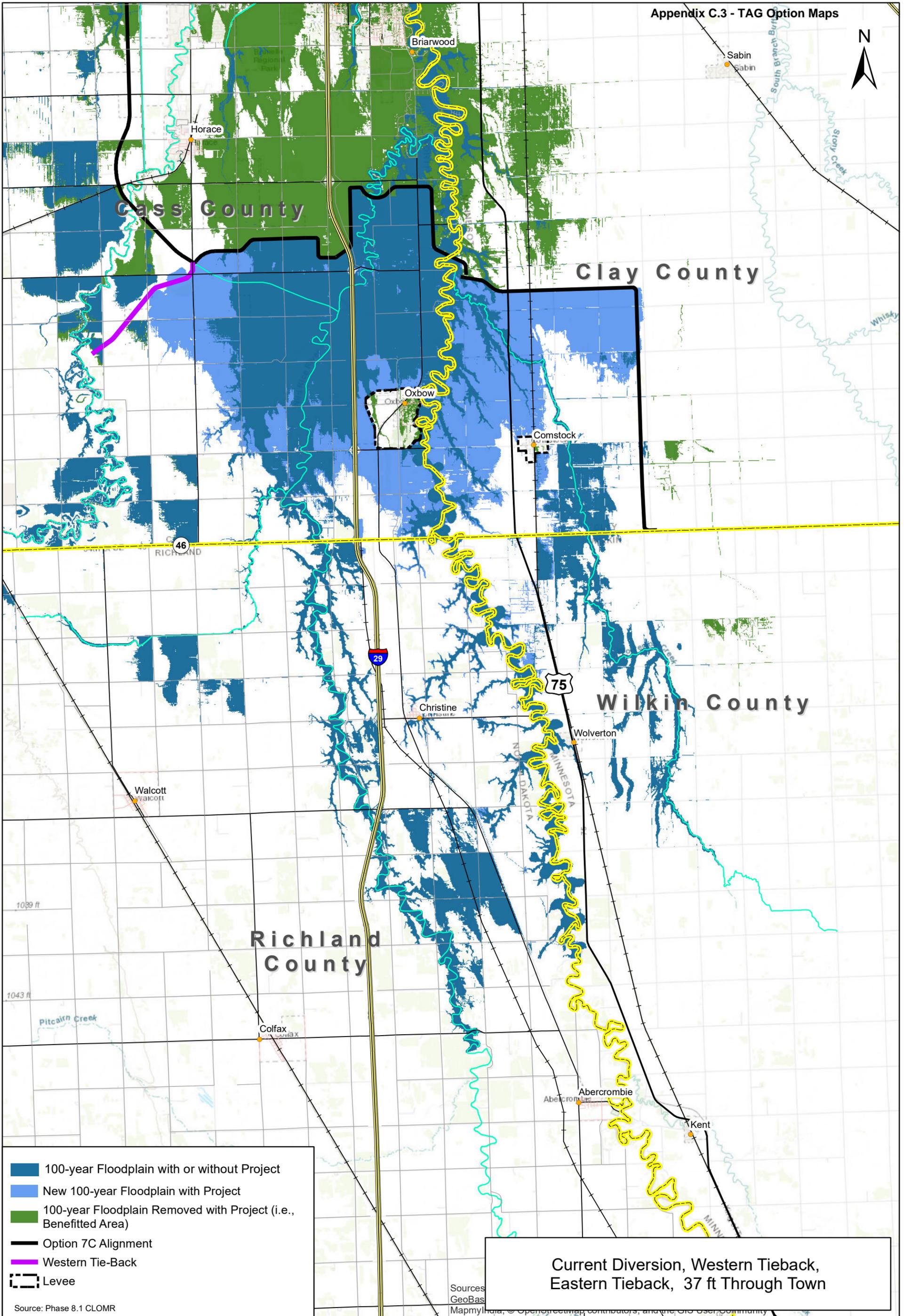
- Option 7B Alingment
- Western Tie-Back
- Levee

Source: Phase 8.1 CLOMR

Current Diversion, Western Tieback,  
Eastern Tieback, 37ft Through Town

**Option 7B Alignment**  
**Depth Difference Map**



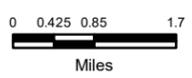


- 100-year Floodplain with or without Project
- New 100-year Floodplain with Project
- 100-year Floodplain Removed with Project (i.e., Benefitted Area)
- Option 7C Alignment
- Western Tie-Back
- Levee

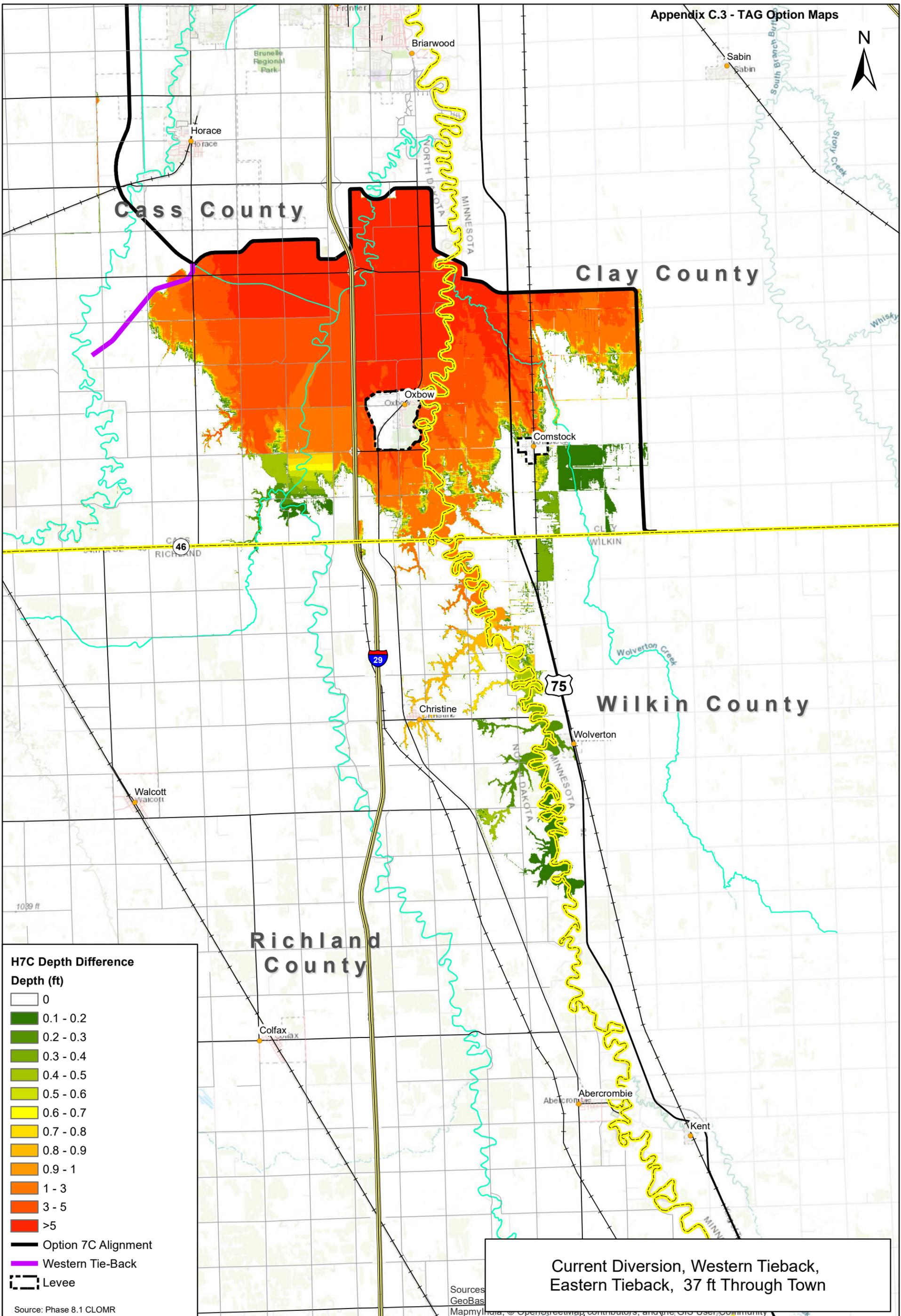
Source: Phase 8.1 CLOMR

Current Diversion, Western Tieback, Eastern Tieback, 37 ft Through Town

### Option 7C Alignment Map



Created By: enelson Date Created: 12/06/2017 Date Exported: 12/8/2017 Image: 2016 County NAIP Elevation Data: -  
 Coordinate System: NAD 1983 UTM Zone 14N Datum: North American 1983  
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**H7C Depth Difference**  
**Depth (ft)**

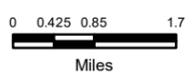
0
0.1 - 0.2
0.2 - 0.3
0.3 - 0.4
0.4 - 0.5
0.5 - 0.6
0.6 - 0.7
0.7 - 0.8
0.8 - 0.9
0.9 - 1
1 - 3
3 - 5
>5

— Option 7C Alignment  
 — Western Tie-Back  
 - - - Levee

Source: Phase 8.1 CLOMR

Current Diversion, Western Tieback, Eastern Tieback, 37 ft Through Town

**Option 7C Alignment  
 Depth Difference Map**



Created By: enelson Date Created: 12/06/2017 Date Exported: 12/8/2017 Image: 2016 County NAIP Elevation Data: -  
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 H:\Fargo\UBN\74007438\13\_7438\_015\Minnesota Dam Safety Permit\Small Team\2017-11-13 Tech Advisory Com\GIS\H7C\_DD\_CountyZoom.mxd



Commenter 97

## **DRAFT SUPPLEMENTAL EIS CITY OF GRAND FORKS COMMENTS**

Following the devastating flood of 1997, the communities of Grand Forks and East Grand Forks (GF/EGF) initiated a jointly sponsored, Federally-funded flood protection project. The project was designed to provide protection equal to the 1997 flood plus allowances for risk and uncertainty. The primary structural means of protection employed by the project included combinations of flood walls and levees.

The best available hydraulic and hydrological information available at that time indicated the cities of Grand Forks and East Grand Forks could count on a level of protection which exceeded a 200 year event. This was considered to have a high level of reliability as the floodwalls/levees contained enough freeboard to cover generally recognized allowances for risk and uncertainty. The top elevations of the flood protection system were such that they were above a 500 year event. Emergency measures would still need to be employed by the communities to provide some allowance for things like wave action, erosion, etc. that present risks of overtopping to any type of system reliant on floodwalls and levees.

The development of the original Fargo/Moorhead Diversion Project's Environmental Impact Statement introduced a new hydrologic concept of Wet Cycle Hydrology. Subsequently, in the currently proposed Plan B, the hydrologic concept is changed from the wet cycle to an updated period of record hydrology. Through this analysis, the communities of Grand Forks and East Grand Forks are now aware that even with no upstream projects, baseline conditions have changed such that we no longer have the same level of protection, from a flood frequency standpoint, that we had originally counted on. Much of this degradation of protection is due to natural phenomenon. However, the Plan B proposal identifies degradation to our flood protection system introduced by the proposed project.

Table 8 of Appendix C (MN DRN DSEIS) identifies an impact of an additional 0.07 ft. of surface water elevation to our communities for the 1% (100 yr.) chance event. Table 10 identifies an impact of an additional 0.58 ft. of surface water elevation to our communities for the 0.2% (500 yr.) chance event. The DSEIS does not address the project impacts at a 200 year frequency event. However, one must conclude that the impact to the Grand Forks/East Grand Forks flood protection system for events larger than a 100 yr. event must be between 0.07 ft. and 0.58 ft. of increased water elevation.

Grand Forks supports the Red River Basin Commission's goal for all communities within the Red River Basin to have 500-year flood protection. The fact that the Grand Forks flood protection system currently protects residents from a repeat of the 97 flood (a 200-year event) and can generally contain a 500-year event shows a great investment in the future of our community and

brings significant emotional security to our residents. Our flood protection project was designed to have less than a 0.1 ft. impact both upstream and downstream. To date we still cannot make any modifications to our system that exceed the 0.1 ft. limitation.

Grand Forks supports Fargo's efforts to raise their level of protection to the 100-year event. It is long overdue. It is also our belief that the project should be designed to minimize negative impacts both upstream and downstream and that impacts that do occur are appropriately mitigated as part of that project. The City of Grand Forks request is that increases in surface water elevation at both the 100-year level and 500-year level in Grand Forks/East Grand Forks (as identified in the Draft Supplemental EIS and a result of "Plan B") should be mitigated as part of the project.

97a

Plan B, as well as previous plans, includes an active operational component to the project. Various operational parameters are outlined in the DSEIS. Operational details are likely to be modified or interpreted as more information becomes available in the future. Grand Forks and East Grand Forks request to be part of any operations group in order to represent downstream impacted communities.

97b

Thank you for the opportunity to comment.

Sincerely,



Michael R. Brown  
Mayor

Cc: Al Grasser  
Mayor Gander  
Councilman Ken Vein  
Councilman Dana Sande  
Todd Feland  
Steve Emery  
Mark Walker



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

September 25, 2018

RE: SEIS Public Comment

Dear Ms. Townley,

Thank you for this opportunity to comment on the Supplemental Environmental Impact Statement (SEIS) for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

The City of Horace again requests that socio-economic impacts on Horace and the region be evaluated in the SEIS with the Plan B alignment. We find the MN DNR response to previous comments regarding this request concerning due to the significant impacts that the Plan B alignment has on the City of Horace. In addition to our concerns about the socio-economic impacts, other concerns include: the risks associated with being located next to the diversion, the Plan B alignment further into the Horace city limits, and the regional impacts this project would have on our community.

98a

The City of Horace is one of the fastest growing communities in the State of North Dakota. This project has a drastic impact on the community as it continues to grow and thrive. With the frequent changes to the alignments for this diversion and the Plan C concept being brought forth, this is disturbing. It has created chaos in our community and animosity amongst our community towards this project. We would like to thank the MN DNR for ruling out the Plan C alignment. However, we still have concern over the Plan B alignment.

As mentioned in our previous letters, the socio-economic impacts the diversion Plan B alignment would have to our community is significant. The City of Horace has been making great strides in improving our economic development and diversity. This is being done through efforts to expand our commercial and industrial development, with the main corridor for this activity being along County Road 14 (100<sup>th</sup> Ave.), which is identified in the MetroCOG SW Transportation Study and followed by the City. The SW

98b

Transportation Study and the City's plans for this corridor were established prior to the Plan B alignment being pursued by the Diversion Authority.

While the City understands the need for some form of flood protection for the Fargo-Moorhead area, the City of Horace would have to sacrifice a significant amount of land for the initial proposal of this alignment, but now will be required to sacrifice even more. This could hinder any possible commercial/light industrial possibilities along the south side of a major corridor (CR 14) to the city. With the limited potential areas in town to place these types of developments, this will restrict economic development with the city that naturally would have occurred. Without the ability to expand the economic model, residents will disproportionately shoulder the tax base for the City.

98a

Residents in the City of Horace also face risk associated with the diversion being located so close to the City. A breach in that dam or diversion could have immediate and devastating effects for the residents of Horace and potentially the residents of south Fargo. The residents of West Fargo and Horace shouldered the cost of the Sheyenne Diversion which currently protects them from flooding from the Sheyenne River. In the past, flooding from the Red River was never an issue for Horace.

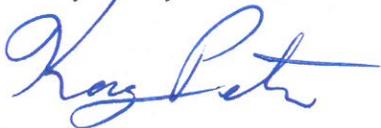
98c

The City of Horace is currently in opposition to the Plan B alignment and any other alignment that would further negatively impact the City (such as moving further north). However, the City would be open to an agreeable response to Plan B pending concessions for loss of future economic growth from the entities that would realize the benefits of the Fargo-Moorhead Diversion.

98d

If you have any questions about this letter, please call me at 701-936-3585.

Thank you for your time,



Kory Peterson

Mayor of Horace, North Dakota

CC: Doug Burgum, State of North Dakota Governor  
Mark Dayton, State of Minnesota Governor  
Tim Mahoney, Mayor City of Fargo, North Dakota

September 27, 2018

Jill Townley  
EIS Project Manager  
DNR Division of Ecological and Water Resources  
Sent Via Email: [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us)

Re: Fargo-Moorhead – Comments to DSEIS  
Our File No. 24082-0005

Dear Ms. Townley:

## I. Introduction

**These comments on the DSEIS are submitted on behalf of the Joint Powers Authority for Richland and Wilkin County.** The JPA represents two counties and governmental entities as well as individuals in Cass and Clay County.

There are six major issues with this project, and the DSEIS compounds and repeats those problems. In our permitting comments, we have raised a series of concerns regarding this revision to the LPP. **We ask that our permitting comments be incorporated into this submission.** 99h

- **EO 11988 Violated.** 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 stored in North Dakota, or sent downstream. The solution is to refrain from developing the floodplain, but Diversion Authority has once again submitted an alternative that continues massive unnecessary floodplain development. 99a

As with the prior Minnesota Environmental Impact Statement, this DSEIS fails to treat EO 11988 principles with the seriousness that they deserve. In the attached

Appendix, we provide a detailed exposition describing why EO 11988 must be followed to the letter by both USACE and DNR. EO 11988 is legally binding; it is an expression of sequencing principles found in MEPA as applied to flood control; and as MnDNR has repeatedly recognized, EO 11988 principles must govern environmental consideration of all flood control projects. EO 11988 principles are implemented by the executive order, but those principles are embodied in Minnesota environmental law and regulations, are integrated into numerous federal regulations, and in 2007 were incorporated into WRDA 2007.

- **New Proposal Project Fails the Permitability Tests found in the Commissioner's Order.** Throughout the deliberations of the Task Force, JPA repeatedly urged that any proposal considered should be measured against the criteria set in the Commissioner's Order. Diversion Authority advocates refused to do that, and the resulting project alternative again violates those criteria.

99b

It appears, instead, that Diversion Authority decided to design a new version of the LPP based on two core principles:

- (1) Diversion Authority has sought to maximize the amount of floodplain development, instead of minimizing floodplain development as the law requires
- (2) Diversion Authority has sought to move some of the features of the project into North Dakota in order to satisfy political statements by Governor Dayton regarding the balance of harm and benefits to the two respective states.

The result is a project that design that continues the flaws contained in the LPP. Once again, MnDNR has allowed an environmental review of a project to ignore permitability, while avoiding any consideration of the fundamental principles found in the Department's own permit decision. If DNR were to approve this project, that would be the essence of arbitrary and capricious decision making.

- **Improper Screening Out of the Minnesota Diversion.** In the original Environmental Impact Statement, USACE concluded that the best way to divert floodwaters was to run it around Moorhead and through Minnesota. We can find no indication that MnDNR challenged the Minnesota Diversion as unpermissible at that time.

The revised permit application has failed to explain adequately why the NED – which is a billion dollars cheaper – has been rejected. At the core of this improper screening seems to be the department's belief that it cannot screen out the applicant's preferred project. This DSEIS illustrates the consequences: the project which USACE designated as the most cost effective and environmentally

sound project does not even get reviewed, because somehow it is regarded as un-permittable, without even a citation to the statute or regulation that makes it un-permittable. Yet, in the original EIS, DNR screened in the LPP, even though it was obviously un-permittable. 99c  
99d

- **The Project is a Hydrological Monstrosity.** 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. Both LPP and this variant of the LPP cost a billion dollars more. Both unleash intentional flooding across Cass and Clay County unnecessarily submerging prime farm land, homes, and cemeteries. Both surround the communities of Oxbow, Hickson, Bakke and Comstock with intentional but unnecessary flooding, requiring the construction of costly ring-dikes. Both ignore the sustainability provisions of the WRDA-2007. 99e

This project has already purchased homes at up to double their value and even built 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.

- **Screening Out of JPA Alternatives that Preserves Floodplain.** Recognizing that there was political pressure to avoid a Minnesota diversion, JPA provided alternative ideas that run the Diversion through North Dakota. (These were designated options B or C, or 30 and 31.) If a Minnesota diversion is rejected, these alternatives are workable, but 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. 99f  
99f  
cmts

The rejection of these alternatives is symptomatic of a double standard in alternative reviews. The Department seems to feel that it must reject alternatives for any perceived flaw, no matter how small, advanced by the project proponent, but the project proponent is allowed to refine its project massively, to address any flaws using value engineering and other methods to meet objections. This double standard is illustrated by the fact that the Department adopted as disqualifying various objections by Diversion Authority's engineers, without even attempting to contact JPA or our engineer, for a response or corrective refinement. continu  
e on  
pag 58

- **Failure to Engage in Consultation with Local and Regional Regulatory Authorities.** The Commissioner’s order properly recognizes that Minnesota law demands that a project proponent meet all local and regional regulatory conditions. Nonetheless there has been virtually no consultation with Wilkin County or the Buffalo Red River Watershed District. All confirmed that the applicant has not engaged in the minimal due diligence required to determine what those regulatory jurisdictions would require before permitting. If DNR is genuinely committed to screening out alternatives that cannot be permitted, how then can it tolerate applicant’s failure to satisfy the permit conditions of local and regional regulators?

99g

## II. Exclusion of the Minnesota Diversion is Contrary to Law and Policy

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. This exclusion is arbitrary and capricious, and it is not based upon law. The DEIS justifies the exclusion of the very project recommended by USACE on the following grounds<sup>1</sup>:

**Minnesota Permitting Feasibility.** Any alternative that would not offer benefits to the state that are commensurate with the impacts to the state would be unable to be permitted in Minnesota. This is because such an alternative wouldn’t represent the least impactful solution in Minnesota (as required by Minnesota Law), and thus it would be infeasible

This interpretation of Minnesota’s “least impact” law is wrong and ill considered. Least impact is not a measure of the balance between benefits and negative impacts. Least impact applies to a project that significantly affects the quality of the environment. If it does, then least impact looks to determine whether there is a feasible alternative consistent with reasonable requirements. There is no support for the claim that those

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<sup>1</sup> The FEIS also states the following: “**Feasibility of Mitigating Downstream Impacts.** In Alternative 3, while the alternative meets the 100-year accreditation and would have environmental benefits over the Project, it would result in downstream impacts that would require mitigation. Given the geographic distribution of downstream impacts and the amount of water that would require storage elsewhere on the landscape, it was determined that mitigating these impacts was infeasible.” This suggestion is totally baseless. The amount of water generated by the Minnesota diversion has been shown to be dramatically less than the LPP. The suggestion that this water cannot be managed is preposterous and completely unsupported in the record with hydrological evidence.

reasonable requirements bar a project because it benefits another state more than Minnesota. The issue the alternative is “a feasible and prudent alternative consistent with the reasonable requirements for environmental protection. Minnesota’s least impact requirement reads as follows:

**No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction.**

Economic considerations alone shall not justify such conduct.

The decision to exclude the Minnesota diversion is utterly unsupported by this language. Evidently the Department is attempting to implement an objection levelled by Governor Dayton relating to the amount of harm in the respective states. But that comment cannot displace the statute and rules. Minnesota can reduce harm to Minnesota by requiring a project that doesn't develop floodplain.

The USACE's environmental review found that the Minnesota Diversion was environmentally superior to the LPP, and that finding equally applies to this revised version of the LPP. In both cases, the diversion trench is shorter. In both cases, the excess water generated is less, because in both cases, floodplain storage is supplanted by floodplain development and thus the damage to the floodplain is dramatically less.

The floodplain that Diversion Authority proposes to develop stores water that flows through both Minnesota and North Dakota; that floodplain is storage that benefits both states equally, and the destruction of the floodplain storage reduces the capacity of the River to carry water from both states. What is asserted by the DSEIS is equivalent to arguing that if a Minnesota factory proposes to dump chemicals into the Red River, it's a lesser impact if it dumps the chemicals into the North Dakota side of the river or one of its North Dakota tributaries.

If MnDNR is going to take the remarkable position that the NED is not the least impact solution, it has a responsibility to identify what environmental harm is at issue. The Minnesota DSEIS nowhere identifies what the pollution, impairment caused by the Minnesota diversion. Surely it is not the project proposed for permitting in the second application is not a superior project as measured by its environmental consequences! It

eliminates more floodplain. It generates more water as a result. It consumes vastly more farmland and causes vastly more flooding in the valley, and does so in both Cass and Clay Counties.

The Minnesota Diversion meets the requirement of section 116D.04 subdivision 6. As compared to Diversion Authority's current proposal, it is:

**a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction.**

JPA suggests that DNR re-read this definition. There is nothing in the definition that requires the benefits of a feasible and prudent alternative to be entirely in Minnesota, or proportionately in Minnesota. There is nothing in the definition that says that one compares the environmental harm one project to another by examining only the harm caused in Minnesota. That would be absurd as applied to a river whose water flows across boundaries.

MnDNR's attempt to justify the equivalent harm principle in the draft is nowhere supported in the record. The DSEIS seems to suggest that a cross border project that reduces all over harm to the Red River valley will be rejected, despite the fact that the overall harm is dramatically less, unless the harm is concentrated on the North Dakota side. As a constitutional consideration it is of doubtful merit, but it is nowhere supported by the statute. 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.

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, one 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.

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, since the USACE has determined, the Minnesota Diversion is the NED project, it is arbitrary and capricious to assert that this variant of the LPP is superior to the NED. 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 basis for rejecting the alternative determined to be the best, simply because there are more benefits to North Dakota.

This point is worth restating in a different way. The Minnesota Diversion was studied for several years. During that time, repeatedly the Minnesota Diversion was treated as the best option, both economically, and environmentally over and over again. It is evident that there were persons in Minnesota who opposed the project, but those comments predated the decision by the USACE that the Diversion was environmentally and economically superior. The Diversion Authority's reimbursement on the LPP is limited to the cost of the NED—the Minnesota Diversion. That's because the USACE has concluded that the NED is superior to the LPP, and by federal law and USACE policy, the federal government will not cost share beyond the cost of the NED project. If the NED project were not feasible, as Diversion Authority contends, neither Minnesota nor USACE would have allowed Congress and USACE to base compensation on the NED project.

***Finally, it is important to recognize that when comparing the NED to the LPP, or the second iteration of the LPP reviewed here, the ecological staff comparing these two projects are comparing a project that has experienced repeated iterations of value engineering, addition of staging and storage, installation of costly ring dikes, and alteration of the flows through town, to a project that was frozen as of the completion of the Federal FEIS. When it was revealed in September of 2010 that flood protecting 50 square miles of floodplain would increase downstream flooding, the ensuing design efforts to resolve that problem excluded the NED. Although distributed storage would reduce the downstream flow by at least 1.6 feet, no effort was introduced to improve the NED with distributed storage. It is patently obvious that DA has guided the alternatives***

review away from anything that doesn't develop floodplain, and someone in Minnesota has guided the alternatives away from a Minnesota diversion. The result of this guiding effort is to give us a project alternative that is a billion dollars more expensive, which unnecessarily floods both Minnesota and North Dakota, and which is still unpermissible.

### **III. The New Iteration of the LPP is UnPermissible.**

While the record does not support screening exclusion of the Minnesota Diversion it certainly supports exclusion of this project as unpermissible. Remarkably, throughout the task force process, and the leadership review, this project was never subjected to even a cursory review as to whether the project meets Minnesota permitting criteria. The Commissioner's Order should have been the baseline for any review of an alternative project but it was not. Among the key components of the Commissioner's order are:

- That the project violates state and federal policy by promoting the unwise and unnecessary development of floodplain. UF-32(a), 32(b), 32(m); Comm. Order ¶ 160. This project clearly violates that requirement.
- That the project is not the least impact solution as required by Minnesota Environmental Policy Act, (MEPA) section 116D.04. CL-85, UF-321, CL-103. CL-105, CL 106, CL-109. USACE itself identified and recommended selection of a Minnesota diversion that will cost \$1 billion less and avoid shifting floodwaters off of the natural floodplain and onto other communities.
- That the project violates regional and local water and land use planning policy and law as required by the 1974 water law reforms passed Chapter in Laws 1974 Chapter 558 and then implemented in Minnesota Statutes Chapter 103G and its regulations. Comm Order ¶ 54-a; Comm order ¶57. See also Buffalo Red River Watershed District Docket Comments; Wilkin County Docket Comments. The Buffalo Red River Watershed District, in its comments to the permit docket once again warned that no effort has been made to initiate a dialog on regional permitting requirements. Our concerns regarding coordination efforts called for in the mediated settlement agreement have been stated previously.
- That the project is overbuilt and over-engineered because it is predicated on providing 500-year protection instead of the standard 100-year protection used throughout the basin.

The Commissioner's order pointed out 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). Throughout their justification of this massive project, both Diversion Authority and USACE wrongly describe this floodplain as “benefitted” by the project, because it would be converted from floodplain to land suitable for scattered suburban development outside the current metropolitan area. That description is misleading: under Minnesota and federal law, floodplain is not benefitted by developing it, any more than a lake would be benefitted by draining it and building a shopping center on it.

Both national and state policy call for the preservation of floodplain’s floodwater storage. Flood protecting floodplain for development impairs the natural flood handling capacity of the river basin and makes flooding worse. That, in fact, is the major problem with the expanded LPP. Once Diversion Authority decided to expand the scope of the project beyond protecting existing development and infrastructure, to floodplain development, the project no longer became permissible. This project is virtually indistinguishable from the first. Here are the floodplain impacts and pool heights compared

**Table 1  
Comparison of Floodplain and Pool Heights  
of the Two Project proposals**

	DA first permit	DA Second Permit
Pool Height	921.66 feet	920.98 feet
Floodplain Impacts	55.4 sq. miles	43.7 sq miles

The Commissioner correctly found that the high hazard dam across the Red River and its floodplain would be built to shift the waters off of the floodplain surrounding Fargo onto other regions and communities. (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 Commissioner further correctly 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).

We arrive at this juncture, because the purpose of the original Diversion project was radically altered in order to promote floodplain development. The original purpose of the Fargo Moorhead flood mitigation project was crafted in conformance with federal<sup>2</sup> and state sustainability policies. In conformance with these policies, the project was to be designed:

“...to reduce flood risk and flood damages in the Fargo Moorhead metropolitan area while **avoiding an increase in peak Red River flood stages, either upstream or downstream and minimizing loss of floodplain in accordance with Executive Order 11988, the floodplain policy.** See DNR Letter August 2010 (emphasis added).

Through a lengthy series of feasibility studies, the United States Army Corps of Engineers had developed a project design that would reduce flood risk and flood damages in the metropolitan area while avoiding an increase in peak Red River flood stages, just as the above DNR letter describes. These sustainability goals were achieved by minimizing the loss of floodplain in accordance with Executive Order 11988 and its Minnesota policy analog. Floodplain storage plays a critical role in reducing the impact of major flooding in the Red River Valley, and particularly for the Fargo Moorhead metropolitan area. The aerial photo below shows the largely undeveloped floodplain south of Fargo during the 1997 flood of record.

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<sup>2</sup> 42 USC 1962-3 states 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.



**Figure 1**

This floodplain to the south of Fargo and another larger floodplain to the northwest provide critical flood storage capacity during major flood events. If water must be removed from these floodplains during major floods, that makes flooding worse. Flood protecting those areas would destroy their flood storage function, and dramatically increase the flow of floodwaters downstream. That certainly is one of the reasons that the original project was designed to protect developed Fargo, but to preserve the natural flood storage functions of undeveloped floodplain south and northwest of developed Fargo.

On April 8, 2008, the USACE released a Reconnaissance Report, (Administrative Record, AR0054197) reflecting the results of years of careful study. The Report recommended preliminary project configurations with a diversion channel running east of Moorhead. This Minnesota Diversion would fully protect Fargo and Moorhead at a far lower cost than the North Dakota alternatives while maintaining the flood storage functions of the floodplains south and northwest of Fargo. In fact, the Reconnaissance Report found that only the Minnesota diversions were cost effective. North Dakota

diversions were more costly and more environmentally complex, because they had to be longer and because they had to cross multiple tributaries of the Red River.

However, powerful interests on the Fargo side saw an opportunity to use federal funds to massively expand the flood control project to develop the 50 square miles of floodplain to the south and northwest of Fargo. To some extent, they used local opposition to the diversion channel as an excuse to append a floodplain development scheme to the project. Adding flood protection to the south floodplain would depart from the project constraints agreed to by interested parties but it would turn low value land into high value suburban sprawl. USACE initially ruled, correctly, that using federal funds to develop floodplain would violate the federal floodplain Executive Order, and it violates the original agreed design principles for the project.

The permit problems for this project derive directly from the Diversion Authority's decision to violate the above described agreed sustainability principles and add massive flood plain development to the project design.

In the documents submitted with these comments, we show that Fargo simply does not need 50 square miles of expansion room. See Docket Comments of JPA, Appendix B. Fargo is already too sparsely developed. Fargo's comprehensive plan actually calls for infill development. As Governor Burgum has stated<sup>3</sup>:

Our city has an ability to grow and grow smarter than other cities by growing more densely as opposed to growing horizontally," he told the Planning Commission. "The 52 square miles is enough to hold us for a long time."

#### **IV. Diversion Authority Failed to Establish Compliance with Local and Regional Ordinances.**

At Finding 44 the Commissioner states that Minnesota law requires a flood control project to receive local permits and governmental approval. The Commissioner's Order correctly finds that the Diversion Authority neither sought nor obtained those approvals. The Commissioner pointed out that the state environmental impact statement had warned

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<sup>3</sup> He continued: The city has 3.7 residents per acre, a far cry from the 10.7 in 1950 when it followed a traditional growth pattern that preceded suburbanization. The kind of suburban development where people need to drive everywhere is becoming less popular nationally, Burgum said. A 2013 survey by Realtors found that 55 percent of American adults would prefer a house within walking distance of stores, restaurants and schools to a house with a big yard, he said.

Diversion Authority that the approvals were required. That should not have been a surprise to Diversion Authority, however, because the local approvals requirement is the centerpiece of Minnesota's water regulatory framework. The Commissioner explained:

The proposed Project would require permits and other governmental approvals, and are discussed in the State FEIS §§ 1.5 and 3.14.3. Additionally, changes to regulatory floodways, Base Flood Elevations (BFEs) or extents of Special Flood Hazard Areas (SFHAs) caused by the construction and operation of the proposed Project would require updates to the existing Flood Insurance Study Map. The NFIP participating communities with FIRMs affected by the Project would require Flood Insurance Rate Map revisions pursuant to the FEMA Letter of Map Revision (LOMR) process and in accordance with the Final FEMA/USACE Coordination Plan. State FEIS §§ 1.5 and 3.2 and App. F.

It is clear that this failure to coordinate, collaborate, and develop the project so that it meets local ordinance requirements was intentional. USACE and Diversion Authority simply applied a surface analysis and assumed, without a scintilla of legal support, that regional and local permits could not possibly be required. As the Commissioner pointed out:

In a meeting dated July 13, 2016 the DNR asked the Diversion Authority if it had applied for or intended to apply for any local government approvals. The Diversion Authority represented that it did not intend to seek approval from local governments for the proposed Project. Consistency with local government land and water plans is a required element for any Minnesota State water permit decision and is addressed in ¶¶ 161 - 197. Commissioner's Order, Finding 53.

In prior filings with the DNR, we have pointed out that the legislative intent behind the local and regional permitting requirement was to prevent one region from diverting waters onto another region and to encourage watershed wide coordination and cooperation. Recent contacts with the major regional and local regulatory authorities confirm that Diversion Authority continues to disregard the underlying scheme of Minnesota permitting law. Their approach seems to be that since we are Fargo and have the backing of the Federal government, we can blow by regional authorities and ignore them but that is not how Minnesota permitting works.

The mediated settlement agreement was designed to create a collaborative process to allow major projects to move forward. Signatories to that agreement recognize that

regions are interdependent, and that the entire Red River Valley must work together to reduce flood risk. Since Minnesota permitting law requires major projects to coordinate with upstream and downstream entities, flood control depends upon collaboration, listening and mutual concessions. To this end, virtually every watershed district in the Red River Valley has incorporated the mediated settlement process in their legally binding watershed plans. Yet, even at this late date, local regulators like Buffalo Red River Watershed District have been complaining that Diversion Authority has failed to engage in the contemplated consultative process.

The direct result of Diversion Authority's out of hand dismissal of local and regional permits is that the project was not designed in coordination with local and regional regulators. This would be like designing a building without checking with the local building and zoning codes. Even a cursory review of the actual permitting laws and regulations should have caused Diversion Authority and USACE to recognize that the legislature intentionally barred projects benefitting one region from shifting waters onto another region, without obtaining permits from the negatively impacted region. In federal court, and in the state proceedings, Diversion Authority has repeatedly disparaged the application of local and regional ordinances to public water permitting. It argues that surely regional and local ordinances could not defeat its plan to transfer water from one portion of the state to another. How is it possible that this new version of the LPP is under review when Diversion Authority has not even conceded that the project is government by Minnesota permitting law, and when they have not yet taken the steps necessary to work with impacted regional and local authorities.

#### **V. The DSEIS Erred in Excluding JPA Alternatives.**

The record will show that Diversion Authority fought aggressively to disparage and marginalize JPA's alternative project designs *before* modelling was complete. The modelling that was conducted shows that by redesigning the North Dakota diversion so that it retains the floodplain storage south and northwest of Fargo, there is massive reductions in the amount of water that needs to be stored elsewhere. At the leadership team meeting scheduled to consider these alternatives, Diversion Authority arrived with a press release announcing Diversion Authority's unilateral selection of this alternative. Following that, Diversion Authority and their engineers have been tasked to marginalize and develop reasons why the project cannot be built without developing the floodplain.

There is a grave danger in prematurely screening out alternatives as has been done here. The primary engineering for a major project comes from the proponent. It is relatively easy for a project proponent who wants to avoid scrutiny of alternatives to raise possible difficulties or impediments to the project. All of these projects have challenges; all of them require refinement. Certainly, the LPP has been no exception. It went

through years of refinement, value engineering and now this new set of refinements. The DSEIS rejects JPA alternatives projects at the screening stage, simply because Houston Moore Group has advanced an issue that needs to be resolved.

Accompanying this submission is a report by Charlie Anderson. Engineer Anderson has a stellar track record in flood engineering in the Red River Valley. His opinion derives from work on modelling and decades of experience with the Red River. The issues raised by the DSEIS have been accepted at face value without even consulting with engineer Anderson. If these concerns actually arose from a genuine desire to find the best least impact alternative, certainly the folks who raised these concerns would have made an effort to contact Mr. Anderson and discuss them. Anderson is the engineer who raised the issue with downstream impacts in 2010, when the entire engineering team at USACE and Houston/Moore neglected to find those issues. He has steadfastly offered honest opinions, and his opinions have been persistently proved accurate. It would be arbitrary and capricious to exclude the JPA propose alternatives based on the record that currently exists. These alternatives have not been fully vetted and should have been examined.

## **VI. The DEIS Flagrantly Errs in Counting “Structures” Impacted.**

Throughout this process, Diversion Authority and their engineers have manipulated the counting of structures. JPA representatives have attempted to verify structure counts and are bewildered at the numbers advanced by the DSEIS. Structures that are already protected by existing state and federal projects appear to be recounted as needed protection. Structures that have been built in the floodplain in violation of national and local policy are treated as being at risk, even though they were intentionally constructed in the floodplain. It appears that the Diversion Authority’s structure count must also be counting structures that would be built in the future, because the structure count is otherwise inexplicable. Homes that have never been flooded appear to be treated as at risk. Areas to the Northwest of Fargo that are undeveloped are treated as having numerous structures at risk, even though they are largely undeveloped and unaffected by JPA’s proposal.

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This project and its alternative version, the LPP, is designed to expand Fargo by 40 to 50 square miles. The plan is to build massively into that floodplain, so that should the levees fail to protect that newly developed area, the losses experienced by flooding will be magnified many-fold. It is absurd to suggest that this is a project that is designed to preserve protection, when in fact, it is designed to flood lands currently flood free, and build in the floodplain.

September 27, 2018

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Sincerely,

/s/Gerald W. Von Korff

JVK/dvf

Enclosures:

- 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)

**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**

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### **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.

Diversions 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(1)(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)l *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.



**Entrepreneurship**

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



**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.



**Workforce Training**

Promote workforce training at the local universities and colleges.



**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.



**Attract and Retain Businesses and Qualified Workforce**

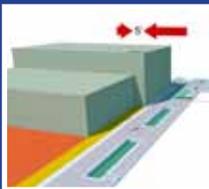
Provide incentives for developing specialized space where both the demand and public benefit are substantially demonstrated. For example, there may be a need for more "wet" laboratory space to strengthen the bioscience industry and provide more jobs.

**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.



**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.



**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.



**Historical Preservation**

Strengthen historical preservation incentives.



**High Quality Affordable Housing near NDSU**

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



**Housing for workforce and low income residents**

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



**Neighborhood Support and Communication**

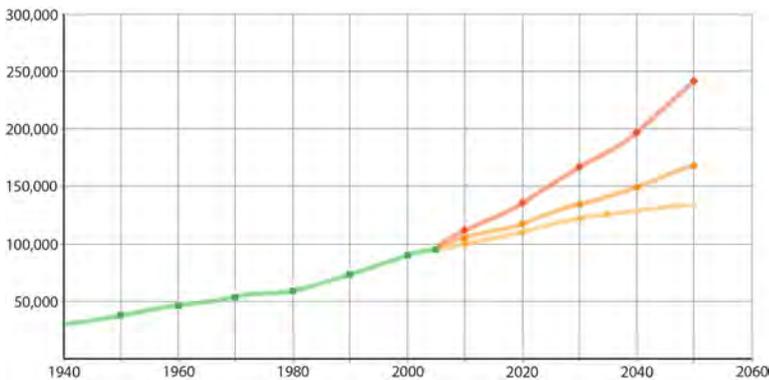
Improve communication between the City and established neighborhoods. Encourage neighborhoods to establish a vision and create neighborhood plans.

## 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 of 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.

Section of Fargo	10 people/acre	12 people/acre
	Population	Population
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 %

*Land Use Goals for the Growth Plan*

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

- 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.

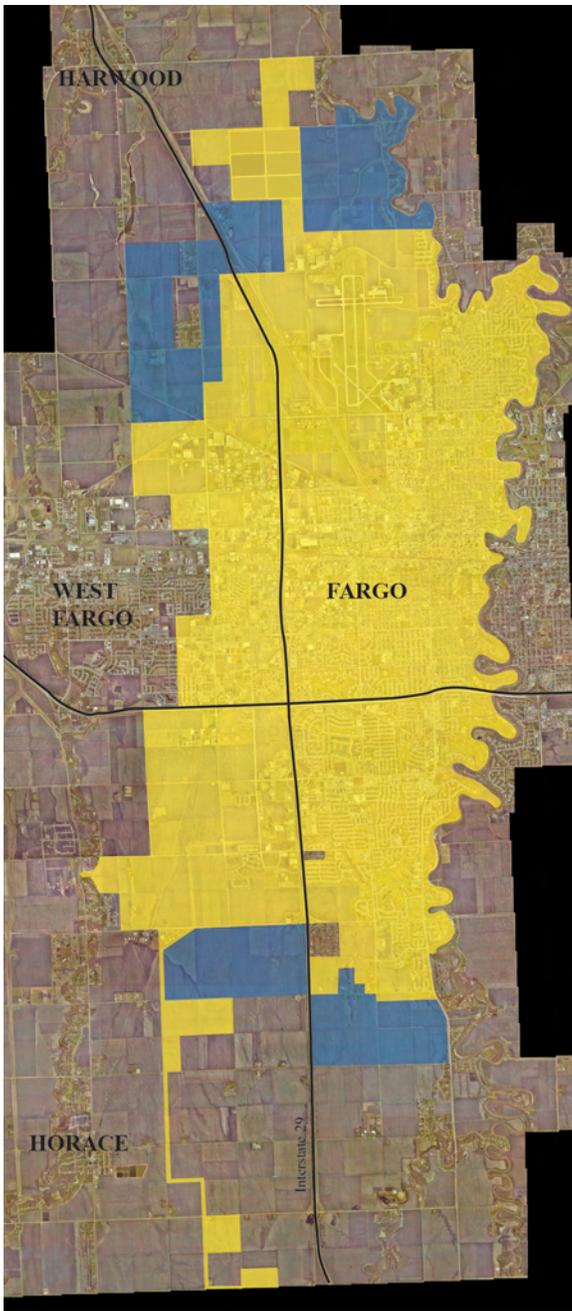
Sprawl, the continued expansion of the city in low density developments places huge financial burdens on the city. It is fiscally irresponsible for the city to allow the costs of infrastructure to rise on a per capita basis. The goal of good planning is to create healthy, efficient places to live, work 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.

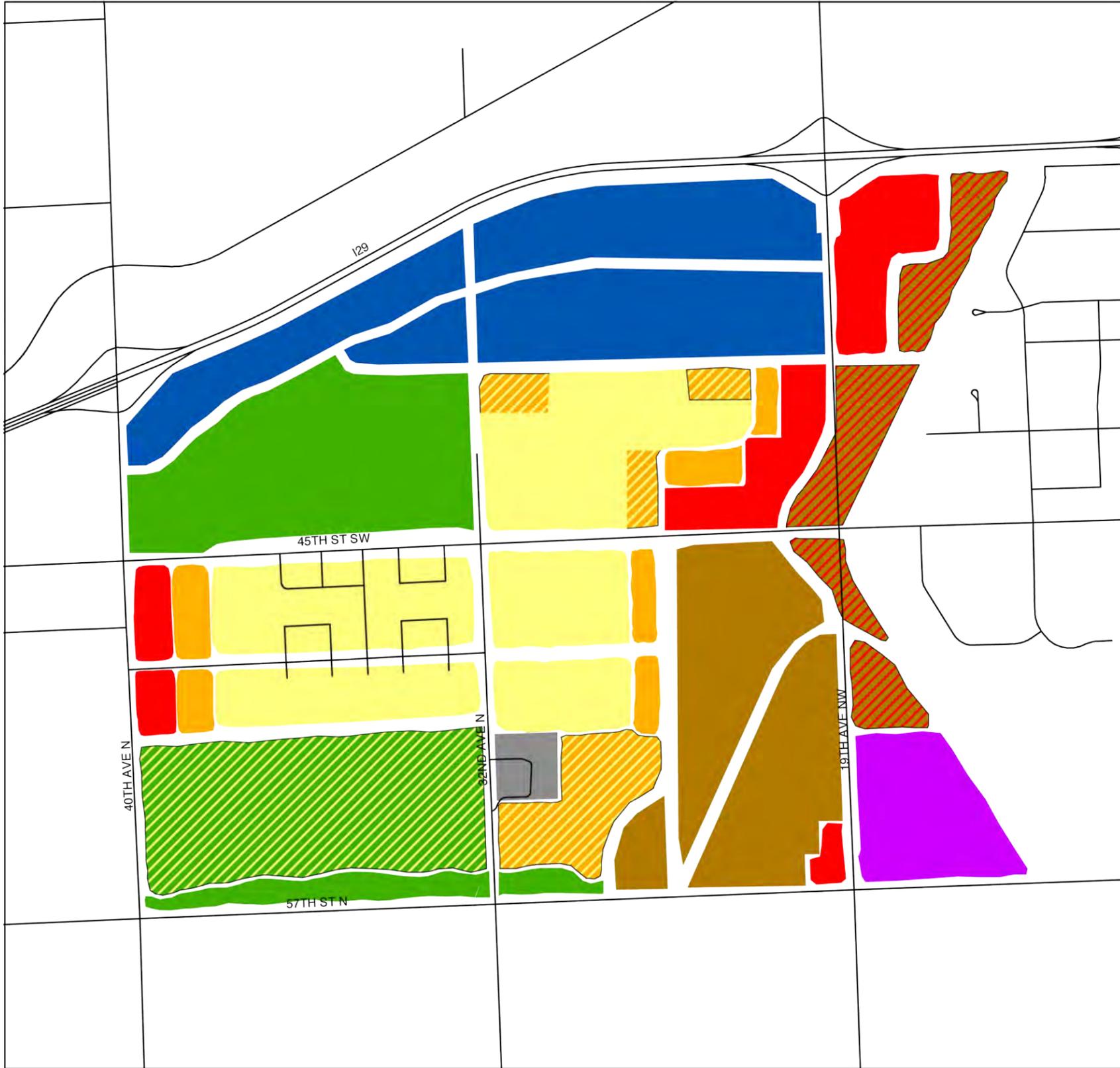
Discussions with Cass County Electric Cooperative have indicated their willingness to work with the City of Fargo to place as many of their lines underground as possible as development of the area takes place.

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.

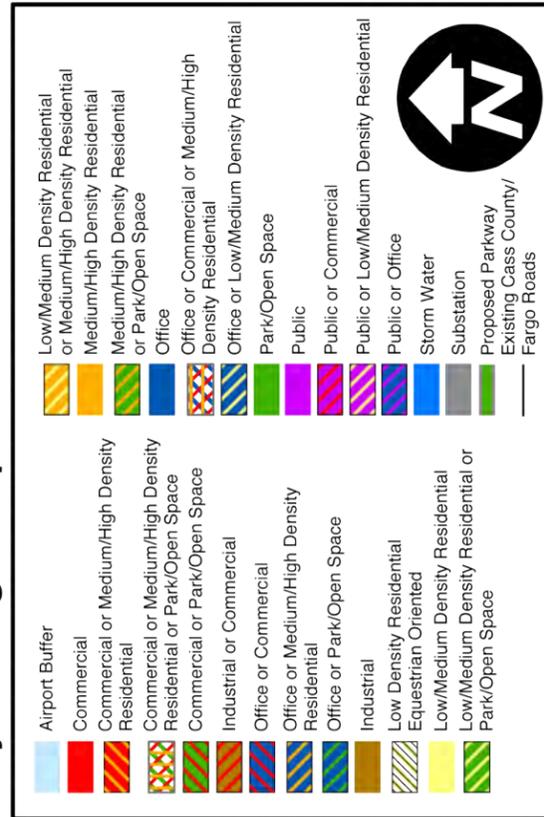




# Northwest Area Plan



## City of Fargo Proposed Future Land Uses

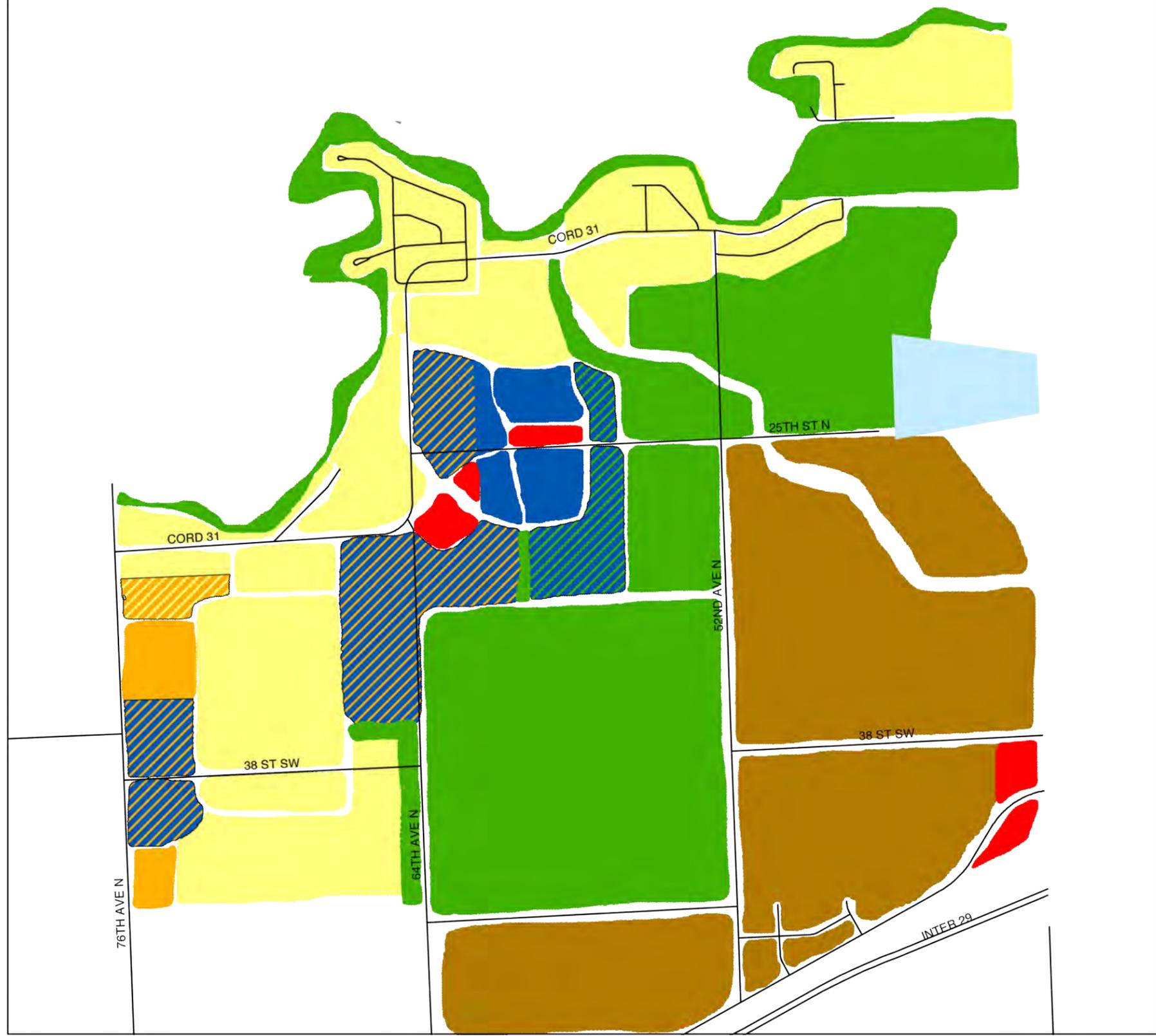


Map created by BJE, City of Fargo Planning and Development, June 2003. Based on data obtained from the City of Fargo Planning Department, June 2003.

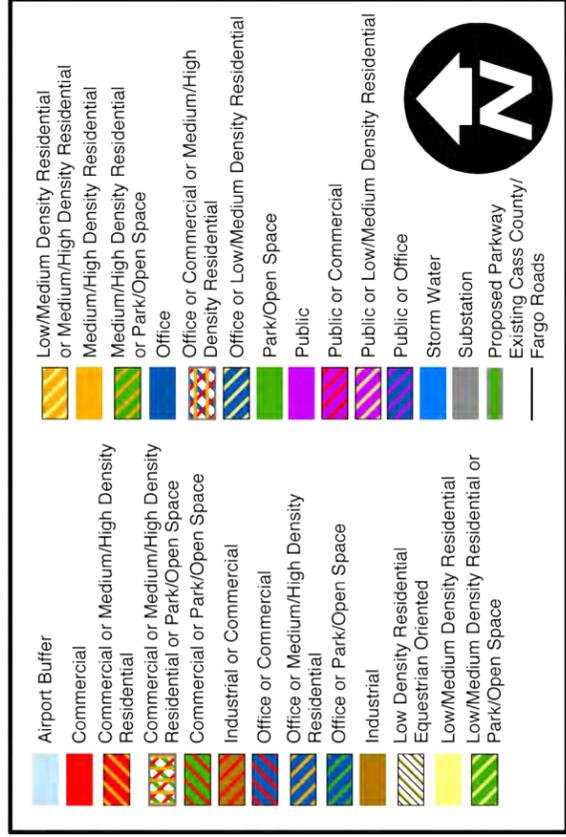
## Appendix Three Growth Plan Maps from 2001

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

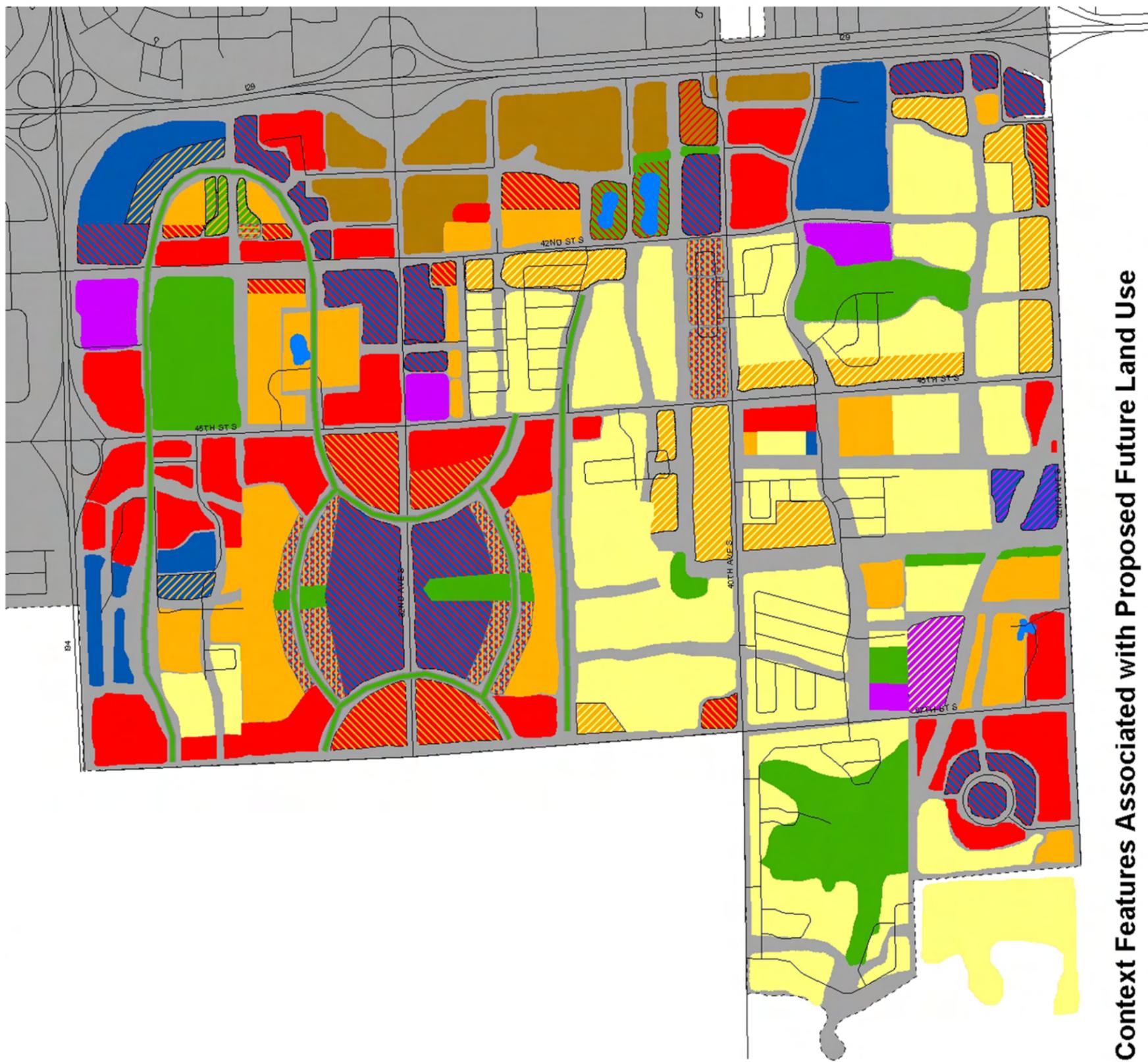


## City of Fargo Proposed Future Land Uses

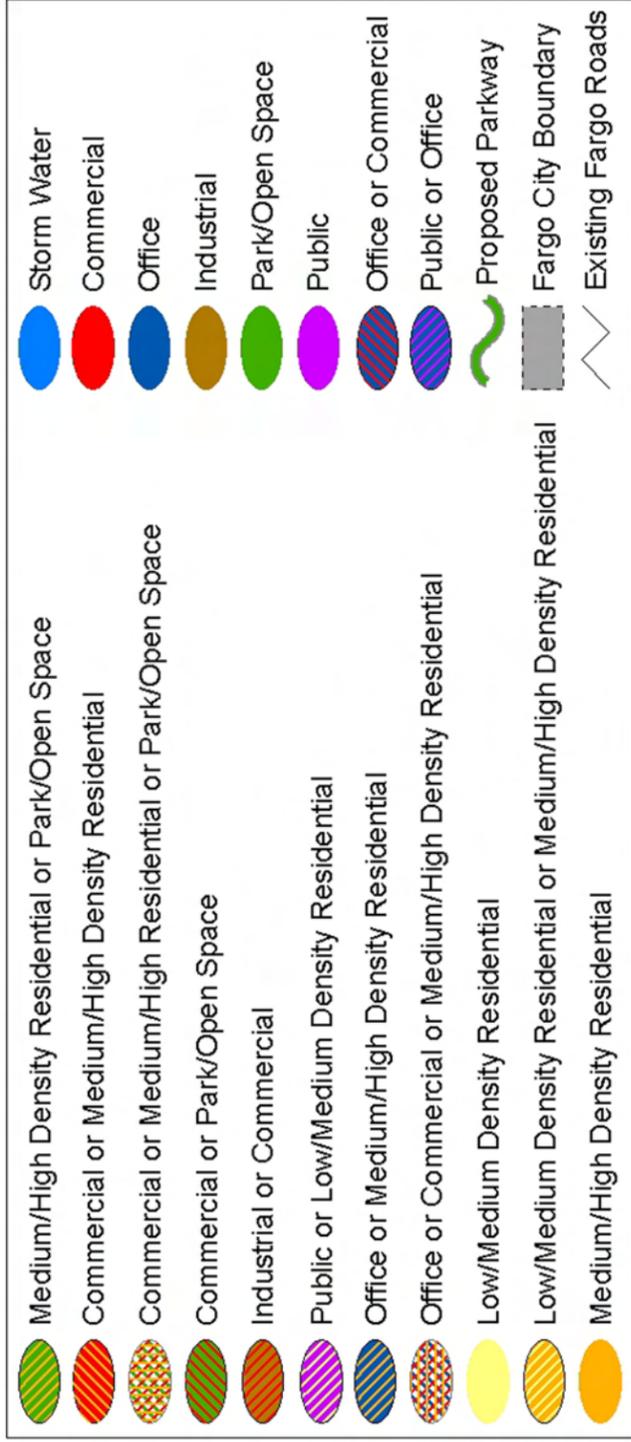


Map created by BJE, City of Fargo Planning and Development, June 2003. Based on data obtained from the City of Fargo Planning Department, June 2003.

# Proposed Future Land Use in Southwest Fargo, July 2003



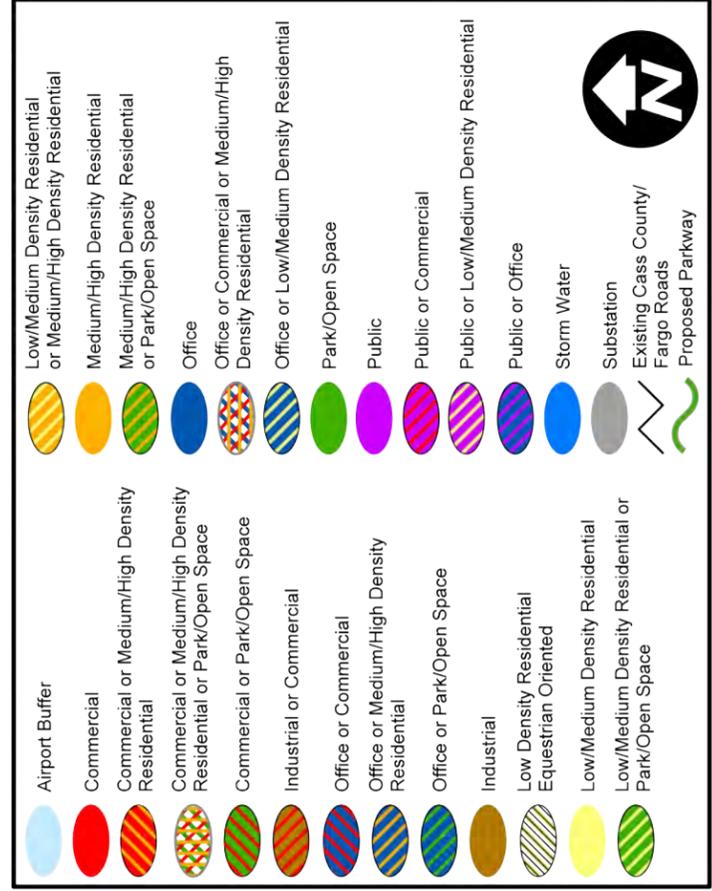
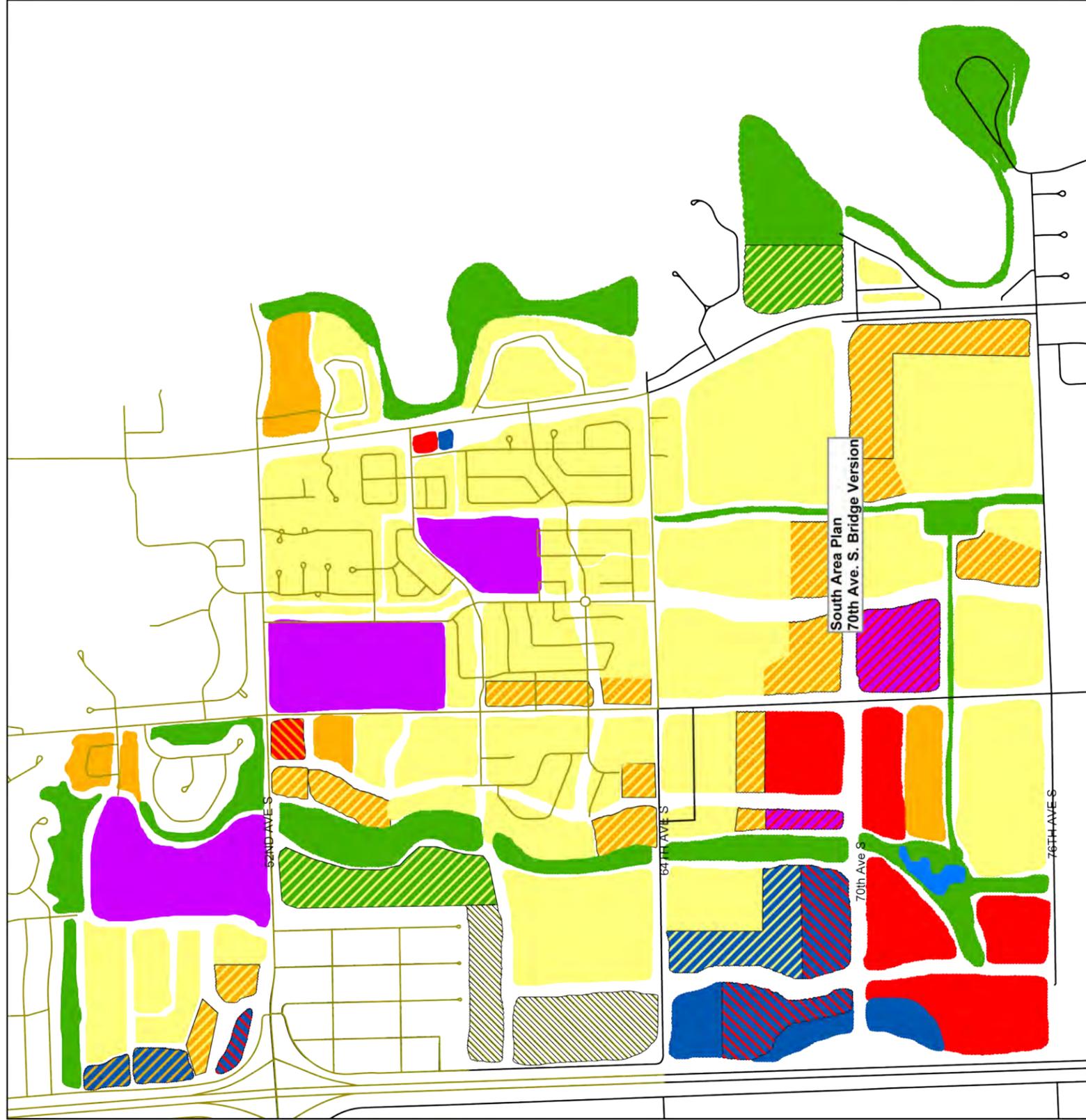
## Context Features Associated with Proposed Future Land Use



Map based on data obtained from the City of Fargo Planning and Development department.  
Created by City of Fargo Planning and Development department, July 2003.

# City of Fargo Proposed Future Land Uses

## 70th Avenue Bridge Version

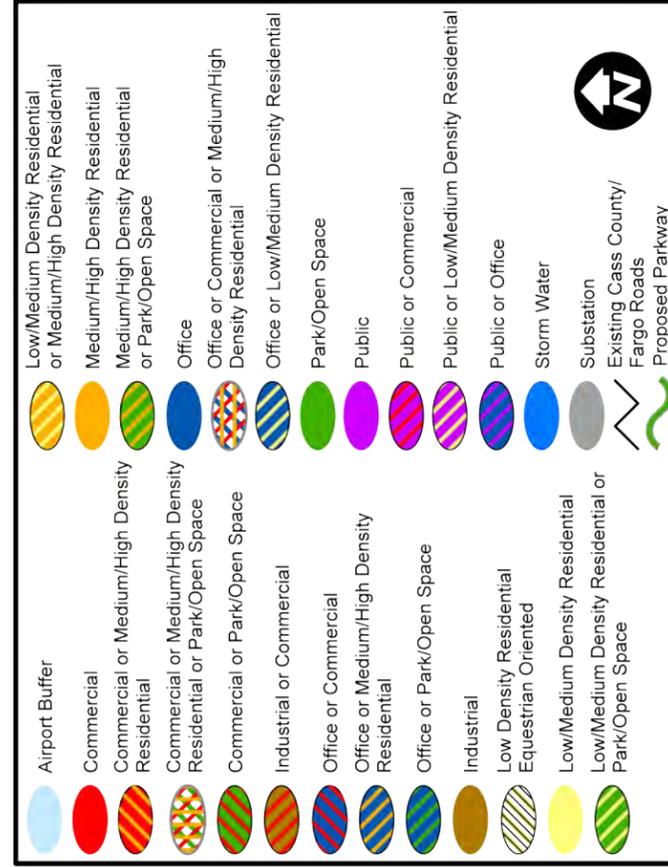
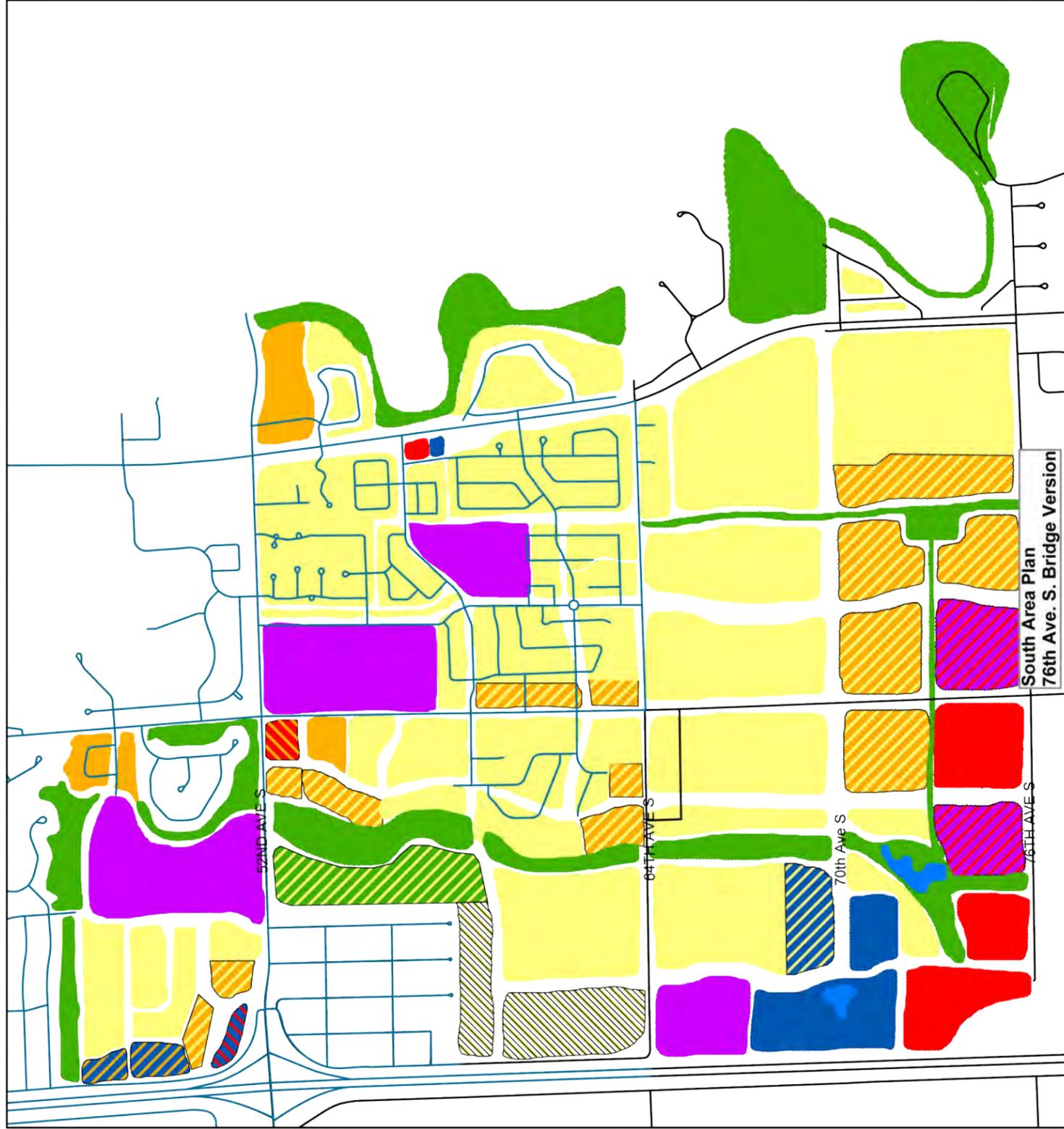


Map created by BJE, City of Fargo Planning and Development, June 2003. Based on data obtained from the approved 2001 Growth Plan for the City of Fargo.



# City of Fargo Proposed Future Land Uses

76th Avenue Bridge Version





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.

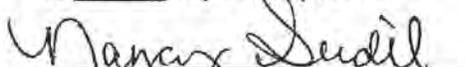
I strongly recommend that before work on any environmental review is completed that a detailed operational plan should be prepared that describes exactly when the staging and storage and diversion will be utilized.

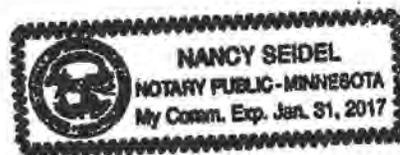
**FURTHER YOUR AFFIANT SAITH NOT.**

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





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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. 99f
    - 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. 99f
  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. 99f
  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. 99f
  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. 99f  
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. 99f
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. 99f
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. 99f
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. 99f
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 permittable 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

Written Comments

Share a comment with the DNR and/or Army Corps for the revised Fargo-Moorhead Flood Risk Management Project.

Please provide your preferred method of contact (mail or email). \*Note that any information provided is public data. While you are not required to provide your contact information, doing so allows the DNR to send you future DNR environmental review documents on the Project. Comments will be shared with both DNR and Army Corps.

Name: <b>KELLY T. MILLER</b>	Mailing Address: <b>7345 177 AVE SE</b>
Representing:	<b>WAMPETON, ND 58075</b>
	Or Email: <b>KTMILLER @ KTMFARM.COM</b>

My comment is for:

Minnesota DNR (Draft SEIS)

Army Corps of Engineers (Draft SEA)

Both DNR and USACE

**SEE ATTACHED**

To The Minnesota DNR and Army Corps of Engineers:

You are tasked with analyzing the environmental impact of the Fargo Diversion. The leaders of the Fargo Diversion have started the project and try to continue without the proper permits and with no regard for the environment and the neighborhoods adjacent to it. Do you think that will change at all, even if they get their permit? Only a judge seems to be able to stop them.

The Diversion Authority has admitted that the diversion is a development plan disguised as a flood control project. That is not how they should be treating Richland County ND or Wilkin County MN by either running or draining water on them. There is also the fiscal responsibility of how to pay for it. That will fall on many people as they refuse to look at reality.

100a

The environmental impact started when Fargo allowed building in the flood plain without raising the level of their building sites. They allowed the developers to consistently disregard the natural flow of water. No buildings should be sitting below the 1897 flood level. And they are still doing it. Davies School is a good example. If the school had been there in 2009 there would have been water running through it. You cannot allow development to continue without any thought about the long term implications of spring flooding here in the Red River Valley. You also have to weigh the cost of the various solutions to the problem. There are other ways to give flood protection to the Fargo area. Ways that are much more cost effective.

The plan to dam the water south of town and use prime farmland as holding areas will affect the salinity of the ground. My concern is that the level of salts will rise and increase to the point where some land may not be farmable. This would be a major disaster for some of the most fertile ground in the world. If there are no longer crops growing the problem of weeds, trash dumping, and dirt blowing into the city of Fargo would be a problem.

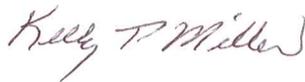
100b

One solution to the problem would be to just widen the Red River through Fargo. There are two areas in the region that are natural water holding areas. The first is about 60 miles southwest of Fargo on the Wild Rice River. The second is about 40 miles south of Fargo on the Bois de Sioux River. The land is not prime farmland and perfectly suited as holding ponds. There are also possibilities for use as a recreation area. There are also areas south and west of Fargo where you could pay landowners to hold the water.

100c

I think the environmental impact of the current plan is leading us to disaster, both for the economy of Fargo and the surrounding area. This is an Ag based economy. The money spent on Oxbow was a crime. I think with time, Fargo will see that the cost was not worth it. The Diversion Authority is using long term money for a short term solution. We need to consider all implications for an agreeable long term solution.

Kelly T Miller  
7345 177<sup>th</sup> Ave SE  
Wahpeton ND 58075



Phone: 701-642-8286

Email: ktmiller@ktmfarm.com

# Commenter 101

**From:** marcus.larson@ezhostmail.com  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Comment to SEIS  
**Date:** Thursday, September 27, 2018 2:25:35 AM  
**Attachments:** [2013-04-04 Blocked Migration Fish Ladders On U.S. Dams Are Not Effective - Yale E360.pdf](#)  
[2013-03-19 Do Not Pass Go The Failed Promise of Fish Ladders International Rivers.pdf](#)  
[2013-01-05 Fish Ladders and Elevators Not Working Science AAAS.pdf](#)  
[Page11 from fm\\_seis\\_app-b.pdf](#)

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Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Jill Townley,

I am writing to express several concerns within the Supplemental EIS.

There is little question that Fargo needs to complete internal flood protection efforts for the existing city footprint, however, the proposal (aka) Plan B is essentially Plan A with various alignment changes and additional impacts that threaten the socio-economic fabric of the region. 101a

The proposed project relies on displacement of water from an existing natural flood plain onto areas that would not be inundated to the proposed extent(s) under existing conditions to provide development area to Fargo, ND. 101b

The proposed project is a development plan disguised as flood control.

The proposed alignment calls for construction of an earthen dam and tie back levee structure 5 miles further south in Minnesota, which proposes inundation in areas that would not flood under actual existing conditions.

The new Minnesota alignment also proposes a non-gated dam across the western reach of Wolverton Creek that will present significant maintenance concerns due to its proximity to 180th Ave S, border Clay and Wilkin counties. Construction of the proposed dam across Wolverton Creek would stage water and inundate areas not previously prone to flooding under actual existing conditions. 101c

The fish passage presented in the Executive Summary and Appendix G is theoretical. There are several scholarly articles citing that fish ladders are a failed promise. I have attached 3 articles for your review. 101d

Page 11 Appendix B (see attachment): Table B- 4. Elevations by Flood Event for Existing Conditions, Plan B indicates an increase of water depth by 3.6 feet at the Red River at Cass/Richland County Line. This is higher than the peak crest at this location during the 2009 flood event - affecting thousands of acres in Minnesota and North Dakota that have not been mitigated or been comprehensively incorporated into the cost/benefit ratio and/or overall project cost estimate. 101e

There does not appear to be a clear and concise operational plan for Plan B. 101f

The alignment changes proposed in Plan B will accelerate river-ine degradation and potentially destabilize adjacent areas with unintended consequences. 101g

The breach assessment appears to suggest the shortest Time Difference Between Dam Breach and Fargo Levee Over-topping to be 10 hours. However, the breach assessment does not appear to clarify whether the newly protected area is fully developed or undeveloped. 101h

The breach assessment does not appear to reflect that lower developed areas would become impassable during an emergency evacuation in the event a dam breach occurs water on the developed side of Fargo Levees which refutes the assertion that: “Over-topping of the Fargo levee system does not occur until many hours after a dam breach, providing substantial warning time for evacuation notification. “

Currently, the FMDA (Fargo Moorhead Diversion Authority) has not secured a domestic P3 funding source. The non-federal sponsor has not presented a viable plan to self-fund or self-bond the project. The proposed project in financially unsound. 101i

Many structures defined as impacted in Plan B are currently impacted under existing condition. It is disingenuous to present existing impacts as new impacts in an effort to obtain a higher impact count then conversely as a benefit. 101j

The proposed FMDA project is inconsistent with several state laws and local ordinances and should not be permitted. 101k

There is little confidence that the FMDA will act consistently with mitigation and the FMDA has not provided a comprehensive solution to fairly mitigate farming operations and related farm businesses. 101l

The proposed FMDA project is not reasonable.  
The proposed FMDA project is not practical.  
The proposed FMDA project does not protect public safety.  
The proposed FMDA project does not promote public welfare.

Respectfully submitted,

Marcus Larson  
513 7th St  
Hickson, ND 58047

## Blocked Migration: Fish Ladders On U.S. Dams Are Not Effective

*Fishways on rivers in the U.S. Northeast are failing, with less than 3 percent of one key species making it upriver to their spawning grounds, according to a new study. The researchers' findings provide a cautionary tale for other nations now planning big dam projects.*

BY JOHN WALDMAN · APRIL 4, 2013

In most major rivers in the U.S., maintaining some semblance of the integrity of migratory fish runs past hydropower dams is dependent upon the fish using ladders and elevators as freely as do two-legged humans. But is this asking too much?

Six colleagues and I undertook a study of the success – or, rather, failure – of Atlantic salmon, American shad, river herring, and other species in migrating from the sea to their spawning grounds past a gauntlet of dams on three rivers in the northeastern U.S. – the Susquehanna, Connecticut, and Merrimack. What we found was grimmer than we expected. For one species, American shad, less than 3 percent of the fish made it past all the dams in these rivers to their historical spawning reaches.

Results for other anadromous species (those that spawn in fresh water and migrate to the ocean and back again) were nearly as bad. And the sobering aspect of these contemporary studies is that they are based on the insubstantial number of fish today as compared to earlier massive migrations of these species, which numbered in the many millions. While investigating fish passage on the Merrimack River in New Hampshire, our project's lead researcher, Jed Brown of the U.S. Fish & Wildlife Service, was struck by the long-term lack of recovery of the targeted fish populations – at some fish restoration meetings there were more people in the room than salmon in the river.

What has happened on the U.S. East Coast, as reported in our study published in the journal *Conservation Letters* in January, is of more than regional or national interest. There are important global conservation lessons, as well. Even as some large dams in the U.S. begin to be removed for environmental reasons, a hydropower boom is occurring worldwide. Thirty large dams have been announced for the Amazon River alone. Eleven major dams are planned for the lower Mekong River. The dam industry in Canada wants to dramatically expand its recent hydropower initiative.

## What's clear is that providing fish passages at a dam is not a panacea.

And dam projects are proposed, planned, or in the works for Africa's upper Nile, the Patuca in Honduras, the Teesta in India, the upper Yangtze in China, the Tigris in Turkey, the Selenge in Mongolia, and many others. Though most of these rivers lack anadromous fishes, many are home to richly diverse freshwater fish communities that make important seasonal migrations within these river systems.

For the international community, the record of fish passage on rivers in the northeastern U.S. is a cautionary tale. Hydropower has often been billed as a clean source of renewable energy, and generating electricity without polluting the air or producing greenhouse gases is commendable. But "clean" is in the eye of the beholder, and any claims to being sustainable ignore its multifarious aquatic effects, including blocking fish passage, fragmenting habitat, and undermining a river's fundamental ecological services.

What's clear is that providing fish passage facilities at a dam is not a panacea. Fishways are to be included in some of these large international projects, but not in others. Yet the options are dismal: To not include fish passage on a large dam is to ensure disruption of

critical fish migrations; but to include fish passage is to likely diminish and maybe even endanger critical fish migrations.

Brown's research began when, as a biologist for the U.S. Fish & Wildlife Service, he relocated in 2005 from the free-flowing mainstem-Delaware River to the thoroughly dammed Merrimack. Brown was struck by the small number of fish making it past the dams. Most fish passage research seeks to engineer improvements to existing technologies; Brown instead decided to launch a survey of the actual long-term results of fish passages on large, heavily dammed rivers.

## These rivers and others have multiple dams blocking access to historical spawning reaches.

What Brown and I and our coauthors found was bleak. One metric used was the percentage of fish passing the first dam that also passed just the second dam. For shad, the numbers were 16 percent on the Merrimack, 4 percent on the Connecticut, and 32 percent on the Susquehanna. But on these rivers the second dam is only the beginning of the journey – these rivers and many others have multiple dams blocking access to historical spawning reaches.

It's important to put these results in perspective because they are merely *relative* to the present paltry numbers of fish that even attempt to migrate up these rivers. For an anadromous fish population in North America, there are three *absolute* numbers that matter. One is how many ran annually before European colonization. The second is the numbers targeted for restoration in fish passage programs. And the third are the numbers that actually show up each year.

On all three rivers examined, restoration goals were in the hundreds of thousands of fish – at least one, if not two, orders of magnitude

less than historic, pristine runs. Yet run sizes obtained across three decades ranged annually from a high of about 10 percent to, more commonly, 2 percent or less of the stated goals. To put it in historical context, despite vast spending on modern technologies, contemporary shad migrations on these rivers are at least three to four orders of magnitude below the original unfettered run sizes, with similar results for salmon and river herring. Dams alone don't explain these results – overfishing, habitat destruction, and alien species contribute – but there is widespread consensus among fish biologists that dams are a primary cause.

No East Coast river has been as adulterated as the Susquehanna, once a veritable shad factory. Shad ran up the Chesapeake Bay, entered the river's mouth, and swam throughout its tributaries and mainstem through much of Pennsylvania and almost 500 miles to Cooperstown in central New York. Shad schools driving upriver on the Susquehanna were so enormous that they were visible in the distance to commercial fishermen by the waves they pushed ahead of them. One notable haul of mixed shad and river herring made in 1827 was estimated at 15 million fish; it took more than three days to offload the catch into wagons.

**With very low or high waters, fishways don't work well or shut down altogether.**

Contrast the open river of yesteryear with the occluded present. A shad fresh from the Atlantic entering the Susquehanna according to its natural rhythms encounters the almost 100-foot-tall Conowingo Dam only 10 miles from the river mouth. There it must somehow sense a tongue of water – the “attraction flow” – at the dam's base in order to allow itself to be lifted in a metal trough to the reservoir above. Next it must orient in the strangely still water and then move upriver past three more dams using fish ladders – lengthy angled chutes with baffles that break up the flow.

With these serial delays it is unlikely that the few shad that make it to the spawning reaches of the Susquehanna arrive at the optimal time in the river's seasonal ecological cycle. Worse yet, the numbers of adults successfully returning downstream past the dams to the sea are nil, sacrificing their future spawning potential. And with very low or high waters, fishways either don't work well or shut down altogether, further delaying migrations.

Electric utility companies have nearly de facto sovereignty over migratory fish on these rivers, with the installation of fishways providing legal but largely ineffectual mitigation for their operations. Exploring technological improvements is limited by costs and the inflexibility of the utilities. That industry is in control may be atoned for with feel-good shad fishing derbies or informational facilities. The Amoskeag Fishways Learning and Visitors Center on the Merrimack in New Hampshire, for example, features a giant sculpture of a leaping American shad. Sadly, though, during most recent years that is the *only* anadromous fish you will see at the center, for rarely does even a single living salmon, shad, river herring, or sea lamprey make it as far as the Amoskeag Dam.

## Rarely does even a single salmon or shad make it as far as the Amoskeag Dam.

In the U.S., the overall record of fish passage is mixed. Fish ladders often work well for river herring on smaller Atlantic rivers. Fish ladders at dams on the West Coast's giant Columbia River system allow large numbers of salmon and also non-native shad to pass, but despite this apparent success contemporary runs of salmon are likely an order of magnitude lower than historic abundances. Chum salmon runs once numbered well more than a million; today they are about three percent of that.

Is it the nature of fishway technology itself or is it less than optimal implementation that is at fault? John Hay, author of *The Run* (1959), was a keen observer of river herring on Cape Cod, where fish ladders work relatively well. He wrote nonetheless, “There is no such thing, I have been told by men who were in the business of making them, as a good or even adequate fishway. There is always an imbalance between the purposes they serve and the results.”

My friends in the fish passage world disagree and say the fault is the difficulty in being able to fine-tune and test new ideas at real-world fishways. Fish passage researchers are earnest, hard workers who need to be optimistic; they tend to believe they are just a tweak or an insight away from a breakthrough. Perhaps they are. Clearly, with the existence of hydropower dams a continuing reality, any enhancements they can wring from fishways will be welcome.

One simple and promising idea being tested in Europe is to line the bottom of fish ladders with rubble to make the ladders seem less artificial. And in some suitable locations in the U.S. and elsewhere, “naturalized” fishways are being built that more closely resemble actual river reaches. In Germany, researchers are building fishways of different designs and then testing them, before applying the new knowledge to the next set of fishways. It’s not clear how well these new approaches will work, but it’s imperative to find out.

In the end, the challenges are daunting, and for a simple reason: It’s asking a lot for a finned creature to take an elevator or to climb a ladder.



John Waldman, a professor of biology at Queens College, New York, works on the ecology and evolution of anadromous fishes, historical ecology, and urban waterways. Before joining Queens College, he worked for 20 years at the Hudson River Foundation for Science and Environmental Research. Waldman's books include *Running Silver: Restoring Atlantic Rivers and Their Great Fish Migrations*, *Heartbeats in the Muck: A Dramatic Look at the History, Sea Life, and Environment of New York Harbor* and *The Dance of the Flying Gurnards: America's Coastal Curiosities and Beachside Wonders*. **MORE** →



# Do Not Pass Go: The Failed Promise of Fish Ladders

**By:** Lori Pottinger

**Date:** Tuesday, March 19, 2013

► [From March 2013 World Rivers Review](#)  
(/node/7880)

*New research reveals that fish-passage facilities at US Atlantic Coast mainstem dams don't work at maintaining healthy runs of migrat species. We asked the lead scientist, **Jed Brown**, about his team's findings.*

**WRR:** *Your research found that the actual numbers of fish who make it to their spawning grounds above dams with fish passages is a fraction of targeted goals of these facilities. What has been the impact on fisheries for the rivers you studied?*

**JB:** In the river systems we examined, very few of the fish species that migrate from the sea to rivers to spawn (anadromous fish species) that are targeted for restoration actually [make it to their historical spawning grounds](#) (/node/2196). For example, for American shad – an important species for commercial and recreational fisheries that sustained generations on the East coast of the US – on average about only 3% percent of the fish that pass the first fishway make it past the last dam with a fishway in these rivers. Another example is that species such as Atlantic sturgeon [cannot pass fish ladders](#) (/node/2193)—so for certain species, fishways do not work at all. Thus, in these systems, effective up and down stream passage is not being provided for anadromous fish. The result is that these species are getting listed as endangered or threatened one by one.

[Limiting the ability of fish to reach their spawning grounds](#) (/node/2249), (and also to return back downriver) means that many fish won't be able to spawn in high quality habitat, which can result in lower numbers of juvenile fish. Loss of entire populations resulted from the original large dams constructed in the 1800s, and since then there has only been very limited success in maintaining the few runs that have persisted. Atlantic salmon on the Connecticut River are a clear example, where a few remained in 1808 and none by 1820. Since the late 1960s a hatchery program has attempted to restore them to the Connecticut, but the program was halted this past year. The lost species represent links between freshwater and marine systems, and have historically been economically important.

The rivers in our analysis exemplify the coast-wide problem of declining anadromous fish populations. Unfortunately, goals set by federal agencies for the number of fish passing each dam are not being approached. There does not appear to be much consequence for them where a private industry is responsible for harming a public resource. We wish there was better oversight, enforcement and expectations on hydropower companies. There may be some changes here as federal agencies such as the US Fish and Wildlife Service move toward policy on fish passages based on actual fish passage results rather than fishway design. In other words, dam owners may be required to demonstrate that they passed X number of fish, rather than just complying with a requirement that they build a fishway.

**WRR:** *You looked at mainstem dams on three major river systems in the US Northeast. Has other research elsewhere found similar results? How widespread is the problem in your estimation?*

**JB:** In the US, the mainstem of the Delaware River is undammed, but some of the major tributaries which are dammed also have problems passing shad through fishways. Research out of Brazil has found that there are a lot of problems with fish ladders on large dammed rivers in Brazil. They have been called ecological traps by Brazilian researchers, because fish ladders transport fish in one direction in the river and this has led to local declines in other areas of these rivers. In Europe as well, low passage efficiency through fishways is common. In Sweden



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height/public/images/resource/  
itok=PdgRBshO)

*A complex fish ladder is intended to allow anadromous fish to pass upstream on the Columbia River in the Northwest. The fish that do not pass the ladder face deadly conditions in the reservoir.*  
Photo by USACE

now considered a critical issue in the survival of native Atlantic salmon.

**WRR:** *Your study states: “It may be time to admit failure of fish passage and hatchery-based restoration programs and acknowledge that ecologically and economically significant diadromous species restoration is not possible without dam removals.” Can you elaborate on*

**JB:** Dams cause dramatic change to rivers and fisheries. At best they slow down migrations to spawning grounds, even where fishway some degree. They create still water behind dams that confuses migrating fish and these standing waters increase water temperatures may be unsuitable for juvenile fish. They also prohibit or reduce movements of other fish and invertebrates, altering a river’s normal ecology. Ecologists call it a loss of “connectivity.” In the case of migratory fishes, dams have resulted in a loss of connectivity between inland and chains of ecological production. It appears that adding fishways and hatchery programs is not sufficient to restore anadromous fish populations to pre-dam levels. Because a wide variety of other factors are impacting river fisheries –including climate change, overfishing, and habitat degradation – we cannot guarantee that dam removal will fully restore these migrating fish populations. That said, we do not believe that meaningful anadromous fish restoration will occur with the dams in place.

Our study focused on the large mainstem dams. In small coastal rivers and tributaries, in cases where dam owners or communities are willing to remove a dam, there is some evidence that fish ladders may benefit alewife (a species of river herring). However, even past success with a species does not guarantee the effectiveness of a new fishway project.

**WRR:** *What are key lessons learned from your research that would be relevant for other dam-building nations with significant migrating populations?*

**JB:** Don’t be lulled into thinking you can build dams and still sustain anywhere near normal-sized runs of migratory fish. Don’t assume remediate the impact of the dam with fish ladders and hatcheries to produce fish – it may not work, and even if some fish pass the dam numbers may be far below targeted levels (and targeted levels often are well below original estimated numbers). Once you go down the dam building, it may not be possible to go back to pre-dam fish population levels.

**WRR:** *Why should people care about this issue? Why are migrating fish something we should be worried about?*

**JB:** Migrating fish are an integral part of the natural ecology and the culture of many of the world’s rivers. In the Northeastern US, river “run silver” with the bodies of these fish, providing both abundant food and a remarkable natural spectacle. A lot of public money has gone into these restoration programs for staff, hatcheries, etc., with poor results. Smaller anadromous fish such as river herring are a prey source important recreational fish species like striped bass and commercial species like cod.

We hope that one day these rivers will once again “run silver” with fish and that humans will once again make a cultural connection with the resource. However, this may not happen without dam removal.

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**Helping hand.** Maryland's Conowingo Dam has a fish lift. EDWARD J. CLEAR/CREATIVE COMMONS

## Fish Ladders and Elevators Not Working

By [Jill U Adams](#) | Jan. 25, 2013 , 3:30 PM

River dams control water flow and help generate electricity, but they're a daunting barrier to fish swimming upstream to spawn. Various structures called fish passages are designed to get fish past dams, and they dot rivers across the Northeast United States. But a new analysis suggests they aren't working like they're supposed to, and fish aren't making it to where they need to go.

To     front the looming wall of a dam and reach upstream waters, dams are dotted with stairlike structures called ladders (fish leap up a series of pools) and elevatorlike contraptions called lifts (fish are channeled into a hopper that gets raised). Such fish passages are a key component of restoration efforts for migratory fish such as American shad and Atlantic salmon, whose populations are at historic lows—less than 10% of previous generations. State laws have required fish passages for hundreds of years—some date back to the 1700s—and the Federal Energy Regulatory Commission has mandated them for relicensing hydropower projects since the 1960s.

Data on fish passages is collected by power companies and is publicly available, but until now no one had pulled the information together. So Jed Brown, a fish ecologist who was working at the U.S. Fish and Wildlife Service in Nashua, New Hampshire, and his colleagues compiled fish passage data from multiple "mainstem" dams—those closest to the mouth—on three major rivers: the Merrimack, which runs from New Hampshire and empties into the Atlantic Ocean north of Boston; the Connecticut, which runs from New Hampshire south to the Long Island Sound; and the Susquehanna, which runs from upstate New York to the Chesapeake Bay.

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Scientists and engineers set targets for the transport capacity of fish passages. And yet, the study lays bare that those targets are being missed by orders of magnitude. For instance, the first Merrimack River dam aims to let 300,000 river herring pass through; the mean number for the years 2008 to

2013. The goal at the first Connecticut River dam is 300,000 to 500,000 fish. Here, the mean for those same years was 86. And for the Susquehanna, the goal is 5 million river herring spawning above the fourth dam, which passed an average of seven herring from 2008 to 2011. This means that very few fish are reaching quality breeding grounds, which has likely contributed to the decimation in river herring populations.

"It's an old problem and it hasn't gotten solved," Brown says of getting fish around dams. (Brown now directs the Integrated Seawater Energy and Agriculture System Project in Abu Dhabi.)

It's not like fish ladders never work. American shad climb ladders in Western U.S. rivers with apparent ease, says co-author Karin Limburg, a shad expert at the State University of New York's College of Environmental Science and Forestry in Syracuse. But for reasons no one completely understands, they're not helping fish at these mainstem dams in the East. Many fish have trouble finding the passages in these large waterways, Limburg says.

So what's the solution? The authors, who publish their work online this month in *Conservation Letters*, suggest it's time to admit failure that **the fish passages they studied aren't working**. They make a case for dam removal in these areas and point to Maine's experience removing two dams from the Penobscot River. In that case, the power company was allowed to increase generating power at other, less ecologically important sites. Removing mainstem dams can allow free access to lower tributaries and their spawning habitats, while dams farther upstream can keep producing electricity (while they limit access to upper tributaries and ancestral habitat).

Brown knows that removing dams will be an uphill battle, so to speak. "I hear this a lot: 'These dams will never come out,'" he says. "Maybe our paper will change that."

James McCleave, professor emeritus at the University of Maine, Orono, agrees that it's time to consider different options. Migratory fish, he notes, readily

3    **in** ened habitat when dams are removed. "So many people are focused on making better fishways," McCleave says. "I think Brown is saying, 'Let's step back and take a different tack.' "

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**Jill U Adams**

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During drawdown, more water would need to be directed through the WRRS under Alternative C. Prolonged high flows may destabilize banks in the segment of the Wild Rice River downstream of the WRRS and increase sedimentation and erosion.

As with Plan B, Alternative C would need to be designed to hold the Probable Maximum Flood (PMF). Alternative C's North-South section of the Dam/Southern Embankment to the west of the Red River would increase the tailwater on the RRS. This would result in higher peak water surface elevations (WSEs) in the inundation area during Alternative C operation during the PMF event. It might also require additional gates be added to the RRS and/or WRRS. If additional gates need to be added to account for the higher peak WSEs, Alternative C would have greater direct footprint impacts from one or two additional 50-foot gates, which in turn would cause greater difficulties for fish passage and loss of aquatic habitat. These impacts would be realized at all times--even when the Project was not operating.

Alternative C would have a greater environmental impact on the Wild Rice watershed than Plan B.

### *Footprint*

Initially, DNR had thought that the inundation area for Alternative C would be shifted downstream far enough that it would eliminate the need for the Eastern Tieback and the Wolverton Creek box culverts. Removal of those two components would greatly reduce impacts to Wolverton Creek aquatic habitat and stream stability. However, 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, so the benefit would not be realized. Table B- 4, below, summarizes the 100-year, 500-year and PMF flood event modeling performed for Alternative C.

Table B- 4. Elevations by Flood Event for Existing Conditions, Plan B and Alternative C

Phase 9 HEC-RAS Model Location	100-year Existing	100-year Plan B	100-year Alt. C	500-year Existing	500-year Plan B	500-year Alt. C	PMF Existing	PMF Plan B	PMF Alt. C
Red River Upstream from Dam (XS 2531315)	914.1	921.0	917.9	915.7	922.7	919.8	917.8	923.7	923.5
Red River at Cass/Richland County Line (XS 2578502)	918.3	921.9	919.8	922.3	923.8	922.7	924.9	926.3	926.2

## Commenter 102

**From:** Beth McConnon  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead SEIS  
**Date:** Thursday, September 27, 2018 10:01:57 AM

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My name is Beth McConnon. I farm organically south of Moorhead, Minnesota with my father. Our sixth-generation farmland would be impacted by the proposed Plan B project. Our land has never flooded.

I would like to highlight a few issues that I noted after reviewing the Draft SEIS:

1. The NW 1/4 of the NE 1/4 Section 17 and the NE 1/4 of the NW 1/4 Section 17 Holy Cross Township in Clay County is owned by my father, Mark Askegaard, and is currently in transition to organic. It will be certified organic in the summer of 2019. This is not indicated in the current mapping, and should be considered an additional 70 acres of organic farmland that would be in the water staging area, as presented by Plan B. 102a
2. It seems as though there are inconsistencies in the maps regarding land that "currently floods." The maps indicate that land South and East of Comstock, MN and into Wilkin county lies in the 100 year flood plain and currently floods. This is simply not true. I am interested to know where the information for these maps was derived from and if the MN DNR has looked into any of these maps in further detail. 102b
3. The mitigation proposed for organic farms is not sufficient. Plan B proposes "replacing" certified organic land with "new" land. Where is the land going to be? What is the quality of the land going to be? Our land has been certified organic for 21 years; how can you compare this "new" land to the land that we have been improving for nearly a quarter century? How will crop insurance be self-funded? Federal crop insurance does not apply to land that is flooded behind a man-made structure. These are only a few of the concerns that I have regarding the proposed mitigation. 102c  
102d

Thank you for your work on this project. I appreciate the opportunity to comment on the Draft SEIS.

-Beth McConnon

Commenter 104



September 27, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Sent via email: [environmentalrev.dnr@state.mn.us](mailto:environmentalrev.dnr@state.mn.us)

RE: FARGO-MOORHEAD SEIS

Dear Ms. Townley,

On behalf of Minnesota Farm Bureau Federation (MFBF), I am submitting these comments in connection with the Draft Supplemental Environmental Impact Statement (EIS) for the Fargo-Moorhead Flood Risk Reduction Project - Plan B. MFBF appreciates the progress that has been made from the 2016 project, but still has concerns with the 2018 plan.

As the Minnesota Department of Natural Resources (DNR) continues to work on the Fargo-Moorhead Flood Risk Management Project, please consider the following points that are of importance to rural Minnesota:

- MFBF supports flood control in the Red River Valley being accomplished through basin-wide retention projects which provide local benefits, dikes, and levees through urban areas and limiting development in natural flood plains.
- MFBF supports preserving and protecting rural cemeteries when dams, levees, and water diversions are constructed.
- MFBF supports all water retention efforts and decisions being controlled by local watershed districts.

In addition, **MFBF opposes the high hazard dam** that is part of the Fargo-Moorhead project. 104a

**MFBF is also concerned with the impacts this project will have on agriculture production in the Red River Valley.** In Appendix F, the Summer Operation Supplemental Crop Loss Program is discussed, and MFBF will 104b

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continue to monitor developments on this program and others that impact production agriculture and the participation in risk management programs.

Thank you for the opportunity to provide comments on the EIS.

Sincerely,

A handwritten signature in black ink that reads "Kevin Paap". The signature is written in a cursive style with a large, prominent initial 'K'.

Kevin Paap  
President



Thursday September 27<sup>th</sup>, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Box 25  
St. Paul, MN 55155-4025

Re: Fargo-Moorhead SEIS

Ms. Townley:

On behalf of the membership of the Minnesota Farmers Union, I appreciate the opportunity to offer some brief comments on the draft supplemental environmental impact statement (Draft SEIS) describing the potential environmental and social effects of the revised Fargo-Moorhead flood diversion project, known as Plan B.

In general, MFU has grave concerns about this draft and the impacts it will have on Minnesota farmers, in particular area organic farmers. In no particular order, these are concerns MFU has heard from farmers regarding the draft SEIS.

MFU has heard from area farmers that the proposed project (Plan B) is much like the initial permit application that the Diversion Authority applied for earlier (Plan A). (The state of MN needs to grant a permit for the project since there is a high hazard dam involved). Farmers we talked to feel that North Dakota receives the majority of benefits from this proposed project allowing them to develop vast amounts of undeveloped floodplain and forcing the flood plain water storage upstream onto areas that previously have not flooded, much of that still being in Minnesota.

105a

Farmers also told us that the areas that this proposal would plan to store water on in Minnesota are currently above the FEMA 500-year flood plain and do not currently flood and are prime agricultural land. If the Diversion Authority, in conjunction with the Army Corps of Engineers were successful in raising 100-year flood plain throughout the valley to claim that the impacts from this plan will be minimal and to stress the need for the diversion. If this is allowed to happen, many Red River Valley farms and farmland would then need to buy flood insurance even though they have never flooded and are above the current FEMA 500-year flood plain.

105b

105b

MFU also has concerns that claims that water storage on agricultural land will only have minor impacts through the proposed SEIS and that it will not disrupt agriculture because the water will be stored for only short periods of time. However, farmer we talked to know that they often have short periods of time to get our crops planted on a timely basis and this window of opportunity could come and pass while water is stored on their land and are waiting for it to dry or clean up the debris from having water stored on their farmland. Federal crop insurance may not be available to farmers in the water staging area since it is being stored behind a man-made structure. MFU has also heard that the Diversion Authority claims that they will self-insure for such losses, but farmers have doubts that they will financially be able to do so. Mitigation is insufficient. The water staging area will become a dead zone where nobody will live, and development will stop, placing financial burdens on our townships and counties. Roads will be in disrepair from flood waters and there is not any plan to compensate for repairs.

105c

105c

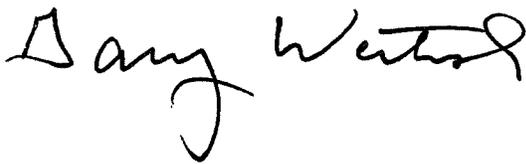
105d

There are currently 4 organic farms that will be impacted by this project. Organic farmland in the staging area will be placed in jeopardy. It would be difficult for farmers to maintain organic certification with farmland in a staging area when it will be uncertain if organic integrity can be maintained. The mitigation plan in the SEIS proposal for organic farms is that the Diversion Authority will buy land somewhere out of the staging area to replace the organic acreage in the staging area and transfer it to the organic farmer via a 1031 exchange. The organic farmers we talked to have many questions about this and with a 3-year certification process seems difficult and unlikely and will risk generation farms from having to make difficult decisions.

105e

In closing, MFU appreciates work that has been done on the draft SEIS and on the diversion but feels at this time that the plan should be reconsidered, and further alternatives should be sought. In talking to farmers in our organization we see no support for this proposal moving forward in this form. Please feel free to contact me if I can be of further assistance.

Regards,



Gary Wertish, President



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September 27, 2018

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

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

Dear Jill Townley:

Thank you for the opportunity to review and comment on the Draft Supplemental Environmental Impact Statement (SEIS) for the Fargo-Moorhead Flood Risk Management Project (Project). The Project consists of a flood control project to divert floodwaters around the cities of Fargo, North Dakota and Moorhead, Minnesota.

The Minnesota Department of Natural Resources (DNR) prepared a state Environmental Impact Statement (EIS) for the Project. The EIS process concluded in June 2016 with DNR's EIS adequacy determination. Following discussions and coordination with the DNR and the U.S. Army Corps of Engineers (USACE), the Project proposer, the Flood Diversion Board of Authority has developed a revised version of the Project, referred to as Plan B, which is outlined in the Draft SEIS.

The Minnesota Pollution Control Agency (MPCA) has reviewed the Draft SEIS and offers the following comments.

**Section 3.4 Wetlands**

- The SEIS should provide additional information regarding wetland impacts in Minnesota and associated mitigation resulting from the proposed Project. The MPCA notes that the SEIS should be sure to include a description of both direct impacts and also potential *indirect* wetland impacts (such as those associated with intermittent inundation and sedimentation that may affect wetland type or quality) and propose sufficient mitigation for such impacts. The Draft SEIS does describe an acreage of indirect wetland impacts (47.1 acres in Minnesota) but later notes "The Project proposers have not identified any mitigation for indirect wetland impacts." Minn. R. 7050.0186 requires compensatory mitigation for unavoidable impacts on the designated uses of a wetland – sufficient to ensure replacement of the *diminished* or lost designated uses of the wetland that was physically altered. Wetlands that change type or degrade (regardless of whether the wetland is permanently "lost") may require compensatory mitigation. 106a
- Please note that compensatory mitigation must be of the same type and in the same watershed as the impacted wetlands, to the extent prudent and feasible. The MPCA expects that impacts to Minnesota waters be mitigated within the state. The MPCA notes that wetlands exempted from regulatory or mitigation requirements under the Wetlands Conservation Act and/or those not under federal jurisdiction may still require mitigation under state water quality standard requirements. 106c

- The MPCA recommends that wetland labeling in the SEIS be consistent throughout the document to the extent possible. For example, on page 76, tables 3-4 and 3-5 use the Eggers and Reed (USACE) classifications for estimated direct wetland impacts, whereas page 77, table 3-6 uses the Cowardin (NWI) classifications for wetland inundation impacts. 106d
- The MPCA recognizes that at this time, identification of all proposed best management practices (BMPs) to manage construction stormwater may yet be incomplete. We do, however, want to note that BMPs will be necessary both above the Ordinary High Water Level and below it (when conducting construction activities within aquatic resources) to ensure protection of water quality. Determining the likely in-water BMPs for the Project, and providing as much detail as possible regarding their use in the SEIS, will help to ensure that impacts to aquatic resources are adequately minimized. The MPCA recommends assessing and describing the use of in-water BMPs such as silt curtains, weighted turbidity curtains, upstream diversions to temporarily reduce or eliminate flow during in-water construction activities, construction during no/low flows or winter conditions, coffer and check dams, etc. 106e
- The MPCA notes that Minnesota Water Quality Standards are broadly applicable, with or without issuance of a 404 permit/401 certification, and recommends the SEIS include sufficient detail to assess the project's ability to comply with these standards, particularly in the event the USACE invokes section 404(r) of the Clean Water Act. 106f
- The MPCA again notes (similar to our June 11, 2018, comment letter) that an application for 401 must include an antidegradation assessment, in accordance with Minn. R. 7050.0285. We provided the draft antidegradation assessment form in our June 11 letter; as a reminder, the form itself is not required, but the form may be used to help ensure the requirements of Minn. R. 7050.0285 subp. 2 are addressed. For further information about the 401 Water Quality Certification process, please contact Bill Wilde at 651-757-2825 or William.wilde@state.mn.us. 106g

We appreciate the opportunity to review this Project. Please be aware that this letter does not constitute approval by the MPCA of any or all elements of the Project for the purpose of pending or future permit action(s) by the MPCA. Ultimately, it is the responsibility of the Project proposer to secure any required permits and to comply with any requisite permit conditions. If you have any questions concerning our review of this Draft SEIS, please contact me by email at [Karen.kromar@state.mn.us](mailto:Karen.kromar@state.mn.us) or by telephone at 651-757-2508.

Sincerely,



Karen Kromar  
Project Manager  
Environmental Review Unit  
Resource Management and Assistance Division

KK:bt

cc: Dan Card, MPCA, St. Paul  
Bill Wilde, MPCA, St. Paul  
Melissa Kuskie, MPCA, St. Paul  
Jim Zeigler, MPCA, Detroit Lakes

## Commenter 107

**From:** Don Nelson  
**To:** [Don Nelson](#); [MN Review, Environmental \(DNR\)](#); [Townley, Jill \(DNR\)](#)  
**Subject:** Fargo-Moorhead SEIS  
**Date:** Thursday, September 27, 2018 1:29:09 AM

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Below are my Comments regarding the Fargo-Moorhead Flood Risk Management Project - Draft SEIS – Executive Summary.

Page 4 comment regarding diverting a portion of the Maple River in Project Description It states that it would divert a portion of the Maple Rivers’ flow upstream of the F-M urban area. **The Maple River is not upstream of the F-M urban area.** 107a

Page 6 comment regarding only allowing 37 feet through town  
There is absolutely no reason to hold back water in a proposed staging area so that only 37 feet runs through town. A 37 foot river stage is fairly insignificant to Fargo/Moorhead by todays standard. With the in-town clay dikes at a height of 44 and the permanent flood walls at a height of 45, only having 37 feet go through town is ridiculous. There is no reason to have 8 feet of freeboard. Sure there are some gaps in the dike through town because a few people didn't take the buyout but that doesn't mean that you flood everyone south of town that is on high ground above the 100 year floodplain. **Running anything less than 41 through town should not even be a consideration.** In 2009 40.82 ran through town using temporary measures and now most of that has all become permanent diking so wouldn’t be an issue at all. 107b

Page 6 comment regarding the 100 year level  
It states 100-year flood on the Red River as being 41.4. It was stated that the 100 year level would be 41.3 as also shown in the chart on page 8.  
With the level of protection agreed to be for the 100 year to be 41.3 feet that still leaves 3 to 4 feet of freeboard with the current protection levels in Fargo/Moorhead. There is absolutely no need for a diversion for a goal of 100 year flood protection when the existing protection levels in Fargo/Moorhead can already handle that 100 year level. 41.3 is only 5.76 inches higher than the highest recorded Fargo flood in history of 40.82. **If Fargo wanted protection above and beyond that it could be accomplished by diverting only the Wild Rice on the ND side of the river. Also, by diverting only the Wild Rice it would keep all the impacts in ND and out of MN. In 2009, 50% of the flow through town was coming from the Wild Rice so it is a major contributor. If it had to have a staging area it could all be contained in ND West of Interstate 29.** So if something ever needed to be done other than the “No Action Alternative” it would be a completely reasonable solution to divert the Wild Rice from the West side of Interstate 29 in ND. 107c

Page 6 comment regarding why permit was denied before  
It states “One of the primary reasons DNR denied the Dam Safety permit of the previously-

proposed Project was due to the inequality of benefits and impacts between North Dakota and Minnesota. 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 same exact statement applies to the new Plan B. Minnesota would receive limited flood-risk reduction benefits but yet 27% of the Impacts are in MN. Almost 100% of that 27% is newly impacted MN land that never previously had an impact. MN should certainly not have to suffer 27% of the Impacts (virtually 100% of this is newly Impacted Currently Non-Floodplain MN land) so that ND can have 83% of the Benefits with virtually all of the ND Benefits being in Current ND Floodplain Land. This is not reasonable and this same statement should be used when making a decision to deny the permit for Plan B.

107d

Page 7 comment regarding the No-Action Alternative

This is a completely reasonable alternative compared to Plan B. Running anything less than 41 feet through town should not even be a consideration. In 2009 40.82 ran through town using temporary measures and now most of that has all become permanent diking so wouldn't be an issue at all. There would be minimal "emergency measures" needed compared to what was done in 2009 now that most of that has all become permanent measures.

107e

Page 9 comment regarding the statement that 56,882 acres of existing 100-year floodplain would no longer be removed from flooding

107f

That statement is completely incorrect. 56,882 acres of existing 100-year floodplain is what would be removed from flooding.

Page 11 comment regarding the Mitigation Category 1

It states it would be Structure Acquisition and Removal. It doesn't say and nobody has ever said for many years where would the new structures be located to replace the structures that are being removed? Where is the new land that these new structures would be built on? Where would the new farmsteads be built? How many miles from their current location would these new structures be built? It is unrealistic if the thought was that the new structures would be located many miles from their current location.

107g

Page 13 comment regarding Fish

Need to address the issue of Fish Stranding in the proposed staging area as the water was to go down.

107h

Also need to address the issue of wildlife stranding and dying in the proposed staging area. The staging area would become a dead zone to wildlife.

107i

Page 14 comment regarding Three National Register-eligible farmsteads

107j

I believe you need to research that number as I'm quite certain the number is greater than

three.

Page 16 comment regarding Land Use Plans and Regulations

The Holy Cross Township (in MN) water ordinance looks to be missing from the list. This project would be in direct violation of that local ordinance. 107k

Page 20 comment regarding impacts/benefits

It states that 27% of the Impacts are in MN. Almost 100% of that 27% is newly impacted MN land that never previously had an impact. With the exception of the few draws, that land West of Hwy 75 that would be in the proposed staging area in MN has never flooded. It was all high and dry in both 1997 and 2009 floods which are the largest floods recorded. Virtually all of this land is above the 100 year floodplain. It states that 83% of the Benefits are in ND. So to state that Plan B provides a more proportional balance of impacts to benefits between MN and ND is completely false (from Page 23). MN should certainly not have to suffer 27% of the Impacts (virtually 100% of this is newly Impacted Currently Non-Floodplain MN land) so that ND can have 83% of the Benefits with virtually all of the ND Benefits being in Current ND Floodplain Land. 107I

Page 22 comment regarding No Action with Emergency Measures

The No Action Alternative impacts 159 less structures than Plan B. Because of comments stated earlier on how much permanent measures have been done since 2009 to handle a 100-year flood the No Action Alternative is the clear and reasonable choice over Plan B.

Page 23 comment regarding “Provides a more proportional balance of impacts to benefits between MN and ND”

If you are only comparing Plan B to Plan A then you could possibly say that Plan B has less impact to MN than Plan A.

But Page 20 states that 27% of the Impacts are in MN. Almost 100% of that 27% is newly impacted MN land that never previously had an impact. With the exception of the few draws, that land West of Hwy 75 that would be in the proposed staging area in MN has never flooded. It was all high and dry in both 1997 and 2009 floods which are the largest floods recorded. Virtually all of this land is above the 100 year floodplain. It states that 83% of the Benefits are in ND. So to state that Plan B provides a more proportional balance of impacts to benefits between MN and ND is completely false. MN should certainly not have to suffer 27% of the Impacts (virtually 100% of this is newly Impacted Currently Non-Floodplain MN land) so that ND can have 83% of the Benefits with virtually all of the ND Benefits being in Current ND Floodplain Land.

There is a comment in Appendix A that needs to be addressed (Comment 31):

The comment from Del Rae Williams (Moorhead Mayor) must be addressed. She states in her comment “The FM Area Diversion Project is a significant project in the Red River Basin that

protects over 235,000 people in the cities of Fargo, West Fargo, Harwood, Horace, Reiles Acres, Frontier, Prairie Rose, Briarwood, and North River, as well as reducing flood risk for residents in Barnes, Berlin, Harwood, Mapleton, Pleasant, Raymond, Reed, Stanley, Warren, and Wiser Townships. Each of these entities is important.”

There are a few interesting items in this comment. First, there are not 235,000 people in those listed areas. A simple search tells you that. Second, even if there was 235,000 people, the project certainly would not be protecting 235,000 people since that would mean that 235,000 people live in the 100-year floodplain which is completely false. It would possibly protect a fraction of those people. Third and the biggest telling part of the comment is that Del Rae Williams (Mayor of Moorhead) in her list of areas stating to need flood protection does not list one MN city or township in her list. This is because the MN side of the river does not need this Diversion with a Staging Area in MN and a High Hazard Dam. It is so sad that Fargo “leaders” have convinced Del Rae Williams to be so concerned about the Fargo side of the river and getting them to where they can develop in the current floodplain of Fargo that she is willing to destroy the southern portion of the county (Clay County, MN) that her city resides in.

The biggest and completely unacceptable issue with this **Plan B is that it removes all the water from the floodplain of ND and places that water in MN on high ground that has never flooded** and will not flood as long as a dam is not built on the Red River to hold back water. This proposed design of flooding MN land that is out of the floodplain with ND water from the ND floodplain cannot be acceptable to MN. This is completely unreasonable and devastating to MN. If the plan was allowed then all the houses and structures in the staging area would have to be torn down and we could never build on our high MN ground for eternity. This is not acceptable.

107m

ND continues to build into the natural floodplain at amazing rates. The night the DNR was in Moorhead accepting public comments, the only people you heard from that were for the project were a couple people with heavy development interests in Fargo and a realtor. You also heard these same people say that they wanted to get rid of the flood insurance issues that come with building in the current floodplain around Fargo and that is why they were for Plan B. So these people think the right thing to do is transfer the current ND Floodplain water into MN on land that is out of the 100-year floodplain and destroy this MN land where people would have to remove all their structures and never be allowed to build on their land for eternity. This would be completely wrong and unreasonable to allow this to happen.

There is **no amount of mitigation or any amount of money that could possibly offset the devastating impact of a staging area** on MN high ground that is naturally above the 100 year floodplain.

107n

In the end, this proposed project and any proposed project that proposes to have **a staging**

area in MN with a high hazard dam needs to be stopped. Flooding the high ground in MN for the benefit of draining ND Floodplain for development purposes is not acceptable to MN in any way. It would be completely unreasonable to allow this project to happen. Fargo's Plan B is basically just Plan A with a different shade of lipstick. The stress that this proposed project has brought to people for many years and continues to bring to people needs to stop so that people can move on with their life. This proposed project is completely corrupt and beyond unethical. 1070

Thanks,  
Don Nelson  
5086 130th Ave. South  
Moorhead, MN  
Home: 218-585-4550  
Cell: 701-793-0751  
Email: [donnelso@hotmail.com](mailto:donnelso@hotmail.com)

## Commenter 108

**From:** Dustin Enget  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorhead SEIS  
**Date:** Thursday, September 27, 2018 8:37:58 AM

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Michael and Margaret Nelson  
1021 100th Ave  
Moorhead, MN 56560  
Email: [mike.nelson25\\_06@yahoo.com](mailto:mike.nelson25_06@yahoo.com)  
Phone: 308-293-3948

### **OID 8527**

#### **Parcel 22-101-0405**

**Name: Michael and Margaret Nelson (previous owners: Thiseth/Anders & Carol/Trustee)**

We are concerned that the proposed Plan B Project will have adverse environmental and economic effects on our property and adjacent property owners.

#### Concern 1.

I believe the water that is backed up on our property (and other properties in the mitigation area) will cause substantial bank collapse and erosion. The sedimentary soils along the river bank are not stable when saturated. High water for any extended period will result in major bank erosion, trees collapsing into the river and property loss. This situation will obviously negatively impact property value for owners along the river in the upstream mitigation area. I have heard precious little discussion about bank stabilization and mitigating this problem. I think there should be as much concern for the Red River bank as the lake banks in lake country. 108a

#### Concern 2.

We are concerned that the Plan B project will require us to buy flood insurance. When we looked at this property for purchase we went to two separate lenders to get their opinions on the need for flood insurance. We did not want to own a property that would require us to carry flood insurance. We were assured by both lenders that the house and buildings were high enough that that flood insurance wasn't required. The Plan B project will change that situation and adversely create an economic hardship. The Plan B project will adversely affect our property value and possibly the ability to sell this house at all. 108b

#### Concern 3.

We believe that there are alternatives to the Plan B project that will protect Fargo-Moorhead. We believe representatives from the Upstream Coalition have brought forward these alternatives. We are concerned that the true cost of this project will negatively impact future generations of citizens of Fargo-Moorhead. 108c  
108d

## Commenter 109

**From:** Timothy Ness  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Cc:** [MONA@NESSTAX.COM](mailto:MONA@NESSTAX.COM)  
**Subject:** Fargo-Moorhead Flood Risk Management Project DEIS  
**Date:** Thursday, September 27, 2018 10:56:21 AM  
**Importance:** High

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To whom this may concern:

I would like to share my concerns concerning the diversion project. Many of my childhood neighbors and relatives have already voiced opposition to the plans that have been presented due to concerns about the potential destruction of natural habitat and the flooding of lands which have never had a history of flooding even in high water level years. **I would like to add my name to that opposition list.** 109a

I grew up on the homestead property of the Ness property to which David Ness refers in his letter to you. My great grandfather settled there and that land has been passed down to my generation. The homestead is bordered by the Red on 3 sides and it has always provided for a beautiful natural environment. In recent years, we have seen the emergence of more wildlife such as turkey and eagles. While the natural flow of the river has eroded some of the banks, **I could only assume that the barriers to natural water flow would increase this erosion and potentially harm wildlife and lands** 109b  
whether left for natural habitat or used for farming. It would seem that certain ditching to disperse waters on a minor scale would lead to a logical conclusion that massive dumping of waters from the FM area to staging or holding areas should be met with a the same skeptical eye.

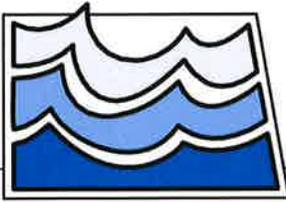
The major driving force behind these plans seems to be to avoid major economic impact in the FM area in the event of major flooding. I currently live in Sioux Falls, SD. Here, the city has developed greenways and a natural park system along the river which allows for flooding because construction has not been allowed in these areas. **When flooding occurs, these parks and greenways are not accessible and outdoor activities at these parks is suspended until the waters reside. I would suggest Fargo develop a plan that would implement this strategy** rather than dumping water on other communities to alleviate the impact of bad city planning. 109c

Though my wife and I currently reside in Sioux Falls, we are hoping to move back to the homestead. My father passed away in 2009 and my mom passed away last year. I became a land owner there in 2012 and now own the entire farming properties. I have never been officially advised of any of the meetings by any of the government bodies that have been reviewing this project. I have never been consulted concerning the specifics of the impact and plan would have specifically on my land. I have not been contacted by anyone who proposed any compensation for the potential damage that these plans may create to this lands. I have been provided with periodic updates by relatives and friends as to what is being discussed. I have reached out on a couple of occasions to our watershed board and they have indicated that worry may not be necessary. With conflicting information, it is hard to make plans for the future and I am sure that these unknowns are affecting many who live and farm in our area.

I believe that common sense seems to indicate this is a mainly Fargo issue and Fargo has the ability to deal with this without impacting the lives of others in other towns, cities and states. If nothing else, this seems to be a ND issue which MN governmental agencies should prevent due to the

negative effects that would come to MN residents and natural habitat. (would ask that you prevent this destruction and put an end to this drawn out process.) 109d

Timothy Ness  
7008 S High Cross Trail  
Sioux Falls, SD 57108



# 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>

Commenter 110

September 27, 2018

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

Dear Ms. Townley:

This is in response to your request for a review of the environmental impacts associated with the draft Supplemental Environmental Impact Statement for the Fargo-Moorhead 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. 110a

- 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. 110b

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 surface water 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. 110c

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.

110d

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.

110e

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.

Sincerely



Steve Best  
Water Resource Planner

JH:sb:pf/1570

Commenter 111

September 27,2018

Minnesota DNR

Re: Fargo Moorhead Diversion Project

My name is Leo Richard and I am a fourth generation farmer on a farm my great-grandfather established in 1890 on the SW1/4-9-49 (Pleasant Township). In the flood of 1897 the middle of this section was dry as my great-uncle moved his livestock from the SE1/4 near the coulee which was flooding. In my lifetime this section goes under water as drain 47 was dug and 170<sup>th</sup> street was raised about the time I was born. The high water mark of 1969 was surpassed in 1989 as I-29 was constructed in 1972 creating another man-made barrier for the flood water. I know first-hand the costs of clean up and delayed planting after a spring flood. Now I am supposed to accept another “man-made” barrier with a huge financial impact on my livelihood to protect years of irresponsible development around Fargo and also future development land. I was at a meeting early in this process when then Fargo City Commissioner Tim Mahoney tried to equate someone who built along Rose Coulee (a building permit that should never have been granted) taking a buyout and made whole to the displacement of a multi-generation farm. Laughable, but this is the mindset we have been dealing with in this process.

The mode of operation for the Diversion Authority and the Corp of Engineers is if we start construction they can't stop us. Examples are work in the Hickson-Oxbow area and the inlet structure. Shouldn't we know the value of a “Flowage Easement” before the first shovel of dirt is turned? 111a

I am also a member of St. Benedict's Catholic Church which was established 148 years ago and will end up between the diversion channel and industrial development putting our building plans in turmoil. 111b

It is my understanding that in the original cost/benefit analysis study bare farmland which would be on the dry side of the diversion was valued at \$35,000/acre to maximize the ratio. This gives credence to the old saying “figures lie and liars figure”. 111c

I also have a problem with Governor Burgum being a moderator of the task force. He has land in the proposed area of protection and will benefit financially. This does not meet the requirement of not having a personal vested interest to be a moderator. 111d

Leo Richard

17107 50<sup>th</sup> St. SE

Horace, ND 58047

701-238-9989



**THE CHAMBER**  
FARGO MOORHEAD WEST FARGO

Sept. 27, 2018

Jill Townley  
Minnesota Department of Natural Resources  
500 Lafayette Road Box 25  
St. Paul, MN 55155-4025

Ref: Plan B, Fargo-Moorhead Flood Diversion Project Environmental Impact Statement

Dear Ms. Townley,

Thank you to the DNR for the attention to the Fargo-Moorhead Flood Risk Management Project, and for the ability to offer feedback on it. The FMWF Chamber of Commerce supports Plan B of the Supplemental EIS for this crucial initiative.

We commend the ND/MN Governors' taskforce for analyzing several alternatives and think it greatly contributed to the success of this group. We support the DNR's Alternative Screening Analysis, which reviewed 33 potential alternatives. This third party validation of the study work done by the Army Corps and by local engineers is what is needed in order to bring our community together and move forward in a united way knowing that the Project chosen has risen about others.

The Chamber has remained highly interested in this project as it has become an economic development issue in the area. The economic certainty that the diversion brings is necessary for the economic development and infrastructure growth of the Fargo, Moorhead, West Fargo area. Our members have voiced a strong priority for Flood Protection as the Public Policy Committee expanded on in the 2018 Public Policy Guide inserting, "The chamber supports the FM Area Diversion project as the best solution to reduce the flood risk in the metropolitan area and provide protection of lives, property and economic opportunity."

Thank you again for your attention and the ability to provide feedback. We hope the results of the ND/MN Governors' taskforce prove helpful in this process and that the project is able to move forward on the current timeline with an approval of Plan B to provide adequate flood control, damage prevention and mitigation translating to stronger economic certainty.

Sincerely,

**Craig Whitney**  
President/CEO  
The Chamber

**Promoting economic growth and prosperity for business and its members through advocacy, education and engagement.**

202 First Avenue North, Moorhead MN ■ [www.fmwfchamber.com](http://www.fmwfchamber.com) ■ 218.233.1100 ■ P.O. Box 2443, Fargo ND 58108-2443

## Commenter 114

**From:** Teanna Limpy  
**To:** [MN Review, Environmental \(DNR\)](#)  
**Subject:** Fargo-Moorehead  
**Date:** Thursday, September 27, 2018 7:01:48 PM

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The Northern Cheyenne THPO office has reviewed the Draft Supplemental Environmental Impact Statement and has issued the following comment:

114a

“As mentioned in the draft SEIS for the Fargo-Moorhead Flood Risk Management Project, our office requests tribal participation in all survey work to be completed in coordination with the change indicated in Plan B. While surveys were previously conducted, it is our request to allow for consulting tribal nations to be included in future survey work, assessment, and formal evaluation of sites identified during Phase III survey work.”

Contact information is listed below.

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

## Commenter 115

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

Dear Ms. Townley:

Please accept this letter as Wilkin County's comment on the Fargo-Moorhead Diversion Authority's Supplemental Environmental Assessment.

According to the impact summary information that was provided on the Army Corps of Engineers website dated August 27, 2018, the project continues to adversely affect farms, business and homes located in the project zone.

The Diversion Authority's overall project does not comply with Wilkin County's Land Use Ordinance, Wilkin County's Comprehensive Plan or Wilkin County's Local Water Management Plan. See respectively, Attachments 1, 2 and 3. Section 20.04 of the Wilkin County Land Use Ordinance prohibits large surface water impoundments, defined as an area exceeding 640 acres devoted to the purpose of flood water storage, staging or retention. See Section 20.03, Land Use Ordinance. Persons proposing a large surface water impoundment may submit an application to amend the Land Use Ordinance. The application must include the following information:

115a

- a. A full explanation of the environmental, public health, economic and social impacts of the proposal.
- b. The amount of land in Wilkin County already devoted to large impoundments.
- c. Whether the proposed project utilizes productive land currently devoted to agriculture or other productive uses.
- d. Identification of any natural floodplain that will be eliminated by the project proponent and the 8-step findings required by EO 19888 and its implementing regulations.
- e. The impact on tax base.
- f. A description of any alternatives that would reduce the need for flood storage, staging, or impoundment.
- g. A description of mitigating measures available to the applicant and an explanation of why they have or have not been used – both with respect to mitigating the footprint of the project in Wilkin County and the consequences of said project in Wilkin County.
- h. An operational plan outlining the circumstances under which the staging, storage or impoundment will be used.
- i. The impact on public and private infrastructure and on agriculture.
- j. Why the applicant has not used local storage, if available.
- k. The size of the storage proposed.

- l. Whether the proposed project will comply with Chapter 103D (or its equivalent) such that impacted landowners and others will receive the protections envisioned by Chapter 103D.
- m. Whether the applicant has followed the mediated settlement process.
- n. Whether the applicant is locating the proposed storage on productive land and floodplain for storage.
- o. Whether the proposal provides a positive cost-benefit to Wilkin County.

Wilkin County has not received any application for an amendment to the Land Use Ordinance from the Diversion Authority or any other entity for a large surface water impoundment. Wilkin County's Comprehensive Plan contains several goals. Goal 1 is to minimize the fragmentation and development of agricultural, forest, wildlife, and open land spaces, including consideration of appropriate minimum lot sizes. The objectives of this goal are to:

- a. Cluster non-agricultural zoning districts around cities and existing transportation and utility corridors.
- b. Encourage cities to annex any new residential subdivision as part of the platting process to ensure the provision of municipal services such as sewer and water, police and fire protection, and other amenities associated with urban areas.
- c. Maintain restrictive limitations on non-farm housing and a density of one non-farm home per quarter section.
- d. Control large land uses such as water impoundments to minimize the loss of agricultural lands.

The overall diversion project would result in a large land use with much loss of agricultural land. This is inconsistent with Objective (d) of Goal 1.

115a

Wilkin County's Local Water Management plan emphasizes consistency and integration with other federal, state and local government unit plans, goals and objectives. See page 4, Attachment 3. Our plan was last updated in 2008. This update incorporated the Wilkin Soil and Water Conservation District (SWCD) Comprehensive Plan and the Bois de Sioux Watershed District Watershed Management Plan. Further updates will incorporate the Buffalo-Red River District Watershed Management Plan, the Otter Tail River Management Plan and the Lower Otter Tail River Total Maximum Daily Load Implementation Plan. During the 2008 update, Wilkin County solicited comments from adjoining counties, soil and water conservation districts and watershed districts to insure consistency with our plans. Despite requesting input, we received no comment from Clay County or the Buffalo-Red Watershed District as to the need to incorporate and plan for a large flood storage impoundment in the southwestern part of Clay County and the northwestern portion of Wilkin County. This failure of members of the Fargo-Moorhead Diversion Authority to properly plan and coordinate with Wilkin County has contributed to inconsistent plans and goals among pertinent stakeholders.

Objective C of Wilkin County's Local Water Management Plan is to investigate issues that conflict with Flood Damage Reduction. Action Item 1 of Objective C recommends that long-range planning documents restrict structural development to within established one hundred (100) year floodplains.

The proposed project will increase the base flood elevations, increasing the area of the established one hundred (100) year floodplain. In accordance with the water management plan, this would have the effect of restricting future growth in Wilkin County. Additionally, current property owners would be required to purchase flood insurance and undertake additional measures to protect their structures from flood damage during the flood event.

115b

Wilkin County thanks you for the opportunity to provide these comments. Please do not hesitate to contact the undersigned by e-mail at [bkoval@co.wilkin.mn.us](mailto:bkoval@co.wilkin.mn.us) or by telephone at (218)-643-5815.

Sincerely,

Breanna Koval  
Wilkin County Environmental Officer