



# Fargo-Moorhead Flood Risk Management Project

## Dam Safety & Work in Public Waters Permit Application Decision

### FREQUENT ASKED QUESTIONS

#### What was the DNR's decision on the Dam Safety and Work in Public Waters Permit application?

The DNR denied the Diversion Authority's Dam Safety and Work in Public Waters Permit.

#### Why did the DNR deny the permit?

- We carefully evaluated the Permit application against Minnesota Statute and Rule.
- The permit was denied for three primary reasons:
  - Alternatives: The DNR concluded that the proposed Project does not meet the requirement to be reasonable, practical, protect public safety and promote public welfare (M.S. 103G.315).
  - Plan Consistency: The Project is not consistent with some state and local land use and water management plans in the project area (M.R. 6115.01150; M.S. 103G.0245).
  - Mitigation: Although the permit applicant developed a number of proposals to meet DNR concerns, there are mitigation, monitoring and adaptive management needs that have not been sufficiently addressed (M.S. 103G.245).
- Detailed rationale for the decision can be found in the Findings of Fact document. The document is available online at <http://www.dnr.state.mn.us/waters/fm-flood-risk.html>

#### Is sandbagging the only other solution?

- Absolutely not. DNR is not advocating, recommending or advising that communities continue to rely on emergency measures, such as sandbagging. We recognize that sandbagging and other emergency measures take a toll on communities.
- Although emergency measures have proven successful in past flood years, and the metropolitan area has weeks to prepare from the non-flash-floods, the DNR agrees that sandbagging and other emergency measures are not permanent protection.
- The DNR understands and supports the need for enhanced flood protection in portions of the Fargo-Moorhead area. However, the Diversion Project as proposed does not meet the standards established in Minnesota law and thus is not an acceptable means of providing that enhanced protection.

## **What would need to be done in order for the permit to be approved?**

- The applicant would need to address the issues identified in the Findings of Fact. The Diversion Authority would need to demonstrate that the proposed Project can meet the requirements of Minnesota law and is consistent with local, state, and federal land use and water management plans.

## **Are there other options?**

- DNR is fully prepared to help identify a "Plan B" that would provide 100-year flood protection to a larger portion of the developed areas, while minimizing and mitigating upstream impacts, limiting disruption of undeveloped floodplain, and ensuring consistency with applicable federal, state, and local plans.
- We cannot have a genuine search for a "Plan B" if the Diversion Authority and Army Corps are simultaneously initiating construction on their current proposal.
- Any effort to identify a "Plan B" needs to effectively engage all affected communities.

## **Why did the DNR select "No Action with Emergency Measures" as the minimal impact solution?**

DNR can only consider the Project and the alternatives included in the permit application. The Diversion Authority's permit application included three alternatives: the proposed Project, the "No Action", and the "No Action with Emergency Measures".

In considering the permit application the DNR had two options; 1) permit the Project, or 2) deny the Project. The decision to deny the Project resulted in the selection of the "No Action with Emergency Measures".

## **Can the decision be appealed?**

- Yes. There are 2 types of appeals.
  - The Permit Applicant and other limited governmental units have 30 days from the permit decision to request a contested case hearing.
    - If their administrative appeal through the contested case process is unsuccessful, they can then appeal to the Minnesota Court of Appeals.
  - Individuals and entities without legal standing to demand a contested case hearing can appeal directly to the Court of Appeals.

## **Why did the DNR say the Flood Diversion Project EIS was adequate and still deny the permit?**

The EIS is not a decision document. The EIS Adequacy Decision did not find the proposed Project as adequate. It determined that the EIS process was adequate.