

Excerpts from: MNDNR Dam Safety and Work in Public Waters Permit Application 2016-0386;
Findings of Fact (October 3, 2016)

(emphasis added)

178. The Project construction area would be within the jurisdiction of Clay County, MN and subject to the requirements of the Clay County Development Code. The Project's proposed construction site is within the County's Shoreland and Agricultural Zone. See Clay County Zoning Map. The Clay County Shoreland Ordinance provides: "Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties." See Clay County Development Code § 8-5B-12. **The proposed Project is inconsistent with these requirements** because the construction of the dam would change the topography and adversely affect numerous properties upstream of the dam.

179. Minnesota Rules 6115.0190 and 6115.0191 (2015) describe the standards and criteria used to evaluate proposals to fill into public waters. In order for a permit to be issued, the filling must be consistent with applicable floodplain and shoreland standards and ordinances for the waters involved. The Clay County Development Code would govern the activities in the shoreland.

180. The Clay County Comprehensive Local Water Plan addresses flooding by focusing on the flood damage reduction process, striving for county wide flood damage reduction. The proposed Project would flood lands in Clay County that were previously outside of the floodplain. Therefore, **the proposed Project is inconsistent with the relevant portions of the Clay County Comprehensive Local Water Plan.**

181. Between the years 2020 and 2040, Fargo's projected growth is expected to require just under 11 square miles. Over 60% of the City's growth by the year 2040 is expected to be within existing city limits and just over 30% (approximately 4 square miles) is estimated to require the unincorporated extra-territorial boundaries. Fargo Growth Plan, 2007. Protecting 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.

182. The BRRWD's Watershed Management plan and the Clay County and Wilkin County Comprehensive Local Water Plans all focus on aquatic habitat improvement. Abandonment and filling of the natural channel of the Red River **appears inconsistent with the natural resource enhancement goals** identified in the plans.

183. Wilkin County's floodplain zoning ordinance applies to all lands within a floodplain, floodway, or flood fringe district on Wilkin County's Zoning Map. Wilkin County Zoning Ordinance, § 22.02.1. The majority of the property proposed to be in the inundation area

during a 100- year or more flood event are not currently within a zoned floodway district, flood fringe district or general floodplain district.

184. Construction and operation of the proposed Project would increase the floodway, flood fringe and floodplain in Wilkin County creating a number of non-conforming properties.

185. The proposed Project is inconsistent with Wilkin County's current Zoning Ordinance and Land Use Plans.

186. Section 20.2.7 of Wilkin County's zoning ordinance expressly provides that it does not "allow, provide for, nor contemplate the use of Wilkin County lands for staging and storage behind a Red River Dam." Section 20.04 of Wilkin County's zoning ordinance expressly prohibits "large surface water impoundments in Wilkin County." **The proposed Project is inconsistent with this zoning ordinance.**

187. Section 5 of the BRRWD Rules provides: "Surface 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." http://www.brrwd.org/pdf/BRRWD_Rules.pdf (last visited September 16, 2016).

188. Portions of the BRRWD that have not previously experienced flooding from the Red River are within the proposed Project inundation area. Should the Project be constructed and operated, these lands would be flooded, which is inconsistent with Section 5 of the BRRWD Rules. Thus, **the Project, if permitted, constructed and operated, would violate the BRRWD Rules.**

189. Comstock, MN is not currently within the Red River Floodplain. Therefore, Comstock has never adopted ordinances to address flooding events from the Red River. Structures within Comstock, including its wastewater treatment plant, were not designed to sustain flooding events such as what would occur if the Project were built. Comstock contends that, even if a ring dike were constructed, its wastewater treatment plant would be compromised.

190. The Permit Applicant's Mitigation Plan proposes construction of a ring dike around Comstock, MN. As outlined in ¶ xxx, the ring dike construction and the newly created floodplain would limit future development within Comstock and **is inconsistent with its development plan.**

191. None of the entities comprising Permit Applicant is exempted by Minnesota law from local zoning and planning requirements. Thus the Project Applicant must obtain any necessary conditional use permit or variance for the Project required by the local zoning ordinances or applicable rules for Pleasant and Holy Cross Township, the BRRWD, the City of Comstock, and Clay County. To assure that the any permit decision is in compliance with applicable local controls, the DNR requires that the Permit Applicant obtains said approvals as a condition of

any state permit. To date, the Permit Applicant has failed to obtain the necessary local government approvals.

197. For the reasons set forth in ¶¶ 154—196 **the DNR concludes that the proposed Project is inconsistent with applicable federal, state, and local requirements** as required by Minn. Stat. § 103G.245, subd. 6 (2014) and Minn. R. 6115.0190, subp. 5H-I, 6115.0200, subp. 5 I-J, and 6115.0210, subp. 5E, Minn. R. 6115.250, subp. 2 (2015).

Sources

Minn. Stat. § 103G.245, subd. 6 (2014): Conformance with water and related land resource management plans.

A public-waters-work permit may not be issued under this section if the project does not conform to state, regional, and local water and related land resources management plans.

Minn. R. 6115.0190, subp. 5H-I, 6115.0200, subp. 5 I-J, and 6115.0210, subp. 5E: a project must meet all of the following requirements...

H. the proposed filling is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved; and

I. the proposed filling is consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.

*Minn. R. 6115.0250, subp. 2 (2015): **Coordination with other agencies.***

Nothing in these standards is intended to supersede or rescind the laws, rules, regulations, standards, and criteria of other federal, state, regional, or local governmental subdivisions with the authority to regulate work in the beds or on the shorelands of public waters. The issuance of a permit shall not confer upon an applicant the approval of any other unit of government for the proposed project. The department shall coordinate the review with other units of government having jurisdiction in such matters.