

FARGO-MOORHEAD AREA FLOOD DIVERSION TASK FORCE

Following a meeting held on October 4, 2017 in Moorhead, MN, North Dakota Governor Doug Burgum and Minnesota Governor Mark Dayton announced the creation of a joint Task Force to propose the framework for flood risk management for the Fargo-Moorhead region. The two Governors will co-chair the Task Force.

Purpose

The purpose of the Task Force is to develop design principles and concept-level engineering solutions to achieve balanced flood risk management for the Fargo-Moorhead region, including up- and downstream communities and properties.

Key Parameters

At the meeting held on October 4th between Governor Burgum and Governor Dayton, two key parameters for the Task Force's work were identified and agreed to:

1. Find solutions within the parameters established by applicable Minnesota, North Dakota and local law.
2. Maintain federal authorization and associated funding for permanent flood protection, unless more expedient and low-cost options are presented that provide protection for a one percent chance flood (i.e., 100-year flood as defined by the Task Force) accreditation by FEMA under the National Flood Insurance Program.

Design Principles

Any project for flood protection in the Fargo-Moorhead region necessarily involves tradeoffs. The Task Force will identify and seek consensus on primary principles for construction of a flood risk management strategy for the region. The Task Force is not constrained by the exact design of the current locally preferred option, yet will operate within the established key parameters endorsed by both governors. In developing the design principles and conceptual project design(s), key considerations include, but are not limited to:

- How other flood risk management strategies may be used to help comprehensively address flood risk.
- How the project design protects existing development, including design level of protection.
- How the project design provides for future smart growth.
- How the project design considers and evaluates the transfer of flood risk:
 - From areas currently in the floodplain to areas not in the floodplain,
 - Between developed and undeveloped areas,
 - Among different types of land use, and
 - From one part of the region to another, and from one state to the other.
- How the project design addresses public safety and environmental impacts.
- How the project would compensate landowners for peak flow inundation areas.

- How construction, compensation, mitigation, and operating costs and cost-effectiveness are influenced by project design.
- What are the operating plan and governance requirements implicit in the project design.
- Other considerations as agreed to by the Task Force.

Design and Engineering Solutions

With guidance from the Task Force and its agreed upon design principles, technical staff will develop one or more concept-level engineering solutions. The Task Force shall give full consideration to these concept-level engineering solutions in its final recommendations.

Task Force Members

- The Task Force will be co-chaired by North Dakota Governor Doug Burgum and Minnesota Governor Mark Dayton. Each Governor may name one or more surrogates to stand in for him at any or all meetings. Only one surrogate may represent either governor at any particular meeting.
- Each Governor will name eight additional members to the Task Force. As desired, the Governors may form advisory groups comprised of other members who can provide specific information to the Task Force.
- Ideally, the Task Force membership will provide geographic representation for all parts of the region, as well as a diversity of thought on the project.

Advisory Groups

As deemed beneficial, the Governors may agree to convene advisory groups related to financial, hydrologic, regulatory, technical, or any other area of expertise. Advisory group members may attend meetings as non-participatory attendees, or upon request of the Co-Chairs.

Timeline

The Task Force will provide its recommendations by December 15, 2017, unless the Governors agree to a different date.

Requirements

- Parties to pending litigation concerning the Fargo-Moorhead Flood Diversion Project will enter into a Section 408 agreement establishing that the Task Force's discussions and deliberations and material produced to support those discussions and deliberations are not admissible in litigation.
- Minnesota and North Dakota agree to participate in this Task Force so long as there is no active litigation being pursued through the proceedings pending in the United States District Court, District of Minnesota, captioned Richland/Wilkin JPA and Minnesota DNR v. US Army Corps of Engineers and FM Flood Diversion Board (Civil No. 13-2262), honoring Judge Tunheim's charge for "all parties to work together to find

common ground.” To the extent necessary, Minnesota and North Dakota agree that an appeal of Judge Tunheim’s injunction filed for the express purpose of preserving the appeal and immediately staying that appeal is not the pursuit of active litigation.

Process and Protocol

- The Task Force may meet in person and/or by phone or videoconference.
- Only Task Force members are allowed to offer input and discussion during the meetings, unless a non-member is called upon by the Co-Chairs.
- Meetings will be biweekly, beginning the week of October 23rd, until agreed otherwise by the Co-Chairs with phone calls in the two off weeks.
- Meetings will be open to the media and the public.
- Only the Governors are authorized to speak on behalf of the Task Force.
- A meeting agenda will be distributed at least 5 days in advance of each meeting or as soon as is practical.
- Minutes of each meeting will be kept.
- All recommendations will be by consensus. In the event unanimous consensus cannot be reached on essential recommendations, a vote may be taken at the concurrence of the Co-Chairs. In the event a vote is taken, and there is a dissenting opinion, the members representing the dissenting opinion will be afforded the opportunity to provide a minority recommendation in the final report.