

**MEMO**Fredrikson and Byron  
Legislative Update

**TO:** Chris Volkers and Steve Larson

**FROM:** Andrew G. Pomroy

**DATE:** May 21, 2019

**SUBJECT:** End of Regular Session F-M Diversion, legislative update 5-21-19

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The Minnesota legislature adjourned its 2019 Regular Session last night with much of the work on the two-year budget left to be finished. While legislative leaders and Governor Walz agreed to a budget framework, including budget targets for each area and some specific items that needed to be included in the various budget bills, they ran out of time to negotiate the details before the constitutionally required adjournment at midnight. In the end, just the budget for Higher Education passed both House and Senate floors before adjournment. The Senate passed the Agriculture, Housing, and Broadband bill, but the House ran out of time on that one. No other subject area had a bicameral agreement as of last night and no new significant progress has taken place as of the writing of this report. The goal was to have the details wrapped up this week and for the Governor to call a one or two day special session to pass the remaining parts of the budget, but there is lingering doubt as to whether or not that will be possible.

The budget deal, should it be finalized and passed by the legislature could lead to some positive outcomes for the Fargo-Moorhead Diversion project, namely in capital investments. The agreement signed by Governor Walz, Speaker Hortman, and Majority Leader Gazelka calls for a \$440 million bill. As you may recall, the rolling average on an odd-year bonding bill in Minnesota is more like \$250 million, while Governor Walz had initially proposed an over \$1 billion bill and the House topped that at roughly \$1.5 billion (including \$10 million in unearmarked flood hazard mitigation funding and \$1.3 million for the Redpath impoundment project in the Bois de Sioux Watershed). The Senate capital investment committee never met this session, despite leadership in that chamber calling for a bill in the scale of that rolling average. While this agreement should be seen as a positive and necessary step to get an appropriation for the DNR's flood hazard mitigation program, the Minority Leaders in the House and Senate have yet to confirm their support for a bonding bill, or one of that size. Senate Minority Leader Tom Bakk and several of his DFL colleagues we have discussed the bill with are known to be seeking a larger bill, while Minority Leader Kurt Daudt said that Republicans in the House will be unwilling to support the budget deal due to an unrelated health care tax item. That opposition jeopardizes the deal, at least for a bonding bill, as that bill is required to pass with 60% support in each chamber, meaning minority and majority votes are necessary.

Also relevant to the Diversion project is the Environment budget. The Governor and House each proposed a \$32 million increase. The Senate, meanwhile, proposed a \$57 million reduction in general fund spending offset somewhat by using other dedicated funds such as lottery revenue and Legacy sales tax revenue to offset some of those general fund cuts. In the end, leaders agreed to a \$14 million increase. While possible, it is unlikely that committee chairs will opt to use any

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of this funding for any capital projects, such as the flood hazard mitigation program, and the spending levels will also make it difficult for the legislature to approve significant dedicated funds for the DNR's legal costs.

We will be working as closely as possible with capital investment committee chairs, staff, and other members in the upcoming final negotiations and Special Legislative Session as the budget deal becomes final and will keep the Diversion updated as developments occur.

Going forward into the legislative interim, this summer will be critical for the Diversion's short, medium, and long-term efforts to secure funding for the requested Minnesota share of the project's costs. This summer, the legislative capital investment committees and representatives from the Governor's administration will be touring the state to see in person capital requests throughout Minnesota. It is vital that the Diversion put its best foot forward in making the case to these state leaders. The first step in that process is to determine if the Diversion and/or its Minnesota local government partners will submit a formal request for funding through the local government request process. Those applications are due to MMB by June 14<sup>th</sup> and more information on the process is available on the MMB Capital Budget website, linked below: <https://mn.gov/mmb/budget/budget-instructions/capbud/>

While the primary funds being requested for the Diversion are through a state agency program, it is not uncommon for local governments to submit their own requests instead of solely relying on the DNR to request these funds. It could be a wise decision, especially considering the Governor's 2019 capital request did not include any funding for flood hazard mitigation grants. If desired, staff at Fredrikson & Byron would be available in the next two weeks to seek an answer from the DNR on what they intend to request for that program. We will also be working as closely as possible with the administration and legislative staff planning the upcoming bonding tours to ensure the Diversion is included in any visits to the region this summer.



## 1 Diversion Inlet Structure Construction

A revised construction schedule from Ames Construction is expected 31 May. Re-start of operations should begin mid-June. Activities for 2019 will include dewatering, test pile program and completion of channel excavation.

## 2 Wild Rice River Structure Construction

Final Plans and Specs were completed May 1, 2019. The Request for Proposals (RFP) is scheduled to be issued early June 2019 with a 45-day bidding period. Contract award is scheduled for late September 2019.

## 3 Red River Structure Design

Detailed design has started. A physical model (1:40 scale) is being contracted for to verify flows and design downstream scour protection. The design schedule is being developed with goal of starting construction in 2021.

## 4 Southern Embankment – Plan B Design

Detailed design, incorporating the Plan B alignment, is ongoing. Geotechnical borings to begin in June 2019.

## 5 Cultural Resources Mitigation – Diversion Channel Sites

Completing further investigations of two archaeological sites along the Diversion Channel this summer. Our contractor should begin field work by July and the results will determine if further excavation will be required. We are in the process of reengaging with the Native American tribes and ND State Historic Preservation Office staff in regards to these sites. There may be opportunities for the public to participate in these investigations as well.

## 6 Colonel Calkins/Colonel Jansen Visit – 27 June 2019

Colonel Sam Calkins and Colonel Karl Jansen will attend the 27 June Diversion Authority meeting. Colonel Jansen assumes command of the St. Paul District on 10 July 2019 (see bio on reverse).



# Col. Karl Jansen

**U.S. ARMY CORPS OF ENGINEERS**

**BUILDING STRONG.**

Col. Karl Jansen will assume command of the St. Paul District in July 2019, becoming the district's 66th commander and district engineer. Prior to assuming this command, he served as the executive officer to the commanding general, U.S. Army Corps of Engineers in Washington, D.C.

The St. Paul District employs nearly 650 professionals that work at more than 40 sites in five upper-Midwest states. The district serves the American public in the areas of environmental enhancement, navigation, flood damage reduction, water and wetlands regulation, recreation sites and disaster response.

Col. Jansen's previous assignments include serving as the 72nd commander of the Buffalo District; deputy commanding officer, 1st Maneuver Enhancement Brigade, Fort Polk, Louisiana; operations officer and executive officer of the 46th Engineer Battalion at Fort Polk, Louisiana; operations officer and project engineer for the Seattle District; company commander, battalion logistics officer, battalion personnel officer, and company executive officer for the 84th Engineer Battalion at Schofield Barracks, Hawaii; and battalion maintenance officer and platoon leader for the 10th Engineer Battalion at Fort Stewart, Georgia.

He earned a Bachelor of Science Degree in Environmental Engineering from the United States Military Academy and a Master of Science Degree in Civil Engineering (Hydraulics & Hydrology) from the University of Washington. He is a registered professional engineer in the State of Washington and a certified project management professional. His military education includes the Engineer Officer Basic and Advanced Courses and the Army Command and General Staff College.

Col. Jansen's military awards and decorations include the Army Superior Unit Award (with Bronze Oak Leaf Cluster), Bronze Star Medal, Legion of Merit, Meritorious Service Medal (with three Oak Leaf Clusters), Army Commendation Medal (with two Oak Leaf Clusters), Army Achievement Medal (with three Bronze Oak Leaf Clusters), National Defense Service Medal (with Bronze Service Star), Armed Forces Expeditionary Medal, Iraqi Campaign Medal (with two Bronze Campaign Stars), Global War on Terrorism Service Medal, Army Service Ribbon, Overseas Service Ribbon (with numeral two), Combat Action Badge, Parachutist Badge and Air Assault Badge

Col. Jansen is a native of Loveland, Colorado. He and his wife, Sarah, have two sons, Henry and Peter.

Item 5 b (added to agenda)

**SUGGESTED MOTION: I move to grant Buffalo Red River Watershed's Districts request for additional time to review permit application # 19-003 and authorize Co-Deputy Executive Director, Michael Redlinger to send the attached letter.**



P.O. Box 2806 • 211 Ninth Street South • Fargo, ND 58108

May 24, 2019

**SENT VIA EMAIL & U.S. MAIL**

Buffalo-Red River Watershed District  
1301 Fourth Avenue NE  
P.O. Box 341  
Barnesville, MN 56514

Attn: Administrator Bruce Albright -- balbright@brrwd.org

**Re: Permit Application #19-003 – Approval of BRRWD’s Request for Additional Time to Complete Review of Permit Application #19-003**

Dear Mr. Albright:

Following the regular meeting of the Buffalo-Red River Watershed District (“BRRWD”) on May 13, 2019, representatives of the Metro Flood Diversion Authority (“Diversion Authority”) understood that BRRWD would be seeking an extension of time from the Diversion Authority to address Permit Application #19-003 submitted on January 24, 2019. Thank you for sending your letter dated May 16, 2019, clarifying the time extension request and defining the steps remaining before BRRWD will act on Permit Application #19-003.

The Diversion Authority is willing to work with BRRWD, the Minnesota Department of Natural Resources (“MDNR”), and the United States Army Corps of Engineers to discuss the MDNR’s definition of the word “maximum” as set forth in MDNR’s permit condition Number 22. This discussion may result in a modification of the ‘Property Rights Acquisition and Mitigation Plan’ for the Project to accommodate landowners in the upstream mitigation area while still allowing the Comprehensive Flood Control Project to operate as designed.

The Diversion Authority is also willing to discuss the permit conditions previously circulated by BRRWD. The Diversion Authority’s technical representatives are best suited for determining technical ability of the Project to comply with the permit conditions, and the Diversion Authority leadership will also want an opportunity to review and consider the final permit conditions. As a result, additional time for BRRWD’s review of Permit Application #19-003 is appropriate.

The Diversion Authority recognizes that the reviews and proposed meetings set forth in your May 16, 2019, letter will not happen before May 28, 2019. On May 23, 2019, the Diversion Authority Board granted BRRWD an extension of time to June 28, 2019, (the Friday following your regular meeting on June 24) to review and rule on the Diversion Authority’s permit application for construction of Project elements to be located within BRRWD.

Please accept this letter as the Diversion Authority's formal approval of BRRWD's request for an extension of time to complete the review of Permit Application #19-003 by June 28, 2019. If you have any questions regarding this letter please feel free to contact me.

Sincerely,

Michael J. Redlinger  
Co-Deputy Executive Director

cc: Barb Naramore, Minnesota DNR  
Terry Williams, U.S. Army Corps of Engineers  
Mary Scherling, Diversion Authority Chair – 2019  
Brent Edison, Attorney, Vogel Law Firm  
John T. Shockley, General Counsel to Diversion Authority

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

BARNESVILLE, MINNESOTA 56514

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

PO BOX 341

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

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May 16, 2019

RECEIVED  
CASS COUNTY COMMISSION

**MAY 17 2019**

Mary Scherling, President  
Diversion Board of Authority  
211 9<sup>th</sup> ST S.  
Fargo, ND 58108-2806

RE: Permit Application No. 19-003  
Request for Time Extension

SENT VIA ELECTRONIC & US MAIL

Dear Ms. Scherling and Diversion Authority Members,

The Diversion Authority (DA) submitted a permit application to the Board of Managers Buffalo-Red River Watershed District (BRRWD) at their meeting in Barnesville on January 28, 2019. In accordance with Minnesota Statute (M.S.) 15.99 there is a time deadline for agency action on matters of this nature. Since then, there have been several BRRWD requests for additional DA information, and your engineering staff have complied with our requests. However, this will be the largest project that the BRRWD has ever been asked to grant a permit for, and as we all know, there's a lot of information to decipher in this regard. Also, because of the controversial nature of the project, it is made our review of the application more extensive and complicated.

At their meeting held on Monday, May 13, 2019, the Board of Managers, BRRWD, passed a motion that would ask the DA for some additional time to complete our review of the application. Without this time extension, the BRRWD would be forced to act on the application at their upcoming meeting on May 28, 2019. This date would fall within the 120-day time limit referenced in M.S. 15.99, Subd. 3. In order for the Board of Managers, BRRWD, to give the permit application due process, we feel that there are several things that still need to be completed by our office before formal action can be taken. One of these involves setting up a meeting with the Minnesota Department of Natural Resources (DNR), the DA Engineers, and someone from the Army Corp of Engineers (COE) to talk about the DNR's meaning of the word "maximum" in their Permit Condition Number 22. An explanation of this terminology will help determine to what elevation the DA will need to take easements to within the project staging area, as well as any upstream potentially impacted zones. Once we can determine the noted elevation, then and only then can we start to take a look at what are the impacts to all of the affected properties within the noted areas. Secondly, the BRRWD would like to hold another meeting to discuss our proposed permit conditions. A meeting was held with DA representatives on March 29, 2019 to start the review of our possible permit conditions. A response was forwarded by the DA representatives requesting some modification to a couple of those "draft" conditions. We feel that it would be beneficial if we could sit down and have one last meeting to iron out what these actual conditions would look like. A third meeting that the BRRWD feels they need to hold is with their legal counsel regarding the status of our contest of the DNR permit for the project. We realize that this has no time limitations and Rule M.S. 15.99 does

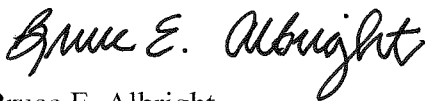


not apply to this particular item. In order for all this to happen, the Board requested a time extension until their June 24, 2019 meeting which will be held at 7:00 PM at our Watershed office in Barnesville. If the referenced meetings can be done sooner, perhaps the Board could take action on the pending permit application before the noted date.

We thank you in advance for consideration of our request. If you should have questions or comments concerning the above, please feel free to contact our office. We understand that your next meeting will be held on Thursday, May 23, 2019. We ask that you consider our request then. If you would like to have a BRRWD representative present at that meeting, please let this office know.

Sincerely,

BUFFALO-RED RIVER WATERSHED DISTRICT



Bruce E. Albright  
Administrator

BEA/kf

cc-electronic mail only:

Brent Edison, Attorney, Vogel Law Firm, 218 NP AVE, Fargo, ND 58107-1389

Michael J. Redlinger, Co-Deputy Executive Director, Flood Diversion Authority, 211 Ninth ST S., Fargo, ND 58108-2806

John T. Shockley, Attorney, Ohnstad Twichell, 444 Sheyenne ST #102, West Fargo, ND 58078

**TO:** FM Diversion Finance Committee  
**FROM:** Kent Costin, FMDA Fiscal Agent  
**RE:** Questions about Financial Reporting From 5/22/2019 Meeting  
**DATE:** 5/23/2019

There were a couple of questions raised at the Finance Committee meeting yesterday requiring further explanations.

**Q1:** *Why does the fiscal agent's financial status report show such a large negative balance for program management as compared to the budget status report prepared by the program management consultant? It gives the appearance that we are way over budget?*

A1: The fiscal agent report tracks encumbrances (open contracts) while the annual cash budget report prepared by the PMC does not. In January 2019, the FM Diversion Authority approved a very large, multi-year contract to Jacobs for all property acquisition services. Starting in 2019, this multi-year contract will be active until all property acquisitions are complete. The amount approved was \$21,180,800. This work is currently active and has been validated by the PMC.

The multi-year contract should not be matched to the annual budget figure with the conclusion that we are over the annual budget approved for this function. If you compare the annual budget figure (\$11,154) to the amount actually expended Y-T-D (\$1,874) we are well within budget for the current fiscal year. This budget line is 17% expended.

**Q2:** *Why is there a different amount shown on the fiscal agent's financial status report vs. the PMC report. Page 18 amount of \$23,426 vs. page 23 amount of \$22,717,508.*

A2: The financial report on page 18 contains other items in addition to the amount shown for the PMC on page 23. We have a contract with Oracle America to provide a program management software services for the project that is included in the encumbrances shown on page 18. If you move down the list on page 23, you can reconcile the numbers by adding in the \$708,434 encumbrance for Oracle America to the PMC encumbrance of \$22,717,508.