



US Army Corps  
of Engineers®  
St. Paul District

# FARGO MOORHEAD DIVERSION PROJECT

# MONTHLY UPDATE

July 25, 2019

## 1 Diversion Inlet Structure Construction

Dewatering began week of 18 July and will continue for up to 3 weeks. The current construction completion date is June 2023. Anticipated schedule:

2019: Dewatering, test pile program, complete channel excavation.

2020: Foundations/site work.

2021: Concrete piers/abutments. Control building.

2022: Install bridge deck, gates, and operating machinery.

2023: Paint gates, seed.

2024: Turf established.

## 2 Wild Rice River Structure Construction

The Request for Proposals (RFP) was issued on 22 July 2019. Proposals are due 5 September. Contract award is anticipated in November 2019. Required construction completion is October 2023. Structure includes 2-40 ft. wide tainter gates.

## 3 Red River Structure Design

Construction of the physical model (1:40 scale) is underway at USACE ERDC Coastal and Hydraulics Laboratory, Vicksburg, MS (see reverse). The overall design schedule is dependent on physical model results and continues to be developed.

## 4 Southern Embankment – Plan B Design

Detailed design, incorporating the Plan B alignment, is ongoing. Geotechnical borings have begun, primarily on Cass and Clay County lands, and will continue as additional access is secured by the Diversion Authority. Construction of the Western Tieback is scheduled for late FY2020.

## 5 Cultural Resources Mitigation – Diversion Channel Sites

Completing further investigations of two archaeological sites along the Diversion Channel this summer. Our contractor began field work in June but has incurred weather delays. Work is scheduled to resume on 29 July. The results will determine if further excavation will be required and a recommendation on this is expected at the end of August. Depending on weather and the results of the surveys, a media opportunity is being planned for the week of 19 August. (See reverse)

## 6 Federal Construction Placement Schedule – June 2019

See enclosure. Outlines placement/resources required to match assumed diversion channel completion. Will continue updating as actual funding and P3 schedule is defined.



Cultural investigations at Diversion Channel Site



Figure 7. Excavating Bone Cluster in East Wall of Trench 3, Excavated Feature 5 at Left, View East



Construction of Red River physical model at ERDC



**TO:** Chris Volkers and Steve Larson

**FROM:** Andrew G. Pomroy

**DATE:** July 17, 2019

**SUBJECT:** F-M Diversion, legislative update 7-17-19

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As discussed last month, the prospects for a Special legislative session to pass a bonding bill were slim and the energy around the idea appears to have evaporated over the past month. That leaves preparations for the 2020 bonding bill as the primary legislative activity over the remainder of summer and fall. Earlier this week, MN Management and Budget (MMB) released the preliminary requests of state agencies and local governments. State agencies and local governments have until October 18<sup>th</sup> of this year to submit revisions and/or new projects to be considered by the Governor and there will be an updated list available after that date. By January 15, Governor Walz will release his recommendations. In the meantime, legislative committees and representatives of the Walz administration will be touring the state to view projects and hear more about them from local officials. **The House Capital Investment Committee is tentatively scheduled to be in Northwest Minnesota September 3rd-5th.** No dates have been released yet for the Senate or administration tours.

With no bonding bill passing during the 2019 session, there will be significant pent up demand for infrastructure spending. That should lead to a bill appropriating over \$1 billion, but as any bill needs 60% of the votes in both bodies to pass, the size and makeup of the bill will be subject to considerable debate and compromise between the Governor and all four legislative caucuses.

### **Relevant Requests**

The most relevant request for the F-M Diversion project is the Department of Natural Resources (DNR) request for Flood Hazard Mitigation funds. It is expected that all necessary state appropriations from Minnesota will be eligible under that program and to date, the Diversion Authority has taken the stance to not seek a stand alone appropriation, but to apply for funds, when available, under that program. We now know from the recently released report that the DNR requested \$20 million for each of the next three biennia. Even if a significant portion of those funds were allocated for the F-M Diversion project, that amount would likely fall short of the project's requested amount over the next six years. In comparison, the DNR has received \$70.119 million over the past six years, dating back to the 2014 session. The larger that appropriation, the more funds should be available for allocation to Moorhead and the surrounding area.

Other communities are also showing a strong desire for a large appropriation for Flood Hazard Mitigation. And while more communities putting pressure on for a larger appropriation is good, it also shows there will be significant competition for whatever dollars are appropriated. While Fredrikson staff are currently reviewing each of the hundreds of requests, from what we've seen

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so far, between communities submitting requests to MMB and communities that were written into a line-item in the House committee bill draft, over \$20 million of specific requests are known to exist in addition to the needs in the Moorhead area. There also exists tens of millions more in requests for semi-similar water-control projects such as breakwaters, sea walls, and storm sewer system upgrades.

**MN Department of Agriculture**

Fredrikson & Byron staff were made aware of some questions being raised by the Commissioner of Agriculture, Thom Petersen. We have reached out to his office to see if additional information can be supplied, or a meeting arranged, about the project, but as he and several Commissioner's Office staff have been traveling as of this update, we have not received a reply from his office.



## FM Diversion Talking Points

Current as of ~~June 20~~July 22, 2019

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## Construction

### P3 Construction (Diversion Channel and Associated Infrastructure)

- The Diversion Authority will contract with a P3 Developer for construction of the diversion channel and associated infrastructure, including bridges and aqueduct structures.
- We expect P3 bids to be received in the spring-fall of 2020, and construction to begin by late fall of 2020.
- Completion of the P3 construction is expected by 2027.
- P3 Construction encourages design innovation and will deliver the project faster and more efficiently by apportioning risk to the entity best positioned to manage it.

### USACE Construction (Southern Embankment and Associated Infrastructure)

- USACE is responsible for construction of the Southern Embankment and associated infrastructure, which includes the earthen embankment, Wild Rice and Red River Control Structures, Diversion Inlet and western tie back levee.
- A Project Partnership Agreement was entered into in July, 2016, obligating USACE to construct the Southern Embankment portion of the Project and seek funding for the Project.
- Construction on the Diversion Inlet Structure (~\$46M) has resumed.
  - Contract has been awarded to Ames Construction of Minnesota
- The construction contract for the Wild Rice River Control Structure (~\$25M-\$100M) is expected to be awarded by the end of November 2019

### In-town Construction

- Additional in-town construction to allow 37' to safely flow through the Red River is necessary for Plan B compromise
  - \$130M more in Fargo
  - \$43M in Minnesota - Moorhead (\$40M) and Clay County (\$3M)

## Permitting

### MN Permit

- The MDNR issued a Dam Safety & Public Waters Work Permit (Permit #2018-0819) for the Project on Dec 27, 2018.
- The Diversion Authority has reviewed the permit and all permit conditions and finds them achievable.
- Most of the permit conditions are construction monitoring and reporting requirements that are routine and customary during construction. There are a minimal number of conditions that must be adhered to prior to construction, such as acquiring the property rights and obtaining other necessary permits. These are items that are typical of every project.

### Contested Case Hearing

- The DNR has referred to the Minnesota Office of Administrative Hearings the requests for a Contested Case Hearing by the Buffalo Red River Watershed District (BRRWD), the City of Comstock, and the City of Wolverton. The ALJ has scheduled a pre-hearing conference to discuss the scope of that hearing for July 2nd.

- A hearing has been scheduled for June, 2020. While the process will take ~~months~~ time to work through, the recent ruling by Federal Court Judge Tunhiem means that construction can take place as scheduled for the elements of the project in ND, in compliance with the MN permit conditions, which will keep the project on schedule.

## BRRWD Permit

- The DNR Commissioner's Order allowed BRRWD local units of government to impose reasonable terms and conditions on any required permits.
- The Diversion Authority applied for a permit in January for work within the Buffalo Red Watershed District.
- BRRWD developed draft permit conditions after months of coordination with the Diversion Authority, the Army Corps, and the Minnesota DNR in order to address concerns expressed by the Watershed and members of the public.
- The draft permit conditions are all workable within the existing project and acceptable to the Diversion Authority.
- To make sure that everyone had sufficient time to work out any appropriate permit terms and conditions, the Diversion Authority granted a time extension to BRRWD thru June 28, 2019
- BRRWD voted June 24, 2019 to deny the permit for work within the Watershed
- The Diversion Authority is confident the application for the Diversion Project complies with all the rules of the BRRWD.
- The BRRWD's action conflicts with the DNR Commissioner's Order that allows reasonable permit conditions, but does not allow local governments to block the project outright.
- The Diversion Authority has filed a challenge to BRRWD's permit denial in Minnesota State Court and has asked the Court to grant the permit.
- ~~The Diversion Authority applied for a permit in January for work within the Buffalo Red Watershed District.~~
- ~~BRRWD has issued draft permit conditions, which are all workable within the existing project.~~
- ~~The Diversion Authority continues to work with BRRWD to support its review process and permit decision~~
- ~~The Diversion Authority granted a time extension to BRRWD thru June 28, 2019~~
- ~~The Diversion Authority intends to comply with permit conditions contained within the BRRWD permit.~~

## Litigation

### Federal Litigation

- The Richland/Wilkin County JPA filed a lawsuit against the U.S. Army Corps of Engineers in 2013. The lawsuit was later joined by the Fargo-Moorhead Diversion Authority and by the State of Minnesota.

- On April 8, U.S. District Court Judge John A. Tunheim modified the injunction to allow all requested construction to proceed on the FM Area Diversion Project.
  - Commence the Public Private Partnership (P3) process for the Diversion Channel and Associated Infrastructure
  - Manufacture components and start construction on the Diversion Inlet Structure
  - Manufacture components and start construction on the Wild Rice River Structure
  - Start construction of the Western Tieback
  - Start non-construction design and mitigation work in North Dakota and Minnesota

### Requests for Mediation

- The Diversion Authority has always been willing to meet with elected leaders in Richland and Wilkin County.
- In 2014, a board position on the Diversion Authority was offered jointly to Richland and Wilkin Counties. The position was declined, but is still available until 2021, though is currently unfilled.
- Any mediation request would be entertained if it included concrete proposals. The Diversion Authority has no interest in further project delays or cost increases.
- Any proposal to discuss major changes to the project would create two serious problems:
  - Undermine the work of Governor Dayton and Governor Burgum to develop Plan B, and the permitting efforts in Minnesota and North Dakota that have both approved the project.
  - No significant changes to the project are legally allowed at this point in the administrative and permitting process; the DNR's Determination of Adequacy found Plan B to be the only appropriate alternative, the R/W JPA chose not to appeal the Determination of Adequacy, and it is now final.

## Financial

### Financial Overview and Next Steps

- We are conferring with our technical and financial advisors to understand the funding commitments from our State and Federal partners and what this means for our financial plan, and to determine the most cost-effective and efficient way to construct the Project.

### State of ND Funding

- The 2019 Legislature committed \$750M, which is a \$180M increase from the previous commitment.
  - To date, the State Legislature has appropriated \$436.5M of the \$750M.
  - The conditions required by the 2019 Legislature are workable and we see no issue with compliance or expect any delay due to the conditions.
- During the legislative interim, the P3 procurement is expected to be completed. Once bids are in hand, we expect future additional legislative funding requests to be made.
- We appreciate the Legislature's commitment to the Project and we will continue to coordinate with the Legislature.



## Federal Funding

- On March 19, 2019 an amended Project Partnership Agreement (PPA) was signed by the cities of Fargo and Moorhead, the Diversion Authority, and the U.S. Army Corps of Engineers. The PPA amendment increases the federal participation to \$750M (in 2015\$, escalates to year of appropriation) in total construction funding, of which \$98M has been appropriated.
- Federal funding to date has come in three categories of funding (only construction funding is counted against the total \$750M):
  - Construction (2016 – present) = \$98M
  - PED Funds (2011-2014) = \$29M
  - Feasibility (2008-2013) = \$11M
- FY2020 Budget Request = \$100M
  - Increment 1: WILD RICE CONTROL STRUCTURE CONSTRUCTION: \$50M
  - Increment 2: FIRST EMBANKMENT DESIGN AND CONSTRUCTION: \$32M
  - Increment 3: DIVERSION INLET STRUCTURE CONSTRUCTION: \$8M
  - Increment 4: ENVIRONMENTAL AND CULTURAL RESOURCE MITIGATION: \$10M

## State of MN Funding

- Commitments have been made by Moorhead and Clay County to request \$86M in State funding.
- \$6M has been secured for construction to date.
- SF1603 has been introduced in the 2019-2020 legislative session requesting \$39 for additional flood hazard mitigation funds.
- With an approved MN permit, we are confident the remaining MN funds will be available when needed for construction and mitigation efforts in MN.
- Additional funding requests are in the process of being made by the Moorhead / Clay County Joint Powers Agreement in conjunction with the DNR through flood mitigation (bond) funding.

## Local Funding

- Local funding has been secured through voter approval of three half-cent sales taxes, two in Fargo and one in Cass County. These sales taxes were extended until 2084 in the 2016 election.
- No additional sources of local revenue are anticipated to fund construction.

## Maintenance Costs

- Maintenance of Project features is expected to be paid through excess revenues on existing sales taxes or through a small maintenance levy on an already established District in North Dakota, similar to other area flood protection projects.
- The Joint Powers Agreement that created the Diversion Authority allocated 2% (based on the socioeconomic analysis from the Minnesota EIS) of the Project maintenance costs to the City of Moorhead and Clay County.

## Special Assessments

- ~~In preliminary conversations with our financial advisors, we are confident there is a solution allowing construction to begin without the need to levy special assessments.~~

- The Special Assessment District was created to obtain more favorable financing terms and rates for sales tax bonds and will not be counted on as a source of revenue in the finance plan.

## Land Acquisition & Property Mitigation

### Land Acquisition

- The Diversion Authority is moving forward with all land acquisition necessary for the Project. A phased approach will be used as designs are completed on Project features. The acquisition of all property for the Diversion Channel is the top priority.
  - In February 2019, 550 letters were sent to property owners who are affected by the Project.
  - The goal is to acquire all property for the Diversion Channel by spring 2020.
- The Diversion Authority has a comprehensive property acquisition and mitigation plan.
- The Cass County Joint Water Resource District is the acquiring entity for property rights in North Dakota.
- The City of Moorhead and Clay County have formed are forming a joint powers agreement authority for the purposes of acquiring property rights in Minnesota.
- Property owners will be fairly compensated, based on an independent appraisal.
- The Diversion Authority will cooperate with landowners who make reasonable requests, including rent-back of property until needed for the project and offering a right of first refusal.
- Eminent Domain will only be used as a last resort.
- Land Acquisition in Minnesota will follow Minnesota Law.
- Land Acquisition in North Dakota will follow North Dakota Law.

### Flowage Easements

- The Project includes an upstream mitigation area where acquisition of flowage easements is required
  - Value of the easements will be determined through an appraisal
- The Diversion Authority has contracted with Crown Appraisals to develop the value of the easements
  - Phase 1 of the study was complete in Nov 2018
  - Phase 2 expected to start this summer

### Additional Mitigation

- The Diversion Authority has developed and committed to additional mitigation above and beyond the requirements established by state and federal agencies.
- The additional programs include
  - Post-operation debris clean-up and damage repair
  - Summer flood supplemental crop loss program