

Minnesota Department of Natural Resources



April 22, 2014

Transmitted via electronic and U.S. mail

Chair Darrell Vanyo
Fargo-Moorhead Diversion Board of Authority
Moorhead City Hall
P.O. Box 779
Moorhead, MN 56561-0779

RE: Fargo-Moorhead Flood Risk Management Project and the Oxbow-Hickson-Bakke Ring Levee Project

Chair Vanyo:

In a letter dated January 14, 2014 to the Fargo-Moorhead Diversion Board of Authority (DA), the Minnesota Department of Natural Resources (MDNR) inquired about the relationship between the Oxbow-Hickson-Bakke Ring Levee (OHB levee) and the Fargo-Moorhead Flood Risk Management Project (F-M project). Specifically, we requested clarity on whether the OHB levee is an independent project or if the OHB project is part of the F-M project for purposes of the Minnesota State Environmental Impact Statement. Your letter response dated February 20, 2014 stated the OHB levee has independent utility as these communities were in need of flood protection, but the levee is being designed to also provide flood protection if the F-M Project is approved and constructed.

As we indicated in our January letter, it would be unlawful for any Minnesota governmental unit or organization of which it is a member to commence work on a component of the F-M project unless there is an independent basis for that component part separate and apart from the F-M project. However, we also continue to acknowledge that, because the OHB levee is entirely within North Dakota, the MDNR has no jurisdiction over construction of the OHB levee.

We have reviewed your February response, along with additional pertinent information available such as the U.S. Army Corps September 19, 2013 Supplemental Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), U.S Army Corps March 21, 2014 Section 404 Public Notice, and levee design plans. Our review has concluded that the OHB levee is a project component of the F-M Project, without an independent basis for its construction as proposed. Our basis for this determination is as follows:

- Although these communities are currently in need of flood protection, the OHB levee was not considered except in relationship to the F-M Project. The timing and development of the OHB levee has only been in the context of the F-M Project.



- The U.S. Army Corps of Engineers Supplemental EA and FONSI refer to the OHB levee as a “modification to the project.” All federal environmental review and permitting documents related to the OHB levee describe it as part of the F-M Project.
- The DA is seeking the cost of the OHB levee to count toward the local match for federal money toward the F-M Project.
- The proposed height of the OHB levee is approximately nine feet above FEMA 100 year flood event protection and approximately seven feet above the U.S. Army Corps of Engineers Expert Elicitation Panel 100 year flood event protection. This additional height appears intended to accommodate increased inundation from the F-M Project.

In light of the jurisdictional challenges and to protect the integrity of Minnesota’s environmental review process we will consider the OHB levee as a component of the F-M project in the state EIS. Consistent with Minnesota law, MDNR will not be making **any** final governmental approvals on the F-M project or any component thereof until the state’s EIS process is complete.

Sincerely,



Mike Carroll
Assistant Commissioner

Cc: Craig Evans, U.S. Army Corps
Judy DesHarnais, U.S. Army Corps
Tom Crump, U.S. Army Corps
Aaron Snyder, U.S. Army Corps
Keith Berndt, Cass County
Bob Zimmerman, City of Moorhead
Michael Redlinger, City of Moorhead
Mark Bittner, City of Fargo
Pat Zavoral, City of Fargo