

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Richard/Wilkin Joint Powers Authority, a  
Minnesota-North Dakota Joint Powers  
Authority,

Civil File No. 0:13-cv-02262-RHK-LIB

Plaintiff,

vs.

United States Army Corps of Engineers;  
John McHugh Secretary of the U.S. Army  
Corps of Engineers (in his official  
Capacity): Jo-Ellen Darcy, Assistant  
Secretary of the Army for Civil Works (in her  
official capacity); and Col. Dan  
Koprowski, District Commander, St. Paul  
District, U.S. Army Corps of Engineers (in  
his official capacity),

**DECLARATION OF  
KENT LOKKESMOE**

Defendants,

and

Fargo-Moorhead Flood Diversion Board  
of Authority,

Defendant-Intervenor.

I, Kent Lokkesmoe, do upon personal knowledge declare as follows:

1. I am the administrator of the Management Resources Section of the Operation Services Division of the Department of Natural Resources (DNR). I also manage the DNR's capital investment program that includes funding for the state's flood hazard mitigation program.

2. I am a professional civil engineer licensed in the State of Minnesota. I specialize in the area of materials and water resources.

3. Prior to serving as the administrator of the Management Resources Section of the Operation Services Division I was the Director of the Division of Waters. I served as the Director of the Division of Waters from 1991-2011.

4. In my capacity both as administrator of the Management of Resources Section of the Operation Services Division and as Director of the Division of Waters I have been actively involved in flood management issues on the Red River of the North (Red River) on behalf of the DNR.

5. The Red River has a significant history of flooding with documented floods dating back to 1897. Flooding along the Red River can be extensive due to the very flat topography of the Red River Valley. Several of the communities along the Red River have experienced high repetitive flood losses.

6. Flood stage at the U.S. Geological Survey gage in Fargo (Fargo gage) is 18 feet, moderate flood stage is 25 feet, and major flood stage is 30 feet. Because of flood control measures previously undertaken, it is not until the Red River reaches 30 feet that Moorhead needs to take emergency measures to prevent flood damage.

7. Minnesota has been involved in flood plain management since 1970. The Minnesota Department of Natural Resources (DNR) administers the state flood plain management program through local ordinances and the flood hazard mitigation program. The flood hazard mitigation program has been in place since 1987.

8. Minnesota strives to reduce flood losses and flood risk in the state through enforcement of flood plain management regulations, encouraging property owners to acquire flood insurance as required by the Federal Emergency Management Agency (FEMA), and

implementation and funding of flood hazard mitigation (flood risk reduction) projects. Minnesota also supports federal flood control projects when Minnesota communities are local sponsors.

9. Federal flood control projects are treated differently by the U.S. Army Corps of Engineers (Corps) than are navigation projects such as navigation channel projects on the Mississippi River. The navigation projects are congressionally authorized and funded. Often there is no local sponsor for these projects and the Corps is funded (without local cost share) to construct, maintain, operate, and own the navigation system. If the project is a navigation project, the Corps obtains all flowage easements and other property rights required for the project in the name of the federal government to raise the water levels with the locks and dams.

10. Corps flood control projects, on the other hand, require a local sponsor. The local sponsor is required to pay a substantial share of the cost of the feasibility/environmental review studies (50/50 percent) and of the design and the construction of the project (65 federal/35 non-federal percent). The local sponsors are also required to obtain all flowage easements and other property interests required for construction of the project and obtain all necessary State and local permits. The local sponsor must also agree to own and operate the project upon completion.

11. The Corps may not commence construction on a significant flood control project without both Congressional authorization and a Congressional appropriation(s). Congressional authorization of a flood control project does not guarantee federal funding through a Congressional appropriation.

12. Minnesota has supported federal flood control projects primarily by providing funding to local sponsor (general local governmental units) where the Corps requires a local match.

13. The Minnesota Legislature has historically provided matching funding for Corps flood control projects. Minnesota has provided matching funding for flood control projects commenced under the federal 205 program which covers small flood control projects – under \$7 million of federal cost. Minnesota has also provided funding for congressionally authorized flood control projects. These projects require both congressional authorization in a WRDA bill as well as a separate congressional appropriation.

14. The DNR role in the federal flood control projects has been to partner with the local government and provide matching funding to the local sponsor when funding has been appropriated by the Minnesota Legislature.

15. The state does not rely exclusively on Corps sponsored projects to provide flood protection in Minnesota.

16. On the Red River, levee projects have been constructed with local and state funds at Georgetown, Perley, and Hendrum, Minnesota. These projects provide 100 year protection with 3 feet of freeboard. Freeboard is the difference between the flood level for which the project is designed and the height of the levee. Freeboard is generally included in flood control projects as a safety feature.

17. The Fargo-Moorhead Flood Diversion Project (Diversion Project) was authorized in the 2014 WRDA. Congress has not appropriated any funding for the construction of the Diversion Project. The Diversion Project is not in the President's 2015 budget.

18. The City of Moorhead has implemented flood protection works under Minnesota's flood hazard mitigation program that include the acquisition and removal of about 250 homes from the flood plain, and construction of levees, pump stations and associated civil

works. This work is currently ongoing and will provide Moorhead with protection to the 42.5 foot flood stage.

19. The cost of the flood protection features outlined in paragraph 18 will be approximately \$105,000,000. The project will provide protection to a river stage of 42.5 feet. This project will result in reducing the city's need for sandbags for a 42.5 foot flood from over 6,000,000 to under 250,000.

20. Fargo has undertaken fewer non-structural flood control mitigation measures than the City of Moorhead. Fargo is relying more heavily on the protection afforded by the structural solution advanced in the Locally Preferred Alternative outlined in the federal environmental review process.

21. The Diversion Project, which is separate from the flood protection described in paragraph 18, has been a local effort and not a State effort. Moorhead sought additional funding from the Minnesota Legislature to cover its cost share for the Diversion Project. The Minnesota legislature did not grant Moorhead's budget request. It is anticipated that Moorhead will make a legislative budget request for a portion of the \$1.077 billion non-federal share of the Diversion Project.

22. Communities within Minnesota have benefited by the federal involvement in local flood control projects. These projects impacted public waters within Minnesota and in these cases the local sponsor applied for and received permits to conduct the work. The Congressional authorization of a federal flood control project has not preempted the need for DNR permits. Examples of federal flood control projects undertaken along the Red River for which State permits were obtained include:

East Grand Forks – A federally authorized and funded comprehensive flood control project. The East Grand Forks – Grand Forks federal flood control project was resurrected after the 1997 flood after sitting dormant for over 10 years. The project included levees and work in both the Red River and the Red Lake River. The following DNR permits were issued for that project: 2000-1174, 2001-1163, 2001-1164, 2002-1182, 2003-1114, 2003-1115, 2004-1081.

Breckenridge – A federally authorized and funded comprehensive flood control project. The project included work in the Red River and Ottertail River. The following DNR permit was issued for that project: 2003-1098.

Crookston – A federal section 205 flood control project that involved cutoff channels in the Red Lake River. The following DNR permit was issued for that project: 2001-1165.

Roseau – A federally authorized and funded comprehensive flood control project. The project involved a diversion channel and control works in the Roseau River. The following DNR permits were issued for that project: 2005-1009, 2010-0396.

23. Initial authorization is not the final word on a Corps project. Authorized projects may be modified for a number of reasons including cost changes and design modifications. In those cases the Corps may seek re-authorization of the originally approved projects.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, as provided by 28 U.S.C. § 1746.

Executed on: July 22, 2014

/s/ Kent Lokkesmoe  
KENT LOKKESMOE