



Richland -Wilkin Joint Powers Authority

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Joint Powers Authority (Richland County, ND & Wilkin County, MN) Tunheim Decision Preserves Plaintiffs' Claims

Today, the Federal District Court issued its decision on part of our claims against aspects of the diversion. Some of the reporting on that decision has incorrectly suggested that the Court eliminated our claims, and that is completely incorrect. In fact, the Court has reaffirmed and vindicated our claim that the diversion must comply with Minnesota's environmental and permitting law.

The federal National Environmental Policy Act (NEPA) and the Minnesota Environmental Policy Act (MEPA) have a major difference. NEPA merely requires the federal agency to examine the environmental impacts. The agency is then free to decide to choose a project that harmful and damaging, even when there is a better, less damaging project available. That is what USACE did here. They selected the locally preferred project, when there was another project that was more consistent with national policy objectives. NEPA does not allow the federal court to force the federal agency to pick the better project.

Minnesota's environmental and permitting law, on the other hand, prohibits the permitting of a project when there is a less damaging feasible alternative. The Court has specifically stated that the Court is not endorsing the locally preferred project nor is it finding that project environmentally preferable. Moreover, the Court has reaffirmed that aspect of our case that the project may not go forward without clearance from the State of Minnesota. In short, the main thrust of our case remains fully in tact. To quote the judge

"The Courts order today is not the end of this case. The JPA's Minnesota law claims are still pending against the Diversion Authority—those claims were not at issue in the motions decided in this order—and the Court's injunction preventing construction of the OHB ring levee remains in place. These matters will await resolution on another day."

We are disappointed by the Court's finding that we cannot enforce Executive Order 11988. We respectfully disagree with that decision. Because our state law claim remains in effect, we are not allowed to appeal that decision until the state permitting claims are resolved. While we respect the Court's decision, we regard the decision as counter to the vast majority of courts that have examined this issue across the country. We continue to urge the USACE to reconsider its decision to flood upstream communities to develop floodplain. We will make a decision on appeal at the termination of the entire federal case.

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