

Diversion Authority says it has eminent domain powers in Richland County

By [Tu-Uyen Tran](#) on Apr 13, 2016 at 10:19 p.m.



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FARGO – The Fargo-Moorhead Diversion Authority will argue that it has eminent domain rights in a part of Richland County that may be flooded by a dam that's part of the flood-control project.

Members of the authority's Land Management Committee said Wednesday, April 13, at their meeting that their attorneys will cite previous court rulings to demonstrate that right as required for a state permit, though land seizures would be a last resort.

The authority plans to negotiate easements from landowners, meaning buying the right to flood their land if needed for a flood fight, said Mark Brodshaug, a farmer and committee member. If landowners push the issue, the authority could offer to buy their land and resell it with an easement right, he said.

Richland County is one of the parties to a lawsuit opposing the diversion project.

The committee discussion was in reaction to [a March 17 letter from North Dakota State Engineer Todd Sando](#) reminding the Diversion Authority that it "must demonstrate a realistic plan for the procurement of the necessary property rights" to get a permit for the dam.

City Commissioner Tony Gehrig recently acquired a copy of the letter and raised

alarm bells at the City Commission meeting Monday, April 11. He claimed that there is little chance the permit will be issued, which will preclude the state or the federal government from funding the \$2.1 billion project.

PDF: [Letter from ND State Engineer to FM Diversion Authority](#)

Mayor Tim Mahoney, a committee member, said Gehrig misunderstood the tone of the letter. He said state Rep. Al Carlson, R-Fargo, asked the state engineer to list all permitting concerns at a March meeting involving city officials to make the process more efficient. The letter was a result of that meeting, he said.

The requirement was no surprise, Mahoney and Brodshaug said, because the Diversion Authority has worked on it for years.

The dam to be built south of Fargo would reduce the flow of flood water into the diversion channel to ease the impact of flooding on downstream communities. It would flood as much as 29,260 acres in North Dakota, including 10,380 in Richland County, during a bad flood.

"From a legal standpoint, an explanation of how the Diversion Authority will secure land rights from unwilling owners in Richland County is required," Sandbo said in the letter.

A permit is needed partly because otherwise the state would not provide its \$450 million share. The U.S. Army Corps of Engineers, which will provide \$450 million, has also said it wouldn't agree to the project without the land rights.

At the Land Management meeting, talk of eminent domain caused concern for committee member Jenny Mongeau, a Clay County commissioner. She said the authority already has a fragile relationship with Richland County.

Brodshaug said that's only to show there is legal authority. The Diversion Authority will negotiate with landowners over the next six years, he said, which is not that different than what's been done with property owners in Cass County where eminent domain has been used very sparingly.

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