

Minnesota Department of Natural Resources

500 Lafayette Road · Saint Paul, Minnesota · 55155-4037

Office of the Commissioner

651-259-5555



July 8, 2016

The Honorable Jo-Ellen Darcy
Office of the Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

Dear Assistant Secretary Darcy:

I understand that you are scheduled to sign the Project Partnership Agreement (PPA) for the proposed Flood Risk Management: Fargo-Moorhead Metro, North Dakota and Minnesota on Monday, July 11, 2016. Staff from your St. Paul District inform us that your July 5, 2016 approval of the project PPA represents your determination that "Corps is likely to resolve any outstanding regulatory issues that could affect the prospects for completing construction of the project," as required under the conditions accompanying the project's FY 2016 construction funding allocation. Given that your office did not directly consult with Minnesota prior to your making this determination, I want to ensure you are aware of Minnesota's perspectives regarding unresolved regulatory issues relevant to this project.

As Governor Mark Dayton shared with OMB Director Shaun Donovan in February 2016, the proposed Fargo-Moorhead Diversion presents significant issues under Minnesota's regulatory system. These are disclosed and discussed at length in the state's Final Environmental Impact Statement (FEIS) dated May 16, 2016. However, in Minnesota, the environmental review process is entirely separate from, and must precede, permitting decisions. Determination of whether these issues can be resolved is a matter for the state's permitting process, which is ongoing. Please understand, our June 29, 2016 decision that the state EIS is "adequate" and therefore that the environmental review process is complete should not, by any means, be interpreted as a project approval or as an indication that state permits are likely to be forthcoming.

Without prejudicing our ultimate decisions, we have attempted to be very clear in our FEIS and our adequacy determination, as well as in our communications surrounding these documents, that the project as proposed presents significant issues under Minnesota regulations that we will need to evaluate very carefully. Project impacts of special concern under Minnesota regulations include construction of a high hazard dam upstream of a large population center, the increased flooding that the project would cause in upstream areas, and the potential for induced development in the floodplain. These impacts raise issues with our regulatory standards including, but not limited to, sufficiency of mitigation; consistency with local, state, and federal plans; and our required determination whether the project represents a reasonable approach to flood risk reduction that is in the public interest. In addition, the level of engineering detail that has been provided thus far falls far short of what we need to complete our technical analysis of the pending permit application.

St. Paul District staff inform us that your determination regarding the likelihood of resolving outstanding regulatory issue was a process internal to your office. Given that we were not consulted as part of this process and further that we are not able to see the basis for your determination, I believe it is essential



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to be on the record directly with you regarding the real and significant regulatory issues that are outstanding in Minnesota concerning the proposed Fargo-Moorhead Diversion Project. My staff are working diligently to review the pending project application and are giving priority to analyzing the threshold policy considerations that will determine whether this project is permittable in Minnesota. We appreciate the ongoing cooperation of your St. Paul District staff as we undertake this work.

Please be assured that Minnesota understands the very real flood risk management needs in Fargo-Moorhead, and in the Red River Valley more generally. Minnesota has invested \$234 million in state funds since 2008 to provide flood risk reduction for Moorhead and other communities in the Red River Valley. In this instance, as always, our goal is to find integrated approaches to flood risk management that meet the policy and technical standards in our regulations.

I appreciate your careful consideration of the issues I've raised here and would be pleased to discuss them further if that would be helpful.

Sincerely,



Tom Landwehr
Commissioner

c: OMB Director Shaun Donovan
USACE Chief of Engineers Lieutenant General Todd Semonite
USACE Mississippi Valley Division Commander Major General Michael Wehr
USACE St. Paul District Commander Colonel Samuel Calkins
Governor Mark Dayton
Mayor Timothy Mahoney, City of Fargo
Mayor Del Rae Williams, City of Moorhead
US Senator Amy Klobuchar
US Senator Al Franken
US Congressman Collin Peterson