



Fargo-Moorhead Flood Risk Management Project

Dam Safety & Work in Public Waters Permit Application Decision

FREQUENTLY ASKED QUESTIONS

What was the DNR's decision on the Dam Safety and Work in Public Waters Permit application?

The DNR denied the Diversion Authority's Dam Safety and Work in Public Waters Permit.

Why is the DNR denying the permit?

- The permit was denied for three primary reasons, which are grounded in Minnesota Rules and Statutes:
 - Alternatives: The DNR concluded that the proposed Project does not meet the requirement to be reasonable, practical, protect public safety and promote public welfare (M.S. 103G.315).
 - Plan Consistency: The Project is not consistent with some state and local land use and water management plans in the project area (M.R. 6115.0150; M.S. 103G.0245).
 - Mitigation: Although the permit applicant developed a number of new mitigation proposals to meet DNR concerns, there are mitigation, monitoring and adaptive management needs that have not been sufficiently addressed (M.S. 103G.245).
- Detailed Rationale for the decision can be found in the Findings of Fact document. The document is available online at <http://www.dnr.state.mn.us/waters/fm-flood-risk.html>

How was the decision made?

- DNR assembled a permit application review team experienced in dam safety, public waters, fisheries, streams, land use, permitting, and regulatory authority.
- DNR asked local governments and other public agencies to review the permit application. This is a standard part of DNR's permitting process and is designed to receive recommendations and comments around land use and water management plan consistency.
- We carefully evaluated the Permit Application against the relevant provisions in Minnesota Statute and Rule. DNR also evaluated the proposed Project against the performance of existing and planned protection (i.e., the No Action Alternative with Emergency Measures).
- During the course of our review, the DNR met with the Diversion Authority, its consultants, and the USACE to gain clarity on items of concern; including the Mitigation Plan and the Property Interests/Rights plan.

What would need to be done in order for the permit to be approved?

- In short, as with any permit denial, the applicant would need to address the issues identified in the Findings of Fact. In this instance, the Diversion Authority would need to demonstrate that it is in compliance with Minnesota law and consistent with local, state, and federal land use and water management plans.

- It is possible that, even with modification, the Project would not meet the requirements of state law. That is something DNR cannot judge at present because we do not know what adjustments the permit applicant, i.e., the Diversion Authority, might be willing to make in order to comply with Minnesota law.

What, specifically, is needed to make this Project permissible?

- In order for a permit to be issued, a project must meet all applicable policy and technical considerations in Minnesota's water laws and rules.

- Even if the Diversion Authority addresses all of the technical and mitigation concerns described in the Findings document, other policy considerations might not be met. For instance, the DNR concluded that the proposed Project does not meet the requirement to be reasonable, practical, protect public safety and promote public welfare. Factors in that determination include:
 - The No Action Alternative with Emergency Measures represents a feasible, prudent, and minimal-impact alternative to provide flood protection to the F-M metropolitan area.
 - Economic benefits alone do not justify a project with the extensive socioeconomic and environmental impacts posed by this Project.
 - Given that there is a feasible, prudent, and minimal-impact alternative, the risk associated with the proposed high hazard dam upstream of a major population center is not warranted.
 - The proposed project's transfer of flood risk from one area of rural, sparse development to another does not promote public welfare.

Can the decision be appealed?

- Yes. There are 2 types of appeals.
 - The Permit Applicant and other limited governmental units have 30 days from the permit decision to request a contested case hearing.
 - If their administrative appeal through the contested case process is unsuccessful, they can then appeal to the Minnesota Court of Appeals.

 - Individuals and entities without legal standing to demand a contested case hearing can appeal directly to the Court of Appeals.