

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

Richland/Wilkin Joint Powers Authority, a)	
Minnesota-North Dakota Joint Powers)	
Authority,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 0:13-cv-02262-
)	JRT-LIB
United States Army Corps of Engineers; John)	
McHugh, Secretary of the US 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, US Army Corps of)	
Engineers (in his official capacity),)	
)	
Defendants.)	
)	
and)	
)	
Fargo-Moorhead Flood Diversion Board of)	
Authority, a Minnesota-North Dakota Joint)	
Powers Authority,)	
)	
Defendant-Intervenor.)	

**MOTION TO REINSTATE UNITED STATES ARMY CORPS OF ENGINEERS
AS AN ACTIVE DEFENDANT AND TO SUPPLEMENT PLEADINGS**

Plaintiff moves pursuant to Rule 15(d), 65, 60(b)(5),(6), 54(b) and 56 to:

(1) reinstate the Federal Defendants as active defendants based upon events and circumstances occurring after the filing of the Amended Complaint;

(2) reinstate Counts III-V on the grounds that the potential for Diversion Authority to

violate Minnesota permitting is no longer speculative, given that the State of Minnesota has denied USACE and Diversion Authority's application for permits, and Diversion Authority has announced its intention to retain the services of USACE to commence construction in violation of Section 7002(2) of the Water Resources Development Act of 2014 (WRRDA-2014), the conditions contained in the Feasibility and Environmental Impact Statement section 3.14.4, the Chief's Report, and Minnesota Environmental Rights Act (MERA).

(3) to enforce NEPA against both defendants, against their announced intent to build the project in violation of Section 3.14.4 of the EIS, which represent material protections to Minnesota's sovereign right to protect its lands and waters;

The grounds for this motion will be more fully stated in briefing, declarations and exhibits from the record. In summary, they include the following:

1. The Federal Environmental Impact Statement (EIS), section 3.14.4 includes a project condition that this project requires Minnesota public waters permits. Section 3.14.4 of the Federal EIS states:

As part of implementing this project, the non-federal sponsors will be required to obtain a Minnesota Department of Natural Resources protected waters permit, a water quality permit from the North Dakota Department of Health, a Sovereign Lands Permit and construction permit from the North Dakota Office of the State Engineer. In order to obtain the necessary permits from the State of Minnesota, the non-federal sponsors must complete the scoping and review process required by the Minnesota Environmental Policy Act. July 2011 Federal Environmental Impact Statement p 137 § 3.12.

2. That condition is incorporated by the Water Resource Development Act Section 7002(2) as an essential condition and component of the project. Constructing the project in

violation of that condition exceeds the authority granted by Congress.

3. Title 33 USC Section 2232(b)(2) demands that State permits and authorizations be obtained before any part of the project is carried out.
4. Minnesota has denied applications for public waters permits: the project does not have permits and authorizations required under section 3.14.4 of the Federal EIS and 33 USC § 2232(b)(2).
5. Acting in concert with Diversion Authority, the United States Army Corps of Engineers (USACE) intends to assist Diversion Authority in carrying out the project unlawfully and outside the terms of the Congressional Authorization. In so doing, federal defendants have taken final action, in excess of statutory authority and in violation of the express conditions for project construction incorporated into the Congressional Authorization, which is now ripe for judicial review.
6. In particular, acting in concert with Diversion Authority, USACE has taken concrete steps to construct the Red River dam, for which Minnesota permits have been denied, and intends to proceed with this project in disregard of section 2232(b)(2) and the conditions of Congressional Authorization. The consequences of these actions, if not enjoined, will be to unlawfully flood communities, citizens, and political subdivisions represented by plaintiff, causing irreparable harm.

ACCORDINGLY, PLAINTIFF'S REQUEST RELIEF AS PROVIDED IN THE PROPOSED ORDER AS FOLLOWS:

(A) Against the Diversion Authority and USACE: Reinstatement of Our NEPA count for the limited purpose of challenging the USACE's attempt to disclaim environmental conditions and protections incorporated in the Final Federal EIS without a Supplemental Environmental Impact Statement and Reauthorization.

(B) Against the Diversion Authority - Reinstatement of Count V — The legal authority for enforcement is as stated in the Motion for permanent relief: WRRDA-2014 Section 204, 7002(2), and MERA.

(C) Against the USACE, reinstatement of the USACE in conjunction with our request for injunctive and declaratory relief requiring compliance with WRRDA-2014, Section 204 and 7002(2).

Dated: November 30, 2016

RINKE NOONAN

/s/ Gerald W. Von Korff

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