



STATE OF MINNESOTA

Office of Governor Mark Dayton

116 Veterans Service Building ♦ 20 West 12th Street ♦ Saint Paul, MN 55155

September 1, 2016

The Honorable Shaun Donovan
Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

The Honorable Jo-Ellen Darcy
Assistant Secretary for Civil Works
Department of the Army
108 Army Pentagon
Washington, DC 20310

Dear Director Donovan and Assistant Secretary Darcy:

I write you with regard to the proposed Fargo-Moorhead Flood Risk Management Diversion Project. I am dismayed and deeply disappointed that the U.S. Army Corps of Engineers is proceeding without any evident regard for the unresolved issues Minnesota has identified. As I have expressed on multiple occasions, it is essential that the Army Corps of Engineers respect Minnesota's permit decision-making process and not act prematurely to initiate construction before our process is complete.

The Chief of Engineers, Lieutenant General Semonite, toured the proposed project area on August 22 and met with the Diversion Authority on August 23. Given how clearly Minnesota has communicated the state permitting issues facing this project, it was inconceivable to me that General Semonite did not also request an opportunity to meet with Minnesota and learn more about these challenges during his visit. But then I viewed his five-minute infomercial for the project (<https://www.youtube.com/watch?v=IwdOeqWxaug>) and realized this was not a fact finding visit, but rather a promotional tour. In the video, Lieutenant General Semonite did not so much as acknowledge the unresolved permitting questions, while he sung the praises of the "amazing project" that he promised to deliver by 2023, apparently with or without the required Minnesota permits. As his project manager stated, "We are racing with local sponsors to get it done as quick[ly] as possible."

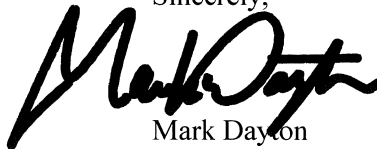
This is not how we do business in Minnesota. Despite Lieutenant General Semonite's unfounded representation to the contrary, Minnesota has not "come together" with the Army Corps of Engineers and the State of North Dakota to advance the proposed project. In all my years of public service at the state and federal levels, I have never seen such a complete disregard for the process of a co-regulator. You should understand that a favorable permit decision by Minnesota is by no means guaranteed, and I take exception to actions by the U.S. Army Corps of Engineers and its non-federal sponsors to suggest otherwise or attempt to advance project construction in the absence of the required Minnesota permits.

These most recent developments are a very disappointing extension of Assistant Secretary Darcy's premature decision to execute the Project Partnership Agreement (PPA) for this project on July 11. Given what Minnesota communicated prior to July 11 about the very significant and unresolved issues relative to our threshold permit requirements, Assistant Secretary Darcy could not have reasonably concluded that the Army Corps of Engineers "is likely to resolve any outstanding regulatory issues that could affect the prospects for completing construction of the project." (Previous correspondence enclosed.)

Statements and actions like those described above demonstrate a federal disregard for state regulatory authority, which is very concerning to me and confusing to members of the public. Such rhetoric clouds an already complicated process and is a source of significant stress for many citizens in the project area.

Finally, let me assure you that Minnesota Department of Natural Resources continues to carefully evaluate the Diversion Authority's permit application, and is currently awaiting required information that was not provided with the Diversion Authority's original application. Minnesota has no desire to take any more time than is necessary in reaching its permit decision.

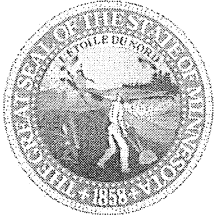
Sincerely,

A handwritten signature in black ink, appearing to read "Mark Dayton". The signature is stylized and cursive.

Mark Dayton
Governor

Enclosures

cc: Lieutenant General Todd Semonite, USACE Chief of Engineers
Major General Michael Wehr, USACE Mississippi Valley Division
Commander
Colonel Samuel Calkins, USACE St. Paul District Commander
Mayor Timothy Mahoney, City of Fargo
Mayor Del Rae Williams, City of Moorhead
Darrell Vanyo, Chair, Flood Diversion Board of Authority
U.S. Senator Amy Klobuchar
U.S. Senator Al Franken
U.S. Congressman Collin Peterson



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July 15, 2016

Shaun Donovan
Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Dear Director Donovan:

I want to convey my personal concern with the Department of the Army's decision to execute a Project Partnership Agreement (PPA) for the proposed Fargo-Moorhead Flood Risk Management Diversion Project. I view this action as premature and inconsistent with the guidance your office issued when allocating \$5 million in funding for FY 2016 to the project.

Specifically, your guidance required the Assistant Secretary of the Army for Civil Works to determine that the Army Corps of Engineers "is likely to resolve any outstanding regulatory issues that could affect the prospects for completing construction of the project" *before* signing the PPA or initiating construction. We've been told that Assistant Secretary Darcy's decision to sign the PPA represents her determination that regulatory issues are likely to be resolved.

Respectfully, I must take issue with her decision. Minnesota was not consulted prior to the Assistant Secretary's determination, nor have we been provided with any written explanation of the basis for her determination. Minnesota has been abundantly clear that the Fargo-Moorhead project as proposed presents very significant issues relative to our threshold permit regulations. Commissioner Landwehr summarized some of those issues in his July 8, 2016 letter to Assistant Secretary Darcy, which is attached.

We are in the process of carefully evaluating the proposed Fargo-Moorhead Diversion Project under our permitting rules. It is premature to conclude that outstanding regulatory issues are likely to be resolved.

Thank you for your consideration of my concerns.

Sincerely,

A handwritten signature in black ink that reads "Mark Dayton".

Mark Dayton
Governor

Enclosure

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Minnesota Department of Natural Resources

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Office of the Commissioner

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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

Assistant Secretary Darcy
July 8, 2016
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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 permissible 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
Darrell Vanyo, Chair, Metro Flood Diversion Authority
US Senator Amy Klobuchar
US Senator Al Franken
US Congressman Collin Peterson