

# Fargo-Moorhead flood-control project hits another obstacle as local permit is denied

By [FORUM NEWS SERVICE](#) |

June 25, 2019 at 11:49 pm

FARGO, N.D. — The chairwoman of the Metro Diversion Authority will urge her fellow board members to vote to appeal the denial of a permit that's required to enable the \$2.75 billion Red River flood-control project to proceed.

Mary Scherling, a Cass County commissioner and chairwoman of the diversion board, said she will seek approval to appeal the permit denial by the Buffalo-Red River Watershed District when the diversion board meets Thursday.

At a meeting Monday, the Buffalo-Red River board deadlocked 3-3 in a vote to approve the permit. Because a majority is required, the proposed permit, which included 10 conditions, failed.



Flood waters from the swollen Red River spill over its bank and into surrounding farm land Sunday, March 21, 2010, north of Fargo, N.D. (AP Photo/M. Spencer Green)

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“Obviously, I’m disappointed,” Scherling said. “We’ve been working in good faith with the Buffalo-Red board for several months. We’ve just done everything we’ve been asked,” including working to meet the 10 conditions attached to the proposed permit.

Members of the Diversion Authority board met with their lawyers Tuesday to discuss their legal options and appeal avenues.

“Our attorney’s doing his due diligence and figuring out our options,” she said. “We feel we’re in compliance with all the rules. This doesn’t stop the project at all. We still need this project. We’re still going to do this project.”

In late December, the diversion project was granted a key permit by the Minnesota Department of Natural Resources, authorization to construct a dam to temporarily store Red River floodwater, enabling a controlled release downstream.

But one of the 54 conditions attached to the Minnesota DNR permit is a requirement that the diversion must obtain all required local permits for the project to go forward.

The Minnesota Buffalo-Red River board has jurisdiction over impacts from the project within its district, which includes Clay and Wilkin counties, areas upstream from the dam that will be affected by pooling water.

The overall project would divert Red River floodwater around Fargo-Moorhead via a channel on the North Dakota side.

In separate administrative cases, the Buffalo-Red River board as well as the Minnesota communities of Wolverton and Comstock are appealing the DNR’s permit enabling the diversion to proceed.

The appeals, which will be heard by an administrative law judge, likely will take a year or more, Scherling said. But the opponents now have the burden of seeking to overturn the Minnesota DNR’s decision, a document resulting from months of detailed study.

“It’s quite a lengthy procedure to take on the DNR,” Scherling said. It’s also expensive litigation, she added, generating costs that will be borne by taxpayers in North Dakota and Minnesota, including constituents of the Buffalo-Red River board.

Fargo Mayor Tim Mahoney, who serves on the Diversion Authority board, also expressed disappointment over the permit denial. The administrative appeals over the Minnesota DNR permit could determine the outcome, he said.

“What I’m assuming the DNR appeal process will figure this out,” Mahoney said.

Kevin Campbell, a Clay County commissioner and Diversion Authority board member, also wants to appeal the Buffalo-Red River board permit denial, which he believes did not follow proper procedure.

“They have to say why they’re denying it, and there was none of that,” he said.

Jay Leitch, president of the Buffalo-Red River board, voted to grant the permit but abstained from voting to continue with the DNR permit appeal. He said he was surprised by the split vote, which resulted in denial of the local permit.

“We have a special meeting with our attorneys to talk about it,” he said.

Members seemed skeptical about the Diversion Authority’s ability to follow through on commitments and questioned that it had adequate financial resources to do so, Leitch said.

The Buffalo-Red River board actually voted twice Monday on the diversion permit. The first vote, 3-3, to approve the permit failed. Later, in the “hubbub” of diversion opponents and proponents leaving the meeting, the board’s lawyer suggested the outcome was perhaps vague.

A second vote, to deny the permit, passed 4-2, after reporters and many observers left the meeting, Leitch said. John Hanson, of Audubon, representing Becker County, changed his vote, making the denial more emphatic, Leitch said.

During Monday’s watershed board meeting, Leitch said he tried to persuade his fellow board members that Wilkin County will experience little or no impact from the diversion. Even in the case of a 100-year flood, he said, Wilkin County landowners would only see a small amount of water.

“But nobody wanted to hear that,” he said.

Despite the denial of the local permit in Minnesota, work on the inlet structure for the diversion will resume early next month in North Dakota. That project is overseen by the U.S. Army Corps of Engineers, which is working with the Diversion Authority on the project.

Work on the inlet began in 2017 but was halted that year by a federal judge. That action came in a lawsuit filed by upstream opponents of the diversion in Minnesota's Wilkin County and North Dakota's Richland County.

The lawsuit prompted formation of a task force led by the governors of North Dakota and Minnesota to forge a consensus that resulted in significant revisions of the diversion project. The new design, called "Plan B," shifts more of the impacts to Cass County in North Dakota, which also derives most of the project's benefits, and was accepted by the Minnesota DNR in December 2018.

Every year of delay increases the project's cost by \$70 million, an estimate diversion authority officials have called conservative.