

## COMMENTS AND PROPOSED EDITS TO POTENTIAL CONDITIONS OF THE BUFFALO-RED RIVER WATERSHED DISTRICT (BRRWD) PERMIT

On the following pages, please find redline comments to the Potential Conditions of the Buffalo-Red River Watershed District (BRRWD) Permit proposed by F-M Diversion Authority (DA) technical staff. DA technical staff is not authorized to commit the DA Board, but with the proposed edits, would provide an affirmative recommendation on the Potential Conditions to the DA Board. The DA appreciates the time and effort of the BRRWD staff and Managers to review the Permit Application and to provide the DA with these Potential Conditions.

DA technical staff is providing comments on three sections of the Potential Conditions. Supporting commentary for the proposed changes in each section is provided below.

Section 1. Because the BRRWD has a long track record of successfully delivering flood mitigation projects and has been working on these issues, the BRRWD may be in the best position to lead efforts for projects in the cities of Georgetown and Wolverton. The proposed edits would clarify the DA's role in providing financial resources and the BRRWD's role in project ownership and delivery.

Section 3. DA technical staff supports the BRRWD's goal of providing maximum flexibility to the land owners who will be impacted by the operation of the Project.

- The acquisition of property rights for all property required for Project operation (e.g. flowage easements on lands without structures) prior to the commencement of any construction in Minnesota may not provide the maximum flexibility desired by the affected property owners given that the project is a multi-year effort. Currently, construction in Minnesota is broken into three construction packages with the earliest starting construction in 2021 and the last being complete in 2026. The current schedule also shows that the Project will not be operational until 2026 or 2027. As a result, flowage easements and impacted structure mitigation will occur five to six years prior to operation of the Project. Other than acknowledging the implications of this requirement, no edits are proposed.
- Option agreements would provide the property owners some added flexibility. However, securing option agreements for a project of this scale may be challenging, if not unrealistic. To provide the maximum flexibility for the property owners, no changes to the option agreement language are proposed.
- The words "in Minnesota" have been added to clarify that all the property rights in Minnesota will need to be acquired prior to the construction project elements in Minnesota (e.g. the Southern Embankment and the Eastern Tie Back).
- Three project components that do not independently result in upstream impacts are proposed to be allowed to proceed to construction when the footprint property has been acquired but prior to acquisition of all property required for Project operation (e.g. flowage easements): 1) the remaining In Town Project components in Moorhead (separate permit applications will be submitted to the BRRWD), 2) roadway improvements in Clay County, and 3) the Red River Control Structure, which is located in North Dakota but requires small footprint acquisitions in Minnesota .

Section 10. A six-month submittal requirement for a permit extension to allow the BRRWD ample time to review the permit extension is proposed.

## POTENTIAL CONDITIONS OF THE BUFFALO-RED RIVER WATERSHED DISTRICT (BRRWD) PERMIT:

**NOTE: THE BRRWD RESERVES THE AUTHORITY TO ADD, MODIFY, OR REMOVE CONDITIONS PRIOR TO ANY PERMIT ISSUANCE.**

A BRRWD Permit is granted and becomes valid subject to the following conditions:

1. **ADDITIONAL FLOOD MITIGATION:** With impacts expected to flood levels at Wolverton and Georgetown, the Permittee shall provide **funding to assist BRRWD in providing** certifiable, permanent 100-year flood protection to the City of Georgetown and the City of Wolverton. Flood protection for the Cities of Georgetown and Wolverton may commence prior to acquisition of all flowage easements for the proposed maximum flood pool and to acquisition of property rights for dam construction.
2. **SITE ACCESS:** The permittee shall grant access to the Minnesota portions of the project site at all reasonable times during and after construction to BRRWD authorized representatives and the Board of Managers for inspection of the work authorized hereunder.
3. **PROPERTY RIGHTS:** Minnesota Property rights shall be acquired, or option agreements shall be signed for all property necessary for construction and operation of the Project **in Minnesota** prior to the commencement of construction in Minnesota. Property rights shall include fee simple absolute acquisition of all property of the Project footprint (Plan B eastern tieback could be by easement). Temporary construction easements shall be acquired on all property that will be used for construction of the Project. **Construction of the Red River Control Structure, In-Town projects, and road improvements within BRRWD's jurisdiction can proceed when all property rights necessary for their construction are acquired.**

All lands with residential or farmstead structures that will be impacted **by Project operation** will be acquired in fee simple absolute, unless the:

- a. landowner prefers a **mutually-agreeable** alternative, and
- b. other regulatory authorities (such as Army Corps and Department of Natural Resources) will permit **the alternative** (assumed to be no more restrictive than current statewide floodplain regulations), and
- c. **the alternative** is cost effective (costs less than full fee simple absolute purchase) ~~for the structure to be relocated, elevated, ringdiked, or floodproofed.~~

For all other property impacted when the dam is operated at maximum capacity that is not acquired in fee simple absolute, flowage easements are required. The demolition and/or cleanup of bought-out structures, ~~or~~ construction associated with relocation, elevating, floodproofing, or ringdiking of farmstead or rural residences, **and construction associated with landowner-preferred alternatives** may commence prior to acquisition of all flowage easements.

4. **SUBMITTALS:** All submittals required by the Minnesota Department of Natural Resources in their Permit No. 2018-0819 conditions shall also be provided concurrently to the BRRWD.
5. **WOLVERTON CREEK CROSSING:** The Permittee shall coordinate the final design of the Wolverton Creek Structure with the BRRWD to ensure compatibility with the Wolverton Creek Restoration Project. The BRRWD recommends the Wolverton Creek Structure and Plan B Eastern Tieback levee be moved to the County line. No construction of the Wolverton Creek Structure is allowed by this permit until written approval of the final design is obtained from the BRRWD.

6. OPERATION, MAINTENANCE, MONITORING, AND INSPECTION PLAN: Any changes to the Operation and Maintenance Plan require prior written approval of the BRRWD.
7. CONSTRUCTION PHASE APPROVAL: Written approval must be obtained from the BRRWD prior to the start of construction of any components of the dam in Minnesota. The Permittee shall submit to the BRRWD detailed plans and specifications at least 120 days prior to construction. Intention of the plan review and approval is to ensure consistency with the original project design and ensure local drainage accommodations and erosion control are adequate.
8. PROJECT MAINTENANCE: The Permittee may maintain the project in Minnesota without a permit from the BRRWD, as long as the maintenance restores the system to its original constructed configuration. The Permittee shall notify the BRRWD of any maintenance in excess of \$50,000 in estimated construction cost.
9. APPLICABLE FEDERAL, STATE, OR LOCAL REGULATIONS: The permittee is not released from any rules, regulations, requirements, ordinances, or standards of any applicable federal, state, or local agencies. This includes all Department of Natural Resources Project Permit No. 2018-0819 requirements.
10. COMPLETION DATE: Construction work authorized under this permit shall be completed on or before the December 31, 2025. The Permittee may request an extension of the time to complete the project by submitting a written request **six (6) months prior to permit expiration**, stating the reason(s) thereof, to the BRRWD. Any extension of time made and granted by the BRRWD shall be made in writing.

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