

## INTRODUCTION

The Minnesota Department of Natural Resources (“DNR”) comes to this Court on the horns of a dilemma. When this Court entered its September 7, 2017 Order issuing an injunction (“Order”), this Court admonished the parties to find a joint resolution for flood risk reduction for the Fargo Moorhead metropolitan area. (Dkt. No. 530 at 58.) The Governors of North Dakota and Minnesota heard the Court and took on this task. After consultation with affected communities on the Red River of the North (“Red River”), including the cities of Fargo and Moorhead, a revised project plan was developed for which the DNR issued a permit on December 27, 2018 (“Permit”). After issuance of the Permit, two communities, Comstock and Wolverton, and the Buffalo Red River Watershed District requested a contested case hearing. Under Minnesota law the filing of a contested case hearing voids the permit. Minnesota now finds itself with a project that it believes meets all permitting requirements but that no longer has a permit. Should this Court modify the injunction without requiring compliance with the Permit conditions, the Plan B Project would not comply with Minnesota law. Moreover, without an order requiring compliance with the Permit conditions, Minnesota has no mechanism to regulate the Plan B Project and enforce its Permit conditions. The interests of Minnesota would be put in jeopardy. For these reasons, Minnesota now asks the Court to either order that construction may commence consistent with all of the requirements set forth in DNR’s pending Permit or deny the Defendants’ motion to modify the injunction.

As this Court is aware, the Fargo-Moorhead metropolitan area is located on the Red River. The Red River has reached or exceeded the National Weather Service flood