



Fargo-Moorhead Flood Risk Management Project

Dam Safety & Work in Public Waters Permit Application Decision

FREQUENT ASKED QUESTIONS

What was the DNR's decision on the Dam Safety and Work in Public Waters Permit application?

The DNR denied the Diversion Authority's Dam Safety and Work in Public Waters Permit.

Why did the DNR deny the permit?

- We carefully evaluated the Permit application against Minnesota Statute and Rule.
- The permit was denied for three primary reasons:
 - Alternatives: The DNR concluded that the proposed Project does not meet the requirement to be reasonable, practical, protect public safety and promote public welfare (M.S. 103G.315).
 - Plan Consistency: The Project is not consistent with some state and local land use and water management plans in the project area (M.R. 6115.01150; M.S. 103G.0245).
 - Mitigation: Although the permit applicant developed a number of proposals to meet DNR concerns, there are mitigation, monitoring and adaptive management needs that have not been sufficiently addressed (M.S. 103G.245).
- Detailed rationale for the decision can be found in the Findings of Fact document. The document is available online at <http://www.dnr.state.mn.us/waters/fm-flood-risk.html>

Is sandbagging the only other solution?

- Absolutely not. DNR is not advocating, recommending or advising that communities continue to rely on emergency measures, such as sandbagging. We recognize that sandbagging and other emergency measures take a toll on communities.
- Although emergency measures have proven successful in past flood years, and the metropolitan area has weeks to prepare from the non-flash-floods, the DNR agrees that sandbagging and other emergency measures are not permanent protection.
- The DNR understands and supports the need for enhanced flood protection in portions of the Fargo-Moorhead area. However, the Diversion Project as proposed does not meet the standards established in Minnesota law and thus is not an acceptable means of providing that enhanced protection.

MINNESOTA STATUTES AND RULES RELATING TO FLOOD RISK MANAGEMENT PROJECTS

103A.201 REGULATORY POLICY.

Subdivision 1. Policy.

To conserve and use water resources of the state in the best interests of its people, and to promote the public health, safety, and welfare, it is the policy of the state that:

- (1) subject to existing rights, public waters are subject to the control of the state;
- (2) the state, to the extent provided by law, shall control the appropriation and use of waters of the state; and
- (3) the state shall control and supervise activity that changes or will change the course, current, or cross section of public waters, including the construction, reconstruction, repair, removal, abandonment, alteration, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in public waters.

103A.207 FLOODPLAIN MANAGEMENT POLICY.

(a) It is the policy of this state to reduce flood damages through floodplain management, stressing nonstructural measures such as floodplain zoning and flood proofing, and flood warning practices.

(b) It is the policy of this state:

- (1) not to prohibit but to guide development of the floodplains consistent with legislative findings;
- (2) to provide state coordination and assistance to local governmental units in floodplain management;
- (3) to encourage local governmental units to adopt, enforce, and administer sound floodplain management ordinances; and
- (4) to provide the commissioner of natural resources with authority necessary to carry out a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state.

103F.105 FLOODPLAIN MANAGEMENT POLICY.

(a) The legislature finds:

- (1) a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and

(b) If a major change in the resource is justified, public-waters-work permits must include provisions to compensate for the detrimental aspects of the change.

Subd. 9. Project affecting floodwaters.

(a) A public-waters-work permit for a project affecting floodwaters may be granted only if:

(1) the area covered by the public-waters-work permit is governed by a floodplain management ordinance approved by the commissioner; and

(2) the conduct authorized by the public-waters-work permit is consistent with the floodplain management ordinance, if the commissioner has determined that enough information is available for the adoption of a floodplain ordinance.

(b) A public-waters-work permit involving the control of floodwaters by structural means, such as dams, dikes, levees, and channel improvements, may be granted only after the commissioner has considered all other flood damage reduction alternatives. In developing a policy on placing emergency levees along the banks of public waters under emergency flood conditions, the commissioner shall consult and cooperate with the office of emergency services.

103G.315 DENIAL AND ISSUANCE OF PERMITS.

Subdivision 1. Commissioner's general authority.

The commissioner may deny issuing permits and issue permits with or without conditions.

Subd. 2. Findings of fact.

The commissioner shall make findings of fact on issues necessary for determination of the applications considered. Orders made by the commissioner must be based upon findings of fact made on substantial evidence. The commissioner may have investigations made. The facts disclosed by investigation must be put in evidence at the hearing.

Subd. 3. Issuance of permit.

If the commissioner concludes that the plans of the applicant are reasonable, practical, and will adequately protect public safety and promote the public welfare, the commissioner shall grant the permit.

116D.04 ENVIRONMENTAL IMPACT STATEMENTS

Subd. 6. Prohibitions.

No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air,