



**DIVERSION AUTHORITY
Land Management Committee
City Commission Chambers
Fargo City Hall
Wednesday, March 27, 2019
3:00 p.m.**

1. Introductions
2. Agenda Review
3. Approve February 27, 2019 Minutes (item A)
4. Property Acquisition Status Report (item B)
5. Lands Outreach Update (item C)
6. Upstream Mitigation – Development Restrictions in Maximum Pool (item D)
7. Crop Insurance (item E)
8. CCJWRD Update
9. MCCJPA Update
10. Other business
11. Next meeting April 24, 2019

**DIVERSION AUTHORITY
Land Management Committee
Commission Chambers
Fargo City Hall
Wednesday, February 27, 2019
3:00 p.m.**

Present: Clay County Commission Representatives Kevin Campbell and Jenny Mongeau, Fargo City Administrator Bruce Grubb, Moorhead City Council Member Chuck Hendrickson, Cass County Joint Water Resource District Manager Rodger Olson, Cass County Commission Representative Mary Scherling and Moorhead City Engineer Bob Zimmerman.

Others present: Eric Dodds - AE2S.

Absent: Fargo Division Engineer Nathan Boerboom, Cass County Commissioner Duane Breitling, City of Horace Mayor Kory Peterson, Fargo City Commissioner John Strand and City of Moorhead Mayor Johnathan Judd.

The meeting was called to order by Ms. Scherling.

Agenda Review

Mr. Olson moved to approve the agenda. Second by Mr. Grubb. All the members present voted aye and the motion was declared carried.

Minutes Approved

Mr. Grubb moved the minutes from the January 23, 2019 meeting be approved. Second by Mr. Campbell. All the members present voted aye and the motion was declared carried.

Property Acquisitions Program Update:

Mr. Dodds said one of the maps included in the meeting packet shows colored squares, which represent the numbers of parcels for each property and work continues on getting the full status. He said the map shows the key areas of the project, including where land is still needed, the three phases of the Diversion channel, the southern embankment and the three control structures. He said there are still a few parcels needed in Oxbow and in the upstream mitigation area and some additional in-town levees. Another map in the pack shows the status of acquisitions and there are many colors on the north end of the channel with green meaning the Diversion Authority owns it, purple meaning a contract is pending, blue meaning it is in negotiation, etc. The solid tan color in the southern half of the channel means appraisals are pending.

Appraisal Services RFP Results:

Mr. Dodds said the Cass County Joint Water Resource District (CCJWRD) issued a Request for Proposals (RFP) for appraisal services in January for the valuation of necessary rights-of-way for the construction and operation of the F-M Metro Area Flood

Diversion Project. The RFP sought to obtain statements of qualifications and proposals for initial blocks of tract appraisal assignments and served to verify appraiser credentials for future on-call assignments. He said a number of individual tract appraisal assignments were bundled into five initial appraisal packages based on geographic proximity and current land use. He said the five packages contain 10 to 30 parcels each and focus on lands necessary for the channel portion of the project. He said future appraisal package assignments will be defined for the property rights needed for the southern embankment and structures in the upstream mitigation area. Appraisal work for the project, he said, includes about 120 parcels for the channel, 110 parcels for the southern embankment in North Dakota, 33 parcels for the southern embankment in Minnesota and approximately 186 structure sites in North Dakota and about 63 structure sites in Minnesota. He said eight proposals were received and reviewed and the recommendation is all eight firms are qualified. He said typically, contract actions come through the Finance Committee; however, given that the RFP was fairly transparent and was given a good review process, the Finance Committee wants the Land Management Committee to recommend the contracting actions and authorize them to work directly with CCJWRD. He said the Committee is recommending Master Service Agreements (MSA) with all eight firms and expectations are all eight will be used in one way or another. He said the firms are: Compass Land Consultants, Inc.; Crown Appraisals, Inc.; GEB Appraisals and Triebwasser Appraisal Service; Integra Realty Resources; Patchin Messner Valuation Counselors; Point Value Appraisal and Consultation; Sutton Group Appraisals, Inc.; and Tinjum Appraisal Company, Inc. He said the five appraisal packages will be awarded right away to three of the firms.

In response to a question from Mr. Olson asking if only three of the firms are awarded the appraisal packages, what does that mean for the other firms, Mr. Dodds said the eight appraisal firms are all qualified to provide work on the project, which is why MSAs are recommended. He said the first five appraisal packages are for the channel and there are other appraisal needs across the scope of the project. For example, he said, there have been a number of phone calls from people outside the channel who are anxious to move forward, so he anticipates that soon appraisal packages 6, 7 and 8 will be put together and then some of the other firms will be asked to consider those packages.

In response to a question from Ms. Scherling asking when the MSAs will begin, Mr. Dodds said the goal is to have all of the contracting actions with the firms ready for the March 14th CCJWRD board meeting. Mr. Dodds added that several of the appraisal firms are also qualified to do work in Minnesota and as soon as the Minnesota acquiring entity is established, some of the appraisers are able to do work on both sides of the river.

Mr. Zimmerman moved to approve the appraisal RFPs. Second by Mr. Hendrickson. All the members present voted aye and the motion was declared carried.

Lands Outreach

Mr. Dodds said there is a significant lands outreach campaign. He said the first rough drafts of the letters were produced in 2017, then with all of the ups and downs of the project, the letters were not mailed; however, the project is now at a point where the lands outreach program can move forward. There are eight different packets of letters going out Friday, he said. He said the letters are being mailed to people who own

property in various locations of the project, including the northern part of the channel, the southern part of the channel, the embankment in North Dakota, the embankment in Minnesota, the upstream impacted areas in North Dakota and Minnesota, the City of Christine, North Dakota, and the City of Wolverton, Minnesota. He said there are eight separate packets and each packet has a different map and some differences in wording. He said there is a team and a tracking system in place to receive phone calls and answer questions at the AE2S offices and the CCJWRD office. He said the packets will provide information to property owners, many of whom will be excited about it and others who will be upset; however, both offices are prepared to handle all phone calls.

In response to a question from Mr. Hendrickson, asking what the approval process was for the letters, Mr. Dodds said the letters were reviewed by mayors, county commissioners, public relations experts and land agents. He said there were many eyes on the letters and are probably the most reviewed letter ever sent by the Diversion Authority.

Ms. Scherling said she sent a letter to The Forum about the mailing, giving people a heads up that they are on the way. She said one of the things the Authority is criticized about is the lack of communication; however, the Authority has not been able to move forward with planned acquisitions due to being tied up in the permitting process. Now the Authority can move forward, she said, and some property owners are going to be happy and obviously there are going to be people who are not happy; however, people will be glad to know their impacts due to the fact that there have been a lot of rumors and perhaps they are not going to be impacted to the degree they thought. She said being able to meet individually with land agents and figure out their options will lessen peoples' anxiety and fear of the unknown.

Upstream Mitigation:

Mr. Dodds said a map titled "FM Area Diversion Project Potentially Impacted Structure and Land Mitigation Plan" is part of the mailing going to property owners and is another one of those items of the project that has gone through several iterations. The map is reflective of the conditions from the DNR permit, he said, or at least the best interpretation of the conditions. He said from a land mitigation standpoint, there are two different pools or two different areas and from a structure mitigation standpoint, there are commensurately two different structure mitigations, depending on where the structures are located. For the land, he said, there is the operating pool, which was defined by the Corps of Engineers. He said it is necessary for the safe operation of the project and that is defined to hold the volume of water that will be required to safely operate the project and have the protection it provides. The DNR and Water Commission have recognized that a dam is being built, he said, therefore the Authority must follow dam safety standards. He said there is also the maximum pool, which is defined by the Probable Maximum Flood (PMF), or a Noah's flood event, and this will be the area where there would be depth differences or impacts caused by a PMF flood event with the project in place. In some areas, he said, it is just a little bit of water on the fringes and in other areas, it is a couple of tenths or a couple of inches of water. He said in accordance with DNR provisions, those are the areas that will be impacted. For the operating pool areas, he said, the Authority will be buying flowage easements,

which will prohibit all development, effectively like a floodway. In the maximum pool areas, he said, the Authority will buy a flowage easement that has restrictions on developments; however, development could occur if structures are elevated above the flood elevation. He said the red dots on the map are residential structures in the floodway; therefore, the Authority is obligated to buy and remove those structures. The yellow dots, he said, are category two structures and are located within the maximum pool area. Again, he said, the Authority is obligated to offer a buyout if those structures are impacted; however, the Authority is also able to consider alternative mitigations such as elevating the structure, floodproofing or a ring levee. He said many engineers were involved in drafting the map; however, it is a complex subject.

Ms. Mongeau said she noticed on the mitigation maps that properties within the dam shadow are not highlighted. She asked if the Committee is still in the process of determining which properties will need buyouts and if so, have those people been included in the mailings. In response, Mr. Dodds said one of the conditions of the DNR permit was a recommendation to limit future development within a quarter mile downstream of the dam, which stems from potential dam breach analysis. He said the Authority has had some follow-up with the DNR and the Buffalo-Red River Watershed District (BRRWD) about that point and that is the recommendation for future development. He said it is his understanding that the Authority is not required to buyout existing structures that are impacted in that zone and it is a zoning issue more than anything else, therefore the Authority did not include any of those properties in the mailing. He said as the final design of the embankment is completed, the Authority will be in contact with those property owners, recognizing that many of the parcels of land impacted by the embankment footprint are not small parcels. The Authority will be in contact with the majority of those property owners by default, he said, due to the fact that part of their parcel is impacted.

Farm Impacts Working Group:

Mr. Dodds said an ag policy subcommittee was established several years ago and met a dozen or so times and was helpful with discussions about the impact of flooding on the quality of soil, risk of diseases, crop insurance and more. When this group was winding down a few years ago, it was discovered that the effectiveness of this group was hamstrung by the size of the group and lawsuits that were in place.

Joe Herbst, AE2S, said there is a robust mitigation plan now, which considers many different aspects of how property owners are going to be mitigated; however, the execution of that plan requires more consideration. He said there is a lot of granularity to how that plan might be executed and by getting feedback and having down in the weeds discussions with people who are impacted, that approach will yield more insight and add validity to the program. He said it is one thing to write a policy, but how does it actually work? A much smaller farm impacts working group, he said, will have time to dive into the details of certain things and it is easier to keep a smaller group on track. He said at the group's first meeting, there will be solid goal-setting and clear objectives. Another thing that will help keep the smaller group on track, he said, is the venue will be smaller and more private so people will not feel like they need to posture or grandstand because their neighbors are looking over their shoulder. He said his hope is that they can have the hard discussions, which will add a lot of credibility. He said the group will

be small but proportionate and he would like to have it reflect the farmer who may be retiring and thinking about succession and also the young farmer who will continue to farm in the staging area, someone who has an interest that extends beyond getting the project built or making it go away and actually how are they going to operate after it is done. He said the group will look at things at a great level of detail.

In response to a question from Ms. Scherling asking when the group will begin meeting, Mr. Herbst said immediately due to the fact that there are questions that need answers and feedback. He said the mailing is a huge step and this lets us really get our arms all the way around the land impacts on this project and the first meeting should happen very soon, prior to spring planting.

Mr. Campbell said in reference to Decision Paper No. 00035 and the Key Characteristics of the Farm Impacts Working Group, the Moorhead Clay County Joint Powers Agreement (MCCJPA) should be added.

Mr. Olson moved to direct the PMC to formulate a Farm Impacts Working Group to advance discussions related to implementation of the mitigation plan and that this directive shall be valid for one year from this date (February 27, 2019) and expire thereupon. Second by Mr. Grubb. All the members present voted aye and the motion was declared carried.

CCJWRD Update

Rodger said the appraisal services RFP results will be discussed at the next CCJWRD meeting as well as a purchase agreement.

MCCJPA Update

Mr. Campbell said the MCCJPA document is getting close to its final draft and be ready for review soon. He said an invitation was sent to the BRRWD, which voted to have a member serve on the MCCJPA as an entity rather than a member.

Mr. Dodds said the MCCJPA document will be reviewed and placed on the Clay County Commission meeting agenda in a month or so.

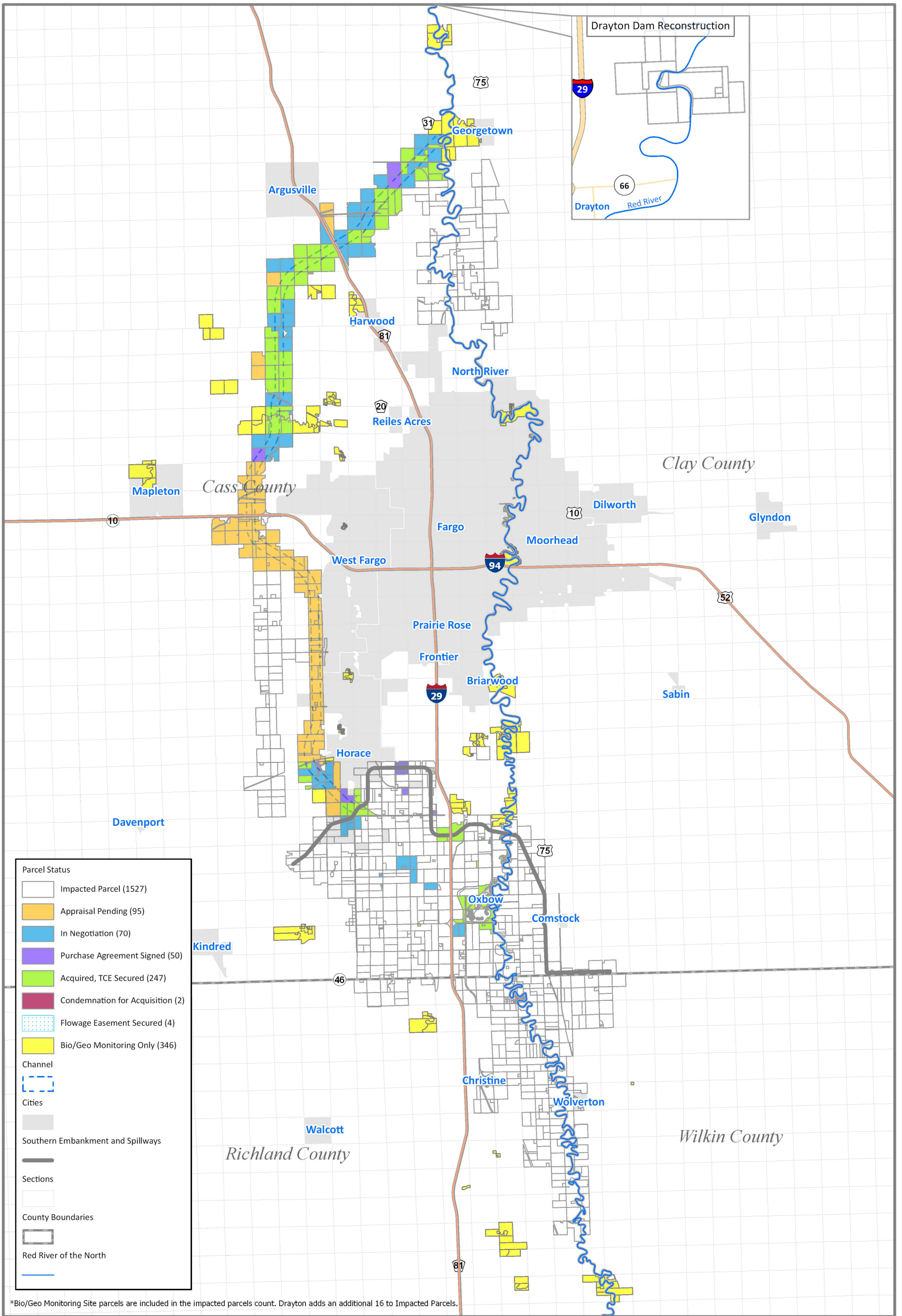
In response to a question from Ms. Scherling, asking if there are any hardship applications in Minnesota, Mr. Campbell said none as of now; however, Clay County has dealt with a couple of cases already.

Mr. Dodds said a few Minnesota property owners have asked to move forward sooner than later and until the Minnesota group is established, Cass County is willing to help with those acquisitions if needed.

Mr. Zimmerman moved the meeting be adjourned. Second by Mr. Hendrickson. All the members present voted aye and the motion was declared carried.

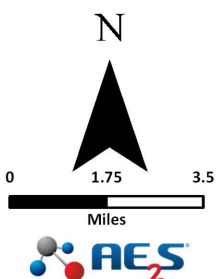
The meeting adjourned at 3:37 p.m.

The next meeting will be March 27, 2019.



*Bio/Geo Monitoring Site parcels are included in the impacted parcels count. Drayton adds an additional 16 to Impacted Parcels.

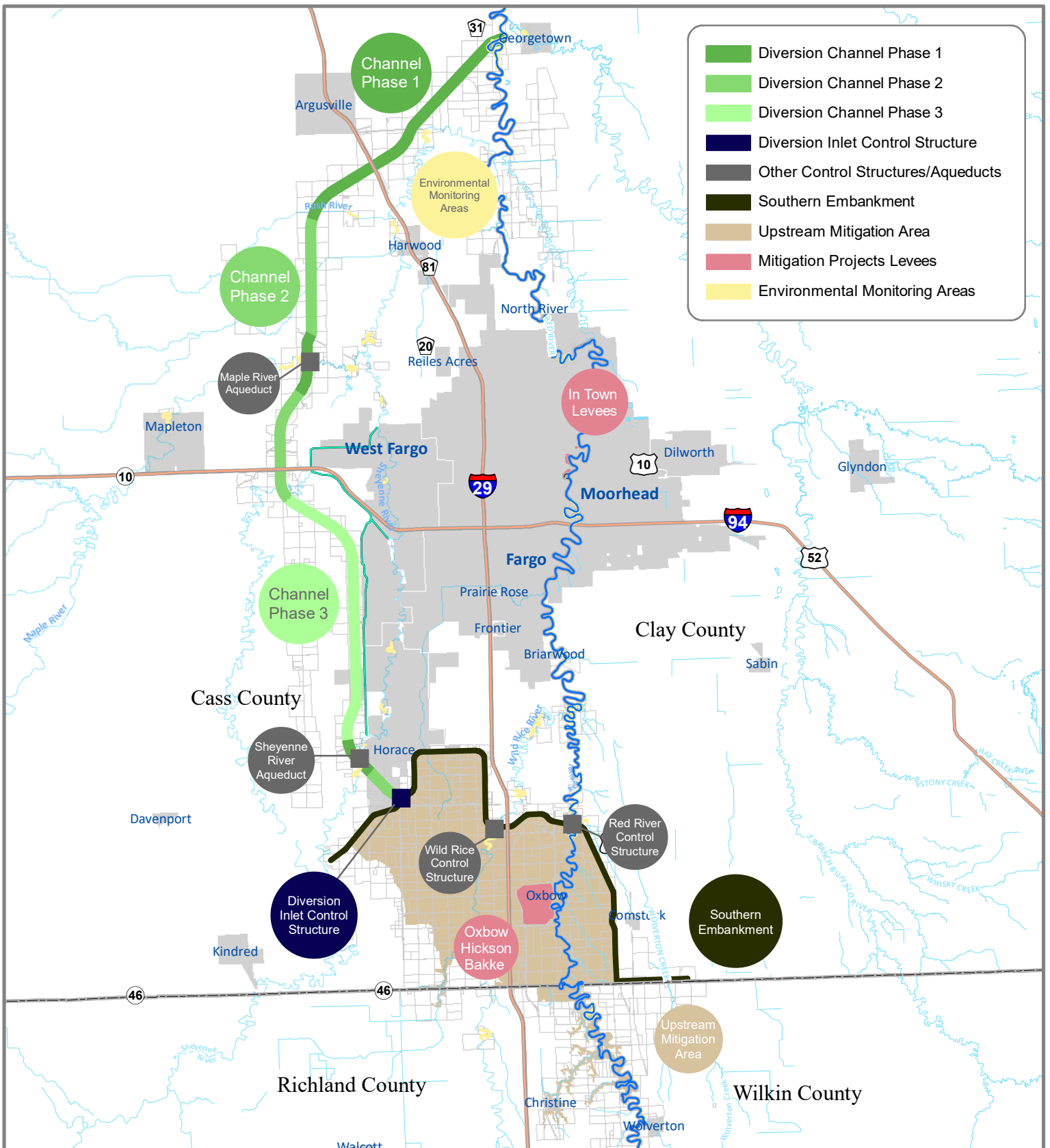
Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate. Edited by: cwickenheiser | C:\Data\Projects\GIS Projects\FM Area Diversion\FMDiversionParcelStatus.aprx



PROPERTY ACQUISITION STATUS REPORT

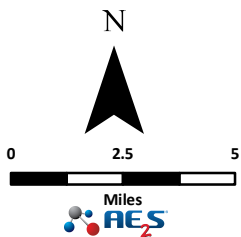
Date: 3/20/2019





- Diversion Channel Phase 1
- Diversion Channel Phase 2
- Diversion Channel Phase 3
- Diversion Inlet Control Structure
- Other Control Structures/Aqueducts
- Southern Embankment
- Upstream Mitigation Area
- Mitigation Projects Levees
- Environmental Monitoring Areas

Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 UTM Zone 14N. | Edited by: cwickenheiser
 C:\Data\Projects\GIS\Projects\FM Area Diversion\Project Work Package\Project Wide\Overall LA Maps\PropertyAcquisitionSevenPhaseMap8x11newLayoutTemplate.mxd



FM AREA DIVERSION KEY ACQUISITION AREAS

Map Date: 3/20/2019



Cultural Mitigation Areas

Sheyenne River Site #1

(32-CS-201) Target Completion: Complete



3 parcels total

(Part of Channel Phase 1)

Phase 3 Cultural Mitigation (Excavation) planned for Summer 2019

North of Maple River Site

(32-CS-5139) Target Completion: TBD

**ON
HOLD**



3 parcels total

(Part of Channel Phase 1)

Phase 2 Cultural Investigation complete - ND SHPO Reviewing Report, results of South of Maple River Site may impact next step at this site.

Sheyenne River Site #2

(32-CS-5126) Target Completion: TBD

**ON
HOLD**



1 parcel total

(Part of Channel Phase 1)

Phase 2 Cultural Investigation ON HOLD pending results of Phase 3 work at Sheyenne River Site #1

South of Maple River Site

(32-CS-5127) Target Completion: Complete



3 parcels total

(Part of Channel Phase 1)

Phase 3 Cultural Mitigation (Excavation) planned for Summer 2019

Drain 14 Site

(32-CS-5135) Target Completion: Fall 2019



1 parcel total

(Part of Channel Phase 2)

Phase 2 Cultural Investigation (Shovel Test) planned for Fall 2019

-  Appraisal Pending
-  In Negotiation
-  Agreement Signed
-  Acquired Parcel
-  Condemnation
-  Change from last report

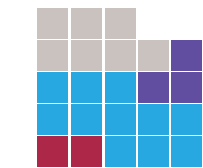
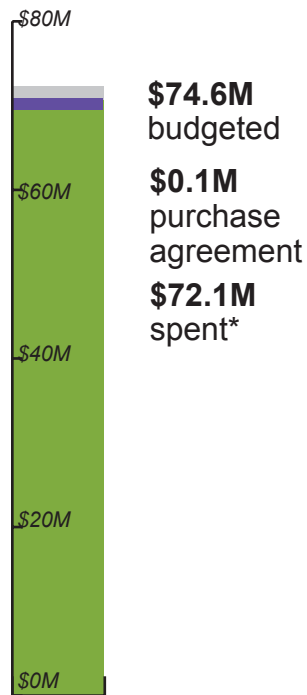
OHB Projects



OHB Ring Levee

WP 43

Hard Costs paid to Property Owners



23 parcels remaining

- 0 Appraisal Pending
- 11 In Negotiation
- 3 Agreement Signed
- 0 Acquired Parcel
- 2 Condemnation
- Changed from last report

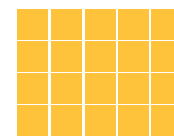
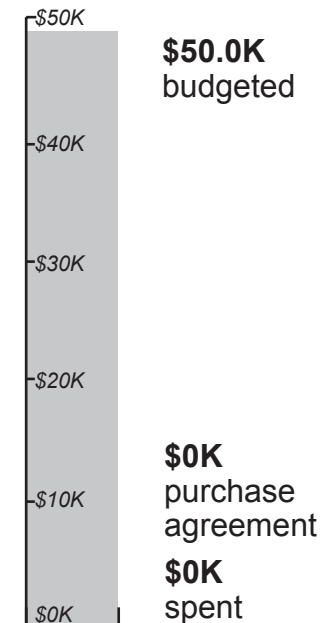
- Budgeted
- Purchase Agreement
- Spent
- Asset Property

* Includes parcels purchased outside the OHB Ring Levee

Hickson Main Ave ROW

WP 43D5

Hard Costs paid to Property Owners



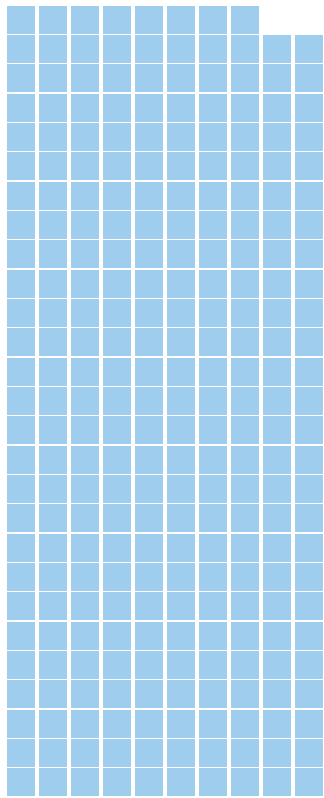
20 parcels total

- 20 Appraisal Pending
- 0 In Negotiation
- 0 Agreement Signed
- 0 Acquired Parcel
- 0 Condemnation
- Changed from last report

- Budgeted
- Purchase Agreement
- Spent
- Asset Property

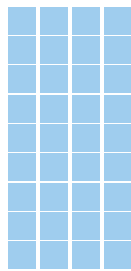
Environmental Monitoring Areas (WP55-BIOGEO)

Cass County



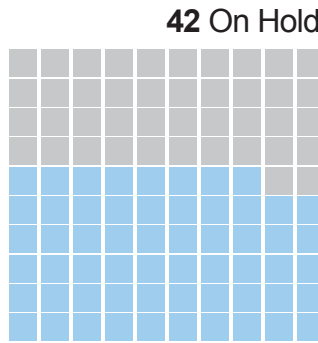
268 parcels total

Richland County



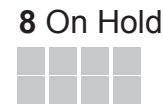
36 parcels total

Clay County



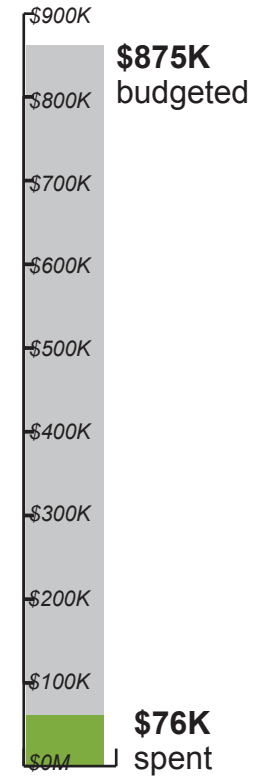
100 parcels total

Wilkin County



8 parcels total

Hard Costs paid to Property Owners



- ROE Sent
- ROE Granted
- USACE Easement Bounds In Work
- Preliminary COS In Work
- In Negotiations
- Bio/Geo Easement Secured
- Change from last report

- Budgeted
- Purchase Agreement
- Spent

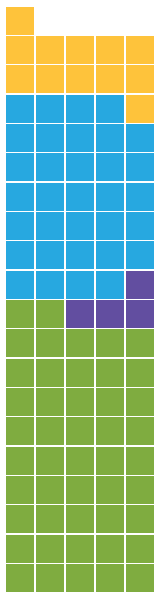
Diversion Channel



Phase 1

(WP DC1)

Target Completion:
April 2020



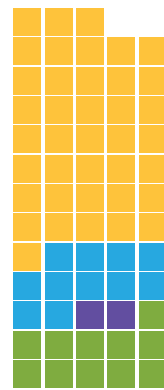
96 parcels total

- 12 Appraisal/MOU Pending
- 33 In Negotiation
- 4 Agreement Signed
- 47 Acquired Parcel
- 0 Condemnation
- Change from last report

Phase 2

(WP DC2)

Target Completion:
April 2020



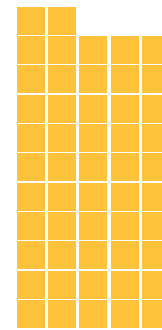
63 parcels total

- 39 Appraisal/MOU Pending
- 11 In Negotiation
- 2 Agreement Signed
- 11 Acquired Parcel
- 0 Condemnation
- Change from last report

Phase 3

(WP DC3)

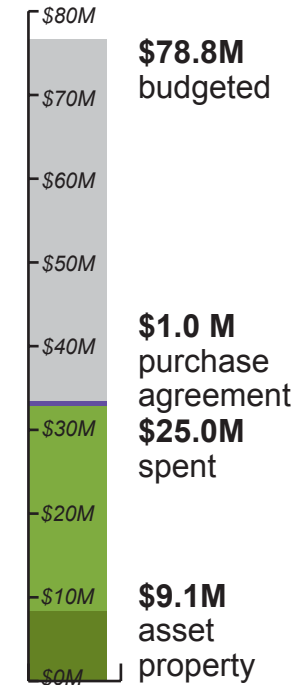
Target Completion:
April 2020



52 parcels total

- 52 Appraisal/MOU Pending
- 0 In Negotiation
- 0 Agreement Signed
- 0 Acquired Parcel
- 0 Condemnation
- Change from last report

Hard Costs paid to Property Owners



- Budgeted
- Purchase Agreement
- Spent
- Asset Property

Southern Embankment Control Structures

Diversion Inlet Control Structure

(WP 26)

Targeted Completion: Complete



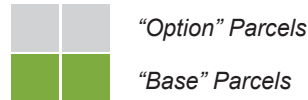
3 parcels total

- Appraisal Pending
- In Negotiation
- Agreement Signed
- 3 Acquired Parcel
- Condemnation
- Change from last report

Wild Rice Control Structure

(WP 30)

Target Completion: TBD



4 parcels total

- 0 Appraisal Pending
- 0 In Negotiation
- 0 Agreement Signed
- 2 Acquired Parcel
- Changed from last report

Red River Control Structure

(WP 35)

Target Completion: TBD



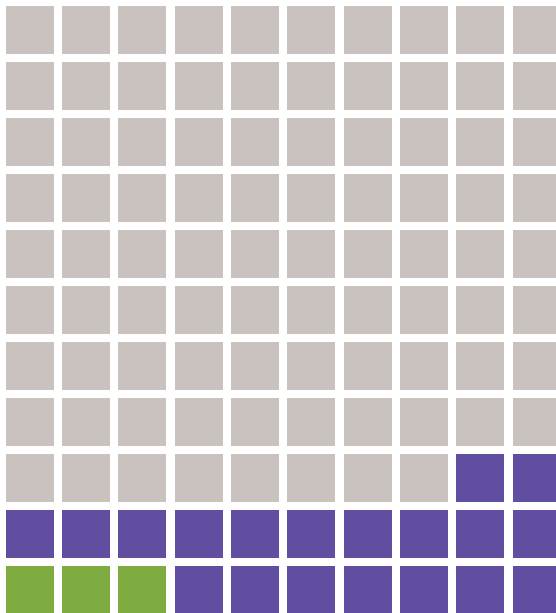
24 parcels total

- 0 Appraisal Pending
- 1 In Negotiation
- 1 Agreement Signed
- 11 Acquired Parcel
- Changed from last report

Southern Embankment

Southern Embankment

(WP Reach A-D and I29)
Targeted Completion: TBD

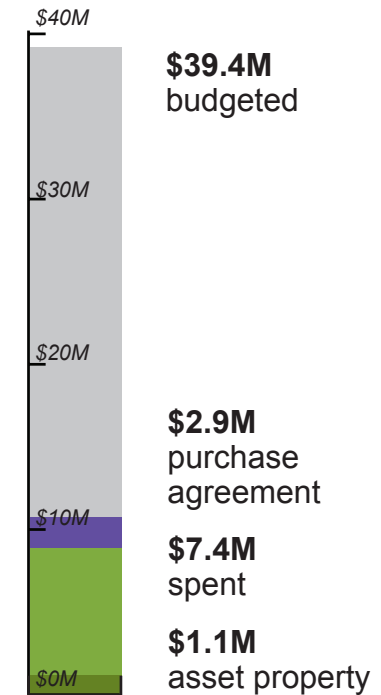


110 parcels total

- Appraisal Pending
- 3 Acquired Parcel
- In Negotiation
- Condemnation
- 19 Agreement Signed
- Change from last report

Southern Embankment & Control Structures

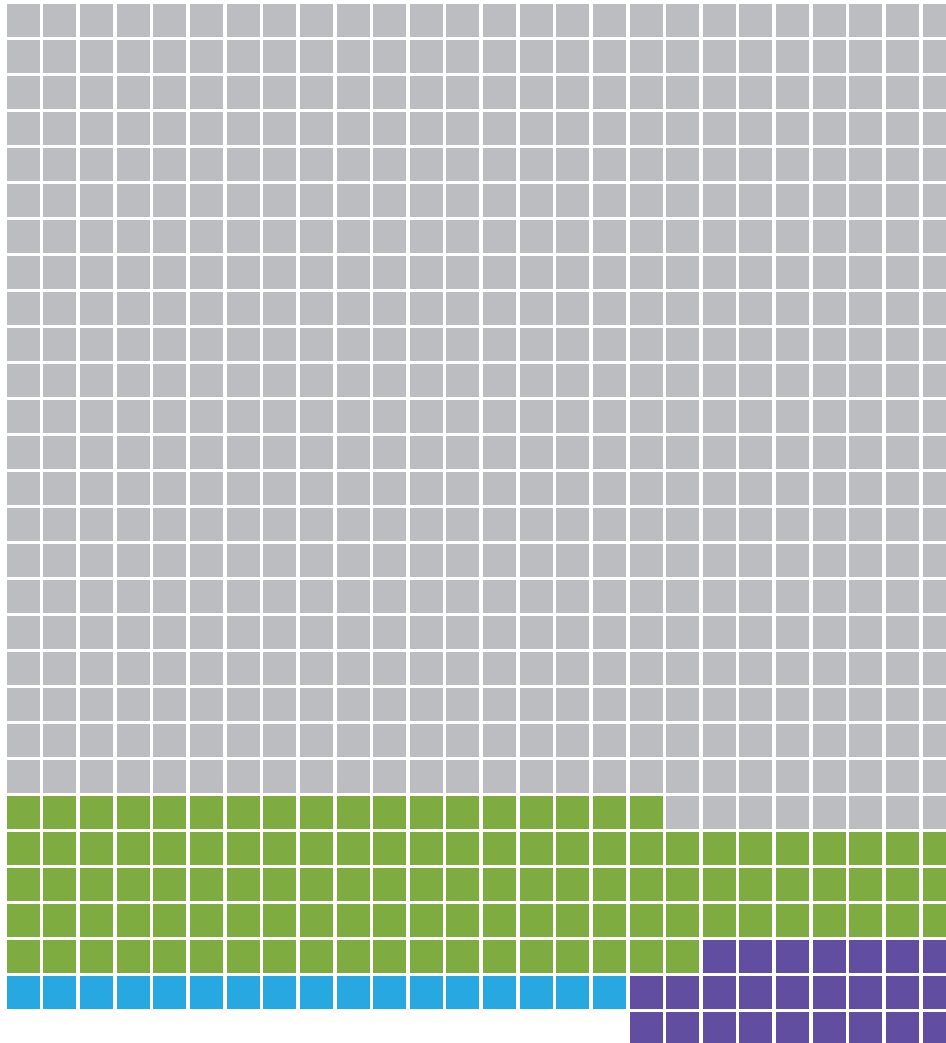
Hard Costs paid to
Property Owners



- Budgeted
- Purchase Agreement
- Spent
- Asset Property

Upstream Mitigation Area (WP 38)

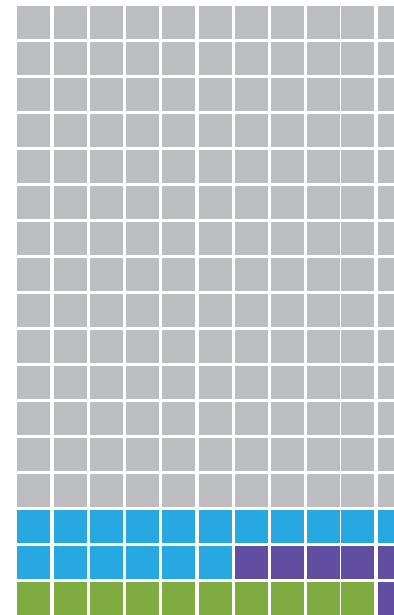
Flowage Easements without structures



Approximately 737 parcels total

- 17 In Negotiation
- 25 Agreement Signed
- 0 Condemnation
- 0 Appraisal Pending
- 115 Flowage Easement Secured
- Changed

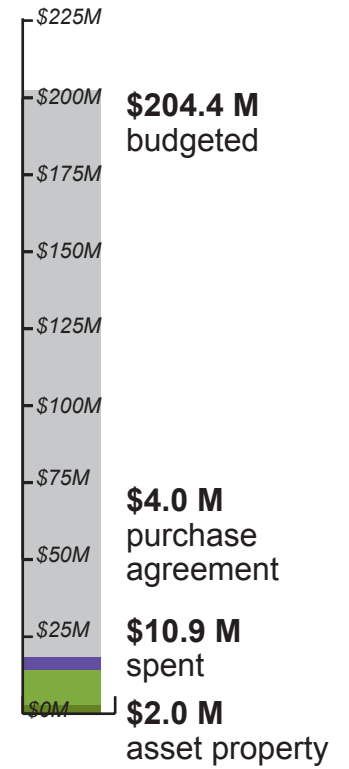
Structure Sites



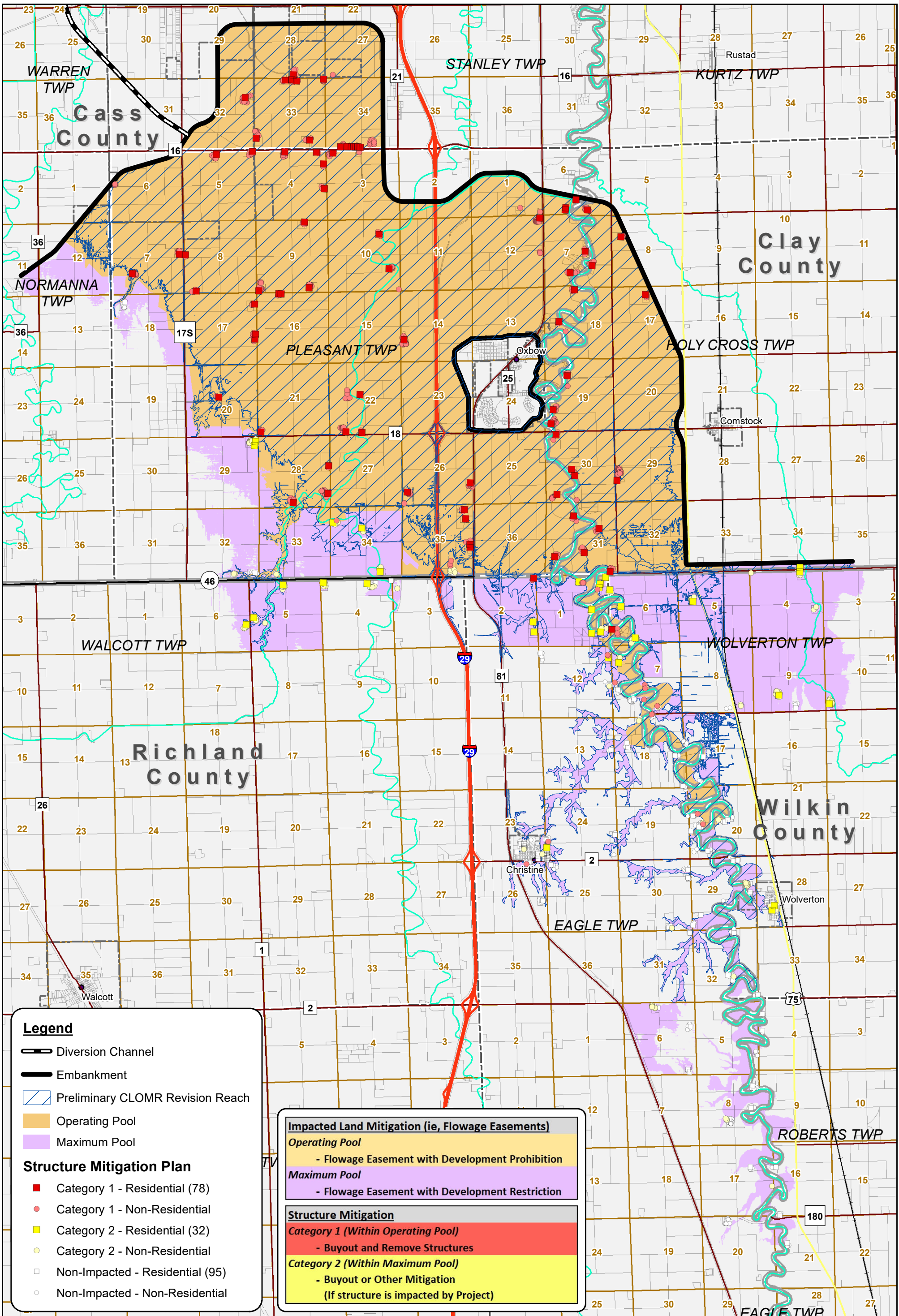
Approximately 187 parcels total

- 0 Appraisal Pending
- 17 In Negotiation
- 6 Agreement Signed
- 10 Flowage Easement Secured
- Condemnation
- Changed

Hard Costs paid to Property Owners



- Budgeted
- Purchase Agreement
- Spent
- Asset Property



Legend

- Diversion Channel
 - Embankment
 - Preliminary CLOMR Revision Reach
 - Operating Pool
 - Maximum Pool
- Structure Mitigation Plan**
- Category 1 - Residential (78)
 - Category 1 - Non-Residential
 - Category 2 - Residential (32)
 - Category 2 - Non-Residential
 - Non-Impacted - Residential (95)
 - Non-Impacted - Non-Residential

Impacted Land Mitigation (ie, Flowage Easements)

Operating Pool

- Flowage Easement with Development Prohibition

Maximum Pool

- Flowage Easement with Development Restriction

Structure Mitigation

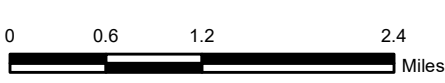
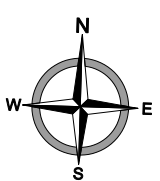
Category 1 (Within Operating Pool)

- Buyout and Remove Structures

Category 2 (Within Maximum Pool)

- Buyout or Other Mitigation (If structure is impacted by Project)

**FM AREA DIVERSION PROJECT
POTENTIALLY IMPACTED STRUCTURE
AND LAND MITIGATION PLAN**



Preliminary



Created By: KMV Date Created: 06/18/18 Date Saved: 02/21/19 Date Exported: 02/21/19
 Plotted By: kyle.volk Parcel Date: Varies Aerial Image: N/A Elevation Data: 2008 Lidar
 Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988
 T:\Projects\19100\19116\19116_Structures_Plan_B_100yr_PMF_Bounds_2019_02_08.mxd

FM Area Diversion Project

Definitions for Upstream Impacted Land and Structure Mitigation

The mitigation requirements for the Project are governed by two general rules:

1. The 100-year flood event (one percent annual chance event) is used to establish the regulatory floodplain boundary for the Project. The floodplain will be updated when the Project is completed within an area that is also referred to as the Revision Reach. The Revision Reach has been defined through the FEMA/USACE (Federal Emergency Management Agency / US Army Corps of Engineers) Coordination Plan using a six-inch tie-in between existing and with-Project 100-year flood events. The Coordination Plan also outlines floodplain management requirements for the Project and the Conditional Letter of Map Revision (CLOMR) process that will be followed for floodplain map revisions and FEMA-related Project mitigation.
2. The probable maximum flood (PMF) event is used for dam-safety purposes (this event is 204,000 cubic feet per second (cfs), or nearly seven times larger than the 2009 flood of record).

Impacted Land Mitigation

Two distinct areas are defined and will be used to acquire property rights on lands impacted by the Project.

- **Operating Pool.** This area contains the required volume of flood water necessary to safely operate the Project up to the 500-year (0.2 percent annual chance) flood event. The Operating Pool will be treated as a floodway.
 - Within the Operating Pool, the Diversion Authority will acquire flowage easements that prohibit future development or construction of structures.
- **Maximum Pool.** This area is defined as the area with flood water depth difference of 0.1-feet or greater under the 100-year or the PMF event.
 - Within the Maximum Pool, the Diversion Authority will acquire flowage easements that restrict future development. The flowage easements within the Maximum Pool will require that future development must be elevated above the **PMF** flood level when the Project is in operation.

Structure Mitigation

Two Categories are defined and will be used to acquire property rights for structures impacted by the Project.

- **Category 1** structures are those located within the Operating Pool.
 - The Diversion Authority will acquire and remove all structures in this category.
- **Category 2** structures are the impacted structures located within the Maximum Pool. An impact is defined as a flood water depth-difference of 0.1-feet or greater during the 100-year or PMF event.
 - The Diversion Authority will offer to buyout and remove impacted structures in this category. For impacted structures, the Diversion Authority will also consider, as an alternative to a buyout and with input from the property owner, alternative mitigation measures. Alternative mitigation measures for impacted residential structures may include elevation, ring levees, relocation, or acquisition. Alternative mitigation measures for impacted non-residential structures may include dry flood proofing, wet flood proofing, elevation, ring levees, relocation, and acquisition. Note that ring levees will be challenging to implement if the structure is located within the Revision Reach.



211 Ninth Street South, Box 2806, Fargo, ND 58108-2806
Phone 701-298-2381

March 13, 2019

Representative David Monson, Chairman
House Appropriations – Education and Environment Division
66th Legislative Assembly North Dakota

Dear Chairman Monson and members of the House Appropriations Education and Environment Division:

Thank you for the opportunity to testify on March 7th and March 8th regarding funding for flood protection in Fargo and across much of Cass County. We appreciate the time and the thoughtful questions posed regarding the complex problem we face, and the project developed to solve it.

As promised, this letter and attached information respond to your question related to the frequency of project operation, federal crop insurance, and impacts within Richland County. Please find attached three documents from the USDA Risk Management Agency regarding the availability of federal crop insurance related to water containment and diversion projects. As noted in the documents, federal crop insurance is available when the acreage can be “timely planted to an insurable crop according to University recommended good farming practices”. Please recognize that most flood events occur before regional planting begins and the probability of Project operation while crops are growing is very low. The timing of floods and timing of planting is well documented in the agricultural impacts study conducted by the NDSU Ag Econ department, which can be found on the Project website at:

<https://www.fmdiversion.com/wp-content/uploads/2015/02/NDSU-FM-Diversion-Expanded-Geography-Final-Aug-31-2016.pdf>.

However, as discussed during the hearing, federal crop insurance may not apply if the Project was to operate and cause impacts on growing crops. As such, the Diversion Authority has developed a ‘summer operation supplemental crop loss program’. Information about the program can be found on page 99 of the ‘Property Rights Acquisition and Mitigation Plan’ found on the project website at:

<https://fmdiversion.com/full-property-rights-acquisition-plan/>. The information is also attached for your convenience.

As noted during the hearing, summer operation of the Project will be extremely rare. There has been no summer event in history of the Red River Valley that would have caused operation of the Project. The largest recorded historic summer flood event on the Red River at Fargo occurred in 1975 and produced a peak river stage of 33.3 feet at the USGS Fargo stream gage. The Project will not operate until the river gage reaches 37 feet. The FM Diversion Authority has analyzed what type of rainfall event would require operation of the Project as part of an Extreme Rainfall Analysis study in 2013. Rainfall events are

typically not uniform across a watershed as large as the Red River Watershed and the largest rainfall tends to be fairly localized. Based on the Extreme Rainfall Analysis study, a localized rainfall of more than 8 inches, (larger than a 200-year 24-hour rainfall event) over a significant portion of the watershed upstream of the metro area would be required to cause the river to rise to a level that would threaten the community enough to cause Project operation. More details about extreme rainfall analysis can be found in a report on the Project website at: <https://fmdiversion.com/technical-memo-extreme-rainfall-analysis/>.

The Committee also inquired about the impacts in Richland County and what land rights are required in Richland County. While most Project impacts are contained with Cass County, the impacts do extend into Richland County, primarily along the channel of the Red River. Last week, approximately 550 letters were sent to property owners whose land is affected by the Project, with 115 of those letters being sent to property owners who own land in Richland County. Per the permit conditions, we are required to purchase a property right, assumed to be a Flowage Easement, on approximately 3,700 acres within the properties in Richland County. The flowage easements will be acquired in accordance with State and federal law, and will be valued using an independent appraisal. The flowage easement will not restrict farming practices, but the flowage easements will include floodplain development restrictions, including development prohibition on approximately 420 acres of that total.

If you have any additional questions about the Project or the mitigation plans, please do not hesitate to contact us.

Sincerely,

Mayor Tim Mahoney
City of Fargo

Commissioner Tony Grindberg
City of Fargo

Commissioner Chad Peterson
Cass County



United States
Department of
Agriculture

Risk
Management
Agency

Billings
Regional
Office

3490 Gabel Road
Suite 100
Billings, MT 59102

Tel: 406-657-6447
Fax: 406-657-6573

April 5, 2011

Rodger Olson
15141 52st. SE.
Leonard, ND 58052

Dear Mr. Olson,

I received your March 31st letter regarding the City of Fargo's diversion study for the Red River. In your letter you stated that ultimately the project will divert and stage water up stream on to agriculture land adjacent to the river. Also, farmers in the affected area are questioning if they would qualify for insurance coverage on this acreage and what the limitations might be.

The Common Crop Insurance Policy Basic Provisions states the following in Section 12, Causes of Loss:

Insurance is provided only to protect against **unavoidable, naturally occurring events**. A list of the covered naturally occurring events is contained in the applicable Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

- (a) Any act by any person that affects the yield, quality or price of the insured crop (e.g., chemical drift, fire, terrorism, etc.);
- (b) Failure to follow recognized good farming practices for the insured crop;
- (c) **Water that is contained by or within structures that are designed to contain a specific amount of water, such as dams, locks or reservoir projects, etc., on any acreage when such water stays within the designed limit** (however, if the producer planted on acreage that was above the designated staged elevation and additional moisture causes flooding of acreage above that level, any damage to such acreage would be covered as an insurable cause of loss).

The same Basic Provisions state in the definition of Prevented Planting - Failure to plant the insured crop by the final planting date designated in the Special Provisions for the insured crop in the county, or within any applicable late planting period, **due to an insured cause of loss that is general to the surrounding area** and that prevents other producers from planting acreage with similar characteristics. Failure to plant because of uninsured causes such as lack of proper equipment or labor to plant acreage, or use of a particular production method, is not considered prevented planting.

The Basic Provisions in Section 17, Prevented Planting also state "However, if it is possible for you to plant on or prior to the final planting date when other producers in the area are planting and you fail to plant, no prevented planting payment will be made....." Therefore, if the producer is delayed planting due to the water diversion while other producers are planting and when the land is finally dry enough to plant is then prevented from planting due to normal rain; **no prevented planting coverage is available on this**

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And Oversees All Programs Authorized Under
The Federal Crop Insurance Corporation



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acreage. Since the delay in timely planting the acreage by the final planting date would not be an unavoidable, naturally occurring event, prevented planting coverage is not available.

However, if the acreage that contains diverted water can still be timely planted to an insurable crop according to University recommended good farming practices, **insurance coverage will attach.** If the crop is planted after the end of the final planting date and in the late planting period the following reductions apply:

The production guarantee or amount of insurance for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date.

(b) Acreage planted after the late planting period (or after the final planting date for crops that do not have a late planting period) may be insured as follows:

- (1) The production guarantee or amount of insurance for each acre planted will be determined by multiplying the production guarantee or amount of insurance that is provided for acreage of the insured crop that is timely planted by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;
- (2) Planting on such acreage must have been prevented by the final planting date (or during the late planting period, if applicable) **by an insurable cause** occurring within the insurance period for prevented planting coverage; and
- (3) All production from insured acreage as specified in this section will be included as production to count for the unit.

I hope this information is helpful in responding to producer concerns that might arise from this situation; if you have any additional questions, please contact our office.

Sincerely,

Doug Hagel
Director

2011 CROP INSURANCE FACT SHEET RELATED TO WATER CONTAINMENT AND DIVERSION PROJECTS

THIS FACT SHEET POINTS OUT CERTAIN FEATURES OF CROP INSURANCE AND IS NOT INTENDED TO BE COMPREHENSIVE. THE INFORMATION BELOW NEITHER MODIFIES NOR REPLACES TERMS AND CONDITIONS OF THE BASIC PROVISIONS, CROP PROVISIONS, OR COUNTY ACTUARIAL DOCUMENTS. *Producers should always consult with their crop insurance agent for further clarification.*

- Section 508(a)(1) of the Federal Crop Insurance Act states in relevant part: “To qualify for coverage under a plan of insurance, the losses of the insured commodity must be due to **drought, flood, or other natural disaster (as determined by the Secretary)**.”
- Crop insurance is provided for losses due to **unavoidable, naturally occurring events**. This language is found in Section 12 of the Basic Provisions of the Common Crop Insurance Policy (11-BR).
- Causes of loss that are not covered are shown in Section 12(a)-(f) of the Basic Provisions. Section 12 (a)-(c) are shown below:
 - Insurance is provided only to protect against unavoidable, naturally occurring events. A list of the covered naturally occurring events is contained in the applicable Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:*
 - (a) Any act by any person that affects the yield, quality or price of the insured crop (e.g., chemical drift, fire, terrorism, etc.);*
 - (b) Failure to follow recognized good farming practices for the insured crop;*
 - (c) Water that is contained by or within structures that are designed to contain a specific amount of water, such as dams, locks or reservoir projects, etc., on any acreage when such water stays within the designed limit (however, if the producer planted on acreage that was above the designated staged elevation and additional moisture causes flooding of acreage above that level, any damage would be covered as an insurable cause of loss).***

Therefore, a circumstance where land that is not planted or that is flooded solely due to a water containment or diversion project that otherwise would not have flooded or was not flooded by a naturally occurring event may not be an insurable loss. Flooding issues that may arise regarding compliance with applicable policy provisions and the insurability of crop losses will be reviewed and assessed by the Risk Management Agency.

- Section 1 of the Basic Provisions contains definitions, including prevented planting which states:
 - **Prevented planting** - Failure to plant the insured crop by the final planting date designated in the Special Provisions for the insured crop in the county, or within any applicable late planting period, **due to an insured cause of loss that is general to the surrounding area** and that prevents other producers from planting acreage with similar characteristics. Failure to plant because of uninsured causes such as lack of proper equipment or labor to plant acreage, or use of a particular production method, is not considered prevented planting.
- Section 17(d)2 of the Basic Provisions also states in relevant part, “However, if it is possible for you to plant on or prior to the final planting date when other producers in the area are planting and you fail to plant, no prevented planting payment will be made.....”

If the acreage impacted by stored or diverted water can still be timely planted to an insurable crop according to recommended good farming practices (as determined by agricultural experts for the area, as defined in section 1 of the Basic Provisions), **insurance coverage will attach**. If the crop is planted after the end of the final planting date and in the late planting period the following reductions apply in accordance with section 16 of the Basic Provisions:

- The production guarantee or amount of insurance for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date.
- Acreage planted after the late planting period (or after the final planting date for crops that do not have a late planting period) may be insured as follows:
 - The production guarantee or amount of insurance for each acre planted will be determined by multiplying the production guarantee or amount of insurance that is provided for acreage of the insured crop that is timely planted by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;
 - Planting on such acreage must have been prevented by the final planting date (or during the late planting period, if applicable) **by an insurable cause** occurring within the insurance period for prevented planting coverage; and
 - All production from insured acreage as specified in this section will be included as production to count for the unit.
- The Late Planting Period (LPP) extends 25 days past the final planting date for most crops. Canola has a 15 day LPP.
- Forage Seeding does not have either Late Planting or Prevented Planting coverage available.

Final Planting Dates – The following final planting dates are applicable for crops in Clay and Wilkin Counties of Minnesota and Cass and Richland Counties of North Dakota:

Clay County, Minnesota

May 31 – Barley, Canola, Corn Grain, Forage Seeding, Oats, Sugar Beets, and Wheat

June 5 – Corn Silage

June 10 – Flax, Dry Beans, Potatoes, Soybeans, and Sunflowers

Wilkin County, Minnesota

5/31 - Barley, Canola, Corn Grain, Flax, Forage Seeding, Oats, Sugar Beets, and Wheat

June 5 – Corn Silage

June 10 – Dry Beans, Potatoes, Soybeans, and Sunflowers

Cass County, North Dakota

May 15 – Canola

May 20 – Dry Peas

May 31 – Barley, Corn Grain, Forage Seeding, Oats, Sugar Beets, and Wheat

June 5 – Corn Silage

June 10 – Dry Beans, Flax, Potatoes, Soybeans, and Sunflowers

Richland County, North Dakota

May 15 – Canola

May 20 – Dry Peas

May 31 – Barley, Corn Grain, Forage Seeding, Oats, Sugar Beets, and Wheat

June 5 – Corn Silage

June 10 – Dry Beans, Flax, Potatoes, Soybeans, and Sunflowers

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2011 CROP INSURANCE SPEAKING POINTS FOR WATER CONTAINMENT AND DIVERSION PROJECTS

- ❖ Crop insurance is provided for losses due to unavoidable, naturally occurring events.
- ❖ Acreage flooded by water contained by or within structures such as dams, locks or reservoir projects is not considered to be an insurable cause of loss if the water stays *within* the designed limit.
- ❖ Flood damage to acreage located *above* the design limit is considered to be an insurable cause of loss.
- ❖ Insurance coverage will attach to acreage impacted by stored or diverted water if the acreage can be timely planted to an insurable crop using good farming practices. Any subsequent loss must be from an insurable cause of loss occurring within the insurance period.
- ❖ Contact your local crop insurance agent to determine final plant dates, late plant and prevented planting procedure for your specific crop/county.

Summer Operation Supplemental Crop Loss Program

Introduction

The Project requires the temporary and occasional retention of flood waters immediately upstream of the southern embankment of the Project. The Diversion Authority will provide mitigation for properties in the upstream mitigation area, and the mitigation has generally been considered to be the acquisition of a permanent flowage easement and associated payment to the property owners, which is required by USACE. Generally, the permanent easement would restrict construction of structures/buildings, but it would allow the land to continue to be used for agriculture production including growing crops, livestock, and hay production.

The flowage easement is intended to provide compensation for impacts associated with the Project and is expected to be a one-time payment at the time the easement is purchased. Under this plan, the one-time payment for the flowage easement would compensate the land-owner for the potential impacts associated with delayed planting, prevented planting, debris, loss of development rights, etc.

The Diversion Authority recognizes the potential impact to the agricultural community on both the North Dakota and Minnesota side of the Red River, and has studied and considered supplemental mitigation solutions, which are greater than what has historically been provided to property owners. In recognition of: (a) the importance of the farm economy to the region; (b) that summer operation would damage growing crops; (c) and that summer operation of the Project is extremely unlikely, the Diversion Authority will adopt a Summer Operation Supplemental Crop Loss Program to provide additional assurance to producers in the upstream mitigation area. The Program would provide producers coverage for the risk associated with Project induced flooding on growing crops during the unlikely summer operation of the Project. The Diversion Authority understands and acknowledges that this program is important to the agricultural community because under these events, it is believed that producers may not be able to utilize the federal crop insurance program(s) for crop damages directly caused by operation of the Project. This program will be available for producers in the upstream mitigation area, which is defined as the area below the elevation of the spillway, which is expected to be 923.5 feet (NAV88). This is the same area where the Diversion Authority will obtain flowage easements.

Proposed Summer Operation Supplemental Crop Loss Program

The Diversion Authority, with the assistance of its insurance advisory, AON, has studied the cost of purchasing a private insurance product, and found that the premiums for the summer flood events may be cost prohibitive. As such, the Diversion Authority will create a self-funded insurance reserve fund for the Summer Operation Supplemental Crop Loss Program. The Program will compensate producers in the upstream mitigation area for crop losses directly caused by operation of the Project during the normal crop growing season.

Given the complexity associated with reviewing and administering crop loss claims, the Diversion Authority will seek the assistance from a neutral and independent third party to administer damage

claims associated with summer operation of the Project and to determine whether payments should be made from the Program. The Diversion Authority intends to coordinate with existing state agencies to determine if the state(s) could assist as the neutral and independent third party in administering any damage claims. The Diversion Authority will be developing additional information regarding the Program within the next 12 to 24 months. The Diversion Authority would be responsible to make timely payment claims based on the adjustment decisions of the third party agent.

Though there has never been a summer flood event in recorded history that would have triggered the operation of the Project, it is possible that an event could happen. If such a major rain event occurs during the normal growing season, and if the rain is significant enough to cause the Project to operate, flooding will occur on farmlands due to the rain event. It is envisioned that a producer could then submit a damage claim and then the claims adjuster would evaluate the claim to determine liability, if any for the damages. If the claims administrator and adjuster find the Project is liable, then the Diversion Authority would make the payment to the producer from its self-funded reserve fund.

To be eligible for the program, a producer must participate in a federal crop insurance program, have growing crops within the upstream mitigation area, and have notified the Diversion Authority of his/her intent to participate in the Summer Operation Supplemental Crop Loss Program. It is the Diversion Authority's understanding that agricultural producers obtain various rates of coverage through federal crop insurance program. Some are insured for 65 percent, others insure for upwards of 80 percent based upon the year and type of crop grown. The Diversion Authority's Program would provide 90 percent coverage for all crop damages directly caused by summer operation of the Project, regardless of year or crop grown.

Additional Background:

- The FM Diversion Project includes an upstream mitigation area for staging of flood waters as a necessary feature of the Project.
- USACE has defined a portion of the upstream mitigation area as an "operating pool". This area is necessary to offset the potential downstream impacts that would exist without upstream mitigation, and the operating pool is based on areas with potential impacts greater than 1-foot (generally).
- The upstream mitigation area extends beyond the "operating pool" for a total area of approximately 38,000 acres.
- The NDSWC and MDNR have suggested using the top elevation of the Limited Service Spillway, or the maximum pool elevation, which are both expected to be 923.5-feet, to define the area of mitigation.
- Mitigation is generally considered acquisition of a flowage easement and associated payment to the property owner, as USACE has mandated that the Diversion Authority obtain a flowage easement for areas within the Staging Area.
- The flowage easement will cover impacts associated with the Project, and is expected to be a one-time payment at the time the easement is secured. Under this plan, the flowage easement would cover impacts associated with delayed planting, loss of development rights, etc.

- The Diversion Authority has considered additional mitigation solutions such as Summer Operation Supplemental Crop Loss Program. One of the primary considerations of additional farm mitigation is to help ensure producers are covered for the risk of Project induced summer flooding on growing crops. Under these events, producers may not be able to tap into federal crop insurance.
- Based on insured values and crop types in 2014, along with the size of the upstream mitigation area, the total estimated maximum loss for all crops in the operating pool is approx. \$20-25M. (Note that the value of agricultural commodities has decline significantly from 2014 levels. In some cases, the price of commodities have declined by up to forty percent (40%).)
- The Diversion Authority will self-fund the program. The Diversion Authority has the financial strength to sustain a self-funded insurance reserve fund in order to assume the risk of this type of event, given that the probability of events that would cause summer operation are extremely low, and given the O&M Funding Program that will be established.
- If this Program is utilized, the Diversion Authority would utilize an O&M Funding Program to fund/finance the costs associated the Summer Operation Supplemental Crop Loss Program payments.