

Flowage Easement Informational Meeting

Frequently Asked Questions

GENERAL

Will the City of Wolverton be affected by the comprehensive project?

Pursuant to the settlement agreement, the MFDA will provide funds to the Buffalo-Red River Watershed District (BRRWD) to design, construct, operate, and maintain the project for 100-year FEMA-accredited flood protection for the City of Wolverton, Minnesota (the “Wolverton Project”). The Wolverton Project will protect the City of Wolverton against adverse flood impacts of the Comprehensive Project. The Wolverton Project will include appropriate in-town lift stations needed for flood control and provide levees or floodwalls that are 1 foot above the 500-year flood event elevation. Prior to commencement of the Wolverton Project, BRRWD and the Metro Flood Diversion Authority (MFDA) intend to mutually agree as to the Wolverton Project scope, budget, and timing.

The MFDA will develop a memorandum of understanding (MOU) to set forth the scope, budget, and timing of the Wolverton Project and the procedures for reviews, reimbursements, and coordination with Minnesota state agencies. The MFDA will implement the Wolverton Project in accordance with the terms and conditions of the MOU.

Will the City of Comstock be affected by the comprehensive project?

The City of Comstock is on the dry side of the comprehensive project.

Pursuant to the settlement agreement, the MFDA will provide funds to the City of Comstock to develop, construct, complete, and finalize construction of a new lagoon (the “Comstock Lagoon Project”). The MFDA will also coordinate with Clay County to provide additional funds to assist in the repair or replacement of Clay County Highway 2 within the City of Comstock (the “Highway 2 Project”) (collectively, the “Comstock Projects”).

The MFDA will develop an MOU with the City of Comstock to set forth the scopes, budgets, and timing of the Comstock Projects and the procedures for reviews, reimbursements, and coordination with Minnesota state agencies. The MFDA will implement the Comstock Projects in accordance with the terms and conditions of the MOU

What happens when both the FM Area Diversion and the Wahpeton-Breckenridge flood risk management project operate at the same time?

The modeling for the comprehensive project takes the downstream impacts of the Wahpeton project into account and mitigates those impacts.

What level was the flood of 2009?

In 2009, the Red River set a record in Fargo-Moorhead, cresting at 40.82 feet. According to the latest hydrology, at the Fargo gage, the 2009 flood was approximately a 50-year flood event. South of the Metro area, at other gage locations, the flood event may have been smaller or larger.

If I choose to sell my land to the MFDA, who will be in charge of the hunting rights?

Generally, while the land is owned by the MFDA, it is leased out to farmers, and those farmers typically have the responsibility to control access and hunting permissions per the terms of their lease agreements.

What is your deadline for flowage easements and other negotiations?

Flowage easement negotiations need to be completed by the end of 2022.

What happens if the MFDA were to dissolve in the future?

The obligations of the MFDA would fall back onto its member entities, which include Cass County, Clay County, the City of Fargo, the City of Moorhead, and Cass County Joint Water Resource District, pursuant to the terms of the Joint Powers Agreement forming the MFDA.

Are the acquisitions publicly viewable or private once completed?

Once fully executed, the flowage easements will be recorded with the county recorder and available to the public.

Will there be any changes in drainage once the Southern Embankment is added?

Local drainage patterns on farmlands immediately adjacent to the Southern Embankment will be modified as part of the design and construction of each reach of the Southern Embankment. Large drainage ditches will be common on each side of the Southern Embankment. The drainage patterns farther south in the Upstream Mitigation Area (UMA) will not be changed by the comprehensive project.

The 100-year floodplain in the Fargo-Moorhead area has been raised several times since the 1970s. Does that mean the diversion will need to be raised, as well?

The comprehensive project was designed under the parameters agreed to with the Governors' Task Force. Potential floodplain changes that are regulated by FEMA will be evaluated in collaboration with the U.S. Army Corps of Engineers (USACE) and the MFDA. While we cannot predict the future, the comprehensive project has been designed to provide fightable protection up to a 500-year flood event.

DEBRIS CLEANUP

How will the details of the Post-Operation Debris Cleanup and Restoration Program be established?

The MFDA will create and support a subcommittee to adaptively manage debris cleanup and non-structural property damage repair, remediation, and/or restoration. The subcommittee will include agricultural producers from the UMA along with MFDA representatives.

Will I be able to burn excess debris that ends up on my land after the water recedes?

Debris left behind from flooding will likely be variable with each flood event. We expect a variety of options will be available for removal and disposal of the debris. The options may include tilling the material into the soil, burning the material, picking up and removing the material, or other options.

The debris cleanup programs talks about “assisting.” Does that mean that the landowners are required to do some of the cleanup?

The program was modeled after a city’s “cleanup week” where residents move unwanted items to the curb to be picked up by the city.

The operating provisions of the Post-Operation Debris Cleanup and Restoration Program will be established with the assistance of the subcommittee.

Who will make up the Alternative Dispute Resolution Board?

The Alternative Dispute Resolution Board was created as an independent board to hear claims by persons against the MFDA alleging their real property was physically damaged by operation of the comprehensive project. The Alternative Dispute Resolution Board is not intended to be the sole remedy for disputes, and persons claiming to be affected by the operation of the project may use other administrative or judicial remedies, if available.

The Alternative Dispute Resolution Board is not intended to address claims relating to alleged negligence of the MFDA, its contractors, agents, officers, employees, or designees. The members of the Alternative Dispute Resolution Board will be three randomly selected, impartial hearing officers.

A resolution establishing the Alternative Dispute Resolution Board is available on the comprehensive project website (www.fmdiversion.gov).

FLOWAGE EASEMENTS

Is my flowage easement payment taxable?

Individuals need to consult with their tax professional. We cannot answer that for each specific scenario. Landowners need to make specific requests to have 1031 or 1033 tax exchange language in the Agreement to Acquire a Flowage Easement.

Who is the landowner's point of contact when negotiating the flowage easement payments?

Each property owner has an assigned land agent working for Cass County Joint Water Resource District in North Dakota or the Moorhead Clay County Joint Powers Authority in Minnesota. The land agents are the primary point of contact for the property owners throughout the negotiations process.

Who is paying the legal fees for production of the Agreement to Acquire Flowage Easement, Flowage Easements, closing documents, etc.?

Cass County Joint Water Resource District in North Dakota and the Moorhead Clay County Joint Powers Authority in Minnesota have engaged attorneys and closing agents to prepare the Agreements to Acquire a Flowage Easement, the easement document, and the closing documents. Cass County Joint Water Resource District and Moorhead Clay County Joint Powers Authority will pay their own attorneys and closing agents.

How were the equations and calculations for diminution percentages developed?

The equations and calculations were prepared by Crown Appraisals, Inc. Crown Appraisals started work in 2018 by researching and studying farmland sales in the Red River valley, along the Mississippi River in Missouri, and along the Missouri River in Iowa and Nebraska. The appraiser analyzed the farmland sales to determine the impacts of flooding and flowage easements.

More information about the flowage easement appraisal process, including the Phase 1 and Phase 1B reports, can be found on the comprehensive project website (www.fmdiversion.gov).

How will you handle units where only a portion of the land requires a flowage easement?

The MFDA is required to purchase a flowage easement in the four mitigation zones. The MFDA is not required to purchase flowage easements outside of the mitigation zones. A legal description (metes and bounds description) for the flowage easement will be prepared when the easement area does not cover the entire parcel.

If a property owner feels that additional mitigation is needed because of unique situations on a specific parcel, the property owner should work with their land agent to present those concerns.

I bought land along the Sheyenne River in the 1980s, and due to a federal rule, I was not able to get a loan from the Bank of North Dakota (BND) for the acres of land that had a flowage easement. The BND considered the land to be already federal land. Is this something that will impact our land in the future? Or using land as collateral?

Each lender will have their own process for determining lending limits, but nothing in the flowage easement prohibits using the property for farming or being able to use the property for collateral in lending.

Will the value of different types of land be reflected in my flowage easement payment?

Yes, our appraisers have comparable sale data for many types of properties in the area, including pasture, wetland, farmland, woodland, etc.

CROP INSURANCE

How does Supplemental Crop Insurance avoid affecting my Actual Production History (APH)?

Per the settlement agreement, the growing season Supplemental Crop Loss Program and the Prevent Plant Crop Insurance Program provided by the MFDA must stipulate that a producer's APH yield is not adversely affected by a reduced yield caused by the comprehensive project operation. The crop insurance program shall include a provision/rider that Risk Management Agency shall not include yields in their calculation for any year in which the comprehensive project operates.

The MFDA is drafting a policy for the supplemental crop insurance programs and intends to have the draft policy available in late 2022.

Is my APH protected if the project causes a summer flooding event that affects my yield?

Yes, there will be provisions to protect this, along with spring flood events.

Is there something spelled out in the flowage easement that guarantees the supplemental crop loss insurance benefit will continue for eternity?

Yes, the MFDA has written language into the flowage easement referencing both the supplemental crop insurance programs and the debris cleanup program.

Is there a way of ensuring that the supplemental crop insurance will continue to receive adequate funding?

The MFDA is committed to provide the supplemental crop insurance programs per the settlement agreement. In addition, the conditions from the Dam Safety and Public Waters Work Permit 2018-0819 issued by the Minnesota Department of Natural Resources requires that the

MFDA provide a financial analysis that demonstrates that the MFDA has created the necessary reserve fund to compensate for crop loss.

What if the diversion gates open up before the final planting date, but do not leave farmers enough time for the fields to dry out and be planted before the deadline?

The MFDA recognizes that the floodwaters will need time to recede and the fields will need adequate time to dry before planting can occur, so the supplemental crop insurance would cover the farmer in this scenario.

The MFDA's goal with the supplemental crop insurance programs is to create a product that protects farmers for the increased risk that the comprehensive project causes, but does not impact the level of traditional coverage the farmers purchase each year.

At what levels do the supplemental crop loss coverage policies cover?

The supplemental prevent plant policy will match the same level of traditional coverage that the farmer purchased for the year. The growing season supplemental crop loss policy will provide 100 percent coverage.

The federal crop insurance program typically changes every 5 years. What happens to this supplemental program if the federal program changes?

The MFDA has committed to make adjustments over time, as necessary and in conjunction with changes to federal crop insurance.

What happens if congress eliminates federal crop insurance? Does that let the MFDA off of the hook for providing protection to farmers?

The MFDA is committed to protecting landowners and ag producers in the area.

Who pays for the supplemental crop insurance?

The MFDA will pay the premiums for the supplemental crop insurance program. There is no cost for farmers or landowners.

Who will fund the Operation and Maintenance (O&M) for the FM Area Diversion?

Excess sales tax will cover most O&M expenses, along with stormwater maintenance fees from the city of Moorhead. An assessment district could be used for maintenance costs. The MFDA will be responsible for O&M of the Southern Embankment and Upstream Mitigation Area.

COMPREHENSIVE PROJECT OPERATION

What if the project operation were to change in the future? For example, if they decided to leave water in the Upstream Mitigation Area for a longer duration.

The project operation will be guided by an operation manual. Once finalized, significant actions and approvals would be needed from USACE to change the operating practice. Operating changes may require an environmental impact assessment, public meetings and disclosures, impact studies, etc.

How could wind affect the water, erosion, etc. in the Upstream Mitigation Area? (What if we get a three-day south wind like we did in 1969?)

The project has been designed and modeled by the USACE to account for these scenarios and many others that could arise. There has been a wave runup analysis, an erosion analysis, and more.

Why does it look like the maximum depth of water in the Upstream Mitigation is taller than the top of the Southern Embankment?

The water level will have a slope as the water flows north, toward the Southern Embankment, so those measurements are likely referring to an area much farther upstream that is higher than the ground near the embankment.