# Q&A Regarding the Metro Flood Diversion Authority's Supplemental Crop Loss Programs

December 2022

## General Questions

**How will the MFDA afford to pay farmers for these claims when the project operates?**

In the most extreme case, where the entire upstream mitigation area (UMA) of nearly 30,000 acres was flooded and 100% of the related crop loss was the MFDA's responsibility, the MFDA's liability would be about $17 million. This is based on 2020 crop prices and illustrates the worst-case scenario.

The MFDA has a comprehensive financial plan to account for not only the construction, but ongoing operation and maintenance of the project. The MFDA is prepared to meet its obligations.

Additionally, the MFDA will be buying an insurance product from an insurance provider that will provide risk insurance for several purposes. The MFDA is building a roughly $3 billion asset that will be required to carry insurance for an array of risks. The MFDA's crop insurance programs will be among the items that are insured in that portfolio. As such, the MFDA will pay a premium for that insurance product. In the event of a loss, MDFA will be indemnified by its insurance and those funds will be available to meet any crop loss obligations.

**Let's say there's not enough funding to pay out these premiums once the construction has completed and the MFDA is unable to buy a policy against the 30,000 acres. What happens?**

The settlement agreement doesn't have a provision that releases the MFDA's responsibilities based on its financial situation. The MFDA is legally obligated to make those payments. There's an extremely comprehensive financial plan that's been developed to account for not only the construction, but also ongoing operations and maintenance. Voter-approved sales taxes also will continue until 2084 with those revenues going toward ongoing expenses such as these. The financial modeling accounts for all costs, including operation, maintenance and crop insurance. We feel very confident that we have a system that will be able to fund all these expenses.

**Many pieces of land are owned by an individual but rented out and farmed by another. In this scenario, who receives the flowage easement and crop insurance payments?**

Crop insurance is for producers/operators/renters and flowage easements are for landowners. We encourage landowners to inform their producers/renters of the programs since the producer/renter will hold the crop insurance and thus need these diversion-related insurance riders. To be eligible for the diversion' s supplemental insurance coverage, producers will be required to maintain a valid federal crop insurance policy (nearly every acre that is farmed in the UMA is insured today and has been for many years). Every year when producers sign up for federal crop insurance, they will identify what acres they intend to plant and what coverage they elect. They should continue to work with their crop insurance agent annually to sign up but, beginning in 2027, insurance agents will have an additional contract allowing producers in the UMA to accept the MFDA's free (at no premium to the farmer) supplemental insurance. Presumably, most producers will elect to participate in this free supplemental insurance, but they will retain the right to opt out if they so choose or fail to purchase a federal crop insurance policy (and are therefore ineligible). If a producer has a claim, he or she will file it with their insurance agent as they have traditionally.

**I read something about a 30-year obligation. What happens after the 30 years?**

The MFDA signed a contract with the Red River Valley Alliance, the P3 (public-private partnership) developer, to handle the operations and maintenance of the stormwater diversion channel for 30 years. After those 30 years, those responsibilities return to the MFDA. The contract with Red River Valley Alliance does not have any effect and is not related to the MFDA's obligation to provide supplemental crop insurance.

**Does the settlement agreement allow the MFDA to back out and not provide the supplemental crop loss coverage later?**

No. The MFDA has a legally binding settlement agreement that expressly requires the MFDA to provide these insurance programs any amendment to the settlement agreement would require the other parties to the settlement agreement to agree with such an amendment.

**Will producers be compensated at 100% for growing season losses and prevented plant losses?**

The settlement agreement indicates that growing season losses are to be compensated to 100% of the value. The MFDA's responsibility under prevented plant is not 100% of the value, but rather matches the prevented-plant coverage level that producers purchase through federal crop insurance. The MFDA does not want to create an incentive for producers to have a prevented-plant situation by compensating them above the level they might otherwise receive, so instead we compensate at the same level.

Federal crop insurance does not pay 100% for prevented-plant losses. It provides a payment that includes the chosen coverage level — most producers in the project area purchase 75% or 80% coverage — and a prevented-plant factor, which for most producers in the area will be 60% or 65%. That means the end payment to a producer from a prevented plant is roughly half of their expected crop value (approved yield x projected price x coverage level x prevented plant factor, or typically between 45% and 52% of the expected value of their crop).

**What is considered 100% coverage?**

Using the Risk Management Agency's (RMA) projection, the MFDA is using the definition of 100% directly from the federal crop insurance program, which is the producer's approved yield multiplied by the crop insurance price (generally the higher of the projected and harvest price released by RMA each year, depending on the policy elected by the farmer).

**Is the coverage level purchased by the producer considered?**

All producers are eligible for 100% coverage for MDFA losses under the growing season crop loss program regardless of the level of federal coverage they purchase. If the federal crop insurance policy pays for part of a crop-loss claim, that payment will be taken into account before the MFDA's supplemental crop loss programs will provide further compensation.

**Will I still be compensated up to 100% of the expected value of my crop if I purchase a lesser level of federal crop insurance coverage in a year when the project is expected to operate?**

As long as producers carry required federal crop insurance, the MFDA is required to pay them 100% of the expected value of their crop in years when the project operates and affects a producer's unit within the UMA.

**Is the MFDA's coverage a revenue policy? If the fall price goes down, are you covering the revenue loss portion?**

There are three primary individual policies that are available: yield protection (YP), revenue protection (RP) and revenue protection with a Harvest Price Exclusion (RP-HPE). Most producers buy RP, which means they're going to use the greater of the projected or harvest price for establishing the value of their crop. If they bought an RP policy, then our prices will reset. If they buy a YP or RP-HPE policy, we will use the spring (projected) price to value their crop, consistent with the determinations made under the federal crop insurance program.

**What provisions in the settlement agreement would address business loss to our co-op if, say, 30% of our crop is lost?**

One of the other provisions in the settlement agreement is a business-interruption insurance program. C-W Valley Co-Op and Dakota Plains Ag are explicitly identified in the settlement agreement as eligible for that business-interruption insurance. The specifics of business-interruption insurance are being developed.

## MFDA Policy Activation and Eligibility

**When is this policy activated? Flooding? Gates closing? Project operation?**

This policy is activated once the control structure gates move, the project begins to operate, and a loss is incurred in an insured unit in the UMA.

**When does the MFDA become responsible for crop loss?**

The MFDA's obligations begin when the control structure gates close.

**Is there such a thing as the project operating and not affecting any crops?**

Yes, most flood events occur early in the spring, well ahead of spring planting dates. An analysis of historical flood events that was done by the NDSU Agriculture Economics Department indicates that we can expect most flood events, and impacts from project operation, to happen before spring planting begins. If the gates close in a given year, and no losses are incurred, there has been no damage and no indemnities will be paid.

**What happens if federal crop insurance goes away?**

The MFDA's obligations under the settlement agreement do not change. In this unlikely event, MDFA would have to revise the terms of coverage (including dropping any requirement for federal crop insurance participation for eligibility), a process that would include extensive producer and public interaction and consensus.

**In many instances, the UMA cuts right through a field, but the crop insurance boundary is based on the field's boundaries. How does coverage work if a portion of a field is flooded due to the project?**

The MFDA's responsibilities stop at the edge of the UMA, but some producers' crop insurance units don't match up with that boundary. The MFDA will implement a pro rata solution based on the unit's size for determining the federal crop insurance payment and the MFDA's responsibility for the supplemental crop insurance to reach 100% of the expected crop value within the UMA portion of the unit.

**If the diversion project operates, and water only covers about 20,000 acres but the other 10,000 acres are not flooded, will those 10,000 acres still be compensated at a 100% level?**

The settlement agreement indicates that the MFDA's crop-loss programs will compensate producers for actual crop losses caused by project operation. As such, the areas that are not flooded (the insurable units in which no acres are affected by project operation) would not qualify for the MFDA's supplemental crop loss programs.

**Let’s say we plant our crop and get 80% of our approved yield. The diversion operated in the spring, but our loss was caused by something else, such as a hailstorm. Which coverage pays for that loss?**

If the project operates, the operation of the project affects your unit, and your crop is less than 100% of its expected value, we're responsible under the terms of the settlement agreement to pay you 100% of the value of your crop. However, any indemnities you receive from other sources get deducted from that amount.

**Will federal crop insurance pay if the project operates?**

The federal crop insurance does not have the legal authority (will likely not pay) to indemnify losses for any manmade or uninsurable cause of loss. For example, if a producer has a reduced yield from a hailstorm and was subject to reduced yields as a result of project operation, they will file a claim, their adjuster will determine what damage was due to natural causes, which are the responsibility of federal crop insurance and/or private supplemental hail insurance, and which damage is due to the project, which will be covered by the MFDA.

**What if our losses are due to excess rain in the growing season? Is one insurance company going to point at the other and neither claim responsibility?**

Producers’ insurance companies’ adjusters will determine what is insurable under federal crop insurance and what is not. The MFDA is responsible for paying the difference. So, if an insurance company says a loss is entirely on the MFDA because all the losses are from a manmade cause, such as project operations, then the MFDA is responsible for paying up to 100% of the crop’s value.

The MFDA will use the loss adjuster from a producer’s federal policy to make the determination and will have no role in their adjusters’ determinations. The MFDA’s calculation will be simple: What was the value of the crop, and what did the producer get from the other insurance company, if anything? We apply any payments from federal crop insurance against the liability, and the MFDA pays the difference.

**How will the MFDA’s supplemental crop-loss programs address the stock penalty for sugar beets if the crop doesn’t get planted?**

Sugar beets have special rules and requirements that are imposed by co-ops, with which the MFDA has no agreements. There are requirements in some of the co-op contracts that require a number of shared acres to be planted based on ownership in the co-op. If, as a result of project operations, a producer’s acres are underwater, they will be unable to meet those obligations. Currently, there is nothing in the settlement agreement that references this specific situation, but the MFDA is working on it.

## Delayed Planting Impacts

**Will the MFDA compensate producers for losses due to delayed planting?**

A producer’s guaranteed crop insurance level starts to erode after the late-planting date established by the USDA for each crop. The MFDA’s supplemental crop-loss programs are designed to encourage planting. If a producer chooses to plant during the late-plant dates, and if the project operates, the MFDA’s obligation under the settlement agreement is to pay the producer for 100% of the expected value of the crop. If the project operates and the producer has a loss, including a reduced yield, the MFDA is responsible for paying the producer for 100% of the expected value of the crop without reducing coverage because of the late planting.

## Actual Production History (APH) Impacts

**What happens if farmland in the UMA becomes rated high-risk due to frequent flooding? What if producers’ premiums go up on their federal crop insurance policies?**

If, as a result of project operations, crop insurance premiums go up or available coverage is reduced, the MFDA is responsible for compensating for those losses, such as if APH is reduced due to project operations.

**If the project operates multiple times in a short time span, it will really affect our APHs. How will we be compensated for that?**

The MFDA is required under the settlement agreement to compensate producers. It states that we must bring producers up to the same circumstance as if the project had not operated. Note that the math associated with these calculations will be complex. The MFDA is pursuing potential legislative changes for this issue.

**Specifically, how would we be compensated for our APH dropping if the project operated, say, three times in five years?**

The MFDA must treat a producer as if the project had not operated. The MFDA can't make the federal crop insurance policy what it would have been; instead, we will pay the difference between the actual value and the expected value without project operations.

Let’s say a producer has a 10-year actual production history and then we experience a significant flood event requiring the project to operate and the producer only gets 30% of their expected yield. We can use county crop production data to index down and elevate back up to the yields that may have been expected had the flooding not occurred. Based on that, we can calculate what your approved yield would have been for those 10 years with all the other exclusions, calculate how much different your rate and guarantee would have been, and offer you compensation based on that.

Note that the MFDA is also working on a legislative solution to the complex APH calculation issue.

**If some uninsurable causes impact my actual production history (APH), how will that be remedied?**

Currently the Federal Crop Insurance Act, which is the legislation that allows all crop insurance to operate, includes dozens of amendments designed specifically to change the approved yield. This is why a producer's 10-year-average history and approved yield are not the same. If a producer is on a two-year, 50/50 crop rotation, those historical yield days can follow them for 20 years. We're obligated to compensate the producer for those adjustments.

## Damage Claims Process

**Will the MFDA's policy operate like another AIP, where we agree if it's practical to replant, or is it still just the call of the insurance company that's involved?**

The MFDA will rely entirely on the federal crop insurance guidelines and elections from AIP loss adjusters.

**When will a producer receive payment from the MFDA if a loss is determined?**

The MFDA anticipates being able to pay the indemnification under the supplemental coverage within 30 days of receiving final settlement information relevant for federal crop insurance.

Producers have the ability within current federal crop insurance programs to choose whether they accept payment in the current calendar year, or the following calendar year based on their tax situation. The MFDA will adopt the same option for producers for its supplemental crop insurance programs. Note that every historic flood event that would have resulted in project operation occurred in March or April, so realistically, there will be plenty of calendar to work with in terms of getting the payment into the year of the flood event or putting it into the following calendar year for tax planning purposes.

**How will the MFDA verify if the farmer was unable to plant? Will the MFDA just take their verification?**

Producers are required to report their planting as part of their crop insurance obligations for their acreage bought, and that has a date on it. We rely on the crop insurance system so we're not creating new or duplicative paperwork.

**Would we have to file a claim through the MFDA?**

Producers are required to provide a notice of loss to the MFDA (and follow reporting rules for their federal crop insurance). The producer's crop insurance adjuster will determine which bushels are lost to insurable causes and which ones are not.

**If I have a loss that does not exceed my federal crop insurance coverage level, who will come out and determine what I am owed by the MFDA?**

The MFDA will ask the same crop insurance adjuster that would have visited for the federal crop insurance to adjust for the supplemental crop-loss programs as well to try to keep the process as consistent as possible. We are working to develop a way to compensate the crop insurance company for their adjuster's visit. Generally, what we find is if there's any loss, whether it triggers an indemnity or not, and a claim is filed, the crop insurance company will send an adjuster. We've approached a couple of approved insurance providers about the possibility of developing terms under which we can pay the adjusters for producers' crop insurance policies to do this in cases where they wouldn't be obligated to already do so.