

TESTIMONY BY DIVERSION AUTHORITY
CHAIRMAN DARRELL VANYO TO THE BUDGET
SECTION ON THE FM AREA DIVERSION PROJECT

SEPTEMBER 24TH, 2014

TESTIMONY TO THE ND BUDGET SECTION
By: DARRELL VANYO
FM DIVERSION AUTHORITY CHAIRMAN
September 24, 2014

Good afternoon Chairman Pollert and committee members. Thank you for the opportunity to provide you with an update on the Fargo Moorhead Area Diversion Project.

A lot of progress has been made on numerous areas since the 2013 legislative session. The first attachment after this testimony in your packet is a comprehensive matrix of legislative action items contained in HB1020 last session along with a status update on each. Many of the issues are being worked on concurrently and are interconnected, but the progress on each can generally be broken down into three parallel tracts; Political, Financial, and Technical.

I understand that there is not time today to go into depth on that entire list and I know there is multitude of interests with this Project, but I would like to cover several key items at a high level, starting with the Political Tract.

Political Tract

As members of the Budget Section, I know that the financial status of our Project partners is a key concern. I am happy to report that, in June, President Obama signed the Water Resources Reform and Development Act, which authorized the Diversion Project. Critics will talk about the backlog of authorized Corps projects, but this water authorization bill was the first one passed into law in seven years. On top of that, the FM Diversion was specifically named in the law as 1 of only 26 water projects nationwide. Also, WRRDA de-authorized many out of date projects that were previously on the books, making the path smoother for appropriating funds for newly authorized projects. This was a critical step, because even though the federal government has spent approximately \$40 million to date on this Project for study and design, authorization allows Senators Hoeven and Heitkamp, and Representative Cramer, to begin seeking a federal appropriation for construction.

A unique aspect of this Project is that one of the federal sponsors is the City of Moorhead in the State of Minnesota. Being a border Project creates unique challenges and interesting situations as different perspectives are expressed. I am sure you have heard in the news about the comments made by MN Governor Dayton. After a lot of discussion and back and forth, we are working on a number of agreements and compromises that the North Dakota and Minnesota members of our board think address the concerns expressed by Governor Dayton. These compromises will alter and slow down some aspects of the Project, but will still allow the Project to progress as Minnesota finishes their environmental impact assessment.

In North Dakota, we have been in close communication with Governor Dalrymple and the State Water Commission. The Diversion Authority attends and provides an update at every regular meeting of the Commission. We greatly appreciate this involvement and review of the Project by the State of North Dakota. Just last week, we were pleased that the State Water Commission unanimously approved the cost-share agreement and the Diversion Authority budget.

Financial Tract

This Project is a massive civil works undertaking with a lot of moving parts and financial interests. We worked closely with you and the rest of the legislative body last session to solidify the State's share of the Project at \$450 million. To date, North Dakota has allocated \$175 million and, through legislative intent, a plan to allocate the remaining \$275 million over the next four biennium. Included within this testimony is a summary of those commitments and State Water Commission expenditures on the Project.

Included in your packet is the Diversion Authority's Fiscal Year 2015 budget and our anticipated 2016 budget. Our budgets are \$211 million in 2015 and over \$300 million in 2016. Over the next biennium, our efforts will focus primarily on construction of in-town levees and the ring-levee around the City of Oxbow and surrounding communities of Bakke and Hickson. In addition, there are funds allocated to begin land acquisitions along the northern sections of

the diversion channel so that construction can begin efficiently and expediently when funds and permits become available.

These are purposely aggressive budgets. Flooding is the number one issue facing our region. After five years of intensive study of the alternatives, costing tens of millions of dollars, we have done the due diligence and are ready to start building the flood protection our citizens need and deserve.

Technical Tract

We have completed an extremely thorough technical study and development process, and we are confident in the Project that has been developed. That confidence in the Project is unwavering, but that does not make all the decisions easy. Governor Dayton made several comments when he was in town a few weeks ago. One of them was that you cannot do a Project of this magnitude without someone being impacted in a way they won't be happy with. Unfortunately, he could not be more right. The challenge we face is to find a way to lessen those impacts and to treat those ultimately impacted with fairness and respect.

Flood protection for the Fargo metro area cannot be accomplished without creating impacts on land elsewhere. There is simply too much water. The design of this Project has been altered and refined many times over several years to determine how best to accommodate this. The Project map located in with this testimony includes an area to the south referred to as the Staging Area. The Staging Area is an integral part of the Project that makes flood protection possible for metro area by eliminating impacts downstream. It is also the most controversial piece of the Project.

This Staging Area is not a reservoir of water, but a temporary water retention feature. In large flood events, it will hold back water for a week and a half. The Staging Area will only operate in events larger than a 35-foot flood at the Fargo gage. For those of you who are not as familiar with our local levels, once it gets to 30-feet it is considered at a Major Flood Stage.

Even though the staging of water only happens at the peak of flooding, which usually occurs in March and April before planting begins, the existence of the Staging Area does create a set of challenges that need to be addressed. Landowners in the Staging Area will be financial compensated through acquisition of a flowage easement. The land in the Staging Area can and will continue to be farmed. The potential of additional water caused by a man made structure does create problems with federal crop insurance. Due to this, the Diversion Authority has committed to a supplemental crop insurance program that would allow operators on the land access to the same type of coverage available today. The supplemental crop insurance program would pick up when federal crop insurance become unavailable. Just last week, we completed a formal RFQ process in which the Agribusiness Department at NDSU was chosen to help us develop a plan to mitigate the impact on farm land. While these impacts would not be realized for many years from now, we are committed to solving this problem and keeping you and the farming community updated as we progress. We have formed an Ag Committee with members from the Staging Area, including a Clay County farmer as one of the Co-Chairs, and this group is working directly on the crop insurance study.

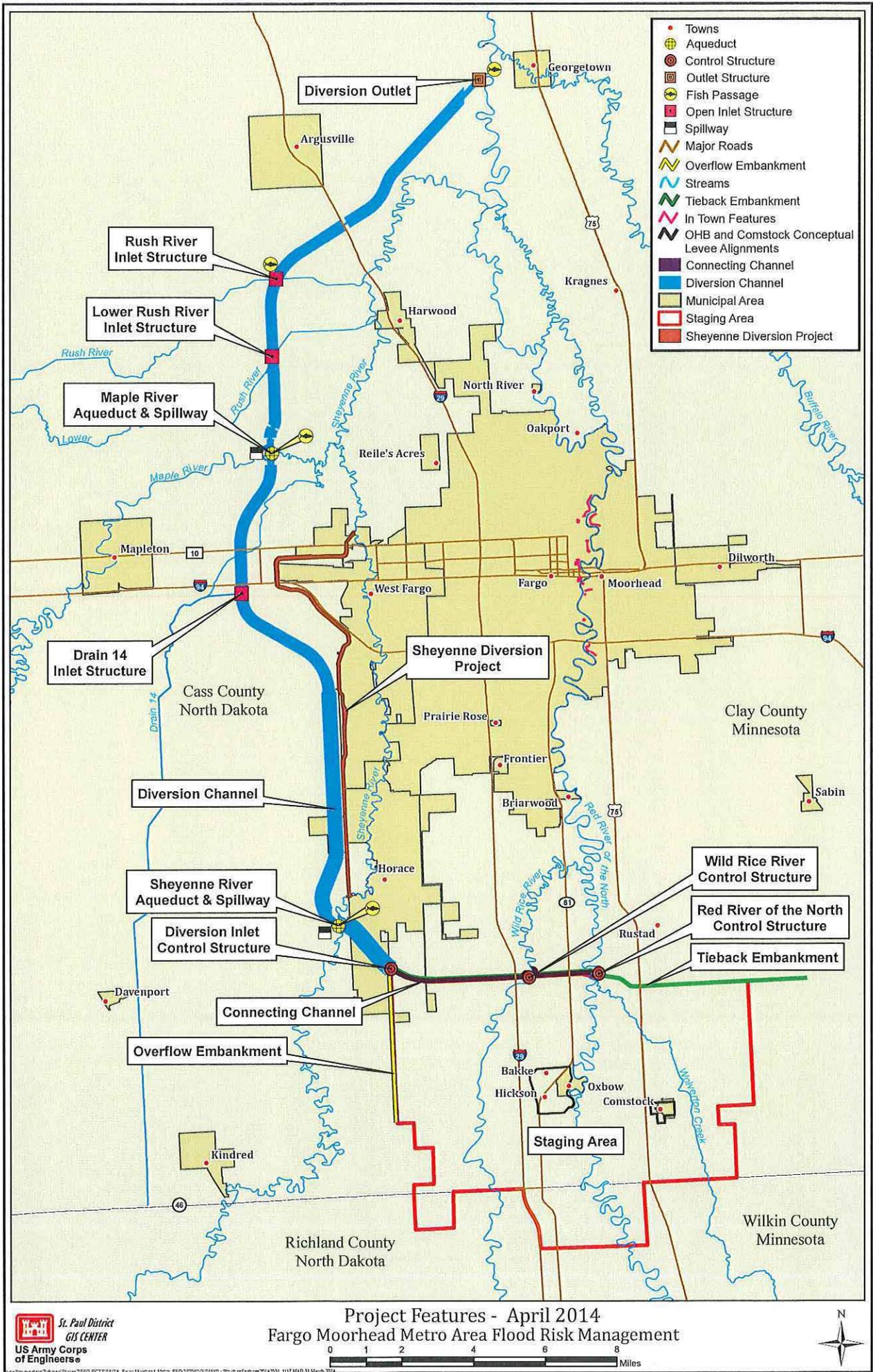
Agricultural mitigation is extremely important, but there are other mitigation efforts underway as well. While there is not time to do them all justice today, I want to assure you that we are aware of the impacts, the questions, and the concerns being expressed. The metro area to date has bought out 700 homes for flood protection and we continue to work diligently towards the things we need to do. We have made good progress on mitigation plans for the residences in the Staging Area, have released a 180 plus page technical study detailing the impact on cemeteries with options on how they could be mitigated, have started construction on the Oxbow/Hickson/Bakke ring levee to prevent a total buyout of those communities, and are continuing to work with the Corps on mitigating the farmstead businesses impacted.

I have been an elected official in some capacity for over two decades. I have been involved in a lot of Projects and have made a lot of decisions that impact people. The scope of this Project

outweighs anything I have undertaken, but the basic principles are the same. I try to keep the problem at the forefront of my mind. We need to reduce and remove the flood risk for the Fargo metro area. We need to do the most good for the most people. But in doing so, we need to treat those impacted with respect and financially compensate them adequately for those impacts. I commit to you that we will continue to address the concerns I know you have heard. These answers do not always come as quick as some would like, but work on them continues to progress and we will get there.

I would like to thank you for the part you have played in this Project. Our constituents have been through a lot of floods. A lot of people have lost their homes, their lively hoods, and that additional stress of flooding has had a great impact on their lives. This Project has a number of challenges ahead of it, but there are more of them behind us. Today, we are closer than ever to achieving permanent flood protection for 200,000 people.

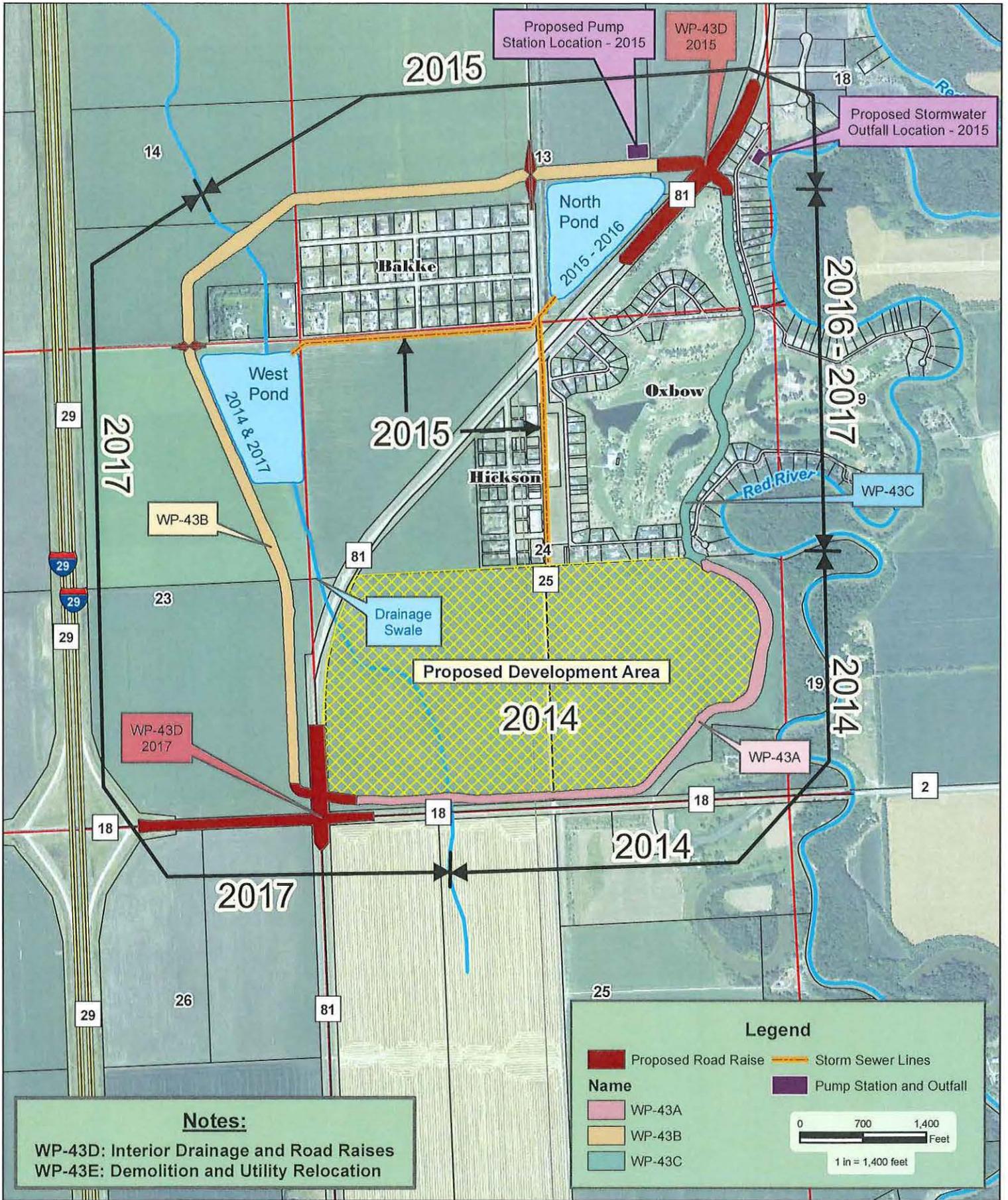
Thank you.



- Towns
- ⊕ Aqueduct
- ⊙ Control Structure
- ⊠ Outlet Structure
- ⊕ Fish Passage
- ⊠ Open Inlet Structure
- ⊠ Spillway
- ⊠ Major Roads
- ⊠ Overflow Embankment
- ⊠ Streams
- ⊠ Tieback Embankment
- ⊠ In Town Features
- ⊠ OHB and Comstock Conceptual Levee Alignments
- ⊠ Connecting Channel
- ⊠ Diversion Channel
- ⊠ Municipal Area
- ⊠ Staging Area
- ⊠ Sheyenne Diversion Project

Project Features - April 2014
 Fargo Moorhead Metro Area Flood Risk Management





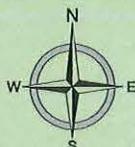
Notes:
 WP-43D: Interior Drainage and Road Raises
 WP-43E: Demolition and Utility Relocation

Legend

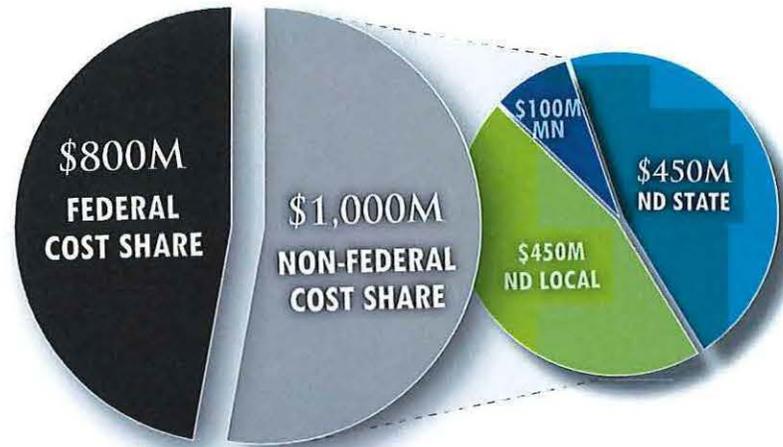
	Proposed Road Raise		Storm Sewer Lines
Name			Pump Station and Outfall
	WP-43A		
	WP-43B		
	WP-43C		

0 700 1,400 Feet
 1 in = 1,400 feet

OHB Ring Levee - Construction Staging Oxbow, Hickson and Bakke, North Dakota



FUNDING PLAN



ND LEGISLATIVE APPROPRIATIONS (\$450 MILLION)

- 2009: \$45 Million (approved)
- 2011: \$30 Million (approved)
- 2013: \$100 Million (approved)
 - HB1020 included legislative intent for the remaining \$275 over four biennium
 - 2015: Request \$68.75 (tentative)
 - 2017: Request \$68.75 (tentative)
 - 2019: Request \$68.75 (tentative)
 - 2021: Request \$68.75 (tentative)

ND LOCAL FUNDING

- Two voter-approved, 20-year, ½¢ sales taxes dedicated to flood protection
- Fargo sales tax in 2009 (90% approval) and County sales tax in 2010 (64% approval)
- Taxes jointly raised approximately \$27M in 2013
- Over the life of the taxes, projections estimate collections totaling \$700M (4% growth rate)

FEDERAL FUNDING

- Federally authorized for \$846 Million
- Approximately \$40 Million to date for Planning, Engineering, and Design (PED)

DIVERSION AUTHORITY FUNDING PRIORITIES 2015/17

- Intown Levees
- Oxbow/Bakke/Hickson Ring Levee
- Diversion preconstruction engineering, land acquisition, and construction once conditions are met

	FY15 Budget	FY16 Budget
PROGRAM	210.8	314.1
Land Acquisition	101.7	100.0
In Town Levees (WP-42)	32.5	28.0
OHB Levee (WP-43)	39.8	0.0
Rush River to Outlet (WP-01-04)	8.0	0.0
I-94 to Rush River (WP-05-14)	0.0	31.2
Red River Control Structure	0.0	5.6
Wild Rice Control Structure	0.0	4.2
Diversion Inlet Gated Structure	0.0	2.9
Sheyenne Aqueduct	0.0	6.2
Staging Area (WP-38)	7.0	7.4
Hardship	1.5	1.6
Opportunistic	8.9	9.0
Land Acquisition Mgmt	4.0	4.0
Construction	81.2	189.6
In-Town Levees (WP-42)	48.7	15.0
OHB Levee (WP-43)	16.2	10.0
Diversion Channel & CR 4/31 Bridge (WP-01-03)	0.0	85.5
I-29, CR81, BNSF RR Bridges (WP-04/05)	0.0	64.1
Other Construction	14.3	10.0
CM	1.7	4.0
Testing	0.3	1.0
Design/Permitting	11.6	10.5
HMG	9.5	10.0
URS	0.6	0.5
MN DNR	1.5	0.0
Technical Oversight & Proj Mgmt	7.2	9.0
Corps	0.5	0.0
PMC	4.3	6.0
Legal	2.0	2.0
Financial Advisor	0.3	1.0
Other Obligations	9.1	5.0
Utility Relocations	9.1	5.0

City of Fargo
 State Water Commission
 Fargo Flood Control Projects Financial Status Report -9/16/2014

STATE AID SUMMARY:	
Summary of State Funds Appropriated :	
Appropriations from 2009 Legislative Session	\$ 45,000,000
Appropriations from 2011 Legislative Session	30,000,000
Appropriations from 2013 Legislative Session	100,000,000
Appropriations Request for 2015 Legislative Session	68,750,000
Total State Funds Appropriated	\$ 243,750,000
Cass County Projects	(136,039)
FM Diversion Authority	(1,144,270)
Fargo Flood Control Projects	(44,315,048)
FM Diversion Authority FY 2014 Remaining Expenditures	(3,000,000)
FM Diversion Authority FY 2015 Budgeted Expenditures	(93,000,000)
FM Diversion Authority FY 2016 Anticipated Expenditures	(125,000,000)
Total Funds Expended or Budgeted	\$ (266,595,357)
Carryover Funds Going Into 2017 Session	\$ (22,845,357)

Fargo-Moorhead Area Diversion Project

Summary of ND Legislative Requirements in HB1020 of the 63rd Legislative Session

Citation	Legislative Requirement	Actions Taken	Status
Section 7 - Fargo Flood Control Project Construction Limitation	Except for ring dikes and levees, no construction south of Fargo until after July 1, 2014	Oxbow/Hickson/Bakke Ring Dike Construction has progressed in compliance with legislation. No other construction south of Fargo has occurred.	Full Compliance
Section 8 - Fargo Flood Control Funding	State funds are only available for levee and dike protection until:		
	<ul style="list-style-type: none"> • Project receives federal authorization 	On June 10, 2014, President Obama signed the Water Resources Reform & Development Act into law, authorizing the FM Diversion Project as 1 of 26 water projects named in the bill.	Full Compliance
	<ul style="list-style-type: none"> • A federal appropriation is provided for Project construction 	The Project is now authorized and can begin requesting federal appropriations.	Pending Compliance

	<ul style="list-style-type: none"> • A Project Partnership Agreement (PPA) is executed 	Once appropriations are received, a PPA can be executed.	Pending Compliance
	<ul style="list-style-type: none"> • The Budget for the Fargo flood control Project is approved by the State Water Commission 	The Diversion Authority has reported quarterly to the State Water Commission on the Project. In Sept. 2014, the State Water Commission unanimously approved the budget and cost-share agreement for the Project.	Full Compliance
Section 9 - Fargo Flood Control Project Funding Agreement	Project sponsor and State Water Commission must enter a cost sharing agreement.	In Sept. 2014, the State Water Commission unanimously approved the budget and cost-share agreement for the Project.	Full Compliance
	Agreement must exclude components deemed recreational by the Army Corps of Engineers.		Full Compliance

	Agreement must exclude funds expected to be provided by other non-federal entities outside of North Dakota.		Full Compliance
	An advance funding agreement between the Army Corps of Engineers and the local Project sponsor must precede state funding used to advance construction work considered to be a federal responsibility.	An agreement (Construction MOU) between the Army Corps of Engineers and the Diversion Authority was signed in March, 2014.	Full Compliance

<p>Section 10 - Legislative Intent - Fargo Flood Control Project Funding</p>	<p>Legislative intent to provide one-half of the local cost-share of the construction of the federally authorized Fargo flood control project... to not exceed \$450,000,000. Further intent to designate \$275,000,000 over equal installments in the next four bienniums.</p>	<p>To date, the legislative assembly has appropriated \$175,000. The request to the 64th legislative assembly is \$68,750,000, one-fourth of \$275,000,000.</p>	<p>In Governor's 2015 Budget</p>
<p>Section 11 - Fargo Flood Control Project Funding - Exemption</p>	<p>Funds appropriated to date can only be used on land purchases and construction.</p>	<p>Approximately \$45 million of State funds have been reimbursed for flood protection, including land purchases and construction.</p>	<p>Full Compliance</p>

	Funds may not be used for the purchase of dwellings.	Approximately 500 homes have been removed for flood protection purposes in Cass County and Fargo, but no State funds have been used on the purchase of these dwellings since the requirement has been in place.	Full Compliance
	No more than 10% of funds may be used for engineering, legal, planning, or other similar purposes.	Funds from the State have not exceeded 10% for these purposes.	Full Compliance
	The Cass County Joint Water Resource District must approve the expenditures.	The CCJWRD has approved all expenditures.	Full Compliance
Section 15 - Reports to the Budget Section	The FM Diversion Authority shall report to the budget section on the following items:		

	<ul style="list-style-type: none"> • Congressional Authorization 	<p>On June 10, 2014, President Obama signed the Water Resources Reform & Development Act into law, authorizing the FM Diversion Project as 1 of 26 water projects named in the bill.</p>	Update in Testimony
	<ul style="list-style-type: none"> • Crop Insurance 	<p>Formal RFQ process was completed resulting in a contract with with NDSU Agribusiness to help develop a policy on Crop Insurance.</p>	Update in Testimony
	<ul style="list-style-type: none"> • Mitigation Efforts 	<p>Multiple, concurrent efforts are underway.</p>	Update in Testimony

	<ul style="list-style-type: none"> • Alternatives 	<p>The Federal feasibility study of alternatives took four years and cost \$22 million to complete. The result was one Project, the FM Area Diversion Project.</p> <p>The Project has made a number of refinements to address upstream concerns and significantly reduce impacts in Richland and Wilkin Counties, including:</p> <ul style="list-style-type: none"> • Alignment moved 1-Mile to the North • Increased Natural Flow of the River through Town by 5' • Added an Adjustable Weir to Greatly Reduce the Chance of Staging Water in a Summertime Flood Event 	<p>Update in Testimony</p>
	<ul style="list-style-type: none"> • Costs 	<p>Costs & budgets are included in the testimony as an attachment.</p>	<p>Update in Testimony</p>

	<ul style="list-style-type: none">• Easements	Under contract with the NDSU Agribusiness Department to refine ag-risks associated with the Project, which will lead to a policy on flowage easements and crop insurance.	Update in Testimony
	<ul style="list-style-type: none">• Project Budgets	Costs & budgets are included in the testimony as an attachment.	Update in Testimony