

MNDAK UPSTREAM COALITION TESTIMONY

Interim Water Topics Committee

August 12th, 2015

Representative Jim Schmidt, Chairman

Chairman Schmidt, Members of the Committee, I'd like to thank the legislature for the opportunity to update your committee on our situation regarding the proposed FM Diversion project. My name is Rae Ann Kelsch, a registered lobbyist for the MNDak Upstream Coalition. We are a grass roots group formed to represent those people that will be impacted by the proposed dam and 50,000 acre water storage area upstream of Fargo. There are two other groups; one is the Richland-Wilkin Joint Powers Authority. They are composed primarily of governmental entities who believe they will be affected by the project. They are currently involved with legal action against the Army Corps and the Diversion Authority. The other significant group is the Upstream Cemetery Authority. That is a group of 16 cemetery associations who believe their graveyards will be impacted by the project.

The obvious impacts to the people living upstream are farmland flooding, damage to roads and infrastructure, flooding of cemeteries and relocation of residences and farmsteads.

Senate Bill 2020 which funded the State Water Commission also contained a study resolution on upstream impacts. The Diversion Authority has been exploring agricultural impacts of the project with a goal of developing a self insurance program to cover damage caused by the project. The self insurance policy is meant to mimic traditional crop insurance at 65% coverage and prevented planting insurance. It is likely that most years the project operates, planting will be delayed. Farmers would suffer a loss of up to 35% with no compensation at all. Prevented planting is the same. It only covers a small portion of the loss, and loss is caused by operating the dam. Flowage easements would be expected to make up for the shortfalls. Flowage easements are a onetime payment, with no tie to how much damage would be caused in perpetuity. The Corps EIS indicates the easements would be 25% of appraised land values. Remember in today's dollars, it costs about \$600 to produce an acre of corn, and \$1000 to grow an acre of sugar beets. That's without consideration for what might be the case 20 or 50 years from now. This project is forever. Several of our members have taken part in the ag impacts groups sponsored by the Diversion Authority, and have followed the study currently underway. The current study is being conducted by North Dakota State University and was to be completed prior to the last legislative study, but a final version has not been released. The results from this study are needed before the study resolution passed by the legislature can be conducted.

A significant issue for the study will be how many acres will be compensated for damage. Army Corps maps indicated the staging area will cover 50,000 acres. The Corps says 32,000 must be mitigated. The 18,000 acre discrepancy is where the water will be less than one foot deep. Damage must be determined by a takings analysis conducted by the Army Corps. Our understanding is that the takings analysis may not have been completed. We are told that the takings analysis results are protected by attorney client privilege between the Corps and the Diversion Authority. The expanded study authorized by the legislature will study impacts to six inches. We believe that crops covered by three inches or three feet of water will be equally dead. Nothing can be done on the legislative study until NDSU completes their work on impacts over one foot. The legislative language also requires hydrology from the Corps and Diversion Authority on extent of the staging area.

A point of analysis in the NDSU study is the interaction between water being backed up on the farmland, and the transportation infrastructure. We are told that operation of the dam will flood 50,000 acres and drain them again in nine days. Townships in the staging area are concerned that their roads may have significant damage as a result of the process. If the snowpack is deep enough to cause flooding, ditches and culverts are usually plugged with snow and ice. The length of planting delays and crop loss will be tied to this process. We hope that the legislative study will address these issues.

We have many members that are very concerned about cemeteries in the footprint of the staging area. Legislators representing upstream interests unsuccessfully tried to get some state oversight of how cemeteries are treated in the last legislative session. Since the end of the session, the Army Corps has completed their study on cemetery impacts. They recommended that easements be paid to cemeteries to flood them. Water depths will exceed eight feet. Their study stated that vaults are assumed to be covered by at least four feet of soil. North Dakota law requires vaults to be covered with 18 inches of soil. Many of you know that it is not unusual for vaults to migrate above the ground surface when soils are saturated. The buoyancy force of eight feet of water is enormous. Perhaps some of you remember the issues around Lake Sacajawea when it was established. The study estimated the cost to be \$14 million to ring dike and raise roads to access the cemeteries. The Corps said it was too expensive. The Diversion Authority wrote a check for the Oxbow Country Club for more than \$10 million for a new clubhouse. Some have suggested the dead should take their easement checks and get a membership at the private country club. The cemetery boards that care for these cemeteries are not happy. People who advocate for flooding the rural cemeteries say the diversion will protect more cemeteries in Fargo. The truth of the matter is that a smaller flood protection project with in town dikes and levees would protect most of the Fargo cemeteries without flooding ours. Caretakers of the upstream graveyards believe that this shouldn't be turned into

a game of trading baseball cards. Our dead should receive the same respect as everyone else's.

As earlier mentioned, MnDak Upstream is not a party to the lawsuit against the Corps and the Diversion Authority. I will spend a couple minutes to update you on its status. The JPA is pursuing a lawsuit in federal court that the Army Corps did not follow federal and state guidelines when they prepared their study of project. A federal judge issued an injunction against project construction, which includes a ring dike around Hickson-Oxbow-Bakke, until the Minnesota evaluation process is complete. The judge's comment on the injunction was that the JPA was likely to prevail on at least some of the counts in the complaint. Everyone is now waiting for the DNR to complete their own environmental impact statement. Since the dam and tie back levee extend into Minnesota, and large areas will be flooded like in North Dakota, their law requires a state study to determine whether the project will meet the goals the Diversion Authority has outlined. Once their EIS is complete, then Minnesota and their other governmental entities have to decide whether they will give them the permits they need. The most difficult issue will likely be a permit for the high hazard dam that will create the staging area. The criteria for the other permits will be whether the benefits outweigh the hazards and damage the project will cause for Minnesota. We can't predict how long this process will take, or its impact on the lawsuit. Those involved in the legal case say a trial could occur before the EIS and permitting process is complete.

The legislature has appropriated large amounts of money for in town flood protection for Fargo. It's critical to the region for that money to be used. Federal money is available for retention projects throughout the valley. It would be tragedy if a single minded pursuit of one project sucks the collective air out of the region to provide flood control that would help everyone.

In closing, MNDak presented an update to the Budget Section on September 24th, 2014. What is unfortunate is that the information I just gave you is almost identical to the update on September 24th. You see, nothing has changed; there is still no mitigation efforts, no plan for crop insurance, no meetings to try and resolve the differences or discuss positive alternatives, only 400% over value buyouts for homes in Oxbow. The future of flood control in the Red River Valley must be a joint effort between Minnesota and North Dakota to reduce river flows, build up dikes and levees, and develop efficient diversions and bypasses to protect existing infrastructure that is at risk. The Red River Valley is a wonderful place to live, with small growing communities outside the natural floodplain that enrich the Fargo-Moorhead metro area with talented and motivated employees to meet our vibrant economy. The MNDak Upstream Coalition hopes we can all grow a future together that will make our kids believe it is the best place on earth to live.