

January 11, 2021

Chairman Monson and members of the Committee,

I. Introduction.

It is an honor to be here and thank you for the invitation to speak with you about the Metro Flood Diversion Authority (MFDA), the state of the Metro Area Diversion Project (Program), and our imminent financial and funding needs. My name is Joel Paulsen, the Executive Director for the Metro Flood Diversion Authority. My testimony will be different than in prior years regarding the Program. First, I want to convey that I will be your direct point of contact during the legislative session for any questions you may have. Second, I am not here to talk about delays due to litigation because these have all been resolved. Rather, I am here to talk about a Program that is now under construction and has secured multiple approvals and milestones since the last legislative session.

I would also like to note that I am not here asking for the creation of a low interest long-term loan program as was requested during last session. The Authority was able to secure a WIFIA loan from the US EPA (under the Water Infrastructure Finance and Innovation Act) in the amount of \$569 million dollars, which will be paid back using Cass County and City of Fargo sales tax dollars. I want to make clear that the US EPA WIFIA loan proceeds can only be used for the Diversion Channel construction and a few elements of the in-town work per the requirements of the federal program. Further, the MFDA also received approval to access a Private Activity Bond (PAB) allocation from the US DOT in the amount of \$296 million that will be available for the Public Private Partnership (P3) Joint Venture Teams to use to lower their cost of construction financing. However, once again the PABs can only be used for the Diversion Channel construction (also referred to as the P3 portion of the project).

With the resolution of all outstanding litigation challenging the construction of the Program settled late last year, the Program has already started constructing multiple major elements and is moving quickly towards the launch of construction of the Diversion Channel in the fall of this year. The key milestone between now and then will be on March 26th, 2021 when we receive final financial proposals (bids) from the Joint Venture Teams bidding on the contract to construct the Diversion Channel utilizing the innovative P3 procurement method.

II. Background.

As you may recall the Program has three major elements that work together to provide a comprehensive flood protection project. These three elements include (1) the in-town work in Fargo and Moorhead, (2) the southern embankment and staging area; and (3) the Diversion Channel and its Associated Infrastructure. The in-town work and the elements of the southern embankment have been under construction for some time, with major works consisting of in-town flood walls and levees, the diversion inlet control structure, and the Wild Rice River control structure. My testimony today will focus on the funding needs for the overall Program for the next biennium and beyond. A significant part of my testimony will cover the P3 procurement which involves only the Diversion Channel component of the Program. The reason the Diversion Channel procurement has such a significant impact on the Program funding needs is that the Diversion Channel component is being constructed pursuant to a single contract valued at nearly \$1 billion as compared to other elements of the Program that are constructed in a series of smaller contracts. With respect to this Program small is a relative term with some of the contracts for the control structures ranging from \$60 million to \$200 million. The rationale to use a single large contract for one element of the Program creates a significant savings and is part of the innovation associated with a P3 contract.

The timing of the P3 procurement process is driven by legal requirements that were activated once the litigation was settled. This obviously has created a disconnect with the mechanics and schedule of the legislative process, specifically for the House's consideration of our funding needs. Until after March 26, we will not be able to provide definitive information about the bids. What we can do is provide the clearest picture possible. Today I will concentrate on the funding of the Program, but if you would like to hear more about the elements of the Program that are currently under active construction, I can provide you with that information as well.

The Diversion Program has three main sources of capital funding, adding up to a total of \$2.75 billion (in 2018 dollars). Please note when I talk about Program funding, I am talking about today's capital cost, not tomorrow's or next year's dollars or the interest that the Cass County and City of Fargo taxpayers are paying on short-term debt and are going to pay on long-term debt.

The largest share of the \$2.75 billion capital cost comes from three local sales tax initiatives that were overwhelmingly passed by voters in the City of Fargo and another sales tax across all of Cass County (The City of Fargo has dedicated two .5-percent sales taxes and a fourth of the 1-percent



infrastructure sales tax, and Cass County has dedicated its .5-percent sales tax for a total of 1.75 percent). These taxes are dedicated to pay some of the capital cost of construction and ultimately has been pledged for the payment of the long-term interest on the WIFIA loan. These successful sales tax initiatives were a huge commitment by the local taxpayers over the course of the next 64 years, one of the longest voter-approved sales tax initiatives in the nation. Generally, the total principal amount of locally paid loans, debt and bonds for the Project will equal a principal amount of \$1.1 billion or about 40% of the overall capital funding. Just like with a home mortgage, the debt service payments over time will be much greater than the \$1.1 billion in principle.

Federal grant funding, which has already been committed, adds up to a figure of \$750 million, amounting to about 30% of the total capital cost. That said the federal commitment is calculated in 2015 dollars and will be escalated to the year of appropriation, meaning that the federal dollars will equal approximately \$908 million at the completion of the project. Further this amount does not include the interest savings associated with the US EPA WIFIA Loan, as the Federal government has also offered federal loan subsidies to the Program.

The state of North Dakota has committed a total of \$750 million in legislative intent to the Project allocated over several bienniums, of which \$66.5 million reflects our current request for the 2021 Legislative Session that was previously authorized by legislative intent. As you are aware, the \$750 million is not indexed for inflation as the federal dollars are. Our partnership has emerged over a number of legislative sessions, and we are grateful for your support. I view the Program's relationship with the legislature as a state-local partnership, and for the good of our partnership I advocated, and the MFDA agreed to defer \$22.5 million from our 2019 cost share agreement due to the deficit in the Resources Trust Fund resulting from the COVID-19 Pandemic and other economic factors. This state-local partnership has benefitted from the strong support of the North Dakota legislature and allowed the MFDA to get to the point of being designated as "shovel ready" but in reality, the Program has had its shovels dirty and in the ground for many years and has invested, with your greatly appreciated help, over \$500 million in the Program to date.

III. Request.

Moving forward into the next biennium, we have identified the need for the \$22.5 million that was deferred from the 2019 cost share agreement to be returned to the Program to enable the timely completion following the award of the P3 contract.

I would now like to review our capital expenditure needs for the next biennium and show where our carry over amount of \$67 million (estimated after the December 2020 reimbursement request), the 2021/23 legislative intent of \$66.5 million and the deferred 2019 cost share amount of \$22.5 million have been identified for critical components:

- In-town flood protection - the Project also includes floodwalls, levees, and other flood protection measures in Fargo to allow up to 37-feet of water to run through town. The Red River reaches flood stage at 18-feet at the Fargo gauge.
- Construction of Diversion Channel, aqueducts, and bridges, including relocating utilities to clear the path for the P3 construction – floodwaters will enter the 30-mile-long Diversion Channel and flow safely north around the metro area.
- Property acquisition for construction of the southern embankment and mitigation for Program operation – when the project operates during extreme flood events, the retention of floodwaters upstream of the southern embankment will create an area that must be properly mitigated, including many different components as well as the purchase of property rights.

As you consider the Authority's funding request, I would like you to consider three scenarios:

Scenario 1: The Authority receives the requested \$89 million (\$66.5 + \$22.5) appropriation for 2021/23. How would that be utilized?

These funds, combined with local sales tax, will allow the MFDA to complete what we have anticipated through 2022 in line with our current schedule.

The MFDA will have \$427 million in expenditures next biennium that are eligible for State Water Commission (SWC) reimbursement. At a 50-percent cost share reimbursement, this represents \$213.5 million in state reimbursables. The total carry-over with the full appropriated request of \$89 million total \$156 million. Under this scenario, we anticipate the Authority will end the 2021/2023 biennium with a zero carry over balance.

Scenario 2: The Authority receives the \$89 million (\$66.5 + \$22.5), the state commitment stays at \$750 million total. How does this impact the Program when the contract is awarded on April 22, 2021, and what problems would this scenario introduce?

If the state of North Dakota maintains its legislative intent at \$750 million, it will mean a funding deficit for the Program currently estimated at approximately \$120 million based on the Program's indicative design and engineer's estimate. As mentioned before, on March 26th we will receive final bids for the P3 portion of the Program. When the contract is awarded on April 22, 2021, we will capture significant cost certainty for the Program overall.

However, if we have a funding deficit, it will endanger the viability of project operation by 2028 by requiring us to leave certain essential elements unfunded: in-town flood protection, critical transportation components and land acquisition for flowage easements in the Upstream Mitigation Area. These issues had been presented in the 2019 Legislative Session and would persist through the next biennium causing uncertainty and potential schedule impacts for the date of operation.

Our US EPA WIFIA loan will not be able to help us in addressing these specific needs. The WIFIA loan only covers the Diversion Channel and some of the City of Fargo work, which rules out its use for any costs in the Upstream Mitigation Area, including lands and relocation of utilities.

Scenario 3: We receive all the previously discussed appropriations with the addition of the estimated \$120 million in additional legislative intent and the bids ultimately end up coming in over our engineers' estimates:

What do we do to move forward with the Program, and how do we deal with this situation?

- On March 26, we will receive bids from three Joint Venture Teams, the teams have had full visibility of our financial plan and know what will be realistic in terms of supporting a viable Project. The MFDA has performed the due diligence required to ensure that these bids will be feasible and affordable. The financial plan has been based on our intent to work with the State of North Dakota to ultimately fill the gap and has considered an \$870 million total contribution from the State to fund this Program.



- The manageability of an excess bid will depend on the extent to which it diverges from the financial plan. Our aim is to work this out within our existing financial resources. If the gap is too large, we will request sufficient additional legislative intent to ensure the completion of this vital Program.

With the EPA WIFIA, SRF (State Revolving Fund) loans and PABs (Private Activity Bonds) allocations from US DOT for the Joint Venture Team, the P3 Team will have access to over \$900 million for construction of the Diversion Channel. The bids would have to come in significantly higher for financial issues to become a genuine problem.

So, to be clear, the MFDA has pressing needs during this session of the Legislature.

The appropriation of \$89 million in existing legislative intent will make a vital contribution to the Program as it keeps construction on schedule and on budget. The estimated additional \$120 million in future legislative intent will ensure full funding for critical activities that would prove more expensive and more difficult if left later in the project. Our proposal is truly conservative in the North Dakota sense of that word: prudent, reasonable, and absolutely necessary.

I very much appreciate your willingness to give these your full consideration.

Thank you for your time and for your support today.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Paulsen".

Joel Paulsen

Executive Director

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