

## RECORD OF DECISION

### MOUSE RIVER ENHANCED FLOOD PROTECTION PROJECT SECTION 408 REQUEST WARD COUNTY, NORTH DAKOTA

The Souris River Joint Water Resource Board (the Requester) has proposed the Mouse River Enhanced Flood Protection Project (MREFPP) as a way to reduce future flood risks throughout the U.S. portions of the Souris River Basin. The construction of this project would require alterations to a number of existing U.S. Army Corps of Engineers (USACE) flood risk reduction projects located in the Souris River Basin of North Dakota (Federal projects). The proposed alterations to these projects require permission from USACE by way of Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. Section 408 (hereinafter referred to as Section 408).

The final programmatic environmental impact statement (FEIS) for the MREFPP, dated July 2017, addresses flood risk management actions for the Souris River Basin, as proposed by the Requester. The MREFPP is proposed to be constructed and permitted in a number of stages over a period of more than 25 years. Detailed design has been completed for Construction Stage 1 of the project. At this time, the Requester has requested Section 408 permission for the MREFPP at the programmatic level and for Construction Stage 1, in particular, since funding is currently available for construction of that stage.

Construction Stage 1 consists of flood risk reduction features, including levees and floodwalls, on the left-descending bank of the Souris River within Minot, North Dakota. Construction Stage 1 would not form a complete system and therefore would not provide flood risk reduction benefits without additional action. Construction Stage 1.5 and the additional construction stages would provide flood risk reduction benefit in subsequent approvals for flood flows of up to 10,000 cubic feet per second (cfs; the 1% chance exceedance event) in parts of the project area, while completion of the project in its entirety would result in flood risk reduction benefits for flood flows up to 27,400 cfs (the 2011 flood of record).

Due to the size and complexity of the project, the FEIS was prepared, in part, as a programmatic document, so that the direct, indirect, and cumulative effects of the overall MREFPP could be considered. In addition, the FEIS specifically addressed the effects of Construction Stages 1 and 1.5, as sufficient design information was available for those stages. Complete construction of the MREFPP, as currently designed, would include:

- approximately 18.1 miles of new levees
- 2.6 miles of new floodwalls
- 2 channel realignments, totaling 1.6 miles
- 2 high-flow bypass diversions
- 20 transportation closure structures
- the reconstruction or modification of 6 bridges
- 111.6 acres of overbank excavation
- the acquisition of over 900 properties

Site-specific and resource-specific issues for subsequent stages of the project will be reviewed and evaluated as detailed plans and official proposals are submitted for Section 408 approval. Should subsequent stages change appreciably from what is described in the current FEIS, supplemental NEPA documents may be

required. Supplemental documentation would consist of stage specific NEPA documents tiered to the FEIS, which would address specific impacts unique to each stage.

In addition to the Requester's Preferred Alternative and the No-Action Alternative, several conceptual flood risk reduction alternatives were also considered, such as diversions, floodproofing, buyouts, upstream storage, and modifications to existing reservoirs. However, none of these alternatives were deemed to be practicable or meet the purpose and need of the project, as identified by the Requester. Practicable means to avoid or minimize adverse environmental effects were incorporated in the design of Construction Stages 1 and 1.5. These measures include the using best management practices, bioengineering techniques, planting native seed mixes, and limiting construction activities to time periods that avoid impacts to seasonally sensitive habitat.

Construction of the MREFPP would also require fill to be placed in aquatic areas that are waters of the United States which requires approval from USACE under Section 404 of the Clean Water Act. In accordance with 33 CFR Parts 320 to 332, the USACE is delegated authority to issue Department of Army permits for discharges of dredged or fill material into waters of the United States. The Requester has applied for a Section 404 permit from the USACE Omaha District. The Omaha District will issue a separate decision on the Requester's Section 404 permit application in an independent evaluation, but using the FEIS prepared for this Section 408 decision and tiering the 404 process off of that. There will be a separate ROD executed by the District when that process is complete.

In order to assure that Construction Stage 1 of the MREFPP does not impair the usefulness of the existing Federal projects and that it not be injurious to the public interest, the following conditions and limitations are necessary and will be included in this Section 408 approval:

1) Approval of the MREFPP at the program level, and Construction Stage 1, in particular, does not imply that Section 408 permission will be granted for future construction stages. Separate Section 408 permission is required for each future stage of the project.

2) The Requester must achieve and maintain compliance with the System-Wide Improvement Framework plan approved by USACE on 27 April 2017.

3) The Requester must submit the following to the St. Paul District within 180 days of the completion of Construction Stage 1:

- a. A revised draft Operation and Maintenance (O&M) manual for the St. Paul District's review. Upon receipt of the draft O&M manual, the St. Paul District will schedule an inspection with the Requester to verify all construction has been completed in accordance with the permission. Any features found to be deficient during that inspection will require the Requester's correction prior to the Corps accepting the alterations as part of the Federal project(s).
- b. As-built drawings and new project real estate boundaries.
- c. A certification report that the work has been completed in accordance with the conditions of the permission.

4) This Section 408 approval does not authorize the discharge of dredged or fill material into a water of the United States. Any such discharge or work associated with this project must be authorized by a separate Department of the Army Permit.

5) To ensure the project complies with Section 106 of the NHPA, the Requester must comply, prior to construction, with all terms of the Programmatic Agreement between the USACE, SRJB and the SHPO signed on 27 October 2016.

6) The Requester must continue to update and maintain the City of Minot's Emergency Action and Evacuation Plan for flood emergencies.

7) This approval should not be construed as an endorsement of certification for the purposes of accreditation from FEMA.

8) If unforeseen circumstances arise that may impact the integrity of the existing Federal projects or require modification of the design during construction, the Requester shall immediately notify St. Paul District's levee safety staff. Depending on the nature of the changed circumstances, the Requester may be required to suspend work while the changed circumstances are evaluated; additional or modified Section 408 approval from the USACE may be required before proceeding with the remainder of the work.

9) If new information becomes available regarding whether the construction of Stage 1 would be injurious to the public interest or impair the usefulness of the projects, the USACE may reevaluate this Section 408 approval and modify or rescinded it as appropriate.

Based on my review of the 33 U.S.C. 408 recommendation package, the FEIS, the views of other Federal, State, and local agencies, and input from the public, I find the Mouse River Enhanced Flood Protection Project, at the program level, and Construction Stage 1, in particular, will not impair the usefulness of the existing Federal projects or be injurious to the public interest. Therefore, the request under 33 U.S.C. Section 408, made by the Souris River Joint Water Resource Board to alter or affect the Federal projects located in the Souris River Basin by implementing Construction Stage 1 of the Mouse River Enhanced Flood Protection Project is approved subject to the limitations and conditions contained herein. This Record of Decision completes the National Environmental Policy Act process for approval of the project pursuant to Section 408.

19 Dec 2017

Date



James C. Dalton

Director of Civil Works