

Finding of No Significant Impact for Rush River Watershed Amenia Levee Flood Protection Project, Cass County, North Dakota

I. Introduction

Cass County Joint Water Resource District Amenia Levee Flood Protection Project is a federally-assisted action authorized for planning under Public Law 83-566, the Watershed Protection and Flood Prevention Act. This act authorized the Natural Resources Conservation Service (NRCS) to provide technical and financial assistance to local project sponsors. The local sponsor of the project is the Cass County Joint Water Resource District.

An environmental assessment (Plan-EA), attached and incorporated by reference into this finding, was undertaken in conjunction with the development of the watershed plan. The assessment was conducted in cooperation and consultation with local, state, and tribal governments; federal agencies; and interested organizations and individuals. Data developed during the assessment are available for public review at the following location:

U.S. Department of Agriculture
Natural Resource Conservation Service
220 East Rosser Avenue PO Box 1458
Bismarck, North Dakota 58502-1458

II. Recommended Action

The proposed action includes construction of a levee around the city of Amenia, North Dakota to provide flood protection to residents during a 100-year, 24-hour event. The proposed constructed levee would be approximately 11,280 feet in length with a 10-foot-wide channel constructed approximately 15 feet from the toe of the levee as an additional measure of protection from flood flows. A stormwater pond would be developed to capture floodwaters and runoff from approximately 180 surface acres within the levee system. The project design includes the construction of removable features to act as temporary levees over three road crossings and two railroad crossings. Other permanent items include external drainage ditches to prevent standing water against the levee (7,750 feet), internal drainage, stormwater pond (35.38 acre-feet), gate well structures (2), sleeper slabs (2), culverts (320 feet) and rip rap.

The purpose and need for action is to reduce the flood risk for the City of Amenia by removing surface water inundation from the Rush River during the 1-percent-annual-chance flood within the city limits. Amenia has historic flood risks with overbank flooding from the Rush River, ice jams, and overland flooding. Additionally, preliminary FEMA flood insurance rate maps (FIRMs) indicate the city will be included in the 100-year (1-percent-annual-chance flood) and 500-year (0.2 percent chance of flood) floodplain. Therefore, homeowners and businesses with federally backed mortgages would be required to purchase flood insurance on their properties when the FIRMs are adopted. With the rising costs associated with the flood insurance, this is a considerable permanent expense for property owners without certified flood protection.

I must determine if the preferred alternative (Levee Alternative 1), will or will not be a major Federal action significantly affecting the quality of the human environment. The Plan-EA accompanying this finding has provided the analysis needed to assess the significance of the potential impacts from the selected alternative. The decision on which alternative is to be implemented and the significance of that alternative's impacts are under part VI of this finding.

III. Alternatives Considered In The EA

Nineteen alternatives were initially considered. When formulating an alternative, it was analyzed for satisfaction of the purpose and need statement, and against four criteria: completeness, effectiveness, efficiency, and acceptability. Some of the initial alternatives considered were eliminated because they did not meet the formulation criteria or did not address the purpose and need for action, did not achieve the Federal Objective and Guiding Principles, or were unreasonable because of cost, logistics, existing technology, or social or environmental reasons. These alternatives were removed from consideration, as described in Plan-EA (Sections 5.2 and 5.3).

Three alternatives were analyzed in the Plan-EA and are characterized as follows:

No-Action Alternative: No new actions would be undertaken. The No-Action Alternative would involve no federal funding to mitigate flood-related impacts in the Rush River watershed or the city of Amenia, resulting in the current flooding conditions as described in the Plan-EA section 2.

Levee Alternative 1: Agency Preferred Alternative – An approximately 11,820-foot levee requiring approximately 33,150 CY of material, would be constructed around the north, west, and south sides of the city of Amenia along with other supporting permanent structures. Levee Alternative 1 will be designed to provide flood protection to residents during a 100-year, 24-hour event. Analysis of this alternative found it to be the one with the greatest net economic benefit consistent with protecting the environment, i.e., the NED (National Economic Development) alternative.

Levee Alternative 2: An approximately 10,085-foot levee, requiring approximately 42,714 CY of material, would be constructed on the south side of the Rush River, approximately .13 miles north of the city of Amenia. The alternative would provide flood protection to the residents of Amenia. Analysis of this alternative found it to have negative annual net benefits due to higher construction costs and greater negative impacts on riparian function and habitat as compared with both the No-Action Alternative and Levee Alternative 1.

Based on the evaluation in the Plan-EA, decisions made by the Local Sponsor, and input from the public, Tribes, and federal, state, and local agencies I have chosen to select Levee Alternative 1 as the agency's preferred alternative. I have taken into consideration all the potential impacts of the proposed action, incorporated herein by reference from the Plan-EA and balanced those impacts with considerations of the agency's purpose and need for action.

In accordance with the Council on Environmental Quality's (CEQ) "40 Most Asked Questions" guidance on NEPA, Question 37(a), NRCS has considered "which factors were weighted most heavily in the determination". Based on the Plan-EA, potential impacts to soil, water, air, plants, fish and wildlife, and human resources were heavily considered in the decision. As a result, the agency's preferred alternative

(Levee Alternative 1) would result in short- and long-term beneficial impacts to the environmental resources potentially impacted by the preferred alternative.

IV. Effects of the Recommended Action-Finding of No Significant Impact

To determine the significance of the action analyzed in the Plan-EA, the agency is required by NEPA regulations at 40 CFR Section 1508.27 and NRCS regulations at 7 CFR Part 650 to consider the context and intensity of the proposed action. Upon review of the NEPA criteria for significant effects and based on the analysis in the Plan-EA, I have determined that the action to be selected, Levee Alternative 1 (agency preferred alternative), would not significantly affect the quality of the human environment. Therefore, preparation of an environmental impact statement (EIS) on the final action is not required under section 102(2)(c) of the NEPA, CEQ implementing regulations (40 CFR Part 1500-1508, Section 1508.13), or NRCS environmental review procedures (7 CFR Part 650). This finding is based on the following factors from CEQ's implementing regulations at 40 CFR Section 1508.27 and from NRCS regulations at 7 CFR Part 650: The environmental impacts of constructing the Levee Alternative 1 are not significant for the following reasons:

- 1) The Plan-EA evaluated both beneficial and adverse impacts of the proposed action. It is anticipated the proposed action will result in long-term beneficial impacts to the human environment including natural resources (such as water, fish and wildlife, and vegetation), cultural resources, and social and economic considerations. As a result of the analysis (discussed in detail in section 6 and incorporated by reference), Levee Alternative 1 does not result in significant impacts to the human environment, particularly the significant adverse impacts which NEPA is intended to help decision-makers avoid, minimize, or mitigate.
- 2) As analyzed in section 6.1.6, Levee Alternative 1 reduces the overall risks to health and human safety by reducing flood risk. The project is anticipated to provide long term beneficial impacts to improve natural ecosystem functions. Specifically, soil, water, air, fish and wildlife, plants and cultural issues will be improved and protected through selection of Levee Alternative 1.
- 3) As analyzed in Section 6.0 of the Plan-EA, there are no anticipated significant effects to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas from selection of Levee Alternative 1. NRCS regulations (7 CFR Part 650) and policy (Title 420, General Manual, Part 401), require that NRCS identify, assess, and minimize or mitigate effects to avoid effects to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. In accordance with these requirements, avoidance, minimization, or mitigation has been incorporated into the Plan-EA (sections 6 and 8.3). Unlike the No Action Alternative, Levee Alternative 1 is expected to reduce environmental risks associated with past, present, and future actions because overall, risks to public safety will be reduced.
- 4) The effects on the human environment are not considered controversial for Levee Alternative 1. There are no impacts associated with the proposed action that would be considered to be controversial.
- 5) Levee Alternative 1 is not considered highly uncertain and does not involve unique or unknown risks.
- 6) Levee Alternative 1 will not establish a precedent for future actions with significant effects, nor does it represent a decision in principle about future considerations.

7) Particularly when focusing on the significant adverse impacts which NEPA is intended to help decision-makers avoid, minimize, or mitigate, Levee Alternative 1 does not result in significant adverse cumulative impacts to the human environment as discussed in section 6.3 of the Plan-EA.

8) Levee Alternative 1 will not cause the loss or destruction of significant scientific, cultural, or historical resources as addressed in section 6.1.5 and Appendix D-5 of the Plan-EA. NRCS follows the procedures developed in accordance with a nationwide programmatic agreement between NRCS, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, which called for NRCS to develop consultation agreements with State historic preservation officers and federally recognized Tribes (or their designated Tribal historic preservation officers). These consultation agreements focus historic preservation reviews on resources and locations that are of special regional concern to these parties.

9) NRCS has concluded that Levee Alternative 1 will either have no effect on threatened and endangered species or will not likely adversely affect threatened and endangered species as discussed in section 6.2 of the Plan-EA. The USFWS offered no letter or additional information during the initial consultation or upon receiving a Draft Plan-EA on October 8, 2021 (Section 7 Plan-EA). Section 6.2.4 specifies construction windows and USFW consultation requirements. Section 6.2.4 of the Plan-EA requires the construction schedule will not adversely affect endangered or threatened species, marine animals, or critical habitat.

10) Levee Alternative 1 does not violate Federal, State, or local law requirements imposed for protection of the environment as noted in section 8.4 of the Plan-EA. The major federal laws identified with the selection of Levee Alternative 1 include the Clean Water Act, Endangered Species Act, National Historic Preservation Act, the Executive order on Environmental Justice and Migratory Bird Treaty Act. Levee Alternative 1 is consistent with the requirements of these laws.

V. Consultation – Public Participation

The scoping process followed the general procedures consistent with the NRCS guidance and PL 83-566 requirements. An interagency scoping meeting was held on December 10, 2015, in Bismarck, ND. This was a general meeting discussing the potential for watershed planning on multiple watersheds in the CJWRD. It was attended by two Federal agencies (USCAE and NRCS, three ND State agencies (State Water Commission, SHPO and the Dept of Health), one Tribe (Spirit Lake) and three private businesses. A public scoping meeting was held on January 6, 2016, in Casselton, ND. Additional scoping comments were solicited following this meeting with a direct mailing to potential stakeholders which included 11 Federal agencies (including the two federal cooperating agencies USFWS + USACE), 9 State agencies, 7 local government agencies, and 7 landowners. Ten comments were received from 4 Federal agencies, 6 State agencies, and 0 local government/individuals.

Specific consultation was conducted with the State Historic Preservation Office and with 23 Tribes/Tribal Historic Preservation Officers to maintain NRCS' government-to-government relationship between Tribes. Two tribes initially commented following the scoping invitation on January 15, 2016. Six Tribes (the two who responded initially and four deemed important by the NRCS State Cultural Resource Specialist) were mailed copies of the Draft Plan-EA and invited to the virtual public meeting (Nov 2, 2021). No responses were received by the Tribes, however the ND SHPO replied with a letter of concurrence of NRCS' Class III Cultural Resource Survey results of "No Historic Properties Affected".

The Draft Plan-EA was transmitted to all participating and interested agencies, groups and individuals for review and comment from October 25, 2021, through December 24, 2021. A virtual public meeting was held on November 2, 2021, over TEAMS. The announcement for the public meeting was published in the Cass County Recorder for 3 weeks (Oct 13-27th). The announcement included the TEAMS web link (Cass County government website) and a link to the Draft Plan-EA on a ND NRCS website. During the review period, 18 comments regarding the project were received. These comments were from 6 individuals and 2 units of government (U.S. Army Corps of Engineers (USACE) and Red River Retention Authority). USACE provided guidance that the project may require an individual Clean Water Act Section 404 permit 120 days prior to bid opening (Patricia McQueary, January 26, 2022). A comment summary table is available in the Plan-EA Appendix A.

VI. Conclusion

The Levee Alternative 1 has been selected as the Preferred Alternative for implementation based upon best meeting the purpose and need while maximizing new economic benefits. Levee Alternative 1 is also the Preferred alternative of the Local Sponsors. The Plan-EA accompanying this finding has provided the analysis needed to assess the significance of the potential impacts from Levee Alternative 1. The decision on which alternative is to be implemented, and the significance of the alternative's impacts, are summarized in Section 6 of the Plan-EA.

Based on information presented in the attached Plan-EA and supporting documents, Levee Alternative 1 is not a major Federal action significantly affecting the quality of the human environment. I have determined that implementing Levee Alternative 1 will not significantly affect the quality of the human and/or natural environment, individually or cumulatively with other actions in the area. No environmental effects meet the definition of significant in context or intensity, as defined at 40 CFR 1508.27. Therefore, an environmental impact statement is not required for the project. This finding is based on the consideration of the context and intensity of impacts as summarized in the Cass County Joint Water Resource District Amenia Levee Flood Protection Project Plan-EA. With these findings, NRCS therefore has decided to implement the Preferred Alternative – Levee Alternative 1

Mary E. Podoll, State Conservationist