

FM AREA DIVERSION PROJECT

Property Owner Information Packet for Cass County Commission

August 3rd, 2020

PROPERTY OWNER: Ervin & Mildred Fitterer

LAND AGENT: Jamie Wark with SRF

OIN: 904



FM AREA
DIVERSION
PROJECT

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Written Correspondence Timeline – Ervin & Mildred Fitterer

OIN 904	Sent	Received
Offer to Purchase	9/23/2019	9/24/2019
Formal Negotiations and Written Offer of Just Compensation	1/17/2020	1/21/2020
Request for Meeting	2/7/2020	2/8/2020
Notice of Intent to Take Possession of Right-of-Way	5/22/2020	5/23/2020
Request for Approval to Take Possession of Necessary Right-of-Way and Temporary Easement	6/26/2020	6/26/2020
Invitation to Attend Public Meeting	6/29/2020	6/30/2020
Commission Meeting Date	8/3/2020	

**CASS COUNTY COMMISSION
CHECKLIST — COMPLIANCE WITH N.D. CENT. CODE § 61-16.1-09(2)
FARGO-MOORHEAD AREA DIVERSION PROJECT**

A. Subject Property Information:

1. Landowner: Ervin J. Fitterer and Mildred L. Fitterer
2. Land Agent: Jamie Wark
3. Parcel No.: 59-0000-10867-010
4. OIN No.: 904

B. Verification:

1. NDCC § 61-16.1-09(2)(b)(1)(a) requires the Cass County Joint Water Resource District (“CCJWRD”) to conduct 60 days of informal negotiations.
 - Did CCJWRD verify at least 60 days of informal negotiations with Landowner:

2. NDCC § 61-16.1-09(2)(b)(1)(b)[1] requires CCJWRD to send the landowner an appraisal and written offer for just compensation by certified mail or commercial delivery requiring a signed receipt or other evidence of constructive notice.
 - Did CCJWRD verify it sent Landowner an appraisal and written offer for just compensation: _____
 - Did CCJWRD verify service of the appraisal and offer by certified mail or commercial delivery, and that Landowner either signed for them or had constructive notice: _____
3. NDCC § 61-16.1-09(2)(b)(1)(b)[2] requires CCJWRD to send Landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt [if the parties have not come to an agreement within 15 days of Landowner’s receipt or notice of CCJWRD’s offer].
 - Did CCJWRD verify it sent Landowner a written request for a meeting by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice: _____

4. NDCC § 61-16.1-09(2)(b)(1)(b)[3] requires CCJWRD to send Landowner a written notice of intent to take possession of the right of way, by certified mail or commercial delivery requiring a signed receipt [if the parties have not come to an agreement within 30 days of Landowner's receipt or notice of CCJWRD's invitation to a meeting].
 - Did CCJWRD verify it sent a written notice of intent to take possession of right away by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice: _____
5. NDCC § 61-16.1-09(2)(b)(2) requires all written communications to Landowner to include contact information for responding to CCJWRD and a description of the required negotiation timeline.
 - Did CCJWRD verify that all written communications to Landowner included contact information for responding to CCJWRD and a description of the required negotiation timeline: _____
6. NDCC § 61-16.1-09(2)(b)(3) prohibits a district from including or utilizing any reference to quick take eminent domain during negotiations.
 - Did CCJWRD verify it did not include or utilize any reference to quick take eminent domain during negotiations: _____

If the Commission answers in the affirmative to the above questions,

RECOMMENDED MOTION:

- I move to authorize the Cass County Joint Water Resource District to utilize quick take eminent domain under Section 61-16-1.09(2) of the North Dakota Century Code to take an easement for a right of way, and temporary easement (if any), regarding the OIN described above in A.4.

FM Area Diversion Project

Property Negotiation Summary

July 27, 2020

Owner	Ervin J & Mildred L Fitterer
Address	171 Prairiewood Dr. South, Fargo, ND 58103
Property Location	Channel Phase 1 - Cass County, ND
Property Type	Agriculture
OIN	904
Land Firm & Land Agent	SRF Jamie Wark

Property Need

The parcels are within the Channel Phase 1 associated with the Project. The Diversion Authority is required to obtain the parcels for the channel. The Diversion Authority desires 39.51 acres of this property for Land/Site Taking and 5.42 acres of TCE.

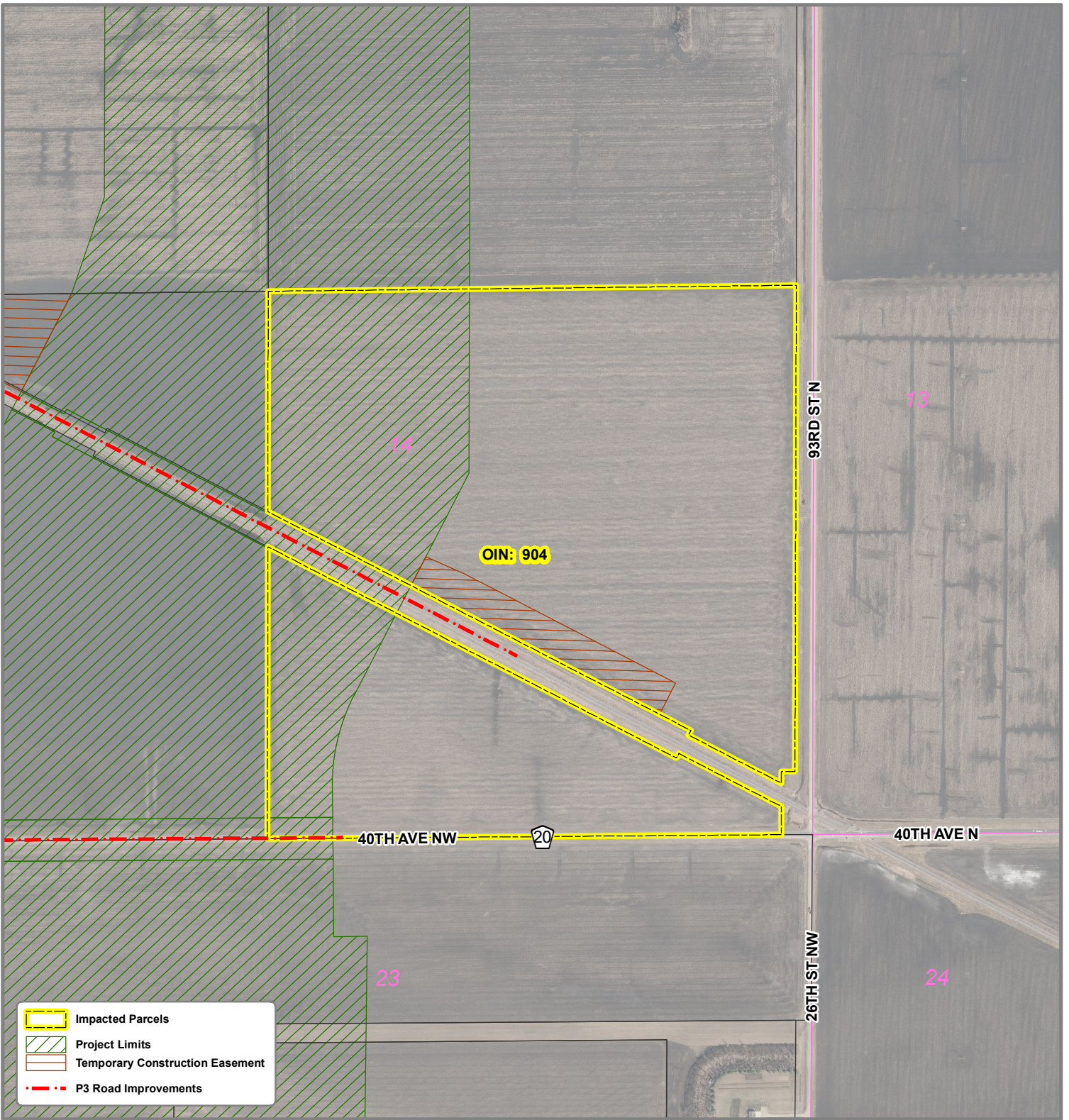
Valuation and Negotiation Summary:

Appraisal Value / Date	\$360,600 (39.51 acres Land/Site Taking & 5.21 acres TCE) dated 09/23/19 \$360,800 (39.51 acres Land/Site Taking & 5.42 acres TCE) dated 01/10/20 (revised)
Counteroffer	\$0 – no counteroffer provided as of 2/19/20
Purchase Agreement Value	\$0

Negotiation Notes

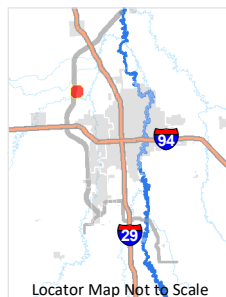
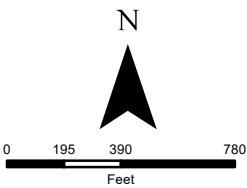
- Jamie Wark has spoken to Ervin on three separate occasions
- Ervin has stated he is not interested in moving forward with the negotiation process and has not provided a counteroffer.
- Ervin's position has not changed the three times I have contacted him.
- Formal Offer letter sent on 01/17/20
- Ervin verified he received the formal offer letter from CCJWRD.

July 27, 2020



Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet |
 C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\IProject Wide\Individual Property Maps - General Inquiry\IndividualLayout8x10v105.mxd



OIN: 904
ERVIN J & MILDRED L FITTERER
Parcel ID: 59-0000-10867-010
Cass County, ND

FM AREA DIVERSION
 Map Date: 2/18/2020





September 23, 2019

Ervin J. and Mildred L. Fitterer
171 Prairiewood Drive S.
Fargo, ND 58103

RE: **Offer to Purchase**
Parcel ID: OIN 904
Project Title: Fargo Moorhead Diversion
PID: 59-0000-10867-010

Dear Mr. and Mrs. Fitterer,

The Cass County Joint Water Resource District (CCJWRD) and other partners are constructing a flood control improvement project in your area. The CCJWRD has hired the HMG Group to aid in the acquisition of right-of-way for the project. You are receiving this letter as the owner of property that must be acquired for the project. This letter conveys CCJWRD's offer to purchase all interests in the real property that are necessary for the project. The interests being purchased (the "Parcel") are listed on Exhibit A (Acquisition Summary) and shown on Exhibit B (Certificate of Survey), and the amount stated in this letter as the purchase amount is for all of those interests. If the Parcel includes interests that another person or entity may own (for example a mortgage lender or easement holder), the CCJWRD's offer is contingent on all parties with interest agreeing to the amount and allocation of the purchase funds.

To determine market value of the interest being acquired, CCJWRD retained the services of the independent property appraisal firm, Compass Land Consultants, Inc. The appraiser has determined that the market value of the interests being purchased is **\$360,600.00**. The CCJWRD has used the market value set forth in the appraisal as the basis for determining Just Compensation for the property interests being acquired from you. A copy of the appraisal is attached to this letter and provided to you. If the purchase amount is based on any conditions or exceptions (such as terms of the transfer of possession or retention of any interest); they will be included in Exhibit A. A summary of the appraisal is provided on Exhibit A (Appraisal Summary).

The Cass County Joint Water Resource District hereby offers to pay you \$360,600.00 as Just Compensation for the property interests it must acquire from you.

At the time this appraisal was completed the Cass County Joint Water Resource District was proposing to purchase 26.40 acres of Temporary Construction Easement (TCE) for the project and therefore the appraisal and Certificate of Survey include TCE acres. However, the CCJWRD has determined to proceed with purchasing only 5.21 acres of TCE and therefore your Just Compensation and Exhibit A only includes the 5.21 acres TCE values.

Ervin J. and Mildred L. Fitterer
Offer to Purchase

OIN 904

Once we agree on the basic terms of an agreement for you to sell, and the CCJWRD to buy the property interests described in this letter, a Purchase Agreement will be drafted and presented to you for approval. The Purchase Agreement will contain all of the pertinent terms and conditions of this offer, as well as several standard legal, property acquisition terms. The Purchase Agreement will be between you and the CCJWRD.

We appreciate your willingness to negotiate with the CCJWRD. We request counteroffers or acceptance of this offer within 30 days from the date of this letter. CCJWRD has flexibility regarding closing, rent and/or leaseback options. We also support 1031-1033 tax exchanges.

If you have any questions about the acquisition process, please contact the representative at 701-893-7435. The representative is here to help you understand the process and to assist in negotiating a fair direct purchase of the Parcel, however, we do not represent you. We are willing to meet with you in person as well as set up a time to discuss questions on the phone.

Upon receipt of this letter, please sign below. Your signature indicates only that you have received this Offer to Purchase, and the following documents:

- Copy of the appraisal for Parcel ID OIN 904 by Compass Land Consultants, Inc.
- Exhibit A (Acquisition Summary), and Exhibit B (Certificate of Survey)

Your signature DOES NOT indicate your acceptance or rejection of the offered amount. Nor does it affect your right to continue to negotiate with the CCJWRD.

On behalf of CCJWRD, we wish to thank you for your cooperation and assistance, and we look forward to working with you toward a mutually satisfactory completion of the acquisition process.

Sincerely,



Jamie Wark

Senior Analyst

jwark@srfconsulting.com

One North Second Street, Fargo, ND

I acknowledge that on _____, 20 ____, I received this letter and all documents listed above.

Ervin J. Fitterer

Mildred L. Fitterer

Enclosures: Appraisal Report, Exhibit A, Exhibit B

EXHIBIT A

**ACQUISITION SUMMARY
Fargo Moorhead Diversion**

Offer to Purchase

Parcel ID: OIN 904

Project Title: Fargo Moorhead Diversion

PID: 59-0000-10867-010

Recorded Fee Owner: Ervin J. and Mildred L. Fitterer

Property Legal Description:

SEE ATTACHED SURVEY

Description of Property Interests to be Acquired: Fee Simple and Temporary Easement

Noted and Waived Exceptions, Reservations or Encumbrances: None

*Unless otherwise noted, any offer to purchase is contingent on the following:

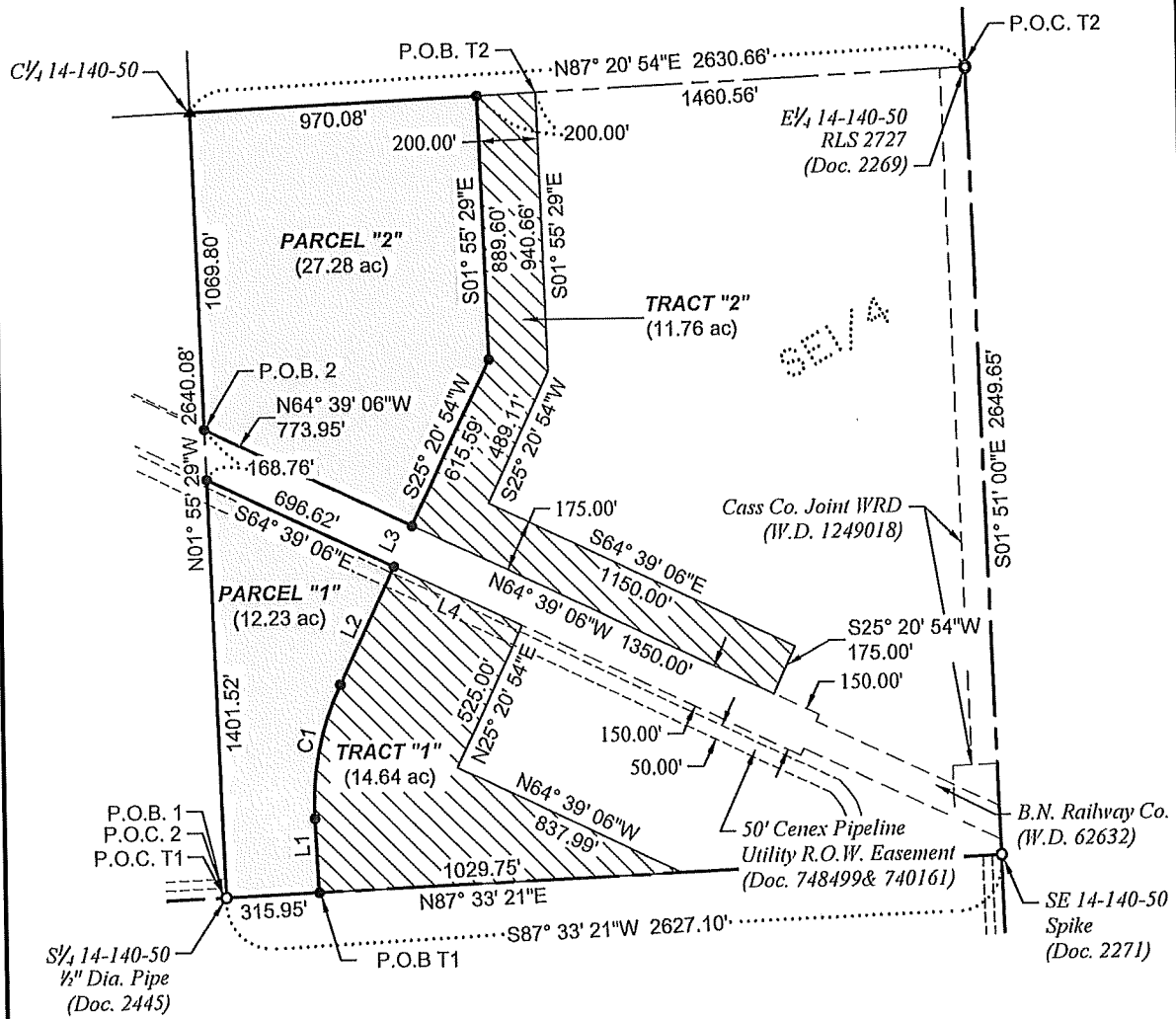
1. Demonstration of marketable title,
2. Conveyance of all interests identified, unless waived in writing by the Cass County Joint Water Resource District,
3. Execution of a purchase agreement signed by the Cass County Joint Water Resource District, or its designee.

APPRAISAL SUMMARY

Parcel Value	Area Size/ Description	Per Unit	Indicated Value
Land/Site Taking	39.51 Acres	\$ 5,800	\$ 229,158.00
Temporary Easement	5.21 Acres	\$ 200 (x 5 years)	\$ 5,210.00
Severance			\$ 126,216.00
TOTAL (rounded)			\$ 360,600.00

EXHIBIT B

CERTIFICATE OF SURVEY



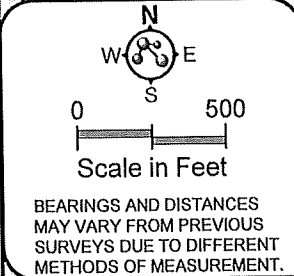
CURVE TABLE					
Curve	Length	Radius	Delta	L.C.	L.C. Bearing
C1	460.82'	950.00'	27°47'33"	456.31'	S11° 27' 08"W

LINE TABLE		
Line	Length	Bearing
L1	247.74'	S02° 26' 39"E
L2	436.28'	S25° 20' 54"W
L3	150.00'	S25° 20' 54"W
L4	475.00'	N64° 39' 06"W

BASIS OF BEARING

COORDINATE SYSTEM:
ND STATE PLANE - SOUTH ZONE
HORIZONTAL DATUM:
NAD83 (Conus)
VERTICAL DATUM:
NAVD 88 (GEOID 09)

DISTANCES:
MEASURED ON THE GROUND IN
U.S. SURVEY FEET
BASIS OF BEARINGS:
GRID NORTH



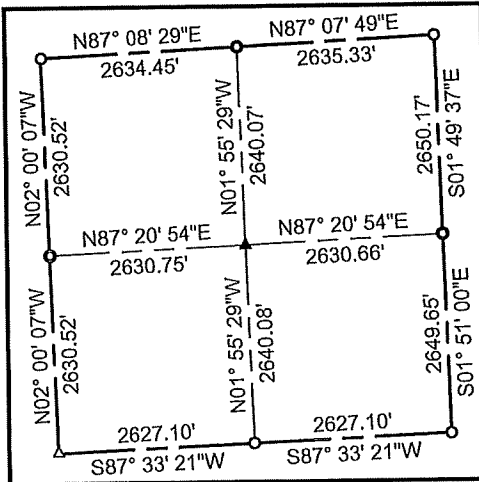
LEGEND

- SECTION LINE
- 1/4 LINE
- 1/4 - 1/4 LINE
- EXIST. PARCEL LINE
- EXIST. EASE.
- NEW PARCEL LINE
- NEW DIVERSION PARCEL
- TEMP. CONST. EASE.
- FND ORIGINAL MON.
- △ FND IRON MON. W/ ALUM. CAP
- FND IRON MON. W/ PLASTIC CAP
- FND IRON MON.
- SET IRON MON. W/ PLASTIC CAP LS-8218
- ▲ SET IRON MON. W/ ALUM. CAP LS-8218
- (M) MEASURED
- (R) PREVIOUSLY RECORDED

PRELIMINARY

CERTIFICATE OF SURVEY

SECTION 14



Part of the Southeast Quarter (SE1/4), Section 14,
Township 140 North, Range 50 West of the 5th
Principal Meridian, Cass County, North Dakota.

**PARENT PARCEL - TRANSFER ON DEATH DEED DOC. NO.
1488587**

OWNER: ERVIN J. & MILDRED L. FITTERER
The Southeast Quarter (SE1/4) of Section 14, Township 140 North,
Range 50 West of the 5th Principal Meridian, Cass County, North
Dakota.

EXCEPTING THEREFROM: The East One Hundred Fifty (150.00)
feet of the South Three Hundred Five (305.00) feet of the Southeast
Quarter (SE1/4) and the East Eighty Five (85.00) feet of the Southeast
Quarter (SE1/4) less the South three Hundred Five (305.00) feet
thereof, Section Fourteen (14), township One Hundred Forty (140)
North, range Fifty (50) West, Cass County, North Dakota.

Less a strip of land One Hundred (100.00) feet wide lying Fifty (50.00)
Feet on each side of the centerline of the Burlington Northern Santa
Fe Railroad Mainline Track.

PARCEL "1" - LEGAL DESCRIPTION

That part of the Southeast Quarter (SE1/4) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Southwest Corner of the Southeast Quarter (SE1/4) of said Section 14; thence North 01° 55' 29" West on the west line of said SE1/4 a distance of 1401.52 feet to the southerly line of the Burlington Northern Railway Co. Right-of-Way; thence South 64° 39' 06" East on said southerly right-of-way line a distance of 696.62 feet; thence South 25° 20' 54" West a distance of 436.28 feet; thence 460.82 feet on the arc of a tangential curve, concave to the southeast, having a radius of 950.00 feet; a central angle of 27° 47' 33", and a long chord length of 456.31 feet bearing South 11° 27' 08" West; thence South 02° 26' 39" East a distance of 247.74 feet to the south line of said SE1/4; thence South 87° 33' 21" West on said south line a distance of 315.95 feet to the Point of Beginning.

Said parcel contains 12.23 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

PARCEL "2" - LEGAL DESCRIPTION

That part of the Southeast Quarter (SE1/4) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of the Southeast Quarter (SE1/4) of said Section 14; thence North 01° 55' 29" West on the west line of said SE1/4 a distance of 1570.28 feet to the northerly line of the Burlington Northern Railway Co. Right-of-Way, said point also being the Point of Beginning; thence continuing North 01° 55' 29" West on said west line of the SE1/4 a distance of 1069.80 feet to the Northwest Corner of said SE1/4; thence North 87° 20' 54" East on the north line of said SE1/4 a distance of 970.08 feet; thence South 01° 55' 29" East parallel with said west line of the SE1/4 a distance of 889.60 feet; thence South 25° 20' 54" West a distance of 615.59 feet to said northerly right-of-way line; thence North 64° 39' 06" West on said northerly right-of-way line a distance of 773.95 feet to the Point of Beginning.

Said parcel contains 27.28 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

TRACT "1" - TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION

That part of the Southeast Quarter (SE1/4) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of the Southeast Quarter (SE1/4) of said Section 14; thence North 87° 33' 21" East on the south line of said SE1/4 a distance of 315.95 feet to the Point of Beginning; thence continuing North 87° 33' 21" East on said south line a distance of 1029.75 feet; thence North 64° 39' 06" West a distance of 837.99 feet; thence North 25° 20' 54" East a distance of 525.00 feet to the southerly line of the Burlington Northern Railway Co. Right-of-Way; thence North 64° 39' 06" West on said southerly right-of-way line a distance of 475.00 feet; thence South 25° 20' 54" West a distance of 436.28 feet; thence 460.82 feet on the arc of a tangential curve, concave to the southeast, having a radius of 950.00 feet; a central angle of 27° 47' 33", and a long chord length of 456.31 feet bearing South 11° 27' 08" West; thence South 02° 26' 39" East a distance of 247.74 feet to the Point of Beginning.

Said tract contains 14.64 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

ERVIN J. & MILDRED L. FITTERER

Part of the Southeast Quarter (SE1/4),
Section 14, T140N, R50W, Cass County, ND

DRAWING TYPE COS	DATE OCT 14, 2016
PROJECT NAME P10733-2013-03-100-01	DATE 08/03/2020
PREPARED BY A.J.W.	DRAWING 2

CERTIFICATE OF SURVEY



CERTIFICATE OF SURVEY

TRACT "2" - TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION

That part of the Southeast Quarter (SE1/4) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northeast Corner of of the Southeast Quarter (SE1/4) said Section 14;
 thence South 87° 20' 54" West on the north line of said SE1/4 a distance of 1460.56 feet to the Point of Beginning;
 thence South 01° 55' 29" East parallel with the west line of said SE1/4 a distance of 940.66 feet;
 thence South 25° 20' 54" West a distance of 489.11 feet;
 thence South 64° 39' 06" East parallel with the northerly line of the Burlington Northern Railway Co. Right-of-Way a distance of 1150.00 feet;
 thence South 25° 20' 54" West a distance of 175.00 feet to said northerly right-of-way line;
 thence North 64° 39' 06" West on said northerly right-of-way line a distance of 1350.00 feet;
 thence North 25° 20' 54" East a distance of 615.59 feet;
 thence North 01° 55' 29" West parallel with the west line of said SE1/4 a distance of 889.60 feet to said north line of the SE1/4;
 thence North 87° 20' 54" East on said north line a distance of 200.00 feet to the Point of Beginning.

Said tract contains 11.76 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

CERTIFICATE OF SURVEYOR

I hereby certify that this survey was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota. All distances and measurements are true and correct to the best of my knowledge and belief, and all monuments shall be placed in the ground as shown.

 Nicholas R. Stattelman

N.D. Registration No. LS-8218

Date: _____

STATE OF NORTH DAKOTA)
) ss.
 COUNTY OF _____)

On this ____ day of _____, in the year 20____, before me a notary public in and for said county and state, personally appeared Nicholas R. Stattelman, known to me to be the person(s) described in, and who executed the within instrument and acknowledged to me that he/she executed the same.

 Notary Public:
 State of North Dakota
 My commission expires: _____

RESERVED FOR COUNTY RECORDER USE



ERVIN J. & MILDRED L. FITTERER

Part of the Southeast Quarter (SE1/4),
 Section 14, T140N, R50W, Cass County, ND

CERTIFICATE OF SURVEY

DRAWING TYPE COS	DATE OCT 14, 2016
PROJECT NAME P10733-2016 100 01	DATE 08/03/2020
PREPARED BY A.J.W	DRAWING 3



[FAQs >](#)

Track Another Package +

*Fitterer
904*

Tracking Number: 9505511429339266211659

[Remove X](#)

Your item was delivered in or at the mailbox at 11:32 am on September 24, 2019 in FARGO, ND 58103.

Delivered

September 24, 2019 at 11:32 am
Delivered, In/At Mailbox
FARGO, ND 58103

Feedback

Get Updates

Text & Email Updates

Tracking History

Product Information

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Go to our [FAQs](#) section to find answers to your tracking questions.



CERTIFIED MAIL – RETURN RECEIPT REQUESTED – HAND DELIVERY

January 17, 2020

**Cass County
Joint Water
Resource
District**

Ervin J. and Mildred L. Fitterer
171 Prairiewood Drive South
Fargo, ND 58103-4623
Certified No. 7018 0040 0000 5525 7011

Greetings:

Dan Jacobson
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Ken Loughheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Formal Negotiations and Written Offer of Just Compensation
OIN: 904
Parcel No.: 59-0000-10867-010

The Cass County Joint Water Resource District (the "District") is in the process of acquiring property interests necessary for the Fargo-Moorhead Area Diversion Project (the "Project"), and the District has been in discussions with you regarding right of way the District must acquire from you to accommodate the Project. The District directed me to provide you this letter as the District's formal offer to purchase right of way and obtain a temporary easement from you. More specifically, to accommodate the Project, the District must acquire a right of way and a temporary easement from you with respect to property located in Cass County and identified as Parcel Identification Number 59-0000-10867-010. The legal description of the property to be acquired is:

Right of Way:

That part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Southwest Corner of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 14; thence North 01°55'29" West on the west line of said SE $\frac{1}{4}$ a distance of 1401.52 feet to the southerly line of the Burlington Northern Railway Co. Right-of-Way; thence South 64°39'06" East on said southerly right-of-way line a distance of 696.62 feet; thence South 25°20'54" West a distance of 436.28 feet; thence 460.82 feet on the arc of a tangential curve, concave to the southeast, having a radius of 950.00 feet; a central angle of 27°47'33", and a long chord length of 456.31 feet bearing South 11°27'08" West; thence South 02°26'39" East a distance of 247.74 feet to the south line of said SE $\frac{1}{4}$; thence South 87°33'21" West on said south line a distance of 315.95 feet to the Point of Beginning.

Said parcel contains 12.23 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrld@casscountynd.gov
casscountynd.gov

AND

That part of the Southeast Quarter (SE¼) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of the Southeast Quarter (SE¼) of said Section 14; thence North 01°55'29" West on the west line of said SE¼ a distance of 1570.28 feet to the northerly line of the Burlington Northern Railway Co. Right-of-Way, said point also being the Point of Beginning; thence continuing North 01°55'29" West on said west line of the SE¼ a distance of 1069.80 feet to the Northwest Corner of said SE¼; thence North 87°20'54" East on the north line of said SE¼ a distance of 970.08 feet; thence South 01°55'29" East parallel with said west line of the SE¼ a distance of 889.60 feet; thence South 25°20'54" West a distance of 615.59 feet to said northerly right-of-way line; thence North 64°39'06" West on said northerly right-of-way line a distance of 773.95 feet to the Point of Beginning.

Said parcel contains 27.28 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Temporary Easement:

That part of the Southeast Quarter (SE¼) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northeast Corner of the Southeast Quarter (SE¼) said Section 14; thence South 87°20'54" West on the north line of said SE¼ a distance of 1660.58 feet; thence South 01°55'29" East parallel with the west line of said SE¼ a distance of 889.60 feet; thence South 25°20'54" West a distance of 440.59 feet to the Point of Beginning; thence continuing South 25°20'54" West a distance of 175.00 feet to the northerly line of the Burlington Northern Railway Co. Right-of-Way; thence South 64°39'06" East on said northerly right-of-way line a distance of 1350.00 feet; thence North 25°20'54" East a distance of 175.00 feet; thence North 64°39'06" West parallel with said northerly right-of-way line a distance of 1350.00 feet to the Point of Beginning.

Said easement contains 5.42 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Enclosed is an appraisal regarding the value of the right of way and temporary easement the District must acquire from you, as determined by a licensed North Dakota appraiser. As you can see from the appraisal, the appraiser indicated the value of the right of way the District must acquire from you is \$229,158.00, the Temporary Easement is \$5,420.00, and damages to the remainder of property in the amount of \$126,216.00, for a total purchase price of \$360,794.00, rounded to \$360,800.00. The District approved the appraisal and this letter is the District's offer to you in the amount of \$360,800.00 as just compensation to purchase right of way and temporary easement from you for the Project. If you are willing to accept the

Ervin J. and Mildred L. Fitterer
January 17, 2020
Page 3

District's offer, please sign the enclosed *Purchase Agreement* and return it to the District in the enclosed self-addressed, stamped envelope.

You are encouraged to maintain contact with the land agent assigned to your property. **Jamie Wark** of SRF Consulting Group, Inc., Inc. can be reached at **(701) 893-7435** or **jwark@srfconsulting.com**. Jamie is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way from you for the Project.

For your information, North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way and temporary easement. If you do not accept the District's offer of just compensation and do not return a signed purchase agreement within fifteen (15) days, the District will send you a written request to discuss the Project and required right of way to be acquired at an upcoming Cass County Joint Water Resource District meeting. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2020.

We look forward to reaching a mutually acceptable agreement to resolve this matter. Thank you for your consideration.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
Lewisc@casscountynd.gov

Enclosures

cc: Jamie Wark, Land Agent,
Eric Dodds, Program Manager, AE2S
Chris McShane, Ohnstad Twichell, P.C.
Chad Peterson, Cass County Commission Chair
Robert Wilson, Cass County Administrator
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.


1. Article Addressed to:
 ERVIN J AND MILDRED L FITTERER
 171 PRAIRIEWOOD DRIVE S
 FARGO ND 58103-4623



9590 9402 3806 8032 1532 01

2. Article Number (Transfer from service label)
 7018 0040 0000 5525 7011

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 Agent
 Addressee

B. Received by (Printed Name)
 ERVIN FITTERER

C. Date of Delivery
 1-21-20

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input checked="" type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |



CERTIFIED MAIL – RETURN RECEIPT REQUESTED – HAND DELIVERY

February 7, 2020

Cass County
Joint Water
Resource
District

Ervin J. and Mildred L. Fitterer
171 Prairiewood Drive South
Fargo, ND 58103-4623
Certified No. 7018 0040 0000 5525 7172

Dan Jacobson
Chairman
West Fargo, North Dakota

Greetings:

Rodger Olson
Manager
Leonard, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Meeting
OIN: 904
Parcel No.: 59-0000-10867-010

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). The District previously provided you a letter dated January 17, 2020; a copy of the District's appraisal for your right of way; and a Purchase Agreement as the District's offer of just compensation to purchase right of way from you. The District's letter specifically described the right of way the District must acquire from you for the Project. We have not received a signed Purchase Agreement from you, and we have not otherwise arrived at mutually acceptable terms regarding the District's purchase of right of way from you to accommodate the Project.

Keith Weston
Manager
Fargo, North Dakota

The District requests your attendance at a meeting to discuss the District's offer to purchase right of way from you. The District is meeting at the Cass County Highway Department, 1201 Main Avenue West in West Fargo, North Dakota, on February 27, 2020, and March 12, 2020, at 8:00 a.m.

Carol Harbeke Lewis
Secretary-Treasurer

The District hopes you will attend one of the above meetings to discuss the Project and the right of way the District must acquire from you to accommodate the Project.

1201 Main Avenue West
West Fargo, ND 58078-1301

Please continue to maintain contact and negotiate with the land agent assigned to your property. **Jamie Wark** of SRF Consulting Group, Inc. is your point of contact for getting answers to any questions you have about the Project. Jamie can be reached at **(701) 893-7435** or jwark@srfconsulting.com.

701-298-2381
FAX 701-298-2397
wrj@casscountynnd.gov
casscountynnd.gov

Ervin J. and Mildred L. Fitterer
OIN 904
February 7, 2020
Page 2

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way. The District must conclude all negotiations and complete the acquisition of right of way necessary for construction of Project components on your property by Fall of 2020.

The District hopes you will attend one of the upcoming District meetings to discuss the Project and the required right of way. The District looks forward to meeting with you.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
lewisc@casscountynd.gov

cc: Jamie Wark, Land Agent
Eric Dodds, Program Manager, AE2S
Chris McShane, Ohnstad Twichell, P.C.
Chad Peterson, Chair, Cass County Commission Chair
Robert Wilson, Cass County Administrator
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 ERVIN J AND MILDRED L FITZGERALD
 171 PRAIRIEWOOD DRIVE S
 FARGO ND 58103-4623



9590 9402 3806 8032 1530 41

? Article Number (Transfer from service label)
 7018 0040 0000 5525 7172

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 Ervin J Fitzgerald Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 E Fitzgerald 2-8-20

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail
 - Insured Mail Restricted Delivery (over \$500)
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

Domestic Return Receipt



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

May 22, 2020

Cass County
Joint Water
Resource
District

Ervin J. and Mildred L. Fitterer
171 Prairiewood Drive S
Fargo, ND 58103-4623
Certified No. 7019 1640 0002 0398 8620

Dan Jacobson
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

Greetings:

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY
OIN: 904
Parcel No. 59-0000-10867-010

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). On behalf of the District, I previously provided you a letter dated January 17, 2020, a copy of the District's appraisal for your right of way and temporary easement, and a Purchase Agreement as the District's offer of just compensation to purchase the right of way and temporary easement from you. In addition, I also provided you a letter dated February 7, 2020, to invite you to meet with the District for purposes of discussing the acquisition of your land. The parties have conducted the informal and formal negotiation procedures required by law but, unfortunately, the parties have not yet reached a mutually-acceptable agreement regarding compensation for the District's purchase of the right of way and temporary easement from you to accommodate the Project.

This letter is the District's NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY. If we do not have an agreement, the District will be requesting approval from the Cass County Commission to take possession of a right of way easement and temporary easement over your property. Cass County will provide you with at least 30 days' notice of a public meeting, and will invite you to the meeting to discuss the District's request.

This NOTICE does not preclude the parties from continuing negotiations. The District still hopes the parties can arrive at a mutually-acceptable agreement.

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynđ.gov
casscountynđ.gov

Ervin J. and Mildred L. Fitterer
OIN 904
May 22, 2020
Page 2

You are encouraged to maintain contact with the land agent assigned to your property. **Jamie Wark** of **SRF Consulting Group, Inc.** can be reached at **(701) 893-7435** or **jwark@srfconsulting.com**. Jamie is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way and temporary easement from you for the Project.

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way and temporary easement. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2020.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
lewisc@casscountynd.gov

cc: Jamie Wark, Land Agent
Chris McShane, Ohnstad Twichell, P.C.
Chad Peterson, Chair, Cass County Commission
Robert Wilson, Cass County Administrator
Birch Burdick, Cass County State's Attorney
Eric Dodds, Program Manager, AE2S
Joel Paulsen, Executive Director, Diversion Authority

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ERVIN J AND MILDRED L FITZGERALD
 171 PRAIRIEWOOD DRIVE S
 FARGO ND 58103-4623



9590 9402 3806 8032 1542 22

2. Article Number (Transfer from service label)

7019 1640 0002 0398 8620

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Ervin Fitzgerald*

- Agent
- Addressee

B. Received by (Printed Name)

DB COVID 19 CK

C. Date of Delivery

5-23-20

D. Is delivery address different from item 1?

If YES, enter delivery address below:

- Yes
- No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt



SENT VIA EMAIL wilsonro@casscountynd.gov

June 26, 2020

**Cass County
Joint Water
Resource
District**

Robert Wilson
Cass County Administrator
Cass County Commission
211 9th Street S
Fargo, ND 58103

Dan Jacobson
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Ken Loughheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynd.gov
casscountynd.gov

Greetings:

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Approval to Take Possession of Necessary Right of Way and
Temporary Easement
OIN: 904
Parcel No. 59-0000-10867-010

As you know, the Cass County Joint Water Resource District (the "District") is in the process of acquiring the right of way necessary for the Fargo Moorhead Diversion Area Project ("Project"). I previously copied you on the following three letters whereby the District sought to negotiate the acquisition of the right of way and temporary easement from Ervin J. and Mildred L. Fitterer (the "Landowner"):

- Letter dated January 17, 2020, enclosing the District's appraisal for the acquisition of the right of way and temporary easement from the Landowner and a proposed Purchase Agreement;
- Letter dated February 7, 2020, inviting the Landowner to meet with the District for purposes of negotiating compensation for the right of way and temporary easement to be acquired; and
- Letter dated May 22, 2020, notifying the Landowner the District planned to submit a request to the Cass County Commission seeking immediate possession of the right of way and temporary easement necessary for the Project.

The District has conducted months of negotiations with the Landowner to arrive at a mutually acceptable agreement for the District's purchase. More specifically, the District engaged in both informal and formal negotiations with the Landowner, as required under N.D. Cent. Code § 61-16.1-09(2)(b), in an effort to reach agreement regarding fair compensation to the Landowner for the acquisition of the necessary right of way and temporary easement over, across, and through certain property owned by the Landowner in Cass County, North Dakota. The legal description of the necessary right of way and temporary easement is as follows:

Right of Way Easement:

That part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Southwest Corner of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 14; thence North 01°55'29" West on the west line of said SE $\frac{1}{4}$ a distance of 1401.52 feet to the southerly line of the Burlington Northern Railway Co. Right-of-Way; thence South 64°39'06" East on said southerly right-of-way line a distance of 696.62 feet; thence South 25°20'54" West a distance of 436.28 feet; thence 460.82 feet on the arc of a tangential curve, concave to the southeast, having a radius of 950.00 feet; a central angle of 27°47'33", and a long chord length of 456.31 feet bearing South 11°27'08" West; thence South 02°26'39" East a distance of 247.74 feet to the south line of said SE $\frac{1}{4}$; thence South 87°33'21" West on said south line a distance of 315.95 feet to the Point of Beginning.

Said parcel contains 12.23 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

That part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 14; thence North 01°55'29" West on the west line of said SE $\frac{1}{4}$ a distance of 1570.28 feet to the northerly line of the Burlington Northern Railway Co. Right-of-Way, said point also being the Point of Beginning; thence continuing North 01°55'29" West on said west line of the SE $\frac{1}{4}$ a distance of 1069.80 feet to the Northwest Corner of said SE $\frac{1}{4}$; thence North 87°20'54" East on the north line of said SE $\frac{1}{4}$ a distance of 970.08 feet; thence South 01°55'29" East parallel with said west line of the SE $\frac{1}{4}$ a distance of 889.60 feet; thence South 25°20'54" West a distance of 615.59 feet to said northerly right-of-way line; thence North 64°39'06" West on said northerly right-of-way line a distance of 773.95 feet to the Point of Beginning.

Said parcel contains 27.28 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Temporary Easement:

That part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northeast Corner of the Southeast Quarter (SE $\frac{1}{4}$) said Section 14; thence South 87°20'54" West on the north line of said SE $\frac{1}{4}$ a

distance of 1660.58 feet; thence South 01°55'29" East parallel with the west line of said SE¼ a distance of 889.60 feet; thence South 25°20'54" West a distance of 440.59 feet to the Point of Beginning; thence continuing South 25°20'54" West a distance of 175.00 feet to the northerly line of the Burlington Northern Railway Co. Right-of-Way; thence South 64°39'06" East on said northerly right-of-way line a distance of 1350.00 feet; thence North 25°20'54" East a distance of 175.00 feet; thence North 64°39'06" West parallel with said northerly right-of-way line a distance of 1350.00 feet to the Point of Beginning.

Said easement contains 5.42 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

As you may recall, in 2017, the North Dakota Legislature modified the process for water resource districts to acquire immediate possession of right of way necessary for water projects; the new process is set forth in Section 61-16.1-09(2)(b). The District has followed all of the necessary steps under the statute, but the parties have not reached a mutually acceptable agreement. Under the new acquisition process enumerated in Section 61-16.1-09(2)(b)(3), the District must next seek the County Commission's approval to proceed further, and to ultimately utilize quick take eminent domain to take possession of the right of way and temporary easement above to commence the Project.

More specifically, Section 61-16.1-09(2)(b)(3) requires the County Commission to hold a public meeting and to provide the Landowner no less than thirty days' notice of the meeting. The District will also attend the meeting, along with the land agent, Jamie Wark, who was the Landowner's main point of contact throughout the negotiation process. Prior to the public meeting, the land agent and the District will verify neither the District nor any of its agents referenced or threatened quick take eminent domain during the informal and formal negotiation process.

While the District takes all landowners' rights very seriously, the District also has an obligation, as a member of the Metro Flood Diversion Authority, to acquire the right of way and temporary easement necessary for the Project, and construction of the Project will not be possible without acquiring the right of way and temporary easement identified above. As the District will explain and verify for the Commission in more detail through this process, the District provided the Landowner with the District's appraisal as the starting point for negotiations, then attempted to negotiate further with the Landowner over the course of several months. This step is not one the District takes lightly; quick take eminent domain is a serious undertaking, and the District has negotiated in good-faith with the Landowner to avoid this process. Despite the District's efforts to be fair, friendly, and flexible in both the informal and formal negotiations with the Landowner, unfortunately, the parties have not reached a mutually acceptable agreement for the acquisition of the right of way and temporary easement.

Robert Wilson
June 26, 2020
Page 4

The District respectfully requests that the Cass County Commission proceed with the public meeting process under Section 61-16.1-09(2)(b)(3) regarding the Landowner and the right of way and temporary easement identified in this letter. Further, the District respectfully requests that the Cass County Commission ultimately approve the District's use of quick take eminent domain to take possession of the right of way and temporary easement identified above by quick take eminent domain so the Project may proceed. For your information, while the County conducts the process under Section 61-16.1-09(2)(b)(3), the District still hopes the parties can arrive at a mutually-acceptable agreement.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
lewisc@casscountynynd.gov

cc: Jamie Wark, Land Agent
Chris McShane, Ohnstad Twichell, P.C.
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority
Eric Dodds, AE2S Program Manager
Sharon Oliver, ROW Acquisition Coordinator, Ohnstad Twichell, P.C.
Heather Worden, Administrative Assistant, Cass County Commission



June 29, 2020

VIA UPS – DELIVERY CONFIRMATION

Board of County Commissioners

Ervin J. Fitterer and Mildred L. Fitterer
171 Prairiewood Drive South
Fargo, ND 58103-4623

Chad M. Peterson
Fargo, North Dakota

Rick Steen
Fargo, North Dakota

Ken Pawluk
Fargo, North Dakota

Duane Breitling
West Fargo, North Dakota

Mary Scherling
Stanley Township, North Dakota

**Re: Cass County Commission
Fargo-Moorhead Area Diversion Project
Invitation to Attend Public Meeting
OIN: 904
Parcel No. 59-0000-10867-010
UPS Tracking No. 1ZRT87R14320062626**

Greetings Mr. and Mrs. Fitterer:

As you know, the METRO FLOOD DIVERSION BOARD OF AUTHORITY (the "Authority") is proceeding with the Fargo Moorhead Diversion Area Project ("Project"); the Cass County Commission (the "Commission") is a member of the Authority. The Cass County Joint Water Resource District (the "District") is also a member of the Authority, and the Authority previously directed the District to obtain the North Dakota right of way necessary to accommodate the Project. You have been in negotiations with the District and its agents regarding right of way and temporary easement the District must acquire from you for the Project. The District copied the Commission on the following three letters the District sent to you regarding the District's negotiations with you:

- Letter dated January 17, 2020, enclosing the District's appraisal for the acquisition of the right of way and temporary easement from you, along with a proposed Purchase Agreement;
- Letter dated February 7, 2020, inviting you to meet with the District for purposes of negotiating compensation for the right of way and temporary easement to be acquired; and
- Letter dated May 22, 2020, notifying you the District planned to submit a request to the Commission seeking immediate possession of the right of way and temporary easement necessary for the Project.

Heather Worden
Commission Assistant

P.O. Box 2806
211 9th Street South
Fargo, North Dakota 58108
701-241-5609
www.casscountynnd.gov

The District informed the Commission that you and the District have not reached a mutually acceptable agreement, and have not signed a purchase agreement, regarding the right of way and temporary easement the District

must purchase from you to accommodate the Project. With that in mind, the District recently requested approval from the Commission to utilize quick take eminent domain to take possession of the right of way and temporary easement the District must acquire from you. The legal description of the necessary right of way and temporary easement is as follows:

Right of Way Easement:

That part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Southwest Corner of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 14; thence North 01°55'29" West on the west line of said SE $\frac{1}{4}$ a distance of 1401.52 feet to the southerly line of the Burlington Northern Railway Co. Right-of-Way; thence South 64°39'06" East on said southerly right-of-way line a distance of 696.62 feet; thence South 25°20'54" West a distance of 436.28 feet; thence 460.82 feet on the arc of a tangential curve, concave to the southeast, having a radius of 950.00 feet; a central angle of 27°47'33", and a long chord length of 456.31 feet bearing South 11°27'08" West; thence South 02°26'39" East a distance of 247.74 feet to the south line of said SE $\frac{1}{4}$; thence South 87°33'21" West on said south line a distance of 315.95 feet to the Point of Beginning.

Said parcel contains 12.23 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

That part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 14; thence North 01°55'29" West on the west line of said SE $\frac{1}{4}$ a distance of 1570.28 feet to the northerly line of the Burlington Northern Railway Co. Right-of-Way, said point also being the Point of Beginning; thence continuing North 01°55'29" West on said west line of the SE $\frac{1}{4}$ a distance of 1069.80 feet to the Northwest Corner of said SE $\frac{1}{4}$; thence North 87°20'54" East on the north line of said SE $\frac{1}{4}$ a distance of 970.08 feet; thence South 01°55'29" East parallel with said west line of the SE $\frac{1}{4}$ a distance of 889.60 feet; thence South 25°20'54" West a distance of 615.59 feet to said northerly right-of-way line; thence North 64°39'06" West on said northerly right-of-way line a distance of 773.95 feet to the Point of Beginning.

Said parcel contains 27.28 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Temporary Easement:

That part of the Southeast Quarter (SE¼) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northeast Corner of the Southeast Quarter (SE¼) said Section 14; thence South 87°20'54" West on the north line of said SE¼ a distance of 1660.58 feet; thence South 01°55'29" East parallel with the west line of said SE¼ a distance of 889.60 feet; thence South 25°20'54" West a distance of 440.59 feet to the Point of Beginning; thence continuing South 25°20'54" West a distance of 175.00 feet to the northerly line of the Burlington Northern Railway Co. Right-of-Way; thence South 64°39'06" East on said northerly right-of-way line a distance of 1350.00 feet; thence North 25°20'54" East a distance of 175.00 feet; thence North 64°39'06" West parallel with said northerly right-of-way line a distance of 1350.00 feet to the Point of Beginning.

Said easement contains 5.42 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

The Commission invites you to attend the Commission's meeting on Monday, August 3, 2020, at 3:30 p.m., via conference call or Microsoft Teams. The District will also participate in the meeting, along with the District's land agent, Jamie Wark, who was your primary point of contact throughout the negotiation process. At the meeting, the Commission will ask the District to verify the District's compliance with Section 61-16.1-09(2) of the North Dakota Century Code. The Commission will ultimately vote on whether to approve the District's use of quick take eminent domain to take a right of way easement and temporary easement over your property.

Over the next several months, in light of Covid-19, the Commission will conduct its meetings via conference call and Microsoft Teams, in accordance with Governor Burgum's Executive Order 2020-16. With that in mind, we request your attendance electronically or by telephone. If you plan to participate in the Commission's August 3, 2020 public meeting, please contact Heather Worden at (701) 241-5609 or wordenh@casscountynd.gov as soon as possible so Ms. Worden can assist you with the necessary arrangements.

This Notice does not preclude you from continuing to work with the District regarding the right of way easement and temporary easement necessary for the Project. In fact, the Commission and the District encourage you to maintain contact with **Jamie Wark** and to continue discussions about the Project. **Jamie Wark** of **SRF Consulting Group, Inc.** is your point of contact regarding the Project. You can reach **Jamie Wark** at **(701) 893-7435** or jwark@srfconsulting.com.

Fitterer
OIN 904
June 29, 2020
Page 4

Finally, North Dakota law requires the Commission to provide you with a description of the District's timeline regarding your right of way. The District must complete the acquisition of right of way necessary for construction of Project components on your property by Fall of 2020.

Sincerely,

CASS COUNTY COMMISSION



Robert Wilson, Cass County Administrator
Cass County Commission
211 Ninth Street South
Fargo, ND 58103
(701) 241-5609

cc: Jamie Wark, Land Agent
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority
Chris McShane, Ohnstad Twichell, P.C.
Eric Dodds, AE2S Program Manager
Sharon Oliver, ROW Acquisition Coordinator, Ohnstad Twichell, P.C.
Heather Worden, Administrative Assistant, Cass County Commission

FedEx Priority Overnight
394332410898 0.10 lb (S) 36.80

Direct Signature Required
Declared Value 100

Recipient Address:
Ervin J Fitterer
mildred L fitterer
171 PRAIRIEWOOD DR S
FARGO, ND 58103-4623
000000000

Scheduled Delivery Date 6/30/2020

Pricing option:
ONE RATE

Package Information:
FedEx Envelope

IMPORTANT!

We are continuing to respond to the impact of COVID-19 around the world. [See our latest updates.](#) For COVID-19-related recipient closures, you can [redirect packages](#), [Ask FedEx](#), or contact the shipper.

Fitterer 394332410898 

Delivered
Tuesday 6/30/2020 at 9:43 am

**DELIVERED**

Signed for by: E.FITTERER

[GET STATUS UPDATES](#)
[OBTAIN PROOF OF DELIVERY](#)

Want to know when your package will arrive?
See your estimated delivery time with FedEx Delivery Manager. [Sign up or Log in](#)

FROM
Fargo, ND US

TO
FARGO, ND US

Shipment Facts

TRACKING NUMBER
394332410898

SERVICE
FedEx Priority Overnight

WEIGHT
0.5 lbs / 0.23 kgs

SIGNATURE SERVICES
Direct signature required

DELIVERED TO
Residence

TOTAL PIECES
1

TOTAL SHIPMENT WEIGHT
0.5 lbs / 0.23 kgs

TERMS
Shipper

PACKAGING
FedEx Envelope

SPECIAL HANDLING SECTION
Deliver Weekday, Residential Delivery,
Direct Signature Required

STANDARD TRANSIT
 6/30/2020 by 10:30 am

SHIP DATE
 Mon 6/29/2020

ACTUAL DELIVERY
Tue 6/30/2020 9:43 am

Travel HistoryLocal Scan Time 

Tuesday, 6/30/2020

9:43 am

FARGO, ND

Delivered

Page 32 of 41**08/03/2020**

7/1/2020

Track your package or shipment with FedEx Tracking

9:04 am FARGO, ND On FedEx vehicle for delivery

7:36 am FARGO, ND At local FedEx facility

Monday, 6/29/2020

6:31 pm FARGO, ND At local FedEx facility

5:35 pm FARGO, ND Picked up

1:43 pm Shipment information sent to FedEx

1:43 pm FARGO, ND Picked up
Tendered at FedEx Office

AFFIDAVIT OF LAND AGENT

STATE OF North Dakota)
) ss.
COUNTY OF Cass)

[¶1] I, Ken Helvey, do hereby state on oath:

[¶2] I am employed by SRF Consulting Group, Inc. as Principal/Land Agent. The Cass County Joint Water Resource District (“the District”) hired SRF Consulting Group, Inc. to negotiate and acquire the necessary right of way for the Fargo-Moorhead Area Diversion Project (the “Project”).

[¶3] The District must acquire certain real property from Ervin J. Fitterer and Mildred L. Fitterer (“Landowner”) for construction, operation, and maintenance of the Project.

[¶4] Landowner’s real property where the District must acquire a Right of Way and Temporary Easement for the Project located in Cass County, North Dakota, more fully described as follows:

Right of Way
OIN 904

That part of the Southeast Quarter (SE¼) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Southwest Corner of the Southeast Quarter (SE¼) of said Section 14; thence North 01°55'29" West on the west line of said SE¼ a distance of 1401.52 feet to the southerly line of the Burlington Northern Railway Co. Right-of-Way; thence South 64°39'06" East on said southerly right-of-way line a distance of 696.62 feet; thence South 25°20'54" West a distance of 436.28 feet; thence 460.82 feet on the arc of a tangential curve, concave to the southeast, having a radius of 950.00 feet; a central angle of 27°47'33", and a long chord length of 456.31 feet bearing South 11°27'08" West; thence South 02°26'39" East a distance of 247.74 feet to the south line of said SE1/4; thence South 87°33'21" West on said south line a distance of 315.95 feet to the Point of Beginning.

Said parcel contains 12.23 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

That part of the Southeast Quarter (SE¼) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of the Southeast Quarter (SE¼) of said Section 14; thence North 01°55'29" West on the west line of said SE¼ a distance of 1570.28 feet to the northerly line of the Burlington Northern Railway Co. Right-of-Way, said point also being the Point of Beginning; thence continuing North 01°55'29" West on said west line of the SE¼ a distance of 1069.80 feet to the Northwest Corner of said SE¼; thence North 87°20'54" East on the north line of said SE¼ a distance of 970.08 feet; thence South 01°55'29" East parallel with said west line of the SE¼ a distance of 889.60 feet; thence South 25°20'54" West a distance of 615.59 feet to said northerly right-of-way line; thence North 64°39'06" West on said northerly right-of-way line a distance of 773.95 feet to the Point of Beginning.

Said parcel contains 27.28 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

Temporary Easement

OIN 904

That part of the Southeast Quarter (SE¼) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northeast Corner of the Southeast Quarter (SE¼) said Section 14; thence South 87°20'54" West on the north line of said SE¼ a distance of 1660.58 feet; thence South 01°55'29" East parallel with the west line of said SE¼ a distance of 889.60 feet; thence South 25°20'54" West a distance of 440.59 feet to the Point of Beginning; thence continuing South 25°20'54" West a distance of 175.00 feet to the northerly line of the Burlington Northern Railway Co. Right-of-Way; thence South 64°39'06" East on said northerly right-of-way line a distance of 1350.00 feet; thence North 25°20'54" East a distance of 175.00 feet; thence North 64°39'06" West parallel with said northerly right of way line a distance of 1350.00 feet to the Point of Beginning.

Said easement contains 5.42 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

The property described above is the "Necessary Property."

[¶5] Affiant is familiar with the records maintained by SRF Consulting Group, Inc. with respect to the Necessary Property and has reviewed all such records prior to executing this affidavit.

[¶6] SRF Consulting Group, Inc. has attempted to negotiate with Landowner to acquire the Necessary Property. Attached as **Exhibit A** is a log of all contacts SRF Consulting Group, Inc. has had with Landowner.

[¶7] The District has instructed SRF Consulting Group, Inc. to refrain from referencing, mentioning, or threatening quick take eminent domain during negotiations since August 1, 2017.

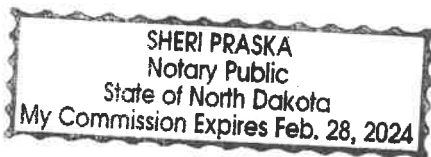
[¶8] I verify to the best of my knowledge, as Principal/Land Agent of SRF Consulting Group, Inc., nobody from SRF Consulting Group, Inc. has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations since August 1, 2017.


Dated this 22 day of July, 2020.



Ken Helvey
SRF Consulting Group, Inc.

Subscribed to and sworn to before me this 22 day of July, 2020.





Notary Public, County of Cass
State of North Dakota
My Commission Expires: 2/28/2024

(SEAL)

"Exhibit A"

OIN 904 - Fitterer Contact Log	
Date	Contact Summary
9/28/2016	ROE and ROE letter sent
10/26/2016	Nicole left a VM for Ervin requesting that he contact Nicole regarding the ROE that was mailed to him
11/9/2016	Nicole left a VM for Ervin requesting that he contact Nicole regarding the ROE that was mailed to him
11/14/2016	Nicole spoke with Ervin, he said he already received and signed an ROE and wondered why he needed to sign another
11/15/2016	Nicole called Ervin and informed him that they do not have a signed ROE on record for him. Previously expired 2013
11/16/2016	Nicole mailed Ervin a copy of the ROE for signature with a return envelope
12/5/2016	Nicole received a signed ROE and mailed it to Michelle Anderson at the CCJWRD on 12/6/16 via regular mail
12/16/2016	Nicole spoke with Mildred and set up a meeting for Monday the 19th to introduce herself and get familiar with the property
12/19/2016	Nicole met Mildred and Mildred said that Ervin didn't want to meet with her. She left her business card
3/16/2017	Appraisal and offer letter sent
4/3/2017	Nicole left VM requesting they contact her to discuss the offer
4/11/2017	Nicole stopped by the Fitterer's home and they were not happy with how things going with the project
5/11/2017	Nicole spoke with Ervin and he stated that they are still waiting and they haven't made a decision yet and they aren't quite sure what they want to do.
6/5/2017	Nicole lvm for Ervin and Mildred requesting that they contact Nicole to discuss the diversion project.
6/7/2017	Nicole lvm for Ervin and Mildred requesting that they contact Nicole to provide a follow up on their offer from the Diversion
8/2/2017	Nicole spoke with Ervin and informed him that the Diversion Authority has giving him a few months to consider the offer
4/30/2019	Jamie spoke with Ervin. Ervin says a lot of people are unhappy about the project, but he's willing to work
9/23/2019	Appraisal and offer letter sent
10/28/2019	Jamie called Ervin Fitterer to discuss the Offer Letter, COS & Appraisal he received and signed for on September 21
1/10/2020	Revised appraisal and offer letter sent
1/17/2020	Formal offer letter sent
4/1/2020	Spoke to Ervin - Does not support project. Will wait for project to play out
5/12/2020	Called - hung up on
5/26/2020	Called - no answer
5/26/2020	Possession Intent letter received
6/2/2020	Ervin called after he received possession intent letter
6/4/2020	Called and left message
6/11/2020	Called - hung up on
6/16/2020	Spoke with Ervin Fitterer. No change.
7/13/2020	Spoke to Ervin - No change.

Said parcel contains 12.23 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

That part of the Southeast Quarter (SE¼) of Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of the Southeast Quarter (SE¼) of said Section 14; thence North 01°55'29" West on the west line of said SE¼ a distance of 1570.28 feet to the northerly line of the Burlington Northern Railway Co. Right-of-Way, said point also being the Point of Beginning; thence continuing North 01°55'29" West on said west line of the SE¼ a distance of 1069.80 feet to the Northwest Corner of said SE¼; thence North 87°20'54" East on the north line of said SE¼ a distance of 970.08 feet; thence South 01°55'29" East parallel with said west line of the SE¼ a distance of 889.60 feet; thence South 25°20'54" West a distance of 615.59 feet to said northerly right-of-way line; thence North 64°39'06" West on said northerly right-of-way line a distance of 773.95 feet to the Point of Beginning.

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Said easement contains 5.42 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

[¶7] The District has fulfilled the required negotiation steps in accordance with subsection 2 of section 61-16.1-09 of the North Dakota Century Code.

[¶8] The District sent a written offer for just compensation to the landowner by certified mail, along with an appraisal and purchase agreement, on January 17, 2020. A copy of the offer (without the appraisal that was included) is attached as **Exhibit 1**.

[¶9] On February 7, 2020, the District sent Landowner a written request for a meeting, by certified mail; the District and Landowner have not reached an agreement regarding compensation, and more than fifteen days have passed since Landowner's receipt of the offer. A copy of the written request for a meeting with the landowner is attached as **Exhibit 2**.

[¶10] The District and Landowner have not reached an agreement regarding compensation, and more than thirty days have passed since Landowner's receipt of the request for a meeting.

[¶11] On May 22, 2020, the District sent Landowner a written notice of intent to take possession of the Right of Way and Temporary Easement, by certified mail. A copy of the notice of intent is attached as **Exhibit 3**.

[¶12] The District has retained land agents who are in direct contact with Landowner. The District instructed our land agents not to reference, mention, or threaten quick take eminent domain during negotiations. The land agents have verified they have not referenced, mentioned, or threatened quick take eminent domain during the course of negotiations with Landowner since August 1, 2017.

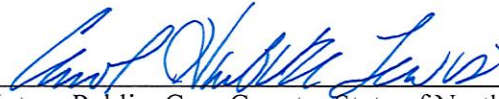
[¶13] I verify there have been no references, mention, or threats of quick take eminent domain by the District during negotiations since August 1, 2017.

Dated this 23 day of July, 2020.



Dan Jacobson, Chair
Cass County Joint Water Resource District

Subscribed to and sworn to before me this 23rd day of July, 2020.



Notary Public, Cass County, State of North Dakota

(SEAL)

